

UNITED STATES INTERNATIONAL TRADE COMMISSION

SYNTHETIC INDIGO FROM CHINA
Investigation No. 731-TA-851 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3222, August 1999)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of synthetic indigo, provided for in subheadings 3204.15.10, 3204.15.40, and 3204.15.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On June 30, 1999, a petition was filed with the Commission and Commerce by Buffalo Color Corporation, Parsippany, NJ, and the United Steelworkers of America, AFL-CIO/CLC, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of synthetic indigo from China. Accordingly, effective June 30, 1999, the Commission instituted antidumping investigation No. 731-TA-851 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of July 8, 1999 (64 F.R. 36921). The conference was held in Washington, DC, on July 22, 1999, 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 CFR § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of certain synthetic indigo products from China that are allegedly sold in the United States at less than fair value (“LTFV”).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping determination requires the Commission to decide, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”²

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, the Act defines “domestic 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 decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission

¹ 19 U.S.C. § 1671b(a)(1); 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT __, Slip Op. 96-51 at 4-6 (March 11, 1996).

² American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); 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) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities,

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as follows:

[D]eep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as “Vat Blue 1.” Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this investigation are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the Harmonized Tariff Schedule of the United States (HTSUS).¹⁰

Synthetic indigo and its derivatives, pre-reduced indigo and solubilized indigo (collectively “synthetic indigo” or “indigo”), are designated commercially as “Vat Blue 1.”¹¹ Indigo is a vat dye¹² with a characteristic deep blue color that has good resistance to color degradation by light or heat.¹³ Indigo dyes are used chiefly as fiber and fabric dyes, mostly in connection with the manufacture of denim products. A unique characteristic of indigo is that it fades evenly when washed.¹⁴ Approximately 98 percent of indigo

⁶ (...continued)

production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁸ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ 69 Fed. Reg. 40831, 40832 (July 28, 1999).

¹¹ Confidential Staff Report (“CR”) at I-2; Public Staff Report (“PR”) at I-2.

¹² Vat dyes are water-insoluble dyes that can be chemically reduced (vatted) to a colorless water-soluble (leuco) form in which they can readily penetrate fibers. Subsequent oxidation then produces the insoluble colored form which remains in and colors the fiber. Vat dyes are generally used for dyeing cotton, wool, and cellulose acetate. CR at I-2, PR at I-2.

¹³ CR at I-2, PR at I-2.

¹⁴ CR at I-2, PR at I-2.

dyes are used in the production of denim; the remaining two percent are used in the food industry and in other applications.¹⁵

All natural¹⁶ and synthetic dyes are classified according to the Colour Index, which is published jointly by the Society of Dyers and Colorists, Bradford, England, and the American Association of Textile Chemists & Colorists, Research Triangle, NC.¹⁷ The vast majority of indigo imported into the United States is generally in the form of water-insoluble dry powder that requires the addition of an alkaline reducing agent such as sodium hydroxide (caustic soda) to form a water-soluble salt that can be absorbed by the fabric to be colored.¹⁸ Indigo dyes that already contain enough of an alkaline reducing agent and water to allow the dyes to be used by manufacturers with a minimum of further preparation are “pre-reduced” or “solubilized” dyes.¹⁹

Denim manufacturers consume 98 percent of the supply of domestic indigo. Denim mills use indigo in either paste or liquid form in their operations. Domestically, denim mills receive their supply from Buffalo Color Corporation (“Buffalo Color”), a manufacturer of indigo paste and indigo powder, as well as from the U.S. firms that convert the imported indigo powdered material from China into a paste form. Buffalo Color markets most of its dyes directly to the end-use consumer. The subject merchandise generally enters the United States in the powder form to reduce shipping costs. The subject merchandise is then processed back into a solution or paste, and then shipped to end-users. Both the domestic and imported indigo dyes are delivered to denim mills and appear to be interchangeable at the point of use.²⁰

C. Domestic Like Product Issues

Petitioners assert that the Commission should find a single domestic like product coextensive with the scope of the investigation, Vat Blue 1 (*i.e.*, synthetic indigo in any form or strength, including its two derivatives, prereduced or white indigo and solubilized indigo).²¹ Several of the respondents argue that the Commission should find separate like products. B.F. Goodrich, an importer of indigo, maintains that indigo paste and powder should be separate like products, or, in the alternative, that pre-reduced indigo should be considered a separate like product.²² The Chinese Chamber of Commerce (“Chinese respondent”) argues that the domestic like product should be “indigo slurry.”²³ Finally, Warner-Jenkinson Co., an end-user of indigo, and New Chemic, an importer of indigo, assert that there should be two separate like products, synthetic indigo used in the food industry, and synthetic indigo used in the textile industry.²⁴ As discussed below, we determine for the purpose of the preliminary phase of this investigation that there is one domestic like product, synthetic indigo, coextensive with the scope.

1. Whether the domestic like product should consist of indigo powder and indigo paste.

¹⁵ CR at I-2, PR at I-2.

¹⁶ Synthetic indigo, which is made through the synthesis of various chemicals, has replaced natural indigo in commercial applications. Natural indigo, which is extracted from the indigo plant, is no longer cost effective to produce, although there is no chemical difference between natural and synthetic indigo. CR at I-2, n.5, PR at I-2.

¹⁷ CR at I-2, PR at I-2.

¹⁸ CR at I-2-I-3, PR at I-2.

¹⁹ CR at I-3, PR at I-2.

²⁰ CR at I-4, PR at I-3.

²¹ Petitioners’ Postconference Br. at 3.

²² B.F. Goodrich Postconference Br. at 3-4.

²³ Chinese Respondent’s Postconference Br. at 5-6.

²⁴ Warner-Jenkinson, New Chemic Joint Postconference Brief (“Warner-Jenkinson Postconference Br.”) at 7.

Using a semi-finished products analysis,²⁵ we determine that indigo powder and indigo paste are within the same domestic like product--synthetic indigo. First, 98 percent of all indigo powder sold in the United States is converted into indigo paste before it is used by its primary end users, textile manufacturers. The remaining 2 percent of indigo powder is sold directly to food colorists or for use in other applications. With the exception of this small percentage, indigo powder generally has no independent use in its powder form and has no market other than textile markets.²⁶ The vast majority of indigo powder is sold to converters, who transform the powder into paste so that it can be used by denim mills.²⁷

Indigo powder and indigo paste share fundamental characteristics and function. Both are considered to be chemical indigo but differ in form.²⁸ Ultimately, both are used for dyeing in textile manufacture or food color production.²⁹

With regard to cost differences and extent of further processing, although indigo powder must be transformed into paste before it can be used by denim manufacturers, evidence is mixed regarding the cost, and value added by this process.³⁰ However, the major portion of the cost of producing either indigo paste or indigo powder is incurred during the chemical synthesis process.³¹

Balancing these factors, we find indigo powder and indigo paste to be part of the same domestic like product.

2. Whether “indigo slurry” should be defined as a separate domestic like product.

The Chinese respondent asserts that “[g]iven the physical differences of indigo slurry and indigo powder, and the fact that Buffalo Color does not sell indigo slurry commercially, we submit the Commission has no alternative but to define the domestic like product [by excluding indigo slurry] and the

²⁵ In a semi-finished products analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Inv. Nos. 731-TA-753-756 (Preliminary), USITC Pub. 3009 (Dec. 1996) at 6, n.25; Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. No. 731-TA-73 (Final), USITC Pub. 2916 (August 1995) at 6 and n.23.

²⁶ CR at I-4, II-1, PR at I-3, II-1.

²⁷ CR at I-4, II-1, PR at I-3, II-1.

²⁸ In previous investigations, the Commission has found the liquid and dry forms of a material to be one like product when the liquid and the dry forms have been somewhat interchangeable. Potassium Hydroxide from Canada, Italy, and the United Kingdom, Inv. No. 731-TA-542-544 (Preliminary), USITC Pub. 2482 (February 1992) at 6-9 and cases cited therein; See also, e.g., Phthalic Anhydride from Venezuela, Inv. No. 731-TA-688 (Final), USITC Pub. 2809 at 5-10 (Sept. 1994); See generally, e.g., Polyvinyl Alcohol from China, Japan, and Taiwan, Inv. Nos. 731-TA-726, 727, and 729 (Final), USITC Pub. 2960 at 6-7 (“dry” and “wet-swollen PVA” in the same like product).

²⁹ CR at I-3-7, II-1, PR at I-35, II-1.

³⁰ According to petitioners, the value added by the conversion process is only *** per pound, and that the conversion process requires about *** additional employees or workers. Petitioners Postconference Br. at 13-14. B.F. Goodrich asserted that its conversion process provides *** percent value to the finished product. It did not provide any information regarding the number of employees used for this process. B.F. Goodrich Postconference Br. at 4.

³¹ CR at I-3-I-4; Transcript 12-14; Petitioners’ Postconference Br. at 13-14.

domestic industry in terms of indigo paste.”³² The Chinese respondent appears to argue that “indigo slurry,” an intermediate product in the production of indigo dye, should be considered a separate like product. Apparently, this argument is based on a misconception that Buffalo Color uses indigo slurry as a raw material in the same fashion that converters use indigo powder “to make” indigo paste, and that the Commission does not consider captive production to be part of the like product. Furthermore, the Chinese respondent apparently believes that all that Buffalo Color produces is indigo slurry or crude indigo, not paste or powder.

The Chinese respondent’s attempt to define indigo slurry as a separate like product is misconceived. The Commission routinely considers captively consumed products to be part of the domestic like product. Moreover, since indigo slurry is within the scope of the investigation, and there is no domestic production of indigo slurry for domestic sales, the “domestic like product” is the product “most similar in characteristics and uses with” the subject imports. In this instance, the product most similar to indigo slurry is synthetic indigo.³³

In any event, applying the semi-finished products analysis to indigo slurry, it is evident that indigo slurry is an intermediate product, not a separate domestic like product. First, all indigo slurry goes into the production of the finished products, indigo powder and indigo paste, and has no independent use.³⁴ Second, there is no market for indigo slurry, and all domestic indigo slurry is captively consumed by Buffalo Color.³⁵ Moreover, although indigo slurry is considered a crude form of indigo, it cannot be used directly by textile manufacturers or food colorists but first must be converted into paste or powder before it can be used.³⁶ Given that there is no market for indigo slurry, it has no appreciable value until it is transformed into a finished product. We, therefore, do not find indigo slurry to be a separate like domestic product.

3. Whether indigo used by the food coloring industry and indigo used by the textile industry are a single domestic like product.

Respondents Warner-Jenkinson and New Chemic argue that indigo powder used in the food industry should be considered a separate like product from indigo used by the textile industry.³⁷ As discussed below, applying the six-factor like product test, we find that indigo for food colors and indigo for textile use are not separate like products.

³² Chinese Respondent’s Postconference Br. at 5.

³³ See Extruded Rubber Thread From Malaysia, Inv. No. 753-TA-34, USITC Pub. 3112 at 5 (June 1998)(because, *inter alia*, “there has been no production of food-grade ERT for commercial sale,” domestic production of food-grade ERT product “does not exist in any practical sense” and could not be considered a domestic like product)(Commissioner Crawford dissenting); Nepheline Syenite From Canada, Inv. 731-TA-525 (Final), USITC Pub. 2502 at 7-11 (Apr. 1992)(since nepheline syenite was not produced in the United States, the Commission defined the domestic like product to include two similar products, feldspar and aplite), *aff’d* Feldspar Corp. v. United States, 825 F. Supp. 1095 (Ct. Int’l Trade 1993).

³⁴ Chinese Respondent’s Postconference Br. at 5.

³⁵ Id.

³⁶ CR at I-5, PR at I-4. Petitioners Postconference Br. at 4-8.

³⁷ Warner-Jenkinson Postconference Br. at 7.

Physical Characteristics and End Uses-- Indigo for food colors differs physically from indigo for textiles in that indigo for food colors is a dry, powder form.³⁸ Both of these indigo products also differ in indigo concentrations, with food color indigo containing a minimum 94 percent concentration and textile indigo containing a 20 percent concentration.³⁹ Indigo for food colors is in a “purer form” than indigo for textile manufacture since indigo for food colors must meet certain iron ion and heavy metal tolerances.⁴⁰ Nevertheless, indigo for food colors and indigo for textiles are both chemically indigo.⁴¹

Interchangeability and Customer and Producer Perceptions-- Since indigo for food colors is essentially indigo powder and indigo for textile manufacturing is indigo paste, they have limited interchangeability in those forms. However, both can be and are used in textile applications although indigo powder must undergo a further dilution process (which appears to be a relatively simple process) before it can be used by the textile manufacturers.⁴² Once the indigo powder is diluted, indigo paste and indigo powder are fully interchangeable.⁴³

There is little information in the record as to customer and producer perceptions specific to indigo for food color applications and indigo for textile applications. However, in general, importers and the domestic producer consider indigo powder, which is the only form of indigo used by food colorists, and indigo paste, which is used by the textile manufacturers, to be interchangeable once the powder is converted into a paste form.⁴⁴ Indigo for food colors can be converted into paste and used by the textile industry.⁴⁵

Channels of Distribution--Indigo powder that is processed for food colors is sold directly to food colorists and other manufacturers. Indigo for textiles in powder form is sold to importers/converters and converted to indigo paste. All indigo paste is sold directly to textile manufacturers.⁴⁶

Common Manufacturing Processes, Facilities, and Employees--Regardless of whether the finished product is indigo for food colors or indigo for textile applications, both undergo the same basic chemical synthesis. As noted earlier, chemically, the two products are essentially indigo, with indigo for food color merely a “purer form,” containing lower iron ion levels.⁴⁷ There are also differences at the finishing stages of the two products’ production as indigo intended for use by denim mills is converted into paste or diluted from powder, while indigo for food color may undergo further purification processes to ensure that it meets

³⁸ In previous investigations, the Commission has found the liquid and dry forms of a material to be one like product when the liquid and the dry forms have been somewhat interchangeable. Potassium Hydroxide from Canada, Italy, and the United Kingdom, Inv. No. 731-TA-542-544 (Preliminary), USITC Pub. 2482 (February 1992) at 6-9 and cases cited therein; See also, e.g., Phthalic Anhydride from Venezuela, Inv. No. 731-TA-688 (Final), USITC Pub. 2809 at 5-10 (Sept. 1994); See generally, e.g., Polyvinyl Alcohol from China, Japan, and Taiwan, Inv. No. 731-TA-726, 727, and 729 (Final), USITC Pub. 2960 at 6-7 (“dry” and “wet-swollen PVA” in the same like product).

³⁹ CR at II-1, PR at II-1. Warner-Jenkinson Postconference Br. attachment.

⁴⁰ CR at II-1; II-13, PR at II-1, II-8. Transcript at 91.

⁴¹ CR at I-4, PR at I-3.

⁴² CR at II-2, II-13, PR at I-0, II-8.

⁴³ CR at I-10, II-1, PR at I-0, II-8.

⁴⁴ CR at I-4, II-11-12, PR at I-3, II-7-8; Petitioners’ Postconference Br. at 6-8.

⁴⁵ CR at I-10, II-1, PR at I-0, II-8

⁴⁶ CR at II-2, PR at II-1.

⁴⁷ CR at I-3-4, I-9, PR at I___, ___,

customer specifications.⁴⁸ At the critical chemical synthesis stage, however, both indigo for food color and indigo for textiles utilize the same facilities and the same employees.⁴⁹

Price--The respondents claim that prices for indigo powder for food colors differ from indigo for textile applications, maintaining that prices for indigo for food colors have not suffered the same sharp decline in prices as other indigo.⁵⁰ The record does not contain any other pricing information specific to indigo for food colors and indigo for textiles.

In sum, while there are differences in the physical characteristics and slight variations in chemical composition in indigo for food colors and indigo for textile use, these two types of indigo are both chemically indigo. Additionally, indigo for food colors can be and is readily converted into paste and then used by the textile industry. The manufacturing processes do not differ greatly until the finishing stages when indigo for textile applications must undergo dilution processes and be transformed into paste, and indigo for food color is subjected to additional purification if it does not meet customer tolerances for heavy metals and other impurities.⁵¹ Nevertheless, at the critical chemical synthesis stage, both indigo for food color and indigo for textiles utilize the same facilities and the same employees. We, therefore, find indigo for food colors and indigo for textiles to be part of the same like product.⁵²

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”⁵³ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁵⁴

There are two issues in this investigation concerning the definition of the domestic industry. The first concerns whether the domestic industry should be defined to include entities who convert the Chinese

⁴⁸ Transcript at 62-63, 90-93; Petitioners' Postconference Br. at 9.

⁴⁹ Petitioners' Postconference Br. at 9.

⁵⁰ Warner-Jenkinson Postconference Br. at 7-8.

⁵¹ Respondent B.F. Goodrich also argues that pre-reduced indigo is a separate like product. Prereduced indigo is classified as a derivative of Vat Blue 1, and is covered within the scope of the investigation. However, prereduced indigo is not produced domestically or by the subject country, China; it is manufactured only by the sole German producer of indigo, which sells it as a 20 percent solution. If there is no domestic production of a product, it cannot be deemed a “domestic like product.” See 19 U.S.C. 1677(10) (if there is no domestic product “like” the subject imports, the “domestic like product” is the product “most similar in characteristics and uses with” the subject imports); Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA-571 (Preliminary), USITC Pub. 2536 at 17 (July 1992); Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final), USITC Pub. 2502 at 7-9 (Apr. 1992). Since there is no domestic production of pre-reduced indigo, we, therefore, find the product most similar to pre-reduced indigo to be synthetic indigo.

⁵² Commissioner Crawford concurs in this analysis and conclusion. She notes that the facts in this investigation are different from those in Extruded Rubber Thread From Indonesia, Inv. No. 751-TA-707 (Final), USITC Pub. 3191 at 15 (May 1999) where she found food-grade ERT and ERT other than food-grade ERT to be separate like products. There, legal restrictions dictated different uses and there was no evidence of actual interchangeability, except in extremely rare instances.

⁵³ 19 U.S.C. § 1677(4)(A).

⁵⁴ See, e.g. Certain Carbon Steel Plate from China, Russia, South Africa and Ukraine, Inv. Nos. 731-TA-753-756 (Final), Pub. 3076 at 9 (Dec. 1997).

indigo powder into indigo paste. The second concerns whether appropriate circumstances exist to exclude Buffalo Color from the domestic industry as a related party.

1. Whether converters are part of the domestic industry.

In deciding whether a firm qualifies as a domestic producer, the Commission examines the overall nature of a firm's production-related activities in the United States.⁵⁵ In defining the domestic industry in these investigations, the Commission must determine whether companies that purchase indigo powder and further process it into indigo paste engage in sufficient production-related activity to be included in the domestic industry.⁵⁶ Petitioners argue that these “converters” should be excluded from the domestic industry,⁵⁷ respondents argue otherwise.⁵⁸

The limited record information is mixed on this issue. As discussed earlier, petitioners allege that the value added by the converters is just over *** per pound or ***, while respondents allege that value added is *** per pound or *** percent.⁵⁹ ⁶⁰ However, capital investment by the converters is fairly low, particularly when compared to capital investment required to establish and maintain a synthetic indigo manufacturing facility. According to the record, it would require approximately \$3 million to build a new diluting facility, which is substantially less than the \$60 million required to build a new indigo manufacturing facility.⁶¹ Additionally, the sophistication of the technology employed in converting powder into paste, the amount of technical expertise involved, and the necessary amount of research and development all appear to be minimal. By respondents' own description,⁶² conversion appears to be a

⁵⁵ The Commission generally considers six factors in this regard: (1) source and extent of the firm's capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. *See, e.g., Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan*, Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 (April 1998) at 9, n.59; *Large Newspaper Printing Presses*, USITC Pub. 2988 at 8-9. No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. *See OCTG*, USITC Pub. 2911 at I-11 n.37; *Silicon Carbide from The People's Republic of China*, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 (June 1994) at I-11 n.49.

⁵⁶ *See e.g., Large Newspaper Printing Presses*, USITC Pub. 2988 (Aug. 1996) at 7-8. Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer. *See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 at I-8-I-9 & n.34 (June 1994) (“no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account).

⁵⁷ Petitioners' Postconference Br. at 10.

⁵⁸ Goodrich Postconference Br. at 4.

⁵⁹ Petitioners' Postconference Br. at 14; B.F. Goodrich Postconference Br. at 4, Exhibit 1.

⁶⁰ Commissioner Crawford notes that respondents did provide information on value added. However, while the data appears probative, she finds that these data alone are insufficient to find that converters should be included in the domestic industry.

⁶¹ Petitioners' Postconference Br. at 12. Although respondents were asked at the conference to provide information as to the capital investment factor in their Postconference briefs, they failed to do so. Transcript at 66-67.

⁶² At the conference, respondents described the conversion process as

a proprietary process in our plant which we use to first grind the indigo ***. Then there are several

(continued...)

relatively simple process especially when compared with the manufacturing process for indigo, particularly the synthesizing of indigo, which is a very precise and exacting process, involving a variety of corrosive and toxic raw material inputs.⁶³

In sum, although the information in the record on this issue is limited, it suggests that the converters are not engaged in sufficient production-related activity for the Commission to find that they are part of the domestic industry for purposes of this preliminary investigation. In particular, capital investment and employment levels appear quite low, and the data are at best mixed as to the extent of the conversion process and the value added by it. However, we will collect additional information regarding this issue in the final phase of this investigation.

2. Related parties.

In defining the domestic industry in this preliminary determination, we also considered whether any producers of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act.⁶⁴ That provision allows the Commission, if appropriate circumstances exist, to exclude from any domestic industry producer that is related to an exporter or importer of subject merchandise, or which is itself an importer. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁶⁵

A related party issue arises with respect to Buffalo Color, the sole domestic producer of the domestic like product. Buffalo Color is a related party because it imports the subject merchandise. According to its questionnaire response, Buffalo Color accounted for *** percent of total subject imports in 1998. ***.⁶⁶

⁶² (...continued)

additives and other chemicals that are added to the indigo powder. It's only after that, the water is added to make it a certain concentration. At that step, there are four primary tests. The product is tested for its particle size . . . its strength, viscosity, and alkalinity . . . After that, the next step is a filtration step and after filtration, it goes into mixing tanks. Mixing tanks are the final tanks where another set of tests are conducted . . . and then there's an exhaustine (phonetic) process which is also part of our quality control.

Transcript at 62-63.

⁶³ CR at I-3-I-4, PR at I-3.

⁶⁴ 19 U.S.C. § 1677(4)(A).

⁶⁵ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

⁶⁶ CR at IV-3, PR at IV-1.

Buffalo Color accounts for all domestic production.⁶⁷ Moreover, Buffalo Color does not sell the subject imports domestically, but has used its subject imports solely for its export markets.⁶⁸ These facts indicate that Buffalo Color is committed to the domestic production of synthetic indigo, and that its primary interest lies in domestic production and not importation. Accordingly, we find that appropriate circumstances do not exist to exclude Buffalo Color from the domestic industry.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

In the preliminary phase of an antidumping investigation, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.^{69 70} In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁷¹ The statute defines “material

⁶⁷ See Titanium Sponge From Japan, Kazakhstan, Russia, and Ukraine, Inv. Nos. 751-TA-17-20 (Review), USITC Pub. 3119 at 3-7 (August 1998); see also Sebacic Acid From The People’s Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793 at I-8 (July 1994)(Commission determined that because a producer was responsible for all domestic production, functioned principally as a producer rather than an importer, and did not market the subject imports but rather used them for production of a downstream product, appropriate circumstances did not exist to exclude that producer from the industry as a related party).

⁶⁸ Id.

⁶⁹ 19 U.S.C. § 1673b(a).

⁷⁰ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the allegedly LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 96-249, at 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 96-317, at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249, at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 100-71, at 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), aff’g 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

⁷¹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to

(continued...)

injury” as “harm which is not inconsequential, immaterial or unimportant.”⁷² In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷³ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁴

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing synthetic indigo is materially injured by reason of allegedly LTFV imports of synthetic indigo from China.

A. Conditions of Competition

From 1996 to 1998, domestic apparent consumption of indigo grew by *** percent in quantity, from *** million pounds to *** million pounds.⁷⁵ In the interim periods, apparent consumption was *** percent higher in the first quarter of 1998 than the first quarter of 1999. Apparent consumption in the first quarter of 1998 was *** million pounds. In the first quarter of 1999, apparent consumption was *** million pounds.⁷⁶

The demand for indigo is largely dependent upon the demand for denim generally, and blue denim in particular.⁷⁷ Two main elements determine the amount of indigo demanded by denim mills. The first is the amount of indigo on the cotton substrate.⁷⁸ To get a darker shade of blue, the dyer must run the fabric through the indigo vat multiple times. The darker the shade that is desired, the more indigo is necessary to achieve that shade.⁷⁹ To the extent that darker shades of denim have become more popular, demand for indigo has tended to increase.⁸⁰

The other element in the demand for indigo is the amount of blue denim produced.⁸¹ Generally, apparent consumption of indigo has moved in tandem with blue denim production.⁸² However, in 1997, production of blue denim slightly decreased while apparent consumption of indigo increased. In part, this difference may be attributed to the increase in the demand for darker shades of denim. In early to mid-1998, both blue denim production and indigo shipments increased significantly. These increases largely were due to the stockpiling of raw materials by denim manufacturers in anticipation of the end of federal cotton subsidies.⁸³

⁷¹ (...continued)

the determination” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁷² 19 U.S.C. § 1677(7)(A).

⁷³ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁵ CR at II-5, PR at II-3.

⁷⁶ CR at II-5, PR at II-3.

⁷⁷ CR at II-5, PR at II-3.

⁷⁸ CR at II-5, PR at II-3.

⁷⁹ Denim manufacturers may substitute some sulfur dye for indigo, but only up to a point, because sulfur dyes and indigo have different washdown characteristics. CR at II-5, PR at II-4.

⁸⁰ CR at II-6, PR at II-4.

⁸¹ CR at II-6, PR at II-4.

⁸² CR at II-7, PR at II-4.

⁸³ CR at II-7, PR at II-4.

More recently, the demand for denim has fallen as fashion trends have moved toward khakis and looser fitting garments.⁸⁴ Additionally, domestic denim production has decreased as blue jeans production has moved overseas, specifically to Mexico.⁸⁵ These occurrences may result in smaller domestic shipments, but also may increase indigo exports.⁸⁶ Indeed, Buffalo Color has increased its exports of indigo. ***.⁸⁷

Generally, the price of indigo is an important factor in purchasing decisions as the domestic product and subject imports are considered substitutable.^{88 89}

B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁹⁰

Subject imports rose 180.3 percent in quantity during 1996-1998, with total subject imports in 1998 equaling 5.564 million pounds, compared to only 1.985 million pounds in 1996.^{91 92} Additionally, subject imports were 812,000 pounds in the first quarter of 1998 compared 1.397 million pounds in the first quarter of 1999.⁹³ In value, subject imports increased by 136.3 percent from 1996 to 1998 and were an additional 55.4 percent higher during the interim periods.⁹⁴

Despite an increase in apparent consumption during 1996 to 1998, the domestic producer’s share of the market fell by *** percentage points in quantity and *** percentage points in value.⁹⁵ Comparing the first quarter of 1998 with the first quarter of 1999, the domestic producer’s market share was *** percentage points lower in quantity and *** percentage points lower in value.⁹⁶

In contrast, subject imports’ share of the market witnessed a period of growth.⁹⁷ Subject imports’ quantity share increased, growing from 22.5 percent in 1996 to 41.5 percent in 1998. During the interim

⁸⁴ CR at II-8, PR at II-5.

⁸⁵ CR at II-9, PR at II-5-6.

⁸⁶ CR at II-9, PR at II-5.

⁸⁷ CR at IV-3, PR at IV-1.

⁸⁸ CR at II-11, PR at II-7.

⁸⁹ In addition to competition from the allegedly lower-priced subject imports, the domestic product competes with other fairly traded imports from Germany. The latter’s quantity share of apparent consumption declined over the period of investigation, from *** percent in 1996 to *** percent in 1998. German share of U.S. market consumption was *** in the first quarter of 1998 and *** percent during the first quarter of 1999. CR at IV-6, Table IV-5. PR at _____. German imports, unlike the subject imports, are in paste form. CR at IV-3, PR at IV-4, PR at IV-3.

⁹⁰ 19 U.S.C. § 1677(7)(C)(i).

⁹¹ We note that Buffalo Color imports constituted a *** percent share of the subject imports in 1998. However, even if these imports were subtracted from the total of subject imports over the period examined, the volume of subject imports would still be significant at *** million pounds in 1996, *** million pounds in 1997, *** million pounds in 1998, and *** million pounds in the first quarter of 1998. ***. CR at Table IV-2, Table IV-3.

⁹² Commissioner Miller intends to examine more closely the importing activities of Buffalo Color in any final investigation.

⁹³ CR at IV-3, Table IV-1.

⁹⁴ CR at IV-3, Table IV-1, PR at IV-1, Table IV-1.

⁹⁵ CR at IV-4, Table IV-7, PR at IV-1, Table IV-4.

⁹⁶ CR at IV-4, Table IV-7, PR at IV-1, Table IV-4.

⁹⁷ CR at IV-4, Table IV-7, PR at IV-1, Table IV-4.

periods, subject imports' quantity share was 29.9 percent lower in the first quarter of 1998 compared to subject imports' quantity share of 45.3 percent in the first quarter of 1999.⁹⁸ Subject import share of the market as measured by value also increased, rising from 19.7 percent in 1996 to 38.5 percent in 1998, and during the interim period subject importers value share was 28.5 percent in the first quarter of 1998 compared to 43.2 percent in the first quarter of 1999.⁹⁹

Based on the foregoing, we find that the volume of imports of the subject merchandise, and the increase in that volume, are significant both in absolute terms and relative to consumption.¹⁰⁰

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁰¹

Pricing data gathered in this investigation show that domestic synthetic indigo has ranged in price between *** per pound and *** per pound.¹⁰² Prices for domestic synthetic indigo suffered a *** decline at the beginning of 1998 and have continued to decline.¹⁰³ In comparison, the price for imported synthetic indigo from China has been falling consistently downward since mid-1996, dropping a total of *** percent, or *** cents per pound over the period of investigation. The prices of the subject imports declined consistently from *** per pound in the first quarter of 1996 to *** per pound in the first quarter of 1999.¹⁰⁴

⁹⁸ CR at IV-4, Table IV-7, PR at IV-1, Table IV-4.

⁹⁹ CR at IV-4, Table IV-7, PR at IV-1, Table IV-4.

¹⁰⁰ Commissioner Crawford joins only in the factual, numerical discussion of the volume of imports here. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of a reasonable indication of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of subject imports is significant in light of its price effects and impact.

¹⁰¹ 19 U.S.C. § 1677(7)(C)(ii).

¹⁰² CR at V-7, Table V-1, PR at V-5, Table V-1.

¹⁰³ CR at V-7, Table V-1, PR at V-5, Table V-1.

¹⁰⁴ CR at V-8, Table V-1, PR at V-5, Table V-1.

¹⁰⁵ Commissioner Crawford finds that the subject imports likely are having significant effects on domestic prices. To evaluate the effects of dumping on domestic prices, Commissioner Crawford compares the domestic prices that existed when the imports were allegedly dumped with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In this investigation, the alleged dumping margins are so large, exceeding 120 percent, that prices for the subject imports from China would have been significantly higher at fairly traded prices. Thus, the cost of the converters' principal input, indigo powder, would have been significantly higher, and therefore the price of the converters' paste made from Chinese powder also likely would have been significantly higher. Consequently, the denim manufacturers' demand for indigo paste made from Chinese powder would have shifted away from the converters' product. Because the market share of the subject imports is quite large, exceeding *** percent, the shift in demand away from the converters' product would have been substantial. The substantial shift in demand away from the converters' product likely would have increased demand for both the

(continued...)

In every quarter during the period examined, prices for Chinese indigo have been below those of the domestic producer.¹⁰⁶ The margins of underselling during the period of investigation ranged from *** percent to *** percent.¹⁰⁷

Given the significant subject import volumes, their declining prices, and in light of the relatively high degree of substitutability between the subject imports and the domestic like product, we find both that underselling by the subject imports is significant and that the subject imports have depressed the prices for the domestic like product to a significant degree.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.” 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 dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{108 109}

Consistent with our finding that the volume, and the increase in volume, of the subject imports between 1996 and 1998 were significant, and that the decline in prices for domestically produced indigo from 1996 to 1998 was due to the subject imports to a significant degree, we find that the subject imports are having a significant adverse impact on the domestic producer.

As noted earlier, from 1996 to 1998, domestic apparent consumption of indigo grew by *** percent in quantity terms, from *** million pounds to *** million pounds, but between the interim periods was *** percent lower, with *** million pounds in the first quarter of 1998 compared to *** million pounds in the first quarter of 1999.¹¹⁰ Yet U.S. shipments of synthetic indigo fluctuated during 1996-1998, increasing by only *** percent, far less than the *** percent rise in apparent consumption.¹¹¹ Between the interim periods, U.S. shipments were *** percent lower, far more than the drop in apparent consumption.¹¹² Domestic shipments also declined absolutely, in value, by *** percent during 1996-1998, and were ***

¹⁰⁵ (...continued)

nonsubject German pre-reduced paste and for Petitioner’s paste. Because Petitioner is a major player in the market, the increase in demand for domestic paste likely would have been fairly large. Petitioner likely could have increased its prices significantly in response to the increase in demand for its product because it is the only domestic producer, nonsubject imports represent only moderate competition, and the increase in prices to fairly traded levels for the large volume of Chinese imports likely would have resulted in an overall increase in the prices in the U.S. market. Therefore, Commissioner Crawford finds that the subject imports are having significant effects on domestic prices.

¹⁰⁶ CR at V-8, Table V-1, PR at V-5, Table V-1.

¹⁰⁷ CR at V-8, Table V-1, PR at V-5, Table V-1.

¹⁰⁸ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

¹⁰⁹ As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce identified estimated dumping margins for China ranging from 124.69 to 129.60 percent. 64 Fed. Reg. at 40833.

¹¹⁰ CR at IV-6, Table IV-3, PR at IV-3, Table IV-3.

¹¹¹ CR at III-3, Table III-2, PR at III-2, Table III-2.

¹¹² CR at III-3, Table III-2, PR at III-2, Table III-2.

percent lower between the interim periods.¹¹³ The decline in value of domestic shipments resulted from a significant decline in the unit value of domestic synthetic indigo, as the domestic producer dropped prices to compete with the increasing volume of lower-priced subject imports.¹¹⁴ The industry's unit value of indigo dropped by *** during 1996-1998, and a further *** between the interim periods.¹¹⁵

U.S. production of synthetic indigo fluctuated downward in 1996-1998, and was lower in the interim period of 1999, compared to the interim period for 1998.¹¹⁶ The fall in U.S. production resulted in declining capacity utilization rates, which dropped by *** percentage points during 1996-1998 and were *** percentage points lower in the first quarter of 1998 compared to the first quarter of 1999.¹¹⁷ In addition, the domestic producer expects a shutdown of its facilities in 1999 of *** weeks rather than the normal *** weeks.¹¹⁸ As U.S. production fell, the workforce also shrank. The average number of production and related workers declined by *** percent during 1996-1998, and a further *** percent between the interim periods.¹¹⁹ Hours worked also eroded throughout 1996-1998 and into the first quarter of 1999 by *** percent and *** percent, respectively.¹²⁰

Total domestic sales of domestic indigo remained flat from 1996 to 1997, but were sharply lower during the interim period from *** million pounds in the first quarter of 1998 compared to *** million pounds in the first quarter of 1999.¹²¹ As domestic sales remained flat, the value of these sales dropped over the same period, from *** million in 1996 to *** million in 1998. In the interim periods, the value was *** million in the first quarter of 1998 compared to *** million in the first quarter of 1999.¹²²

While net sales values per pound declined, costs of goods sold increased from *** per pound in 1996 to *** in 1998, and were *** in the first quarter of 1998 compared to *** in the first quarter of 1999.¹²³ As a result, gross profit margins declined from *** million in 1996 to *** million in 1998, and were *** million in the first quarter of 1998 compared to *** in the first quarter of 1999.¹²⁴ At the same time, operating income declined in each annual period, *** million in 1996 to *** in 1998 and was a loss in interim 1999.¹²⁵ Net income followed a similar trend.¹²⁶ ¹²⁷ The adverse impact of the subject imports on

¹¹³ CR at III-3, Table III-2, PR at III-2, Table III-2.

¹¹⁴ CR at III-3, PR at III-2. Commissioner Crawford did not rely on this sentence in reaching her determination.

¹¹⁵ CR at III-3, Table III-2, PR at III-2, Table III-2.

¹¹⁶ U.S. production rose slightly from *** million pounds in 1996 to *** million pounds in 1997, then dropped to *** million pounds in 1998. During the interim periods, U.S. production fell from *** million pounds in the first quarter of 1998 to *** million pounds in the first quarter of 1999. CR at III-2, Table III-1, PR at III-1, Table III-1.

¹¹⁷ CR at III-2, Table III-1, PR at III-1, Table III-1.

¹¹⁸ CR at III-2, PR at III-1.

¹¹⁹ CR at III-6, Table III-5, PR at III-3, Table-5.

¹²⁰ CR at III-6, Table III-5, PR at III-3, Table -5.

¹²¹ CR at VI-I, Table VI-1, PR at VI-I, Table VI-1.

¹²² CR at VI-I, Table VI-2, PR at VI-I, Table VI-1.

¹²³ CR at VI-I, Table VI-1, PR at VI-1, Table VI-1.

¹²⁴ CR at VI-I, Table VI-1, PR at VI-1, Table VI-1.

¹²⁵ CR at VI-I, Table VI-1.

¹²⁶ Net income of the U.S. producer fell from *** million in 1996 to *** in 1998. During the interim periods, net income fell from *** in the first quarter of 1998 to *** in the first quarter of 1999. CR at VI-2, Table VI-1, PR at VI-1, Table VI-1.

¹²⁷ Commissioner Crawford does not rely on any analysis of the trends in the statutory impact factors in her determination of a reasonable indication of material injury by reason of the subject imports, but concurs in the

(continued...)

the domestic industry is further confirmed by the lost sales and revenues allegations that were confirmed by Commission staff. The domestic producer lost at least *** million and *** million pounds and suffered at least *** instances of lost revenues, totaling *** and *** million pounds during the period of investigation due to the lower-priced subject imports.¹²⁸

Based on the foregoing, we find that the subject imports are having an adverse impact on the domestic industry.

IV. CONCLUSION

For the reasons stated above, we find that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from China.

¹²⁷ (...continued)

conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of unfairly traded imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were traded unfairly with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so she gauges the impact through those effects. In this regard, the impact on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (*e.g.*, employment, wages, etc.) is derived from this impact.

As she noted earlier, Commissioner Crawford finds that the domestic industry likely would have been able to increase its prices had the subject imports been priced fairly. She also finds that the allegedly dumped imports are having a significant impact on the domestic industry's output and sales. Had the Chinese powder been sold at fairly traded prices, there would have been a fairly large increase in demand for domestic paste. Although operating at quite high levels of capacity utilization, Petitioner had sufficient unused capacity, exports and inventories available that it could have increased its output and sales to meet the increased demand for domestic paste. As the sole domestic producer facing only moderate competition from nonsubject imports, it is likely that Petitioner would have increased its output and sales significantly in response to the fairly large increase in demand for domestic paste, in addition to raising its prices. Therefore, it is likely that Petitioner would have increased both its prices and its output and sales, and therefore its revenues, significantly had the Chinese imports been fairly traded, and thus the domestic industry would have been materially better off if the subject imports had not been dumped. Consequently, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

¹²⁸ CR at V-8, PR at V-5.

