

UNITED STATES INTERNATIONAL TRADE COMMISSION

ANHYDROUS SODIUM SULFATE FROM CANADA

Investigation No. 731-TA-884 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3345, September 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930,² 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 of anhydrous sodium sulfate from Canada,³ that are alleged to be sold in the United States at less than fair value (LTFV).

BACKGROUND

On July 10, 2000, a petition was filed with the Commission and the Department of Commerce by Cooper Natural Resources (CNR), Tulsa, OK, and IMC Chemicals (IMCC), Overland Park, KS, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of anhydrous sodium sulfate from Canada. Accordingly, effective July 10, 2000, the Commission instituted antidumping investigation No. 731-TA-884 (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 July 17, 2000.⁴ The conference was held in Washington, DC, on July 31, 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 19 U.S.C. § 1673b(a).

³ For purposes of this investigation, anhydrous sodium sulfate, also referred to as "salt cake" or "disodium sulfate," is an inorganic chemical with a chemical composition of Na₂SO₄. The "Chemical Abstract Service" number for anhydrous sodium sulfate is 7757-82-6. All forms and variations of anhydrous sodium sulfate are included within the scope of the investigation, regardless of grade, level of purity, production method, or form of packaging. Anhydrous sodium sulfate is currently classifiable under subheadings 2833.11.10 and 2833.11.50 of the Harmonized Tariff Schedule of the United States (HTS).

⁴ 65 FR 44075.

VIEWS 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 of anhydrous sodium sulfate from Canada that are allegedly sold in the United States at less than fair value (“LTFV”).¹

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.² 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.”³

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.”⁴ 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.”⁵ 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 ...”⁶

¹ Whether there is a reasonable indication that the establishment of a domestic industry is being materially retarded by reason of the subject imports is not at issue in this investigation.

² 19 U.S.C. § 1673b(a); *see also*, American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

³ 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).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

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 characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ 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.¹⁰

B. Product Description

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

anhydrous sodium sulfate, also referred to as “salt cake” or “disodium sulfate,” from Canada. Anhydrous sodium sulfate is an inorganic chemical with a chemical composition of Na₂SO₄. The “Chemical Abstract Service” number for anhydrous sodium sulfate is 7757-82-6. All forms and variations of anhydrous sodium sulfate are included within the scope of the investigation, regardless of grade, level of purity, production method or form of packaging. Anhydrous sodium sulfate is currently classifiable under subheadings 2833.11.10 and 2833.11.50 of the Harmonized Tariff Schedule of the United States (HTS).¹¹

⁷ 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 Steel, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁸ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁹ 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.”).

¹⁰ 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 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ Confidential Report (“CR”) at I-3, Public Report (“PR”) at I-2; Commerce’s Notice of Initiation, 65 FR 47954 (Aug. 4, 2000).

Anhydrous sodium sulfate is an inorganic chemical that is principally used to produce soaps and detergents, textiles, pulp and paper, and glass. It is also used in the production of carpet fresheners, starch, and animal feed, and in the conditioning of coal. Anhydrous sodium sulfate is produced either “naturally” (*i.e.*, from lake brine in which it occurs naturally) or “synthetically” (*i.e.*, as a by-product of numerous other chemical processes, such as the manufacture of rayon or the recycling of batteries).¹²

C. Domestic Like Product Issues

Petitioners (Cooper Natural Resources (“CNR”) and IMC Chemicals Inc. (“IMCC”)) argue that the Commission should find a single domestic like product consisting of anhydrous sodium sulfate in all grades, levels of purity, and forms, regardless of production methods or forms of packaging.¹³ Respondent (Canadian producer and exporter Saskatchewan Minerals, a division of Goldcorp Inc.) agrees with petitioners’ definition for purposes of the preliminary phase of this investigation.¹⁴ We find that the record in this investigation supports petitioners’ proposed definition of the domestic like product. Both the natural and synthetic producers’ processes for anhydrous sodium sulfate result in a chemically identical end product that is not commercially distinguishable in terms of physical characteristics, end use, interchangeability, or customer perception.¹⁵

Although the record indicates that producers sell and purchasers often specify particular grades of anhydrous sodium sulfate (e.g., glass grade or detergent grade), there is no evidence of any clear differences between these grades. To the contrary, the limited information available points to a high degree of substitutability among grades and inconsistent use of grade names.¹⁶

Based on the foregoing, and in light of the agreement of the parties, we define the domestic like product as consisting of all anhydrous sodium sulfate, coextensive with Commerce’s scope of investigation.

¹² The parties have variously referred to the anhydrous sodium sulfate that is not derived from natural sources as synthetic, by-product, co-product, or waste product. This opinion uses the term synthetic to refer to such anhydrous sodium sulfate. The record indicates that 9 out of 10 responding synthetic producers account for anhydrous sodium sulfate as a by-product. CR at III-3, PR at III-3.

¹³ Petition at 8, 15.

¹⁴ Conference Transcript (“Tr.”) at 112.

¹⁵ Tr. at 18.

¹⁶ CR at I-4-5, PR at I-5; Tr. at 9, 37. The only exception to this interchangeability among grades concerns “salt cake.” Salt cake is a less processed form of anhydrous sodium sulfate that is off-white or yellow in color, which in turn makes it unsuitable for applications in which whiteness is important (*e.g.*, production of detergent, textile, or glass). Trace minerals and other elements are refined out of salt cake for use in those applications. The record indicates that salt cake accounts for a small and decreasing share of domestic production of anhydrous sodium sulfate. Tr. at 47.

D. Domestic Industry and Related Parties

The domestic industry is defined as “the producers as a whole of a domestic like product.”¹⁷ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.¹⁸ Based on our finding that the domestic like product consists of all anhydrous sodium sulfate, we conclude that the domestic industry consists of all domestic producers of that product.^{19 20}

There are 20 known domestic producers of anhydrous sodium sulfate. The two petitioners, CNR and IMCC, are “natural producers,” meaning that they intentionally produce the product from lake brine in which anhydrous sodium sulfate occurs naturally. All other domestic producers are “synthetic producers” meaning that they produce anhydrous sodium sulfate from other raw materials in which it does not occur naturally. All domestic synthetic producers are also considered “by-product producers,” which means that they produce this product in conjunction with various other chemical products in a single process and do not separately account for the production costs of anhydrous sodium sulfate.²¹

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.²² 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.²³ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²⁴ 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

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 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).

¹⁹ No domestic producer of anhydrous sodium sulfate is related to any importer or Canadian producer of anhydrous sodium sulfate nor did any domestic producer report subject imports. Therefore, there are no related party issues in this preliminary investigation. See, Tr. at 34.

²⁰ Imports from Canada of anhydrous sodium sulfate accounted for *** percent of U.S. imports during the period of investigation. Therefore, negligibility is not an issue in this investigation.

²¹ While none of the synthetic producers entered appearances in this investigation, a number of such producers indicated that they ***. Table III-1, CR at III-2, PR at III-2.

²² 19 U.S.C. § 1673b(a).

²³ 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).

²⁴ 19 U.S.C. § 1677(7)(A).

United States.²⁵ 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.”²⁶

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing anhydrous sodium sulfate is materially injured by reason of subject imports from Canada that are allegedly sold in the United States at LTFV.

A. Conditions of Competition

There are several conditions of competition pertinent to the U.S. market for anhydrous sodium sulfate. First, the parties concur that demand for anhydrous sodium sulfate is declining because of a shift in consumer preferences to liquid detergents that use no anhydrous sodium sulfate as well as to concentrated powdered detergents that use less anhydrous sodium sulfate.²⁷ The decline of textile production in the United States, the shift from glass to other types of containers, and changes in paper production technology have also caused demand for anhydrous sodium sulfate to decline.²⁸ Apparent consumption of anhydrous sodium sulfate (based on quantity) declined 5.0 percent from 1997 to 1999, but was 4.3 percent higher in Jan.-Mar. (“interim”) 2000 than in interim 1999.²⁹

The market for anhydrous sodium sulfate is a mature one with well established end uses and relatively few buyers;³⁰ approximately 15 purchasers account for more than half of U.S. consumption.³¹ Moreover, anhydrous sodium sulfate is a relatively minor and inexpensive ingredient in the products in which it is used, thus the price of anhydrous sodium sulfate does not significantly affect demand for the product.³² Additionally, there is a high degree of substitutability between anhydrous sodium sulfate produced in the United States and Canada as well as between natural and synthetic anhydrous sodium sulfate.^{33 34}

Transportation costs are an important factor in the price of anhydrous sodium sulfate because such costs are high relative to the value of the product.³⁵ U.S. producers report that transportation costs account for approximately 32 percent of total cost.³⁶

²⁵ 19 U.S.C. § 1677(7)(C)(iii).

²⁶ *Id.*

²⁷ Tr. at 10.

²⁸ *Id.* at 10, 77-78.

²⁹ CR at IV-8, PR at IV-8. Apparent consumption of natural anhydrous sodium sulfate declined *** percent from 1997 to 1999, and was *** percent lower in interim 2000 than in interim 1999. Apparent consumption of synthetic anhydrous sodium sulfate increased *** percent from 1997 to 1999, and was *** percent higher in interim 2000 than in interim 1999.

³⁰ *Id.* at 44.

³¹ Tr. at 19.

³² Tr. at 21; CR at II-4,6, PR at II-3,4.

³³ Tr. at 18; CR at II-7, PR at II-5.

³⁴ We note that Canadian producers produce only natural anhydrous sodium sulfate.

³⁵ CR at V-1, PR at V-1.

³⁶ *Id.*

Synthetic anhydrous sodium sulfate production is a by-product of processes used to produce other, higher-value products. Synthetic producers must dispose of their anhydrous sodium sulfate in order to maintain production of those higher-value products.³⁷ Accordingly, synthetic production is not particularly affected by demand or price. Rather, its supply is primarily affected by demand for the higher-value products, than demand for anhydrous sodium sulfate. As demand for, and production of, the more valuable products have increased, production of synthetic anhydrous sodium sulfate has also correspondingly increased.³⁸ Importantly, while natural producers' capacity has not changed, synthetic producers have increased capacity during the period of investigation due to increased production of their more valuable products.³⁹ The synthetic producers' share of domestic consumption rose sharply in the period examined, rising from *** percent of U.S. consumption in 1997 to *** percent in 1999. The synthetic producers' share was *** percent in interim 2000 compared to *** percent in interim 1999.⁴⁰

Synthetic producers *** inventories of anhydrous sodium sulfate.⁴¹ However, the domestic natural producers have significant inventories, which *** during the period of investigation, rising from *** percent of total U.S. shipments in 1997 to *** percent in 1999.⁴²

In addition to the inventories, domestic natural producers maintain they have significant reserves. According to information from the U.S. Geological Survey, U.S. natural producers have reserves of 860,000 short tons and a reserve base of 1.4 million short tons which affects their capacity to produce natural anhydrous sodium sulfate.⁴³ Petitioners estimate their own reserves to be approximately *** million short tons.⁴⁴

³⁷ Tr. at 39. Various domestic synthetic producers have submitted letters for the record disputing respondent's claim that they treat anhydrous sodium sulfate as a "waste product." We agree that the record supports the synthetic producers' claim that they would always prefer to obtain the best possible price for their anhydrous sodium sulfate and that there are costs associated with upgrading Glauber salt to marketable anhydrous sodium sulfate. CR at III-3, PR at III-3; CR at VI-15-16, PR at VI-6. In our view, however, the most important fact about by-product production, as to which there is no serious disagreement, is that by-product producers have no choice but to keep making anhydrous sodium sulfate, regardless of market conditions, if they wish to continue producing their primary products. CR at III-3, PR at III-3; CR at VI-1-2, PR at VI-1.

³⁸ Synthetic production rose from *** short tons in 1997 to *** short tons in 1999. Synthetic production was *** short tons in interim 2000, compared to *** short tons in interim 1999. Table III-2, CR at III-5, PR at III-4.

³⁹ Overall industry capacity increased 3.9 percent from 1997 to 1999, and was 7.9 percent higher in interim 2000 than in interim 1999. Industry capacity for natural anhydrous sodium sulfate *** while industry capacity for synthetic anhydrous sodium sulfate increased *** percent from 1997 to 1999 and was *** percent higher in interim 2000 than in interim 1999. CR at III-4, PR at III-3.

⁴⁰ CR at IV-8, PR at IV-5.

⁴¹ Table III-5, CR at III-13, PR at III-12.

⁴² Table C-1, CR & PR at Appendix C.

⁴³ See, CR at II-2 n.5, PR at II-2, defining reserves and reserve base.

⁴⁴ Petition at 63.

B. Volume of Subject Imports

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.”⁴⁵

The volume of subject imports fell substantially during the period of investigation. Imports from Canada were *** short tons in 1997, *** short tons in 1998, *** short tons in 1999; they were *** short tons in interim 1999, and *** short tons in interim 2000.⁴⁶ The subject imports’ market share also declined, falling from *** percent in 1997 to *** percent in 1999; it was *** percent in interim 2000 compared to *** percent in interim 1999.⁴⁷ This drop in market share occurred at the same time that apparent consumption declined.

Based on the declining volume of subject imports, as well as their declining share of the U.S. market, we find that the volume of subject imports is not significant.

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.*⁴⁸

As discussed previously, natural and synthetic anhydrous sodium sulfate and domestic and Canadian anhydrous sodium sulfate are all highly substitutable.⁴⁹ Sales are generally made through contracts that last a year or longer, although there are also spot sales. Although there was evidence that some contracts include provisions for adjusting prices during the year, such provisions do not appear to

⁴⁵ 19 U.S.C. § 1677(7)(C)(i).

⁴⁶ Table IV-2, CR at IV-3, PR at IV-3. We note that the official U.S. import statistics show a significantly lower level of subject imports than data submitted by U.S. importers. CR at IV-1, PR at IV-1. However, respondent stated that the Commission should rely on the import data submitted in the Commission’s questionnaires. Respondent’s Postconference Brief, Exhibit 9.

We disagree with petitioners’ assertion that revised importer questionnaire data submitted by respondent are suspect. ***.

⁴⁷ Table IV-5, CR at IV-12, PR at VI-8.

⁴⁸ 19 U.S.C. § 1677(7)(C)(ii).

⁴⁹ Tr. at 18; CR at II-7, PR at II-5.

be commonly invoked.⁵⁰ While price is an important factor, purchasers consider quality, producer reliability, and established buyer-seller relationships to also be important to their choice of suppliers.⁵¹

The average unit value (“AUV”) of anhydrous sodium sulfate declined steadily over the period of investigation, with the AUV for the domestic producers’ U.S. shipments falling from \$104.08 in 1997 to \$93.73 in 1998 and \$74.44 in 1999. The AUV for U.S. shipments was \$70.51 in interim 2000, compared to \$78.46 in interim 1999.⁵²

Because so many large sales are made through an annual bid process, we examined bid prices for sales during the period of investigation. Contrary to petitioners’ allegations, our data show that more than half the contracts for which the Commission received information were split and awarded to more than one source, and the lowest bidder was not necessarily awarded any portion of the contract. Of the 34 contracts involving competitive bids, 7 were awarded entirely to the lowest bidder, 15 were awarded partially to the lowest bidder, and 8 were not awarded to the lowest bidder.⁵³ During the period of investigation, Canadian producers’ bids were higher than at least one domestic producer’s more than two-thirds of the time, especially during 1999 and 2000 when the Canadian producer bid higher than the lowest domestic bidder in 13 out of 16 instances.⁵⁴ Moreover, while respondent was the lowest bidder for 7 contracts, domestic synthetic producers were the lowest bidder for 13 contracts.⁵⁵ Importantly, both the instances of underbidding by the respondent and the volume of merchandise tied to the respondent’s underbidding were concentrated with one purchaser, ***.⁵⁶ In contrast, the number of instances of underbidding by domestic synthetic producers and the volume of merchandise tied to their underbidding were spread out among several purchasers.⁵⁷ Thus, to the extent that low bidders may have led domestic prices down, domestic synthetic producers appear to be the downward price leaders. We therefore do not find significant underbidding by the subject imports.

Similarly, petitioners’ lost sales and lost revenue allegations do not support their claim that subject imports contributed significantly to domestic price declines. Many of the allegations were denied or only partially confirmed.⁵⁸ Moreover, we note that the domestic producers’ lost revenue allegations are based on a comparison to the previous years’ price for the same customer, rather than reductions in the bid for the

⁵⁰ CR at V-3, PR at V-3.

⁵¹ Anhydrous sodium sulfate tends to represent a small share of the cost of the downstream products in which it is used. Tr. at 21; CR at II-6, PR at II-4. Because of this, many smaller purchasers buy anhydrous sodium sulfate from a single long-term source without attempting to obtain a lower price through competitive bidding and some purchasers split their purchases among several suppliers at different prices. Tr. at 89-90; Tables V-1 through V-4; CR at V-6-19, PR at V-4-5. Purchasers indicate that they prefer not to risk a proven, reliable supply of a needed but relatively insignificant input in order to obtain a price reduction that would contribute relatively little to their bottom line. Tr. at 105-106.

⁵² Table III-3, CR at III-7, PR at III-7.

⁵³ CR at V-20, PR at V-5.

⁵⁴ Tables V-3 through V-5, CR at V-13-22, PR at V-4-7.

⁵⁵ Tables V-1 through V-4, CR at V-6-19, PR at V-4-5; Respondent’s Postconference Brief at 9-10. Petitioners contend that respondent’s *** forced all bidders to lower their prices the next year. However, since *** bids are sealed, producers would not necessarily be aware of the contract-winning price. Additionally, ***.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ CR at V-24-28, PR at V-8-10.

same year's sale, as are typically the basis for lost revenue allegations. Such comparisons are inherently suspect in a market where prices have declined significantly from year to year.

Overall, we find no indication that prices of the Canadian product are depressing or suppressing domestic anhydrous sodium sulfate prices to a significant degree or that underselling by the subject imports is significant. Rather, the evidence suggests that the rising capacity and production of domestic synthetic producers have exacerbated excess supply conditions in this declining market and driven prices down.⁵⁹

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.⁶⁰ 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 and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."^{61 62 63}

The domestic industry's performance was mixed over the period of investigation. Despite declining apparent consumption, the domestic industry as a whole experienced rising production capacity, production, and shipments between 1997 and 1999 and data for these factors were higher in interim 2000 as compared with interim 1999.⁶⁴ Capacity utilization initially declined, falling from 84.6 percent in 1997 to 71.8 percent in 1998, then recovered to 80.5 percent in 1999, and was 77.5 percent in interim 2000 compared with 69.5

⁵⁹ A comparison of the AUVs of domestic shipments of natural and synthetic anhydrous sodium sulfate provides further support for this conclusion. The AUV of domestic synthetic anhydrous sodium sulfate was higher than the AUV of domestic natural anhydrous sodium sulfate in 1997, \$*** compared to \$***. However, the AUV of domestic synthetic anhydrous sodium sulfate dropped below the AUV for domestic natural anhydrous sodium sulfate in 1998, \$*** compared to \$***, and remained significantly lower for the remainder of the period of investigation. The AUV of domestic synthetic anhydrous sodium sulfate was \$*** in 1999 compared to \$*** for natural anhydrous sodium sulfate. In interim 1999, it was \$*** compared to \$*** for natural anhydrous sodium sulfate. In interim 2000, the AUV for domestic synthetic anhydrous sodium sulfate was \$*** compared to \$*** for domestic natural anhydrous sodium sulfate. Table III-3, CR at III-8, PR at III-7.

⁶⁰ 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).

⁶¹ 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.

⁶² 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 estimated dumping margins ranging from 19.29 to 100.10 percent. 65 Fed. Reg. 47954 (Aug. 4, 2000).

⁶³ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. *See*, Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁶⁴ Table III-2, CR at III-5, PR at III-4; Table III-3, CR at III-7, PR at III-6.

percent in interim 1999.⁶⁵ Moreover, the domestic industry steadily increased its share of domestic consumption from *** percent in 1997 to *** percent in 1999. The domestic industry's market share was *** percent in interim 2000, compared to *** percent in interim 1999.⁶⁶

By contrast, the industry's employment⁶⁷ and financial performance declined over most of the period of investigation. In discussing financial performance, we note that, due to accounting conventions, full financial data are available only for the two natural producers, who accounted for *** percent of domestic production in 1999.⁶⁸ ⁶⁹ The data show steady declines in commercial sales values, gross profits, and operating income between 1997 and 1999, with some measures improving between the interim periods. The two natural domestic producers' operating income margin rose from *** percent in 1997 to *** percent in 1998, then declined to *** percent in 1999, and was *** percent in interim 2000 compared with *** percent in interim 1999.⁷⁰ Similarly, available data show that synthetic product producers experienced declining net sales on a per ton basis throughout the period of investigation.⁷¹ We note, however, that while the two natural producers reported *** associated with declining revenues, the synthetic producers ***.⁷²

These results demonstrate that declining prices for anhydrous sodium sulfate in the U.S. market have adversely affected the domestic industry's revenues and profitability to some extent, despite rising sales volumes.⁷³ As discussed above, however, we do not find the volume of subject imports to be significant, nor do we find that subject imports are having any significant negative price effect. The falling demand and the price declines that are at the root of the industry's financial woes are not due to subject imports. Accordingly, we find that the subject imports are not having a significant adverse impact on the domestic industry.

We therefore conclude that there is no reasonable indication that the domestic industry is materially injured by reason of the subject imports.

⁶⁵ Table III-2, CR at III-5, PR at III-4; Memorandum INV-X-187.

⁶⁶ Table IV-5, CR at IV-12, PR at IV-8.

⁶⁷ Production and related workers declined from 198 in 1997 to 157 in 1999 and were 150 in interim 2000, compared to 152 in interim 1999. Hours worked declined from 401,000 in 1997 to 337,000 in 1999 and were the same, 82,000, in interim 1999 and 2000. Table III-6, CR at III-14, PR at III-13.

⁶⁸ CR at III-2, PR at III-1.

⁶⁹ According to U.S. generally accepted accounting principles, principal production costs are not assigned to by-products, and related sales revenue is treated as either a deduction from cost of goods sold or "other revenue." Under these circumstances, a traditional profit-and-loss statement for by-product producers of anhydrous sodium sulfate does not exist. By contrast, the two petitioners account for production of this product in a manner which allows a traditional profit-and-loss statement to be developed. CR at VI-2, PR at VI-1.

⁷⁰ Table VI-1, CR at VI-3, PR at VI-2.

⁷¹ Table VI-2, CR at VI-4, PR at VI-2.

⁷² CR and PR at Appendix D. Overall capital expenditures by the domestic industry rose from \$*** in 1997 to \$*** in 1999. Table VI-7, CR at VI-14, PR at VI-5.

⁷³ The Commission data may overstate the effect of domestic price declines on the domestic industry's profitability because the financial data reflect not only the domestic sales of the two natural producers, but also their export sales of domestically produced product. When the two are separated, it is clear that ***. Producer questionnaire of ***; Table VI-6, CR at VI-12, PR at VI-5; CR at VI-13, PR at VI-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 consider 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 . . .”⁷⁴ 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.⁷⁵ In making our determination, we have considered all statutory factors that are relevant to this investigation.⁷⁶

The production capacity of the Canadian anhydrous sodium sulfate industry remained unchanged over the period of investigation and is not projected to increase in the near future. However, the Canadian industry’s production declined from 1997 to 1999 and between the interim periods, resulting in declining capacity utilization.⁷⁷ Moreover, the United States is by far the largest export market for the Canadian industry.⁷⁸ Nonetheless, despite the existence of this excess capacity, the volume of subject imports decreased rather than increased during the period of investigation. Nothing in the record indicates that this will soon change. Accordingly, we see no likelihood that the existing unused production capacity will, in the imminent future, result in substantially increased imports of the subject merchandise into the United States.

We have found that subject imports are not presently entering the United States at prices that are depressing or suppressing domestic prices to a significant degree and that any underselling by subject imports is not significant. There is no evidence to suggest that this situation is likely to change. In particular, we note that, among the *** contracts for which respondent engaged in competitive bidding for delivery in 2000, it was not the lowest bidder on any of the contracts, and among the *** of those contracts that it won in whole or in part, it was the highest bidder in each instance. Accordingly, we do not find that subject imports are likely to enter the United States at prices that are likely to have a significant depressing or suppressing effect on domestic prices.

⁷⁴ 19 U.S.C. §§ 1673d(b)(1) and 1677(7)(F)(ii).

⁷⁵ 19 U.S.C. § 1677(7)(F)(ii); *see, e.g.*, S. Rep. No. 249 at 88-89; *see also*, Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990).

⁷⁶ 19 U.S.C. § 1677(7)(F)(i). Factor I is inapplicable because no subsidies are alleged. Factor VII is inapplicable because this investigation does not involve imports of a raw agricultural product. There are no known antidumping duty orders or findings concerning anhydrous sodium sulfate from Canada in effect in any third country markets.

⁷⁷ Table VII-1, CR at VII-2, PR at VII-1.

⁷⁸ *Id.* Petitioners argue that transportation costs severely constrain the ability of Canadian producers to export to markets other than the United States. However, transportation costs are also an issue for domestic producers, yet they significantly increased their export sales during the period of investigation.

U.S. importers' inventories of Canadian anhydrous sodium sulfate rose over the period of investigation, but never exceeded *** percent of total imports or of U.S. shipments of imports.⁷⁹ Inventories held by Canadian producers were never large, and declined as a share of total shipments over the period.⁸⁰

There is no potential for product-shifting in this investigation, because there are no facilities in Canada currently producing other products that could also be used to produce anhydrous sodium sulfate.⁸¹ Because we have found no causal link between the domestic industry's financial troubles and *** and the volumes or prices of the subject imports, we cannot conclude that subject imports are having actual or potential negative effects on the existing development and production efforts of the domestic industry. Nor are there any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports of the subject merchandise.

For the foregoing reasons, we find no reasonable indication that the U.S. industry producing anhydrous sodium sulfate is threatened with material injury by reason of subject imports from Canada.

CONCLUSION

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 allegedly LTFV imports of anhydrous sodium sulfate from Canada.

⁷⁹ Table VII-2, CR at VII-5, PR at VII-3.

⁸⁰ Table VII-1, CR at VII-2, PR at VII-1.

⁸¹ CR at II-4, PR at II-3.