

UNITED STATES INTERNATIONAL TRADE COMMISSION

SACCHARIN FROM CHINA
Investigation No. 731-TA-1013 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3535, September 2002)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1013 (Preliminary)

SACCHARIN FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of saccharin, provided for in subheading 2925.11.00 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).

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 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 July 11, 2002, a petition was filed with the Commission and Commerce by PMC Specialties Group, Inc., Cincinnati, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of saccharin from China. Accordingly, effective July 11, 2002, the Commission instituted antidumping duty investigation No. 731-TA-1013 (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 18, 2002 (67 FR 47398). The conference was held in Washington, DC, on August 1, 2002, 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 Commissioner Lynn M. Bragg not participating.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of saccharin from China 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 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.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. PAST INVESTIGATIONS

The Commission has conducted investigations of saccharin on two previous occasions. In the first, Saccharin from Japan and the Republic of Korea, Inv. Nos. AA1921-174 & 175, USITC Pub. 846 (Dec. 1977), the Commission conducted investigations under the Antidumping Act, 1921, as amended, and reached negative determinations. In the second, Saccharin from China, Inv. No. 731-TA-675 (Final), USITC Pub. 2842 (Dec. 1994),⁴ the Commission also reached a negative determination.

III. DOMESTIC LIKE PRODUCT

A. In General

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

¹ Commissioner Lynn M. Bragg did not participate in this investigation.

² 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999). We note that no party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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 A petition was filed regarding saccharin from Korea as well as China (Inv. No. 731-TA-676). The Department of Commerce made a negative determination as to Korea. 59 Fed. Reg. 58826 (Nov. 15, 1994).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ Id.

“domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁷

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹⁰ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

Commerce has defined the imported merchandise within the scope of this investigation as: saccharin. Saccharin is a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) sodium saccharin (American Chemical Society Chemical Abstract Service (“CAS”) Registry #128-44-9); (2) calcium saccharin (CAS Registry #6485-34-3); (3) acid (or insoluble) saccharin (CAS Registry #81-07-2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms.

The merchandise subject to this investigation is classifiable under subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS) and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades.¹²

⁷ 19 U.S.C. § 1677(10).

⁸ 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 the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁹ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

¹⁰ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹¹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹² 67 Fed. Reg. 51536, 51536-37 (Aug. 8, 2002).

Saccharin is a chemical additive, made from petroleum-based organic chemicals, that is used primarily as a sweetener. First synthesized in 1879, it has been used in the United States as a sugar substitute since 1885, primarily in foods and beverages (either commercially added prior to consumption or personally added at the time of consumption) and in personal care products such as toothpaste and mouthwash. Pound for pound, it is about 350 times sweeter than sugar. It also is used as an additive in adhesives and in metalworking fluids to facilitate electroplating. End users for the food and beverage markets are mostly soft drink manufacturers and manufacturers of table-top sweetener packets for restaurants, airlines and other firms serving beverages to the public. The auto and auto parts industries use saccharin in electroplating chrome bumpers and accessories. Saccharin also is used in pharmaceuticals, animal feed, tobacco, and food mixes.¹³

Three chemical variations of saccharin generally are available: (1) sodium saccharin, which accounts for the bulk of U.S. consumption and which is available in granular, powder, spray-dried powder, or liquid form; (2) calcium saccharin, and (3) acid (or insoluble) saccharin.¹⁴ Like the saccharin produced in the United States, most of the subject merchandise from China is sodium saccharin. Before purchasing, most users either require a certificate of analysis or conduct their own tests for purity and for adherence to Food and Drug Administration (“FDA”) specifications outlined in the Food Chemical Codex and the United States Pharmacopeia. Saccharin that meets these standards is known in the market as “food grade” and is required for virtually all uses other than adhesive production and electroplating. Both the U.S. and Chinese products are marketed as “food grade.”¹⁵

C. Domestic Like Product

1. Arguments of the Parties

Petitioner, PMC Specialties Group, Inc. (“PMC”), argues that the Commission should find that there is one domestic like product, consisting of all saccharin and not including alternative sweeteners such as aspartame, as the Commission determined in its most recent prior investigation of saccharin.¹⁶ Respondents question whether acid (insoluble) saccharin should be considered a separate like product from sodium and calcium saccharin, but do not argue that the definition of the domestic like product should be expanded beyond the scope of the investigation to include alternative sweeteners.

2. Analysis

Based on the record in this preliminary phase investigation, we define the domestic like product to include all saccharin. In terms of physical characteristics and uses, all forms of saccharin are made from petroleum-based organic chemicals.¹⁷ Commercially-sold sodium saccharin is used primarily as a sweetener in foods and fountain beverages, animal feeds, tobacco, and personal care products such as mouthwash and toothpaste, pharmaceuticals, and also is used in scented candles. Some sodium saccharin

¹³ Confidential Report (“CR”) at I-2 - I-3, Public Report (“PR”) at I-2.

¹⁴ A fourth variation of saccharin known as research grade saccharin, which does not have a CAS Registry number, was listed in the petition and is included in the scope of this investigation. However, no sales of research grade saccharin were reported during the period examined. CR at I-3 n.9, PR at I-2 n.9.

¹⁵ CR at I-3, PR at I-2.

¹⁶ Saccharin from China, Inv. Nos. 731-TA-675 (Final), USITC Pub. 2842 (Dec. 1994).

¹⁷ CR at I-2, I-7, PR at I-2, I-5.

is used in industrial products such as adhesives and metalworking fluids.¹⁸ While acid (insoluble) saccharin is used as a chemical intermediate in herbicide and pesticide production, it also is used as a sweetener in beverages, mouthwash, chewing gum, lip balm, denture cream, and toothpaste, and is used in adhesives as well.¹⁹ Calcium saccharin is used in tabletop sweeteners, foods, soft drinks (primarily canned or bottled), and chewing gum.²⁰

With respect to interchangeability, all forms of saccharin can be used as a sweetener.²¹ Indeed, saccharin's primary use is as a sweetener.²²

*** domestically-produced saccharin and most of the imported product are sold to end users.²³

As noted above, "food grade" saccharin is required for virtually all uses of saccharin.²⁴

Domestically-produced saccharin is manufactured by the Maumee process. Methyl anthranilate is used to produce ammonia saccharin, which is then transformed into a crude insoluble saccharin, and then to a soluble sodium saccharin. The soluble sodium saccharin can be purified to a grade acceptable for use by any customer, and can be sold as such or can be modified to become acid (insoluble) saccharin. Acid (insoluble) saccharin may be sold for use in that form, or may be further modified to produce calcium saccharin.²⁵

There are some pricing differences among the three types of saccharin, but these differences do not appear to be considerable. For instance, between January 1999 and March 2002, domestic prices for sodium saccharin in powder form (pricing product 2) ranged from \$*** per pound to \$*** per pound,²⁶ prices for acid (insoluble) saccharin in spray-dried powder form (pricing product 3) ranged from \$*** to \$*** per pound;²⁷ and prices for calcium saccharin in spray-dried powder form (pricing product 4) ranged from \$*** to \$*** per pound.²⁸ However, domestic prices for sodium saccharin in granular form (pricing product 1) ranged from \$*** to \$*** per pound during the period examined,²⁹ and prices for non-food grade sodium saccharin in granular form (pricing product 5) ranged from \$*** to \$*** per pound.³⁰

On the basis of the similarity in physical characteristics and uses, general interchangeability, common channels of distribution, common manufacturing facilities and production process, and general similarity in price, we find that sodium, acid (insoluble) and calcium saccharin comprise one domestic like product.^{31 32}

¹⁸ CR at I-8 n.28, PR at I-6 n.28.

¹⁹ CR at I-8 n.29, PR at I-6 n.29.

²⁰ CR at I-8 n.30, PR at I-6 n.30.

²¹ CR at I-2, I-8 nn.28-30, PR at I-2, I-6 nn.28-30.

²² CR/PR at I-2.

²³ CR at I-5, PR at I-4.

²⁴ CR at I-3, PR at I-2.

²⁵ CR at I-5 n.16, PR at I-4 n.16.

²⁶ CR/PR at Table V-2.

²⁷ CR/PR at Table V-3.

²⁸ CR/PR at Table V-4.

²⁹ CR/PR at Table V-1.

³⁰ CR/PR at Table V-5.

³¹ As explained above, crude insoluble saccharin is transformed into soluble sodium saccharin, which may then be transformed into finished acid (insoluble) saccharin, which in turn may be transformed into calcium saccharin. Because the various forms of saccharin are produced in one process involving several steps, the semi-finished product analysis is applicable in determining whether there is one like product, two like products, or three. In that

In view of the foregoing, we find that there is one domestic like product consisting of all forms of saccharin.

IV. DOMESTIC INDUSTRY AND RELATED PARTIES

The domestic industry is defined as “the producers as a [w]hole of a domestic like product”³³ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁴

Based on our domestic like product finding, we determine that the domestic industry consists of the sole producer of saccharin: PMC.³⁵

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS³⁶

analysis, we examine: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. See, e.g., Low-Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom, Inv. Nos. 701-TA-409-412 (Preliminary) and 731-TA-909-912 (Preliminary), USITC Pub. 3388 (Jan. 2001) at 5-6; Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 (July 1999) at 6 n.23. While there is only limited information on the record applicable to the semi-finished product analysis, that information also indicates a single domestic like product.

There are, as explained previously, independent uses for the upstream article(s); that is, sodium saccharin is not dedicated to the production of acid (insoluble) saccharin, and neither of those forms is dedicated to the production of calcium saccharin. Hence, the three forms have separate markets. Yet the differences in the physical characteristics and functions of the three are not great, and the steps used to manufacture acid (insoluble) saccharin from sodium saccharin, and calcium saccharin from acid (insoluble) saccharin, are not extensive, as acid is added to sodium saccharin to make the acid (insoluble) saccharin, and calcium hydroxide is added to acid (insoluble) saccharin to make calcium saccharin. CR at I-5 n.16, PR at I-4 n.16. Further, there is evidence on the record that there is similarity in price among the three forms, as the few additional steps appear to add only a small portion of value to the product. Petitioner’s Postconference Brief at 5.

³² The scope of the investigation pertains solely to saccharin. As indicated above, no party argues that the Commission should find that the domestic like product includes alternative sweeteners, such as aspartame. While we may define the like product to be broader than the scope if the facts so warrant, see, e.g., Certain Pasta from Italy and Turkey, Inv. Nos. 701-TA-365 and 366 and 731-TA-734 and 735 (Final), USITC Pub. 2977 at 8-12 (July 1996), the record does not indicate that a broader like product is appropriate here.

³³ 19 U.S.C. § 1677(4)(A).

³⁴ 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).

³⁵ Because PMC imported *** pounds of *** saccharin from *** Chinese producers in 2001, CR at IV-2, PR at IV-1, it is a related party. Respondents do not argue that PMC should be excluded from the domestic industry. PMC produced *** pounds of saccharin in 2001, CR/PR at Table III-1, and its imports are equivalent to only *** percent of its production in that year. CR at IV-2, PR at IV-1. ***. It is clear that its interests lie in production and not importation, and it is the only domestic producer. CR/PR at III-1. Accordingly, we find that appropriate circumstances do not exist to exclude PMC from the domestic industry as a related party.

³⁶ There is no issue regarding negligibility because imports of saccharin from China constituted more than one-half of total imports in 2001. *See* 19 U.S.C. § 1677(24); CR/PR at Table IV-1.

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.³⁷ 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.³⁸ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³⁹ 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.⁴⁰ 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.”⁴¹

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

A. Conditions of Competition

The following conditions of competition for saccharin are pertinent to our analysis in this investigation.

The demand for saccharin increased steadily between 1999 and 2001: apparent U.S. consumption grew from *** pounds in 1999 to *** pounds in 2000, and then to *** pounds in 2001. It *** between interim periods: it was *** pounds in January-March 2001 and *** pounds in January-March 2002.⁴²

Pursuant to a study that found saccharin to be a cancer-causing agent in rats, the FDA banned the use of saccharin in food and beverages in 1977. Shortly thereafter, Congress imposed a moratorium on the ban, but subjected the sale of saccharin to certain requirements. The Saccharin Study and Labeling Act, renewed through May 1997, mandated that health warning labels be placed prominently on all products containing saccharin. According to petitioner, saccharin’s association with cancer and the warnings pertaining thereto had a negative impact in some market sectors in the late 1980s, particularly the packaged (non-fountain) soft drink market, and was a factor in helping the only other major artificial sweetener, aspartame, to displace sales. However, after further study, including tests involving mice and monkeys, evidence strongly supported the conclusion that saccharin does not cause cancer in humans. The FDA approved saccharin for general use and on December 21, 2000, President Clinton signed the SWEETEST Act,⁴³ which removed the warning label on all products using saccharin.⁴⁴

The manufacturers of popular packaged-soft drinks, such as Coca Cola and Pepsi, switched from saccharin to aspartame in their products that were bottled for retail sale in 1983, six years after the

³⁷ 19 U.S.C. § 1673b(a).

³⁸ 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).

³⁹ 19 U.S.C. § 1677(7)(A).

⁴⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁴¹ 19 U.S.C. § 1677(7)(C)(iii).

⁴² CR/PR at Table IV-4.

⁴³ “SWEETEST” is an acronym for “Saccharin Warning Elimination via Environmental Testing Employing Science and Technology.”

⁴⁴ CR at I-3 - I-5, II-5, PR at I-3, II-3 - II-4.

Saccharin Study and Labeling Act of 1977 took effect. However, because of the limited shelf life of aspartame, the large packaged-soft drink manufacturers continued to use saccharin in beverages placed in dispensers.⁴⁵

In addition to aspartame, other sweeteners may be substituted for saccharin. These include sugar, acesulfame-K, tagatose, alitame, and sucralose.⁴⁶ With the lifting of the warning label requirement and the growing use of blends, petitioner asserts that food formulators now use saccharin with other sweeteners to create cost-effective taste profiles in products prepared for retail sale. Blending saccharin with other sweeteners reduces the total cost of the sweetener product because most sweeteners are more expensive than saccharin. The amount of saccharin used in the blends varies from product to product depending on the desired taste. PMC stated that approximately 20 percent of its total sales of saccharin is used in products that contain blends.⁴⁷

While there were questions concerning the quality of the Chinese product during the 1993-94 investigations, evidence in the record indicates that Chinese producers have corrected any quality problems and can now meet the qualification requirements of U.S. customers.⁴⁸ In fact, the U.S. and Chinese producers appear to produce reasonably comparable products, and both are marketed as “food grade” saccharin⁴⁹ and are used interchangeably.⁵⁰ However, there is evidence in the record that the domestic product has quality problems, such as odor, although these concerns do not appear to be widespread.⁵¹

Respondents argued that it is important for producers to be able to compete in the global marketplace, as the large multinational customers bid for “massive” quantities of saccharin for all of their plants worldwide and demand large quantity discounts.⁵²

Nonsubject imports play a role in the marketplace, although the Chinese product accounted for more than one-half of imports in 2001.⁵³

B. Volume of the 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.”⁵⁴

The quantity and value of subject imports more than doubled over the period examined. Specifically, subject imports soared 149.7 percent by quantity between 1999 and 2001,⁵⁵ and 143.8 percent

⁴⁵ CR at I-4, PR at I-3.

⁴⁶ CR at II-8, PR at II-5. We intend to examine the competition between saccharin and alternative sweeteners, particularly aspartame, in any final phase investigation.

⁴⁷ CR at I-4 - I-5, PR at I-3 -I-4.

⁴⁸ CR at II-8, PR at II-6.

⁴⁹ CR at I-3, PR at I-2.

⁵⁰ CR at II-8 - II-9, PR at II-6.

⁵¹ CR at II-9, V-16, V-18, PR at II-6, V-6. We intend to explore the issue of quality concerns of both the domestic and Chinese product in any final phase investigation.

⁵² Respondents’ Postconference Brief at 12-13. We intend to explore this issue further in any final phase investigation.

⁵³ CR/PR at Table IV-1.

⁵⁴ 19 U.S.C. § 1677(7)(C)(i).

⁵⁵ Subject imports rose from 1.0 million pounds in 1999 to 1.4 million pounds in 2000, then climbed to 2.6 million pounds in 2001. Subject imports were 656,000 pounds in Jan.-Mar. 2001 and 740,000 pounds in Jan.-Mar.

by value.⁵⁶ In terms of market share, subject imports *** over the period.⁵⁷ Although apparent U.S. consumption increased over the period as subject imports increased, the domestic producers lost market share.⁵⁸ This loss was due to subject imports, as nonsubject imports also lost market share between 1999 and 2001.⁵⁹ In fact, virtually all of the increase in total imports is attributable to subject Chinese imports, which surged during that time period.⁶⁰

For purposes of this preliminary determination, we find the volume and increase in volume of subject imports, both in absolute terms and relative to apparent consumption in the United States, to be 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.⁶¹

Evidence on the record indicates that, once a producer of saccharin has met certain qualifications, the saccharin is interchangeable.⁶² Accordingly, price is an important factor in purchasing decisions.⁶³

Subject imports undersold the domestic product in 46 of 49 quarters for which price comparisons were available. The margins of underselling ranged from 0.7 percent to 59.2 percent.⁶⁴

2002. CR/PR at Table IV-3.

⁵⁶ The value of subject imports climbed from \$1.6 million in 1999 to \$2.4 million in 2000, then climbed further to \$4.0 million in 2001. The value of subject imports was \$1.1 million in Jan.-Mar. 2001 and \$1.2 million in Jan.-Mar. 2002. CR/PR at Table IV-3.

⁵⁷ Subject import market share was *** percent in 1999, *** percent in 2000 and *** percent in 2001. It was *** percent in Jan.-Mar. 2001 and *** percent in Jan.-Mar. 2002. CR/PR at Table IV-4.

⁵⁸ U.S. producers' market share decreased from *** percent in 1999 to *** percent in 2000, then fell to *** percent in 2001. It was *** percent in Jan.-Mar. 2001 and *** percent in Jan.-Mar. 2002. CR/PR at Table IV-4.

⁵⁹ Nonsubject market share declined from *** percent in 1999 to *** percent in 2000, then rose to *** percent in 2001. It was *** percent in Jan.-Mar. 2001 and *** percent in Jan.-Mar. 2002. CR/PR at Table IV-4.

⁶⁰ CR at IV-2, PR at IV-1.

⁶¹ 19 U.S.C. § 1677(7)(C)(ii).

⁶² CR at I-3, II-8 - II-9, PR at I-2, II-6.

⁶³ See CR at II-10, PR at II- 6 - II-7.

⁶⁴ CR at V-15, PR at V-5.

For all five pricing products, domestic prices declined⁶⁵ as subject import volumes climbed, notwithstanding the fact that the price of raw materials rose over the period examined.⁶⁶ Thus, the record evidence indicates price depression by subject imports.⁶⁷ In addition, there are a number of confirmed lost sales allegations totaling nearly ***.⁶⁸

Based on the pricing data collected in this preliminary phase investigation, we find that there has been significant underselling by the subject imports. We also find that the subject imports have had significant depressing effects on prices of the domestic like product.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁹ 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.”^{70 71}

As indicated above, apparent U.S. consumption grew steadily and substantially between 1999 and 2001, although it was lower in interim 2002 than in interim 2001.⁷² During this time, subject imports were

⁶⁵ CR/PR at Tables V-1 - V-5. There is evidence on the record that purchasers are a major factor in the declining prices, with the lowest bidder gaining the sale. *See* CR at V-16, V-18, PR at V-6. Although neither PMC nor the responding importers reported sales of saccharin over the internet, one importer did report participating in a reverse auction for saccharin over the internet. The importer did not sell any saccharin, however. CR/PR at V-2. These auctions reportedly take place on a global scale, with large volumes of merchandise at issue. *See* Tr. at 88 (Mr. Ritell); *see also* Tr. at 10 (Mr. Hartquist) (“prices offered on volume rebates”). In any final phase investigation, we intend to examine any differences in pricing due to sales volumes.

⁶⁶ Raw material costs accounted for *** percent of the cost of goods sold in 1999, *** percent in 2000 and *** percent in 2001. CR/PR at V-1.

⁶⁷ Domestic prices generally tended lower over the period examined as subject import prices decreased. For example, domestic prices for product 1 declined from a high of \$*** per pound in April-June 1999 to a low of \$*** per pound in January-March 2002, as subject imports declined from a high of \$*** per pound in July-September 1999 to a low of \$*** per pound in January-March 2002. CR/PR at Table V-1.

⁶⁸ CR/PR at Table V-8.

⁶⁹ 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).

⁷⁰ 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

⁷¹ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping duty proceeding as part of its consideration of the impact of imports. *See* 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated dumping margins of 116.64 percent to 355.55 percent for saccharin from China. 67 Fed. Reg. at 51538.

⁷² As measured by quantity, apparent U.S. consumption increased by *** percent from 1999 to 2001, although it was *** percent lower in interim 2002 than in interim 2001. The value of apparent U.S. consumption also increased between 1999 and 2001 by *** percent, although it was *** percent lower in interim 2002 than in interim 2001. CR/PR at Table IV-4.

capturing a larger share of the market.⁷³ The increase in Chinese market share occurred at the expense of the domestic industry, as the domestic producers experienced a steady and substantial decrease over the entire period examined.⁷⁴ The market share of nonsubject imports also declined between 1999 and 2001, although it increased between the interim periods.⁷⁵

Domestic production decreased over the period as well,⁷⁶ while capacity ***,⁷⁷ resulting in a decline in capacity utilization.⁷⁸ PMC's U.S. shipments also fell.⁷⁹ As a consequence, inventories rose over the period⁸⁰ and net sales declined.⁸¹ The domestic industry also experienced increasing financial losses during 1999-2001.⁸² These adverse financial conditions occurred while the cost of raw materials increased significantly⁸³ and the domestic industry could not raise its prices to recoup its costs to a significant degree because of the significant and increasing volumes of allegedly LTFV subject imports. In

⁷³ As measured by quantity, their market share grew *** percentage points between 1999 and 2001, and was *** percentage points higher in interim 2002 than in interim 2001. Chinese market share increased *** percentage points between 1999 and 2001 when measured by value, and was *** percentage points higher in interim 2002 than in interim 2001. CR/PR at Table IV-4.

⁷⁴ Domestic producers' market share diminished by *** percentage points, as measured by quantity, between 1999 and 2001, and was *** percentage points lower in interim 2002 than in interim 2001. As measured by value, domestic producers' market share decreased by *** percentage points between 1999 and 2001, and by was *** percentage points lower in interim 2002 than in interim 2001. CR/PR at Table IV-4.

⁷⁵ As measured by quantity, nonsubject import market share fell *** percentage points between 1999 and 2001, and was *** percentage points higher in interim 2002 than in interim 2001. As measured by value, nonsubject import market share decreased *** percentage points between 1999 and 2001, and was *** percentage points higher in interim 2002 than in interim 2001. CR/PR at Table IV-4.

⁷⁶ Domestic production fell from *** pounds in 1999 to *** pounds in 2000, then fell further to *** pounds in 2001. It was *** pounds in Jan.-Mar. 2001 and *** pounds in Jan.-Mar. 2002. CR/PR at Table III-1.

⁷⁷ Domestic capacity was *** pounds in 1999-2001, and *** pounds in the interim periods. CR/PR at Table III-1.

⁷⁸ Capacity utilization declined from *** percent in 1999 to *** percent in 2000, then declined further to *** percent in 2001. It was *** percent in Jan.-Mar. 2001 and *** percent in Jan.-Mar. 2002. CR/PR at Table III-1.

⁷⁹ By quantity, U.S. shipments were *** between 1999 and 2000, increasing from *** pounds in 1999 to *** pounds in 2000, but then decreased to *** pounds in 2001. They were *** pounds in Jan.-Mar. 2001 and *** pounds in Jan.-Mar. 2002. By value, U.S. shipments were also *** between 1999 and 2000, increasing from \$*** in 1999 to \$*** in 2000, then declining to \$*** in 2001. CR/PR at Table III-2.

⁸⁰ Inventories climbed from *** pounds in 1999 to *** pounds in 2000, then fell to *** pounds in 2001. They were *** pounds in Jan.-Mar. 2001 and *** pounds in Jan.-Mar. 2002. CR/PR at Table III-4.

⁸¹ The quantity of net sales rose from *** pounds in 1999 to *** pounds in 2000, then fell to *** pounds in 2001. It was *** pounds in Jan.-Mar. 2001 and *** pounds in Jan.-Mar. 2002. The value of net sales was \$*** in 1999 and \$*** in 2000, and declined to \$*** in 2001. It was \$*** in Jan.-Mar. 2001 and \$*** in Jan.-Mar. 2002. CR/PR at Table VI-1.

⁸² Operating losses were \$*** in 1999, climbing to \$*** in 2000 and increasing further to \$*** in 2001. They were \$*** in Jan.-Mar. 2001 and \$*** in Jan.-Mar. 2002. CR/PR at Table VI-1. According to petitioner, PMC was profitable in 1997 when subject imports were approximately one-third their 2001 levels. Petitioner's Postconference Brief at 17; Tr. at 28 (Mr. Hudgens).

⁸³ Raw materials costs rose from \$*** in 1999 to \$*** in 2000, then climbed further to \$*** in 2001. They were \$*** in Jan.-Mar. 2001 and \$*** million in Jan.-Mar. 2002. CR/PR at Table VI-2. As measured in terms of unit value, raw material costs increased from \$*** per pound in 1999 to \$*** per pound in 2000, then increased further to \$*** per pound in 2001. They were \$*** per pound in Jan.-Mar. 2001 and \$*** per pound in Jan.-Mar. 2002. CR/PR at Table VI-2.

fact, the steadily rising cost of goods sold relative to net sales indicates a cost-price squeeze,⁸⁴ which is due both to rising raw material costs as well as to the fact that PMC incurs certain fixed costs, which are now spread over lower volumes of production or sales due to the influx of subject imports.⁸⁵

The number of PMC's production and related workers fell steadily over the period,⁸⁶ as did their hours worked⁸⁷ and wages paid.⁸⁸ While PMC normally shuts down for approximately four weeks during the year to perform necessary maintenance tasks, in 2002 it expects to be closed for an unprecedented 16 weeks because of reduced sales of saccharin.⁸⁹ Production stoppages adversely affect fixed unit costs and production yields, as well as utilization of employees.⁹⁰

Capital expenditures, however, increased for most of the period,⁹¹ and research and development expenses followed suit.⁹² PMC states that it was required to allocate funds from other product lines in order to continue to produce saccharin.⁹³

Thus, the record in this preliminary phase investigation indicates that, by gaining significant market share at the expense of PMC, low-priced subject imports have had a significant adverse impact on the domestic industry, as reflected in the declining levels of shipments, production, sales, and employment combined with rising costs and a lack of profitability.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing saccharin is materially injured by reason of imports from China that allegedly are sold in the United States at less than fair value.

⁸⁴ The cost of goods sold as a ratio to net sales increased from *** percent in 1999 to *** percent in 2000 and then to *** percent in 2001. It was *** percent in Jan.-Mar. 2001 and *** percent in Jan.-Mar. 2002. CR/PR at Table VI-1.

⁸⁵ See Tr. at 29 (Mr. Hudgens).

⁸⁶ The number of production and related workers declined from *** in 1999 to *** in 2000, then fell to *** in 2001. It was *** in Jan.-Mar. 2001 and *** in Jan.-Mar. 2002. CR/PR at Table III-5.

⁸⁷ Hours worked decreased from *** in 1999 to *** in 2000, then fell to *** in 2001. They were *** in Jan.-Mar. 2001 and *** in Jan.-Mar. 2002. CR/PR at Table III-5.

⁸⁸ Wages paid totaled \$*** in 1999, then fell to \$*** in 2000 and fell further to \$*** in 2001. They were \$*** in Jan.-Mar. 2001 and \$*** in Jan.-Mar. 2002. CR/PR at Table III-5.

⁸⁹ Tr. at 16-17 (Mr. McCullough), 28 (Mr. Hudgens).

⁹⁰ Petitioner's Postconference Brief at 18.

⁹¹ Capital expenditures increased from \$*** in 1999 to \$*** in 2000, then increased to \$*** in 2001. They declined, however from \$*** in Jan.-Mar. 2001 to \$*** in Jan.-Mar. 2002. CR/PR at Table VI-4.

⁹² Research and development expenses rose from \$*** in 1999 to \$*** in 2000, then fell to \$*** in 2001. They were \$*** in Jan.-Mar. 2001 and \$*** in Jan.-Mar. 2002. CR/PR at Table VI-4.

⁹³ Petitioner's Postconference Brief at 18.