Electrolytic Manganese Dioxide From Australia, China, Greece, Ireland, Japan, and South Africa

Investigations Nos. 731-TA-1048-1053 (Preliminary)

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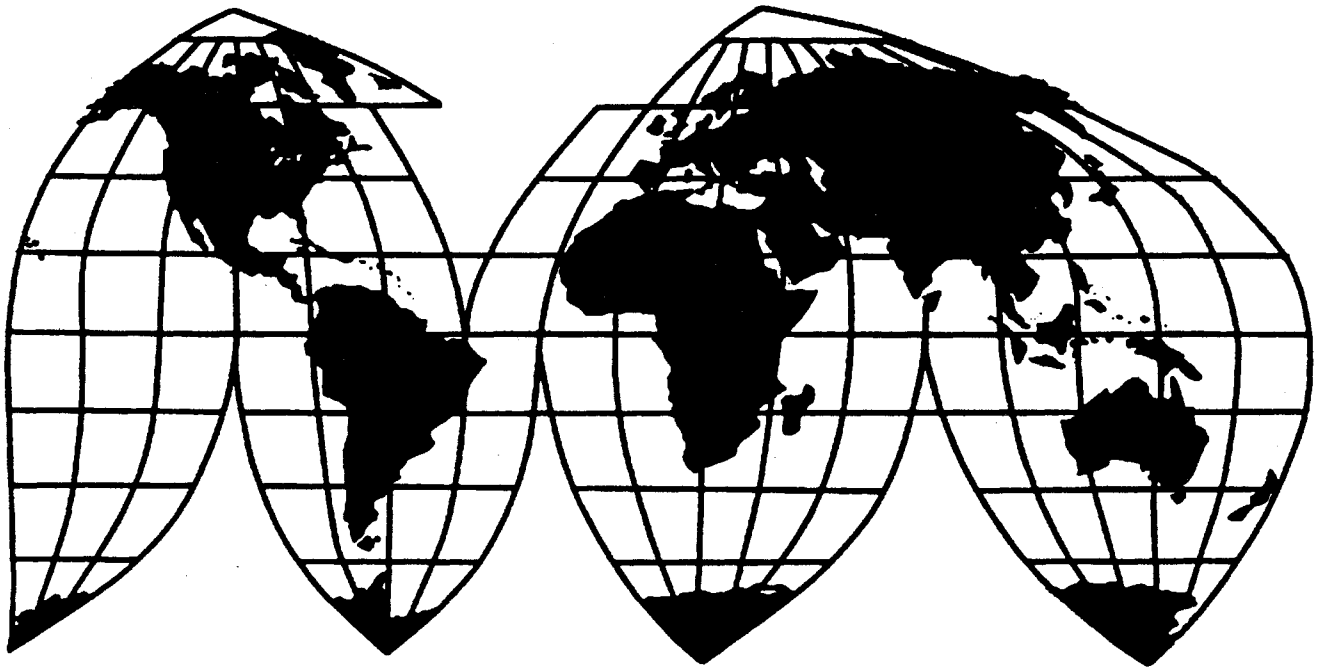
U.S. International Trade Commission



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-1048-1053 (Preliminary)

ELECTROLYTIC MANGANESE DIOXIDE FROM AUSTRALIA, CHINA, GREECE, IRELAND, JAPAN, AND SOUTH AFRICA

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, 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 Australia, Greece, Ireland, Japan, and South Africa of electrolytic manganese dioxide, provided for in subheading 2820.10.00 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). The Commission has determined that U.S. imports from China are negligible.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. 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 affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 investigations.

BACKGROUND

On July 31, 2003, a petition was filed with the Commission and Commerce by Kerr-McGee Chemical, LLC, Oklahoma City, OK, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of electrolytic manganese dioxide from Australia, China, Greece, Ireland, Japan, and South Africa. Accordingly, effective July 31, 2003, the Commission instituted antidumping duty investigations Nos. 731-TA-1048-1053 (Preliminary).

Notice of the institution of the Commission's investigations 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 August 11, 2003 (68 FR 47607). The conference was held in Washington, DC, on August 21, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of electrolytic manganese dioxide ("EMD") from Australia, Greece, Ireland, Japan, and South Africa that are sold in the United States allegedly at less than fair value. We also find that imports of EMD from China are negligible and terminate the investigation with respect to these imports.

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 determinations, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[1] 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."[2] [3]

II. 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."[4] Section 771(4)(A) of the Tariff Act of 1930, as amended (the Act), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[5] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ... ."[6]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual

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[1] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

[2] American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[3] In these investigations, Kerr McGee Chemical LLC is the sole petitioner (hereinafter "petitioner"). Respondents filing briefs included (1) Delta EMD South Africa Pty, Ltd. ("Delta SA"), Delta EMD Australia Pty, Ltd. ("Delta AUS"), Tosoh Corp., Tosoh Hyuga Corp., and Tosoh Hellas A.I.C. (collectively hereinafter "joint respondents"); (2) Hengyang Jianchen Manganese Industry Co., Ltd. ("Hengyang"), Hunan JMC Xinshao Co., ("Hunan"), Xiangtan Electrochemical Scientific Ltd., ("Xiangtan"), and Zunyi Shuangyuan Chemicals Group Co., Ltd. ("Zunyi") (collectively hereinafter "Chinese respondents"); (3) Energizer Battery Manufacturing, Inc. ("Energizer"), and (4) Rayovac Corp. ("Rayovac").

[4] 19 U.S.C. § 1677(4)(A).

[5] Id.

[6] 19 U.S.C. § 1677(10).

determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[7] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[8] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[9] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[10] The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.[11]

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

> [a]ll manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD), including high-grade chemical manganese dioxide (CMD-U).[12]

EMD, whether imported or domestically produced, is manganese dioxide that has been refined by an electrolytic process.[13] EMD is used in dry-cell batteries, which are able to discharge electrical current as a result of an energetically favorable transfer of electrons from the battery anode to the battery

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[7] 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).

[8] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess., at 90-91 (1979).

[9] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 249 at 90-91 (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.").

[10] 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).

[11] See Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp.2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

[12] 68 Fed. Reg. 42002, 42002 (July 16, 2003).

[13] Confidential Staff Report ("CR") at I-5, Public Staff Report ("PR") at I-4.

cathode.[14] There are three grades of EMD– alkaline, lithium and zinc-chloride grade– which are designed to be used in alkaline, lithium, and chloride batteries, respectively.[15] The three grades differ primarily in particle size and pH, which are imparted during the finishing process, but are essentially identical in all other physical characteristics.[16] Virtually all EMD produced and consumed in the United States is of the alkaline grade.[17]

Petitioner urges that the Commission find one domestic like product consisting of all EMD as it did in prior investigations.[18] It maintains that all EMD has the same physical characteristics and uses, is interchangeable, is made using the same manufacturing processes, and is marketed through the same channels of distribution.[19] Respondents do not dispute that the definition of the domestic like product should be coextensive with the definition of the subject merchandise.[20] The record in these preliminary investigations does not suggest that any other domestic like product definition is appropriate.

Thus, we find one domestic like product coextensive with the scope of the investigation.

III. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Industry

The domestic industry is defined 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."[21] 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.[22]

Based on our finding that the domestic like product is EMD, consistent with the scope of these investigations, we find that the domestic industry consists of all domestic producers of EMD.

B. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry

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[14] CR at I-5, PR at I-4.

[15] CR at I-6, PR at I-5.

[16] CR at I-6, PR at I-5.

[17] CR at I-6, PR at I-5. *** of lithium-grade EMD was produced in the United States in recent years. CR at I-6, PR at I-5.

[18] The Commission in prior investigations concerning EMD also found one like product coextensive with Commerce's scope. Electrolytic Manganese Dioxide from Greece and Japan, 731-TA-406 and 408 (Final), USITC Pub. 2177 (April 1989) at 7; and Electrolytic Manganese Dioxide from Greece and Japan, 731-TA-406 and 408 (Review), USITC Pub. 3296 (May 2000) at 6. However, in prior investigations, unlike the current investigations, the scope included NMD and CMD (including high-grade chemical dioxide) and just two grades of EMD, alkaline and zinc chloride.

[19] Petitioner's Brief ("Br.") at 5.

[20] Transcript of the Commission's August 21, 2003 conference ("Tr.") at 112.

[21] 19 U.S.C. § 1677(4)(A).

[22] 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).

producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[23] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[24]

Energizer, a domestic producer of EMD, was an importer of the subject merchandise from *** during the period of investigation,[25] and therefore is a related party.[26] Energizer imported *** short tons, *** short tons, and *** short tons in 2000, 2001, and 2002 respectively.[27] At the same time, Energizer's domestic production of EMD was *** short tons in 2000, *** short tons in 2001, and *** short tons in 2002, and its ratio of imports to production of EMD was *** percent in 2000, *** percent in 2001, and *** percent in 2002.[28] Energizer does not support the petition and filed a brief as a respondent, but has a stated preference to purchase EMD from other domestic producers (although it obviously does not always do so).[29] It appears that Energizer did not receive a significant benefit from its importations given that *** in each year of the period of investigation.[30] Its ratio of imports to production *** from 2000 to 2002 and was *** in the last two years of the period examined.[31] We also note that none of the parties has argued for the exclusion of Energizer.

We therefore find that for purposes of these preliminary investigations appropriate circumstances do not exist to exclude Energizer from the domestic industry. We define the domestic industry to include all producers of EMD.

IV. NEGLIGIBLE IMPORTS

The statute provides that subject imports from one country that correspond to a domestic like product and account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition, shall be

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[23] 19 U.S.C. § 1677(4)(B).

[24] 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 the related parties 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 producers 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 interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

[25] CR and PR at Table III-4.

[26] See 19 U.S.C. § 1677(4)(B)(i).

[27] CR and PR at Table III-4.

[28] CR and PR at Table III-4.

[29] However, its purchases from other domestic producers *** than its imports of the subject merchandise. CR and PR at Table III-4.

[30] CR and PR at Table VI-2.

[31] CR and PR at Table III-4.

deemed negligible.[32] By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.[33] The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.[34]

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than 3 percent of all such merchandise imported into the United States.[35]

In these investigations, subject imports from Australia, Greece, Ireland, Japan, and South Africa each accounted for more than three percent of the volume of all EMD imported into the United States in the most recent 12-month period for which data are available preceding the filing of the petition.[36] As such, we find that subject imports from these subject countries are not negligible under 19 U.S. C. § 1677(24).

According to the most reliable data available, subject imports from China accounted for 2.5 percent of all EMD imported into the United States in the most recent 12-month period for which data were available preceding the filing of the petition.[37] We therefore find that subject imports from China are negligible for purposes of our present material injury analysis.

Furthermore, we find, pursuant to 19 U.S.C. § 1677(24)(A)(iv), that subject imports from China will not imminently account for more than 3 percent of the total volume of EMD imports into the United States. First, Chinese producers' shipments to the United States have decreased since 2001. After rising

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[32] 19 U.S.C. § 1677(24)(A)(I)(I).

[33] 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

[34] 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) ("SAA").

[35] 19 U.S.C. § 1677(24)(A)(iv).

[36] CR and PR at Table IV-3.

[37] Commerce statistics were revised as explained in CR/PR Table IV-3 and n.3. These are the most reliable data, because the adjustments ensure that all imports are correctly classified by their country of origin, and ensure that all imports from nonsubject countries have been removed because they are not part of the scope. CR and PR at Table IV-3.

We note that the petitioner argued that the Commission's import data should be adjusted to account for: (1) imports of *** short tons of EMD that were reported as being from Hong Kong; (2) alleged discrepancies between importers' questionnaire data and foreign producers' questionnaire data; and (3) additional EMD imports from China because of the failure of certain companies that petitioner contends are U.S. importers of EMD to submit questionnaire responses. Petitioner's Br. at 3 and Ex.2. Petitioner claimed that after such adjustments, its calculations indicate that subject imports from China account for *** percent of total imports.

Commission staff carefully evaluated each of petitioner's claims for adjustment of the import data. As the staff report indicates, all appropriate adjustments were made; the 2.5 percent share for China was calculated from the adjusted data. Imports from Hong Kong have been already included in the total import figures for China. CR at IV-6, n.5, PR at IV-5, n.5. With respect to the alleged discrepancies *** between importer and foreign producer questionnaire data, the Commission considers the importer questionnaire data to be more reliable given the time required to ship from China to the United States. CR at IV-6, n.6, PR at IV-5, n.6 and ***. Third, as for the unresponsive "importers," the majority of such "importers" are not in fact importers of record of EMD from China but are freight forwarders. CR at IV-6 at n.7, PR at IV-5, n.7. Moreover, petitioner's concerns relating to "underreporting" in questionnaire responses have no basis in light of the fact that Commerce statistics closely correspond to importer questionnaire data. CR at IV-6 at n.7, PR at IV-5, n.7. See also CR and PR at Table IV-3, listing other adjustments which were made to the data as advocated by petitioner.

from *** short tons in 2000 to *** short tons in 2001, they then fell to *** short tons in 2002.[38] Chinese producers' shipments to the United States were *** lower in interim 2003 at *** short tons, compared with *** short tons in interim 2002.[39] As a share of total Chinese EMD shipments, Chinese subject producers' exports of EMD to the United States increased *** from *** in 2000 to *** in 2001, but then declined to *** percent in 2002.[40] As a share of Chinese total shipments, exports to the United States were *** lower in interim 2003 at *** percent, compared with *** percent in interim 2002.[41] [42]

There are only *** producers in China that have the capability to produce alkaline-grade EMD.[43] The remaining *** produce only zinc-chloride grade EMD, which is not consumed in the U.S. market.[44] There is no indication that Chinese producers will imminently shift their production from zinc-chloride to alkaline-grade EMD. The record indicates that such a conversion would be time-consuming and would require significant capital investment.[45] Of the *** alkaline-grade producers in China, ***.[46]

While reported Chinese production capacity for all EMD increased steadily during the period of investigation,[47] Chinese subject producers reported *** capacity utilization rates of *** percent in 2000, *** percent in 2001, and *** percent in 2002.[48] Of the total Chinese production capacity for all EMD (which is higher than the capacity reported in questionnaire responses), only about *** percent, or *** short tons, reportedly can be used for the production of alkaline-grade EMD.[49] Although capacity utilization rates fell *** during the period of investigation, Chinese producers of alkaline-grade EMD reported capacity utilization rates of ***.[50]

About *** of Chinese production is absorbed by the Chinese home market.[51] Chinese subject

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[38] CR and PR at Table VII-2.

[39] CR and PR at Table VII-2.

[40] CR and PR at Table VII-2.

[41] CR and PR at Table VII-2.

[42] Exports to the United States are projected to *** in 2003 and 2004 compared with the level in 2002. Projected shipments to the third countries and to the Chinese home market are *** larger than the projected shipments to the United States, and the projected shipments to the United States are expected to remain below *** percent of total Chinese shipments. CR and PR at Table VII-2.

Petitioner argues that these projections are inaccurate given that ***. Petitioner's Br. at 13. Whether or not ***. CR at VII-4, PR at VII-2.

[43] Only *** are certified by the Chinese Battery Industry Association ("CIBA") to produce alkaline-grade EMD. CR at VII-3, PR at VII-1.

[44] CR at VII-3, PR at VII-1.

[45] Chinese Respondents' Br. at 41.

[46] CR at VII-3, n.2, PR at VII-1,n.2.

[47] Chinese production capacity for all EMD rose from *** short tons in 2000 to *** short tons in 2002, and is projected to *** by 2004 to *** short tons. CR and PR at Table VII-2. In interim 2003, Chinese subject producers' reported capacity was *** short tons compared with *** short tons in interim 2002. CR and PR at Table VII-2.

[48] CR and PR at Table VII-2. In interim 2003, Chinese subject producers reported a capacity utilization rate of *** percent compared with *** percent in interim 2002. CR and PR at Table VII-2.

[49] CR at VII-4 at n.5, PR at VII-2 at n.5, and Chinese Respondents' Br. at 9.

[50] Chinese Respondents' Br. at 9-10.

[51] Home-market shipments accounted for *** percent of total Chinese EMD shipments in 2000, *** percent in 2001, and *** percent in 2002. CR and PR at Table VII-2. Chinese producers' shipments to their home market increased from *** short tons in 2000 to *** short tons in 2001 and *** short tons in 2002. CR and PR at Table VII-

(continued...)

producers also have significant exports, *** of which were to markets other than the U.S. market. In 2000, 2001, and 2002, Chinese exports of EMD to third countries represented ***, ***, and *** percent of Chinese producers' total shipments.[52] Demand for EMD (in particular alkaline-grade EMD) in both the Chinese home market and other Asian markets is currently robust, and is projected to ***.[53] There are currently more than 800 battery manufacturers in China, including such large battery manufacturers as Duracell, Energizer, Toshiba, and Maxell.[54] To satisfy demand for alkaline-grade EMD, China imports from other countries, including the United States, and is currently a net importer of alkaline-grade EMD.[55]

Other factors also make it unlikely that Chinese subject producers have the potential to imminently exceed three percent of total U.S. EMD imports. EMD produced in China is made of lower quality manganese carbonate ore and is perceived to be of lower quality.[56] To compete for sales in the U.S. market, EMD must undergo rigorous, lengthy (averaging 9 to 18 months), and costly qualification procedures.[57] Chinese subject producers have been largely unsuccessful in qualifying their product and ***.[58]

Accordingly, in light of the recent decline of Chinese subject imports as a share of total imports, the little excess Chinese capacity to produce alkaline-grade EMD, the lack of Chinese producers' ability to imminently shift from production of zinc-chloride grade EMD to alkaline-grade EMD, the importance of the home-market and third-country markets to subject producers, the high and increasing demand for EMD in those markets, the lower quality of the Chinese product, and purchasers' qualification requirements, we find that there is no reasonable indication that subject imports from China would imminently exceed the three-percent negligibility threshold. The investigation with respect to subject imports from China is therefore terminated.[59]

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[51] (...continued)
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[52] CR and PR at Table VII-2. Chinese producers' shipments to third countries steadily increased from *** short tons in 2000 to *** short tons in 2001, then to *** short tons in 2002. CR and PR at Table VII.

[53] Chinese Respondents' Br. at 13, Ex. 8.

[54] CR at VII-4, PR at VII-2.

[55] CR at VII-5, PR at VII-2.

[56] CR at IV-9, PR at IV-6.

[57] Chinese Respondents' Br. at 25-26; Joint Respondents' Br. at 6-10; Rayovac's Postconference Br. at 3-5; and Energizer's Br. at 3-4.

[58] Chinese subject producers' inventories have fluctuated upward over the period of investigation. CR and PR at Table VII-2. However, the record indicates that alkaline-grade EMD represents a *** of these inventories and that EMD held in inventories was produced for specific customers. Chinese respondents' Br. at 43.

[59] Petitioner complains that the 12-month period that the Commission is required to examine in assessing negligibility is misleading in these investigations because Chinese subject imports are seasonal and "bunch up" at the end of the calendar year. Tr. at 33 (Mr. Greenwald). However, we note that this consecutive 12-month period will reflect seasonal trends. In addition, the statute clearly instructs the Commission to use the 12-month period in assessing negligibility, and does not provide an exception for seasonal merchandise.

Petitioner also argues that, if demand for EMD increases toward the end of 2003, subject imports from China are likely to increase to a higher level than they were toward the end of 2002. Id. However, there is no indication that any such increase in demand will disproportionately benefit subject imports from China with respect to other imports, such that China's share of total imports would increase. In fact, given the ***, any increase in imports would be more likely to be from countries other than China.

V. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a present material injury determination, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.[60] In assessing whether subject imports compete with each other and with the domestic like product,[61] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[62]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[63] Only a "reasonable overlap" of competition is required.[64]

Petitioner argues that the Commission should cumulate imports from Australia, China, Greece, Ireland, Japan, and South Africa for purposes of its present injury analysis.[65] It maintains that all domestic and imported EMD is essentially fungible.[66] Acknowledging that there are "slight technical

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[60] 19 U.S.C. § 1677(7)(G)(I). There are four exceptions to the cumulation provision, none of which applies to investigations of subject imports from Australia, Greece, Ireland, Japan, and South Africa. See id. at 1677(7)(G)(ii).

[61] The SAA (at 848) expressly states that the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition. Citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd 859 F.2d 915 (Fed. Cir. 1988).

[62] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[63] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[64] See Goss Graphic Sys., Inc. v. United States, 33 Fed. Supp. 2d 1082, 1087-88 (Ct. Int'l Trade 1988) ("[C]umulation does not require two products to be highly fungible" (quoting BIC Corp. v. United States, 964 F. Supp. 391, 400 (Ct. Int'l Trade 1997)); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[65] Petitioner's Br. at 6.

[66] Petitioner's Br. at 7.

differences" among the various EMDs that "affect how they work in a particular customer's production process," it emphasizes that all EMD can be substituted once certain adjustments are made.[67] Petitioner also asserts that the other statutory cumulation factors, similar geographic and channels of distribution as well as simultaneous presence in the market, are all clearly met in this case.[68]

While respondents did not specifically address the issue of cumulation in their briefs or at the conference, they do argue that EMD is not a commodity product as petitioner claims.[69] They claim that EMD is not interchangeable as it is produced for specific battery manufacturers.[70] They emphasize that all EMD must go through a rigorous, costly, and lengthy qualification process which prevents easy shifting between suppliers.[71]

B. Analysis

We find that the criteria for cumulating imports has been met in these preliminary investigations. The petitions covering subject imports from Australia, Greece, Ireland, Japan, and South Africa were filed on the same day.[72] We find that there is a reasonable overlap of competition among subject imports from all five countries and between these subject imports and the domestic like product. Imports from each of the subject countries generally have been simultaneously present in the U.S. market during the period examined,[73] both the domestic like product and the subject imports from all five countries compete in the same geographic markets, and they are sold directly through sales representatives of importers and U.S. producers to end users (battery manufacturers).[74] Finally, as discussed below, subject imports and the domestic like product are generally fungible.

Subject imports of EMD from each country appear to be at least moderately interchangeable with each other and with the domestic like product.[75] Generally, U.S. producers familiar with both the domestic product and imported EMD indicate that they are "always" or "frequently" interchangeable.[76] U.S. importers report that the domestic and imported product are "frequently" or "sometimes interchangeable."[77] As for non-price factors, U.S. producers responded that these differences are generally "never" significant.[78] In contrast, importers responded that such differences were always or

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[67] Petitioner's Br. at 7.

[68] Petitioner's Br. at 8.

[69] Joint respondents' Br. at 4, Energizer's Br. at 3.

[70] Joint respondents' Br. at 6-7, Rayovac Br. at 8, Energizer's Br. at 3.

[71] Tr. at 113-118, Joint respondents' Br. at 6-7, Rayovac Br. at 8, Energizer's Br. at 3.

[72] As we have determined that Chinese subject imports are negligible and have terminated the investigation with respect to these imports, subject imports from China are not eligible for cumulation. 19 U.S.C. § 1677(7)(G)(ii)(II).

[73] Subject imports from Australia, Ireland, and South Africa entered the U.S. market in each month from January 2002 through June 2003. At the same time, subject imports from Japan also entered the U.S. market in every month but April 2003, and subject imports from Greece entered in seven months in 2002 and two months in the first half of 2003. CR at IV-9, PR at IV-6-7.

[74] CR at IV-9, PR at IV-6.

[75] CR at I-8, PR at I-6.

[76] CR at II-4, n.6, PR at II-3, n.6.

[77] CR at II-4, n.6, PR at II-3, n.6.

[78] CR at II-4, n.6, PR at II-3, n.6.

sometimes significant.[79]

The interchangeability of domestic and imported EMD is limited somewhat by the fact that all new shipments of EMD are required to undergo a qualification process.[80] However, the record indicates that producers of domestic EMD and various imported EMD have been qualified to supply various major battery producers.[81] Moreover, while all EMD is produced to meet a specific customer's needs, one producer's EMD can be substituted for another's when adjusted to fit the customer's particular production requirements.[82]

Thus, we find that there is a reasonable overlap of competition between subject imports from Australia, Greece, Ireland, Japan, South Africa, and the domestic like product, and we cumulate subject imports from these countries for purposes of our material injury analysis in these preliminary investigations.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS

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.[83] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[84] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[85] 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.[86] 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."[87]

Based on an evaluation of the relevant statutory factors, we find that there is a reasonable indication that the domestic industry producing EMD is materially injured by reason of subject imports from Australia, Greece, Ireland, Japan, and South Africa.

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[79] CR at II-4, n.6, PR at II-3, n.6.

[80] CR at II-4, n.6, PR at II-3, n.6.

[81] Petitioner's Br. at 17. Indeed, petitioner notes that ***. Petitioner's Br. at 17.

[82] Petitioner's Br. at 17.

[83] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[84] 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).

[85] 19 U.S.C. § 1677(7)(A).

[86] 19 U.S.C. § 1677(7)(C)(iii).

[87] 19 U.S.C. § 1677(7)(C)(iii).

A. Captive Production[88]

The domestic industry captively consumes a significant portion of its domestic like product in the manufacture of downstream products, namely, batteries. We have considered whether the captive production provision requires us to focus our analysis primarily on the merchant market when assessing the market share and the factors affecting the financial performance of the domestic industry. We find that a significant amount of domestic production of EMD is captively consumed and is sold on the merchant market, and thus the threshold requirement is met.[89] However, the record indicates that EMD sold in the merchant market is used in the production of the same downstream products, batteries, for which EMD is internally consumed.[90] Accordingly, we find that the third criterion of the captive production provision is not satisfied, and therefore the captive production provision does not apply in this investigation

B. Other Conditions of Competition

When performing our analysis in these investigations, we took into account the following conditions of competition:

Demand for EMD is derived from the demand for dry-cell batteries.[91] There are three grades of EMD--alkaline, lithium and zinc-chloride grade--which are designed to be used in alkaline, lithium, and zinc-chloride batteries, respectively.[92] However, virtually all EMD produced and consumed in the United States is of the alkaline grade.[93]

According to questionnaire responses, *** U.S. producers and six of eight importers indicated

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[88] The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), which was added to the statute by the Uruguay Round Agreements Act (URAA), provides:

> (iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that –
>
> (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
>
> (II) the domestic like product is the predominant material input in the production of that downstream article, and
>
> (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,
>
> then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

The SAA indicates that where a domestic like product is transferred internally for the production of another article coming within the definition of the domestic like product, such transfers do not constitute internal transfers for the production of a "downstream article" for purposes of the captive production provision. SAA, H.R. Rep. 103-316, vol. I at 853.

[89] CR at III-6, PR at III-5. Energizer, which accounted for about *** of domestic production in 2002, captively consumes all of its production. The production of Erachem and Kerr-McGee is sold on the open market. CR and PR at C-1.

[90] CR and PR at III-6.

[91] CR and PR at II-2.

[92] CR at I-6, PR at I-5.

[93] CR at I-6, PR at I-5.

that there are no substitute products for EMD.[94] Of the remaining two importers, one responded that chemical manganese dioxide may be a substitute, while the other importer stated it had "no idea"' whether there were any substitutes for EMD.[95]

Demand for batteries declined in 2000 and 2001 as retailers and consumers drew down their "Y2K" stockpiles of batteries, and the weakening economy led to reduced demand for battery-operated products.[96] Demand for batteries started to increase in 2002, and continued to increase in 2003, although it remained at a rate below historical high levels.[97] U.S. apparent consumption of EMD decreased from 114,437 short tons in 2000 to 88,447 short tons in 2001, but increased to 94,609 short tons in 2002.[98] U.S. apparent consumption also increased from 44,852 short tons in the first half of 2002 to 49,730 short tons in the first half of 2003.[99]

There are four major battery manufacturers in the United States: Duracell, Energizer, Mutec, and Rayovac.[100] Each of these manufacturers operates worldwide.[101] Because these battery manufacturers require their suppliers' EMD to meet rigorous qualification procedures, there are only a limited number of suppliers with EMD that meets their requirements.[102] These include subject producers Delta (Australia, South Africa), Mitsui (Ireland and Japan), and Tosoh (Japan and Greece), as well as two domestic producers, Erachem and Kerr-McGee.[103] The third domestic producer, Energizer, captively consumes all of its EMD production, and purchases additional EMD from other EMD producers.[104] While domestic producers compete with subject foreign producers for sales to U.S. battery manufacturers, domestic production capacity is less than total U.S. apparent consumption.[105] [106] U.S. EMD production capacity increased from 63,853 short tons in 2000 to 68,020 short tons in 2001 and to 68,253 short tons in 2003. U.S. production capacity for both interim 2002 and 2003 was 34,127 short tons.

Subject and domestic EMD appear to be at least moderately interchangeable.[107] Generally, U.S. producers familiar with both the domestic product and imported EMD indicate that they are "always" or "frequently" interchangeable.[108] U.S. importers report that the domestic and imported product are "frequently" or "sometimes" interchangeable.[109] The interchangeability of domestic and imported EMD is limited somewhat by the fact that all new shipments of EMD are required to undergo a qualification

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[94] CR at II-3, PR at II-2.

[95] CR at II-3, PR at II-2.

[96] CR and PR at II-2.

[97] CR and PR at II-2.

[98] CR and PR at Table IV-4.

[99] CR and PR at Table IV-4.

[100] CR and PR at II-1.

[101] CR and PR at II-1.

[102] CR and PR at II-1; Petitioner's Br. at 15.

[103] CR and PR at II-1; Petitioner's Br. at 15.

[104] CR at VI-1, PR at VI-1.

[105] CR and PR at Table C-1.

[106] During the period of investigation, there were no nonsubject imports in the U.S. market.

[107] CR at II-4, n.6, PR at II-3, n.6.

[108] CR at II-4, n.6, PR at II-3, n.6.

[109] CR at II-4, n.6, PR at II-3, n.6.

process.[110] However, the record indicates that domestic EMD and various imported EMD producers' product have been qualified by various major battery producers.[111] Moreover, petitioner states that all EMD is produced to meet a specific customer's needs, and that one producer's EMD can be substituted for another's when adjusted to fit the customer's particular production process.[112] To ensure EMD quality and battery performance, battery manufacturers work closely with EMD producers, resulting in long-term commercial relationships.[113]

In May 2000, the Commission reached negative determinations in its five-year reviews of existing orders on subject imports from Greece and Japan.[114] As a result, the antidumping duty orders on subject imports from these two countries were effective on January 1, 2000.[115]

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[116]

Subject import volume decreased over the period examined, but remained at significant levels relative to domestic consumption and production. Subject import volume decreased from 53,988 short tons in 2000 to 39,703 short tons in 2001 and 38,120 short tons in 2002.[117] Subject import volume was significantly higher in interim 2003, at 29,883 short tons, compared with 15,605 short tons in interim 2002.[118] However, apparent consumption fell from 2000 to 2001, and increased in 2002, but remained below the 2000 level. As a result, subject import market share was fairly steady, increasing slightly from 2000 to 2002. Shipments of subject imports accounted for *** percent of apparent U.S. consumption (by volume) in 2000, *** percent in 2001, and *** percent in 2002.[119] Subject import shipments' share of apparent consumption was significantly higher in interim 2003, at *** percent, compared with *** percent in 2002. Subject imports were equivalent to 86.6 percent of U.S. production (by volume) in 2000, 62.3 percent in 2001, and 83.8 percent in 2002.[120] In interim 2003, subject imports were equivalent to 103.2 percent of U.S. production compared with 67.5 percent in interim 2002.[121]

Based primarily on their high market share, increasing market share between interim periods, and ratio to domestic production, we find for purposes of these preliminary investigations that subject import volume was significant during the period examined in absolute terms and relative to apparent U.S.

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[110] The qualification process is a rigorous, costly, and lengthy procedure. Chinese Respondents' Br. at 25-26; Joint Respondents' Br. at 6-10; Rayovac's Postconference Br. at 3-5; and Energizer's Br. at 3-4.

[111] Petitioner's Br. at 17.

[112] Petitioner's Br. at 7.

[113] Chinese Respondents' Br. at 25-26; Joint Respondents' Br. at 6-10; Rayovac's Postconference Br. at 3-5; and Energizer's Br. at 3-4.

[114] USITC Pub. 3296 at 20.

[115] 65 Fed. Reg. 34661 (May 31, 2000).

[116] 19 U.S.C. § 1677(7)(C)(i).

[117] CR and PR at Table IV-2.

[118] CR and PR at Table IV-2.

[119] CR and PR at Table C-1.

[120] CR and PR at Table IV-6.

[121] CR and PR at Table IV-6.

consumption and U.S. production.

D. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act[122] provides that, in evaluating the price effects of 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.

As noted above, subject imports and the domestic like product appear to be at least moderately interchangeable. While respondents emphasize that quality is the most important factor in purchasing decisions, the record indicates that price is also an important factor in purchasing decisions. According to questionnaire responses, U.S. producers report that differences in non-price factors were generally "never" significant, while importers report that non-price factors were "always" or "sometimes" significant.[123]

Most sales of EMD are made on a contract basis. Contracts are typically one-year in duration and have fixed terms for price and quantity.[124] The record indicates that contracts are generally negotiated in the final quarter of each year for the following year. The negotiation process frequently involves counteroffers as customers receive competitive offers from various sources and customers identify quantity needs. If additional incremental quantities of EMD are required above levels specified, a separate agreement is reached. ***.[125] ***.[126]

Because the U.S. EMD market is composed of just a few large battery manufacturers, U.S. battery manufacturers have considerable purchasing power. Respondents reported that in order to gain a competitive advantage, battery manufacturers have exerted pressure on all of their EMD suppliers to lower prices.[127]

According to price data collected in these investigations, there was significant price underselling by subject imports during the period of investigation. Subject imports undersold the domestic like product in a majority of the 14 calendar quarters in which comparisons between subject imports and the domestic product were possible, with the largest margins of underselling generally occurring during the first half of 2003.[128] While the margins of underselling were generally less than 5 percent, we find the underselling to be significant for purposes of these preliminary investigations in light of the level of interchangeability of the product.[129]

Domestic prices for standard alkaline grade EMD in powder form fell over the period of investigation from $*** to $*** per pound despite an increase in EMD demand in 2002 and the first half

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[122] 19 U.S.C. § 1677(7)(C)(ii).

[123] CR and PR at Table II-2.

[124] CR at V-2, PR at V-1.

[125] CR at V-2, PR at V-1.

[126] CR at V-2, PR at V-1.

[127] Joint Respondents' Br. at 20 -23.

[128] CR and PR at Table V-1.

[129] CR and PR at Table V-1.

of 2003.[130] Subject import prices also declined during the period of investigation, but at a greater rate than domestic prices.[131] Thus, for purposes of this preliminary investigation, we find that there is a reasonable indication that subject imports significantly depressed prices for the domestic like product, especially in the latter half of 2002 and first half of 2003.[132]

The domestic industry faced rising costs throughout the period of investigation, but was unable to pass on those costs through higher prices, even as demand for EMD increased. The ratio of the industry's COGS to net sales rose from 80.1 percent in 2000 to 85.2 percent in 2001 and 97.8 percent in 2002; it was 98.1 percent in interim 2002 and 98.7 percent in interim 2003.[133] Although apparent consumption was higher in 2002 than in 2001, and higher in interim 2003 compared with interim 2002,[134] prices and average unit values fell, as the market share of subject imports increased.[135] Thus, for purposes of this preliminary investigation, we find that there is a reasonable indication that subject imports also significantly suppressed U.S. prices. We also note that, in 2002 and 2003, petitioner experienced a significant amount of both lost sales and lost revenues as a result of low-priced subject imports.[136]

In the final phase of these investigations, we intend to seek additional information on the various factors influencing pricing in this market. Specifically, we will explore alleged imbalances between supply and demand, as well as price pressure allegedly exerted by battery manufacturers in the latter portion of the period of investigation.

E. Impact of the Subject Imports[137]

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[138] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition

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[130] CR and PR at Table V-1.

[131] CR and PR at Table V-1.

[132] In these preliminary investigations, data were collected detailing U.S. producers' and importers' participation in bid events. The information collected was inconclusive but indicated that subject imports underbid the domestic product in a number of instances. CR and PR at Table V-3. We plan to examine the bidding process and the circumstances surrounding the bids more fully in any final phase of these investigations.

[133] CR and PR at Table VI-1.

[134] CR and PR at Table IV-5.

[135] CR and PR at Tables V-1 and VI-1.

[136] CR and PR at Table V-4.

[137] In its notice of initiation, Commerce estimated dumping margins for Australia to be 47.01 percent, for Greece to be 22.86 percent, for Ireland to be 25.04 percent, for Japan to be 87.96 percent, and for South Africa to be 28.42 percent. 68 Fed. Reg. 51551- 51555 (Aug. 27, 2003).

[138] 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.") SAA at 885.

that are distinctive to the affected industry."[139]

By most measures, the domestic industry's condition worsened over the period of investigation. The quantity, total value, and unit values of domestic shipments decreased over the period of investigation and (except for the quantity of domestic shipments) were lower in interim 2003 than in 2002.[140] The domestic industry's share of apparent consumption increased slightly from 2000 to 2001, but declined in 2002, and was lower in interim 2003 than in interim 2002.[141] Domestic capacity increased somewhat over the period of investigation, but remained unchanged in the interim periods.[142] Domestic capacity utilization fell over the period of investigation, with the largest decline from 2001 to 2002. However, capacity utilization was higher in interim 2003 compared with interim 2002.[143] The number of workers remained virtually steady from 2000 to 2002, but was lower in interim 2003 than in 2002.[144] Wages declined over the period examined, and unit labor costs were higher in 2002 than in 2000, but unit labor costs decreased in interim 2003 compared with interim 2002.[145]

The domestic industry's financial indicators worsened substantially over the period examined. Net sales value fell from $87.5 million in 2000 to $71.2 million in 2001 and $69.2 million in 2002; it was $34.1 million in interim 2002 and $32.6 million in interim 2003.[146] The unit cost of goods sold in 2002 was 17 percent higher in 2002 than in 2000.[147] The domestic industry's operating income was $8.4 million in 2000, and fell to $2.7 million in 2001 and became a loss of $6.6 million in 2002.[148] In the interim periods, operating losses were higher in 2003 compared with 2002.[149] The domestic industry's operating margin fell from 9.6 percent in 2000, to 3.9 percent in 2001, and to a loss of 9.5 percent in 2002.[150] The domestic industry's operating loss margin was worse in interim 2003 compared with interim 2002.[151] The domestic industry's capital expenditures decreased and research and development

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[139] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[140] CR and PR at Table C-1.

[141] CR and PR at Table C-1. Domestic producers' share of U.S. apparent consumption fluctuated slightly from 52.2 percent in 2000 to 53.4 percent in 2001 and to 51.6 percent in 2002. However, domestic producers' share of U.S. apparent consumption was lower in interim 2003, at 49.9 percent, than in interim 2002, when it was 52.6 percent. CR and PR at Table C-1.

[142] CR and PR at Table C-1.

[143] CR and PR at Table C-1.

[144] CR and PR at Table C-1.

[145] CR and PR at Table C-1. While we examine the domestic industry as a whole, see 19 U.S.C. §1677(4)(A), we take into account, as a condition of competition, Energizer's captive production. We note that the merchant market producers' indicators followed similar trends to those for the industry as a whole. We also note that ***. See CR and PR at Table C-2.

[146] CR and PR at Table C-1.

[147] CR and PR at Table C-1.

[148] CR and PR at Table C-1.

[149] CR and PR at Table C-1.

[150] CR and PR at Table C-1.

[151] CR and PR at Table C-1. Domestic merchant producers experienced similar financial trends. The operating income for domestic merchant producers fell from $*** in 2000 to $*** in 2001, and to *** of $*** in 2002. In interim 2002 and 2003, domestic merchant producers reported ***, respectively. CR and PR at Table VI-2. Domestic merchant producers' operating margins were *** percent, *** percent, and *** percent in 2000, 2001, and

(continued...)

expenses increased from 2000 to 2002, but both were lower in interim 2003 than in interim 2002.[152]

For purposes of these preliminary determinations, we find a reasonable indication that cumulated subject imports had a significant negative impact on the condition of the domestic industry during the period examined. As discussed above, we find both the volume of subject imports and the negative price effects of the subject imports to be significant. In light of the negative volume and price effects of subject imports and the worsening condition of the domestic industry, and in particular its financial performance, we find that subject imports negatively affected the performance of the domestic industry during the period examined.[153]

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of EMD from Australia, Greece, Ireland, Japan, and South Africa sold in the United States allegedly at less than fair value.

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[151] (...continued)
2002, respectively, and *** percent in interim 2002 and *** percent in interim 2003. CR and PR at Table VI-2.

[152] CR and PR at Table VI-4.

[153] Respondents argued that the domestic industry's problems primarily are the result of factors other than subject imports. In particular, they point to the decline in EMD demand in 2000-2002; price wars between the U.S. battery manufacturers; Kerr-McGee's announced plans to divest its EMD operations, which created the perception that it is an unreliable source; Kerr McGee's decision to pursue the ultimately unsuccessful "high drain"battery market; environmental costs at Kerr-McGee's plant site; and Erachem's ***. Joint respondents' Br. at 20-31.

In any final phase of these investigations, we will further explore these issues and their impact on the condition of the domestic industry.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on July 31, 2003, by Kerr-McGee Chemical LLC ("Kerr-McGee"), Oklahoma City, OK, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of less-than-fair-value ("LTFV") imports of electrolytic manganese dioxide ("EMD")[1] from Australia, China, Greece, Ireland, Japan, and South Africa. Information relating to the background of these investigations is provided below.[2]

Effective date	Action	*Federal Register* citation
July 31, 2003	Petition filed with Commerce and the Commission; Commission institutes investigations	68 FR 47607, August 11, 2003
August 21, 2003	Commission's conference[1]	NA
August 27, 2003	Initiation of investigations by Commerce	68 FR 51551, August 27, 2003
September 12, 2003	Commission's vote	NA
September 15, 2003	Commission's determinations transmitted to Commerce	NA
September 22, 2003	Commission's views transmitted to Commerce	NA

[1] A list of witnesses that appeared at the conference is presented in app. B.

ORGANIZATION OF REPORT

Section 771(7)(B) of the Tariff Act of 1930 (the "Act") (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

> *shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

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[1] A complete description of the imported product subject to these investigations is presented in *The Product* section located in Part I of this report. The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTS") under subheading 2820.10.00. The normal trade relations tariff rate imposed on this product is 4.7 percent *ad valorem*. Imports under this subheading that are products of South Africa are eligible to receive duty-free entry under the Generalized System of Preferences ("GSP").

[2] *Federal Register* notices cited in the tabulation are presented in app. A.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

> *In evaluating the volume of imports of merchandise, 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.*
> . . .
> *In evaluating the effect of imports of such merchandise on prices, 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.*
> . . .
> *In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to*
> *. . . (I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

Information on the subject merchandise, alleged margins of dumping, and domestic like product is presented in *Part I.* Information on conditions of competition and other relevant economic factors is presented in *Part II. Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Parts IV and V*, respectively. *Part VI* presents information on the financial experience of U.S. producers. The statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury are presented in *Part VII.*

SUMMARY DATA

A summary of data collected in these investigations for the U.S. EMD market is presented in appendix C, tables C-1 (data on the total U.S. market) and C-2 (data on the U.S. merchant market). Table C-1 includes data submitted by all three U.S. producers: Energizer Battery Manufacturing, Inc.

("Energizer"), Erachem Comilog, Inc. ("Erachem"), and Kerr-McGee. Table C-2 includes data for the two U.S. producers that sell EMD in the merchant market.[3]

Producer data are based on questionnaire responses of three firms that accounted for all U.S. production of EMD during the period examined. U.S. import data were compiled using modified Commerce statistics. Data on U.S. consumption of imports, however, were compiled using the shipment data found in the questionnaire responses of eight firms that imported the subject product during the period examined.

PREVIOUS AND RELATED INVESTIGATIONS

On May 31, 1988, the Commission instituted antidumping investigations on EMD (defined as in the present investigations) from Greece, Ireland, and Japan.[4] On April 10, 1989, the Commission issued final affirmative determinations with regard to imports of EMD from Greece and Japan.[5]

On May 26, 1998, Eveready (referred to as Energizer in this report) filed with the Commission a request for a changed circumstances review with regard to imports from Greece pursuant to section 751(b) of the Act.[6] The Commission determined that the request did not show changed circumstances sufficient to warrant a review.[7] Eveready appealed the Commission's determination to the Court of International Trade. The Commission moved to dismiss the appeal, which was granted on the basis that an upcoming sunset review of the orders would provide the equivalent relief Eveready sought.[8]

On May 3, 1999, the Commission instituted sunset reviews to determine whether revocation of the antidumping orders on imports of EMD from Greece and Japan would likely lead to the continuation or recurrence of material injury to the domestic EMD industry.[9] On April 20, 2000, the Commission determined that revocation would not likely lead to continuation or recurrence of material injury to the U.S. industry, and the orders were subsequently revoked.[10]

NATURE AND EXTENT OF ALLEGED SALES AT LTFV

On August 27, 2003, Commerce published a notice in the *Federal Register* of the initiation of the antidumping investigations on EMD from Australia, China, Greece, Ireland, Japan, and South Africa.

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[3] Kerr-McGee and Erachem sell EMD in the merchant market. Energizer internally consumes all the EMD it produces in its battery manufacturing facilities.

[4] *Notice of Institution of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Greece, Ireland, and Japan*, 53 FR 21530, June 8, 1988.

[5] *Electrolytic Manganese Dioxide from Greece and Japan*, Invs. Nos. 731-TA-406 and 408 (Final), USITC Pub. 2177 (April 1989), p. 1. Commerce determined that there were no LTFV imports of EMD from Ireland.

[6] In its request, Eveready alleged the following changed circumstances: (1) the addition of a third recognized type of EMD–"high drain" EMD, (2) structural changes in battery consumption (a shift from C and D size batteries to smaller AA and AAA size batteries), and (3) the impending unavailability of supply of regular and "high drain" EMD from U.S. producers and producers in countries not subject to antidumping orders.

[7] 63 FR 43192, August 12, 1998.

[8] *Eveready Battery Co., Inc. v. United States*, Slip. Op. 99-126 (CIT, November 23, 1999).

[9] *Notice of Institution of Five-year Reviews: Electrolytic Manganese Dioxide from Greece and Japan*, 64 FR 23675, May 3, 1999. The Commission determined to conduct full sunset reviews on these orders. 64 FR 46407, August 25, 1999.

[10] *Electrolytic Manganese Dioxide from Greece and Japan*, Invs. Nos. 731-TA-406 and 408 (Review), USITC Pub. 3296 (May 2000), p. 1.

The estimated weighted-average dumping margins (in percent *ad valorem*), as reported by Commerce (based on petitioners' alleged margins, as adjusted) are presented in the following tabulation.[11]

Country	Estimated dumping margins (*percent ad valorem*)
Australia	47.01
China	31.38
Greece	22.86
Ireland	25.04
Japan	87.96
South Africa	24.82

THE SUBJECT PRODUCT

Commerce has defined the scope of these investigations as follows:

> These investigations cover all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip or plate form.
>
> Excluded from the scope of these investigations are natural manganese dioxide ("NMD") and chemical manganese dioxide ("CMD"), including high-grade chemical manganese dioxide ("CMD-U").
>
> The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2820.10.00. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

EMD, whether imported or domestically produced, is manganese dioxide (MnO_2) that has been refined in an electrolytic process. Virtually all EMD is used in dry-cell batteries,[12] which are able to discharge electrical current as a result of an energetically favorable transfer of electrons from the battery anode to the battery cathode.[13]

Presented below is information on both imported and domestically produced EMD, as well as information related to the Commission's "domestic like product" determination.[14] No responding party

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[11] *Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa; 68 FR 51551, August 27, 2003.*

[12] Non-battery applications for EMD include chromatography, glassmaking, electronics, water treatment, and as an oxidation catalyst, but the cost of EMD generally renders it unsuitable for these applications (petitioner's August 13, 2003 response to the Commerce Department's August 7, 2003 letter, p. 6).

[13] The anode generally consists, at least in part, of a metal such as zinc or lithium, which can easily give up electrons; the cathode consists in part of a material that can accept those donated electrons with the circuit completed externally, thereby providing direct current electricity for use in various battery-powered devices. The most commonly used electrically active cathode material is manganese dioxide with an inert conductor to help carry the electrons to a battery terminal.

[14] The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing

(continued...)

has objected to the petitioner's definition of the domestic like product, "all EMD produced in the United States."[15]

Physical Characteristics and Uses

Physically, EMD is a black powder (or plate or chip that will be ground into powder) that has a gamma crystalline structure. The powder form is required for use in dry-cell batteries. Its gamma crystalline structure, as opposed to most other crystalline structures that manganese dioxide powder can assume, allows for the free transfer of hydrogen ions within the manganese dioxide crystal, thus resulting in the fullest possible utilization of the manganese dioxide in the production of electrical current within a dry-cell battery.

There are three grades of EMD--alkaline, zinc chloride, and lithium grade, but only alkaline grade EMD has been produced in the United States in significant volumes in recent years. Alkaline grade EMD, because of particle size and pH (acidity level), qualifies for use in the manufacture of alkaline batteries, zinc chloride-grade qualifies for use in zinc chloride batteries, and lithium grade qualifies for use in lithium batteries.[16] The particle size (grind) and pH are achieved in the finishing process of the EMD. All other properties of the three grades of EMD, including the moisture content, sulfate content, other metallic element content, purity, and crystalline structure, are essentially identical.

Within each of the grades of EMD, there is relatively higher and lower quality EMD. Higher quality EMD tends to have a higher discharge rate and longer shelf life than lower quality EMD in the same grade. Higher quality EMD is distinguished from lower quality EMD because it contains lower levels of impurities, superior flow characteristics of the materials in the battery, and a higher energy capacity per unit weight. Of course, the quality of EMD is only one factor out of many that determine the quality of a finished battery.

A special kind of premium alkaline battery is the "high drain" (HD) battery, which is an alkaline battery that has been modified for use in applications that require high power such as digital cameras and digital audio. Despite intense research and development, use of these batteries has declined in the United States recently, largely because of increased competition from rechargeable nickel metal high drain batteries which are not made with EMD.[17]

In addition to EMD, there are two other types of manganese dioxide, both of which also can be used in dry-cell batteries: natural manganese dioxide ("NMD") and chemical manganese dioxide ("CMD"). NMD consists of certain naturally occurring manganese ore, selected because of its high MnO_2 content, favorable electrochemical properties, and low content of impurities. The ore is often processed to remove impurities and to improve its battery activity. NMD has a lower performance rate than EMD or CMD but may be blended with such synthetic manganese dioxide for increased performance. For approximately 80 years subsequent to the invention of the wet zinc/manganese dioxide primary cell (the ancestor of the present-day dry-cell battery) by Georges Leclanche in the 1860s, NMD

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[14] (...continued)
facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price.

[15] Petitioner's postconference brief, p. 5.

[16] Some EMD is also used in rechargeable batteries, but the amount used per unit weight is substantially less than in the primary batteries cited above. No zinc chloride batteries are known to have been produced in the United States in recent years. *** lithium-grade EMD was produced in the United States during the period examined by ***.

[17] Transcript of the Commission's August 21, 2003 conference ("conference transcript") (Mr. Codde, Rayovac), pp. 87-88.

was the only type of manganese dioxide used in dry-cell batteries. NMD is not produced in the United States today, only small amounts are imported, and NMD is not within the scope of these investigations.

CMD is chemically precipitated, battery-active manganese dioxide. The properties of CMD differ from EMD in three major respects: surface area, electrolyte absorption, and density. As a result, CMD generally exhibits lower discharge rates than does EMD. CMD is used outside the United States in lower performance batteries but is not known to be used domestically in batteries. CMD is not within the scope of these investigations.

The alkaline battery represents a significant improvement over the Leclanche battery and typically has a longer shelf life than a zinc chloride battery. The alkaline battery requires EMD (not NMD or CMD) and only alkaline-grade EMD. In an alkaline battery, the cathode consists of a high-density blend of EMD and graphite. The electrolyte is concentrated potassium hydroxide; potassium hydroxide is very alkaline or "basic" (the opposite of acidic). The anode is composed of powdered amalgamated zinc.

Before EMD can be used in a battery, a sample is subjected to extensive testing. The most important tests that an EMD producer or consumer uses to test EMD quality are (1) discharge performance tests, (2) gassing tests, and (3) tests to measure the compressed density of the EMD. The discharge performance test measures how long a battery will maintain useful voltage for a given load and rate of discharge. This test essentially provides information on the number of hours of service a battery will provide. The gassing test measures how much gas is generated as a result of impurities in the EMD. The less gas that is generated, the purer the EMD and the longer the shelf life of the battery.[18] Tests to measure the compressed density of a given sample of EMD determine how much EMD can be used in a battery within the space limitations of the battery. The more EMD that can be contained in a battery, the higher the electrical capacity of the battery.

Even though a given sample of EMD may perform satisfactorily when subjected to standard tests such as a discharge performance test, it must be qualified before it can be used in a given battery. Based on information obtained in these investigations, the qualification process can range from about *** months to over a year in duration.[19] The qualification process ensures that the processing equipment used to manufacture a given battery is compatible with the type of EMD to be used, so as to optimize battery performance.

In general, because smaller battery performance is more dependent on EMD discharge quality than that of the larger batteries, EMD quality is more critical in smaller batteries (AA and AAA size) than in larger batteries (C and D size). The highest quality EMD is generally placed in smaller batteries, whereas in larger batteries, higher-quality EMD is more likely to be blended with lower quality EMD or a slightly lesser quality EMD may be used.[20] According to Rayovac, blending has allowed the company to be flexible in using not only the domestic but also the imported product.[21] Blending not only can result in cost savings by allowing lower cost EMD to be blended in with a higher grade (without adversely affecting performance), but also permits the development of EMD having desirable physical properties that are a composite of the blends used.[22] Attempts to reduce EMD costs are motivated, in

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[18] The shelf life of a battery is a measure of how long a battery may be stored and still provide useful service. Alkaline batteries typically have a shelf life of several years.

[19] According to Kerr-McGee, the duration of the qualification process ranges from about ***-*** months, whereas Rayovac estimates that the qualification process takes *** (about 9-18 months). Staff conversation with ***, Kerr-McGee, and conference transcript (Mr. Codde, Rayovac, p. 111).

[20] Petitioner's postconference brief, exhibit 1, pp. 3-4.

[21] Conference transcript (Mr. Codde, Rayovac), p. 121.

[22] Staff telephone conversation with ***.

part, because EMD is the most expensive ingredient in an alkaline battery, typically amounting to approximately *** percent of the total cost of manufacture of the alkaline battery.[23]

Petitioner contends that EMD is increasingly becoming a commodity-like product as producers from a number of countries have improved their production processes and control so that they are better able to control EMD quality.[24] Respondents disagree that "commoditization" has occurred.[25] In any event, quality remains a source of concern in certain instances, not only for foreign suppliers but also for domestic suppliers. Rayovac has stated that it does not plan to buy EMD from Kerr-McGee, in part because its standard alkaline EMD was deemed to be more abrasive and corrosive than Rayovac's manufacturing machinery could accommodate.[26] Some respondents to Commission questionnaires stated that EMD imported from China was not on a par with EMD imported from other subject countries, particularly for smaller sized batteries, although EMD imported from China is used in large-sized batteries (which do not require as high quality EMD as smaller batteries) as a blend.

Production Process

All types and grades of EMD, whether imported or domestically produced, are produced by the same general process. There are three stages of EMD production: ore handling, electrolysis, and finishing.

Ore handling involves the preparation of manganese dioxide for electrolysis. Currently, the only ores that are suitable contain either manganese dioxide or manganese carbonate.[27] Manganese ore[28] containing manganese dioxide is crushed and ground and then fed into reduction furnaces that convert manganese dioxide to the sulfuric acid-soluble manganese oxide (MnO) known as the reduced ore. (For ore containing manganese carbonate the reduction step is omitted.) The manganese is then "leached" by having the reduced ore digested continuously in spent electrolyte and sulfuric acid. Next, the resulting

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[23] Conference transcript (Mr. Derby), p. 23; responses to Commission questionnaires.

[24] According to petitioner, "the production quality of Kerr-McGee's competitors has improved to the point that--with the exception of Chinese material--any quality gap identified in the Sunset Review no longer exists. This quality improvement has been driven by the battery producers, who have worked with the various suppliers to upgrade their operations so that they can have multiple high quality supply options. The relevant improvements during commoditization are those in the areas of product discharge capacity and impurity levels. The improvements have been made by attention to process control--e.g., controlling the leach plant operation to affect cell feel purity, controlling the acid manganese cell solution, controlling the temperature, current density, etc. All of these process adjustments are made through know-how and practice, and with the proper knowledge transfer and experience, plants in Australia, South Africa, Ireland, Greece and Japan are unquestionably world-class producers of alkaline EMD" (petitioner's postconference brief, exhibit 1, p. 4).

[25] Chinese respondents state that alkaline-grade EMD has not become commoditized and that EMD produced by different manufacturers has different physical and electrochemical properties (Chinese respondents' postconference brief, p. 24). Energizer contends that "petitioner's claim of commoditization is exaggerated" and that "blending illustrates that commoditization of EMD has not occurred" (Energizer's postconference brief, pp. 3-4).

[26] Conference transcript (Mr. Codde, Rayovac), pp. 89-90; ***.

[27] According to the petitioner, in general, manganese carbonate ores contain less manganese than manganese dioxide ores and may be more expensive to process but are not necessarily inferior in quality. Conference transcript (Mr. Stater, Kerr-McGee, and Mr. Smith, counsel for Kerr-McGee), pp. 38-40. However, at least one respondent contends that it is much less expensive to produce EMD from manganese carbonate ore (postconference brief of importer First Continental International (N.J.) Inc., pp. 1-2). *** Chinese producers of EMD stated that they produce EMD using manganese carbonate as a raw material. Chinese respondents' postconference brief, p. 27.

[28] Manganese ore is relatively abundant in the earth's crust, but only certain manganese ore has the relative purity and other properties that make it suitable for use in the production of EMD. Principal sources for manganese ore include Australia, China, Gabon, and Ghana.

manganese sulfate solution is purified to remove, to the extent possible, such impurities as copper, nickel, cobalt, molybdenum, antimony, and arsenic (manganese dioxide for batteries should be essentially free of impurities that would deposit on a zinc anode). Iron may be added to aid in the removal of impurities.[29]

In electrolysis, the manganese sulfate solution is processed through a number of thickeners and filters and is fed to the electrolytic cell room. The purified manganese sulfate is then metered to the electrolytic cells, where hydrogen is liberated at carbon or lead cathodes and manganese dioxide is deposited on titanium anodes. The period of electrolysis lasts from 2 to 4 weeks.

In the finishing process, the anodes are removed from the cells and are immersed in hot water to remove the electrolyte solution.[30] The EMD deposit is removed from the anodes, washed, and neutralized to remove traces of the electrolyte. Neutralization determines the final pH of the EMD. When the EMD is removed from the anodes and neutralized, it is in a plate or chip form, but it must be ground into a powder for use in batteries. It is usually ground and sold as a powder by the EMD producers. Prior to shipment, the EMD is dried and packed according to customer specification. Before EMD is shipped to a customer, relatively minor adjustments are made to meet the particular needs of the customer. Adjustments include modifying the particle-size distribution, compressed density, and abrasiveness of the EMD. These adjustments do not produce major differences in EMD quality or performance.

In response to questions on whether firms produced other products on the same equipment and machinery used in the production of EMD, and using the same production and related workers, ***.

Other Domestic Like Product Factors

Information on interchangeability, customer and producer perceptions, and channels of distribution is presented in Part II of this report, and information on the pricing of EMD is presented in Part V.

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[29] Later removal of the iron is important because it would otherwise contaminate the product and affect efficiency in the electrolysis process, and because impurities such as arsenic and lead are co-precipitated when the iron is precipitated.

[30] The finishing step is the step that distinguishes whether the EMD is alkaline, zinc chloride, or lithium grade. Conference transcript (Mr. Smith, counsel for Kerr-McGee), pp. 51-52.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

CHANNELS OF DISTRIBUTION AND MARKET CHARACTERISTICS

All reported domestic shipments of EMD from U.S. producers and importers are sold to end users, namely battery producers. At the conference, Kerr-McGee described the domestic and global markets for EMD as highly concentrated, with a small number of producers and an even smaller number of purchasers. Virtually all EMD demand in the United States is for the standard alkaline grade. The commercial EMD market is supplied by two U.S. companies (Kerr-McGee and Erachem)[1] and several foreign companies (Delta, Mitsui, Tosoh, and certain producers in China).[2] There are four major U.S. purchasers (Duracell, Energizer, Mutec, and Rayovac) who are described as having significant market power in both the U.S. and global markets.[3]

SUPPLY AND DEMAND CONSIDERATIONS [4]

U.S. Supply

Based on available information, U.S. producers of EMD have the ability to respond to changes in prices with moderate to large changes in the quantity of shipments of U.S.-produced EMD to the U.S. market. The main factors contributing to this degree of responsiveness are some excess capacity and the existence of sizable inventories. The degree of responsiveness may be moderated by the lack of exports to alternate markets. These factors are detailed next.

Industry Capacity

Data reported by U.S. producers indicate that there is excess capacity with which to expand production of EMD in the event of price changes. Domestic capacity utilization fell from 97.6 percent in 2000 to 93.6 percent in 2001, then declined further to 66.7 percent in 2002. Interim data for the first half of 2003 indicate that capacity utilization increased to 84.8 percent as compared to 67.7 percent for the first half of 2002.

Inventory Levels

U.S. producers' inventories of EMD, as a ratio to total shipments, were *** percent in 2000, *** percent in 2001, and *** percent in 2002. Interim data for the first half of 2003 indicate that inventories remained *** at *** percent of total shipments as compared to *** percent of total shipments in the first half of 2002.

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[1] Energizer is also a U.S. producer of EMD, but produces for internal consumption only.

[2] The full names of the foreign companies are presented in part VII of this report.

[3] Conference transcript (Joseph Derby, Kerr-McGee), pp. 20-24.

[4] Reported data on subject foreign producers' production capacity, production, capacity utilization, inventories, and exports of EMD are shown in detail in Part VII of this report.

Export Markets

Exports represented a small share of the quantity of total shipments during 2000-2002, accounting for *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in interim 2002, and *** percent in interim 2003. These numbers suggest that U.S. producers may have a limited ability to divert shipments to or from alternate markets in response to changes in the prices of EMD.

U.S. Demand

Based on available information, the overall demand for EMD is unlikely to change significantly in response to changes in price. The main factor contributing to the low degree of price sensitivity is the lack of substitute products.

Demand Characteristics

Demand for this product is derived from the demand for dry cell batteries. Questionnaire responses reveal that U.S. producers and importers agree that demand for dry cell batteries declined in 2000 and 2001 as retailers and consumers reduced their Y2K-related stockpiles of dry cell batteries. Also, the weakening economy led to reduced demand for battery-operated products. Battery consumption began to increase in 2002 and continued to grow in 2003, albeit at a rate below historical levels due to ongoing weak economic conditions. At the conference, the petitioner stated that, in 2001, U.S. demand fell approximately 20 to 30 percent in one year to levels below the available supply, followed by a decline in prices in 2002.[5] *** reported that demand growth in the period 2001 to the present has been approximately 2 to 3 percent per year.

Available information indicates that U.S. consumption of EMD decreased from 114,437 short tons in 2000 to 88,447 short tons in 2001 before increasing to 94,609 short tons in 2002. Interim data show an increase in demand from 44,852 short tons in the first half of 2002 to 49,730 short tons in the first half of 2003.

Substitute Products

Questionnaire responses from all U.S. producers and six of eight importers reveal that most responding firms believe there are no substitute products for EMD. Of the two importers that did not respond with the majority, *** reported that chemical manganese dioxide may be a substitute in some applications, and *** reported that it had "no idea" regarding the existence of substitute products.

Cost Share

According to responding U.S. producers and importers, the EMD that they sell in the U.S. market is used in the production of batteries, primarily alkaline batteries. *** estimated the percentage of total end-use cost accounted for by EMD to be ***.

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[5] Conference transcript (Harrell Smith, counsel for Kerr-McGee), p. 14.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported EMD depends upon such factors as relative prices, quality, and conditions of sale. Based on available data in the preliminary phase of these investigations, staff believes that there is at least a moderate degree of substitution between domestic EMD and subject imports. Table II-1 summarizes U.S. producers' and importers' responses regarding the perceived degree of interchangeability between EMD produced in the United States and in other countries.[6] Table II-2 summarizes U.S. producers' and importers' responses regarding the perceived importance of differences in factors other than price between EMD produced in the United States and in other countries.[7]

Table II-1
EMD: Perceived degree of interchangeability between EMD produced in the United States and in other countries in sales of EMD in the U.S. market

Country pair	Number of U.S. producers reporting					Number of U.S. importers reporting				
	A	F	S	N	O	A	F	S	N	O
U.S. vs. Australia	***	***	***	***	***	---	1	---	1	5
U.S. vs. China	***	***	***	***	***	---	1	1	2	3
U.S. vs. Greece	***	***	***	***	***	1	3	---	1	2
U.S. vs. Ireland	***	***	***	***	***	---	2	---	1	4
U.S. vs. Japan	***	***	***	***	***	---	5	---	1	1
U.S. vs. South Africa	***	***	***	***	***	---	1	1	1	4
U.S. vs. nonsubject	***	***	***	***	***	---	---	1	1	5

Note – A = Always, F= Frequently, S =Sometimes, N =Never, O = No familiarity.

Source: Compiled from data submitted in response to Commission questionnaires.

[6] In those instances where U.S. producers and importers reported familiarity with the degree of interchangeability of EMD produced in one subject country as compared to another subject country, responses from U.S. producers reveal that EMD is generally "always" or "frequently" interchangeable (i.e., can physically be used in the same applications), while responses from importers reveal that EMD is "frequently" or "sometimes" interchangeable for such country combinations. Subject country comparisons involving China revealed a somewhat lower perception of interchangeability, with U.S. producers reporting that EMD is "frequently" or "sometimes" interchangeable in such comparisons and importers reporting that EMD is "sometimes" or "never" interchangeable in such comparisons. Approximately half of the responding importers reported no familiarity with the various subject country combinations. Rayovac stated that EMD produced in China is "qualitatively different" from EMD produced in other countries in that it does not perform to ANSI specifications, in contrast to the EMD of other producers. (Rayovac's postconference brief, p. 14.)

[7] In those instances where U.S. producers and importers reported familiarity with the degree of importance of differences in factors other than price for EMD produced in one subject country as compared to another subject country, responses from U.S. producers reveal that differences in non-price factors are generally "never" significant, while responses from importers reveal that such differences are generally "always" or "sometimes" significant. Subject country comparisons involving China revealed a somewhat greater perception among U.S. producers of the importance of non-price factors, with U.S. producers reporting that such factors are "sometimes" significant in such comparisons.

Table II-2
EMD: Perceived importance of differences in factors other than price between EMD produced in the United States and in other countries in sales of EMD in the U.S. market

Country pair	Number of U.S. producers reporting[1]					Number of U.S. importers reporting[2]				
	A	F	S	N	O	A	F	S	N	O
U.S. vs. Australia	***	***	***	***	***	2	---	---	1	2
U.S. vs. China	***	***	***	***	***	2	---	---	1	2
U.S. vs. Greece	***	***	***	***	***	2	---	---	1	2
U.S. vs. Ireland	***	***	***	***	***	2	---	1	1	1
U.S. vs. Japan	***	***	***	***	***	2	---	1	1	1
U.S. vs. South Africa	***	***	***	***	***	2	---	---	1	2
U.S. vs. nonsubject	***	***	***	***	***	2	---	---	---	3

[1] *** and therefore did not answer this question.
[2] *** and therefore did not answer this question.

Note -- A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.

Source: Compiled from data submitted in response to Commission questionnaires.

Kerr-McGee states that EMD has increasingly become a commodity product where price is the most important consideration in purchase decisions, and the process referred to as blending has contributed to the commoditization of EMD. In contrast, respondents have argued that quality is the overriding issue in purchase decisions, with EMD manufactured to customer specifications for a given battery size or battery sizes. Respondents assert that not all battery producers have the capability to blend EMD and that blending does not allow battery producers to use EMD from different suppliers interchangeably. Further, blended EMD must also be qualified separately from the inputs used in the specific blend.[8]

[8] See Rayovac's postconference brief, pp. 3-5, Energizer's postconference brief, pp. 3-4, and Delta and Tosoh's joint postconference brief, pp. 6-10.

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

Information presented in this section of the report is based on (except as noted) the questionnaire responses of three firms. These firms are believed to account for all of the U.S. production of EMD during the period examined.

U.S. PRODUCERS

The Commission sent producers' questionnaires to all three firms identified as U.S. producers of EMD in the petition. Table III-1 presents the list of U.S. producers with each company's production location(s), share of U.S. production in 2002, and position on the petition.

Table III-1
EMD: U.S. producers, U.S. production locations, shares of U.S. production in 2002, and positions on the petition

Firm	Production location	Share of production (*percent*)	Position on the petition
Energizer[1]	Westlake, OH	***	Oppose
Erachem[2]	New Johnsonville, TN	***	Support
Kerr-McGee[3]	Henderson, NV	***	Petitioner

[1] Energizer is primarily a U.S. producer of alkaline batteries headquartered in St. Louis, MO.
[2] Erachem is a wholly owned subsidiary of Comilog U.S., Inc. of Baltimore, MD.
[3] Kerr-McGee is a wholly owned subsidiary of Kerr-McGee Corp. of Oklahoma City, OK.

Source: Compiled from data submitted in response to Commission questionnaires and conference transcript (Mr. Sonnenberg, counsel for Energizer), p. 82.

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data on U.S. producers' capacity, production, and capacity utilization are presented in table III-2. Total U.S. capacity increased from 2000 to 2002 by 6.9 percent, but remained well below apparent U.S. consumption of EMD. Total U.S. production of EMD decreased by 27.0 percent from 2000 to 2002. Capacity utilization decreased by 31.0 percentage points from 2000 to 2002.

Table III-2
EMD: U.S. producers' capacity, production, and capacity utilization, 2000-2002, January-June 2002, and January-June 2003

Item	Calendar year			January-June	
	2000	2001	2002	2002	2003
Capacity *(short tons)*:					
Energizer	***	***	***	***	***
Erachem	***	***	***	***	***
Kerr-McGee	***	***	***	***	***
Total	63,853	68,020	68,253	34,127	34,127
Production *(short tons)*:					
Energizer	***	***	***	***	***
Erachem	***	***	***	***	***
Kerr-McGee	***	***	***	***	***
Total	62,344	63,684	45,491	23,116	28,954
Capacity utilization *(percent)*:					
Energizer	***	***	***	***	***
Erachem	***	***	***	***	***
Kerr-McGee	***	***	***	***	***
Average	97.6	93.6	66.7	67.7	84.8
Source: Compiled from data submitted in response to Commission questionnaires.					

***. Kerr-McGee, however, stated that recently, due to increasing EMD inventories, it elected to suspend its EMD production operations at its Henderson, NV facility and furlough 85 employees.[1] Kerr-McGee has stated publicly that it is trying to divest the company of its EMD business.[2] Kerr-McGee has stated at the Commission's public conference and in filings with the Securities and Exchange Commission that its desire is to concentrate on its two core business segments, oil and gas exploration and the production and marketing of titanium oxide, and sell its EMD facility if a buyer appeared.[3] Kerr-McGee has also experienced environmental problems and has been cited by the Environmental Protection Agency ("EPA") for failure to install required pollution controls at its EMD plant.[4]

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[1] Conference transcript (Mr. Stater, Kerr-McGee), p. 19.

[2] Conference transcript (Mr. Hill, Kerr-McGee), p. 51. Rayovac stated Kerr-McGee's divestiture plan was a factor in its decision not to enter into a supplier relationship with Kerr-McGee. *Id.* (Mr. Codde, Rayovac), p. 89; Rayovac's postconference brief, p. 11.

[3] Conference transcript (Mr. Hill, Kerr-McGee), p. 51.

[4] On September 27, 2001, the EPA issued to Kerr-McGee a notice of violation of the Clean Air Act that stated that the company released 47 tons of carbon monoxide per year for approximately seven years. The potential liability could exceed $100 million. *See* Joint respondents' postconference brief, p. 29, exhs. 18-20; Rayovac's

(continued...)

***.

***.

The domestic producers reported *** toll agreements *** U.S. production of EMD in U.S. foreign trade zones.

U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORT SHIPMENTS

As detailed in table III-3, the volume of U.S. producers' U.S. shipments of EMD decreased by 18.3 percent from 2000 to 2002. The value of their U.S. shipments decreased by 22.4 percent during the same time period. *** of the internal shipments are those of Energizer, which consumes all of the EMD it produces in the production of its dry cell batteries.[5] The *** volume of export shipments made by U.S. producers increased by *** percent between 2000 and 2002, while the value of those export shipments also increased *** percent during the same period. *** reported export shipments, which were made to ***. Energizer, which internally consumes all the EMD it produces, ***.

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[4] (...continued)
postconference brief, pp. 12-13. Joint respondents argue that Kerr-McGee cannot complete its divestiture plan due to these environmental concerns. *Id.*

[5] ***.

Table III-3
EMD: U.S. producers' shipments, by type, 2000-2002, January-June 2002, and January-June 2003

Item	Calendar year			January-June	
	2000	2001	2002	2002	2003
			Quantity (*short tons*)		
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	59,793	47,233	48,843	23,574	24,820
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
			Value (*$1,000*)		
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	86,372	68,241	66,991	32,621	32,380
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
			Unit value (*per short ton*)		
Commercial shipments	$***	$***	$***	$***	$***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	1,445	1,445	1,372	1,384	1,305
Export shipments	***	***	***	***	***
Average	***	***	***	***	***

[1] Not applicable.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. PRODUCERS' IMPORTS AND PURCHASES OF IMPORTS

One of the three U.S. producers, ***, reported that it directly imported or purchased subject imports from third-party importers during the period examined. Table III-4 presents direct imports and purchases of imports and domestic product by ***, along with its U.S. production.

Table III-4
EMD: * production, imports, and purchases, 2000-2002, January-June 2002, and January-June 2003**

* * * * * * *

CAPTIVE CONSUMPTION

Section 771(7)(C)(iv) of the Act states that–

If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that–

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
(II) the domestic like product is the predominant material input in the production of that downstream article, and
(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance . . ., shall focus primarily on the merchant market for the domestic like product.[6]

In 2002, captive consumption (internal shipments) accounted for *** percent of the reported volume of U.S. producers' U.S. shipments of EMD; *** captive consumption was accounted for by Energizer. Commercial (merchant) shipments accounted for *** percent of U.S. producers' shipments, and transfers to related firms accounted for *** percent. The percentage shares for 2000 and 2001 were similar.

The first requirement for application of the captive consumption provision is that the domestic like product that is internally transferred for processing into a downstream article not enter the merchant market for the domestic like product. All of Energizer's captively consumed EMD was used in its production of its brand name alkaline dry-cell batteries.

The second criterion of the captive consumption provision concerns whether the domestic like product is the predominant material input in the production of the downstream article that is captively produced. EMD is the most expensive ingredient in an alkaline battery, but typically amounts to approximately *** percent of the total cost of manufacturing a battery.[7]

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[6] 19 U.S.C. § 1677(7)(C)(iv).

[7] Questionnaire responses of ***.

The third criterion of the captive consumption provision is that the production of the domestic like product sold in the merchant market is generally not used in the production of the downstream article produced from the domestic like product that is internally transferred for processing (captively produced). Virtually all, if not all, U.S.-produced EMD, whether sold in the U.S. merchant market or captively consumed, is used in the production of dry cell batteries.

U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of EMD for the period examined are presented in table III-5.

Table III-5
EMD: U.S. producers' end-of-period inventories, 2000-2002, January-June 2002, and January-June 2003

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers ("PRWs") engaged in the production of EMD, the total hours worked by such workers, and wages paid to such PRWs during the period for which data were collected in these investigations are presented in table III-6.

Table III-6
EMD: Average number of production and related workers producing EMD, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2000-2002, January-June 2002, and January-June 2003

* * * * * * *

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent importer questionnaires to 13 firms believed to be importers of EMD from the subject countries, as well as to all three U.S. producers.[1] Questionnaire responses were received from eight companies that are believed to account for virtually all U.S. imports of EMD.[2] Questionnaire respondents were located in Pennsylvania, New Jersey (2), New York (2), Ohio, and Wisconsin. *** firm reported imports from nonsubject countries.

Although the Commission received importer questionnaires from all major importers of EMD, the Commission staff elected to compile U.S. import data in this report using modified Commerce statistics in order to increase import data coverage.[3]

*** U.S. importers entered the subject product into or withdrew it from foreign trade zones or bonded warehouses. Table IV-1 lists all responding U.S. importers of EMD and their quantity of imports, by source, in 2002.

Table IV-1
EMD: Reported U.S. imports, by importer and by source of imports, 2002

* * * * * * *

[1] The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by the Bureau of Customs and Border Protection ("Customs") (formerly the U.S. Customs Service), may have imported EMD since 2000.

[2] In addition to the 8 responses, the Commission received responses from *** indicating that they did not import EMD during the period examined. *** were sent importers' questionnaires by the Commission but did not respond.

[3] Overall, importer questionnaire data track closely with the public Commerce statistics. The Commerce import data of HTS subheading 2820.10.00 were modified to exclude manganese dioxide ("MD") outside the scope of these investigations and to correct apparent country-of-origin misclassifications. The corrections are: (1) imports reported as originating in the United Kingdom have been reclassified as being from Ireland; (2) imports reported as originating in Hong Kong have been reclassified as being from China; and (3) all imports from nonsubject countries have been removed because they are believed to be out of the scope of these investigations (either chemical MD or natural MD).

Petitioner has stated that there are no EMD production facilities in either Hong Kong or the United Kingdom, but merely shipping ports for the facilities located in China and Ireland. ***.

Imports of manganese dioxide from nonsubject countries accounted for only 2.1 percent of total imports in 2002. The nonsubject countries were: (1) Brazil, (2) Belgium, (3) France, (4) Germany, (5) Ghana, (6) India, (7) Mexico, (8) Morocco, (9) Netherlands, and (10) Switzerland.

Imports of manganese dioxide from Belgium are out-of-the-scope chemical manganese dioxide (CMD). Petition, exh. 14; petitioner's postconference brief, exh. 1, p. 1. Erachem's sister company in Belgium is a producer of CMD and exports CMD to the United States. Petition, vol. II, exh. 4, affidavit of Denis F. DeCraene, Erachem. Imports from Brazil, Ghana, India, and Mexico are natural (ore) manganese dioxide (NMD). These countries produce NMD, not EMD. The petitioner states that no EMD production facilities exist in any of the remaining nonsubject countries (France, Germany, Morocco, Netherlands, and Switzerland). Petitioner's postconference brief, exh. 1, p. 1.

U.S. IMPORTS

Table IV-2 shows that the volume of U.S. imports of EMD from all subject countries combined decreased by 28.5 percent from 2000 to 2002, but increased by 89.9 percent between January-June 2002 and January-June 2003. The volume of U.S. imports from the following countries experienced decreases between 2000 and 2002: Australia decreased by 13.5 percent; Greece, by 6.5 percent; Ireland, by 31.6 percent; and South Africa, by 76.3 percent. The volume of imports from China increased by 9.3 percent between 2000 and 2002 and the volume of imports from Japan increased from 45 short tons in 2000 to 1,729 short tons in 2002. Imports from all subject countries except China increased between January-June 2002 and January-June 2003.

Table IV-2
EMD: U.S. imports, by source, 2000-2002, January-June 2002, and January-June 2003

Source	Calendar year			January-June	
	2000	2001	2002	2002	2003
	Quantity (*short tons*)				
Australia	28,040	22,727	24,249	10,541	18,561
China	1,310	1,823	1,432	217	155
Greece	1,739	620	1,627	340	851
Ireland	10,708	7,998	7,319	3,212	4,395
Japan	45	346	1,729	1,107	1,277
South Africa	13,456	8,013	3,195	405	4,799
Subtotal	55,298	41,526	39,552	15,822	30,039
All others	0	0	0	0	0
Total	55,298	41,526	39,552	15,822	30,039
	Value (*$1,000*)[1]				
Australia	39,718	33,449	33,183	14,322	22,979
China	1,779	1,941	1,690	234	167
Greece	2,382	849	2,174	455	1,053
Ireland	15,384	11,562	10,256	4,466	5,887
Japan	79	808	3,141	2,219	1,605
South Africa	18,281	11,112	4,461	637	6,024
Subtotal	77,624	59,721	54,905	22,332	37,714
All others	0	0	0	0	0
Total	77,624	59,721	54,905	22,332	37,714

Table continued on next page.

Table IV-2--*Continued*
EMD: U.S. Imports, by source, 2000-2002, January-June 2002, and January-June 2003

Source	Calendar year			January-June	
	2000	2001	2002	2002	2003
			Unit value (*per short ton*)		
Australia	$1,416	$1,472	$1,368	$1,359	$1,238
China	1,357	1,065	1,180	1,078	1,076
Greece	1,370	1,370	1,336	1,337	1,238
Ireland	1,437	1,446	1,401	1,390	1,340
Japan	1,756	2,336	1,816	2,005	1,257
South Africa	1,359	1,387	1,396	1,572	1,255
Average	1,404	1,438	1,388	1,411	1,256
All others	0	0	0	0	0
Average	1,404	1,438	1,388	1,411	1,256
			Share of quantity (*percent*)		
Australia	50.7	54.7	61.3	66.6	61.8
China	2.4	4.4	3.6	1.4	0.5
Greece	3.1	1.5	4.1	2.2	2.8
Ireland	19.4	19.3	18.5	20.3	14.6
Japan	0.1	0.8	4.4	7.0	4.3
South Africa	24.3	19.3	8.1	2.6	16.0
Subtotal	100.0	100.0	100.0	100.0	100.0
All others	0	0	0	0	0
Total	100.0	100.0	100.0	100.0	100.0
			Share of value (*percent*)		
Australia	51.2	56.0	60.4	64.1	60.9
China	2.3	3.2	3.1	1.0	0.4
Greece	3.1	1.4	4.0	2.0	2.8
Ireland	19.8	19.4	18.7	20.0	15.6
Japan	0.1	1.4	5.7	9.9	4.3
South Africa	23.6	18.6	8.1	2.9	16.0
Subtotal	100.0	100.0	100.0	100.0	100.0
All others	0	0	0	0	0
Total	100.0	100.0	100.0	100.0	100.0

[1] Landed, duty-paid.

Source: Compiled from adjusted Commerce statistics of HTS subheading 2820.10.00. The adjustments are: (1) imports reported as originating in the United Kingdom have been reclassified as being from Ireland; (2) imports reported as originating in Hong Kong have been reclassified as being from China; and (3) all imports from nonsubject countries have been removed because they are out of the scope of these investigations (either chemical MD or natural MD). *See, supra*, footnote 3.

NEGLIGIBILITY

The Tariff Act provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition–in this case July 2002 through June 2003. The shares (in *percent*) of the total quantity of U.S. imports for each of the subject countries for the period of July 2002 through June 2003 are shown in table IV-3. Imports from all countries have been compiled using Commerce data as revised. As shown in table IV-3, imports from China are below 3 percent of total imports.

Table IV-3
EMD: U.S. imports and shares of total imports, by source, July 2002-June 2003

Country	Imports (*short tons*)	Share of total imports (*percent*)
Australia	32,269	60.0
China[1]	1,370	2.5
Greece	2,138	4.0
Ireland	8,502	15.8
Japan	1,900	3.5
South Africa	7,590	14.1
Subtotal	53,769	100.0
All other countries	0	0
Total	53,769	100.0

[1] ***.
Petitioner contends that all imports from China are within the scope of these investigations. Petition, p. 6. Chinese respondents claim that ***. Chinese respondents' brief, Responses to Staff Questions Raised at the Conference, p. 2.

Source: Compiled from adjusted Commerce statistics of HTS subheading 2820.10.00. The adjustments are: (1) imports reported as originating in the United Kingdom have been reclassified as being from Ireland; (2) imports reported as originating in Hong Kong have been reclassified as being from China; and (3) all imports from nonsubject countries have been removed because they are out of the scope of these investigations (either chemical MD or natural MD). *See, supra*, footnotes 3 and 4.

Petitioner contends that official U.S. import data understate the actual level of imports from China and that "a careful analysis of ITC importer and producer questionnaire data, PIERS data, and official import statistics reveals that the official data fail to capture large import volumes during the July 2002 through June 2003 period." Petitioner contends that its adjusted data indicate that imports from China represented approximately *** percent of total imports in that period.[4] Petitioner obtained the *** percent figure in the following manner: (1) added a 126,000 kilogram (139 short tons) import shipment to U.S. imports from China that was reported in Customs data and Commerce data as imports from Hong

[4] Petitioner's postconference brief, p. 3 and exh. 2.

Kong and imported by ***;[5] (2) added additional EMD volume to U.S. imports from China because of perceived discrepancies between importers' questionnaire data and foreign producers' questionnaire data;[6] and (3) added additional EMD volume from China because of perceived under-reporting of U.S. imports from China because of the failure of some companies, alleged by the petitioner to be U.S. importers of EMD, to submit questionnaire responses to the Commission.[7]

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical market, (3) common or similar channels of distribution, and (4) simultaneous presence in the market.

Fungibility

Petitioner argues that all EMD from all subject countries and the United States is essentially fungible.[8] It states, however, that slight technical differences among different EMD may affect how it works in a particular battery manufacturer's production process. Petitioner contends that in recent years EMD has become increasingly "commoditized." It contends that this has occurred by the improved quality of foreign EMD (with the exception of China) facilitated by the large battery manufacturers, which have worked with the foreign producers to upgrade their EMD operations and allowed the battery manufacturers to secure multiple and global sources of EMD.[9] Petitioner also argues that the process of "blending" has increased the fungibility of EMD, even of lower grade EMD from China. "Blending" is a process by which battery manufacturers may mix or blend EMD from various sources and various grades together to achieve a desired EMD grade.

Respondents argue that EMD is not a commodity product and is not fungible.[10] They stated that EMD is produced for specific battery manufacturers and that it is not interchangeable between end users.

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[5] The U.S. import data from China found throughout this report already reflect the addition of imports from Hong Kong to those of China.

[6] Petitioner contends that ***.

[7] Petitioner argued that additional EMD imports from China should be added because the Commission did not receive importers' questionnaires from ***.

*** were listed in Customs data as U.S. importers from China during the relevant period. As mentioned in this section of the report, Commission staff opted to use official Commerce statistics to increase data coverage of U.S. imports. Moreover, the import data reported by Customs in 2002 match precisely (with the addition of imports from Hong Kong) the data reported in the official Commerce statistics. Therefore, petitioner's concerns regarding under-reporting of U.S. imports from China in importers' questionnaires not submitted to the Commission are alleviated by using Commerce statistics. In fact, a portion of petitioner's *** percent calculation rests upon modifying the Commerce statistics with the perceived under-reporting found in the questionnaire responses; this would constitute double-counting of imports from those companies already captured in the Customs and Commerce import data.

*** were all listed in PIERS as involved in manganese dioxide transactions with China. Commission staff opted not to include the PIERS data for these companies for the following reasons: (1) ***; (2) ***; (3) because import data from Customs tracked precisely with official Commerce statistics, reliance on PIERS data was deemed unnecessary; (4) from the PIERS data itself, it is unclear whether the transactions involved are for EMD, CMD, or NMD; and (5) ***.

[8] Petitioner's postconference brief, p. 7.

[9] Petitioner's postconference brief, exh. 1, p. 4.

[10] Joint respondent's postconference brief, p. 4; Energizer's postconference brief, p. 3.

Further, they argue that a rigorous and costly qualification process, which can take 9 to 18 months, prevents battery manufacturers from switching quickly between EMD producers.[11] Moreover, respondents add that qualification for one end use (i.e., AA or AAA batteries) does not necessarily qualify the EMD for other end uses (i.e., C or D batteries).[12] They take issue with petitioner's contention that "blending" has somehow recently "commoditized" EMD and state that every EMD product has to be prequalified regardless if it is blended or not.[13] Further, one respondent cites the fact that not all battery producers have the capacity to blend EMD as it takes specific capital investment and equipment.[14]

Rayovac states that *** than the EMD of some other manufacturers, and ***.[15]

Respondents argue that there are significant quality differences between EMD produced in China and EMD produced in other countries. They state that EMD produced in China lacks performance and reliability in the production of alkaline batteries.[16]

Chinese producers of EMD use manganese carbonate ore as opposed to manganese dioxide ore as a raw material in their EMD production. Respondents argue that while less expensive than manganese dioxide ore, the use of this raw material creates contaminants in the final EMD product that are difficult or costly to remove and may cause gassing, leaking, or reduce battery reliability.[17]

Geographical Market Segmentation

No geographical market segmentation in the United States was reported by the parties to these investigations. EMD from all subject countries competes for end users without regard to geographical location in the United States.[18]

Common or Similar Channels of Distribution

All imports from all subject countries and domestic production of EMD are sold directly to end users, the battery manufacturers, by sales representatives of the producers or the importers.[19]

Simultaneous Presence in the Market

Imports generally have been simultaneously present in the U.S. market throughout the period examined. Imports of EMD from Australia, Ireland, and South Africa entered the United States in all months from January 2002 through June 2003, imports from Japan entered in all months except for April

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[11] Joint respondents' postconference brief, pp. 6-7; Rayovac's postconference brief, p. 8; Energizer's postconference brief, p. 3 (qualification takes 12 to 18 months). ***. Petitioner's postconference brief, p. 17.

[12] Joint respondents' postconference brief, p. 6.

[13] Respondents also state that blending is not a new process and existed in the industry during the period of review in the Commission's prior sunset review of EMD. Joint respondents' postconference brief, pp. 6 and 9.

[14] Rayovac has stated that it does use a blending process for a portion of its battery production. ***. Rayovac's postconference brief, pp. 14-15. ***.

[15] Rayovac's postconference brief, p. 9. ***. *Id.*, pp. 3 and 11.

[16] Chinese respondents' postconference brief, p. 27.

[17] Energizer's postconference brief, p. 10. Manganese carbonate also contains less manganese which makes it less useful in high-grade batteries. Chinese respondents' postconference brief, p. 17.

[18] ***. Petitioner's postconference brief, p. 17.

[19] *Id.*

2003, imports from Greece entered in seven months in 2002 and two months in January-June 2003, and imports from China entered in nine months in 2002 and three months in January-June 2003.

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of EMD are presented in table IV-4.

Table IV-4
EMD: U.S. shipments of domestic product, U.S. imports by source, and apparent U.S. consumption, 2000-2002, January-June 2002, and January-June 2003

Item	Calendar year			January-June	
	2000	2001	2002	2002	2003
	Quantity (*short tons*)				
U.S. producers' U.S. shipments	59,793	47,233	48,843	23,574	24,820
U.S. shipments of imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Greece	***	***	***	***	***
Ireland	***	***	***	***	***
Japan	***	***	***	***	***
South Africa	***	***	***	***	***
Total subject imports	54,644	41,214	45,766	21,278	24,910
All other countries	0	0	0	0	0
Total imports	54,644	41,214	45,766	21,278	24,910
Apparent U.S. consumption	114,437	88,447	94,609	44,852	49,730
	Value (*$1,000*)				
U.S. producers' U.S. shipments	86,372	68,241	66,991	32,621	32,380
U.S. shipments of imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Greece	***	***	***	***	***
Ireland	***	***	***	***	***
Japan	***	***	***	***	***
South Africa	***	***	***	***	***
Total subject imports	77,458	59,226	62,672	29,121	30,858
All other countries	0	0	0	0	0
Total imports	77,458	59,226	62,672	29,121	30,858
Apparent U.S. consumption	163,830	127,467	129,663	61,742	63,238

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. MARKET SHARES

Data on market shares in the total U.S. market for EMD are presented in table IV-5.

Table IV-5
EMD: Apparent U.S. consumption and market shares, 2000-2002, January-June 2002, and January-June 2003

Item	Calendar year			January-June	
	2000	2001	2002	2002	2003
			Quantity (*short tons*)		
Apparent U.S. consumption	114,437	88,447	94,609	44,852	49,730
			Value (*$1,000*)		
Apparent U.S. consumption	163,830	127,467	129,663	61,742	63,238
			Share of quantity (*percent*)		
U.S. producers' U.S. shipments	52.2	53.4	51.6	52.6	49.9
U.S. shipments of imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Greece	***	***	***	***	***
Ireland	***	***	***	***	***
Japan	***	***	***	***	***
South Africa	***	***	***	***	***
Total subject imports	47.8	46.6	48.4	47.4	50.1
All other countries	0	0	0	0	0
Total imports	47.8	46.6	48.4	47.4	50.1
			Share of value (*percent*)		
U.S. producers' U.S. shipments	52.7	53.5	51.7	52.8	51.2
U.S. shipments of imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Greece	***	***	***	***	***
Ireland	***	***	***	***	***
Japan	***	***	***	***	***
South Africa	***	***	***	***	***
Total subject imports	47.3	46.5	48.3	47.2	48.8
All other countries	0	0	0	0	0
Total imports	47.3	46.5	48.3	47.2	48.8

Source: Compiled from data submitted in response to Commission questionnaires.

RATIO OF IMPORTS TO U.S. PRODUCTION

Data on ratio of imports to total U.S. production of EMD are presented in table IV-6.

Table IV-6
EMD: U.S. production, U.S. imports, and ratios of imports to production, 2000-2002, January-June 2002, and January-June 2003

Item	Calendar year			January-June	
	2000	2001	2002	2002	2003
	Quantity (*short tons*)				
U.S. production	62,344	63,684	45,491	23,116	28,954
U.S. imports from--					
Australia	28,040	22,727	24,249	10,541	18,561
China	1,310	1,823	1,432	217	155
Greece	1,739	620	1,627	340	851
Ireland	10,708	7,998	7,319	3,212	4,395
Japan	45	346	1,729	1,107	1,277
South Africa	13,456	8,013	3,195	405	4,799
Total subject imports	55,298	41,526	39,552	15,822	30,039
All other countries	0	0	0	0	0
Total imports	55,298	41,526	39,552	15,822	30,039
	Ratio of imports to U.S. production (*percent*)				
U.S. imports from--					
Australia	45.0	35.7	53.3	45.6	64.1
China	2.1	2.9	3.1	0.9	0.5
Greece	2.8	1.0	3.6	1.5	2.9
Ireland	17.2	12.6	16.1	13.9	15.2
Japan	0.1	0.5	3.8	4.8	4.4
South Africa	21.6	12.6	7.0	1.8	16.6
Total subject imports	88.7	65.2	86.9	68.4	103.7
All other countries	0	0	0	0	0
Total imports	88.7	65.2	86.9	68.4	103.7

Source: Compiled from data submitted in response to Commission questionnaires and adjusted Commerce statistics.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

U.S. Inland Transportation Costs

Transportation costs of EMD for delivery within the United States vary from firm to firm but tend to account for a relatively small percentage of the total cost of the product. For the two U.S. producers that responded to this question, these costs accounted for *** to *** percent of the total cost of EMD. For the five importers who provided usable responses to this question, these costs accounted for between 1.2 and 5.0 percent of the total cost of the product, with an average of 2.5 percent.

*** reported geographic market areas concentrated in the Midwest, Mid-Atlantic, and Southeast regions of the United States. The six importers that responded to this question also reported market areas encompassing these regions.

Producers and importers were also requested to provide estimates of the percentages of their shipments that were made within specified distance ranges. For the two U.S. producers that provided usable responses to this question, *** shipments were reported to have occurred within 100 miles, *** percent occurred within 101 to 1,000 miles, and *** percent occurred at distances over 1,000 miles. Among the five importers that provided usable responses to this question, no shipments were reported to have occurred within 100 miles, 60 percent occurred within 101 to 1,000 miles, and 40 percent occurred at distances over 1,000 miles.

PRICING PRACTICES

Pricing Methods

Questionnaire responses reveal that most sales of EMD in the United States are made on a short-term contract basis (multiple deliveries up to 12 months), with the remaining sales made on a spot basis. Contracts appear to typically be one year in duration and fix price for a certain quantity. According to Kerr-McGee, contracts are generally negotiated in the final quarter of each year for the following year. The negotiation process frequently involves counteroffers as customers receive competitive offers from various sources and identify quantity needs. If additional incremental quantities are required above those levels specified in the contract, *** . *** stated that if competitively priced EMD from another source is offered to a customer during the term of *** 's contract, the customer will sometimes request a price adjustment. *** .

Sales Terms and Discounts

The vast majority of responding U.S. producers and importers reported no formal discount policy; however, some firms reported volume-based discounts that are negotiated on a customer-by-customer basis. U.S. producers reported that payment is required within 30 to 60 days and price quotes are typically on an f.o.b. plant basis. Importers reported that payment is within 30 to 90 days and prices are generally quoted on a delivered basis.

U.S. producers and importers were asked to provide information on the average lead time between a customer's order and the date of delivery for sales of EMD in the U.S. market. According to U.S. producers, *** . Among responding importers, *** .

PRICE DATA

The Commission requested U.S. producers and importers to provide quarterly f.o.b. commercial shipment (to unrelated U.S. customers) data for the total quantity and value of two EMD products.[1] These data were used to determine weighted-average prices in each quarter. Data were requested for the period January 2000 through June 2003. The products for which pricing data were requested are as follows:

Product 1. - Standard alkaline grade electrolytic manganese dioxide in powder form

Product 2. - Lithium grade electrolytic manganese dioxide in powder form

Pricing data reported by the U.S. producers and importers accounted for *** percent of the 2002 value of U.S. producers' commercial U.S. shipments of EMD, *** importers' commercial U.S. shipments of EMD from Australia, China, and Japan, *** percent from Greece, *** percent from Ireland, and *** percent from South Africa.[2]

Price Comparisons

Data on f.o.b. selling prices and quantities of product 1 sold by the U.S. producers and importers of EMD are shown in table V-1 and figure V-1, respectively. Table V-2 summarizes quarterly underselling/overselling by country.[3]

Table V-1
Product 1: Weighted-average f.o.b. prices and quantities as reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, January 2000-June 2003

* * * * * * *

Figure V-1
Weighted-average f.o.b. prices for product 1, as reported by U.S. producers and importers, by quarters, January 2000-June 2003

* * * * * * *

[1] Requested data were net values (i.e., gross sales values less all discounts, allowances, rebates, prepaid freight, and the value of returned goods), f.o.b. U.S. point(s) of shipment.

[2] The following firms provided pricing data: ***.

[3] *** was the only firm to report price data for product 2. Therefore, product 2 data are not shown in this report. ***.

Table V-2
EMD: Product 1 - Number of quarters of under/overselling and average margins, by country

Country	Underselling		Overselling	
	No. of quarters	Avg. margin *(percent)*	No. of quarters	Avg. margin *(percent)*
Australia	6	2.5	5	2.0
China	14	11.5	0	---
Greece	10	6.0	0	---
Ireland	11	2.9	0	---
Japan	2	5.4	4	7.4
South Africa	8	2.6	3	1.4
Total	51		12	

Source: Compiled from data submitted in response to Commission questionnaires.

BID DATA

U.S. producers and importers were requested to report details of their participation in bid events for shipment in calendar year 2000 or later. Responses are provided in table V-3. A total of 20 bid events for alkaline grade EMD were reported for the period examined, of which 10 bid events provide data on competition between the domestic product and subject imports. Of these 10 bid events, three were awarded exclusively to U.S. suppliers, five were awarded to both U.S. suppliers and ***, and in two cases U.S. producers' bids were accepted but data on whether ***'s bid was accepted or rejected were not available.

Table V-3
EMD: Bid information on alkaline grade EMD contracts awarded by purchasers for shipment during 2000 or later

* * * * * * *

LOST SALES AND LOST REVENUES

In the petition, U.S. producers provided information on seven alleged lost sales and/or lost revenues due to imports of EMD from the subject countries. The reported allegations of lost sales and lost revenues involve *** pounds of EMD. The lost sales and lost revenue allegations are reported in tables V-4 and V-5, respectively.[4] Additional information provided by purchasers follows.

Table V-4
EMD: Lost sales allegations

* * * * * * *

[4] Some lost sales and lost revenue data provided in the petition are inconsistent with lost sales and lost revenue data provided in petitioner's postconference brief at pp. 28 and 29.

Table V-5
EMD: Lost revenue allegations

* * * * * * *

***.[5]

***.[6]

[5] Staff interview with *** of ***, September 3, 2003.

[6] E-mail responses from *** of ***, September 3 and 4, 2003.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Three producers[1] of EMD, accounting for all known U.S. production of EMD in 2002, provided the requested financial data. Energizer consumed all of its production of EMD internally and reported no commercial sales of EMD. ***. Cost of goods sold ("COGS") was reported ***. Selling, general, and administrative ("SG&A") expenses were allocated on the basis of ***. The SG&A expenses' percentages were derived from the company's published financial statements.[2] ***. Mr. Hill of Kerr-McGee stated at the conference that "despite reduced operating rates which have increased our per unit production costs we have been accumulating unacceptably high inventories of EMD. And as a result, unfortunately in May of this year we had to make the difficult decision to idle our EMD manufacturing facility and furlough 85 employees effective August of this year."[3]

OPERATIONS ON EMD

Income-and-loss data for the U.S. producers on their EMD operations are presented in table VI-1; selected financial data, by firm, are presented in table VI-2; and a variance analysis is shown in table VI-3. The operating income margin declined from a positive 9.6 percent of total net sales in 2000 to a positive 3.9 percent in 2001 and then turned into a negative 9.5 percent in 2002. The operating loss margin increased from 8.1 percent in January-June 2002 to 10.7 percent in January-June 2003.

From 2000 to 2001, the volume of total net sales declined by about 19 percent; on a per-pound basis, average COGS and SG&A expenses increased more than the average selling price, resulting in a smaller operating income. From 2001 to 2002, the volume of total net sales slightly increased by about 2 percent; on a per-short-ton basis, the average COGS and SG&A expenses increased whereas the average selling price decreased, resulting in a negative operating income. Between January-June 2002 and January-June 2003, the volume of total net sales increased by about 3 percent; on a per-short-ton basis, the average selling price decreased more than the average COGS and SG&A expenses increased, resulting in a higher operating loss.

---

[1] The three U.S. producers and their fiscal year ending dates are Energizer (September 30), Erachem (December 31), and Kerr-McGee (December 31).

[2] A letter from ***.

[3] Conference transcript (Mr. Hill, Kerr-McGee), p. 16.

Table VI-1
Result of operations of U.S. producers in the production of EMD, fiscal years 2000-2002, January-June 2002, and January-June 2003

Item	Fiscal years			January-June	
	2000	2001	2002	2002	2003
	Quantity (*short tons*)				
Commercial sales	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
Total net sales	60,227	48,603	49,771	24,173	24,920
	Value (*$1,000*)				
Commercial sales	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
Total net sales	87,483	71,226	69,243	34,074	32,609
Cost of goods sold[1]	70,071	60,662	67,731	33,440	32,193
Gross profit	17,412	10,564	1,512	634	416
SG&A expenses	9,054	7,815	8,108	3,383	3,913
Operating income or (loss)	8,358	2,749	(6,596)	(2,749)	(3,497)
Interest expense	228	633	649	335	251
Other expense	0	0	0	0	0
Other income items	0	0	0	0	0
Net income or (loss)	8,130	2,116	(7,245)	(3,084)	(3,748)
Depreciation/amortization	12,643	12,734	12,466	6,401	6,068
Cash flow	20,773	14,850	5,221	3,317	2,320
	Ratio to net sales (*percent*)				
Cost of goods sold	80.1	85.2	97.8	98.1	98.7
Gross profit	19.9	14.8	2.2	1.9	1.3
SG&A expenses	10.3	11.0	11.7	9.9	12.0
Operating income or (loss)	9.6	3.9	(9.5)	(8.1)	(10.7)
Net income or (loss)	9.3	3.0	(10.5)	(9.1)	(11.5)
	Unit value (*per short ton*)				
Net sales	$1,453	$1,465	$1,391	$1,410	$1,309
Cost of goods sold	1,163	1,248	1,361	1,383	1,292
Gross profit	289	217	30	26	17
SG&A expenses	150	161	163	140	157
Operating income or (loss)	139	57	(133)	(114)	(140)
Net income or (loss)	135	44	(146)	(128)	(150)
	Number of firms reporting				
Operating losses	***	***	***	***	***
Data	3	3	3	3	3

[1] ***.

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-2
Results of operations of U.S. producers in the production of EMD, by firms, fiscal years 2000-2002, January-June 2002, and January-June 2003

* * * * * * *

The variance analysis shows that the decrease in operating income from 2000 to 2002 was mainly attributable to a high unfavorable net cost/expense variance and also unfavorable price and net volume variances. The increase in operating loss from January-June 2002 to January-June 2003 was mainly attributable to an unfavorable price variance.

***.

Table VI-3
U.S. EMD producers' variance analysis, fiscal years 2000-2002, January-June 2002, and January-June 2003

Item	Fiscal years			Jan.-June
	2000-02	2000-01	2001-02	2002-03
	Value (*$1,000*)			
Commercial sales:				
Price variance	***	***	***	***
Volume variance	***	***	***	***
Commercial sales variance	***	***	***	***
Internal consumption:				
Price variance	***	***	***	***
Volume variance	***	***	***	***
Internal consumption variance	***	***	***	***
Transfers to related firms:				
Price variance	***	***	***	***
Volume variance	***	***	***	***
Transfer variance	***	***	***	***
Total net sales:				
Price variance	(3,052)	627	(3,695)	(2,518)
Volume variance	(15,188)	(16,884)	1,712	1,053
Total net sales variance	(18,240)	(16,257)	(1,983)	(1,465)
Cost of sales:				
Cost variance	(9,825)	(4,115)	(5,611)	2,280
Volume variance	12,165	13,524	(1,458)	(1,033)
Total cost variance	2,340	9,409	(7,069)	1,247
Gross profit variance	(15,900)	(6,848)	(9,052)	(218)

Table continued on next page.

Table VI-3--*Continued*
U.S. EMD producers' variance analysis, fiscal years 2000-2002, January-June 2002, and January-June 2003

Item	Fiscal years			Jan.-June
	2000-02	2000-01	2001-02	2002-03
	Value (*$1,000*)			
SG&A expenses:				
Expense variance	(626)	(508)	(105)	(425)
Volume variance	1,572	1,747	(188)	(105)
Total SG&A variance	946	1,239	(293)	(530)
Operating income variance	(14,954)	(5,609)	(9,345)	(748)
Summarized as:				
Price variance	(3,052)	627	(3,695)	(2,518)
Net cost/expense variance	(10,451)	(4,623)	(5,716)	1,855
Net volume variance	(1,451)	(1,613)	66	(85)

Note: Unfavorable variances are shown in parentheses; all others are favorable.

Source: Compiled from data submitted in response to Commission questionnaires.

***. Erachem stated that ***.[4]

With respect to ***, Kerr-McGee stated that ***.[5]

If Energizer's data are excluded from the aggregate data, ***.

INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES, AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' data on capital expenditures, R&D expenses, and the value of their property, plant, and equipment for their EMD operations are shown in table VI-4.

Table VI-4
Capital expenditures, research and development expenses, and value of assets of U.S. producers in the production of EMD, fiscal years 2000-2002, January-June 2002, and January-June 2003

* * * * * * *

[4] A letter from ***.

[5] A letter from ***.

The Commission staff requested that Kerr-McGee provide its environmental capital expenditures. The following tabulation shows these capital expenditures:

* * * * * * *

***.[6]

The Commission staff requested that Erachem provide its environmental capital expenditures. The following tabulation shows these capital expenditures:

* * * * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of EMD from Australia, China, Greece, Ireland, Japan, or South Africa on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown below.

Actual negative effects:

***.

Anticipated negative effects:

***.

[6] A letter from ***.

PART VII: THREAT CONSIDERATIONS

This part of the report contains information on foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets.

THE INDUSTRY IN AUSTRALIA

Table VII-1 presents data for reported production and shipments of EMD in Australia. The Commission requested and received data from one firm that was listed in the petition and believed to export EMD to the United States. The sole producer of EMD in Australia, Delta EMD Australia Pty, Ltd. ("Delta Australia"), accounted for 100 percent of Australia's exports of EMD to the United States during the period examined.

Delta Australia reported that *** percent of its total sales in the most recent fiscal year were sales of EMD. In 2002, *** percent of Delta Australia's total shipments were exported to the United States. Approximately *** percent of its shipments of EMD were to other export markets such as ***. From 2000 to 2002, Delta Australia's volume of shipments exported to the United States decreased by *** percent, and its volume of shipments exported to other world markets decreased by *** percent. Delta Australia's capacity increased from 2000 to 2002 by *** percent due to *** and is projected to ***. Its production increased from 2000 to 2002 by *** percent and is projected to ***. *** is Delta Australia's *** U.S. importer of EMD.

Table VII-1
EMD: Australia's reported production capacity, production, shipments, and inventories, 2000-2002, January-June 2002, January-June 2003, and projections for 2003 and 2004

* * * * * * *

THE INDUSTRY IN CHINA

Table VII-2 presents data for reported production and shipments of EMD in China. The Commission received data from four firms[1] that were listed in the petition. These four firms estimate that in 2002, they accounted for approximately *** percent of all EMD production in China. Of the four Chinese producers that responded, ***, exported EMD to the United States during the period examined.[2]

Chinese respondents have stated that ***. Of the *** Chinese producers that are capable of producing alkaline EMD, only *** have been certified by the Chinese Battery Industry Association ("CBIA") to actually produce alkaline EMD.[3] ***.[4] ***.

In 2002, *** percent of total shipments of EMD from China were exported to the United States while *** percent of total shipments were made in the Chinese home market. Producers of EMD in China reported that in 2002 *** percent of their shipments of EMD were to other export markets, ***.

---

[1] These firms are: (1) Hengyang Jianchen Manganese Industry Co., Ltd. ("Hengyang"); (2) Hunan JMC Xinshao Co., Ltd. ("JMC"); (3) Xiangtan Electrochemical Scientific, Ltd. ("Xiangtan"); and (4) Zunyi Shuangyuan Chemicals Group Co., Ltd. ("Zunyi").

Hengyang reported that ***. JMC reported that ***. Xiangtan reported that ***. Zunyi reported that ***.

[2] ***.

[3] ***. Chinese respondents' postconference brief, p. 15.

[4] ***.

From 2000 to 2002, Chinese EMD producers' volume of shipments exported to the United States *** while their volume of shipments exported to other world markets increased by *** percent. Producers' capacity in China increased from 2000 to 2002 by *** percent[5] and is projected to ***.[6] Production increased from 2000 to 2002 by *** percent and is projected to ***.

It is estimated that there are over 800 battery manufacturers in China.[7] Many of these producers produce lower quality zinc chloride batteries. However, there are also producers of alkaline batteries in China, including the large U.S. battery manufacturers, such as Duracell, Energizer, Toshiba, and Maxell.[8] The Chinese respondents argue that ***, these alkaline battery producers cannot secure sufficient volumes of alkaline EMD in China and must import from other countries including the United States. Therefore, they contend that China is a net importer of alkaline EMD.[9]

Chinese respondents also contend that the substantial capital investment, the time, and the differences in technology in order to convert zinc chloride EMD production facilities to alkaline EMD production facilities preclude an imminent conversion to increased alkaline EMD production.[10]

Table VII-2
EMD: China's reported production capacity, production, shipments, and inventories, 2000-2002, January-June 2002, January-June 2003, and projections for 2003 and 2004

* * * * * * *

THE INDUSTRY IN GREECE

Table VII-3 presents data for reported production and shipments of EMD for Greece. The Commission requested data from one firm, Tosoh Hellas A.I.C. ("Tosoh Greece"), which was listed in the petition and accounted for all EMD production in Greece during the period examined. Tosoh Greece is ***.

Tosoh Greece reported that *** percent of its total sales in the most recent fiscal year were sales of EMD. In 2002, *** percent of Tosoh Greece's total shipments were exported to the United States. It reported that *** percent of its shipments of EMD were to other export markets such as ***. From 2000 to 2002, Tosoh Greece's volume of shipments exported to the United States decreased by *** percent, and its volume of shipments exported to other world markets also decreased by *** percent. Tosoh Greece's capacity *** from 2000 to 2002 and is projected to *** in 2003 and 2004. Its production decreased from 2000 to 2002 by *** percent, ***. *** imports *** of Tosoh Greece's EMD into the United States.

---

[5] ***. Chinese respondents' postconference brief, p. 9.

[6] ***.

[7] Chinese respondents' postconference brief, Responses to Staff Questions Raised at the Conference, p. 5.

[8] *Id.*, pp. 13-14.

[9] Chinese respondents cited Chinese Customs data showing that from 1999 to 2002, China imported on average 8,770 short tons of alkaline-grade EMD annually; and from January-June 2003, it imported 3,702 short tons of alkaline-grade EMD. *Id.*, p. 14 and Responses to Staff Questions Raised at the Conference, p. 13.

[10] *Id.*, p. 16.

Table VII-3
EMD: Greece's reported production capacity, production, shipments, and inventories, 2000-2002, January-June 2002, January-June 2003, and projections for 2003 and 2004

* * * * * * *

THE INDUSTRY IN IRELAND

Table VII-4 presents data for reported production and shipments of EMD for Ireland. The Commission requested data from one firm, Mitsui Denman (Ireland), Ltd. ("Mitsui Ireland"), which was listed in the petition and accounted for all EMD production in Ireland during the period examined. Mitsui Ireland is a wholly owned subsidiary of Mitsui Mining & Smelting Co., Ltd. ("Mitsui") of Japan.

Mitsui Ireland reported that *** percent of its total sales in the most recent fiscal year were sales of EMD. In 2002, *** percent of Mitsui Ireland's total shipments were exported to the United States. It reported that *** percent of its shipments of EMD were to other export markets such as ***. From 2000 to 2002, Mitsui Ireland's volume of shipments exported to the United States decreased by *** percent, and its volume of shipments exported to other world markets also decreased by *** percent. Mitsui Ireland's capacity *** from 2000 to 2002 and is projected to *** in 2003. Its production decreased from 2000 to 2002 by *** percent and is projected to ***. Mitsui Ireland reported that ***.[11] *** is Mitsui Ireland's *** U.S. importer of EMD.

Table VII-4
EMD: Ireland's reported production capacity, production, shipments, and inventories, 2000-2002, January-June 2002, January-June 2003, and projections for 2003 and 2004

* * * * * * *

THE INDUSTRY IN JAPAN

Table VII-5 presents data for reported production and shipments of EMD for Japan. The Commission received data from two firms[12] that were listed in the petition. These two firms estimate that in 2002, they accounted for approximately *** percent of all EMD production in Japan.

In 2002, *** percent of total shipments of EMD from Japan were exported to the United States while *** percent of total shipments were made in the Japanese home market. Producers of EMD in Japan reported that in 2002 *** percent of their shipments of EMD were to other export markets, ***. From 2000 to 2002, Japanese EMD producers' volume of shipments exported to the United States *** while their volume of shipments exported to other world markets decreased by *** percent. Producers' capacity in Japan *** from 2000 to 2002 and is projected to ***. Production decreased from 2000 to 2002 by *** percent, but is projected to ***.

Tosoh reported that ***. *** is Mitsui's *** U.S. importer of EMD.

---

[11] Mitsui Ireland's foreign producer questionnaire response; see also conference transcript (Mr. Reilly, Nathan Associates, Inc.), p. 74 ("Mitsui Denman, Ireland will permanently close this year which will reduce world EMD capacity by more than 20,000 short tons").

[12] These firms are: (1) Mitsui Mining & Smelting Co., Ltd. ("Mitsui"); and (2) Tosoh Corp. or its EMD producing subsidiary, Tosoh Hyuga Corp. ("Tosoh"). ***.

Table VII-5
EMD: Japan's reported production capacity, production, shipments, and inventories, 2000-2002, January-June 2002, January-June 2003, and projections for 2003 and 2004

* * * * * * *

THE INDUSTRY IN SOUTH AFRICA

Table VII-6 presents data for reported production and shipments of EMD for South Africa. The Commission requested data from one firm, Delta EMD Pty South Africa, Ltd. ("Delta South Africa"), which was listed in the petition and accounted for all EMD production in South Africa during the period examined. Delta South Africa is the parent corporation of Delta Australia.

Delta South Africa reported that *** percent of its total sales in the most recent fiscal year were sales of EMD. In 2002, *** percent of Delta South Africa's total shipments were exported to the United States. It reported that *** percent of its shipments of EMD were to other export markets such as ***. From 2000 to 2002, Delta South Africa's volume of shipments exported to the United States decreased by *** percent, and its volume of shipments exported to other world markets rose by *** percent. Delta South Africa's capacity increased by *** percent from 2000 to 2002 and is projected to *** in 2003 and 2004 due to ***. Its production decreased from 2000 to 2002 by *** percent, ***. *** is Delta South Africa's *** U.S. importer of EMD.

Table VII-6
EMD: South Africa's reported production capacity, production, shipments, and inventories, 2000-2002, January-June 2002, January-June 2003, and projections for 2003 and 2004

* * * * * * *

U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of subject merchandise from Australia, China, Greece, Ireland, Japan, and South Africa are shown in table VII-7.

Table VII-7
EMD: U.S. importers' end-of-period inventories of subject imports, by source, 2000-2002, January-June 2002, and January-June 2003

* * * * * * *

U.S. IMPORTERS' IMPORTS SUBSEQUENT TO JUNE 30, 2003

The Commission requested importers to indicate whether they imported or arranged for the importation of EMD from Australia, China, Greece, Ireland, Japan, or South Africa after June 30, 2003. ***[13] responding importers reported that they had arranged for the importation of EMD from a subject country subsequent to June 30, 2003. The tabulation on the following page shows the importer, the quantity of EMD imported or arranged for importation subsequent to June 30, 2003, and the country of origin of the imports.

[13] ***.

* * * * * * *

NO DUMPING IN THIRD-COUNTRY MARKETS

There is no indication that EMD from Australia, China, Greece, Ireland, Japan, or South Africa has been the subject of any import relief investigations in any other countries.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1048–1053 (Preliminary)]

Electrolytic Manganese Dioxide From Australia, China, Greece, Ireland, Japan, and South Africa

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1048–1053 (Preliminary) under section 733(a) of the Tariff Act of 1930

(19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Australia, China, Greece, Ireland, Japan, and South Africa of electrolytic manganese dioxide, provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by September 15, 2003. The Commission's views are due at Commerce within five business days thereafter, or by September 22, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on July 31, 2003 by Kerr-McGee Chemical, LLC, Oklahoma City, OK.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. 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 investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 21, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than August 18, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 26, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Dated: August 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20367 Filed 8–8–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-805, A-484-802, A-419-802, A-588-864, A-791-818, A-570-889]

Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide From Australia, Greece, Ireland, Japan, South Africa and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand (Australia) at 202-482-3207, Doug Kirby (Greece) at 202-482-3782, John Drury (Ireland) at 202-482-0195, Brandon Farlander (Japan) at 202-482-0182, Matthew Renkey (South Africa) at 202-482-2312, Rachel Kreissl (PRC) at 202-482-0409 or Alex Villanueva at 202-482-3208, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Petition

On July 31, 2003, the Department of Commerce ("Department") received an antidumping duty petition ("Petition") filed in proper form by Kerr-McGee Chemical LLC ("Kerr-McGee or Petitioner"). Kerr-McGee is a domestic producer of electrolytic manganese dioxide ("EMD"). On August 13, 2003, Petitioner submitted information to supplement the Petition ("Supplemental Response"). Additionally, on August 13, 2003, the Department asked Petitioner to clarify the sales-below-cost allegations and the countries for which the allegations were made. *See Memorandum to the File from Alex Villanueva, Case Analyst through James C. Doyle, Program Manager; EMD: Regarding Sales- Below-Cost Allegations*, dated August 13, 2003. On August 14, 2003, Petitioner submitted a letter indicating that the sales-below-costs allegations were made only for Ireland, Japan and South Africa. Consequently, Petitioner did not request a sales-below-cost allegation for Australia and Greece. On August 20, 2003, Petitioner submitted revised lost sales and revenue information. In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioner alleges imports of EMD from Australia, Greece, Ireland, Japan, South Africa and the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The Department finds that Petitioner filed its Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the investigations it is presently seeking. *See Determination of Industry Support for the Petition* section below.

Scope of the Investigations

These investigations cover all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip or plate form. Excluded from the scope are natural manganese dioxide ("NMD") and chemical manganese dioxide ("CMD"), including high-grade chemical manganese dioxide ("CMD-U").

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2820.10.0000. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted in the Petition we have determined there is a single domestic like product, EMD, which is defined further in the "Scope of the Investigations" section above, and we have analyzed industry support in terms of that domestic like product. For more information on our analysis and the data upon which we relied, *see Antidumping Duty Investigation Initiation Checklist* ("*Initiation Checklist*"), dated August 20, 2003, Appendix II - Industry Support on file in the Central Record Unit ("CRU") in room B-099 of the main Department of Commerce building.

In determining whether the domestic petitioner has standing, we considered the industry support data contained in the petition with reference to the domestic like product as defined above in the "Scope of the Investigations" section. To estimate 2002 production for all domestic EMD producers named in the Petition, Petitioner estimated production data using Roskill Information Service Ltd. and conservatively assumed that the remaining company produced to capacity. For purposes of determining industry support, Petitioner combined its year 2002 production data with Erachem Comilog, Inc. ("Erachem"), also a domestic producer, and supporter of the Petition. To estimate 2002 production for all other domestic EMD producers named in the Petition, Petitioner estimated production data using Roskill Information Services Ltd. and conservatively assumed the remaining company produced to capacity. This estimated production data was added to the actual production data detailed above to arrive at total estimated U.S. production of EMD for the year 2002 in short tons. *See* Petition at Exhibit 9 describing how this production data was estimated.

Using the data described above, the share of total estimated U.S. production of EMD in year 2002 represented by Petitioner and Erachem, a supporter of the Petition, equals over 50 percent of total domestic production. Therefore, the Department finds the domestic producers who support the Petition account for at least 25 percent of the total production of the domestic like product. In addition, as no domestic producers have expressed opposition to the Petition, the Department also finds the domestic producers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.

Therefore, we find that Petitioner has met the requirements of section 732(c)(4)(A) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The source or sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production ("COP") and constructed value ("CV") have been accorded

treatment as business proprietary information. Petitioner's sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our *Initiation Checklist.* We corrected certain information contained in the Petition's margin calculations; these corrections are set forth in detail in the *Initiation Checklist.* Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

Periods of Investigation

The anticipated period of investigation ("POI") for Australia, Greece, Ireland, Japan and South Africa will be July 1, 2002 through June 30, 2003. The anticipated POI for the PRC will be January 1, 2003 through June 30, 2003. *See* 19 CFR 351.204(b).

Export Price for All Countries

In calculating the U.S. price, Petitioner has relied exclusively on average unit value ("AUV") data with respect to the HTSUS number 2820.10.0000. This HTS number is a "basket category" as it includes both subject and non-subject merchandise. This HTS number includes the subject merchandise, EMD, as well as non-subject merchandise, CMD, and possibly NMD[1]. Historically, the Department has not accepted basket category AUV's as the basis for U.S. price unless petitioners can provide evidence that the imports classified under the basket category overwhelmingly consist of subject merchandise. In this case, Petitioner has provided information on the record that supports its position that the overwhelming percentage of the imports from the subject countries are, in fact, within the scope of the investigation.

Petitioner used PIERS data to corroborate its contention that the imports under HTSUS number 2820.10.0000 are in fact overwhelmingly subject merchandise because PIERS provides greater product identification information than official U.S. Census data as reported on the International Trade Commission's Dataweb import statistics ("Dataweb").

Petitioner points out that for the subject countries, in many instances, PIERS data clearly identifies EMD for individual shipments. For other shipments, PIERS often identifies them as simply "Manganese Dioxide." These shipments could very well be of subject merchandise but PIERS' lack of specificity prevents a clear identification as such. Given the reluctance of the Department to rely on basket category AUV's for U.S. price, we requested that Petitioner demonstrate that the PIERS data captures the universe of subject merchandise sales during the POI. Additionally, for subject countries where a portion of total POI imports cannot be clearly identified as EMD, we requested that Petitioner demonstrate through other means that all (or at least an overwhelming majority) of the imports were in fact EMD. In order to show the completeness of the PIERS data, Petitioner provided a ratio of total imports according to the PIERS data, as divided by total imports as reported by Dataweb for each of the six countries in the petition. A review of the concordance between PIERS and Dataweb show that for five of the six countries, a substantial majority of the imports are EMD. *See* Supplemental Response at Exhibit A.

In the case of Ireland, the PIERS import volume is significantly less than the Dataweb volume. Petitioner suggests that the discrepancy between PIERS and Dataweb is due to systematic under-reporting of Irish EMD imports in PIERS. According to Petitioner, EMD imports from Ireland as shown in PIERS are likely mis-labeled as imports from the UK, because there is no EMD production in England, Scotland, or Wales. In addition, Petitioner believes that some imports from Ireland are entering the United States via Canada, and PIERS may have excluded such entries entirely as PIERS does not report on truck, plane, or railway entries. *See* Supplemental Response at pages 22–24. We found this explanation reasonable because we found no evidence to contradict these statements after conducting a review of the data submitted by Petitioner. *See Initiation Checklist.* Therefore, we find that there is a sufficient basis to accept the Irish AUV data as a basis for U.S. price.

As the second step in its analysis, Petitioner examined each PIERS import entry and compared those which specifically identified the imported product as EMD to those identifying another product, which was usually simply "manganese dioxide," thereby generating another set of ratios.[2] For five countries (Australia, Greece, Ireland, Japan, and South Africa), the PIERS-based EMD-to-total-imports ratios show that at least approximately eight-seven percent of the entries in the basket HTS category were EMD, while two of the countries (South Africa and Greece) were one-hundred percent. Extrapolating the PIERS-based results to the Dataweb figures, the Department is able to adequately conclude that the overwhelming portion of imports reflected in the Dataweb figures are EMD, and are therefore adequate figures upon which to base export price for Australia, Greece, Ireland, Japan, and South Africa.

Finally, we note that the PIERS EMD-to-total imports ratio does not demonstrate that all imports from the PRC are EMD and that there is evidence on the record that the PRC does produce CMD and NMD. As a result, Petitioner provided further information to corroborate its argument that the Chinese imports to the United States were EMD. Specifically, Petitioner provided Dataweb statistics that showed that there were entries of Chinese merchandise in only three months of the POI to two different ports. Petitioner provided an affidavit to attest to the fact that the material was significantly EMD. *See* Petition at Exhibit 5. The volumes indicated in the affidavit match two of the three entries listed in the Dataweb statistics, and represent approximately eighty-nine percent of the volume entered into the United States under the relevant HTS number. Petitioner did not have any information regarding the third and final month's entry volume. However, the average unit value of the third month's entries is significantly higher than the others. Therefore, Petitioner notes that the inclusion of this data point is conservative since it lowers the overall margin. *See Initiation Checklist.* Therefore, we find that there is a sufficient basis to accept the Chinese AUV data as a basis for U.S. price.

Australia

Export Price

For a description of export price for Australia, *see Export Price for All*

[1] Note that Petitioner indicated at footnote 11 on page 6 of its July 31, 2003, petition, that NMD would be in the basket category HTS number 2820.10.0000. However, it would appear that NMD is properly classified under HTS 2602.00.0000, with 10-digit designations varying according to manganese weight. As a result, NMD should not be included in the basket category.

[2] Note that these ratios only counted those PIERS entries which could be positively identified as EMD in the numerator. However, the remaining entries may include EMD, so the actual EMD-to-total imports ratios may in fact be higher. Moreover, Petitioner also provided additional evidence that it is likely that only EMD is being imported under this HTS category. Petitioner provided information that CMD is produced only in Belgium and the PRC, while NMD is predominantly produced in Gabon, Ghana, Brazil, the PRC, Mexico, and India *See* Petition at Exhibit 9 and 13.

Countries above. Petitioner also adjusted this AUV data for foreign inland freight costs. *See* Petition at Exhibit 28 and *Initiation Checklist.*

Normal Value

With respect to normal value ("NV"), Petitioner provided information that there were no commercial quantity sales of EMD in the home market during the POI and that there is no viable third country market on which to base NV. *See* Petition at Exhibit 6 and 18. Therefore, Petitioner based NV on CV. *See* Supplemental Response at Exhibit K.

Petitioner calculated cost of manufacturing ("COM") based on its own production experience, adjusted for known differences between costs incurred to produce EMD in the United States and Australia using publicly available data. To calculate interest, Petitioner relied upon information from Delta-Australia's corporate parent, Delta PLC, for the year 2002. Petitioner based profit on the 2002 experience of Ticor Limited, a producer of titanium dioxide, which Petitioner stated was similar to the production process of manganese dioxide. *See* Petition at page 21. We have accepted this methodology for purposes of this initiation. The price to CV comparison produced an estimated dumping margin of 47.01 percent.

Greece

Export Price

For a description of export price for Greece, *see Export Price for All Countries* above. Petitioner made no deduction for imputed credit expenses or foreign inland freight costs. *See Initiation Checklist.*

Normal Value

With respect to NV, Petitioner stated it did not know whether the home market for Greece was viable and home market prices were not reasonably available for Tosoh-Greece's sales of EMD during the POI. *See* Petition at page 23. However, Petitioner provided a third country price for EMD offered for sale in Belgium. The Petition provides evidence that these sales of EMD in the third-country market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act. We note, however, that Petitioner did not request a sales-below-cost of production investigation for Greece. Therefore, because the home market prices were unavailable, the home market viability is unknown and the largest third country market price is below COP, Petitioner's dumping allegation is based on CV.

Pursuant to section 773(b)(3) of the Act, cost of production ("COP") consists of manufacture ("COM"), selling, general and administrative (SG&A) expenses, and packing. Petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce EMD in the United States and Greece using publicly available data. To calculate interest, Petitioner relied upon information based upon the 2002 financial statement of Tosoh Corporation, the corporate parent of Tosoh-Greece. To calculate SG&A, petitioner relied upon the 2002 financial statement of a similar company for which data was reasonably available, Aluminum de Grece Industrial and Commercial S.A. ("Aluminum de Grece"). Petitioner chose Aluminum de Grece, an aluminum producer, because the production of aluminum is similar to EMD production.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner based NV for Greece on constructed value ("CV"). Petitioner calculated CV using the COM, SG&A and interest expense figures used to compute Greece home market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. For profit, Petitioner relied upon amounts reported in Aluminum de Grece's 2002 financial statement. See Supplemental Response at Exhibit L. Petitioner explained that the production of Aluminum De Grece is similar to the process of EMD as they are both energy intensive and involve purification of the ore feedstock and electrolysis. *See* Petition at page 24.

We are initiating this investigation based on constructed value of EMD from Greece calculated by Petitioner. Based on the comparison of the U.S. price to NV, the estimated dumping margin is 22.86 percent. *See Initiation Checklist.*

Ireland

U.S. Price

For a description of export price for Ireland, *see Export Price for All Countries* section above. Petitioner made adjustments for foreign inland freight to the AUV data. *See* Petition at Exhibits 3, 33 and *Initiation Checklist.*

Normal Value

With respect to NV, Petitioner relied on foreign market research and third country market price, as Mitsui-Ireland's EMD production was not sold in the home market during the POI and Petitioner demonstrated that all production was for export activities. *See* Petition at Exhibit 34.

Petitioner used Germany as the viable third country comparison market as Germany is the second largest export market for Irish EMD after the United States. Pursuant to section 773 of the Act, Petitioner retrieved data confirming that Mitsui-Ireland's EMD exports to Germany represent at least 22 percent of its total EMD exports to the United States during the period July 2000 through May 2003. Petitioner calculated an average net third-country price and adjusted for movement expenses from Ireland to Germany and for imputed credit expenses. *See* Petition at Exhibit 33 and Supplemental Response at Exhibit M.

Petitioner alleges that the sales of EMD in the third-country market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act. Pursuant to that section of the Act, COP consists of the COM, SG&A expenses, and packing. In the analysis of the third-country market price (above), market prices are inclusive of selling expenses, and therefore Petitioner used a COP also inclusive of SG&A. In regard to SG&A expense, Petitioner states it was unable to obtain specific and detailed financial data for Mitsui-Ireland, and believes it reasonable to use an SG&A ratio of the most similar Irish metals producer for which data was available - Glencar Mining, PLC. *See* Petition at Exhibit 56, page 16 and Supplemental Response at Exhibit M.

Petitioner used its own COM in the CV calculations with adjustments for known differences in production costs between Ireland and the U.S. for materials, energy and labor costs across the manufacturing process of EMD: ore handling (a.k.a. "leaching"), electrolysis, and finishing.

For interest expense, Petitioner relied upon amounts reported for the Japanese parent company Mitsui Mining & Smelting Co., Ltd. (Mitsui Kinzoku)'s interest expense for the year ending March 2002. See Petition at Exhibit 55, page 14. Consistent with 773(e)(2) of the Act, Petitioner included in CV an amount for profit. However, Petitioner applied the "zero" profit rate of Glencar Mining, PLC. *See* Petition at Exhibit 56, pages 16–17.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner based NV for sales in Ireland on CV. *See* Supplemental Response at Exhibit M.

We have accepted this methodology for purposes of this initiation. The price to CV comparison produced an estimated dumping margin of 25.04% percent. *See Initiation Checklist.*

Japan

Export Price

For a description of export price for Japan, *see Export Price for All Countries* above. Petitioner also adjusted the AUV for foreign inland freight expenses based upon information obtained from a foreign market researcher. *See* Petition at Exhibit 7 and Supplemental Response at pages 28–29 and Exhibit H. Petitioner made no other adjustments to U.S. price, claiming this resulted in a conservative estimate.

Normal Value

With respect to NV, Petitioner relied on the same foreign market researcher to obtain price quotes for the foreign like product sold in Japan. Petitioner obtained from the market researcher price quote for alkaline grade, powder form EMD sold in the Japanese home market which the researcher indicates is the same type and grade sold in the United States. *See* Petition at Exhibit 7 and Supplemental Response Exhibit H. Petitioner adjusted this price by deducting total movement expenses. Petitioner made no deduction for imputed credit expenses. *See Initiation Checklist.* Petitioner claimed this was a conservative estimate, as foreign market research revealed payment terms in a range of periods.

Claiming that the Japanese producer's sales of the foreign like product were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, Petitioner requested that the Department initiate a country-wide sales-below-cost investigation. *See* Petitioner's August 14, 2003 letter. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing. Petitioner calculated COM based on Petitioner's own experience, adjusted for known differences based on the foreign market research of Japanese EMD producers' operations and publicly available data.

Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner based NV for sales in Japan on CV. Petitioner calculated CV using the same COM, SG&A, and interest expense figures used to compute the COP. Consistent with section 773(e)(2) of the Act, Petitioner included in CV an amount for profit. Petitioner relied upon the profit ratio reported in Tosoh's 2002 annual report. *See* Petition at Exhibit 53 and Supplemental Response at page 30.

We have accepted this methodology for purposes of this initiation. The price to CV comparison produced an estimated dumping margin of 87.96 percent. *See Initiation Checklist.*

South Africa

Export Price

For a description of export price for South Africa, *see Export Price for All Countries* above. Petitioner adjusted this AUV data for foreign inland freight costs. *See* Petition at Exhibit 38.

Normal Value

With respect to NV, Petitioner provided a home market price obtained through foreign market research for EMD comparable to the product exported to the United States which serve as a basis for EP. Petitioner made no adjustments to this calculated average home market price. Petitioner also provided information demonstrating reasonable grounds to believe or suspect that sales of EMD in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. Petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce EMD in the United States and South Africa using publicly available data. To calculate interest, Petitioner relied upon information from Delta SA's corporate parent, Delta PLC, for the year 2002. To calculate SG&A, Petitioner relied upon the 2002 financial statement of the most similar company for which data was reasonably available, Highveld. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner based NV for South Africa on CV. Petitioner calculated CV using the same COM, SG&A and interest expense figures used to compute South African home market costs. Consistent with section 773(e)(2) of the Act, Petitioner included in CV an amount for profit. For profit, Petitioner relied upon amounts reported in Highveld's 2002 financial statement.

We have accepted this methodology for purposes of this initiation. The price to CV comparison produced an estimated dumping margin of 24.82 percent. *See Initiation Checklist.*

PRC

Export Price

For a description of export price for the PRC, *see Export Price for All Countries* above. Petitioner also deducted an amount for foreign inland freight in the PRC from the starting U.S. Price. The calculation of foreign inland freight was derived using an inflated value used in the recent preliminary determination on polyvinyl alcohol from the PRC. *See* Petition at Exhibit 41 and Supplemental Response at page 37.

Normal Value

Petitioner asserts that the Department considers the PRC to be a non-market economy country ("NME") and therefore, constructed NV based on the factors of production methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that the PRC is an NME country. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China*, 68 FR 46577 (August 6, 2003) and *Notice of Initiation of Antidumping Investigation: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 68 FR 44040 (July 25, 2003). In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product appropriately is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

For NV, Petitioner based the factors of production, as defined by section 773(c)(3) of the Act, on its own consumption rates because information regarding Chinese producers' consumption rates is not reasonably available. *See* Supplemental Response

at pages 39–40. Thus, Petitioner has assumed, for purposes of the Petition, that producers in the PRC use the same inputs in the same quantities as Petitioner, adjusted for any known differences. Based on the information provided by Petitioner, we believe that its factors of production methodology represents information reasonably available to Petitioner and is appropriate for purposes of initiating this investigation.

Petitioner asserts that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) a significant producer of comparable merchandise; and (2) at a level of economic development comparable to the PRC. Based on the information provided by Petitioner, we believe that Petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation.

Petitioner based the factors of production (raw materials, labor, energy and packing), as defined by section 773(c)(3) of the Act, for EMD from the PRC on its own experience and adjusted for known differences. Pursuant to section 773(c)(4), Petitioner valued these factors using a variety of sources, including Monthly Statistics of Foreign Trade of India, Volumes I and II, Directorate General of Commercial Intelligence & Statistics (Monthly) ("MSFTI"), Chemical Weekly, the Department's factor valuation memoranda from other NME proceedings, Government of India and pricing lists from Indian chemical manufacturers.

For manganese dioxide ore, the main raw material, Petitioner provided a surrogate value based on the prices from the financial statements of Eveready Industries India, Ltd. ("Eveready India"), an Indian manufacturer of the subject merchandise. For certain chemical inputs (*e.g.*, sulfuric acid), Petitioner provided a surrogate value based on pricing information from Chemical Weekly. For other inputs such as caustic soda, lime (high calcium), harbonite 800S, Petitioner used pricing data from MSFTI to calculate surrogate values.

With regard to energy (electricity), Petitioner provided a surrogate value using Eveready India's financial statements. In addition, Petitioner provided a surrogate value for natural gas, a second energy source, using pricing information from the Gas Authority of India website.

Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). With regard to certain packing materials, Petitioner used MSFTI pricing data as the basis for the surrogate values.

Petitioner has provided values for inputs that represent almost 99 percent of the total cost of materials, energy, and packing in the NV calculation. Petitioner explained that the estimated value of the inputs for which it was unable to identify Indian surrogate values represents a minuscule portion of the NV calculation.

For some inputs, Petitioner did not provide a surrogate value using Indian imports statistics or any of the sources identified above. Instead, Petitioner used its own U.S. acquisition costs to value those inputs. Petitioner explained that the U.S. acquisition cost was used because there were no known differences in Chinese production processes and any differences would be immaterial. The inputs for which Petitioner used a U.S. acquisition cost included: packing materials and certain minor factors used in the production of EMD. *See Initiation Checklist* at Attachment V.

Petitioner contends that it has attempted to identify surrogate values for as many inputs as possible, including those that are common to other Chinese antidumping cases before the Department. Petitioner also explains that it has not been able to identify surrogate values for inputs that are unusual and used in very small amounts.

We have decided not to accept Petitioner's reliance on the U.S. acquisition costs to value the packing materials and certain minor factors of production because our practice in NME cases is to obtain surrogate values from a surrogate country. In the instant case, Petitioner did not provide surrogate values for certain inputs using information from a surrogate country. Therefore, in accordance with the Department's practice, we have not included those surrogates in the calculation of NV provided by Petitioner. By doing so, the Department is lowering the normal value, which is conservative. *See Notice of Initiation of Antidumping Duty Investigations: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from Germany, India, and the People's Republic of China*, 68 FR 34579 (June 10, 2003) and *Initiation Checklist*.

Eveready India was selected by Petitioner as the surrogate producer in India to compute factory overhead and SG&A expenses. *See Initiation Checklist*. Petitioner calculated the overhead ratio by dividing Eveready India's total overhead expenses (including "Depreciation," "Repairs to Machinery and Buildings," and "Stores and Spares Consumed") by Eveready India's material and energy expenses.

Petitioner excluded labor expenses from the denominator in the calculation of the overhead ratio on the grounds that Eveready India's Tea Division employs over 44,000 people while its Battery, Flashlights and Packet Tea Division (which produces EMD) employs 3,400 people. *See* Petition at 40. While the Department agrees it is appropriate to exclude non-EMD related labor expenses from the denominator of the overhead ratio, we do not agree it is appropriate to deduct EMD related labor expenses. Therefore, the Department added EMD-related labor expenses into the overhead ratio and COM calculations. The Department then applied the ratio to the labor expense inclusive COM as per its standard practice. With regard to SG&A, Petitioner calculated a ratio by dividing all the SG&A expense by Eveready India's total COM (inclusive of labor expenses). *See Initiation Checklist*.

Eveready India did not report a profit in its financial statements, therefore, Petitioner based the profit ratio on aggregate data published by the Reserve Bank of India ("RBI") (*See Final Determination of the Antidumping Duty Investigation of Saccharin from the People's Republic of China*, (Issues and Decision Memoranda at Comment 9) 68 FR 27530 (May 20, 2003)), for the accounting period 2000–2001, the most current data available from the RBI. Petitioner calculated profit as a percentage of the COP for public companies and private companies, and then averaged these two ratios to obtain a single profit ratio. *See Initiation Checklist*.

After revising the NV calculation submitted by Petitioner as discussed above, the Department accepted Petitioner's calculation of NV for initiation purposes based on the above arguments which resulted in an estimated dumping margin of 31.38 percent. See Initiation Checklist at Attachment V.

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe imports of EMD from Australia, Greece, Ireland, Japan, South Africa and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

With respect to Australia, Greece, Ireland, Japan, South Africa and the PRC, Petitioner alleges that the U.S.

industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

Petitioner contends the industry's injured condition is evident in examining net operating income, profit, net sales volumes, production employment, as well as inventory levels, and reduced capacity utilization. *See* Petition at pages 41–60. Petitioner asserts its share of the market has declined from 2000 to 2002. *See* Petition at page 48. For a full discussion of the allegations and evidence of material injury, *see Initiation Checklist* at Appendix IV and Supplemental Response at pages 42–42.

Initiation of Antidumping Investigations

Based on our examination of the Petition covering EMD, we find it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of EMD from Australia, Greece, Ireland, Japan, South Africa and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation, or January 7, 2004.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the governments of Australia, Greece, Ireland, Japan, South Africa and the PRC. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided in section 19 CFR 351.203(c)(2).

International Trade Commission Notification

The ITC will preliminarily determine on September 12, 2003, whether there is reasonable indication that imports of EMD from Australia, Greece, Ireland, Japan, South Africa and PRC are causing, or threatening, material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 20, 2003.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–21903 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–DS–S

APPENDIX B

LIST OF CONFERENCE WITNESSES

CALENDAR OF PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference:

Subject:	Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa
Invs. Nos.:	731-TA-1048-1053 (Preliminary)
Date and Time:	August 21, 2003 - 9:30 a.m.

The conference was held in connection with these investigations in the Main Hearing Room, 500 E Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties:

Wilmer, Cutler & Pickering
W.N. Harrell Smith IV, Esq.
Washington, DC
on behalf of

Kerr-McGee Chemical LLC

Charles H. Hill, Vice President Chemical, Controller and General Manager of Specialty Products, Kerr-McGee Chemical LLC
Fredrick R. Stater, Plant Manager, Kerr-McGee Chemical LLC
Joseph M. Derby, Director of Strategic & Business Planning, Kerr-McGee Chemical LLC

W. N. Harrell Smith, IV–OF COUNSEL
John D. Greenwald

In Opposition to the Imposition of Antidumping Duties:

O'Melveny & Myers LLP
Washington, DC
on behalf of

Delta EMD Australia Pty, Ltd.
Delta EMD South Africa Pty, Ltd
Chemalloy Co., Inc.

Evan Van Zyl, Chairman and Managing Director, Delta EMD South Africa Pty, Ltd.
John G. Reilly, Economist, Nathan Associates, Inc.

Kermit W. Almstedt–OF COUNSEL
Veronique Lanthier

In Opposition to the Imposition of Antidumping Duties:–*Continued*

Weil, Gotshal & Manges LLP
Washington, DC
on behalf of

Tosoh Corp.
Tosoh Hyuga Corp.
Tosoh Hellas A.I.C.

John G. Reilly, Economist, Nathan Associates, Inc.

A. Paul Victor–OF COUNSEL
Gregory Husisian
Amy T. Dixon

Hogan & Hartson LLP
Washington, DC
on behalf of

Hengyang Jianchen Manganese Industry Co., Ltd.
Hunan JMC Xinshao Co., Ltd.
Xiangtan Electrochemical Scientific, Ltd.
Zunyi Shuangyuan Chemicals Group Co., Ltd.

John G. Reilly, Economist, Nathan Associates, Inc.

Craig A. Lewis–OF COUNSEL

Barnes, Richardson & Colburn
Washington, DC
on behalf of

Rayovac Corp.

Mark A. Codde, Director of Purchasing, Rayovac Corp.

Matthew T. McGrath–OF COUNSEL
Diane A. MacDonald

Sonnenberg & Anderson
Chicago, IL
on behalf of

Energizer Battery Manufacturing, Inc.

Steven P. Sonnenberg–OF COUNSEL
M. Jason Cunningham

APPENDIX C

SUMMARY DATA

Table C-1
EMD: Summary data concerning the total U.S. market, 2000-2002, January-June 2002, and January-June 2003

(Quantity=short tons, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per short ton; period changes=percent, except where noted)

	Reported data					Period changes			
				January-June					Jan.-June
Item	2000	2001	2002	2002	2003	2000-2002	2000-2001	2001-2002	2002-2003
U.S. consumption quantity:									
Amount	114,437	88,447	94,609	44,852	49,730	-17.3	-22.7	7.0	10.9
Producers' share (1)	52.2	53.4	51.6	52.6	49.9	-0.6	1.2	-1.8	-2.7
Importers' share (1):									
Australia	***	***	***	***	***	***	***	***	***
Greece	***	***	***	***	***	***	***	***	***
Ireland	***	***	***	***	***	***	***	***	***
Japan	***	***	***	***	***	***	***	***	***
South Africa	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
All other sources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total imports	47.8	46.6	48.4	47.4	50.1	0.6	-1.2	1.8	2.7
U.S. consumption value:									
Amount	163,830	127,467	129,663	61,742	63,238	-20.9	-22.2	1.7	2.4
Producers' share (1)	52.7	53.5	51.7	52.8	51.2	-1.1	0.8	-1.9	-1.6
Importers' share (1):									
Australia	***	***	***	***	***	***	***	***	***
Greece	***	***	***	***	***	***	***	***	***
Ireland	***	***	***	***	***	***	***	***	***
Japan	***	***	***	***	***	***	***	***	***
South Africa	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
All other sources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total imports	47.3	46.5	48.3	47.2	48.8	1.1	-0.8	1.9	1.6
U.S. shipments of imports from:									
Australia:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Greece:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Ireland:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Japan:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
South Africa:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subtotal:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
China:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table C-1--Continued
EMD: Summary data concerning the total U.S. market, 2000-2002, January-June 2002, and January-June 2003

(Quantity=short tons, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per short ton; period changes=percent, except where noted)

	Reported data					Period changes			
				January-June					Jan.-June
Item	2000	2001	2002	2002	2003	2000-2002	2000-2001	2001-2002	2002-2003
U.S. shipments of imports from:									
All other sources:									
Quantity	0	0	0	0	0	(2)	(2)	(2)	(2)
Value	0	0	0	0	0	(2)	(2)	(2)	(2)
Unit value	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Ending inventory quantity	0	0	0	0	0	(2)	(2)	(2)	(2)
All sources:									
Quantity	54,644	41,214	45,766	21,278	24,910	-16.2	-24.6	11.0	17.1
Value	77,458	59,226	62,672	29,121	30,858	-19.1	-23.5	5.8	6.0
Unit value	$1,418	$1,437	$1,369	$1,369	$1,239	-3.4	1.4	-4.7	-9.5
Ending inventory quantity	***	***	***	***	***	***	***	***	***
U.S. producers':									
Average capacity quantity	63,853	68,020	68,253	34,127	34,127	6.9	6.5	0.3	0.0
Production quantity	62,344	63,684	45,491	23,116	28,954	-27.0	2.1	-28.6	25.3
Capacity utilization (1)	97.6	93.6	66.7	67.7	84.8	-31.0	-4.0	-27.0	17.1
U.S. shipments:									
Quantity	59,793	47,233	48,843	23,574	24,820	-18.3	-21.0	3.4	5.3
Value	86,372	68,241	66,991	32,621	32,380	-22.4	-21.0	-1.8	-0.7
Unit value	$1,445	$1,445	$1,372	$1,384	$1,305	-5.1	0.0	-5.1	-5.7
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***	***
Wages paid ($1,000s)	***	***	***	***	***	***	***	***	***
Hourly wages	***	***	***	***	***	***	***	***	***
Productivity (tons/1,000 hours)	***	***	***	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***	***	***	***
Net sales:									
Quantity	60,227	48,603	49,771	24,173	24,920	-17.4	-19.3	2.4	3.1
Value	87,483	71,226	69,243	34,074	32,609	-20.8	-18.6	-2.8	-4.3
Unit value	$1,453	$1,465	$1,391	$1,410	$1,309	-4.2	0.9	-5.1	-7.2
Cost of goods sold (COGS)	70,071	60,662	67,731	33,440	32,193	-3.3	-13.4	11.7	-3.7
Gross profit or (loss)	17,412	10,564	1,512	634	416	-91.3	-39.3	-85.7	-34.4
SG&A expenses	9,054	7,815	8,108	3,383	3,913	-10.4	-13.7	3.7	15.7
Operating income or (loss)	8,358	2,749	(6,596)	(2,749)	(3,497)	(3)	-67.1	(3)	-27.2
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	$1,163	$1,248	$1,361	$1,383	$1,292	17.0	7.3	9.0	-6.6
Unit SG&A expenses	$150	$161	$163	$140	$157	8.4	7.0	1.3	12.2
Unit operating income or (loss)	$139	$57	($133)	($114)	($140)	(3)	-59.2	(3)	-23.4
COGS/sales (1)	80.1	85.2	97.8	98.1	98.7	17.7	5.1	12.6	0.6
Operating income or (loss)/ sales (1)	9.6	3.9	(9.5)	(8.1)	(10.7)	-19.1	-5.7	-13.4	-2.7

(1) "Reported data" are in percent and "period changes" are in percentage points.
(2) Not applicable.
(3) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires.

Table C-2
EMD: Summary data concerning the U.S. merchant market, 2000-2002, January-June 2002, and January-June 2003

* * * * * * *