

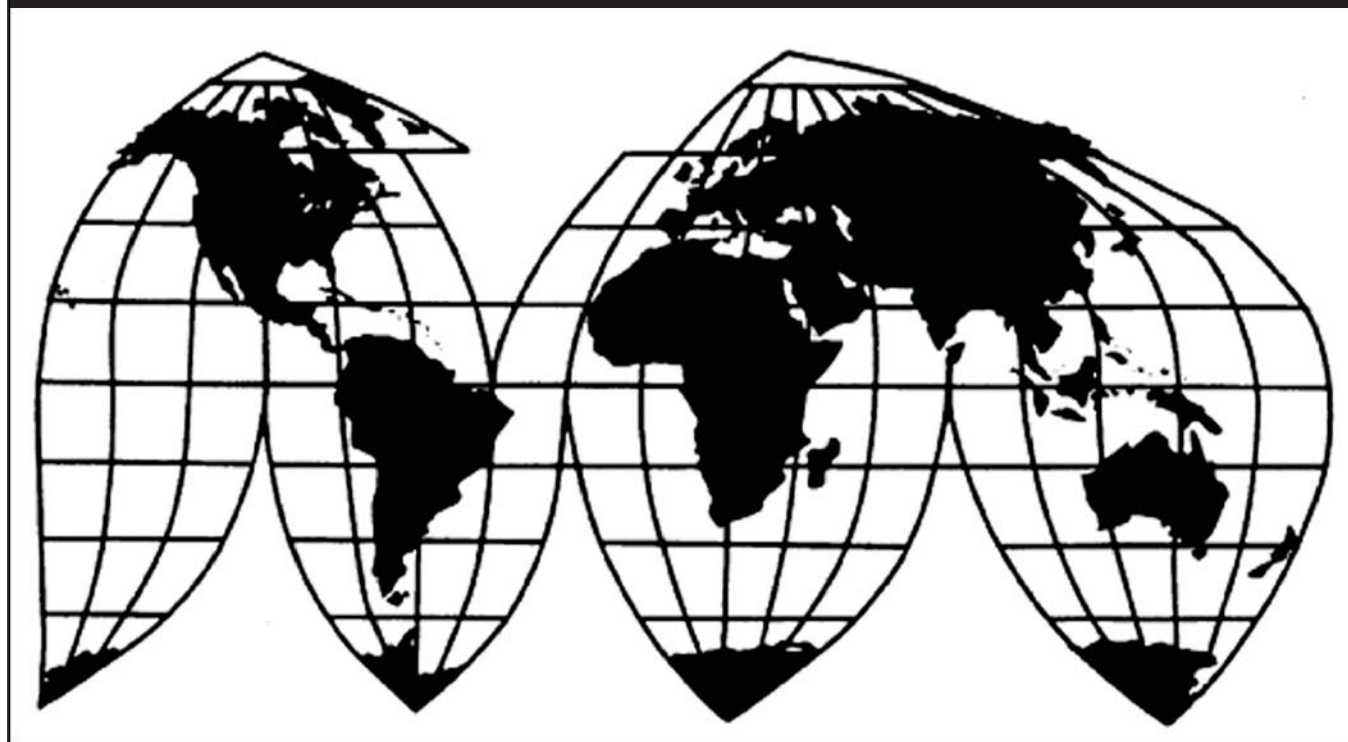
Certain Stilbenic Optical Brightening Agents from China and Taiwan

Investigation Nos. 731-TA-1186-1187 (Final)

Publication 4322

May 2012

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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
Investigation Nos. 731-TA-1186-1187 (Final)

CERTAIN STILBENIC OPTICAL BRIGHTENING AGENTS FROM CHINA AND TAIWAN

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and Taiwan of certain stilbenic optical brightening agents, provided for in subheadings 3204.20.80 and 2921.59.40 and may have been imported under subheadings 2921.59.80 and 2933.69.60 (statistical reporting numbers 2921.59.8090 and 2933.69.6050) of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective March 31, 2011, following receipt of a petition filed with the Commission and Commerce by Clariant Corp., Charlotte, NC. The final phase of the investigations was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain stilbenic optical brightening agents from China and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 25, 2011 (76 FR 72719). The hearing was held in Washington, DC, on March 15, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that an industry in the United States is materially injured by reason of imports of certain stilbenic optical brightening agents (“CSOBAs” or “stilbenic OBAs”) from China and Taiwan that the U.S. Department of Commerce (“Commerce”) has determined were sold in the United States at less than fair value.

I. BACKGROUND

The petition in these investigations was filed on March 31, 2011, by Clariant Corporation (“Clariant”), a U.S. producer of CSOBAs that accounts for *** of domestic production of CSOBAs. Clariant participated in the hearing and filed prehearing and posthearing briefs. A second U.S. producer of CSOBAs, BASF Corporation (“BASF”), also participated in at the hearing and filed a posthearing response to Commissioners’ questions.

Teh Fong Ming International Co., Ltd. and TFM North America, Inc. (collectively “TFM”), the primary Taiwan producer/exporter of subject merchandise and its U.S. importer, participated in the hearing and filed prehearing and posthearing briefs.

U.S. industry data in these investigations are based on the domestic producer questionnaire responses of three firms that accounted for 100 percent of U.S. production of CSOBAs during the period of investigation (“POI”) covered by these final phase investigations.¹

U.S. import data are based on importer questionnaire responses of eight firms that accounted for a large majority of subject imports during the POI and responses of six importers of stilbenic OBAs from nonsubject sources.²

The Commission sent purchaser questionnaires to 39 U.S. paper producing companies believed to have purchased CSOBAs during the 2009-11 period. Responses were received from 16 purchasers, with 14 reporting they had purchased CSOBAs since January 1, 2009.³

Chinese industry data are based on questionnaire responses from *** Chinese producers, accounting for an estimated *** percent of Chinese production and *** percent of total exports of subject merchandise from China to the United States in 2011. Taiwan industry data are based on the questionnaire response from TFM, which accounted for an estimated *** percent of production in Taiwan in 2011 and *** percent of total exports of subject merchandise from Taiwan to the United States in 2011.⁴

¹ Confidential Staff Report, INV-KK-038 (Mar. 5, 2012) (“CR”) at I-1 and Public Staff Report (“PR”) at I-1. All respondents to the Commission’s questionnaires were asked to report quantities and prices for CSOBAs on a 100-percent active ingredient equivalent basis. CR at V-9 n.19, PR at V-6 n.19. The amount of active ingredient in CSOBAs varied by country. Sales of U.S. imports of CSOBAs from China reportedly had a *** percent weighted average of active ingredients, sales of U.S. imports of CSOBAs from Taiwan had a *** percent weighted average, and sales of the domestic like product had a *** percent weighted average. CR at V-9, PR at V-5.

² CR/PR at IV-1. In these investigations, we do not rely on official import statistics from Commerce because they are based on basket subheadings of the Harmonized Tariff Schedule of the United States that include products other than CSOBAs. The three year period of investigation (“POI”) in the final phase of these investigations covers January 2009 to December 2011. The POI in the preliminary phase was January 2008 through December 2010. Certain Stilbenic Optical Brightening Agents from China and Taiwan, Inv. Nos. 731-TA-1186-1187 (Preliminary), USITC Pub. 4236 (May 2011) (“Preliminary Determinations”) at 6.

³ CR at II-3, PR at II-2.

⁴ CR at VII-1, VII-4; PR at VII-1-2.

II. DOMESTIC LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole 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.”⁶ In turn, the Tariff 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.”⁷

The decision regarding the appropriate domestic like product in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁰ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,¹¹ the Commission determines what domestic product is like the imported articles Commerce has identified.¹²

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., Cleo Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors, including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁹ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹⁰ Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹¹ See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

¹² Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); Torrington, 747 F. Supp. at 748-52 (affirming the Commission’s determination defining six like products in investigations in which Commerce found five classes or kinds).

B. Product Description

Commerce defined the scope of the imported merchandise under investigation as follows:

all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis [1, 3, 5-triazin-2-yl] amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.

Excluded from these investigations are all forms of 4,4'-bis [4-anilino-6-morpholino-1, 3, 5-triazin-2-yl] amino-2,2'-stilbenedisulfonic acid, $C_{40}H_{40}N_{12}O_8S_2$ ("Fluorescent Brightener 71"). These investigations cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.¹³

CSOBAs are organic chemicals used primarily for brightening paper products. Without brightening, many paper products have an aesthetically unappealing yellowish cast. When applied to paper, CSOBAs absorb ultraviolet light and emit blue light (a property also known as fluorescence), compensating for the yellowish cast and making the paper appear a brighter white.¹⁴

CSOBAs are built upon diaminostilbene disulfonic acid ("DAS"), a synthetic organic chemical. In CSOBAs, two 1,3,5-triazinyl rings are attached to the DAS structure; a derivative of aniline and an additional chemical component, typically an amine, are attached to each of the triazinyl rings. The derivative of aniline used can either be aniline itself, sulfanilic acid, or aniline disulfonic acid.¹⁵

CSOBAs are made in three main categories – "di," "tetra," and "hexa" – based on the number of sulfonate groups that the molecule contains, which is determined by the derivative of aniline used in the production process. The number of sulfonate groups on the molecule affects the solubility of the CSOBA in water and determines when the specific CSOBA is best applied in the paper making process.¹⁶

The di category contains two sulfonate groups and is produced using aniline. This category of CSOBA is usually applied to the pulp slurry before the paper web is formed. The tetra category contains four sulfonate groups and is produced using sulfanilic acid. Tetra CSOBAs are the most versatile of the CSOBAs – they can be added to the pulp slurry before the paper web is formed, in the size press, or in coating applications. The hexa category contains six sulfonate groups and is produced using aniline sulfanilic acid. Application of hexa CSOBAs tends to be limited to the surface coating operations.¹⁷

Within the United States, CSOBAs are generally shipped as aqueous solutions, with the percentage of the active ingredient typically 20 percent for di CSOBAs, 23 percent for tetra CSOBAs, and 16 percent for hexa CSOBAs. CSOBAs can be shipped in bulk or nonbulk containers. Bulk deliveries

¹³ 76 Fed. Reg. 68148, 68149 (Nov 3, 2011); 76 Fed. Reg. 68154, 68155 (Nov 3, 2011).

¹⁴ CR at I-7, PR at I-6.

¹⁵ CR at I-7, PR at I-6.

¹⁶ CR at I-8-9, PR at I-6-7.

¹⁷ CR at I-8-9, PR at I-6-7.

are made in tank truck or rail cars. Non-bulk deliveries are in drums that can hold approximately 450 lbs. of material, or intermediate bulk containers that hold approximately 2,400 lbs.¹⁸

C. Analysis

In the preliminary phase of these investigations, the Commission defined a single domestic like product corresponding to the scope, to include all forms, states, concentrations, and compositions of final stilbenic OBA products and intermediate stilbenic OBA products.¹⁹ The Commission explained that the final products shared physical characteristics and had the same general use, brightening paper products. The Commission also found that the final products were generally interchangeable; were sold in the same channels of distribution (virtually all to end users); were perceived as similar by producers and customers; had common manufacturing facilities, production processes, and production employees; and overlapped in terms of price.²⁰ Applying the semifinished products analysis, the Commission also concluded that the domestically produced intermediate products that were like those within the scope were also part of the single domestic like product.²¹

The evidence collected in the final phase of these investigations does not warrant a departure from the Commission's like product finding in the preliminary phase. Clariant supports finding one domestic like product that is coextensive with the scope of the investigations and no party has objected to that domestic like product definition. Accordingly, for the reasons stated in our determinations in the preliminary phase of these investigations, we find a single domestic like product, consisting of all forms, states, concentrations, and compositions of stilbenic OBA products co-extensive with the scope of investigation.

III. DOMESTIC INDUSTRY

A. Legal Standards

The domestic industry is defined as the domestic “producers as a whole 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.”²² 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.

¹⁸ CR at I-9, PR at I-7.

¹⁹ Preliminary Determinations at 10.

²⁰ Preliminary Determinations at 7-10.

²¹ Preliminary Determinations at 10-11. The Commission found that the intermediate products were dedicated to the production of the final CSOBA products, there was no separate market for the intermediate products, the central molecular structure for the intermediate and final products was the same, intermediates were transformed into final products by relatively straightforward chemical reactions, and there was minimal difference in the cost and value of the intermediate and final products. Id.

²² 19 U.S.C. § 1677(4)(A).

B. Analysis

In the preliminary determinations in these investigations, the Commission defined the domestic industry as “all U.S. producers of the domestic like product, namely Clariant, BASF, and 3V.”²³ The evidence collected in the final phase of these investigations does not warrant a departure from the Commission’s definition of the domestic industry in the preliminary phase.²⁴ No party has objected to that domestic industry definition. Accordingly, for the reasons stated in our determinations in the preliminary phase of these investigations, we define the domestic industry as all U.S. producers of the domestic like product, namely Clariant, BASF, and 3V.

IV. CUMULATION²⁵

A. Background

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.²⁶ In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.²⁷

²³ Preliminary Determinations at 11-15. The Commission also found that converting the powdered form of CSOBA into an aqueous solution by mixing it with water, known as “letdown,” did not constitute sufficient production-related activity to warrant treating converters as producers of CSOBAs. *Id.* at 12-23.

²⁴ There are no related party issues in the final phase of these investigations. Although *** was identified as a related party in the preliminary phase of these investigations based on its importation of subject merchandise in 2008, the Commission found that appropriate circumstance did not exist to exclude *** from the domestic industry. Preliminary Determinations at 13-15. No domestic producer imported or purchased subject merchandise during the 2009-11 POI in this final phase of the investigation. CR at III-10-11, PR at III-4.

²⁵ Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations. Based on the importer questionnaire data in the final phase of these investigations, subject imports from China accounted for 16.1 percent and subject imports from Taiwan 75.7 percent of total imports of CSOBAs in 2010. CR/PR at Table IV-2. In 2011, those percentages were 10.4 and 70.2 percent for China and Taiwan, respectively. CR/PR at Table IV-2. Because subject imports from China and Taiwan were well-above the statutory negligibility threshold, we find that subject imports are not negligible under 19 U.S.C. § 1677(24).

²⁶ 19 U.S.C. § 1677(7)(G)(i).

²⁷ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff’d*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988).

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.²⁸ Only a “reasonable overlap” of competition is required.²⁹

Applying this four factor analysis in its determinations in the preliminary phase of these investigations, the Commission found a reasonable overlap of competition between subject imports from China and Taiwan and between subject imports from each source and the domestic like product.³⁰

B. Parties’ Arguments

Clariant argues that the record shows a reasonable overlap of competition between the subject imports from China and Taiwan and between imports from each subject country and the domestic like product, and that the Commission should therefore cumulate subject imports from Taiwan and China.³¹ Clariant contends that the CSOBAs sourced from the United States, Taiwan, and China are generally commodity products that are easily substituted for each other and that all products satisfy purchasers’ quality requirements.³² Clariant and BASF each asserts that the record does not support TFM’s claims of purity differences between the domestic like product and subject imports from Taiwan, and contends that, in any event, purity level is not a factor purchasers include among their quality specifications in purchasing CSOBAs.³³ Clariant also argues that CSOBAs from Taiwan are not accompanied by greater technical support and service than are domestic CSOBAs.³⁴ Finally, Clariant argues that the other cumulation factors – geographic overlap, channels of distribution, and simultaneous presence – are satisfied and notes that no party argues otherwise.³⁵

TFM asserts that subject imports from Taiwan are not fungible with the domestic like product because the former have a higher purity level and are provided with greater technical support and service than the domestic like product.³⁶

C. Analysis

The statutory threshold for cumulation is satisfied in these investigations because the petitions concerning subject imports from China and Taiwan were filed on the same day, March 31, 2011. None of the statutory exceptions to cumulation applies. As discussed below, we find a reasonable overlap of

²⁸ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

²⁹ The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 848 (1994) (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988)), aff’d, 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

³⁰ Preliminary Determinations at 16-17.

³¹ Clariant’s Prehearing Brief at 7-11.

³² Clariant’s Prehearing Brief at 8-10; Clariant’s Posthearing Brief at 2, 8, 10, Exhibit 9, and Exhibit 11.

³³ Id., BASF’s Posthearing Brief at 2 and Attachments 1- 5.

³⁴ Clariant’s Posthearing Brief at 11.

³⁵ Clariant’s Prehearing Brief at 10-11.

³⁶ TFM’s Posthearing Brief at 7, 12-14.

competition between subject imports from Taiwan and China, and between subject imports from each subject country and the domestic like product.

Fungibility. The data collected in these investigations indicate a moderate to high degree of substitutability between CSOBAs produced domestically and those imported from China and Taiwan.³⁷ As we address further in our discussion of conditions of competition, *infra*, the domestic like product, subject imports from China, and subject imports from Taiwan all meet purchasers' quality requirements, purity per se is not generally among such requirements, and the record does not indicate any substantial product purity or technical support/service differences between subject imports and the domestic like product. We therefore find that domestically produced CSOBAs and subject imports from Taiwan and China are sufficiently fungible for cumulation purposes.

Geographic overlap. CSOBAs produced in the United States are sold nationwide.³⁸ Although imports of CSOBAs from the subject countries may enter select Customs districts, these products are then generally sold throughout the United States.³⁹

Channels of distribution. Subject imports from Taiwan and China and the domestic like product share the same distribution channels, with ***.⁴⁰

Simultaneous market presence. U.S. produced CSOBAs and subject imports – in all three categories (di, tetra, and hexa) – have been present and sold to varying degrees in the U.S. market in each of the years in the 2009-11 period.⁴¹

Conclusion. For the foregoing reasons, we cumulate subject imports from Taiwan and China for our analysis of material injury by reason of subject imports.

IV. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Legal Standards

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.⁴² In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁴³ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁴⁴ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United

³⁷ CR at II-16, PR at II-10.

³⁸ CR at IV-9, PR at IV-3.

³⁹ CR/PR at Table II-1. Imports of CSOBAs from both China and Taiwan entered the United States through Customs districts in all four regions: East, South, West, and Midwest. CSOBAs from China entered principally through Customs districts in the East and CSOBAs from Taiwan entered principally through Customs districts in the South, West, and Midwest. CR/PR at Table IV-7.

⁴⁰ CR/PR at Table II-2.

⁴¹ CR/PR at Table IV-3.

⁴² 19 U.S.C. §§ 1671d(b), 1673d(b).

⁴³ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁴⁴ 19 U.S.C. § 1677(7)(A).

States.⁴⁵ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴⁶

Although the statute requires the Commission to determine whether the domestic industry is “materially injured by reason of” unfairly traded imports,⁴⁷ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.⁴⁸ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.⁴⁹

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include non-subject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.⁵⁰ In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.⁵¹ Nor does the

⁴⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁷ 19 U.S.C. §§ 1671d(a), 1673d(a).

⁴⁸ Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), aff’d, 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

⁴⁹ The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

⁵⁰ Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

⁵¹ SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject

(continued...)

“by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as non-subject imports, which may be contributing to overall injury to an industry.⁵² It is clear that the existence of injury caused by other factors does not compel a negative determination.⁵³

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”^{54 55} Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”⁵⁶

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive non-subject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases

⁵¹ (...continued)

imports.” (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Invs. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

⁵² S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

⁵³ See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

⁵⁴ Mittal Steel, 542 F.3d at 877-78; see also id. at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination ... {and has} broad discretion with respect to its choice of methodology.”) citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

⁵⁵ Commissioner Pinkert does not join this paragraph or the following three paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of non-subject imports, albeit without reliance upon presumptions or rigid formulas. Mittal explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, non-subject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

⁵⁶ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

involving commodity products and a significant market presence of price-competitive non-subject imports.⁵⁷ The additional “replacement/benefit” test looked at whether non-subject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have “evidence in the record” to “show that the harm occurred ‘by reason of’ the LTFV imports,” and requires that the Commission not attribute injury from non-subject imports or other factors to subject imports.⁵⁸ Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive non-subject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.⁵⁹

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard.⁶⁰ Congress has delegated this factual finding to the Commission because of the agency’s institutional expertise in resolving injury issues.⁶¹

C. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is material injury by reason of subject imports.

(1) Demand Conditions

CSOBA demand is derived from demand in sectors in which it is used, with the primary use being in production of paper of various types: uncoated and coated paper, printing paper, specialty paper,

⁵⁷ Mittal Steel, 542 F.3d at 875-79.

⁵⁸ Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

⁵⁹ To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in non-subject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large non-subject import suppliers). In order to provide a more complete record for the Commission’s causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of non-subject imports.

⁶⁰ We provide in our respective discussions of volume, price effects, and impact a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

⁶¹ Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

paperboard, and tissue paper.⁶² The three largest reporting U.S. purchasers of CSOBAs in 2011 were ***.⁶³

Total apparent U.S. consumption of CSOBAs measured by quantity fluctuated over the POI, increasing from *** pounds in 2009 to *** pounds in 2010, then declined to *** pounds in 2011.⁶⁴ Overall, total apparent U.S. consumption of CSOBAs was 5.0 percent higher in 2011 compared with 2009.⁶⁵ Although market participants' perceptions of changes in U.S. demand for CSOBAs during the investigation period were somewhat mixed, most firms reported that demand had fluctuated or decreased.⁶⁶ Factors reported as tending to reduce demand included the recession, imports of finished paper products, and increased use of electronic-reading technology. Factors reported as tending to increase demand included recovery from the recession and new standards for greater paper brightness.⁶⁷

(2) Supply Conditions

As noted above, three firms accounted for all of the domestic production of CSOBAs during the investigation period – Clariant, BASF, and 3V. In 2011, Clariant, BASF, and 3V accounted for, respectively, *** percent, *** percent, and *** percent of total domestic production of CSOBAs.⁶⁸

The domestic industry's share of apparent U.S. consumption declined throughout the POI, from *** percent in 2009 to *** percent in 2010 and *** percent in 2011, for an overall decline of *** percentage points.⁶⁹ The market share of the subject imports increased from *** percent in 2009 to *** percent in 2010 and *** percent in 2011, for an overall increase of *** percentage points.⁷⁰ Nonsubject imports' share of apparent U.S. consumption increased from *** percent in 2009 to *** percent in 2010 and *** percent in 2011.⁷¹

As explained above, there are three main categories of CSOBAs: di, tetra, and hexa products. Each of these three categories is supplied by domestic producers and subject imports from China and Taiwan. Tetra category products are the predominant form of CSOBAs in the United States, but their share of the market has declined somewhat over the POI as shipments of the di and hexa category products have increased.⁷² In 2009, tetra products accounted for *** percent of U.S. producers' total U.S. commercial sales by quantity, with di category products accounting for *** percent and hexa category

⁶² CR at II-11-12, PR at II-6-7.

⁶³ CR at II-3, PR at II-2.

⁶⁴ CR/PR at Table IV-9.

⁶⁵ CR/PR at Table C-1. Apparent U.S. consumption measured by value, after increasing from \$*** in 2009 to \$*** in 2010, declined *** in 2011 to \$***. CR/PR at Table IV-9. The difference between the decline from 2010 to 2011 measured by quantity (a decline of *** percent) and that decline measured by value (a decline of *** percent) appears to be attributable to the *** in 2011 than in 2010. See, e.g., CR/PR at Tables C-1, IV-6. We note also that the *** share of the 2009 volume accounted for by ***, compared with that share accounted for in 2010, also explains the difference between the 2009-10 increase in apparent U.S. consumption as measured by quantity (an increase of *** percent) and the increase measured by value (an increase of *** percent). CR/PR at Tables IV-6, C-1.

⁶⁶ CR/PR at Table II-3.

⁶⁷ CR at II-12, II-15; PR at II-7, II-9. See also Clariant's Prehearing Brief at 28, BASF Response to Commissioners' Questions at 1-2.

⁶⁸ CR/PR at Table III-1. ***. CR/PR at III-2.

⁶⁹ CR/PR at Tables IV-9, C-1.

⁷⁰ CR/PR at Tables IV-9, C-1.

⁷¹ CR/PR at Tables IV-9, C-1.

⁷² See, e.g., CR/PR at Tables III-4, IV-3, IV-4, IV-5, IV-6, VII-6.

products accounting for *** percent. By 2011, tetra shipments accounted for *** percent of U.S. producers' U.S. commercial sales by quantity, with di category products accounting for *** percent and hexa category products accounting for *** percent.⁷³ Cumulated subject imports showed a similar trend, with tetra products accounting for *** percent of subject foreign producers' export shipments to the U.S. in 2009, di-category products accounting for *** percent, and hexa category products accounting for *** percent.⁷⁴ In 2011, tetra products had declined to *** percent of subject foreign producers' exports to the U.S., with di category shipments accounting for *** percent and hexa category products accounting for *** percent.⁷⁵

The parties acknowledge that in mid-year 2008, prior to the period of investigation in the final phase of these investigations, there was a disruption in supply of DAS, a key input in production of CSOBAs. This reportedly occurred because China, the main global supplier of DAS, ordered the stoppage of certain manufacturing activities, including DAS production, during the run-up to the 2008 Olympic games in Beijing.⁷⁶ The resultant DAS shortage in 2008 was fairly quickly resolved and domestic producers were able to meet their existing contractual supply commitments notwithstanding that shortage.⁷⁷ Some smaller, non-traditional customers, however, that did not have existing contracts or other established relationships with domestic producers, may have faced longer lead times.⁷⁸ Given that CSOBAs are most often sold on a contract basis, only a small portion of the market might have been affected by any shortage.⁷⁹

(3) Substitutability

The degree of substitution between domestically produced and imported CSOBAs depends upon such factors as relative prices, quality, reliability of supply, and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services).⁸⁰

TFM asserts that product purity determines the overall effectiveness of CSOBAs, that CSOBAs from Taiwan have greater purity levels than the domestic like product and that customers prefer subject imports from Taiwan over U.S. produced CSOBAs because of that higher purity level. According to TFM, additives and impurities can increase the unattractive yellow hue and decrease the overall brightness of paper and cause paper brightness to fade more quickly.⁸¹

Clariant argues that, even if TFM's products have higher purity, this does not give them any significant commercial advantage.⁸² Clariant claims that the existence of impurities below 15 percent has little impact on the product's ability to achieve brightness/whiteness targets, that domestic and subject CSOBAs all meet that purity level, and that the true driver of a product's effectiveness is its concentration

⁷³ CR/PR at Table III-4.

⁷⁴ CR/PR at Table VII-6.

⁷⁵ CR/PR at Table VII-6.

⁷⁶ Clariant Prehearing Brief at 26-28.

⁷⁷ Moreover, because BASF produces its own DAS, it would not have been affected by any Chinese supply constraints in any event. Clariant's Prehearing Brief at 26-28.

⁷⁸ Hearing Transcript at 89-90.

⁷⁹ See CR at V-4, PR at V-3 ("CSOBAs are most often sold on a contract basis.")

⁸⁰ CR at II-16, II-10.

⁸¹ Hearing Transcript at 124, 129 (Nelson). We also note that TFM's arguments concern only comparisons between the domestic like product and subject imports from Taiwan and, therefore, TFM does not raise any argument that subject imports from China are not substitutable for subject imports from Taiwan.

⁸² Clariant's Posthearing Brief at 2; Hearing Transcript at 174, 175, 192 (Nelson).

level of active ingredients.⁸³ Ultimately, Clariant asserts, the quality of the solution is determined by testing the effectiveness of the application of that solution on a paper machine, not by testing for purity.⁸⁴

Based on the information reported in these investigations, we find a moderate to high degree of substitutability among subject imports from both countries and the domestic product. All of the responding U.S. producers reported that CSOBAs produced in the United States and those imported from China and Taiwan were always or frequently interchangeable.⁸⁵ With one exception, all of the responding U.S. importers reported that CSOBAs produced in the United States and imported from China and Taiwan were always or frequently interchangeable.⁸⁶ A majority of purchasers also reported CSOBAs produced in the United States and those imported from China and Taiwan were always or frequently interchangeable.⁸⁷ U.S. purchasers' comparison of the domestic like product and subject imports for a range of factors similarly does not show subject imports from Taiwan to be superior to the domestic like product in any significant respect; the only significant difference was that a majority of purchasers reported that the price of the product from Taiwan was lower than the price for the domestic like product.⁸⁸

Thus, this record does not support TFM's contention that the domestically produced CSOBAs and subject imports from Taiwan are not substitutable. Although some purchasers appear to be aware that impurities can impact the effectiveness of CSOBAs, it is far from clear that CSOBAs from any source have a level of impurities that renders them not substitutable with CSOBAs from other sources.⁸⁹ Testing conducted by Clariant shows little if any difference between TFM's and Clariant's products in terms of purity.⁹⁰ Furthermore, purchasers appear to evaluate quality and effectiveness of the product in actual machine trials and do not request specific purity levels in their requests for proposals,⁹¹ and nearly all purchasers reported that the domestic like product and subject imports from China and Taiwan always or usually meet minimum quality specifications.⁹²

We also note that if the CSOBAs from Taiwan were in fact superior to the U.S. produced CSOBAs based on purity differences, we would expect the product from Taiwan to command a price premium. However, as addressed further in our discussion of price effects, *infra*, subject imports from Taiwan undersold the domestic like product *** of quarterly price comparisons.⁹³ In addition, the average unit values for subject imports from Taiwan in all CSOBA subcategories (di, tetra, and hexa) were lower than those for the domestic like product.⁹⁴

TFM also argues that it provides technical support/service to its customers at a level superior to that provided by domestic producers. However, all eleven responding purchasers reported that the domestic product was either comparable or superior to the subject imports from Taiwan in terms of

⁸³ Clariant's Prehearing Brief at 14-15.

⁸⁴ Clariant's Posthearing Brief at Exhibit 11 (Statement of Andrew C. Jackson at ¶ 3).

⁸⁵ CR/PR at Table II-9.

⁸⁶ CR/PR at Table II-9.

⁸⁷ CR/PR at Table II-9.

⁸⁸ CR/PR at Table II-8.

⁸⁹ See, e.g., CR at II-20-23, PR at II-13-14.

⁹⁰ Clariant's Posthearing Brief at 10 n.47. We do not rely on results of materials testing provided by TFM as dates of production and testing were not provided. TFM's Posthearing Brief at Exhibit 2 (1), p. 5.

⁹¹ Clariant's Prehearing Brief at 8-10; Clariant's Posthearing Brief at 2, 8, 10, Exhibit 9, and Exhibit 11; BASF's Posthearing Brief at 2 and Attachments 1- 5.

⁹² CR/PR at Table II-10.

⁹³ E.g. CR/PR at Tables V-10, V-11.

⁹⁴ Compare unit values at CR/PR Tables IV-3 (domestic unit values) and IV-5 (Taiwan unit values).

technical support/service.⁹⁵ Moreover, technical service was only infrequently identified among the three most important factors in purchasing decisions.⁹⁶ Additionally, the domestic producers provide the same types of services TFM alleges it provides and do so with more personnel that are located closer to U.S. paper mills and can therefore get on site faster than TFM's support staff.⁹⁷

We further find that price is an important consideration in CSOBA purchasing decisions in the U.S. market. Twelve of 14 responding purchasers identified price as a very important factor in their purchasing decisions,⁹⁸ and a majority of purchasers identified price as the first or second most important factor in their purchasing decisions.⁹⁹ Responding U.S. producers reported that differences in non-price factors among CSOBAs produced in the United States and imported from China and Taiwan were never or only sometimes significant in sales of the domestic product and imports from both subject countries.¹⁰⁰ The U.S. importers' and purchasers' responses were more varied, with importers' responses almost equally in the always, frequently, sometimes, or never significant categories and purchasers responses mostly in the always, frequently, or sometimes significant categories.¹⁰¹ This shows that price is an important – though not exclusive – consideration in U.S. purchasers' sourcing decisions.

For the foregoing reasons, we find a moderate to high degree of substitutability regardless of the source.

D. Volume of Cumulated Subject Imports from China and Taiwan

Section 771(7)(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁰²

The volume of cumulated U.S. shipments of subject imports increased dramatically over the POI in absolute and relative terms.¹⁰³ U.S. shipments of subject imports increased *** percent between 2009 and 2010, from *** pounds in 2009 to *** pounds in 2010, and rose an additional *** percent from 2010

⁹⁵ CR/PR at Table II-8.

⁹⁶ CR/PR at Table II-5, see also CR at II-23 PR at II-14-15. (purchasers' anecdotal accounts of technical support provided by domestic producers and importers of subject merchandise).

⁹⁷ E.g. Hearing Transcript at 219-20 (Kelly), Clariant's Posthearing Brief at 11 and Exhibit 12.

⁹⁸ CR/PR at Table II-6. The other two identified price as somewhat important. Id.

⁹⁹ CR/PR at Table II-5.

¹⁰⁰ CR/PR at Table II-11.

¹⁰¹ CR/PR at Table II-11.

¹⁰² 19 U.S.C. § 1677(7)(C)(i).

¹⁰³ TFM claims the growth in subject imports was in response to the mid-2008 shortage of DAS from China (discussed above), which it contends caused purchasers to seek reliable supply alternatives to domestic producers. We do not find that this DAS shortage, and any resulting actual or perceived CSOBA supply constraints, explain the significant increase in subject imports over the POI. As noted above, the DAS shortage was short-lived and there is no indication that it prevented domestic CSOBA producers from meeting their major supply commitments. Moreover, subject imports continued to increase significantly in 2011, well after the DAS shortage could have been a concern. Finally, if the DAS shortage was an important consideration of purchasers, we would expect to see them shift toward purchasing from BASF, the only domestic CSOBA producer that makes its own DAS, rather than toward subject imports, which are also dependent on DAS from China. To the contrary, subject imports increased while BASF's shipments fell. See CR at III-2-3, PR at III-2; Hearing Transcript at 162, 205; BASF Producer Questionnaire Response at II-8a; CR/PR at Table IV-8.

to 2011, ending at *** pounds in 2011.¹⁰⁴ Thus, the quantity of cumulated subject import shipments increased *** percent during 2009-11.¹⁰⁵

Cumulated U.S. shipments of subject imports consistently increased their share of apparent U.S. consumption during the POI, whether consumption was increasing (between 2009 and 2010) or declining (between 2010 and 2011). Cumulated subject imports' market share increased *** percentage points in a period of increasing consumption, from *** percent in 2009 to *** percent in 2010, and captured an even greater *** percentage points in 2011, notwithstanding declining consumption.¹⁰⁶ Subject imports thus accounted for *** percent of apparent U.S. consumption at the end of the investigation period.¹⁰⁷

Subject imports' increased market penetration from 2009 to 2011 came at the direct expense of the domestic industry. During that period, subject imports' share of apparent U.S. consumption increased overall by *** percentage points while the domestic industry's share declined by *** percentage points.¹⁰⁸ Nonsubject imports' share of U.S. consumption increased overall by *** percentage points, from *** percent in 2009 to *** percent in 2011.¹⁰⁹

As noted above, tetra category products are the predominant form of CSOBAs in the U.S. market. Subject imports of this product have forced the domestic producers to seek expanded use of di and hexa category CSOBAs. In 2009, tetra category CSOBAs accounted for *** percent of subject foreign producers' export shipments to the United States; by 2011, this share had declined slightly to *** percent, still representing the great majority of subject imports.¹¹⁰ At the same time, the tetra category's share of domestic producers' U.S. commercial sales dropped significantly, from *** percent in 2009 to *** percent in 2011.¹¹¹ As subject imports of tetra category CSOBAs increased, domestic producers encouraged customers to use higher priced di and hexa category CSOBAs in an effort to retain market share and improve their profitability.¹¹² The domestic producers' efforts, however, appear to have been largely unsuccessful.

We conclude that the volume and increase of cumulated subject imports from China and Taiwan are significant, both in absolute terms and relative to consumption and production in the United States.

E. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹¹³

¹⁰⁴ CR/PR at Tables IV-8, C-1.

¹⁰⁵ CR/PR at Tables IV-8, C-1.

¹⁰⁶ CR/PR at Tables IV-9, C-1.

¹⁰⁷ CR/PR at Tables IV-9, C-1. The ratio of cumulated subject imports to domestic production increased from *** percent in 2009 to *** percent in 2010 and *** percent in 2011. CR/PR at Table IV-2.

¹⁰⁸ CR/PR at Tables IV-9, C-1.

¹⁰⁹ CR/PR at Table C-1.

¹¹⁰ CR at Table VII-6.

¹¹¹ CR/PR at Table III-4.

¹¹² Clariant's Prehearing Brief at 33-34.

¹¹³ 19 U.S.C. § 1677(7)(C)(ii).

As discussed earlier, the record shows a moderate to high degree of substitutability among subject imports from China and Taiwan and the domestic like product. In addition, price is an important consideration in CSOBA purchasing decisions in the U.S. market.¹¹⁴

The Commission collected pricing data on two CSOBA products – Fluorescent Brightener 220 in solution in bulk (product 1) and in non-bulk (product 2) packaging.¹¹⁵ The quantities of domestic product and subject imports were typically *** for sales in bulk packaging than for sales in non-bulk packaging.¹¹⁶ Prices were requested on an f.o.b. basis and, because suppliers generally sell on a delivered price basis, prices were requested on a delivered price basis as well.¹¹⁷ Although substantial U.S. freight costs indicate that f.o.b. prices would be the better basis upon which to make price comparisons, we considered both sets of data and note that there are no substantial differences between the comparisons on the two bases.

*** U.S. producers, *** importers of CSOBAs from China, and *** importer of CSOBAs from Taiwan reported usable pricing data.¹¹⁸ Pricing data reported by these firms accounted for approximately *** percent of reported U.S. producers' commercial shipments, *** percent of reported U.S. commercial shipments of subject imports from China, and *** percent of reported U.S. commercial shipments of subject imports from Taiwan during the POI.¹¹⁹

On an f.o.b. basis, subject imports undersold the domestic product in *** of *** comparisons and, on a delivered basis, subject imports undersold the domestic product in *** of *** quarterly price comparisons.¹²⁰ Underselling margins ranged from *** percent to *** percent on an f.o.b. basis and from *** percent to *** percent on a delivered basis.¹²¹

¹¹⁴ CR/PR at Tables II-5, II-6.

¹¹⁵ CR at V-6, PR at V-4. This is a tetra category product.

¹¹⁶ CR/PR at Table V-3.

¹¹⁷ Clariant argued that the Commission should assess the comparative pricing data on a delivered basis rather than an f.o.b. basis given that CSOBAs in the U.S. market are priced on a delivered basis. Clariant Prehearing Brief at 43-48.

¹¹⁸ CR at V-7, PR at V-5.

¹¹⁹ CR at V-8, PR at V-5.

¹²⁰ CR/PR at Tables V-10, V-11. Subject imports from China undersold the domestic product on an f.o.b. basis in *** of *** quarterly price comparisons and, on a delivered basis, in *** of *** price comparisons. Subject imports from Taiwan undersold the domestic product, on an f.o.b. basis, in *** of *** quarterly price comparisons and, on a delivered basis, in *** of *** price comparisons. Id.

¹²¹ CR/PR at Tables V-10, V-11.

Furthermore, we believe that the prices for the subject imports from China used in the price comparisons summarized above ***,¹²² Price comparisons based on adjustments ***,¹²³ After these adjustments, the data for cumulated subject imports show underselling of the domestic product in *** of *** comparisons on an f.o.b. basis and *** of *** comparisons on a delivered basis.¹²⁴ Underselling margins ranged from *** percent to *** percent on a delivered basis and from *** percent to *** percent on an f.o.b. basis.¹²⁵

Underselling is indicated by other record evidence as well. The average unit values for U.S. commercial shipments of subject imports were lower than prices for domestic producers' shipments in each of the product specific di, tetra, and hexa categories.¹²⁶ In addition, most responding purchasers reported that prices for the subject imports from China and Taiwan were superior to (i.e., lower than) domestic producers' prices.¹²⁷ Furthermore, purchasers confirmed domestic producers' lost revenues allegations valued at \$*** and involving *** pounds of CSOBAs and confirmed lost sales allegations valued at \$*** and involving *** pounds.¹²⁸

Based on all of this evidence, we conclude that there has been significant underselling of the domestic like product by imports of CSOBAs from China and Taiwan and that this underselling enabled subject importers to gain market share at the expense of the domestic industry.¹²⁹

¹²² See CR/PR at Appendix F. *** reported an average percentage of active ingredient of ***. Clariant asserted that it was not credible that ***. Clariant's Prehearing Brief at 53-54. Domestic producers reported an average active ingredient level of *** percent for the pricing product (tetra products) and TFM reported an average of *** percent for solution and *** percent for its powder imports of the pricing products from Taiwan. CR/PR at Table V-3. Thus, *** percent is *** the level in the domestic producers' tetra product and the level in the tetra imports from Taiwan; it is also *** the industry average of *** percent for the tetra category. CR at 1-9. In addition, Commission staff *** product during the POI and none of them could confirm that the active ingredient level in ***'s product was *** percent. CR at V-7 n.16, PR at V-5 n.16. Four responding purchasers (***) reported that they did not know the concentration level of active ingredients of their *** purchases. However, ***, reported that it purchased CSOBAs from *** consistently on a *** percent active ingredient basis. CR at V-7 n.16, PR at V-5 n.16. Based on this information, *** pricing data were recalculated according to a *** percent active ingredient concentration level. See CR at Appendix F; see also CR at V-7 n.16, PR at V-5 n.16.

¹²³ See CR/PR at Tables F-1 - F-4 (adjusted data showing underselling by the Chinese product in *** of *** comparisons on an f.o.b. basis and *** of *** comparisons on a delivered basis). Compare CR/PR at Tables V-10, V-11 (unadjusted data showing underselling in *** of *** comparisons on an f.o.b. basis and *** of *** comparisons on a delivered basis).

¹²⁴ CR at Tables F-6, F-7.

¹²⁵ CR at Tables F-6, F-7.

¹²⁶ CR/PR at Tables IV-3, IV-4, IV-5. Because these average unit values are for specific subcategories CSOBAs, they are likely relatively free of the product mix differences that might limit the utility of unit values in other contexts. See, e.g., Allegheny Ludlum Corp. v. United States, 287 F.3d 1365, 1373-74 (Fed. Cir. 2002); see also Nucor Corp. v. United States, 594 F. Supp. 2d 1320, 1363 (Ct. Int'l Trade 2008) ("AUV data is not dispositive proof of underselling because this data is only reliable if the product mix is constant over time").

¹²⁷ CR/PR at Table II-8.

¹²⁸ CR at V-25, PR at V-9; CR/PR at Tables V-7, V-8.

¹²⁹ We note that a large portion of the subject imports are shipped from China and Taiwan in powder form and then turned back into an aqueous solution through a "let-down" process in the United States before being delivered to customers. See CR at V-20, PR at V-8 (noting that 87 percent of subject imports represented in the pricing data were imported in powder form). We acknowledge there is a cost advantage to ship CSOBAs in powder form as opposed to shipping the aqueous solution, but the data show underselling by subject imports that are imported both in solution and in powder form, as well as both on a delivered and an f.o.b. basis. CR at Tables V-4-7 and Tables F-1-4.

We also find evidence that low-priced subject imports have depressed prices of the domestic like product in the U.S. market to a significant degree. Prices for U.S.-produced CSOBA products fluctuated over the POI but were substantially lower at the end of the period than at the beginning.¹³⁰ Overall, domestic producers' prices for product 1 declined *** percent over the period on a delivered basis and *** percent on an f.o.b. basis. Domestic producers' prices for product 2 declined *** percent over the period on a delivered basis and *** percent on an f.o.b. basis.¹³¹ Between the first quarter of 2009 and the first quarter of 2010, f.o.b. prices of all U.S.-produced CSOBAs fell by *** to *** percent and delivered prices fell by *** to *** percent.¹³² The declines in domestic producers' prices occurred as shipments of subject imports increased their market share at the expense of the domestic producers. Accordingly, we find that subject imports had significant price depressing effects on the domestic product.¹³³

For the above reasons, we find that subject imports have had a significant adverse impact on the domestic industry's CSOBA prices.

F. Impact of the Cumulated Subject Imports from China and Taiwan¹³⁴

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹³⁵ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."¹³⁶

Domestic industry performance indicators declined, overall, between 2009 and 2011. In some instances there were improvements in 2010, but these improvements were lost due to declines in 2011. Production increased from *** pounds in 2009 to *** pounds in 2010, then declined to *** pounds in 2011, for an overall decline of *** percent.¹³⁷ U.S. producers' production capacity declined overall from *** pounds in 2009 to *** pounds in 2011. Capacity utilization fell overall from *** percent in 2009 to *** percent in 2011, an overall decline of *** percentage points.¹³⁸

¹³⁰ CR/PR at Tables V-5 - V-7, F-1 - F-4.

¹³¹ CR/PR at Table V-8.

¹³² CR at V-18.

¹³³ The finding of price depression is also consistent with declines in average unit values for commercial shipments of the domestic product in the specific di, tetra, and hexa categories. CR/PR at Tables IV-3.

¹³⁴ We have considered the magnitude of the dumping margins found by Commerce in its final antidumping duty determinations. Commerce found dumping margins ranging from 63.98 percent to 109.95 percent on subject merchandise from China and 6.20 percent on subject merchandise from Taiwan. CR/PR at Table I-1.

¹³⁵ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.").

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

¹³⁷ CR/PR at Table C-1.

¹³⁸ CR/PR at Table C-1.

Domestic producers' U.S. shipments increased from *** pounds in 2009 to *** pounds in 2010, then declined to *** pounds in 2011, for an overall drop of *** percent.¹³⁹ The *** pound and *** percent overall decline in the quantity of U.S. producers' U.S. shipments from 2009 to 2011 occurred at the same time that apparent U.S. consumption overall increased by *** percent, from *** pounds in 2009 to *** pounds in 2011.¹⁴⁰ As a result, the domestic industry's share of apparent U.S. consumption also fell, declining from *** percent in 2009 to *** percent in 2010, and to a period low of *** percent in 2011.¹⁴¹

The number of production workers declined from *** in 2009 to *** in 2011, an overall decline of *** percent.¹⁴² Hours worked fell from *** in 2009 to *** in 2011, a decline of *** percent.¹⁴³ Hourly wages declined overall from \$*** in 2009 to \$*** in 2011, an overall decline of *** percent.¹⁴⁴ Productivity declined overall by *** percent from 2009 to 2011.¹⁴⁵

The industry's overall declines in output and steady drop in market share between 2009 and 2011 corresponded with overall declines in its net sales and net sales revenues.¹⁴⁶ The industry experienced an operating *** throughout the POI. The *** from \$*** in 2009 to \$*** in 2010, and ended at *** in 2011.¹⁴⁷ In 2011, *** of the three domestic producers reported operating ***.¹⁴⁸ The domestic industry's operating margins worsened from *** percent in 2009 to *** percent in 2011, an overall decline of *** percentage points.¹⁴⁹ Finally, capital expenditures, after increasing from \$*** in 2009 to \$*** in 2010, declined to \$*** in 2011, while return on investment was *** percent in 2009, *** percent in 2010, and *** percent in 2010.¹⁵⁰

As additional evidence of the impact of subject imports, ***.¹⁵¹ BASF indicates that subject imports' increased presence in the market resulted in its significantly lower CSOBA sales volumes, significantly lower margins on those reduced volumes, and ***.¹⁵²

Accordingly, despite some improvements between 2009 and 2010, the industry's performance indicators all ended the period below their 2009 levels. The volume and increase in volume of cumulated subject imports, in absolute terms and in terms of share of apparent U.S. consumption and share of domestic production, significantly increased throughout the POI, while the domestic industry's share of U.S. consumption correspondingly significantly declined. Given that the record shows moderate to high substitutability between the products regardless of source, a price competitive market, and evidence of underselling and price depression, we find that subject imports have significantly displaced domestic

¹³⁹ CR/PR at Table C-1.

¹⁴⁰ CR/PR at Table C-1.

¹⁴¹ CR/PR at Table C-1.

¹⁴² CR/PR at Table C-1.

¹⁴³ CR/PR at Table C-1.

¹⁴⁴ CR/PR at Table C-1.

¹⁴⁵ CR/PR at Table C-1. Productivity was *** pounds per hour in 2009, *** pounds per hour in 2010, and *** pounds per hour in 2011. Id.

¹⁴⁶ Net sales declined overall from *** pounds in 2009 to *** pounds in 2011, and from \$*** in 2009 to \$*** in 2011, overall declines of *** percent and *** percent, respectively. CR/PR at Tables VI-1, C-1.

¹⁴⁷ CR/PR at Table VI-1.

¹⁴⁸ CR/PR at Table VI-2.

¹⁴⁹ CR/PR at Table VI-1.

¹⁵⁰ CR/PR at Tables VI-4 & VI-5.

¹⁵¹ CR/PR at III-2.

¹⁵² CR at III-2-3, PR at III-2.

production and depressed U.S. prices, leading to significant declines in the domestic industry's production, shipments, market share, capacity utilization, employment, and profitability.

We have considered the role of other factors, such as demand and nonsubject imports, to ensure that we are not attributing injury from such other factors to the subject imports. We find that demand trends do not explain the domestic industry's current condition. As noted earlier, the decline in the domestic industry's shipments occurred notwithstanding an overall increase in apparent U.S. consumption. When apparent U.S. consumption rose, subject imports captured a large part of the growth, while the domestic industry's share continued to decline.

We have also considered the role of nonsubject imports.¹⁵³ Their volume was *** over the POI.¹⁵⁴ Nonsubject imports' market share increased by *** percentage points over the POI, while subject imports' share increased by *** percentage points.¹⁵⁵ Moreover, Clariant testified that nonsubject imports generally were priced according to market forces.¹⁵⁶ Indeed, the record shows that the average unit values of nonsubject imports were consistently higher than the average unit values of subject imports and the domestic product.¹⁵⁷ Thus, nonsubject imports appear to have played at most only a minor role in the current condition of the domestic industry.

Finally, as explained previously, the shortage of DAS (an input in production of CSOBAs) in mid-year 2008 does not appear to explain the domestic industry's current condition. The shortage took place prior to the POI in this final phase of these investigations and was resolved fairly quickly. Moreover, the record indicates that domestic producers were able to meet all major supply commitments notwithstanding any shortage. In addition, one domestic producer, BASF, produces its own DAS and, thus, would not have been affected by such a shortage.

Consequently, the record indicates a causal nexus between the subject imports and the adverse condition of the domestic industry and thus demonstrates material injury by reason of subject imports. We therefore conclude that subject imports have had a significant adverse impact on the domestic industry.

CONCLUSION

For the above-stated reasons, and based on the record in the final phase of these investigations, we find that an industry in the United States is materially injured by reason of dumped imports of CSOBAs from China and Taiwan.

¹⁵³ For purposes of the analysis required by Bratsk and Mittal, Commissioner Pinkert finds that nonsubject imports, whose market share was less than five percent throughout the period under examination, were not a significant factor in the U.S. marketplace.

¹⁵⁴ As noted above, nonsubject imports' market share was *** percent in 2009, *** percent in 2011, and *** percent in 2011. CR/PR at Tables IV-9, C-1.

¹⁵⁵ CR/PR at Table C-1.

¹⁵⁶ E.g., Clariant's Posthearing Brief at Exhibit 3, p.4.

¹⁵⁷ CR/PR at Table C-1.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by Clariant Corp. (“Clariant”), Charlotte, NC, on March 31, 2011, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports from China and Taiwan of certain stilbenic optical brightening agents (“CSOBAs”).¹ Information relating to the background of the investigations is provided below.^{2 3}

Effective date	Action
March 31, 2011	Petition filed with Commerce and the Commission; institution of Commission investigations (76 FR 19383, April 7, 2011)
April 27, 2011	Commerce’s notice of initiation (76 FR 23554, April 27, 2011)
May 23, 2011	Commission’s preliminary determination (76 FR 30967, May 27, 2011)
November 3, 2011	Commerce’s preliminary determinations (76 FR 68148 (China) and 76 FR 68154 (Taiwan), November 3, 2011); Commission institution of final phase investigations (76 FR 72719, November 25, 2011)
March 15, 2012	Commission’s hearing
March 23, 2012	Commerce’s final determination (77 FR 17027 (Taiwan), March 23, 2012)
March 26, 2012	Commerce’s final determination (77 FR 17436 (China), March 26, 2012)
April 19, 2012	Commission’s vote
May 2, 2012	Commission determinations sent to Commerce

SUMMARY DATA

A summary of data (on a total, 100-percent active ingredient basis) collected in the investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of three firms that accounted for 100 percent of U.S. production of CSOBAs during 2009-11. U.S. imports are based on questionnaire responses of eight firms that accounted for the majority of subject imports of CSOBAs during the period examined. Foreign industry data are based on questionnaire responses of three firms: two from China and one from Taiwan. CSOBAs are traded both in a powder form and in a solution form. The Commission requested that data be reported three ways: on a total, 100-

¹ Stilbenic optical brightening agents are synthetic organic products normally used in the production of certain paper, detergents, and textiles. CSOBAs are provided for in subheadings 3204.20.80 and 2921.59.40 of the Harmonized Tariff Schedule of the United States (“HTSUS”) and may have been imported under subheadings 2921.59.80 and 2933.69.60 (statistical reporting numbers 2921.59.8090 and 2933.69.6050). These are residual or “basket” categories covering other products in addition to the subject product. Each of the subheadings, with the exception of 2933.69.60, has a normal trade relations tariff rate of 6.5 percent *ad valorem* applicable to imports from China and Taiwan. Subheading 2933.69.60 has a normal trade relations tariff rate of 3.5 percent *ad valorem* applicable to imports from China and Taiwan.

² *Federal Register* notices cited in the tabulation are presented in app. A.

³ App. B lists witnesses that appeared at the hearing.

percent active ingredient basis; in solution form, as produced/shipped; and in powder form, as produced/shipped. The report presents data on a total, 100-percent active ingredient basis; however, analogous data for the solution form component are presented in appendix D and analogous data for the powder form component are presented in appendix E.⁴

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

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

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

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

. . .

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

. . .

⁴ Questionnaire section table quantities were requested to be reported in: (1) 1,000 pounds (total, on a 100-percent active ingredient basis); (2) 1,000 pounds (in solution, as produced/sold); and (3) 1,000 pounds (in powder, as produced/sold). When reporting (2) and (3), respondents were requested to report the corresponding weighted-average percentage of active ingredients contained, with quantities net of returns. The reported quantities should reconcile as follows: total quantity on a 100-percent active ingredient basis should equal the sum of the quantity in solution as produced/sold multiplied by the weighted average percentage of active ingredients contained in solution, plus the quantity in powder as produced/sold multiplied by the weighted average percentage of active ingredients contained in powder. For example, 1,000 pounds of 93 percent active ingredient powder converts to 930 pounds on a 100-percent active ingredient basis and 1,000 pounds of 22 percent active ingredient solution converts to 220 pounds on a 100-percent active ingredient basis. Therefore, if a respondent reported 1,000 pounds of 93 percent active powder and 1,000 pounds of 22 percent active solution, the respondent would also report a total quantity of 1,150 pounds on a 100-percent active ingredient basis.

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

*...
(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

Organization of the Report

Part I of this report presents information on the subject merchandise, dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume of subject imports and pricing of domestic and imported products, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.

U.S. MARKET SUMMARY

CSOBAs generally are organic chemicals primarily used for brightening paper products. The leading U.S. producers of CSOBAs are Clariant, BASF Corp. ("BASF"), and 3V Inc. ("3V"). Leading subject producers of CSOBAs include *** of China and *** of Taiwan. The leading U.S. importer of CSOBAs from China is *** and the leading importer of CSOBAs from Taiwan is ***. Leading importers of CSOBAs from nonsubject countries in 2011 (primarily Germany, Italy, India, Switzerland, and the United Kingdom) include ***. U.S. purchasers of CSOBAs are primarily firms that produce various paper products; the three largest reporting U.S. purchasers of CSOBAs in 2011 were ***.⁵

Apparent U.S. consumption of CSOBAs totaled approximately *** in 2011. Currently, three firms are known to produce CSOBAs in the United States. U.S. producers' U.S. shipments of CSOBAs totaled *** in 2011, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports from subject sources totaled *** in 2011 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports from nonsubject sources totaled *** in 2011 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

⁵ *** reported that it participates in a joint purchasing arrangement with ***.

RELATED INVESTIGATIONS

On March 31, 2003, Ciba Specialty Chemicals Corp. (“Ciba”), Tarrytown, NY, filed a petition with the Commission and Commerce alleging that the domestic industry was being injured by reason of subsidized imports of certain 4,4'-diamino-2,2'stilbenedisulfonic acid chemistry from India and LTFV imports from China, Germany, and India. The Commission instituted its investigations into this matter⁶ but the petition was withdrawn shortly after filing.⁷

On May 14, 2003, Ciba filed a petition with the Commission and Commerce alleging that the domestic industry was being injured by reason of subsidized imports of certain 4,4'-diamino-2,2'stilbenedisulfonic acid chemistry from India and LTFV imports from China, Germany, and India. The Commission instituted its investigations into this matter⁸ and on June 30, 2003, the Commission determined that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury, or that the establishment of an industry in the United States was materially retarded, by reason of imports from China, Germany, and India of certain 4,4'-diamino-2,2'stilbenedisulfonic acid chemistry, provided for in subheadings 2921.59.20 and 3204.20.80 of the Harmonized Tariff Schedule of the United States, that was alleged to be subsidized by the Government of India and that was alleged to be sold in the United States at less than fair value.⁹

THE NATURE AND EXTENT OF SALES AT LTFV

Table I-1 presents information from Commerce on the final dumping margins for the subject countries. The period of investigation for the China dumping investigation is July 1, 2010, through December 31, 2010, and for the Taiwan dumping investigation is January 1, 2010 through December 31, 2010.¹⁰

Table I-1
CSOBAs: Commerce’s final dumping margins, by sources

Country	Type of comparison	Final dumping margin (percent ad valorem)
China ¹	Export price to normal value	Hongda..... 95.29
	Export price to normal value	Transfar..... 63.98
	Adverse facts available	PRC-wide.....109.95
Taiwan	Export price to constructed value	TFM..... 6.20
		All other..... 6.20
¹ China was treated as a non-market economy (NME) for purposes of the investigation, and Thailand was chosen as an appropriate surrogate country. Source: Commerce’s notices of final determination of sales at LTFV published in the <i>Federal Register</i> (77 FR 17436 (China), March 26, 2012, and 77 FR 17027 (Taiwan), March 23, 2012).		

⁶ Investigations Nos. 701-TA-434 and 731-TA-1030-1032 (Preliminary) were instituted effective March 31, 2003 (68 FR 17084, April 8, 2003).

⁷ See, 68 FR 19577, April 21, 2003.

⁸ Investigations Nos. 701-TA-435 and 731-TA-1036-1038 (Preliminary) were instituted effective May 14, 2003 (68 FR 28252, May 23, 2003).

⁹ See, 68 FR 41661, July 14, 2003.

¹⁰ 77 FR 17436 (China), March 26, 2012, and 77 FR 17027 (Taiwan), March 23, 2012.

THE SUBJECT PRODUCT

Scope

The imported product subject to these investigations is defined by Commerce as—

all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (i.e., all derivatives of 4,4'-bis[1,3,5-triazin-2-yl]amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The OBAs covered by these investigations include final OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of OBA products.

Excluded from these investigations are all forms of 4,4'-bis[1,3,5-triazin-2-yl]amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ ("Fluorescent Brightener 71").

These investigations cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active OBA ingredient, as well as any compositions regardless of additives (i.e., mixtures or blends, whether of OBAs with each other, or of OBAs with additives that are not OBAs), and in any type of packaging.

These OBAs are classifiable under subheading 3204.20.80 of the Harmonized Tariff Schedule of the United States ("HTS"), but they may also enter under subheadings 2933.69.6050, 2921.59.40, and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Tariff Treatment

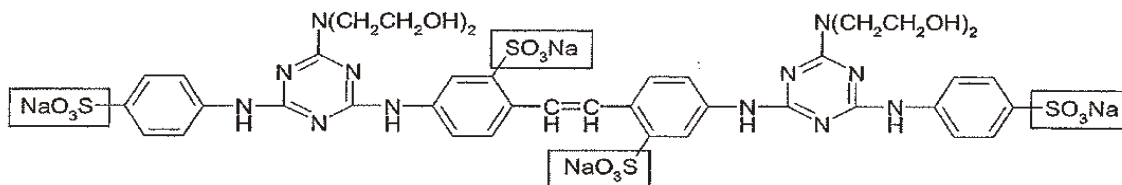
During the period of investigation, CSOBAs were provided for in Harmonized Tariff Schedule of the United States ("HTS") subheadings 3204.20.80 and 2921.59.40 and may have been imported under subheadings 2921.59.80 and 2933.69.60 (statistical reporting numbers 2921.59.8090 and 2933.69.6050).¹¹ These products are residual or "basket" categories covering other products in addition to the subject product. The subheadings, with the exception of 2933.69.60, have a normal trade relations tariff rate of 6.5 percent *ad valorem* applicable to imports from China and Taiwan. The normal trade relations tariff rate applicable to imports from China and Taiwan for subheading 2933.69.60 is 3.5 percent *ad valorem*.

¹¹ HTS subheading 3204.20.80 provides for synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, other. However, the scope of the imported subject product as defined by Commerce states that the brightening agents may also enter under HTS subheadings 2921.59.40 and 2921.59.80 and statistical reporting number 2921.59.8090 which provide for aromatic polyamines and their derivatives; salts thereof, and under statistical reporting number 2933.69.6050, which provides for heterocyclic compounds with nitrogen heteroatom(s) only: compounds containing an unfused triazine ring in the structure.

Physical Characteristics and Uses

The subject CSOBAs are organic chemicals primarily used for brightening paper products.¹² Without brightening, many paper products have an aesthetically unappealing yellowish cast.¹³ When applied to paper, CSOBAs absorb ultraviolet light and emit blue light, compensating for the yellowish cast and making the paper appear a brighter white.

All CSOBAs are built upon diaminostilbene disulfonic acid (DAS), a synthetic organic chemical.¹⁴ Attached to the DAS structure are two 1,3,5-triazinyl rings. Attached to each of the 1,3,5-triazinyl groups are a derivative of aniline and an additional chemical component, typically an amine. The derivative of aniline used can be either aniline itself; sulfanilic acid, which contains one sulfonate group; or aniline disulfonic acid, which contains two sulfonate groups.¹⁵ The specific derivative of aniline that is used determines whether the molecule is classified as a “di,” “tetra,” or “hexa” CSOBA, as explained in more detail below. The identity of a CSOBA is specified by both the derivative of aniline used and the identity of the other chemical group attached to the 1,3,5-triazinyl ring. For example, the CSOBA known as Fluorescent Brightener 220 (F.B. 220) uses sulfanilic acid as the aniline derivative and diethanolamine as the other chemical group attached to the 1,3,5-triazinyl group. The structure of Fluorescent Brightener 220 is shown below.¹⁶



CSOBAs are made in three main categories based on the number of sulfonate groups that the molecule contains, which is determined by the derivative of aniline used in the production process.¹⁷ The number of sulfonate groups on the molecule affect the solubility of the CSOBA in water and which specific CSOBA is best applied in the paper making process.¹⁸

The “di” category of CSOBAs contains two sulfonate groups and is produced using aniline. In paper making, the “di” category of CSOBAs is usually applied to the pulp slurry before the paper web is formed.¹⁹

The “tetra” category of CSOBAs contains four sulfonate groups and is produced using sulfanilic acid. “Tetra” CSOBAs are the most versatile of the CSOBAs and can be applied at multiple locations in the paper making process. “Tetra” CSOBAs can either be added to the pulp slurry before the paper web

¹² Petition Vol. 1, p. 10.

¹³ Ibid., Exhibit I-2, p. 1.

¹⁴ Ibid., p. 5.

¹⁵ Ibid., p. 16.

¹⁶ Ibid., Exhibit I-3, p. 6.

¹⁷ Petition Vol. 1, p. 6.

¹⁸ Conference transcript, p. 67 (Dickson).

¹⁹ Petition Vol. 1, p. 14.

is formed, in the size press, or in coating applications.²⁰ FB 220, which is the most widely used CSOBA,²¹ is in the “tetra” category.

The “hexa” category of CSOBAs contains six sulfonate groups and is produced using aniline disulfonic acid. Application of the “hexa” CSOBAs in the paper making process is limited to the surface coating operations.²²

The CSOBA known as Fluorescent Brightener 71 (“FB 71”) is excluded from the scope of this investigation. According to the petitioner, FB 71 is primarily used as an additive in detergents and is not used as an optical brightening agent for paper.²³

Within the United States, CSOBAs are shipped as aqueous solutions with the percentage of the active ingredient typically 20 percent for “di” CSOBAs, 23 percent for “tetra” CSOBAs and 16 percent for “hexa” CSOBAs.²⁴ CSOBAs can be shipped in bulk or nonbulk containers.²⁵ Bulk deliveries are made in tank truck or rail cars. Non-bulk deliveries are in drums, which can hold approximately 450 pounds, or intermediate bulk containers, which hold approximately 2,400 pounds of material.²⁶ For shipment from China and Taiwan, CSOBAs are shipped either as aqueous solutions ready for final use in paper making or as a powder that must be dissolved in water before use.²⁷ For CSOBAs shipped as powder, an importer or its affiliate, a third party tolling operation, or the final user prepares the CSOBA in an aqueous solution at the desired concentration.²⁸ Powdered CSOBA is shipped in “bulk bags” of various sizes.

For a specific CSOBA, for example, FB 220, the active ingredient produced in the United States is identical to that produced in China and Taiwan. However, the product in aqueous solution may have additives²⁹ and impurities that differ among the domestic producers and foreign producers. The respondents in this case claim that the subject product from Taiwan has fewer impurities than the domestic like product.³⁰ According to their hearing testimony, these impurities can increase the unattractive yellow hue and decrease the overall brightness of paper.³¹ Product quality issues are discussed in more detail in Part II of this report.

Manufacturing Processes

The primary inputs in the production of CSOBAs are DAS, cyanuric chloride, and derivatives of aniline. DAS is generally the most expensive of these inputs.³² DAS contains the stilbene structure that CSOBAs are built upon. Cyanuric chloride contains the 1,3,5-triazinyl structure with chlorine atoms at

²⁰ Ibid., p. 14.

²¹ Hearing transcript, p. 14 (Jackson), and conference transcript, p. 18 (Dickson).

²² Petition Vol. 1, p. 14.

²³ Conference transcript, p. 18 (Dickson).

²⁴ Conference transcript, p. 20 (Dickson).

²⁵ Petition Vol. 1, p. 23.

²⁶ Ibid., p. 24.

²⁷ Ibid., p. 24.

²⁸ Ibid., p. 24.

²⁹ Additives can include biocides, urea, polyvinyl alcohol, or polyethylene glycol, which provide certain desirable characteristics for the final product. Petition Vol. 1, p. 18.

³⁰ Hearing transcript, p. 126 (Nelson).

³¹ Hearing transcript, p. 129 (Nelson).

³² Conference transcript, p. 37 (Dettlaff).

the 2, 4, and 6 positions.³³ As explained above, the derivative of aniline used in the production determines whether the specific CSOBA is in the “di,” “tetra,” or “hexa” category.

CSOBAs are typically produced in a three step process.³⁴ In the first step, cyanuric chloride reacts with DAS to produce the first intermediate in CSOBA production. In the second step, the first intermediate is reacted with a derivative of aniline, which replaces one of the remaining chlorine atoms on the 1,3,5 triazinyl group, to form the second intermediate. In the third step, the second intermediate is reacted with a final chemical component, typically an amine, to confer desired chemical and physical properties to the CSOBA. The final chemical component replaces the remaining chlorine atom on each of the 1,3,5-triazinyl groups.

An alternate production process is also possible where the first and second steps are different from those mentioned above.³⁵ In the first step, cyanuric chloride reacts with a derivative of aniline. The intermediate produced in the first step of this alternate process is then reacted with DAS. This alternative process produces the same intermediate that results from step two of the process given above. The third step in the alternative process is the same as in the process described above.

A byproduct of these reactions is sodium chloride.³⁶ The sodium chloride is removed from the final CSOBA product by reverse osmosis or ultrafiltration.³⁷ The sodium chloride solution is sent to a wastewater treatment facility and released back into the environment after treatment.³⁸

Two of the domestic producers, Clariant and 3V, use batch processes to carry out the reaction steps above and produce CSOBAs.³⁹ These producers purchase DAS from other chemical companies. DAS is primarily produced in China and, to a lesser extent, in India.⁴⁰ One domestic producer, BASF, uses a continuous process that starts with the production of DAS from toluene and other inputs.⁴¹ BASF could purchase DAS from the merchant market to produce CSOBAs if its DAS manufacturing facility was down.⁴² According to hearing testimony, the producer in Taiwan, TFM, uses a continuous process to produce CSOBAs.⁴³

DOMESTIC LIKE PRODUCT

The Commission’s determination regarding the appropriate domestic products that are “like” the subject imported product 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, where appropriate, (6) price.

In the preliminary phase of these investigations, Clariant argued that the Commission should define a single domestic like product consisting of all forms, states, concentrations, and compositions of triazinylaminostilbenes (“TASs”) except Fluorescent Brightener 71 (“FB 71”), and that the single like

³³ Petition Vol. 1, p. 15, footnote 44.

³⁴ Ibid., pp. 15–16.

³⁵ Ibid., pp. 16–17.

³⁶ Hearing transcript, p. 20-21 (Gibson).

³⁷ Conference transcript, p. 59 (Dickson).

³⁸ Conference transcript, p. 64 (Dickson) and p. 65 (Golder).

³⁹ Conference transcript, p. 65 (Dickson).

⁴⁰ Hearing transcript, p. 138 (Nelson).

⁴¹ Conference transcript, p. 66 (Dickson). A description of the process used by BASF is found in *Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid Chemistry from China, Germany, and India, Invs. No. 701-TA-435 and 731-TA-1036-1038 (Preliminary)*, USITC Publication 3608, July 2003, p. I-4.

⁴² Hearing transcript, p. 228 (Kelly).

⁴³ Hearing transcript, pp. 166-167 (Nelson).

product definition should include the intermediate products that were within the scope of investigation.⁴⁴ Although respondents did not argue against a single domestic like product that includes intermediate products, they argued that the like product definition proposed by Clariant differed from the domestic like product definition in the Commission's 2003 investigations of certain brighteners.⁴⁵ Respondents also argued that Clariant was seeking a like product definition that improperly was based on product usage when it argued that CSOBAs were used in paper applications and that FB 71 was used in detergent applications.⁴⁶

The Commission agreed with Clariant and defined a single domestic like product, corresponding to the scope, to include all forms, states, concentrations, and compositions of final stilbenic OBA products, and intermediate stilbenic OBA products.⁴⁷ The Commission explained that the final products shared physical characteristics and uses, were interchangeable, were sold in the same channels of distribution, were perceived as similar by producers and customers, had common manufacturing facilities, production processes and production employees, and overlapped in terms of price.⁴⁸ Finding that the domestic like product definition should not be expanded to include FB 71, the Commission noted that FB 71 was significantly different from the in-scope final OBA products in terms of its physical characteristics and uses, degree of interchangeability, and perceptions of producers and customers. The Commission also found that the price factor supported the conclusion not to expand the domestic like product definition to include FB 71, although it noted that this factor was not necessary to its determination.⁴⁹

The Commission found that the intermediate OBA products that were within the scope were also part of the single domestic like product. Employing a semifinished products analysis, the Commission explained that the intermediate products were dedicated to the production of the final OBA products, there was no separate retail or wholesale market for the intermediate OBA products, and the central molecular structure for the intermediate and final products was the same. The Commission also found that there was a minimal difference in the cost and value between intermediate and final OBA products and that the processes used to transform intermediates into final OBA products were relatively straightforward chemical reactions.⁵⁰

Regarding respondents' reference to the like product in the 2003 Certain DAS Chemistry Preliminary determinations, the Commission explained "that every investigation is *sui generis* and that the Commission must make its findings anew such that a determination in one investigation does not mandate a similar determination in another investigation."⁵¹

The Commission therefore defined the like product as a single domestic like product that was co-extensive with the scope.⁵²

Petitioner Clariant noted that in the preliminary investigations, no other party objected to the definition of the domestic like product, and submitted that, for the same reasons elaborated in the

⁴⁴ *Certain Stilbenic Optical Brightening Agents from China and Taiwan*, Inv. Nos. 731-TA-1186-1187 (Preliminary), USITC Pub. 4236 (May 2011) ("2011 CSOBAs Preliminary") at 6.

⁴⁵ 2011 CSOBAs Preliminary at 6. The 2003 investigation to which respondents referred is *Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid Chemistry from China, Germany, and India*, Inv. Nos. 701-TA-435 and 731-TA-1036-1038 (Preliminary), USITC Pub. 3608 (July 2003) ("2003 Certain DAS Chemistry Preliminary").

⁴⁶ 2011 CSOBAs Preliminary at 6.

⁴⁷ 2011 CSOBAs Preliminary at 10.

⁴⁸ 2011 CSOBAs Preliminary at 7-10.

⁴⁹ 2011 CSOBAs Preliminary at 10.

⁵⁰ 2011 CSOBAs Preliminary at 10-11.

⁵¹ 2011 CSOBAs Preliminary at 6, citing *Nucor Corp. v. United States*, 318 F. Supp.2d 1207, 1247 (Ct. Int'l Trade 2004) ("It is a well-established proposition that the ITC's material injury determinations are *sui generis*; that is, the agency's findings and determinations are necessarily confined to a specific period of investigation with its attendant, peculiar set of circumstances.").

⁵² 2011 CSOBAs Preliminary at 11.

preliminary determination, the Commission should also conclude in its final determination that the single domestic like product is co-extensive with the scope and consists of all forms, states, concentrations, and compositions of TASs, except for FB 71.⁵³ Respondent TFM did not comment on the definition of the domestic like product in the final phase of these investigations.

Interchangeability and Customer and Producer Perceptions

Information with respect to interchangeability and customer and producer perceptions concerning CSOBAs can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

Channels of Distribution

CSOBAs are primarily sold *** paper producers. Information on CSOBA channels of distribution is presented in Part II of this report, *Conditions of Competition in the U.S. Market*.

Price

Detailed information on the pricing of CSOBAs is presented in Part V of this report, *Pricing and Related Information*.

⁵³ Clariant's prehearing brief, p. 7.

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

MARKET CHARACTERISTICS

CSOBAs are normally used as optical brighteners in the production of paper. Accordingly, demand for CSOBAs is largely derived from demand for paper that uses CSOBAs as an input. CSOBAs are produced in various molecular structures (di, tetra, and hexa), forms (free acid or salt), states (powder, slurry, or solution), concentrations,¹ compositions (mixtures or blends), and fluorescent brightener capacities.² Tetra CSOBAs are most commonly used in the production of paper, accounting for 69.6 percent of U.S. shipments in 2011. Hexa and di CSOBAs are more commonly used in the specialty market and therefore represent a much smaller percentage of the U.S. market, accounting for 15.5 and 14.9 percent of U.S. shipments in 2011, respectively. The efficacy of these different CSOBA products reportedly differ depending on the stage of the paper-production process, and certain CSOBA products may not work in certain specialty paper applications.³

CSOBAs are generally applied in an aqueous solution during the production of paper. All domestically produced CSOBAs are shipped as a finished liquid product. However, CSOBAs produced in China and Taiwan can be shipped either as an aqueous solution ready for use by the end user, or as a powder.⁴ For CSOBAs shipped as powder, the product is then reconstituted into liquid form (“let-down”) by the importer, third party tolling operation, or the final end user before use. The overwhelming majority of purchasers purchase CSOBAs in solution form and are not involved in the let-down process. However, purchases of CSOBAs in powder form have increased since 2009. Two large purchasers reported purchasing CSOBAs in powder that are delivered directly to the mill and letting down the product themselves at their own paper mills.⁵

During the period of investigation, domestic U.S. market share has declined by *** percentage points and subject imports have increased U.S. market share by approximately *** percentage points. U.S.-produced CSOBAs made up *** percent of the U.S. market in terms of volume in 2011, down from *** percent in 2009. In 2011, subject imports from China made up *** percent of the U.S. market compared to *** percent in 2009. Subject imports from Taiwan made up *** percent of the U.S. market in 2011 compared to *** percent in 2009.

Firm concentration is relatively high for both domestic and subject import sources. Overall, four firms accounted for *** percent of U.S. consumption in 2011. The two largest U.S. producers (***) represented *** percent of U.S. production in 2011. Imports of CSOBAs from China and Taiwan were equally concentrated. ***, the largest importer from China, represented approximately *** percent of U.S. imports of CSOBAs from China in 2011. ***, the largest importer of CSOBAs from Taiwan, represented approximately *** percent of U.S. imports of CSOBAs from Taiwan in 2011.

¹ Each of the molecular structures involve particular ranges of concentration of active ingredients (Commission staff telephone interview with ***, March 30, 2011). Within their respective ranges, di solutions typically contain approximately 20 percent active ingredients, tetra solutions typically contain approximately 23 percent, and hexa solutions typically contain approximately 16 percent active ingredients (Petition, Volume I, pp. 14-15).

² These product differences reportedly confer subtle differences in chemical and physical properties (Petition, Volume I, p. 11).

³ Petition, Volume I, pp. 14 and 27; and *** purchaser questionnaire response, section II-3.

⁴ Producers in China and Taiwan use a spray dryer to convert their CSOBAs, which are always produced in a liquid form, to a powder state, thereby reducing their ocean freight costs.

⁵ *** reported that it began purchasing CSOBAs in powder from Taiwan in October 2011 in order to reduce costs. Purchaser questionnaire response, section II-3. *** reported that it purchases CSOBAs in powder from Taiwan, but due to its limited blending capabilities, it also purchases CSOBAs that are delivered in solution. Email from ***, January 26, 2012.

U.S. producers and importers are concentrated in different regions of the United States. Three U.S. producers, one importer of CSOBAs from China (***) , and one importer of CSOBAs from Taiwan (***) reported their 2011 U.S. commercial shipments of CSOBAs by geographical areas; their shipment shares, based on f.o.b. sales values, are shown in table II-1. U.S. producers reported nationwide sales; however, their sales are primarily concentrated in the Northeast, Midwest, and the Southeast. *** reported serving four regions of the United States including the Southeast and Northeast regions, with a predominant presence in the Mountains region. *** reported serving five regions of the United States, with a predominant presence in the Midwest, Pacific Coast, and Central Southwest regions.

Table II-1

CSOBAs: Share of U.S. commercial shipment values by geographical market areas in the United States served by domestic producers and subject importers, 2011

* * * * *

The Commission sent purchasers' questionnaires to 39 U.S. paper-producing companies believed to have purchased CSOBAs during the period 2009-11. Questionnaire responses were received from 16 purchasers, with 14 reporting that they had purchased CSOBAs since January 1, 2009. Thirteen of the responding purchasers reported that they were end users and the remaining purchaser reported that it was a distributor. Based on questionnaire responses, the three largest reporting U.S. purchasers of CSOBAs in 2011 were ***,⁶ **, characterized itself as an end user of CSOBAs producing uncoated freesheet paper and coated paperboard, and reported purchases of \$*** in 2011. The next largest responding purchaser, **, characterized itself as an end user of CSOBAs producing various paper products and reported CSOBA purchases of \$*** in 2011. The third largest responding purchaser, **, which also characterized itself as an end user producing various paper products, reported CSOBA purchases of \$*** in 2011.

CHANNELS OF DISTRIBUTION

U.S. producers and importers ship the vast majority of CSOBAs to end users (primarily to paper-producing companies), with the remainder shipped to distributors. The shares of the reported quantity of U.S. shipments of the domestic and imported CSOBAs shipped to distributors and to end users during 2009-11 are shown on a 100-percent active ingredient basis in table II-2.

Table II-2

CSOBAs: Channels of distribution for domestic product and U.S. imports sold in the U.S. market as a share of U.S. shipment quantities on a 100-percent active ingredient basis, by year and by source, 2009-11

* * * * *

⁶ *** reported that it participates in a joint purchasing arrangement with **. Purchaser questionnaire response, section I-4 and I-5.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. producers have the ability to respond to changes in demand with relatively large changes in the quantity of shipments of U.S.-produced CSOBAs to the U.S. market. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

Based on U.S. producers' reported capacity and production of CSOBAs on a 100-percent active ingredient basis, the domestic industry's capacity utilization fluctuated during 2009-11, increasing from *** percent in 2009 to *** percent in 2010 before falling to *** percent in 2011, and averaged *** percent during the full period.⁷ This level of capacity utilization indicated that U.S. producers of CSOBAs had a substantial amount of available capacity with which they could increase production of CSOBAs in the short run in the event of a price change during 2009-11.

Inventory levels

U.S. producers reported combined end-of-period inventory quantities on a 100-percent active ingredient basis that fluctuated during 2009-11, from *** percent of their total shipments in 2009, to *** percent in 2010, and *** percent of shipments in 2011. These levels of inventories suggest that U.S. producers may have some ability to use inventories to respond to price changes; however, this flexibility may be restrained to the extent that U.S. producers' inventories consist of products already committed to customers in the U.S. and/or export markets.⁸

Alternative markets

U.S. producers' total reported exports of their U.S.-produced CSOBAs increased from *** percent of U.S. producers' total shipments in 2009 to *** percent in 2010, and *** percent in 2011. This level of exports during the period indicates that domestic producers of CSOBAs may have some ability to shift shipments between the United States and other markets in the short run in response to price changes.

Production alternatives

*** responding U.S. producers reported producing other products, such as florescent brightener 71, dyes, pigments, polymer A, flame retardants, fixatives, and biocides, on the same equipment and with the same labor used to produce CSOBAs. In addition, U.S. producers reported constraints on their ability to shift production among products. The three U.S. producers reported the following constraints: ***.

Supply disruptions

No firm reported any type of supply constraint for U.S.-produced CSOBAs since 2009. The majority of firms (all 3 producers, 3 of 4 importers, and 10 of 13 purchasers) reported that they have not

⁷ ***. ***.

⁸ As indicated in Part V, about *** percent of U.S. producers' 2011 U.S. commercial shipment were based on long-term contracts that were typically for *** years.

been affected by any raw material shortages since 2009.⁹ However, purchaser *** reported that in late 2008 to 2009, raw material shortages in China impacted global markets and affected the availability of CSOBAs. Purchaser *** also reported DAS shortages during 2009-10.

The majority of firms reported that raw material shortages have not affected the supply of CSOBAs in the U.S. market since 2009. One importer, *** noted that all producers source DAS from the same producers in China. Two purchasers, (***), reported that they have increased their number of sources of CSOBAs and have qualified more global suppliers because of the supply shortages during 2008-09. *** reported that it has changed suppliers due to the noted shortages, and it now purchases CSOBAs from TFMNA instead of Clariant and Kemira Oyj (“Kemira”).

Supply of Subject Imports

The responsiveness of supply of subject imported CSOBAs to changes in price depends upon such factors as the existence of excess capacity, the levels of inventories, and the existence of export markets. Relevant information for China and Taiwan follows.

Supply of subject imports from China

The Commission received two questionnaire responses from Chinese suppliers.¹⁰ Based on available information, Chinese producers have the ability to respond to changes in demand with moderate-to-large changes in the quantity of shipments of CSOBAs to the U.S. market. The main factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

Reported capacity *** at *** pounds during 2009-11 and is anticipated to remain unchanged during 2012-13. The *** responding Chinese producers reported combined capacity utilization for CSOBAs on a 100-percent active ingredient basis that increased from *** percent in 2009 to *** percent in 2010, to *** percent in 2011.^{11 12} This level of capacity utilization indicates that Chinese producers may have some available capacity with which they could increase production of CSOBAs in the short run in the event of a price change.

Inventory levels

Chinese producers’ inventories, relative to total shipments, remained relatively stable between *** and *** percent during 2009-11, and are anticipated to increase to *** percent in 2012 before decreasing to *** percent in 2013. These data indicate that Chinese producers may have some ability to use inventories as a means to increase shipments to the U.S. market in the short run.

⁹ However, importer *** and purchasers *** reported that there was a significant shortage of DAS, the main raw material input for CSOBAs, in 2008 due to the shut-down of production in China during the Beijing Olympics. Purchaser *** reported that raw material shortages in 2008 caused it difficulty in CSOBAs and affected its business. Purchaser *** reported that Kemira (the world’s largest paper chemical supplier headquartered in Finland) placed it on allocation in 2008.

¹⁰ The Commission received questionnaire responses from two Chinese producers accounting for an estimated *** percent of CSOBA production in China in 2011.

¹¹ These levels of capacity utilization are anticipated to decrease to *** percent in 2012 and *** percent in 2013.

¹² The *** responding Chinese producers also reported *** on the same equipment and machinery used to produce CSOBAs. Therefore, measures of capacity and capacity utilization for each type of product, including CSOBAs, may be subject to *** as relative prices and demand for the various types of products change.

Alternative markets

The two responding Chinese producers reported that their products were shipped primarily to *** during 2009-11 (figure II-1). Chinese producers' export shipments to the United States, as a share of total shipments of CSOBAs, decreased from *** percent in 2009 to *** percent in 2011, and are anticipated to decrease to *** percent in 2012-13. These data indicate that Chinese producers have a large home market and substantial third-country markets from which they may be able to shift shipments of CSOBAs to the United States in the short run in the event of a price change in the U.S. market.

Figure II-1
CSOBAs: Shares of total shipments of CSOBAs by Chinese producers, by destination, 2009-11 and 2012-13 (forecasted)

* * * * *

Production alternatives

The *** responding Chinese producers reported *** on the same equipment and machinery used to produce CSOBAs.

Supply disruptions

U.S. importers were asked to discuss any supply problems for imported Chinese CSOBAS in the U.S. market that occurred since 2009. ***, the single responding importer, reported that no such supply problems have occurred.

Supply of subject imports from Taiwan

Based on available information, the one responding Taiwan producer, ***, has the ability to respond to changes in demand with moderate changes in the quantity of shipments of CSOBAs to the U.S. market.¹³ The main factors contributing to the moderate degree of responsiveness of supply are discussed below.

Industry capacity

*** reported capacity for CSOBAs (on a 100-percent active ingredient basis) *** from *** pounds during 2009-10 to *** pounds in 2011. Reported production for CSOBAs *** each year during the full period. *** reported capacity utilization increased from *** percent in 2009 to *** percent in 2011 and averaged *** percent during the full period.¹⁴ This level of capacity utilization indicates that *** has a low to moderate amount of available capacity with which it could have increased production of CSOBAs in the short run in the event of a price change.¹⁵

¹³ The Commission received a questionnaire response from one Taiwan producer accounting for an estimated *** percent of CSOBA production in Taiwan in 2011.

¹⁴ This level of capacity utilization is anticipated to decrease to *** percent in 2012 and then increase to *** percent in 2013.

¹⁵ ***.

Inventory levels

*** inventories, as a share of total shipments, increased from *** percent in 2009 to *** percent in 2010 before decreasing to *** percent in 2011, and are anticipated to decrease to *** percent in 2012 and *** percent in 2013. These data indicate that *** has little ability to use inventories as a means to increase shipments to the U.S. market in the short run.

Alternate markets

*** export shipments to the United States, as a share of total shipments of CSOBAs, decreased irregularly from *** percent in 2009 to *** percent in 2011, and are anticipated to decrease to *** percent in 2012 and *** percent in 2013 (figure II-2). ***. These data for alternate markets indicate that *** had some non-U.S. markets from which they may be able to shift shipments of CSOBAs to the United States in the short run in the event of a price change in the U.S. market.

Figure II-2
CSOBAs: Shares of total shipments of CSOBAs by Taiwan producer *, by destination, 2009-11, 2012-2013 (forecasted)**

* * * * *

Production alternates

*** reported that it *** other products on the same equipment and machinery used to produce CSOBAs.

Supply disruptions

U.S. importers were asked to discuss any supply problems for imported Taiwan CSOBAs in the U.S. market that occurred since 2009. The *** responding importer, ***, reported that it experienced no such supply problems.

Supply of Nonsubject Imports of CSOBAs to the U.S. Market

Based on import questionnaire data (presented in Part IV), CSOBAs are typically imported only from a few nonsubject countries and in limited quantities. The specific nonsubject countries identified in questionnaire responses were Canada, Germany, India, Indonesia, Italy, and the United Kingdom.

U.S. importers were asked to discuss any supply problems for imported CSOBAs from nonsubject countries in the U.S. market that occurred since 2009. All four responding importers (***) reported that they experienced no such supply problems.

New Suppliers

Nine of 14 purchasers indicated that new suppliers have entered the U.S. market since 2009. Purchasers cited Sun Rise Chemical from China (5 purchasers), Blancophor¹⁶ from Germany (2), Greenville from China (2), and TFMNA from Taiwan (2).

¹⁶ In 2010, Blankophor (based in Germany) acquired Kemira. In North America, Blankophor has been established as a division of Indulor America and is headquartered in Graham, NC.

U.S. Demand

Based on available information, it is likely that changes in the price level of CSOBAs would result in a small changes in the quantity of CSOBAs demanded. The main contributing factor to the small degree of responsiveness of demand is the lack of substitutability of other products for CSOBAs as well as the low share of CSOBAs in the overall costs of end products.

End Uses

Overall U.S. CSOBA demand depends upon the demand for U.S.-produced paper and textile products. All U.S. producers, importers, and purchasers reported that the primary end use for CSOBAs was paper of various types: uncoated paper, printing paper, specialty papers, paperboard, tissue paper, and coated paper.¹⁷ U.S. producer *** reported that CSOBA demand is affected by the demand for paper as well as the demand for higher levels of brightness of paper. Four of 13 purchasers of CSOBAs reported that the demand for their firms' final products incorporating CSOBAs has fluctuated since 2009, three reported decreased demand, three reported no change in demand, and three reported increased demand. Nine of 12 purchasers reported that the demand for their firms' final products had an effect on their demand for CSOBAs. Purchasers *** and *** reported that CSOBA usage fluctuated with the demand for commercial paper products. *** and *** reported that, while production of higher brightness grades of white paper requiring more optical brightening agents has increased, their overall demand for CSOBAs has fallen due to the decreased demand for uncoated freesheet paper and newsprint paper. *** reported that CSOBAs have become more cost effective than other pigments used for brightening paper. *** reported that demand for paper with higher brightness has increased thereby increasing its demand for CSOBAs. *** reported that while demand for paper products has increased since the end of the recession, overall demand for paper products is generally declining.

Demand Characteristics

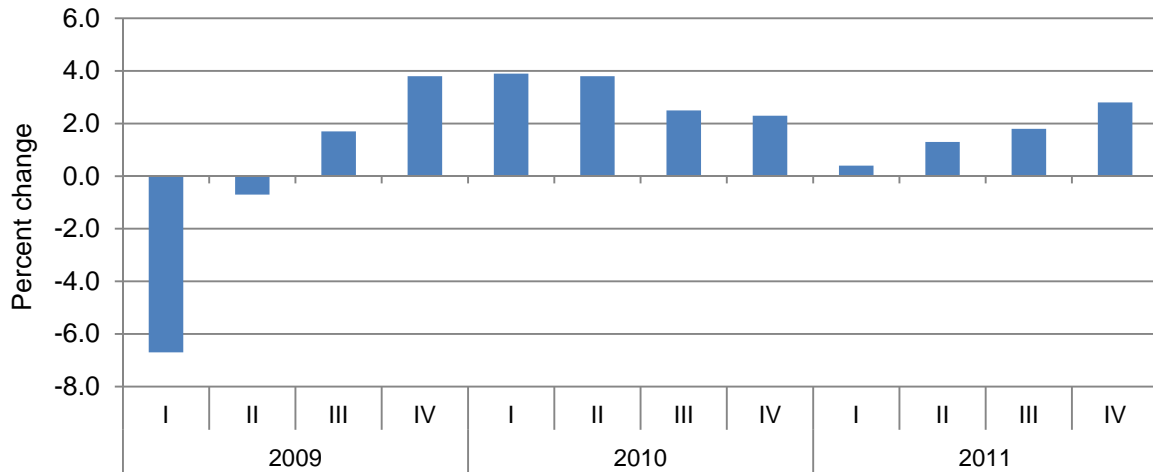
CSOBAs are used principally as an optical brightener in paper production. Overall, the demand for paper products has declined, but the desire for increasingly brighter paper continues to offset this decline in demand for CSOBAs.¹⁸ Based on questionnaire responses from U.S. producers, importers, and purchasers, U.S. demand for CSOBAs is affected by changes in the overall U.S. economic activity, and, as an intermediate product, is derived from demand in the sectors in which it is used, principally the paper producing sector.¹⁹ The decline and weak recovery of the general economy since 2008 has reduced CSOBA demand. As shown in figure II-3, quarterly real growth rate in U.S. GDP began to recover and increased between 2009 and the first half of 2010, declined from the third quarter of 2010 until the first quarter of 2011, and then began to increase through the end of 2011.

¹⁷ U.S. producer *** and importer *** reported textiles as a secondary end use for CSOBAs, with one and three percent of their total CSOBA shipments, respectively, accounted for by use in textile manufacturing.

¹⁸ Petitioner's posthearing brief, exhibit 1, p. 15.

¹⁹ U.S. demand for CSOBAs may also be affected by changes in the level of imported downstream products (imported paper) that compete with the U.S.-produced products containing CSOBAs and by competing downstream products in the export market. Overall, imports of finished paper goods fell by 3.3 percent from 2009 to 2011. Imports of finished paper goods reached a period high of over \$494 million in September 2009 and a period low of \$357 million in December 2011. USITC Dataweb, accessed March 21, 2012.

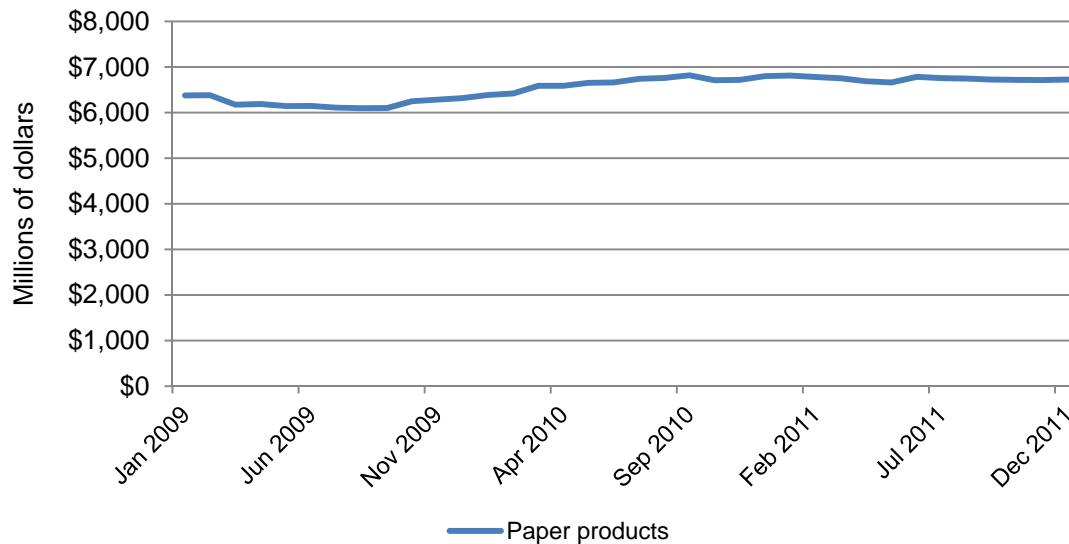
Figure II-3
Real GDP growth, percentage change from previous periods, by quarters, January 2009-December 2011



Source: *National Income and Product Accounts- Table 1.1.1, Percent Change from Preceding Period in Real Gross Domestic Product*, Bureau of Economic Analysis, <http://www.bea.gov/national/nipaweb>, retrieved February 9, 2012.

U.S. producers' shipments of paper, pulp, and paperboard mills (paper products), on a seasonally adjusted monthly value basis, increased irregularly during January 2009-December 2011 (figure II-4). The monthly value of shipments of paper products decreased from approximately \$6.4 billion in January 2009 to a period low of approximately \$6.1 billion by August 2009. Paper products shipments then generally increased to almost \$6.8 billion by January 2011, before decreasing slightly approximately \$6.7 billion by December 2011. Overall, there was a 5.4 percent net increase between January 2009 and December 2011 and a 10.3 percent increase over the period-low in August 2009.

Figure II-4
Values of U.S. producers' shipments of paper product (paper, pulp, and paperboard mills), by month, January 2009-December 2011



Note.--Monthly figures are seasonally adjusted shipment values.

Source: *Manufacturers' Shipments, Inventories, and Orders*, U.S. Census Bureau, http://www.census.gov/manufacturing/m3/historical_data/index.html, retrieved February 14, 2011.

Business Cycles

The vast majority of producers, importers, and purchasers reported that there was no specific business cycle to the CSOBA market, and it was not subject to conditions of competition distinctive to the CSOBA market. However, one of three responding producers, one of seven importers, and four of ten purchasers reported such cycles. *** reported that “the overall competition is much tougher today due to the consolidations in the paper industry and additional imports of finished paper products has reduced the overall CSOBAs demand.” Three purchasers reported that the CSOBA market was driven by the availability and costs of raw materials.²⁰ One purchaser reported that the price of an alternative brightening agent (T102) and other pigments have made CSOBAs more price-effective. One purchaser reported that the market for specialty papers has become more competitive since 2009, which has led it to become more “aggressive” with its CSOBAs suppliers.

Apparent U.S. Consumption

Apparent U.S. consumption increased from *** pounds in 2009 to *** pounds in 2010 and then decreased to *** pounds in 2011. Overall, U.S. consumption increased 5.0 percent between 2009 and 2011.

Demand Trends

When asked how demand for CSOBAs has changed within the United States since January 1, 2009, the majority of producers and importers reported that demand for CSOBAs has decreased or fluctuated, while purchaser responses were split (table II-3).

Table II-3

CSOBAs: U.S. producer, importer, and purchaser responses regarding the demand for CSOBAs in the United States since 2009

Item	Number of firms reporting			
	Increase	No Change	Decrease	Fluctuate
U.S. producers	***	***	***	***
Importers	0	1	3	3
Purchasers	2	2	3	0
Total	***	***	***	***

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

Reported factors that led to decreases include: the recession; consolidation in the paper industry; a decrease in the overall demand for paper products; increased imports of finished paper products; and increased use of electronic technology (e.g., e-books).²¹ Reported factors that led to fluctuating demand include the following: the recession and subsequent recovery; fluctuating demand for paper; and demand for higher levels of brightness in paper.²² The two purchasers that indicated an increase in demand

²⁰ Raw material costs affect supply and should not affect demand.

²¹ According to BASF, the demand for CSOBAs used in the production of paper tracks directly with the production rates of graphic paper, which it projects will decline by approximately 2.5 percent per year. Even with the potential increased brightness specifications and increased recycled fiber content (which requires more CSOBAs), BASF anticipates a decrease in demand for CSOBAs in the United States at a rate of one to two percent per year through 2020. BASF’s response to post-hearing questions, statement of Ted Kelly, Jr., pp. 1-2.

²² In 2005, the base brightness standard for copy paper increased from 88 to 92 with a secondary tier of 96 brightness. This trend has continued and, currently, more paper mills produce paper at 96 brightness rather than the (continued...)

reported that prices for CSOBAs have decreased while demand for white paper products has increased, with paper companies looking for the least-cost alternative for paper brightness.

Cost Share

As noted earlier, CSOBAs are used primarily as optical brighteners in paper manufacturing. Paper was by far the most frequently reported end-use product, followed distantly by textiles and pigments. Three producers, four importers, and thirteen purchasers reported cost shares of CSOBAs in the production of paper which ranged from 0.5 percent to 5.0 percent. Reported cost shares of CSOBAs in the production of textiles and pigments were 1 percent and 3 percent, respectively.

Substitute Products

The majority of firms reported that no substitutes exist for CSOBAs. Importer *** reported three substitutes, but indicated that the use of these products as substitutes was limited and changes in the prices of these substitutes did not result in any change in the price of CSOBAs. Purchaser *** reported two substitutes, and it stated that it did not know how these products as substitutes affected the price for CSOBAs. The reported substitutes, their uses, and their shortcomings are as follows.

Titanium dioxide can be used in size press and coating. It provides partial substitution for CSOBAs, but such substitution, as a high whitening agent, is limited due to its high cost.

Chlorine dioxide can be used in whitening pulp. It provides a low degree of substitutability for CSOBAs, because it is used for bleaching only pulp. It must be used in the bleaching stage to give beginning brightness and cannot be used post bleach stage.

Ansilex and other bright clays can be used in the wet end of paper production in acid machines to get brightness, but its substitutability for CSOBAs is limited by retention and sheer strength.

Precipitated calcium carbonate can be used in the production of paper.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestically produced and imported CSOBAs depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, etc.), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there may be some differences between domestic and imported CSOBAs, but overall, there is a moderate-to-high degree of substitution among CSOBAs produced in the United States, the subject countries, and other import sources.

Factors Affecting Purchasing Decisions

Purchasers were asked a variety of questions to determine what factors influence their decisions when buying CSOBAs. Information obtained from their responses indicates that quality, availability, price, and technical service are relatively important factors.

(...continued)

92. This increase in brightness standards has increased the demand of OBAs in the marketplace. Hearing transcript, p. 78 (Dettlaff) and p. 138 (Nelson).

Knowledge of Country Sources

Twelve of 14 purchasers indicated they had marketing/pricing knowledge of domestically produced CSOBAs, 8 of CSOBAs from China, 8 from Taiwan, 5 from Germany, 1 from India, and 1 from Indonesia. As shown in table II-4, most purchasers (and their customers) “never” make purchasing decisions based on the producer or country of origin.

Table II-4
CSOBAs: Purchaser responses to questions regarding the origin of their purchases

Purchaser/customer decision	Always	Usually	Sometimes	Never
Purchaser makes decision based on producer	3	3	0	8
Purchaser's customer makes decision based on producer	0	1	0	11
Purchaser makes decision based on country	1	1	1	11
Purchaser's customer makes decision based country	0	0	0	12

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

Major Factors in Purchasing

Available information indicates that purchasers consider a variety of factors when purchasing CSOBAs. While quality and price were cited most frequently as being important factors in their purchase decisions, other factors such as availability are also important considerations. Quality was most frequently cited as the first-most important factor (6 firms) as well as the second-most important factor (5), and price was most frequently reported as the third-most important factor (4) (table II-5).

Table II-5
CSOBAs: Ranking factors used in purchasing decisions, as reported by U.S. purchasers

Factor	Number of firms reporting			
	First	Second	Third	Total
Quality	6	5	0	11
Price	4	3	4	11
Availability	1	2	3	6
Technical service	0	1	2	3
Other ¹	2	3	4	9

¹ Other factors include reliability of supply and patent for the first factor; timely shipments, customer service, and dosage requirements for the second factor; and reliability of supply, timely shipments, preferred supplier, and product range for the third factor.

Note.—Four purchasers provided a fourth important factor generally considered in their purchase decisions which include: supplier's safety record; dosage requirements; range of product line to include powdered products; and reliability of supply.

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

Purchasers were split when asked how often they purchase CSOBAs offered at the lowest price, with seven of 14 purchasers reporting “usually,” six reporting “sometimes,” and one reporting “never.” Six purchasers also reported that they purchase higher-priced CSOBAs from one source although a comparable product was available at a lower price from another source. Purchasers identified product

availability, quality, lower dosage rate, technical support, supply chain length, and patent requirements as reasons for choosing higher-priced CSOBAs.²³

Five of 14 purchasers reported that certain grades/types of CSOBAs were available from only one source (either domestic or foreign). *** reported that tetra optical brighteners in powder form are only available from TFMNA and Sun Rise.²⁴ *** reported that hexa optical brighteners formulated to be used with *** paper are only available from domestic and European suppliers. *** reported that, because of a patent, CSOBAs used with “wood-containing fiber” in the wet-end of the paper machine can only be purchased from BASF. *** reported that “grades are specific to each supplier and must be evaluated on a per-supplier basis; the specific chemical nature is proprietary.” *** reported that TFMNA sells CSOBAs of a high-purity level that is rarely matched by other global sources.

Importance of Specified Purchase Factors

Purchasers were asked to rate the importance of 15 factors when making their purchasing decisions (table II-6). The factors listed as “very important” by more than three-quarters of the responding 14 firms were availability (14 firms); product consistency (14); reliability of supply (13); price (12); quality meets industry standards (12); and U.S. transportation costs (10).

Table II-6
CSOBAs: Importance of purchase factors, reported by U.S. purchasers

Factor	Very important	Somewhat important	Not important
	<i>Number of firms responding</i>		
Availability	14	0	0
Delivery terms	6	7	1
Delivery time	9	5	0
Discounts offered	4	7	3
Extension of credit	6	3	5
Minimum quantity requirements	2	9	3
Packaging	4	8	2
Price	12	2	0
Product consistency	14	0	0
Quality meets industry standards	12	2	0
Quality exceeds industry standards	4	8	2
Product range	3	10	1
Reliability of supply	13	1	0
Technical support/service	9	5	0
U.S. transportation costs	10	3	1

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

²³ Purchaser *** reported that, in the wet-end of paper production, *** products must be used due to the patent.

²⁴ ***. Purchaser questionnaire response, section II-3.

Factors determining quality

U.S. purchasers identified various principal factors they considered in determining the quality of CSOBAs. Reported factors included purity,²⁵ brightness and color performance, concentration levels of active ingredients, consistency between shipments, relative usage amount (efficiency) during the manufacturing process, shelf life, and technical support.²⁶

Eight of 12 responding purchasers reported that there was a performance advantage with CSOBAs purchased from certain suppliers compared to others. Five purchasers reported that there was a performance advantage with CSOBAs purchased from TFMNA compared to other suppliers, including higher brightness and whiteness levels for the same cost basis, dosage reductions, and consistent quality between shipments.²⁷ One purchaser (***) reported that there was a performance advantage with CSOBAs purchased from Clariant compared to other suppliers. Specifically, it noted that CSOBAs produced by Clariant had a higher average active ingredient content than foreign-produced CSOBA products in the same cost range and it has been able to obtain a higher brightness level with Clariant's products.²⁸ Seven purchasers reported that these performance advantages were "very important" in their purchasing decisions and one reported that it was "somewhat important."

Purity

The petitioner and the respondent disagree on the importance of purity as a measure of quality. The petitioner asserts that higher concentrations of active ingredients, not higher purity levels, will deliver comparable brightness with small quantities of solution.²⁹ The petitioner asserts that the existence of impurities below 15 percent has little impact on product performance to achieve brightness/whiteness targets and that the true driver of a product's effectiveness is its concentration level of active ingredients.³⁰ Clariant claims that all major CSOBA manufacturers satisfy the minimum threshold for purity and produce a CSOBA product that is at least 85 percent pure. The respondent asserts that purity is what determines the overall effectiveness of a product. According to TFM, additives and impurities can increase the unattractive yellow hue, decrease the overall brightness of paper, and cause the paper brightness to fade more quickly.³¹

Purchasers' knowledge of impurities and their perspective on the importance of purity is mixed. In general, purchasers appear to evaluate quality and the purity of the product in actual machine trials³² and do not request specific quality and purity specifications in RFPs. Four of ten responding purchasers identified types of impurities that impact product performance (ability to achieve desired brightness/whiteness targets. ***, reported that cyanuric chloride and unreacted amine compounds, which are left over from an incomplete reaction in the OBA production process, can cause significant adverse impact on brightness development. It stated that these impurities will cause lower achievable

²⁵ CSOBA products are in aqueous solution which may have additives and impurities that differ among suppliers. According to TFM, these impurities can increase the unattractive yellow hue, decrease the overall brightness of paper, and cause the paper brightness to fade more quickly. Hearing transcript, p. 129 (Nelson).

²⁶ One purchaser cited efficiency with mechanical wood fiber papers as a principal factor in determining the quality of CSOBAs, and one purchaser cited the purity of powder and it noted that CSOBAs in powder form were not available from U.S. producers.

²⁷ *** noted that the higher brightness and whiteness levels achieved have increased its sales of fine paper to its customers.

²⁸ As discussed in *Part V*, the concentration of active ingredients in CSOBA products varies from product to product and from producer to producer with typical concentration levels ranging from 16 to 23 percent.

²⁹ Petitioner's posthearing brief, exhibit 3, p. 18.

³⁰ Petitioner's prehearing brief, pp. 14-15.

³¹ Hearing transcript, pp. 124 and 129 (Nelson).

³² During machine trials different quantities of CSOBAs are applied at the wet-end or size press during paper production and the resulting brightness or whiteness of the paper is measured.

brightness levels, and impede reaching the brightness target of 97% GE, as well as the optimal blue shade, required for the U.S. market. According to ***, it is critical to have control of the reaction process to ensure a complete reaction, which has consumed all raw materials and reaction intermediates, followed by a product purification process to make the final OBA products of the highest purity possible before delivering the products to the customers. Other unwanted impurities, such as p-Nitrotoluene, p-Nitro, o-sulfonate toluene, di-nitrostyrene also have an impact on brightness development during the paper making process but to a lesser degree. *** reported that, in general, any non-fluorescing compounds that absorb light at 350 nm and do not fluoresce at 422 nm will impact the product's performance, and it noted that these types of impurities are caused by unreacted, or an excess, of feedstock material during the production process of OBAs. *** also noted that purity can have a more direct impact on OBA products that are better retained in the paper (i.e. tetra sulfonated). *** identified salts and dirt as impurities that impact performance and reported that an impurity level greater than 0.05 percent in CSOBA solutions has an impact on product performance. *** reported that the role of purity in OBAs is a concern in the industry. It identified product refining techniques, chemical structure of the end product, and ore selection, as factors that affect the purity level of a finished OBA product. *** stated that "as the role of OBA's has grown in the white paper industry, there are many products that will 'green over' from impurity when dosage is increased. The efficacy of the OBA material before 'greening' is very dependent upon the supplier/material selected. More efficacy allows more addition and higher perceived brightness." Five purchasers, *** reported that impurities were not a factor that they measured or obtained in their purchaser specifications; two purchasers reported that they did not know what types of impurities impact product performance. *** reported that while it knows that higher levels of impurities can negatively affects the products' ability to achieve brightness/whiteness targets, information regarding purity is typically proprietary and suppliers do not report purity levels to purchasers.

Purchasers were asked at what purity threshold level the existence of impurities in the CSBOA solution had an impact on product performance. *** reported that a purity threshold level below 97 percent can have an impact on product performance. *** reported that "a user will generally notice a processing change with a 10 percent difference in CSOBA purity. The lower level of purity will require more material to meet requirements."

Purchasers were asked if the purity level of CSOBAs purchased from one supplier was consistently higher than CSOBAs purchased from other suppliers. Five of nine purchasers reported that TFM produced CSOBAs with the highest purity level. *** reported that its lab testing has shown that TFM's product produces higher whiteness values, which it attributes to a "cleaner" liquid.³³ *** reported that it had experienced fewer problems with "greening over" with the current products it purchases from TFM than with products previously purchased from other suppliers. *** reported that TFM's products have always been higher in purity, which *** requires in order to produce its high brightness copy paper at 97 percent GE brightness. *** reported that based on its supplier certificate of analysis, the purity level of tetra CSOBAs from TFM is consistently higher (greater than 97 percent) than tetra CSOBAs from Clariant (approximately 82 percent). *** reported that is has seen a consistently higher purity level from TFM's OBA products. Three purchasers, *** reported that they did not measure the purity level of one supplier versus another.

Technical support

Seven of 14 purchasers reported that they specifically purchase CSOBAs from certain suppliers because of the technical/sales support that these suppliers provide. All seven purchasers reported that they received technical/sales support from their suppliers at no additional cost. Three purchasers reported that TFMNA provided technical services including market advice. *** stated that TFMNA provided support within four hours of all applicable facilities and that it managed the blending operations for ***

³³ In response to questions from Commission staff, ***. Email from ***, received March 23, 2012.

for no additional cost. Three purchasers reported that BASF provided them with on-site operational support as well as R&D support. Two purchasers (***) reported that Clariant provided them with assistance in selecting the best optical brighteners for each type of paper grade in order to obtain optimal use. One purchaser (***) stated that Greenville provided them with around-the-clock technical support and would be at its production site within 30 minutes if needed.

Supplier certification

Eleven of 13 responding purchasers, representing more than 99 percent of all purchases by value in 2011, reported that they require suppliers of CSOBAs to become certified or pre-qualified for all of their purchases.³⁴ Ten purchasers reported obtaining lab samples and then conducting multiple machine trials to determine the overall quality of the product (strength and brightness/whiteness levels achieved) as well as an evaluation of how the tested CSOBA interacts with other raw materials during the manufacturing process. In addition, three purchasers reported requiring safety and environmental approvals when qualifying a new supplier. One purchaser (***) reported that stewardship forms are submitted to ensure that the new supplier's products comply with various regulations, with some of its products requiring an FDA approval.³⁵ Two purchasers reported evaluating technical support and cost analysis and two purchasers require an ISO certification. One purchaser (***) required new suppliers to provide references from existing customers. Eleven purchasers provided information on the time necessary to qualify a supplier. Qualification times ranged from seven days to over six months, with five purchasers reporting ranges from three months to over six months.

When asked if any domestic or foreign suppliers had failed to obtain certification, only one of 14 purchasers reported "yes." *** reported that *** from China failed to qualify because *** product and equipment were contaminated at its trial facility.

Lead times

*** sales of U.S.-produced CSOBAs in 2011 came from inventories, with lead times ranging from 4 to 5 days. One importer of CSOBAs from China reported that *** percent of its sales in 2011 came from U.S. inventory and reported a lead time ranging from one day to one week depending on the customer's location. The sole importer of CSOBAs from Taiwan reported that *** percent of its sales came from U.S. inventory and reported an average lead time of 10 days.

Changes in purchasing patterns

Since January 2009, purchasers of CSOBAs have changed their purchasing patterns in different ways with respect to the country of origin of the CSOBAs (table II-7). Purchasers of domestic CSOBAs indicated that their purchases generally fluctuated or decreased. Reasons reported for fluctuations or decreases in domestic purchases included supply issues, fluctuating demand for end-use product, and price. While many purchasers reported that they had not purchased CSOBAs from subject sources, the majority of purchasers who had purchased from China or Taiwan reported an increase in purchases. Pricing and new grade trials were noted as reasons for an increase in purchases of CSOBAs from China. Reasons reported for an increase in purchases of CSOBAs from Taiwan included: new grade trials,

³⁴ Three purchasers, representing 1 percent of all 2011 purchases, reported that they did not require suppliers to become certified or qualified.

³⁵ All domestic producers produce a FDA-compliant product, which is used in products that may be used for food packaging. Less than 10 percent of sales of Fluorescent Brightener 220 comply with FDA regulations. Hearing transcript, pp. 54-55 (Dettlaff).

reliability of supply, and a more efficient process that requires a lower dosage of CSOBAs to achieve the same level of brightness.

Table II-7

CSOBAs: Changes in purchase patterns from U.S., subject countries, and nonsubject countries

Source	Decreased	Increased	Constant	Fluctuated	Did not purchase
United States	4	0	3	5	2
China	1	3	1	1	7
Taiwan	1	4	1	1	4
Nonsubject	3	2	0	1	4

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

Nine of 14 purchasers reported that they had changed suppliers since 2009. *** reported adding TFMNA as a supplier in 2009 because it achieved higher brightness and whiteness levels with less dosage requirements. *** reported adding TFMNA in early 2009 due to allocation issues with Kemira and Clariant. *** reported adding TFMNA because the quality and overall efficiency of TFMNA’s product provides the lowest total cost material when applied in the manufacturing process. *** reported that it stopped purchasing from Clariant due to Clariant’s lack of competitive pricing. *** reported that it has stopped purchasing from BASF due to price and it has added TFMNA because of its quality and price. Purchasers *** and *** reported that they have started purchasing from Sun Rise Chemicals.

Of the 14 responding purchasers, 6 purchased CSOBAs weekly, 5 purchased monthly, 2 purchased on an as-needed basis, and 1 purchased daily. When asked if purchasers expected their purchasing pattern to change in the next two years, 4 of 14 purchasers responded “yes.” Three purchasers anticipate increasing their purchasing frequency due to increased CSOBA consumption; the remaining purchaser anticipates reducing its purchasing frequency because it has become “noncompetitive.”

The majority of purchasers (8 of 14) contact at least three suppliers before making a purchase. The remainder reported contacting between 1 and 2 suppliers. Thirteen of 14 purchasers reported negotiating with the supplier when purchasing CSOBAs. Eleven purchasers reported that negotiations are based on price, availability, transportation costs, reliability of supply, theoretical usage of the product to obtain required brightness levels, and origin of raw materials. The majority of purchasers (11 of 14) reported that they do not vary their purchases from a given supplier within a specified time period based on the price offered for that period.^{36 37}

Importance of purchasing domestic product

The majority of purchasers (11 of 14) reported that buying U.S. product was not an important factor in their firms’ purchases. Three purchasers reported that buying domestic product was preferred because of shorter lead times and decreased potential for microbial growth, increased supply chain security, and technical support/service. Two purchasers, ***, reported that 70 and 100 percent of their purchases are domestic, respectively.

³⁶ Although purchaser *** indicated “yes,” it reported that it uses a bid process to contract its suppliers for an annual term and it does not typically vary its purchases from a given supplier during the contracted agreement period.

³⁷ Clariant and BASF reported that the limited storage capacity for CSOBAs at paper mills combined with the inadvisability of mixing CSOBAs from two different suppliers in a single batch limits a purchaser’s ability to vary their purchases from different suppliers. Hearing transcript, pp. 214-215 (Kelly) and Petitioner’s posthearing brief, exhibit 1, pp. 2-3.

Comparisons of Domestic Product, Subject Imports and Nonsubject Imports

Purchasers were asked a number of questions comparing CSOBAs produced in the United States, China, Taiwan, and nonsubject countries. Purchasers were asked for a country-by-country comparison on the 15 factors for which they were asked to rate the importance of various purchasing factors (table II-8).

Table II-8
CSOBAs: Comparisons of product by source country, as reported by U.S. purchasers

Factor	U.S. vs. China			U.S. vs. Taiwan			China vs. Taiwan		
	S	C	I	S	C	I	S	C	I
Availability	1	7	1	1	8	2	1	4	1
Delivery terms	2	6	1	2	8	1	1	4	1
Delivery time	4	3	2	5	6	0	1	4	1
Discounts offered	0	6	3	0	10	1	1	5	0
Extension of credit	0	8	1	0	11	0	1	4	1
Minimum quantity requirements	2	7	0	1	10	0	1	4	1
Packaging	1	8	0	0	11	0	1	5	0
Price ¹	0	2	7	0	3	8	2	3	1
Product consistency	2	7	0	1	10	0	1	4	1
Quality meets industry standards	2	7	0	1	10	0	1	4	1
Quality exceeds industry standards	2	7	0	1	8	2	1	4	1
Product range	2	7	0	2	8	1	1	4	1
Reliability of supply	3	5	1	3	8	0	2	3	1
Technical support/service	3	5	1	3	8	0	2	2	2
U.S. transportation costs ¹	1	5	3	1	9	1	1	5	0
Factor	U.S. vs. nonsubject			China vs. nonsubject			Taiwan vs. nonsubject		
	S	C	I	S	C	I	S	C	I
Availability	0	5	1	0	5	0	1	2	1
Delivery terms	1	4	1	0	5	0	1	3	0
Delivery time	2	3	1	0	5	0	1	3	0
Discounts offered	0	5	1	1	4	0	1	3	0
Extension of credit	0	6	0	0	5	0	0	4	0
Minimum quantity requirements	0	5	1	0	5	0	1	3	0
Packaging	1	5	0	0	5	0	0	4	0
Price ¹	2	2	3	1	2	2	2	1	2
Product consistency	1	4	1	0	5	0	1	3	0
Quality meets industry standards	0	5	1	0	5	0	1	3	0
Quality exceeds industry standards	0	5	1	0	5	0	1	3	0
Product range	0	5	1	0	5	0	1	3	0
Reliability of supply	2	3	1	0	5	0	1	3	0
Technical support/service	1	4	1	0	4	1	1	2	1
U.S. transportation costs ¹	1	4	1	0	5	0	0	3	1

¹ A rating of superior means that price/U.S. transportation cost is generally lower. For example, if a firm reported "U.S. superior", it meant that the price of the U.S. product was generally lower than the price of the imported product.

Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.

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

When comparing U.S. product to subject products, most responding purchasers reported that U.S. product was comparable to product from China³⁸ and Taiwan³⁹ for all characteristics except for price, for which the product from China and Taiwan were rated as superior.⁴⁰

When comparing subject products, most purchasers reported that Chinese product was comparable to Taiwan product for all characteristics, although in terms of technical support/service, two purchasers reported that Chinese product was superior, two reported that the products were comparable, and two reported that the Taiwan product was superior. When comparing U.S. product to CSOBAs produced in nonsubject countries, most responding purchasers reported that the U.S. product was comparable to CSOBAs produced in nonsubject countries for all characteristics. The exception to this was price, wherein two purchasers reported that the U.S. product was superior, two reported the products were comparable, and three reported U.S. product was inferior (i.e., the U.S. price is generally higher). The majority of purchasers reported that subject products were comparable to CSOBAs produced in nonsubject countries.

To determine whether U.S.-produced CSOBAs can generally be used in the same applications as CSOBAs from both subject and nonsubject countries, U.S. producers, importers, and purchasers were asked whether CSOBAs can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. In general, producers, importers, and purchasers identified a high frequency of interchangeability between most country comparisons. All three responding U.S. producers reported that domestic and imported product from subject countries are “always” or “frequently” interchangeable. The majority of importers and purchasers reported that domestic and imported CSOBAs from subject countries are “always” or “frequently” interchangeable (table II-9). Importers and purchasers reported consistent quality, product efficiency, specification requirements, and supplier not being qualified as factors that limit or preclude interchangeability.⁴¹ The majority of U.S. producers, importers, and purchasers reported that domestic and imported product from nonsubject subject countries are “always” or “frequently” interchangeable. In addition, the majority of firms also reported a high frequency of interchangeability between subject country comparisons.

³⁸ Purchaser responses indicated no clear majority rating when comparing delivery time of U.S. product and Chinese product.

³⁹ Purchaser responses indicated no clear majority rating when comparing delivery time of U.S.-produced CSOBAs and CSOBAs produced in Taiwan.

⁴⁰ Purchaser *** additionally reported that Taiwan product was superior to U.S. product with respect to its availability of product in powder form.

⁴¹ Purchaser *** reported that the Taiwan CSOBAs exhibit a higher quality/purity which provides more consistent and repeatable performance and that the standard domestically produced CSOBAs cannot be used in all applications utilizing Taiwan CSOBAs.

Table II-9

CSOBAs: Perceived interchangeability of products produced in the United States and in other countries, by country pairs

Country pair	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. subject countries												
U.S. vs. China	2	1	0	0	4	2	0	0	4	2	2	0
U.S. vs. Taiwan	2	1	0	0	2	1	1	0	3	5	3	0
U.S. vs. nonsubject countries												
U.S. vs. nonsubject	2	1	0	0	2	2	0	0	3	2	3	0
Subject country comparisons												
China vs. Taiwan	2	1	0	0	2	1	1	0	3	2	0	0
China vs. nonsubject	2	1	0	0	3	2	0	0	3	2	0	0
Taiwan vs. nonsubject	2	1	0	0	2	2	1	0	2	3	0	0
Note.--A = Always, F = Frequently, S = Sometimes, N = Never.												
Source: Compiled from data submitted in response to Commission questionnaires.												

As seen in table II-10, ten responding purchasers reported that domestically produced CSOBAs “always” meet minimum quality specifications. Half or slightly more than half of firms with knowledge indicated the same for product from China and Taiwan.

Table II-10

CSOBAs: Ability to meet minimum quality specifications, by source

Country	Number of firms reporting				
	Always	Usually	Sometimes	Rarely or never	Don't know
United States	10	3	0	0	1
China	3	2	1	0	6
Taiwan	5	3	0	0	4
Nonsubject countries	3	2	1	0	5
Source: Compiled from responses to Commission questionnaires.					

In addition, producers, importers, and purchasers were asked to assess how often differences other than price were significant in sales of CSOBAs from the United States, subject, or nonsubject countries (table II-11). Two of the three responding U.S. producers reported that differences other than price were “never” important for any subject country combination, and the remaining producer reported that differences other than price were “sometimes” important.

The majority of purchasers, and half or slightly less than half of responding importers, reported that differences other than price between U.S.-produced CSOBAs and subject imports are “always” or “frequently” a significant factor. Six purchasers reported the quality of the product and product availability as significant factors. Five purchasers (***) and one importer (***) reported that technical

support was very important in the paper industry.⁴² Two purchasers (***) reported availability of raw materials as a significant factor.⁴³

When comparing the United States to nonsubject countries, responses from importers and purchasers were mixed, with more than half of the responding firms reporting that differences other than price are “always” or “frequently” a significant factor.

Table II-11
CSOBAs: Perceived significance of differences other than price between products produced in the United States and in other countries, by country pairs

Country pair	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. subject countries												
U.S. vs. China	0	0	1	2	1	1	2	1	5	2	2	0
U.S. vs. Taiwan	0	0	1	2	2	0	1	1	4	4	3	0
U.S. vs. nonsubject countries												
U.S. vs. nonsubject	0	0	0	0	1	2	1	1	5	1	3	0
Subject country comparisons												
China vs. Taiwan	0	0	1	2	1	2	1	1	3	1	2	0
China vs. nonsubject	0	0	0	0	1	2	1	1	3	0	2	1
Taiwan vs. nonsubject	0	0	0	0	1	2	1	1	3	0	3	0
Note.--A = Always, F = Frequently, S = Sometimes, N = Never.												
Source: Compiled from data submitted in response to Commission questionnaires.												

ELASTICITY ESTIMATES

This section discusses elasticity estimates; although parties were requested to comment on these estimates in their prehearing or posthearing brief, none commented.

U.S. Supply Elasticity

The domestic supply elasticity for CSOBAs measures the sensitivity of the quantity supplied by the U.S. producers to changes in the U.S. market price for CSOBAs. The elasticity of domestic supply depends on several factors, including the level of excess capacity, the existence of inventories, and the availability of alternate markets for U.S.-produced CSOBAs.⁴⁴ Previous analysis of these factors indicates that the U.S. industry has a substantial ability to increase or decrease shipments to the U.S. market based on unused capacity and production flexibilities. An estimate in the range of 4 to 6 is suggested.

⁴² Two of these four purchasers identified subject importers as providing better technical support than U.S. producers. The remaining two purchasers did not identify specific comparisons/characteristics.

⁴³ Purchaser *** stated that Taiwan’s raw material availability was an advantage over CSOBAs produced in the United States.

⁴⁴ Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Therefore, factors affecting increased quantity supplied to the U.S. market also affect decreased quantity supplied to the same extent.

U.S. Demand Elasticity

The U.S. demand elasticity for CSOBAs measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of CSOBAs. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of CSOBAs in the final cost of end-use products in which it is used. Because of a lack of close, broadly accepted substitutes and low cost share, it is likely that the aggregate demand for CSOBAs is moderately inelastic, with values ranging between -0.25 to -0.6.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported CSOBAs. Product differentiation, in turn, depends upon such factors as quality and condition of sale (availability, delivery, etc.). Based on available information indicating that the domestic and imported products can frequently be used interchangeably, the elasticity of substitution between U.S.-produced CSOBAs and imported CSOBAs is likely to be in the range of 3 to 5.

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of three firms that accounted for 100 percent of U.S. production of CSOBAs during 2011.

U.S. PRODUCERS

U.S. producers of CSOBAs, their production locations, corporate affiliation, position with respect to the petition,¹ and share of 2011 U.S. production are shown in table III-1.

Table III-1
CSOBAs: U.S. producers, position with respect to the petition, production locations, share of 2011 U.S. production, and corporate affiliation

Firm	Position on petition	Production location(s)	Share of 2011 production (percent)	Corporate affiliation
3V	***	Georgetown, SC	***	3V Chemical SpA, Milano, Italy
BASF	***	McIntosh, AL	***	BASF SE, Ludwigshafen, Germany
Clariant	Support	Martin, SC	***	Clariant AG, MuttENZ, Switzerland
Total			100.0	
Source: Responses to the Commission questionnaires, public conference, and petition.				

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Table III-2 presents U.S. producers' production capacity, production, and capacity utilization for CSOBAs. Capacity utilization fluctuated downward during 2009-11, increasing from approximately *** percent in 2009 to about *** percent in 2010, before falling to *** percent in 2011, with a resultant effect of a *** percentage point decline in capacity utilization over the period for which data were collected.

Table III-2
CSOBAs: U.S. producers' capacity, production, and capacity utilization, 2009-11

* * * * *

¹ ***. BASF's posthearing responses to Commission questions ("BASF's posthearing responses"), March 22, 2012, p. 1.

***.² ***.³ BASF indicated that the gain in market share by the Chinese and Taiwanese OBA manufacturers resulted in significantly lower volumes as well as significantly lower margins on its remaining business. The impact of both lower volumes (i.e., idle capacity at the plant) and lower margins is ***.⁴ According to BASF, ***.⁵

Clariant reported that ***.⁶ Specifically, Clariant reported its 2011 ***.⁷ Clariant also reported a ***.⁸ *** reported that the ***.⁹

*** reported that it produces *** on the same equipment and machinery used in the production of CSOBAs; however, no other products can be made on these production lines ***. ***.¹⁰ *** reported that it does not produce, nor does it anticipate producing in the future, other products on the same equipment and machinery used in the production of CSOBAs; however, ***.¹¹ *** described the constraints that set limits on its production capacity and ability to shift production capacity between products as ***.¹² *** reported that the same production and related workers employed to produce CSOBAs ***.¹³ ***.¹⁴

U.S. PRODUCERS' SHIPMENTS

Table III-3 presents U.S. producers' shipments of CSOBAs on a 100-percent active ingredient basis. Commercial U.S. shipments of CSOBAs fluctuated downward throughout the 2009-11 period examined, by *** percent, while U.S. exports increased irregularly, by *** percent. Specifically, U.S. producers' U.S. shipments increased by *** percent from *** pounds in 2009 to *** pounds in 2010 before declining by *** percent to *** pounds in 2011. U.S. producers' export shipments grew by *** percent from *** pounds in 2009 to *** pounds in 2010 before declining by *** percent to *** pounds in 2011. ***.¹⁵

Table III-3
CSOBAs: U.S. producers' shipments, by types, 2009-11

* * * * *

² ***'s U.S. Producer Questionnaire Response, section II-2. BASF clarified the acquisition of Ciba Specialty Chemical's North American paper CSOBA business as one of many paper chemical product families acquired by BASF in the global acquisition of Ciba. According to BASF, the North American paper CSOBA business made up *** of Ciba at the time of its acquisition by BASF. BASF's posthearing responses, p. 4.

³ BASF's posthearing responses, p. 3.

⁴ Ibid., pp. 3-4.

⁵ Ibid., p. 3.

⁶ ***'s U.S. Producer Questionnaire Response, section II-2.

⁷ Ibid.

⁸ ***'s U.S. Producer Questionnaire Revisions, section II-2, February 24, 2012.

⁹ ***'s U.S. Producer Questionnaire Response, section II-3.

¹⁰ ***'s U.S. Producer Questionnaire Response, sections II-3 and II-4.

¹¹ ***'s U.S. Producer Questionnaire Response, section II-3.

¹² ***'s U.S. Producer Questionnaire Response, section II-4.

¹³ ***'s U.S. Producer Questionnaire Response, section II-3 and addendum, bullet 3.

¹⁴ ***'s U.S. Producer Questionnaire Response, section II-4.

¹⁵ U.S. Producer Questionnaire Responses, sections II-8a and II-8b.

U.S. producers' commercial U.S. shipments of CSOBAs by di-, tetra-, and hexa- categories are presented in table III-4. The volume of U.S. producers' U.S. commercial shipments of di-category CSOBAs rose by *** percent ; the tetra-category fell by *** percent, and the hexa-category fluctuated upward by *** percent, during the 2009-11 period for which data were collected. Specifically, the di-category increased by *** percent from 2009 to 2010, from *** pounds to *** pounds, and rose by *** percent from 2010 to 2011, to *** pounds. The tetra-category fell by *** percent, from *** pounds in 2009 to *** pounds in 2010, and decreased further, by *** percent, to *** pounds in 2011. The hexa-category increased irregularly by *** percent, from *** pounds in 2009 to *** pounds in 2010, and declined by *** percent, to *** pounds in 2011. The value of U.S. producers' U.S. commercial shipments by categories followed a similar pattern; however, the unit values decreased each year for the di-category (by \$*** from \$*** in 2009 to \$*** in 2010, and by \$*** to \$*** in 2011) and hexa-category (by \$*** from \$*** in 2009 to \$*** in 2010, and by \$*** to \$*** in 2011), while the tetra-category unit values fell by \$*** from \$*** in 2009 to \$*** in 2010 before rising by \$*** to \$*** in 2011.

Table III-4
CSOBAs: U.S. producers' U.S. commercial shipments, by category, 2009-11

* * * * *

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' inventories of CSOBAs are presented in table III-5.¹⁶ U.S. producers' end-of-period inventories increased irregularly, by *** percent, during the period for which data were collected. Specifically, U.S. producers' inventory decreased, by *** percent, from *** pounds in 2009 to *** pounds in 2010 before increasing, by *** percent, to *** pounds in 2011. The ratio of inventories to total shipments also rose irregularly, by *** percentage points, during the 2009-11 period. Specifically, the ratio of inventories to total shipments decreased, by *** percentage points, from *** percent in 2009 to *** percent in 2010, before a rise, by *** percentage points, to *** percent in 2011.

Table III-5
CSOBAs: U.S. producers' end-of-period inventories, 2009-11

* * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. producers' employment data are presented in table III-6. ***.¹⁷ ***.¹⁸ ***.¹⁹ The U.S. industry's productivity declined irregularly during 2009-11, by ***, from *** in 2009, to *** in 2010, *** in 2011.

¹⁶ ***'s U.S. Producer Questionnaire Response, section II-8a.

¹⁷ ***'s U.S. Producer Questionnaire Response, section II-2.

¹⁸ ***'s U.S. Producer Questionnaire Response, section II-2.

¹⁹ ***'s U.S. Producer Questionnaire Response, sections II-2 and II-8a and ***'s U.S. Producer Questionnaire Revisions, section II-2, February 24, 2012.

Table III-6

CSOBAs: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2009-11

* * * * *

PRODUCERS' IMPORTS AND NON-IMPORT PURCHASES

***²⁰ ***²¹ ***²²

²⁰ ***'s Importer Questionnaire Response, section II-4.

²¹ ***'s Importer Questionnaire Response, section II-4.

²² ***'s U.S. Producer Questionnaire Response, sections II-12a and 12b; Importer Questionnaire Response, section II-4.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent questionnaires to 19 firms (including the three U.S. producers) that were believed to be possible importers of CSOBAs from China and Taiwan during January 2009-December 2011 and received responses from eight firms. Four firms reported imports of the subject merchandise during this period. Three firms imported from China, one imported from Taiwan, and six imported from nonsubject sources.¹ Table IV-1 lists all responding U.S. importers of CSOBAs and their quantity of imports, by source, on a 100-percent active ingredient basis, in 2011. *** was the largest importer from China in 2011 and accounted for *** percent of all reported U.S. imports of CSOBAs from China and *** percent of reported U.S. imports of CSOBAs from nonsubject sources in 2011. *** was the largest importer of CSOBAs from Taiwan in 2011 and accounted for *** percent of reported U.S. imports of CSOBAs from Taiwan.² *** was the largest importer of CSOBAs from nonsubject sources in 2011 and accounted for *** percent of reported U.S. imports of CSOBAs from nonsubject sources. *** U.S. importers entered the subject product into or withdrew it from foreign trade zones or bonded warehouses.

U.S. IMPORTS

Official Commerce statistics for HTS subheadings 3204.20.80 and 2921.59.40 and HTS statistical reporting numbers 2921.59.8090 and 2933.69.6050 are basket categories and thus overstated; therefore, questionnaire data are used for imports of CSOBAs. CSOBAs are imported both in powder and in solution form; therefore, import quantity data are presented on a total, 100-percent active ingredient basis.³

Table IV-1
CSOBAs: Reported U.S. imports, by importer and by source of imports, 2011

* * * * *

Table IV-2 presents data on U.S. imports of CSOBAs on a total, 100-percent active ingredient basis. The volume of U.S. imports of CSOBAs from China and Taiwan aggregated increased by *** pounds (*** percent) from 2009 to 2011, from *** pounds in 2009 to *** pounds in 2011, and accounted for *** percent of total imports of CSOBAs in 2011. China's share of total imports decreased from *** percent in 2009 to *** percent in 2010, and accounted for *** percent of total imports in 2011. Taiwan's share of total imports decreased irregularly from *** percent in 2009, to *** percent in 2010, and accounted for *** percent of total imports in 2011.

¹ ***.

² Reconciliation of data among the three forms of CSOBAs requested: total, 100-percent active ingredient basis; solution form; and powder form, proved difficult for certain respondent importers. In particular, ***.

³ Data for U.S. imports of CSOBAs in solution form are presented in appendix D and data for U.S. imports of CSOBAs in powder form are presented in appendix E.

Table IV-2
CSOBAs: U.S. imports, by sources, 2009-11

* * * * *

The volume of nonsubject imports rose from *** pounds in 2009 to *** in 2010, and to *** pounds in 2011. Nonsubject import’s share of total imports increased from *** percent in 2009, to *** percent in 2010, and accounted for *** percent of total imports in 2011. The rise in nonsubject imports in 2011 may be attributable to ***. Blankophor purchased its optical brightening agents production facility from Kemira Oyj on September 10, 2010,⁴ and ***.⁵

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) the degree of fungibility, including specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Channels of distribution are discussed in *Part II* of this report; fungibility, geographical markets, and presence in the market are discussed below.

Fungibility and Presence in the Market

Tables IV-3 through IV-6 present U.S. producers’ commercial shipment quantities and U.S. importers’ U.S. commercial shipment quantities by category (di-, tetra-, and hexa-) for the period for which data were collected. The data indicate that, during the period for which data were collected, U.S.-produced CSOBAs as well as imports from China and Taiwan were present, to varying degrees, in all three categories of the CSOBA market. Additional discussion of fungibility is presented in *Part II*.

Table IV-3
CSOBAs: U.S. producers’ U.S. commercial shipments, by category, 2009-11

* * * * *

Table IV-4
CSOBAs: U.S. commercial shipments of imports from China, by category, 2009-11

* * * * *

Table IV-5
CSOBAs: U.S. commercial shipments of imports from Taiwan, by category, 2009-11

* * * * *

Table IV-6
CSOBAs: U.S. commercial shipments of imports from all other sources, by category, 2009-11

* * * * *

⁴ Kemira Oyj, “Kemira closes the Blankophor (previously German Catec) deal,” October 1, 2010, http://www.kemira.com/en/media/pressreleases/Pages/1448386_20101001144600.aspx (accessed May 4, 2011).

⁵ ***’s importer questionnaire response and email correspondence with USITC staff, January 24 and February 15, 2012.

Geographical Markets

CSOBAs produced in the United States are reportedly shipped nationwide. While imports of CSOBAs from the subject countries may enter select Customs districts, such products are then generally sold nationwide. Table IV-7 presents information on shares of U.S. imports of CSOBAs entered by regions and Customs districts during 2009-11. Imports of CSOBAs from both China and Taiwan entered the U.S. market through each major geographic region. However, imports of CSOBAs from China principally entered through Customs districts in the East, while imports of CSOBAs from Taiwan principally entered through Customs districts in the South, West, and Midwest.

Table IV-7
CSOBAs: U.S. imports by sources and regions, 2009-11

Region	China			Taiwan		
	2009	2010	2011	2009	2010	2011
Shares of total quantity (percent)						
East ¹	58.32	74.86	86.82	0.35	0.74	3.66
South ²	11.23	1.47	4.24	48.92	35.24	28.93
West ³	16.49	7.25	3.04	20.86	26.60	23.71
Midwest ⁴	13.96	16.42	5.90	29.88	37.42	43.70
Total	100.00	100.00	100.00	100.00	100.00	100.00
¹ Includes: Baltimore, MD; Boston, MA; Charleston, SC; Charlotte, NC; New York, NY; Ogdensburg, NY; Philadelphia, PA; Portland, ME; Savannah, GA; and St. Albans, VT. ² Includes: Houston-Galveston, TX; Laredo, TX; Mobile, AL; New Orleans, LA. ³ Includes: Anchorage, AK; Columbia-Snake, OR; Great Falls, MT; Los Angeles, CA; San Francisco, CA; and Seattle, WA. ⁴ Includes: Buffalo, NY; Chicago, IL; Cleveland, OH; Detroit, MI; Duluth, MN; Milwaukee, WI; and Minneapolis, MN. Note.—Because of rounding, figures may not add to the totals shown. Source: Compiled from official Commerce statistics for HTS numbers 2921.59.40, 2921.59.8090, and 3204.20.80.						

APPARENT U.S. CONSUMPTION

Table IV-8 presents data on apparent U.S. consumption of CSOBAs on a total, 100-percent active ingredient basis. The volume of apparent consumption of CSOBAs on a total, 100-percent active ingredient basis fluctuated upward over the period examined, from *** million pounds in 2009, to *** pounds in 2010, and *** pounds in 2011; however, U. S. producers' shipments decreased irregularly during the period for which data were collected from *** pounds in 2009, to *** pounds in 2010, and *** pounds in 2011. At the same time, the volume of U.S. shipments of subject imports rose from *** pounds in 2009 to *** pounds in 2010, and to *** pounds in 2011.

Table IV-8
CSOBAs: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2009-11

* * * * *

U.S. MARKET SHARES

Table IV-9 presents data on U.S. market shares based on apparent U.S. consumption of CSOBAs on a total, 100-percent active ingredient basis. The volume of U.S. market share of the domestic producers of CSOBAs fell by *** percentage points from 2009-11; specifically, from *** percent in 2009, to *** percent in 2010, to *** percent in 2011. The volume of U.S. shipments of subject imports rose by *** percentage points during 2009-11, from *** percent in 2009, to *** percent in 2010, and to *** percent in 2011.

Table IV-9
CSOBAs: Apparent consumption and market shares, by sources, 2009-11

* * * * *

PART V: PRICING AND RELATED INFORMATION

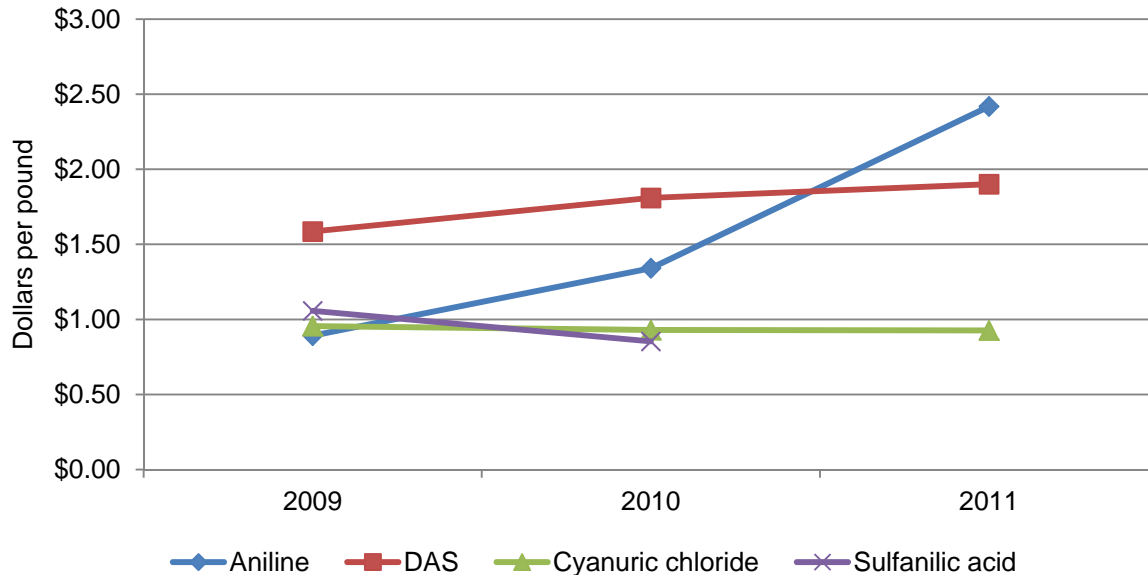
FACTORS AFFECTING PRICES

Raw Material Costs

Total raw material costs averaged *** percent of the responding U.S. producers' total costs of goods sold to produce CSOBAs during 2009-11. DAS, a substantial input used to produce domestic CSOBAs, accounted for approximately *** percent of U.S. producers' total cost of goods sold during this period.¹ Other important raw material inputs used to produce domestic CSOBAs are aniline (di CSOBAs), cyanuric chloride (all CSOBAs), and sulfanilic acid (tetra CSOBAs).

U.S. producers *** reported that no public price data exists for their inputs used to produce CSOBAs. U.S. import statistics provide unit values for some of the major chemical inputs may be indicative of price trends of these chemicals in the U.S. market during this period. Quarterly trends in the unit values of imported DAS, cyanuric acid, and sulfanilic acid during 2009-2011 are shown in figure V-1. Unit values of the chemicals, particularly aniline, steadily increased over the period.²

Figure V-1
CSOBAs' input chemicals: Average landed, duty-paid, U.S. ports-of-entry unit values of aniline, DAS, cyanuric acid and sulfanilic acid¹, by year, January 2009-December 2011



¹ The unit value of sulfanilic acid for 2011 was \$18.59 per pound. Only 165 pounds were imported in 2011 compared with 1.7 million pounds in 2010. Sulfanilic acid from India has an AD duty of 114.80 percent and a CVD of 43.71 percent and sulfanilic acid from China has AD duties ranging from 19.14 to 85.20 percent.

Source: USITC Dataweb, accessed February 15, 2012.

¹ BASF reported that ***. U.S. producer questionnaire response, section IV-17.

² *** reported that more than 80 percent of the raw materials used in the production of CSOBAs are sourced from China. *** anticipates that the price of raw materials will trend upwards. U.S. importer questionnaire response, section III-18.

*** producers reported that the costs of raw materials have increased during the period of investigation, and in particular during 2011.³ *** stated that “***.” *** stated that generally the increases in raw materials costs are not recovered in the selling prices of CSOBAs in the U.S. market.⁴

U.S. Inland Transportation Costs

The three U.S. producers, two importers of CSOBAs from China (***), and one importer of CSOBAs from Taiwan (***) indicated that their firms generally arrange for transportation to customers’ locations. U.S. producers reported that U.S. inland transportation costs for CSOBAs ranged from *** to *** percent of the delivered price. In the U.S. market, CSOBAs are shipped in bulk and non-bulk containers; the delivered price of CSOBAs is typically less in bulk containers compared to non-bulk containers for equal distances shipped.⁵ The two responding importers of CSOBAs from China reported that U.S. inland transportation costs averaged *** percent of the delivered price. The one responding importer of CSOBAs from Taiwan reported that U.S. inland transportation costs averaged *** percent of the delivered price.

All three U.S. producers and two importers reported their share of sales by specified distance categories. U.S. producers’ and importers’ weighted-average U.S. shipment shares of domestic and imported CSOBAs by specified distance categories from their U.S. shipping locations during 2011 are shown in the following tabulation.

Distances shipped	Shares of U.S. commercial shipment values (percent)		
	U.S.-produced	Imported from China ¹	Imported from Taiwan
Within 100 miles	***	***	***
101 to 1,000 miles	***	***	***
Over 1,000 miles	***	***	***
¹ *** reported that *** percent of its sales of CSOBAs were delivered within 100 to 1,000 miles of its shipping location.			
Source: Compiled from data submitted in response to Commission questionnaires.			

PRICING PRACTICES

Pricing Methods

All responding firms (three producers, two importers of CSOBAs from China, and one importer of CSOBAs from Taiwan) reported generally quoting prices on a delivered basis, with the suppliers arranging the freight. U.S. producers *** and importer *** typically offer payment terms of net 30 days. Two importers of CSOBAs from China offer payment terms of net 60 days, and U.S. producer *** offers payment terms of net 45 days. All three U.S. producers reported selling CSOBAs ***. BASF also

³ According to financial data reported by all three U.S. producers, while raw material costs increase in terms of ratio to sales, the average unit values for raw material costs remained flat during the period of investigation (see *Part VI* for greater detail).

⁴ Importer questionnaire response, section III-18.

⁵ Bulk containers include tank trucks/road tankers (45,000 pounds or 5,000 gallons), and rail cars (180,000 pounds or 20,000 gallons). Non-bulk containers include drums (450 pounds or 50 gallons) and totes/intermediate bulk containers (2,400 pounds or 250 gallons). *Certain Stilbenic Optical Brightening Agents from China and Taiwan, Inv. Nos. 731-TA-1186-87 (Preliminary)*, USITC Publication 4236, May 2011, p. V-3.

reported that ***. Importer Sun Rise reported ***. Importer Greenville reported that ***. Importer TFMNA reported that ***.

Sales Terms and Discounts

. *** and the three responding importers () reported that they did not offer any discounts.

Contract vs. Spot Sales

CSOBAs are most often sold on a contract basis. The petitioner asserts that the length of contracts for the sales of CSOBAs has shortened over the past decade, resulting in an increasing number of short term contracts and a decreasing number of long-term contracts.⁶ However, data submitted by producers and importers does not show a trend away from multi-year contracts. Three U.S. producers and two importers reported their 2009-2011 U.S. commercial shipments of CSOBAs by type of sale; their shipment shares, based on f.o.b. sales values, are shown in table V-2.⁷ The share of commercial shipments sold on a long-term contract basis has increased for both U.S. producers and the Taiwan importer during the period of investigation. U.S. producers' share of spot sales and short-term contracts has decreased during 2009-11. Clariant asserts that it is unable to win spot sale and short-term contracts due to the presence of subject imports. However, the respondents claim that paper producers do not purchase CSOBAs from the spot market because CSOBA products are required to be pre-qualified by paper mills (qualification trials typically range from 2-5 months), and mixing CSOBAs from different suppliers can have undesirable effects on paper performance.⁸ Both importers from China and Taiwan reported never selling CSOBAs on the spot market.

Table V-2
CSOBAs: U.S. producers' and importers' U.S. commercial shipments by type of sale, 2009-2011

* * * * *

Two producers (***) and one importer (***) reported that their long-term contracts are typically *** years. All three producers and two importers (***) reported that their short-term contracts are typically one year in length.⁹ Two producers (***) and one importer (***) reported that both their long-term and short-term contracts can be renegotiated. All three producers reported that both price and quantity are initially fixed. Importer *** reported that its short-term contracts can be renegotiated and that price is initially fixed. The three producers and two importers (***) reported that contracts generally contain meet-or-release provisions.

⁶ Petitioner's posthearing brief, exhibit 1, pp. 6-7.

⁷ Spot sales are usually for a one-time delivery, within 30 days of the purchase agreement; short-term sales are for multiple deliveries for up to 12 months after the purchase agreement; and long-term sales are for multiple deliveries for more than 12 months after the purchase agreement. Short-term and long-term sales may be arranged by contracts or oral agreements.

⁸ Respondent's posthearing brief, p.12. Clariant and BASF also reported that limited storage capacity for CSOBAs at paper mills combined with the inadvisability of mixing CSOBAs from two different suppliers in a single batch limits a purchaser's ability to vary their purchases from different suppliers. Hearing transcript, pp. 214-215 and Petitioner's posthearing brief, exhibit 1, pp. 2-3. This may explain the very low share of purchases on the spot market.

⁹ Importer *** reported that ***. *** reported that *** percent of its sales were sold as ***.

PRICE DATA

The Commission requested U.S. producers and importers provide quarterly data for the total quantity and both delivered and f.o.b. value of the following CSOBA products shipped to unrelated U.S. customers during January 2009-December 2011.

Product 1.— 4,4'-bis***-6-(4-sulfoanilino)-1,3,5-triazin-2-yl]amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₄N₁₂O₁₆S₄ (“Fluorescent Brightener 220”)--

For example:

Clariant’s Leucophor T-100 Liquid, T-105 Liquid, or T-4 Liquid;

BASF’s Tinopal ABP-A Liquid;

TFM’s Taflunol UMS T/P Powder or UMS 640L Liquid; and

Hongda’s 4PL-C, BBU-D, or Elcowhite TS.

Report Fluorescent Brightener 220 **in solution**, in bulk packaging (e.g., *tank trucks, road tankers, and/or rail cars*);

Product 2.—Fluorescent Brightener 220 **in solution**, in non-bulk packaging (e.g., *drums, totes, and/or intermediate bulk containers*).

The price data were based on quarterly U.S. delivered and f.o.b. selling price data of U.S. producers and importers for their shipments of the specified CSOBA products on a 100-percent active ingredient basis.^{10 11} The concentration levels of active ingredients in CSOBA products can affect sales prices, with potentially purchasers willing to pay a higher price for a product with a higher concentration level. In addition to concentration levels, there are other important determinants in the pricing of CSOBAs. Although CSOBAs are almost always applied in aqueous solution by the end user, CSOBAs can be shipped as either aqueous solution or as powder. For CSOBAs shipped as powder, an affiliate of the importer, a third party tolling operation, or the final end user prepares the CSOBAs in an aqueous solution at the desired concentration.^{12 13} The distances shipped and the state in which the CSOBAs are shipped in can greatly affect sale price, with transportation costs a proportionally greater factor for those shipped in solution than in powder. Prices were requested on both U.S. delivered and f.o.b. bases. Prices on a delivered basis are the prices used in the U.S. market. However, these prices are biased by the varying transportation methods and freight costs. Prices based on an f.o.b. basis isolate the effect of the substantial freight costs, but do not reflect the prices quoted to U.S. customers.¹⁴ Price trends and comparisons based on both a delivered and f.o.b. bases are discussed below.

¹⁰ The weighted-average percentage of active ingredients contained for each of the quarterly quantity figures were requested because the concentration of active ingredients in CSOBA products varies from product to product and from producer to producer.

¹¹ Quarterly price data on a 100-percent active ingredient bases was calculated by multiplying the quantity of pounds in solution by the quarterly weighted-average percentage of active ingredients contained in solution.

¹² Importers of CSOBAs from China and Taiwan that imported the products in dry form and then reconstituted the products into liquid form (typically called a let-down process) were asked to provide the requested selling price data for the let-down products separately from sales of CSOBAs imported as a solution. In addition, importers of CSOBAs in dry form from the subject countries were requested to provide the share of their average delivered price that was accounted for by the let-down process for each such country, product, and year that price data were reported. ***. ***.

¹³ CSOBAs in powder form typically range from 90 percent to 100 percent of active ingredients.

¹⁴ To estimate selling prices on an f.o.b. basis, the reporting firms were requested to deduct from their delivered selling prices U.S. freight from their U.S. plants (producers) or from their U.S. ports-of-entry (importers). Reporting firms were requested to report quantities (in pounds of solution) separately for their delivered and f.o.b. selling

(continued...)

*** U.S. producers of CSOBAs (***), two importers of CSOBAs from China (***), and one importer of CSOBAs from Taiwan (***) reported usable price information, but not necessarily for all products or periods.^{15 16} In addition, price data were reported by one importer of CSOBAs from Germany (***) and one importer of CSOBAs from Indonesia (***). All firms were able to report comparable quantities of both the requested delivered and f.o.b. price data. Both *** reported price data for their CSOBAs imported ***.¹⁷ By quantity (based on a 100-percent active ingredient), pricing data by responding firms accounted for approximately *** percent of U.S. producers' commercial shipments during January 2009-December 2011, *** percent of reported U.S. commercial shipments of imports from China, and *** percent of reported U.S. commercial shipments of imports from Taiwan.

The total sales quantities of CSOBAs in solution and the weighted-average percent of active ingredient of the specified CSOBA products to U.S. paper companies for which U.S. producers and subject importers reported the requested pricing data during 2009-11 are shown in table V-3. Quantities for both the domestic and subject imported products were typically *** for sales in bulk packaging (product 1) than sales in non-bulk packaging (product 2). As seen later in the pricing tables, unit prices of the bulk sales were typically *** than the non-bulk sales.

Table V-3
CSOBAs: Total sales quantities and the weighted-average percent of active ingredient of domestic and subject imported CSOBA products, January 2009-December 2011

* * * * *

The amount of active ingredient sold in CSOBAs in solution varied by country. U.S. importers of CSOBAs from China sold CSOBAs in solution with the lowest percentage of active ingredients with a weighted-average of *** percent. The amount of active ingredient in sales of domestically produced CSOBAs and CSOBAs imported from Taiwan were similar. U.S. producers sold CSOBAs in solution with the highest percentage of active ingredient, with a weighted-average of *** percent and the U.S. importer of CSOBAs from Taiwan sold CSOBAs with a weighted-average of *** percent.¹⁸

Based on U.S. delivered prices, quarterly net weighted-average selling prices and quantities of the domestic and subject imported products 1 and 2 are shown in tables V-4 and V-5, respectively, and in figures V-2 and V-3, respectively. Quarterly net weighted-average selling prices based on reported U.S.

(...continued)

prices, where the respective quantities should correspond to shipments that were reported on a delivered and f.o.b. basis, respectively.

¹⁵ The pricing data presented herein differ from those presented in the prehearing report, as they now incorporate revisions made by importer ***. Importer *** deducted the cost of U.S. inland freight from the port to the warehouse from its reported f.o.b. sales values.

¹⁶ The petitioner disputes the validity of the *** reported average percentage of active ingredients in its pricing products; however, *** insists that its shipments of products 1 and 2 to U.S. customers ***. The petitioner asserts that it is not credible that ***. Petitioner's prehearing brief, pp. 53-54. Commission staff attempted to verify the concentration level of active ingredients in *** product during the period of investigation. Four responding purchasers (***) reported that they did not know the concentration level of active ingredients of their *** purchases. Purchaser responses indicated that firms purchase CSOBA products based on the product's overall effectiveness during a batch trial. Purchasers also reported in response to Commission questionnaires that the price of CSOBAs *** was generally lower than the price of U.S. product. However, ***, reported that it purchased CSOBAs from *** and the product was sold on a *** percent active ingredient basis. It reported that the concentration level was consistently at *** percent during 2009-11. Therefore, price data based on *** reported concentration levels for *** pricing products are presented in appendix F.

¹⁷ Importer *** reported that it imported CSOBAs ***.

¹⁸ This weighted-average for both Taiwan and China includes both CSOBAs imported in solution and in powder form.

f.o.b. prices and quantities of the domestic and subject imported products 1 and 2 are shown in tables V-6 and V-7, respectively, and in figures V-4 and V-5, respectively. The quarterly net weighted-average selling prices and quantities shown in these tables are based on 100-percent active ingredients.¹⁹ The reported quarterly quantities and net weighted-average U.S. delivered and f.o.b. prices of the specified products imported from nonsubject countries are discussed in appendix G.

Table V-4

CSOBAs: Weighted-average U.S. delivered prices and quantities of domestic and subject imported product 1,¹ and margins of underselling/(overselling), by quarters, January 2009-December 2011

* * * * *

Table V-5

CSOBAs: Weighted-average U.S. delivered prices and quantities of domestic and subject imported product 2,¹ and margins of underselling/(overselling), by quarters, January 2009-December 2011

* * * * *

Figure V-2

CSOBAs: Weighted-average quarterly U.S. delivered prices and quantities of domestic and subject imported product 1, by quarters, January 2009-December 2011

* * * * *

Figure V-3

CSOBAs: Weighted-average quarterly U.S. delivered prices and quantities of domestic and subject imported product 2, by quarters, January 2009-December 2011

* * * * *

Table V-6

CSOBAs: Weighted-average f.o.b. prices and quantities of domestic and imported product 1,¹ and margins of underselling/(overselling), by quarters, January 2009-December 2011

* * * * *

Table V-7

CSOBAs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2,¹ and margins of underselling/(overselling), by quarters, January 2009-December 2011

* * * * *

Figure V-4

CSOBAs: Weighted-average quarterly f.o.b. prices and quantities of domestic and imported product 1, by quarters, January 2009-December 2011

* * * * *

¹⁹ The reported quarterly quantities and net weighted-average selling prices are shown on a 100-percent active ingredient basis because these data are believed to be appropriate for price comparison purposes when concentration levels vary between products and producers.

Figure V-5
CSOBAs: Weighted-average quarterly f.o.b. prices and quantities of domestic and imported product 2, by quarters, January 2009-December 2011

* * * * *

Price Trends

As show in tables V-4 through V-8 and figures V-2 through V-5, weighted-average sale prices of the specified CSOBA products produced domestically and imported from China and Taiwan fluctuated during 2009-11.²⁰ Prices of the domestic and subject imported products generally ***, except for the Taiwan product 2 (imported in powder form) that ***. Price trends of the domestic and subject imported CSOBAs appear to be influenced, at least partially, by price fluctuations of raw material costs. Prices of the domestic and subject imported products were generally at their highest during the first quarter of 2009 and then decreased, with price increases of DAS peaking in mid-year 2008 and falling by half by the end of 2009.

U.S.-produced CSOBA products fluctuated but decreased substantially from their 2009 levels. Overall, f.o.b. prices of all U.S.-produced CSOBAs fell by *** to *** percent between the first quarter of 2009 and the first quarter of 2010; delivered prices of all U.S.-produced CSOBAs also fell, decreasing by *** to *** percent between the first quarter of 2009 and the first quarter of 2010. Domestic prices for product 1 increased slightly during the third and fourth quarters of 2010, fell in the first quarter of 2011, and have remained stable through the end of 2011. Domestic prices for product 2 have irregularly increased through the end of 2011 since its period low during the fourth quarter of 2009.

The weighted-average f.o.b. sale prices for CSOBAs imported from China and Taiwan generally followed the trends displayed by domestically produced CSOBAs. However, f.o.b. and delivered prices for Taiwan product 2 (imported in powder form) increased *** percent, respectively, from the first quarter of 2009 through the fourth quarter of 2009, then irregularly decreased through the end of 2010 before irregularly increasing through the end of 2011.

Table V-8
CSOBAs: Summary of weighted-average U.S. delivered and f.o.b. prices for products 1-2 from the United States, China, and Taiwan

* * * * *

²⁰ Freight costs did not significantly change during the period of investigation and the overall trends of delivered prices follow the same trends of f.o.b. prices.

Price Comparisons

Comparisons between delivered and f.o.b. prices

U.S. producers and importers of CSOBAs from China and Taiwan reported their quarterly net U.S. delivered and f.o.b. price data for two specified CSOBA products sold to paper companies during January 2008-December 2011. As seen in table V-9, the weighted-average delivered price of U.S.-produced CSOBAs was 10.2 percent higher than the weighted-average f.o.b. price for CSOBAs shipped in bulk packaging (product 1) and 12.0 percent higher for CSOBAs shipped in non-bulk packaging (product 2). However, the difference between delivered and f.o.b. prices of Taiwan imports was half as much domestic product, with delivered prices of Taiwan products only 4.8 to 6.0 percent higher than the f.o.b. price for CSOBAs imported from Taiwan. The lower U.S.-inland freight costs per pound for Taiwan importers compared to the freight costs of U.S. producers were consistent with the shorter U.S. shipping distances reported by subject importers.

Table V-9

CSOBAs: Weighted-average price difference between delivered and f.o.b. prices of domestic and imported product, 2009-11

* * * * *

The occurrences and margins of underselling and overselling do not vary greatly when comparing delivered and f.o.b. prices of CSOBAs imported as solution. However, for CSOBAs imported as powder (which represents 87 percent of subject import price data), the number of occurrences and the margins of underselling and overselling do differ when comparing delivered and f.o.b. prices. The role of shipment distances and the state in which the CSOBAs are shipped is particularly evident in the prices of imports from Taiwan shipped in bulk packaging. Margins of underselling and overselling on a delivered and f.o.b. bases for the period are presented by pricing product and by year in table V-10 and V-11 on the following pages.

Delivered price comparisons

A total of *** quarterly price comparisons were possible between the domestic CSOBA products 1 and 2 and those imported from China during 2009-11. Prices of imports from China were higher than the U.S. producers' price in *** quarterly comparisons (***), with an average overselling margin of *** percent for CSOBAs imported as solution and an average overselling margin of *** percent for CSOBAs imported as powder (and sold in solution).

A total of *** quarterly comparisons were possible between the domestic CSOBA products 1 and 2 and those imported from Taiwan. Prices of imports from Taiwan were lower than the U.S. producers' prices in *** quarterly comparisons (***). The Taiwan products imported as solution were priced less than the domestic products in *** quarterly comparisons (***), with an average underselling margin of *** percent. The Taiwan products imported as powder (and sold in solution) were priced lower than the domestic in *** quarterly comparisons (***), with an average underselling margin of *** percent.

Table V-10

CSOBAs: Summary of underselling/(overselling) by product and by year from China and Taiwan based on delivered prices, January 2009-December 2011¹

* * * * *

F.o.b. price comparisons

A total of *** quarterly price comparisons were possible between the domestic CSOBA products 1 and 2 and those imported from China during 2009-11. Prices of imports from China were higher than the U.S. producers' price in *** quarterly comparisons (***), with an average overselling margin of *** percent for CSOBAs imported as solution and an average overselling margin of *** percent for CSOBAs imported as powder (and sold in solution).

A total of *** quarterly comparisons were possible between the domestic CSOBA products 1 and 2 and those imported from Taiwan. Prices of imports from Taiwan were lower than the U.S. producers' prices in *** quarterly comparisons (***). The Taiwan products imported as solution were priced below the domestic products in *** quarterly comparisons (***), with an average underselling margin of *** percent. The Taiwan products imported as powder (and sold in solution) were priced higher than the domestic in *** quarterly comparisons (***), with an average overselling margin of *** percent. For the remaining *** quarterly comparisons, Taiwan prices were lower than domestic prices (***), with an average underselling margin of *** percent. *** occurred primarily for product 1 (bulk packaging), with *** percent of the sales volume of product 1 imported from subject sources sold at higher prices than domestically-produced product 1. *** occurred primarily for product 2 (non-bulk packaging), with *** percent of the sales volume of product 2 imported from subject sources sold at prices lower than domestic prices.

Table V-11
CSOBAs: Summary of underselling/(overselling) by product and by year from China and Taiwan based on f.o.b. prices, January 2009-December 2011¹

* * * * *

LOST REVENUES AND LOST SALES

In the preliminary and final phases of these investigations, the Commission requested U.S. producers of CSOBAs to report any instances of lost revenues or lost sales they experienced due to competition from imports of CSOBAs from China and Taiwan. During the preliminary phase of these investigations, all three producers reported having lost sales or revenues due to Chinese or Taiwan import competition during this time period.²¹ During the final phase, U.S. producers made an additional four lost sales allegations and one lost revenue allegation.

The total value of all of the lost revenues allegations on the record was \$*** involving *** pounds of CSOBAs. The total value of the lost sales allegations was \$*** involving *** pounds of CSOBAs. The staff received responses for 7 lost revenue allegations. The responding purchaser reported that it agreed with all 7 lost revenues allegations totaling \$*** and involving *** pounds of CSOBAs.

The staff received responses for 54 lost sales allegations. Responding purchasers reported that they agreed with 8 lost sales allegations involving *** pounds of CSOBAs, and disagreed with 37 lost sales allegations involving *** pounds of CSOBAs.

A summary of the investigated information is shown in table V-7 for lost revenue allegations and table V-8 for lost sale allegations. Additional comments from purchasers are presented in the text.

²¹ During the preliminary phase, the staff attempted to contact 14 of the 20 purchasers named in the useable allegations reported in the petition, capturing more than 95 percent of the total quantity involved in these allegations.

Table V-7
CSOBAs: U.S. producers' lost revenue allegations

* * * * *

Table V-8
CSOBAs: U.S. producers' lost sales allegations

* * * * *

***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Three U.S. firms provided usable financial data on their operations producing CSOBAs.¹ These reported data are believed to represent all known U.S. CSOBA production in the period for which data were gathered.

OPERATIONS ON CSOBAs

Income-and-loss data for the reporting U.S. producers of CSOBAs are presented in table VI-1 on a 100-percent active ingredient dry basis.² Results may be briefly summarized here as follows: The quantity and value of total net sales fell irregularly from 2009 to 2011. The average unit value (“AUV”) of sales also declined irregularly from 2009 to 2011, accounted for mostly by ***.³ The *** of exports ameliorated the overall decline in those indicators for U.S. shipments. The absolute value of the cost of goods sold (“COGS”) fell from 2009 to 2011, primarily as a result of lower sales. Both the AUV of COGS fell and the ratio of COGS to sales declined between 2009 and 2011. Within COGS, total raw materials declined on a dollar basis, remained at the same level on a per-unit basis, and increased as a ratio to both total COGS and to total net sales.⁴ Selling, general, and administrative (“SG&A”) expenses

¹ The firms are: BASF, Clariant, and 3V. Each of the reporting firms has a fiscal year that ends on or about December 31. ***. There are minor differences between data reported in the trade and financial sections of the Commission’s producers’ questionnaire, which are attributable to rounding. Commission staff verified the questionnaire responses of BASF and Clariant (EDIS document 473103, February 28, 2012). Changes have been released and are incorporated into the staff report.

² The Commission’s questionnaire requested data on a dry weight basis as well as on an in-solution basis. The responding U.S. producers produce, sell, and maintain their books and records on an in-solution basis. This section of the report presents data on a 100 percent contained dry weight basis; data on an in-solution basis may be found in app. D.

³ The composition of trade by category of CSOBA changed during the period for which data were gathered. Overall, the quantity and value of U.S. shipments of the di- and hexa categories increased between 2009 and 2011 although the average unit values were lower in 2011 than in 2009; the quantity, value, and average unit value of U.S. shipments of the tetra-category CSOBA fell between 2009 and 2011. During the preliminary phase of the investigation, one U.S. producer attributed the decline in sales to “decreased demand due to increased imports of finished paper products, consolidations in the paper industry, and due to the recession. In our opinion, the overall demand for CSOBAs today is lower than 2008 levels.” *** U.S. producer questionnaire response, section IV-14. Although acknowledging restructuring and concentration in the paper industry (e.g., Dettlaff, pp. 93 and 103-104, Kelly, p. 236), others disagreed in part, stating that demand had increased in the paper-manufacturing industry for increased levels of optical brightness, particularly for use with recycled paper, in magazine publishing, and cited the application of color lock technology that is used for copy paper, as well. Conference transcript, pp. 55-56 (Dettlaff) and 105-107 and 114-115 (Nelson). Mr. Nelson stated that overall demand was probably flat to slightly higher due to increases in brightness. Conference transcript, p. 121 (Nelson). Clariant stated that imports had been concentrated in the workhorse tetra-quality product posing the primary reason why U.S. shipments of this CSOBA fell.

⁴ Each of the components of COGS declined between 2009 and 2011 although at a different rate. With regard to raw material costs, there were reported supply shortages of DAS in 2008. Conference transcript, p. 103 (Nelson). See also postconference brief of TFM, pp. 1-5. Raw materials are discussed later in this section of the report as well as in Part V.

increased from 2009 to 2011 as did their per-unit value and the SG&A expense-to-sales ratio.⁵ The operating *** increased from 2009 to 2011.⁶ Measures of profitability on a per-unit basis or ratio-to-sales followed the changes in dollar value of sales. After adding interest and other expenses, net *** increased irregularly from 2009 to 2011. Cash flow was *** in each yearly period and was greatest in 2011 following the trend in net *** before taxes.⁷

Tables VI-1 and VI-2 present data for CSOBAs on a 100-percent active ingredient basis as a total for the three reporting U.S. producers and by-firm, respectively. Data on a solution basis are presented in appendix D.

Table VI-1
CSOBAs: Results of operations of U.S. producers, 2009-11

* * * * *

Raw materials utilized in the production of CSOBAs include such inputs as DAS, which is the single most expensive input, aniline derivatives, and others such as cyanuric chloride.⁸ The price for DAS (and its precursor, p-nitrotoluene) reportedly spiked in 2008 due to alleged shortages caused by the shutdown of production facilities in China during the Beijing Olympics.⁹ U.S. producers have stated that they had lost the ability to pass price increases for raw material costs on to customers.¹⁰ As noted earlier, the values of sales and raw material costs fell from 2009 to 2011. The dollar value of sales fell more than did the dollar value of raw material costs (\$*** versus \$***) and the ratio of raw material costs to sales increased ***. The AUV of sales declined irregularly while the AUV of raw material costs was flat between 2009 and 2011. Mr. Ted Kelly of BASF indicated that DAS is currently “long.”¹¹ Dr. Andrew Jackson of Clariant and Dr. Randall Nelson of TFM stated that they believe the cost of DAS will increase.¹²

Total COGS was also affected by changes in other factory costs. By their nature, other factory costs stay the same and reflect the “fixed” nature of production costs. Other factory costs declined in dollar terms, as a ratio to sales, as well as on a per-unit basis from 2009 to 2011. In part, this trend reflected the ***.¹³

⁵ Sales values and SG&A expenses were adjusted to remove freight charges on shipments to customers for *** to an f.o.b. basis.

⁶ ***. The ***. See table VI-2.

⁷ Net income before taxes is calculated after deducting interest charges (the largest single item) and other expenses and adding other income items to operating income. Cash flow is the sum of net income plus depreciation.

⁸ While ***. Steam and electricity also are used in the production process and are classified in “other factory costs.”

⁹ Conference transcript, pp. 37-38 (Dettlaff). See also postconference brief of TFM, pp. 1-5. This was echoed in questionnaire responses of U.S. producers. See U.S. producers’ questionnaire response of ***, section IV-18. *** responded that “since December 2010, our raw material costs have been increasing.” Ibid.

¹⁰ Conference transcript, pp. 28 (Golder), 37-38 (Dettlaff), and 138 (Kelly). This was repeated at the Commission’s hearing. Hearing TR, pp. 26 (Dettlaff), 210 and 230 (Kelly).

¹¹ Hearing transcript, p. 225 (Kelly). “Long” means supply is readily available in the market. Mr. Kelly indicated that his company’s analysis concluded that DAS supply would be getting “longer” in the future with expansions and investments in China and India. Ibid.

¹² Hearing TR, pp. 71 (Jackson) and 163 (Nelson).

¹³ ***.

Table VI-2 depicts operating data for CSOBAs on a dry weight, 100-percent active ingredient basis, by-firm.

Table VI-2
CSOBAs: Selected results of operations of U.S. producers, by firm, 2009-11

* * * * *

BASF, ***, acquired Ciba Specialty Chemicals in April 2009, including the plant at McIntosh, AL, where it produces CSOBAs and FB71. BASF was *** for which data were gathered. The quantity, value, and AUVs of BASF's sales *** between 2009 and 2011. Its operating ***.¹⁴ Other factors that contribute to this include ***.¹⁵ BASF stated that ***.¹⁶ Some of the ***.¹⁷

Clariant, *** produces CSOBAs at its plant in Martin, SC (***) of that plant's production). It uses the batch process and ***. Clariant sells ***. The quantity and value of Clariant's sales ***. Clariant was *** of the yearly periods; its operating ***.¹⁸

3V is the ***, and it produces CSOBAs via the batch process at its plant in Georgetown, SC. Like Clariant, 3V ***.¹⁹ 3V's total net sales were ***. 3V ***.

A variance analysis for the operations of U.S. producers of CSOBAs is presented in summary form in table VI-3. The information for this variance analysis is derived from table VI-1.²⁰ The analysis shows that the increase of \$*** in the operating loss from 2009 to 2011 was attributable to the unfavorable price variance (unit sales values fell) that was greater than the favorable net cost/expense variance (unit costs decreased). The operating loss was greater by \$*** in 2010 compared with 2009 and greater in 2011 than in 2010 by \$***. It should be noted that the usefulness of the analysis may be diminished by changes in product mix. In this regard, reduced shipments of tetra-quality CSOBAs were partially offset by greater shipments and relatively higher average unit value of di-sulpho and hexa-

¹⁴ As noted in tables VI-1 and VI-2, BASF ***.

¹⁵ Unlike the other two U.S. producers, BASF produces DAS and uses a continuous process, which is reflected in ***. "Idle costs" (underabsorbed costs of production) account for a ***. GAAP reporting requirements stipulate that sales and inventory be on the basis of fully-absorbed costs. "Idle costs" represent incurred costs (such as maintenance, repair, depreciation, utilities, labor, factory management and the like) but exceed standard costs. These variances from standard costs have not been "absorbed" by inventory and must be assigned periodically.

¹⁶ Posthearing Statement of Ted Kelly, BASF, March 22, 2012, p. 3.

¹⁷ ***. BASF has made efforts to restructure its CSOBA business and manufacturing. See Posthearing Statement of Ted Kelly, BASF, March 22, 2012, pp. 3-4, including optimization projects with full year cost savings of ***. While reducing costs is important, increasing capacity utilization and profitability also are important.

¹⁸ Clariant, ***. As noted earlier in table VI-1, Clariant increased ***.

¹⁹ Its raw material costs ***.

²⁰ A variance analysis is calculated in three parts: sales variance, cost of sales variance, and SG&A expense variance. Each part consists of a price variance (in the case of the sales variance) or a cost or expense (cost/expense) variance (in the case of the cost of sales and SG&A expense variance), and a volume variance. The sales or cost/expense variance is calculated as the change in unit price or per-unit cost/expense times the new volume, while the volume variance is calculated as the change in volume times the old unit price or per-unit cost/expense. Summarized at the bottom of the table, the price variance is from sales; the cost/expense variance is the sum of those items from COGS and SG&A variances, respectively, and the volume variance is the sum of the volume components of the net sales, COGS, and SG&A expense variances. The overall volume component of the variance analysis is generally small.

quality CSOBAs.²¹ The change in product mix (lower volume and higher unit values) may have masked the full extent of changes in average unit values and unit costs.

Table VI-3
CSOBAs: Variance analysis on the operations of U.S. producers, 2009-11

* * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The reported capital expenditures are shown in table VI-4. *** accounted for the majority of reported capital expenditures.²² *** stated that the nature of their capital expenditures related to infrastructure improvements and health and safety within the plants.²³ No U.S. producer reported any expenses related to research and development.

Table VI-4
CSOBAs: Capital expenditures of U.S. producers, 2009-11

* * * * *

ASSETS AND RETURN ON INVESTMENT

Data on the U.S. producers' total assets and their return on investment ("ROI") are presented in table VI-5 and utilize operating income or (loss) data from table VI-1. Total assets utilized in the production, warehousing, and sale of CSOBAs for reporting U.S. producers decreased by *** percent from 2009 to 2011 led by ***. ROI, the ratio of operating income to total assets, became more negative following both the trend of operating income and total assets.

Table VI-5
CSOBAs: The value of assets and return on investment of U.S. producers, fiscal years 2009-11

* * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers of CSOBAs to describe any actual or potential negative effects of imports of CSOBAs from China and Taiwan on their firms' growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Their responses are on the following page.

²¹ A variance calculation on price alone for each of the three categories of CSOBA indicates that the di-category would be unfavorable by \$***, the hexa-category would be unfavorable by \$***, and the tetra-category would be unfavorable by \$*** from 2009 to 2011. This is a price variance calculation only.

²² In the preliminary phase of these investigations, ***. E-mail to staff from ***, April 26, 2011.

²³ ***. Interview between Commission staff and *** during verification.

Actual Negative Effects

BASF: ***.

Clariant: ***.

3V: ***.

Anticipated Negative Effects

BASF: ***.

Clariant: ***.

3V: ***.

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(I)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

THE INDUSTRY IN CHINA

*** Chinese producers of CSOBAs, ***, together accounting for an estimated *** percent of Chinese CSOBA production in 2011, responded to the Commission's foreign producer/exporter questionnaire.¹ The companies estimate their aggregate percentage of total Chinese CSOBA exports to the United States in 2011 at *** percent, or by company as: ***. ***.² *** reported *** as constraints on its production capacity, while *** reported *** as constraints on its production capacity.³ ***.⁴ The Chinese CSOBA producers reported exports to markets in ***.⁵
***.⁶ ***.⁷

Table VII-1
CSOBAs: Data for the industry in China, 2009-11 and projected 2012-13

* * * * *

Table VII-2
CSOBAs: Chinese producers' export shipments to the United States, by category, 2009-11

* * * * *

THE INDUSTRY IN TAIWAN

*** producer of CSOBAs in Taiwan, ***, accounting for an estimated *** percent of CSOBA production in Taiwan in 2011, responded to the Commission's foreign producer/exporter questionnaire.⁸

¹ Foreign producer questionnaire responses, (sections II-10a, II-10b, and II-10c). ***, (section I-3).

² Ibid. (sections II-4 and II-6).

³ Ibid. (section II-5).

⁴ Ibid. (sections II-2 and II-3).

⁵ Ibid. (sections II-10a, II-10b, and II-10c).

⁶ Ibid. (section II-7).

⁷ Ibid. (section II-8).

⁸ ***'s foreign producer questionnaire (sections II-13a, II-13b, and II-13c).

*** reported ***.⁹ *** estimated that it accounted for *** percent of total CSOBA exports to the United States from Taiwan in 2011. *** also exports CSOBAs to markets in ***.¹⁰

TFM started CSOBA production in 1992 and began selling CSOBAs in the United States in 2006, after a 2005 shortage caused by the increased brightening standard set by International Paper. According to TFM, it was further drawn into the U.S. market by the 2008 USA CSOBA supply shortfall.¹¹

*** reported that *** percent of its firm's most recent fiscal year's sales were represented by sales of CSOBAs.¹² *** reported changes in operations due to ***.¹³ Specifically, ***. According to ***,¹⁴ *** report production of products other than CSOBAs on the same equipment and machinery used in the production of CSOBAs, maintenance of inventories in the United States, nor being subject to antidumping findings or remedies in any WTO-member countries.¹⁵ *** as constraints that set the limits on its production capacity.¹⁶ *** further indicated that its sales ***.¹⁷

TFM reported that it is growing its business in Europe and Asia even beyond China and making more CSOBA sales to other countries in 2011/2012. TFM further indicated that given the size of the U.S. market, its sales should now be stable and that its sales growth will be in other markets, such as Europe. According to TFM, it anticipates that its sales to third markets (Japan and Europe) will double in 2012 compared to 2011.¹⁸

According to the February 2012 Paperchem Report, customers always choose the best value supplier, and are impressed with TFM's high-purity product in terms of performance and consistency. Paperchem indicated that TFM is able to keep its overheads down, producing via toll manufacturers and selling at acceptable margins, and that TFM material in particular set a new standard for efficiency.¹⁹

Table VII-3
CSOBAs: Data on the industry in Taiwan, 2009-11 and projected 2012-13

* * * * *

Table VII-4
CSOBAs: Taiwan producers' export shipments to the United States, by category, 2009-11

* * * * *

⁹ Ibid. (section I-3).

¹⁰ Ibid. (sections II-13a, II-13b, and II-13c).

¹¹ TFM posthearing brief, March 22, 2012, p. 6 (see Answers to Commission questions).

¹² ***'s foreign producer questionnaire (section II-7).

¹³ Ibid. (section II-2).

¹⁴ Ibid.

¹⁵ Ibid. (sections II-4, II-8, and II-9).

¹⁶ Ibid. (section II-5).

¹⁷ Ibid. (section II-3).

¹⁸ TFM posthearing brief, March 22, 2012, p. 5 (see Answers to Commission Questions).

¹⁹ PaperChem Report, "US papermakers provide feedback on OBA usage," February 2012, Issue 179, p. 12 (see TFM's posthearing brief, Exhibit 5).

THE SUBJECT INDUSTRY

Aggregated data for China and Taiwan combined is presented in table VII-5.

Table VII-5

CSOBAs: Data on the subject industry (China and Taiwan), 2009-11 and projected 2012-13

* * * * *

Table VII-6

CSOBAs: Subject foreign producers' export shipments to the United States, by category, 2009-11

* * * * *

U.S. INVENTORIES OF PRODUCT FROM CHINA AND TAIWAN

Table VII-7 presents data on U.S. importers' end-of-period inventories of imported CSOBAs. ***.²⁰

Table VII-7

CSOBAs: U.S. importers' end-of-period inventories of imports, by source, 2009-11

* * * * *

U.S. IMPORTERS' IMPORTS SUBSEQUENT TO DECEMBER 31, 2011

The Commission requested importers to indicate whether they imported or arranged for the importation of CSOBAs from China or Taiwan after December 31, 2011. ***.²¹

ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS

There are no known CSOBA third-country import relief investigations or existing antidumping or countervailing duty orders on the subject product from China or Taiwan in countries other than the United States.²² No subject countries' exports of CSOBAs are subject to tariff or non-tariff barriers to trade in any countries other than the United States, nor are these exports subject to current proceedings in any countries other than the United States that might result in tariff or non-tariff barriers to trade.²³

INFORMATION ON NONSUBJECT COUNTRIES

In assessing whether the domestic industry is materially injured or threatened with material injury "by reason of subject imports," the legislative history states "that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-

²⁰ ***'s importer questionnaire response (sections II-7a and II-7c).

²¹ ***'s importer questionnaire response (section II-3).

²² Conference Transcript, p. 83 (Ellis).

²³ Importer Questionnaire Responses (section I-10); Foreign Producer Questionnaire Responses, (section II-9).

subject imports) ‘to ensure that it is not attributing injury from other sources to the subject imports.’”²⁴

During the final phase of these investigations, the Commission sought pricing data from U.S. importers of CSOBAs from China, Taiwan, and all other countries. Those data are presented in Part V of this report. With respect to foreign nonsubject industry information, publicly available information regarding international producers of CSOBAs in Germany, India, and Switzerland follows. These three countries accounted for a large majority of CSOBA imports from nonsubject countries for 2009-11.

Germany

At least two firms in Germany produce optical brighteners for paper products, BASF and Blankophor. BASF announced in November 2010 that it will cease production of optical brighteners at its plant in Grenzach, Germany, and move production of its paper chemicals to India.²⁵ According to an industry report, BASF is withdrawing from the European market for CSOBAs.²⁶ Blankophor (formerly known as German Catec GmbH) purchased its optical brightening agents production facility from Kemira Oyj on September 30, 2010.²⁷ Blankophor is increasing its share of the European market as BASF withdraws.²⁸

India

Two firms in India produce CSOBAs. Paramount Minerals and Chemicals Limited (Paramount) produces di, tetra, and hexa CSOBAs.²⁹ According to its website, Paramount has an annual production capacity of 30,000 metric tons, including the capability of producing 2,500 metric tons annually of OBAs in powder form.³⁰ One industry report indicates that Paramount is focusing more on the European and the South American markets than on the United States.³¹ Daikaffil Chemicals India Limited has an annual capacity of 20,000 metric tons for various OBA products.³² Daikaffil produces its own DAS for

²⁴ Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

²⁵ BASF, “BASF gears paper chemicals business toward growth markets,” November 11, 2010, <http://www.basf.com/group/pressrelease/P-10-472> (accessed May 4, 2011).

²⁶ PaperChemReport, “Europe sees some shifting shares in OBA as BASF commences withdrawal,” June 2011, 12 (see Petitioner’s prehearing brief, Exhibit I).

²⁷ Kemira Oyj, “Kemira closes the Blankophor (previously German Catec) deal,” October 1, 2010, http://www.kemira.com/en/media/pressreleases/Pages/1448386_20101001144600.aspx (accessed May 4, 2011).

²⁸ PaperChemReport, “Europe sees some shifting shares in OBA as BASF commences withdrawal,” June 2011, 13 (see Petitioner’s prehearing brief, Exhibit I).

²⁹ Paramount Minerals and Chemicals Limited, “Products,” <http://www.pmclindia.com/products.aspx> (accessed May 4, 2011).

³⁰ Paramount Minerals and Chemicals Limited, “Infrastructure,” <http://www.pmclindia.com/infrastructure.aspx> (accessed May 4, 2011).

³¹ PaperChem Report, “Europe sees some shifting shares in OBA as BASF commences withdrawal,” June 2011, 13 (see Petitioner’s prehearing brief, Exhibit I).

³² Daikaffil Chemicals India Limited, “Products,” <http://www.daikaffil.com/products.htm> (accessed May 4, 2011).

use in the production of CSOBAs.³³ Additionally, BASF has announced that it is moving production for its paper chemicals business to India.³⁴ ***.³⁵

Switzerland

Both BASF and Clariant produce CSOBAs in Switzerland.³⁶ Clariant announced plans to cease production of CSOBAs in Switzerland and move CSOBA production to Prat, Spain, in 2011.³⁷ After Clariant ceased manufacture of CSOBAs in Switzerland, it moved the production of paper specialties from the Muttenz plant to Prat in Spain and Charlotte NC. However, Clariant retained its laboratories in Switzerland and its operations team reportedly makes frequent trips to Prat.³⁸

³³ Daikaffil Chemicals India Limited, "Factory," <http://www.daikaffil.com/factory.htm> (accessed May 4, 2011).

³⁴ BASF, "BASF gears paper chemicals business toward growth markets," November 11, 2010, <http://www.basf.com/group/pressrelease/P-10-472> (accessed May 4, 2011).

³⁵ BASF posthearing responses, p. 3.

³⁶ Petition Vol. 1, Exhibit I-4.

³⁷ PaperChem Report, "Kemira to Divest FWAs business," June 2010, 12 (see Petition Vol. 1, Exhibit I-11).

³⁸ PaperChem Report, "US papermakers provide feedback on OBA usage," February 2012, Issue 179, p. 13 (see Respondent TFM's posthearing brief, Exhibit 5).

APPENDIX A

***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

**[Investigation Nos. 731-TA-1186-1187
(Preliminary)]**

**Certain Stilbenic Optical Brightening
Agents From China and Taiwan**

AGENCY: United States International
Trade Commission.

ACTION: Institution of antidumping
investigations and scheduling of
preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731-TA-1186-1187 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Taiwan of certain stilbenic optical brightening agents, provided for in subheading 3204.20.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair

value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 16, 2011. The Commission's views are due at Commerce within five business days thereafter, or by May 23, 2011.

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

DATES: *Effective Date:* March 31, 2011.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202-205-3354), 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>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 31, 2011, by Clariant Corporation, Charlotte, NC.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an

administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 1 p.m. on April 21, 2011, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Requests to appear at the conference should be filed in writing with the Secretary to the Commission on or before March 18, 2011. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 26, 2011, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must 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, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document

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

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 1, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011-8222 Filed 4-6-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**International Trade Administration****[A-570-972, A-583-848]****Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations****AGENCY:** Import Administration, International Trade Administration, Department of Commerce.**DATES:** *Effective Date:* April 27, 2011.**FOR FURTHER INFORMATION CONTACT:** Shawn Higgins at (202) 482-0679 or Robert Bolling at (202) 482-3434 (People's Republic of China), AD/CVD Enforcement, Office 4 or Hermes Pinilla at (202) 482-3477 or Sandra Stewart at (202) 482-0768 (Taiwan), AD/CVD Enforcement, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**The Petitions**

On March 31, 2011, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of certain stilbenic optical brightening agents (stilbenic OBAs) from the People's Republic of China (PRC) and Taiwan filed in proper form by the Clariant Corporation (the petitioner). See *Antidumping Duty Petitions on Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan* (March 31, 2011) (the Petitions). The petitioner is a domestic producer of stilbenic OBAs. On April 4, 2011, the Department issued a request for additional information and clarification of certain areas of the Petitions. On April 7, 2011, in response to the Department's request, the petitioner filed an amendment to the Petitions. See *Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Amendment to Petitions* (April 7, 2011) (Supplement to the PRC AD Petition or Supplement to the Taiwan AD Petition).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of stilbenic OBAs from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed these Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioner is requesting. See the "Determination of Industry Support for the Petitions" section below.

Period of Investigation

Because the Petitions were filed on March 31, 2011, the period of investigation (POI) for the PRC investigation is July 1, 2010, through December 31, 2010. The POI for the Taiwan investigation is January 1, 2010, through December 31, 2010. See 19 CFR 351.204(b)(1).

Scope of the Investigations

The products covered by these investigations are certain OBAs from the PRC and Taiwan. For a full description of the scope of the investigations, see

the "Scope of the Investigations," in Appendix I of this notice.¹

Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 10, 2011, twenty calendar days from the signature of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Comments on Product Characteristics for Antidumping Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of stilbenic OBAs to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product-comparison criteria. We find that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe stilbenic OBAs, it may be that only a

select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, we must receive comments at the above address by May 10, 2011. Additionally, rebuttal comments limited to those issues raised in the comments must be received by May 17, 2011.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers who support the petition account for (i) at least 25 percent of the total production of the domestic like product and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers accounting for more than 50 percent of the total production of the domestic like product, the Department shall (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the

¹ See also Memorandum to File from Shawn Higgins, dated April 14, 2011, regarding telephone conversation with counsel for the petitioner regarding the scope of the Petitions.

Department's determination is subject to limitations of time and information because the Department determines industry support at the time of initiation. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (CAFC 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the 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 title." Thus, the reference point from which the domestic like-product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of these investigations. Based on our analysis of the information submitted on the record, we have determined that stilbenic OBAs constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like-product analysis in these cases, see the Antidumping Duty Investigation Initiation Checklist: Certain Stilbenic Optical Brightening Agents from the PRC (PRC Initiation Checklist) at Attachment II and the Antidumping Duty Investigation Initiation Checklist: Certain Stilbenic Optical Brightening Agents from Taiwan (Taiwan Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room 7046 of the main Department of Commerce building.

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry-support data contained in the Petitions with reference to the domestic like product as defined in the "Scope of the Investigations" in Appendix I of this notice. To establish industry support, the petitioner provided its own 2010 production data of the domestic like product and compared this to total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petitions at 3 and Exhibits I-1 and I-16; *see also* PRC Initiation Checklist at Attachment II and Taiwan Initiation Checklist at Attachment II.

The Department's review of the data provided in the Petitions, supplemental responses, and other information readily available to the Department indicates that the petitioner has established industry support. First, based on information provided in the Petitions, the petitioner established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 732(c)(4)(D) of the Act; *see also* PRC Initiation Checklist at Attachment II and Taiwan Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product. *See* PRC Initiation Checklist at Attachment II and Taiwan Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See id.*

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigations that it is requesting the Department to initiate. *See id.*

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production, a lower capacity-utilization rate, fewer

shipments, underselling, price depression or suppression, lost revenue, decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are supported by adequate evidence and meet the statutory requirements for initiation. *See* PRC Initiation Checklist at Attachment III and Taiwan Initiation Checklist at Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate investigations of imports of stilbenic OBAs from the PRC and Taiwan. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the PRC Initiation Checklist and Taiwan Initiation Checklist.

Alleged U.S. Price and NV: The PRC

The petitioner states that PRC exporters/producers first sell subject merchandise in the United States to unaffiliated resellers. *See* Volume III of the Petitions at 13-14. The petitioner does not have access, however, to the prices charged by PRC producers to U.S. resellers. *Id.* As a result, to calculate export price (EP), the petitioner based its calculation on the prices charged by U.S. resellers of PRC stilbenic OBAs to a U.S. customer. *Id.* Specifically, the petitioner calculated EP based on a price at which revenues were lost due to a competing bid from a supplier of PRC stilbenic OBAs. *See* Supplement to the PRC AD Petition at Exhibits 32 and 33. The petitioner substantiated the price used as a basis for the EP calculation with an affidavit. *See* Supplement to the PRC AD Petition at Exhibit 32. The price used as a basis for the EP calculation is a delivered price to an end-user for stilbenic OBAs supplied in a solution state. *See* Volume III of the Petitions at 14. To calculate EP for stilbenic OBAs in a solution state, the petitioner adjusted the EP based on the terms of sale for brokerage and handling in the port of export, international freight, U.S. customs duties, U.S. reseller markup, and U.S. inland freight. To calculate EP for stilbenic OBAs in a powder state, the petitioner adjusted the EP based on the terms of sale for brokerage and handling in the port of export, international freight, U.S. customs duties, U.S. reseller markup, further manufacturing (*i.e.*, dilution), and U.S. inland freight.

See Volume III of the Petitions at 13–17 and Supplement to the PRC AD Petition at Exhibit 33.

The petitioner states that the PRC is a non-market economy (NME) country and no determination to the contrary has been made by the Department. See Volume III of the Petitions at 2–3. In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of the PRC investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of the PRC investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC's NME status and the granting of separate rates to individual exporters.

Citing section 773(c)(4) of the Act, the petitioner contends that India is the appropriate surrogate country for the PRC because it is at a level of economic development comparable to that of the PRC and it is a significant producer of stilbenic OBAs. See Volume III of the Petitions at 3–5 and Exhibit III–1. Also, the petitioner states that Indian data for valuing factors of production are available and reliable. See Volume III of the Petitions at 3. Based on the information provided by the petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate-country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

The petitioner calculated the NV and dumping margins for the U.S. prices, discussed above, using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. The petitioner calculated NVs for stilbenic OBAs in both solution and powder state based on its own consumption rates for producing stilbenic OBAs. See Volume III of the Petitions at 5–6, 11–12, and Exhibit III–2. In calculating NV, the petitioner based the quantity of each of the inputs used to manufacture and pack stilbenic OBAs in the PRC based on its own

production experience during the POI because it stated that the actual usage rates of the foreign manufacturers of stilbenic OBAs were not reasonably available. *Id.* The petitioner stated, however, that its production process and cost structure is representative of the PRC stilbenic OBAs producers because the production of stilbenic OBAs “involves the same basic technology worldwide.” See Volume III of the Petitions at 6. The petitioner adjusted its factor inputs to reflect any known differences between the petitioner's production process and the process employed by PRC producers. See Volume III of the Petitions at 11–12 and Exhibit III–2. The petitioner also adjusted its factor inputs to reflect higher usage rates for energy and labor in the production of stilbenic OBAs in powder state. See Volume III of the Petitions at 12 and Supplement to the PRC AD Petition at Exhibit 31.

The petitioner valued the factors of production based on reasonably available, public surrogate-country data, including Indian import statistics from the Global Trade Atlas (GTA). See Volume III of the Petitions at 6–7 and Exhibit III–4 and Supplement to the PRC AD Petition at Exhibit 29. The petitioner excluded from these import statistics imports from countries previously determined by the Department to be NME countries, *i.e.*, it excluded imports from Indonesia, the Republic of Korea, and Thailand, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies, and it excluded imports labeled as being from “unspecified countries.” See Volume III of the Petitions at 6–7 and Exhibit III–4. In addition, the petitioner made currency conversions, where necessary, based on the POI-average rupee/U.S. dollar exchange rate as reported on the Department's Web site. See Volume III of the Petitions at 12 and Exhibit III–13 and Supplement to the PRC AD Petition at Exhibits 30–31. The petitioner determined labor costs using the labor consumption, in hours, derived from its own experience. See Volume III of the Petitions at 11 and Supplement to the PRC AD Petition at Exhibits 30–31. The petitioner valued labor costs using the Department's current methodology of calculating an hourly wage rate by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. See Volume III of the Petitions at 7–8 and 10 and Supplement

to the PRC AD Petition at 3 and Exhibit 28.

The petitioner determined electricity costs using the electricity consumption, in kilowatt hours, derived from its own experience. See Volume III of the Petitions at 11–12 and Supplement to the PRC AD Petition at Exhibits 30–31. The petitioner valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. See Volume III of the Petitions at 8–9 and Exhibit III–26.

The petitioner determined natural gas costs using the natural gas consumption derived from its own experience. See Volume III of the Petitions at 11–12 and supplement to the PRC AD Petition at Exhibits 30–31. The petitioner valued natural gas using data obtained from the Government of India Ministry of Petroleum and Natural Gas as well as the gas transmission costs from the Gas Authority of India Ltd. See Volume III of the Petitions at 9 and Exhibit III–8.

The petitioner determined water costs using the water consumption derived from its own experience. See Volume III of the Petitions at 11–12 and Supplement to the PRC AD Petition at Exhibits 30–31. The petitioner valued water based on information that is contemporaneous with the POI from the Maharashtra Industrial Development Corporation. See Volume III of the Petitions at 9 and Supplement to the PRC AD Petition at 2 and Exhibit 27.

The petitioner based factory overhead, selling, general and administrative (SG&A), and profit on data from Daikaffil Chemicals India Limited (Daikaffil Chemicals), an Indian producer of stilbenic OBAs, for the fiscal year April 2009 through March 2010. See Volume III of the Petitions at 10 and Exhibits III–9 and III–10. The petitioner states that Daikaffil Chemicals was an Indian producer of stilbenic OBAs during fiscal year 2009–2010. See Volume III of the Petitions at 10. Therefore, for purposes of the initiation, the Department finds the petitioner's use of Daikaffil Chemicals' financial ratios appropriate. See 19 CFR 351.408(c)(4).

Alleged U.S. Price and NV: Taiwan

The petitioner calculated two constructed export prices (CEPs) (one for stilbenic OBAs in solution and one in powder state) using a price quote it obtained from a credible source for stilbenic OBAs in the solution state. The petitioner substantiated the U.S. price quote with an affidavit and a declaration from the person who obtained the information. To calculate CEP for stilbenic OBAs in a solution state, the petitioner adjusted the CEP based on the

terms of sale for brokerage and handling incurred in Taiwan and the United States, international freight, U.S. customs duties, U.S. inland freight, U.S. indirect selling expenses, and CEP profit. To calculate CEP for stilbenic OBAs in a powder state, the petitioner adjusted the CEP based on the terms of sale for brokerage and handling incurred in Taiwan and the United States, international freight, U.S. customs duties, U.S. inland freight, U.S. indirect selling expenses, further manufacturing (*i.e.*, dilution), and CEP profit. See Volume II of the Petitions at 7–19, Exhibits II–18 through II–26, Supplement to the Taiwan AD Petition at Exhibit 28, and Taiwan Initiation Checklist.

With respect to NV, the petitioner calculated NV based on constructed value (CV). The petitioner computed a CV for stilbenic OBAs in the solution state and in the powder state, using the same methodology described below.

Pursuant to section 773(a)(4) of the Act, the petitioner calculated CV using the cost of manufacturing, SG&A expenses, packing expenses, and financial expenses. The petitioner then added the average profit rate based on the most recent financial statements of a company in the same general industry in Taiwan as the producer. See Taiwan Initiation Checklist.

The petitioner calculated raw materials, labor, energy, and packing based on its own production experience, adjusted for known differences to manufacture stilbenic OBAs in Taiwan using publically available data. See Taiwan Initiation Checklist for details of the calculation of raw materials, labor, energy, and packing. To calculate the factory overhead, SG&A, financial expenses, and the profit rate, the petitioner relied on cost data from a Taiwanese producer of optical brighteners. See Volume II of the Petitions at 8–12 and Exhibits II–16 and II–17 and Taiwan Initiation Checklist.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of stilbenic OBAs from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EPs to NVs in accordance with section 773(c) of the Act, the estimated dumping margins for stilbenic OBAs from the PRC range from 80.64 percent to 203.16 percent. See the PRC Initiation Checklist. Based on comparisons of CEPs to CVs in accordance with section 773(a)(4) of the Act, the estimated dumping margins for stilbenic OBAs from Taiwan range from 61.79 percent

to 109.45 percent. See Taiwan Initiation Checklist.

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on stilbenic OBAs from the PRC and Taiwan, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of stilbenic OBAs from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in AD investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5). See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that “withdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.” *Id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegation is due no later than 45 days before the scheduled date of the preliminary determinations.

Respondent Selection

The PRC

Following standard practice in AD investigations involving NME countries, the Department will request quantity and value information from all known exporters and producers identified with complete contact information in Volume III of the Petitions and Supplement to the PRC AD Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both

the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008), and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). On the date of publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> and a response to the quantity and value questionnaire is due no later than May 11, 2011. Also, the Department will send the quantity and value questionnaire to those PRC companies identified in Volume I of the Petitions at Exhibit I–8.

Taiwan

Following standard practice in AD investigations involving market-economy countries, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under HTSUS number 3204.20.80 during the POI. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at <http://ia.ita.doc.gov/apo>.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market-Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's Web site at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in

processing the separate-rate applications in previous AD investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, e.g., *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594–95 (August 6, 2007). The specific requirements for submitting the separate-rate application in the NME investigation are outlined in detail in the application itself, which will be available on the Department's Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents. As explained in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the Government of the PRC and Taiwan authorities. Because of the large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC and Taiwan authorities, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than May 16, 2011, whether there is a reasonable indication that imports of stilbenic OBAs from the PRC and Taiwan are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD or countervailing duty (CVD) proceeding must certify to the accuracy and completeness of that information. See section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) (*Interim Final*

Rule), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 20, 2011.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The certain stilbenic optical brightening agents ("OBA") covered by these investigations are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (i.e., all derivatives of 4,4'-bis [1,3,5-triazin-2-yl] amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.

Excluded from these investigations are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ ("Fluorescent Brightener 71"). These investigations cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (i.e., mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States ("HTSUS"), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

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under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 31, 2011, a petition was filed with the Commission and Commerce by Clariant Corp., Charlotte, NC, alleging that an industry in the United States is materially injured by reason of LTFV imports of certain stilbenic optical brightening agents from China and Taiwan. Accordingly, effective March 31, 2011, the Commission instituted antidumping duty investigation Nos. 731-TA-1186-1187 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 7, 2011 (76 FR 19383). The conference was held in Washington, DC, on April 21, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 16, 2011. The views of the Commission are contained in USITC Publication 4236 (May 2011), entitled *Certain Stilbenic Optical Brightening Agents from China and Taiwan: Investigation Nos. 731-TA-1186-1187 (Preliminary)*.

Issued: May 23, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

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INTERNATIONAL TRADE COMMISSION

Investigation Nos. [731-TA-1186-1187]
(Preliminary)

Certain Stilbenic Optical Brightening Agents From China and Taiwan

Determinations

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Taiwan of certain stilbenic optical brightening agents, provided for in subheadings 3204.20.80, 2933.69.6050, 2921.59.40, and 2921.59.8090 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigation

¹ The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-972]

Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* November 3, 2011.

SUMMARY: The Department of Commerce (the "Department") preliminarily determines that certain stilbenic optical brightening agents ("OBA") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice.

FOR FURTHER INFORMATION CONTACT: Shawn Higgins or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0679 or (202) 482-5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, the Department received an antidumping duty petition concerning imports of OBAs from the PRC and Taiwan filed in proper form by the Clariant Corporation ("Petitioner").¹ On April 4, 2011, and April 5, 2011, the Department issued requests for information and clarification of certain areas of the petition, to which Petitioner timely filed responses on April 7, 2011, and April 8, 2011.²

¹ See Antidumping Duty Petitions on Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan (March 31, 2011).

² See Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Amendment to Petitions (April 7, 2011); see also

The Department initiated an antidumping duty investigation of OBAs from the PRC on April 20, 2011.³

In the *Initiation Notice*, the Department stated that it intended to select PRC respondents based on quantity and value ("Q&V") questionnaires.⁴ On April 21, 2011, the Department requested Q&V information from 30 companies identified in the petition as potential producers and/or exporters of OBAs from the PRC.⁵ The Department received timely responses to its Q&V questionnaire from two companies, Zhejiang Hongda Chemicals Co., Ltd. ("Hongda") and Zhejiang Transfar Whyyon Chemical Co., Ltd. ("Transfar").⁶

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy ("NME") investigations. The process requires exporters and producers to submit a separate-rate status application ("SRA")⁷ and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. The SRA for this investigation was posted on the Department's Web site, <http://ia.ita.doc.gov/ia-highlights-and-news.html>, on April 21, 2011. The deadline for filing an SRA was June 26, 2011.⁸

On May 18, 2011, the Department issued antidumping questionnaires to Hongda and Transfar. In June and July 2011, Hongda and Transfar submitted timely responses to sections A, C, and D of the Department's antidumping questionnaire.

The Department issued supplemental questionnaires to Hongda and Transfar from June to October 2011. Hongda and

Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Amendment to Petitions (April 8, 2011).

³ See *Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 76 FR 23554 (April 27, 2011) ("*Initiation Notice*").

⁴ See *Initiation Notice*, 76 FR at 23558.

⁵ See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, "Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Quantity and Value Questionnaire" (April 21, 2011).

⁶ See the Department's memorandum entitled, "Respondent Selection in the Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China," dated May 18, 2011 ("Respondent Selection Memo").

⁷ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) ("Policy Bulletin 05.1"), available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

⁸ No party submitted a SRA.

Transfar submitted timely responses to the Department's supplemental questionnaires from July to October 2011. From June to September 2011, Petitioner submitted comments to the Department regarding the submissions and/or responses of Hongda and Transfar.

On May 27, 2011, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of OBAs from the PRC.⁹

On June 9, 2011, the Department issued a letter to all interested parties inviting comments regarding whether Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 2921.59.4000 and 2921.59.8090 are appropriate for inclusion in the scope of the investigation.¹⁰ Petitioner submitted comments on June 16, 2011.¹¹ No other party submitted comments. On July 11, 2011, the Department issued a memorandum detailing its decision to continue to include HTSUS subheadings 2921.59.4000 and 2921.59.8090 in the scope of the investigation.¹²

On July 29, 2011, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On August 10, 2011, the Department published a postponement of the preliminary determination on OBAs from the PRC.¹³

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise.

⁹ See *Investigation Nos. 731-TA-1186-1187 (Preliminary)*, 76 FR 30967 (Int'l Trade Comm'n May 27, 2011).

¹⁰ See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, (June 9, 2011).

¹¹ See Petitioner's June 16, 2011, submission.

¹² See Memorandum to Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, "Certain Harmonized Tariff Schedule Numbers in the Scope of Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan" (July 11, 2011).

¹³ See *Certain Stilbenic Optical Brightening Agents From the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 76 FR 49443 (August 10, 2011).

Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from Transfar on October 19, 2011. Transfar consented to the extension of provisional measures from a four-month period to not longer than six months. Because this preliminary determination is affirmative, and the request for postponement was made by an exporter who accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

Period of Investigation

The period of investigation ("POI") is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2011.¹⁴

Scope of the Investigation

The OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis [1,3,5-triazin-2-yl] ¹⁵ amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The OBAs covered by this investigation include final OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of OBA products.

Excluded from this investigation are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] ¹⁶ amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ ("Fluorescent Brightener 71"). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or

blends, whether of OBAs with each other, or of OBAs with additives that are not OBAs), and in any type of packaging.

These OBAs are classifiable under subheading 3204.20.8000 of the HTSUS, but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Non-Market Economy Country

For purposes of the initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.¹⁷ The Department's most recent examination of the PRC's market status determined that NME status should continue for the PRC.¹⁸ In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The Department has not revoked the PRC's status as an NME country, and we have therefore treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production ("FOPs") valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that Philippines, Indonesia, Ukraine, Thailand, Colombia, and South Africa are countries comparable to the PRC in terms of economic development.¹⁹ Once

the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.²⁰ Petitioner and Transfar submitted further comments regarding surrogate country selection on July 20, 2011. On July 27, 2011, Petitioner, Transfar and Hongda submitted rebuttal comments.

We have determined that it is appropriate to use Thailand as a surrogate country pursuant to section 773(c)(4) of the Act because we have found that: (1) It is at a similar level of economic development; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand that we can use to value the FOPs.²¹ Thus, we have calculated normal value ("NV") using Thailand prices when available and appropriate to value the FOPs of the OBA producers under investigation. We have obtained and relied upon contemporaneous publicly available information wherever possible.²²

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.²³

"Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China" (June 23, 2011) ("Policy Memorandum"). The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

²⁰ See *Id.*

²¹ See Memorandum to Abdelali Elouaradia from Shawn Higgins, "Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Surrogate Country Memorandum" (October 27, 2011).

²² See Memorandum to Abdelali Elouaradia through Robert Bolling re: Selection of Surrogate Values at 2, dated May 19, 2011 ("Surrogate Value Memorandum").

²³ In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and*

¹⁷ See *Initiation Notice*, 76 FR at 23557.

¹⁸ See Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") China's Status as a Non-Market Economy ("NME") (August 30, 2006) (memorandum is on file in the CRU on the record of case number A-570-901).

¹⁹ See Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4,

¹⁴ See 19 CFR 351.204(b)(1).

¹⁵ The brackets in this sentence are part of the chemical formula.

¹⁶ *Id.*

Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information were filed on July 27, 2011, by Petitioner and Transfar. Petitioner, Transfar, and Honda filed rebuttal surrogate value comments on August 10, 2011.²⁴

Application of Adverse Facts Available

The PRC-Wide Entity and PRC-Wide Rate

The Department issued its request for Q&V information to 30 potential Chinese exporters of merchandise under consideration, in addition to posting the Q&V questionnaire on the Department's Web site.²⁵ While information on the record of this investigation indicates that there are numerous producers/exporters of OBAs in the PRC, we received two timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V questionnaire. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under consideration during the POI from the PRC that did not respond to the Department's request for information. We have treated these non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate their eligibility for a separate rate.²⁶

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum ("IDM") at Comment 2.

²⁴ See the "Factor Valuation" section below; see also Surrogate Value Memorandum.

²⁵ Petitioner identified 30 companies as potential producers/exporters of OBAs from the PRC. See Respondent Selection Memo.

²⁶ See, e.g., *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009).

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Specifically, certain companies did not respond to our questionnaire requesting Q&V information. Accordingly, we find that the PRC-entity: (i) Withheld information requested by the Department; (ii) failed to provide information in a timely manner and did not indicate that it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form; and (iii) significantly impeded the proceeding by not submitting the requested information. As a result, pursuant to sections 776(a)(2)(A)–(C) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate.²⁷ Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.²⁸ We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Furthermore, the PRC-wide entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.²⁹ Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous

²⁷ See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

²⁸ See Statement of Administrative Action, accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("SAA"); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000).

²⁹ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) ("*Nippon Steel*") (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown").

administrative review, or any other information placed on the record. In selecting a rate for adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.³⁰ The highest margin alleged in the petition is 203.16 percent.³¹ This rate is higher than any of the calculated rates assigned to individually examined companies. Thus, as AFA, the Department's practice would be to assign the rate of 203.16 percent to the PRC-wide entity.

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."³² To "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.³³

³⁰ See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying IDM, at "Facts Available."

³¹ See *Initiation Notice*, 76 FR at 23558.

³² See *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479, 6481 (February 4, 2008), and accompanying IDM at Comment 2 (quoting SAA at 870).

³³ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we examined information on the record and found that we were unable to corroborate the highest margin in the petition. Therefore, the Department finds that the highest transaction-specific margin of the mandatory respondents is sufficiently adverse to act as the AFA rate. With respect to AFA, for the preliminary determination, we have assigned the PRC-wide entity the rate of 141.08 percent, the highest transaction-specific margin among the mandatory respondents.³⁴ No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.³⁵

Date of Sale

19 CFR 351.401(i) states that, “in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” In *Allied Tube & Conduit Corp. v. United States*, the Court of International Trade (“CIT”) noted that a “party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to ‘satisfy’ the Department that ‘a different date better reflects the date on which the exporter or producer establishes the material terms of sale.’”³⁶ The date of sale is generally the date on which the parties agree upon all material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.³⁷

(November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

³⁴ See *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318, 64322 (October 18, 2011).

³⁵ See 19 CFR 351.308(c) and (d) and section 776(c) of the Act; see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at 1.

³⁶ See *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d 1087, 1090 (CIT 2001).

³⁷ See *Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying IDM at

For sales by Hongda and Transfar, we used the commercial invoice date as the sale date because record evidence indicates that the terms of sale were not set until the issuance of the commercial invoice.³⁸

Fair Value Comparisons

To determine whether sales of OBAs to the United States by the respondents were made at LTFV, we compared export price (“EP”) to NV, as described in the “Export Price,” and “Normal Value” sections of this notice.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we used EP for all sales reported by Hongda and Transfar. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (e.g., foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation) in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates.³⁹

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies. Therefore, for this preliminary determination we have calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials

Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying IDM at Comment 2.

³⁸ See Hongda’s Preliminary Determination Analysis Memorandum, dated October 27, 2011; see also Transfar’s Preliminary Determination Analysis Memorandum, dated October 27, 2011.

³⁹ See “Factor Valuation” section below for further discussion of surrogate value rates.

employed; and (3) representative capital costs.⁴⁰ In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value to value FOPs, but when a producer sources an input from a market economy (“ME”) and pays for it in a ME currency, the Department may value the factor using the actual price paid for the input.⁴¹

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents during the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.⁴² As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Thai import surrogate values a Thai surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit’s decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997) (remanding to Commerce its freight expense calculation to avoid double-counting). A detailed description of all surrogate values used for Hongda and Transfar can be found in the Surrogate Value Memorandum.

For the preliminary determination, in accordance with the Department’s practice, we used data from the Thailand Customs Department and other publicly available sources from Thailand in order to calculate surrogate values for Hongda and Transfar FOPs (direct materials and packing materials) and certain movement expenses.⁴³ In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department’s practice is to select, to the extent practicable, surrogate values

⁴⁰ See Section 773(c)(3)(A)–(D) of the Act.

⁴¹ See 19 CFR 351.408(c)(1); see also *Shakeproof Assembly Components Div of Ill v. United States*, 268 F.3d 1376, 1382–83 (Fed. Cir. 2001) (affirming the Department’s use of market-based prices to value certain FOPs).

⁴² See e.g., *New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

⁴³ See Surrogate Value Memorandum at 2.

which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.⁴⁴ The record shows that data in Thailand's Customs Department, as well as those from the other sources from Thailand, are contemporaneous with the POI, product-specific, and tax-exclusive.⁴⁵ In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the International Monetary Fund's Consumer Price Index for Thailand.⁴⁶

Furthermore, with regard to Thailand's import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.⁴⁷

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.⁴⁸ Rather, the Department

bases its decision on information that is available to it at the time it makes its determination.⁴⁹ Therefore, we have not used prices from India, Indonesia or South Korea in calculating Thailand's import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.⁵⁰

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.⁵¹ Where we find ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,⁵² we use the actual purchases of these inputs to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight-average the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.⁵³ Where appropriate, we add freight to the ME prices of inputs. Transfar claimed that certain of its reported movement expenses were sourced from an ME country and paid for in U.S. dollars. However, the Department did not treat

Transfar's ocean freight expenses as ME purchases because Transfar was unable to demonstrate that its PRC freight forwarder was an agent acting on behalf of a ME freight carrier. Specifically, information submitted by Transfar did not include full document traces that would show that the prices, including any agent fee or commission, paid by Transfar were set by the ME freight carrier. *See* Surrogate Value Memorandum at 7.

Section 773(c) of the Act provides that the Department will value FOP in NME cases using the best available information regarding the value of such factors in a ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOP, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act.

Previously, the Department used regression-based wages that captured the worldwide relationship between *per capita* Gross National Income ("GNI") and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC"), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("*Dorbest*"), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest*, the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.⁵⁴

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.⁵⁵ In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter

⁴⁴ *See e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

⁴⁵ *See* Surrogate Value Memorandum at 3.

⁴⁶ *See* Surrogate Value Memorandum at 2.

⁴⁷ *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 7; *see also Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM at pages 4–5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying IDM at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at pages 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001).

⁴⁸ *See Omnibus Trade and Competitiveness Act of 1988*, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary*

Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

⁴⁹ *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008).

⁵⁰ *Id.*

⁵¹ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

⁵² *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

⁵³ *See Antidumping Methodologies: Market Economy Inputs*, 71 FR at 61718.

⁵⁴ *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment*, 76 FR 9544 (Feb. 18, 2011).

⁵⁵ *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").

6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (“Yearbook”).

In this preliminary determination, the Department calculated the labor input using the data on industry specific labor cost from the primary surrogate country (i.e., Thailand), as described in *Labor Methodologies*. The Department relied on Chapter 6A labor cost data for Thailand from the International Labour Organization’s (“ILO”) Yearbook of Labour Statistics (“Yearbook”). The Department used ILO Chapter 6A labor cost data for the year 2000 because this is the most recent Chapter 6A data available for Thailand. The Department further determined the two-digit description under ISIC–Revision 3–D (“Manufacture of Chemicals and Chemical Products”) to be the best available information because it is specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor cost data reported by Thailand to the ILO under Sub-Classification 24 of the ISIC–Revision 3–D, in accordance with section 773(c)(4) of the Act.⁵⁶ For this preliminary determination, the calculated industry-specific wage rate is 66.88 baht per hour. The Department inflated this value to the POI. For further information on the calculation of the wage rate, see Surrogate Value Memorandum at 5.

We valued truck freight expenses using a per-unit average rate for price data from the Thailand Board of Investment’s 2006 publication, *Costs of Doing Business in Thailand*.⁵⁷

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand for 20 and 40 foot containers published in the World Bank publication, *Doing Business 2011: Thailand*.⁵⁸

We valued international freight using data obtained from the Descartes Carrier

Rate Retrieval Database (“Descartes”), which can be accessed via <http://descartes.com/>.⁵⁹ The Descartes database is a web-based service, which publishes the ocean freight rates of numerous carriers. We find that this database is accessible to government agencies without charge, in compliance with Federal Maritime Commission regulations and, thus, is a publicly available source. In addition to being publicly available, the Descartes data reflect rates for multiple carriers, report rates on a daily basis, the price data obtained are based on routes that closely correspond to those used by respondents, and are similar to the merchandise subject to this segment. Therefore, the Descartes data is product-specific, publicly available, a broad-market average, and contemporaneous with the period of the segment. Accordingly, the Descartes data is the best available source for valuing international freight on the record because it provides rates that are representative of the entire period of the segment and a broader representation of product-specificity.

However, while the Department finds that the Descartes data is the most superior source for valuing international freight on the record, to make the source less impractical, the Department has had to make certain arbitrary calls. The Department has calculated the period-average international freight rate by obtaining rates from multiple carriers for a single day in each quarter of the period of the segment. For any rate that the Department determined was from a non-market economy carrier, the Department has not included that rate in the period-average international freight calculation. Additionally, any charges included in the rate that are covered by brokerage and handling charges that the respondent incurred and are valued by the reported market economy purchase or the appropriate surrogate value, the Department has not included these charges in the calculation.

We valued marine insurance using a rate from RJG Consultants.⁶⁰

Regarding energy, we were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary determination, we have disregarded the respondents’ energy inputs (electricity, water, and steam for both Hongda and Transfar) in the calculation of NV, in order to avoid double-counting energy costs that have necessarily been captured in the surrogate financial ratios.⁶¹

We valued railway freight using price data from the Thailand Board of Investment’s 2011 publication, *Costs of Doing Business in Thailand*.⁶²

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements from the following producer of comparable merchandise in Thailand: PTT Chemical Public Co. Ltd., covering the fiscal year ending December 2010.⁶³ The Department may consider other publicly available financial statements for the final determination, as appropriate.

Currency Conversion

Where necessary, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.⁶⁴

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Hongda and Transfar.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.⁶⁵ This practice is described in Policy Bulletin 05.1.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted average margin
Zhejiang Hongda Chemicals Co., Ltd	Zhejiang Hongda Chemicals Co., Ltd	106.22
Zhejiang Transfar Whyyon Chemical Co., Ltd	Zhejiang Transfar Whyyon Chemical Co., Ltd	126.25
PRC-wide Entity	141.08

⁵⁶ The Department preliminarily determined that there is no evidence on the record demonstrating that the cost of labor is overstated. Therefore, the Department did not make any adjustments to the calculation of the surrogate financial ratios.

⁵⁷ See Surrogate Value Memorandum at 6.

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *id.* at 7.

⁶¹ See e.g. *Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Affirmative Determination of Sales at Less Than*

Fair Value, 74 FR 16838 (April 13, 2009) and accompanying IDM at Comment 2.

⁶² See Surrogate Value Memorandum at 7.

⁶³ See *id.* at 5–6.

⁶⁴ See *id.* at 2.

⁶⁵ See *Initiation Notice*, 76 FR at 23559.

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (“CBP”) to suspend liquidation of all appropriate entries of OBAs from the PRC as described in the “Scope of Investigation” section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of OBAs, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.⁶⁶ A table of contents, list of authorities used

and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days after the date of publication of this notice.⁶⁷ Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, at a time and location to be determined.⁶⁸ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Case briefs, rebuttal briefs and hearing requests should be submitted to the Department electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA Access”). Access to IA Access is available in the Central Records Unit, room 7046 of the main Department of Commerce building.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28537 Filed 11–2–11; 8:45 am]

BILLING CODE 3510–DS–P

⁶⁶ See 19 CFR 351.309.

⁶⁷ See 19 CFR 351.310(c).

⁶⁸ See 19 CFR 351.310.

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-583-848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margin of sales at LTFV is listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Hermes Pinilla, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-0768 and (202) 482-3477, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On March 31, 2011, Clariant Corporation (the petitioner) filed an antidumping petition against imports of stilbenic OBAs from Taiwan. *See* "Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Petitions Requesting the Imposition of Antidumping Duties," dated March 31, 2011 (the petition).

On April 27, 2011, the Department initiated the antidumping duty investigation on stilbenic OBAs from Taiwan. *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 76 FR 23554 (April 27, 2011) (*Initiation Notice*).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the date of publication of the *Initiation Notice*. *See Initiation Notice*, 76 FR at 23555. The Department

also set aside a period of time for parties to comment on product characteristics for use in the antidumping duty questionnaire. *Id.* We received comments from the respondent on May 10, 2011, and comments from the petitioner on May 10, 17, and 26, 2011, concerning product characteristics.¹ After reviewing the comments received, we have adopted the characteristics and hierarchy as explained in the "Product Comparisons" section of this notice, below.

Based on U.S. Customs and Border Protection (CBP) data obtained for U.S. imports of subject merchandise during the period of investigation (POI), on May 24, 2011, we selected Teh Fong Min International Co., Ltd. (TFM) and Sun Rise Chemical Ind. Co., Ltd. (Sun Rise) as mandatory respondents in this investigation. On June 10, 2011, Sun Rise provided documentation supporting its claim that it did not have any shipments of subject merchandise to the United States during the POI. See the "Selection of Respondents" section of this notice, below.

On May 26, 2011, we issued the antidumping questionnaire to TFM and Sun Rise. We received TFM's responses on July 1 and July 20, 2011. Because Sun Rise properly filed a statement of no shipments and provided supporting documentation, it did not respond to our questionnaire.

On May 27, 2011, the International Trade Commission (ITC) published its affirmative preliminary determination that there is a reasonable indication that imports of stilbenic OBAs from Taiwan are materially injuring the U.S. industry, and the ITC notified the Department of its finding. See *Certain Stilbenic Optical Brightening Agents From China and Taiwan*, 76 FR 30967 (May 27, 2011).

On June 9, 2011, we sent a letter to all interested parties inviting comments regarding the Harmonized Tariff Schedule of the United States (HTSUS) subheadings included in the description of the subject merchandise. On June 16, 2011, we received comments from the petitioner. After reviewing the comments received we established the appropriate description of the subject merchandise. See the "Scope of the Investigation" and the "Changes to Scope of Investigation" sections of this notice below.

On July 29, 2011, the petitioner requested that the Department postpone its preliminary determination by 50 days. Because the petitioner made this

timely request, in accordance with section 733(c)(1)(A) of the Act, we postponed our preliminary determination by 50 days. See *Certain Stilbenic Optical Brightening Agents From the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 76 FR 49443 (August 10, 2011).

On September 12, 2011, the petitioner filed allegations of targeted dumping by TFM. See the "Allegations of Targeted Dumping" section below.

On October 17, 2011, TFM requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by no more than 135 days in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month to a six-month period.

On October 11, 2011, the petitioner submitted comments for consideration in the preliminary determination.

Period of Investigation

The POI is January 1, 2010, through December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2011. See 19 CFR 351.204(b)(1).

Scope of the Investigation

The certain stilbenic OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis[1,3,5-triazin-2-yl]² amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.

Excluded from this investigation are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl]³ amino-2,2'-stilbenedisulfonic acid, C40H40N12O8S2 ("Fluorescent Brightener 71"). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic

OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the HTSUS, but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Changes to Scope of Investigation

The Department identified the scope of the investigation in its *Initiation Notice* and set aside a period of time for interested parties to raise issues regarding product coverage. On June 9, 2011, the Department issued a letter to all interested parties inviting comments regarding whether HTSUS subheadings 2921.59.4000 and 2921.59.8090 are appropriate for inclusion in the scope of the investigation. The petitioner submitted comments on June 16, 2011. No other party submitted comments. On July 11, 2011, the Department issued a memorandum detailing its decision to continue to include HTSUS subheadings 2921.59.4000 and 2921.59.8090 in the scope of the investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. In the *Initiation Notice* we stated that we intended to select respondents based on CBP data for U.S. imports under HTSUS number 3204.20.80 during the POI and we invited comments on CBP data and selection of respondents for individual examination. See *Initiation Notice*, 76 FR 23554 (April 27, 2011).

On May 2, 2011, we released the CBP data to all parties with access to information protected by administrative protective order. Based on our review of the CBP data and our consideration of the comments we received from the petitioner on May 9, 2011, and the Department's current workload, we determined that we had the resources to examine two companies. Accordingly, we selected TFM and Sun Rise as

¹ The petitioner's May 26, 2011, comments were submitted in response to the product-matching characteristics identified by the Department in its May 26, 2011, antidumping-duty questionnaire.

² The brackets above denote the chemical formula of the subject merchandise. This is not business-proprietary information.

³ *Id.*

mandatory respondents. These companies also are the publicly identified producers/exporters of subject merchandise. See Memorandum to Christian Marsh entitled “Antidumping Duty Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan—Identification of Respondents,” dated May 24, 2011.

On June 10, 2011, Sun Rise provided documentation that it did not have any shipments of subject merchandise to the United States during the POI, and a review of entry documents provided by CBP substantiated this claim. See Memorandum from Tom Futtner to Laurie Parkhill, entitled “Request for U.S. Entry Documents—Certain Stilbenic Optical Brightening Agents from Taiwan (A-583-848),” dated August 3, 2011. Therefore, TFM is the only remaining mandatory respondent in this investigation.

Allegations of Targeted Dumping

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: (1) There is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act.

On September 12, 2011, the petitioner submitted an allegation of targeted dumping with respect to TFM asserting that the Department should apply the average-to-transaction methodology in calculating TFM’s margin. In its allegation, the petitioner asserts that there are patterns of export prices (EPs) for comparable merchandise that differ significantly among customers and regions. The petitioner relied on the Department’s targeted-dumping test first introduced in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*Nails*), and used more recently in *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) (*OCTG*).

Because our analysis includes business-proprietary information, for a full discussion see Memorandum to Christian Marsh, entitled “Less-Than-Fair-Value Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan: Targeted Dumping—Teh

Fong Min International Co., Ltd.,” dated concurrently with this notice (Targeted-Dumping Memo).

A. Targeted-Dumping Test

We conducted customer and regional analyses of targeted dumping for TFM using the methodology we adopted in *Nails* as modified in *Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 55183 (October 27, 2009) (test unchanged in final; 75 FR 14569 (March 26, 2010)), to correct a ministerial error, and as further modified in *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum at Comment 4,⁴ to correct for additional ministerial errors.

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. See section 777A(d)(1)(B)(i) of the Act and *Nails*. In this test we made all price comparisons on the basis of identical merchandise (*i.e.*, by control number or CONNUM). The test procedures are the same for the customer and regional allegations of targeted dumping. We based all of our targeted-dumping calculations on the U.S. net price which we determined for U.S. sales by TFM in our standard margin calculations. For further discussion of the test and the results, see the Targeted-Dumping Memo.

As a result of our analysis, we preliminarily determine that the overall proportion of TFM’s U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of the Act and our practice as discussed in *Nails* is insufficient to establish a pattern of EPs for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department has determined that criteria established in 777A(d)(1)(B)(i) of the Act have not been met.

Therefore, we have applied the average-to-average methodology to all sales. See Targeted-Dumping Memo for further discussion.

Date of Sale

Section 19 CFR 351.401(i) of the Department’s regulations states that the Department normally will use the date of invoice, as recorded in the producer’s

⁴ See also Targeted-Dumping Memo for further discussion.

or exporter’s records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

TFM reported its sales using shipment date as the date of sale, because its shipments occurred prior to invoicing. On July 14, August 11, September 12, October 11, and October 12, 2011, the petitioner commented on the use of the date of TFM’s long-term contracts as the date of sale for U.S. sales made pursuant to these contracts. Based on information on the record concerning these long-term contracts, we have determined that the evidence does not establish that the material terms of sale are set on contract date. TFM has demonstrated that either party has the right to renegotiate the prices during the pendency of the contract, that such renegotiations have occurred, that the quantities established in the contracts are merely estimates and that there are no firm minimum quantity requirements.

See TFM’s August 26, 2011, supplemental questionnaire response at pages 6–7, and exhibit SE–13. Therefore, because date of shipment precedes invoice date and the record evidence otherwise demonstrates that shipment date is when final price and quantity are determined, we have used shipment date as the date of sale. For one customer, multiple sales were included in one invoice, and we calculated a “weighted average ship date” to use as the date of sale. See the TFM Analysis Memorandum to the file dated concurrently with this notice for additional information (Preliminary Analysis Memo).

Recently the U.S. Court of International Trade upheld the Department’s decision to use invoice

date for U.S. sales governed by long-term contracts because the evidence on the record did not demonstrate that the respondent's U.S. customers were contractually bound such that their material terms of sale were finally and firmly established on the contract date. *See Yieh Phui Enterprise Co. v. United States* (Slip Op. 11-107) (August 24, 2011). Similarly, the long-term contracts here do not set the material terms of sale; the terms are set at date of shipment, which occurs before date of invoice. Therefore, in accordance with our practice and judicial precedent we have selected the date of shipment as the date of sale.

Fair-Value Comparisons

To determine whether sales of stilbenic OBAs to the United States by TFM were made at LTFV during the POI, we compared normal value to constructed export price, as described in the "Normal Value" and "Constructed Export Price" sections of this notice in accordance with section 777A(d)(1)(B) of the Act. We made average-to-average comparisons for all sales to the United States and provided offsets for non-dumped comparisons.

Product Comparisons

We received comments from the respondent on May 10, 2011, and comments from the petitioner on May 10, 17, and 26, 2011, concerning product characteristics. After reviewing the comments received, we have adopted the characteristics and hierarchy identified by the petitioner, with one exception. Instead of matching on the basis of the exact concentration of active brightening agents, we specified a range of active ingredients in the hierarchy. *See* our May 26, 2011, antidumping-duty questionnaire for TFM. We have relied on four criteria for matching U.S. sales of subject merchandise to normal value: category, stage, state, and range of concentration of active ingredients.

U.S. Price

We based the United States price on constructed export price (CEP), as defined in section 772(a) of the Act, because the first sale to an unaffiliated party was made by TFM's U.S. affiliate, TFM North America, Inc.

We calculated CEP based on the packed Free on Board, Cost, Insurance and Freight, or delivered price to unaffiliated purchasers in the United States. We made deductions, as appropriate, for discounts. We also made deductions for any movement expenses in accordance with sections 772(c)(2)(A) and 772(d) of the Act. *See*

the Preliminary Analysis Memo for additional information.

Normal Value

After testing comparison-market viability, we calculated normal value as stated in the "Constructed Value" section of this notice.

A. Comparison-Market Viability

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price. Section 773(a)(1)(C) of the Act contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or third country to serve as a viable basis for calculating normal value, we compared the respondent's volumes of home-market and third-country sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. The aggregate volume of TFM's sales of foreign like product in the home market was not greater than five percent of its sales of subject merchandise to the United States. Therefore, TFM's sales in the home market are not viable as a comparison market. Similarly, TFM's sales of foreign like product to third-country markets were not greater than five percent of its sales of subject merchandise to the United States. Therefore, none of these markets are viable as a comparison market.

B. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(e) of the Act, we calculated constructed value (CV) based on the sum of the cost of materials and fabrication, selling, general and administrative expenses, interest expenses, U.S. packing expenses, and profit. We relied on information submitted by the respondent for materials and fabrication costs, general and administrative expenses, interest expenses, and U.S. packing costs. Based on the review of record evidence, TFM did not appear to experience significant changes in the cost of manufacturing during the period of investigation. Therefore, we followed

our normal methodology of calculating an annual weighted-average cost.

Because the Department has determined for purposes of this preliminary determination that TFM does not have a viable comparison market, we could not determine selling expenses and profit under section 773(e)(2)(A) of the Act. Therefore, we relied on section 773(e)(2)(B) of the Act to determine these amounts.

The statute does not establish a hierarchy for selecting among the alternative methodologies provided in section 773(e)(2)(B) of the Act for determining selling expenses and profit. *See* Statement of Administrative Action Accompanying the URAA, H.R. Rep. No. 103-316, Vol. 1, at 840 (1994). Alternative (iii) of section 773(e)(2)(B) of the Act specifies that selling and profit may be calculated based on any other reasonable method in connection with the home-market sale of merchandise that is in the same general category of products as the subject merchandise as long as the result is not greater than the amount realized by exporters or producers "in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise" (*i.e.*, the "profit cap").

Because TFM did not produce and sell any other merchandise in the same general category as stilbenic OBAs and because no other producers/exporters are being individually examined in this investigation, we calculated TFM's selling expenses and profit under section 773(e)(2)(B)(iii) of the Act. We used the selling expenses and profit from the publicly available financial statements for the fiscal year most contemporaneous with the POI of a company in Taiwan, Everlight Chemical Industrial Corporation (Everlight). In addition to producing subject merchandise, Everlight also produces other chemicals, including OBAs that are used in other applications. For a more detailed discussion *see* Memorandum to Neal Halper from Gina Lee, regarding "Constructed Value Calculation Adjustments for the Preliminary Determination," dated concurrently with this notice (Preliminary Cost Memo).

As explained above, TFM does not produce other merchandise in the same general category of products as the subject merchandise. Thus, a profit cap cannot be calculated as there is no information regarding profit that is normally realized in connection with the sale of merchandise in the same general category for consumption in the home market. *See* Preliminary Cost

Memo. Therefore because there is no information available on the profit cap on the record, as facts available, we are applying option (iii), without quantifying a profit cap.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination for TFM.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct CBP to suspend liquidation of all entries of stilbenic OBAs from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated below, as follows: (1) The rate for TFM will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 12.03 percent, as discussed in the “All-Others Rate” section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Weighted-average margin (percent)
Teh Fong Min International Co., Ltd	12.03

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. TFM is the only respondent in this investigation for which the Department has calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-

average dumping margin calculated for TFM, 12.03 percent. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999), and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 72 FR 30753, 30757 (June 4, 2007) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007)).

Disclosure

We will disclose the calculations performed in our preliminary determination to interested parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. If the Department’s final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of stilbenic OBAs from Taiwan are materially injuring, or threatening material injury to, the U.S. industry (see section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed below, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. *See* 19 CFR 351.309(c)(2). Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on CD-ROM.

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party. *See* also 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for filing a rebuttal brief at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain the following: (1) The party’s name, address, and telephone number; (2) a list of participants; (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department’s regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 17, 2011, TFM requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by no more than 135 days after the date of publication of this notice in the **Federal Register**. At the same time, TFM requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month to

a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) Our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011-28555 Filed 11-2-11; 8:45 am]

BILLING CODE 3510-DS-P

**INTERNATIONAL TRADE
COMMISSION**

**[Investigation Nos. 731-TA-1186-1187
(Final)]**

**Certain Stilbenic Optical Brightening
Agents From China and Taiwan;
Scheduling of the Final Phase of
Antidumping Investigations**

AGENCY: United States International
Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731-TA-1186-1187 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and Taiwan of certain stilbenic optical brightening agents ("CSOBAs"), provided for in subheading 3204.20.80 of the Harmonized Tariff Schedule of the United States, but they may also enter under subheadings 2933.69.6050, 2921.59.40, and 2921.59.8090.¹

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis[1,3,5-triazin-2-yl]amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced

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

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT:

Cynthia Trainor (202) 205-3354), 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>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of CSOBAs from China and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on March 31, 2011 by Clariant Corp., Charlotte, NC.

Participation in the investigation 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 final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's

rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations 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 the final phase of these investigations will be placed in the nonpublic record on March 1, 2012, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 15, 2012.

Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 7, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 9, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission.

Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 8, 2012. 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 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 22, 2012; 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 investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 22, 2012. On April 12, 2012, 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 16, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.30 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. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's web site at <http://edis.usitc.gov>.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

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

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

during the synthesis of final stilbenic OBA products.

The compounds *excluded* from these investigations are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2yl]amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ ("Fluorescent Brightener 71"). These investigations cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs) and in any type of packaging."

By order of the Commission.

Issued: November 18, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011-30317 Filed 11-23-11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (the Department) has determined that imports of certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Continuation of Suspension of Liquidation" section of this notice.

DATES: *Effective Date:* March 23, 2012.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0768 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On November 3, 2011, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of stilbenic OBAs from Taiwan. See *Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68154 (November 3, 2011) (*Preliminary Determination*).

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by the participating respondent, Teh Fong Min International, Co., Ltd. (TFM) and its U.S. affiliate, TFM North America, Inc. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the company.¹

¹ See Memorandum to the File entitled "Verification of the Sales Response of TFM North America, Inc. (TFMNA) in the Antidumping Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan," dated December 20, 2011, Memorandum to the File entitled "Verification of the Sales Response of Teh Fong Min International Co., Ltd. in the Antidumping

We received case briefs submitted by Clariant Corporation (hereinafter, the petitioner) and TFM on January 19, 2012. TFM and the petitioner submitted rebuttal comments on January 26, 2012, and January 27, 2012, respectively. At the request of both parties, we held a hearing on January 31, 2012, in the main Department of Commerce building.

Subsequent to the *Preliminary Determination*, the Department revised the program to ensure that it accurately reflected the methodological choices made in that determination. These revisions to the programming, had they been included in the preliminary determination, would not have altered the weighted average dumping margins calculated there. See "Less-Than-Fair-Value Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan: Final Analysis Memorandum for Teh Fong Min International Co., Ltd. (1/1/2010—12/31/2010)," dated concurrently with this notice (Final Analysis Memo) (with the revised preliminary AD margin program, output and weighted-average dumping margins).

Period of Investigation

The period of investigation (POI) is January 1, 2010, through December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2011. See 19 CFR 351.204(b)(1).

Scope of Investigation

The certain stilbenic OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis [1,3,5- triazin-2-yl]² amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.

Excluded from this investigation are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl]³ amino-2,2'-stilbenedisulfonic acid, C40H40N12O8S2 ("Fluorescent

Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan," dated December 30, 2011, and Memorandum to the File entitled "Verification of the Cost Response of Teh Fong Min International Corporation in the Antidumping Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan," dated January 6, 2012.

² The brackets above denote the chemical formula of the subject merchandise. This is not business-proprietary information.

³ *Id.*

Brightener 71"). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memorandum (I&D Memo) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, which is dated concurrently with and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The I&D Memo is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memo can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed and electronic versions of the I&D memo are identical in content.

Targeted Dumping

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: (1) There is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act.

In the *Preliminary Determination*, based on the methodology we adopted

in *Nails*,⁴ as modified in *Bags*⁵ and *Wood Flooring*⁶ to correct certain ministerial errors, we found that the overall proportion of TFM's U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of the Act was insufficient to establish a pattern of export prices for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department determined that the criteria established in 777A(d)(1)(B)(i) of the Act had not been met and applied the average-to-average methodology to all sales.⁷ No party has commented on this determination.

As in the *Preliminary Determination*, for TFM we continue to not find a pattern of export prices for comparable merchandise that differs significantly among customers, regions, or by time period. See Final Analysis Memo.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verifications, we have made certain changes to TFM's margin calculation. For a discussion of these changes, see memorandum to Neal M. Halper from Gina K. Lee entitled, "Constructed Value Calculation Adjustments for the Final Determination—Teh Fong Min International Co., Ltd. ("TFM")" (Final Cost Memo) and Final Analysis Memo, dated concurrently with this notice.

Date of Sale

Section 19 CFR 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the

⁴ See *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*Nails*).

⁵ See *Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 55183 (October 27, 2009) (unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010)) (*Bags*).

⁶ See *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying I&D Memo at Comment 4.

⁷ See also Memorandum to Christian Marsh from Susan H. Kubbach entitled, "Less-Than-Fair Value Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan: Targeted Dumping—Teh Fong Min International Co., Ltd.," dated October 27, 2011.

Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.

TFM reported its sales using shipment date as the date of sale, because shipment occurred prior to invoicing. The petitioner commented that contract date or contract amendment date is the appropriate date of sale for TFM's sales made pursuant to long-term contracts. Based on information on the record concerning these long-term contracts and consistent with the *Preliminary Determination* and *Yieh Phui*,⁸ we find that the date of shipment is the appropriate date of sale. See I&D Memo published concurrently with this notice at Comment 1.

Constructed Value

As was explained in the *Preliminary Determination* (76 FR at 68134–68135), in accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value because TFM did not have a viable comparison market. We calculated constructed value in accordance with section 773(e) of the Act. Because TFM does not have a viable comparison market, in the *Preliminary Determination* we determined selling expenses and profit under section 773(e)(2)(B)(iii) of the Act. In the *Preliminary Determination* we used the profit rate derived from the publicly available financial statements for the fiscal year most contemporaneous with the POI for a company in Taiwan, Everlight Chemical Industrial Corporation (Everlight). We received new factual information concerning the calculation of constructed value profit from parties since the *Preliminary Determination*. After considering the new factual information and comments we received concerning this issue, we find that, for this final determination, it is appropriate to use Everlight's colorants-sector profit to derive the constructed value profit. We have also excluded movement expenses and direct-selling expenses in our calculation of constructed value indirect selling expenses. See the discussion in the accompanying I&D Memo at Comments 2 through 6. See also Final Cost Memo and Final Analysis Memo.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of

⁸ See *Yieh Phui Enterprise Co. v. United States* (Slip Op. 11–107) (August 24, 2011) (*Yieh Phui*).

stilbenic OBAs from Taiwan which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated below, as follows: (1) The rate for TFM will be the rate we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 6.20 percent, as discussed in the "All-Others Rate" section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Weighted-average margin (percent)
Teh Fong Min International Co., Ltd	6.20

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. TFM is the only respondent in this investigation for which the Department calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for TFM, 6.20 percent.⁹

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999), and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 72 FR 30753, 30757 (June 4, 2007) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007)).

**International Trade Commission
Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a 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. Timely notification of the 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 determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: March 19, 2012.

Paul Piquado,

*Assistant Secretary for Import
Administration.*

Appendix I**Issues in I&D Memo**

1. Date of Sale for Long-Term Contracts
2. Constructed Value Profit
3. Constructed Value Selling Expenses
4. Constructed Export Price Profit
5. General and Administrative Expenses
6. Cost Reconciliation

[FR Doc. 2012-7063 Filed 3-22-12; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-972]

Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

DATES: *Effective Date:* March 26, 2012.

SUMMARY: On November 3, 2011, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of certain stilbenic optical brightening agents ("stilbenic OBAs") from the People's Republic of China ("PRC").¹ The Department invited interested parties to comment on the *Preliminary Determination*. Based on the Department's analysis of the comments received, the Department has made changes from the *Preliminary Determination*, and continues to find that stilbenic OBAs from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in

¹ See *Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68148 (November 3, 2011) ("*Preliminary Determination*").

section 735 of the Tariff Act of 1930, as amended (the "Act"). The final dumping margins for this investigation are listed in the "Final Determination" section below.

FOR FURTHER INFORMATION CONTACT: Shawn Higgins or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0679, or (202) 482-5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published its *Preliminary Determination* of sales at LTFV and postponement of the final determination on November 3, 2011. Between November 7, 2011, and November 18, 2011, the Department conducted verification of mandatory respondents Zhejiang Transfar Whyyon Chemical Co., Ltd. ("Transfar") and Zhejiang Hongda Chemicals Co., Ltd. ("Hongda").² Clariant Corporation ("Petitioner"), Transfar, and Hongda submitted case briefs on January 6, 2012.³ On January 11, 2012, Petitioner and Transfar filed rebuttal briefs. The Department conducted a public hearing on February 1, 2012.

Period of Investigation

The period of investigation ("POI") is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2011.⁴

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum.⁵ A list of

² See the "Verification" section below.

³ The Department rejected Transfar's original case brief because it contained untimely information. See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Transfar, regarding Transfar's submission of untimely information (January 10, 2012). Transfar submitted a revised version of its case brief on January 13, 2012. See Letter from Transfar to the Secretary of Commerce, "Certain Stilbenic Optical Brightening Agents from China" (January 13, 2012) ("Transfar's Case Brief"); Letter from Transfar to the Secretary of Commerce, "Certain Stilbenic Optical Brightening Agents from China" (January 11, 2012) ("Transfar's Rebuttal Brief").

⁴ See 19 CFR 351.204(b)(1).

⁵ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of

these issues is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

- The Department changed the surrogate value ("SV") for ocean freight to reflect shipping rates that actually occurred during the POI. In addition, the Department included certain additional charges (*i.e.*, fuel surcharges, destination delivery charges, and bill of lading charges) in the ocean freight calculation because these charges were not separately covered by the brokerage and handling SV.⁶
- The Department changed the SV for ice blocks from Global Trade Atlas import data to a value reported in the publication *Business Report Thailand*.⁷
- The Department made changes based on minor corrections presented at verification.⁸

China" (March 19, 2012) ("Issues and Decision Memorandum").

⁶ See Issues and Decision Memorandum at Comment 4; Memorandum from Maisha Cryor, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Surrogate Value Memorandum" (March 19, 2012) ("Final SV Memo") at Attachment 2.

⁷ See Issues and Decision Memorandum at Comment 3; Final SV Memo at Attachment 1.

⁸ See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, and Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Verification of the Antidumping Duty Questionnaire Responses of Zhejiang Hongda Chemicals Co., Ltd." (December 15, 2011) ("Hongda's Verification Report"); Memorandum from Maisha Cryor, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination Analysis Memorandum for Zhejiang Hongda Chemicals Co., Ltd." (March 19, 2012); Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, and Maisha Cryor, International Trade Compliance Analyst, AD/CVD

Scope of the Investigation

The stilbenic OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis [1,3,5- triazin-2-yl]⁹ amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by this investigation include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from this investigation are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl]¹⁰ amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ ("Fluorescent Brightener 71"). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States ("HTSUS"), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Verification

As provided in section 782(i) of the Act, the Department verified the information submitted by Transfar and Hongda for use in its final determination. The Department used standard verification procedures, including examination of relevant accounting and production records and

Operations, Office 4, to the File, "Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Verification of the Antidumping Duty Questionnaire Responses of Zhejiang Transfar Whyyon Chemical Co., Ltd." (December 15, 2011) ("Transfar's Verification Report"); Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination Analysis Memorandum for Zhejiang Transfar Whyyon Chemical Co., Ltd." (March 19, 2012).

⁹ The brackets in this sentence are part of the chemical formula.

¹⁰ *Id.*

original source documents provided by the respondents.¹¹

Non-Market Economy Country

The Department considers the PRC to be a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC's status as an NME country. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, the Department continues to treat the PRC as an NME for purposes of the final determination.

Surrogate Country

In the preliminary determination, the Department selected Thailand as the appropriate surrogate country for use in this investigation pursuant to section 773(c)(4) of the Act based on the following: (1) It is at a similar level of economic development as the PRC; (2) it is a significant producer of merchandise comparable to the merchandise under consideration; and (3) the record contains reliable data from Thailand that the Department can use to value the factors of production.¹² The Department has not made changes to these findings for the final determination.

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply facts available ("FA") if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include

¹¹ See Transfar's Verification Report; Hongda's Verification Report.

¹² See Memorandum to Abdelali Elouaradia from Shawn Higgins, "Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Surrogate Country Memorandum" (October 27, 2011).

reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

PRC-Wide Entity

In the *Preliminary Determination*, the Department determined that certain PRC exporters/producers did not respond to the Department’s requests for information including information pertaining to whether they were separate from the PRC-wide entity.¹³ Thus, the Department has found that these PRC exporters/producers are part of the PRC-wide entity and the PRC-wide entity has not responded to requests for information.¹⁴ No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Because the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on FA.

Because the PRC-wide entity did not respond to our request for information, the Department has determined that the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department has found that, in selecting from among the FA, an adverse inference is appropriate for the PRC-wide entity.

Because the Department begins with the presumption that all companies within an NME country are subject to government control and only the mandatory respondents have overcome that presumption, the Department is

applying a single antidumping rate to all other exporters of merchandise under consideration from the PRC. Such companies have not demonstrated entitlement to a separate rate.¹⁵ Accordingly, the PRC-wide entity rate applies to all entries of merchandise under consideration except for entries from Transfar and Hongda.

Selection of the Adverse Facts Available Rate for the PRC-Wide Entity

In selecting a rate for adverse facts available (“AFA”), the Department selects a rate that is sufficiently adverse “as to effectuate the purpose of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”¹⁶ Further, it is the Department’s practice to select a rate that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁷ It is the Department’s practice to select as AFA the higher of (a) the highest margin alleged in the petition or (b) the highest rate calculated for any respondent in the investigation.¹⁸ The highest margin alleged in the petition is 203.16 percent.¹⁹ This rate is higher than any of the rates calculated for individually examined companies. Thus, as AFA, the Department’s practice would be to assign the rate of 203.16 percent to the PRC-wide entity. However, in order to determine the probative value of the margins in the petition for use as AFA for purposes of this final determination, the Department examined information on the record and found that it was unable to corroborate either the highest margin in the petition or both its U.S. price and normal value

components. In addition, the Department does not find the highest calculated weighted-average margin of the mandatory respondents to be sufficiently adverse to act as the AFA rate.²⁰ The Department finds, however, that the highest transaction-specific margin of the mandatory respondents (*i.e.*, 109.95 percent) is sufficiently adverse to serve as the AFA rate.²¹ No corroboration of this rate is necessary because the Department is relying on information obtained in the course of this investigation, rather than secondary information.²² This was the same methodology the Department employed in the *Preliminary Determination*. No interested party has commented on this methodology for calculating the PRC-wide rate.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/ manufacturer combinations listed in the chart in the “Final Determination” section below.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.²³ This practice is described in Policy Bulletin 05.1.²⁴

Final Determination

The Department determines that the following dumping margins exist for the period July 1, 2010, through December 31, 2010:

Exporter	Producer	Weighted average margin
Zhejiang Hongda Chemicals Co., Ltd	Zhejiang Hongda Chemicals Co., Ltd	95.29
Zhejiang Transfar Whyyon Chemical Co., Ltd	Zhejiang Transfar Whyyon Chemical Co., Ltd	63.98
PRC-wide Entity	109.95

¹³ See *Preliminary Determination*, 76 FR at 68150.
¹⁴ *Id.*

¹⁵ See *Notice of Final Determination of Sales at Less Than Fair Market Value: Synthetic Indigo From the People’s Republic of China*, 65 FR 25706, 25707 (May 2, 2000).

¹⁶ See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998).

¹⁷ See *Brake Rotors from the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (Nov. 18, 2005) (quoting the Statement of

Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994)).

¹⁸ See *Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725, 60729 (October 1, 2010).

¹⁹ See *Certain Stilbenic Optical Brightening Agents From the People’s Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 76 FR 23554, 23558 (April 27, 2011) (“*Initiation Notice*”).

²⁰ See *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318, 64322 (October 18, 2011).

²¹ *Id.*

²² See 19 CFR 351.308(c) and (d) and section 776(c) of the Act; *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 73 FR 35652, 35653 (June 24, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

²³ See *Initiation Notice*, 76 FR at 23559.

²⁴ See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

Disclosure

The Department intends to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all appropriate entries of stilbenic OBAs from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date of publication of the *Preliminary Determination* in the **Federal Register**. The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise under consideration. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the 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. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 19, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I**Issues for Final Determination**

- Issue 1: Whether the Department Should Revise the Surrogate Value for 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid
- Issue 2: Whether the Department Should Revise the Calculation of the Surrogate Financial Ratios
- Issue 3: Whether the Department Should Revise the Surrogate Value for Ice Blocks
- Issue 4: Whether the Department Should Revise the Surrogate Value for Ocean Freight
- Issue 5: Whether the Department Should Revise the Surrogate Value for Brokerage and Handling
- Issue 6: Whether the Department Should Revise the Surrogate Value for Labor

[FR Doc. 2012-7215 Filed 3-23-12; 8:45 am]

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APPENDIX B
CALENDAR OF PUBLIC HEARING

CALENDAR OF PUBLIC HEARING

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

Subject: Certain Stilbenic Optical Brightening Agents from China and Taiwan

Inv. Nos.: 731-TA-1186 and 1187 (Final)

Date and Time: March 15, 2012 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:

Petitioner (**Richard L.A. Weiner**, Sidley Austin LLP)
Respondent (**Peter J. Koenig**, Squire, Sanders & Dempsey (US) LLP)

In Support of the Imposition of Antidumping Duty Orders:

Sidley Austin LLP
Washington, D.C.
on behalf of

Clariant Corporation

Kenneth Golder, President, Chief Executive Officer,
Clariant Corporation

Matthew Dettlaff, Senior Products Manager, BU Paper
Specialties North America, Clariant Corporation

Russell Gibson, Operations Manager, Paper Specialties,
Clariant Corporation

**In Support of the Imposition of
Antidumping Duty Orders (continued):**

Dr. Andrew Jackson, Head of Product Management,
Optical Brightening Agents, Clariant International Ltd.

Christopher S. Barnard, Head of Legal Services North
America, Clariant Corporation

John Dickson, Consultant

Lynn Holec, Consultant, ITR LLC

Don Little, Consultant, ITR LLC

Neil R. Ellis)
Richard L.A. Weiner)
Rajib Pal) – OF COUNSEL
Jill Caiazzo)
Mika Morse)

**In Opposition to the Imposition of
Antidumping Duty Orders:**

Squire, Sanders & Dempsey (US) LLP
Washington, D.C.
on behalf of

TFM North America, Inc.

Randall B. Nelson, Manager, Technical Services Group,
TFM North America, Inc.

Peter J. Koenig) – OF COUNSEL

OTHER PARTY:

BASF Corporation
Charlotte, NC

Ted Kelly Jr., Vice President, Wet End Paper Chemicals

Steven J. Goldberg, Vice President and Associate
General Counsel, Regulatory Law and
Government Affairs

CLOSING REMARKS/REBUTTAL:

Petitioner (**Neil R. Ellis**, Sidley Austin LLP)

Respondent (**Peter J. Koenig**, Squire, Sanders & Dempsey (US) LLP)

-END-

APPENDIX C

SUMMARY DATA FOR CSOBAS
(TOTAL, 100-PERCENT ACTIVE INGREDIENT BASIS)

CSOBAs: Summary tables		
Table No.	Imports	Countries cumulated
C-1	Market shares for subject country imports are based on shipments of U.S. imports; quantity in 1,000 pounds (total, 100-percent active ingredient basis).	China and Taiwan.

Table C-1
CSOBAs: Summary data concerning the U.S. market, 2009-11

* * * * *

APPENDIX D
DATA FOR CSOBAS IN SOLUTION FORM

Table D-1
CSOBAs: U.S. producers' capacity, production, and capacity utilization, 2009-11

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Table D-2
CSOBAs: U.S. producers' shipments, by types, 2009-11

* * * * *

Table D-3
CSOBAs: U.S. producers' commercial shipments, by category, 2009-11

* * * * *

Table D-4
CSOBAs: U.S. producers' end-of-period inventories, 2009-11

* * * * *

Table D-5
CSOBAs: Selected results of operations of U.S. producers, 2009-11

* * * * *

Table D-6
CSOBAs: Reported U.S. imports, by importer and by source of imports, 2011

* * * * *

Table D-7
CSOBAs: U.S. imports, by sources, 2009-11

* * * * *

Table D-8
CSOBAs: U.S. producers' U.S. commercial shipments, by category, 2009-11

* * * * *

Table D-9
CSOBAs: U.S. commercial shipments of imports from China, by category, 2009-11

* * * * *

Table D-10
CSOBAs: U.S. commercial shipments of imports from Taiwan, by category, 2009-11

* * * * *

Table D-11
CSOBAs: U.S. commercial shipments of imports from all other sources, by category, 2009-11

* * * * *

Table D-12
CSOBAs: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2009-11

* * * * *

Table D-13
CSOBAs: Apparent consumption and market shares, by sources, 2009-11

* * * * *

Table D-14
CSOBAs: Data for the industry in China, 2009-11 and projected 2012-13¹

* * * * *

Table D-15
CSOBAs: Chinese producers' export shipments to the United States, by category, 2009-11

* * * * *

Table D-16
CSOBAs: Data for the industry in Taiwan, 2009-11 and projected 2012-13¹

* * * * *

Table D-17
CSOBAs: Taiwanese producers' export shipments to the United States, by category, 2009-11

* * * * *

Table D-18
CSOBAs: U.S. importers' end-of-period inventories of imports, by source, 2009-11

* * * * *

APPENDIX E
DATA FOR CSOBAS IN POWDER FORM

Table E-1
CSOBAs: Reported U.S. imports, by importer and by source of imports, 2011

* * * * *

Table E-2
CSOBAs: U.S. imports, by sources, 2009-11

* * * * *

Table E-3
CSOBAs: U.S. commercial shipments of imports from China, by category, 2009-11

* * * * *

Table E-4
CSOBAs: U.S. commercial shipments of imports from Taiwan, by category, 2009-11

* * * * *

Table E-5
CSOBAs: U.S. commercial shipments of imports from all other sources, by category, 2009-11

* * * * *

Table E-6
CSOBAs: Data for the industry in China, 2009-11 and projected 2012-13¹

* * * * *

Table E-7
CSOBAs: Chinese producers' export shipments to the United States, by category, 2009-11

* * * * *

Table E-8
CSOBAs: Data for the industry in Taiwan, 2009-11 and projected 2012-13¹

* * * * *

Table E-9
CSOBAs: Taiwanese producers' export shipments to the United States, by category, 2009-11

* * * * *

Table E-10
CSOBAs: U.S. importers' end-of-period inventories of imports, by source, 2009-11

* * * * *

APPENDIX F

**PRICE DATA BASED ON PURCHASERS' REPORTED ACTIVE INGREDIENT
LEVELS OF CSOBA PRODUCTS IMPORTED FROM CHINA**

The petitioner disputes the validity of the *** reported average percentage of active ingredients in its pricing products; however, *** insists that its shipments of products 1 and 2 to U.S. customers ***.¹ Staff contacted all 6 purchasers that reported purchasing Chinese product during the period of investigation in order to verify the concentration levels of active ingredient contained in *** products. *** the largest reported purchaser of Chinese product, reported that the products it purchased during 2009-11 were sold on a *** percent active ingredient basis. Staff has recalculated the price data for products from China (based on 100-percent active ingredients) using *** reported concentration level of *** percent. Price data based on quarterly net weighted-average U.S. delivered prices and quantities of the domestic and subject imported products 1 and 2 from China are shown in tables F-1 and F-2, respectively, and in figures F-1 and F-2, respectively. Quarterly net weighted-average selling prices based on reported U.S. f.o.b. prices and quantities of the domestic and subject imported products 1 and 2 from China are shown in tables F-3 and F-4, respectively, and in figures F-3 and F-4, respectively. The summary of the weighted-average U.S. delivered and f.o.b. prices for products 1-2 from the United States, China, and Taiwan² are presented in table F-5. In addition, the selling price comparisons between the domestic products and those imported from China and Taiwan are summarized in tables F-6 and F-7 by period and by product based on quantity of the imported CSOBA products.

Table F-1

CSOBAs: Weighted-average U.S. delivered prices and quantities of domestic and imported product 1,¹ and margins of underselling/(overselling), by quarters, January 2009-December 2011

* * * * *

Table F-2

CSOBAs: Weighted-average U.S. delivered prices and quantities of domestic and imported product 2,¹ and margins of underselling/(overselling), by quarters, January 2009-December 2011

* * * * *

Figure F-1

CSOBAs: Weighted-average quarterly U.S. delivered prices and quantities of domestic and imported product 1, by quarters, January 2009-December 2011

* * * * *

Figure F-2

CSOBAs: Weighted-average quarterly U.S. delivered prices and quantities of domestic and imported product 2, by quarters, January 2009-December 2011

* * * * *

Table F-3

CSOBAs: Weighted-average f.o.b prices and quantities of domestic and imported product 1,¹ and margins of underselling/(overselling), by quarters, January 2009-December 2011

* * * * *

¹ Petitioner's prehearing brief, pp. 53-54.

² The price data for products from Taiwan were not adjusted by Commission staff, and are the same data presented in *Part V* of the Staff report.

Table F-4

CSOBAs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2,¹ and margins of underselling/(overselling), by quarters, January 2009-December 2011

* * * * *

Figure F-3

CSOBAs: Weighted-average quarterly U.S. f.o.b. prices and quantities of domestic and imported product 1, by quarters, January 2009-December 2011

* * * * *

Figure F-4

CSOBAs: Weighted-average quarterly U.S. f.o.b. prices and quantities of domestic and imported product 2, by quarters, January 2009-December 2011

* * * * *

Table F-5

CSOBAs: Summary of weighted-average U.S. delivered and f.o.b. prices for products 1-2 from the United States, China, and Taiwan

* * * * *

Table F-6

CSOBAs: Summary of underselling/(overselling) by product and by year from China and Taiwan based on delivered prices, January 2009-December 2011¹

* * * * *

Table F-7

CSOBAs: Summary of underselling/(overselling) by product and by year from China and Taiwan based on f.o.b. prices, January 2009-December 2011¹

* * * * *

APPENDIX G

**PRICE COMPARISONS AMONG THE U.S.-PRODUCED AND SUBJECT
IMPORTED CSOBA PRODUCTS AND THOSE IMPORTED FROM
NONSUBJECT COUNTRIES**

Figures G-1 and G-2 present quarterly pricing and quantity data for CSOBAs from the United States, China, Taiwan, and nonsubject countries. Nonsubject country pricing data were received from Germany (imported as solution) and Indonesia (imported as powder).

When comparing domestic producers' pricing data to pricing data from all nonsubject sources, there were 16 possible pricing comparisons, in which domestically produced CSOBAs were priced higher in *** quarters. When comparing Chinese pricing data to pricing data for all nonsubject sources, there were 16 possible comparisons. CSOBAs imported from China were priced higher than nonsubject country CSOBAs in *** comparisons. CSOBAs imported from Taiwan were priced higher in *** possible pricing comparisons. A summary of underselling and overselling for the specified products imported from nonsubject countries vis-à-vis the products produced domestically and imported from China and Taiwan during 2009-11 is presented in table G-1.

Figure G-1
CSOBAs: Weighted-average U.S. f.o.b. selling prices and quantities of domestic and imported CSOBA product 1,¹ by quarters, January 2009-December 2011

* * * * *

Figure G-2
CSOBAs: Weighted-average U.S. f.o.b. selling prices and quantities of domestic and imported CSOBA product 2,¹ by quarters, January 2009-December 2011

* * * * *

Table G-1
CSOBAs: Summary of underselling/(overselling) by product from nonsubject countries, January 2009-December 2011

* * * * *

