

UNITED STATES INTERNATIONAL TRADE COMMISSION

Bulk Acetylsalicylic Acid (Aspirin) From China
Investigation No. 731-TA-828 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3314, June 2000)

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BULK ACETYLSALICYLIC ACID (ASPIRIN) FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China of bulk acetylsalicylic acid (aspirin), provided for in subheadings 2918.22.10 and 3003.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that it would not have found material injury but for the suspension of liquidation.

BACKGROUND

The Commission instituted this investigation effective May 28, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Rhodia, Inc., Cranbury, NJ. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of bulk aspirin from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 4, 2000 (65 FR 5659). The hearing was held in Washington, DC, on May 18, 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)).

IEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is threatened with material injury by reason of imports of bulk acetylsalicylic acid (“aspirin”)¹ from China that have been found by the Department of Commerce (“Commerce”) to be sold at less than fair value (“LTFV”).

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the “domestic like product” and the “industry.” Section 771(4)(A) of the Tariff Act of 1930 (“the Act”) defines the relevant 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.”² 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.”³

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission applies the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁴ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁵ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁶ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise being sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁷

¹ The product is also referred to as ortho-acetylsalicylic acid. See 65 Fed. Reg. 33805 (May 25, 2000).

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10).

⁴ See, e.g., Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. See id. at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁵ See, e.g., Nippon Steel, 19 CIT at 454-55.

⁶ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991).

⁷ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

Commerce has defined the imported article within the scope of this investigation as:

bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia (“USP”) 23. It is classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.⁸

Bulk acetylsalicylic acid, commonly known as bulk aspirin, is a white, odorless, organic compound with the chemical formula $C_9H_8O_4$.⁹ It is used for medicinal purposes, primarily for mild pain relief, fever relief, or as an anti-inflammatory agent.¹⁰ Aspirin also is used in low dosages for the treatment of stress and cardiovascular disease.¹¹

For the purposes of this investigation, bulk aspirin may be in pharmaceutical or compound form but not in measured doses, tablets, or capsules for direct human consumption.¹² It may be pure acetylsalicylic acid in crystal form or granulated into a fine powder. The acetylsalicylic acid also may be mixed with small amounts of inactive materials, such as starch, lactose, cellulose, or coloring agents.¹³

In the preliminary phase of this investigation, the Commission determined that there was one domestic like product.¹⁴ In that determination, the Commission noted that it normally does not find

⁸ 65 Fed. Reg. 33805 (May 25, 2000).

⁹ Confidential Staff Report (“CR”) at I-3, Public Staff Report (“PR”) at I-3.

¹⁰ CR at I-3-4, PR at I-3.

¹¹ CR at I-4, PR at I-3.

¹² CR at I-3, PR at I-2.

¹³ CR at I-4, PR at I-3.

¹⁴ Bulk Acetylsalicylic Acid (Aspirin) from China, Inv. No. 731-TA-828 (Preliminary), USITC Pub. 3211 (July 1999) (“Preliminary Determination”) at 5.

(continued...)

separate like products based on different grades of chemical or mineral products and that aspirin crystal and aspirin starch are both used to produce dosage forms of aspirin or other medicaments which use aspirin as an input. We have been presented with no new arguments or new evidence that suggest it would be appropriate to change that finding in this final phase of the investigation. Accordingly, for the same reasons articulated in the preliminary phase determination, we determine that there is one domestic like product consisting of all bulk aspirin.

B. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”¹⁵ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.¹⁶ Based on our domestic like product determination, we find that the domestic industry consists of the sole domestic producer of bulk aspirin, Rhodia, Inc. (“Rhodia”), as the Commission found in the preliminary phase of the investigation.¹⁷

II. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.¹⁸ In making these determinations, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹⁹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²⁰ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.²¹ No single factor is dispositive and all relevant

¹⁴ (...continued)

¹⁵ 19 U.S.C. § 1677(4)(A).

¹⁶ See 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).

¹⁷ Preliminary Determination at 8.

¹⁸ 19 U.S.C. § 1673d(b).

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

²⁰ 19 U.S.C. § 1677(7)(A).

²¹ 19 U.S.C. § 1677(7)(C)(iii).

factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²²

For the reasons discussed below, we determine that the domestic industry producing bulk aspirin is not materially injured by reason of LTFV imports from China, but that it is threatened with material injury.

A. Conditions of Competition

We find the following conditions of competition relevant to our analysis in this investigation. As an input, the demand for bulk aspirin is derived from the demand for finished tablets containing aspirin.²³ Demand for bulk aspirin is relatively inelastic, such that modest reductions in price would be unlikely to stimulate meaningful additional demand for bulk aspirin.²⁴ Additionally, aspirin competes with acetaminophen and ibuprofen in the finished analgesic market.²⁵ Chemically, however, there are no direct substitute products for bulk aspirin.²⁶ Aspirin accounted for 23.4 percent of the analgesic market in 1998, up from 22.4 percent in 1995.²⁷

Until 1996, U.S. demand for bulk aspirin was steadily declining.²⁸ However, more recently, demand has grown slightly, apparently due to recent news that aspirin is helpful in the prevention of cardiovascular disease and specific cancers and by increased advertising of aspirin in the media, especially since Bayer Corp. (“Bayer”) has re-acquired the rights to the Bayer trade name.²⁹

Over the last decade, the domestic industry went through two major consolidations. Prior to 1989, four firms comprised the domestic industry: Dow Chemical Company (“Dow”), Monsanto Chemical Company (“Monsanto”), Norwich-Eaton, and Sterling Drug.³⁰ In 1989, Rhone-Poulenc S.A., the French multinational corporation, acquired the analgesic business of Monsanto, including Monsanto’s bulk aspirin manufacturing facility in St. Louis, Missouri.³¹ In 1994, Bayer acquired Sterling Drug and closed that company’s bulk aspirin production operations.³² In the following year, Norwich-Eaton ceased production

²² 19 U.S.C. § 1677(7)(C)(iii).

²³ CR at II-5, PR at II-3.

²⁴ CR at II-20, PR at II-12.

²⁵ CR at II-5, PR at II-3.

²⁶ CR at II-6, PR at II-4.

²⁷ CR at II-6, PR at II-4.

²⁸ CR at II-3, PR at II-2.

²⁹ CR at II-3, PR at II-2.

³⁰ CR at III-1, PR at III-1.

³¹ CR at III-1, PR at III-1.

³² CR at III-1, PR at III-1.

of bulk aspirin and began to source its aspirin requirements from Rhone-Poulenc.³³ In late 1995, Rhone-Poulenc entered into an agreement to acquire certain assets of Dow’s salicylates businesses, including ***.³⁴ These structural changes culminated in an industry that was reduced from four producers in 1989 to only one producer, Rhone-Poulenc, after 1996. Rhodia, Inc., was formed in 1997 following a reorganization by Rhone-Poulenc. Rhodia’s direct parent is Rhodia S.A., a French firm.³⁵

There are two tiers of aspirin tableters that purchase bulk aspirin: producers of brand name aspirin tablets and store brand (private label)/generic tablet producers (collectively “generic/store brand aspirin”).³⁶ Tableters producing generic/store brand aspirin are more sensitive to fluctuations in the price of bulk aspirin than brand name tableters because bulk aspirin accounts for less of the total cost of name brand aspirin than generic/store brand aspirin.³⁷

Bulk aspirin must “qualify” to be sold in the United States. To do so, it must satisfy two minimum requirements: (1) the USP-23 requirements for chemical purity; and (2) the Food and Drug Administration’s stability requirement for shelf life.³⁸ In addition, the upper-tier tableters have their own supplier qualification requirements, such as requiring that the bulk aspirin production facility meet Good Manufacturing Processing (“GMP”) standards.³⁹ Various tableters in the U.S. have qualified, or are in the process of qualifying, bulk aspirin from the *** producers in China, Shandong Xinhua Pharmaceutical Group Corp. (“Shandong”) and Jilin Pharmaceutical Co., Ltd. (“Jilin”).⁴⁰

Bulk aspirin may be purchased in different forms: pure aspirin crystals; granular 100 percent aspirin; and pure aspirin mixed with starch, usually a blend of 90 percent aspirin and 10 percent starch.⁴¹ The domestic industry typically produces crystals in 20, 40, 80, or 20/60 mesh (particle) sizes.⁴² The record evidence shows, on the other hand, that Chinese producers have limited ability to effectively separate bulk aspirin crystals by mesh size;⁴³ therefore, Chinese bulk aspirin crystal generally is only available in combined mesh form.⁴⁴ Using Chinese bulk aspirin crystals thus reduces tableters’

³³ CR at III-1, PR at III-1.

³⁴ CR at III-1, PR at III-1.

³⁵ CR at III-2, PR at III-1.

³⁶ CR at II-1, PR at II-1.

³⁷ CR at II-1, II-6-7, PR at II-1, II-4.

³⁸ CR at II-13, PR at II-8.

³⁹ CR at II-11, PR at II-6.

⁴⁰ CR & PR at Table II-3. For example, ***, has qualified Shandong and is in the process of qualifying Jilin. CR & PR at Table II-3, CR at II-14, V-17, & VII-4, PR at II-8, V-9, VII-3.

⁴¹ CR at I-7-8, PR at I-6.

⁴² CR at I-4, I-7-8, PR at I-3, I-6. ***. CR at I-8, PR at I-6.

⁴³ CR at II-4, II-11, II-13, II-15, PR at II-3, II-7, II-9.

⁴⁴ CR at V-4 -5, PR at V-3.

productivity because it requires more down time for machinery adjustment.⁴⁵ Such a quality difference between subject and domestic products does not exist with respect to aspirin starch because the bulk aspirin input into aspirin starch is in granulated form.⁴⁶

Aspirin processors can either purchase premixed aspirin starch or, if they have the appropriate equipment, they can purchase pure aspirin and blend their own starch mixture.⁴⁷ Aspirin starch enters the United States duty-free whereas 100 percent aspirin is subject to an 8 percent *ad valorem* rate of duty.⁴⁸ However, aspirin starch is priced approximately *** than unmixed aspirin.⁴⁹ Chinese production of aspirin starch comprises the largest portion of its overall production of bulk aspirin.⁵⁰ In contrast, aspirin starch production makes up a relatively smaller percentage of total U.S. production.⁵¹

Over the period of investigation, the volume of nonsubject imports was large and increasing.⁵² Nonsubject imports also steadily increased their market share over the period of investigation.⁵³ The large increase in the volume and value of nonsubject imports over the period of investigation, especially in 1999, is largely explained by the 1997 decision of *** to switch its source of bulk aspirin from the domestic producer to ***.⁵⁴ ***, another important customer, also switched from domestic aspirin to nonsubject imports over the period of investigation. Once *** switched suppliers, *** became Rhodia's largest customer.⁵⁵

⁴⁵ CR at II-4, PR at II-2-3.

⁴⁶ CR at I-8, PR at I-6.

⁴⁷ CR at I-5-7, PR at I-4-6.

⁴⁸ CR at I-8, PR at I-6.

⁴⁹ CR at I-8, PR at I-6.

⁵⁰ June 20, 2000 E-mail from Cynthia Trainor to Commission including table of reported shipments of aspirin starch and aspirin crystals. Shipments of aspirin starch increased from 38.9 percent of Chinese shipments of bulk aspirin to the United States in 1997 to 51.4 percent by 1999. Id.

⁵¹ CR at III-4, PR at II-2. Domestic shipments of aspirin starch in 1999 were only *** percent of total shipments, while *** of shipments were of aspirin crystals. Id.

⁵² The volume of nonsubject imports was 2.1 million pounds in 1997 and increased to 4.9 million pounds by 1999. In terms of value, nonsubject imports increased from \$4.2 million in 1997 to \$9.2 million in 1999. CR & PR at Table IV-1, CR at IV-3, PR at IV-2.

⁵³ In terms of volume, nonsubject imports' market share increased from *** percent in 1997 to *** percent in 1999. In terms of value, nonsubject imports increased from *** percent of total shipments in 1997 to *** percent in 1999. CR & PR at Table IV-3, CR at IV-5, PR at IV-3.

⁵⁴ CR & PR at Table VI-2, CR at VI-6, PR at VI-3.

⁵⁵ CR & PR at Table VI-2, CR at VI-6, PR at VI-3.

The domestic producer generally sells bulk aspirin on a *** contract basis.⁵⁶ It generally sets its prices from a published price list, unless ***.⁵⁷ For example, ***.⁵⁸ Rhodia's contracts generally contain ***.⁵⁹ In contrast, importers of subject merchandise generally use either transaction-by-transaction negotiations for establishing their prices or blanket orders for multiple shipments.⁶⁰ Most purchasers of Chinese aspirin noted that pricing is negotiable.⁶¹

⁵⁶ CR at V-3, PR at V-2. Although Rhodia generally sells on a *** contract basis, it sells on a *** contract basis to ***. CR at V-9, PR at V-4.

⁵⁷ CR at V-3, PR at V-2.

⁵⁸ CR at V-13, PR at V-7.

⁵⁹ CR at V-3, PR at V-2.

⁶⁰ CR at V-3, PR at V-2.

⁶¹ CR at V-3, PR at V-2.

B. Volume of Subject Imports

Section 771(7)(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁶²

Over the period of investigation, subject imports nearly doubled both in terms of quantity and of value.⁶³ Also, the market share of subject imports increased significantly both in terms of quantity and value.⁶⁴ The domestic producer’s volume and market share in the U.S. market decreased substantially over the period of investigation.⁶⁵ Imports of nonsubject bulk aspirin, however, increased at an even greater rate⁶⁶ than subject imports in terms of volume and market share during the period of investigation.⁶⁷ As noted above, the increased market share of nonsubject imports corresponded with Rhodia’s loss of two of its major accounts to nonsubject producers.⁶⁸

While the volume of subject imports increased substantially from 1997 to 1999, for the reasons discussed below, we find that the volume of subject imports and the increase in the volume of those imports have not had significant adverse consequences on the domestic industry at the present time.⁶⁹

⁶² 19 U.S.C. § 1677(7)(C)(i).

⁶³ The quantity of subject imports rose from 2.6 million pounds in 1997 to 4.0 million pounds in 1999. The value of subject imports rose from \$3.1 million in 1997 to \$5.2 million in 1999. CR & PR at Table IV-1.

⁶⁴ Chinese market share on the basis of quantity increased from *** percent in 1997 to *** percent in 1998 and to *** percent in 1999. Chinese market share on the basis of value increased from *** percent in 1997 to *** percent in 1998 and to *** percent in 1999. CR & PR at Table IV-3.

⁶⁵ The volume of the domestic producer’s shipments fell from *** million pounds in 1997 to *** million pounds in 1999. In terms of value, the domestic producer’s shipments fell from \$*** million in 1997 to \$*** million in 1999. CR & PR at Table IV-2. The U.S. producer’s market share based on quantity fell from *** percent in 1997 to *** percent in 1999. On the basis of value, U.S. market share fell from *** percent in 1997 to *** percent in 1999. CR & PR at Table IV-3, CR at IV-5, PR at IV-3, CR at IV-5, PR at IV-3.

⁶⁶ From 1997 to 1999, nonsubject imports increased *** percentage points by volume and *** percentage points by value whereas subject imports increased *** percentage points by volume and *** percentage points by value. CR & PR at Table IV-3, CR at IV-5, PR at IV-3.

⁶⁷ The volume of nonsubject imports on the basis of quantity rose steadily from 2.1 million pounds in 1997 to 2.8 million pounds in 1998 and to 4.9 million pounds in 1999. CR & PR at Table IV-1. On the basis of value, nonsubject imports increased from \$4.2 million in 1997 to \$5.7 million in 1998 to \$9.2 million in 1999. CR & PR at Table IV-1. Market share of nonsubject imports, on the basis of value, rose from *** percent in 1997 to *** percent in 1998 and to *** percent in 1999. In terms of quantity, nonsubject imports increased from *** percent in 1997 to *** percent in 1998 to *** percent in 1999. CR & PR at Table IV-3, CR at IV-5, PR at IV-3.

⁶⁸ Pet. Posthearing Br. at 8.

⁶⁹ Commissioner Bragg finds that while the increased volume of subject imports, standing alone,
(continued...)

C. Price Effects of Subject Imports

Section 771(7)(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.⁷⁰

The record shows that domestic bulk aspirin and subject imports have had somewhat limited substitutability, but are increasingly becoming substitutable as more domestic producers are qualifying the Chinese aspirin for use in their tablet production. Although tableters may use any country's product interchangeably once they have successfully completed qualification, even Rhodia admits that, until recently, Chinese producers generally have not offered acceptable consistency, order lead times, and product grade offering.⁷¹ Consequently, only generic aspirin tableters and a small number of private label tableters have qualified Chinese aspirin for use in their facilities to this point.⁷² However, the record also shows that an increasing number of tableters of private label aspirin, including the domestic producer's largest customer (alone accounting for *** percent of Rhodia's total net sales of bulk aspirin in 1999), have recently qualified or are imminently going to qualify Chinese product.⁷³

Subject imports undersold the domestic like product in every comparison over the period of investigation.⁷⁴ We note, however, that the price comparisons for domestic products 1 and 2 have a somewhat reduced probative value because the domestic product is not being compared to identical subject merchandise. Whereas the subject merchandise is unsifted bulk aspirin crystals, the domestic products are higher-value products that have been sifted into specific crystal sizes.⁷⁵ In any event, the record does not indicate that the underselling by subject imports has had a significant effect on the prices of the domestic like product. Prices for the domestic like product have fluctuated significantly over the period of investigation⁷⁶ while prices of subject merchandise have remained flat over the same period,

⁶⁹ (...continued)

may be considered significant, such increased volume is not significant when viewed in the context of the entire record in this investigation.

⁷⁰ 19 U.S.C. § 1677(7)(C)(ii).

⁷¹ CR at II-16, PR at II-9.

⁷² CR & PR at Table II-3, CR at II-14, PR at II-8.

⁷³ CR & PR at Tables II-3 & VII-2. ***. CR & PR at Table II-3, CR at II-14, PR at II-8.

⁷⁴ CR & PR at Tables V-1 - V-3, CR at V-5-7, PR at V-4-6.

⁷⁵ CR at V-5-6, PR at V-3.

⁷⁶ CR & PR at Figures V-I & V-2, CR at V-8, PR at V-6-7.

with only slight decreases in the later part of the period.⁷⁷ Therefore, we find no correlation between the LTFV price of subject merchandise and the price of the domestic product to date. Thus, we find that, as yet, subject imports have not suppressed or depressed prices to a significant degree. However, as discussed below, as Chinese producers begin to compete more fully with the domestic product for private label tableters (such as Rhodia's largest customer), we expect that significant adverse price effects will occur.

D. Impact of Subject Imports

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.^{78 79} 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.

Data for many of the trade indicators collected over the period of investigation point to an industry whose condition is worsening. For example, while the capacity of the domestic producer was steady throughout the period, capacity utilization decreased as a result of decreased production levels.⁸⁰ Net sales quantity and value also decreased ***.⁸¹ The domestic industry therefore *** in 1998 and 1999 and, on an operating income basis, was ***, although *** in 1999.⁸² These negative indicators, however, appear to be due to factors other than subject imports. Rhodia lost over *** pounds of business in 1998 and 1999 to nonsubject imports.⁸³ Further, Rhodia engaged in plant restructuring to increase processing

⁷⁷ CR & PR at Figures V-I & V-2, CR at V-8, PR at V-6-7.

⁷⁸ 19 U.S.C. § 1677(7)(C)(iii). See also Uruguay Round Agreements Act ("URAA") Statement of Administrative Action, H.R. Rep. 316, 103d Cong., 2d Sess., vol. I, at 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."). See also *id.* at 851.

⁷⁹ As part of its consideration of the impact of imports, the statute, as amended by the URAA, specifies that the Commission is to consider "the magnitude of the margin of dumping most recently published prior to the closing of the Commission's administrative record." 19 U.S.C. § 1677(7)(C)(iii)(V); 1677(35)(C)(ii). Commerce's final antidumping duty margins for the specified producers/exporters are 42.77 percent for Shandong, 4.72 percent for Jilin, and 144.02 percent for all others. 65 FR 33807 (May 25, 2000).

⁸⁰ CR & PR at Table III-1. Production of the domestic like product declined from *** million pounds in 1997 to *** million pounds in 1999. The U.S. producer's capacity has remained steady since 1997 at *** million pounds while capacity utilization has decreased from *** percent in 1997 to *** percent in 1999. Id.

⁸¹ CR & PR at Table VI-1, CR at VI-2, PR at VI-1.

⁸² CR & PR at Table VI-1, CR at VI-2, PR at VI-1.

⁸³ CR & PR at Table VI-2, CR at VI-7, PR at VI-3.

efficiency in anticipation of losing this business from ***.⁸⁴ During the period of investigation, Rhodia also incurred significant expenses as a result of absorbing Dow's bulk aspirin business and relocating the corporation's headquarters to the United States.⁸⁵ In addition, Rhodia had to pay ***, a cost included in the cost of goods sold, although this practice ended in 1999 when Rhodia became an independent company.⁸⁶

Moreover, although the confirmed lost sales and lost revenue allegations provide some support for a finding that the industry is presently materially injured by reason of subject imports, in light of other evidence showing the lack of present significant price effects noted above, we find that the industry is not materially injured by reason of subject imports at this time. While the domestic producer has been forced to lower its prices on a single recent sale of a modest quantity to its largest customer in order to meet the prices of subject imports,⁸⁷ as yet, there have been no significant price effects on the domestic industry by reason of subject imports and the impact of subject imports thus has not yet been felt by the domestic industry.⁸⁸ Now that the domestic industry must compete for the business of even its largest customer, in addition to other private label aspirin tableters, the impact of subject imports will be manifest in the imminent future. Therefore, we find that the domestic industry producing bulk aspirin, although not yet materially injured by subject imports, is vulnerable to material injury in the imminent future by reason of subject imports from China.

III. THREAT OF MATERIAL INJURY BY REASON OF SUBJECT 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."⁸⁹ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.⁹⁰ In making our determination, we have considered all statutory factors that are relevant to this investigation,⁹¹ including imminent

⁸⁴ CR at VI-5, PR at VI-2-3.

⁸⁵ CR at VI-5, PR at VI-2-3.

⁸⁶ CR at VI-5, PR at VI-2.

⁸⁷ Petitioner's Prehearing Brief at App.59.

⁸⁸ In addition, we note that the impact of subject merchandise was mitigated somewhat by the fact that subject producers shipped over 50 percent of their product as aspirin starch, whereas the domestic producer shipped approximately *** percent of its product in crystalline form. See June 20, 2000, E-mail from Cynthia Trainor.

⁸⁹ 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

⁹⁰ 19 U.S.C. § 1677(7)(F)(ii).

⁹¹ 19 U.S.C. § 1677(7)(F)(i). Factor I is inapplicable because this investigation does not involve
(continued...)

increases in production capacity in China, the rate of the increase in the volume and market penetration of subject imports, the low prices of subject imports, and the substantial inventories of subject merchandise.

As an initial matter, we note that the domestic industry producing bulk aspirin is vulnerable in light of the many negative indicators of the condition of the industry noted above. Moreover, the loss of the industry's largest customer, ***, to nonsubject imports has left the domestic producer particularly susceptible to the effects of competition with subject imports for Rhodia's remaining customers. Its current largest purchaser, ***, has already qualified and purchased *** truckloads of aspirin from ***.⁹² As noted above, the domestic producer already has been forced to reduce its prices to this customer when it had to compete with the lower price of this Chinese subject merchandise.⁹³ Further, this large customer also has stated that it expects to ***.⁹⁴

The volume of the subject imports nearly doubled over the period examined⁹⁵ and market penetration increased substantially.⁹⁶ Further, exports to the United States, as a percentage of total shipments by Chinese producers, have increased rapidly and significantly while exports to other markets have shown only slight increases.⁹⁷ This trend of increasing exports to the United States is projected to continue, with projected increases of *** percent in 2000 and a further *** percent increase in 2001.⁹⁸ Assuming steady apparent consumption, these increases would more than double China's U.S. market share. By 2000, the volume of China's exports of subject merchandise to the United States is expected to surpass its exports to all other markets combined.⁹⁹ At the same time, Chinese home market shipments have decreased over the period of investigation and are expected to decrease even further in 2000.¹⁰⁰

⁹¹ (...continued)

countervailing duties. Factor VI regarding product-shifting is not an issue in this investigation. Factor VII also is inapplicable because this investigation does not involve imports of a raw agricultural product.

⁹² CR & PR at Table II-3, CR at V-17, PR at V-9.

⁹³ Petitioner's Prehearing Brief at 59.

⁹⁴ CR & PR at Table II-3, CR at II-14, PR at II-8.

⁹⁵ U.S. shipments of subject imports from China increased from 2.6 million pounds in 1997 to 3.6 million pounds in 1998, then to 4.0 million pounds in 1999. CR & PR at Table IV-2, CR at IV-4, PR at IV-3.

⁹⁶ Subject imports' market share increased from *** percent in 1997 to *** percent in 1998, then increased further to *** percent in 1999. CR & PR at Table IV-3, CR at IV-5, PR at IV-3.

⁹⁷ Exports to the United States increased from *** percent of total shipments in 1997 to *** percent in 1999. Exports to other markets increased from *** percent of total shipments in 1997 to *** percent in 1999. CR & PR at Table VII-3, CR at VII-5-6, PR at VII-3.

⁹⁸ CR & PR at Table VII-3, CR at VII-5-6, PR at VII-3.

⁹⁹ By 2000, exports of subject merchandise to the United States are expected to reach *** million pounds, or *** percent of total shipments, while exports to other markets are expected to be *** million pounds, or *** percent of total shipments. CR & PR at Table VII-3, CR at VII-5-6, PR at VII-3.

¹⁰⁰ Shipments of Chinese bulk aspirin to the Chinese home market decreased from *** million (continued...)

Moreover, while production of bulk aspirin in China increased slightly over the period,¹⁰¹ there remains considerable excess capacity.¹⁰² The reported current Chinese capacity to produce bulk aspirin is large and significant increases are anticipated in the future.¹⁰³ Finally, importers' inventories increased over the period of investigation.¹⁰⁴ All of these factors indicate the likelihood of substantially increased imports of subject merchandise unless an order is issued.

In addition, consistent underselling at substantial margins was present throughout the period of investigation,¹⁰⁵ and we expect that such pervasive underselling will continue in the imminent future. As already noted, however, domestic prices have not yet been affected significantly by this underselling because subject imports generally have not been competing for the domestic industry's main customers.¹⁰⁶ Nevertheless, we expect that subject merchandise will begin to exert significant downward pressures on the prices for the domestic product as tableters of private label aspirin continue to qualify the lower-priced Chinese aspirin. Evidence of the ability of Chinese subject import prices to influence lower pricing for the domestic like product in such transactions already exists on this record because the domestic producer very recently was forced to reduce its price to its largest customer pursuant to a meet-or-release clause.¹⁰⁷ Therefore, as subject imports increasingly compete on a large-scale basis with the

¹⁰⁰ (...continued)

pounds in 1997 to *** million pounds in 1999, and are projected to decrease even further to *** million pounds in 2000. As a percentage of total shipments, *** percent of Chinese bulk aspirin was shipped to the Chinese home market in 1997, declining to *** percent in 1999, and an expected *** percent in 2000. CR & PR at Table VII-3, CR at VII-5-6, PR at VII-3.

¹⁰¹ Chinese production of subject imports increased from *** million pounds in 1997 to *** million pounds in 1998. CR & PR at Table VII-1, CR at VII-2, PR at VII-1.

¹⁰² Capacity utilization increased from *** percent in 1997 to *** percent in 1998. CR & PR at Table VII-1, CR at VII-2, PR at VII-1.

¹⁰³ The two largest Chinese producers reported that their capacity would remain stable at *** million pounds over the 1999 and 2000 periods, but then anticipated that their capacity would increase sharply to *** million pounds by 2001. PR & CR Table VII-3. We note that these capacity levels do not reflect all Chinese capacity and are substantially lower than what total capacity would be because some large producers of Chinese aspirin did not respond to Commission questionnaires. CR at VII-1, n.2, PR at VII-1, n.2.

¹⁰⁴ U.S. importers' end-of period inventories increased from 311,000 pounds in 1997 to 699,000 pounds in 1999. The ratio of U.S. importers' end-of-period inventories to U.S. shipments of imports increased from 14.4 percent in 1997 to 21.5 percent in 1999. CR & PR at Table VII-4, CR at VII-7, PR at VII-3.

¹⁰⁵ The Chinese product undersold the domestic product for every product in every quarter. Margins of underselling ranged from 30.7 to 68.4 percent. See CR & PR at Tables V-1 - V-3, CR at V-5-7, PR at V-4-6.

¹⁰⁶ CR & PR at Tables V-1 - V-3, CR at V-5-7, PR at V-4-6.

¹⁰⁷ See Petitioner's Prehearing Brief at App. 59.

domestic product, which we find is likely to occur imminently, subject imports will have significant price depressing and suppressing effects on the domestic industry producing bulk aspirin.

Other demonstrable adverse trends also indicate the probability of imminent material injury by reason of subject imports. As noted above, domestic net sales quantities and values declined *** between 1997 and 1999 while *** remained unchanged.¹⁰⁸ The domestic industry experienced declining profitability over the period of investigation and experienced *** in 1998 and 1999.¹⁰⁹ As the domestic industry is faced with greater competition from subject imports, the already difficult situation of the domestic industry will be exacerbated. Competition with low-priced subject imports will drive down domestic prices and/or decrease Rhodia's sales volume. With the lower sales volume resulting from *** switch to nonsubject imports, Rhodia has already experienced increased unit costs.¹¹⁰ Rhodia will be unable to increase prices to cover these rising costs as competition with subject Chinese aspirin becomes even more intense. Finally, low returns have stalled long-term investments and research and development by Rhodia.¹¹¹

In sum, we find that the volume of subject imports will increase significantly and these imports will enter the U.S. market at prices that are likely to have significant depressing or suppressing effects, unless an order is issued. Such negative volume and price effects would adversely impact the domestic industry. Accordingly, we find that the domestic industry producing bulk aspirin is threatened with material injury by reason of subject imports from China.¹¹²

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing bulk aspirin is threatened with material injury by reason of subject imports from China.

¹⁰⁸ CR at VI-3, PR at VI-2.

¹⁰⁹ CR at VI-3-4, PR at VI-2.

¹¹⁰ CR at VI-4, PR at VI-2.

¹¹¹ CR & PR at App. E-4.

¹¹² For the reasons discussed earlier regarding the lack of present material injury by reason of subject imports, we do not find that but for the suspension of liquidation, we would have found the domestic industry to be experiencing material injury. See 19 U.S.C. § 1673d(b)(4).