

UNITED STATES INTERNATIONAL TRADE COMMISSION

CITRIC ACID AND SODIUM CITRATE FROM CHINA

Investigation No. 731-TA-863 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3277, February 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China of citric acid and sodium citrate, provided for in subheadings 2918.1400 and 2918.1510 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

BACKGROUND

On December 15, 1999, a petition was filed with the Commission and the Department of Commerce by Archer Daniels Midland Co., Decatur, IL; Cargill, Inc., Naperville, IL; and Tate & Lyle Citric Acid, Inc., Decatur, IL, alleging that an industry in the United States is threatened with material injury by reason of LTFV imports of citric acid and sodium citrate from China. Accordingly, effective December 15, 1999, the Commission instituted antidumping duty investigation No. 731-TA-863 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 22, 1999 (64 FR 71831). The conference was held in Washington, DC, on January 5, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Commissioners Jennifer A. Hillman and Stephen Koplán dissenting; Chairman Lynn M. Bragg not participating.

IEWS OF THE COMMISSION

Based on the record in this investigation, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China of citric acid and sodium citrate that are allegedly sold in the United States at less than fair value (“LTFV”).^{1 2}

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.³ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁴

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁶ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁷

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in

¹ Commissioners Hillman and Koplán find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of citric acid and sodium citrate from China that are allegedly sold in the United States at LTFV. See Dissenting Views of Commissioners Jennifer A. Hillman and Stephen Koplán. They join in Parts I, II, and III.A of this opinion.

² Chairman Lynn M. Bragg did not participate in this investigation. Chairman Bragg recused herself from this investigation to avoid an appearance of a conflict of interest based upon information which came to her attention following the Commission’s public meeting held January 31, 2000.

³ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

⁴ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

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 the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

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

The scope of the investigation includes all grades and granulation sizes of citric acid and sodium citrate in any type of packaging and in either dry form or in any solution, including, but not limited to, solutions of water, alcohol and ether. The scope of the investigation includes the hydrous and anhydrous forms of citric acid and the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt. Sodium citrate includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and monosodium citrate, respectively. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.¹²

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

¹¹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹² 65 Fed. Reg. 1588 (Jan. 11, 2000).

Citric acid and sodium citrate are produced through the fermentation of a starch or sugar base using molds or yeasts.¹³ Citric acid is one of the most widely used acids in the food and beverage industry.¹⁴ It serves as an acidulant, preservative, and/or flavor enhancer in products including carbonated and non-carbonated drinks, dry powdered beverages, wines and wine coolers, jams, jellies, preserves, gelatin desserts, candies, frozen foods, and canned fruits and vegetables.¹⁵ Citric acid is also used in household laundry detergents, pharmaceuticals, metal cleaners, durable-press textile finishing treatments, cosmetics and other industrial applications. Sodium citrate has similar uses to citric acid products such as laundry detergent and as an additive to carbonated beverages, dry beverage mixes, fruit drinks, jams, jellies, preserves, gelatin desserts, and candies. Sodium citrate is also used as an emulsifier and preservative in cheese and dairy products, as a buffering agent in household cleaner products, and as a diuretic and expectorant in pharmaceuticals.¹⁶

C. Domestic Like Product Issues

Petitioners contend that the Commission should find a single like product consisting of both citric acid and sodium citrate.¹⁷ Several producers and importers of the Chinese product argue that the Commission should find that citric acid and sodium citrate are separate like products.¹⁸ We determine that there is one domestic like product consisting of citric acid and sodium citrate, coextensive with the scope of this investigation.

Citric acid and sodium citrate have similar, but not identical, chemical and physical characteristics. In the dry state, both take the form of a white granular or crystalline powder.¹⁹ Both are odorless, while the taste of citric acid is described as a “strongly acidic taste” and that of sodium citrate as a “pleasant acid taste” or a “cool salty taste.”²⁰ Both may be sold or used either in a dry state or as an aqueous solution.²¹ Sodium citrate is produced either by modifying the fermentation process used to produce citric acid or by

¹³ Confidential Report, Memorandum INV-W-017 (Jan. 24, 2000), as amended by Memorandum INV-X-024 (Jan. 31, 2000) (“CR”) at I-4-6, Public Report (“PR”) at I-3-4; Petition at 7.

¹⁴ Winter, Ruth, *A Consumer’s Dictionary of Food Additives*, Three Rivers Press, New York, 1994, pp. 126-27, 360-61, *quoted in* Questionnaire Response of ***. *See also* Petition at Exhibit 2 (SRI Consulting, CEH Marketing Research Report: Citric Acid (8/6/99) (“SRI Report”)), p. 17.

¹⁵ Petition at 5-6; CR at I-3, PR at I-2.

¹⁶ Petition at 6. Petitioners state that pharmaceutical applications account for a small (“single digit”) and declining portion of the market for citric acid and sodium citrate. Transcript of Conference, January 5, 2000 (Tr.) at 67 (Testimony of Mr. Gruber of Cargill, Inc. (“Cargill”).

¹⁷ Petition at 9-11; Petitioners’ Postconference Brief at 2-6; Tr. at 22-24, 140.

¹⁸ Postconference Brief of China BBKA Biochemical Group Corp. and BBKA (USA) (collectively “BBKA”) at 8-10; Postconference Brief of Ningxiner Biological Engineering Co., Laiwu Sisha Biochemistry Co. and Mineral Corp Co., and Wego Chemical and Mineral Corp. (collectively “Wego”) at 3.

¹⁹ CR at I-3, PR at I-2; Petition at 10; Tr. at 22-23 (Testimony of Mr. Gruber of Cargill).

²⁰ CR at I-3, PR at I-2; Petition at Exhibit 4 (*Food Chemicals Codex*, Fourth Edition, National Academy Press, July 1996); and *A Consumer’s Dictionary of Food Additives*, *quoted in* ***.

²¹ CR at I-6, PR at I-4; Petition at 9; Tr. at 23 (Testimony of Mr. Gruber of Cargill).

reacting citric acid with caustic soda.²² Thus, both products have similar essential chemical characteristics, notwithstanding their slight chemical differences.²³

The end uses of the two products overlap to a large degree. Both citric acid and sodium citrate serve as acidulants and preservatives in foods and beverages, and both are used as buffers, acidulants, and chelators in the production and formulation of a wide variety of chemical and household products.²⁴ The primary common use of citric acid and sodium citrate is in laundry detergents.²⁵ There are some end uses that are not common for both products, such as the use of citric acid in wine, fruit and vegetable products, and the use of sodium citrate as an emulsifier in cheese.²⁶

Given that they are used for many of the same purposes, citric acid and sodium citrate are technically interchangeable for most uses, although the different formulation of products in which they are used limits the degree of their actual interchangeability.²⁷ However, citric acid can be neutralized with a sodium alkali to form sodium citrate suitable for use in some formulas that call for the latter.²⁸

Citric acid and sodium citrate are sold through the same channels of distribution.²⁹ Domestically produced citric acid and sodium citrate are predominantly sold directly to end users, with the remaining approximately *** percent of sales made to distributors.³⁰

Tate & Lyle currently produces only citric acid, but its predecessor, Haarmann and Reimer, produced both products.³¹ The other two domestic producers, ADM and Cargill, produce both citric acid and sodium citrate.³² The producers produce citric acid and sodium citrate at the same facilities using the same workers.³³ The two products also share the same equipment and processes up until the point that some citric acid is reacted with caustic soda to produce sodium citrate.³⁴

²² CR at I-3, PR at I-2; Petition at 8.

²³ Tr. at 22-23 (Testimony of Mr. Gruber of Cargill); Tr. at 123 (Testimony of Mr. Wang of BBKA (USA)) and *** Questionnaire Response. The chemical formula for citric acid is $C_6H_8O_7$, whereas the chemical formula for sodium citrate, $C_6H_5Na_3O_7$, reflects the addition of the sodium hydroxide. Petitioners' Postconference Brief at 3, n. 2.

²⁴ CR at I-3-4, PR at I-2-3. ***, a *** purchaser of both citric acid and sodium citrate, stated in its Questionnaire Response that ***.

²⁵ Petition at 6.

²⁶ Petition at 6. See Questionnaire Responses of *** and ***.

²⁷ Tr. at 23 (Testimony of Mr. Gruber of Cargill); Tr. at 116 (Testimony of Mr. Echaghpour of Wego); Tr. at 123 (Testimony of Mr. Wang of BBKA).

²⁸ CR at I-6-7, PR at I-4; Tr. at 23 (Testimony of Mr. Gruber of Cargill). See Questionnaire Responses of ***.

²⁹ CR and PR at Table I-1; Tr. at 23 (Testimony of Mr. Gruber of Cargill); BBKA's Postconference Brief at 9.

³⁰ CR and PR at Table I-1.

³¹ CR and PR at III-1 & n.2; Tr. at 68 (Testimony of Mr. Boynton of Tate & Lyle).

³² CR and PR at III-1.

³³ CR at I-5 & n.15, III-2, n.4, PR at I-3 & n.15, III-1, n.4; Petition at 10; Petitioners' Postconference Brief at 5; Tr. at 22 (Testimony of Mr. Gruber of Cargill).

³⁴ CR at I-4-5, III-2, nn.4 & 5, PR at I-3, III-1-2, nn. 4 & 5; Petition at 10; Petitioners' Postconference Brief at 5; Tr. at 22-23 and 41 (Testimony of Mr. Gruber of Cargill).

Domestic producers view citric acid and sodium citrate as similar and as part of a single product line.³⁵ Although many purchasers do not view citric acid and sodium citrate as interchangeable once a formula is developed, purchasers often view the two as able to serve the same end use.³⁶

The domestic producers indicated that the prices for citric acid and sodium citrate are about the same and that the two products are sold to many customers through the same type of fixed price and fixed term contracts.³⁷ The similarity in prices for the domestic products is borne out by the pricing data obtained in the investigation. In 1998 and 1999, prices for domestic fine granular citric acid in 50 pound bags (product 1) ranged from *** per pound, as compared to *** per pound for the same sized bags of fine granular sodium citrate (product 5).³⁸ In 1998 and 1999, prices for domestic granular citric acid in 50 pound bags (product 2) ranged from *** per pound, as compared to *** per pound for the same sized bags of granular sodium citrate (product 6).³⁹

In sum, although specific end product formulations limit the actual interchangeability of citric acid and sodium citrate, the record indicates that they are physically and chemically similar, are sold through the same channels of distribution at similar prices and share the same manufacturing processes, as well as common production facilities and employees. Further, even though there are a few end uses unique to each of them, citric acid and sodium citrate can be used for similar purposes in a wide variety of food, beverage and industrial products. Based on these considerations, we conclude that citric acid and sodium citrate constitute one like product.

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”⁴⁰ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴¹ Based on our finding that the domestic like product consists of citric acid and sodium citrate, we conclude that the domestic industry consists of all domestic producers of those products.

In defining the domestic industry in this investigation, we have considered whether firms that purchase citric acid and convert it into sodium citrate solution engage in sufficient production-related

³⁵ Petition at 10-11 and Exhibit 3 (product literature for ADM, Cargill, and Tate & Lyle).

³⁶ See, e.g. Purchaser Questionnaire Responses of *** at 5,7.

³⁷ Petition at 11; Tr. at 23-24 (Testimony of Mr. Gruber of Cargill). Purchasers of the domestic products *** See ***.

³⁸ CR and PR at Tables V-1 and V-5.

³⁹ CR and PR at Tables V-2 and V-6.

⁴⁰ 19 U.S.C. § 1677(4)(A).

⁴¹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

activity to be included in the domestic industry.⁴² Only one converter, FBC Industries, Inc. (“FBC”) supplied data on such sodium citrate operations.⁴³

FBC employed *** workers for *** hours in the conversion of citric acid to sodium citrate in 1998, and *** workers for *** during January-September 1999.⁴⁴ FBC did not provide information about the source and extent of its capital investment, but petitioners indicated that capital requirements and conversion costs are minimal, requiring only a warehouse worker and “a big old tank.”⁴⁵ Petitioners also indicated that the conversion process is a batch process that does not require much technical expertise, but rather is analogous to dropping an Alka-Seltzer into water.⁴⁶ According to the data provided by FBC, it adds *** percent value to the citric acid during conversion in the United States.⁴⁷ Excluding the costs of other materials that are added to the citric acid, FBC’s domestic processing adds *** percent in domestic value.⁴⁸

In sum, the information in the record suggests that the converters are not engaged in sufficient production-related activity for the Commission to find that they are part of the domestic industry. Capital investment and employment levels appear ***. In addition, the sophistication of the technology employed in converting citric acid into sodium citrate, the amount of technical expertise involved, and the necessary amount of research and development all appear to be minimal.⁴⁹

⁴² Petitioners argue that these “converters” should be excluded from the domestic industry. Petitioners’ Postconference Brief at 7. Respondents do not address the question.

In deciding whether a firm qualifies as a domestic producer, the Commission generally considers six factors: (1) source and extent of the firm’s capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. *See e.g.*, Dynamic Random Access Memories of One Megabit and Above from Taiwan, (“DRAMs”), Inv. No. 731-TA-811 (Final), USITC Pub. 3256 (Dec. 1999) at 7-12; Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan (“SRAMs”), Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 (Apr. 1998) at 9, n.59; Large Newspaper Printing Presses, USITC Pub. 2988 at 7-9. No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. *See* Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (“OCTG”), Inv. Nos. 701-TA-363 and 364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) at I-11 n.37; Silicon Carbide from China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 (June 1994) at I-11 n.49.

⁴³ *See* CR at III-1, n.1 and VI-6.

⁴⁴ FBC’s Questionnaire Response at 5.

⁴⁵ Tr. at 41-44 (Testimony of Mr. Gruber of Cargill) (conversion costs would be only “a couple of cents”).

⁴⁶ Tr. at 42 (Testimony of Mr. Gruber of Cargill).

⁴⁷ CR and PR at Table VI-6.

⁴⁸ *Id.* Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer. *See* Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 (June 1994) at I-8-I-9 & n.34 (“no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account”).

⁴⁹ Under similar circumstances, the Commission found that companies that purchase indigo powder and convert it into indigo paste were not engaged in sufficient production-related activity to be considered part of the domestic synthetic indigo industry. Synthetic Indigo from China, Inv. No. 731-TA-851 (Preliminary), USITC Pub.

(continued...)

III. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁵⁰ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵² In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵³ 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.”⁵⁴

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing citric acid and sodium citrate is materially injured by reason of subject imports from China that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition

Several conditions of competition are pertinent to our analysis in this investigation. First, the demand for citric acid and sodium citrate is derived from the demand for the final consumer goods containing citric acid or sodium citrate.⁵⁵ Food and beverage manufacturers account for as much as two-thirds of the total demand for citric acid and sodium citrate in the United States.⁵⁶ Apparent domestic consumption of citric acid and sodium citrate increased 12.9 percent overall between 1996 and 1998.⁵⁷ Apparent consumption was 2.5 percent higher in interim 1999 than it was during the same period of 1998.⁵⁸ The domestic producers reported that, among the most common uses for citric acid and sodium citrate, the rate of increase in demand was highest for beverage usage, followed by food and

⁴⁹ (...continued)
3222 (Aug. 1999) at 10-11.

⁵⁰ 19 U.S.C. § 1673b(a).

⁵¹ 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 . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁵² 19 U.S.C. § 1677(7)(A).

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁵ CR at II-4, PR at II-3.

⁵⁶ CR at II-4, PR at II-3, *citing* P & G’s Postconference Brief at 13. *See also* Petition at Exhibit 2 (SRI Report) at p. 17 (in 1998, food and beverage sector accounted for *** percent of U.S. consumption of citric acid) and Petitioners’ Postconference Brief at Appendix 1.

⁵⁷ CR and PR at Tables IV-2 and C-1.

⁵⁸ CR and PR at Tables IV-2 and C-1.

pharmaceutical uses, and slowest for detergents.⁵⁹ U.S. producers indicated that between *** percent of their domestic shipments went to end users and the remainder went to distributors.⁶⁰ Conversely, data for importers indicate that between 10 and 35 percent of importers' shipments went to end users, while the remainder went to distributors.⁶¹

While price is an important factor in the sale of citric acid and sodium citrate, other factors, such as quality are equally, if not more, important for at least some applications.⁶² In particular, the evidence in the record indicates that quality is paramount for food and beverage applications.⁶³ A number of food and beverage producers reported that Chinese citric acid did not meet their quality standards and that it is only suitable for industrial grade applications.⁶⁴ Likewise, quality is a prime concern for pharmaceutical users of citric acid and sodium citrate.⁶⁵

During the second half of the period of investigation, the composition of the domestic industry changed, with Tate & Lyle's acquisition of Haarmann & Reimer's operations.⁶⁶ On July 1, 1998, Tate & Lyle acquired Haarmann & Reimer's worldwide citric acid business, including Haarmann & Reimer's citric acid production facilities in Ohio. Haarmann & Reimer retained ownership of its Indiana facility, and produced citric acid and sodium citrate for Tate & Lyle until December 31, 1998, at which time the Indiana plant was shut down. Although Tate & Lyle subsequently doubled the capacity at the Ohio facility, the net effect of its purchase of Haarmann & Reimer's citric operations was a *** of domestic capacity to produce citric acid as well as a loss of *** percent of domestic capacity to produce sodium citrate.⁶⁷

Domestic capacity utilization for citric acid production rose from 87.4 percent in 1996 to 92.9 percent in 1997, and then to 96.1 percent in 1998.⁶⁸ Domestic capacity utilization for sodium citrate, which accounted for approximately 11 percent of U.S. citrate production, rose from 72.2 percent in 1996 to 74.8 percent in 1997, and then to 81.7 percent in 1998.⁶⁹ Although capacity utilization for both citric acid

⁵⁹ CR at II-4-5, PR at II-3.

⁶⁰ CR and PR at Table I-1.

⁶¹ CR and PR at Table I-1.

⁶² See CR at II-7 and Table II-1, PR at II-4 and Table II-1.

⁶³ See, e.g., letter from Universal Flavors (manufacturer of beverages and food flavors for Kroger, Winn Dixie, Publix and others), dated Jan. 3, 2000; letter from First Food Co., Inc. ("First Food"), (manufacturer of gelatin, pudding and drink mixes), received by Commission on Jan. 5, 2000; letter from Northwestern Foods, Inc. ("Northwestern Foods") (manufacturer of powdered flavorings for Sno-Cone products and Hot Cocoa mixes), dated Jan. 3, 2000; letter from Drafft Root Beer, Inc. ("Drafft Root Beer"), dated January 3, 2000; notes of Jan. 6, 2000, staff phone conversation with ***.

⁶⁴ CR at II-10, *citing* letter from Drafft Root Beer (stating that Chinese citric acid is unusable because of clumping, difficulty in dissolving, and solubility problems); Tr. at 75-76 (Testimony of Mr. Zint of Procter & Gamble) (stating that P&G does not use any citric acid from China in any ingestible P&G products). See also letters from Universal Flavors, First Food, Northwestern Foods.

⁶⁵ See CR and PR at II-1 (*** only buys pharmaceutical grade citric acid from approved suppliers whose facilities it can audit).

⁶⁶ CR and PR at III-1, n.2.

⁶⁷ CR and PR at III-2 and Table III-2.

⁶⁸ CR and PR at Tables III-2 and C-2.

⁶⁹ CR and PR at Tables III-2 and C-3.

and sodium citrate was lower in interim 1999 than it was in interim 1998, the respective 11.6 percent and *** percent decreases were *** the respective *** percent and *** percent decreases in capacity.⁷⁰

Finally, fairly traded imports account for the majority of imports of citric acid and sodium citrate into the United States.⁷¹ The evidence in the record indicates that imports from Israel and Austria compete with the U.S. product for sales in the food and beverage industry, and that purchasers perceive these fairly traded imports to be of equal quality to domestic citric acid and sodium citrate.⁷² The market share held by these fairly traded imports increased slightly each year from 1996 to 1998, and then increased most notably during the first nine months of 1999 as compared to the same period for 1998.⁷³

B. Volume

Section 771(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.”⁷⁴ The volume of subject imports increased from 25.5 million pounds in 1996, to 36.5 million pounds in 1997, and then to 44.2 million pounds in 1998, of which 32.4 million pounds were imported during the first nine months as compared to 66.0 million pounds during the same period of 1999.⁷⁵ The value of subject imports also increased, from \$14.9 million in 1996 to \$20.0 million in 1997 and then to \$22.6 million in 1998, with interim period values of \$16.7 million in 1998 and \$32.7 million in 1999.⁷⁶

Subject imports increased their market share from 5.7 percent in 1996 to 7.6 percent in 1997 and then to 8.7 percent in 1998.⁷⁷ During the interim periods, subject imports held 8.1 percent of the market in 1998 and 16.2 percent in 1999.⁷⁸ In terms of value, subject imports’ share of the market also increased, albeit at a slower rate than the volume increase. By value subject imports represented 5.0 percent of apparent consumption in 1996, 6.5 percent in 1997, and 7.2 percent in 1998; for the interim periods, subject imports’ market share was 6.7 percent in 1998 and 13.5 percent in 1999.⁷⁹

By volume and value, U.S. producers’ market share declined between 1996 and 1998, from 78.0 percent of volume and 78.1 percent of value in 1996 to 74.7 percent of volume and 75.2 percent of value in

⁷⁰ See CR and PR at Tables C-2 and C-3. The percentage point declines for capacity utilization were 11.1 percentage points for citric acid and *** percentage points for sodium citrate. *Id.*

⁷¹ CR and PR at Table IV-1.

⁷² CR at II-10, PR at II-7; Tr. at 16, 92, 102, 109; letters from Drafft Root Beer and First Food, referencing Israeli citric acid; letter from Universal Flavors, referencing Austrian citric acid; Questionnaire Response of ***, referencing Israeli product.

⁷³ CR and PR at Table IV-2.

⁷⁴ 19 U.S.C. § 1677(7)(C)(I).

⁷⁵ CR and PR at Table IV-1. We have counted imports from Hong Kong as subject imports, in light of evidence reflecting that there is no citric acid production in Hong Kong and that Hong Kong brokers admitted handling Chinese material that is shipped to the United States. CR and PR at IV-1, n.2.

⁷⁶ CR & PR at Table IV-1.

⁷⁷ CR and PR at Tables IV-2 and IV-3.

⁷⁸ CR and PR at Tables IV-2 and IV-3.

⁷⁹ CR and PR at Tables IV-2 and IV-3.

1998.⁸⁰ For interim 1999, as compared to interim 1998, U.S. producers' market share was 9.9 percentage points lower by quantity and 8.9 percentage points lower by value.⁸¹

Nonsubject imports followed the same trends as the subject imports.⁸² By quantity and value, the market share held by nonsubject imports increased from 1996 to 1998 and in interim 1999 as compared to interim 1998.⁸³ These increases were slight from 1996 to 1998, rising from 16.3 percent of quantity and 17.0 percent of value in 1996 to 16.6 percent of quantity and 17.6 percent of value in 1998.⁸⁴ The market share held by nonsubject imports then increased to a greater extent between 1998 and 1999, based upon a comparison of the data for the interim periods. From interim 1998 to interim 1999, the quantity-based market share of nonsubject imports increased by 11.0 percent (1.8 percentage points) while their value-based market share increased by 11.7 percent (2.1 percentage points).⁸⁵

The increase in the volume of subject imports during the period of investigation, when viewed in isolation, could be considered significant. However, the record of this investigation establishes that the Chinese imports have not made significant inroads into sales made by the domestic industry to U.S. food and beverage manufacturers. Rather, the large majority of subject imports compete with the domestic product only in the industrial use market, where the subject imports have already increased their market share without a significant adverse impact on the industry. For this reason, we do not find that the volume of subject imports is significant. We note that this finding is consistent with our determinations that subject imports did not have any significant negative price effects or impact on the domestic industry, as discussed below.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁸⁶

Substitutability between the domestic like product and subject imports is limited by quality considerations. While the products appear to be good substitutes for industrial uses, the evidence in the

⁸⁰ CR and PR at Table IV-3.

⁸¹ CR and PR at Table C-1.

⁸² See PR and CR at Tables IV-2 and IV-3.

⁸³ CR and PR at Table IV-3.

⁸⁴ CR and PR at Tables IV-3 and C-1.

⁸⁵ CR and PR at Tables IV-3 and C-1.

⁸⁶ 19 U.S.C. § 1677(7)(C)(ii).

record indicates that the inferior quality of the Chinese product has made it a poor substitute for domestic product sold for food and beverage uses, which account for the great majority of sales.⁸⁷

We find that there is not significant underselling by the subject imports.⁸⁸ First, as noted, the evidence indicates that the Chinese product has not been sold to a significant extent for food and beverage uses. There is not a reasonable indication of evidence that the large food and beverage industry users, whom petitioners identified as their most important customers, have purchased or are willing to purchase Chinese product for use in ingestible products sold in the United States. Indeed, five name brand food and beverage manufacturers, ***, Drafft Root Beer, and Procter & Gamble, stated that they do not and will not use Chinese citric acid at all or use it only in non-ingestible products.⁸⁹ One name brand producer, *** uses it in *** its soft drinks, but *** is not a large purchaser of citric acid and sodium citrate in comparison to other name brand food and beverage purchasers.⁹⁰

Among other (non name-brand) food and beverage purchasers, the record also indicates a reluctance or refusal to purchase Chinese product.⁹¹ Even those that were willing to purchase Chinese product purchased minimal amounts, mainly for use in ***.⁹²

Further, the evidence concerning underselling is mixed. For the domestic producers' largest selling item, fine granular citric acid in 50 pound bags (product 1), the Chinese product consistently oversold the domestic like product since the second quarter of 1996.⁹³ For the largest selling Chinese product, granular citric acid sold in 50 pound bags (product 2), the Chinese product undersold the domestic product in most

⁸⁷ CR at II-1, II-4-5, II-9-10, PR at II-1, II-3, II-6-7. Petitioners and respondents emphasized the significance of the recent use of electronic bidding by at least one large U.S. purchaser of citric acid, *i.e.*, Quaker Oats. The use of electronic auctions is likely to increase the transparency of prices. However, as demonstrated by the Quaker Oats procurement, the use of these types of procedures has not resulted in increased acceptance of Chinese product for food and beverage use. Indeed, in the Quaker Oats auction, the purchaser ultimately ***. See CR at V-14.

⁸⁸ Respondents argued that the market is still feeling the lingering effects of the admitted 1993-95 price-fixing conspiracy in the citric acid industry. Ashland's Postconference Brief at 16-21. We have given the price-fixing little weight in our determination, as it may have affected prices only for the early part of the investigation. The fact of the early-to-mid 1990's price-fixing did not affect our analysis of the present condition of the market or price effects.

⁸⁹ See Questionnaire Responses of ***; Jan. 3, 2000, letter from Drafft Root Beer; Tr. at 75 (Testimony of Mr. Zint of Procter & Gamble).

⁹⁰ See Purchasers' Questionnaire Responses at p. 3; Drafft Root Beer letter. From January through September, 1999, *** purchased *** pounds of citric acid and sodium citrate, *** of which were Chinese product. In comparison, in 1999, *** purchased *** pounds, *** of which were from China; Quaker Oats purchased *** million pounds, *** of which were from China; *** purchased an estimated *** pounds, *** of which were from China. Although petitioners ***, Drafft Root Beer purchases approximately 75,000 to 1.0 million pounds of citric acid per year, none of which are from China.

⁹¹ See letter from Universal Flavors, which purchases approximately 650,000 pounds of citric acid per year, none of which are from China; letter from First Food, which purchases approximately 500,000 pounds of citric acid per year, none of which are from China; letter from Northwestern Foods, which purchases approximately 12,000 pounds of citric acid and sodium citrate per year, none of which are from China.

⁹² For example, in 1999 *** purchased *** pounds of citric acid, *** of which were from China and *** pounds of sodium citrate, *** of which were from China. ***. See also ***.

⁹³ CR and PR at Table V-1.

quarters, but by small margins.⁹⁴ An examination of prices for products 1 and 2 based upon channels of distribution shows that the Chinese product oversold domestic products 1 and 2 in sales to end users in 26 of 30 price comparisons, whereas the Chinese product consistently undersold the domestic products in sales to distributors.⁹⁵ Significantly, end users constitute between *** and *** percent of U.S. producers' domestic shipments,⁹⁶ indicating that the Chinese product actually oversells the domestic product in sales in the latter's more predominant channel of distribution.

Although prices for both domestic and subject imports fluctuated downward from 1996 through the third quarter of 1999,⁹⁷ we do not find significant price suppression or depression by the subject imports. While the domestic producers alleged numerous lost sales and revenues, the purchasers' accounts of the cited transactions were mixed, and those allegations that were confirmed do not contradict our finding that the subject imports have not made significant inroads into the food and beverage segment of the market.^{98 99} Accordingly, we find that the subject imports did not adversely affect prices for the domestic like product to a significant degree. This finding is consistent with petitioners' own arguments, which appear to concede that there is no present injury by reason of the subject imports.

D. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁰⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive

⁹⁴ CR and PR at Table V-2.

⁹⁵ See supplemental tables prepared by staff economist.

⁹⁶ CR and PR at Table I-1.

⁹⁷ CR and PR at Tables V-1-6.

⁹⁸ We note that the petitioners failed to provide their lost sales/revenues allegations in a timely manner. Although Commission Rule 207.11(b)(2) requires petitioners to include in their petition any reasonably available lost sales or lost revenues that they intend to allege, in this case such allegations were submitted after the petition was filed. In this investigation, we considered both the untimely and timely allegations in light of the fact that staff was able to contact many of the purchasers named in the allegations and the unique circumstances that several of the allegations involved transactions that were also introduced into the record by other parties. Notwithstanding the unique circumstances of this investigation, we reiterate the importance of complying with the Commission rule.

⁹⁹ Vice Chairman Miller considered only the lost sales/revenues allegations that involved transactions occurring after or immediately before the filing of the petition, and specific allegations that were also raised by other parties.

¹⁰⁰ 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." *Id.* at 885).

and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{101 102}

We do not find that the subject imports had a material adverse impact on the domestic industry. Although the volume and market share of subject imports increased during the period of investigation, the domestic industry registered *** particularly with respect to financial indicators.¹⁰³

The financial data indicate that the industry’s performance *** from a *** start in 1996. From 1996 to 1998, gross profits *** percent, *** in 1996 to *** in 1998, and were *** in interim 1999 than in interim 1998.¹⁰⁴ The industry’s operating income margin *** from *** percent to *** percent in 1998.¹⁰⁵ Likewise, the operating income margin was *** in interim 1999 as compared to *** percent in interim 1998.¹⁰⁶ Domestic producers’ capital expenditures *** between 1996 and 1997, and despite ***, were ***.¹⁰⁷

The number of production related workers, hours worked, and wages paid *** from 1996 to 1998, as did productivity. Although the number of workers, hours worked and productivity *** in interim 1999 as compared to interim 1998, wages *** between the interim periods.¹⁰⁸

Domestic producers’ production, capacity utilization and U.S. shipments increased each year from 1996 through 1998. In interim 1999 as compared to interim 1998, production was 25.2 percent lower, U.S. shipments were 11.0 percent lower and capacity utilization was down 11.1 percentage points for citric acid and *** percentage points for sodium citrate. These interim declines in trade data appear to mirror the increase in the volumes of subject and nonsubject imports. Notwithstanding these production and shipment declines in interim 1999, the industry’s financial performance *** and remained ***. Accordingly, we find that the subject imports are not having a material adverse impact on the domestic industry.

For the reasons stated above, we find that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from China.

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

¹⁰² The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce identified estimated dumping margins based on export price to normal value comparisons ranging from 211.58 to 307.79 percent. 65 Fed. Reg. at 1590.

¹⁰³ We reach this conclusion both with or without the inclusion of the limited financial data that Tate & Lyle was able to provide. See CR and PR at Table VI-2. Tate & Lyle reported that it was unable to supply all requested data because of its limited access to records maintained by Haarmann & Reimer. CR and PR at VI-1 and n.2. If Tate & Lyle’s data for January-September 1999 were included in the interim 1999 total industry data, the average operating income margin for the industry would be *** percent of net sales for that interim period. CR at VI-6, PR at VI-2. We note that a comparison of this figure to the interim figure for 1998 is not useful because the interim 1998 industry figure does not include Tate & Lyle’s data.

¹⁰⁴ CR and PR at Table VI-1. For interim 1998, the industry reported *** for interim 1999.

¹⁰⁵ CR and PR at Table VI-1.

¹⁰⁶ CR and PR at Table VI-1.

¹⁰⁷ CR and PR at Table VI-7. ADM and Cargill collectively reported capital expenditures of *** in interim 1998 and *** in interim 1999. *Id.* In addition, Tate & Lyle reported *** in capital expenditures during interim 1999. See Tate & Lyle’s Questionnaire Response at p.12.

¹⁰⁸ CR and PR at Table III-5.

IV. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁰⁹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,”¹¹⁰ and considers the threat factors “as a whole.” In making our determination, we have considered all factors that are relevant to this investigation.¹¹¹ Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of citric acid and sodium citrate from China that are allegedly sold in the United States at less than fair value.

As an initial matter, we reiterate our observation that the domestic industry is currently prospering in many respects. In fact, the industry’s financial performance *** over the period of investigation and does not indicate that material injury would occur absent an antidumping duty order.

As discussed in our consideration of present injury, the volumes of citric acid and sodium citrate exported from China to the United States have increased during recent years. Nonetheless, Chinese producers of citric acid and sodium citrate are currently operating at a high capacity utilization level.¹¹² While there is evidence of likely substantial increases in their capacity,¹¹³ not all of this increase will result in additional products that will be directed at the U.S. market. Chinese home market and third country market shipments have risen each year since 1996.¹¹⁴ In particular, shipments to other markets have consistently accounted for the bulk of Chinese producers’ shipments, and have continued to rise substantially, far exceeding Chinese exports to the United States.¹¹⁵ This has been so notwithstanding an antidumping duty order on Chinese imports into Mexico since 1994 and a 1999 Indian order.¹¹⁶ We find it

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

¹¹⁰ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” *Metallverken Nederland B.V. v. United States*, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), *citing American Spring Wire Corp. v. United States*, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). *See also Calabrian Corp. v. United States*, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), *citing* H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

¹¹¹ 19 U.S.C. § 1677(7)(F)(i). Factors I and VII are inapplicable since this investigation does not involve a countervailable subsidy or the importation of agricultural products.

¹¹² CR and PR at Table VII-1.

¹¹³ *See* Petition at 41; Petitioners’ Postconference Brief at 1-2, 20 and Exhibits 6, 8 and 17.

¹¹⁴ This is so even accounting for the inclusion in home market shipments of one Chinese producers’ merchandise that is sold in China and subsequently exported by a third firm. *See* CR and PR at Table VII-1, note 2.

¹¹⁵ CR and PR at Table VII-1.

¹¹⁶ CR at VII-4, PR at VII-3. Even if we assume Chinese exports of citric acid to India ceased since imposition of the antidumping duty order, the evidence indicates that Chinese exports to third country markets are substantial and increasing. *See* CR and PR at Table VII-1, and The World Trade Atlas data on China exports of citric acid (India accounted for 3.0 percent (2.7 percent by value) of 1998 exports of Chinese citric acid, down from the 5.7 percent (5.4 percent by value) exported to India in 1997).

likely that the Chinese producers will continue directing most of their production to third country markets and will not divert significant shipments from those markets to the United States.¹¹⁷

Further, as noted in our discussion of present injury, there is no evidence that the Chinese imports have made significant inroads in sales to the U.S. food and beverage industry.¹¹⁸ Rather, the large majority of all subject imports compete with domestic product only in the industrial use market, where they have already increased their penetration without adverse impact on the U.S. industry. Chinese factories produce mostly unrefined citric acid with poor packaging which is of inferior quality for U.S. pharmaceutical and food and beverage end-use markets.¹¹⁹ While petitioners alleged that improvements in the quality and product certification of subject imports threaten the domestic industry's dominance in the high end of the market, the inferior quality and reputation of the Chinese products prevents the Chinese producers from matching the quality or acceptance of the domestic product for food and beverage and pharmaceutical uses. Record evidence indicates that although Chinese product has been available in the U.S. market for some time, it will be at least two to three years before the level of quality of Chinese citric acid becomes acceptable to the higher tier of the U.S. market.¹²⁰ Consequently, we find that any imminent increase in the volume of subject citric acid and sodium citrate is unlikely to displace the higher quality domestic products.

We also find no reasonable indication of likely product shifting in China. The record contains no indication that the equipment currently used to make citric acid or sodium citrate in China is being used to produce any other product. In fact, there is evidence that some Chinese companies which once produced citric acid have changed production lines to manufacture other products such as saccharine and cannot switch back to producing citric acid because necessary equipment was either not maintained or was sold to other Chinese factories.¹²¹

The ratio of Chinese producers' home inventories of citric acid and sodium citrate to both production and shipments declined from 1996 to 1998.¹²² Although these ratios were slightly higher in interim 1999 than in interim 1998, the 1999 ratios were still small and well below those in 1996. We note that U.S. importers' inventories of Chinese citric acid and sodium citrate increased during the period investigated, and particularly during interim 1999.¹²³ At the same time, however, the ratios of inventories to imports and to shipments of imports declined by approximately twenty percent (5 percentage points)

¹¹⁷ Petitioners argue that Chinese producers have a strong incentive to increase exports in light of a government-wide rebate of Chinese value-added tax and an alleged "special support" provided by the Chinese Government to respondent China BBKA. Petitioners' Postconference Brief at 39-41. Even if petitioners are correct that these measures provide added incentive for Chinese producers to export, the record does not indicate that Chinese producers are likely to increase significantly exports to the United States rather than to other markets.

¹¹⁸ In support of their view that the industry is threatened in the food and beverage sector, petitioners listed a number of food and beverage accounts that they believe have received offers of Chinese citric acid or which have actually purchased it. Petitioners' Postconference Brief at 35. While petitioners also indicated that approximately 70 percent of all citric acid is sold to about 10 to 15 end users (Petition at 9), only *** of the firms listed as actual or potential users of Chinese product are among the top ten customers identified by any of the three domestic citric acid producers in their questionnaire responses. The Commission received purchasers' questionnaire responses from *** of those firms—***, and, as discussed, *supra*, we considered those responses in reaching our determination.

¹¹⁹ CR and PR at VII-I.

¹²⁰ Tr. at 94 (Testimony of Mr. MacDonald of Ashland).

¹²¹ Tr. at 114 and 117 (Testimony of Mr. Echaghpour of Wego).

¹²² CR and PR at Table VII-1.

¹²³ CR and PR at Table VII-2.

between interim 1998 and interim 1999.¹²⁴ Moreover, the inventory-to-shipment ratios reported by importers of subject products is in the same range as those reported by the domestic producers and by importers of nonsubject imports.¹²⁵

We do not find that imports of the subject merchandise are likely to enter the U.S. market at prices that are likely to depress or suppress domestic prices to a significant degree. As we explained in the above discussion of no material injury by reason of subject imports, the subject imports have not had significant effects on the prices of domestic merchandise. The record does not suggest a change in the imminent future in the ability of Chinese imports to compete to a significant degree for sales to food and beverage purchasers. Further, the record indicates that fairly traded imports are playing an increasingly important role in price competition for sales to the food and beverage market.¹²⁶ Accordingly, we find it unlikely that the imports will have significant price-depressing or price-suppressing effects on domestic prices in the imminent future.

Nor do we find that subject imports are likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. Indeed, we note that the industry has made *** capital expenditures and *** such expenditures between interim 1998 and 1999, notwithstanding increases in the volume and market penetration of subject imports.¹²⁷ For example, in July 1999, Tate & Lyle expanded its Ohio facility, using equipment purchased from Haarmann and Reimer's Indiana facility.¹²⁸ Tate & Lyle reported *** in capital expenditures during interim 1999.¹²⁹

Finally, the record does not indicate any other demonstrable adverse trends that indicate a probability that the subject imports will likely materially injure the domestic industry.¹³⁰ On the contrary, recent trends in the industry's financial performance have been positive, and support our negative threat determination. Accordingly, we find that the domestic industry producing citric acid and sodium citrate is not threatened with material injury by reason of subject imports from China.

CONCLUSION

¹²⁴ CR and PR at Table VII-2.

¹²⁵ See CR and PR at Tables III-4 and VII-2. One importer (***) which reported large end-of-period inventories for interim 1999, indicated that the ***.

¹²⁶ For example, the fact that *** highlights the extent of price competition among domestic producers and nonsubject imports. See CR at V-14, PR at V-11 and *** Purchasers' Questionnaire Response at p.12. See also letter from First Food, indicating that it currently purchases Israeli product at a price that met Cargill's price offer; letter from Drafft Root Beer, indicating that it recently starting purchasing Israeli product "priced within a penny or two less than the domestic citric acid and a penny or two higher than the Chinese citric acid"; and letter from Universal Flavors, indicating that it purchases U.S. and Austrian product.

¹²⁷ See CR and PR at Tables VI-7, IV-1 and IV-3.

¹²⁸ CR and PR at III-2; Tr. at 29 (Testimony of Mr. Boynton of Tate & Lyle).

¹²⁹ Tate & Lyle's Questionnaire Response at 12.

¹³⁰ 19 U.S.C. § 1677(7)(F)(I)(IX).

For the reasons stated above, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of citric acid and sodium citrate from China that are allegedly sold in the United States at less than fair value.

**DISSENTING VIEWS OF COMMISSIONERS JENNIFER A. HILLMAN
AND STEPHEN KOPLAN**

On the basis of the record in this preliminary investigation, we determine that there is a reasonable indication that an industry in the United States producing citric acid and sodium citrate is threatened with material injury by reason of imports of citric acid and sodium citrate from China that are alleged to be sold in the United States at less-than-fair-value (“LTFV”). We concur with our colleagues’ findings with respect to the domestic like product, domestic industry, and conditions of competition that are distinctive to the domestic industry. We dissent, however, from the Commission’s determinations that (1) the record as a whole contains clear and convincing evidence that the citric acid and sodium citrate industry in the United States is not threatened with material injury by reason of the subject imports; and (2) no likelihood exists that contrary evidence will arise in a final investigation.¹

Section 771(7)(F) of the Tariff Act of 1930, as amended, directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”² The Commission may not make such a determination “on the basis of mere conjecture or supposition,”³ and considers the threat factors “as a whole.” In making our determination, we have considered all factors that are relevant to these investigations.⁴ Based on an evaluation of the relevant statutory factors, for the reasons described below, we find a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from China.

Imports of subject merchandise into the United States increased rapidly and substantially during the period of investigation, both in absolute terms and as a percentage of apparent domestic consumption, particularly in interim 1999. From 1996 to 1998, subject imports from China increased from 25.2 million pounds to 44.0 million pounds, a 75 percent increase.⁵ Subject imports’ volume more than doubled in interim 1999 (January-September period) as compared to interim 1998, rising from 32.2 million pounds to 65.1 million pounds.⁶

This substantially increasing volume of subject imports captured market share from the domestic industry. Even as domestic apparent consumption increased by roughly 13 percent from 1996 to 1998, the domestic producers’ market share declined from 78.0 percent to 74.7 percent as the subject Chinese import share increased from 5.6 percent to 8.7 percent.⁷ More important for our threat analysis, the domestic producers’ share of the market declined by roughly 10 percentage points in interim 1999 compared to interim 1998, while at the same time the subject imports’ market share nearly doubled from 8.1 percent to 15.9

¹ American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986).

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

³ 19 U.S.C. §1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

⁴ 19 U.S.C. § 1677(7)(F)(i). Factors I and VII are inapplicable since these investigations do not involve a countervailable subsidy or the importation of agricultural products. See 19 U.S.C. § 1677(7)(F)(i)(I), (VII).

⁵ CR and PR at IV-1.

⁶ *Id.*

⁷ CR and PR at App. C, Table C-1.

percent.⁸ Thus, in a very short period of time, subject imports took significant market share from the domestic industry.⁹

In addition, while exports of subject product to the United States surged, subject foreign producers' home market shipments as a percentage of total shipments declined from 42.8 percent in 1996 to *** percent in 1998 and continued to decline in interim 1999 compared to interim 1998.¹⁰ At the same time, Chinese exports to the United States as a percentage of total shipments increased at a greater rate than did their exports to other foreign countries.¹¹

Chinese capacity to produce subject merchandise increased over the period of investigation by 166 percent from 100.6 million pounds in 1996 to 267.6 million pounds in 1998.¹² Projected 1999 Chinese capacity is 335.3 million pounds, more than three times their capacity at the beginning of the period of investigation.¹³ Significantly, their capacity is scheduled to increase further in 2000 *** by the end of this year.¹⁴ Thus, as Chinese producers have added substantial capacity over the period of investigation, the United States appears to have become a significant market for them, and this trend will likely continue given demand for citric acid and sodium citrate in the United States.

The export data for China may reflect, in part, the fact that antidumping duty orders on subject Chinese citric acid have been issued in Mexico and, more recently, in India.¹⁵ The antidumping duty order with respect to India was issued in 1999, which is when Chinese exports to the United States increased the greatest. In sum, given the overall capacity for production of citric acid and sodium citrate, as well as the likely continued diversion by China of exports to the United States from other third country markets, we find that the increasing capacity and unused capacity in China are likely to result in a significant increase of subject imports into the United States.¹⁶

Inventories held by U.S. importers of subject products increased commensurate with the tremendous growth of Chinese imports. End-of-period inventories of subject merchandise in the United States increased from 1.7 million pounds in 1996, to 3.6 million pounds in 1997, and to 5 million pounds in 1998. This growth continued unabated as inventories further increased between interim periods by more than 100 percent, to 10.1 million pounds.¹⁷

In assessing the significance of the current and likely volume of subject imports, we have taken into account the apparent segmentation in the U.S. market for citric acid and sodium citrate. Food and beverage producers account for as much as two-thirds of U.S. demand for citric acid and sodium citrate.¹⁸ The remaining one third or more of U.S. demand is accounted for primarily by industrial uses, with a small percentage consumed for pharmaceutical uses.

Respondents argue that, because of poor quality, the Chinese citric acid and sodium citrate is not used extensively by food and beverage manufacturers, particularly by large name-brand companies, for

⁸ *Id.*

⁹ 19 U.S.C. § 1677(7)(F)(i)(III).

¹⁰ CR and PR at Table VII-1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ CR at VII-2, PR at VII-3. We also note that petitioner has argued that production capacity in China can further expand significantly with little or no capital investment. Petition at 41, Petitioners' Postconference Brief at 1-2. Petitioners also assert that the number and capacity of smaller Chinese producers is growing, and that the five largest Chinese producers will have doubled capacity by the end of this year, and will then possess enough capacity to supply most of the U.S. and Chinese markets. Petitioners' Postconference Brief at 20-21.

¹⁵ CR at VII-4 and PR at VII-3.

¹⁶ 19 U.S.C. § 1677(7)(F)(i)(II).

¹⁷ CR and PR at Table VII-2. *See* 19 U.S.C. § 1677(7)(F)(i)(V).

¹⁸ CR at II-4, PR at II-3.

whom quality is especially important.¹⁹ Respondents claim that a large portion of the food and beverage sector is therefore largely unavailable to Chinese product, which negates any threat of material injury.

We agree with respondents that, to date, the focus of sales of Chinese citric acid and sodium citrate has been on industrial uses, and that the record reveals relatively few sales to large name-brand food and beverage makers. However, on the current record, these facts are insufficient to compel the conclusion that there is no reasonable indication that the domestic industry is threatened with material injury, for the following reasons.

First, there is the opportunity for substantial additional sales of Chinese product into the industrial sector. Interim 1999 imports from China held a 15.9 percent share of the U.S. market for citric acid and sodium citrate; however, as noted above, industrial uses account for up to a third of the U.S. market.²⁰ Chinese imports are of sufficient quality to service industrial users.²¹ Increased imports destined for industrial uses are likely to take sales primarily from domestic producers, which currently hold two thirds of the domestic market for citric acid and sodium citrate.

Second, the record contains evidence of growing inroads of Chinese product into the food and beverage sector, including by manufacturers of well-known brands. For example, one well-known national beverage manufacturer indicated that this year it intended to increase the percentage of its business awarded to Chinese producers from about *** percent in January-September 1999 to *** percent in 2000.²² Thus, the quality of the Chinese product, and/or U.S. purchasers' assessment of that quality, have improved, providing access for likely further sales of Chinese imports into the food and beverage sector, the higher end of domestic applications.

Third, petitioners allege that other food and beverage producers have either begun to purchase Chinese product or are in the process of testing the product for future purchases. In the preliminary phase of this investigation, the Commission took the unusual step of sending questionnaires to purchasers. The data we received, while substantial, accounted for well under half of domestic purchases. Given that some food or beverage producers, even larger name-brand producers, are already purchasing Chinese material, we would seek more complete purchaser data in a final investigation to determine the full extent of current and likely future purchases of Chinese products.²³

Despite the market segmentation (the extent of which we would examine further in a final phase of the investigation), based on the surge in imports, both in absolute terms and relative to the U.S. market, substantial unused capacity in China, recent barriers to third country markets, and the substantial increase in inventories, we find it likely that subject imports will continue to increase significantly in the imminent future.

Prices for both the domestic like product and subject imports generally declined over the period of investigation, including in interim 1999.²⁴ Subject imports undersold domestic product for all but one of the

¹⁹ See, e.g., Ashland Postconference Brief at 4-13; Procter and Gamble Postconference Brief at 9-11.

²⁰ CR and PR at App. C, Table C-1.

²¹ Indeed, in 1999, *** questionnaire at 3, 4, and 11.

²² *** questionnaire at 3 and 13. In 1999, ***. Petitioners' Postconference brief at ex. 3. It appears likely that if the subject Chinese product can pass the rigorous quality assurance tests of these name brand food processors, it can become more widely accepted into the food segment of the market. In fact, several other food manufacturers have purchased Chinese product. CR at D-3 to D-7 and PR at D-3. ***.

²³ For example, for some large purchasers that have not purchased Chinese product for food or beverage uses to date, it was unclear whether such purchasers are testing Chinese product, and if so, how far along they are in this process. In this regard, the record suggests that the period for qualifying a citric acid or sodium citrate producer is in the range of several months. Tr. at 95 (MacDonald). This relatively short period does not appear to present an impediment for increased sales of Chinese product into the food and beverage sector within an imminent timeframe.

²⁴ CR and PR at Tables V-1-V-6. Average unit values for subject imports declined throughout the period of investigation. CR and PR at App. C, Table C-1. There is no suggestion in the record that the product mix of

products for which we gathered pricing data sufficient to permit price comparisons, including the product representing the largest volume of subject imports.²⁵

These price declines have occurred despite substantial growth in apparent consumption.²⁶ We would not expect the industry to experience price declines in the face of growing demand.²⁷ In addition, the increased use of online auctions will only serve to intensify price-based competition in this market.²⁸ The role of subject imports in depressing or suppressing domestic prices will only increase as subject imports compete in this electronic bidding. Based on the foregoing, including the downward trend in prices for both Chinese and domestic product and the evidence of underselling, we conclude that the increasing volume of lower priced subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices.

In making our determination, we are mindful of the current state of the domestic industry.²⁹ However, our threat analysis does not end with an assessment of the current operating performance of the industry, but also examines whether subject imports have materially contributed to significant recent declines in that performance. While an industry might have been able to perform relatively well in the face of competition from allegedly LTFV imports, by examining recent trends we might find a reasonable indication that the industry is threatened with material injury by reason of the subject imports if the record indicates that there have been substantial declines in the industry's performance that will likely imminently worsen.

With respect to this investigation, the financial data reflect *** that requires further examination in the final phase of the investigation before we can definitively ascertain the impact of the subject imports on the industry as a whole. For example, it is of great significance to us that the data for the industry as a whole ***.³⁰ In particular, ***.³¹ The ***.³²

Thus, while we render our determination based on ***, additional examination of the factors affecting these data might provide evidence that such a ***. Indeed, it is noteworthy that the subject imports appear to currently be concentrated in the industrial grade segment of the market. ***³³ ***.³⁴

Moreover, other performance indicators show mixed results, with some of the most important indicators declining. Production, shipments, and capacity utilization all declined in interim 1999³⁵, while inventories as a percent of production rose and employment was flat.³⁶

subject imports changed over this period.

²⁵ CR and PR at Tables V-1-V-6. A close examination of the reported prices for the only product for which the subject imports oversold the domestic product reveals underselling for all possible comparisons on sales to distributors, which represented roughly 28 percent of the volume of reported domestic sales of that product. See tables prepared by staff economist in response to Commissioners' request for additional information.

²⁶ CR at II-2-II-3 and PR at II-1-II-2. Respondents even suggest that there was a shortage in the market in 1999 due to the high capacity utilization of the domestic industry. CR and PR at II-2.

²⁷ Respondents assert that falling U.S. prices were the result of the "normalization" of the domestic market after termination of the price-fixing carried out by two domestic producers that lasted from 1991 to 1995. Ashland's Postconference Brief at 16-18.

²⁸ CR at V-2-V-3 and PR at V-1-V-2.

²⁹ Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F.3d 978 (Fed. Cir. 1994).

³⁰ CR and PR at Table VI-2.

³¹ *Id.*

³² CR at VI-5 and Tables VI-2 and VI-3 and PR at VI-2 and Tables VI-2 and VI-3.

³³ Petitioners' Postconference Brief at App. 1.

³⁴ Petitioners' Postconference Brief, App. 1, CR and PR at Table VI-2. We recognize that the data for ***.

³⁵ CR and PR at Tables III-2 and III-3.

³⁶ CR and PR at Tables III-4 and III-5.

Finally, with respect to other demonstrable adverse trends that indicate the probability of material injury,³⁷ petitioners alleged that, as of September 1999, the Chinese Government increased the amount of an internal value-added tax that is rebated to exporters of citric acid and sodium citrate from 9 percent to 15 percent of the sales price.³⁸ No respondent denied existence of this rebate increase. While we do not address whether such a rebate constitutes a subsidy for countervailing duty purposes, a rebate could increase the incentive or ability of Chinese producers or exporters to export their citric acid and sodium citrate. We would explore the nature of any rebate and its likely effects in a final investigation.³⁹

Therefore, given the likely substantial increase in subject import volume and likely price suppression or depression resulting from subject imports, we find that material injury “would occur unless an order is issued or a suspension agreement is accepted.” For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing citric acid and sodium citrate is threatened with material injury by reason of the subject imports from China.

³⁷ 19 U.S.C. § 1677(7)(F)(i)(IX).

³⁸ Petitioners’ Postconference Brief at 39.

³⁹ With respect to actual or potential negative effects on development and product efforts, including efforts to develop a derivative or more advanced version of the domestic like product, we note that all three domestic producers have indicated that increased imports from China will hinder their ability to undertake future expansions. CR and PR at E-3. *See* 19 U.S.C. 1677(7)(F)(I)(VIII).