

UNITED STATES INTERNATIONAL TRADE COMMISSION

INDUSTRIAL PHOSPHORIC ACID FROM ISRAEL AND BELGIUM  
Investigations Nos. 701-TA-286 (Review) and 731-TA-365 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION  
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## UNITED STATES INTERNATIONAL TRADE COMMISSION

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### INDUSTRIAL PHOSPHORIC ACID FROM ISRAEL AND BELGIUM

#### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the countervailing duty order on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### BACKGROUND

The Commission instituted these reviews on March 1, 1999 (64 F.R. 10017) and determined on June 3, 1999, that it would conduct full reviews (64 F.R. 31610, June 11, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on July 16, 1999 (64 F.R. 38474).<sup>3</sup> The hearing was held in Washington, DC, on March 30, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

<sup>2</sup> Chairman Lynn M. Bragg not participating.

<sup>3</sup> The Commission subsequently revised its schedule, publishing notice in the *Federal Register* on January 7, 2000 (65 F.R. 1173).

## VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the countervailing duty order covering industrial phosphoric acid from Israel and of the antidumping duty order covering industrial phosphoric acid from Belgium would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

In August 1987, the Commission determined that an industry in the United States was being materially injured by reason of imports of industrial phosphoric acid from Israel that were being subsidized by the Government of Israel. The Commission also determined at that time that an industry in the United States was being materially injured by reason of imports of industrial phosphoric acid from Belgium and Israel that were being sold at less than fair value.<sup>2</sup> On August 19, 1987, Commerce issued antidumping and countervailing duty orders on industrial phosphoric acid from Israel and on August 20, 1987, Commerce issued an antidumping duty order on industrial phosphoric acid from Belgium.<sup>3</sup>

On March 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping and countervailing duty orders on industrial phosphoric acid would likely lead to continuation or recurrence of material injury.<sup>4</sup> The Commission received responses to the notice of institution from three domestic producers: Albright & Wilson Americas Inc. (“A&W”), FMC Corp. (“FMC”), and Solutia Inc. (“Solutia”), which represented \*\*\* percent of domestic production of industrial phosphoric acid in 1998.<sup>5</sup> One manufacturer/exporter in Belgium, Societe Chimique Prayon-Rupel (“Prayon”), which represented 100 percent of Belgian production of subject merchandise in 1998, also filed a response. Finally, one manufacturer/exporter in Israel, Rotem Amfert Negev, Ltd. (“Rotem”) filed a response with HCI (Georgia) Inc. (“HCI”), an importer of subject merchandise from Israel. Rotem represented \*\*\* percent of Israeli production of industrial phosphoric acid in 1998<sup>6</sup> and accounts for virtually all exports of Israeli subject merchandise to the United States.<sup>7</sup>

On June 3, 1999, the Commission unanimously determined that both the domestic and respondent interested party group responses to its notice of institution were adequate.<sup>8</sup> Pursuant to 19 U.S.C. § 1675(c)(5), the Commission decided to conduct full reviews.

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<sup>1</sup> Chairman Bragg not participating. *See* separate Views of Vice Chairman Marcia E. Miller.

<sup>2</sup> Industrial Phosphoric Acid from Belgium and Israel, Inv. Nos. 701-TA-286 & 731-TA-365-366 (Final), USITC Pub. 2000, at 3 (“Original Determination”).

<sup>3</sup> 52 Fed. Reg. 31439 (Aug. 20, 1987) (Belgium); 52 Fed. Reg. 31057 (Aug. 19, 1987) (Israel).

<sup>4</sup> 64 Fed. Reg. 10017 (Mar. 1, 1999).

<sup>5</sup> Confidential Report (“CR”)/Public Report (“PR”) at Table I-2.

<sup>6</sup> Rotem’s Response to Commission’s Notice of Institution at 18; CR at IV-8, PR at IV-4.

<sup>7</sup> CR at IV-6, PR at IV-4. Haifa, the other Israeli producer of industrial phosphoric acid, \*\*\*. CR at IV-6 n.5, PR at IV-4 n.5.

<sup>8</sup> *See* Explanation of Commission Determinations on Adequacy in Industrial Phosphoric Acid from Israel and Belgium. *See also* 64 Fed. Reg. 31610 (June 11, 1999).

Because there was no domestic interest expressed in maintaining the antidumping duty order on industrial phosphoric acid from Israel, Commerce determined to revoke that order effective January 1, 2000. Accordingly, the Commission terminated its review of the antidumping duty order on industrial phosphoric acid from Israel. 64 Fed. Reg. 30358 (June 7, 1999).

A&W, FMC, and Solutia initially opposed revocation of the subject orders and filed a response to the Commission's notice of institution; completed the Commission's questionnaires; and filed a joint prehearing brief in these reviews. However, subsequent to the Federal Trade Commission's approval of the acquisition of A&W by Rhodia Inc. ("Rhodia")<sup>9</sup> all domestic interested parties (A&W, FMC, and Solutia) withdrew from further participation in these reviews and stated that they no longer will pursue retention of the subject orders.<sup>10</sup> Consequently, no domestic producer appeared at the Commission's hearing on March 30, 2000, nor did any domestic producer file a posthearing brief or participate thereafter, while both respondents participated in the Commission's hearing and filed posthearing briefs. We consider the fact that the domestic industry no longer supports retention of the orders to be a central factor in our determination that revocation of the orders likely would not lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines "the domestic like product" and the "industry."<sup>11</sup> The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."<sup>12</sup>

In its final five-year review determinations, Commerce defined the subject merchandise as "industrial phosphoric acid."<sup>13</sup> In the original investigations, the Commission defined the domestic like product as industrial phosphoric acid.<sup>14</sup> In the original investigations, the Commission also determined not to include agricultural grade phosphoric acid within the definition of the like product.<sup>15</sup>

In these reviews, no party argued in support of a domestic like product other than industrial phosphoric acid, or provided information that would justify finding a different domestic like product. There is no new information obtained during these five-year reviews that would suggest a reason for departing from the Commission's original definition of the domestic like product.<sup>16</sup> Accordingly, we define the domestic like product as industrial phosphoric acid.

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<sup>9</sup> Rhodia is a domestic producer that \*\*\* the subject orders. CR at I-26, PR at I-18.

<sup>10</sup> Mar. 29, 2000 letter filed on behalf of A&W, FMC, and Solutia; *see* CR at I-26, PR at I-18.

<sup>11</sup> 19 U.S.C. § 1677(4)(A).

<sup>12</sup> 19 U.S.C. § 1677(10). *See 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). *See also* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

<sup>13</sup> 65 Fed. Reg. 6163 (Feb. 8, 2000) (Israel); 65 Fed. Reg. 3661 (Jan. 24, 2000) (Belgium).

<sup>14</sup> Original Determination, USITC Pub. 2000 at 7.

<sup>15</sup> Original Determination, USITC Pub. 2000 at 6.

<sup>16</sup> Prayon contends that the \*\*\* should be included in the domestic like product. Prayon's Prehearing Brief at 7. However, the phosphoric acid that \*\*\*. CR at I-22, PR at I-16.

Prayon also expresses uncertainty as to whether the purified acid manufactured by J.R. Simplot Co. and Vicksburg Chemical should be included in the Commission's definition of the domestic like product, but does not have information sufficient to take a position on the issue. Prayon's Prehearing Brief at 7.

## B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the domestic “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>17</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>18</sup> In accordance with our domestic like product determination, we determine that the domestic industry consists of all domestic producers of industrial phosphoric acid.

## III. REVOCATION OF THE COUNTERVAILING DUTY ORDER ON INDUSTRIAL PHOSPHORIC ACID FROM ISRAEL AND THE ANTIDUMPING DUTY ORDER ON INDUSTRIAL PHOSPHORIC ACID FROM BELGIUM WOULD NOT BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

### A. Cumulation

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>19</sup>

In these reviews, the statutory requirement that both industrial phosphoric acid reviews be initiated on the same day is satisfied. Based on the available information regarding the capacity and export orientation of the industries in Belgium and in Israel, as well as the nature of competition in the U.S. market, we find that the subject imports from both countries would be likely to have a discernible adverse impact on the domestic industry if the orders were revoked.<sup>20</sup>

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<sup>17</sup> 19 U.S.C. § 1677(4)(A).

<sup>18</sup> See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>19</sup> 19 U.S.C. § 1675a(a)(7).

<sup>20</sup> For a discussion of the analytical framework of Commissioners Hillman and Koplán regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Commissioner Koplán’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephan Koplán

(continued...)

We find there likely will not be a reasonable overlap of competition between the subject imports from Israel and Belgium. First, U.S. imports of Belgian industrial phosphoric acid are limited to technical grade industrial phosphoric acid, \*\*\*.<sup>21</sup> Further, there is only a minor geographic overlap and different channels of distribution when comparing the subject imports. Specifically, \*\*\*, sells mainly in the Northeast and Southeast. Shipments from \*\*\* are mainly to the Mid-Atlantic and Southeast regions, although \*\*\* percent of 1998 Israeli shipments went to the West Coast, East Coast, and Northern Midwest.<sup>22</sup> Moreover, the channels of distribution differ: \*\*\* while \*\*\*.<sup>23</sup> Finally, none of the responding U.S. purchasers reported buying both Belgian and Israeli industrial phosphoric acid.<sup>24</sup>

We find these differences likely will become even more pronounced in the reasonably foreseeable future. Under the terms of the FMC and Solutia joint venture, Prayon is to \*\*\*,<sup>25</sup> and thus will not compete with the Israeli subject imports. Given the limited current overlap in competition and shift of some subject imports from Belgium to internal U.S. consumption in the reasonably foreseeable future, we find that there likely would not be a reasonable overlap of competition between imports of industrial phosphoric acid from Israel and Belgium if the countervailing and antidumping duty orders were revoked.

## **B. Legal Standard in a Five-Year Review**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>26</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”<sup>27</sup> Thus, the likelihood standard is prospective in nature.<sup>28</sup> The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest

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<sup>20</sup> (...continued)

Regarding Cumulation).

<sup>21</sup> CR at II-10 & n.10, PR at II-6 & n.10; Tr. at 11-12.

<sup>22</sup> CR at II-1, PR at II-1.

<sup>23</sup> CR at II-1, PR at II-1.

<sup>24</sup> The majority of responding purchasers buy only U.S.-produced industrial phosphoric acid. Twenty-three purchasers reported buying exclusively from domestic sources, six bought both U.S.-produced and Belgian industrial phosphoric acid, two bought U.S.-produced and Israeli industrial phosphoric acid, and two relied exclusively on imports from Israel. CR at I-27, PR at I-19.

<sup>25</sup> See Prayon’s Posthearing Brief at 6-7; Prayon’s Prehearing Brief at 24-25, 27.

<sup>26</sup> 19 U.S.C. § 1675a(a).

<sup>27</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

<sup>28</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

themselves only over a longer period of time.”<sup>29</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>30 31</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”<sup>32</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.<sup>33 34</sup>

We note that Section 776(a) of the Act authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.<sup>35</sup> We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most

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<sup>29</sup> 19 U.S.C. § 1675a(a)(5).

<sup>30</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>31</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>32</sup> 19 U.S.C. § 1675a(a)(1).

<sup>33</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>34</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to this antidumping duty order. *See* 65 Fed. Reg. 3661; CR/PR at Appendix A.

<sup>35</sup> 19 U.S.C. § 1675(c)(3)(B).

persuasive.”<sup>36</sup>

For the reasons stated below, we determine that revocation of the countervailing duty order on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

### C. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>37</sup>

First, as stated earlier, the domestic industry no longer supports retention of the countervailing duty order on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium.

Demand for industrial phosphoric acid is derived from the demand for industrial phosphates and other end-use applications.<sup>38</sup> U.S. demand for industrial phosphoric acid was already declining during the period examined in the original investigations, and has continued to diminish in the years since the orders have been in place. Between 1986 and 1998, apparent U.S. consumption fell by about \*\*\*.<sup>39</sup> This reflects declining demand in industrial phosphoric acid’s primary application (phosphates) as a result of the U.S. ban on phosphate use in laundry detergents,<sup>40</sup> and has been only partially offset by the increased demand for industrial phosphoric acid in other applications<sup>41</sup> and by the increase in general economic activity.

Since the period examined in the original investigations, the domestic industry has been engaging in a continuing process of consolidation (reducing the number of facilities producing industrial phosphoric acid) and restructuring (shifting from the thermal furnace process (capable of producing semiconductor grade and polyphosphoric grade industrial phosphoric acid) to the purified wet-process (less costly and more environmentally compatible)).<sup>42</sup> Both the industry consolidation and the progressive shift from thermal furnace production to purified wet-process production reflect the impact of U.S. environmental restrictions on the production and use of phosphates in detergents. However, despite a general decline in the demand for industrial phosphates and the industry’s consolidation and restructuring, a substantial portion (\*\*\* percent) of the domestic like product still is consumed internally in the production of phosphates.<sup>43</sup>

The domestic industry can reasonably be described as somewhat concentrated, given the

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<sup>36</sup> SAA at 869.

<sup>37</sup> 19 U.S.C. § 1675a(a)(4).

<sup>38</sup> CR at II-7, PR at II-4.

<sup>39</sup> CR/PR at Table I-1.

<sup>40</sup> CR at I-16, II-7, PR at I-12, II-4.

<sup>41</sup> Other applications include calcium phosphates (food & industrial goods); potassium phosphates (paper, rubber processing; antifreeze); and ammonium phosphates (fire extinguishers & flame retardants), as well as a number of direct applications. CR at I-13 - I-14, II-7, PR at I-10- I-11, II-4.

<sup>42</sup> See CR at I-18 - I-19, I-23 - I-25, PR at I-13, I-17.

<sup>43</sup> CR at II-1, PR at II-1. The captive production provision of the statute, 19 U.S.C. § 1677(7)(c)(iv), does not apply to five-year reviews.

relatively small (and declining) number of U.S. producers and the large share of the U.S. market these producers supply.<sup>44</sup> Moreover, four firms responding to the Commission's questionnaires purchase \*\*\* of the reported merchant market purchases of U.S.-produced industrial phosphoric acid, two other firms account for \*\*\* of the reported purchases of Belgian industrial phosphoric acid, and a seventh firm accounts for \*\*\* of the reported purchases of Israeli industrial phosphoric acid.<sup>45</sup>

Based on the record evidence, we find that these conditions of competition in the U.S. industrial phosphoric acid market are not likely to change significantly in the reasonably foreseeable future.<sup>46</sup> Accordingly, we find that current conditions in the U.S. industrial phosphoric acid market provide us with a reasonable basis upon which to assess the likely effects of revocation of the countervailing and antidumping duty orders within a reasonably foreseeable time.

## **D. Israel**

### **1. Likely Volume of Subject Imports**

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.<sup>47</sup> In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>48</sup>

In its original determination the Commission found that the cumulated volume of subject imports was significant.<sup>49</sup> In these reviews, capacity utilization in the Israeli industry is \*\*\*,<sup>50</sup> Importers' inventories declined by approximately \*\*\* percent between 1997 and 1998 and further declined by approximately \*\*\* between the interim periods.<sup>51</sup> Israel has substantial exports to non-U.S. markets,<sup>52</sup> while its U.S. market share is currently small and is not likely to be significant in the reasonably foreseeable future.<sup>53</sup>

Moreover, as noted above, subsequent to the Federal Trade Commission's approval of the

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<sup>44</sup> See CR/PR at Table I-4.

<sup>45</sup> CR at I-28, PR at I-19.

<sup>46</sup> We note that the consolidation and restructuring of the industry appears to be an ongoing process.

<sup>47</sup> 19 U.S.C. § 1675a(a)(2).

<sup>48</sup> 19 U.S.C. § 1675(a)(2)(A)-(D).

<sup>49</sup> Original Determination, USITC Pub. 2000 at 18-19.

<sup>50</sup> Israel's capacity utilization was \*\*\* percent in 1998. CR/PR at Table IV-5.

<sup>51</sup> End-of-period inventories from Israel decreased from \*\*\* pounds in 1997 to \*\*\* pounds in 1998, and from \*\*\* pounds in January-September 1998 to \*\*\* pounds in January-September 1999. CR/PR at Table IV-3.

<sup>52</sup> Israel's exports to markets other than the United States totaled \*\*\* percent of its total shipments in 1997 and \*\*\* percent in 1998, and were \*\*\* percent in January-September 1998 and \*\*\* percent in January-September 1999. CR/PR at Table IV-5.

<sup>53</sup> Israel's market share was \*\*\* percent in 1997 and \*\*\* percent in 1998. It was \*\*\* percent in January-September 1998 and \*\*\* percent in January-September 1999. CR/PR at Table I-4.

acquisition of A&W by Rhodia, all domestic producer parties withdrew from further participation in these reviews and stated that they are no longer interested in maintenance of the subject orders. We find that this action indicates the domestic industry believes that the volume of subject imports would not be

likely to be significant if the orders were revoked. Finally, there is little or no potential for product shifting.<sup>54</sup>

Based on the foregoing, we find it likely that the volume of subject imports from Israel would not rise to a significant level if the order were removed.<sup>55</sup>

## **2. Likely Price Effects**

In evaluating the likely price effects of subject imports if the order under review is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.<sup>56</sup>

During the original investigation, the Commission found that price was a major factor in purchasing decisions and that the prices of the imported products were generally less than domestic prices.<sup>57</sup> With respect to the current reviews, price remains an important factor in purchasing decisions<sup>58</sup> and domestic producers and importers compete for sales for some of the same customers,<sup>59</sup> although there appear to be few shared customers. However, the large volume of the domestic like product consumed internally, as well as differences in product mix, geographic presence, and channels of distribution, all serve to attenuate competition between domestic and Israeli industrial phosphoric acid and are likely to continue to do so for a reasonably foreseeable time.

Because we find that the volume of subject imports from Israel would not rise to a significant level if the order were removed, we find it unlikely that subject imports from Israel would have any significant price effects on the domestic market if the order were revoked. Thus, we find that revocation of the countervailing duty order would not lead to significant underselling by the subject imports from Israel of the domestic like product, or to significant price depression or suppression.

## **3. Likely Impact**

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and

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<sup>54</sup> See CR at IV-8, PR at IV-4.

<sup>55</sup> See SAA at 890.

<sup>56</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>57</sup> Original Determination, USITC Pub. 2000 at 20.

<sup>58</sup> CR at II-8, PR at II-5.

<sup>59</sup> Compare CR at II-9, PR at II-5, with CR at I-27, PR at I-19.

(3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>60</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>61</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>62</sup>

In the original investigation, the Commission determined that there was price suppression and depression, which was a significant cause of reduced profitability for the domestic industry.<sup>63</sup> In these reviews, U.S. shipments decreased between 1997 and 1998, but increased between interim periods;<sup>64</sup> end-of-period inventories increased between 1997 and 1998, but decreased between interim periods;<sup>65</sup> the number of production and related workers declined between 1997 and 1998, but remained steady between interim periods, while hours worked increased between interim periods;<sup>66</sup> and although sales, gross profits and operating income declined, the domestic industry remained highly profitable.<sup>67</sup> We conclude that the industry is not in a “weakened state,” as contemplated by the vulnerability criterion of the statute.<sup>68</sup>

In light of ongoing market restructuring,<sup>69</sup> the industry should remain highly profitable and highly capable of competing in the U.S. market. Further, the domestic industry’s withdrawal from further participation in these reviews and its statement that it is no longer interested in maintaining the orders indicates that the domestic industry does not view itself as being vulnerable to the effects of the subject imports if the order is revoked.

We do not find it likely that revocation of the countervailing duty order on subject imports from Israel would result in an increase in the volume of subject imports to significant levels. As a consequence, we do not find it likely that subject imports would have any significant price effects on the domestic

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<sup>60</sup> 19 U.S.C. § 1675a(a)(4).

<sup>61</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its expedited review of this order, Commerce found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following margins: Prayon and all others at 14.67 percent. 65 Fed. Reg. at 3662. With respect to the countervailing duty order for Israeli producers and exporters, Commerce found margins for Haifa and all others at 5.91 percent. 65 Fed. Reg. at 6166.

<sup>62</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>63</sup> Original Determination, USITC Pub. 2000 at 22.

<sup>64</sup> CR/PR at Table III-2.

<sup>65</sup> CR/PR at Table III-4.

<sup>66</sup> CR/PR at Table III-5.

<sup>67</sup> CR/PR at Table III-8.

<sup>68</sup> 19 U.S.C. § 1675a(a)(1)(C). *See* SAA at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.”).

<sup>69</sup> Rhodia acquired A&W, as noted above, and FMC and Solutia have combined their respective phosphates and phosphorous derivatives businesses in a joint venture termed Astaris. CR at I-25, PR at I-17 - I-18.

market if the order were revoked. Accordingly, based on the record in this review, we conclude that, in the event of revocation of the order, subject imports from Israel likely would not have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

## **E. Belgium**

### **1. Likely Volume of Subject Imports**

Belgium's capacity utilization is generally high, but with \*\*\*. <sup>70</sup> Importers' inventories were \*\*\* throughout the period. <sup>71</sup> Like Israel, Belgium has substantial exports to non-U.S. markets, <sup>72</sup> while its U.S. market share is currently small and is not likely to be significant in the reasonably foreseeable future. <sup>73</sup> There is little or no potential for product shifting. <sup>74</sup>

As pertains to subject imports from Belgium, we make the same finding with respect to the domestic producer parties' withdrawal from further participation in these reviews as we did with respect to subject imports from Israel.

In view of the foregoing, we find it likely that the volume of subject imports from Belgium would not rise to a significant level if the order were removed. <sup>75</sup>

### **2. Likely Price Effects**

We make the same finding regarding price effects of the subject imports from Belgium as we did with the subject imports from Israel insofar as the importance of price and attenuated competition are concerned. Similarly, because we find that the volume of subject imports from Belgium would not rise to a significant level if the order were removed, we find it unlikely that subject imports from Belgium would have any significant price effects on the domestic market if the order were revoked. Thus, we find that revocation of the antidumping duty order would not lead to significant underselling by the subject imports from Belgium of the domestic like product, or to significant price depression or suppression.

### **3. Likely Impact**

As discussed above, the domestic industry should remain highly profitable and highly capable of competing in the U.S. market. We find, as we did with respect to subject imports from Israel, that the domestic industry does not view itself as being vulnerable to the effects of the subject imports from Belgium if the order is revoked and is not in a "weakened state."

We do not find it likely that revocation of the antidumping duty order would result in an increase in

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<sup>70</sup> Belgium's capacity utilization was \*\*\* percent in 1998. CR/PR at Table IV-4; *see* Prayon's Posthearing Brief at 6.

<sup>71</sup> CR/PR at Table IV-3.

<sup>72</sup> Belgium's exports to markets other than the United States totaled \*\*\* percent of its total shipments in 1997 and \*\*\* percent in 1998, and were \*\*\* percent of its total shipments in both January-September 1998 and January-September 1999. CR/PR at Table IV-4.

<sup>73</sup> Belgium's market share was \*\*\* percent in 1997 and \*\*\* percent in 1998, and remained steady at \*\*\* percent in January-September 1998 and \*\*\* percent in January-September 1999. CR/PR at Table I-4.

<sup>74</sup> *See* CR at IV-4, PR at IV-1.

<sup>75</sup> *See* SAA at 890.

the volume of subject imports from Belgium to a significant level. As a consequence, we do not find it likely that subject imports from Belgium would have significant price effects on the domestic market if the order were revoked. Accordingly, based on the record in this review, we conclude that, in the event

of revocation of the antidumping duty order, subject imports from Belgium likely would not have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

### **CONCLUSION**

For the foregoing reasons, we determine that revocation of the countervailing and antidumping duty orders on industrial phosphoric acid from Israel and Belgium likely would not lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.



## VIEWS OF VICE CHAIRMAN MARCIA E. MILLER

In August 1987, the Commission determined that the domestic industrial phosphoric acid (“IPA”) industry was materially injured by dumped imports from Belgium and dumped and subsidized imports from Israel.<sup>76</sup> Thereafter, the Department of Commerce issued an antidumping duty order on imports of IPA from Belgium and antidumping and countervailing duty orders on imports of IPA from Israel.

In March 1999, the Commission instituted five-year reviews, pursuant to section 751(c) of the Tariff Act of 1930, to determine whether revocation of these orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>77</sup> In making a determination in a five-year review, the Commission is instructed to consider the likely volume, price effects, and impact of subject imports on the domestic industry if the order is revoked, taking into account (i) the Commission’s prior injury determinations, including the volume, price effects, and impact of the subject imports on the domestic industry at that time, (ii) whether any improvement in the state of the industry is related to the order, and (iii) whether the domestic industry is vulnerable to material injury if the order is revoked.<sup>78</sup>

This case presents the Commission with unique circumstances. During the Commission’s period of review, the domestic industry consisted of four major producers: Albright & Wilson Americas Inc., FMC Corporation, Solutia Inc., and Rhodia Inc. Three of these companies, Albright & Wilson, FMC, and Solutia, opposed revocation of the orders, whereas Rhodia, \*\*\*.<sup>79</sup>

On March 29, Albright & Wilson, FMC, and Solutia notified the Commission that they were withdrawing from further participation in the reviews and were no longer pursuing retention of the subject orders.<sup>80</sup> Their decision apparently relates to two recent consolidations in the industry -- Rhodia’s acquisition of Albright & Wilson and FMC’s and Solutia’s formation of a joint venture that combines their IPA operations -- and the Federal Trade Commission’s approval of those transactions.<sup>81</sup>

The fact that Albright & Wilson, FMC, and Solutia no longer seek retention of the orders, and the

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<sup>76</sup> Industrial Phosphoric Acid from Belgium and Israel, Inv. Nos. 701-TA-286 & 731-TA-365-366 (Final), USITC Pub. No. 2000 at 1 and 3 (August 1987).

<sup>77</sup> Because no member of the domestic industry expressed interest in maintaining the antidumping duty order on IPA from Israel, the Department of Commerce revoked that order effective January 1, 2000. 64 Fed. Reg. 24,137 (May 5, 1999). Accordingly, that order is not before the Commission.

<sup>78</sup> 19 U.S.C. § 1675a(a). The statute defines the relevant industry to be considered in a five-year review as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.” 19 U.S.C. § 1677(4)(A). In its original determination, the Commission defined the domestic like product as industrial phosphoric acid. I see no reason to adopt a different definition of the domestic like product (and corresponding domestic industry).

<sup>79</sup> Confidential Staff Report (“CR”) at I-26 and App. E (April 20, 2000); Public Report (“PR”) at I-18 and App. E. In September 1999, J.R. Simplot Co. began production of \*\*\* quantities of IPA. Simplot \*\*\*. Even if Simplot reaches expected production levels, it will remain a \*\*\* producer. CR at I-26 and III-2; PR at I-18 and III-2.

<sup>80</sup> See Letter filed on behalf of Albright & Wilson Americas Inc., FMC Corporation, and Solutia Inc. (March 29, 2000).

<sup>81</sup> Id. The FTC’s consent order requires Rhodia to divest Albright & Wilson’s merchant IPA business, including its joint venture interest in a North Carolina manufacturing facility to Potash Corporation of Saskatchewan (“PCS”). Id. PCS was Albright & Wilson’s joint venture partner in the North Carolina production facility. PCS has expressed no interest in the orders and has not participated in the Commission’s reviews. See Posthearing Brief of Societe Chimique Prayon-Rupel, S.A. (“Prayon”) at 1 (April 10, 2000).

fact that Rhodia \*\*\*, is compelling evidence that the domestic industry is not likely to be materially injured if the orders are revoked.<sup>82</sup>

Other facts in the record also support this conclusion. The volumes of subject imports from Belgium and Israel are very small and are not likely to increase significantly. The Belgian producer operates at high capacity utilization rates, its sales are dedicated to other markets (principally in Europe), and it faces constraints on its distribution capabilities in the United States.<sup>83</sup> Moreover, the Belgian producer \*\*\*.<sup>84</sup> The Israeli producers are operating at \*\*\* capacity utilization rates, their sales are dedicated to other markets (principally in Europe), and they face limitations on their distribution capabilities in the United States.<sup>85</sup> Prices in the U.S. market are high and are not likely to be significantly affected by the small volume of likely subject imports if the orders are revoked, particularly given the limitations on the ability of imports to compete throughout the U.S. market.<sup>86</sup>

The domestic industry dominates the U.S. market, with a market share well in excess of 90 percent.<sup>87</sup> Since the original investigation, the domestic industry has consolidated and closed outmoded production facilities and invested in new facilities using modern production technology.<sup>88</sup> The financial performance of the domestic industry during the Commission's review period has been very strong and the consolidations discussed above will strengthen the industry even more.<sup>89</sup> In short, the domestic industry is well-positioned to withstand the relatively small amount of increased competition that is likely to result if the orders are revoked.

Accordingly, I determine that revocation of the antidumping duty order on imports of IPA from Belgium and the countervailing duty order on imports of IPA from Israel would not be likely to lead to continuation or recurrence of material injury to the U.S. IPA industry within a reasonably foreseeable time.

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<sup>82</sup> Since Albright & Wilson, FMC, and Solutia were the only domestic producers to respond to the Department of Commerce's notice of initiation, it is very likely that the Department would have revoked these orders for lack of domestic industry interest if the domestic producers had taken this position while the reviews were still pending before that agency.

<sup>83</sup> Prayon Posthearing Br. at 5-6. The Belgian producer has \*\*\* to increase capacity. *Id.* Inventories in Belgium are \*\*\*. CR at II-5; PR at II-3.

<sup>84</sup> Prayon Posthearing Br. at 6-7.

<sup>85</sup> CR at II-5-6 and II-10; PR at II-3 and II-6. Rotem, the \*\*\* of the two Israeli producers and the one that historically has accounted for virtually all IPA exports to the United States, reported that it is running at more or less full capacity and has no plans to increase capacity. CR at II-5-6; PR at II-3 and II-6. Inventories in Israel suggest some ability to increase exports. CR at II-6; PR at II-3.

<sup>86</sup> CR at II-1 and II-10; PR at II-1 and II-6. See also Prayon Posthearing Br. at 5 and 8; Written Testimony of Ilan Hakim at 6-7 (March 30, 2000).

<sup>87</sup> CR at I-30 (Table I-4); PR at I-21 (Table I-4).

<sup>88</sup> CR at I-18-19; PR at I-13.

<sup>89</sup> CR at III-10 (Table III-6) and III-12 (Table III-8); PR at III-7 (Table III-6) and III-8 (Table III-8).