Nitromethane From The People's Republic of China

Investigation No. 731-TA-650 (Final)

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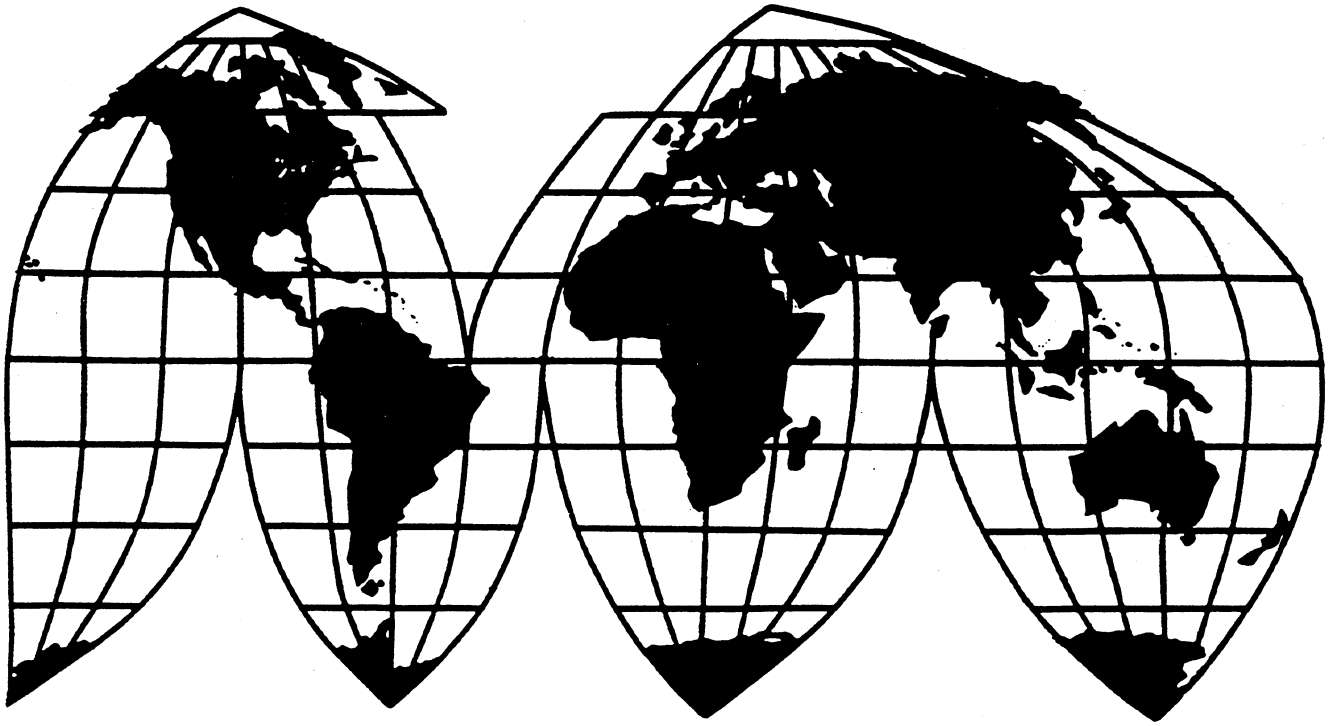
U.S. International Trade Commission



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Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

PART I: DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-650 (Final)

NITROMETHANE FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China (China) of nitromethane, provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 4, 1993, following a preliminary determination by the Department of Commerce that imports of nitromethane from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 1, 1993 (58 F.R. 63392). The hearing was held in Washington, DC, on March 29, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Commissioner Crawford dissenting and Commissioner Bragg not participating.

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that the industry in the United States producing nitromethane is neither materially injured nor threatened with material injury by reason of imports of nitromethane from the People's Republic of China that have been found to have been sold at less than fair value (LTFV) in the United States.[1] [2] [3]

I. LIKE PRODUCT

A. In General

In determining whether an industry in the United States 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 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."[4] In turn, 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."[5]

The Department of Commerce ("Commerce") has defined the article subject to these investigations as nitromethane, a chemical 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), a basket provision, and having the following characteristics:

> Nitromethane is a nitroparaffin in which the nitro group is attached to the single carbon atom of that number 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.[6]

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[1] Material retardation of the establishment of an industry is not an issue in these investigations and will not be discussed further. Also, because we reach a negative determination, we do not address critical circumstances.

[2] Commissioner Crawford determines that the industry in the United States producing nitromethane is materially injured by reason of LTFV imports of nitromethane from China. See her dissenting views infra.

[3] Commissioner Bragg did not participate in the determination in this investigation.

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10). The Commission's like product determinations are factual, and the Commission applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. See, e.g., Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

In analyzing like product issues, the Commission considers a number of factors, including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and (6) where appropriate, price. Calabrian Corp. v. U.S. Int'l Trade Comm'n, 794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington Co. v. United States, 747 F. Supp. at 748-49.

[6] 59 Fed. Reg. 14834 (Mar. 30, 1994).

B. Like Product Issues

The production of nitromethane in the United States involves the simultaneous production[7] of three other coproducts, which along with nitromethane make up a group of organic chemicals known as nitroparaffins. The nitroparaffins include nitromethane, nitroethane, 1-nitropropane, and 2-nitropropane.[8] These nitroparaffins are used to make a variety of downstream derivatives.[9] ANGUS uses nitromethane to produce derivative products, including: TRIS AMINO® Crystals, TRIS AMINO® Concentrate, TRIS NITRO®, and ALKATERGE® T/T-IV, which are used in pharmaceuticals and pharmaceutical intermediates, and serve a wide range of specialty chemical markets.[10]

In the preliminary investigation, the Commission found a single like product consisting of nitromethane and did not expand the like product to include the other nitroparaffins or nitroparaffin derivatives. The Commission found that the products had quite distinct physical characteristics (e.g., molecular structure and chemical composition) and end uses, and were not interchangeable.[11] The Commission found that, although there are similarities in channels of distribution,[12] customers and producers perceive the products to be different[13] and they are sold at different prices.[14]

In this final investigation, all parties advocate one like product -- nitromethane.[15] None of the parties to this final investigation argued that the Commission should change the findings reached in the preliminary investigation, and no new facts have arisen that warrant changing the definition of the like product from that reached in the preliminary investigation. Indeed, the little new evidence concerning the like product that has arisen in this final

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[7] ANGUS Chemical Company ("ANGUS"), the petitioner and sole current U.S. producer of nitromethane, reacts nitric acid (HNO_3) with propane gas (C_2H_6) at high temperature and pressure to produce nitromethane in its plant in Sterlington, LA. Confidential Report ("CR") at I-7, Public Report ("PR") at II-5; Economic Memorandum EC-R-047 at 3 (Apr. 22, 1994). W.R. Grace, the other U.S. producer during the period of investigation, used a different production process before it ceased production in mid-1992. This process involved nitrating a mixture of propane and ethane. Nitromethane from the People's Republic of China, Inv. No. 731-TA-650 (Preliminary), USITC Pub. 2661 at I-9 (July 1993) (hereinafter "Preliminary Determination").

[8] CR at I-7, PR at II-5; Economic Memorandum EC-R-047 at 3 (Apr. 22, 1994); Petitioner's Prehearing Brief at 2.

[9] CR at I-7, PR at II-5.

[10] CR at I-6, PR at II-4.

[11] Preliminary Determination at 9, 11.

[12] The Commission noted that the channels of distribution for nitromethane and the nitroparaffin derivatives are somewhat different. The nitroparaffin derivatives are sold both directly to end users and to distributors, whereas nitromethane is sold directly to end users. Id. at 10 n.27.

[13] The Commission noted that although producers use similar production processes and marketing strategies for nitromethane and other nitroparaffins, they recognize that the products are different. Id. at 12.

[14] Id. at 9-10, 12. The Commission also noted that under the traditional five-factor finished/unfinished product analysis, the same definition resulted, with nitromethane as the like product. It noted, however, that it was unclear whether such analysis was appropriate and that broadening the definition of the like product in this investigation to include derivatives, i.e., downstream products, has the effect of including within the definition of the domestic industry producers of a downstream product whose interest, as purchasers of unfair imports, is contrary to the domestic producers of those articles. Preliminary Determination at 8-10 & n.30 (citing Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 (Mar. 1991)). Petitioner has not argued for such analysis in this final investigation and we do not rely on it here.

[15] See Petitioner's Prehearing Brief at 9-15; Hearing Transcript at 171-72. Although the respondents argued for a broader like product in the preliminary investigation, they now accept a like product comprising only nitromethane. Hearing Transcript at 171-72.

investigation[16] only confirms the conclusions made in the preliminary investigation.[17] For these reasons, and the reasons stated in the Commission's preliminary determination, we find one like product, nitromethane, and do not include the other nitroparaffins or nitroparaffin derivatives in the like product.

II. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Producers

In light of our like product definition, we reaffirm the Commission's definition of the domestic industry reached in the preliminary determination as the producers of nitromethane during the period of investigation, including ANGUS and W.R. Grace ("Grace") (which ceased production in mid-1992).[18]

B. Related Parties

Under section 771(4)(B) of the Act, producers who are themselves importers of LTFV or subsidized merchandise are considered related parties and may be excluded from the domestic industry in "appropriate circumstances."[19] In its preliminary determination, the Commission found that ANGUS was a related party because it imported the subject product during the period of investigation.[20] Because ANGUS was responsible for a substantial percentage of domestic production, is the sole remaining domestic producer, and imported only while its production was interrupted[21] in order to continue to supply existing customers,

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[16] The new evidence on the record consists of additional material in the report, which supports the same conclusions as the information in the preliminary investigation report, and Petitioner's Prehearing Brief, which parallels the preliminary determination and reaches the same conclusions as those presented in Petitioner's Postconference Brief.

[17] See, e.g., CR at I-5 - I-8, I-9, I-20, I-23, I-58 - I-59, PR at II-4 - II-5, II-10, II-21 - II-22; Economic Memorandum EC-R-047 at 3-4, 6-7, 25-26 (Apr. 22, 1994); Petitioner's Prehearing Brief at 2, 10-12, 14; compare Report Table 16, CR at I-69 - I-71, PR at II-26 with Report Table 19, CR at I-88, PR at II-30; compare Report Table C-1, CR at C-3, PR at C-3 with Report Table C-2 and D-7, CR at C-4, D-9, PR at C-3, D-3.

[18] We note that there is limited information in this investigation on another domestic company, Texas Allied, which indicated that it has ***. CR at I-18 n.47, PR at II-9 n.47. The process of refining nitromethane usually involves merely the reduction of water content in nitromethane and is a procedure that some customers and distributors can perform. See Hearing Transcript at 70-71, 155-56; CR at I-18, PR at II-9. There is conflicting evidence suggesting that this company has ***. See Posthearing Brief of Coalition of American Nitromethane Distributors and Consumers, April 15, 1994 Affidavit of Joseph Rabaglia, Chemical Product Manager, Wego Chemical and Mineral Corporation, ¶ 8. Moreover, no purchaser in questionnaire responses has identified this company as a source of domestically produced nitromethane. As very limited information was provided on this company, and its operations appear limited principally to refining nitromethane, we do not include it in the industry. In any event, this company's operations are a very small portion of the overall nitromethane domestic industry data. See Report Table 4, CR at I-24, PR at II-11. Given the small quantity of domestic production that it allegedly accounts for, the company's inclusion in the industry would not affect our analysis or conclusions.

[19] 19 U.S.C. § 1677(4)(B).

[20] Preliminary Determination at 14. This information is confirmed in this final investigation. See CR at I-19 - I-20, PR at II-10.

[21] The Commission found that although ANGUS's import levels were high, this fact was not as important in this investigation because ANGUS imported only while its facility was being rebuilt after its explosion on May 1, 1991. Preliminary Determination at 15. The Commission noted that ANGUS's nitromethane production was continuous until May 1, 1991, when a major fire and

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the Commission also found that appropriate circumstances did not exist to exclude ANGUS from the industry as a related party.[22] Rather, the Commission viewed ANGUS's importing of the subject product as an important condition of competition affecting the industry.[23]

Little additional evidence has arisen in this final investigation on ANGUS's status as a related party, and no party argued (either in the preliminary or final investigation) that the Commission should exclude ANGUS as a related party.[24] We affirm our finding in the preliminary investigation that appropriate circumstances do not exist to exclude ANGUS from the industry as a related party.[25]

III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured by reason of LTFV imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. These factors 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. No single factor is determinative, and we consider all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[26] In evaluating the condition of the domestic industry, we look at the domestic industry as a whole.[27]

In examining the condition of the domestic industry, we considered the indicators of industry performance for all domestically produced nitromethane, whether captively consumed or sold on the merchant market. In reaching our determination we have, however, taken into consideration the degree of captive consumption. In general, captive consumption attenuates the degree of competition between the domestic product and the subject imports. We have taken into consideration that the subject imports do not affect the captive segments

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[21](...continued)
explosion forced the shutdown of ANGUS's domestic production. ANGUS resumed partial production in March 1992 following a two-phase reconstruction program which fully restored ANGUS's nitromethane production capacity by mid-1992. CR at I-12 - I-13, PR at II-7; Hearing Transcript at 24; Preliminary Determination at 14 (citing Preliminary Investigation Report at I-14).

[22] Preliminary Determination at 15-16. The Commission found that ANGUS has always maintained a prominent position as a producer within the domestic nitroparaffins market and that although its import levels were high, evidence showed that ANGUS imported in an attempt to maintain its customer base by supplying purchasers with imported nitromethane. Id. The Commission relied on ANGUS's comments that it had no alternative source of supply for the large nitromethane purchases from China it made, as neither Grace nor sources in other countries had the capacity to satisfy ANGUS's demands. Id.

[23] Id. at 16.

[24] See Petitioner's Prehearing Brief at 16-17; Coalition's Posthearing Brief at 12, Appendix 1; Hearing Transcript at 136-143.

[25] See CR at I-11 - I-13, I-19, I-23 - I-25, PR at II-7, II-10, II-11, Report Tables 4, 9, D-5, CR at I-24, I-34, D-7, PR at II-11, II-13, D-3; Economic Memorandum EC-R-047 at 3 (Apr. 22, 1994); Petitioner's Prehearing Brief at 3-4, 5, 16-17; Hearing Transcript at 24-25, 61-62, 87-90; Petitioner's Responses to Commission Questions at 1-2, 9; compare Report Table 10 (ANGUS's overall operations) with Report Table C-1 (ANGUS's and Grace's operations) and Table D-7 (Grace's nitroparaffins operations); see also Hearing Transcript at 171, 103-106, 118, 185, 177-179; Petitioner's Prehearing Brief at 18.

[26] 19 U.S.C. § 1677(7)(C)(iii).

[27] See, e.g., Welded Stainless Steel Pipe from Malaysia, Inv. No. 731-TA-644 (Final), USITC Pub. 2744, at I-9 n.29 (Mar. 1994).

of this industry in the same manner that they affect the merchant market segments.[28] We note that ANGUS captively consumed a significant percentage of its nitromethane production in the production of downstream derivatives.[29] Grace also captively consumed a percentage of its production in 1990 and 1991; however, because it had fewer derivative product offerings, it captively consumed a lesser percentage of its production than ANGUS.[30]

Virtually all of the industry data discussed below reflect to some degree the decision of Grace to cease producing nitroparaffins, including nitromethane, in the second quarter of 1992.[31] Grace had experienced operating problems in 1990 and early 1991,[32] but its operating levels temporarily improved during ANGUS's production hiatus from May 1, 1991 through March 1992.[33] The circumstances surrounding Grace's decision to exit the nitromethane industry was a multistep process involving three separate decisions, each made at a different time under different circumstances.[34] First, Grace decided to reorganize its lines of business to concentrate on certain core activities. This decision occurred in early 1990, when imports were entering in de minimis quantities. The organic chemicals division, which included nitroparaffins, was not considered to be one of these core businesses, and thus became a target for possible sale.[35]

Second, Grace decided to sell its nitroparaffins business. This decision occurred in early 1991, when imports still were entering in de minimis quantities and at high prices.[36] Despite the fact that ANGUS's plant explosion on May 1, 1991 subsequently afforded Grace increased nitromethane business opportunities due to a domestic market supply shortage, Grace continued with attempts to sell its nitroparaffins business.

Third, Grace decided to close its nitroparaffin plant. This decision occurred in the second quarter of 1992, after ANGUS's plant explosion, when imports were entering in

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[28] See, e.g., Certain Flat-Rolled Carbon Steel Products, Inv. Nos. 701-TA-319, et al., and 731-TA-573-579, et al., Vol. I, USITC Pub. 2664 at 15-18 (Aug. 1993).

[29] See CR at I-20 & n.54, I-23, PR at II-10 & n.54, II-11. ANGUS captively consumed *** percent of its nitromethane production in 1990, *** percent in 1991, *** percent in 1992, and *** percent in 1993. Id.; see also Petitioner's Posthearing Brief at 10.

[30] Grace captively consumed *** percent of its production in 1990 and *** percent in 1991. See CR at I-20 & n.54, PR at II-10 & n.54.

In 1993, ***. CR at I-33, PR at II-13. Thus a major difference between the ANGUS and Grace plants is that ***. CR at I-33, PR at II-13.

[31] CR at I-13, I-37, PR II-7, II-14. This issue is further addressed by Vice Chairman Watson and Commissioner Nuzum in their discussion of the impact of the subject imports, infra, in the section on no material injury by reason of LTFV imports.

[32] Like ANGUS, Grace had operating problems, including ***, in 1990 and early 1991. See CR at I-13, I-37, PR at II-7, II-14; see also Respondents' Posthearing Brief, Kiziuk Affidavit. Grace's nitroparaffin operations were ***. CR at I-15, PR at II-8.

[33] CR at I-37, Appendix D, PR at II-14, Appendix D.

[34] The circumstances behind Grace's decision to close were in contention in this investigation and are discussed in CR at I-13 - I-18, PR at II-7 - II-9; Prehearing Submission of Cedar Chemicals; Respondents' Prehearing Brief at 5-8; Respondents' Posthearing Brief at 1-4 and accompanying Affidavits; Petitioners' Prehearing Brief at 51-55 and accompanying Affidavits; Petitioners' Posthearing Brief at 8-9 and affidavits cited therein; Petitioners' Response to Further Questions at 4-5 and accompanying Affidavits; Hearing Transcript at 10-11, 19, 29-30, 66-67, 103-107, 118-119, 167-170, 171-174, 177-179, 184-185.

[35] CR at I-15, PR at II-8; Hearing Transcript at 103-107, 118-119, 168-171, 185; Prehearing Submission of Cedar Chemicals; Petitioner's Prehearing Brief, affidavits of Messrs. Huber and Power; Responses by Petitioner to Commission Questions, affidavit of Mr. Neeves.

[36] CR at I-15 - I-16, PR at II-8 - II-9, Report Table 14, CR at I-54, PR at II-20, Report Tables 16 and 17, CR at I-69 - I-71 and I-75 - I-76, PR at II-26; see also CR at I-16, PR at II-8; Hearing Transcript at 103-107, 118-119, 168-171, 185; Prehearing Submission of Cedar Chemicals; Petitioner's Prehearing Brief, affidavits of Messrs. Huber and Power; Responses by Petitioner to Commission Questions, affidavit of Mr. Neeves.

considerable quantities.[37] Prices of imports at this time were lower than prior periods but higher than in 1990, a period during which petitioner agrees import prices were not at unfair prices and during which imports were entering at de minimis levels.[38] Grace stopped production of nitroparaffins in the second quarter of 1992, and in August 1992, the decision not to restart the plant was made public. At the time of Grace's decision in early 1992 to close, ANGUS was also communicating to its U.S. customers that the ANGUS plant would come on line sooner than expected, although Grace closed its plant prior to the restart of ANGUS's production. Grace's decision to cease production accounts for many of the decreases in the domestic industry indicators occurring in 1992, which are discussed below. As a result of Grace's decision to cease producing nitromethane, ANGUS was the sole domestic producer during at least the last seven months of 1992 and all of 1993.[39]

Much of the data discussed below also reflect the disruptions of domestic production during the period of investigation. A fire and explosion at ANGUS's plant on May 1, 1991, forced it to cease production during reconstruction for 10 months, until March 1992.[40] During that time period, ANGUS sold product from inventory, sold imported Chinese nitromethane, and sold product it acquired from Grace to maintain ANGUS's own customer base.[41] Grace also experienced similar interruptions in its operations in 1990 and 1991, although on a smaller scale.[42]

ANGUS's current operations involve production in a different plant than in earlier years, with an entirely different cost structure and assets.[43] Moreover, the conditions of supply in the market for nitromethane in the United States have changed considerably during the period. With Grace's decision to cease production of nitromethane, purchasers have an interest in an alternative, or second, source of supply furnished by Chinese nitromethane.

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[37] CR at I-16, PR at II-8, Report Table 14, CR at I-54, PR at II-20; Hearing Transcript at 103-107, 118-119, 168-171, 185; Petitioner's Prehearing Brief, affidavits of Messrs. Huber and Power; Responses by Petitioner to Commission Questions, affidavit of Mr. Neeves.

[38] Report Tables 16 and 17, CR at I-69 - I-71 and I-75 - I-76, PR at II-26; see also CR at I-16, PR at II-8.

[39] Respondents have raised certain questions regarding the interaction of competition and antitrust issues with the Commission's injury determination. Hearing Transcript at 16, 18; Petitioner's Posthearing Brief at 11-12. Respondents have argued that ANGUS, as the sole domestic producer, has engaged in various types of anticompetitive behavior. We note that the legislative history of the antidumping laws indicates that Congress intended that the Commission reach its determinations after assessing all relevant factors of trade and competition. See S. Rep. No. 1298, 93rd Cong., 2d Sess. 180 (1974); S. Rep. No. 249, 96th Cong., 1st Sess. 88 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 46 (1979); H.R. Doc. No. 153, Part II, 96th Cong. 1st Sess. 46 (1979). However, we do not find respondents' arguments regarding anticompetitive behavior relevant to our analysis of whether the domestic industry is materially injured by reason of LTFV imports in this investigation. See Maverick Tube Corp. v. United States, 687 F.Supp. 1569, 1573-74 (Ct. Int'l Trade 1988) (criticizing the use of predatory pricing analysis and indicating it is more akin to antitrust than antidumping); USX Corp. v. United States, 682 F.Supp. 60, 65-68 (Ct. Int'l Trade 1988) (stating that the antidumping statute the Commission administers is based on "injury to industry" not "injury to competition").

[40] CR at I-12 - I-13, I-35 - I-37, PR at II-7, II-13 - II-14.

[41] Id. at II-7, II-13 - II-14. During 1991 and 1992, Grace's operations were temporarily enhanced because of ANGUS's shutdown. See CR at I-15 & n.37, I-37, I-62 - I-63, PR at II-8, II-14, II-23. We note that in our analysis, we examined the domestic industry "in the context of production operations in the United States" and discounted effects from ANGUS's own importing of Chinese nitromethane. See 19 U.S.C. § 1677(7)(B)(i)(III).

[42] As noted above, Grace had operating problems (***) in 1990 and early 1991. See CR at I-37, PR at II-14.

[43] As a result of ANGUS's plant being rebuilt in 1992, ***. Thus ratios of profitability, whether based on sales or assets, are not comparable for any two periods. See Report Table 11, CR at I-43, PR at II-15, n.1 to Report Table 10, CR at I-41, PR at II-14, CR at I-36 - I-40, PR at II-13 - II-14.

Previously, the need for a second source of supply was satisfied by the production of both Grace and ANGUS in the United States.[44] Imports have comprised a portion of the domestic market while either Grace or ANGUS have been absent from the market. However, ANGUS's domestic production competed with Chinese imports only for a portion of 1992 and a portion of 1993, as those imports ceased entirely after August 1993.[45] In the other years, imports entered the United States in only very small amounts (1990) or competed only with Grace's production, while ANGUS was shut down for a portion thereof (1991 and 1992).

Thus, due to Grace's decision to cease production and due to ANGUS's rebuilt plant with its different asset and cost basis, 1993 is not directly comparable with 1990 -- the only other full year of production by the domestic industry during the period of investigation. For these reasons, in this final investigation, we are faced with a situation in which no yearly data are comparable on a consecutive basis.

A direct comparison of 1993 and 1990 data in all instances, as petitioner suggests, would distort our analysis, as the many intervening factors discussed above have affected the domestic nitromethane industry and market. The domestic nitromethane industry and market existing in 1993 have undergone such significant structural change that comparisons between 1990 and 1993 are of only limited value in determining whether the domestic industry is presently materially injured by reason of LTFV imports. For this reason, we focus on 1993 data and can make only limited comparisons between 1993 data and 1990 data.[46] [47] [48]

Apparent U.S. consumption of nitromethane on the basis of quantity, including that consumed internally in the production of derivatives, decreased considerably from 1990 to 1991, but increased slightly in 1992 and again by a slightly larger amount in 1993.[49] On the basis of value, consumption decreased each year during the period of investigation, and by a greater percentage than the decrease by quantity.[50]

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[44] CR at I-63, I-86, I-91 - I-102, PR at II-23, II-29, II-32; Hearing Transcript at 18, 101, 108-110, 116, 131-132.

[45] We note that the pending LTFV determination likely contributed to the cessation of Chinese imports.

[46] Much of the discussion of the industry's condition is in general terms to protect the confidentiality of the underlying data, which has been obtained from only two firms and, in 1993, from only ANGUS. Confidential information is provided in footnotes and is deleted from the public version of this opinion.

[47] Due to the conditions of competition discussed herein, Vice Chairman Watson and Commissioner Nuzum find that, for purposes of determining whether the domestic industry is experiencing material injury, the most relevant part of the period of investigation is from March 1992 (when ANGUS' production came back on line) through August 1993 (there were no imports after the end of August 1993). The record indicates that just prior to March 1992, ANGUS ceased its own importing activities and began to compete with the subject imports to regain market share. It is only during the above described time period, therefore, that there was significant head-to-head competition between the current sole producer in the domestic industry and non-de minimis subject imports.

[48] Commissioner Crawford does not join the discussion of this paragraph. She does not make a separate conclusion of material injury based on comparisons of year-to-year (i.e., trends) data.

[49] Data referred to in this paragraph are summarized in Report Table 1, CR at I-10 - I-11, PR at II-6. On the basis of quantity, apparent U.S. consumption decreased from *** pounds in 1990 to *** pounds in 1991, but increased to *** pounds in 1992 and *** million pounds in 1993. Id. We note that the ANGUS plant explosion and supply constraints contributed to decreases in consumption as alternatives to nitromethane were explored but not found to be viable and some purchasers had to shut down due to an inability to obtain nitromethane. CR at I-63, PR at II-23.

[50] On the basis of value, apparent U.S. consumption decreased from about *** in 1990 to about *** in 1991, *** in 1992, and *** in 1993. Id.

Production and average-of-period capacity to produce nitromethane declined considerably from 1990 to 1991 due to the explosion on May 1, 1991 at ANGUS's plant.[51] In 1992, average-of-period capacity returned to a level higher than that reported for 1990 as ANGUS completed the reconstruction of its plant by May 1992. Production also increased considerably in 1992, but did not reach the 1990 level. In 1993, average-of-period capacity decreased only slightly despite the exit of Grace from the domestic industry,[52] and production actually increased slightly to levels above those reported for 1992. ANGUS's production as the sole domestic producer was higher in 1993 than total industry production in 1992 but not as high as total industry production in 1990. The interplay between capacity and production results in average-of-period capacity utilization rates that increased slightly from 1990 to 1991, decreased in 1992 and increased slightly in 1993. Capacity utilization rates remained over 60 percent for each year during the period of investigation.[53]

Domestic producers' U.S. shipments of nitromethane decreased considerably by quantity and value in 1991 and 1992.[54] These declines again relate to production shutdowns by ANGUS in 1991 and Grace in 1992. Quantity and value of U.S. shipments increased considerably in 1993. The average unit value of domestic producers' U.S. shipments increased slightly from 1990 to 1991 and again in 1992, but decreased in 1993.[55] U.S. producers' exports of nitromethane by both quantity and value decreased from 1990 to 1991, but increased in 1992.[56] Exports decreased very slightly by quantity and value in 1993.

Domestic producers' end-of-period inventories of nitromethane were lower in 1991 than 1990, were at a significantly higher level in 1992, and again were higher in 1993.[57] End-of-period inventories in relation to U.S. production rose steadily throughout the period of investigation. End-of-period inventories in relation to shipments of domestically produced nitromethane rose each year from 1990 to 1992, but declined in 1993.

The number of production and related workers (PRWs) producing nitromethane decreased from 1990 to 1991, increased in 1992, and decreased in 1993.[58] The number of

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[51] Data referred to in this paragraph are summarized in Report Table 4, CR at I-23 - I-25, PR at II-11. Domestic nitromethane production was *** pounds in 1990, *** pounds in 1991, *** pounds in 1992, and *** pounds in 1993. Average-of-period capacity was about *** pounds in 1990, *** pounds in 1991, *** pounds in 1992, and *** pounds in 1993.

[52] Grace ceased production in the second quarter of 1992.

[53] Capacity utilization rates were *** percent in 1990, *** percent in 1991, *** percent in 1992, and *** percent in 1993.

[54] Data referred to in this paragraph are summarized in Report Tables 4 and 5, CR at I-25 - I-27, PR at II-11 - II-12. Domestic producers' U.S. shipments of nitromethane were *** pounds in 1990, *** pounds in 1991, *** pounds in 1992, and *** pounds in 1993.

[55] Data on U.S. producers' shipments are summarized in Report Tables 4 and 5, CR at I-25 - I-27, PR at II-11 - II-12. Unit values were *** per pound in 1990, *** per pound in 1991, *** per pound in 1992, and *** per pound in 1993.

[56] Data on export shipments are summarized in Report Tables 4 and 5, CR at I-25 - I-27, PR at II-11 - II-12. U.S. producers' exports were *** pounds in 1990, *** pounds in 1991, *** pounds in 1992, and *** pounds in 1993. Unit values of U.S. producers' exports were *** per pound in 1990, *** per pound in 1991, *** pounds in 1992, and *** pounds in 1993.

[57] Data referred to in this paragraph are summarized in Report Table 7, CR at I-26 - I-27 and I-28, PR at II-12. End-of-period inventories were *** pounds in 1990, *** pounds in 1991, *** pounds in 1992, and *** pounds in 1993.

[58] Data referred to in this paragraph are summarized in Report Table 8, CR at I-27 - I-32, PR at II-12 - II-13. There were *** nitromethane PRWs in 1990, *** in 1991, *** in 1992, and *** in 1993.

The accounting records of the domestic producers do not contain labor cost information specific to nitromethane. Consequently, both producers reported the number of total workers for nitroparaffin operations. The nitromethane figures were derived by allocating nitroparaffin totals by

(continued...)

PRWs producing nitroparaffins followed a similar pattern although the levels were different.[59] ***, which reflect its decision to close down its nitroparaffin production facility.[60] The number of hours worked by PRWs in nitromethane operations decreased from 1990 to 1991, increased in 1992, and increased slightly again in 1993.[61] The number of hours worked by PRWs in nitroparaffin operations followed a similar pattern, although again the levels were different.[62] Productivity of PRWs in nitromethane and nitroparaffin operations decreased each year during the period of investigation. Unit labor costs of PRWs in nitromethane operations increased each year during the period of investigation. Unit labor costs of PRWs in nitroparaffin operations, however, decreased slightly from 1990 to 1991, then increased in both 1992 and 1993.[63]

Although the Commission requested financial data from domestic producers concerning their nitromethane operations separate from their other operations, Grace was unable to report its nitromethane operations data separately from its nitroparaffins data.[64] ANGUS was able to report its nitromethane operations separately; therefore, we discuss the nitromethane operations of ANGUS separately from those of Grace.[65] Because we do not have separate data on nitromethane for Grace, we discuss the overall nitroparaffins operations of this producer. Nitroparaffins are the narrowest group of products for which we have data that include this domestic producer's nitromethane operations and, thus, is the best information available on the financial condition of its nitromethane operations.[66] We also note that ANGUS accounted for the bulk of the industry data from 1990 to 1992 and all of the data for 1993. Although we must discuss the financial operations of the two domestic producers separately due to these reporting problems, our analysis is based on the condition of the industry as a whole.[67]

The net sales value of ANGUS's nitromethane sales decreased considerably from 1990 to 1991, and by a smaller amount in 1992, then increased considerably in 1993, reflecting ANGUS's return to production of nitromethane.[68] The cost of goods sold as a

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[58](...continued)
relative production of each nitroparaffin, including nitromethane. Because ANGUS uses virtually the same production employees for nitromethane production that it uses for nitroparaffins production, using only nitroparaffin production data would not dramatically change the results and would constitute the narrowest category for which the industry could otherwise report data. See 19 U.S.C. § 1677(4)(D). Therefore, we consider both nitromethane and nitroparaffin employment indicators here.

[59] There were *** nitroparaffin PRWs in 1990, *** in 1991, *** in 1992, and *** in 1993.

[60] CR at I-32, PR at II-13. ANGUS reported that it did not lay off any workers during its nitromethane production shutdown. See Petitioner's Postconference Brief at 28-29; see also Preliminary Investigation Confidential Report Table 7.

[61] The number of hours worked by PRWs in nitromethane operations was *** hours in 1990, *** hours in 1991, *** hours in 1992, and *** hours in 1993.

[62] The number of hours worked by PRWs in nitroparaffin operations was *** hours in 1990, *** hours in 1991, *** hours in 1992, and *** hours in 1993.

[63] Because productivity of production and related workers and unit labor costs are based on production, we do not find these data to be particularly meaningful for the periods covering a production shutdown of Grace or ANGUS.

[64] CR at I-37 - I-38, PR at II-14.

[65] ANGUS's data were verified by Commission staff. CR at I-33 n.68, I-39 - I-40, PR at II-13 - II-14.

[66] See 19 U.S.C. § 1677(4)(D). We note that nitromethane production comprised a considerable percentage of overall production of nitroparaffins during the period of investigation. Compare Report Table 4, CR at I-24, PR at II-11 with Report Table D-2, at CR at D-4, PR at D-3.

[67] See 19 U.S.C. § 1677(4)(A).

[68] Data referred to in this paragraph are summarized in Report Table 10, CR at I-33 - I-41, PR at II-13 - II-14. ANGUS's net sales were *** in 1990, *** in 1991, *** in 1992, and *** in 1993.

percentage of sales increased from 1990 to 1991, and again in 1992, but declined in 1993.[69] This decline reflects in part the different cost structure of production in ANGUS's new plant. Operating income decreased from 1990 to 1991, and again in 1992, but increased considerably in 1993.[70] Operating income as a percentage of sales decreased from 1990 to 1991, and again in 1992, but increased in 1993.[71] The 1990-91 and 1990-92 declines in these financial data reflect ANGUS's production shutdown from May 1991-March 1992. ANGUS's research and development expenses relating to nitromethane increased considerably from 1990 to 1991, then decreased slightly in 1992 and further in 1993.[72]

Financial indicators for Grace's nitroparaffin operations followed different patterns. Net sales (by quantity and value) of nitroparaffins produced by Grace increased each year from 1990 to 1992, but decreased in 1993, reflecting its decision to cease producing nitroparaffins.[73] The cost of goods sold as a percentage of sales decreased consistently over the period of investigation.[74] Grace experienced *** in its nitroparaffin operations from 1990 to 1992, but *** in 1993 as it was winding down its operations. As a percentage of sales, *** decreased consistently from 1990 to 1992, and rose to a positive level in 1993. Grace's research and development expenses relating to nitroparaffin operations were lower than ANGUS's nitromethane research and development expenses and decreased consistently from 1990 to 1992, when Grace ceased production.[75]

ANGUS's capital expenditures on its nitroparaffin operations[76] decreased slightly from 1990 to 1991, then rose dramatically in 1992 due to its investment in rebuilding after the explosion.[77] Capital expenditures dropped to their lowest level in 1993. Grace's capital expenditures on its operations rose from 1990 to 1991, then dropped considerably in 1992. There were no capital expenditures in 1993.[78] [79]

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[69] Cost of goods sold as a percentage of sales was *** percent in 1990, *** percent in 1991, *** percent in 1992, and *** percent in 1993.

[70] Operating income was *** in 1990, *** in 1991, *** in 1992, and *** in 1993.

[71] Operating income as a percentage of sales was *** percent in 1990, *** percent in 1991, *** percent in 1992, and *** percent in 1993.

We note that measures of profitability based on 1993 total assets or changes in book value of property, plant, and equipment versus the same items for 1990 are not comparable because of the large asset base as a result of ANGUS investing in rebuilding its plant after its explosion. See CR at I-42, PR at II-15. We are reluctant to characterize one year's profits without appropriate comparisons to another year. In this regard, in the comparison provided by petitioners, these profits were characterized as "very close to averages," which certainly does not support a conclusion that they represent profit levels of a company suffering from material injury. See Petitioner's Posthearing Brief at 9. Commissioner Crawford does not make a separate conclusion regarding material injury based on a company's profit levels.

[72] CR at I-42, PR at II-15.

[73] Data referred to in this paragraph are summarized in Report Table D-5, CR at D-7, PR at D-3. Net sales were *** in 1990, *** in 1991, *** in 1992, and *** in 1993.

[74] Cost of goods sold as a percentage of sales was *** percent in 1990, *** percent in 1991, *** percent in 1992, and *** percent in 1993.

[75] CR at I-42, PR at II-15.

[76] ANGUS provided capital expenditures data for nitroparaffins, rather than solely for nitromethane. Grace reported the same capital expenditures for nitroparaffins as for the overall establishment.

[77] Data referred to in this paragraph are summarized in Report Table 12, CR at I-42 and I-44, PR at II-15.

[78] Although the Commission requested in the questionnaires sent to ANGUS and Grace that the companies ***. In response to questions posed in the questionnaire, ANGUS and Grace responded that ***. CR at E-3, PR at E-3. ANGUS reported that ***. Id. Both companies reported that subject imports ***. Id.

IV. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS[80]

A. Legal Standard

The Commission is required to make a final determination of whether an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports.[81] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[82] In making our determination, the Act provides that the Commission:

> (i) shall consider --
>
> > (I) the volume of imports of the merchandise which is the subject of the investigation,
> >
> > (II) the effect of imports of that merchandise on prices in the United States for like products; and
> >
> > (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States; and
>
> (ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.[83]

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[79](...continued)
[79] Based on the foregoing, Chairman Newquist and Commissioner Rohr find that the domestic industry producing nitromethane is not experiencing material injury. In particular, they note the robust performance of the domestic industry both before and following the ten-month shutdown of ANGUS's facility, as demonstrated by increases in 1993 in the industry's share of U.S. apparent consumption, shipments, capacity utilization, and net sales, as well as the strong performance in production and profitability. They note that this strong performance occurred despite the departure of one domestic producer.

[80] Because Chairman Newquist and Commissioner Rohr find that the domestic industry is not experiencing material injury, they proceed directly to a threat analysis and do not join the following discussion except as noted in the section on no threat of material injury.

[81] 19 U.S.C. § 1673d(b).

[82] 19 U.S.C. § 1677(7)(A).

[83] 19 U.S.C. § 1677(7)(B).

The Commission may consider alternative causes of injury, but it is not to weigh causes.[84] The statutory language regarding causation of material injury by reason of LTFV imports is interpreted differently by different Commissioners.[85]

For the reasons discussed below, we find that the domestic nitromethane industry is not materially injured by reason of LTFV imports from China.[86]

B. Volume of the LTFV Imports

In determining whether the domestic industry is experiencing material injury by reason of the LTFV imports, we first evaluate the volume of subject imports. During the ANGUS production outage in 1991 and 1992, there was a shortage of domestically produced nitromethane. In response, an increased supply of imported nitromethane, almost entirely from China, was brought into the market, in large part by ANGUS, as the other producer, Grace, was unable to satisfy demand.[87] As a result, the volume of subject imports from China increased dramatically from 1990 to 1991. Import volumes decreased in 1992 and then considerably more in 1993, as ANGUS cancelled its import obligations, and came back on line.[88] The market share of subject imports was small in 1990 and rose considerably in 1991 and 1992, but declined considerably in 1993 to a level below that reported in 1991.[89] Significantly, ANGUS's market share of domestically produced nitromethane was higher in 1993 than it was in 1990, before it experienced the plant explosion and before subject imports entered the United States in increased quantities.[90]

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[84] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

> the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, at 74. Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

[85] See Defrost Timers from Japan, Inv. No. 731-TA-643 (Final), USITC Pub. 2470 at I-10 nn.47-49 (Feb. 1994).

[86] In making our determination, we consider the impact of the imports on the industry "as a whole." See, e.g., United Eng'g & Forging v. United States, 779 F. Supp. 1375, 1391 (Ct. Int'l Trade 1991).

[87] CR at I-53, I-62 & n.112, PR at II-19, II-23 & n.112. Small amounts of nitromethane were imported from Ireland in 1991 and 1992. CR at I-53 n.95, PR at II-19 n.95.

[88] Report Table 14, CR at I-53 - I-54, PR at II-19 - II-20; see also, infra, section of no threat of material injury. Subject imports were *** pounds in 1990, *** in 1991, *** , and *** in 1993. The value of subject imports rose from 1990 to 1991, then declined in 1992 and 1993. We note that some of ANGUS's nitromethane orders from Chinese producers could not be cancelled so that ANGUS continued to receive substantial volumes of imported material in 1992 after its plant began coming back on line. CR at I-19 - I-20, PR at II-10; Hearing Transcript at 166-167.

ANGUS argues that not all imports are accounted for by the questionnaire responses so the Commission should also consider PIERS data on imports which it submitted. See Petitioner's Prehearing Brief at 33 n.6, Eichmiller Affidavit. We note, however, that the Commission's import data account for virtually all imports of nitromethane from China and that Commerce official statistics, upon which PIERS data are based, incorrectly include imports of other chemicals. See CR at I-53, PR at II-19.

[89] Report Table 15, CR at I-57, PR at II-21. The market share of subject imports in 1990 was *** percent in 1990, *** percent in 1991, *** percent in 1992, and *** percent in 1993. We note that trends in imports and market share differ due to inventory build-up in 1991, and drawn-down in 1992. ANGUS accounted for substantially all end-of-period inventories, which were *** pounds in 1991 and *** to *** pounds in 1993. CR at I-47, PR at II-17.

[90] CR at I-57, PR at II-21.

Because we find that Grace ceased production for reasons other than competition from subject imports, we find the increased market share of ANGUS probative of the industry's present condition. The increase in subject import volume that occurred in 1991 and 1992 was not at the expense of existing domestic production. We also find it significant that imports have decreased dramatically (by volume and as a percentage of apparent consumption) since ANGUS has come back on line.

Any past increases in the subject imports can be attributed solely to the domestic supply shortage which ensued as a result of ANGUS's plant explosion and disappeared after ANGUS came back on line. Recent imports are dedicated to customers that want to maintain an established alternative, or second, source of supply to ANGUS.[91] Imports have returned to a low level (though not as low as before the ANGUS plant explosion). Those imports fill only a portion of the void created by Grace's departure from the market as ANGUS fills the remaining portion of that void. Indeed, ANGUS's market share as a sole domestic producer is higher now than before the explosion when it shared the U.S. market with Grace and imports were de minimis.[92]

In this regard, we note that we do not find the lower 1990 import levels to be the only acceptable level not to cause material injury to this industry. Import levels of Chinese nitromethane in 1991 and 1992 reflect the need to complement a supply shortage resulting from ANGUS's explosion and, in 1993 and currently, imports are only an alternative, second source of supply for U.S. purchasers who are fearful of a repetition of the supply disruption that ensued after ANGUS's plant explosion.[93] In this investigation, where both the volume and market share of the subject imports have declined substantially since 1991, and in view of the lack of substantial evidence that domestic industry sales were displaced by import volumes (as discussed below), we do not find the level of subject imports to be significant.

B. Price Effects of the LTFV Imports

The weighted-average delivered prices of U.S.-produced nitromethane followed different trends in the various end-use markets to which it was sold.[94] The weighted-average

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[91] CR at I-62 - I-64, I-86, PR at II-23 - II-24, II-29; Hearing Transcript at 18, 101, 109-110, 116, 131-132; Prehearing Submission of Cedar Chemical at 4-5.

[92] ANGUS accounted for *** percent of apparent consumption in 1993 after the explosion as compared to *** percent before the explosion. CR at I-57, PR at II-21.

[93] CR at I-62 - I-63, I-86, I-91 - I-102, PR at II-23, II-29, II-32; Prehearing Submission of Cedar Chemical at 4-5; Hearing Transcript at 18, 101, 109-110, 116, 131-132. After the ANGUS plant explosion, some purchasers either shut down their production, reduced production, or reduced the nitromethane component in their products as a way of conserving nitromethane. CR at I-63, PR at II-23.

[94] Data on the prices of U.S.-produced nitromethane are summarized in CR at I-67 - I-77 and accompanying figures and tables. These data show that weighted-average delivered prices for U.S.-produced nitromethane sold to the chloropicrin market *** from 1990 through the first quarter of 1991, then *** until *** after mid-1992. In 1993, chloropicrin prices ***. Prices in the 1,1,1-trichloroethane market were *** from 1990 to the beginning of 1992, when they *** until mid-1992, after which they *** for the remainder of the period of investigation to levels ***. Prices in the racing fuel market *** during 1990, *** during 1991, then *** again in 1992 and *** thereafter. Prices in the explosives market *** from 1990 to 1993, reaching *** in 1991 and 1992, and *** in 1993. Prices in the hobby fuel market were *** from 1990 to the first quarter of 1991, when they *** for the remainder of 1991. These prices *** in 1992 and *** in 1993.

delivered prices of Chinese nitromethane similarly followed different trends depending on the end-use market.[95]

During ANGUS's production outage, prices for nitromethane were high.[96] Following the construction of ANGUS's new production facility, which opened ahead of schedule in March 1992,[97] the company sought to regain the market share accounted for by imports after the explosion, while ANGUS was not producing.[98] During this period, ANGUS sold both previously imported Chinese nitromethane from inventory[99] and its own production.[100] ANGUS priced the Chinese product lower than its U.S. product, lower than Grace's products, and lower than Chinese nitromethane sold by other importers.[101] Indeed, in 15 out of 16 comparisons between ANGUS's sales of Chinese nitromethane and U.S.-produced nitromethane, ANGUS undersold U.S.-produced product.[102] Underselling by ANGUS's imports in 1992 represented, for the most part, sales of 1991 and early 1992 imports that ANGUS drew from inventory.
[103] We find that this demonstrates a lack of significant underselling by contemporaneous imports. Moreover, ANGUS argues that the unfair pricing began after March 1992.[104] Thus, we find that underselling by ANGUS is not representative of underselling by unfair imports.[105]

Price decreases in 1992 are, therefore, due to unique market conditions existing in mid-1992 when ANGUS came back on line and tried to recapture market share. ANGUS alleges that it was forced to lower its prices for both its imported Chinese nitromethane and U.S. product to meet Chinese import competition.[106] The evidence, however, supports a

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[95] Data relating to weighted average prices of Chinese nitromethane are summarized in CR at I-72 - I-77 and accompanying figures and tables. These data show that weighted average prices for imported Chinese nitromethane sold in the chloropicrin and hobby fuel markets *** over the period, particularly in the first quarter of 1992. Prices in the racing fuel market *** over the period. Chinese nitromethane was sold in the 1,1,1-trichloroethane market in only *** and the prices ***.

[96] CR at I-62 - I-63, PR at II-23; Hearing Transcript at 110.

[97] CR at I-64, PR at II-24; Hearing Transcript at 24-25, 87-90.

[98] CR at I-63, PR at II-23.

[99] ANGUS ceased importing nitromethane before its new plant came fully on line. CR at I-13, I-24 - I-25, PR at II-7, II-11; Hearing Transcript at 24, 56, 61-62, 87-88; Petitioner's Prehearing Brief at 4; Petitioner's Responses to Commission Questions at 9-10.

[100] CR at I-63 - I-64, PR at II-23 - II-24; Hearing Transcript at 63-64, 100-101, 110-114. Much of the discussion and debate by the parties in this investigation regarding pricing relates to alleged predatory pricing practices of the petitioner. We emphasize that we have focussed our analysis on the evidence regarding significant underselling and significant price suppression and price depression by the subject imports. Information regarding the nature of price competition, including price leadership, contributes to our assessment of the price effects of the imports; however, alleged predatory pricing practices by the domestic industry are otherwise not relevant to our inquiry.

[101] CR at I-58 - I-102, PR at II-21 - II-32; Hearing Transcript at 63-64, 110-114.

[102] CR at I-77, PR at II-26.

[103] CR at I-83, PR at II-28.

[104] Petitioner's Posthearing Brief at 1-3; Hearing Transcript at 11, 27, 56, 58-59.

[105] See, infra, notes 118-124 and accompanying text.

[106] ANGUS argues that the underselling evidence is distorted because it does not show ANGUS's efforts to compete with what it alleges were low Chinese import prices. It argues that in instances where the Chinese lost a sale to a particular purchaser, ANGUS had been forced to lower its price to compete. ANGUS provides documentation on sales calls made in 1993 to substantiate these claims. ANGUS asserts that "underselling" evidence resulting in these circumstances is distorted. We recognize the somewhat one sided nature of underselling evidence when addressing the question of who was driving price competition, ANGUS or importers of Chinese nitromethane. However, we note that it works both ways. When the Chinese obtained a sale at a particular price, that price is reported in our data. The losing U.S. competing price is not reported. Given the depth of questionnaire

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contrary conclusion. Indeed, Grace reported in its questionnaire response that ***.[107] Other evidence shows that ANGUS is the price leader.[108] At the end of 1991, ANGUS held inventories of Chinese nitromethane totalling *** pounds, accounting for much of the inventories associated with the *** pounds of nitromethane imported from China during that year.[109] Thus, when ANGUS's plant came back on line in March of 1992, ANGUS still had significant volumes of Chinese product in inventory. Prices fell in the period following the re-entry of ANGUS's domestically produced product into the market due to an oversupply of nitromethane created by ANGUS's attempts to sell off its inventoried Chinese nitromethane at low prices, while at the same time trying to sell its own production.[110] Meanwhile, other importers continued to sell imported Chinese nitromethane to customers gained when domestic purchasers were unable to procure nitromethane from domestic sources as a result of the ANGUS plant explosion.

The oversupply situation that led to the price declines in the U.S. market was in large part the result of ANGUS's reentry into the market months ahead of schedule. ANGUS had inventories of Chinese nitromethane that it wanted to sell off. It dropped its price to secure customers for production from its new plant.[111] ANGUS priced its imports below the prices other importers were offering in order to win these customers, and be in a position to continue to supply subsequently from its domestic production.

U.S. purchasers reported that ANGUS's imported nitromethane was initially priced 20 to 50 percent below other imported Chinese nitromethane. ANGUS's effort to recapture market share by lowering price started a price decline in the market.[112] As the prices of other imported Chinese nitromethane were lowered to compete with the price of ANGUS's imported Chinese nitromethane, domestic nitromethane prices also declined.[113] This ultimately culminated in ANGUS offering competitive price guarantee clauses in contracts with customers for 1993 purchases, in which ANGUS agreed that it would supply its own U.S. material at the same price as imported Chinese product.[114] We find this particularly

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[106](...continued)
responses and volume of data in the record (many responding importing and purchasing firms and virtually all imports covered), we find that the evidence of price underselling (whether of U.S. produced- or Chinese nitromethane) is probative and reliable. See CR at I-53, I-67, PR at II-19, II-25. Consistent with this evidence is evidence of ANGUS being the initiator of the price decline in the market. CR at I-64 - I-65, PR at II-24. Moreover the report provides evidence to suggest that ANGUS's arguments are not persuasive. See CR at I-83 & n.122, PR at II-28 & n.122.

[107] CR at I-60 n.108, PR at II-22 n.108.

[108] CR at I-86 - I-87, PR at II-29 (purchasers predominantly consider ANGUS the price leader). For the period after the ANGUS plant was rebuilt, *** identified ANGUS as the market price leader, compared with *** that identified both ANGUS and Chinese import sources, and *** that identified only Chinese import sources. Of *** chloropicrin producers, *** identified ANGUS as the price leader of nitromethane they purchase in the domestic market and the *** reported no price leader in the domestic nitromethane market. Id; see also Hearing Transcript at 17, 63-64, 110-115, 120.

[109] CR at I-47, PR at II-17, Report Table 14, CR at I-54, PR at II-20.

[110] Hearing Transcript at 110-114.

[111] ANGUS indicated that it intentionally priced its imports below its domestic product during 1992 because of differences in purity. Hearing Transcript at 63-64.

[112] CR at I-64, PR at II-24.

[113] Id.

[114] CR at I-65, PR at II-24. ANGUS alleged that it did not propose the competitive price clause but rather that three of the five purchasers in the chloropicrin market demanded them and that after this, they were offered to two other purchasers in the chloropicrin market to avoid placing them at a competitive disadvantage. Id.; see also Hearing Transcript at 38-39; Petitioner's Posthearing Brief at 2-6. However, we note that these other two chloropicrin producers were ***. CR at I-65 n.116, PR at II-24 n.116. Moreover, only one of the three purchasers ANGUS identified as demanding the
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important considering that the U.S. product is generally recognized as having higher quality and shorter lead times.[115] The Chinese product is considered by some customers to be inferior due to its higher water and acidity content, which makes it more corrosive (creating handling problems and costs) and lowering the yield of the end-use product or making it unusable.[116] The uncertain delivery record, poorer quality, and handling problems of Chinese nitromethane explain why at least some purchasers will not pay as much for Chinese nitromethane as for the domestic product. This demonstrates the importance of ANGUS's price guarantee, as customers are likely to buy higher quality merchandise from ANGUS and receive better delivery if they can get it for the same price as the Chinese imports.

In general, the evidence does not support the conclusion that subject imports caused significant price depression or suppression. We note that nitromethane is priced differently according to the end-use market in which it is sold, with prices in these markets generally depending on the importance of nitromethane to the specific end-use product and whether there are other competing products for the end-use application.[117] Prices of domestically produced nitromethane since 1993 (i.e., after the shortage caused by the ANGUS explosion) have stabilized considerably. Indeed, prices for nitromethane in some end-use markets were relatively stable throughout the period of investigation.[118] The largest use for nitromethane sold in the open market is in the production of chloropicrin,[119] and nitromethane prices are lowest in the chloropicrin market.[120] Significantly, weighted average net delivered selling prices of U.S.-produced nitromethane sold in the chloropicrin market were lower than

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[114](...continued)
competitive price clause confirmed that it requested the clause for the contract -- the other two purchasers reported that it was ANGUS and not themselves that proposed the competitive price clause. CR at I-65, PR at II-24; see also Hearing Transcript at 114; Respondents' Posthearing Brief at 3-6. Indeed, one of the three purchasers identified by ANGUS as demanding the competitive price clause but which actually refuted this allegation, reported that ANGUS had indicated that it would take the price as low as necessary to drive the Chinese out of the market. CR at I-65, PR at II-24.

[115] CR at I-6 - I-7, I-60 - I-61, I-65 - I-66, I-85, I-90 - I-102, PR at II-4, II-22, II-24 - II-25, II-28, II-30 - II-32; Hearing Transcript at 108-109, 132. Although *** agreed that the U.S.- and Chinese-produced nitromethane are interchangeable, *** reported that there were important differences between the quality of the Chinese and U.S.-produced nitromethane. CR at I-65 - I-66, I-85, PR at II-24 - II-25, II-28.

[116] CR at I-6 - I-7, I-60 - I-61, I-65 - I-66, I-85, I-90 - I-102, PR at II-4, II-22, II-24 - II-25, II-28, II-30 - II-32; Hearing Transcript at 108-109, 132.

[117] CR at I-60, Report Tables 16-17, Figures 17, CR at I-68 - I-81, PR at II-25 - II-27; Hearing Transcript at 47-49, 52-54, 186.

Purchasers also rely on certain non-price factors in their purchasing considerations. In this regard, average lead times are up to *** for U.S. producers' nitromethane, whereas U.S. importers' lead times generally range between ***. CR at I-60 - I-61, PR at II-22 - II-23. However, transportation costs are not an important factor in the sale of nitromethane (generally only *** percent of the price of the product). CR at I-61, PR at II-23. We also note that it does not appear necessary for ANGUS to sell at a price at or below a price purchasers indicate they can acquire Chinese nitromethane as purchasers will likely pay more for the quality and delivery terms ANGUS can offer, thereby reducing purchasers' handling, inventory, and related production costs.

Vice Chairman Watson notes that these non-price factors attenuate the degree of substitutability between the domestic product and the subject imports. There is evidence in the record that the domestic product has, in fact, commanded some price premium throughout the period of investigation. In at least one sub-market, that price premium was ***. CR at I-98, PR at II-32.

[118] Report Table 16, Figures 1, 4-7, CR at I-67 - I-77, PR at II-25 - II-26.

[119] CR at I-6, PR at II-4. The largest market for unrelated sales of nitromethane is the chloropicrin market, representing approximately *** percent of the total domestic shipments of nitromethane in the open market during 1993. CR at I-59 - I-60, PR at II-22.

[120] Id.

imported nitromethane in many of the comparisons.[121] [122] The pricing data generally indicate that imports had little effect on domestic producer prices. In addition, price competition is limited generally by ANGUS exporting or captively consuming its nitromethane.[123] As discussed above, some of the instances of underselling are attributable to ANGUS's sales of nitromethane[124] imported in 1991 and early 1992 and, thus, we do not consider them to support a finding of adverse price effects by LTFV imports.

The performance of the industry does not provide any indication of significant adverse price effects. ANGUS's increased market share, high net sales, high profitability, high operating income -- particularly as a percentage of net sales -- and significant production all support the conclusion that the subject imports have not had any adverse price or volume effects on the domestic industry. Any decreases in price were caused by ANGUS's desire to regain its market share and its willingness to sell at whatever price would allow it to accomplish this objective. Presently, ANGUS is operating under forward contracts for 1994 that it negotiated at high prices with its chloropicrin customers,[125] and in all major markets for nitromethane, ANGUS's nitromethane was priced the same or higher for 1994 than during 1993.[126] Further ANGUS did not experience ***.[127]

C. Impact of LTFV Imports on Domestic Producers

Evidence gathered in this investigation shows that the explosion of ANGUS's plant in May 1991 had significant effects during the period of investigation. ANGUS, however, has since rebounded to strong operating performance and dominant market share. In addition, we do not find that ANGUS's lost sales or lost revenues allegations indicate that the domestic industry is materially injured by reason of LTFV imports. Many of the lost sales allegations were not confirmed or involved factors other than the price of the subject imports.[128] The

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[121] Report Figures 1, 5, Table 18, CR at I-68, I-79, I-82, PR at II-25, II-27. Although prices of Chinese imports *** domestic product in 1993 in the racing fuel and 1,1,1-trichloroethane markets, pricing data were very minimal in general.

[122] Vice Chairman Watson also notes that some purchasers prefer ANGUS's nitromethane for reliability, short lead times, and quality. See CR at I-6 - I-7, I-61, I-65 - I-66, I-85, I-90 - I-102, PR at II-4, II-23 - II-25, II-28, II-30 - II-32; Hearing Transcript at 108-109, 132.

[123] CR at I-40, PR at II-14. But see I-58.

[124] Underselling by subject imports (by importers other than ANGUS) occurred in 15 out of 28 instances of price comparisons with domestic products; in the other 13 remaining instances when comparisons could be made, the domestic product undersold subject imports. CR at I-77, PR at II-26.

ANGUS argues that the difference in weighted average price to the chloropicrin market between what Angus reported and what the Report states results from certain discounts that ANGUS gave for cash in advance. ANGUS argues that " ***." Petitioner's Posthearing Brief at 7 n.4. Petitioner also argues that price comparisons between imports and domestic products raises an issue of whether sales for the imported and domestic product were contemporaneous. Id. at 7-8. We disagree. To the extent discounts were given (by importers or domestic producers), they should be factored into the pricing data. We find our pricing data and comparisons of prices of subject imports and domestic products to be reliable. However, we take note of petitioners arguments and consider them in making the conclusions herein.

[125] CR at I-84 - I-85, PR at II-28 - II-29. For a discussion of 1994 pricing, see, infra, section on no threat of material injury.

[126] CR at I-84, PR at II-28. In the chloropicrin market, the largest market for nitromethane, ANGUS *** its price. Id.

[127] Report Appendix E.

[128] Some of these factors include concerns about obtaining an alternative or second source of supply; perceived availability of nitromethane at the time orders were placed, when ANGUS had not

(continued...)

lost revenues allegations did not relate to specific sales or price offerings, but rather to product sold after ANGUS's plant was reopened that was not priced at a particular high level.[129]

Moreover, Grace reported in its questionnaire response that ***.[130] Grace had little problem competing with subject imports and, indeed, at the time imports were entering in increasing numbers and ANGUS was not producing, Grace's position improved. Grace reported difficulty only in competing on price with ANGUS -- not with subject imports.

As noted above, the issue of Grace's decision to cease production is in contention between respondents[131] and petitioner.[132] On balance, we view the evidence more strongly to support the conclusion that Grace's decision to cease production of nitromethane was due to factors other than LTFV imports and was not, therefore, by reason of those imports.[133] Grace's questionnaire indicates that ***.[134] The Grace response indicates that *** and that ***.[135] Rather, Grace recognized ***.[136] Finally, Grace ***.[137]

We find the responses by Grace in its questionnaire responses to be persuasive, as they were given without the influence of either petitioners or respondents, who both appear to have made concerted efforts to obtain testimony and statements from former Grace employees and executives espousing the respective views either of petitioners or respondents. The questionnaires were prepared by the two individuals who had been responsible for the production and marketing of Grace's nitroparaffins and would be most familiar with Grace's reasons for ceasing production.[138] Indeed, comments by two former Grace executives supplied by petitioner, are inconsistent with other comments made by these executives or on

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[128](...continued)
yet shown that it could return to full production; having forward orders already in place at the time of ANGUS's sales attempts; and other similar, non-price factors. See CR at I-90 - I-102, PR at II-30 - II-32.

[129] CR at I-90 n.131, PR at II-30, n.131.

[130] CR at I-90 n.130, PR at II-30 n.130. But see CR at I-14, PR at II-8 (Grace reported that after the explosion at ANGUS's plant it raised prices but not as much as it wanted due to the presence of imported nitromethane).

[131] Respondents' arguments on Grace's decision to cease production are discussed in Respondents' Prehearing Brief at 6-8; Respondents' Posthearing Brief at 1-4 and accompanying Affidavits; Hearing Transcript at 103-107, 118-119, 167-168, 171-173, 185; Transcript of Preliminary Staff Conference at 89; see also Prehearing Submission of Cedar Chemicals. They argue that Grace's decision to exit the nitroparaffins business was made in advance of any significant quantities of imports of nitromethane from China. They argue that the company ***. They argue that Grace ***. Respondents rely on affidavits and testimony by Peter Kiziuk, former Marketing Director for Grace, and Joe Rabaglia, Product Manager of Wego Chemical & Mineral Corp. a distributor of nitromethane, in their arguments that subject imports were not a factor in Grace's decision to cease production of nitromethane.

[132] Petitioner's arguments on Grace's decision to cease production are discussed in Petitioners' Prehearing Brief at 51-55 and accompanying Affidavits; Petitioners' Posthearing Brief at 8-9 and affidavits cited therein; Petitioners' Response to Further Questions at 4-5 and accompanying Affidavits; Hearing Transcript at 10-11, 29-30, 66-67, 174, 184-185. Petitioners argue that Chinese imports played a significant role in Grace's decision to close. They rely on affidavits and comments by former executives of Grace who would have been involved in Grace winding down its plant and discredit the testimony of Mr. Kiziuk because he did not participate in the decision to close the plant permanently as their witnesses did.

[133] CR at I-14 - I-19, PR at II-8 - II-10.

[134] CR at I-13 - I-14, PR at II-7 - II-8.

[135] Grace Questionnaire Response at 33, 47-48; see also CR at I-90 n.130, PR at II-30 n.130; CR at E-3, PR at E-3 (***).

[136] CR at I-63, PR at II-23; Grace Questionnaire Response at 41.

[137] Grace Questionnaire Response at 7.

[138] CR at I-14 & n.32, PR at II-8 & n.32.

their behalf in questionnaires.[139] Moreover, statements of former Grace executives submitted by ANGUS also note that imports were only one of the factors, among others, that Grace considered in its decision to cease production, or "a factor that contributed to the decision."[140] These affidavits demonstrate that factors other than LTFV imports explain the reason for Grace's decision to cease production of nitromethane.[141]

Decisions leading up to Grace's discontinuation of production were made before Chinese imports entered the United States in large amounts, and before the capacity of Chinese nitromethane producers became known to Grace decision makers.[142] Grace's nitromethane production ceased as part of its decision to cease production of nitroparaffins.[143] Grace's exit from the nitroparaffin business was related primarily to its decision to exit the organic chemicals business, of which nitroparaffins are a part; and this decision was part of an overall restructuring of Grace's chemical business.[144] Grace's nitroparaffins business had almost always been unprofitable and turned out to be unsalable; thus, Grace decided to cease these operations entirely.[145] Nitroparaffins were products to which the company had already decided not to dedicate its resources long before imports entered in any meaningful level.[146]

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[139] See CR at I-17 n.43, 44, PR at II-9 nn.43, 44; compare CR at I-14, PR at II-8 with Petitioner's Prehearing Brief, Power Affidavit at 2.

[140] Indeed, in the Huber Affidavit provided with Petitioner's Prehearing Brief, petitioner's witness even admits that

> The decision of W.R. Grace to withdraw from the nitroparaffins business was the consequence of the history of operating losses that the business had suffered and the competitive environment that the business faced. The importation of Chinese nitromethane was part of the competitive environment at that time and was a factor that contributed to the decision.

Huber Affidavit ¶ 2. This can hardly be recognized as a ringing endorsement of petitioners argument that imports were a significant factor in Grace's decision to close.

[141] See Petitioner's Prehearing Brief, Huber Affidavit, Power Affidavit. We note also that the fact that these affiants do not identify any specific dates on which decisions concerning the closure of Grace were made suggests that the decisions leading up to the closure were made prior to any decrease in Chinese nitromethane prices and due to other factors.

[142] CR at I-15 - I-16, I-17, PR at II-8 - II-9; Hearing Transcript at 19, 171, 103-107, 118-119, 167-170, 177-179, 185; Respondents' Prehearing Brief at 5-8; see CR at I-13 - I-18, PR at II-7 - II-9; Prehearing Submission of Cedar Chemicals; Respondents' Prehearing Brief at 5-8; Respondents' Posthearing Brief at 1-4 and accompanying Affidavits; Petitioners' Prehearing Brief at 51-55 and accompanying Affidavits; Petitioners' Posthearing Brief at 8-9 and affidavits cited therein; Petitioners' Response to Further Questions at 4-5 and accompanying Affidavits; Hearing Transcript at 10-11, 19, 29-30, 66-67, 103-107, 118-119, 167-170, 171-174, 177-179, 184-185.

[143] CR at I-14, PR at II-8; Prehearing Submission of Cedar Chemical at 4-6.

[144] CR at I-14, PR at II-8; Prehearing Submission of Cedar Chemicals, at 3-6; Respondents' Prehearing Brief at 5-8.

[145] See CR at I-14 - I-16, PR at II-8 - II-9; Hearing Transcript at 171, 173, 103-107, 118-119, 167-170, 177-179, 185; Prehearing Submission of Cedar Chemicals, at 3; Respondents' Prehearing Brief at 5-8.

[146] To the extent subject Chinese imports played any role at all in this decision, ANGUS's sales of imported nitromethane likely would have played the most part, as ANGUS's prices of this product were lowest in the market. See CR at I-58 - I-87, PR at II-21 - II-29; Hearing Transcript at 17, 19, 63-64, 110-115, 120; Prehearing of Cedar Chemical at 6; Respondents' Prehearing Brief at 5-8. We note that ANGUS was also the largest volume importer at about the time Grace officials appear to have made the decision to close down the nitroparaffins operations. Indeed, the evidence shows that competition from ANGUS (through its domestic production and sales) played a significant role in Grace's decision to cease production. CR at I-63, PR at II-23; Grace Questionnaire Response at 41; Hearing Transcript at 19; Prehearing Submission of Cedar Chemicals, at 3, Exhibit 2; Respondents' Prehearing Brief at 3, 5-8. ANGUS had indicated that it was going to come back on line after its plant explosion, which may have influenced Grace's decision making.

The 1993 import levels, even before Commerce ordered suspending liquidation of imports, did not have any adverse effects on the domestic industry. Although ANGUS might prefer to be the only supplier in the U.S. market, the mere fact that it is not the only supplier does not, of course, warrant an affirmative determination in this case.[147] ANGUS's ability entirely to regain its 1990 market share after the plant explosion, and to increase that market share in 1993, demonstrates the lack of adverse impact from Chinese nitromethane imports on the domestic industry.[148]

Based on the evidence on import volumes, and ANGUS's significant net sales, high profitability and operating income -- particularly as a percentage of net sales -- and significant production, we do not find that the subject imports have had a significant adverse impact on the domestic industry in this investigation.

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

We further determine that there is no threat of material injury by reason of LTFV imports from China. Under the statute, the Commission is required to consider ten factors in its threat analysis,[149] only six of which are relevant to this investigation. In making our determination, we considered whether increases in production capacity or existing unused capacity in the exporting country are likely to result in a significant increase in imports of the merchandise to the United States; whether there were rapid increases in United States market penetration and the likelihood that the penetration will increase to an injurious level; the probability that subject imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices; whether there has been a substantial increase in inventories of the subject merchandise in the United States; whether there is underutilized capacity for producing the merchandise in the exporting country; and whether there are any other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of actual injury.[150]

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[147] We particularly note ANGUS's high levels of production and net sales and sound financial condition in 1993. For a further discussion of the positive performance and high operating levels of ANGUS see, supra, the section on the condition of the domestic industry and the subsection on price effects in this section.

[148] Vice Chairman Watson notes that from March, 1992 through July, 1993, the period during which head-to-head competition existed between ANGUS's domestically produced product and the subject imports (not imported by ANGUS), ANGUS was able to gain significant market share while at the same time remaining highly profitable. By July, 1993, ANGUS found itself in the enviable position of being the sole domestic producer with no competition from either subject or non-subject imports.

[149] See 19 U.S.C. § 1677(7)(F)(i).

[150] 19 U.S.C. §1677(7)(F)(II), (III), (IV), (V), (VI), and (VII). Since this investigation does not involve a subsidy or an agricultural product, Factors I and IX are not applicable. Product shifting, Factor VII, is not an issue because there is no evidence that foreign manufacturers of nitromethane produce any other products currently under investigation or subject to an order. Factor X is not significant in this investigation, because the nitromethane industry is a mature industry. See Petitioner's Prehearing Brief at 17. In addition, we 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. See 19 U.S.C. § 1677(7)(F). There is no evidence of such dumping findings or remedies concerning nitromethane from China.

The statute directs that we do not make a finding of threat of material injury unless evidence of threat is real and actual injury is imminent.[151] A finding of threat of material injury also cannot be based on "mere conjecture or speculation."[152]

We note that, with respect to threat, evidence concerning the condition of the industry in 1993 provides the point of departure for our analysis. As discussed previously, the data showed a slight upturn in the domestic industry's operations and a return to full production such that the industry is not vulnerable. Consumption of nitromethane also showed an upturn in 1993 after two years at lower levels.[153] ANGUS is currently the sole domestic producer and has high profitability, i.e., is able to command revenues well above its costs of goods sold and SG&A expenses, as well as a large market share.

Chinese production capacity and existing unused capacity are not likely to result in a significant increase in imports of nitromethane to the United States. Projected capacity in China is expected to remain the same in 1994.[154] Chinese producers have been producing at virtually full capacity in 1993 and are expected to produce at full capacity in 1994.[155] Many nitromethane production plants in China began producing nitromethane to supply the demand from ANGUS,[156] after its plant explosion forced it to seek alternative sources of supply to keep its customers.[157] Indeed, the decision of many smaller Chinese companies to produce nitromethane when they previously did not was made at ANGUS's request and was a response to the short-term price increase of nitromethane in the United States caused by the supply shortage resulting from the ANGUS plant explosion.[158] Since ANGUS has returned to full production, these Chinese plants have either shut down or returned to producing the unrelated chemicals they were producing before ANGUS's production hiatus.[159] Indeed, testimony at the Commission's hearing shows that ANGUS's decision to cancel existing contracts for Chinese nitromethane when its production facilities were coming back on line,

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[151] 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

[152] See 19 U.S.C. § 1677(7)(F)(ii). ANGUS argues that the Commission's evidence on threat (capacity, production, etc. of Chinese plants) is insufficient for the Commission to conclude that imports will not increase in the future and fails to recognize the full potential for such threat. However, the report provides extensive detail concerning the considerable efforts staff made to obtain any evidence on these issues and the data presented therein suggests a different conclusion. ANGUS's speculation about gaps in the Commission's data is not persuasive of a positive threat determination. Moreover, the evidence shows that even if imports rose slightly (which the data, in fact, do not suggest), the industry would not be injured thereby.

[153] Report Table 1, CR at I-10 - I-11, PR at II-6 - II-7.

[154] Report Table 13, CR at I-48 - I-53, PR at II-18 - II-20.

[155] Report Table 13, CR at I-48 - I-53, PR at II-18 - II-20. We note that petitioner's estimate of Chinese capacity of *** pounds is not supported by the evidence in the record and cited herein.

[156] There were some plants already producing nitromethane in China largely to supply Chinese domestic consumption. Preliminary Investigation Report at I-48 n.51; Hearing Transcript at 126, 132-133.

[157] CR at I-53, I-62 & n.112, PR at II-19, II-23 & n.112, Report Table 14, CR at I-53 - I-54, PR at II-19 - II-20; Hearing Transcript at 18, 101, 132, 139-140

[158] Hearing Transcript at 101.

[159] CR at I-50, PR at II-18; Hearing Transcript at 101, 126-128, 134, 152. We note that the three Chinese companies represented in Report Table 13 have increasing capacity and production levels, but that in regard to exports shipped to the United States, these companies represent an increasing percentage of any exports shipped -- from *** percent of exports from China in 1990 (and *** percent in 1991 -- at the time of ANGUS's production outage) to almost *** percent of Chinese nitromethane exports in 1993, after ANGUS came back on line and the other Chinese producers either shutdown, returned to producing other chemical products, or stopped shipping to U.S. customers due to the threat of patent infringement suits. Compare Report Table 13, CR at I-49, PR at II-18 with Report Table 14, CR at I-54, PR at II-20; see CR at I-50 - I-51, PR at II-18 - II-19; Hearing Transcript at 100-101, 126, 132-133, 139-140, 153, 165.

just as the Chinese were attempting to fulfill their obligations under those contracts, have made the Chinese reluctant to participate in the U.S. market.[160]

As discussed above, the past increases in exports to the United States of Chinese nitromethane occurred as a result of the domestic shortage caused by the ANGUS plant explosion in 1991.[161] These levels of imports were not injurious at that time, and have since subsided considerably. Since ANGUS's return to full production, imports have assumed a position as an alternative, or secondary, source of supply.[162] It is likely that Chinese imports will maintain this position in the future, as U.S. purchasers generally prefer to purchase the U.S. product due to its reliability, shorter lead time, and quality.[163] Based on the foregoing, we find that it is not likely that imports will increase to an injurious level in the near future.

As discussed above, any decreases in U.S. market prices for nitromethane occurred as a result of ANGUS selling off its considerable inventories of Chinese nitromethane after its new plant came on line.[164] Despite the declines, these price levels were sufficiently high enough for ANGUS to maintain its healthy operating income levels.[165] Moreover, the fact that prices of Chinese nitromethane sold by importers other than ANGUS were higher than ANGUS's prices for the same products[166] indicates that future price effects are not likely to be negative. This is particularly true because U.S. purchasers generally prefer to purchase U.S. product, as discussed above. ANGUS's pricing policies during the period of investigation indicate its willingness to engage in price competition with LTFV imports to keep market share, and its ability to do so without suffering material injury as a result. Thus, it does not appear likely that future imports will enter the United States at prices which would have adverse effects on the domestic industry.

The fact that ANGUS has entered into forward contracts for 1994 at high prices, with penalties for customers' release from the contracts,[167] demonstrates that purchasers will continue to purchase U.S. produced nitromethane at stable prices and will turn to Chinese nitromethane only as an alternative, or secondary, source of supply.[168] Indeed, in all five markets studied, ANGUS's nitromethane was priced the same or higher for 1994 than during 1993.[169] Based on the foregoing, it is not likely that subject imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices.

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[160] Hearing Transcript at 18, 100-101, 128, 132, 134, 139-140, 134, 151-152, 165. ANGUS has also sent notice to U.S. purchasers and Louzhou Chemical, a company in China, that it intends to enforce patent rights, which it alleges Louzhou is violating in its production of nitromethane. These notices have had the effect of eliminating this company's Chinese nitromethane from the U.S. market. Id. at 133, 153, 160-162, 165; Prehearing Submission of Cedar Chemicals, at 4, Exhibit 1; see also Petitioner's Response to Commission Questions at 12-13, Exhibits O and P.

[161] Hearing Transcript at 110, 131-132.

[162] CR at I-86, I-91 - I-102, PR at II-29, II-32; Hearing Transcript at 18, 101, 128, 109-110, 116, 131-134, 152.

[163] CR at I-6 - I-7, I-61, I-65 - I-66, I-85, I-90 - I-102, PR at II-4, II-23 - II-24, II-28, II-30 - II-32; Hearing Transcript at 108-109, 132.

[164] CR at I-63 - I-64 - I-65, I-77, I-83, I-86 - I-87, PR at II-23 - II-24, II-26, II-28 - II-29; Hearing Transcript at 63-64, 100-101, 110-114.

[165] Report Table 10, CR at I-41, PR at II-14; see also CR at E-3, PR at E-3.

[166] Report Tables 16 and 17, Figures 1-7, CR at I-68 - I-81, PR at Ii-25 - II-27.

[167] CR at I-84 - I-85, PR at II-28 - II-29.

[168] Hearing Transcript at 18, 101, 109-110, 116, 131-132; see also CR at I-91 - I-102, PR at II-32.

[169] CR at I-84, PR at II-28. As noted above, in its largest market, the chloropicrin market, ANGUS *** its price. Id.; see also CR at I-6, I-59 - I-60, PR at II-4, II-22, Figures 1, 5, Table 18, CR at I-68, I-79, I-82, PR at II-25, II-27.

Importers typically do not maintain inventories of subject imported nitromethane.[170] The ratio of inventories to U.S. shipments of subject imports decreased considerably and are very low in 1993.[171] Moreover, the bulk of inventories of Chinese imports during the period of investigation was accounted for by ANGUS's stock which has since been sold off or will be disposed of.[172] Thus, there are only low levels of Chinese nitromethane in inventory in the United States, which do not pose any threat to the domestic industry.

There are no other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of actual injury in the future.[173] Indeed, the demand for nitromethane in the chloropicrin market (the largest market for nitromethane in the open market) is expected to increase in the future. A competing product, methyl bromide, has been identified as an ozone depleter and its use is expected to be phased out because it cannot increase under the Montreal Protocol.[174] In addition, shipments of Chinese nitromethane to the Chinese home market have increased considerably and there are other significant import markets besides the United States.[175]

Having found that the domestic industry is not currently materially injured by reason of subject imports, we also find that it is not threatened with material injury by reason of subject imports. Future imports of nitromethane from China are likely to have as little adverse impact on the domestic industry as they had during the period of investigation. The domestic industry is not vulnerable to future material injury by reason of continued imports at the volumes and prices reported in 1993 (and in forward contracts for 1994). The evidence does not indicate that the volumes and prices of imports are likely to change in the near future so as to cause material injury. Nor is there other evidence in the record which would indicate a change in either the domestic industry's condition, or the imports, which would support the conclusion that future imports will cause material injury to the domestic industry. Indeed, the evidence demonstrates ANGUS's willingness and ability to compete with LTFV imports from China without suffering material injury.

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[170] CR at I-47, PR at II-17; Hearing Transcript at 128.

[171] CR at I-47, PR at II-17.

[172] CR at I-47, PR at II-17; Hearing Transcript at 87. U.S. inventories of Chinese nitromethane, of which ANGUS comprises almost all, were *** pounds in 1992 and *** pounds in 1993. CR at I-47, PR at II-17.

[173] Hearing Transcript at 130, 133.

[174] CR at I-10, I-60, PR at II-6, II-22; Hearing Transcript at 126-127, 188-189; Respondents' Prehearing Brief at 30-31. The Montreal Protocol restricts trade on ozone-depleting chemicals, as well as the technologies for manufacturing them. See The Year in Trade: Operation of the Trade Agreements Program 1991, (43d Report) USITC Pub. 2554 at 18 (Aug. 1992). The Protocol was adopted in 1987 and has been ratified by at least 63 countries (including the United States), representing more than 99 percent of the production of and 90 percent of the consumption of ozone depleting chemicals. Id.

We note that for similar reasons, use of and demand for 1,1,1-trichloroethane may similarly decrease, thereby decreasing the demand for nitromethane that is used to make trichloroethane. CR at I-10 - I-11, I-63, PR at II-6, II-23; Respondents' Prehearing Brief at 30-31. However, nitromethane comprises a smaller percentage as an ingredient of 1,1,1-trichloroethane than it does as an ingredient in chloropicrin. CR at I-58, PR at II-21. In addition, the 1,1,1-trichloroethane market is a much smaller end user of nitromethane than chloropicrin. CR at I-58, I-59 - I-60 & n.105, PR at II-21 - II-22 & n.105. Thus, the increased demand for nitromethane in making chloropicrin will heavily outweigh any reduced demand for nitromethane in making 1,1,1-trichloroethane. Evidence also suggests that nitromethane use will increase as a result of other applications, although the impact of these uses is less clear. Hearing Transcript at 101, 126-130, 134; see also Respondents' Prehearing Brief at 30-31; Respondents' Posthearing Brief at 15.

[175] Report Table 13, CR at I-49, PR at II-18, CR at I-52 - I-53, PR at II-19 - II-20.

CONCLUSION

Chairman Newquist and Commissioner Rohr find that the domestic industry producing nitromethane is not experiencing material injury based on the robust performance of the domestic industry, as demonstrated by the industry's share of U.S. apparent consumption, and its levels of production, profitability, shipments, capacity utilization, and net sales. Vice Chairman Watson and Commissioner Nuzum conclude that the domestic industry producing nitromethane is not materially injured by reason of the subject imports based on their findings that the volume and market share of the subject imports were not significant, that there were no significant price effects by the subject imports, and that there was no significant adverse impact of the subject imports on the domestic industry. The Commission further concludes, based on its analysis of the relevant statutory factors that there is no threat of material injury by reason of the subject imports.

DISSENTING VIEWS OF COMMISSIONER CRAWFORD
Nitromethane from The People's Republic of China
Inv. No. 731-TA-650 (Final)

On the basis of information obtained in this final investigation, I determine that an industry in the United States is materially injured by reason of imports of nitromethane found by the Department of Commerce to be sold at less-than-fair-value (LTFV). I concur in the conclusions of my colleagues with respect to like product, the domestic industry, and related parties. I also concur in their discussion of the condition of the domestic industry.

I. ANALYTICAL FRAMEWORK

Evaluating the effects of LTFV imports on domestic prices and the domestic industry requires an understanding of the economic factors affecting the domestic market. It is necessary to understand how purchasers of the product react to an increase or decrease in the price of the product they purchase (i.e. the elasticity of demand). It is also necessary to understand how the imported and domestic products are differentiated from each other and how that affects purchasers' decisions to buy the products. When purchasers can choose between imports and domestic products, differences between those products will affect the price purchasers are willing to pay for each. The extent of those differences determines whether purchasers buy relatively more of the domestic product when the relative price of the imported product increases (i.e. the elasticity of substitution).

Similarly, when evaluating the impact of LTFV imports on the domestic industry, it is necessary to understand whether the industry could increase the volume of its production in response to an increase in the price of the domestic product (i.e. the elasticity of domestic supply). It is also necessary to understand other relevant economic factors, such as the composition of the industry and the availability of nonsubject imports, that affect domestic prices and output. For example, the degree of market power may affect a producer's price and production decisions.

Having developed an understanding of the market and the domestic industry, I evaluate the effects of the dumping. To evaluate the effect of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the impact on the domestic industry, I compare the state of the industry when the imports were dumped with what the state of the industry would have been if the imports had been priced fairly. In this regard, the impact on the domestic industry's production and revenues is critical, because the impact on other industry indicators (e.g. employment, wages, etc.) is derived from the impact on production and revenues.

I then determine whether the price and production effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If this is affirmative, I find that the domestic industry is materially injured by reason of dumped imports. I note that the presence of market power, such as in the case of a monopoly, does not alter the legal basis for determining material injury by reason of LTFV imports.

II. BACKGROUND AND CONDITIONS OF COMPETITION

A. Elasticity of Demand

The elasticity of demand measures how purchaser demand responds to product price changes. It varies with several factors, including the product's cost as a percentage of total cost of the finished product, availability of substitute products and alternative finished goods.

The demand for nitromethane is derived from the demand for the downstream products in which it is used. On average, nitromethane represents less than 40 percent of the overall cost of the downstream products in which it is used. In addition, there are virtually no direct substitutes for nitromethane in nearly all of its applications. For applications in which other materials may be substituted for nitromethane, the use of other materials can result in a considerable loss of effectiveness in the downstream products. For these reasons, the demand for nitromethane is relatively inelastic, and purchasers are relatively insensitive to price increases.[1] Therefore, I find that purchasers are unlikely to reduce their purchases of nitromethane significantly if prices increase.

B. Elasticity of Substitution

The elasticity of substitution measures how the quantity demanded of one product relative to another product responds to changes in the relative prices of these products. It depends upon the extent of product differentiation which, in turn, depends upon such factors as quality and conditions of sale. If products are close substitutes, purchasers will tend to respond more readily to relative price changes. In this investigation I find that the LTFV imports and the domestic products are good substitutes for each other.

*** agreed that domestic and Chinese nitromethane are interchangeable; that is, that each can be used in place of the other. However, *** reported that there were quality differences between the two products. They reported that the Chinese nitromethane was inferior to the domestic product because of its higher water and acidity content. These quality differences limit the substitutability, but not significantly.

The largest market for nitromethane is for producing chloropicrin, which accounted for *** of the total domestic shipments of nitromethane in 1993. Chloropicrin producers reported that since the production of chloropicrin is an aqueous-based process, the additional water content of the Chinese product did not present a major obstacle to their production of chloropicrin. As a result, in the largest market, the products are close substitutes. In addition, during the period of time that it could not produce nitromethane, ANGUS used Chinese nitromethane to produce its derivative products, further indicating that the two are substitutable. Finally, although the purity level of imported Chinese nitromethane initially was somewhat lower than that of the domestic product, the purity level improved over the period of investigation, which further increases the substitutability between the two products.[2]

For these reasons, I find that the quality differences do not reduce the substitutability significantly, and that the Chinese product and the domestic product are good substitutes. Therefore, if the price of Chinese nitromethane increases relative to the price of the domestic product, purchasers are likely to switch from buying the Chinese product to buying the domestic product.

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[1] Economics Memorandum EC-R-047 at 25-27. There appear to be substitute products for the downstream products in which nitromethane is used. However, responses to the Commission's questionnaires indicate that the substitutability between these products is limited.

[2] EC-R-047 at 22-25.

C. Elasticity of Domestic Supply

I find that the domestic industry would have been able to increase its output as a result of an increase in prices.[3] In 1993, capacity utilization was *** percent, and available capacity was substantially larger than the quantity of Chinese imports. In addition, there are large inventories available for sale in the market, and significant export markets exist so that the domestic industry is able to shift production into and out of the U.S. market.[4] For these reasons, I find that the domestic industry is readily able to increase its output in response to an increase in prices.

D. Composition of the Domestic Industry and Nonsubject Imports

Since mid-1992, petitioner has been the sole U.S. producer of nitromethane. Nonsubject imports have not had a significant presence in the U.S. market; in fact, there were no nonsubject imports in 1993. As a result, purchasers of nitromethane had only two alternative sources of supply in 1993, petitioner and Chinese imports. As the sole domestic producer, petitioner's market power was limited only by the presence of Chinese imports.

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS

The statute requires a determination of whether a domestic industry is materially injured by reason of LTFV imports. The composition of the industry is irrelevant to that determination. That is, we take the domestic industry -- whether composed of one or many producers -- as we find it. Similarly, the legal standard of material injury is the same for all industries, regardless of their composition. Consequently, material injury to a monopolistic industry would include the loss of monopoly profits by reason of the LTFV imports.

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
>
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . . .[5]

In assessing the effect of LTFV imports, I compare the current condition of the domestic industry with the condition that would have existed had imports been fairly priced.[6] Then, taking into account the condition of the industry, I determine whether any resulting

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[3] To the extent that monopoly power exists or would have existed, the supply response of the domestic industry may change. That is, a monopolist can set the price for its product by altering the supply in the market and has the ability to choose the combination of price and production levels that will maximize its profits.

[4] EC-R-047 at 20-22.

[5] 19 U.S.C. § 1677(7)(B)(i). In making its determination, the Commission may consider "such other economic factors as are relevant to the determination." 19 U.S.C. § 1677(7)(B)(ii).

[6] 19 U.S.C. § 1677(7)(C)(iii).

change of circumstances constitutes material injury. For the reasons discussed below, I find that the domestic industry is materially injured by reason of LTFV imports.

A. Volume of the LTFV Imports

In 1993, the domestic industry's market share was *** percent, and the market share of LTFV imports was *** percent. Based on the market share of LTFV imports, I find the volume of LTFV imports to be significant, particularly in light of the key condition of competition distinctive to this industry, that is, that petitioner was the sole domestic producer in 1993.

B. Effect of LTFV Imports on Domestic Prices

To analyze the effect of LTFV imports on domestic prices of the like product, I consider a number of factors relating to the industry and the nature of the products. These factors include the availability of substitute products in the market, the degree of substitutability between the LTFV imports and the domestic like product, the presence of fairly traded imports, and the degree of market power that can be exercised by domestic producers. I find the LTFV imports had significant price effects.

Because Chinese imports and domestic nitromethane are good substitutes, purchasers would have reduced their purchases of Chinese imports in response to the higher prices that would have been charged if the imports had been fairly traded. In fact, the dumping margins are so high that is unlikely that any volume of LTFV imports would have entered the domestic market if they had been fairly priced. As a result, petitioner would have been the sole supplier in the U.S. market.

As a monopolist, petitioner would have had the ability to increase prices by restricting the supply of nitromethane in the market. The extent to which prices would have increased depends on the manner and extent to which petitioner would have exercised its monopoly power. Because of petitioner's market power, it was in a position to choose whether to raise its prices or increase its production. Therefore, both the price effects and production effects are analyzed together in the discussion of the Impact on the Domestic Industry, below.

C. Impact on the Domestic Industry

In assessing the impact of LTFV imports on the domestic industry, I consider, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development.[7] These factors either encompass or reflect the volume and price effects of the dumped imports, and so I must gauge the impact of the dumping through those effects. In this case, both prices and output were adversely affected by the dumping of the Chinese imports.

As discussed above, it is quite unlikely that any volume of LTFV imports would have entered the domestic market at fairly traded prices. In a competitive market environment where there is no monopolistic market power, domestic producers would have significantly increased their production of nitromethane but would have been unable to sustain a price increase.

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[7] 19 U.S.C. § 1677(C)(iii).

However, the U.S. nitromethane market is not a competitive market. Had the Chinese imports been fairly priced, they would have been priced out of the market. Petitioner would have had no competition in the U.S. market, and therefore would have had monopolistic market power. This monopoly power would have allowed petitioner to set the market price by controlling the quantity supplied. As a monopolist, petitioner would have been able to choose a combination of price and production levels, given existing demand conditions and petitioner's cost of production, that would maximize its profits. Because the Chinese product would have been priced out of the market and petitioner has the ability to readily increase its output, petitioner would have been able to increase its production up to a level that would satisfy demand for the displaced Chinese product. In addition, because demand is inelastic, petitioner would have been able both to increase the price of its nitromethane while at the same time increasing the absolute quantity of its production and sales. Either change alone would have increased petitioner's revenues.

The combination of circumstances in this case -- inelastic demand, the significant volume of LTFV imports, and petitioner's monopolistic market power -- would have allowed petitioner to increase both output and prices. Therefore, revenues and profits would have increased significantly.[8] Consequently, I conclude that the domestic industry would have been materially better off if LTFV imports had been fairly priced. Therefore, I determine that the domestic industry is materially injured by reason of LTFV imports of nitromethane from the People's Republic of China.

IV. CRITICAL CIRCUMSTANCES

The Department of Commerce has found that critical circumstances exist with respect to LTFV imports of nitromethane from the People's Republic of China. Therefore, I must determine "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."[9] In doing so, the statute requires an evaluation of "whether the effectiveness of the antidumping duty order would be materially impaired if such imposition did not occur."[10]

The vast majority of the massive increase in imports found by Commerce occurred before the date on which the retroactive application of duties could apply. In fact, the retroactive application of duties could reach only a negligible amount of the imports that entered since the petition was filed. Because of the negligible amount of imports that could be reached, I find that retroactive application would be of marginal, if any, value in preventing the recurrence of injury and that the effectiveness of an antidumping order would not be materially impaired if retroactive duties were not imposed.

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[8] A monopolist seeks to maximize profits. The combination of price and production levels that maximizes profits may or may not result in an increase in overall revenues. However, due to the low elasticity of demand in the nitromethane market, I find that both an increase in profits and revenues would have occurred.

[9] 19 U.S.C. § 1673d(b)(4)(A)(i).

[10] 19 U.S.C. § 1673d(b)(4)(A)(ii).

PART II: INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce (Commerce) that imports of nitromethane[1] from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV) (58 F.R. 59237, November 8, 1993), the U.S. International Trade Commission, effective November 4, 1993, instituted investigation No. 731-TA-650 (Final) under section 735(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* on December 1, 1993 (58 F.R. 63392).[2] The hearing was held in Washington, DC, on March 29, 1994.[3]

Commerce's affirmative final LTFV determination was published in the *Federal Register* of March 30, 1994 (59 F.R. 14834). The deadline for the Commission's final injury determination is May 6, 1994.

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

BACKGROUND

This investigation results from a petition filed by ANGUS Chemical Co. (ANGUS), Buffalo Grove, IL, on May 24, 1993, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of nitromethane from China. In response to that petition the Commission instituted investigation No. 731-TA-650 (Preliminary) under section 733 of the Act (19 U.S.C § 1673b(a)) and, on July 7, 1993, determined that there was a reasonable indication of such material injury, or threat of such material injury.[4]

There have been no other Commission investigations concerning nitromethane. However, in 1983 the Commission conducted an antidumping investigation concerning chloropicrin from China. Chloropicrin manufacture is one of the primary end uses of nitromethane. The Commission determined that an industry in the United States was materially injured by reason of LTFV imports of chloropicrin from China.[5]

In March 1984 Commerce issued an antidumping duty order on chloropicrin from China. In March 1990 Commerce published a notice of intent to revoke the antidumping duty order based on the fact that no reviews were requested in the previous four consecutive years.[6] However, the petitioner objected to the revocation and in May 1990 Commerce determined not to revoke the order.

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[1] Nitromethane is provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States (HTS).

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

[3] A list of witnesses who appeared at the hearing is shown in app. B.

[4] Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford determined that there was a reasonable indication of material injury. Chairman Newquist, Commissioner Rohr, and Commissioner Nuzum determined that there was a reasonable indication of the threat of material injury.

[5] U.S. International Trade Commission, *Chloropicrin from the People's Republic of China* (investigation No. 731-TA-130 (Final), USITC Publication 1505, Mar. 1984.

[6] Commerce automatically issues a notice of intent to revoke an order when no reviews are requested after four consecutive years. Moreover, it is often indicative of a cessation of imports when an antidumping duty order is issued with a relatively high margin, in this case 43 percent, and there are no requests for review. However, because chloropicrin enters the United States under a residual HTS category, it is not possible to determine whether imports have actually ceased.

NATURE AND EXTENT OF SALES AT LTFV

On March 30, 1994, Commerce published in the *Federal Register* its final determination that imports of nitromethane from China are being, or are likely to be, sold in the United States at LTFV. As the basis for calculating LTFV margins, Commerce relied on best information available. Best information available in this case was information provided by the petitioner because the foreign producers/exporters failed to respond adequately to the request for information by Commerce. Commerce determined the weighted-average dumping margin for the class or kind of merchandise under investigation to be 233.70 percent for all exporters.

On the basis of best information available, Commerce also found that critical circumstances exist with respect to imports of nitromethane from China.

THE PRODUCT

Description and Uses

Nitromethane (sometimes called nitroform) is one member of a class of organic chemicals known as nitroparaffins (or nitroalkanes).[7] Nitroparaffins include all straight- or branched-chain alkanes that have had one of the hydrogen atoms replaced by a nitro group (NO_2). 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 nitro group on the first carbon in the chain), and 2-nitropropane (3 carbon atoms with the nitro group on the second carbon in the chain). These are all considered primary nitroparaffins in that each has only one nitro group attached to the base alkane.

Nitromethane is a clear colorless liquid that is 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 flash point 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 heavier than an equal volume of water.

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 sold in the open market is in the production of chloropicrin, a primary soil nematocide. Other major uses are as racing car fuel and other specialty fuels, and in the manufacture of a variety of preservatives, pharmaceuticals, and pharmaceutical intermediates. Nitromethane is also used by nitromethane producers to produce derivative products, including: TRIS AMINO® Crystals, TRIS AMINO® Concentrate, TRIS NITRO®, and ALKATERGE®-T/T-IV. These derivatives are used in the manufacture of pharmaceuticals and pharmaceutical intermediates, and serve a wide range of specialty chemical markets.

The manufacturing processes of the imported nitromethane and the domestic product are different. As a result, there are some differences in the impurities contained in the final product. The imported nitromethane contains more impurities, primarily water, than the domestic product.[8] These impurities do not appear to prevent using either imported or domestically produced nitromethane in the production of nitromethane derivatives or chloropicrin. However, there is some evidence that imported nitromethane must be further processed or refined to be used in certain other applications. For example, without further processing, imported nitromethane is less suitable for use

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[7] Selected data on nitroparaffins and derivative products are presented in app. D.

[8] Domestically produced nitromethane is typically 98-99 percent pure. The nitromethane imported from China was typically 96 percent pure in 1990-92, and closer to 98 percent pure in 1993.

in applications where purity is a relatively important characteristic, such as in specialty and racing fuels, pharmaceuticals, and certain specialty chemicals. ***.[9] It appears, however, that the impurity level of the imported nitromethane has improved since 1991.[10]

Production Processes

The domestic manufacturer, ANGUS, makes nitromethane at one production facility located 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 by-products (e.g., water, hydrogen, nitric oxide, and carbon monoxide and dioxide) are then separated by filtration, distillation, and other chemical processes into individual products and by-products. The nitromethane product resulting from this production process is in excess of 98 percent pure, with impurities consisting primarily of other nitroparaffins. Four co-products (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 ***.[11]

The chemical process used by the Chinese consists of reacting sodium nitrite ($NaNO_2$) in a water slurry with dimethyl sulfate ($(CH_3)_2SO_4$).[12] This reaction usually is carried out at or below 20°C (68°F) to limit the formation of co-products. These co-products are primarily methyl nitrite and an aqueous solution of sodium sulfate. 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 co-products, is over 96 percent pure. The primary contaminant is water, which can be removed by azeotropic distillation. Additional distillation is sometimes done to remove colored impurities. Crude nitromethane (typically less than 97 percent pure) is not suitable for use as is and must be purified to produce a commercially viable product. Crude wet nitromethane is purified in a two-stage batch distillation.[13] The finished product normally contains greater than 99 percent nitromethane and less than 0.1 percent water.[14]

Substitute Products

There are no viable substitute products available for nitromethane in the applications in which it is principally used, particularly in those applications which use it in a chemical reaction to produce a different chemical product.[15] 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.

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[9] See the "U.S. Producers" section of this report for further discussion.

[10] Transcript of the public hearing (hearing transcript), p. 24.

[11] Petitioner's postconference brief, p. 41.

[12] 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; transcript of the public conference (conference transcript), p. 30.

[13] Petition, Exhibit C.

[14] Importers and purchasers reported that nitromethane imported from China often had a purity level *** percent.

[15] Some substitutability exists in the production of 1,1,1-trichloroethane, in which small amounts of nitromethane, nitroethane, and 1-nitropropane function as stabilizing agents.

Like Product and Domestic Industry

In the preliminary investigation the Commission defined the like product as nitromethane and did not expand the definition to include other nitroparaffins or nitroparaffin derivatives. The Commission further defined the domestic industry as the producers of nitromethane during the period of investigation, including ANGUS and W.R. Grace & Co. (Grace), which ceased production in mid-1992.[16]

U.S. Tariff Treatment

Nitromethane is classified in the HTS in subheading 2904.20.50,[17] with a column-1 general duty rate of 7.9 percent ad valorem. This applies to countries entitled to the column-1 general (most-favored-nation) duty rate, including China. Eligible nitromethane imported from beneficiary countries under the Generalized System of Preferences (GSP) (except India), the Caribbean Basin Economic Recovery Act (CBERA), the United States-Israel Free Trade Area Implementation Act of 1985 (IFTA), the North American Free Trade Agreement (NAFTA), and the Andean Trade Preference Act (ATPA) are eligible to enter free of duty. The column 2 rate of duty, applicable to those countries enumerated in general note 3(b) to the HTS, is 30.5 percent ad valorem.

THE U.S. MARKET

Apparent U.S. Consumption[18]

Data on apparent U.S. consumption of nitromethane were compiled from information submitted in response to Commission questionnaires and are presented in table 1. These data are composed of the sum of U.S. shipments of U.S. producers[19] and U.S. importers.

Table 1
Nitromethane: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent U.S. consumption, 1990-93

* * * * * * *

The data show that apparent U.S. consumption of nitromethane on the basis of quantity, including that consumed internally in the production of derivatives, decreased by *** percent during 1990-91 and then increased slightly in 1991-93. 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.[20] The demand for 1,1,1-trichloroethane (formerly the largest market for nitromethane) has been declining as its use also is being phased out under the Montreal Protocol.

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[16] U.S. International Trade Commission, *Nitromethane from the People's Republic of China*, (investigation No. 731-TA-650 (Preliminary)), USITC Pub. 2661, July 1993, pp. 6-13.

[17] Some companies reported importing nitromethane under HTS subheading 2904.90.50 in 1991. However, these importers were subsequently informed by the Customs Service that this was an incorrect classification for nitromethane.

[18] The Commission received questionnaire responses from the two U.S. producers in operation during 1990-93. Producer and importer questionnaire responses have been used in the calculation of apparent consumption.

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

[20] Conference transcript, 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[21] and Grace.[22] ANGUS and its corporate predecessors[23] have been producing nitroparaffins at facilities located in Sterlington, LA,[24] for 37 years.[25] 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 *** percent of ANGUS' total nitroparaffins 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.[26]

On May 1, 1991, a major fire and explosion at the Sterlington, LA, plant caused extensive damage to the production facility.[27] The undamaged derivatives facility was brought back into operation within three weeks by using inventories of basic nitroparaffins,[28] supplemented by supplies purchased from alternative sources.[29] A two-phase reconstruction program began in August 1991. Phase I restored approximately 50 percent of 1990 nitroparaffin production capacity by March 1992. Phase II restored the nitroparaffins 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 ensure the safe handling of detonable streams, to improve overall plant safety, and to decrease waste streams and environmental emissions.[30]

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

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[21] 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, ***.

[22] Grace ceased producing nitroparaffins in the second quarter of 1992 and sold its organic chemicals business in Dec. 1992. Grace ***.

[23] 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.

[24] The Sterlington plant had an annual capacity of 15 million pounds of basic nitroparaffins production when it was built in 1955. The current plant capacity of 90 million pounds per year was reached in 1975; conference transcript, p. 13. Capacity did not increase when the plant was rebuilt following an explosion in 1991.

[25] ANGUS assumed operation of the Sterlington facility on Feb. 29, 1992. The plant previously had 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.

[26] 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 transcript, p. 12.

[27] ***.

[28] ANGUS allocated its remaining one-month inventory to customers based generally on 1990 sales.

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

[30] Hearing transcript, p. 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.[31] This is contradicted by statements from former employees familiar with Grace's nitroparaffin operations, and ***,[32] indicating that the business had always been unprofitable. ***.[33] 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 at the plant.[34]

Several new affidavits were submitted in prehearing and posthearing briefs, and additional testimony was given at the hearing, which further address the reason for Grace's exit from the business. This new information is discussed below. Although there are conflicting accounts of Grace's exit from the market, no one disputes the fact that Grace's nitroparaffin operations were never profitable for a variety of reasons, including lack of sufficient derivative product offerings and problems with operating its plant. Grace's exit from the nitroparaffin business actually involved three separate decisions, each made at a different time under different circumstances.

The first decision occurred in early 1990 when Grace decided to reorganize its lines of business to concentrate on certain core activities. The organic chemicals division, which included nitroparaffins, was not considered to be one of these core businesses, and thus was a target for possible sale.[35] During 1990, imports from China were selling at $*** per pound but were present in negligible quantities.

The second decision occurred in early 1991 when Grace decided to sell its nitroparaffins business. This was prior to the May 1, 1991, explosion at the ANGUS plant; during this period, imports from China continued to be priced at $*** per pound and were still negligible. Despite Grace's decision to sell the business, the supply shortage caused by the ANGUS explosion created an opportunity for Grace to increase its revenues from sales of nitroparaffins.[36] In the second and third quarters of 1991, Grace took out several advertisements in *Chemical Week*[37] which described Grace's stability as a supplier and its long-term commitment to serving the nitroparaffins market. Also during 1991, Grace was approached by *** regarding the possible purchase of its nitroparaffins operation.[38]

The final decision occurred in early 1992 when Grace decided to close its nitroparaffins plant. Between May and December 1991, Chinese nitromethane was selling for between $*** and $*** per pound and was present in significant quantities in the market place.[39] Prices dropped quickly in early 1992 and were between $*** and $*** by the end of the second quarter. In early 1992, a Grace employee visited Chinese nitromethane producers to evaluate their production capacity.[40] Also, starting in late 1991, ANGUS was communicating to its customers that its plant would come on line sooner than expected, although Grace closed its plant prior to the restart of ANGUS' plant.

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[31] Conference transcript, p. 20, and postconference brief, pp. 34-36.

[32] Grace is no longer in the nitroparaffin business, and the individuals most familiar with Grace's nitroparaffin operations are no longer with the company; thus, Grace had difficulty compiling all of the information required for the questionnaire. Nevertheless, the questionnaire is fairly complete. The information obtained from Grace was from the two individuals who had been responsible for the production and marketing of Grace's nitroparaffins.

[33] Telephone conversation, June 4, 1993.

[34] Conference transcript, pp. 89-90.

[35] Hearing transcript, p. 140.

[36] Grace's 1992 Annual Report stated that "Sales and operating income...increased significantly in 1992 due to increased sales to a competitor as a result of an explosion at the competitor's plant."

[37] Petitioner's posthearing brief, Exhibit A.

[38] Affidavit of Peter Kiziuk, respondents' posthearing brief.

[39] This includes nitromethane imported by ANGUS and by other importers.

[40] Mr. Kiziuk's testimony at the hearing and affidavit refer to this trip; although no exact date is given, the trip must have occurred between Nov. 1991 and Apr. 1992.

Petitioner buttressed its contention that Chinese nitromethane was a significant contributing factor in Grace's decision by supplying three affidavits from current and former Grace employees. The first affidavit, from Fred Huber who was in charge of Grace's Deer Park facility (where both nitroparaffins and other specialty chemicals were made) until December 1991, stated that imported Chinese nitromethane was a factor in the "competitive environment" which factored into Grace's decision to sell its nitroparaffin business.[41] It also stated that the large capacity of the Chinese producers, and their apparent willingness to sell at very low prices, was a significant factor in the decision to close the plant. The second affidavit, from George Power, who was in charge of the Deer Park facility between December 1991 and its closure in early 1992, agreed with the first affidavit, particularly with respect to the decision to close the plant.[42] The third affidavit, from James P. Neeves, current Executive Vice President with Grace, agreed with the first two but added that the decision to close the plant was made at the corporate level by himself and others, with input from Messrs. Huber and Power.[43]

Respondents buttressed their argument that imports of Chinese nitromethane were not a factor in Grace's decision to exit the business by submitting the testimony and affidavit of Mr. Kuziuk, former marketing director for Grace nitroparaffins and current consultant to Grace.[44] Mr. Kuziuk identified several parties who had expressed interest in purchasing Grace's organic chemicals division. He also pointed out that Grace did not know about the capacity of Chinese producers until he returned from China in April 1992. He stated that a significant decision like closing the plant would normally take Grace between six months and a year to make, thus Grace must have been planning the closure as early as 1991.

Finally, Cedar Chemicals submitted an affidavit agreeing with respondents that imports from China were not a factor in Grace's decision to exit the business.[45] Cedar Chemicals had produced TRIS AMINO®, a nitromethane derivative, for Grace in a tolling arrangement using Grace's nitromethane. Cedar Chemicals stated that it was very familiar with Grace's nitroparaffin operations because of this arrangement.

A third company, ***, indicated that it had produced nitromethane in the United States.[46] However, the company estimated that it had produced *** of nitromethane. By contrast, the company has refined *** of imported nitromethane and resold the higher purity product to hobby and racing fuel, pharmaceutical, and specialty chemical users who required higher purity nitromethane.

U.S. Importers

Thirteen firms provided information regarding imports of nitromethane from China.[47] ***. The petition alleges that nitromethane produced in China is transshipped through Hong Kong and Japan.[48] However, *** reported importing Chinese nitromethane through Hong Kong, and these

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[41] Affidavit of Fred Huber, petitioner's prehearing brief.

[42] Mr. Power's affidavit (petitioner's prehearing brief) was somewhat inconsistent with earlier statements made to staff over the telephone. When asked about this apparent discrepancy in a subsequent telephone conversation with staff, Mr. Power stated that he thought there was no inconsistency, and that his affidavit was correct.

[43] However, Mr. Neeves signed the preliminary questionnaire for Grace, which stated that Grace ***. Mr. Power had also apparently reviewed the preliminary questionnaire.

[44] Mr. Kuziuk had been hired by Grace as a consultant to prepare the preliminary questionnaire (which Mr. Neeves signed). Mr. Kuziuk did not help prepare the final questionnaire response, which was essentially identical to the preliminary, including the statement that ***.

[45] Respondents' posthearing brief.

[46] *** did not provide a questionnaire response as such; however, based on one letter and several phone calls, the staff has determined the following information. The company was started by ***.

[47] These firms, which represent all known importers, are concentrated on the West and East coasts.

[48] Petition, p. 4.

imports were entered with the country of origin being China. Official import statistics show no imports from Hong Kong under HTS subheading 2904.20.50, although there is a small amount of imports under HTS subheading 2904.90.50 (which some importers have used). In addition, there are imports from Japan under both headings. Because both of these HTS categories are basket categories, there is no way to determine whether they reflect nitromethane imports. None of the responding firms reported imports of nitroethane, 1-nitropropane, or 2-nitropropane.

In 1990, *** reported importing *** pounds of nitromethane from China valued at ***. Such imports were sold ***.[49]

ANGUS imported *** pounds of nitromethane from China in 1991 and *** pounds in 1992. These imports accounted for *** percent by volume of reported nitromethane imports from China in 1991 and *** percent in 1992.[50] *** In addition, after the Sterlington plant came back on line ***.[51] ***.[52]

Channels of Distribution

Domestic producers captively consume a large portion of nitromethane in the production of such derivative products as TRIS AMINO® Crystals, TRIS AMINO® Concentrate, TRIS NITRO®, and ALKATERGE® T/T-IV.[53] These derivatives are used in the manufacture of pharmaceuticals and pharmaceutical intermediates, and serve a wide range of specialty chemical markets.[54] Domestic nitromethane that is not used captively is either exported or sold to end users[55] (see table 2) that use it as a solvent in polymers for coatings, as a component of specialty fuels, as a stabilizer for chlorinated hydrocarbons, and as an extraction solvent. Chloropicrin producers accounted for the largest portion of open market sales of domestically produced nitromethane, with the exception of 1992, when their purchases dropped considerably.[56] Two other applications accounted for a significant portion of domestically produced nitromethane: 1,1,1-trichloroethane and specialty fuels.[57]

Table 2
Nitromethane: U.S. shipments of U.S. producers, by types of customers, 1990-93

* * * * * * *

The distribution of nitromethane imported from China is essentially the same as that of domestically produced nitromethane (table 3); it is sold almost exclusively to end users. Chloropicrin production accounts for the largest portion, with nitromethane derivatives the second

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[49] This importer had not been contacted previously because it had imported nitromethane under HTS subheading 2904.90.50, the incorrect classification.

[50] ***.

[51] ANGUS supplemental questionnaire response dated Mar. 8, 1994.

[52] ***.

[53] ANGUS captively consumed ***. After the explosion at the Sterlington plant, ANGUS also used imported nitromethane in the production of derivatives. If ANGUS' production and its imports are combined, the ratio of nitromethane, from both sources, captively consumed has been ***. Grace consumed *** than ANGUS because it had *** derivative product offerings.

[54] For example, ANGUS reacts nitromethane to produce TRIS-AMINO® crystals, which have applications in the buffer market; conference transcript, p. 33.

[55] Less than *** was sold to distributors.

[56] Table 3 shows that in 1992, chloropicrin producers purchased a significant quantity of imported nitromethane, including imports by ANGUS.

[57] 1,1,1-trichloroethane is being phased out because it is an ozone depleter; petitioner's postconference brief, p. 39.

largest.[58] As stated above, some imported nitromethane was refined by *** to increase its purity prior to resale.

Table 3
Nitromethane: U.S. shipments of U.S. imports from China, by types of customers, 1990-93

* * * * * * *

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 that produced non-negligible quantities of nitromethane during any part of the period January 1990 through December 1993.[59]

U.S. Capacity, Production, and Capacity Utilization

The Commission requested U.S. producers to provide data on their full production capability[60] to produce nitromethane in 1990 through 1993. These data are presented in table 4.

Table 4
Nitromethane: U.S. capacity, production, and capacity utilization, by firms, 1990-93

* * * * * * *

Average-of-period capacity to produce nitromethane declined *** between 1990 and 1991 due to the explosion in May 1991 at ANGUS' Sterlington plant.[61] Such capacity increased *** between 1991 and 1992 as ANGUS completed phase I in March 1992 and phase II in May 1992 of the reconstruction of its plant. Such capacity to produce nitromethane decreased *** in 1993 when compared with 1992.[62] Both firms reported operating ***.

U.S. production of nitromethane decreased *** between 1990 and 1991, increased *** between 1991 and 1992, and *** in 1993. Average-of-period capacity utilization for nitromethane *** in 1991, *** in 1992, and *** in 1993.

U.S. Producers' Shipments

Total U.S. shipments[63] of domestically produced nitromethane by the two U.S. producers (based on quantity) decreased *** between 1990 and 1991 and fell *** between 1991 and 1992 (tables 5 and 6). U.S. shipments of nitromethane increased *** between 1992 and 1993.

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[58] Table 3 shows imports from ANGUS and other importers. The vast majority of imports in the "Other U.S. customers" category are ANGUS'.

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

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

[61] ***.

[62] Grace reported *** in 1993.

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

Table 5
Nitromethane: Shipments by U.S. producers, by types, 1990-93

* * * * * * *

Table 6
Nitromethane: U.S. producers' U.S. shipments, by firms, 1990-93

* * * * * * *

ANGUS markets its nitromethane world-wide, with *** and *** being its two largest export markets. Prior to ceasing production, Grace also exported its nitromethane world-wide, with *** being its main export markets.

U.S. Producers' Inventories

The level of end-of-period inventories of nitromethane held by U.S. producers *** in 1990 to *** in 1993 (table 7). Petitioner stated that prior to the plant explosion, ANGUS had generally maintained a *** supply of nitromethane in inventory. After the explosion, ANGUS' customers were worried about further interruptions to supply and asked ANGUS to maintain a larger inventory.[64] ANGUS is also concerned about this and now plans to keep a *** inventory.[65]

Table 7
Nitromethane: End-of-period inventories of U.S. producers, by firms, 1990-93

* * * * * * *

U.S. Producers' Employment

The number of production and related workers (PRWs) producing nitromethane declined *** percent between 1990 and 1991, rose *** percent in 1992, and fell by *** percent in 1993 (table 8).[66] Hours worked decreased *** percent from 1990 to 1991. This was the period that ANGUS' plant was being rebuilt, which resulted in a drop in production levels. Hours worked increased *** percent from 1991 to 1992 and rose by an additional *** percent from 1992 to 1993.

Table 8
Average number of total employees and production and related workers in establishments wherein nitroparaffins are produced, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by products and by firms, 1990-93

* * * * * * *

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[64] Some customers ***.

[65] ANGUS estimates typical annual consumption of *** pounds. Thus, the current inventory of *** pounds is about a *** supply. ANGUS stated that it plans to produce a *** of nitroparaffins in a given year. If demand is different from that projected, ANGUS will generally adjust *** rather than changing ***.

[66] The accounting records at both companies do not contain labor cost information specific to nitromethane. Consequently, both producers reported total workers for nitroparaffin operations. The nitromethane figures were derived by allocating nitroparaffin totals by relative production of each nitroparaffin, including nitromethane.

Wages and total compensation paid to nitromethane PRWs similarly declined from 1990 to 1991 and then rose from 1991 to 1993. Hourly wages and unit labor costs increased steadily during 1990-93, while productivity fell steadily over the same period.

ANGUS based its 1990 and 1991 labor cost data on information ***. This information is not as detailed as the information ANGUS has for 1992 and 1993, when ANGUS was operating the plant itself, and thus comparisons between the periods are problematic. ANGUS reported that its labor cost of operating the plant changed when it assumed operation for two reasons: ***.

In its questionnaire, the Commission requested U.S. producers to provide detailed information concerning reductions in the number of PRWs producing nitromethane during January 1990 through December 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 nitromethane between 1990 and 1993, furnished financial data.[67]

Overall Establishment Operations

* * * * * * *

In 1993 ***. Thus, a major difference between the ANGUS and the Grace plants is (was) that ***.

Financial data for ANGUS' overall establishment operations are presented in table 9.[68] This is a consolidated statement, i.e., it includes ***.

Table 9
Income-and-loss experience of ANGUS on the overall operations of its establishment wherein nitromethane is produced, fiscal years 1990-93

* * * * * * *[69]

Insurance Claims

* * * * * * *[70] [71]

Issues in Evaluating Industry Data

Evaluating the financial data in this investigation requires the consideration of various issues, including the following:

---

[67] ***.
[68] Overall establishment operations include ***.
[69] ***.
[70] Questionnaire response of ANGUS (final investigation), p. 24. ***.
[71] ANGUS letter of June 22, 1993, to the Commission.

ANGUS

1. Allocation of costs for individual products, such as nitromethane, that are produced as part of a joint production process is not as reliable as the aggregate costs that emanate from the total production process for nitroparaffins.

2. Its operations during part of 1991 and 1992 were shut down; thus there are no two consecutive periods during 1990-93 that are comparable.

3. Its plant was rebuilt during 1992. As a result, ***. Thus, ratios of profitability, whether based on sales or assets, are not comparable for any two periods.

Grace

1. ***

2. ***

Operations on Nitroparaffins

Income-and-loss experience on *** is presented in appendix D. ***.

In its preliminary opinion, the Commission stated that for the operations of Grace, "We note that nitromethane production comprises a considerable percentage *** of overall production of nitroparaffins during the period of investigation. 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."[72] Grace reaffirmed that it could not provide separate income-and-loss data for nitromethane in this final investigation.

In a written response to various staff questions, Grace indicated the following:[73]

* * * * * * *

Thus, determining profitability for nitroparaffins is dependent upon a proper market valuation of transfer value, which in this investigation is not easily determinable. Because of the difficulty in determining income-and-loss at the nitroparaffin level, the establishment income-and-loss data are a more reliable indicator of the entire nitroparaffin operation.

ANGUS' Nitromethane Operations

***.[74] [75] *** (table 10). ***.

* * * * * * *[76]

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[72] U.S. International Trade Commission, *Nitromethane from the People's Republic of China* (inv. No. 731-TA-650 (Preliminary)), USITC Pub. 2661, July 1993, p. 20, footnote 84.

[73] Letter from Randall Strange, Senior Litigation Counsel of Grace, Feb. 17, 1994.

[74] Questionnaire response, p. 22.

[75] This method is unacceptable for income-and-loss for other nitroparaffins.

[76] ***.

Table 10
Income-and-loss experience of ANGUS on its operations producing nitromethane, fiscal years 1990-93

* * * * * * *

Investment in Productive Facilities

ANGUS' large capital investment made in 1992 for the rebuilding of its plant resulted in a substantial increase in ***. This investment is significantly greater than the investment in the plant prior to the explosion; the plant was over 35 years old and had ***.[77] As a result, measures of profitability based on 1993 total assets or changes in the book value of property, plant, and equipment versus the same items for 1990 are not comparable because of the larger asset base. ANGUS provided the same asset data for nitroparaffins and nitromethane, as its records do not permit a further allocation. Both producers' investment in property, plant, and equipment are shown in table 11.

Table 11
Value of assets and return on assets of U.S. producers on their operations producing nitroparaffins, by firms, fiscal years 1990-93

* * * * * * *

Capital Expenditures

ANGUS provided the same capital expenditures data for nitroparaffins and nitromethane, as its records do not permit a further allocation. Both producers' capital expenditures are shown in table 12.

Table 12
Capital expenditures by U.S. producers of nitroparaffins, by firms, fiscal years 1990-93

* * * * * * *

Research and Development

***. A summary of ANGUS' research and development expenses is shown below (*in thousands of dollars*):

* * * * * * *

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 E.

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[77] The book value is the remaining portion of the total cost of an asset after depreciation.

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

Section 771(7)(F)(i) of the Act (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[78]--

> (I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),
>
> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
>
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
>
> (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
>
> (V) any substantial increase in inventories of the merchandise in the United States,
>
> (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
>
> (VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
>
> (VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 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

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[78] 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."

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.[79]

Subsidies (item (I)) and agricultural products (item IX) are not issues in this case. Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix E. 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, follows. Other threat indicators have not been alleged or are otherwise not applicable.

U.S. Importers' Inventories

According to questionnaire responses, U.S. importers of nitromethane from China *** in 1990. End-of-period inventories of Chinese nitromethane declined from *** pounds in 1991 to *** pounds in 1992, before rising to *** pounds in 1993. The ratio of inventories to U.S. shipments of imports from China decreased from *** percent in 1991 to *** percent in 1992. This ratio increased to *** percent in 1993.

U.S. Importers' Current Orders

In its questionnaire, the Commission asked firms to report future contracts for importing nitromethane from China after December 31, 1993. No importers reported any orders after that date; in fact, there were no imports after August 1993.[80] In its questionnaire, the Commission also asked firms if they planned to continue importing nitromethane from China. Nine importers indicated they no longer planned to import; three mentioned this case as the reason, one mentioned that there was no longer a shortage, one stated that its plant restarted operation, and four did not give a reason. Four importers did not answer the question.

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[79] 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."

[80] Aug. 8, 1993, was the date of retroactive suspension of liquidation by Commerce.

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

The Commission received complete questionnaire responses from three Chinese producers: Kunshan Synthetic Chemical Factory (Kunshan), Suzhou Wu Xian No. 2 Perfumery Factory (Wu Xian), and Wujin Hongda Chemical Factory (Wujin).[81] These data are presented in table 13. Capacity increased *** percent in 1991, *** in 1992, and rose *** percent in 1993. Production increased steadily throughout the period, starting at *** pounds in 1990 and increasing to *** pounds in 1993. Capacity utilization decreased from *** percent in 1990 to *** percent in 1991, before increasing to *** percent in 1993. With the exception of 1992, home-market shipments *** throughout the period.

Table 13
Nitromethane: Chinese capacity, production, inventories, capacity utilization, and shipments, 1990-93 and projected 1994

* * * * * * *

To evaluate how representative of the total Chinese industry this information may be, the only indicators available are exports to the United States and the number of companies. Regarding exports, the three companies providing complete questionnaire responses reported *** pounds exported to the United States in 1991, *** pounds in 1992, and *** pounds in 1993. Such exports accounted for an increasingly larger portion of total U.S. imports: *** percent in 1991, *** percent in 1992, and *** percent in 1993.[82]

Regarding the number of Chinese companies producing during 1990-92, the only information is that provided in the petition. The petition identified four main producers in China: Kunshan, Dan Dong Chemical Factory (Dan Dong), Luzhou Chemical Company (Luzhou), and Shanhai Pu Tang Chung Hang Chemical Factory (Pu Tang). China increased its capacity to produce nitromethane in 1991 after the explosion suffered by ANGUS.[83] During 1992, more than 30 plants in China were manufacturing nitromethane, mostly in small quantities.[84] The majority of these factories shut down or produced other products after ANGUS resumed production of nitromethane.[85] Thus, it is difficult to determine the total number of Chinese companies producing during 1990-92.

Regarding the number of Chinese companies producing in 1993, information on the record indicates that there may have been as many as nine Chinese factories producing in 1993. Of these nine companies, six were identified by the MOFTEC as being responsible for the production of all exports in the first five months of 1993. These are: (1) Kunshan, (2) Kunshan Second Solvent Factory (Kunshan 2), (3) Shanghai Zhuang Hang Chemical Factory (Zhuang Hang), (4) Wu Xian,

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[81] Questionnaires were sent to 15 Chinese companies that were identified in the following manner: 6 producers were identified by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) to the Commerce Department as accounting for 100 percent of exports during January through June 1993 (these companies are represented by counsel through whom the questionnaire was served directly), and 9 companies were identified by petitioner as being producers (these companies were served questionnaires by either air courier or telefax). In addition, the Commission sent a cable to the U.S. embassy in Beijing in the preliminary investigation, the response to which indicated that the embassy was unable to provide the data requested.

[82] Because of time lags and possible other differences between reporting exports and imports, it is not possible to make an exact comparison. However, given that no imports were reported after August 1993, it is likely that the 1993 export shipments reported by the three Chinese companies have been captured in the total 1993 imports.

[83] Conference transcript, pp. 55-56.

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

[85] Conference transcript, p. 97.

(5) Wujin, and (6) Dan Dong. The remaining three companies were identified by petitioner:[86] (7) Luzhou, (8) Jiangsu Rugao Linzi Chemical Plant (Jiangsu), and (9) Jia Ding Chemical Plant (Jia Ding). Of these nine companies, seven definitely produced in 1993[87] and two may or may not have.[88]

In addition to the three complete questionnaires, the Commission received short statements regarding 1993 capacity from three producers: Luzhou, Dan Dong, and Zhuang Hang. The Commission also received an affidavit regarding the overall condition of the Chinese industry from a Chinese broker.

Total capacity estimates for 1993 range from a low of *** pounds to a high of *** pounds. The six producers (out of seven known producers) providing information on 1993 capacity reported a total combined capacity of *** pounds. However, four of these firms reported a number of reasons, enumerated below, why *** pounds of this capacity is unavailable for export to the United States. Thus, they estimate that only *** pounds of such capacity is available for export to the United States. The affidavit supplied by the broker estimated total nitromethane capacity at *** pounds.[89] Finally, petitioners estimated Chinese capacity at *** pounds.[90]

Kunshan, with the *** of *** pounds, reported that *** pounds was used to produce *** for the domestic market. Luzhou, with *** capacity of ***, reported that *** pounds was committed to *** production. Dan Dong, with the *** capacity of *** pounds, reported that all production was devoted to a *** market. Finally, Zhuang Hang, with the *** capacity of *** pounds, reported that it is now using nitromethane to produce ***.

The broker's affidavit indicated that nitromethane in China is used primarily to produce ***, which is used as a pharmaceutical intermediate. Other uses identified are ***, ***, and ***. The broker's affidavit also identified export markets other than the United States, with *** as the largest, followed by ***. The broker's affidavit estimated Chinese exports to *** to have been *** pounds in 1993, and Chinese exports to *** to have been *** pounds in 1993.[91]

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

U.S. Imports

Table 14 presents data received from the 13 responding firms importing nitromethane, which are believed to account for virtually all imports of nitromethane from China.[92] The relevant HTS subheading is a basket category which includes imports of other chemicals; therefore, the Commission could not rely on official statistics for import data.

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[86] Petitioner identified *** in letters dated Dec. 13, 1993, and Jan. 4 and 7, 1994. Of these ***. ***.

[87] The six identified by MOFTEC definitely produced in 1993; Luzhou definitely produced as evidenced by its questionnaire.

[88] There is no evidence that either firm produced in 1993.

[89] No explanation of how this figure was derived was provided in the affidavit. The affidavit did state that the Chinese nitromethane workshops could also produce ***.

[90] Petitioner's estimate appears to be based on an internal memorandum dated Apr. 24, 1992, assessing Chinese production capacity. *See* affidavit of Ralph M. Eichmiller, petitioner's prehearing brief.

[91] No 1993 exports to these markets are identified in either the three questionnaires or the three short statements. However, respondents submitted an additional affidavit dated Apr. 3, 1994, from the manager of Sinochem Jiangsu Sushou, that corroborated the broker's affidavit regarding the uses of nitromethane in China, and Chinese exports.

[92] With the exception of *** pounds of nitromethane in 1991 and *** pounds in 1992 imported from ***, China was the only foreign source of nitromethane during 1990-93.

Table 14
Nitromethane: U.S. imports, by sources, 1990-93

* * * * * * *

During the ANGUS production outage in 1991 and 1992, there was a marketplace shortage of nitromethane and, in response, an increased supply of nitromethane was brought on the market, almost entirely from China.[93]

The quantity of U.S. imports of nitromethane from China increased from *** pounds in 1990 to *** pounds in 1991, then decreased by *** percent between 1991 and 1992 and by *** percent between 1992 and 1993. The value of the imports from China rose dramatically from 1990 to 1991, then declined by *** percent from 1991 to 1992 and by *** percent in 1993.

Unit values of imports from China rose sharply in 1991, then fell by more than *** percent through 1993. A comparison of average unit values of U.S. producers' U.S. shipments and U.S. shipments of imports from China is shown below (*per pound*):

* * * * * * *

Petitioner alleged that "critical circumstances" exist with respect to imports of nitromethane from China, and Commerce found in the affirmative on this issue. Commerce used best information available to determine that imports were massive and that the importers knew or should have known that dumping was occurring.

As a result of Commerce's affirmative final determination with respect to critical circumstances, the Commission is required to determine whether retroactive imposition of antidumping duties appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time. The Commission is to make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed. If the Commission finds either no material injury or only a threat of material injury, it need not reach a critical circumstances determination.

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

(I) the condition of the domestic industry,

(II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by the efforts to avoid potential imposition of antidumping duties,

(III) whether foreign economic conditions led to massive imports of the merchandise, and

(IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.

---

[93] As stated previously, ANGUS accounted for *** percent of imports from China in 1991 and *** percent in 1992.

The following tabulation, based on questionnaire data, provides monthly data on U.S. imports of nitromethane in 1993:[94]

* * * * * * *

U.S. Market Shares

Market shares of U.S. shipments of nitromethane, including those consumed internally, are presented in table 15. U.S. producers' market share by volume declined from *** percent in 1990 to *** percent in 1991 and to *** percent in 1992; it increased to *** percent in 1993. U.S. producers' market share by value declined from *** percent in 1990 to *** percent in 1991 and to *** percent in 1992; it increased to *** percent in 1993. China's market share by volume increased from *** percent in 1990 to *** percent in 1991 and to *** percent in 1992. China's share then decreased to *** percent in 1993. China's market share by value increased from *** percent in 1990 to *** percent in 1991 and to *** percent in 1992, and then fell to *** percent in 1993.

Table 15
Nitromethane: U.S. market shares, by sources, 1990-93

* * * * * * *

A further breakdown of U.S. market shares, based on questionnaire data, is shown in the tabulation below (*in percent, based on quantity of U.S. shipments*):

* * * * * * *

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: in the production of derivative products[95] and chloropicrin, as a stabilizer in 1,1,1-trichloroethane, as a specialty fuel (hobby or racing fuel), or as an explosive.[96] Nitromethane is used captively by U.S. producers for derivative products but is sold to unrelated purchasers in the chloropicrin, 1,1,1-trichloroethane, hobby fuel, racing fuel, and explosives markets.[97] Nitromethane is typically blended or mixed with other material for the production of these end-use products with the exception of racing fuel, in which nitromethane is the sole material. Nitromethane represents approximately *** percent of the cost of the derivative

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[94] The petition was filed on May 24, 1993. Aug. 8, 1993, is the date of Commerce's retroactive suspension of liquidation.

[95] There are four major derivative products: TRIS AMINO® crystals, TRIS AMINO® concentrate, TRIS NITRO®, and ALKATERGE®-T/T-IV.

[96] The derivatives are used as a pharmaceutical or a pharmaceutical intermediate. 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.

[97] In 1993, approximately *** percent of the U.S. production of nitromethane (including exports) was used captively by the U.S. producer to produce the derivative products, whereas *** percent was sold to unrelated purchasers in the United States and *** percent was exported. With the departure of Grace in late 1992 from the industry, the petitioner, ANGUS, and its subsidiaries are believed to be the only current producers of the derivative products in the world.

products, *** percent of the cost of chloropicrin, *** percent of the cost of 1,1,1-trichloroethane, up to *** percent of the cost of hobby fuel, *** percent of the cost of racing fuel, and *** percent of the cost of explosives.[98]

U.S. producers, importers, and purchasers of nitromethane generally agreed that there are no direct substitutes for nitromethane in nearly all of its applications. In some applications, other materials can replace a portion of the nitromethane, although this results in some loss of effectiveness for the final product. U.S. producers and purchasers also reported that there are substitute products for the end-use products that use nitromethane.

ANGUS and Grace reported some substitutability between nitromethane and other nitroparaffins (nitroethane and 1-nitropropane) in the 1,1,1-trichloroethane market, although the end-use product is not as effective as the product that uses nitromethane. ANGUS reported that after its plant's explosion, 1,1,1-trichloroethane producers used less nitromethane and more nitroethane and 1-nitropropane as stabilizers in their product mix. After ANGUS rebuilt its production facility, 1,1,1-trichloroethane producers used more nitromethane in their product mix, but not at the pre-explosion level.[99] Similarly, hobby fuel manufacturers reported that after the ANGUS explosion, they started selling more hobby fuel with a lower nitromethane component and a higher methanol component to conserve their supply of nitromethane.[100] The effect of the lower nitromethane content in the formulations is a reduction of some speed (approximately 10-15 percent) in the hobby model. *** also reported that nitroethane, at a price similar to that of nitromethane, can be used to make a fungicide about one-half as effective as chloropicrin.

For open market sales, U.S. producers and importers reported selling nitromethane to ***.[101] U.S. importers also reported selling nitromethane to the U.S. producer, ANGUS. The largest market for unrelated sales of nitromethane is the chloropicrin market. It represented approximately *** percent of the total domestic shipments of nitromethane in the open market during 1993.[102] The demand for nitromethane in the chloropicrin market is expected to increase as a competitive product, methyl bromide, identified as an ozone depleter, is phased out.

Nitromethane is priced on a per-pound basis and 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.

Competition is another factor that affects the price of nitromethane. Prices will tend to be lower if competitive factors exist in the marketplace. Some purchasers have commented that ANGUS has tried to reduce competition in the United States by a variety of methods.[103] First, when Grace was originally building its plant during the mid-1980s, ANGUS allegedly reduced its nitromethane price to make it harder for Grace to enter the market. Second, some purchasers reported that after the plant explosion, ANGUS tried to "corner" the market for the imported Chinese product by contracting orders for as much nitromethane as possible.[104]

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[98] Telephone conversations with purchasers and questionnaire responses.

[99] Nitroethane and 1-nitropropane are priced lower than nitromethane in this market.

[100] Hobby fuel is sold in different ratios of nitromethane to methanol and oil.

[101] ***.

[102] The specialty fuel and the 1,1,1-trichloroethane markets represented approximately *** and *** percent of nitromethane open market purchases during 1993, respectively.

[103] Purchaser questionnaires, telephone conversations, and field visit.

[104] Some purchasers also cited the filing of the antidumping suit as an additional tactic by ANGUS to reduce competition.

Both U.S. producers have (had) list prices for nitromethane but list prices are discounted to meet competition in each end-use market.[105] U.S. producers reported that their average lead times 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 1990-93. Both U.S. producers and three 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.[106] ANGUS allocated its approximate one-month inventory of nitromethane to its customers on the basis of previous purchases and started to import nitromethane from China. ***.[107] Grace also allocated its nitromethane by selling the product only to its existing customers.[108]

*** reported that imports from China were not a factor in the marketplace prior to the ANGUS explosion but became so after the explosion due to the inability of U.S. producers to satisfy demand in the U.S. market. *** reported that after the explosion it could sell all the nitromethane it could produce and reasonably increase prices. Some U.S. importers reported that they only entered the nitromethane market after the ANGUS explosion and that ANGUS was their first customer.[109] 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 lead times and limited availability from China.

Some U.S. purchasers reported that during the period immediately following the explosion and prior to acceptable quantities of imported material, they had to either shut down their production of the end-use product for a period of time, reduce production of the end-use product, or lower the nitromethane component in the end-use product as a way of conserving nitromethane. Purchasers in the chloropicrin market reported the most problems, with two of the five firms shutting down production for a period of time and all having to curtail production. Purchasers in the hobby fuel and explosives markets reported having to stop selling their higher nitromethane blended product. Purchasers in the 1,1,1-trichloroethane and racing fuel markets reported the least problems because (1) demand for 1,1,1-trichloroethane was declining because of the planned phaseout, and (2) there was already a distributor of Chinese nitromethane in the racing fuel market, World Wide Racing Fuels, at the time of the explosion. *** reported that after the explosion, Chinese nitromethane started gaining acceptance by more drivers in the racing fuel market.

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[105] ***.

[106] After the explosion, ANGUS cancelled supply contracts with *** U.S. purchasers of nitromethane. Contracts with these purchasers accounted for a minimum of *** pounds of nitromethane during 1991, of which *** pounds were delivered and *** pounds were cancelled.

[107] ***.

[108] ***.

[109] These were ***.

Following the construction of ANGUS' new production facility in 1992, *** reported that ANGUS moved to "aggressively regain its market share" lost due to the explosion. During this post-construction period, ANGUS sold both the imported Chinese nitromethane and its own production. ANGUS reported that in December 1991, when the rebuilding of the plant was nearing completion, ANGUS developed plans for using or selling its remaining inventories of Chinese nitromethane and for reintroducing its own nitromethane into each end-use market. ANGUS reported that it attempted to price the U.S. product higher than its own Chinese imports. For example, the plan for the chloropicrin market was to offer ANGUS nitromethane at $*** per pound and the Chinese nitromethane at $*** per pound (or an equivalent price of $*** per pound for 95 percent purity). The price differential was to take into account the lower purity of the Chinese product and to sell off existing inventory. ANGUS reported that at the time of this pricing plan, the price for Grace's nitromethane was $*** per pound and the price for other importers' Chinese nitromethane ranged between $*** and $*** per pound.[110]

ANGUS also reported that when it realized that its plant was going to be finished ahead of schedule, it contacted all of its Chinese nitromethane sources and cancelled its orders with them. In most cases, ANGUS negotiated ***. Overall, *** million pounds of pre-ordered Chinese nitromethane were cancelled by ANGUS during 1992.

ANGUS reported that during 1992-93, it was forced to lower its prices for both its imported Chinese nitromethane and U.S. product to meet Chinese import competition. However, most U.S. purchasers reported that ANGUS' imported Chinese nitromethane was initially priced 20 to 50 percent below that offered for other imported Chinese nitromethane. As the price for the other imported Chinese nitromethane was lowered below the price for the ANGUS imported Chinese nitromethane, prices continued to decline for both the imported Chinese nitromethane and the U.S. product. This culminated in ANGUS' contracts offered to purchasers for 1993 that included a competitive price clause guaranteeing that ANGUS would match any price offer for imported Chinese product with its own U.S. material.[111]

ANGUS argued at the hearing and in its posthearing brief that it did not propose the competitive price clause, rather, three of the five purchasers in the chloropicrin market (***) demanded the competitive price clause in the 1993 nitromethane contracts. ANGUS stated that the clause was then offered to the two remaining purchasers in the chloropicrin market (***)[112] to avoid placing them at a competitive disadvantage.[113] One of the three purchasers, ***, confirmed that it requested the competitive price clause for the contract. The other two purchasers (***) reported that it was ANGUS and not themselves that proposed the competitive price clause. Both *** reported that this clause is not unusual in contracts for other chemicals that they purchase. *** reported that ANGUS had told him that it would take the price as low as necessary to drive the Chinese out of the market.

Product Comparisons

***, most of the responding importers, and nearly all of the responding purchasers 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

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[110] Letter from ***, Apr. 7, 1994.

[111] One U.S. purchaser of nitromethane for the *** market, ***, reported that it used the lower price of imported Chinese material offered by ANGUS to lower the price of ANGUS' U.S.-produced nitromethane.

[112] ***.

[113] However, ANGUS did not offer the same sales price for nitromethane to all five purchasers in the chloropicrin market during 1993.

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 of the end-use product.

Although the purity levels of the initial imported Chinese nitromethane ranged between 95 and 98 percent, as compared to 99 percent for the U.S. product, the purity level for the Chinese product improved during 1990-93. 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, the additional water content of the Chinese material did not present a major obstacle. Typically, chloropicrin producers purchased the lower-purity, lower-priced nitromethane; and racing fuel and hobby fuel end users purchased the higher-purity, higher-priced nitromethane. During 1993, most of the imported Chinese product sold on the open market was to the chloropicrin market.

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-December 1993. U.S. producers and importers were requested to provide price data for nitromethane sold to five end-use markets: the chloropicrin market, the racing fuel market, the hobby fuel market, the 1,1,1-trichloroethane market, and the explosives market. U.S. importers were also requested to provide price data for nitromethane sold directly to U.S. producers of nitromethane. U.S. purchasers were requested to provide pricing data for their purchases of U.S.-produced nitromethane and imported nitromethane from China purchased from U.S. importers and from U.S. producers.

Usable price data were received from both U.S. producers, 10 U.S. importers of nitromethane, and 16 U.S. purchasers of nitromethane. Reported pricing accounted for approximately *** percent of U.S. producers' domestic shipments of nitromethane and 98 percent of U.S. importers' domestic shipments of nitromethane during 1993. Reported pricing from U.S. purchasers accounted for 67 percent of U.S. producers' domestic shipments of nitromethane and nearly all of U.S. importers' domestic shipments of nitromethane during 1993.

U.S. Price Trends[114]

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, while prices for nitromethane sold to the racing fuel market generally *** and prices for nitromethane sold to the hobby fuel and explosives markets *** during the same time period (figure 1, table 16). Prices for nitromethane sold to all of the markets except explosives then *** through the end of 1991.[115] Once ANGUS rebuilt its production facility, prices generally *** for nitromethane sold to ***, but generally *** in the *** market.

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

* * * * * * *

[114] Only U.S. producers' and importers' price trends are presented. Purchaser pricing information generally confirmed the pricing trends reported by the U.S. producers and importers of nitromethane and therefore is not shown.

[115] The prices for the explosives market *** through the end of 1991.

Table 16
Weighted-average net delivered selling prices and quantities of U.S.-produced nitromethane sold to the chloropicrin market, the racing fuel market, the hobby fuel market, the 1,1,1-trichloroethane market, and the explosives market, by companies and by quarters, January 1990-December 1993

* * * * * * *

* * * * * * *

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. Prices for Chinese nitromethane sold to *** markets generally *** (figures 2 and 3, table 17). ***.

Figure 2
Weighted-average net delivered selling prices of ANGUS' imported nitromethane from China sold to the chloropicrin market, the racing fuel market, the hobby fuel market, and the explosives market, by quarters, January 1990-December 1993

* * * * * * *

Figure 3
Weighted-average net delivered selling prices of imported nitromethane from China (not including ANGUS' imports) sold to the chloropicrin market, the racing fuel market, the hobby fuel market, the 1,1,1-trichloroethane market, and to U.S. producers, by quarters, January 1990-December 1993

* * * * * * *

Table 17
Weighted-average net delivered selling prices and quantities of imported nitromethane from China sold to the chloropicrin market, the racing fuel market, the hobby fuel market, the 1,1,1-trichloroethane market, the explosives market, and to U.S. producers, by quarters, January 1990-December 1993

* * * * * * *

Only in *** markets, ***, did ANGUS and the other importers both sell their Chinese nitromethane. In these markets, the prices for ANGUS' imported Chinese nitromethane were generally below those of other importers. In 9 of the 11 instances in which comparisons between ANGUS' imported Chinese nitromethane and the other importers' Chinese nitromethane were possible, ANGUS' imported product was priced between 7 and 43 percent below the price for other importers' Chinese product.

ANGUS' Price Trends

Figure 4 shows prices for ANGUS' U.S.-produced and its imported Chinese nitromethane sales to the chloropicrin, hobby fuel, racing fuel, and explosives markets.

Figure 4
ANGUS' delivered selling prices of its U.S.-produced and imported Chinese nitromethane sold to the chloropicrin market, the racing fuel market, the hobby fuel market, and the explosives market, by quarters, January 1990-December 1993

* * * * * * *

Price Comparisons

Comparisons between U.S.-produced and imported Chinese nitromethane (including ANGUS' imported Chinese product) are possible in all five end-use markets (figures 5-7). There were 16 instances in which comparisons between ANGUS' imported Chinese nitromethane and the U.S.-produced nitromethane were possible (table 18). In 15 of these instances, the imported product sold by ANGUS was priced between 5.6 and 38.1 percent below the domestic product. Only in one instance was the price of the imported product sold by ANGUS higher than the domestic product (by 4.2 percent).

Figure 5
Weighted-average net delivered selling prices of U.S.-produced nitromethane, ANGUS' imported nitromethane from China, and other importers' imported nitromethane from China (not including ANGUS' imports) sold to the chloropicrin market and the racing fuel market, by quarters, January 1990-December 1993

* * * * * * *

Figure 6
Weighted-average net delivered selling prices of U.S.-produced nitromethane, ANGUS' imported nitromethane from China, and other importers' imported nitromethane from China (not including ANGUS' imports) sold to the hobby fuel market and the explosives market, by quarters, January 1990-December 1993

* * * * * * *

Figure 7
Weighted-average net delivered selling prices of U.S.-produced nitromethane, and importers' imported nitromethane from China (not including ANGUS' imports) sold to the 1,1,1-trichloroethane market, by quarters, January 1990-December 1993

* * * * * * *

Table 18
Nitromethane: Margins of under/(over)selling for sales to the chloropicrin, racing fuel, hobby fuel, 1,1,1-trichloroethane, and explosives markets, by quarters, January 1990-December 1993

* * * * * * *

In 15 of the 28 instances where comparisons between all other imported Chinese nitromethane and the domestic product were possible, the Chinese product was priced between 0.4 and 39.4 percent below the domestic product. In the remaining 13 instances, the Chinese product was priced between 0.6 and 106.9 percent higher than the domestic product.

The Commission also requested purchasers to provide pricing information concerning their purchases of the U.S.-produced and the imported Chinese nitromethane. Nine purchasers reported 31 instances where they bought U.S.-produced nitromethane and imported Chinese nitromethane (not from ANGUS) during the same quarter. These purchasers included four firms in the chloropicrin market, two firms in the hobby fuel market, one firm in the 1,1,1-trichloroethane market, one firm in the explosives market, and ANGUS. In 7 of the 31 instances, the Chinese product was priced between 2 and 39 percent below the competing domestic product. However, in 21 instances, the Chinese product was priced between 2 and 158 percent higher than the domestic product.[116]

Petitioner argued at the hearing and in its posthearing brief that any instance of overselling by the imported product was artificial and that every price reduction that ANGUS made during 1992-93 was in response to not only actual sales of the imported product but also competing price offers by other importers of the Chinese product. ANGUS provided as support of this statement its own sales personnel reports and letters from purchasers.[117] Most of ANGUS' sales of nitromethane to the chloropicrin market during 1992 involved its own inventories of Chinese nitromethane. During 1993, after the competitive price clause was included in the nitromethane contracts, sales offers of other importers' Chinese product at lower prices were presented to ANGUS, which then matched the Chinese price with its U.S.-produced product. ANGUS stopped matching these offers during the fourth quarter of 1993.

1994 Pricing

The Commission requested U.S. producers, importers, and purchasers of nitromethane to discuss the prices for nitromethane during 1994. In all five markets, ANGUS' nitromethane was priced ***.[118] ***.

Purchasers of nitromethane for the chloropicrin market complained about ANGUS' tactics for 1994 sales of nitromethane. ANGUS offered the $*** price for all orders made prior to the date of Commerce's preliminary determination, November 1, 1993. If the purchasers did not sign the contract or if they wanted to purchase additional material, ANGUS stated that they would have to pay market price. The purchasers reported that ANGUS would not specify what the market price would be. In addition, the contract stated that the purchasers would be charged *** cents per pound for any amount cancelled. All five chloropicrin manufacturers reported that they were forced to sign the contracts because the antidumping case had eliminated the Chinese nitromethane from the market.

* * * * * * *

Purchaser Responses

The Commission sent questionnaires to 23 firms believed to be purchasers of nitromethane. Responses were received from 17 firms. The responding firms included all of the purchasers of nitromethane in the chloropicrin, racing fuel, and 1,1,1-trichloroethane markets, and most of the

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[116] In three other instances, the prices were the same.

[117] These sales reports typically state what the purchaser considered the competitive price in the market to be. Letters from purchasers with sales offers occurred typically during 1993, in connection with the enactment of the competitive price clause. In nearly all of the reports and letters, the competing importer of the Chinese product was not identified. There were only two instances in which the competing importer was identified. The two importers identified, ***, represent a small portion of total imports of Chinese nitromethane.

[118] ***.

purchasers in the hobby fuel and explosives markets.[119] Information obtained from these purchasers is summarized below.

Nearly all of the responding purchasers reported that they had bought some imported Chinese nitromethane during 1990-93, typically beginning after ANGUS' plant exploded. Some of these purchasers reported that they also purchased the Chinese product from ANGUS. Most of the purchasers indicated problems with the quality of the Chinese nitromethane (e.g., low purity, high acid and water content); however, they reported that the product had improved. The purchasers in the chloropicrin market were the larger purchasers of the Chinese nitromethane product due to chloropicrin production being an aqueous-based process and not as affected by the high acid or water content of the Chinese nitromethane as the other markets.

Purchasers reported that they seldom changed suppliers; however, they did so following the explosion when nitromethane was in short supply. Following ANGUS' rebuilding of its plant and Grace's departure from the industry, some purchasers added suppliers as an alternative or secondary source to ANGUS to maintain a competitive situation.

Purchasers were asked to rank, in order of importance, the major factors considered in deciding from whom to purchase nitromethane. Nearly all of the responding purchasers commented that price, quality, and availability of supply were the major factors. More than one-half of the purchasers who bought the Chinese nitromethane also considered maintaining several sources of supply as an additional very important factor for purchasing the Chinese product.

Price Leadership

Purchasers were also requested to name any firm(s) they considered to be price leaders during the following three time periods during 1990-93: (1) prior to ANGUS' plant explosion, (2) after ANGUS' plant explosion and before the rebuilding of ANGUS' plant, and (3) after ANGUS' plant was rebuilt. For the period prior to the ANGUS explosion, eight purchasers identified ANGUS as the price leader, two purchasers identified Grace, and four purchasers cited both ANGUS and Grace.[120] Some of the purchasers that cited ANGUS mentioned ANGUS' aggressive pricing tactics, including lowering its nitromethane price when Grace was building its plant during the mid-1980s.

For the second period, after ANGUS' plant explosion and before the rebuilding of ANGUS' plant, nine purchasers cited no price leaders, four purchasers cited Grace, one purchaser cited a Chinese importer, one purchaser cited both Grace and Chinese importers, and two purchasers cited ANGUS, including one purchaser citing the Chinese product sold by ANGUS.[121] During this period, purchasers reported that there was a shortage in supply and prices increased significantly.

For the period after ANGUS' plant was rebuilt, 10 purchasers cited ANGUS as the price leader, one purchaser cited both ANGUS and Chinese importers as the price leader, and two purchasers cited only Chinese importers as being the price leader.[122] However, only one purchaser was able to cite a specific firm, ***, as being a price leader with the Chinese product. This firm purchases Chinese nitromethane from an importer and sells it only to the racing fuel industry. Four of the five chloropicrin producers reported ANGUS as the price leader during this time period.[123] ANGUS argued at the hearing and in its posthearing brief that it was not the price leader because it

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[119] ANGUS also submitted a purchaser questionnaire for the time period after its plant exploded when it was purchasing Chinese nitromethane and some U.S. product from Grace.

[120] ***.

[121] ***.

[122] ANGUS reported that Chinese importers were the price leaders during this period.

[123] The fifth chloropicrin producer reported no price leader during this time period. The five chloropicrin producers accounted for *** percent of nitromethane purchases in the open market during 1993.

only lowered its prices to meet the prices or price offers of competing importers of the Chinese product.

Derivative Products

The Commission requested both U.S. producers to report U.S. sales quantity and value information for nitromethane derivative products that they sold during 1990-93.[124] For nearly all of the derivative products, prices increased during 1991-93 (table 19). ANGUS reported that *** percent and *** percent of the nitromethane used for its derivatives during 1991 and 1992, respectively, was imported from China.

Table 19
Nitromethane derivatives: U.S. producers' average prices and quantity of sales in the United States and the amount of nitromethane used in these derivatives, by company and type of derivative, 1990-93

* * * * * * *

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January-March 1990 through October-December 1993, the nominal value of the Chinese yuan depreciated by 18.2 percent relative to the U.S. dollar (figure 8). The real value of the Chinese currency is not shown because producer price information for China is not known.

Lost Sales and Lost Revenues

For the final investigation, the Commission received seven allegations of lost sales involving seven purchasers by one U.S. producer, ANGUS.[125] [126] [127] The lost sales allegations totalled $*** and involved *** pounds of nitromethane.[128] None of these allegations reported the competing price

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[124] U.S. producers also submitted average price and quantity data for the other 3 nitroparaffin products and some of their derivative products. See app. D for this information.

[125] ***.

[126] ANGUS also submitted lost revenue allegations for 11 companies. ANGUS reported that its lost revenues were not for specific sales, but rather for any product sold after its plant was reopened that was not priced at $*** per pound for the chloropicrin market, $*** per pound for the hobby fuel market, and $*** per pound for the racing fuel market. ANGUS stated that these prices were what it planned to sell nitromethane at when its plant reopened in 1992. Under this methodology, ANGUS believed that it has lost revenues amounting to $*** during 1992-93. However, since these allegations did not constitute actual instances of price offerings, staff has not included them as lost revenues. Six of these companies that account for over $*** of the alleged lost revenues are discussed in the other allegations.

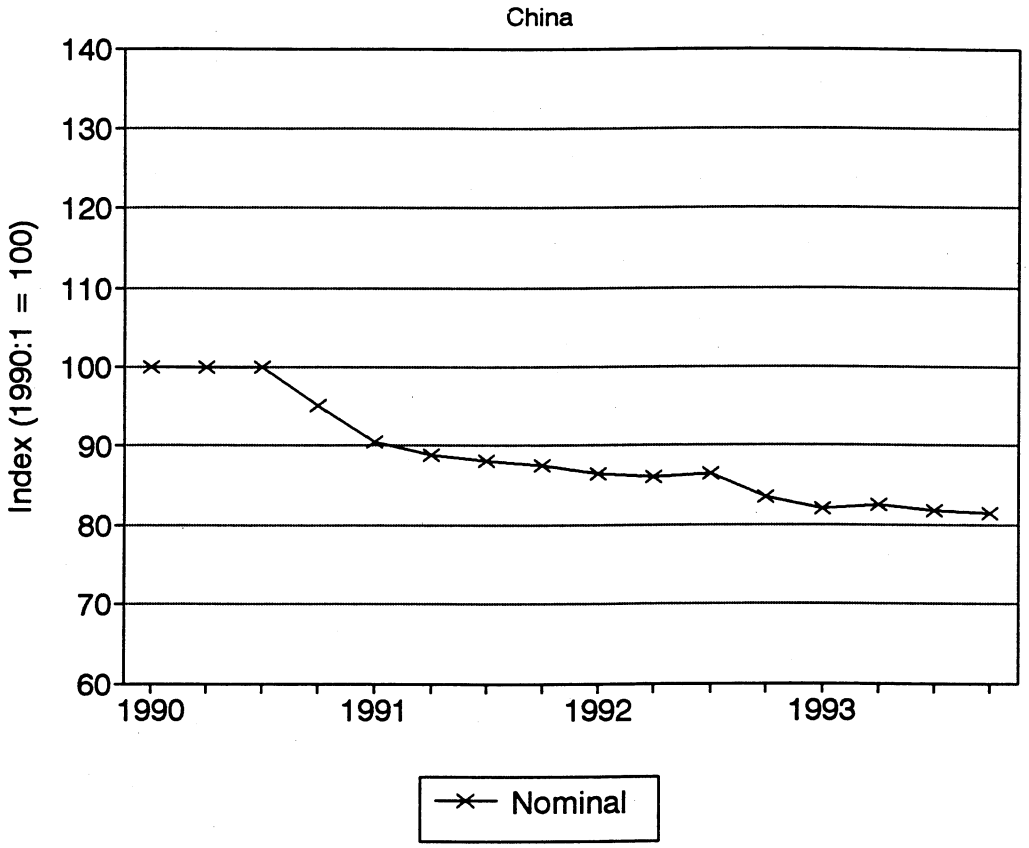
[127] During the preliminary investigation, ANGUS reported 68 allegations of lost sales and 23 allegations of lost revenues involving 16 purchasers. ANGUS did not resubmit these allegations for the final investigation. These allegations are also discussed with the current allegations.

The lost sales allegations during the preliminary investigation totalled $*** and involved *** pounds of nitromethane. The lost revenue allegations during the preliminary investigation totalled $*** and involved *** pounds. During the preliminary investigation, staff contacted 8 firms representing 63 of the lost sale allegations involving *** pounds and totalling $*** and 14 of the lost revenue allegations involving *** pounds and totalling $***.

[128] ANGUS argues that the value for lost sales should be the nitromethane price that ANGUS wanted to sell nitromethane at when its plant reopened in 1992, e.g., $*** per pound for the chloropicrin market, $*** per

(continued...)

Figure 8
Exchange rates: Index of the nominal exchange rate between the U.S. dollar and the currency of China, by quarters, January 1990-December 1993



Source: International Monetary Fund, *International Financial Statistics*, March 1994.

[128] (...continued)
pound for the hobby fuel market, and $*** per pound for the 1,1,1-trichloroethane market, and not what ANGUS' price offer was at the time of the lost sale, e.g., $*** per pound for the chloropicrin market, $*** per pound for the hobby fuel market, and $*** per pound for the 1,1,1-trichloroethane market. Staff has used the actual price offerings during 1993 as the basis for ANGUS' lost sales allegations.

from the alleged Chinese material. All of these allegations occurred during 1993. Staff contacted all seven purchasers.

Chloropicrin Market

* * * * * * *

Hobby Fuel Market

* * * * * * *

1,1,1-Trichloroethane Market

* * * * * * *

Racing Fuel Market

* * * * * * *

Explosives Market

* * * * * * *

APPENDIX A

FEDERAL REGISTER NOTICES

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

Nitromethane From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-650 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from The People's Republic of China ("China") of nitromethane as provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States.

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

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: James Terpstra (202-205-3199) or Robert Carpenter (202-205-3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of nitromethane from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 24, 1993, by ANGUS Chemical Co., Buffalo Grove, IL.

Participation in the Investigation and Public Service List

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

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

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 15, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 29, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 17, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 22, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 22, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 6, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 6, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 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 § 207.20 of the Commission's rules.

Issued: November 24, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 93-29437 Filed 11-30-93; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-823]

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

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3773 or (202) 482-0922.

FINAL DETERMINATION: The Department of Commerce ("the Department") determines that nitromethane from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since making our preliminary determination on November 1, 1993 (58 FR 59237, November 8, 1993), the following events have occurred.

On November 8, 1993, respondent exporters Shanghai Native Produce Import/Export Corporation, Sinochem Jiangsu Suzhou Import/Export Corporation, and Sinochem Liaoning, along with their associated manufacturers, requested that we postpone making our final determination by 60 days pursuant to 19 CFR 353.20(b)(1). We published a notice postponing the final determination on November 29, 1993 (58 FR 62644).

Various additional information from the five participating companies was filed on December 17 and December 28, 1993, as well as on January 6, 1994.

From January 10-29, 1994, we conducted verification of the questionnaire responses of the following companies: exporters Shanghai Native Produce ("SNP") and Sinochem Jiangsu Suzhou ("SJS"); and manufacturers Wujin Hongda Chemical Factory, Kunshan Synthetic Chemical Factory, and Suzhou Wu Xian No. 2 Perfume Factory. We also visited the facilities of another exporter, Shanghai Chemicals Import/Export Corporation, because we determined that that company might have shared ownership with one of the two exporters that were being verified.

Petitioner and respondents filed case briefs on February 24, 1994, and rebuttal briefs on March 2, 1994. On March 3, 1994, we held a public hearing in which petitioners and respondents participated.

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 number 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 towelettes.

Nitromethane is currently classifiable under 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.

Period of Investigation

The period of investigation ("POI") is December 1, 1992, through May 31, 1993.

Best Information Available

The PRC's Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") identified four exporters who sold the subject merchandise to the United States during the POI: Sinochem Hebei, Sinochem Liaoning, SJS, and SNP. Sinochem Hebei submitted no information. Sinochem Liaoning provided substantially incomplete information in response to the Department's requests. Verification revealed that the other two exporters, SJS and SNP, failed to provide adequate information on foreign market value (See Comment 1 in the "Interested Party Comments" section of this determination, below). Thus, all exporters have failed to provide adequate responses to our questionnaire. Accordingly, the Department has used the best information available ("BIA"), in accordance with section 776(c) of the Act and 19 CFR 353.37, to calculate the margins for all exporters from the PRC.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium (58 FR 37083, July 9, 1993). In this case, however, we do not need to determine whether SJS and SNP were cooperative since there is no choice as to which margin should be used. Accordingly, we are using as BIA 233.70 percent, which is the sole margin calculated in the petition.

Separate Rates

Because all four exporters either provided insufficient responses or failed to respond altogether, and because the same BIA margin applies to all four exporters, we do not need to consider whether to accept the claims for separate rates made by the participating exporters.

Fair Value Comparisons

To determine whether sales of nitromethane from the PRC to the United States were made at less than fair value, we compared, using BIA, the United States price to the foreign market value, as provided in the petition. See our notice of initiation of this proceeding (58 FR 33617, June 8, 1993)

for a complete description of the methodology used.

Verification

As provided in section 776(b) of the Act, we attempted to verify all information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comment

The petitioner contends that the respondents by their obfuscation and substantial response inaccuracies have impeded the investigation so thoroughly that the Department should use BIA for the final determination. Petitioner listed, among others, the following reasons as justification for their position:

- Respondents' tardy disclosure of the use of, and outright refusal to identify, two raw materials, which petitioner notes could be a significant part of the cost of production; and
- The general inaccuracy and unreliability of the information reported, such as raw material usage; and energy usage.

Respondents contend that their questionnaire responses contained sufficient information to permit margin calculations. Respondents make the following essential arguments regarding their responses:

- The names of the unreported ingredients, although regarded by respondents as trade secrets and thus not mentioned in responses to the questionnaire, were nevertheless informally disclosed at verification both orally and by allowing verifiers to review company documents and observe the manufacturing process; and
- The companies' responses were verified in their most significant respects, discrepancies discovered at verification were not serious, and the Department does not have to verify every reported fact in order to make an overall assessment that submitted information is suitable for margin calculations. At most, certain errors warrant "non-punitive BIA".

DOC Position

The responses of the manufacturers that supplied SJS and SNP with nitromethane were largely inaccurate and unverifiable to the point of being totally unusable. Accordingly, because their supplying manufacturers' responses were incomplete, both exporters must be deemed to have failed verification and be assigned margins based on BIA.

The most egregious deficiency is that all factories supplying the nitromethane exporters failed to report certain materials (i.e., two additives for each manufacturer) used in the manufacturing process.

In our July 26, 1993, questionnaire, we specifically required respondents to furnish the identity and amount of every material used in the production of nitromethane. See Section D (III–A) of our questionnaire. Our regulations set out the time frame within which questionnaire responses must be submitted. See 19 CFR 353.31. However, at no time did any of the respondents identify the two additives used in the production process (despite being permitted to file information in response to the questionnaire as late as five months after the questionnaire's issue).

Further, the companies did not, as they contend, disclose the information at verification. Although Department verifiers traced the existence of these additives through various records, they deliberately did not attempt to translate into English the names because the respondents insisted that the ingredients were trade secrets and could not be divulged to the verifiers. The Department's role is not to surreptitiously collect information that a respondent has characterized as a trade secret and has refused to reveal. The fact, revealed for the first time in respondents' case brief, that one of the three manufacturers inadvertently included the Chinese characters for the names of the additives in a verification exhibit (which, despite the requirement set forth under 19 CFR 353.31(f), was untranslated) does not alter the overall fact that respondents refused to reveal, much less permit verification of, the additives' identities.

Respondents' explanation for their refusal to divulge this information was that the additives were highly confidential and could not be revealed even to the Department. The Department's procedures for handling business proprietary information, which can include not disclosing certain very sensitive information under administrative protective order ("APO") (see 19 CFR 353.32), were explained in the cover letter to our questionnaire and were repeatedly reiterated at verification. Nevertheless, each responding manufacturer chose not to reveal the identity of the additives.

Although Department practice generally accepts minor corrections to questionnaire responses during verification, the revelation of unidentified materials is not a "minor correction." In fact, it must be considered significant new information. That the relative amounts used per ton of nitromethane are small does not make the failure to report the identity and use of the additives in the production process a "minor correction." See Tapered Roller Bearings from Japan (Administrative Review) (56 FR 65228, December 16, 1991); Gray Portland Cement from Mexico (Administrative Review) (56 FR 12156, March 22, 1991).

By refusing to identify these materials, respondents allow us no means of determining their value in a surrogate economy. As petitioners point out, these additives could be quite valuable and add substantially to the overall production costs. Only in knowing the precise identity and quantity can we judge the materials' importance, and thereby the gravity of their omission. Relatively small per-batch amounts cannot be considered a criterion for evaluating the gravity of failing to report these materials.

In addition to the respondents' failure to report certain materials used in the production process, two other significant deficiencies exist. First, Wu Xian failed to report the fact it purchased crude nitromethane from another PRC factory for use in its production of refined nitromethane. Essentially, another significant ingredient in the production process was unreported by Wu Xian. Second, SNP failed to report information regarding an additional supplying manufacturer even though our questionnaire specifically asked that factors data be provided by all manufacturers that produced for merchandise sold to the United States during the POI. This omission leaves us with no factor information for some of SNP's POI sales.

We agree with the respondents that the Department does not have to verify every reported fact. However, decisions regarding what is to be verified are the Department's and not a respondent's. At no time were the respondents relieved of their obligation to report in their questionnaire response, and allow verification of, the additives' identities and the other factors.

In light of the numerous significant deficiencies in the responses, there is no acceptable alternative to disregarding the respondents' responses. Additionally, the failure of both Sinochem Hebei and Sinochem Liaoning to respond adequately to our questionnaire renders incontrovertible the need to base our final determinations for those two companies on BIA. Thus, the margin for all four exporters can only be based on BIA. Therefore, we are using the only margin provided in the petition, 233.7 percent.

Because our final determination is based on BIA, we do not need to address interested party comments pertaining to

issues other than the basis for our final determination.

Critical Circumstances

The petitioner alleges that critical circumstances exist with respect to imports of the subject merchandise from the PRC. Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

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

We normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) for exporter's sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since the final margin for nitromethane from the PRC is above 25 percent, we determine in accordance with section 735(a)(3)(A)(ii) of the Act that there is knowledge that dumping existed for nitromethane from the PRC. Since we determined that importers knew, or should have known, that imports of nitromethane from the PRC were being sold at LTFV prices, we do not need to consider whether there is a history of dumping.

Under 19 CFR 353.16(f)(1), we normally consider the following factors in determining whether imports have been massive over a short period of time:

(1) The volume and value of the imports;

(2) Seasonal trends (if we find that they are applicable); and

(3) The share of domestic consumption accounted for by imports.

Because the overall integrity of the response was unreliable (see March 23, 1994, Concurrence Memorandum for detailed discussion), we have relied upon BIA for determining whether there have been massive imports of nitromethane from the PRC. As BIA we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 735(a)(3)(B) of the Act. Additionally, we note that the unreliable company-specific information, if used, would also lead to a finding of massive imports.

Accordingly, based on our analysis, we determine that critical circumstances exist for imports of nitromethane from the PRC.

Suspension of Liquidation

In accordance with sections 773(d)(1) and 733(e)(2) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of nitromethane from the PRC that are entered, or withdrawn from warehouse, for consumption on or after August 10, 1993 (i.e., 90 days prior to the date of publication of our preliminary determination in the Federal Register). The Customs Service shall require a cash deposit or posting of a bond equal to 233.70 percent *ad valorem* on all entries of certain nitromethane from the PRC. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

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

Dated: March 23, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-7564 Filed 3-29-94; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

CALENDAR OF THE PUBLIC HEARING

CALENDAR OF PUBLIC HEARING

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

Subject	:	**NITROMETHANE FROM THE PEOPLE'S REPUBLIC OF CHINA**
Inv. No.	:	**731-TA-650 (Final)**
Date and Time	:	**March 29, 1994 - 9:30 a.m.**

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

Opening Remarks

Petitioner

Respondents

In Support of Imposition of Antidumping Duties:

Katten Muchin & Zavis
Chicago, Illinois
and Co-counsel
Saunders & Monroe
Chicago, Illinois
On behalf of

ANGUS Chemical Company

Gary Granzow, President

O.W. Chandler, Consultant

Janet E. Mann, Vice President-Marketing

Kent Strong, Vice President of Sales and Technical Service

Fred L. Lieb, General Counsel

Ralph M. Eichmiller, Director-Marketing Operations

Mark Joslin, Comptroller

Robert F. Seely)--OF COUNSEL

Dr. Simonetti Samuels (Economist)

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

In Opposition to the Imposition of Antidumping Duties:

Aitken Irvin & Lewin
Washington, D.C.
On behalf of

Sinochem Liaoning Importers & Exporters Corporation
Liaoning U.S.A.
The Coalition of American Nitromethane Distributors and Consumers

John Wilhelm, Jr., General Manager, Niklor Chemical Incorporated

Joseph Rabaglia, Chemical Product Manager, Wego Chemical and Mineral Corporation

Ron Whitfield, Economist, Charles River Associates

Jack Aranowitz, President, Technical Chemicals and Products, Incorporated

Frank LeSueur, President, World Wild Racing

Peter Kiziuk, Consultant, former director of Marketing W.R. Grace, Independent Consultant

Bruce Aitken)
Ben L. Irvin)-OF COUNSEL
Martin J. Lewin)

APPENDIX C

SUMMARY DATA

Table C-1
Nitromethane: Summary data concerning the U.S. market, 1990-93

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Table C-2
Nitroparaffins: Summary data concerning the U.S. market, 1990-93

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APPENDIX D

DATA ON NITROPARAFFINS AND DERIVATIVE PRODUCTS

Table D-1
Nitroparaffins: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent U.S. consumption, 1990-93

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Table D-2
Nitroparaffins: U.S. capacity, production, and capacity utilization, by firms, 1990-93

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Table D-3
Nitroparaffins: U.S. producers' U.S. shipments, by firms, 1990-93

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Table D-4
Nitroparaffins: End-of-period inventories of U.S. producers, 1990-93

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Table D-5
Income-and-loss experience of Grace on its operations producing nitroparaffins, fiscal years 1990-93

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Table D-6
Nitroparaffins: U.S. imports, by sources, 1990-93

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Table D-7
Nitroparaffins: Unit value data for sales of U.S.-produced nitroparaffins (not including nitromethane) and their derivatives, by company and nitroparaffin type, 1990-93

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APPENDIX E

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

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

The Commission requested U.S. producers to describe and explain the actual and negative effects, if any, 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). Producers were also asked whether the scale of capital investments undertaken has been influenced by the presence of imports of this product from China. Their responses are shown below:

* * * * * * *