

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN AMMONIUM NITRATE FROM UKRAINE

Investigation No. 731-TA-894 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3374, DECEMBER 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured² by reason of imports from Ukraine of certain ammonium nitrate³ provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On October 13, 2000, a petition was filed with the Commission and the Department of Commerce by the Committee For Fair Ammonium Nitrate Trade ("COFANT") whose members include Air Products & Chemicals, Inc., Allentown, PA; Mississippi Chemical Corp., Yazoo City, MS; El Dorado Chemical Co., Oklahoma City, OK; La Roche Industries, Inc., Atlanta, GA; and Nitram, Inc., Tampa, FL, alleging

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 Commissioner Askey finds a reasonable indication that an industry in the United States is threatened with material injury.

³ The product covered by this investigation is solid, fertilizer grade ammonium nitrate, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this investigation is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).

that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain ammonium nitrate from Ukraine. Accordingly, effective October 13, 2000, the Commission instituted antidumping duty investigation No. 731-TA-894 (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 October 20, 2000 (65 *FR* 63093). The conference was held in Washington, DC, on November 3, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that there is a reasonable indication that an industry in the United States is materially injured⁴ by reason of imports of high density ammonium nitrate (“HDAN”) from Ukraine that are allegedly sold in the United States at less than fair value (“LTFV”).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing 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.⁵ 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.”⁶

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining 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.”⁷ 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.”⁸ 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”⁹

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.¹⁰ No single factor is dispositive, and the Commission

⁴ Commissioner Askey finds a reasonable indication that the domestic industry producing HDAN is threatened with material injury by reason of the subject imports. She joins in sections I, II, and III-A of these views. *See* Additional Views of Commissioner Thelma J. Askey.

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

⁶ 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).

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10).

¹⁰ *See, e.g.*, NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.¹¹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹² 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.¹³

B. Product Description

In its notice of initiation, Commerce defined the merchandise subject to this investigation as follows:

solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).¹⁴

High-density or fertilizer grade ammonium nitrate (“HDAN”) is a fertilizer used to deliver nitrogen to the soil.¹⁵ Ammonium nitrate (“AN”) is produced by the direct reaction of ammonia (NH₃) with nitric acid (HNO₃). Depending on the producer, HDAN may be produced in either granular or prill form. Granules are formed by layering molten HDAN onto seed particles in a rotary pan or drum granulator, and prills are formed by spraying molten HDAN droplets into specially designed towers and allowing the molten droplets to free-fall through an upward current of cool air until they solidify into small spheres.¹⁶

¹⁰ (...continued)

the particular record at issue’ and the ‘unique facts of each case’ ”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See Nippon*, 19 CIT at 455, n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹¹ *See, e.g.*, S. Rep. No. 96-249, at 90-91 (1979).

¹² *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.”).

¹³ *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (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).

¹⁴ 65 Fed. Reg. 66966 (Nov. 8, 2000).

¹⁵ Confidential Report (“CR”) at I-5-I-6, Public Report (“PR”) at I-4-I-5.

¹⁶ CR at I-6-I-7, PR at I-5-I-6.

C. Domestic Like Product Issues

In this investigation, both the petitioner¹⁷ and the respondents¹⁸ agree that the Commission should not include ammonium nitrate with a bulk density less than 53 pounds per cubic foot (“low density” or “LDAN,” also known as “industrial” or “explosive” grade AN) in the domestic like product.¹⁹ In its recent investigation of Certain Ammonium Nitrate from Russia, although none of the parties advocated its inclusion, the Commission considered whether the like product should include LDAN, but, based on a traditional six factor analysis, concluded that LDAN is not like HDAN.²⁰ In light of the parties’ agreement, and for the reasons discussed in the Russian case, we do not revisit the issue here.

Respondents in this investigation have also indicated that they do not object to a domestic like product limited to HDAN, and have not sought to include other nitrogen-based fertilizers in the like product. In the Russian investigation, by contrast, the respondents urged the Commission to consider including other nitrogen-based fertilizers.²¹ As in the Russian investigation, the limited evidence of record in the instant investigation indicates that, at a minimum, there are differences in physical characteristics (*e.g.*, nitrogen content, volatility, fast-acting properties), end uses (*i.e.*, differences in suitability based on climate, crop, and terrain), production processes, and price between HDAN and other nitrogen-based fertilizers.²² Thus, based on the evidence that other nitrogen-based fertilizers are distinct from HDAN in certain important respects, and in light of the parties’ agreement on the appropriate like product in this investigation, we define the domestic like product in this investigation as high density ammonium nitrate, coextensive with the scope of investigation.

¹⁷ Petitioner is the Committee for Fair Ammonium Nitrate Trade (“COFANT” or “petitioner”), an ad hoc committee made up of five domestic producers of HDAN: Air Products & Chemicals, Inc., El Dorado Chemical Co., LaRoche Industries, Inc., Mississippi Chemical Corp., and Nitram, Inc. Petition at 9. On October 31, 2000, shortly after the filing of the petition, LaRoche Industries’ HDAN operations were purchased by LSB Industries, the corporate parent of El Dorado. Also appearing in support of the petition is non-petitioning domestic producer Agrium US, Inc. (“Agrium”).

¹⁸ Respondents participating in this investigation are ConAgra International Fertilizer Co., Inc. (“ConAgra”), an importer of subject merchandise, and JSC Concern Stirol (“Stirol”), a Ukrainian producer and exporter of the subject merchandise. Also appearing in this investigation are the Government of Ukraine, Ministry of Economy, and the Committee for a Competitive AN Market, a group of American farmers, AN retailers, wholesalers/distributors, and traders/importers.

¹⁹ Petitioner’s Postconference Brief at 2; Transcript of Preliminary Staff Conference (Nov. 3, 2000) (“Conf. Tr.”) at 152-153 (Mr. Farrell).

²⁰ Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Preliminary), USITC Pub. 3232 at 5-7 (Sept. 1999).

²¹ ConAgra Postconference Brief at 4; Stirol Postconference Brief at Q-7.

²² Conf. Tr. at 12 (Mr. Porvaznik), 60 (Mr. Ewing), 101-102 (Mr. Spatar), 124-125 (Mr. Vernon), 129-131 (Mr. Wendel), 150-151 (Messrs. Vernon and Wendel), 166-167 (Ms. Slater); CR at II-10-II-13, PR at II-7-II-9; Petitioner’s Postconference Brief at 3, 6-10; ConAgra Postconference Brief at 7-10. *See also* Letter dated Dec. 15, 1999, from Valerie A. Slater, counsel to COFANT, to Donna R. Koehnke in Investigation No. 731-TA-856 (Final) at 2-5 (incorporated by reference by petitioner in its postconference brief at 3 n.12).

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product”²³ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²⁴ Based on our definition of the like product, we find that the domestic industry consists of the ten domestic producers of HDAN that were operating during the period of investigation.²⁵

We must also consider whether any producers of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in 19 U.S.C. § 1677(4)(B). That provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.²⁶ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.²⁷

In the preliminary phase of this investigation, no domestic producer imported or purchased subject merchandise during the period of investigation (which ended September 30, 2000) or is related through corporate affiliation with a producer or importer of subject merchandise. We note, however, that petitioner LaRoche purchased *** short tons of subject merchandise from importer *** for delivery in October 2000.²⁸ In previous investigations, the Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist where the domestic producer was responsible for a predominant proportion of an

²³ 19 U.S.C. § 1677(4)(A).

²⁴ 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).

²⁵ The companies that were domestic producers during the period of investigation are petitioners Air Products, El Dorado, LaRoche (purchased by LSB Industries, the parent of petitioner El Dorado, effective Oct. 31, 2000), Mississippi Chemical, and Nitram, as well as Agrium, Coastal Chem, PCS Nitrogen, Prodicta LLC (formerly Unocal, its fertilizer assets were acquired by Agrium effective Sept. 30, 2000), and Wil-Gro (which ceased operation in December 1999). Table III-1, CR at III-2, PR at III-2; Conf. Tr. at 11 (Mr. Porvaznik) and 39-40 (Mr. Junker).

²⁶ 19 U.S.C. § 1677(4)(B).

²⁷ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producer vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, *e.g.*, Melamine Institutional Dinnerware from China, Indonesia and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (Feb. 1997).

²⁸ CR at III-6 and n.2, PR at III-6 n.2; LaRoche Producer Questionnaire at section II-13.

importer's purchases and the importer's purchases were substantial.²⁹ Here, however, LaRoche's reported purchases account for *** percent of total subject imports projected by *** for full-year 2000.³⁰ Thus, the quantity of purchases does not appear to be sufficiently substantial to warrant a conclusion that LaRoche controlled ***. Moreover, none of LaRoche's reported data, which cover a period predating its purchases of subject imports, are affected by those purchases. Nevertheless, we will, if necessary, revisit the issue of whether any domestic producer is a related party in any final phase of this investigation.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS³¹

In the preliminary phase of antidumping or countervailing 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.³² 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.³³ The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."³⁴ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.³⁵ 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."³⁶

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing HDAN is materially injured by reason of subject imports from Ukraine that are allegedly sold in the United States at less than fair value.

²⁹ See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (Apr. 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (Apr. 1997).

³⁰ See Petitioner's Postconference Brief, Exhibit 1 at 3-4, and Exhibit 9.

³¹ Imports from Ukraine accounted for approximately *** percent of all U.S. imports of HDAN during the 12-month period preceding the filing of the petition (October 1999 - September 2000). CR at IV-1, PR at IV-1. Therefore, negligibility is not an issue in this investigation. See 19 U.S.C. § 1677(24)(A)(i)(I).

³² 19 U.S.C. § 1671b(a) and 1673b(a).

³³ 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).

³⁴ 19 U.S.C. § 1677(7)(A).

³⁵ 19 U.S.C. § 1677(7)(C)(iii).

³⁶ 19 U.S.C. § 1677(7)(C)(iii).

A. Conditions of Competition ³⁷

HDAN is a commodity product, without readily identifiable variations or grades.³⁸ However, the quality of the product may deteriorate through exposure to moisture, changes in temperature, or repeated handling. Because of the longer distance it must be transported and the additional handling that entails, the subject merchandise is exposed more often, and for longer periods of time, to these adverse conditions, which can result in more caking and a higher level of fines than are typical of the domestic like product.³⁹ The addition of anti-caking and stabilizing agents to the product helps reduce these problems to some extent, as does the importers' practice of scheduling the arrival of the imported product to coincide with the spring planting season, so as to avoid additional storage time.⁴⁰ Therefore, despite the somewhat higher risk of product degradation, we conclude that the subject merchandise is largely interchangeable with the domestic like product.⁴¹ Moreover, the limited evidence of record indicates that price is important to purchasers when selecting a supplier for HDAN.⁴²

³⁷ As noted in the Report, in this investigation staff grouped tolled shipments with internal shipments for reporting purposes to minimize the effect that shipments of toll-converted product (for which the tolling fee does not include the cost of ammonia) would have on the unit value of commercial shipments. CR at III-3, PR at III-3; CR at VI-2 n.3, PR at VI-1 n.3. Thus, although combined internal shipments and tolled shipments accounted for between 1.8 and 6.5 percent of domestic producers' total U.S. shipments during the period of investigation, these data reflect mostly shipments of tolled product. Table III-3, CR at III-4, PR at III-4. Accordingly, we need not consider whether the statutory captive production provision, 19 U.S.C. § 1677(7)(C)(iv), applies in this investigation.

³⁸ CR at I-5, PR at I-4; CR at II-20, PR at II-14; Conf. Tr. at 12-14 (Mr. Porvaznik).

³⁹ Absorption of water from the atmosphere can cause HDAN to cake, such that the individual free-flowing particles form a solid mass, which inhibits proper application to the ground. CR at I-8 and n.21, PR at I-6 and n.21. Expansion and contraction due to temperature changes as well as repeated handling cause HDAN particles to break down, resulting in a higher level of fines (*i.e.*, particles of sub-specification size), which can make the product more difficult to apply evenly and more difficult to mix into fertilizer blends. CR at I-8 and n.21, PR at I-6 and n. 21; CR at II-23-II-24 and n.57, PR at II-15 and n.57; Conf. Tr. at 139-140 (Mr. Vernon), 145-146 (Mr. Harlander) (noting that fines and caked product are suitable for processing into liquid UAN fertilizer, but not for direct application as solid HDAN).

⁴⁰ CR at II-21, PR at II-14; Conf. Tr. at 86 (Messrs. Spatar and Bolotsky), 98-99 (Mr. Spatar), 139-140 (Mr. Vernon) (importing product in season to avoid storage time improves quality), 143-146, 162 (Mr. Harlander).

⁴¹ Conf. Tr. at 156 (Mr. Vernon) (while growers previously perceived quality problems with imported product, now they seldom ask the origin of the product), 142-143 (Mr. Harlander) (process improvements have improved Ukrainian product to acceptable quality for U.S. market). In this regard, as discussed below with respect to the volume of the subject imports, we agree with petitioner that the ability of Ukrainian producers to bring their product up to U.S. quality standards and the ability of U.S. importers to sell such large quantities of the product in one season is persuasive evidence of the acceptable quality of the Ukrainian product not just before shipment, storage, and handling, but at the retail level as well.

⁴² The information of record with respect to factors affecting purchasing decisions is derived from the public record in our recent investigation of Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338 (Aug. 2000). In that case, the majority of responding purchasers reported that the lowest price would always or usually win the sale. CR at II-22-II-23, PR at II-15. In any final phase of this investigation, we will seek updated information from purchasers regarding the importance of price to their purchasing decisions.

Consumption of HDAN is seasonal, with demand peaking in the spring planting season. Nevertheless, production efficiencies dictate that HDAN is produced throughout the year.⁴³ Product produced in the off-season must be stored either in the producer's or purchaser's facilities. Traditionally, domestic producers offer HDAN at lower prices during off-season periods, such as the "fall fill" period, to stimulate demand and induce purchasers to share the storage burden.⁴⁴ Overall, demand for fertilizers in the U.S. market is generally considered to be mature.⁴⁵ As with other fertilizers, however, demand for HDAN is affected by planted acreage and application rates, each of which in turn is influenced by crop prices and weather.⁴⁶

HDAN is one of several nitrogen-based fertilizers; others include anhydrous ammonia, urea, UAN solutions, ammonium sulfate, calcium ammonium nitrate, and sodium nitrate.⁴⁷ HDAN is distinguished from these other nitrogen-based fertilizers by its fast action, good solubility, and low volatility at ambient temperatures.⁴⁸ It is used principally to fertilize certain types of row crops (such as corn, soybeans, wheat, and cotton), tobacco, citrus, and pasture and forage crops. HDAN's unique combination of properties makes it the preferred source of nitrogen for crops that use "no-till" planting and in warm climates.⁴⁹ The record indicates that, even where HDAN is the preferred fertilizer, other nitrogen-based fertilizers may be substitutable for HDAN to a varying extent, depending on cost, climate, terrain, and crop selection.⁵⁰ Nevertheless, the unique properties of HDAN may explain why, despite the possibility of substitution, HDAN generally sells at a premium (on a per unit of nitrogen basis) over other nitrogen-based fertilizers in the U.S. market.⁵¹

Another important condition of competition is the presence of nonsubject imports, chiefly from Canada, the Netherlands, and Russia. The evidence of record indicates that nonsubject imports are generally good substitutes for both the domestic like product and the subject imports.⁵² During the period of investigation, the volume of nonsubject imports from all sources other than Russia rose in each calendar year and was higher in interim (January - September) 2000 than in interim 1999.⁵³ The volume of imports from Russia rose between 1997 and 1999.⁵⁴ On July 23, 1999, the petitioner in the instant investigation filed an antidumping duty petition against imports of HDAN from Russia. On January 7, 2000, Commerce published its preliminary affirmative determination in the Russian investigation and ordered the suspension

⁴³ CR at V-9, PR at V-7; Conf. Tr. at 62-63, 69-70 (Mr. Ewing).

⁴⁴ CR at V-9, PR at V-7; Conf. Tr. at 62-65 (Mr. Ewing).

⁴⁵ CR at II-8, PR at II-5.

⁴⁶ CR at II-8-II-10, PR at II-5-II-6.

⁴⁷ CR at I-6, PR at I-6; CR at II-10, PR at II-7.

⁴⁸ *CR at II-10-II-12, PR at II-7-II-8.*

⁴⁹ CR at I-6, PR at I-5; CR at II-7-II-8, PR at II-5; Conf. Tr. at 60 (Mr. Ewing).

⁵⁰ CR at II-10-II-12, PR at II-7-II-9; Table II-1, CR at II-13, PR at II-8; Conf. Tr. at 124-125 (Mr. Vernon), 129-131 (Mr. Wendel). In the investigation of Certain Ammonium Nitrate from Russia, 10 out of 28 responding purchasers indicated that they do not substitute other fertilizers for HDAN. Of the purchasers that indicated that they do substitute, some indicated that they substituted freely, but half indicated that substitution was infrequent or was limited by factors such as weather conditions. See USITC Pub. 3338 at 7. The data underlying these conclusions have been incorporated into the record of the instant investigation. See CR at II-14, PR at II-9.

⁵¹ CR at II-16-II-17, PR at II-10-II-11.

⁵² CR at II-24-II-25, PR at II-16; Conf. Tr. at 112 (Mr. Harlander) (ConAgra has imported and sold in the United States HDAN from Egypt, the Netherlands, Russia, Ukraine, and Canada).

⁵³ Table IV-1, CR at IV-2, PR at IV-2.

⁵⁴ Table IV-1, CR at IV-2, PR at IV-2.

of liquidation on imports of HDAN from Russia.⁵⁵ HDAN imports from Russia quickly fell to virtually zero.⁵⁶ On May 19, 2000, Commerce and the Government of Russia entered into a suspension agreement. The suspension agreement provides for a quota of 49,962 metric tons of HDAN from Russia in 2000, 100,000 metric tons in 2001, and annual increases thereafter through 2004. The suspension agreement also provides that the price at which all imports of HDAN from Russia are made must be at or above a “reference price” set with reference to weekly market prices in the United States, but at no times lower than a “floor price” of \$85 per ton FOB Russian port.⁵⁷ On August 2, 2000, the Commission made a final affirmative determination in its investigation of HDAN from Russia, based on data covering the period 1997-1999.⁵⁸ There have been no or virtually no imports of HDAN from Russia in 2000.⁵⁹

A final condition of competition that we have considered is the cost of natural gas. Natural gas is a primary raw material in the manufacture of HDAN, accounting for between 30 and 50 percent of its cost of production.⁶⁰ Petitioner estimates that the price of natural gas to U.S. fertilizer producers was nearly 30 percent higher in September 2000 than in September 1999 and is currently at its highest level, in nominal terms, in the past 20 years.⁶¹ Record evidence tends to confirm that natural gas prices fell early in the period of investigation and rose sharply at the end.⁶²

B. Volume of the 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.”⁶³

The volume of subject imports from Ukraine was zero short tons in 1997, *** short tons in 1998, and zero short tons in 1999, representing *** percent of U.S. apparent consumption in 1998. In interim 2000, however, subject imports from Ukraine shot up to *** short tons, gaining a U.S. market share of *** percent by quantity.⁶⁴ In addition to imports received during interim 2000, responding importers reported

⁵⁵ 65 Fed. Reg. 1139, 1144 (Jan. 7, 2000).

⁵⁶ Table IV-1, CR at IV-2, PR at IV-2.

⁵⁷ 65 Fed. Reg. 37759, 37760 (June 16, 2000).

⁵⁸ Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338 (Aug. 2000). The Commission completed the final phase of its investigation after the filing of a request for continuation of the investigation by the petitioner.

⁵⁹ Table IV-1, CR at IV-2, PR at IV-2. Petitioner contends that there have been no imports from Russia this year because Ukrainian product is selling in the United States at prices below the floor price established in the suspension agreement. Conf. Tr. at 76 (Ms. Slater); Petitioner’s Postconference Brief at 16-17. Respondent ConAgra argues that it wishes to import product from Russia, but has been unable to do so because the Government of Russia has failed to allocate the available quota. Conf. Tr. at 161 (Mr. Harlander). In any final phase of the investigation, we will seek additional information on the status of the Russian suspension agreement quota.

⁶⁰ CR at V-1-V-2, PR at V-1.

⁶¹ Conf. Tr. at 23 (Mr. Ewing), 30 (Mr. Klett); CR at VI-4 (gas cost tabulation provided by Mississippi Chemical).

⁶² CR at V-1-V-2, PR at V-1.

⁶³ 19 U.S.C. § 1677(7)(C)(i).

⁶⁴ Table IV-1, CR at IV-2, PR at IV-2; Table IV-3, CR at IV-4, PR at IV-4. While the Commission typically prefers to base its determinations on full-year data and sometimes places less emphasis on interim data, in this

(continued...)

an additional *** short tons of Ukrainian product expected to be delivered in *** 2000.⁶⁵ These additional volumes bring total subject imports for the year 2000 to date to at least *** short tons.⁶⁶ In our view, this rapid rise in the volume and market share of the subject imports from virtually nothing to over *** percent of the market is evidence of the acceptable and marketable quality of the Ukrainian product, despite respondents' claim that its quality is inferior, and demonstrates the Ukrainian producers' ability to ship large volumes to serve the U.S. market despite claimed transportation and logistical difficulties.⁶⁷

Moreover, the record indicates that the subject imports gained market share during interim 2000 at the expense of the domestic industry. The market share held by the domestic industry, which fell from 1997 to 1998 and remained steady between 1998 and 1999, was lower by three percentage points in interim 2000 compared with interim 1999.⁶⁸

Based on the rapid increase in the volume and market share of the subject imports in interim 2000 as compared to earlier periods, the ability of such imports to gain widespread market acceptance in a single crop year despite alleged quality problems, and the fact that such imports took market share from the domestic industry, for purposes of this preliminary determination, we find both the volume of the subject imports and the increase in that volume to be significant both in absolute terms and relative to consumption in the United States.

C. Price Effects of the 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.⁶⁹

Prices for HDAN tend to follow seasonal trends. They are generally higher in the spring planting season and lower in the fall and early winter. Thus, price trends are best discerned by comparing prices for

⁶⁴ (...continued)

investigation we rely principally on data for interim (January - September) 2000, because the interim data cover nine months of a year and because subject imports from Ukraine have only had a significant presence in the U.S. market during 2000. We note, moreover, that because most HDAN consumption in the United States occurs in the spring, the interim data include the entire 2000 planting season. Conf. Tr. at 27-28 (Mr. Klett) (shipments build in fourth and first quarters, demand peaks in second quarter, and third quarter is historically lowest volume period). We therefore determine that the interim data provide a reasonable basis upon which to reach our determination.

⁶⁵ CR at VII-5, PR at VII-5.

⁶⁶ By contrast, we note that imports from Russia peaked at *** short tons in calendar year 1999. Table IV-1, CR at IV-2, PR at IV-2.

⁶⁷ See generally Stinol Postconference Brief at 4-9; Conf. Tr. at 85-89 (Statement of Messrs. Spatar and Bolotsky), 98-99 (Mr. Spatar), 142-144 (Mr. Harlander) (explaining how ConAgra arranged for upgrades to the quality of the Ukrainian product and a regular gas supply to Cherkassy).

⁶⁸ Table IV-3, CR at IV-4, PR at IV-4.

⁶⁹ 19 U.S.C. § 1677(7)(C)(ii).

the same month over successive years.⁷⁰ Measured in this manner, prices for the domestic like product declined continuously between 1997 and 1999.⁷¹ As noted above, there was little or no Ukrainian product present in the U.S. market at the time these price declines occurred. In the Russian investigation, the Commission found that the large volumes of LTFV imports from Russia depressed and suppressed domestic prices during those years.⁷² In 2000, by contrast, there were no imports from Russia, but a significant volume of imports from Ukraine. Prices for the domestic like product were higher in eight of the first nine months of 2000 than they were in the same month in 1999, although they remained considerably below their 1997 levels.⁷³

As noted, the record in this preliminary phase of the investigation indicates that HDAN is a commodity-type product, and that the domestic like product and the subject imports are largely substitutable.⁷⁴ Moreover, in the recent investigation of HDAN from Russia, purchasers indicated that price is an important factor in their purchasing decisions.⁷⁵ In 2000, subject imports from Ukraine undersold the domestic like product in all nine months for which comparisons were possible, by margins ranging from 4.9 to 24.1 percent.⁷⁶ In these circumstances, we conclude that underselling by the subject imports has been significant.⁷⁷

Based on the limited record in the preliminary phase of this investigation, we further conclude that the substantial volumes of subject imports that entered the U.S. market in the first nine months of 2000 suppressed price increases for the domestic like product that otherwise would have occurred to a significant degree. Our starting point for this analysis is the Russian investigation, in which the Commission found that, because of the depressing and suppressing effect on prices of the subject imports, domestic producers' HDAN prices during the 1999 fertilizer year were at depressed levels relative to 1997.⁷⁸ As noted above, the record shows that domestic prices for both the subject imports and the domestic like product were

⁷⁰ CR at V-9, PR at V-7.

⁷¹ Table V-1, CR at V-12, PR at V-6.

⁷² USITC Pub. 3338 at 9-11.

⁷³ Table V-1, CR at V-12, PR at V-6. Mississippi Chemical, the largest U.S. producer of HDAN, testified that early in the spring 2000 season, it refused to meet the low prices of Ukrainian imports. When the volume of such imports proved to be larger than Mississippi Chemical anticipated, it made the decision in June 2000 to lower its price to *** in order to reduce inventories. While Mississippi Chemical achieved *** in that month, its price reduction significantly reduced the weighted average domestic sales price reported for that month. CR at V-11, PR at V-9.

⁷⁴ CR at II-20-II-21, PR at II-14; Conf. Tr. at 156 (Mr. Vernon) (while growers previously perceived quality problems with imported product, now they seldom ask the origin of the product), 142-143 (Mr. Harlander) (process improvements have improved Ukrainian product to acceptable quality for U.S. market).

⁷⁵ CR at II-22-II-23, PR at II-15.

⁷⁶ Table V-2, CR at V-13, PR at V-8. Indeed, the differences in reported weighted average selling prices for Ukrainian HDAN were below those for the domestic product by between *** and *** per ton in eight of the nine months of interim 2000 -- an amount significantly exceeding the \$5 to \$7 per ton premium that one purchaser testified he is willing to pay for the domestic product. Conf. Tr. at 128 (Mr. Vernon). In addition, we note that Ukrainian imports undersold the domestic like product in the three possible comparisons in 1998 and the one possible comparison in 1999. Table V-2, CR at V-13, PR at V-8.

⁷⁷ In addition, although they represent a relatively small volume of the domestic industry's sales, we find that the evidence of numerous confirmed instances of sales and revenues lost on the basis of price tends to support our finding that underselling by the subject imports is significant. CR at V-17, PR at V-10; Tables D-1 and D-2, CR and PR at Appendix D.

⁷⁸ USITC Pub. 3338 at 9-11.

higher in interim 2000 than in the same months of interim 1999. However, beginning in late 1999 and continuing throughout interim 2000, the domestic industry has experienced a significant increase in its natural gas costs, which, as noted above, account for 30 to 50 percent of the cost of production of HDAN.⁷⁹ This rise in the cost of natural gas is reflected in the increase in the industry's unit cost of goods sold from \$102.02 per short ton in interim 1999 to \$117.06 in interim 2000.⁸⁰ Thus, the evidence suggests that, despite rising prices, the combination of low-priced competition from the subject imports and rising production costs have put the domestic industry in a cost-price squeeze.⁸¹

In these circumstances, even though rising prices have allowed domestic producers to pass on at least some of their increasing costs, as discussed further below, the price increases have not been sufficient to return domestic prices to profitable levels.⁸² Moreover, while we have considered whether the prices of nonsubject imports may be responsible for the failure of domestic prices to recover significantly from their 1999 lows, the average unit values for nonsubject imports from all sources, as well as those for nonsubject imports from Canada and Russia individually, have been well above those for the subject product in interim 2000.⁸³ Accordingly, based on the high degree of substitutability between the subject imports and the domestic like product, the industry's need to pass on rising costs in order to regain profitability and recover from the price depressing effects of Russian HDAN in 1997-1999, and the significant underselling by the subject imports, we conclude that the subject imports have suppressed price increases that otherwise would have occurred to a significant degree.

D. Impact of the Subject Imports

⁷⁹ Figure V-1, CR at V-2, PR at V-2. These data show that, after falling irregularly from a January 1997 high of \$69 per short ton of HDAN to a low of \$40 in May 1999, natural gas costs of HDAN production rose in almost every subsequent month until reaching \$77 in September 2000. CR at V-1, PR at V-1. In addition, petitioner Mississippi Chemical provided its own natural gas cost per short ton of HDAN. Its data show the cost per ton falling to a low of *** in 1998, and rising to a high of *** in interim 2000, compared with *** in interim 1999. CR at VI-4, PR at VI-3.

⁸⁰ Table VI-2, CR at VI-4, PR at VI-3. When assessing whether the domestic industry has experienced price suppression, we generally consider the industry's cost of goods sold as a percentage of net sales. In this instance, the ratio of COGS to net sales was very slightly lower in interim 2000 than in interim 1999. Table VI-1, CR at VI-3, PR at VI-2 (showing COGS/net sales ratio of 97.3 percent in interim 1999 and 96.9 percent in interim 2000). Based on the limited record in this preliminary phase of the investigation, however, we cannot conclude that this slight decline in the ratio of COGS to net sales means that domestic HDAN prices are not suppressed, especially in light of the Commission's finding in the recent investigation involving Russia that domestic prices were suppressed and depressed in 1999. In any final phase of the investigation, we will further investigate the relationship between natural gas costs, HDAN production costs, and the price of HDAN, in order to determine the extent to which domestic producers could reasonably expect to pass on increased natural gas costs in the form of higher prices.

⁸¹ A cost-price squeeze occurs when a producer is unable fully to pass on increases in its cost of production in the form of price increases. Respondents concede that the domestic industry faces this situation. Conf. Tr. at 152 (Mr. Reilly).

⁸² See *City Lumber Co. v. United States*, 311 F. Supp. 340, 347-348 (Cust. Ct. 1970) (in second of two sequential investigations involving imports of same product from different countries, Commission may base injury determination with respect to the second country on sales at LTFV that continue injury due to subject imports from the first country), *aff'd*, 457 F.2d 991 (C.C.P.A. 1972).

⁸³ Table IV-1, CR at IV-2, PR at IV-2.

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.⁸⁴ 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.”^{85 86 87}

As noted above, domestic producers of HDAN have historically found it most efficient to operate their plants at high rates of capacity utilization and, when necessary, to meet lower subject import prices in order to maintain market share.⁸⁸ As the Commission found in the Russian investigation, the data tend to reflect this pattern to some extent during the period 1997-1999, with domestic shipments rising and shipment values falling.⁸⁹ Despite this preference for continuous production, however, several domestic producers opted to cease producing HDAN for extended periods in 2000, citing rising costs and depressed prices.⁹⁰ Domestic shipments by quantity were lower by 9.2 percent in interim 2000 than in interim 1999.⁹¹ Comparing interim 2000 to interim 1999, the domestic industry also experienced lower production, capacity utilization, employment, productivity, and capital expenditures.⁹²

Comparing interim 2000 to interim 1999, domestic shipment values were 4.6 percent higher, reflecting somewhat higher prices.⁹³ Nevertheless, as discussed above, domestic producers were caught in

⁸⁴ 19 U.S.C. § 1677(7)(C)(iii). *See also* Statement of Administrative Action (“SAA”) to the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103-316, at 851 and 885 (1994) (“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.).

⁸⁵ 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 at 25 n.148 (Feb. 1999).

⁸⁶ 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 weighted average dumping margins of between 222 and 285 percent. 65 Fed. Reg. 66966, 66968 (Nov. 8, 2000).

⁸⁷ 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); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 at 11 n.63 (Sept. 2000).

⁸⁸ Conf. Tr. at 62-63 (Mr. Ewing).

⁸⁹ Table C-1, CR at C-4, PR at C-4; USITC Pub. 3338 at 10, 11-12.

⁹⁰ CR at E-3, E-4, and E-6, PR at E-3 (***) reported shutting down production in ***; *** reported shutting down production at its ***; and *** reported shutting down its plant in ***). Although several domestic producers reported shutdowns earlier in the period of investigation, the production shutdowns in interim 2000 appear to be of longer collective duration.

⁹¹ Table C-1, CR at C-4, PR at C-4. The decline in shipments between interim 1999 and interim 2000 is probably understated, because Wil-Gro, a domestic producer that ceased operating in December 1999, did not respond to the questionnaire in this investigation. Table III-1 n.3, CR at III-2, PR at III-2.

⁹² Table VI-1, CR at VI-3, PR at VI-2; Table VI-5, CR at VI-9, PR at VI-5.

⁹³ Table C-1, CR at C-4, PR at C-4. We again point out that, beginning in late 1999 and continuing throughout interim 2000, the domestic industry experienced a significant increase in the cost of natural gas. Figure V-1, CR at (continued...)

a cost-price squeeze, unable to recover from their financial losses in 1999 due to competition from low-priced imports from Ukraine. Thus, while the value of net sales was \$174.5 million in interim 2000, compared with \$167.2 million in interim 1999, the industry's operating profit as a percentage of net sales improved only slightly from negative 5.3 percent in interim 1999 to negative 3.8 percent in interim 2000, well below the positive operating income margins achieved in 1997 and 1998.⁹⁴ The industry's continued financial troubles caused several producers to have their creditworthiness downgraded or to lose access to capital necessary to maintain and improve their production facilities.⁹⁵

In light of the departure of Russian HDAN from the U.S. market, and particularly after relief was provided to the domestic industry, we would have expected the condition of the domestic industry to improve. Indeed, domestic producers reported that their "fall-fill" sales campaign in fall 1999 was far more successful than in 1997 and 1998, because purchasers were not confident that Russian HDAN would be available in sufficient quantities in spring 2000.⁹⁶ Moreover, once Commerce suspended liquidation of imports of HDAN from Russia in January 2000, such imports virtually disappeared from the U.S. market. However, because of the surge in allegedly LTFV imports from Ukraine, which have undersold the domestic like product and suppressed additional price increases, the industry has hardly made any recovery in interim 2000 from its injured condition at the end of 1999. Indeed, in some respects, the industry's condition has continued to deteriorate, with another permanent plant closure – LaRoche's Crystal City plant – reportedly underway.⁹⁷ For all these reasons, we find that the subject imports had a significant adverse impact on the domestic industry.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing HDAN is materially injured by reason of imports of HDAN from Ukraine that are allegedly sold in the United States at LTFV.

⁹³ (...continued)

V-2, PR at V-2.

⁹⁴ Table VI-1, CR at VI-3, PR at VI-2.

⁹⁵ CR and PR at Appendix E.

⁹⁶ Conf. Tr. at 63-65 (Mr. Ewing).

⁹⁷ Conf. Tr. at 16 (Mr. Porvaznik).

ADDITIONAL VIEWS OF COMMISSIONER THELMA J. ASKEY

I find that there is a reasonable indication that a domestic industry producing high density ammonium nitrate (“HDAN”) is threatened with material injury by reason of imports from Ukraine that are alleged to be sold in the United States at less than fair value (“LTFV”). I join my colleagues’ discussion of the domestic like product, domestic industry, conditions of competition and the legal standard for present material injury. Nevertheless, I write separately to explain my determination that the domestic industry producing HDAN is threatened with material injury by reason of subject imports.

Threat of Material Injury by Reason Of LTFV Imports from Ukraine

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.”⁹⁸ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”⁹⁹ In making my determination, I have considered all factors that are relevant to this investigation.¹⁰⁰

Based on an evaluation of the relevant statutory factors, I find that the domestic industry producing HDAN is threatened with material injury by reason of imports of HDAN from Ukraine that are alleged to be sold in the United States at less than fair value.

The data available in this preliminary investigation show that production capacity in Ukraine is quite large and that the industry has substantial available excess capacity. The record shows that the industry’s capacity fluctuated slightly but remained over 2.0 million short tons during most of the POI.¹⁰¹ The industry’s capacity utilization rate remained below 60 percent until interim 2000, when it increased to 76.2 percent.¹⁰² In interim 2000, when Ukrainian exports to the United States were at their peak, available data show the industry as still having more than 350,000 short tons of available capacity, which represents almost twice the amount of Ukrainian imports in that period.¹⁰³ Further, the record shows that Ukrainian producers significantly increased their exports to other markets; Ukrainian exports to all other markets were more than twice as great in interim 2000, at *** short tons, than in interim 1999, at *** short tons.¹⁰⁴ Moreover, while respondents indicated that they experienced significant logistical problems with shipping HDAN to the United States, the record shows that they were able to overcome those difficulties with

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

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

¹⁰⁰ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

¹⁰¹ CR and PR at Table VII-2.

¹⁰² CR and PR at Table VII-2.

¹⁰³ See CR and PR at Table VII-2.

¹⁰⁴ CR and PR at Table VII-2.

relative ease, as evidenced by the relatively rapid increase in subject import volumes.¹⁰⁵ Subject import shipments increased more than ten-fold between 1998 and interim 2000, increasing from *** short tons in 1998 to *** short tons in the interim period; they accounted for *** percent of domestic apparent consumption in interim 2000, compared with a mere *** percent in 1998, when they were at their pre-2000 peak.¹⁰⁶ Likewise, the industry was able to overcome reported quality problems and limited access to necessary natural gas supplies.¹⁰⁷ The record also indicates that the European Union has made a provisional finding of dumping of Ukrainian HDAN in the EU and has imposed a provisional antidumping duty.¹⁰⁸ Additionally, the record indicates that China may be substantially limiting its imports of HDAN from Ukraine and other sources at this time.^{109 110} Thus, it is likely that Ukrainian producers will continue to view the United States as an attractive market given their limited access to these two large markets. Accordingly, I find that there is a reasonable indication that there is existing unused capacity in Ukraine indicating the likelihood of substantially increased subject imports from Ukraine into the United States.

While domestic prices were higher in 2000 than in 1999,¹¹¹ even as subject import volumes increased, there has been consistent underselling on the part of the subject imports, with the subject merchandise underselling the domestic like product in all available price comparisons.¹¹² Accordingly, based upon the record in the preliminary phase of this investigation, I find that given their current trends, subject imports are likely to continue to undersell the domestic like product in the imminent future, and to suppress or depress prices for U.S. producers to a significant degree and increase demand for further imports from Ukraine.

I also find that increased volumes of subject imports may have a material adverse effect upon the performance of producers of the domestic like product. The profitability of the industry declined substantially during the period of investigation,¹¹³ although those declines are largely a result of the effects of dumped imports from Russia, which were present in significant quantities through much of the POI.¹¹⁴ Nevertheless, given my finding that subject import volumes are likely to continue to increase and that such increases would have significant adverse price depressing or suppressing effects upon domestic prices, there is a reasonable indication in this preliminary investigation that despite slight improvements

¹⁰⁵ See, e.g., Post-Conference Brief of JSC Concern Stirol, at 5-7 & Q-3; Conference Transcript at pp. 85-90 & 142-43.

¹⁰⁶ CR and PR at Tables IV-1 and C-1.

¹⁰⁷ See, e.g., Post-Conference Brief of JSC Concern Stirol, at 2-3, 4-5 & 8-9; Conference Transcript at p. 89.

¹⁰⁸ CR at VII-6, PR at VII-5.

¹⁰⁹ CR at VII-6, PR at VII-5.

¹¹⁰ With respect to inventories of subject merchandise, data from U.S. importers show end of period inventories having increased in interim 2000, jumping from *** short tons in 1998 to *** short tons in interim 2000. CR and PR at Table VII-3. Available data show that Ukrainian producer's inventories have been relatively low during the POI. See CR and PR at Table VII-2. Questionnaire data on U.S. importers' recent arrivals and current orders, i.e., since September 30, 2000, show *** short tons. CR & PR at VII-5.

¹¹¹ See CR and PR at Table V-1 (showing that prices in each month of 2000 were higher than in the same month of 1999).

¹¹² See CR and PR at Table V-1.

¹¹³ For example, between 1997 and 1999, the industry's operating margin declined from 13.7 percent to negative 6.3 percent, its gross profits declined from \$60 million to \$3.5 million, its capital expenditures declined from \$94 million to \$19.5 million, and its operating income declined from \$38 million to negative \$13.5 million. CR and PR at Table C-1.

¹¹⁴ See CR and PR at Table C-1.

in certain financial indicators in interim 2000, that the declines in the industry's financial indicators may continue.

Therefore, I find that the domestic industry producing HDAN is threatened with material injury by reason of subject imports of HDAN from Ukraine.

CONCLUSION

For the reasons stated above, I determine that the domestic industry producing HDAN is threatened with material injury by reason of imports of HDAN from Ukraine that are alleged to be sold in the United States at less than fair value.