

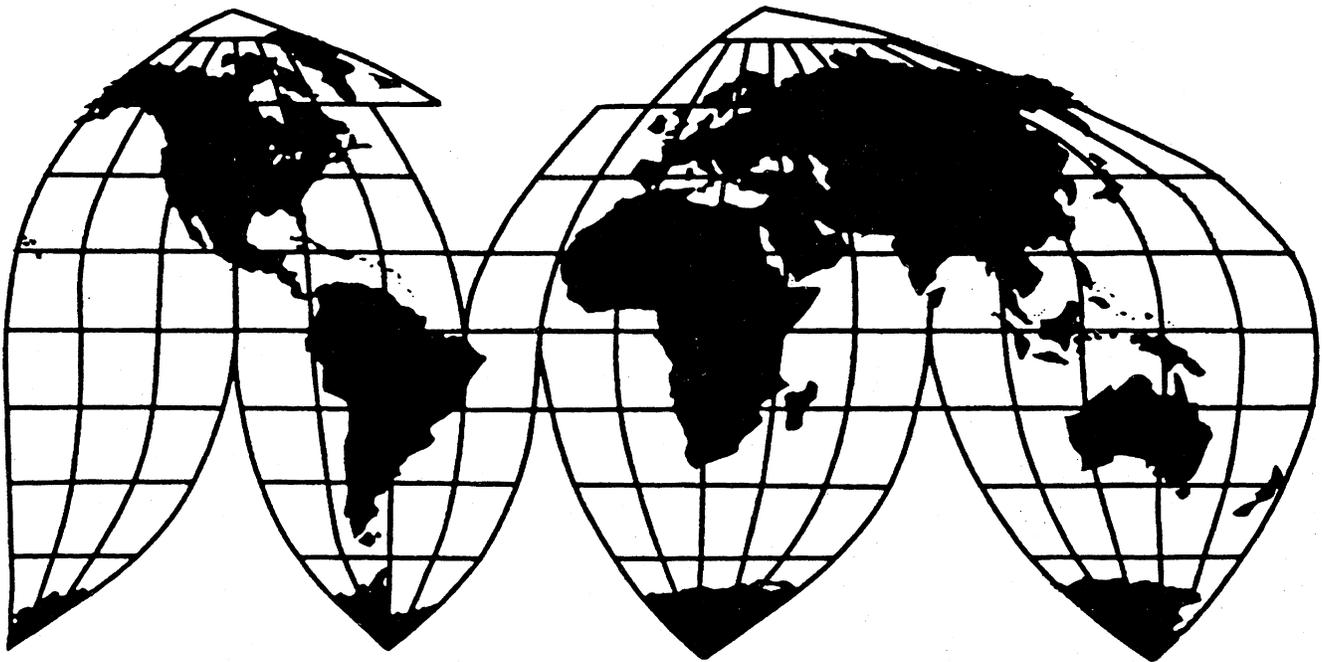
Electrolytic Manganese Dioxide From Greece and Japan

Investigations Nos. 731-TA-406 and 408 (Review)

Publication 3296

May 2000

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-406 & 408 (Review)

ELECTROLYTIC MANGANESE DIOXIDE FROM GREECE AND JAPAN

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

BACKGROUND

The Commission instituted these reviews on May 3, 1999 (64 F.R. 23675) and determined on August 25, 1999 that it would conduct full reviews (64 F.R. 46407, August 25, 1999). Notice of the scheduling of the Commission's reviews 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* on October 6, 1999 (64 F.R. 54353). The hearing was held in Washington, DC, on March 2, 2000, 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)).

² Chairman Lynn M. Bragg dissenting.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering electrolytic manganese dioxide (“EMD”) from Greece and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. BACKGROUND

In April 1989, the Commission determined that an industry in the United States was being materially injured by reason of less than fair value (“LTFV”) imports of EMD from Greece and Japan.² Commerce issued antidumping duty orders with respect to EMD from these countries on April 17, 1989.³ On May 3, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on EMD from Greece and Japan would likely lead to continuation or recurrence of material injury.⁴

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁵ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.⁶

¹ Chairman Bragg dissenting. See Dissenting Views of Chairman Lynn M. Bragg.

² Electrolytic Manganese Dioxide From Greece and Japan, Invs. Nos. 731-TA-406 & 408 (Final), USITC Pub. 2177 (Apr. 1989) (“Original Determination”).

³ See 54 Fed. Reg. 15243 (Apr. 17, 1989); 54 Fed. Reg. 15244 (Apr. 17, 1989).

⁴ 64 Fed. Reg. 23675 (May 3, 1999).

⁵ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁶ Commissioner Askey notes that the group adequacy approach adopted by the Commission is not required or even suggested by the Uruguay Round Agreements Act (“URAA”) or the Statement of Administrative Action (“SAA”). As the process is currently structured, Commissioners must vote on the adequacy of responses submitted by two separate groups, a “domestic” interested party group and a “respondent” interested party group. This process precludes individual Commissioners from deciding whether the overall level of responses submitted by the parties is adequate, which is the approach suggested by the language of both the URAA and SAA (at 880). Moreover, this approach incorrectly presupposes that it is only when “adequate” responses are submitted by both the “domestic” and “respondent” groups that the Commission will obtain a sufficient amount of additional information in a full review to warrant conducting such a full review. Finally, the process adopted by the Commission precludes expediting a review unless a majority of Commissioners agree that one of the group responses is inadequate. As a result of this procedural rule, unless a majority agrees which group is inadequate, the

(continued...)

In these reviews, the Commission received responses to the notice of institution from: (1) Chemetals, Inc. (“Chemetals”) and Kerr-McGee Chemical, LLC (“Kerr-McGee”) (collectively, “Petitioners”), which are domestic producers of EMD, and (2) Eveready Battery Company (“Eveready”), which produces EMD in the United States ***. No response to the notice of institution was received from any producer or exporter of subject merchandise from Greece or Japan.⁷ Accordingly, on August 5, 1999, the Commission determined that the domestic interested party group responses were adequate in both reviews, and that the respondent interested party group response was adequate for the review concerning EMD from Greece.^{8 9} Pursuant to section 751(c)(5) of the Act,¹⁰ the Commission decided to conduct full five-year reviews with regard to EMD from both Greece and Japan.¹¹

Tosoh Hellas A.I.C. (“Tosoh Hellas”) and Tosoh Corp. (“Tosoh Japan”) (collectively, “Tosoh”), producers of EMD in Greece and Japan, respectively, entered their appearances in these reviews on November 17, 1999. On March 2, 2000, the Commission held a hearing in these reviews, at which representatives of Petitioners, Tosoh, and Eveready appeared. The Petitioners filed briefs in support of continuation of the orders, and Tosoh and Eveready filed briefs in opposition to continuation of the orders.

⁶ (...continued)

Commission will not expedite a review, even if a majority of the Commission is in favor of expediting the review.

One of the flaws of the Commission’s approach is highlighted by the circumstances of this case. Here, the two major subject producers of EMD did not respond to the notice of institution. In many sunset reviews, this would have led to an expedited review, presumably because these companies “would not provide adequate information if the [Commission] conducted a full-fledged review.” SAA at 880. Nonetheless, the two producers did choose to participate in this proceeding after the Commission proceeded to a full review. Accordingly, the failure of these companies to respond to the notice of initiation was not necessarily an indication of their intent not to cooperate in a full review nor did it indicate that the Commission would not obtain significant additional useful information in the full review. For a further discussion of Commissioner Askey’s views concerning the Commission’s adequacy approach, see Elemental Sulphur from Canada, Inv. No. AA1921-127 (Review), USITC Pub. 3152 at 5, n. 5 (Jan. 1999).

⁷ Explanation of Commission Determinations on Adequacy, Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731-TA-406 & 408 (Review).

⁸ 64 Fed. Reg. 46407 (Aug. 25, 1999).

⁹ Chairman Bragg and Commissioner Hillman dissented from the finding that the respondent interested party group response was adequate with respect to Greece. 64 Fed. Reg. 46407, n. 1 (Aug. 25, 1999).

¹⁰ 19 U.S.C. § 1675(c)(5).

¹¹ See Explanation of Adequacy. The Commission decided to conduct a full review concerning EMD from Japan, notwithstanding the inadequate respondent interested party group response in this review, to promote administrative efficiency in light of its decision to conduct a full review concerning EMD from Greece. Id. Chairman Bragg and Commissioners Crawford and Hillman dissented from this decision.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c) of the Act, the Commission defines “the domestic like product” and the “industry.”¹² 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 under this subtitle.”¹³ The Commission's decision regarding the appropriate domestic like product(s) in an investigation or review is based on the facts, record, and legal parameters of the proceeding in question.¹⁴ In a section 751(c) review, the Commission must also take into account “its prior injury determinations.”¹⁵

In its final five-year review determination for Electrolytic Manganese Dioxide From Japan, Commerce defined the subject merchandise as follows:

manganese dioxide (MnO₂) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip, or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the order. There has been one scope clarification with regard to EMD from Japan. On January 6, 1992, the Department ruled that high-grade chemical manganese dioxide (CMD-U) is within the scope of the order. This merchandise is currently classifiable under the Harmonized Tariff Schedule (“HTS”) item number 2820.10.0000.¹⁶

EMD is a black powder with a gamma crystalline structure that is used in dry-cell batteries. There are two grades of EMD – alkaline grade and zinc chloride grade, although zinc chloride grade has not been produced in the United States in recent years. The two grades differ primarily in the particle size and pH, which are imparted during the finishing process. Alkaline- and zinc-chloride-grade EMD are essentially identical in all other physical characteristics.¹⁷

¹² 19 U.S.C. § 1677(4)(A).

¹³ 19 U.S.C. § 1677(10). See NEC Corp. v. Dep’t of Commerce, Slip Op. 98-164 at 8 (CIT, 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 (CIT 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁴ See, e.g., Citrosuco Paulista, S.A., v. United States, 704 F. Supp. 1075, 1087-88 (CIT 1988) (while each original investigation is *sui generis*, and the Commission is not bound by prior like product determinations, the like product definition must be based on a rational basis discernible to the reviewing court).

¹⁵ 19 U.S.C. § 1675a(a)(1)(a).

¹⁶ Electrolytic Manganese Dioxide From Japan, 64 Fed. Reg. 67858, 67859 (Dec. 3, 1999) (final, sunset rev.) (“EMD From Japan”) (citations omitted), citing Electrolytic Manganese Dioxide from Japan, 57 Fed. Reg. 395 (Jan. 6, 1992) (final scope ruling). The same language appears in Commerce’s determination with regard to Greece. See Electrolytic Manganese Dioxide From Greece, 64 Fed. Reg. 67861 (Dec. 3, 1999) (final, sunset rev.) (“EMD From Greece”).

¹⁷ CR at I-11, PR at I-6 - I-7.

In the original investigation, the Commission defined the like product as all EMD.¹⁸ The Commission expressly explained that this definition includes zinc chloride grade, alkaline grade, titanium anode, and graphite anode EMDs.¹⁹ No party has argued for a different domestic like product definition in these reviews, and there is no information that indicates a need to revisit the Commission's original determination of the domestic like product.²⁰ Therefore, for the reasons outlined in the Commission's original determination, we define the domestic like product as all EMD.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic 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."²¹ In accordance with our domestic like product determinations, we determine that the domestic industry consists of all domestic producers of EMD.

C. Related Parties

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to section 771(4)(B), which allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²²

¹⁸ Original Determination, Pub. 2177 at 7.

¹⁹ Original Determination, Pub. 2177 at 7. Graphite anode and titanium anode EMD refer to the type of anode used in the electrolysis process. *Id.* at 6.

²⁰ All indications are, in fact, to the contrary. *See, e.g.*, CR at I-11 - I-15, PR at I-6 - I-9. We note that Eveready subdivides alkaline EMD into three grades: regular, high quality/high drain, and high tech. CR at I-12, PR at I-7. However, Eveready states that the differences among these grades do not rise to the level that would justify treating them as separate domestic like products. Eveready Response to the Notice of Institution at 24-25. Indeed, the grades defined by Eveready ***, and differ from each other in relatively minor ways. *See generally* CR at I-11 - I-15, PR at I-6 - I-9. ***.

²¹ 19 U.S.C. § 1677(4)(A).

²² *See Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (CIT 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such 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 producer vis-à-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 (CIT 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

(continued...)

***.²³ However, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.^{24 25}

III. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON EMD WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Cumulation

1. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²⁶

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.²⁷ We note that neither the statute nor the SAA provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.²⁸ With respect to this provision, the Commission generally considers the likely volume of the subject

²² (...continued)

producers and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g., Sebacic Acid from the People’s Republic of China*, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

²³ CR at III-4, PR at III-3; see section 771(4)(B)(i) of the Act, 19 U.S.C. § 1677(4)(B)(i).

²⁴ *** states that it imported *** short tons (“ST”) of ***. CR at III-5, PR at III-3. Such volumes are equivalent to less than *** percent of *** annual U.S. production. CR & PR, Table IV-1; CR at III-2, PR at III-1. ***, seem to indicate that the company’s primary interest lies in domestic production.

²⁵ For the reasons discussed later in this opinion, Vice Chairman Miller, Commissioner Hillman, and Commissioner Koplán also do not find that *** is likely to import significant volumes of subject merchandise if the order is revoked. Therefore, they conclude that the primary interest of *** will continue to be in domestic production.

²⁶ 19 U.S.C. § 1675a(a)(7).

²⁷ 19 U.S.C. § 1675a(a)(7).

²⁸ SAA, H.R. Rep. No. 103-316, vol. I (1994).

imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.²⁹

The Commission has generally considered four factors that provide a framework for determining whether the imports compete with each other and with the domestic like product.³⁰ Only a “reasonable overlap” of competition is required.³¹ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.³²

In these reviews, the statutory requirement that both of the EMD reviews be initiated on the same day is satisfied. We do not find that subject imports from any of the subject countries are likely to have no discernible adverse impact on the domestic industry if the orders are revoked.³³

²⁹ Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not solely on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, see Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

³⁰ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: 1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; 2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; 3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and 4) whether the imports are simultaneously present in the market. *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (CIT 1989).

³¹ *See Mukand Ltd. v. United States*, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

³² *See, e.g., Torrington Co. v. United States*, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

³³ For a discussion of the analytical framework of Vice Chairman Miller and Commissioners Hillman and Koplan regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Commissioner Koplan’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephan Koplan Regarding Cumulation).

2. Reasonable Overlap of Competition

At the present time, Japanese and Greek EMD are fungible with each other and with the domestic like product. *** rates EMD from Japan and Greece as comparable in all respects except *** and ***, with the Greek product having *** quality than the Japanese product.³⁴ *** reports that *** EMD is comparable to Japanese and Greek EMD in all respects except ***, where the U.S. merchandise has the advantage. *** states that domestically-produced ***.³⁵

Japanese, Greek, and U.S. producers are currently qualified to supply ***, leading us to conclude that there would be a geographic overlap among the two subject import sources and the domestic like product if the orders were revoked.³⁶ They also use the same channels of distribution, selling directly to the purchaser through sales representatives of the domestic producers or Japanese or Greek importers.³⁷ As in the original investigation, Mitsubishi Corp. is a joint owner (with Tosoh Japan) of Tosoh Hellas, and its role in importing both Japanese and Greek EMD during the original investigation period suggests that merchandise from the two subject countries would use the same distribution channels if the orders were revoked.³⁸ Finally, EMD from both Greece and Japan was imported into the United States throughout the original investigation period, in 1998, and in the first nine months of 1999,³⁹ which is evidence that the subject merchandise is likely to be simultaneously present in the market with the domestic like product.

As in the Original Determination, the relationship between Tosoh Japan, Mitsubishi, and Tosoh Hellas plays an important role in our analysis.^{40 41 ***42} which suggests that Tosoh Japan would also make use of ***. Moreover, Tosoh Japan would have an incentive to coordinate sales between itself and Tosoh Hellas so as to maximize profits. We believe these situations would continue if the orders were revoked.

Overall, we find that there likely would be a reasonable overlap of competition between subject imports from Greece and Japan and the domestic like product, as well as among the subject imports from these countries, if the antidumping duty orders covering EMD were revoked.

³⁴ CR at II-42, PR at II-19 - II-20.

³⁵ CR at II-40 - II-41, PR at II-19.

³⁶ Tosoh Corp. Posthearing Brief, Att. 1 at 16.

³⁷ CR at IV-1, PR at IV-1.

³⁸ Original Determination, Pub. 2177 at 13-14.

³⁹ Final Report to the Commission, Electrolytic Manganese Dioxide From Greece and Japan, Invs. Nos. 731-TA-406 & 408 (Final), Table 18.

⁴⁰ Original Determination, Pub. 2177 at 14.

⁴¹ Commissioner Askey does not join in this paragraph. She notes that, in the absence of probative data indicating that the related producers in Greece and Japan would actually coordinate their U.S. export shipments upon revocation of an order, it is speculative to assume that the companies would do so. Indeed, she believes that it is more reasonable to assume that a corporate parent would establish a facility in a country for the purpose of making sales to that country and its neighboring countries, not for the purpose of establishing operations to export to the United States. Moreover, she notes that, if the two companies did coordinate their U.S. shipments, it is reasonable to presume that they would attempt to minimize their level of competitive overlap. Accordingly, this fact does not tend not to support cumulation of the two countries.

⁴² According to Eveready, for purchases of Greek EMD, ***. Eveready Response to the Notice of Institution at 15-16 (June 22, 1999).

3. Other Considerations

The record indicates that, if the orders are revoked, subject imports would likely compete in the U.S. market under similar conditions of competition. We have considered the common ownership of Tosoh Hellas and Tosoh Japan as particularly relevant to this point.⁴³ We also considered the record evidence that Tosoh Hellas and Tosoh Japan ***, with a sizable portion of their output devoted to zinc chloride grade EMD.⁴⁴ Both of these foreign producers are export oriented, but expressed the intention of continuing to service existing customers outside of the United States.⁴⁵ Both sold small amounts of EMD in the United States during the review period, maintained qualification to sell to ***, and were ***.⁴⁶ For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from Greece and Japan in these reviews.

B. Legal Standard In a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁴⁷ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁴⁸ Thus, the likelihood standard is prospective in nature.⁴⁹ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁵⁰ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{51 52}

⁴³ Commissioner Askey does not join this statement.

⁴⁴ CR at IV-4, n. 8 & IV-7, n. 11, PR at IV-2, n. 8 & IV-3, n. 11.

⁴⁵ CR & PR, Tables IV-2 & IV-3, Tr. at 193 (J. Vacadaris).

⁴⁶ CR & PR, Tables II-4 & IV-1; Eveready Prehearing Brief at 16.

⁴⁷ 19 U.S.C. § 1675a(a).

⁴⁸ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁴⁹ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁵⁰ 19 U.S.C. § 1675a(a)(5).

⁵¹ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic

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Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁵³ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.⁵⁴ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.”⁵⁵

We note that Section 776(a) of the Act authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.⁵⁶ Section 751(c)(3)(B) of the Act specifically provides that in an expedited five-year review the Commission is to issue “a final determination based on the facts available, in accordance with section 776.” Section 776 of the Act, however, does not limit the use of facts available to an expedited review.

We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of

⁵¹ (...continued)

products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁵² In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁵³ 19 U.S.C. § 1675a(a)(1).

⁵⁴ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁵⁵ 19 U.S.C. § 1675a(a)(1)(D). Commerce did not find that any of the producers or importers of subject merchandise had absorbed antidumping duties on their sales during the review period. *See generally EMD From Japan*, 64 Fed. Reg. 67858; *EMD From Greece*, 64 Fed. Reg. at 67861.

⁵⁶ 19 U.S.C. § 1675(c)(3)(B).

the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁵⁷

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.^{58 59} In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁶⁰

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁶¹

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁶² All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁶³ As instructed by the statute, we have considered the

⁵⁷ SAA at 869.

⁵⁸ 19 U.S.C. § 1675a(a)(2).

⁵⁹ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determinations in the instant reviews.

⁶⁰ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁶¹ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁶² 19 U.S.C. § 1675a(a)(4).

⁶³ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its reviews, Commerce found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: 77.73 percent for Mitsui, 71.91 for Tosoh Japan, 73.30 for all other producers in

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extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the order is revoked.⁶⁴

For the reasons stated below, we determine that revocation of the antidumping duty orders on EMD from Greece and Japan would not be likely to lead to continuation or recurrence of material injury to the domestic injury within a reasonably foreseeable time.

C. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic EMD industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶⁵

There are two grades of EMD, alkaline and zinc chloride, which are used exclusively to produce batteries of the same name.⁶⁶ The production processes for the two types of EMD differ in that alkaline grade requires titanium anodes, while zinc chloride grade can be made with both titanium and other types of anodes.⁶⁷ Although some foreign producers, including Tosoh, make both alkaline and zinc chloride grade EMD, the U.S. producers make exclusively alkaline grade EMD.⁶⁸ Alkaline EMD is typically customized to perform best in a particular battery production plant. However, alkaline EMD that meets U.S. producers’ standards ***.⁶⁹ In addition, high quality zinc chloride grade EMD may sell for the same price as alkaline grade EMD.⁷⁰

The alkaline EMD market is characterized by a small number of suppliers and purchasers. There are only eight alkaline EMD producers in the world that meet the quality requirements of U.S. battery producers – Kerr-McGee, Chemetals, Eveready, Delta (with plants in Australia and South Africa), Mitsui Denman (with a plant in Ireland), Tosoh Japan, Mitsui Mining and Smelting (“Mitsui”), and Tosoh Hellas.⁷¹ The three domestic producers, Delta, and Mitsui Denman are the only companies that sell large quantities of EMD in the U.S. market, where there are only four significant purchasers – Eveready,

⁶³ (...continued)

Japan, and 36.72 for Tosoh Hellas and all other producers in Greece. EMD From Japan, 64 Fed. Reg. at 67861, EMD From Greece, 64 Fed. Reg. at 67864.

⁶⁴ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁶⁵ 19 U.S.C. § 1675a(a)(4).

⁶⁶ CR at I-11, PR at I-6. Eveready alleged that there is a further segregation of alkaline EMD into standard, high-drain, and high-tech grades, ***. Eveready Prehearing Brief at 5-6, CR at II-12, PR at I-7. We did not rely on Eveready’s allegation in our analysis.

⁶⁷ Tr. at 65 (J. Worthington).

⁶⁸ CR at I-11, IV-4, n. 8 & IV-7, n. 11, PR at I-6, IV-2, n. 8, & IV-3, n. 11.

⁶⁹ CR at II-13, PR at II-6.

⁷⁰ Tr. at 28 (D. DeCraene) ***.

⁷¹ Tr. at 203 (G. Hooks). However, ***.

Duracell, Rayovac, and Mutec.⁷² Although there are a number of alkaline battery producers outside the United States, two of the U.S. purchasers – Eveready and Duracell – produce alkaline batteries in facilities outside the United States, and are among the largest, if not the largest, consumers of alkaline EMD in the world.⁷³ To improve EMD quality and battery performance, battery manufacturers must work closely with the EMD producers and test any experimental products under actual production conditions. These considerations force EMD suppliers and purchasers to form long-term commercial relationships.⁷⁴

EMD is usually sold under long-term contracts, each lasting for a year or more, although spot purchases do occasionally occur.⁷⁵ The contracts usually specify a price and quantity, although ***.⁷⁶

Since the original investigation, the demand for alkaline batteries in both the United States and the rest of the world has increased rapidly, spurred by the popularity of handheld electronic devices and a long-term shift away from zinc chloride batteries.⁷⁷ Although production capacity has historically kept pace with demand in the EMD industry, that did not occur during the review period. Producers have made incremental increases in the capacity of existing plants, but no producer has built a new plant, and the rate of the increase in capacity has been lower than the rate of increase in apparent U.S. consumption of EMD.⁷⁸ As a result, demand is likely to exceed the available production capacity on a worldwide basis sometime in 2001 or 2002.⁷⁹ Petitioners' witnesses testified that they could ***.⁸⁰ ***.⁸¹ However, EMD producers' proposals were contingent on large increases in prices and, even if begun immediately, would not reach commercial levels of production until *** at the earliest.⁸² Petitioners' capacity expansion proposals do not appear to be sufficient to meet the increase in demand that is likely to occur⁸³ and, thus, demand for EMD in the United States is likely to exceed the available supply in the foreseeable future.

The volume of subject imports decreased immediately after the imposition of antidumping duties. However, the volume of nonsubject imports soon began to increase, reaching a level at which

⁷² Petitioners' Prehearing Brief at 23, Tosoh Prehearing Brief at 5. CR at II-3 - II-4.

⁷³ Tr. at 36 (J. Burrows).

⁷⁴ CR at II-5, PR at II-3.

⁷⁵ CR at V-6, PR at V-5.

⁷⁶ CR at V-7, PR at V-5.

⁷⁷ CR at II-27 & II-34, PR at II-11 and II-16.

⁷⁸ CR at III-1 - III-2, PR at III-1, *** and Tr. at 191 (J. Vacadaris). For example, domestic producers' capacity increased *** percent in 1998 and *** percent in the first nine months of 1999 as compared with the same period in 1998. In contrast, apparent domestic consumption increased by *** percent in 1998 and by *** percent in 1999. CR & PR, Table C-1.

⁷⁹ Tosoh Prehearing Brief at 10; ***, in Letter from W.N. Harrell Smith, IV, to Donna R. Koehnke, Exh. 18 (Apr. 7, 2000) ("Kerr McGee Documents").

⁸⁰ ***.

⁸¹ Producers typically sought *** as prerequisites for any capacity expansion. See Petitioners' Posthearing Brief, Exh. J, ***.

⁸² Petitioners' Posthearing Brief, Addendum at 13; ***.

⁸³ This holds true both at the current rate of increase in demand, ***, which may be inflated by hoarding for the year 2000 and a severe hurricane season in 1999, and at the *** rate of increase, five to eight percent, that Kerr McGee projected in filings at the SEC. CR & PR, Table I-4, Kerr-McGee 10-K Report at 9.

nonsubject producer Delta is consistently *** of EMD to U.S. purchasers.⁸⁴ These imports are necessary to serve demand that domestic producers cannot fill.⁸⁵ Nonsubject imports' U.S. point-of-shipment prices have generally been *** than the U.S. f.o.b. plant prices; however, the delivered prices charged by Kerr McGee, Delta, and Chemetals ***.⁸⁶

Although EMD is traded on a world-wide basis, purchasers prefer to buy locally if possible.⁸⁷ This is due in part to transportation costs, which can be prohibitive.⁸⁸ Prices differ on a regional basis, and are generally highest in Japan, lower in the United States, and lower still in Europe and Asia.⁸⁹

Finally, Eveready is the only integrated producer of EMD in the United States. It consumes all of the EMD it produces in its own battery making operations.⁹⁰ Therefore, the Commission could not include Eveready in the financial results for the domestic industry, as there was no way to convert the company's transfer values into actual market values.⁹¹ However, Eveready's data were included in other aggregate domestic industry statistics.⁹²

We do not expect the foregoing conditions of competition to change appreciably if the antidumping duty orders are revoked. Accordingly, we find that current conditions in the U.S. EMD industry provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

D. Likely Volume of Subject Imports

In the original investigation, the Commission found that the volume and market share of the subject imports increased in each year of the investigation period and, therefore, were significant.⁹³ Since the antidumping duty orders went into effect, subject imports of EMD from Greece and Japan have been almost completely absent from the U.S. market.⁹⁴ During the review period, the volume and market share of subject imports was extremely low in terms of both units shipped and value.⁹⁵

⁸⁴ CR & PR, Table V-3.

⁸⁵ Compare CR & PR, Table I-4 with Table III-1.

⁸⁶ Compare CR & PR, Table V-3 with CR & PR, Figure V-7.

⁸⁷ For example, ***. See Tosoh Corp. Posthearing Brief, Exh. 1, item 3, Table 1 (following page 7). Eveready has a policy of using U.S.-made EMD in its U.S. plants. Tr. at 205-206 (G. Hooks); see also CR at II-17, PR at II-7.

⁸⁸ See CR at II-17, PR at II-7.

⁸⁹ CR at II-17, PR at II-7, Tr. at 36 (Burrows).

⁹⁰ CR at III-2, PR at III-1. We note that section 771(7)(A) establishes that the captive production provision, section 771(7)(C)(iv), applies only in determinations under sections 703(a), 705(b), 733(a), and 735(b). See 19 U.S.C. § 1677(7)(B). Therefore, it does not apply to five-year reviews pursuant to section 751(c).

⁹¹ CR at III-8, n. 11, PR at III-4, n. 11.

⁹² Data for Eveready are included unless otherwise noted in all tables in the staff report, including those reporting domestic industry capacity, production, shipments, and costs of production.

⁹³ Original Determination, Pub. 2177 at 15.

⁹⁴ CR at II-23, PR at II-9.

⁹⁵ CR & PR, Tables I-3 & I-4.

We note that there is some excess capacity in Greece and Japan, which could be used to increase production of alkaline EMD by as much *** ST this year.⁹⁶ It is unlikely that the subject producers would ship this entire volume to the United States, as they believe that demand from their existing customers is likely to increase.⁹⁷ But even if they did, there would likely be no significant effect on the volume sold by domestic producers. U.S. purchasers are likely to use any increased volume of EMD available from subject producers to meet the projected increase in demand, which domestic producers cannot satisfy because they are currently producing at full capacity.⁹⁸ Any remaining increase in the volume of subject imports would be likely to result in a decrease in the volume of nonsubject imports, rather than the domestic like product. Delta and Mitsui Denman charge *** prices *** the domestic producers on a delivered basis, and domestic purchasers have stated their preference for U.S.-produced EMD.⁹⁹ In any event, the subject producers plan no major increases in capacity before ***.¹⁰⁰ Therefore, subject producers' unutilized capacity should decrease in the foreseeable future, as their current customers' needs increase.

U.S. importers' inventories of the subject merchandise were *** throughout the investigation period. Foreign producers' inventories rose from 1997 to 1998, but then fell in 1999, and were *** percent lower in September 1999 than they were in September 1998. In light of the incipient supply shortfall, inventories are unlikely to rise significantly in the foreseeable future.¹⁰¹

There do not appear to be any barriers barring shipment of subject merchandise to countries other than the United States. Indeed, the subject producers already have an established presence in many other countries.¹⁰²

There does not appear to be any incentive for the subject producers either to convert current production of zinc chloride grade EMD to alkaline grade or to decrease sales to third countries or the home market in order to shift volume to the United States in the reasonably foreseeable future. Although delivered prices for EMD in the United States are higher than in Europe or Asia, sales to the United States would incur added duty and transportation costs that would make returns to the foreign producers less attractive than returns on sales to existing customers in other countries.¹⁰³ There is also no reason for subject producers to reduce production of zinc chloride grade EMD in order to increase production of

⁹⁶ We did not include Japan Metals & Chemicals Co. in our estimate of alkaline EMD capacity, as that company produces lower quality EMD and does not produce alkaline grade EMD. CR at IV-3, n. 5; PR at IV-2, n. 5. The three subject producers of alkaline EMD had a *** percent capacity utilization in the first three quarters of 1999. Including a ***, they will have a total capacity of approximately *** ST this year. See CR & PR, Tables IV-2 & IV-3; CR at IV-6, PR at IV-2 - IV-3.

⁹⁷ CR at II-26 - II-27, PR at II-11.

⁹⁸ Kerr-McGee projected an increase in EMD demand of between five and eight percent annually for the 1999-2004 period, which suggests an increase in demand of *** ST per year. See SEC Edgar database, Kerr-McGee 1998 10K Report, at 9, in Tosoh Prehearing Brief, Attachment. The only planned increase in capacity by the domestic industry in 2000 is a ***. CR & PR at III-1. The capacity expansions discussed by domestic producers for 2001 and 2002 would similarly fall short of the projected increase in demand. See above, notes 21 - 22.

⁹⁹ ***. CR at II-40 - II-41, PR at II-19. Eveready has stated a preference for U.S. EMD. Tr. at 205-206 (G. Hooks).

¹⁰⁰ CR at IV-4 - IV-7, PR at IV-2 - IV-3.

¹⁰¹ We note that inventories in the EMD industry ***. CR at II-18, nn. 36 & 37; PR at II-8, nn. 36 & 37.

¹⁰² See, e.g., CR at IV-4 & IV-6, PR at IV-2 & IV-3.

¹⁰³ CR at V-1 - V-2, PR at V-1; Tr. at 193 (J. Vacadaris).

alkaline grade EMD for sale in the United States, since the two grades are priced at similar levels.¹⁰⁴ Nor are subject producers likely to shift shipments from home or third-country markets. They currently supply EMD to ***,¹⁰⁵ which are likely to oppose any efforts to divert EMD from their foreign plants to service their U.S. plants.¹⁰⁶ Similarly, a strategy of cutting production volume to increase sales to the United States could also lead to supply shortfalls in third markets, straining supply relationships in a market that places a premium on long-term relationships.

Accordingly, based on the facts in the record of these reviews, we conclude that the volume of subject imports from Greece and Japan is not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty order is revoked.

E. Likely Price Effects

In the original investigation, the Commission found that the subject imports undercut and depressed domestic EMD prices, which fell steadily throughout the investigation period.¹⁰⁷ The Commission concluded that competition between Chemetals and Kerr-McGee was not responsible for declining prices because Duracell had a Buy American policy in effect that made it unnecessary for the two U.S. producers to compete with each other on a price basis. In contrast, the Commission found that the subject producers had an incentive to undercut domestic prices to gain the sales necessary to utilize underutilized capacity. It found support for this conclusion in the fact that, after a fire took Eveready's EMD plant out of operation, U.S. prices decreased, and subject imports from Japan captured the bulk of Eveready's business,¹⁰⁸ even though a sudden fall in output would be expected to result in price increases. The Commission determined that these factors indicated that subject imports depressed and suppressed the prices for the domestic like product.

With subject imports currently at extremely low levels, the Commission's pricing analysis in these reviews did not yield any comparisons between the domestic like product and the subject imports, or unit values that would allow meaningful aggregate comparisons. Other evidence on the record, however, provides a basis for us to conclude that subject imports are not likely to undersell the domestic like product, or significantly depress or suppress domestic prices within a reasonably foreseeable time.

After an initial increase in U.S. prices following imposition of the antidumping duty orders, domestic prices have generally remained stable throughout the 1990s.¹⁰⁹ In light of the expected shortage of supply, if the subject producers can produce enough EMD to increase shipments to the United States, they have no incentive to undersell U.S. producers. U.S. purchasers appear to be willing to pay the going price to any producer that meets their specifications,¹¹⁰ and have solicited sales from foreign producers,

¹⁰⁴ Tr. at 52 (D. DeCraene) & 223 (J. Vacadaris). Tosoh Corp. predicts that demand for zinc chloride grade EMD will decrease by *** percent, and that its own production of zinc chloride grade EMD will decrease accordingly as it facilitates existing customers' switch to alkaline batteries. Tosoh Posthearing Brief, Att. 1 at 6.

¹⁰⁵ Tosoh Corp. Posthearing Brief at 3.

¹⁰⁶ Tr. at 240 (G. Hooks).

¹⁰⁷ Original Determination, Pub. 2177 at 15-16.

¹⁰⁸ Original Determination, Pub. 2177 at 18-19.

¹⁰⁹ CR at II-5 & II-33, PR at II-3 & II-15.

¹¹⁰ CR at II-13, PR at II-6.

removing the need for promotional pricing.¹¹¹ Nor is there any need to cut prices significantly in order to generate sales volume. With the perception of future shortages, some purchasers already have needs that current suppliers do not meet. Finally, the subject producers in Greece and Japan face a disincentive against aggressive pricing in the United States. ***, and are likely to seek a global price reduction if they receive one in the United States.¹¹² Therefore, negative repercussions in other markets would more than offset any benefit gained by using large price reductions to obtain a greater volume of sales in the United States.

Increased shipments of subject merchandise to the United States are not likely to depress or suppress overall pricing levels to a significant degree. Although an increase in total supply could reduce the price at which supply and demand reached equilibrium in a static market, demand for EMD is increasing. Consistent with our conclusion that subject imports would fill increased demand that domestic producers cannot meet, we conclude that prices for subject imports would not significantly affect prices for the existing volume of sales.

Finally, we note that producers of the subject merchandise face the same incentives as any producer to increase profits by raising prices where possible, and that the impending EMD shortage would likely lead to an increase in prices. ***¹¹³. It is likely that the subject producers will attempt to initiate this process by seeking price increases from their existing customers. In this context, it is unlikely that they would simultaneously offer lower prices to U.S. customers.

For the foregoing reasons, we find that revocation of the antidumping duty orders would not be likely to lead to significant underselling by the cumulated subject imports of the domestic like product, or to significant price depression and suppression, within a reasonably foreseeable time.

F. Likely Impact

In the original investigation, the Commission noted that Kerr-McGee converted from graphite to titanium anodes in 1985 and Chemetals' predecessor, Foote Mineral Co., only began production in 1986.¹¹⁴ The Commission found that the domestic industry's attempts to maintain production levels and market share had caused shipment and production data to improve slightly. However, these improvements had been accompanied by a decrease in both average unit values and operating margins.¹¹⁵

The record in these reviews indicates that the domestic industry's operating margins have improved *** since the original investigation, moving from a loss position to *** of profitability.¹¹⁶ This has occurred because the industry's unit costs have *** as the last year of the original investigation

¹¹¹ CR & PR, Tables II-4 & IV-1; Eveready Prehearing Brief at 16.

¹¹² CR at II-27 - II-28, PR at II-12. *See also* Tosoh Posthearing Brief at 3. Eveready's head of purchasing testified that prices for EMD in Europe and Asia did not influence the prices that the company paid in the United States. Tr. at 241 (G. Hooks). However, he attributed this disconnect to the fact that Eveready buys only from domestic producers in the United States and only from non-U.S. producers outside the United States. This situation would change if the order were removed and Eveready *** order EMD from Greece. ***.

¹¹³ ***.

¹¹⁴ Original Determination, Pub. 2177 at 9.

¹¹⁵ Original Determination, Pub. 2177 at 9-10.

¹¹⁶ CR & PR, Table I-1.

period, while average unit values are *** higher.¹¹⁷ The industry's capacity *** as large, while production has ***. As a result, capacity utilization is greater, and has reached the point at which the industry is producing at full capacity. The number of production workers and hours worked is also greater than at any point during the original investigation period.¹¹⁸

There is little information on the record that would suggest that the industry is vulnerable.¹¹⁹ The domestic industry appears to be highly competitive with world suppliers. Purchasers rate Kerr-McGee as producing ***,¹²⁰ and recognize that Chemetals ***.¹²¹ The domestic producers are operating at full capacity and over the period of review have been drawing down inventory levels.¹²² The industry's operating profits were *** during the review period, as was almost every other performance indicator normally considered by the Commission.¹²³ Given the likelihood of an EMD shortage in the reasonably foreseeable future, demand is likely to remain strong and the industry's condition is likely to remain strong or ***.

This improvement in the industry's condition appears to have begun with price increases that followed the imposition of antidumping duty orders in 1989. The prices charged by Kerr-McGee and Chemetals increased by *** percent, from *** per short ton in 1988 to *** per short ton in 1991.¹²⁴ We conclude that this initial improvement is related to the antidumping duty orders. However, the volume of nonsubject imports rose along with the prices. After smaller increases in 1989 and 1990, the volume of nonsubject imports increased threefold in 1991, spurred by the entry of EMD from Australia into the U.S. market and the quintupling of the volume of EMD imported from Ireland.¹²⁵ By 1994, nonsubject imports had attained a market share *** than subject imports had held at their peak in 1988.¹²⁶ The domestic industry not only survived this challenge, but prospered. By 1997, it had gained back some of the market share lost to nonsubject imports and was operating at *** profit margins.¹²⁷ This performance indicates a further strengthening in the domestic industry, as witnessed by the ability of both Kerr-McGee and Chemetals to increase their output and improve the quality of their EMD to world-class levels.

Therefore, we conclude that pre-order conditions will not recur if the order is lifted. Prior to the original investigation period, Japanese producers were "the predominant suppliers of EMD in the

¹¹⁷ Compare CR & PR, Table III-6 with Final Report to the Commission (confidential version) at A-42, Electrolytic Manganese Dioxide From Greece and Japan, Invs. Nos. 731-TA-406 & 408 (Final).

¹¹⁸ CR & PR, Table I-1.

¹¹⁹ The final comments on new information submitted by Tosoh Corp. improperly referenced information that was not on the administrative record. In accordance with section 207.68(b) of the Commission's Rules of Practice and Procedure, we disregarded such information in reaching our final determination. See 19 C.F.R. § 207.68(b).

¹²⁰ See CR at II-40, PR at II-19; ***.

¹²¹ CR at II-13, n. 22, PR at II-6, n. 22.

¹²² CR & PR, Tables III-1 & III-3.

¹²³ See CR & PR, Tables III-1, III-2, III-4 & III-5.

¹²⁴ CR at II-5, PR at II-3.

¹²⁵ Chemetals & Kerr-McGee Response to the Notice of Institution, Exh. 2 (June 22, 1999).

¹²⁶ Petitioners' Response to the Notice of Institution, Exh. 2.

¹²⁷ CR & PR, Table I-1.

U.S.’’¹²⁸ The U.S. producers had only recently entered the market for high-quality alkaline EMD, and could not match the quality of the Japanese product.¹²⁹ The situation has since changed. As noted above, U.S. producers can now match Japanese quality,¹³⁰ have increased their capacity, and have reached *** levels of profitability. Therefore, we do not expect subject imports to have the same effect that they did during the original investigation period.

In light of global supply limitations, the parity between domestic EMD and EMD from the subject countries, and the EMD purchasers’ preference for sourcing locally, we conclude that the subject imports are unlikely to have a significant negative effect on domestic producers’ production or market share. There is no evidence that domestic producers’ costs of production ***, and subject imports are unlikely to suppress or depress prices to a significant degree. Therefore, subject imports are unlikely to have a significant negative effect on the financial performance of the domestic industry if the orders are revoked.

Finally, we find that subject imports are not likely to have a significant negative effect on the domestic industry’s existing development and production efforts. ***.¹³¹ Finally, we note that the U.S. battery producers have in the past sought to invigorate competition by helping lower quality producers to improve their product.¹³² Therefore, we expect that U.S. purchasers will continue to work with domestic EMD producers to develop derivative or more advanced versions of the domestic like product even if the orders are revoked.

Accordingly, based on the record in these reviews, we conclude that if the antidumping duty orders are revoked, subject imports from Greece and Japan would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on imports of EMD from Greece and Japan would not be likely to lead to continuation or recurrence of material injury to the U.S. EMD industry within a reasonably foreseeable time.¹³³

¹²⁸ Original Determination, Pub. 2177 at 17. At that point, subject producers’ production capacity was *** that of domestic producers. See Original Staff Report, Tables 6, 16 & 17.

¹²⁹ Original Determination, Pub. 2177 at 9-10, 19-20.

¹³⁰ Subject producers’ alkaline EMD capacity is now *** than domestic producers’ capacity. CR & PR, Tables III-1, IV-2 & IV-3.

¹³¹ *** Tr. at 189 (G. Bohlke).

¹³² Original Determination, Pub. 2177 at 17, n. 54.

¹³³ Commissioner Bragg dissenting.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

Based upon the record in these investigations, I find under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders on electrolytic manganese dioxide (“EMD”) from Greece and Japan would be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I therefore dissent from the determination of the majority.

As a starting point, I recognize that the record indicates that the U.S. market is likely nearing a supply shortfall.¹ However, even accepting that the volume of subject imports will increase in response to any supply shortfall, the record indicates that subject producers have both the ability and incentive to ship a significant volume of EMD into the U.S. market above and beyond the volume necessary to cover any likely supply shortfall, and as discussed below, such imports will likely undersell the domestic like product resulting in significant negative price effects in the U.S. market. As a result, domestic producers will likely experience declining financial performance and a decreased ability to expand production capacity to meet growing EMD demand in the U.S. market.

I. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

A. DOMESTIC LIKE PRODUCT

In its final sunset review determinations, Commerce defined the scope of the EMD orders as:

electrolytic manganese dioxide (“EMD”). EMD is manganese dioxide (MnO₂) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip, or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the order.

In its original determinations, the Commission found “the minor physical differences between zinc chloride grade, alkaline grade, titanium anode, and imported graphite anode EMD to be insufficient bases for separate like product treatment.”² Therefore, it found that the domestic like product for the subject merchandise consisted of all EMD. None of the parties to these reviews has contested the original like product finding, and the record contains no evidence suggesting that a different like product definition would be more appropriate.³

In performing my like product analysis, I begin with Commerce’s scope determination and look to see if there are clear dividing lines among possible like products. In this regard, I consider whether different types of products represent a “continuum” of articles within one like product rather than separate like products. In this review, I define the like product to include all EMD.

¹ Petitioners’ Posthearing Brief at Exh. K at 8 (***).

² Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 406 & 408 (Final), USITC Pub. 2177 at 7 (April 1989) (“Original Determination”).

³ See CR at I-10-I-16, PR at I-6-I-9.

B. DOMESTIC INDUSTRY

Section 771(4)(A) of 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 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, provided that adequate production-related activity is conducted in the United States.⁵

Based upon my domestic like product finding above, I define the domestic industry as all domestic producers of EMD.

C. RELATED PARTIES

Having defined the domestic industry as all domestic producers of EMD, I turn to the issue of whether appropriate circumstances exist to exclude any domestic producer from the domestic industry as a related party. The related parties provision, 19 U.S.C. § 1677(4)(B), allows for the exclusion of certain domestic producers from the domestic industry for the purposes of an injury determination. Applying the provision involves two steps. First, the Commission must determine whether a domestic producer meets the definition of a related party.⁶ Second, if a producer is a related party, the Commission may exclude such a producer from the domestic industry if “appropriate circumstances” exist.⁷

Exclusion of a related party is within the Commission’s discretion based upon the facts presented in each case.⁸ The rationale for the related parties provision is the concern that domestic producers who are related parties may be shielded from any injury that might be caused by the subject imports.⁹

The record indicates that ***, a domestic producer of EMD, was also an importer of *** during the review period,¹⁰ which makes it a related party by definition.¹¹ However, the record also indicates

⁴ 19 U.S.C. § 1677(4)(A).

⁵ See, e.g., Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (September 1998); Manganese Sulfate from the People’s Republic of China, Invs. Nos. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (November 1995) (“the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry”); Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363 and 364 and 731-TA-711-717 (Final), USITC Pub. 2911 (August, 1995) (not including threaders in the casing and tubing industry because of “limited levels of capital investment, lower levels of expertise, and lower levels of employment”).

⁶ Section 771(4)(B), 19 U.S.C. § 1677(4)(B).

⁷ 19 U.S.C. § 1677(4)(B).

⁸ See Torrington Co. v. United States, 790 F. Supp. at 1168; Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987).

⁹ See Torrington Co., 790 F. Supp. at 1168; Empire Plow Co., 675 F. Supp. at 1353-54; S. Rep. No. 249, 96th Cong. 1st Sess. at 83 (1979) (“where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry”).

¹⁰ CR at III-4, PR at III-3.

¹¹ See section 771(4)(B)(i) of the Act, 19 U.S.C. § 1677(4)(B)(I). *** accounted for *** percent of U.S. production of EMD in 1998. CR and PR at Table I-2.

that the volume of subject imports ***, thus indicating that *** primary interests lie in domestic production and not importation.¹² Accordingly, I determine that appropriate circumstances do not exist to exclude *** from the domestic industry as a related party.

II. CUMULATION

A. ANALYTICAL FRAMEWORK

As set forth in previous views, in considering whether to cumulate subject imports in a sunset review, I first assess: (1) whether the reviews were initiated on the same day; and (2) the likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product, in the event the orders are revoked.¹³

If, as a result of the foregoing assessment, I determine that subject imports are amenable to cumulation, I then proceed to examine whether the statutory exception precludes cumulation of such imports that are otherwise amenable to cumulation.

Upon review of the record in these reviews, I find, as discussed below, that there is likely to be a discernible adverse impact to domestic EMD producers as result of revocation of each subject order individually. I therefore cumulate subject imports from Greece and Japan.

B. REASONABLE OVERLAP OF COMPETITION

The record indicates that the subject imports from Greece and Japan and the domestic like product are fungible.¹⁴ The record also indicates that U.S. sales of Greek and Japanese subject imports and the domestic like product are now and would likely continue to be made through similar channels of distribution.¹⁵ In addition, Greek and Japanese subject imports and the domestic like product are likely to be sold by U.S. producers and importers in all areas of the United States.¹⁶

Based upon all the foregoing, I find a likely reasonable overlap of competition among subject imports from Greece and Japan and the domestic like product in the event of revocation.

C. DISCERNIBLE ADVERSE IMPACT

1. GREECE

Based upon the sole Greek EMD producer Tosoh Hellas' most recent capacity utilization rates and an optimal capacity utilization rate of *** percent, Tosoh Hellas currently has the ability to produce an additional *** short tons of EMD which potentially could be made available for export to the U.S.

¹² CR at III-4-III-6, PR at III-3; CR at III-2, PR at III-1.

¹³ See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (October 1999) at 27-30; Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Invs. Nos. 701-TA-269 and 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (April 2000) at 27-32.

¹⁴ CR at II-42, PR at II-19; CR at II-40-II-41, PR at II-19.

¹⁵ CR at I-15, PR at I-9.

¹⁶ CR at II-9, PR at II-4.

market, and which is equivalent to over *** percent of 1998 apparent U.S. consumption and nearly *** percent of 1998 domestic EMD production.¹⁷ The record therefore indicates that, in the event of revocation, Tosoh Hellas has the ability to ship a significant volume of subject imports into the United States. The record also indicates that Tosoh Hellas is qualified to supply ***, and in fact recently shipped a small volume of subject merchandise to ***.¹⁸

In addition, subject imports from Greece would likely undersell the domestic like product in the event of revocation. Subsequent to the issuance of the order at issue, subject imports from Greece have been nearly absent from the U.S. market.¹⁹ Therefore, the most reliable pricing information on the record is the pricing information from the original investigation. And based upon the original pricing data, the record indicates that subject imports from Greece would likely undersell the domestic like product in the event of revocation.²⁰

Based upon the foregoing, I determine that in the event of revocation subject imports from Greece will likely have a discernible adverse impact on the domestic EMD industry. Accordingly, I find that subject imports from Greece are amenable to cumulation.

2. JAPAN

Based upon the most recent Japanese capacity utilization rates and an optimal capacity utilization rate of *** percent, Japanese EMD producers currently have the ability to produce an additional *** short tons of EMD which potentially could be made available for export to the U.S. market, and which is equivalent to over *** percent of 1998 apparent U.S. consumption and nearly *** percent of 1998 domestic EMD production.²¹ In addition, the record indicates that Japanese producers' production capacity will increase by *** short tons in the near term, thus bringing the volume of potential Japanese EMD available for shipment to the United States to over *** short tons, which is equivalent to over *** percent of 1998 apparent U.S. consumption and over *** percent of 1998 total domestic EMD production.²²

The record also indicates that subject imports from Japan would likely undersell the domestic like product in the event of revocation. Subsequent to the issuance of the order at issue, subject imports from Japan have been nearly absent from the U.S. market.²³ Therefore, the most reliable pricing information currently on the record is the pricing information from the original investigation. And based upon the original pricing data, the record indicates that subject imports from Japan would likely undersell the domestic like product in the event of revocation.²⁴

¹⁷ CR and PR at Table IV-2; CR and PR at Table I-4; CR and PR at Table III-1. I note that respondents argue that their "ideal capacity utilization rate" is ***. Tosoh Prehearing Brief at 11. However, as recently as 1998, Tosoh Hellas operated at a capacity utilization rate of ***, and at the time of the original investigation, Tosoh Hellas' capacity utilization rate was as high as *** percent. Tosoh Prehearing Brief at 11; Original CR at A-52.

¹⁸ CR and PR at Table II-4; CR at II-23, PR at II-10.

¹⁹ CR at II-23, PR at II-9.

²⁰ Original Determination at 15-21.

²¹ CR and PR at Table IV-3; CR and PR at Table I-4; CR and PR at Table III-1. The record indicates that in 1999 Tosoh Japan operated near *** percent capacity utilization. Tosoh Prehearing Brief at 42.

²² CR at IV-6; CR and PR at Table I-4; CR and PR at Table III-1.

²³ CR at II-23, PR at II-9.

²⁴ Original Determination at 15-21.

Based upon the foregoing, I determine that in the event of revocation subject imports from Japan will likely have a discernible adverse impact on the domestic EMD industry. Accordingly, I find that subject imports from Japan are amenable to cumulation. I therefore cumulate subject imports from Greece and Japan in performing my analysis.

III. REVOCATION OF THE ORDERS ON EMD FROM GREECE AND JAPAN IS LIKELY TO LEAD TO THE CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. LEGAL STANDARD

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur; and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”²⁵ The Uruguay Round Agreements Act (“URAA”) Statement of Administration Action (“SAA”) provides that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the finding] . . . and the elimination of its restraining effects on volumes and prices of imports.”²⁶ Thus, the likelihood standard is prospective in nature. The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”²⁷ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis” in antidumping and countervailing duty investigations.²⁸

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains many of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the [orders are] revoked.”²⁹ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.”³⁰

For the reasons set forth below, I determine that revocation of the antidumping duty orders on EMD from Greece and Japan would be likely to lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. CONDITIONS OF COMPETITION

In evaluating the likely impact of the subject imports on the domestic industry if the orders are revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context

²⁵ 19 U.S.C. § 1675a(a).

²⁶ URAA SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994).

²⁷ 19 U.S.C. § 1675a(a)(5).

²⁸ SAA at 887.

²⁹ 19 U.S.C. 1675a(a).

³⁰ *Id.*

of the business cycle and conditions of competition that are distinctive to the affected industry.”³¹ In performing my analysis under the statute, I have taken into consideration the following conditions of competition for EMD.

First, the U.S. EMD market has an extremely small number of buyers and sellers.³² Therefore, revocation of the orders has the potential to shift the short run balance between supply and demand in favor of EMD buyers.³³

Second, EMD purchasers and producers strive to maintain long-term relationships with each other.

Third, demand for batteries is increasing in the United States and around the world, especially for smaller batteries used in handheld electronics, with a consequent increase in demand for EMD.³⁴

Fourth, the record indicates that the U.S. market is likely nearing a supply shortfall.³⁵

Fifth, domestic and subject producers have the ability to supply all quality levels of EMD consumed in the United States.³⁶ Although the record indicates that ***.³⁷

Sixth, nonsubject imports are priced in the same range as domestically produced merchandise and play an increasingly important role in the domestic market.³⁸

Seventh, EMD prices are highest in Japan, somewhat lower in the United States, and lower still in the rest of the world. Thus, foreign producers have an incentive to sell EMD into the U.S. market.³⁹

Eighth, U.S. dry cell battery producers and the domestic market in which they compete are the largest and most technologically advanced in the world.⁴⁰ Since foreign EMD producers must keep up with the latest technological developments, they have a strong incentive to sell their product in the U.S. market.⁴¹

Ninth, U.S. EMD producers have no viable alternative to selling in the United States, since the other major EMD markets in Europe and Japan have tariff barriers to entry, and an EMD plant cannot be used to make other products.⁴²

Finally, once EMD producers have qualified with a given purchaser, there is a high degree of substitution among EMD producers qualified with the given purchaser.⁴³ In this context, price becomes an important factor affecting purchasing decisions.⁴⁴

³¹ 19 U.S.C. § 1675a(a)(4).

³² Petitioners’ Prehearing Brief at 23; Tosoh Prehearing Brief at 5.

³³ CR at II-1, PR at II-1.

³⁴ Tosoh Posthearing Brief at 3.

³⁵ Petitioners’ Posthearing Brief at Exh. K at 8 (***).

³⁶ CR and PR at Table II-4.

³⁷ ***.

³⁸ ***.

³⁹ Petitioners’ Posthearing Brief, Question Responses at 31.

⁴⁰ Petitioners’ Prehearing Brief at 2.

⁴¹ Petitioners’ Prehearing Brief at 24.

⁴² Petitioners’ Prehearing Brief at 26.

⁴³ CR at II-38, PR at II-17.

⁴⁴ CR at II-39, PR at II-18.

C. LIKELY VOLUME OF SUBJECT IMPORTS

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁴⁵ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁴⁶

The record indicates that subject producers from Greece and Japan currently have, or will shortly have, the ability to produce an additional *** short tons of EMD which potentially could be made available for export to the U.S. market, and which is equivalent to *** percent of 1998 apparent U.S. consumption and nearly *** percent of 1998 domestic EMD production.⁴⁷

The record also indicates that, in the event of revocation, subject producers will have both the ability and incentive to shift sales from current clients to U.S. clients, further increasing the potential volume of subject imports available for export to the United States.⁴⁸ Subject producers contend that they would not abandon existing clients in order to supply U.S. demand.⁴⁹ However, during the original investigation subject producers did in fact shift sales from non-U.S. purchasers to U.S. purchasers, thus indicating both an ability and willingness to re-direct sales from existing purchasers to the U.S. market in the event of revocation.⁵⁰

More recent factual information also evidences subject producers’ ability to re-direct sales to the United States. Tosoh Hellas indicated that *** of its production is under one-year contracts.⁵¹ Tosoh Hellas would therefore have the ability to shift sales to the U.S. market when its current contractual commitments expire. In addition, the custom in the Japanese market is to rely upon informal contracts, thus indicating that Japanese subject producers have an immediate ability to shift their considerable sales of EMD destined for non-Japanese markets to the United States.⁵²

I therefore determine that, based upon the subject producers’ ability to significantly increase the volume of subject imports into the United States and the incentives to obtain higher prices in the U.S. market while servicing a few large, technologically sophisticated purchasers, revocation of the

⁴⁵ 19 U.S.C. § 1675a(a)(2).

⁴⁶ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁴⁷ CR and PR at Table IV-2; CR and PR at Table IV-3; CR at IV-6, PR at IV-3; CR and PR at Table I-4; CR and PR at Table III-1.

⁴⁸ Respondents claim that their capacity utilization rates are constrained by having to service customers with differing EMD specifications. Tosoh Prehearing Brief at 11. If so, subject producers could choose to shift sales away from several smaller purchasers to a few large U.S. purchasers in an effort to increase their EMD production efficiency and capacity utilization rates.

⁴⁹ Tosoh Prehearing Brief at 25.

⁵⁰ Original CR at A-52-A-53.

⁵¹ Tosoh Posthearing Brief at 8.

⁵² Tosoh Posthearing Brief at 8. Japanese producers’ exports to markets other than the United States totaled *** short tons in 1998. CR and PR at Table IV-3.

antidumping duty orders will likely result in significant volumes of subject imports from Greece and Japan.

D. LIKELY PRICE EFFECTS OF SUBJECT IMPORTS

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product. The Commission must also consider whether the subject imports are likely to enter the U.S. at prices that would have a significant price depressing or suppressing effect on the domestic like product.⁵³

Due to the near absence of subject imports in the U.S. market subsequent to the issuance of the orders, there is little current evidence upon which to make price comparisons between domestic EMD and subject imports. Nonetheless, I have considered all relevant economic factors within the context of the business cycle and the conditions of competition distinctive to the industry. As instructed by the statute, I have also considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the order is revoked.

During the original period of investigation, subject imports were found to have depressed and undercut domestic EMD prices, with a resulting adverse impact on the domestic industry.⁵⁴ Following imposition of the antidumping orders at issue, the average price obtained by domestic EMD producers rose by *** percent in the first two years.⁵⁵ Subsequently, domestic EMD prices have been relatively flat, until recently when they have trended slightly lower as a result of increased competition from non-subject imports.⁵⁶

In this context, *** has indicated that it believes domestic prices are currently too high and that it *** so that it will be able to obtain subject EMD at "reasonable prices."⁵⁷ It is therefore apparent that *** will attempt to use subject imports to leverage prices for the domestic product lower. This determination is further supported by record evidence indicating that revocation of the orders has the potential to shift the short run balance between supply and demand in favor of EMD purchasers.⁵⁸ U.S. EMD purchasers therefore will have both the ability and incentive to utilize unfairly priced subject imports to decrease the price of domestic EMD in the event of revocation.

I therefore conclude that given the high degree of substitution among qualified purchasers and the importance of price in purchasing decisions, the likely significant volume of subject imports will result in likely significant negative price effects to the domestic industry in the event of revocation.

E. LIKELY IMPACT OF SUBJECT IMPORTS

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors likely to have a bearing on the state of the industry in the United States, including: (1) likely declines in output, sales, market share, profits, productivity, return on investments,

⁵³ 19 U.S.C. § 1675a(a)(3).

⁵⁴ Original Determination at 15-21.

⁵⁵ CR at II-23.

⁵⁶ CR at V-6-V-25, PR at V-5-V-9; CR at II-33, PR at II-15.

⁵⁷ ***.

⁵⁸ CR at II-1, PR at II-1.

and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.⁵⁹

As discussed above, revocation of the antidumping duty orders would be likely to lead to significant increases in the volume of subject imports at prices that likely would cause price depression and subsequent erosion of the domestic industry's profitability. In turn, these declines would likely result in critical worker layoffs, idling of plant capacity, and the inability to make capital expenditures and fund research and development essential to product development and sales, all of which will significantly impede the ability of domestic producers to compete in the U.S. market.

Accordingly, I conclude that if the antidumping duty orders on subject imports from Greece and Japan are revoked, the likely significant volumes of subject imports would likely result in significant negative price effects, and thus have a likely significant adverse impact on the domestic industry within a reasonably foreseeable time.

IV. CONCLUSION

Based upon the foregoing, I find that revocation of the antidumping duty orders on EMD from Greece and Japan would be likely to lead to continuation or recurrence of material injury to the domestic EMD industry within a reasonably foreseeable time.

⁵⁹ 19 U.S.C. § 1675a(a)(4).

PART I: INTRODUCTION AND OVERVIEW

BACKGROUND

On May 3, 1999, the Commission gave notice, pursuant to section 751(c) of the Tariff Act of 1930 (the Act), that it had instituted reviews to determine whether revocation of the antidumping duty orders on electrolytic manganese dioxide (“EMD”)¹ from Greece and Japan would likely lead to the continuation or recurrence of material injury to a domestic industry.² On August 25, 1999, the Commission determined that it should conduct full reviews pursuant to section 751(c) of the Act.³ Information relating to the background and schedule of the reviews is provided in the tabulation below. There have been no recent determinations and there are no existing orders on imports of EMD from countries other than those subject to these reviews.

Effective date	Action
April 17, 1989	Commerce’s antidumping duty orders
May 3, 1999	Commission’s institution of five-year reviews
August 5, 1999	Commission’s decision to conduct full reviews
September 28, 1999	Commission’s scheduling of full reviews
December 3, 1999	Commerce’s final results of expedited sunset reviews (64 FR 67858, December 3, 1999) ¹
February 14, 2000	Commerce’s preliminary results of administrative reviews
March 2, 2000	Commission’s hearing ²
April 20, 2000	Commission’s votes
April 30, 2000	Commerce’s final results of administrative reviews
May 9, 2000	Commission’s determinations transmitted to Commerce

¹ Commerce’s notice is presented in app. A.
² A list of hearing witnesses is presented in app. B.

¹ For the purpose of these reviews, electrolytic manganese dioxide is defined as manganese dioxide (MnO₂) that has been refined in an electrolysis process. EMD is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms (powder, chip, or plate) and two grades (alkaline and zinc chloride). EMD is classified in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States (HTS), with a general duty rate of 4.7 percent *ad valorem*.

² 64 FR 23675, May 3, 1999. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

³ The Commission’s notice of institution (64 FR 23675, May 3, 1999), notice to conduct full reviews (64 FR 46407, August 25, 1999), scheduling notice (64 FR 54353, October 6, 1999), and statement on adequacy appear in app. A and may also be found at the Commission’s web site (Internet address <http://www.usitc.gov>). The Commissioner’s votes on whether to conduct expedited or full reviews may also be found at the web site.

The Original Investigations

The original investigations resulted from a petition filed with the Commission and Commerce on May 31, 1988, by Chemetals, Inc., Baltimore, MD, and Kerr-McGee Chemical Corp., Oklahoma City, OK, alleging that an industry in the United States was materially injured or threatened with material injury by reason of less-than-fair-value ("LTFV") imports of EMD from Greece, Ireland, and Japan. Effective May 31, 1988, the Commission instituted antidumping investigations Nos. 731-TA-406, 407, and 408 (Preliminary) (on Greece, Ireland, and Japan, respectively) under section 733(a) of the Act, and on July 15, 1988, notified Commerce of its affirmative determinations in the preliminary investigations. Accordingly, Commerce continued its investigations on alleged LTFV sales of EMD from Greece, Ireland, and Japan.

On March 2, 1989, Commerce published its final affirmative LTFV determinations on imports of EMD from Greece and Japan (Commerce determined that there were no LTFV imports of EMD from Ireland).⁴ The Commission issued its affirmative final determinations on April 10, 1989, and Commerce published antidumping duty orders for Greece and Japan on April 17, 1989. Commerce found weighted-average dumping margins of 36.72 percent for Tosoh Hellas and 36.72 percent for all others from Greece. For Japan, Commerce found weighted-average dumping margins of 77.43 percent for Mitsui Mining and Smelting ("Mitsui"), 71.91 percent for Tosoh Corp. ("Tosoh"), and 73.30 percent for all others.⁵ A summary of data from the original investigations and from these reviews is presented in table I-1.

Table I-1

EMD: Summary data presenting selected items from the original investigations and the current reviews, 1986-88, 1997-98, January-September 1998, and January-September 1999

* * * * *

STATUTORY CRITERIA

Section 751(c) of the Tariff Act of 1930 requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation "would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury."⁶

⁴ See Final Determinations of Sales at Less Than Fair Value: Electrolytic Manganese Dioxide from Greece, 54 FR 8771 (March 2, 1989); from Ireland, 54 FR 8776 (March 2, 1989); and from Japan, 54 FR 8778 (March 2, 1989).

⁵ See Electrolytic Manganese Dioxide from Greece and Japan: Notices of Antidumping Duty Orders, 54 FR 15244 (April 17, 1989).

⁶ Certain transition rules apply to the scheduling of reviews (such as this one) involving antidumping and countervailing duty orders and suspensions of investigations that were in effect prior to Jan. 1, 1995 (the date the WTO Agreement entered into force with respect to the United States). Reviews of these transition orders will be conducted over a three-year transition period running from July 1, 1998 through June 30, 2001. Transition reviews must be completed not later than 18 months after institution.

Section 752(a)(1) of the Act states that the Commission “shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account--

- (A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,
- (B) whether any improvement in the state of the industry is related to the order or the suspension agreement,
- (C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and
- (D) in an antidumping proceeding, Commerce’s findings regarding duty absorption.”

Section 752(a)(2) of the Act states that “[i]n evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including--

- (A) any likely increase in production capacity or existing unused production capacity in the exporting country,
- (B) existing inventories of the subject merchandise, or likely increases in inventories,
- (C) the existence of barriers to the importation of such merchandise into countries other than the United States, and
- (D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.”

Section 752(a)(3) of the Act states that “[i]n evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether--

- (A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and
- (B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.”

Section 752(a)(4) of the Act states that “[i]n evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to--

- (A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,
- (B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(C) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.

The Commission shall evaluate all relevant economic factors within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.”

Section 752(a)(6) of the Act states that in making its determination, “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.”

SUMMARY DATA

Information obtained during the course of the reviews that relates to the above factors is presented throughout this report. A summary of data collected in the reviews is presented in appendix C and separate data on Eveready Battery Co. (“Eveready”), St. Louis, MO, are provided in appendix D. U.S. industry data are based on questionnaire responses of 3 firms that account for all U.S. production of EMD. U.S. import data are based on importers’ questionnaire responses of 6 firms. Responses by U.S. producers, importers, and purchasers of EMD and producers of the product in Greece and Japan to a series of questions concerning the significance of the existing antidumping duty orders and the likely effects of their revocation are presented in appendix E.

NATURE AND EXTENT OF SALES AT LTFV

Commerce’s Final Results of Expedited Sunset Reviews

On December 3, 1999, Commerce issued the final results of the expedited sunset reviews on electrolytic manganese dioxide from Greece (64 FR 67861) and Japan (64 FR 67858). Commerce found that revocation of the antidumping duty order for Greece would be likely to lead to continuation or recurrence of dumping. Commerce based its determination for Greece on the fact that import volumes sharply declined following the imposition of the order and have not regained their pre-order levels. Therefore, Commerce determined that the margin calculated in the original investigation reflects the behavior of Greek producers and exporters without the discipline of the order. As a result of the review, Commerce provided a dumping margin of 36.72 percent for Tosoh Hellas and 36.72 percent for “all others.”

For Japan, Commerce found that revocation of the antidumping duty order on imports of EMD also would be likely to lead to continuation or recurrence of dumping. Commerce determined that imports of the subject merchandise have fluctuated greatly following the imposition of the order and that dumping has continued over the life of the order. Therefore, Commerce determined that the margin calculated in the original investigation reflects the behavior of Japanese producers and exporters without the discipline of the order. As a result of the review, Commerce provided dumping margins of 77.73 percent for Mitsui, 71.91 percent for Tosoh, and 73.30 percent for “all others.”

Administrative Reviews

Prior to 1998, there were no administrative reviews of the order on imports of EMD from Greece. On November 16, 1999, Commerce published the final results of an antidumping duty administrative review for the order on EMD from Greece covering the period April 1, 1997-March 31, 1998.⁷ The final results showed a 0.00 percent weighted-average dumping margin for Tosoh Hellas, which is the only known producer/exporter of EMD in Greece.

Commerce has conducted three administrative reviews of the antidumping duty order on EMD from Japan^{8 9} and published its final results of the reviews as shown in the following tabulation.

Period of review	Date review issued	Margin (percent)
April 1, 1990-March 31, 1991	May 14, 1993 (58 FR 28551)	20.43
April 1, 1991-March 31, 1992	October 21, 1994 (59 FR 53136)	77.43
April 1, 1992-March 31, 1993	October 21, 1994 (59 FR 53136)	77.43

According to data from the U.S. Customs Service, \$*** in antidumping duties was collected in 1994 on imports of EMD from Japan valued at \$***. In 1997, \$*** in antidumping duties was collected on EMD from Japan and the customs value of imports was \$***. Customs did not provide data on duties collected or customs values of imports from Japan for 1993, 1995-96, or 1998, and did not provide any data for imports of EMD from Greece (which, in theory, indicates no imports).

CHANGED CIRCUMSTANCES REVIEW

On May 26, 1998, Eveready filed a request that the Commission review its affirmative final determination in the original antidumping investigation concerning EMD from Greece in light of changed circumstances, pursuant to section 751(b) of the Act. The request alleged the following changed circumstances: (1) the addition of a third recognized type of EMD (high drain alkaline EMD), (2) structural changes in battery consumption (from C and D batteries to AA and AAA batteries), and (3) the impending unavailability of supply of regular and high drain alkaline EMD from U.S. producers and producers in countries not subject to antidumping orders. Accordingly, the Commission published a *Federal Register* notice¹⁰ requesting comments as to whether the alleged changed circumstances warranted the institution of review investigations.¹¹ The Commission received comments in support of the request from Eveready and Tosoh Hellas (the Greek producer of EMD), and comments in opposition to the request from Chemetals and Kerr-McGee.

⁷ Electrolytic Manganese Dioxide from Greece: Final Results of Antidumping Duty Administrative Review, 64 FR 62169, November 16, 1999.

⁸ All reviews were for Tosoh Corp. of Japan.

⁹ There are pending administrative reviews of the orders on Greece and Japan for the period April 1, 1998-March 31, 1999; the proposed date for the completion of the final results of these reviews is April 30, 2000 (See Electrolytic Manganese Dioxide: Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 64 FR 28973 (May 28, 1999) and 64 FR 35124 (June 30, 1999)).

¹⁰ 63 FR 30254, June 3, 1998.

¹¹ Although Eveready's request concerned only imports from Greece, the Commission also solicited comments on the possibility of self-initiating a review of the outstanding antidumping order on imports from Japan.

After consideration of the request for review and the responses to its *Federal Register* notice, the Commission determined, pursuant to section 751(b) of the Act and Commission rule 207.45, that the information of record did not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determinations in the original antidumping investigations on EMD from Greece and Japan.¹² Among its reasons for denying Eveready's request for review, the Commission stated that Eveready failed to provide specific evidence supporting its claim of a separate and new product; that although there was a continuing shift in battery consumption to AA and AAA batteries which are predominantly used in higher drain portable electronic devices, there was no record evidence that the battery shift resulted in a corresponding shift to a new, high drain EMD; that Eveready failed to provide specific evidence regarding the U.S. industry's capacity limitations, its own production limitations, its attempts to work with the other U.S. producers, or its efforts to qualify or procure EMD from nonsubject and subject sources including Greece; and that alkaline EMD prices remained relatively stable and did not reflect the severe supply limitations that were alleged by Eveready to exist.

THE PRODUCT

EMD, whether imported or domestically produced, is manganese dioxide (MnO_2) that has been refined in an electrolytic process, as defined on page I-1. Virtually all EMD is used in dry-cell batteries, which are able to discharge electrical current as a result of an energetically favorable transfer of electrons from the battery anode to the battery cathode.¹³

The preparation of EMD by electrolysis and the use of EMD in dry-cell batteries were reported as early as 1918, but commercial use in dry-cell batteries began in the 1940s. EMD's importance in the operating performance of dry-cell batteries is far greater than its share of the cost of producing such batteries.

Presented below is information on both imported and domestically produced EMD, as well as information related to the Commission's "domestic like product" determination.¹⁴

Physical Characteristics and Uses

Physically, EMD is a black powder (or plate or chip that will be ground into powder) that has a gamma crystalline structure. The powder form is required for use in dry-cell batteries. Its gamma crystalline structure, as opposed to most other crystalline structures that manganese dioxide powder can assume, allows for the free transfer of hydrogen ions within the manganese dioxide crystal, thus resulting in the fullest possible utilization of the manganese dioxide in the production of electrical current within a dry-cell battery.

¹² 63 FR 43192, August 12, 1998.

¹³ The anode generally consists, at least in part, of a metal such as zinc or lithium, which can easily give up electrons; the cathode consists in part of a material that can accept those donated electrons with the circuit completed externally, thereby providing direct current electricity for use in various battery-powered devices. The most commonly used electrically active cathode material is manganese dioxide with an inert conductor to help carry the electrons to a battery terminal.

¹⁴ The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price.

There are two grades of EMD--alkaline grade and zinc chloride grade, but only alkaline grade EMD has been produced in the United States in recent years. Alkaline grade EMD, because of particle size and pH (acidity level), qualifies for use in the manufacture of alkaline batteries. Zinc chloride-grade qualifies for use in zinc chloride batteries. The particle size (grind) and pH are achieved in the finishing process of the EMD. All other properties of the two grades of EMD, including the moisture content, sulfate content, other metallic element content, purity, and crystalline structure, are essentially identical.

Within each of the two grades of EMD, there is relatively higher and lower quality EMD. Higher quality EMD tends to have a higher discharge rate and longer shelf life than lower quality EMD in the same grade. Of course, the quality of EMD is only one factor out of many that determine the quality of a finished battery.

Eveready asserts that there are three grades of EMD: regular grade, high quality (or high drain) grade, and high tech grade. The regular grade alkaline EMD, ***, is used in the manufacture of C, D, F, N, and AAAA size batteries.¹⁵ According to Eveready, the high quality/high drain alkaline EMD, ***, gives a longer lasting life to AA and AAA batteries and, hence, makes those batteries more attractive to consumers for use in electronic devices.¹⁶ However, Chemetals and Kerr-McGee argue that the "high quality" EMD is manufactured by all the principal EMD producers¹⁷ and that it is distinguishable from the "low quality" EMD which is manufactured by producers in Brazil, China, and Russia.¹⁸ They also state that Eveready's claim (in its request for a changed circumstances review) that there is a new type of EMD (high quality/high drain) is not based on a change in EMD, but rather that the high drain features are attributable to new battery design and construction.¹⁹ Additional information about the alleged differences between grades of EMD can be found in Part II of this report in the section dealing with U.S. market segments/channels of distribution.

In addition to EMD, there are two other types of manganese dioxide, both of which are also used in dry-cell batteries: natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). NMD consists of certain naturally occurring manganese ore, selected because of its high MnO₂ content, favorable electrochemical properties, and low content of impurities. The ore is often processed to remove impurities and to improve its battery activity. NMD has a lower performance rate than EMD or CMD but may be blended with such synthetic manganese dioxide for increased performance. For approximately 80 years subsequent to the invention of the wet zinc/manganese dioxide primary cell (the ancestor of the present-day dry-cell battery) by Georges Leclanche in the 1860s, NMD was the only type of manganese dioxide used in dry-cell batteries. NMD is not produced in the United States, only small amounts are imported, and NMD is not within the scope of these investigations.

CMD is chemically precipitated, battery-active manganese dioxide. The properties of CMD differ from EMD in three major respects: surface area, electrolyte absorption, and density. As a result, CMD generally exhibits lower discharge rates than does EMD. On January 6, 1992, Commerce ruled that high-grade CMD (CMD-U) is within the scope of the antidumping order on EMD from Japan (57 FR 395).

In 1987, 67 percent of EMD consumption in the United States was in the manufacture of alkaline batteries, 20 percent in zinc chloride batteries, and 12 percent in ammonium chloride, or Leclanche, batteries.²⁰ In 1999, the great majority of EMD consumption in the United States was in the manufacture

¹⁵ Eveready's response to the notice of institution, p. 6.

¹⁶ *Ibid.*, p. 5.

¹⁷ ***, Chemetals' and Kerr-McGee's response to the notice of institution, p. 10.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, p. 20.

²⁰ *Electrolytic Manganese Dioxide from Greece and Japan*, USITC Pub. 2177, April 1989, p. A-4.

of alkaline batteries. There is no known U.S. production of zinc chloride or ammonium chloride (Leclanche) batteries.

The alkaline battery represents a significant improvement over the Leclanche battery and typically has a longer shelf life than a zinc chloride battery. The alkaline battery requires EMD (not NMD or CMD) and only alkaline grade EMD. In an alkaline battery, the cathode consists of a high-density blend of EMD and graphite. The electrolyte is concentrated potassium hydroxide; potassium hydroxide is very alkaline or "basic" (the opposite of acidic). The anode is composed of powdered amalgamated zinc.

Before EMD can be used in a battery, a sample is subjected to extensive testing. The most important tests that an EMD producer or consumer uses to test EMD quality are (1) discharge performance tests, (2) gassing tests, and (3) tests to measure the compressed density of the EMD. The discharge performance test measures how long a battery will maintain useful voltage for a given load and rate of discharge. This test essentially provides information on the number of hours of service a battery will provide. The gassing test measures how much gas is generated as a result of impurities in the EMD. The less gas that is generated, the purer the EMD and the longer the shelf life of the battery.²¹ Tests to measure the compressed density of a given sample of EMD determine how much EMD can be used in a battery within the space limitations of the battery. The more EMD that can be contained in a battery, the higher the electrical capacity of the battery.

Even though a given sample of EMD may perform satisfactorily when subjected to standard tests such as a discharge performance test, it must be qualified before it can be used in a given battery. The qualification process can range from about 3 months to a year in duration. The qualification process ensures that the processing equipment used to manufacture a given battery is compatible with the type of EMD to be used, so as to optimize battery performance.

Common Manufacturing Facilities and Production Employees

All types and grades of EMD, whether imported or domestically produced, are produced by the same general process. There are three stages of EMD production: ore handling, electrolysis, and finishing.

Ore handling involves the preparation of manganese dioxide for electrolysis. The manganese ore²² is crushed and ground and then fed into reduction furnaces that convert manganese dioxide to the sulfuric acid-soluble manganese oxide (MnO) known as the reduced ore. The manganese is then "leached" from the reduced ore by having the reduced ore digested continuously in spent electrolyte and sulfuric acid. Next, the resulting manganese sulfate solution is purified to remove, to the extent possible, such impurities as copper, nickel, cobalt, molybdenum, antimony, and arsenic (manganese dioxide for batteries should be essentially free of impurities that would deposit on a zinc anode). Iron may be added to aid in the removal of impurities.²³

In electrolysis, the manganese sulfate solution is processed through a number of thickeners and filters and is fed to the electrolytic cell room. The purified manganese sulfate is then metered to the

²¹ The shelf life of a battery is a measure of how long a battery may be stored and still provide useful service. Alkaline batteries typically have a shelf life of several years.

²² Manganese ore is relatively abundant in the earth's crust, but only certain manganese ore has the relative purity and other properties that make it suitable for use in the production of EMD. Principal sources for manganese ore used in the production of manganese dioxide include Gabon and Australia.

²³ Later removal of the iron is important because it would otherwise contaminate the product and affect efficiency in the electrolysis process, and because impurities such as arsenic and lead are co-precipitated when the iron is precipitated.

electrolytic cells, where hydrogen is liberated at carbon or lead cathodes and manganese dioxide is deposited on titanium anodes. The period of electrolysis lasts from 2 to 4 weeks.

In the finishing process, the anodes are removed from the cells and are immersed in hot water to remove the electrolyte solution. The EMD deposit is removed from the anodes, washed, and neutralized to remove traces of the electrolyte. Neutralization determines the final pH of the EMD. When the EMD is removed from the anodes and neutralized, it is in a plate or chip form, but it must be ground into a powder for use in batteries. It is usually ground and sold as a powder by the EMD producers. Prior to shipment, the EMD is dried and packed according to customer specification. Before EMD is shipped to a customer, relatively minor adjustments are made to meet the particular needs of the customer. Adjustments include modifying the particle-size distribution, compressed density, and abrasiveness of the EMD. These adjustments do not produce major differences in EMD quality or performance.

Channels of Distribution

Both imported and domestic EMD are sold through the same channels of distribution and are sold directly to end users. These end users, i.e., battery manufacturers, purchase EMD from sales representatives of the EMD producers and importers (EMD producers in both Greece and Japan use trading companies located in the United States to market their product). U.S. producers and importers reported that virtually all EMD was shipped directly to battery manufacturers.

Other Domestic Like Product Factors

Information on interchangeability and customer and producer perceptions of EMD are presented in Part II of this report, and pricing information is presented in Part V.

U.S. MARKET PARTICIPANTS

U.S. Producers

U.S. production of electrolytic manganese dioxide is currently accounted for by 3 producers. Questionnaires were sent to all 3 producers and all were completed and returned. U.S. producers, their positions on revocation of the orders on Greece and Japan, plant locations, and U.S. production shares are shown in table I-2. At the time of the original investigations, Rayovac Corp. ("Rayovac") was also a producer of EMD, but currently it purchases EMD for the production of dry-cell batteries.

U.S. Importers

The Commission sent questionnaires to 5 firms believed to be importers of EMD from all sources (2 importers from subject countries and 3 importers from nonsubject countries). All 5 firms submitted completed responses to the questionnaires. In addition, ***. In the original investigations, 6 firms, which accounted for all known imports of EMD during the period of the investigations, submitted responses to Commission questionnaires. ***, ***, and *** were among the 6 importers in the original investigations. *** did not import any EMD during the period of review.

U.S. Purchasers

Commission questionnaires were sent to 4 firms believed to purchase EMD from domestic producers: Duracell, Eveready, Matsushita-Ultra Tech Battery Corp. ("Mutec"), and Rayovac.

Responses were received from all of the firms. Mutec is the only new purchaser in the industry since the original investigations in 1989.

Table I-2

EMD: U.S. producers, positions on revocation, plant locations, and shares of U.S. production in 1998

Firm	Position on revocation	Plant location(s)	Share of U.S. production
Chemetals, Inc.	***	New Johnsonville, TN	***
Kerr-McGee Chemical LLC	***	Henderson, NV	***
Eveready Battery Co., Inc.	*** ¹	Marietta, OH	***

¹ In its questionnaire response, Eveready *** revocation of the order on imports of EMD from ***. However, in its prehearing brief, Eveready *** revocation of the order for ***. Eveready's questionnaire response and Eveready's prehearing brief, p. 2.

Source: Compiled from data submitted in response to Commission questionnaires.

APPARENT U.S. CONSUMPTION AND MARKET SHARES

The volume of apparent U.S. consumption of EMD grew by *** percent from 1997 to 1998, as shown in table I-3. The value of apparent U.S. consumption increased by *** percent during the same period. From January-September 1998 to January-September 1999, the quantity of U.S. apparent consumption rose by *** percent while the value rose by *** percent.

Table I-4 indicates that from 1997 to 1998, the market share held by U.S. producers of EMD fell by *** percentage points on the basis of quantity and declined by *** percentage points on the basis of value. During the same period, the market share held by importers of EMD from Greece and Japan remained constant *** while the market share held by importers of EMD from all other sources grew by *** percentage points on the basis of quantity and by *** percentage points on the basis of value. The interim periods show similar trends for market shares held by both U.S. producers and importers.

According to data compiled from Commission questionnaire responses, 100 percent of both U.S. producers' shipments and importers' shipments of EMD went to end users in 1998.

Table I-3

EMD: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1997-98, January-September 1998, and January-September 1999

* * * * *

Table I-4

EMD: Apparent U.S. consumption and market shares, 1997-98, January-September 1998, and January-September 1999

* * * * *

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

INTRODUCTION

The basic circumstances surrounding the market for EMD since the imposition of the antidumping duty orders in 1989 are straightforward. These include the nearly complete absence of subject imports since 1990, the immediate increase in price and the subsequent price stability after the imposition of the orders, the increase in nonsubject import market share, and strong growth in the demand for EMD. The structure of the market for EMD is one of few buyers and few sellers, where annual negotiations determine price. Especially in the short run, the results of the price negotiations can be quite dependent on the balance between available capacity and demand for dry-cell alkaline batteries. Although each party vigorously attempts to obtain favorable pricing, neither has much recourse when this balance moves against them. A second important factor is the long-term relationships formed between buyers and sellers of EMD, based on the benefits of safeguarding future volume requirements and optimizing technical compatibility between EMD and battery design.

A revocation of the antidumping duty order has the potential to shift the short run balance between supply and demand in favor of EMD buyers, though not necessarily to the same extent as was the case before the antidumping duty orders were imposed, and depending on the amount of product made available in the U.S. market by subject producers. This subject product availability is a matter of some dispute. Revocation could also potentially dilute the market power currently held by domestic producers. There is some evidence that in the absence of revocation of the orders, the balance between supply and demand could shift somewhat towards EMD producers as compared to the balance in recent years. Both the absence of subject import volume since the imposition of the antidumping duty orders and the variety of outcomes possible in markets characterized by market power increase the level of uncertainty as to the likely effect of revocation.¹

This section of the report gives an overview of some of the economic issues relevant to the market for EMD and a description of the characteristics and trends of that market. It also provides a description of U.S. supply, subject foreign supply, nonsubject foreign supply, and U.S. demand in the EMD market.

SUMMARY OF ECONOMIC ISSUES RELATED TO PRODUCT DEFINITION

The U.S. market for EMD is virtually completely dependent on demand by four U.S. manufacturers of dry-cell alkaline batteries. All of the EMD purchased by the four major buyers is used in their battery manufacturing processes. The U.S. makers of dry-cell alkaline batteries are similarly very much dependent on the supply of EMD as there is no reasonable substitute for EMD in the construction of these batteries. When the original antidumping duty orders were imposed, there were two grades of EMD in use in the United States, alkaline and zinc chloride, with use of the former by far the most prevalent. Since that time, use of zinc chloride grade EMD has been almost completely abandoned in the United States. Batteries made with zinc chloride grade EMD, however, still substantially outnumber those made with alkaline grade EMD in many parts of the world, particularly in less developed countries. The distinction between zinc chloride grade and alkaline grade EMD is not an issue to domestic manufacturers, as all of their production is of the alkaline grade. The distinction is pertinent to the economics of the present review investigation only in the sense that direct competition between U.S.

¹ These two factors also make numerical analysis of the likely effects of revocation using the Commission's usual techniques unreliable. In situations such as these, numerical analyses are typically not performed.

EMD producers and those foreign EMD producers competitive only in zinc chloride grade markets is essentially nonexistent.

In some of the materials received by the Commission, it has been suggested that there is more than one distinct grade of alkaline grade EMD. To assess this possibility, each firm receiving a Commission questionnaire was asked whether multiple products fall within the alkaline grade EMD category.² In response to this question, three firms indicated that there are multiple products: ***. Of these, *** suggest that the principal distinction between grades is ***. Eveready points to three different products, distinguished by intended end use battery size/quality, physical and electrochemical properties, and performance. Other questionnaire respondents, including ***, state that alkaline grade EMD is not divided into multiple products. None dispute, however, that physical and electrochemical characteristics of EMD may vary across the different EMD sources, with resulting differences in quality and optimal end use.³ The discussion that follows does not make use of any strict and clearly identifiable product distinction, but does incorporate the economic impacts of quality differences between EMD sources.

U.S. MARKET SEGMENTS/CHANNELS OF DISTRIBUTION

The U.S. market for non-captive EMD sales has been highly concentrated over the period of investigation. More than 99 percent of the market consists of two domestic producers competing with two nonsubject foreign producers for sales to four U.S. battery producers.⁴ The relative shares of each EMD seller are shown in table II-1. On the supply side, the top two suppliers, ***, account for between *** of these sales, while the third largest supplier's *** are *** those of ***, the fourth largest.⁵ On the demand side, ***, the largest buyer, accounts for approximately *** percent of commercial purchases. Of the three other purchasers, *** accounts for roughly *** as many commercial purchases as *** and *** those of ***. Eveready also consumes EMD produced in its own factory. These Eveready non-commercial EMD transfers are approximately *** percent as large as the aggregate commercial EMD market.

Table II-1: Relative EMD production and purchase shares, 1997-99

* * * * *

Herfindahl index values average 0.30 for the supply side of the commercial EMD market between January 1997 and September 1999.⁶ The average Herfindahl index value drops to *** when Eveready's production of EMD is included in the calculation. By this measure, the demand side of the

² The following question was asked: "Is alkaline electrolytic manganese dioxide divided into multiple products based on chemical properties or end use applications?" In the event of an affirmative answer, the question further instructed the questionnaire respondent to "describe the chemical or physical properties to any distinct products."

³ Among those indicating that there are not multiple products, ***'s questionnaire makes mention of ***'s two EMD grades, *** refers to differences in products from the various sources, and *** that quality differences exist.

⁴ A third domestic EMD producer, Eveready, consumes all of its own production internally. One of the foreign suppliers, Delta, has plants in both South Africa and Australia.

⁵ These percentages and the purchase percentages that follow are computed as the share of sales made by the four major suppliers, as reported in responses to Commission questionnaires by the four major buyers.

⁶ The Herfindahl index is a common measure of industry concentration. An index value of 0.33, for instance, is what would be obtained if an industry consisted of three equal sized firms, each supplying one third of the market. A useful (though literally absurd) interpretation of the Herfindahl index value of 0.30 is that the EMD industry is roughly as concentrated as it would be if it consisted of 3.33 (the reciprocal of 0.30) equal-size firms.

commercial market is somewhat more concentrated, with a Herfindahl index value of 0.35. Including Eveready's purchases of its own EMD *** the Herfindahl index value ***.

EMD producers and purchasers both report that the present market structure is more favorable towards the U.S. producers than the market structure that held at the time of the original orders. At that time, foreign competition to EMD produced domestically by Kerr-McGee and Chemetals came principally from three Japanese producers. Additionally, Rayovac produced some of its own EMD, as did Eveready (though at the time of the orders, Eveready's EMD production was just beginning to recover from a destructive fire). After the imposition of the antidumping duty orders, the combined market share of Kerr-McGee and Chemetals increased from approximately *** percent in the preceding years to over *** percent in 1990. The antidumping duty orders also preceded a rise in the average price obtained by these two producers from about \$*** per pound in 1988 to \$*** per pound in 1991.⁷ Domestic producers, in particular, report that ***.⁸ Among purchasers, on the other hand, ***.

EMD sellers and buyers have tended to form long-term commercial relationships, with benefits to both parties. Despite the small number of participants on both sides of the market, each buyer and seller will not usually have active relationships with all of the other firms on the other side of the market. Instead, each firm will typically have major relationships with two suppliers or buyers, sometimes with a minor third source/outlet. Tables II-2 and II-3 provide an indication of these relationships by showing the average quantities of transactions between trading partners, and the percentage of sales/purchases of each firm accounted for by their individual trading partners, respectively, over the period of review.⁹

Table II-2: Supplier/purchaser average annual bilateral transactions (*in short tons*)

* * * * * * *

Table II-3: Supplier/purchaser bilateral market shares (*in percent*)

* * * * * * *

Firms tend to concentrate their sales/purchases in this manner in large part because of the ongoing technical cooperation required between the EMD producer and the battery manufacturer. Determining the best type of EMD to use in alkaline batteries is a relatively complicated process, depending on the type of battery manufacturing techniques utilized, among other factors. EMD manufacturers and battery makers attempt to find the optimal balance of several characteristics of EMD including ***. An improvement in one product characteristic is often liable to result in a drop-off in another characteristic. The EMD produced by each manufacturer has somewhat different physical and

⁷ Response of Chemetals and Kerr-McGee to notice of institution of sunset review, exh. 2, Burrows affidavit at 7, and handout used by petitioners during *in camera* portion of the hearing. During the intervening years the combined market share of Kerr-McGee and Chemetals fell somewhat and has fluctuated between *** and *** percent. Imports from Australia and Ireland began to account for major shares of the U.S. EMD market share in 1992. The average price ***.

⁸ Questionnaire responses and James C. Burrows, President and Chief Executive Officer, Charles River Associates, Inc., *in camera* hearing transcript, p. 114.

⁹ For instance, *** average sales of *** short tons to Duracell account for *** percent of Duracell's total purchases of EMD. Those same *** sales to Duracell account for *** percent of *** total EMD sales. In Table II-3, the percentages on the left hand side of the dashed lines sum to 100 down each column. The percentages on the right hand side of each dashed line sum to 100 across each row.

electrochemical properties into which a substantial investment in research and experimentation has been devoted.¹⁰ An EMD producer and a battery maker will undertake a good deal of technical cooperation in order to achieve the best possible match between the properties of the EMD and the battery manufacturing technologies and processes.¹¹ On both sides of the market, products are tailored specifically to the needs of trading partners. In questionnaire responses, EMD manufacturers reported that *** of the EMD they produce for each of their customers differs according to customer needs.¹² Battery makers also treat EMD produced by different manufacturers differently, most often using EMD from certain sources only in specific battery sizes/grades, and sometimes working to develop the highest quality mixes of EMD from various sources. In addition to product quality issues, the two parties are also very concerned with product reliability, distributional issues, the ability to make and follow through with long-term commercial relationships and volume commitments, and the ability to work together to improve technological capabilities.

As implied by the considerations above, battery makers require the EMD that they purchase to meet certain very specific requirements. For this reason, all of the EMD purchased by battery makers and the vast majority of the EMD sold by EMD producers require pre-qualification of the EMD. Battery makers and EMD producers report that it takes between *** months and *** months for the qualification process to be completed. Battery makers report qualification costs from \$*** to over \$***, which covers the cost of *** and the cost of ***. EMD producers report that they are responsible for ***. Qualification also includes the process of verifying the compatibility, reliability, and technical competence of the EMD supplier, as well as the ability of the supplier to consistently meet specifications, and service and delivery requirements. Table II-4 lists all EMD suppliers qualified to sell product to the various battery manufacturers. Where applicable, the qualifications are distinguished by battery size or other characteristics.

Table II-4: Current purchaser qualification of supplier EMD, by battery size

* * * * *

While there are several benefits to working with a small number of EMD manufacturers from the perspective of the battery maker, it is not usually the case that a battery maker will purchase from a single supplier. (*** always purchased around *** percent or more of its EMD from a secondary source during the period of investigation.) This supply variety has several principal causes, besides the desire to use different EMD in different types of batteries, as previously mentioned. Battery manufacturers want to have more than one source to minimize their dependence on a single supplier, both to improve their bargaining position in price negotiations and to guard against possible supply disruptions (from fire or other mishap, for example). This supplier diversification also helps insure battery makers against technological stagnation at any particular EMD plant. For these reasons battery makers will sometimes qualify EMD from, or maintain relationships with, certain EMD producers from whom they have no

¹⁰ These differences in properties (***) result from the quest to produce EMD that will result in the highest possible battery performance. ***. *** reported in a February 4, 2000 conversation with staff that producing top quality EMD is almost an art, and depends on ***. This point is echoed by Ritchie T. Thomas, Esquire, Squire, Sanders, & Dempsey, public hearing transcript, p. 69.

¹¹ It is not necessarily the case, however, that the degree and pace of technical cooperation is always optimal from the point of view of the EMD producer. For example, ***.

¹² In a January 18, 2000 conversation with staff, ***. In a February 4, 2000 conversation, ***.

serious intentions of making large and/or immediate purchases. For instance, *** is currently qualifying with ***. *** is in the process of qualifying EMD manufactured ***. *** has unsuccessfully attempted to qualify *** material *** in the last two years. Battery makers and EMD manufacturers are also in the process of attempting to qualify EMD from current suppliers for additional battery sizes. *** has recently approved *** EMD for *** batteries. The two firms are continuing to work to qualify that material for *** and are in the early stages of assessing the ***. *** is currently qualifying *** material for use in its *** batteries. *** is in the process of qualifying *** material for its *** cells and is considering its use in ***.

Throughout the period since the initial investigations, EMD producers have made improvements to their product. The nature of these improvements is described differently by the various market participants. Kerr-McGee describes the improvements as ***.¹³ ***.¹⁴ ***.¹⁵ Other market participants also commented on the degree and nature of product improvement since 1989 in their questionnaire responses. Chemetals describes the improvements in EMD ***.

Duracell's assessment of product improvements since 1989 ***. Mutec, ***.¹⁶ Rayovac suggests that ***. Eveready discusses ***.¹⁷ ***.¹⁸

In much of the material presented to the Commission by ***, but to some degree by ***, it was pointed out that not all EMD suppliers have achieved identical quality levels since the imposition of the antidumping duty orders. Specifically, it was suggested that EMD produced by some suppliers is less suitable for use in higher end applications, referred to variously by Eveready as high drain, high rate, and high tech.¹⁹ As shown in the qualification table above, *** does not reserve EMD from different sources for use in specific battery sizes or grades. ***.²⁰ The segregation of EMD into specific batteries is done solely on the basis of product quality and performance. Sizes AAA and AA benefit disproportionately from an increase in EMD quality. Thus the highest quality EMD tends to be first reserved for these sizes.²¹ An important reason for this is the small amount of EMD per battery used in these two sizes, compared to C and D batteries.

¹³ Response to Commission's questionnaire.

¹⁴ Staff visit to Kerr-McGee's Henderson, NV facility, February 22, 2000.

¹⁵ Response to Commission's questionnaire and staff conversation with Brian Clowe, Director of Sales and Marketing, Kerr-McGee, January 6, 2000. At this time, ***.

¹⁶ ***.

¹⁷ See, for example, Eveready's response to the Commission's questionnaire and David Kilby, Technical Research Department, Eveready Battery Co., *in camera* hearing transcript, pp. 150-52.

¹⁸ David Kilby, Technical Research Department, Eveready Battery Co., *in camera* hearing transcript, p. 151.

¹⁹ Although the terms are sometimes used interchangeably, Eveready differentiates between the terms "high drain," "high rate," and "high tech" as follows: High drain refers specifically to battery-using applications requiring a high electrical discharge rate, and generally to the batteries and EMD used in batteries specially designed to provide a high and lasting level of performance. High rate refers to batteries and EMD used in batteries designed to provide long-lasting continuous discharge in high drain applications. High tech refers to batteries and EMD used in batteries designed to provide long-lasting intermittent use in high drain applications. ***.

²⁰ ***.

²¹ Examination of table II-4 might give the impression that EMD suited for AA and AAA batteries is not well-suited for C and D batteries. Although EMD is *** qualified separately for different battery sizes, it is *** the case that product that is used in the smaller sizes would be at least as effective in larger sizes as product qualified only for larger sizes.

Of the two domestic manufacturers, ***.²² Only in one instance has ***. Despite apparent differences in product quality (or grades) among EMD manufacturers, ***. Eveready ***.²³

*** stated that replacing *** in an AA or AAA battery would result in a performance loss of between *** percent to *** percent depending on the test used to analyze performance, a loss that the average battery consumer would ***.²⁴ ***.

Despite the small number of firms at present on both sides of the market, there is not any strong evidence that any individual firm has yet exhibited disproportionate price leadership. *** states in its questionnaire that *** influenced the market price of EMD after the antidumping duty orders were imposed by raising prices at a time that ***, but this does not appear to indicate any unusual or distinctive behavior.²⁵ However, it does appear that a firm's negotiating leverage is roughly consistent with its market share. ***.²⁶ ***, however, was not able to push through a desired price increase of \$*** per pound *** in negotiations with ***.²⁷ *** reports basing its negotiating position, in large part, on ***. In this case, it saw no indication that ***, and was successful in ***. *** has also been unable to obtain a *** price than ***, despite ***.²⁸

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production for the U.S. Market

Based on available information, U.S. EMD producers are likely to respond to changes in demand with small to moderate changes in the quantity of shipments of U.S.-produced EMD to the U.S. market. This summary appraisal masks a good deal of important detail. Short-run responsiveness is likely to be quite low, due to low variable costs and the lack of production alternatives. Assuming that *** in the market for high quality alkaline grade EMD, the domestic supply responsiveness will likely continue to be fairly low over longer periods of time.²⁹ ***. Thus, the medium and longer term responsiveness, ***, is judged to be somewhat higher. The most likely scenario (in which ***) would suggest a domestic supply elasticity of approximately 0.25 to 0.5.³⁰ A scenario (***) with a domestic supply elasticity of 2 to 3 is also conceivable. The factors influencing the supply responsiveness are discussed below.

²² ***.

²³ G. Clark Hooks, Head of Purchasing, Eveready Battery Co., *in camera* hearing transcript, pp. 155-56 and conversation with staff of December 29, 1999.

²⁴ ***.

²⁵ ***.

²⁶ ***.

²⁷ Petitioners' posthearing brief, exh. K.

²⁸ Part of the inability to achieve a higher price than *** can be attributed to ***.

²⁹ During the original investigation, Chemetals and Kerr-McGee increased their combined production by *** percent during a period of falling prices. Although this seems to be due in part to an ***, it is evidence of extremely low price responsiveness over a period of several years.

³⁰ This is a somewhat lower elasticity than that given in the prehearing report.

Industry capacity

In 1998, U.S. EMD producers reported a combined capacity for EMD production of *** short tons. The U.S. EMD industry's capacity utilization rates were very high over the period of investigation. The capacity utilization rate during interim 1999 was *** percent for Kerr-McGee, *** percent for Chemetals, and *** percent for Eveready's EMD facility. Between January 1997 and September 1999, the capacity utilization rate averaged *** percent for Kerr-McGee, ***³¹ percent for Chemetals, and *** percent for Eveready. This contrasts with capacity utilization rates of these two producers of EMD of *** percent in 1987-88 and *** percent in 1989-90.³² As the potential revocation of the antidumping duty order(s) might lower, not increase, demand for domestic product, the amount of remaining capacity should not have a strong impact on prices in the event of revocation.³³ Given increasing U.S. demand for EMD, however, the current high capacity utilization rates may result in upward pressure on prices if the orders are continued and capacity does not expand at a similar rate as demand.

Alternative markets

The EMD manufacturers report very few alternative market possibilities. Since 1997, Kerr-McGee's EMD exports have totaled *** short tons out of a production total of *** short tons. In the same period, Chemetals has exported a quantity of product equal to *** percent of production, principally to ***. Eveready ***. The price Chemetals received for its exports averaged \$*** per pound, *** the price received in the U.S. market of approximately \$*** per pound (and ***). *** suggest that selling to the major markets of Japan and Europe would be very difficult. In Japan, *** report non-tariff barriers to entry (in particular, the distribution system). In addition, there is a general tariff of 3.9 percent. In the EU, the applicable tariff rate is 4.7 percent. Most importantly, the price that can be obtained for EMD is *** lower in most if not all of these markets than in the United States, especially after accounting for transportation costs from the United States to foreign markets. *** states that ***, putting the European delivered price of alkaline grade EMD at about \$*** to \$*** per pound. In Asia, the price *** to average between \$*** and \$*** per pound c.i.f. *** report similarly lower prices in these markets. *** reports that *** Japanese EMD *** at \$*** per pound, while *** reports *** for EMD from the same company ***. In Europe, *** a price of \$*** per pound for *** EMD, while *** for that product.³⁴ Tosoh reports that ***.³⁵

Inventory levels

Inventory levels of domestic EMD suppliers fell somewhat from the beginning of January 1997 to the end of September 1999. At the former date, inventories stood at *** percent of 1998 capacity,

³¹ ***.

³² Response of Chemetals and Kerr-McGee to notice of institution of sunset review, exh. 2 and 3.

³³ Eveready stated in its prehearing brief, p. 14, that it "strongly disagrees" with the implication that revocation *would* lead to lower demand for domestic product. It is true that demand for domestic EMD will not fall (relative to current demand) unless revocation induces the subject producers to make more product available to the U.S. market, and unless that supply increase more than offsets growing demand.

³⁴ Staff conversation of December 20, 1999 with *** and *** questionnaire.

³⁵ Tosoh's posthearing brief, table 1 following page 7.

while inventories were *** percent of 1998 capacity at the latter. The drop in the inventory levels at Eveready's EMD facility accounts for about *** of this drop. In contrast to Eveready's inventory, Kerr-McGee's inventory rose *** during the period and stood at *** percent of its 1998 capacity at the end of September 1999. The inventory levels reported by Kerr-McGee and Chemetals for the period of investigation are *** as a percentage of production than levels in many of the years subsequent to the antidumping duty order. ***. Often the reported inventories in the EMD industry are not necessarily available for general sale. Much of the inventories kept are of product specifically produced for specific buyers.³⁶ Additionally, inventory may be kept to insure smooth supply in case of production difficulties rather than representing product that the EMD maker would like to immediately move.³⁷

Production alternatives

There are essentially no viable production alternatives to the production of alkaline grade EMD for U.S. sellers. *** U.S. producers report that no other products can be made using the same plants and equipment.³⁸ EMD producers could produce zinc chloride grade EMD on the same equipment if the market for alkaline grade EMD were to vanish, but there is no market in North America for this lower-grade product, either at present or in the conceivable future.³⁹

Production costs

*** of the three domestic producers report that material costs have had *** effect on the selling price of EMD over the period of investigation. ***. The financial information provided by *** indicates that its labor- and raw materials-exclusive factory costs *** from 1997 levels, ***, so that the cost of goods per pound sold *** from \$*** per pound in 1997 to \$*** per pound in 1998 before *** to \$*** per pound during interim 1999.⁴⁰ In contrast, ***'s cost of goods sold *** from \$*** per pound in 1997 to \$*** per pound in 1998, before *** to \$*** per pound during interim 1999.

EMD manufacturing facilities have *** variable costs, relative to overall costs. The Chemetals variable costs of production (***) were \$*** per pound in 1998. The raw material and direct labor costs of Kerr-McGee were \$*** per pound in 1998. These costs varied *** over the period of investigation. Such low variable costs provide a strong incentive for these firms to maintain their output levels in the short run, even when prices fall, since the difference between the price received and variable costs can be used to help offset the fixed costs over which firms have little control in the short run.

*** 41

³⁶ ***. Inventory intended for a specific buyer may become general inventory if something prevents the intended purchaser from taking the product.

³⁷ Tosoh indicates that it ***. (Tosoh's posthearing question responses, p. 12.)

³⁸ ***.

³⁹ A production transformation *backwards* from alkaline grade to zinc chloride grade EMD could be very simple, unlike the *forward* transformation for firms producing exclusively zinc chloride grade. Denis F. DeCraene, Vice President, Marketing and Sales, Chemetals, public hearing testimony, pp. 67, 75.

⁴⁰ ***.

⁴¹ ***.

Investment

Both Kerr-McGee and Chemetals state very clearly that ***. They just as clearly state that ***, to which continuance of the antidumping duty on Greek and Japanese products is vital. *** states in its questionnaire response that ***.⁴² Since 1997, *** in domestic EMD capacity has occurred, but apparent consumption has risen by approximately *** percent.

EMD purchasers have expressed ***.⁴³ ***, which has purchased *** of imported EMD during the period of review, claims in its questionnaire responses that ***.⁴⁴ ⁴⁵ *** states that since 1998, both of the domestic commercial EMD producers have ***. They also indicated to *** that they have ***.

The circumstances that would induce *** beyond those presently planned is ***. Kerr-McGee has stated that ***.⁴⁶ For a *** to occur, Kerr-McGee indicated that much ***.⁴⁷ Chemetals indicated that it would ***.⁴⁸ Eveready indicated that ***.⁴⁹

When asked by the Commission's questionnaire whether they had been unable or unwilling to furnish EMD to customers since 1997, ***.⁵⁰

The research costs of Kerr-McGee and Chemetals have been *** over the period of investigation, ranging from *** to *** percent of the value of total net sales. This has apparently been a period of *** research into quality improvement. *** reports that research costs at these levels are ***.⁵¹ The research expenses, of course, must be compared to the costs of not keeping up technologically with competitors. These costs are difficult to measure precisely but are reported by *** to be significant, especially if technological disadvantage were to accumulate over a period of several years.⁵²

Subject Imports

The antidumping duty orders effectively cut off imports of EMD from Greece and Japan to the United States.⁵³ Prices rose by *** percent in the first two years, a *** smaller percentage than the 36.72 percent duty placed on Greek EMD.⁵⁴ With duties in excess of 70 percent levied on EMD purchased

⁴² This is apparently the ***, *in camera* hearing testimony, p. 81.

⁴³ Purchaser questionnaire responses from ***.

⁴⁴ In a conversation with staff on January 27, 2000, ***.

⁴⁵ ***.

⁴⁶ Staff visit to Kerr-McGee's Henderson, NV facility, February 22, 2000, and petitioners' posthearing brief, exh. K, p. 36.

⁴⁷ ***. Petitioners' posthearing brief, exh. K, p. 6, p. 20.

⁴⁸ Denis F. DeCraene, Vice President, Marketing and Sales, Chemetals, *in camera* hearing transcript, p. 82.

⁴⁹ G. Clark Hooks, Head of Purchasing, Eveready Battery Co., *in camera* hearing transcript, p. 168.

⁵⁰ Petitioners' posthearing brief, exh. K, p. 34.

⁵¹ Staff conversation of January 18, 2000 with ***.

⁵² *** questionnaire responses of ***.

⁵³ Imports from Japan dropped to *** in 1989. Imports from Greece *** in 1989, *** in 1990.

⁵⁴ In both of 1987 and 1988, imports of EMD from Greece were *** of what they had been in 1986 and *** of U.S. apparent consumption according to data collected for the original investigations. The average (annual) price for Greek EMD never fell below \$*** per pound. The Greek antidumping duty added onto its previous selling

(continued...)

from the Japanese Tosoh or Mitsui facilities, the product from these firms would have had to carry a duty-exclusive price of between approximately \$*** and \$*** per pound in order to remain price competitive against domestic EMD.⁵⁵ Since that time, subject imports have remained at zero or trivial levels. Over the last couple of years, however, some purchases of EMD of Japanese and Greek origin have occurred. These have principally been in very small quantities relative to the overall size of the market.^{56 57}

In response to the Commission's questionnaire, foreign producers indicated *** the nature of their present relationship with the U.S. market. The two Japanese producers both stated that ***. Tosoh Hellas stated that it was presently ***. Tosoh Hellas further pointed out that ***.

Tosoh Hellas and Tosoh Hyuga have both indicated that it would be ***. The preferences for long-term relationships between purchasers and suppliers tends to make rapid entry of new producers unlikely. *** over the period of investigation.⁵⁸ Furthermore, *** with the Tosoh products from ***. Mitsui's Japanese product has ***. This may be *** because of the general understanding of Mitsui's Irish product in the U.S. marketplace and the likelihood that the two Mitsui plants use the same technologies.

Among domestic purchasers, *** an intention to begin widespread use of Japanese EMD in the event of an antidumping duty order revocation. *** states that *** in the event of a revocation, but ***. *** indicates that it *** from either country. *** suggests that a technological breakthrough on the part of firms in one of these countries would ***. ***.

Most of the purchasers indicated that a revocation of the order would have a beneficial effect on the U.S. market overall by providing more choices of quality material and making prices more competitive. *** suggested that the potential revocation of the orders would have no practical effect on EMD prices.⁵⁹ It argues that subject producers understand that underselling in the U.S. market would lead to a new antidumping case which would not likely be decided in their favor.

Industry capacity

Tosoh Hellas reports that its 1998 capacity was *** short tons. Among Japanese producers, Tosoh reports 1998 capacity of *** short tons and Mitsui reports capacity of *** short tons. Of these, only *** reports any increase in capacity in 1999, by over *** short tons. Capacity utilization rates reported by subject producers range between *** percent and *** percent. In 1999, Tosoh reports that capacity utilization rates were *** percent in Japan in 1999 and *** percent in Greece ***. Tosoh also asserts that *** percent capacity utilization is its ideal production rate because of downtime needed for maintenance and the changing of setup involved with producing several different grades for numerous customers. Greek excess capacity in 1998 was *** short tons.

⁵⁴ (...continued)

prices would have raised the price of Greek EMD to about \$*** per pound, somewhat above a competitive level.

⁵⁵ Selling at these prices may have resulted in changes in the dumping margin computed by Commerce in subsequent administrative reviews.

⁵⁶ ***.

⁵⁷ ***.

⁵⁸ ***.

⁵⁹ ***.

Excess capacity among the Japanese producers Tosoh and Mitsui combined to equal *** short tons or *** percent in 1998.⁶⁰ The Japanese EMD market also includes a third Japanese producer, JMC, whose estimated 1998 excess capacity was *** short tons. JMC is reported to ***.⁶¹ The baseline estimate of the relevant combined Greek and Japanese (U.S. market quality) excess capacity (excluding JMC) totals roughly *** short tons in 1998, about *** percent of U.S. consumption of commercially traded EMD. Tosoh reports projections that its excess capacity in Japan will *** in 1999 and 2000.⁶²

Tosoh Hyuga reports *** in order to meet increasing demand for alkaline grade EMD in Asia. *** has yet to be determined, Mitsui Mining & Smelting indicates *** in order to serve the Asian market. Tosoh Hellas reports ***.

Alternative markets

Estimates provided to the Commission of the size of the Japanese market for EMD range from *** to *** short tons in 1998.⁶³ Japanese producers report that ***, and that **. Of Japanese consumption, however, *** short tons were supplied by Tosoh Hyuga and Mitsui Mining & Smelting, suggesting that the Japanese market is highly concentrated. If so, while facing no incentive to divert domestic production, Japanese producers may be able to sell in the United States (or in other non-Japanese markets) without much fear of depressing Japanese prices.

The Japanese sales of Tosoh Hyuga and Mitsui Mining & Smelting account for *** percent of the 1998 EMD shipments of these two companies. Most of the rest of the shipments of these two producers were exported to markets in ***. Shipments are made both of zinc chloride grade EMD and alkaline grade EMD, with the former representing *** percent of overall.⁶⁴ Mitsui Mining & Smelting estimates that growth of the Japanese market will be about *** percent per year in the next several years, while the growth of the market in the rest of Asia will be *** percent per year (both rates are *** than its anticipated growth rate of the U.S. market). Reasons for this growth include the rebound from the Asian economic crisis of 1997-98 and relatively rapid income growth in much of Asia. Additionally, it is projected that alkaline batteries will gradually replace zinc chloride batteries.

Tosoh Hellas sold less than *** percent of its 1998 shipments in Greece (and less than *** percent of its 1998 domestic Greek shipments to the United States). *** domestic Greek shipments were shipments of zinc chloride grade EMD. The remaining shipments, much of them alkaline grade (alkaline

⁶⁰ These compare to excess capacity computed in the original investigation to be *** short tons in 1986, *** percent of Tosoh and Mitsui's Japanese capacity at the time. By 1988, the production by these two firms had exceeded the ***. (***) The excess capacity in 1986 was *** percent of U.S. consumption. In 1998, the excess capacity of these two Japanese firms was only *** percent of U.S. apparent consumption.

⁶¹ In an affidavit of *** stated that JMC ***. *** stated his understanding that JMC is *** and is *** in a conversation with staff on January 14, 2000. He reported that JMC has ***. *** reported in a conversation with staff on January 14, 2000 that approximately ***. While he does not know the present state of JMC's technological capabilities, he guesses that they probably could ***. He also reported having the impression that JMC *** at present.

⁶² Tosoh's prehearing brief, exh. 1, table 8.

⁶³ The *** estimate is found in the response of Chemetals and Kerr-McGee to notice of institution of sunset review, exh. 3. The *** estimate is found in Mitsui Mining & Smelting's questionnaire response.

⁶⁴ Tosoh's posthearing question responses, p. 6.

grade production totals *** percent of Tosoh Hellas' overall production),⁶⁵ went to markets in ***. Tosoh Hellas anticipates worldwide demand annual growth rates of between *** and *** percent.

The significant proportion of export sales made by the subject EMD producers - especially to U.S. companies in these markets - might serve to reduce any inclination to price very aggressively in the U.S. market if the orders were to be revoked. Purchasers in these markets include ***. It could be difficult for subject producers to sell at prices below Asian and European prices in the United States without creating downward pressure on prices in these markets. However, Eveready states that there is no connection between prices in the U.S. market and prices in other markets.⁶⁶

There is no indication of any recent or forthcoming changes in tariff rates in the home markets of subject companies or in third markets. According to ***'s questionnaire response, tariff rates are generally low in many of the major EMD markets.

Inventory levels

Inventory levels at the end of September 1999 reported by Mitsui Mining & Smelting and Tosoh Hyuga total *** short tons, a *** of *** short tons since the beginning of 1997. These are *** inventory levels than the combined end-of-period inventories reported by Chemetals and Kerr-McGee of *** short tons, and as a percentage of annualized capacity are *** (***) percent compared to *** percent for Chemetals and Kerr-McGee). Tosoh Hellas reported inventories *** by *** short tons over the same period to *** short tons, about *** percent of annualized capacity.

Production alternatives

As is the case for the U.S. manufacturers of EMD, there is no indication that subject country equipment and/or workers can be switched from use in the production of another product to the production of EMD. *** report an inability to make such a switch, as well as a lack of history of such product shifting, and no plans to do so.

Production costs

Very little information has been made available to the Commission regarding the underlying costs of EMD production in the two subject countries. However, Chemetals and Kerr-McGee provided an estimate of the variable cash operating costs of production in Japan.⁶⁷ According to this estimate -

⁶⁵ Tosoh's posthearing question responses, p. 6.

⁶⁶ G. Clark Hooks, Head of Purchasing, Eveready Battery Co., public hearing testimony, p. 241.

⁶⁷ Response of Chemetals and Kerr-McGee to notice of institution of sunset review, Burrows affidavit at 15.

which was made using data from the first quarter of 1999 - these variable costs were roughly \$*** per pound.^{68 69} Delivery to the United States would increase this cost, but by less than *** cents per pound.⁷⁰

In connection with the estimated Japanese variable production costs, Chemetals and Kerr-McGee emphasize the incentive of Japanese producers to attempt to achieve full capacity production levels by selling EMD into the United States at any price above their short run variable costs (plus transportation and tariff costs) in the event of a revocation of the antidumping duty orders. It is alleged that this is essentially what occurred prior to the original antidumping investigation, a view apparently shared by the Commission in its original decision.⁷¹ As acknowledged by the petitioners, this does not imply that subject producers will sell at variable costs, only that a short run incentive exists whenever otherwise empty capacity could be sold at prices above variable costs in a manner that would not reduce prices in primary markets.⁷²

Nonsubject Imports

Based on available information, the South African, Australian, and Irish producers are likely to respond to changes in demand with large changes in the quantity of shipments of EMD to the U.S. market, in the event of revocation. The main contributing factors to a relatively high degree of responsiveness of supply are the existence of alternative markets and the ability to shift production sites among affiliates. An additional factor in analyzing the likely effect of the potential revocation of the antidumping duty orders is the apparent (***) reticence of nonsubject producers to price in a manner that would provoke an antidumping investigation against themselves.⁷³ The estimated elasticity of South African and Australian supply is 2 to 10. The estimated elasticity of Irish supply is 2 to infinity.^{74 75} The latter range is larger because of the potential to shift Mitsui Denman production for the U.S. market to Japan if the antidumping duty order on Japanese EMD were to be removed.

⁶⁸ A good deal of the data and assumptions underlying this estimate were made available to staff in a memorandum of February 7, 2000 from James Burrows, President and Chief Executive Officer, Charles River Associates, Inc., the economist responsible for the calculations.

⁶⁹ The costs included in the this estimation were ***. Using the 1999 third quarter data on the exchange rate *** rather than the first quarter data would result in very little change in the computed variable cost.

⁷⁰ Tosoh's posthearing question responses (table 2 following p. 7) calculates nearly a \$*** cent per pound additional cost of selling to the U.S. market. This calculation uses the duty on a base price of \$*** per pound, and appears to double-count some portion of the transportation costs (costs of shipping to the United States are included without excluding the costs of shipping to non-Japanese Asian markets).

⁷¹ Views of the Commission, *Electrolytic Manganese Dioxide from Greece and Japan*, USITC Pub. 2177, April 1989, p. 18.

⁷² Petitioner's prehearing brief, p. 34.

⁷³ *** questionnaire response and staff conversation with ***, January 4, 2000.

⁷⁴ These elasticity estimates are higher than those provided in the prehearing report.

⁷⁵ These elasticity estimates and others in this report are intended to describe the likely results of the particular events associated with revocation of the antidumping duty orders, and do not necessarily apply to other situations. For instance, the potential price elasticity of infinity ascribed to Mitsui Denman is meant to describe the possibility that order revocation might result in a production shift from Mitsui Denman to Mitsui Mining & Smelting Co., as demand for imports from the latter increases as compared to its demand with the duty in place. It is not meant to imply that Mitsui Denman would increase its quantity sold to the U.S. market in an unlimited manner in response to a very small increase in its price.

Industry capacity

Both U.S. producers and U.S. purchasers state that the capacity of nonsubject producers has greatly expanded since the antidumping duty order in 1989. (The potential entry of HiTec Energy NL discussed in Part IV could significantly increase nonsubject capacity of high quality alkaline grade product.) A good deal of this capacity expansion is evident in the increased nonsubject imports as a percentage of U.S. apparent consumption since the order. The estimates provided by *** indicate that Delta's combined capacity in its South Africa and Australia facilities was *** short tons in 1998. Mitsui Denman's capacity in that year was estimated to be *** short tons. Precise figures are not available as to how much of this capacity is already committed to purchasers, but there is an impression that supply from Delta is *** as from U.S. producers or as from Mitsui Denman.⁷⁶ *** reported that while it believes Delta's capacity utilization percentage is in the *** percent range, Delta has *** available space to expand and has *** inventory. However, ***.⁷⁷ *** As is the case for domestic supply, the removal of the antidumping duty orders would reduce demand for nonsubject EMD. In this situation, capacity constraints (or the lack thereof) should not be a significant factor in the nonsubject supply response.

Capacity from other nonsubject sources was estimated to total *** short tons.⁷⁸ These other nonsubject sources include EMD manufacturers in Spain, Brazil, India, and China. Of these, none were a factor in the U.S. market during the period examined, and it appears that only Chinese imports have a possibility of competing with U.S.-produced EMD in the near future, given prices near current ones. Chinese 1998 capacity is estimated to have been *** short tons by Chemetals/Kerr-McGee. It is not at all clear, though, how much of the Chinese product should be considered potentially competitive. *** reports that ***. Both *** and *** (along with ***) indicate that they are *** for EMD originating in China. *** expressed *** about the possible future impact of Chinese EMD on the U.S. market in connection with an observation that ***. Data are not available that would pinpoint how much of the Chinese capacity (or that of Spain, India, and Brazil) is committed to non-U.S. customers, though Chemetals/Kerr-McGee report an estimate of Chinese EMD consumption of *** short tons.

In the context of nonsubject supply, *** has argued that there is a link between nonsubject capacity and the potential threat to the domestic industry posed by subject imports.⁷⁹ This need not be capacity for production to U.S. market standards. According to this argument, subject capacity - even if initially at a low level - can quickly be freed up for sale to the U.S. market by the substitution of nonsubject (and possibly lower quality) EMD for subject EMD in the traditional markets of the subject producers. For example, *** argues that if the order against Japan were to be revoked, the capacity that has been used for sales in Asian markets by Japanese producers could be diverted for sale to the U.S. market. The resulting EMD shortfall in Asia would then be filled by Chinese EMD. The respondents reject this notion, pointing to ***⁸⁰ ***.⁸¹

⁷⁶ ***.

⁷⁷ ***.

⁷⁸ Response of Chemetals and Kerr-McGee to notice of institution of sunset review, exh. 3.

⁷⁹ ***.

⁸⁰ Denis F. DeCraene, Vice President of Marketing and Sales, Chemetals, public hearing transcript, p. 52, and John Vacadaris, Director, Tosoh Hellas A.I.C., public hearing transcript, p. 223.

⁸¹ John G. Reilly, Vice President, Nathan Associates, *in camera* hearing transcript, pp. 137, 140-141.

Other factors

There is no indication that nonsubject foreign EMD producers have any more ability to shift away from the production of EMD to alternative products than domestic or subject foreign producers. Likewise, no figures have been presented that would indicate any significant difference between the relative magnitude of fixed and variable costs in nonsubject countries and elsewhere. Inventory figures are not available by country, but ***'s questionnaire response includes statistics showing worldwide inventories at about *** short tons in the middle of 1999. Various other considerations including the lower price in non-U.S. markets and the weaker notions outside the U.S. market about the importance of using relatively high grades of EMD suggest that balance between supply and demand is tilted somewhat in favor of purchasers when compared to the U.S. market.

The U.S. market share of the two major nonsubject sources has increased throughout the period of review (though it had been higher in some of the years since the imposition of the orders than it was in 1997).⁸² According to data obtained from U.S. EMD purchasers in response to Commission questionnaires, the relative share of U.S. commercial purchases from Delta and Mitsui has risen from *** percent in the first quarter of 1997 to *** in the third quarter of 1999. Since the initial impact of the antidumping duty order, the average price of EMD sold by Kerr-McGee and Chemetals has been fairly stable ***. In real terms, however, the prices have *** declined since the increased prices following the imposition of the orders ***. This price behavior is consistent with an increase in competition from nonsubject sources. (The behavior of pricing is detailed in Part V of this report.)

In markets such as that for EMD with ***, economic theory recognizes an incentive for suppliers to sell at relatively low prices in markets they view as secondary to their primary markets. Indeed, this is precisely the argument that Kerr-McGee and Chemetals have advanced as a rationale for keeping the antidumping duty orders in place against Greek and Japanese EMD.⁸³ Nonsubject producers, however, seem to sell EMD at a *** higher price in the United States relative to their prices in other markets. Both purchasers and U.S. producers have indicated that there is a perception of an implicit threat of antidumping action by the domestic industry directed against nonsubject firms that prevents these firms from pricing their EMD too aggressively.^{84 85}

U.S. Demand

The level of U.S. aggregate demand for EMD depends almost exclusively on the demand for dry-cell alkaline batteries. Based on the available evidence, staff believes that demand for EMD would be very unresponsive to a change in price. This conclusion is based on the very small effect a change in the price of EMD would have on the (apparent) price of batteries and on the difficulty in substituting other materials for EMD in the battery production process. This leads to an aggregate U.S. demand elasticity estimate of 0 to 0.5.

⁸² Response of Chemetals and Kerr-McGee to notice of institution of sunset review, exh. 2.

⁸³ *Ibid.*, p. 30.

⁸⁴ In a January 4, 2000 conversation with staff, *** reported that ***. *** also reports in its questionnaire response that the implied threat of antidumping actions means that nonsubject competitors are very careful about their U.S. market pricing.

⁸⁵ This does not necessarily imply that the same level of threat would be perceived by nonsubject producers if the antidumping duty orders against Greece and/or Japan were to be revoked.

Demand Characteristics and Trends

The demand for batteries has been increasing fairly rapidly over the past several years, a trend that is expected to continue. The increasing battery demand has, in turn, been fueled in large part by the increasing popularity of battery-powered electronic devices such as cellular phones, Walkman-type devices, digital and flash cameras, and camcorders. Disproportionate growth is forecast to occur in the demand for the smaller battery sizes, AA and AAA. This implies that the growth of EMD demand should tend to be lower than the growth of battery demand. Chemetals reports that demand for EMD has been increasing at a rate of *** percent per year. Duracell places EMD demand growth at *** percent per year. Both firms predict that demand growth will increase at *** rate into the future. Kerr-McGee states that demand growth for EMD has been *** percent per year but should *** a bit to *** percent annually. Rayovac estimates that demand for batteries has grown at a rate of *** percent per year, while Mutec puts the rate at *** percent. Both expect a *** these growth rates. Eveready provides yearly battery production estimates for itself by battery size. While the figures Eveready provides in response to the Commission's questionnaire may not match Eveready's current expectations, they project its overall battery production to increase at an average annual rate of about *** percent between 1996 and 2002.⁸⁶ Of this, AA and AAA production is projected to increase by about *** and *** percent, respectively. C, D, and 9V production growth rate projections are ***, ***, and *** percent, respectively. Mitsui Mining & Smelting projects approximately an *** percent growth rate for U.S. EMD demand.

By these standards, 1998 and 1999 appear to be strong years for EMD demand growth. Data reported by U.S. purchasers shows that apparent consumption increased from *** short tons in 1997 to *** short tons in 1998, an increase of *** percent (which is virtually identical to the *** percent increase in 1998 consumption obtained from compilations of responses to other Commission questionnaires). These data also show that purchases increased by *** percent between interim 1998 and interim 1999.

*** of the EMD purchasers report that EMD shipments are somewhat seasonal in that more batteries are produced and purchased in the latter one or two quarters of the year in preparation for holiday battery purchases. *** reported spreading its battery production evenly throughout the year. The tendency to purchase seasonally is not apparent from the purchaser's questionnaire data. Each of the EMD purchasers indicated that the EMD market is not subject to business cycles or any other distinctive conditions of competition.

Substitute Products

The only feasible substitute for alkaline grade EMD is zinc chloride grade EMD, though there is essentially no market for the latter in the United States today. Since a revocation of the antidumping duty orders would increase the supply of both EMD grades without any obvious bias in the relative magnitude of the two increases, the lack of U.S. purchasing interest in zinc chloride grade EMD is very unlikely to change.

Cost Share

Three of the four purchasers reported the percentage of battery cost accounted for by EMD for each of the major battery sizes. For AAA batteries, the EMD cost percentage ranges between ***

⁸⁶ See, for instance, G. Clark Hooks, Head of Purchasing, Eveready Battery Co., public hearing transcript, p. 204.

percent and *** percent. For AA batteries, the percentage rises to *** to *** percent. EMD accounts for *** percent to *** percent of the cost of C batteries and *** percent to *** percent of the cost of D batteries. For 9V batteries, the EMD cost percentages range from *** percent to *** percent. *** did not report cost percentages by battery size but reported that *** percent of the total cost of producing batteries is accounted for by EMD.

Staff requested the battery manufacturers to report the quantity of EMD used in each battery cell. The reported per-battery EMD usage levels were roughly *** as large for AA batteries as AAA batteries, and *** again as large for C batteries. D batteries were reported to use just over *** as much EMD per battery as C batteries. 9V cells use *** EMD than AA batteries. The EMD requirements range from *** pounds of EMD per 1,000 *** AAA batteries to *** pounds of EMD per 1,000 *** D batteries. With these EMD requirements, the EMD cost per battery can be computed. This cost ranges from roughly *** per AAA battery to *** per battery for D batteries. Overall (and depending on the method of calculation), the EMD cost per battery centers around *** cents per battery.

With the small EMD cost per battery, any plausible change in the price of EMD would affect the cost of making a battery by *** at most and by much less for many battery sizes. If such a price change were fully passed on to the battery consumer, the effect on battery purchases would be almost negligible. The more important issue, then, in analyzing the sensitivity of aggregate EMD demand to possible price changes is whether or not battery producers could substitute some other material or technology in the process of making batteries in response to changes in the price of EMD. In regard to the particular question of the possible effects of the removal of the antidumping duty, the specific issue is essentially whether or not battery makers could pack more EMD into a battery if its price fell (in order to cut costs of other materials). The available evidence suggests that the scope for doing so is limited. ***. ***.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported EMD depends upon such factors as relative prices, quality (e.g., qualification of grade standards, reliability of supply, defect rates, etc.), and (to a somewhat lesser degree) conditions of sale (e.g., lead times between order and delivery dates, payment terms, product and technical services, etc.). Also, because of the length of time required for qualification, the prevalence of annual contracting, and the benefits of maintaining long-term buyer/seller relationships, the substitutability between new and current suppliers increases with time. Based on these latter three factors, staff believes that there is a relatively small degree of substitutability between different sources of product (whether domestic versus subject, domestic versus nonsubject, or subject versus nonsubject) in a time horizon of less than about one year. It also believes that the degree of substitutability rises quickly at horizons past one year and is quite large over 3-4 year horizons. In the medium-to-long term, staff estimates the elasticity of substitution to lie in a range between 4 to 6 between U.S. product and the major nonsubject imports.⁸⁷ The estimation and interpretation of the elasticity of substitution between subject imports and other products is problematic in this case because of the lack of significant subject import quantities. This difficulty biases the use of the methods typically used by the Commission to numerically simulate the likely impact of the potential removal of the antidumping duty orders. However, staff believes that absent the antidumping duty orders, the elasticity of substitution between subject imports and products of both the U.S. and nonsubject countries would be in the same range as that between U.S. and nonsubject product, 4 to 6. However, at current quantities,

⁸⁷ This is somewhat higher than the elasticity estimates given in the prehearing report.

staff believes that the elasticity of substitution between subject imports and EMD from other sources is above 20.

Factors Affecting Purchasing Decisions

When asked to list the most important factors considered when choosing an EMD supplier, the responses of the four major domestic EMD purchasers were all quite similar. They all said that quality (including ongoing technological capability in improving EMD performance, for most purchasers) and price were very important. Three purchasers said that long-term supply commitments are also important.⁸⁸ *** long-term commitment/pre-arranged contracts as the most important factor, followed by quality and price. *** both ranked quality first, and price second. *** no order of preference between these factors. In response to a second question, each responding manufacturer listed product availability, product consistency, product reliability, product quality, product qualification, and low price as very important factors in their purchasing decisions.⁸⁹ Alone among purchasers, *** rated a supplier's technical support and service as only somewhat important. In large part, the purchasers indicated that the factors considered important in choosing suppliers do not vary by the country of the supplier.

Comparisons of products across countries in this industry with only a small number of suppliers (and a few more potential suppliers) are essentially comparisons of products across producing firms. The only exceptions to this are the United States with two major suppliers and Japan with two major suppliers.⁹⁰ Comparisons of Japanese and Greek product with that of other countries are somewhat more difficult to draw because of the lack of a subject-country presence in the U.S. market since the antidumping duty orders were imposed. For U.S. product, U.S. purchasers have indicated that in some areas there are ***. This suggests that a generic comparison between the products produced in the United States and those produced elsewhere could be misleading.

In the questionnaire sent to U.S. purchasers, the purchasers were asked to compare the products produced in different countries in a number of different areas including availability, delivery terms, delivery time, discounting, minimum quantity requirements, packaging, product consistency, product quality, product range, supply reliability, technical support and service, transportation network, and U.S. transportation costs. Purchasers were also asked to rank the quality of the EMD they use by supplier. The comparisons that follow draw upon the responses to these questions. One commonality across the country comparisons is that Chinese product is judged to be available at lower prices than product from any other country, but also to be deficient in many of the other considerations, especially in terms of product quality and consistency, supply reliability, transportation networks, and technical support/service. The comparisons discussed below supplement the qualification list in table II-4 to form a more complete picture of the perceptions of U.S. EMD purchasers with regard to the available supplies of EMD.

⁸⁸ ***

⁸⁹ *** did not respond to this question.

⁹⁰ While China is a third exception, with apparently about 6-7 EMD producers, none of its product has yet to become sufficiently competitive in the U.S. market to warrant distinguishing between firms in this discussion.

Comparisons of Domestic Products and Subject Imports

Only *** compares U.S.-produced EMD to that produced in Greece and Japan generally.⁹¹ Out of all the comparisons, the only difference indicated between U.S. product and subject product is that U.S. *** is superior to that produced in both Japan and Greece. It should be noted that ***. *** ranks the quality of *** EMD as just above that of *** product and *** product.⁹² All three of these products are classified by ***.⁹³ In other questionnaire responses and in conversations with staff, ***.

Comparisons of Domestic Products and Nonsubject Imports

*** and *** both compare U.S. product to product sold by Delta, but express *** perceptions. *** reports that U.S. products are superior to both Australian and South African products in terms of ***. It reports ***. *** reports that Australian and South African product is superior in terms of ***. The United States is judged to have an advantage ***. The most obvious explanation for the *** and *** assessments is that ***.

*** and *** compare U.S. product to Irish product. Generally, both purchasers seem to slightly prefer the *** product, with the *** product given the edge only in terms of ***. *** rates Irish product *** to U.S. product in terms of ***, while *** Irish ***. When asked to rank the EMD from their suppliers, *** put *** ahead of ***, with *** last. *** did not explicitly rank EMD quality from their supplying firms but did indicate that *** product is used in the smaller battery sizes (usually an indication of quality), while *** product is used in the larger sizes. While *** is ***, *** has purchased from *** during the period of investigation.

Comparisons of Subject Imports and Nonsubject Imports

Only *** directly compares subject and nonsubject imports. With respect to EMD from both Greece and Japan, the nonsubject imports compared are from South Africa. In the comparisons, South African *** is rated as *** to that of Greece and *** to that of Japan. Its *** is rated as *** than the Japanese ***. South African products were rated *** to Greek and Japanese products in terms of ***. For all other comparisons, the subject imports were rated as comparable to the South African imports.

Comparisons of Subject Products from the Subject Countries

*** to compare Greek and Japanese imported EMD. Its response indicates that the two products are comparable in all areas but two. Greek EMD is reported to be *** than Japanese, while Japanese EMD is rated *** in terms of ***. In its quality rankings, *** places *** EMD slightly ahead of the *** product.

91 ***

92 ***

93 ***

Comparisons of Nonsubject Products from the Nonsubject Countries

*** no distinctions between the Australian and South African products sold by Delta. It rates Australian- and South African-produced EMD ahead of EMD from Ireland with respect to ***, but behind Ireland in terms of ***.

PART III: CONDITION OF THE U.S. INDUSTRY

Information in this section is based on the questionnaire responses of 3 firms that accounted for all U.S. production of EMD in 1998.

U.S. PRODUCERS' CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers' average production capacity increased by *** percent from 1997 to 1998 and production declined by *** percent (table III-1). Average production capacity increased by *** percent and production increased by *** percent from January-September 1998 to the same period of 1999. ***.¹

Table III-1

EMD: U.S. producers' capacity, production, and capacity utilization, 1997-98, January-September 1998, and January-September 1999

Item	1997	1998	January-September 1998	January-September 1999
Capacity (<i>short tons</i>)	***	***	***	***
Production (<i>short tons</i>)	***	***	***	***
Capacity utilization (<i>percent</i>)	100.3	91.3	90.4	100.8

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

All three U.S. producers reported additions to capacity since April 17, 1989 (the date the antidumping duty orders became effective). ***. There is no toll production among members of the domestic industry and there is no U.S. production of EMD in foreign trade zones.

U.S. PRODUCERS' DOMESTIC SHIPMENTS, INTERNAL SHIPMENTS, AND EXPORT SHIPMENTS

As shown in table III-2, the volume of U.S. producers' U.S. shipments increased by 11.5 percent from 1997 to 1998 while the value increased by 9.5 percent. The volume of U.S. shipments grew by 4.8 percent from January-September 1998 to January-September 1999 while the value increased by 4.5 percent. The unit value dropped by 1.8 percent from 1997 to 1998 and declined by 0.3 percent during the interim periods.

Internal shipments of EMD represented *** percent of total shipments by volume and *** percent of total shipments by value in 1998. Eveready's internal consumption accounts for all of the U.S. producers' internal shipments.²

Export shipments decreased by *** percent by volume and decreased by *** percent by value from 1997 to 1998. From January-September 1998 to January-September 1999, export shipments declined by *** percent by volume and dropped by *** percent by value. These shipments accounted

¹ ***. Petitioner's posthearing brief, question responses, p. 41. Because of ***, the reported capacity data for 1998 may not be comparable with those for 1997 or interim 1999.

² Eveready internally consumes all of the EMD it produces. This EMD is used for the manufacture of AAAA, C, D, F, and N size batteries.

for *** percent of the total shipment volume and *** percent of the total shipment value in 1998. Export shipments were to ***.

Table III-2

EMD: U.S. producers' shipments, 1997-98, January-September 1998, and January-September 1999

Item	1997	1998	January-September 1998	January-September 1999
Quantity (short tons)				
Commercial shipments	***	***	***	***
Internal shipments	***	***	***	***
U.S. shipments	56,354	62,813	44,425	46,561
Export shipments	***	***	***	***
Total	***	***	***	***
Value (\$1,000)				
Commercial shipments	***	***	***	***
Internal shipments	***	***	***	***
U.S. shipments	73,444	80,390	56,921	59,462
Export shipments	***	***	***	***
Total	***	***	***	***
Unit value (per short ton)				
Commercial shipments	***	***	***	***
Internal shipments	***	***	***	***
U.S. shipments	\$1,303	\$1,279	\$1,281	\$1,277
Export shipments	***	***	***	***
Total	***	***	***	***

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

U.S. PRODUCERS' INVENTORIES

U.S. producers' inventories fell by 43.9 percent from 1997 to 1998, as shown in table III-3, and the ratio of inventories to total shipments decreased by *** percentage points. The quantity of inventories declined by 26.3 percent from January-September 1998 to January-September 1999 while the ratio of inventories to total shipments decreased by *** percentage points for the same period.

Table III-3

EMD: U.S. producers' end-of-period inventories, 1997-98, January-September 1998, and January-September 1999

Item	1997	1998	January-September 1998	January-September 1999
EOP inventories (<i>short tons</i>)	13,874	7,779	11,320	8,347
Ratio to production (<i>percent</i>)	***	***	***	***
Ratio to U.S. shipments (<i>percent</i>)	24.6	12.4	19.1	13.4
Ratio to total shipments (<i>percent</i>)	***	***	***	***

Note: January-September ratios are annualized.

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

***³ ***⁴

U.S. PRODUCERS' IMPORTS AND PURCHASES

Two U.S. producers, ***, reported imports and one U.S. producer, ***, reported purchases during the period of review. In 1998, *** imported a total of *** short tons of EMD from *** combined (an amount equal to *** percent of its total production for 1998). *** provided the following explanations for its imports from ***⁵ ***⁶ ***⁷ ***.

One U.S. producer, ***, reported purchasing EMD since April 1989. ***⁸ ***⁹ ***¹⁰. The following tabulation shows ***.

* * * * *

U.S. PRODUCERS' EMPLOYMENT, WAGES, AND PRODUCTIVITY

From 1997 to 1998, the average number of production and related workers (PRWs) increased by 7.0 percent while the hours worked increased by 5.1 percent, as shown in table III-4. PRWs remained virtually the same and the number of hours worked increased slightly from January-September 1998 to January-September 1999. Total wages paid rose by 4.2 percent and 4.3 percent, respectively, from 1997 to 1998 and from January-September 1998 to the same period in 1999, while hourly wages remained relatively constant over the period of review. Productivity dropped by *** percent from 1997 to 1998,

³ Petitioners' posthearing brief, question responses, p. 42.

⁴ Ibid.

⁵ *** importer questionnaire, response to question II-6, p. 5.

⁶ *** importer questionnaire, response to question II-6, p. 5.

⁷ ***.

⁸ *** purchaser questionnaire response, p. 5.

⁹ Ibid., p. 8.

¹⁰ Ibid.

but rose by *** percent from January-September 1998 to the same period of 1999, while unit labor costs increased by *** percent from 1997 to 1998 and declined by *** percent during the interim periods.

Table III-4

EMD: Average number of production and related workers, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 1997-98, January-September 1998, and January-September 1999

Item	1997	1998	January-September 1998	January-September 1999
Production and related workers	280	299	298	299
Hours worked (1,000)	645	678	503	515
Wages paid (\$1,000)	13,690	14,266	10,616	11,075
Hourly wages	\$21.23	\$21.04	\$21.12	\$21.50
Productivity (short tons per hour)	***	***	***	***
Unit labor costs (per short ton)	\$***	\$***	\$***	\$***

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

FINANCIAL CONDITION OF THE U.S. INDUSTRY

Three producers (Chemetals, Eveready, and Kerr-McGee), accounting for all U.S. production of EMD during the review period, provided financial data on their EMD operations.¹¹

Chemetals, a French-owned company, produces the subject product at its New Johnsonville, TN plant. Eveready, a wholly-owned subsidiary of Ralston Purina (a public company), produces EMD at its Marietta, OH plant, and Kerr-McGee Chemical (a subsidiary of Kerr-McGee, a public company), produces EMD at its Henderson, NV plant.

Ralston Purina discussed its Eveready battery business in its 1999 10-K report. It said that it intends to spin-off (create a separate entity for) its battery business during 2000.¹² It also stated that:

“There has been a shift within primary battery products from carbon zinc batteries to alkaline batteries. As such, the Company has recorded provisions related to restructuring its world-wide battery production capacity and certain administrative functions in each of the last three years. Alkaline batteries are now the dominant primary battery in all world areas with the exception of Asia and Africa. The Company continues to review its battery production capacity and its business structure in light of pervasive global trends, including the evolution of technology.”^{13 14 15}

¹¹ Eveready captively consumes all of its EMD production in the production of batteries, and thus its transfer values do not reflect actual market prices. Its per-unit costs are presented with the other producers in this section of the report. Its submitted financial data are presented in app. D. ***.

¹² Ralston Purina 10-K for the fiscal year ending September 30, 1999, p. 3.
Internet: <http://www/sec.gov/archives/edgar>.

¹³ Ibid, p. 57. Since 1997 the company has closed 3 battery plants, terminated employees, and written down

(continued...)

EMD

The aggregate results of operations are presented in table III-5. Because Eveready has only captive production, the results of operations data only includes Chemetals and Kerr-McGee. Aggregate volume and net sales increased from 1997 to 1998 and between interim 1998 and interim 1999. ***.

Table III-5
Results of operations of U.S. producers in the production of EMD, fiscal years 1997-98, January-September 1998, and January-September 1999

* * * * *

The results of operations, by firm, are presented in table III-6. ***.¹⁶ ***.¹⁷ ***. As shown in table III-7, the totals of the unit values per ton for raw materials and labor in interim 1999 ***:
***.¹⁸ ***.¹⁹ ***.²⁰ The unit costs for all three producers (including Eveready) are presented in table III-7. ***.

Table III-6
Results of operations of U.S. producers, by firm, in the production of EMD, fiscal years 1997-98, January-September 1998, and January-September 1999

* * * * *

Table III-7
Cost of goods sold (per ton) of U.S. producers, by firm, in the production of EMD, fiscal years 1997-98, January-September 1998, and January-September 1999

* * * * *

A variance analysis showing the effects of prices and volume on the producers' net trade sales of EMD, and of costs and volume on their total expenses, is shown in table III-8. ***.

¹³ (...continued)
some of its battery assets.

¹⁴ The company sold its OEM rechargeable battery business in 1999. Ibid, p. 61.

¹⁵ ***.

¹⁶ In the original investigation, ***.

¹⁷ Telephone conversation with ***.

¹⁸ Posthearing brief of Gardner, Carton & Douglas, pp. 40-41. ***. Response to a question by staff attorney during the hearing.

¹⁹ Ibid, p. 22.

²⁰ Kerr-McGee's response to staff fax, January 12, 2000.

Table III-8
Variance analysis for EMD operations, fiscal years 1997-98 and January-September 1998-99

* * * * *

**Productive Facilities, Capital Expenditures,
and Research and Development Expenses**

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development costs for EMD are shown in table III-9.

Table III-9
Value of assets, capital expenditures, and research and development expenses of U.S. producers of EMD, fiscal years 1997-98, January-September 1998, and January-September 1999

* * * * *

The producers were requested to describe the significance of the existing antidumping duty orders covering imports of EMD from Greece and Japan on their operations, and to describe the changes to their operations if the orders were revoked. The responses are presented in appendix E.

PART IV: U.S. IMPORTS AND THE FOREIGN INDUSTRIES

U.S. IMPORTS

Import data for EMD were compiled from the questionnaire responses of 6 importers which accounted for virtually 100 percent of imports in 1998.¹ The importers are ***,² ***,³ ***. Four of the importers are located on the East Coast and two are located in the Midwest.

During the period of review, imports from Greece and Japan accounted for less than 1 percent of total imports of EMD on the basis of both quantity and value, as shown in table IV-1. There were no imports from Greece in 1997, *** imports from Greece in 1998, and the quantity, value, and unit value of imports from Greece remained constant during the interim periods. Imports from Japan dropped by *** percent on the basis of quantity and fell by *** percent on the basis of value from 1997 to 1998. From January-September 1998 to January-September 1999, the quantity of imports from Japan decreased by *** percent and the value of imports declined by *** percent. Unit values for imports from Japan remained relatively constant over the period of review.

Table IV-1

EMD: U.S. imports, by source, 1997-98, January-September 1998, and January-September 1999

* * * * *

From 1997 to 1998, the quantity of imports from nonsubject countries (South Africa, Australia, and Ireland) increased by *** percent while the value of imports rose by *** percent. The quantity and value of imports from nonsubject countries grew by *** and *** percent respectively from January-September 1998 to January-September 1999. The unit value of imports from nonsubject countries declined *** during the period of review.

The following tabulation shows 1998 imports of EMD (*in short tons*) as reported in importer questionnaires. As previously noted, imports reported by *** and imports from *** reported by *** were excluded from import totals to avoid double-counting.

* * * * *

THE INDUSTRIES IN GREECE AND JAPAN

The Commission sent questionnaires to 1 firm in Greece and 3 firms in Japan that were believed to be producers of EMD. Completed questionnaires with usable data were submitted by Tosoh Hellas (Greece), Tosoh Co. (Japan), and Mitsui Mining & Smelting Co. (Japan). The Commission did not

¹ To avoid double-counting, imports of EMD from South Africa that were reported by *** were omitted from the database. Those imports were accounted for by *** importer questionnaire. Also, imports reported by *** were omitted to avoid double-counting of the EMD imports reported in *** importer questionnaire.

² ***. These companies withdraw EMD from the bonded warehouses as needed.

³ ***.

receive a response from Japan Metals & Chemicals Co. (“JMC”) (Japan).⁴ ⁵ At the time of the original investigations, Tosoh Hellas was the only producer of EMD in Greece. There were four producers of EMD in Japan, but the two principal producers were Tosoh Co. and Mitsui.⁶ Exports from Tosoh Hellas and Tosoh Co. to the United States were equivalent to *** of each firm’s total production in 1998.⁷

Greece

Tosoh Hellas is located in Thessaloniki, Greece. It is affiliated with Tosoh Co. in Japan, which also produces EMD. ***. Tosoh Hellas has experienced expansions in production capacity from *** metric tons (*** short tons) per year in 1994 to *** metric tons (*** short tons) per year in 1998. ***. Exports of Greek EMD (***) are not subject to tariff or non-tariff barriers in any countries other than the United States; however, most-favored nation tariffs are collected on imports of EMD into Greece.

Table IV-2 presents data for Tosoh Hellas’ production of EMD in Greece.⁸ From 1997 to 1998, capacity grew by *** percent and production increased by *** percent, resulting in a rise in capacity utilization of *** percentage points. From January-September 1998 to January-September 1999, capacity remained constant while production declined by *** percent, resulting in a decrease in capacity utilization of *** percentage points. *** of production was shipped to the home market during the period of review and *** percent of the Greek exports were shipped to markets other than the United States. The principal export markets for Tosoh Hellas are ***.

Table IV-2

EMD: Data for the producer in Greece, 1997-98, January-September 1998, and January-September 1999

* * * * *

Japan

Tosoh Co. is located in Tokyo, Japan. It is the parent company of Tosoh Hyuga Corp. (Japan)⁹ and Tosoh Hellas (Greece). ***. Tosoh has experienced an expansion of production capacity from *** metric tons (*** short tons) per year in 1993 to *** metric tons (*** short tons) per year in 1998. There have been some changes designed to ***.

⁴ JMC began EMD manufacturing in 1981 and its current production quantity is approximately 18,000 metric tons (19,800 short tons) per year. (JMC web site, <http://www.jmc.co.jp>, January 6, 2000.)

⁵ Japan Metals & Chemicals Co. produces a lower quality EMD and it has never produced alkaline grade EMD. Denis F. DeCraene, Vice President of Marketing and Sales, Chemetals, hearing transcript, p. 26 and Mr. John G. Reilly, Vice President, Nathan Associates, Inc., hearing transcript, p. 188.

⁶ The other two Japanese producers at the time of the original investigations were Daiichi Carbon Co. and JMC. Neither of these companies provided data to the Commission in the original investigations.

⁷ ***.

⁸ Tosoh Hellas’ 1999 EMD production consisted of *** percent alkaline grade EMD and *** percent zinc chloride grade EMD. Tosoh’s posthearing brief, app. 1, p. 6.

⁹ In 1995, Tosoh Co. reorganized its operations and moved its EMD production into a wholly-owned subsidiary, Tosoh Hyuga Co., Ltd. Tosoh Co. and Tosoh Hyuga Co. are collectively referred to as “Tosoh.”

***.¹⁰ Exports of Tosoh's EMD (to ***) are not subject to tariff or non-tariff barriers in any countries other than the United States; however, most-favored nation tariffs are collected on imports of EMD into Japan.

Mitsui is located in Tokyo, Japan. It is affiliated with Mitsui Denman Ltd., located in Ireland. ***. Exports of Mitsui's EMD (to ***) are not subject to tariff or non-tariff barriers in any countries other than the United States.

Table IV-3 presents data for Tosoh and Mitsui combined.¹¹ Capacity rose by *** percent and production fell by *** percent from 1997 to 1998, resulting in a decrease in capacity utilization of *** percentage points.¹² From January-September 1998 to January-September 1999, capacity increased by *** percent and production increased by *** percent, resulting in a *** percentage point reduction of capacity utilization. During the period of review, approximately *** of the EMD produced in Japan was shipped to the home market while *** was exported to markets other than the United States. Principal export markets for Japanese EMD are ***. A *** amount of EMD, about *** percent of total production for each year, was internally consumed.

Table IV-3

EMD: Data for two producers in Japan, 1997-98, January-September 1998, and January-September 1999

* * * * *

PRODUCTION OF EMD IN OTHER COUNTRIES

EMD is also produced in Australia, Brazil, China, India, Ireland, Russia, South Africa, and Spain. However, production from Brazil, China, India, Russia, and Spain reportedly does not compete with the alkaline grade EMD produced by the higher-quality EMD producers in Greece, Japan, Australia, Ireland, South Africa, or the United States.^{13 14 15} Producers and estimated 1999 production capacities (*in short tons*) are: Delta Manganese (Australia) Ltd.,¹⁶ ***; SBC/Eletro Manganês and Sbel (Brazil), *** and ***, respectively; Mitsui (Ireland) ***; Delta (South Africa), ***; and Cegassa (Spain), ***.

¹⁰ ***.

¹¹ Tosoh's 1999 production of EMD consisted of *** percent of alkaline grade and *** percent of zinc chloride grade EMD. Worldwide, Tosoh expects that production of zinc chloride grade EMD *** through 2004. Tosoh's posthearing brief, app. 1, p. 6.

¹² The third producer in Japan, JMC, did not provide a questionnaire response. Counsel for Chemetals and Kerr-McGee reported that JMC's EMD capacity was *** short tons in 1999. Chemetals' and Kerr-McGee's June 22, 1999, response to the notice of institution of these investigations, exh. 3, p. 3.

¹³ Tosoh's posthearing brief, app. 1, p. 2.

¹⁴ Respondents report that the producers in Brazil, China, India, Russia, and Spain produce zinc chloride and/or ammonium grade EMD. Tosoh's posthearing brief, app. 1, p. 1, and Eveready's posthearing brief, responses to questions, p. 4.

¹⁵ ***. Petitioners' posthearing brief, addendum, p. 24.

¹⁶ This plant, built by Australian Manganese Co., Ltd., came on stream in 1990 and was purchased by Delta Electrical Industries, Inc. of South Africa in 1997, with the acquisition completed in January 1998. Chemetals' and Kerr-McGee's June 22, 1999, response to the notice of institution of these investigations, exh. 9, p. 15, and exh. 10, p. 7.

Estimated capacity in India was *** short tons in 1999, and estimated capacity in China was *** short tons in 1999.¹⁷

In Australia, HiTec Energy NL (formerly Sovereign Resources) has pilot plant operations underway to produce EMD for testing by end users. The first delivery of EMD is scheduled for April 2000.¹⁸ Full-scale EMD production is expected to commence late in calendar year 2001. HiTec Energy NL initially expects to produce 15,000 metric tons per year (estimated to be around 5-6 percent of the current world market) and will increase in two stages to 23,000 metric tons per year in the sixth year of production.¹⁹ HiTec Energy NL plans to produce a high quality grade of EMD and it intends to export 100 percent of its production to the United States and Europe.²⁰

U.S. IMPORTERS' PROJECTED IMPORTS

Importers were asked to report any EMD that was imported or expected to be imported from Greece or Japan after September 30, 1999. ***.

U.S. IMPORTERS' INVENTORIES

There were no inventories reported for imports of EMD from Greece and Japan for the periods of review (table IV-4). Inventories of EMD imported from nonsubject countries decreased by *** percent from 1997 to 1998, but grew by *** percent from January-September 1998 to January-September 1999. The ratio of inventories to U.S. shipments of imports fell by *** percentage points from 1997 to 1998 and increased by *** percentage points during the interim periods.

Table IV-4

EMD: U.S. importers' end-of-period inventories of imports, 1997-98, January-September 1998, and January-September 1999

* * * * *

¹⁷ Ibid., exh. 3, p. 3.

¹⁸ HiTec Energy NL Quarterly Report for December 31, 1999, <http://www.hitec-energy.com.au>, March 7, 2000.

¹⁹ Search engine Google's cache of <http://www.sovereign.net.au/faq> (retrieved November 12, 1999), March 6, 2000.

²⁰ Ibid.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

As discussed in Part II, raw material costs have not played a significant role in the pricing of EMD. Nonetheless, *** reports that manganese ore prices fell by *** percent during 1999, but are expected to rise *** in 2000 or 2001 if the steel industry recovers (as it projects).¹ The 1999 drop in the manganese ore price reduced the cost of producing EMD by about \$*** per pound, or about *** percent of the selling price, according to ***. *** also identifies a drop in the price of manganese ore as a result of sluggish demand from the steel industry. It attributes a ***-percent drop in the price of EMD to this decline in manganese ore prices. As does ***, it predicts a rise in the price of manganese ore in the near future with the recovery in the steel industry.

Transportation Costs to the U.S. Market

Transportation costs for EMD from Greece to the United States (excluding U.S. inland costs) are estimated to be approximately 10 percent of the total cost for EMD. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value. Using the same data, transportation costs for EMD from Japan to the United States (excluding U.S. inland costs) are estimated to be approximately 2 percent of the total cost for EMD.² The same transportation costs for EMD from Australia, Ireland, and South Africa to the United States are estimated at 4 percent, 10 percent, and 6 percent, respectively, of the total cost for EMD. Transportation costs for EMD from Greece, Japan, Australia, Ireland, and South Africa to the United States (excluding U.S. inland costs), weighted by volume, are estimated to average approximately 6 percent of the total cost for EMD.

U.S. Inland Transportation Costs

In the Commission's questionnaire, Chemetals reports that the transportation costs for its EMD average about *** percent of the total delivered cost. Its customers, ***, report transportation cost percentages for their EMD of *** percent, respectively. Kerr-McGee's transportation costs range between *** and *** percent of its total delivered cost, according to its own estimates. (Kerr-McGee's production facility is located in Nevada, while most of the battery production facilities are in the southeastern United States. The Chemetals plant is located in New Johnsonville, TN.) *** reports ***-percent transportation costs for Kerr-McGee's EMD, while *** percent. For imported EMD, *** reports inland transportation costs of *** percent for EMD from each of the Delta facilities. Inland transportation costs to *** are *** percent for both Mitsui Denman and Delta South Africa. Eveready's

¹ The manganese ore prices are c.i.f. Gulf Coast ports. This information was provided to staff by *** on January 18, 2000.

² The respondents dispute this figure as being too low. The petitioners appear to agree that this figure is too low. While no precise figures are proposed that would permit an alternative calculation, it is suggested by the respondents that Japanese transportation costs are comparable or higher to Greek transportation costs. See Eveready's prehearing brief, pp. 28-29; Tosoh's prehearing brief, p. 27; Tosoh's posthearing question responses, table 2 following p. 7; and petitioner's response to the notice of institution, p. 31.

costs of transporting its own EMD from its EMD facility to its battery-making facilities are *** percent of its total cost.

All four U.S. EMD purchasers stated in their questionnaire responses that transportation costs are *** consideration in deciding the source of their EMD supply. There is evidence, however, that transportation costs are an important secondary consideration. A range of 2 to 7 percent transportation costs implies potential differences in transportation costs of \$0.035 per pound, not an insignificant amount compared to ***. *** to lower its price in one instance during the period of review to offset the difference in transportation costs from *** compared to the transportation costs from ***.³ In a conversation with staff, *** suggested that ***'s transportation costs were the highest of any EMD source, enough so as to make it *** supplier despite ***.⁴

Exchange Rates

Quarterly data reported by the International Monetary Fund (IMF) indicate that the nominal value of the Japanese yen appreciated by 6.7 percent relative to the U.S. dollar from January 1997 to September 1999 (figure V-1). Since the initial investigation (beginning in 1986), the Japanese yen appreciated by 44.0 percent against the dollar in nominal terms, according to yearly IMF data (figure V-2).⁵ The real value of the yen appreciated by 3.3 percent over the shorter time period and by 3.0 percent over the longer period vis-a-vis the U.S. dollar (figures V-1 and V-2, respectively). The IMF data also show that the value of the Greek drachma depreciated by 16.3 percent relative to the U.S. dollar in nominal terms from January 1997 to September 1999, and by 8.2 percent in real terms over the same period (figure V-3). Between 1986 and 1999 the Greek drachma depreciated in nominal value by 53.6 percent but appreciated in real value by 16.7 percent (figure V-4).

PRICING PRACTICES

Pricing Methods

The selling price of EMD is determined by one-on-one negotiations between buyer and seller. Factors in these negotiations may include EMD production cost trends, battery demand, and available supply and demand alternatives. Both buyers and sellers attempt to obtain, and provide transacting firms with, a sense of the going market price for EMD each year. Competitor prices are not revealed, however. Price negotiations almost invariably are conducted for contract sales, most often for the period of one year. Chemetals reports that *** of its sales are contract sales and Kerr-McGee reports that *** of its sales are by contract. *** reported some exceptions to the typical case during the period of investigation. Its purchases of *** EMD between 1997 and the middle of 1999 were governed by ***. *** states that in the exceptional cases in which a contract covers more than one year, quantity and price are still often subject to annual negotiations. Some of Rayovac's purchases from *** were purchase orders or contracts of ***. Purchasers will buy on the spot market occasionally when purchase quantities are small, when they cannot arrange contracts to satisfy their anticipated needs, or when they face previously unanticipated needs for EMD during the middle of the year. ***. The petitioners, while acknowledging that spot market purchases are not unprecedented, suggest that there is no presumption in a

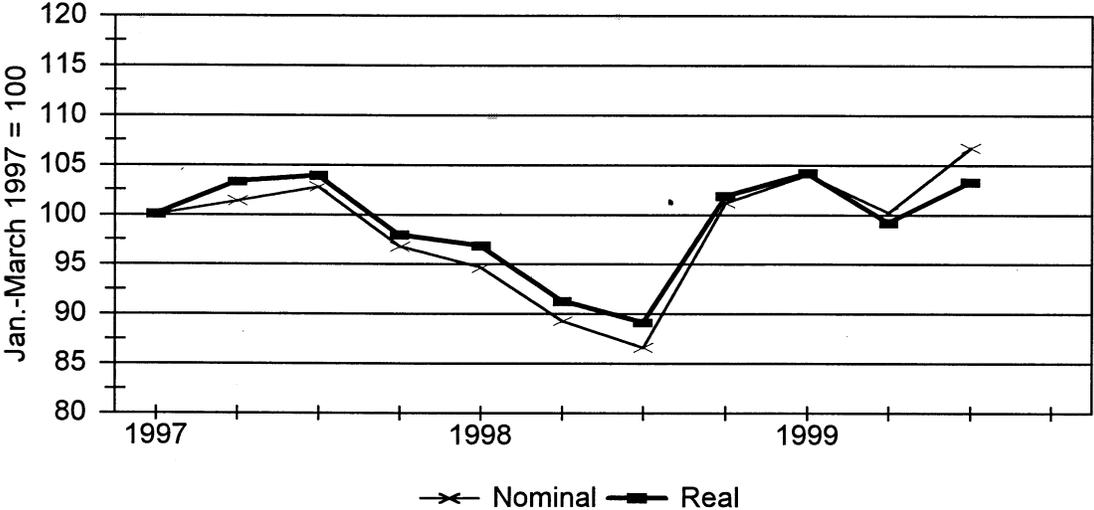
³ ***.

⁴ Staff conversation with *** on December 20, 1999. This conclusion is not confirmed by the transportation costs reported in response to Commission questionnaires.

⁵ 1999 exchange rates were approximated by averaging the first three reported quarterly rates for that year.

Figure V-1

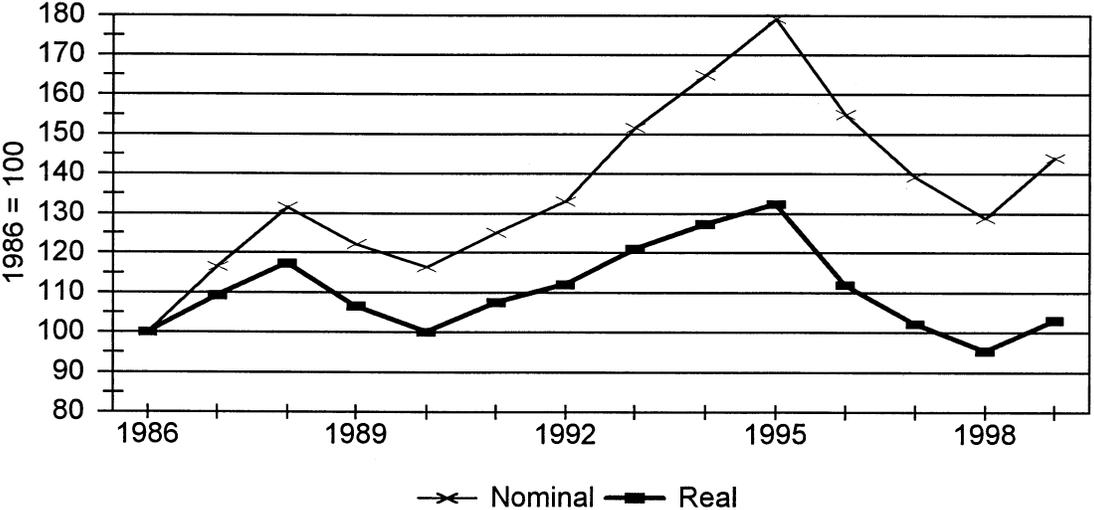
Exchange rates: Indices of the nominal and real exchange rates of the Japanese yen relative to the U.S. dollar, by quarters, January 1997-September 1999



Source: International Monetary Fund, *International Financial Statistics*, December 1999.

Figure V-2

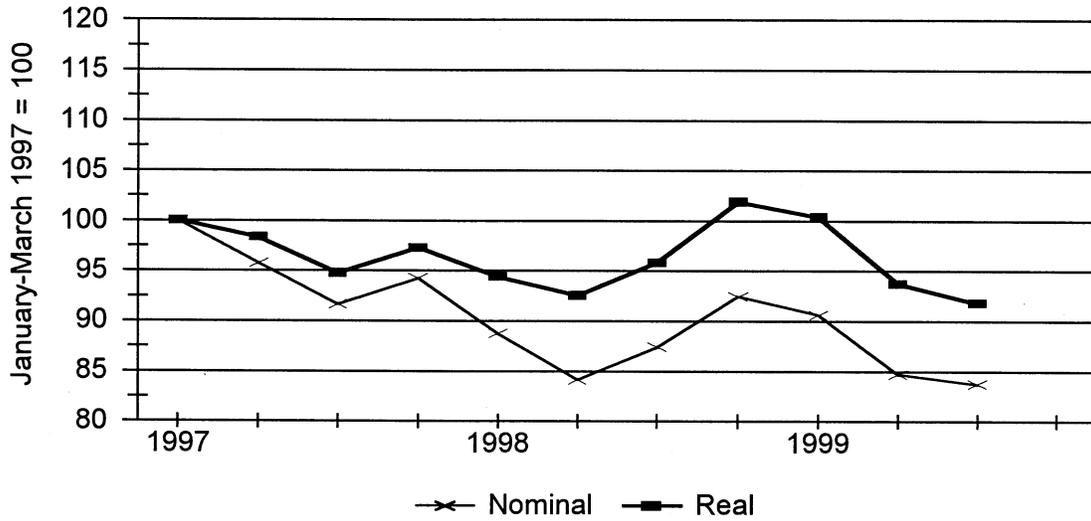
Exchange rates: Indices of the nominal and real exchange rates of the Japanese yen relative to the U.S. dollar, by years, 1986-99



Source: International Monetary Fund, *International Financial Statistics*, December 1999.

Figure V-3

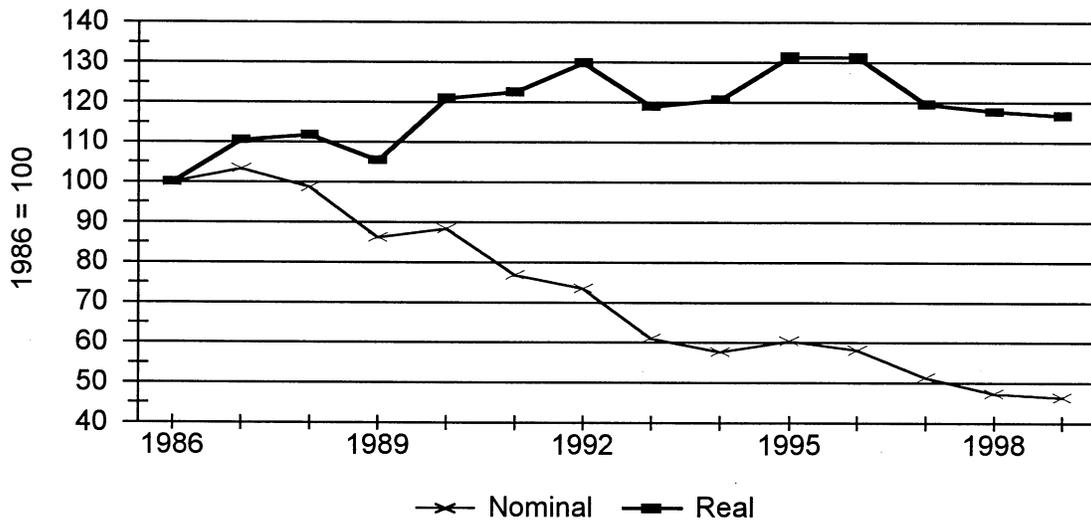
Exchange rates: Indices of the nominal and real exchange rates of the Greek drachma relative to the U.S. dollar, by quarters, January 1997-September 1999



Source: International Monetary Fund, *International Financial Statistics*, December 1999.

Figure V-4

Exchange rates: Indices of the nominal and real exchange rates of the Greek drachma relative to the U.S. dollar, by years, 1986-99



Source: International Monetary Fund, *International Financial Statistics*, December 1999.

predominantly contract market that significant quantities of spot supplies will be available for purchasers.⁶

Sales Terms and Discounts

Discounts are given periodically in the EMD market, though there is typically no set pattern for discounting. Discounts may be made in exchange for an increase in volume, for example, or on quantities beyond a certain level. These are always part of the individual buyer/seller negotiations.

EMD contracts usually include most favored provider/purchaser type provisions in which parties are protected from their competitors obtaining a better deal than they negotiated. Contracts also typically include a meet-or-release provision. Negotiations for EMD usually include negotiations for both quantity and price. The nature of the quantity agreements vary, however.⁷ ***. *** indicate that there are no "take or pay" provisions in any contracts. If a purchaser cannot take in the specified minimum quantity, despite its best efforts, the seller retains the excess product.

Price quotation terms vary by transaction, but typically are f.o.b. plant for domestic product and delivered for imports. Some examples of these are described in appendix F.

PRICE DATA

The Commission requested U.S. producers of alkaline grade EMD, as well as importers of Greek and Japanese alkaline grade EMD, to provide quarterly data for the total quantity and value of alkaline grade EMD that was shipped to unrelated customers in the U.S. market. Data were requested for the period January 1997 to September 1999, f.o.b. U.S. producing establishment for producers and U.S. point of shipment for importers. Data on the total quantity and value of alkaline grade EMD purchased by U.S. customers during this period, by supplier, were also requested from EMD purchasers. Additionally, information on price negotiations for contracts of one year or longer was requested from both EMD sellers and buyers. With one major exception and certain minor ones, the negotiated contracts cover all of the reported sales and purchases.⁸

The pricing data supplied by U.S. EMD producers and those provided by U.S. purchasers are quite consistent with one another, and with the contract negotiation data provided by both parties. Of all the data sources, the data reported by EMD purchasers are the most informative in the sense that they contain information about prices and quantities for all significant EMD market participants.^{9 10} As their use allows the incorporation of data regarding EMD from nonsubject country sources into the pricing discussion that follows, the purchaser data are used except where noted.

All 4 major EMD purchasers - Duracell, Eveready, Rayovac, and Mutec - provided usable pricing data for purchases of alkaline grade EMD. These firms account for over 99 percent of the apparent consumption of alkaline grade EMD in the United States. Pricing data reported by these firms

⁶ Petitioners' posthearing brief, pp. 14-16.

⁷ The description of the nature of contract quantity agreements comes from staff conversations with the producers and purchasers to which the description refers.

⁸ ***.

⁹ The questionnaire item requesting price and quantity information from U.S. purchasers instructed the firms to include data on purchases from only their top three sources. Only for *** is there an indication that any battery producer had more than three suppliers. In ***'s case, its purchases of ***.

¹⁰ The data obtained from EMD purchasers, however, do not fully distinguish between imports from the Australian Delta facility and the South African Delta facility. The discussion, tables, and figures that follow treat EMD from the two Delta sources as one.

account for approximately 99.7 percent of these U.S. purchasers' apparent consumption levels. Except where noted, the pricing data presented exclude Eveready's internal transfers of its own EMD production to its battery-making facilities, as these transfers are of a fundamentally different nature than the commercial transactions in many important respects.

The pricing data are presented in tables V-1 through V-4 and figures V-5 through V-13. The first table and the first figure establish the similarity between the data reported by U.S. EMD producers and the data reported by U.S. purchasers of EMD.¹¹ The pricing data reported by the commercial U.S. producers (Kerr-McGee and Chemetals) are presented in table V-1 and figure V-5, along with the data on purchases of U.S.-produced EMD reported by U.S. purchasers. Comparing these two sets of data in table V-1, it is seen that the overall quantities reported by the two parties are nearly identical, differing only by 0.94 percent between January 1997 and September 1999. However, the quantities reported in each quarter by the two parties are much less similar. Within a given quarter, the quantities reported by producers differ by up to 16 percent from the quantities reported by purchasers. Part of the reason for this seems to be the differences in shipping and receiving dates. For instance, *** reports that its sales to ***, whereas *** reports buying a substantial amount of *** product in the ***.

Table V-1

Alkaline grade EMD: Weighted-average f.o.b. plant and delivered prices and quantities of domestically produced alkaline grade EMD, by quarter, January 1997-September 1999

* * * * *

Table V-2

Alkaline grade EMD: Weighted-average f.o.b. plant/U.S. point of shipment prices and quantities of domestically produced and nonsubject imported alkaline grade EMD and margins of underselling/(overselling), by quarter, January 1997-September 1999

* * * * *

Table V-3

Alkaline grade EMD: Weighted-average f.o.b. plant/U.S. point of shipment prices and quantities of alkaline grade EMD, by producer, by quarter, January 1997-September 1999

* * * * *

Table V-4

Alkaline grade EMD: Weighted-average f.o.b. plant/U.S. point of shipment prices and quantities of alkaline grade EMD, by purchaser, by quarter, January 1997-September 1999

* * * * *

¹¹ The data reported on the (minimal) imports of EMD from Greece and Japan are not described in the tables and figures but are discussed briefly in the body of the report.

Figure V-5
Weighted-average f.o.b plant and delivered prices (*per pound*) of alkaline grade EMD reported by U.S. producers and purchasers, by quarters, January 1997-September 1999

* * * * *

Figure V-6
Real and nominal f.o.b. U.S. EMD producer prices (*per pound*), 1986-99

* * * * *

Figure V-7
Average delivered prices (*per pound*) of alkaline grade EMD, by supplier and by quarters, January 1997-September 1999

* * * * *

Figure V-8
Average f.o.b. prices (*per pound*) of alkaline grade EMD, by purchaser and by quarters, January 1997-September 1999

* * * * *

Figure V-9
Average f.o.b plant/U.S. point of shipment prices (*per pound*) for alkaline grade EMD, bilateral transactions, 1997-99

* * * * *

Figure V-10
Producer shares of the U.S. commercial and noncommercial EMD market, January 1997-September 1999

* * * * *

Figure V-11
Purchaser shares of the U.S. commercial and noncommercial EMD market, January 1997-September 1999

* * * * *

Figure V-12
Producer shares of sales to EMD purchasers, January 1997-September 1999

* * * * *

Figure V-13

Buyer shares of purchases from EMD producers, January 1997-September 1999

* * * * *

Table V-1 and figure V-5 also show the average f.o.b. price reported by producers and that reported by purchasers. The price reported by the purchasers is minimally, but invariably, higher than that reported by the producers, by roughly one-half of 1 cent. Contract data, not shown here, exhibit a greater degree of price agreement between the two parties, but do not take into account the varying product purchase/sales mix from quarter to quarter. The prices shown are nearly constant, centered between \$*** to \$*** per pound, with a *** drop from 1997 to 1998, and an increase of *** magnitude in 1999. The computed delivered price is also shown and averages about *** cents per pound higher than the f.o.b. price. This price is computed from the reported f.o.b. prices and the various supplier-to-purchaser transportation cost percentages reported by purchasers.

Prices received by domestic producers over a longer period are shown in figure V-6, both in nominal and real terms. The average nominal price for domestic commercial sales of EMD in 1986 (the beginning of the period of investigation for the original antidumping investigation) was over \$*** per pound.¹² It fell to under \$*** per pound in 1988. Prices rose to over \$*** per pound in 1990 and 1991. Since that time, the average nominal price has hovered between \$*** and \$*** per pound, with prices in the *** end of this range in the most recent years. The pattern exhibited by real prices is similar to that of nominal prices, but at least three features are noteworthy. First, there has been no increase, on average, in the producer price index since 1995, so that the relationship between nominal and real prices has not changed since then. Real prices in 1999 were *** than 1995 real prices (and *** than 1997 real prices). Second, by 1997, the real price of EMD received by U.S. producers was *** per pound higher (in 1986 dollars) than in 1988. Finally, over the current period of review, the real price of EMD received by domestic producers has increased by about \$*** per pound.

Table V-2 uses the purchasers' reported data to compare domestic volumes and pricing to that of imports from the major foreign (nonsubject) EMD producers. The picture of price *** established in table V-1 is apparent here as well. Nonsubject imports average *** to *** cents per pound *** than domestic EMD, with the margin *** over the 11 quarters of data. The quantity numbers are much less stable. Domestic relative share of the total ranges between *** and *** percent. The highest domestic relative share occurred during the first quarter of 1997 and the lowest occurred in the third quarter of 1999. This fits in with the general drop in the share of U.S. EMD purchases accounted for by domestic product. The data do not indicate a drop in the absolute volume of purchases of domestically produced EMD, but rather an increase in the purchases of foreign nonsubject product.

Tables V-3 and V-4 present price and quantity data by firm, for producers and purchasers, respectively. Table V-3 shows that Kerr-McGee and Chemetals *** between 1997 and 1999. Delta's prices were *** at about *** per pound *** than U.S. firms' prices. Mitsui Denman's prices were about *** cents per pound *** those of the U.S. EMD producers throughout 1997 and 1998. In 1999, the Mitsui Denman prices ***. Data not included in the tabulations underlying table V-3 suggest that ***. ***. Figure V-7 merges the data in table V-3 with the information on transportation costs to compute an average delivered EMD price from each major supplier. Whereas the *** in f.o.b. terms, the *** product is *** from the customer's point of view.

Table V-3 also shows a *** increase in the purchases of *** EMD between 1997 and 1999, but much *** increases for *** and ***. Purchases of *** product in the last quarter of 1999 were *** those in the first quarter of 1997. Purchases of *** product *** as well, though at a *** rate and from a base

¹² Response of Chemetals and Kerr-McGee to Notice of Institution of Sunset Review, exh. 4.

***. Most of the *** in purchases of *** EMD occurred in ***, when *** began to purchase from *** in *** quantities. The producers' shares of commercial and noncommercial EMD purchases are also shown in figure V-10.

Table V-4 and figures V-8 and V-11 present similar information on U.S. EMD purchasers. The price data in the table shows that *** paid approximately *** per pound for EMD than ***. *** paid ***, especially during 1997 and 1998. These f.o.b. prices paid by each purchaser are shown in figure V-8.

While the pricing data for purchasers in table V-4 and figure V-8 account only for commercial sales of EMD, the quantity figures in the table and the market shares in figure V-11 include Eveready's internal EMD production. In absolute terms, *** firms have increased their use of EMD. The relative market shares of the purchasers are shown in figure V-11. While excluding Eveready's use of its own EMD would lower the Eveready relative (purchasing) share by about *** percent, it does not change the *** of relative shares between 1997 and 1999 that can be seen in figure V-11 (despite some ***).

The remaining figures provide more detail on the buyer/seller relationships in the EMD market. Yearly bilateral f.o.b. prices (prices charged by individual sellers to individual buyers) are shown in figure V-9. The bilateral prices are consistent with the more aggregated values displayed in other tables and figures. In particular, *** can be seen to pay a *** price for EMD to *** than ***. Additionally, with only rare exceptions, prices charged by *** are higher than those charged by ***.

Figures V-12 and V-13 show the individual market shares within the EMD market. Among the trends apparent in figure V-12 is that the share of ***'s EMD in ***'s purchases has increased substantially, from *** percent in the first quarter of 1997 to *** percent in the final quarter of 1999. Also, *** in the latter quarters. (***). A similar situation has occurred with ***, which ***. The converse views and relative shares are presented in figure V-13.

PRICE NEGOTIATION INFORMATION

The Commission's producer, purchaser, and importer questionnaire asked these parties to provide details of their long-term price negotiations. The importer questionnaires asked only for information related to negotiations for EMD imported from Greece and Japan. As the quantities of product purchased from these countries was very small and generally not obtained under long-term contracts, no importer information was obtained. Contract negotiation information obtained from producers and purchasers, including their descriptions of negotiating sequences and processes, are provided in appendix F.

APPENDIX A

***FEDERAL REGISTER* NOTICES AND
THE COMMISSION'S STATEMENT ON ADEQUACY**

**INTERNATIONAL TRADE
COMMISSION**

[Investigations Nos. 731-TA-406 and 408
(Review)]

**Electrolytic Manganese Dioxide From
Greece and Japan**

AGENCY: United States International
Trade Commission.

ACTION: Institution of five-year reviews
concerning the antidumping duty orders
on electrolytic manganese dioxide from
Greece and Japan.

SUMMARY: The Commission hereby gives
notice that it has instituted reviews
pursuant to section 751(c) of the Tariff
Act of 1930 (19 U.S.C. 1675(c)) (the Act)
to determine whether revocation of the
antidumping duty orders on electrolytic
manganese dioxide from Greece and
Japan would be likely to lead to
continuation or recurrence of material
injury. Pursuant to section 751(c)(2) of
the Act, interested parties are requested
to respond to this notice by submitting
the information specified below to the
Commission;¹ to be assured of
consideration, the deadline for
responses is June 22, 1999. Comments
on the adequacy of responses may be
filed with the Commission by July 16,
1999.

For further information concerning
the conduct of these reviews and rules
of general application, consult the
Commission's rules of practice and
procedure, part 201, subparts A through

¹ No response to this request for information is
required if a currently valid Office of Management
and Budget (OMB) number is not displayed; the
OMB number is 3117-0016/USITC No. 99-5-009,
expiration date June 30, 1999. Public reporting
burden for the request is estimated to average 7
hours per response. Please send comments
regarding the accuracy of this burden estimate to
the Office of Investigations, U.S. International Trade
Commission, 500 E Street, SW, Washington, DC
20436.

E (19 CFR part 201), and part 207,
subparts A, D, E, and F (19 CFR part
207). Recent amendments to the Rules
of Practice and Procedure pertinent to
five-year reviews, including the text of
subpart F of part 207, are published at
63 FR 30599, June 5, 1998, and may be
downloaded from the Commission's
World Wide Web site at [http://
www.usitc.gov/rules.htm](http://www.usitc.gov/rules.htm).

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193) or Vera
Libeau (202-205-3176), 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.
General information concerning the
Commission may also be obtained by
accessing its internet server ([http://
www.usitc.gov](http://www.usitc.gov)).

SUPPLEMENTARY INFORMATION:**Background.**

On April 17, 1989, the Department of
Commerce issued antidumping duty
orders on imports of electrolytic
manganese dioxide from Greece and
Japan (54 FR 15243). The Commission is
conducting reviews to determine
whether revocation of the orders would
be likely to lead to continuation or
recurrence of material injury to the
domestic industry within a reasonably
foreseeable time. It will assess the
adequacy of interested party responses
to this notice of institution to determine
whether to conduct full reviews or
expedited reviews. The Commission's
determinations in any expedited
reviews will be based on the facts
available, which may include
information provided in response to this
notice.

Definitions

The following definitions apply to
these reviews:

(1) Subject Merchandise is the class or
kind of merchandise that is within the
scope of the five-year reviews, as
defined by the Department of
Commerce.

(2) The Subject Countries in these
reviews are Greece and Japan.

(3) The Domestic Like Product is the
domestically produced product or
products which are like, or in the
absence of like, most similar in
characteristics and uses with, the

Subject Merchandise. In its original determinations, the Commission defined a single Domestic Like Product: electrolytic manganese dioxide.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single Domestic Industry: producers of electrolytic manganese dioxide.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is April 17, 1989.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

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

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these

reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification

inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the

Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1988.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for

the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-11008 Filed 4-30-99; 8:45 am]

BILLING CODE 7020-02-P

207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: George Deyman (202-205-3197), 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. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On August 5, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (64 FR 23675, Mar. 3, 1999) was adequate with respect to both reviews, and that the respondent interested party group response was adequate with respect to Greece¹ but inadequate with respect to Japan. The Commission also found that other circumstances warranted conducting a full review with respect to Japan.² A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: August 18, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-22074 Filed 8-24-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-406 and 408
(Review)]

Electrolytic Manganese Dioxide from Greece and Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews 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, D, E, and F (19 CFR part

¹ Chairman Bragg and Commissioners Crawford and Hillman dissenting.

² Chairman Bragg and Commissioners Crawford and Hillman dissenting.

**INTERNATIONAL TRADE
COMMISSION**

[Investigations Nos. 731-TA-406 and 408
(Reviews)]

**Electrolytic Manganese Dioxide From
Greece and Japan**

AGENCY: United States International
Trade Commission.

ACTION: Scheduling of full five-year
reviews concerning the antidumping
duty orders on electrolytic manganese
dioxide from Greece and Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews 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, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: September 28, 1999.

FOR FURTHER INFORMATION CONTACT: Pamela Luskin (202-205-3189), 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. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:**Background.**

On August 5, 1999, the Commission determined that responses to its notices of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 46407, August 25, 1999). A record of the

Commissioners' votes and the Commission's statement on adequacy are available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List.

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews 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, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notices of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to these reviews.

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

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notices of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report.

The prehearing staff report in these reviews will be placed in the nonpublic record on February 10, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these reviews beginning at 9:30 a.m. on March 2, 2000, 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 February 24, 2000. 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 February 28, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camerano* later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is February 22, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 13, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before March 13, 2000. On April 12, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 17, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (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.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 29, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-26043 Filed 10-5-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-806]

**Final Results of Expedited Sunset
Review: Electrolytic Manganese
Dioxide From Japan**

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

ACTION: Notice of final results of expedited sunset review: Electrolytic manganese dioxide from Japan.

SUMMARY: On May 3, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on electrolytic manganese dioxide from Japan (64 FR 23596) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3207 or (202) 482-1560, respectively.

EFFECTIVE DATE: December 3, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders* 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to this antidumping duty order is electrolytic manganese dioxide ("EMD"). EMD is manganese dioxide (MnO₂) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip, or plate, and two grades, alkaline and zinc chloride. EMD in all three

forms and both grades is included in the scope of the order.

There has been one scope clarification with regard to EMD from Japan. On January 6, 1992, the Department ruled that high-grade chemical manganese dioxide (CMD-U) is within the scope of the order.¹

This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2820.10.0000. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

The Department, in its final determination of sales at less than fair value ("LTFV"), published two company-specific weighted-average dumping margins as well as an "all others" rate (54 FR 8778, March 2, 1989). The antidumping duty order on EMD from Japan was published in the *Federal Register* on April 17, 1989 (54 FR 15244). Since that time, the Department has conducted three administrative reviews.² This sunset review covers imports from all known Japanese producers/exporters. To date, the Department has issued no duty-absorption findings in this case.

Background

On May 3, 1999, the Department initiated a sunset review of the antidumping duty order on EMD from Japan (64 FR 23596), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of Chemetals, Inc. ("Chemetals"), and Kerr-McGee Chemical LLC ("KMC") (collectively, "domestic interested parties") on May 18, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Chemetals and KMC on June 2, 1999, within the 30-day deadline specified in the *Sunset Regulations* in section 351.218(d)(3)(i). Both Chemetals and Kerr-McGee claimed interested-party status pursuant to section 771(9)(C) of the Act as U.S. producers of a like product. In addition, both Chemetals and KMC stated that they participated in the original investigation and every segment of the proceeding since the original

investigation. We did not receive any response from respondent interested parties to this proceeding. As a result, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On September 7, 1999, the Department determined that the sunset review of the antidumping duty order on EMD from Japan is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than November 29, 1999, in accordance with section 751(c)(5)(B) of the Act.³

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt.1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy*

¹ See *Electrolytic Manganese Dioxide from Japan; Final Scope Ruling*, 57 FR 395 (January 6, 1992).

² See *Final Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide From Japan*, 58 FR 28551 (May 14, 1993), and *Final Results of Antidumping Duty Administrative Reviews: Electrolytic Manganese Dioxide From Japan*, 59 FR 53136 (October 21, 1994).

³ See *Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 48579 (September 7, 1999).

Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3 of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations* this constitutes a waiver of participation.

In their substantive response, the domestic interested parties argue that revocation of the order on EMD from Japan would be likely to lead to continuation or recurrence of dumping due to the fact that dumping margins above *de minimis* have been calculated after the issuance of the order and import volumes declined sharply following the imposition of the order.

The domestic interested parties assert that, in administrative reviews conducted after the imposition of the order, the Department calculated margins well above *de minimis* for Tosoh Corporation (see June 2, 1999, substantive response of the domestic interested parties at 7). They also argue that imports of EMD from Japan fell from approximately 19,000 short tons in 1988, the year before the order was imposed, to approximately 143 short tons in 1989, the year in which the order was imposed. Moreover, the domestic interested parties assert that, since the order was imposed, imports of Japanese EMD have remained at relatively negligible levels (less than one percent of their pre-order volume (see *id.* at 8)). Therefore, they conclude that the sharp decline in import volumes accompanied by the continued existence of dumping margins above *de*

minimis after the imposition of the order provides a strong indication that dumping would continue or recur if the order is revoked.

The Department agrees, based on an examination of the final results of administrative reviews, that dumping margins above *de minimis* levels have continued throughout the life of the order. As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

With respect to import levels, the Department agrees that imports of the subject merchandise decreased in 1990, the year following the imposition of the order. However, since that time, imports of EMD from Japan have fluctuated greatly, showing no overall trend.⁴

As explained above, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a *de minimis* level remains in effect for exports of the subject merchandise for at least one known Japanese producer/exporter. Given that dumping has continued over the life of the order and respondent interested parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the order is revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that normally it will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, normally the Department will provide a margin based on the “all others” rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. (See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.) To date,

⁴The Department bases this determination on information contained in U.S. IM146 Reports, U.S. Department of Commerce statistics, U.S. Department of Treasury statistics, and information obtained from the U.S. International Trade Commission.

the Department has not made any duty-absorption findings in this case.

In their substantive response, the domestic interested parties suggest that the Department adhere to its normal policy and select the margins from the original investigation for Mitsui Mining and Smelting (“Mitsui”) and the “all others” rate. However, they recommend that the Department forward to the Commission the more recently calculated margin from the second administrative review of 77.43 percent for Tosoh Corporation (“Tosoh”). The domestic interested parties point out that Tosoh participated in the first administrative review (1990–91) and received a rate of 20.43 percent, lower than the 71.91 percent margin determined for Tosoh in the original LTFV investigation and antidumping duty order. They argue that Tosoh seemed content with its margin of 20.43 percent and, thus, sought to “lock in” that rate and thereby avoid a possibly higher margin by refusing to participate in the second (1991–92) and third (1992–93) administrative reviews (see June 2, 1999, substantive response of the domestic interested parties at 10). Therefore, the domestic interested parties argue that the Department should conclude that the dumping margin of 77.43 percent determined in the 1991–92 and 1992–93 reviews most accurately reflects Tosoh’s likely dumping margin should revocation occur.

We agree with the domestic interested parties that we should forward to the Commission the rates from the original investigation for Mitsui and “all others.” As for the margin for Tosoh, the Department disagrees with the domestic interested parties. As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department may provide to the Commission a more recently calculated margin for a particular company where dumping margins increased after the issuance of the order or if that particular company increased dumping to maintain or increase market share. Such circumstances are not present in this case. As noted above, domestic interested parties argued that import volumes actually declined over the life of the order and the domestic interested parties did not provide any argument or evidence that Tosoh was attempting to increase or maintain market share.

Therefore, consistent with the *Sunset Policy Bulletin* the Department determines that the margins calculated in the original investigation are probative of the behavior of Japanese producers/exporters of EMD if the order were revoked as they are the only rates

which reflect the behavior of these producers and exporters without the discipline of the order in place. As such, the Department will report to the Commission the company-specific and "all others" rates from the original investigation as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Mitsui Mining and Smelting ("Mitsui")	77.73
Tosoh Corporation ("Tosoh") ...	71.91
All Others	73.30

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 29, 1999.

Richard W. Moreland,
Acting Assistant Secretary for Import Administration.

[FR Doc. 99-31429 Filed 12-2-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-484-801]

Final Results of Expedited Sunset Review: Electrolytic Manganese Dioxide From Greece

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

ACTION: Notice of final results of Expedited Sunset Review: Electrolytic manganese dioxide From Greece.

SUMMARY: On May 3, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on electrolytic manganese dioxide from

Greece (64 FR 23596) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-3207 or (202) 482-1560, respectively.

EFFECTIVE DATE: December 3, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping duty order is electrolytic manganese dioxide ("EMD"). EMD is manganese dioxide (MnO₂) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip, or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the order.

This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2820.10.0000. The HTS item number is provided for convenience and customs

purposes. The written description remains dispositive.

History of the Order

The Department, in its final determination of sales at less than fair value ("LTFV"), published one company-specific weighted-average dumping margin as well as an "all others" rate (54 FR 8771, March 2, 1989). The antidumping duty order on EMD from Greece was published in the **Federal Register** on April 17, 1989 (54 FR 15243). On November 16, 1999, after the deadline for submitting comments in this sunset review, the Department published the final results of the only administrative review conducted of this order (64 FR 62169). This sunset review covers imports from all known Greek producers/exporters. To date, the Department has issued no duty absorption findings in this case.

Background

On May 3, 1999, the Department initiated a sunset review of the antidumping duty order on EMD from Greece (64 FR 23596), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of Chemetals, Inc. ("Chemetals") and Kerr-McGee Chemical LLC ("KMC") on May 18, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We also received a notice of intent to participate from The Eveready Battery Company ("Eveready") on May 14, 1999. We received complete substantive responses from Chemetals, KMC, and Eveready on June 2, 1999, within the 30-day deadline specified in the *Sunset Regulations* in section 351.218(d)(3)(i). Both Chemetals and KMC claimed interested-party status pursuant to section 771(9)(C) of the Act as U.S. producers of a like product. Eveready claimed interested-party status pursuant to sections 771(9)(A) and 771(9)(C) as a U.S. importer of the subject merchandise and a producer of a domestic like product. In addition, Chemetals, KMC, and Eveready each stated that they had participated in the original investigation and every segment of the proceeding since the original investigation. On June 7, 1999, we received rebuttal comments from Chemetals, KMC, and Eveready. In its rebuttal comments, Eveready asserted that the joint response of Chemetals and KMC was inadequate and incomplete and should be disregarded along with any rebuttal comments filed by Chemetals and KMC. On June 9, 1999, Eveready requested that the 500-page rebuttal comments of Chemetals and KMC, which proffered

lengthy factual and legal analysis never before seen by Eveready or the Department, be stricken from the record. On June 11, 1999, Chemetals and KMC responded that Eveready's June 9 submission should be stricken from the record but, if maintained, it nevertheless did not provide a basis for striking the rebuttal comments.

On June 22, 1999, we notified the International Trade Commission ("the Commission") that we did not receive an adequate response (in this case, no response) to our notice of initiation from any respondent interested parties to this proceeding (see Letter to Mr. Lynn Featherstone from Jeffrey A. May, June 22, 1999). As a result, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On September 7, 1999, the Department determined that the sunset review of the antidumping duty order on EMD from Greece is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than November 29, 1999, in accordance with section 751(c)(5)(B) of the Act.¹

Adequacy

As noted above, on June 22, 1999, we notified the Commission that we determined to conduct an expedited review of this order on the basis that we had not received an adequate response (in this case, no response) to our notice of initiation from any respondent interested party. On July 12, 1999, within the deadline provided in section 351.309(e)(ii) of the *Sunset Regulations*, Eveready argued that the Department erred when it stated that it had received "no response" from respondent interested parties because Eveready filed its substantive response not only as a producer in the United States of a domestic like product (under section 771(9)(C) of the Act) but also as a United States importer of the subject merchandise (under section 771(9)(A) of the Act). Further, Eveready argued that its response should be considered adequate despite the fact that it did not provide the additional information required by subparagraphs (A) through (E) of section 351.218(d)(3)(iii) of the

Sunset Regulations to be submitted by respondent interested parties. Eveready supports this argument by asserting that these subparagraphs are not applicable to Eveready because they are intended for foreign exporters of the subject merchandise (the second type of respondent interested party under the regulations). However, Eveready adds that it nonetheless provided information in its response identifying the dumping margin in effect, as well as the volume and value of Greek exports of EMD by quarter and year from 1983 to the present. Eveready also states that although it is not a foreign exporter of the subject merchandise, the statistics it provided in its response shows that it purchased all of the exports of EMD from Greece in 1998 and 1999. Further, Eveready asserts that it purchased 94 percent of the total imports of EMD from Greece for the past five years. On this basis, Eveready argues that the Department should reverse its erroneous decision and conduct a full sunset review.

We also received comments from Chemetals and KMC on July 12, 1999, concerning the adequacy of response to the notice of initiation and the appropriateness of an expedited review. Chemetals and KMC supported the Department's determination to conduct an expedited review and referred to their rebuttal comments for specific argument. Specifically, Chemetals and KMC asserted that the Department correctly determined to conduct an expedited review on the basis that: (1) Tosoh Hellas A.I.C. ("Tosoh Greece"), the sole manufacturer in Greece of the subject merchandise, did not respond; (2) Eveready's response did not provide the information required of a U.S. importer; (3) Eveready, despite its assertion, is not a U.S. importer of the subject merchandise; (4) the Department did not receive complete substantive responses from respondent interested parties accounting on average for more than 50 percent of the total exports of the subject merchandise; and (5) Eveready's response was non-responsive to the information requested in the Department's notice of initiation.

On September 14, 1999, Eveready again requested that the Department reconsider its determination to conduct an expedited review. On September 23, 1999, Chemetals and KMC responded, arguing that the time for filing comments had expired and, therefore, Eveready's submission should be rejected and no action taken.

We agree with Chemetals and KMC that we should conduct an expedited review in this case. Section 351.218(e)(1)(ii)(C) of the *Sunset*

Regulations provides that normally the Department will conduct an expedited review in accordance with section 751(c)(3)(B) of the Act where the Secretary determines that respondent interested parties provided inadequate response to a notice of initiation. Although Eveready argues that certain information requirements are not applicable to Eveready as an importer, the Department's regulations make no such exception. Furthermore, although it is possible that the Department may have considered Eveready's information requirement arguments in determining whether Eveready's substantive response was complete, the fact is that Eveready never attempted to explain this position in its substantive response. By failing to provide the required information in subparagraphs (A) through (E) of section 351.218(d)(3)(iii), or even to explain its rationale for not providing such information, Eveready's response cannot be considered complete and, hence, cannot be considered adequate.

In their rebuttal comments, as well as in subsequent submissions, Chemetals and KMC argue that Eveready does not qualify as an interested party under section 771(9)(A) of the Act because it is, in fact, not an importer of subject merchandise. Rather, they contend, Eveready is a U.S. purchaser of the imported material. In support of this argument, Chemetals and KMC refer to the July 7, 1998, questionnaire response of Tosoh Greece in the 1997/98 administrative review in which Tosoh Greece stated that Mitsubishi International Corporation is its importer and reseller of EMD in the U.S. market. In its comments on the Department's adequacy determination, Eveready does not dispute the comments of Chemetals and KMC regarding that Eveready is not a U.S. importer.

As we noted in *Final Results of Full Sunset Review: Sugar from the European Community*,^{64 FR 49464} (September 13, 1999), adequacy determinations are made for the purpose of determining whether there is sufficient participation to warrant a full review. In this case, because we received an incomplete response from the one party claiming respondent interested-party status and we did not receive a response from any other party claiming respondent interested-party status, we continue to determine that we received inadequate respondent interested-party participation to warrant a full review.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted

¹ See *Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 48579 (September 7, 1999).

this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt.1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3 of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the

sunset review. In the instant review, the Department did not receive a complete substantive response from respondent interested parties. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, Chemetals and KMC argue that revocation of the order on EMD from Greece would be likely to lead to continuation or recurrence of dumping due to the fact that dumping margins above *de minimis* remain in place and import volumes declined sharply following the imposition of the order. Specifically, Chemetals and KMC assert that imports of EMD from Greece fell from approximately 97 short tons in 1988, the year before the order was imposed, to zero short tons in 1990, the first full year following the imposition of the order. Moreover, Chemetals and KMC assert that no EMD was imported from Greece from 1990 to 1996. Finally, they argue that, since 1997, imports of Greek EMD have remained at relatively negligible levels (see June 2, 1999, substantive response of Chemetals and KMC at 9). Therefore, Chemetals and KMC conclude that the sharp decline in import volumes following the imposition of the order accompanied by the continued existence of dumping margins above *de minimis* provides a strong indication that dumping would continue or recur if the order is revoked.

In its substantive response, Eveready argues that the likely effect of revocation of the order would be that dumping would not continue or recur (see June 2, 1999, substantive response of Eveready at 48). Eveready bases its argument on several factors. For one, Eveready argues that market forces have changed dramatically since the order was imposed in 1989 (see *id.* at 5). Furthermore, Eveready maintains that the technological revolution, including the growth of portable electronics, has caused the demand for batteries, and, hence, EMD, to grow quickly (see *id.* at 5-6). Eveready argues further that battery manufacturers have had to adjust to these changes and provide this rapidly evolving market with smaller portable power sources that can handle the rigorous demands of the new high-drain technologies. Eveready maintains that the batteries used to power these portable devices are the AA and AAA-size alkaline batteries which last longer and, as a result, require a higher-quality EMD, referred to as "high quality" or "high-drain" EMD, in their production (see *id.* at 6). Eveready maintains that EMD produced by Chemetals does not qualify, despite nearly two years' effort. Further, with respect to foreign

manufacturers, Eveready states that the only firms that it has either qualified or appear to be able to be qualified are those in Japan, Greece, and Ireland (see *id.* at 7).

Moreover, Eveready argues that the Greek producers of EMD need not dump their product in the U.S. market because they already have market share and already sell all the EMD they produce (see *id.* at 7-8). While Eveready agrees that imports of EMD from Greece declined after the issuance of the order and by 1990 ceased altogether, Eveready asserts that the decline in import volumes was due to the fact that Greece did not produce any EMD that was usable in the U.S. market, not due to the imposition of the order (see *id.* at 24-25).

In their rebuttal, Chemetals and KMC assert that nowhere in Eveready's submission is specific evidence or good cause shown as to why the revocation of the order would not result in continuation or recurrence of dumping. They argue that there have not been significant changed circumstances since the time of the original investigation. Chemetals and KMC maintain that the growth in AA and AAA battery use does not constitute changed circumstances because this trend has not led to a corresponding increase in the number of AA and AAA batteries produced (see June 7, 1999, rebuttal of Chemetals and KMC, Appendix B, at 13). In sum, Chemetals and KMC rebut Eveready's statement that revocation of the order would not lead to continuation or recurrence of dumping while also maintaining that changed circumstances have not been demonstrated in this case.

In its rebuttal, Eveready argues that the fact that antidumping duties were paid on shipments of the subject merchandise from Greece does not lead automatically to the conclusion that dumping continued at levels above *de minimis* following the imposition of the order (see June 7, 1999, rebuttal of Eveready at 6). Moreover, Eveready rebuts the arguments of Chemetals and KMC that the cessation of imports of EMD from Greece following the imposition of the order provides a strong indication that dumping would continue or recur were the order revoked (see *id.* at 7). Furthermore, Eveready claims that import volumes provided by Chemetals and KMC in their substantive response are misleading because they are reported in short tons, as opposed to metric tons. In addition, Eveready maintains that the claim by Chemetals and KMC that the cessation of imports was due solely to the antidumping duty order overlooks

the changing market place and the shift in battery production (*see id.* at 7).

With respect to import levels, the Department agrees that imports of the subject merchandise ceased in 1990, the year following the imposition of the order. Imports remained at zero until 1997. Since that time, imports of EMD from Greece have been negligible.²

The final results of the 1997-98 administrative review were not issued until November 16, 1999;³ however, the results were consistent with the preliminary results on which interested parties based their arguments. While the final results reflected a zero dumping margin for Tosoh Greece, the analysis was based on minimal exports, as acknowledged by all interested parties. Therefore, the cessation of dumping occurred at the expense of exports of the subject merchandise from Greece.

Based on this analysis, the Department finds that the sharp decline in imports is highly probative of the likelihood of continuation or recurrence of dumping. Given that import volumes ceased for a period of time following the imposition of the order and have since been negligible and respondent interested parties waived their right to participate in this review before the Department, the Department determines that dumping is likely to continue or recur if the order is revoked. Because we are basing our determination on the fact that import volumes sharply declined following the imposition of the order, we have not addressed Eveready's arguments regarding changed circumstances as a basis for revocation.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption

determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.) To date, the Department has not made any duty absorption findings in this case.

In their substantive response, Chemetals and KMC suggest that the Department adhere to its normal policy and select the margins from the original investigation. They therefore recommend that the Department forward the rates of 36.72 percent for Tosoh and 36.72 percent for all others from the original investigation (*see* June 2, 1999, substantive response of Chemetals and KMC at 11).

Eveready asserts that the dumping margin would disappear if the order were revoked (*see* June 2, 1999, substantive response of Eveready at 48). Eveready cites as support for its argument the preliminary results of the 1997-1998 administrative review conducted by the Department, in which the dumping margin was found to be zero for Tosoh.

In their rebuttal, Chemetals and KMC state that Eveready does not challenge the Department's normal practice of forwarding margins from the original investigation, but instead contends that a zero margin should apply since, in the currently pending administrative review for 1997-1998, the Department preliminarily determined that sales by Tosoh (Greece) were not made below fair value. However, citing to the sunset review of the order on frozen concentrated orange juice from Brazil, Chemetals and KMC point out that the Department has refused to base its margin recommendation on preliminary results of ongoing administrative reviews.⁴

Eveready, in its rebuttal, argues that Chemetals and KMC have not provided any factual evidence regarding why the margins from the original investigation should be forwarded to the Commission.

The Department agrees with Chemetals and KMC that we should forward to the Commission the rates from the original investigation for Tosoh and "all others." The Department notes that although in the 1997-1998 administrative review it calculated a weighted-average dumping margin of zero for Tosoh, this margin was based on minimal exports of the subject merchandise. As acknowledged by Chemetals, KMC, and Eveready, imports of the subject merchandise from Greece fell sharply following the imposition of the order and have not regained their pre-order levels.

Therefore, consistent with the *Sunset Policy Bulletin* the Department determines that the margins calculated in the original investigation are probative of the behavior of Greek producers/exporters of EMD if the order were revoked as it is the only rate that reflects the behavior of these producers and exporters without the discipline of the order. As such, the Department will report to the Commission the company-specific and "all others" rates from the original investigation as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Tosoh Hellas ("Tosoh")	36.72
All Others	36.72

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-31433 Filed 12-2-99; 8:45 am]

BILLING CODE 3510-DS-P

² The Department bases this determination on information contained in U.S. IM146 Reports, U.S. Department of Commerce statistics, U.S. Department of Treasury statistics, and information obtained from the U.S. International Trade Commission.

³ *See Electrolytic Manganese Dioxide from Greece; Final Results of Antidumping Duty Administrative Review*, 64 FR 62169 (November 16, 1999).

⁴ *See Final Results of Expedited Sunset Review; Frozen Concentrated Orange Juice from Brazil*, 64 FR 16901 (April 7, 1999).

EXPLANATION OF COMMISSION DETERMINATIONS ON ADEQUACY

in

Electrolytic Manganese Dioxide from Greece and Japan Invs. Nos. 731-TA-406 and 408 (Review)

On August 5, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Tariff Act Of 1930, as amended (19 U.S.C. §1675(c)(5)).¹

Regarding domestic interested parties, the Commission received a joint response containing company-specific data from two producers who support the continuation of the antidumping duty orders and a separate response from Eveready Battery Co. ("Eveready"), a U.S. producer of subject merchandise, which seeks the revocation of the antidumping duty order against Greece. The three U.S. producers account for all U.S. production of electrolytic manganese dioxide. Regarding respondent interested parties, the Eveready response also states that Eveready is the importer of all of the subject merchandise imported from Greece. Based on the information on the record, the Commission accepted Eveready's representation that it is the importer of the subject merchandise from Greece.² In the review concerning Japan, the Commission did not receive a response from any respondent interested parties.

The Commission determined that the domestic interested party group response was adequate. The Commission also determined that the respondent interested party group response for Greece was adequate because Eveready accounts for 100 percent of the subject imports. Accordingly, the Commission decided to proceed to a full review for *Electrolytic Manganese Dioxide from Greece*.^{3 4 5} Because no respondent interested party responded to the notice of institution in the review

¹ Chairman Bragg and Commissioners Crawford and Hillman dissented from the decision to conduct full reviews in these proceedings, and determined that the Commission should conduct expedited reviews.

² Commissioner Crawford does not concur in this finding.

³ Chairman Bragg determined that in the absence of any response from producers of the subject merchandise in Greece or Japan, the respondent interested party group responses for both countries were inadequate.

⁴ Commissioner Crawford determined that no respondent interested party responded to the notice of institution concerning Greece. Therefore, she concluded that the respondent interested party group response concerning Greece was inadequate.

⁵ Commissioner Hillman determined that the volume of subject merchandise imported by Eveready was very small in light of the company's U.S. production or the size of the U.S. market.

(continued...)

concerning Japan, the Commission determined that the respondent interested party group response in that review was inadequate. However, the Commission determined to conduct a full review for Japan to promote administrative efficiency in light of its decision to conduct a full review with respect to *Electrolytic Manganese Dioxide from Greece*.⁶

⁵(...continued)

Therefore, in the absence of responses from other importers or foreign producers, she finds that the respondent interested party group response is not adequate to warrant a full review.

⁶ Chairman Bragg and Commissioners Crawford and Hillman dissenting.

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: Electrolytic Manganese Dioxide from Greece and Japan
Invs. Nos.: 731-TA-406 and 408 (Review)
Date and Time: March 2, 2000 - 9:30 a.m.

Sessions were held in connection with the investigations in the Main Hearing Room, 500 E Street, SW, Washington, DC.

In Support of the Continuation of the Antidumping Orders:

Gardner, Carton & Douglas
Washington, DC
and
Squire, Sanders & Dempsey
Washington, DC
on behalf of

Kerr-McGee Chemical LLC ("KMC")
Chemetals, Inc. ("Chemetals")

James B. Worthington, Vice President and General Manager,
Electrolytic Products Division, KMC

Brian W. Clowe, Director, Sales and Marketing,
Electrolytic Products Division, KMC

Denis F. DeCraene, Vice President, Marketing and Sales, Chemetals

James C. Burrows, President and Chief Executive Officer,
Charles River Associates, Inc.

Richard D. Boltuck, Vice President, Charles River Associates, Inc.

W.N. Harrell Smith, IV, Gardner, Carton & Douglas)
William M. Ejzak, Gardner, Carton & Douglas)-OF COUNSEL
Ritchie T. Thomas, Squire, Sanders & Dempsey)

Continued on the following page.

In Support of the Revocation of the Antidumping Orders:

Weil, Gotshal & Manges, LLP
Washington, DC
on behalf of

Tosoh Hellas A.I.C.
Tosoh Corp.

John Vacadaris, Director, Tosoh Hellas A.I.C.

John G. Reilly, Vice President, Nathan Associates, Inc.

A. Paul Victor)
Gregory Husisian) --OF COUNSEL

Ablondi, Foster, Sobin & Davidow, P.C.
Washington, DC
on behalf of

Eveready Battery Co. ("Eveready")

G. Clark Hooks, Head of Purchasing

David Kilby, Technical Research Department

Gary L. Bohlke--OF COUNSEL

APPENDIX C
SUMMARY DATA

Table C-1

EMD: Summary data concerning the U.S. market, 1997-98, January-September 1998, and January-September 1999

(Quantity=short tons; value=1,000 dollars; unit values, unit labor costs, and unit expenses are per short ton; and period changes=percent, except where noted)

Item	Calendar year		January-September		Period changes	
	1997	1998	1998	1999	1997-98	Jan.-Sept. 1998- Jan.-Sept. 1999
U.S. consumption quantity:						
Amount	***	***	***	***	***	***
Producers' share ¹	***	***	***	***	***	***
Importers' share: ¹						
Greece	***	***	***	***	***	***
Japan	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total imports	***	***	***	***	***	***
U.S. consumption value:						
Amount	***	***	***	***	***	***
Producers' share ¹	***	***	***	***	***	***
Importers' share: ¹						
Greece	***	***	***	***	***	***
Japan	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total imports	***	***	***	***	***	***
U.S. shipments of imports from--						
Greece:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory	***	***	***	***	***	***
Japan:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory	***	***	***	***	***	***
Subtotal:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory	***	***	***	***	***	***
Other sources:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory	***	***	***	***	***	***

Table continued on next page.

(Quantity=short tons; value=1,000 dollars; unit values, unit labor costs, and unit expenses are per short ton; and period changes=percent, except where noted)

Item	Calendar year		January-September		Period changes	
	1997	1998	1998	1999	1997-98	Jan.-Sept. 1998- Jan.-Sept. 1999
U.S. shipments of imports from--						
All sources:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory	***	***	***	***	***	***
U.S. producers'--						
Average capacity quantity	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***
Capacity utilization ¹	100.3	91.3	90.4	100.8	-9.0	10.4
U.S. shipments:						
Quantity	56,354	62,813	44,425	46,561	11.5	4.8
Value	73,444	80,390	56,921	59,462	9.5	4.5
Unit value	\$1,303	\$1,280	\$1,281	\$1,277	-1.8	-0.3
Export shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Inventories/total shipments ¹	***	***	***	***	***	***
Production workers	280	299	298	299	7.0	0.3
Hours worked (1,000 hours)	645	678	503	515	5.1	2.5
Wages paid (1,000 dollars)	13,690	14,266	10,616	11,075	4.2	4.3
Hourly wages	\$21.23	\$21.04	\$21.12	\$21.50	-0.9	1.8
Productivity (lbs. per hour)	***	***	***	***	***	***
Unit labor costs	\$***	\$***	\$***	\$***	***	***
Net sales: ²						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
COGS ²	***	***	***	***	***	***
Gross profit or (loss) ²	***	***	***	***	***	***
SG&A expenses ²	***	***	***	***	***	***
Operating income ²	***	***	***	***	***	***
Capital expenditures ²	***	***	***	***	***	***
Unit COGS ²	***	***	***	***	***	***
Unit SG&A expenses ²	***	***	***	***	***	***
Unit operating income or (loss) ²	***	***	***	***	***	***
COGS/sales ^{1 2}	***	***	***	***	***	***
Operating income or (loss) ²	***	***	***	***	***	***

¹ Period changes are in percentage points.

² Eveready is not included because it captively consumes all of its production of EMD.

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

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX D
RESULTS OF OPERATIONS FOR EVEREADY

Table D-1
Results of operations of Eveready in the production of EMD, fiscal years 1997-98, January-September 1998, and January-September 1999

* * * * *

APPENDIX E

**U.S. PRODUCERS', U.S. IMPORTERS', U.S. PURCHASERS', AND FOREIGN
PRODUCERS' COMMENTS REGARDING THE EFFECTS OF THE ORDERS
AND THE LIKELY EFFECTS OF REVOCATION**

**U.S. PRODUCERS' COMMENTS REGARDING THE EFFECTS OF THE ORDERS AND THE
LIKELY EFFECTS OF REVOCATION**

**Anticipated Operational/Organizational Changes
if Orders Were to be Revoked (Question II-4)**

The Commission requested U.S. producers to describe any anticipated changes in the character of their operations or organization relating to the production of EMD in the future if the antidumping duty orders on EMD from Greece and Japan were to be revoked. Their responses are as follows:

* * * * *

**Significance of Existing Orders
In Terms of Trade and Related Data (Question II-14)**

The Commission requested U.S. producers to describe the significance of the existing antidumping duty orders covering imports of EMD from Greece and Japan in terms of their effect on their firms' production capacity, production, U.S. shipments, inventories, purchases, and employment. Their responses are as follows:

* * * * *

**Anticipated Changes In Trade and Related Data
if Orders Were to be Revoked (Question II-15)**

The Commission requested U.S. producers to describe any anticipated changes in their production capacity, production, U.S. shipments, inventories, purchases, or employment relating to the production of EMD in the future if the antidumping duty orders on EMD from Greece and Japan were to be revoked. Their responses are as follows:

* * * * *

**Significance of Existing Orders
in Terms of Financial Data (Question III-8)**

The Commission asked U.S. producers to describe the significance of the existing antidumping duty orders covering imports of EMD from Greece and Japan in terms of their effect on their firms' revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values. Their responses are as follows:

* * * * *

**Anticipated Changes in Financial Data
if Orders Were to be Revoked (Question III-9)**

The Commission asked U.S. producers to describe any anticipated changes in their revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, or asset values

relating to the production of EMD in the future if the antidumping duty orders on EMD from Greece and Japan were to be revoked. Their responses are as follows:

* * * * *

U.S. IMPORTERS' COMMENTS REGARDING THE EFFECTS OF THE ORDERS AND THE LIKELY EFFECTS OF REVOCATION

Anticipated Operational/Organizational Changes if Orders Were to be Revoked (Question II-4)

The Commission requested importers whether they anticipate any changes in the character of their operations or organization relating to the importation of EMD in the future if the antidumping duty orders on EMD from Greece and Japan were to be revoked. Their responses are as follows:

* * * * *

Significance of Existing Orders in Terms of Trade and Related Data (Question II-8)

The Commission requested importers to describe the significance of the existing antidumping duty orders covering imports of EMD from Greece and Japan in terms of their effect on their firms' imports, U.S. shipments of imports, and inventories. Their responses are as follows:

* * * * *

Anticipated Changes In Trade and Related Data if Orders Were to be Revoked (Question II-9)

The Commission requested importers to describe any anticipated changes in their imports, U.S. shipments of imports, or inventories of EMD in the future if the antidumping duty orders on EMD from Greece and Japan were to be revoked. Their responses are as follows:

* * * * *

U.S. PURCHASERS' COMMENTS REGARDING THE LIKELY EFFECTS OF REVOCATION

Effects of Revocation on Future Activities of the Firms and the U.S. Market as a Whole (Question III-18)

The Commission asked purchasers to comment on the likely effects of revocation of the antidumping duty order on (1) the future activities of their firms and (2) the U.S. market as a whole. Their responses are as follows:

* * * * *

**FOREIGN PRODUCERS' COMMENTS REGARDING THE EFFECTS OF THE
ORDERS AND THE LIKELY EFFECTS OF REVOCATION**

**Anticipated Changes in EMD Operations or Organization if the
Orders Were to be Revoked (Question II-3)**

The Commission requested foreign producers to describe any anticipated changes in the operations or organization of their firms relating to the production of EMD in the future if the antidumping duty orders on EMD from Greece and Japan were to be revoked. Their responses are as follows:

* * * * *

**Significance of Existing Orders
in Terms of Trade and Related Data (Question II-15)**

The Commission requested foreign producers to describe the significance of the existing antidumping duty orders covering imports of electrolytic manganese dioxide from Greece and Japan in terms of their effect on their firms' production capacity, production, home market shipments, exports to the United States and other markets, and inventories. Their responses are as follows:

* * * * *

**Anticipated Changes in Trade and Related Data
if the Orders Were to be Revoked (Question II-16)**

The Commission requested foreign producers to describe any anticipated changes in their production capacity, production, home market shipments, exports to the United States and other markets, or inventories relating to the production of electrolytic manganese dioxide in the future if the antidumping duty orders on EMD from Greece and Japan were to be revoked. Their responses are as follows:

* * * * *

APPENDIX F
PRICE NEGOTIATION INFORMATION

U.S. EMD producers were asked in their Commission questionnaires to provide a description of each of their price negotiations with individual purchasers related to possible contracts of one year or longer applying since 1997. Purchasers were also asked to provide such information as to their negotiations with producers. ***¹***. The following section will quote and/or summarize the reported price negotiation descriptions provided by the U.S. producers. Much of the notable information provided by EMD purchasers has been incorporated elsewhere in this report. Of the EMD purchasers, only Eveready's questionnaire response to the price negotiating process question will be given below.

Chemetals

Chemetals provided no information on price negotiations in individual years, but briefly summarized the general issues involved in negotiations. The Chemetals summaries regarding negotiations with its major customers are described below. Chemetals also provided very brief and generic descriptions of its negotiations with ***. These contain nothing of note and are not described here.

* * * * *

Kerr-McGee

Kerr-McGee provides much more detail than any other respondent regarding the price negotiation sequences, giving information by firm and year. These descriptions follow. First an overview of the firms competing with Kerr-McGee, sales and delivery terms, and key determinants in the acceptance of the sales offers for each of the purchasers is given. Then the Kerr-McGee descriptions of the negotiating sequence, organized by year, are quoted. ***.

* * * * *

Eveready

Eveready does not give separate descriptions of its negotiations with individual suppliers and provides no information on price negotiations in individual years. However, it did describe the general negotiating process in these terms:

* * * * *

Other purchaser negotiation comments

* * * * *

¹ ***.

