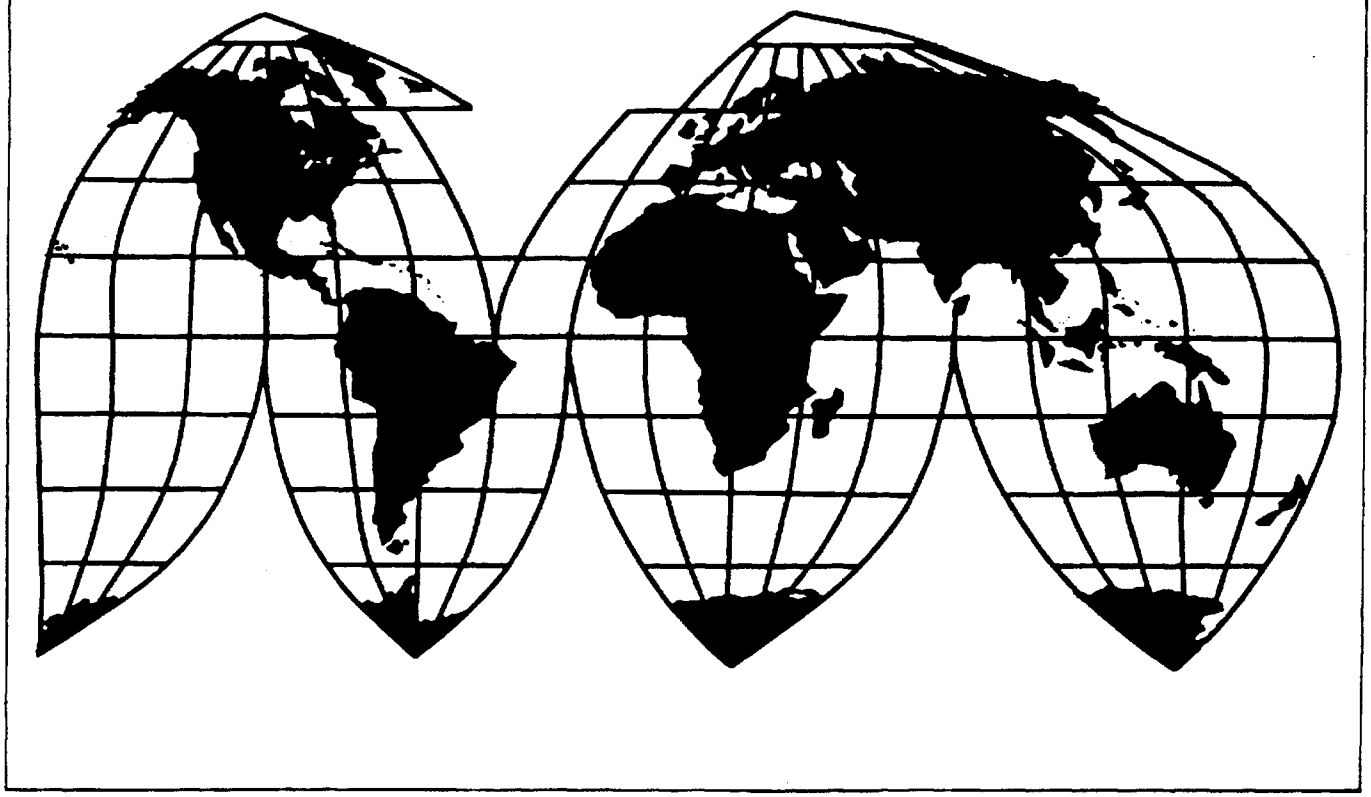
# Chlorinated Isocyanurates From China and Spain

Investigations Nos. 731-TA-1082 and 1083 (Preliminary)

**Publication 3705** **July 2004**

**U.S. International Trade Commission**



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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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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-1082 and 1083 (Preliminary)

CHLORINATED ISOCYANURATES FROM CHINA AND SPAIN

## 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 China and Spain of chlorinated isocyanurates, provided for in subheading 2933.69.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

## COMMENCEMENT OF FINAL PHASE 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 the 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 May 14, 2004, a petition was filed with the Commission and Commerce by Clearon Corp., Fort Lee, NJ, and Occidental Chemical Corp., Dallas, TX, alleging that an industry in the United States is materially injured by reason of LTFV imports of chlorinated isocyanurates from China and Spain. Accordingly, effective May 14, 2004, the Commission instituted antidumping duty investigations Nos. 731-TA-1082 and 1083 (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 May 21, 2004 (69 FR 29328). The conference was held in Washington, DC, on June 4, 2004, 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)).

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 28, 2004. The views of the Commission are contained in USITC Publication 3705 (July 2004), entitled *Chlorinated Isocyanurates from China and Spain: Investigations Nos. 731-TA-1082 and 1083 (Preliminary).*

# VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of chlorinated isocyanurates ("chlorinated isos") imported from China and Spain that are allegedly sold at less than fair value.

## I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured 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]

## II. BACKGROUND

Chlorinated isos are used primarily as sanitizing agents for swimming pools, spas, and industrial water, and as disinfecting and bleaching agents for detergents, bleaches and cleansers. Chlorinated isos are sold in granular, tablet or stick form. The active ingredient for sanitizing purposes is chlorine.[3]

The antidumping duty petitions in these investigations were filed on May 14, 2004, by domestic producers Clearon Corporation ("Clearon") and Occidental Chemical Corporation ("OxyChem"). BioLab, another domestic producer, is not a petitioner, but supports the petition.[4]

Several Chinese producers and exporters of chlorinated isos, as well as several importers of subject merchandise from China (collectively "Chinese Respondents"), participated in these investigations and filed a joint brief.[5] Arch Chemicals, Inc. ("Arch"), an importer of subject merchandise from China, filed a separate brief. Aragonesas Delsa, S.A., ("Delsa" or "Spanish Respondent"), a Spanish producer of chlorinated isos and the only exporter of chlorinated isos from Spain to the United States, filed a separate brief.

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[1] 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); 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] Confidential Report ("CR") at I-3; Public Report ("PR") at I-2.

[4] CR/PR at Table III-1.

[5] Chinese Respondents include Chinese producers and exporters of chlorinated isos: Changzhou Clean Chemical Co., Ltd.; Hebei Jiheng Chemical Co., Ltd.; and Nanning Chemical Industry Co., Ltd. Chinese Respondents also include several importers of subject merchandise from China: Wego Chemical and Mineral Corp. ("Wego Chemical"); Alden Leeds Inc. ("Leeds"); N. Jonas and Company ("Jonas"); Cadillac Chemical Corp. ("Cadillac"); and Special Materials Company.

## III. DOMESTIC LIKE PRODUCT

### A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[6] 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."[7] 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. . . . "[8]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[9] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[10] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[11] Although the Commission must accept the determination of the U.S. Department of Commerce ("Commerce") as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.[12] 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

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[6] 19 U.S.C. § 1677(4)(A).

[7] Id.

[8] 19 U.S.C. § 1677(10).

[9] 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) consumer 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).

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

[11] 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.")

[12] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a 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).

pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.[13]

### B. Product Description

Commerce's notice of initiation defines the imported merchandise within the scope of these investigations as follows –

> Chlorinated isocyanurates or "chlorinated isos." Chlorinated isos are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \cdot 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular and tableted forms. These investigations cover all chlorinated isos.[14]

Commerce's scope of investigation includes all chemical and physical forms (powder, granules or tablets) of chlorinated isos. There are three primary chemical compositions of chlorinated isos, depending upon the amount of available chlorine, all of which are within Commerce's scope of investigation: (1) trichloroisocyanuric acid or "trichlor," which has 90 percent available chlorine; (2) sodium dichloroisocyanurate or "dichlor" in anhydrous form, which has 63 percent available chlorine; and (3) dichlor in dihydrate form, which has 56 percent available chlorine.[15]

Trichlor dissolves more slowly than dichlor, is used for long-term pool maintenance, and is predominantly sold in tablet form.[16] In contrast, dichlor dissolves more quickly than trichlor, is used for rapid pool sanitization or industrial uses, and is largely sold in granular form.[17] Certain patented, domestically produced "blended" tablets contain trichlor and other additives consisting of an algicide and a water clarifier.[18]

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[13] 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).

[14] Chlorinated Isocyanurates from the People's Republic of China and Spain, 69 FR 32488, 32488-89 (June 10, 2004) (initiation of antidumping duty investigations). Chlorinated isos currently are classifiable under subheading 2933.69.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification represents a basket category that includes chlorinated isos and other compounds. Id.

[15] Petitioners' Postconference Brief at 3.

[16] CR at II-1-2; PR at II-1; ("Most trichlor is ultimately sold as tablets or sticks,. . . . "), Transcript of Commission Staff Conference held June 4, 2004 ("Tr.") at 30 (Johnson, Clearon).

[17] CR at II-1-2; PR at II-1 ("With dichlor, the dissolution rate is so fast that if you made a tablet, it falls apart") Tr. at 93-94 (Testimony of Antony Hand, Clearon).

[18] CR at II-1, n.2; PR at II-1, n.2. ***. ***.

## C. Domestic Like Product

Chinese Respondents advocate that the Commission find trichlor and dichlor to be separate domestic like products. Arch advocates that the Commission find blended tablets and other chlorinated isos to be separate domestic like products.[19]

For the reasons set forth below, based on the record in these preliminary phase investigations, we find one domestic like product consisting of all chlorinated isos, coextensive with Commerce's scope of investigation.

### (1) Whether There is a Clear Dividing Line between Trichlor and Dichlor

Based on the Commission's traditional six factor like product analysis, we find that there is no clear dividing line between trichlor and dichlor that would warrant treating them as separate domestic like products.

*Physical Characteristics and Uses.* Trichlor and dichlor have similar physical characteristics and uses. They are similar in chemical composition,[20] although trichlor has a higher level of chlorine.[21] Dichlor dissolves more easily than trichlor and is generally sold in granular form, while trichlor dissolves more slowly and is usually sold in tablet form.[22]

*Interchangeability.* Both trichlor and dichlor can be substituted for each other to sanitize a pool. The record reflects, however, that they are usually not used as substitutes for each other in the U.S. market due to consumer preferences for dichlor in granular form for rapid, short term "shock" pool treatments, and trichlor in tablet or stick form for long term, routine pool maintenance.[23] Although trichlor cannot be used to shock a pool,[24] dichlor can be used to routinely sanitize a pool.[25] Thus, dichlor and trichlor overlap in their application in the swimming pool market. Similarly, although dichlor is more commonly used than trichlor in the industrial cleanser market, trichlor also is used in that market.[26] Therefore, there appears to be at least a moderate degree of interchangeability between trichlor and dichlor.

*Channels of Distribution.* The record reflects that trichlor and dichlor are sold in common channels of distribution. Both granular trichlor and granular dichlor are manufactured by Clearon and OxyChem. BioLab only manufactures trichlor. Granular trichlor is generally tableted and repackaged. Granular dichlor is generally only repackaged because it dissolves easily.[27] This tableting and repackaging may be performed by a domestic producer of the granular chlorinated isos or by a separate

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[19] Spanish Respondent Delsa did not make any domestic like product arguments.

[20] Petitioners' Postconference Brief at 5.

[21] Chinese Respondents' Postconference Brief at 4.

[22] CR at II-1-2; PR at II-1; Tr. at 30, 93-94.

[23] CR at I-3, II-1-2; PR at I-2, II-1.

[24] CR at II-2, n.8; PR at II-1, n.8.

[25] CR at II-1 & n.6; PR at II-1 & n.6.

[26] CR at II-1 & n.3; PR at II-1 & n.3.

[27] CR at II-1-2; PR at II-1.

tableter/packager. [28] Both products are then generally sold to distributors, which in turn sell the chlorinated isos to mass merchant retailers, large pool chains, pool service companies and smaller retailers.[29]

*Common Manufacturing Facilities, Production Processes, and Production Employees.* Trichlor and dichlor are produced on separate production lines, from a common feedstock, using common production processes. Their common feedstock - trisodium cyanurate, accounts for a significant proportion of total manufacturing costs. From that common feedstock, they are manufactured on separate production lines, but using similar processes. Trichlor and dichlor are sometimes manufactured in the same plant, using common production employees.[30]

*Customer and Producer Perceptions.* The record is mixed with respect to this factor. Petitioners perceive dichlor and trichlor as chlorinated isos, a single domestic like product. They contend that their customers consider them related products that work on an integrated basis to provide pool sanitization.[31] However, Chinese Respondents argue that they are perceived as very different products with different uses.[32]

*Price.* The prices for trichlor are somewhat lower than those for dichlor. The Commission's pricing data reflect that in 2003 and interim (January to March) 2004, a pound of granular trichlor (Product 1) ranged from $*** to $*** per pound, whereas a pound of dichlor, in the same size bag, sold in the same period, ranged from $*** to $*** per pound, based on reported weighted-average prices. Prices for trichlor were below those of dichlor in each of the specific quarters for which data were collected.[33] Trichlor accounts for the bulk of U.S. production and shipments, due to its dominant use in pool sanitization. The economies of scale associated with the large quantities of trichlor production may help explain its lower price vis-a-vis dichlor.[34]

*Conclusion.* Based on the Commission's traditional like product analysis, we do not find that trichlor and dichlor are separate domestic like products. Trichlor and dichlor have similar chemical compositions, similar chemical properties and are used primarily for the same application - - to sanitize pools. Their markets overlap, although there are limitations on their interchangeability and some perceived differences between them. Trichlor and dichlor are produced from common feedstock, and share common production processes and sometimes common production facilities and production workers. The two products also have similar prices, although trichlor is generally lower priced. We do not find that a clear dividing line exists between trichlor and dichlor for purposes of the preliminary phase of these investigations. We intend, however, to explore this issue further in any final phase investigations.

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[28] CR at II-1, n.4, II-3; PR at II-1, n.4, II-2. Tr. at 65-69.

[29] CR at II-3-4; PR at II-2. Petitioners' Conference Exhibit at 12.

[30] CR at I-4; PR at I-3. Petitioners' Postconference Brief at 7.

[31] Petitioners' Postconference Brief at 6.

[32] Tr. at 140-142.

[33] CR/PR at Tables V-2 and V-3.

[34] CR at I-3; PR at I-2.

### (2) Whether There is a Clear Dividing Line between Blended Tablets and other Chlorinated Isos

Based on the Commission's traditional six factor like product analysis, we do not find that certain blended tablets are a separate domestic like product from other chlorinated isos.

*Physical Characteristics and Uses.* Other chlorinated isos, in particular regular trichlor in tablet form, and the blended tablets appear to be similar in physical characteristics and uses. The blended tablets are primarily made of trichlor.[35] They also contain additives that reportedly clarify the water and control algae growth.[36] Other chlorinated isos and the blended tablets are both used to sanitize pools.

*Interchangeability.* Blended tablets and regular trichlor tablets are generally interchangeable, and compete directly against each other in the swimming pool market.[37] The blended tablets and the regular trichlor tablets are highly interchangeable with respect to pool sanitization and algae control. The only difference in application between regular trichlor tablets and blended tablets are that the blended tablets are used for water clarification and regular trichlor tablets are not.[38] As with regular trichlor, the blended tablets have more limited interchangeability with dichlor, which is usually in granular form, although both products can be used to sanitize pools.

*Channels of Distribution.* Regular trichlor tablets and blended tablets apparently share common channels of distribution. BioLab, the only known domestic producer of blended tablets, sells a range of products under a brand name, including its blended products. BioLab has its own distribution network,[39] and there is no indication that it distributes its blended tablets separately from its other pool products.[40]

*Manufacturing Facilities, Production Processes and Production Employees.* The blended product is primarily trichlor. Most domestically produced granular trichlor is converted into tableted trichlor.[41] There is no indication that BioLab's production of its blended products differs significantly in terms of manufacturing facilities, production processes and production employees, from its production of regular trichlor tablets.

*Customer and Producer Perceptions and Pricing.* The parties disagree over whether there are differences in customer and producer perceptions and pricing between the blended tablets and other chlorinated isos.[42]

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[35] Arch's Postconference Brief, Exhibit 4 (BioLab patent for multi-functional sanitizer and clarifier that preferably includes about 63 percent to 80 percent trichlor).

[36] Arch's Postconference Brief at 9.

[37] Petitioners' Postconference brief at 12, citing to Tr. at 187-188.

[38] Petitioners' Postconference Brief at 13-14.

[39] Petitioners' Postconference Brief at 22.

[40] Arch indicates that BioLab distributes a number of brands for dichlor and trichlor "to different market channels," but does not specify these channels or why BioLab would distinguish between them in marketing its products. Arch's Postconference Brief at 17.

[41] CR at II-1-2; PR at II-1; Tr. at 30 (Johnson, Clearon).

[42] Arch's Postconference Brief at 9; Petitioners' Postconference Brief at 12-13.

*Conclusion.* For purposes of the preliminary phase of these investigations, based on our six like product factor analysis, we do not find that there is a clear dividing line between the blended tablets and other chlorinated isos sufficient to find them to be separate domestic like products. The blended products largely share physical characteristics and uses with the regular trichlor tablets, and compete directly against regular trichlor tablets. They also appear to share channels of distribution and production facilities and processes. The parties disagree with respect to differences in customer and producer perception and prices between the products. We intend to examine this issue more fully in any final phase of these investigations.

### (3) Whether There is a Clear Dividing Line between Granular Trichlor and Tableted Trichlor, Including Blended Tablets

In its arguments, Arch has attempted to distinguish blended tablets from bulk granular chlorinated isos.[43] As we discussed above, blended trichlor tablets are similar to regular trichlor tablets, and we have found them to be part of the same domestic like product. We also have considered whether granular trichlor, an upstream product, should be included in the same domestic like product as the downstream tableted trichlor, both regular and blended tablets,[44] based on our semi-finished like product analysis.[45] We conclude that granular trichlor should be included in the same domestic like product as tableted trichlor.

Most granular trichlor has no significant market other than to be converted into tableted trichlor, whether regular trichlor tablets or blended tablets, for the swimming pool and spa market. However, small amounts may be sold in granular form that are not ultimately converted into tablets, or sold to the industrial cleanser market.[46] Granular and tableted trichlor have the same chemical structure, and granular trichlor imparts to regular tableted trichlor all of its chemical properties.[47]

The cost to convert granular trichlor into tablets is not as great as the cost to produce the granular trichlor, but it is not insignificant, and the same may be said about the processes used to transform granular trichlor into tablets.[48] The prices of granular trichlor and tableted trichlor are similar, although tableted trichlor is more expensive.[49]

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[43] Tr. at 118-119.

[44] Virtually all chlorinated isos tablets are made primarily of trichlor because dichlor dissolves so easily. ("With dichlor, the dissolution rate is so fast that if you made a tablet, it falls apart.") Tr. at 93-94 (Testimony of Antony Hand, Clearon). Therefore, the issue before us is whether granular trichlor should be in the same domestic like product as tableted trichlor.

[45] In a semi-finished product analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. E.g., Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Preliminary), USITC Pub. 3533 (August 2002) at 7.

[46] Petitioners' Postconference Brief at 8. CR/PR at II-1 & n.3.

[47] Petitioners' Postconference Brief at 9.

[48] Petitioners' Postconference Brief at 9.

[49] A Clearon representative testified that "processing granular trichlor into tablets accounts for less than *** of Clearon's sales price to ***, and cost *** per pound, depending on packaging. Petitioners' Postconference Brief, Exhibit 6. Mr. Abramson of Wego Chemical, a distributor of chlorinated isos, and a Chinese Respondent, testified

(continued...)

For purposes of the preliminary phase of these investigations, based on our semi-finished like product factor analysis, we do not find that there is a clear dividing line between granular and tableted trichlor sufficient to find them to be separate domestic like products. Granular trichlor has no significant market other than to be converted into tableted trichlor, whether regular trichlor tablets or blended tablets. Granular and tableted trichlor have the same chemical structure, and granular trichlor imparts to regular tableted trichlor all of its chemical properties.

In sum, we find one domestic like product, consisting of all chlorinated isos, co-extensive with Commerce's scope of investigation.

## IV. 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."[50] 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.[51] Based on our finding that the domestic like product consists of all chlorinated isos within the scope of these investigations, for purposes of these preliminary determinations, we find that the domestic industry consists of all known domestic producers of these products (i.e., BioLab, Clearon, and OxyChem). We also consider whether the production of chlorinated isos includes the operation of domestic firms that further process granular chlorinated isos into tablets ("tableters").

In deciding whether a firm qualifies as a domestic producer, the Commission often has analyzed the overall nature of a firm's production-related activities in the United States. Production-related activity at minimum levels could be insufficient to constitute domestic production.[52] Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer.[53] No single factor is determinative and the Commission may

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[49] (...continued)
that the relative difference in value between granular and tableted trichlor is approximately $0.10 per pound. Tr. at 132. Petitioners assert that therefore, production of granular trichlor accounts for approximately 90 percent of the total cost of tableted trichlor. Petitioners' Postconference Brief at 9.

[50] 19 U.S.C. § 1677(4)(A).

[51] 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).

[52] The Commission generally considers six factors:

(1) source and extent of the firm's capital investment;
(2) technical expertise involved in U.S. production activities;
(3) value added to the product in the United States;
(4) employment levels;
(5) quantity and type of parts sourced in the United States; and
(6) any other costs and activities in the United States directly leading to production of the like product.

See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA-736 and 737 (Final), USITC Pub. 2988 (Aug. 1996) at 7-8 ; Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) at I-11 n.37.

[53] See Certain Wax and Wax/Wax Resin Thermal Transfer Ribbons from France, Japan and Korea, 731-TA-
(continued...)

consider any other factors it deems relevant in light of the specific facts of any investigation.[54] Chinese Respondents argue that the tableters should be included in the domestic industry for chlorinated isos.[55] Petitioners argue to the contrary.[56]

We note at the outset that limited information on the tableters is available in this preliminary phase of these investigations. Given the limited data available, we find that the record in these investigations supporting inclusion of tableters in the domestic industry is mixed.[57] Tableters appear to invest a significant amount of capital in somewhat complex processing operations.[58] However, the complexity of the processing, the capital investment and the value added by tableting is low relative to the more sophisticated manufacturing process, the substantial capital investment, and the significant value added involved in the basic manufacture of the granular chlorinated isos.[59] The tableters appear to account for a significant share of overall employment in the U.S. industry. However, it is unclear whether these employees solely work on tablet production, whether they are also involved in the tableting

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(...continued)
1039-1041 (Final) USITC Pub. 3683 (April 2004) at 11-12; See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 (June 1994) at I-8-9 & n.34 ("no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account"); Low Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) (the Commission concluded that twenty percent value added by flux coaters was sufficient); see also Low Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-246 (Final), USITC Pub. 1790 (Jan. 1986) (value added in the United States was ten to twenty percent).

The Commission has also stated that a "modest percentage of domestically sourced parts or raw materials as a percentage of cost does not necessarily mean that a firm is not a domestic producer." Certain All Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (Mar. 1989) at 13-14. Conversely, the Commission has decided not to include a firm in the domestic industry where its operations contributed only a "minor percentage of the total value" of the product. Certain Radio Paging and Alerting Devices from Japan, Inv. No. 731-TA-102 (Final), USITC Pub. 1410 (Aug. 1983) (operations involved assembly and soldering of foreign-sourced parts involving little technical skill); see also Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514 (Apr. 1984) at 7-8 (Commission emphasized for the first time that no single factor--including value added--is determinative).

[54] See Silicon Carbide from The People's Republic of China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 (June 1994) at I-11 n.49.

[55] Chinese Respondents' Postconference Brief at 6.

[56] Petitioners' Postconference Brief at 14.

[57] Vice Chairman Okun refers to her dissenting views in Pure Magnesium from China and Israel, Inv. Nos. 701-TA-403 and 731-TA-895-896 (Final), USITC Pub. 3467 (November 2001) at 29-30.

[58] Chinese Respondents' Postconference Brief at 7-8, & Exhibits 2, 3 & 4. Petitioners' Postconference Brief, Answers to Staff Questions at 2-3 (description of tableting operations).

[59] Petitioners' Postconference Brief at 16, Answers to Staff Questions at 3. Petitioners did not provide a joint estimate on value added, stating that it varies based on tablet size and shape. Id, Answers to Staff Questions at 3. However, Mr. Abramson of Wego Chemical, a distributor of chlorinated isos, and a Chinese Respondent, testified that the relative difference in value between granular and tableted trichlor is approximately $0.10 per pound. Tr. at 132. Petitioners assert, therefore, that production of granular trichlor accounts for approximately 90 percent of the total cost of tableted trichlor. Petitioners' Postconference Brief at 9. Therefore, the value added by the tableting process would be approximately ten percent. *** the estimate by a Clearon representative that "processing granular trichlor into tablets accounts for less than *** of Clearon's sales price to ***, and cost *** per pound, depending on packaging. Petitioners' Postconference Brief, Exhibit 6. *** , Leeds, an importer and a Chinese Respondent gave a *** estimate. It stated that tableting chlorinated isos added value of from $*** to $*** per pound in the United States. Chinese Respondents' Postconference Brief at 8 & Exhibit 15, unnumbered page 7.

of other products, or are engaged in types of work other than tableting.[60] In this preliminary phase of these investigations, we have no industry data on tableters, so the determination whether to include them in the industry would essentially have no effect. We intend to examine this issue further in any final phase of these investigations.[61]

We base our determination in the preliminary phase of these investigations on the data we have obtained from the three known producers of chlorinated isos: Clearon, OxyChem and BioLab.[62]

## V. CUMULATION[63]

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, 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 U.S. market.[64] In assessing whether subject imports compete with each other and with the domestic like product, 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 geographic 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.[65]

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[60] Qualco states that it employs 76 people in production-related positions. Jonas states that it has ***. Leeds has *** "involved directly in tabletizing." It is unclear whether these employees only produce chlorinated isos tablets. Moreover, it is unclear whether there are any employees from other firms that produce tablets. Chinese Respondents' Postconference Brief at 8-9, & Exhibits 2, 3 & 4.

[61] We note that if we find in any final investigations that the tableters have engaged in sufficient production-related activity to be included in the domestic industry, we may still find that one or more of the tableters should be excluded from the domestic industry based on the related parties provision. 19 U.S.C. § 1677(4). The record reflects that Leeds, Wego Chemical and Cadillac are importers of subject merchandise that tablet chlorinated isos or have a close relationship with a tableter. CR at IV-1 & n.1; PR at IV-1 & n.1.

[62] ***. For all of the foregoing reasons, we do not find that "appropriate circumstances" exist to exclude *** from the domestic industry.

[63] Negligibility is not an issue in these investigations. Subject imports from China and Spain, measured by quantity, based on data from importer questionnaires, exceeded the statutory negligibility threshold in the most recent twelve-month period for which data were available preceding the filing of the petition. 19 U.S.C. § 1677(24). Subject imports from China accounted for *** of all U.S. imports in both 2003 and interim (January to March) 2004, while subject imports from Spain accounted for *** percent and *** percent of all U.S. imports, respectively. CR at IV-1, n.2; PR at IV-1, n.2. Thus, we do not find that subject imports from China or Spain are negligible for purposes of the preliminary phase of these investigations.

[64] 19 U.S.C. § 1677(7)(G)(i).

[65] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. 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).

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.[66] Only a "reasonable overlap" of competition is required.[67] None of the statutory exceptions to the general cumulation rule apply to these investigations.[68]

## A. Fungibility

We find that the domestic product, subject imports from China and subject imports from Spain are generally fungible, particularly with respect to chlorinated isos in tablet form.

Subject merchandise from Spain generally enters the United States in granular form. Subject merchandise from China enters the United States in both granular form and tablet form.[69] Domestic product is sold in both granular and tablet form.[70]

Petitioners maintain that subject imports from China, subject imports from Spain, and the domestic product are fully interchangeable with each other, and therefore compete on the basis of price.[71] Some importers, however, maintain that subject imports from China are of lower quality than domestic product and subject imports from Spain, and therefore are not fully fungible with them.[72]

Questionnaire responses from both producers and importers generally reflect a relatively high level of fungibility between the domestic product and subject imports from Spain, but some questionnaire responses from importers reflect a lower level of fungibility between subject imports from China and the domestic product and subject imports from Spain.[73]

We note, however, that although some imports of chlorinated isos enter the United States in tablet form, to a large extent the responding importers in these investigations purchase granular chlorinated isos and press it into tablets.[74] Some importers report differences in the products due to the

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

[67] 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). See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[68] 19 U.S.C. § 1677(7)(G) (ii).

[69] Tr. at 70 (Testimony of Antony Hand, Clearon).

[70] CR at II-3; PR at II-2.

[71] CR at II-9; PR at II-6.

[72] CR at II-9; PR at II-6.

[73] U.S. producers responded that subject imports from China and Spain were "always" or "frequently" interchangeable with each other and the domestic product. Similarly, the majority of importers responded that subject imports from China and Spain were "always" or "frequently" interchangeable with each other and the domestic product. However, one importer response indicated that subject imports from China were only "sometimes" interchangeable with the domestic product. One response indicated that subject imports from China were "never" interchangeable with the domestic product. Further, one importer response indicated that subject imports from China were "never" interchangeable with subject imports from Spain. CR/PR at Tables II-1 and II-2.

[74] Most of the chlorinated isos imported into the United States from all sources other than Japan, including the subject countries, are imported by seven distributors that also process granular chlorinated isos into tablet form. They comprise Leeds, Arch, Cadillac, Haviland Consumer Products, Inc., SCP Distributors, Special Materials Co., (continued...)

"clumping" of the subject imports from China.[75] Granular chlorinated isos from different sources may be easily combined in the tableting process.[76] Adjustments to the tableting press may be necessary to accommodate tableting chlorinated isos from China, but once that is accomplished, the products are generally considered fully fungible. Subject merchandise and domestic product may even be sold together in the same pail of tableted chlorinated isos.[77]

### B. Same Geographical Markets

Chlorinated isos are sold throughout the United States by both domestic producers and importers. ***. *** of the responding importers reported that they serve national or nearly national markets. ***.[78]

### C. Simultaneous Presence

Subject imports from China and Spain and the domestic like product were present in the U.S. market in each year of the period of investigation, as well as in interim 2003 and interim 2004.[79]

### D. Channels of Distribution

Subject merchandise as well as domestic product can enter the United States market in either granular or tablet form, and can be sold to either tableters/repackagers or to distributors.[80] Granular chlorinated isos generally are delivered to a manufacturer's tableting and packaging facilities or to tableters and packagers in one-metric ton "supersacks" that are not yet branded.[81] After tableting and packaging, the product then is sold to distributors who brand the product and sell it to pool retail stores, the big "box" stores like Home Depot and Wal-Mart, pool service companies and other retail outlets.[82] BioLab is an exception. It manufactures, tablets, and distributes its own chlorinated isos under its own brand name, but it distributes its product to the same retail outlets as other distributors.[83] We conclude that domestic product and subject imports of chlorinated isos are sold in similar channels of distribution.

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[74] (...continued)
and Wego Chemical. CR/PR at IV-1. Cadillac sells its subject imports to Qualco which tablets the product at the same location. CR at IV-1, n.1; PR at IV-1, n.1.

[75] Chinese' Respondents Postconference Brief at 27-28 & Exhibit 8.

[76] Granular chlorinated isos from different sources may be combined when they are poured into the tablet press. CR at V-7, n.23; PR at V-6, n.23.

[77] CR at V-7, n.23; PR at V-6, n.23; Tr. at 162-63. We note that one importer states that tablets containing subject imports from China may not have as aesthetic an appearance, and may have a stronger chlorine odor, than other tableted chlorinated isos. Tr. at 124-25.

[78] CR at V-1, n.2; PR at V-1, n.2.

[79] CR/PR at Table III-2 and Table IV-1.

[80] CR at II-3; PR at II-2. Tr. at 70 (Testimony of Antony Hand, Clearon).

[81] Petitioners' Postconference Brief, Answers to Staff Questions at 2.

[82] Petitioners' Conference Exhibit at 12.

[83] Petitioners' Conference Exhibit at 12. Petitioners' Postconference Brief at 22. BioLab's direct customers reportedly include both distributors and mass merchandisers. Arch's Postconference Brief at 17.

### E. Conclusion

Based on the record in the preliminary phase of these investigations, we find a reasonable overlap of competition between subject imports from China and Spain and the domestic product sufficient to support cumulation.

## VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS FROM CHINA AND SPAIN

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.[84] 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.[85] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[86] 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.[87] 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."[88]

### A. Conditions of Competition and the Relevant Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of the subject imports.

#### Demand Conditions

Chlorinated isos are a sanitizing agent used in two markets: (1) swimming pool and spa sanitization, the principal market, and (2) industrial applications, including use as a disinfectant and bleaching agency in cleansers and detergents.[89] Questionnaire responses reflect that swimming pool and spa sanitization demand accounts for 95 percent of the total U.S. chlorinated isos market, and industrial applications account for the remaining five percent of the market.[90] As noted earlier, there are two

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[84] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[85] 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, e.g., Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[86] 19 U.S.C. § 1677(7)(A).

[87] 19 U.S.C. § 1677(7)(C)(iii).

[88] 19 U.S.C. § 1677(7)(C)(iii).

[89] CR at I-2-3, II-1; PR at 1-2, II-1.

[90] CR at I-5; PR at 1-3.

primary chemical forms of chlorinated isos: trichlor and dichlor.[91] Trichlor dominates the market for chlorinated isos in the United States due to its popularity as a routine pool sanitizer.[92]

The U.S. market is the largest market in the world for chlorinated isos. Demand for chlorinated isos in the United States is linked to demand for pool sanitization, which is based on new swimming pool construction and weather conditions. Weather can play a larger role than construction in any particular year.[93] According to producers and importers, demand increases for chlorinated isos at a rate of two percent to six percent per year, as the number of pools in the United States increases.[94] Demand is seasonal, peaking in the summer months.[95] ***, price negotiations are carried out from August to December for the following spring and summer season.[96]

Commission data reflect that demand for chlorinated isos in the U.S. market increased over the period of investigation.[97] Despite these data, both producers and importers reported that 2003 was a year of reduced demand due to cooler and wetter weather than normal.[98]

**Supply Conditions and the Structure of the Domestic Industry**

1. *Manufacturing Granular Chlorinated Isos.*

OxyChem, BioLab, and Clearon are the three manufacturers of granular chlorinated isos in the United States. Clearon and OxyChem produce both dichlor and trichlor.[99] BioLab produces only trichlor.[100] Even though demand is seasonal, domestic producers spread production over the course of the year to maintain optimal operating efficiencies. To have profitable operations, chlorinated isos producers need to operate at a high level of capacity. Therefore, they build up inventories in the fall and winter months, from which they sell in the high demand summer months.[101]

2. *Tableting and Packaging.*

As noted earlier, most trichlor is tableted, and both trichlor and dichlor are packaged into smaller containers for further distribution by tableters/packagers. The three domestic granular manufacturers carry out these processes differently. OxyChem has a tolling arrangement with a dedicated contract packager. Oxychem manufactures the trichlor, and pays the contract tableter for tableting and packaging

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[91] CR at II-1-2; PR at II-1.

[92] CR at I-3; PR at 1-2. Tableters *** estimated that 10-15 times as much trichlor as dichlor is sold within the pool and spa segment of the U.S. market. CR at II-2; PR at II-1.

[93] CR at II-8; PR at II-5. Chinese Respondents' Postconference Brief at 15-16. Delsa Postconference Brief at 5.

[94] CR at II-8; PR at II-5.

[95] Petitioners' Postconference Brief at 22.

[96] CR at V-3; PR at V-3.

[97] Total U.S. market demand for chlorinated isos, measured by the quantity of apparent U.S. consumption, increased by 16.8 percent from 2001 to 2002, and then further increased by 7.2 percent from 2002 to 2003, for an overall increase of 25.2 percent from 2001 to 2003. In addition, apparent U.S. consumption measured by quantity was 2.1 percent higher in interim 2004 than in interim 2003. CR/PR at Table C-1.

[98] CR at II-8, n.48; PR at II-6, n.48.

[99] CR at II-3; PR at II-2.

[100] CR at II-3; PR at II-2.

[101] Petitioners' Postconference Brief at 22.

it for them.[102] BioLab does most of its own tableting, and is a net buyer of chlorinated isos.[103] BioLab purchases *** granular trichlor from ***, converts it into tablets and packages it for sale.[104] Clearon manufactures granular trichlor and then tablets and packages it, as appropriate, in its own dedicated tableting and packaging facility. It also does some tableting and packaging for other firms.[105]

In addition to the tableting and packaging done by the domestic producers, there are merchant repackers that tablet and package trichlor and repackage dichlor.[106] They tablet and package both domestically produced and imported chlorinated isos, including subject merchandise.[107]

Both Arch and the Chinese Respondents argue that they have been forced to source their chlorinated isos overseas because the domestic suppliers are their competitors, or because the domestic producers are not willing or able to supply them with chlorinated isos.[108]

3. *Distribution.*

After tableting and packaging, the product is sold to distributors who brand the product and sell it to pool retail stores, the big "box" stores like Home Depot and Wal-Mart, pool service companies and other retail outlets.[109] As noted previously, BioLab has its own retail distribution network and brands its products.[110]

4. *EPA Statutory Registration Requirements.*

Due to changes in FIFRA requirements, several U.S. importers and distributors have recently obtained registrations from the Environmental Protection Agency ("EPA") to purchase and sell chlorinated isos from China for swimming pool and spa sanitization in the United States. These changes allow registration applicants to use research funded by previous licensees in their applications, without

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[102] Tr. at 66-67 (Testimony of David Stephenson, OxyChem).

[103] Petitioners' Postconference Brief at 22.

[104] The amount BioLab purchased from *** accounted for *** of U.S. commercial shipments of trichlor and *** of *** shipments in the period examined, making BioLab ***. CR at III-1; PR at III-1.

[105] Petitioners' Postconference Brief, Answers to Staff Questions at 2-3; Tr. at 68 (Testimony of Johnson).

[106] Tr. at 68-69 (Testimony of Johnson). See Petitioners' Conference Exhibit at 12.

[107] CR at I-4; PR at I-3.

[108] Chinese Respondents' Postconference Brief at 17-18. Arch's Postconference Brief at 2-6.

[109] Petitioners' Conference Exhibit at 12.

[110] Petitioners' Postconference Brief at 22. Arch Postconference Brief at 17.

having to pay compensation to use the research.[111] One firm described the licensing process as taking approximately one year.[112]

*5. Nonsubject Imports.*

The share of the U.S. market held by nonsubject imports, measured in quantity, was relatively stable over the period of investigation, and never exceeded 9.4 percent of the market.[113]

**Pricing**

Petitioners maintain that chlorinated isos, whether in granular or tablet form, are essentially a commodity product. Therefore, price is the single most important factor in contract negotiations.[114] Chinese Respondents argue that although that may be true for sales to mass merchandisers, it is not true for sales of granular merchandise in bulk. They maintain that subject imports from China are lower-priced because they are of lower quality.[115] Importers argue that there are increased costs, delays and risks in purchasing subject imports from China due to the hazardous nature of chlorinated isos.[116] Chinese Respondents assert that U.S. prices are higher than world prices for chlorinated isos.[117]

## B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[118]

The volume of cumulated subject imports measured in quantity and value increased significantly over the period of investigation, both in absolute terms and relative to production and consumption in the United States.

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[111] Petitioners' Postconference Brief at 23 & Exhibit 16. FIFRA, the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § § 136 *et seq.*) governs the sale of chlorinated isos in the United States. This law prohibits the distribution or sale of pesticides that have not been registered with EPA. Registering under FIFRA required extensive and very expensive testing to ensure that the product was safe and would not have any adverse effects on humans or the environment. Petitioners' Postconference Brief at 23.

A coalition of domestic producers and foreign producers (the "Ad Hoc Committee") jointly paid for the research required to secure licenses to sell chlorinated isos in the United States. The Ad Hoc Committee includes petitioners, Spanish Respondent Delsa, and other foreign producers (but no foreign producers from China). Prior to 2001, any new importer of chlorinated isos to the U.S. market would either need to pay for its own research or compensate the Ad Hoc Committee by paying a fee of approximately $400,000. In 2001, this requirement expired. CR at II-2-3; PR at II-2.

The industrial segment does not have any EPA licensing requirement because it does not make any claims about abilities to kill organisms. CR at II-3; PR at II-2.

[112] Tr. at 137.

[113] CR/PR at Table C-1.

[114] Petitioners' Postconference Brief at 21.

[115] Chinese Respondents' Postconference Brief at 23.

[116] CR at II-12; PR at II-8.

[117] Chinese Respondents' Postconference Brief at 13-14.

[118] 19 U.S.C. § 1677(7)(C)(i).

The volume of subject imports measured by quantity increased from 5,848 short tons in 2001 to 8,667 short tons in 2002 and further to 25,705 short tons in 2003. The volume of subject imports was higher, 9,401 short tons, in interim (January to March) 2004, as compared to 6,779 short tons in interim 2003. The volume of subject imports increased by 339.6 percent from 2001 to 2003. In fact, the volume of subject imports was higher in interim 2004, which only included one quarter's worth of data, than in full calendar years 2001 or 2002.[119] Subject import volume measured by value reflected similar trends.[120]

Subject import U.S. market share rose steadily over the period of investigation, from a relatively small share of the market in 2001 to a fifth of the market in 2003. Subject imports' share of the U.S. market measured by quantity steadily increased from 5.5 percent in 2001 to 7.0 percent in 2002 and further increased to 19.3 percent in 2003. It was 24.5 percent in interim 2004 as compared to 18.1 percent in interim 2003.[121]

In contrast, the domestic industry lost market share over the period of investigation, as the industry's shipments did not keep pace with the increase in apparent domestic consumption. The domestic industry's share of the U.S. market measured by quantity fell irregularly by 12.8 percentage points from 2001 to 2003, and was lower in interim 2004 than in interim 2003.[122] The domestic industry lost market share in the context of a 25.2 percent increase in apparent domestic consumption between 2001 and 2003 and a slight increase in consumption in interim 2004 as compared to interim 2003.[123]

As stated previously, the U.S. market share of nonsubject imports never exceeded 9.4 percent of the market, and stayed relatively stable over the period of investigation.[124] Therefore, subject imports gained market share almost entirely at the expense of the domestic industry.

The ratio of subject imports to domestic production of chlorinated isos steadily increased from 2001 to 2003, and was higher in interim 2004 than in interim 2003.[125]

Accordingly, we find for purposes of the preliminary phase of these investigations that both the volume and increase in subject import volume were significant during the period examined, both in absolute terms and relative to consumption and production in the United States.[126]

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

[120] The value of subject imports increased from $9.8 million in 2001 to $12.0 million in 2002 and further to $31.9 million in 2003. It increased by 226 percent from 2001 to 2003. The value of subject imports was higher, $11.3 million in interim 2004, as compared to $8.2 million in interim 2003. CR/PR at Table C-1.

[121] CR/PR at Table C-1.

[122] The domestic industry's share of the U.S. market measured by quantity increased slightly from 86.9 percent in 2001 to 87.1 percent in 2002, and then decreased to 74.1 percent in 2003. It was 67.1 percent in interim 2004 as compared to 72.6 percent in interim 2003. CR/PR at Table C-1.

[123] CR/PR at Table C-1.

[124] CR/PR at Table C-1.

[125] The ratio of subject imports to domestic production of chlorinated isos increased from 4.9 percent in 2001, to 7.0 percent in 2002, and further to 21.4 percent in 2003. It was 30.4 percent of domestic production in interim 2004 as compared to 21.4 percent in interim 2003. CR/PR at Table IV-1.

[126] Chinese Respondents argue that the volume of subject imports has increased in large part because importers are no longer required to compensate the Ad Hoc Committee for its research under FIFRA, prior to obtaining licenses to sell chlorinated isos. Chinese Respondents' Postconference Brief at 12. While this may be the case, the lifting of the requirement to pay compensation is in place for the foreseeable future, and we see no reason to discount the significance of the increased imports due to that event. We do not find that the lifting of the FIFRA requirement detracts from the significance of the large increase in subject import volume in these investigations.

## C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act[127] 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 discussed above, there is a high degree of substitutability between domestic product and subject imports, although some importers have reported that subject imports from China are of lower quality, and that other factors besides price enter into their purchasing decisions.[128]

In these investigations, U.S. producers and importers provided quarterly pricing data for three granular chlorinated isos products: trichlor sold in 2,205-pound bags ("Product 1"); dichlor in dihydrate form sold in 2,205 pound bags ("Product 2"); and dichlor in dihydrate form sold in 300-pound drums ("Product 3"). Three U.S. producers and four importers provided usable pricing data.[129] Pricing data reported by these firms accounted for approximately 12.9 percent of U.S. producers' shipments of chlorinated isos and 36.2 percent of U.S. imports from China in 2003.[130]

We note that the pricing data in these investigations do not include pricing data for tablets.[131] If granular product is imported into the United States, and then converted into tablets by importers, those sales would also not be covered by our current pricing data. We were not able to gather pricing data from certain importers of subject imports from Spain, due in part to their conversion of granular product to tablet form prior to its sale, and due in part to firms not responding to the questionnaires.[132] We intend to increase our coverage of pricing data with respect to sales of tablets, and of subject imports from Spain, in any final phase of the investigations.[133]

With respect to the pricing data in this preliminary phase of these investigations, subject imports undersold the domestic product in 22 out of 23 price comparisons.[134] The margins of underselling for Products 1 and 2 were almost all in double digits, and ranged as high as 43.9 percent.[135] Pricing data

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[127] 19 U.S.C. § 1677(7)(C)(ii).

[128] CR at II-9, II-12; PR at II-6, II-8.

[129] CR at V-7; PR at V-5.

[130] CR at V-8; PR at V-6. We were unable to gather usable pricing data with respect to subject imports from Spain. Id, n.25.

[131] CR at V-7; PR at V-.5.

[132] CR at V-8; PR at V-6.

[133] Gathering these data may be further complicated if we find that the production of tablets in the United States represents sufficient production related activity to constitute domestic production. Under those circumstances, tablets produced domestically, even from subject imports of granular chlorinated isos, would be considered domestically produced chlorinated isos tablets. See Certain Wax and Wax/Wax Resin Thermal Transfer Ribbons from France, Japan and Korea, 731-TA-1039-1041 (Final) USITC Pub. 3683 (April 2004) at 23 ("[O]ur finding that the activities of domestic converters are domestic production means that their shipments are domestic shipments.").

[134] CR at V-8-9; PR at V-6; CR/PR at Table V-3.

[135] CR/PR at Tables V-1 and V-2.

regarding Product 3 were consistent with the other pricing data, but limited data were available.[136] For purposes of these preliminary investigations, we find that there has been significant price underselling of the domestic like product by subject imports.

We also find that subject imports have depressed domestic prices to a significant degree. Our pricing data show that domestic prices fell sharply toward subject import prices with respect to all three pricing products over the period examined. For Product 1, domestic prices fluctuated downward from $*** per pound in the first quarter of 2001 to $*** per pound in the first quarter of 2004.[137] For Product 2, domestic prices fluctuated downward with an isolated spike in the third quarter of 2001, from $*** in first quarter 2001 to $*** in the first quarter of 2004.[138] Finally, for Product 3, domestic prices fluctuated downward from $*** in first quarter 2001 to $*** in the first quarter of 2004.[139]

While domestic prices fell over the period of investigation, prices for subject imports remained relatively stable or increased, but remained well below domestic prices, except for one instance of overselling. The margins of underselling by subject imports for Products 1 and 2 decreased over the period of investigation as domestic prices sharply declined.[140] The limited data available for Product 3 are consistent with the pricing data for the other two products.

Confirmed lost sales and lost revenues provide further support for our finding that subject imports have depressed domestic prices to a significant degree.[141] *** reported that *** had meet-or-release provisions with *** customers. ***, but that contracts were subject to renegotiations.[142] Several importers also acknowledged that contracts could be renegotiated or that there were meet-or-release clauses in the contracts.[143] Therefore, contracts in this industry can be affected by changes in market prices. Petitioners assert that over the past two years their purchasers have used meet-or-release clauses to force domestic producers to lower their prices due to low prices offered for subject imports.[144] These assertions are supported by record evidence of confirmed lost sales and lost revenues.[145]

We find for purposes of the preliminary phase of these investigations, that there has been significant price underselling of the domestic like product by subject imports, and that subject imports have depressed domestic prices to a significant degree.

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[136] There were only two Product 3 price comparisons between subject imports and the domestic product. CR/PR at Table V-3.

[137] CR/PR at Table V-1.

[138] CR/PR at Table V-2.

[139] CR/PR at Table V-3.

[140] CR/PR at Tables V-1 and V-2.

[141] We note that Chinese Respondents argue that certain domestic producers have caused prices to fall by targeting business with the large retailers. Chinese Respondents' Postconference Brief at 16-20. To the extent practicable, we intend to explore this matter further in any final investigations.

[142] CR/PR at V-3 & n.4.

[143] CR/PR at V-3, n.4.

[144] Petitioners' Postconference Brief at 21.

[145] *** confirmed lost sales allegations by Petitioners covering ***. CR at V-25; PR at V-8; CR/PR at Table V-4. ***. CR at V-24; PR at V-8.

## D. Impact of the Subject Imports[146]

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."[147] 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 that are distinctive to the affected industry."[148]

We have examined performance indicators in trade and financial data for the domestic industry producing chlorinated isos.[149] These data indicate declining overall trends in the condition of the domestic industry, which are most evident in its financial data.

Regarding trade data, we note that performance indicators were stable or showed small increases over the three year period. U.S. producers' production and total domestic shipments of chlorinated isos increased somewhat from 2001 to 2003 but were lower in interim 2004 than in interim 2003.[150] Capacity and capacity utilization by the domestic industry were relatively stable over the period of investigation, at approximately 80 percent.[151] The average number of production related workers and hours worked for chlorinated isos fell steadily from 2001 to 2003, and were lower in interim 2004 than in interim 2003. Wages paid increased from 2001 to 2003, but were lower in interim 2004 than in interim 2003. Productivity, however, increased both in the annual years surveyed, and in interim 2004 as compared to interim 2003.[152]

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[146] In its notice of initiation, Commerce estimated margins for subject imports from China of 109.14 percent to 157.82 percent, and margins of 29.68 percent to 42.36 percent for subject imports from Spain. Chlorinated Isocyanurates from the People's Republic of China and Spain, 69 Fed. Reg. 32488, 32491 (June 10, 2004).

[147] 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.

[148] 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).

[149] CR/PR at Table III-2 and Table VI-1.

[150] Production increased from 119,385 short tons in 2001, to 124,414 short tons in 2002 and then fell to 120,163 short tons in 2003. Production was slightly lower (30,891 short tons), in interim 2004 than in interim 2003 (31,640 short tons). U.S. commercial shipments increased from 92,524 in 2001, to 108,411 in 2002, and then fell to 98,812 in 2003. U.S. commercial shipments were slightly lower (25,690 short tons) in interim 2004 than in interim 2003 (27,215 short tons). CR/PR at Table III-2.

[151] Domestic production capacity increased steadily from 149,650 short tons in 2001, to 150,850 short tons in 2002, to 152,000 short tons in 2003. Capacity was slightly higher (38,848 short tons) in interim 2004, as compared to interim 2003 (38,663 short tons). Capacity utilization increased from 79.8 percent in 2001, to 82.5 percent in 2002, and then decreased to 79.1 percent in 2003. Capacity utilization was lower in interim 2004 (79.5 percent) than in interim 2003 (81.8 percent). CR/PR at Table III-2.

[152] The average number of production workers decreased steadily from 336 in 2001 to 325 in 2002 and further to 317 in 2003. The average number of workers was lower in interim 2004 (279) than in interim 2003 (328). Hours worked also decreased steadily from 774,000 in 2001, to 749,000 in 2002, and further to 720,000 in 2003. Hours worked were lower in interim 2004 (150,000) than in interim 2003 (190,000). Productivity steadily increased from 154.2 tons per 1,000 hours in 2001 to 166.2 tons per 1,000 hours in 2002 and further to 166.9 tons per 1,000 hours in 2003. Productivity was higher (205.5 tons per 1,000 hours) in interim 2004 as compared to interim 2003

(continued...)

In contrast, many of the domestic industry's consolidated financial indicators declined irregularly over the period of investigation. In general, these indicators improved from 2001 to 2002, then declined below 2001 levels in 2003. Operating income, net sales measured by value, operating margins, capital expenditures and cost of goods sold as a ratio to sales all followed these trends. In interim 2004, the downward trends experienced in the annual years surveyed continued. Research and development expenditures and inventories exhibit downward trends in the interim periods.[153]

Operating income fell irregularly by 46.9 percent from 2001 to 2003, and the domestic industry experienced an operating loss in interim 2004 as compared to operating income in interim 2003.[154] Net sales measured by value decreased irregularly by 5.8 percent between 2001 and 2003, and were 15.1 percent lower in interim 2004 than in interim 2003.[155]

The domestic industry's ratio of operating income to sales fell by 5.1 percentage points from 2001 to 2003. Operating margins increased from 11.6 percent in 2001 to 14.0 percent in 2002, but then decreased to 6.6 percent in 2003. In interim 2004, operating margins were 13.4 percentage points lower than in interim 2003, and the domestic industry experienced a negative margin of 3.3 percent.[156]

Cost of goods sold ("COGS") as a ratio to sales increased irregularly from 2001 to 2003. COGS was 81.8 percent of sales in 2001, increasing to 88.0 percent of sales in 2003. The ratio of COGS to sales was higher in interim 2004 (97.7 percent) than in interim 2003 (84.4 percent). In interim 2004, COGS approached one hundred percent of net sales value, indicating that revenues were not keeping pace with costs.[157]

Capital expenditures decreased irregularly from 2001 to 2003 and were lower in interim 2004 than in interim 2003. Research and development expenditures were relatively stable from 2001 to 2003,

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[152] (...continued)
(166.9 tons per 1,000 hours.). CR/PR at Table III-2.

[153] CR/PR at Table VI-1, Table VI-6.

[154] CR/PR at Table C-1. Operating income increased from $23.5 million in 2001, to $31.2 million in 2002, then fell to $12.5 million in 2003. The domestic industry had an operating loss of $1.5 million in interim 2004 as compared to an operating income of $5.5 million in interim 2003. CR/PR at Table VI-1.

[155] CR/PR at Table C-1. Net sales measured by value decreased irregularly from 2001 to 2003. They increased from $202 million in 2001, to $223 million in 2002, and then decreased to $190 million in 2003. Net sales measured by value were $46 million in interim 2004 as compared to $54 million in interim 2003. CR/PR at Table VI-1.

Net sales measured in quantity, increased irregularly from 2001 to 2003, but were lower in interim 2004 than in interim 2003. Net sales measured by quantity increased from 109,763 short tons in 2001, to 127,444 short tons in 2002 and then decreased to 114,772 in 2003. Net sales measured by quantity were 30,971 short tons in interim 2004 as compared to 32,549 short tons in interim 2003. CR/PR at Table VI-1.

[156] CR/PR at Table C-1 and Table VI-1. These declines in operating income are primarily attributable to falling prices. CR/PR at VI-5; CR/PR at Table VI-5. As we found above, subject imports depressed domestic prices to a significant degree.

[157] CR/PR at Table VI-1.

but lower in interim 2004 than in interim 2003.[158] End-of-period inventories decreased somewhat from 2001 to 2003, but were 22 percent higher in interim 2004 as compared to interim 2003.[159]

These declines occurred as subject imports entered the U.S. market in increased and significant volumes, and gained market share almost exclusively at the expense of the domestic industry, notwithstanding increased apparent domestic consumption. At the same time, subject imports undersold domestic product, typically by double digit margins, and depressed domestic prices to a significant degree.

Both Chinese Respondents and Arch have raised causation issues related to the business strategies of certain domestic producers. They allege that these strategies have forced distributors to source chlorinated isos overseas, and have caused domestic prices to fall, contributing in large part to any injury that the domestic industry may be experiencing.[160] We intend to examine this issue more closely in any final phase of these investigations.

For purposes of these preliminary determinations, we conclude that subject imports had an adverse impact on the condition of the domestic industry during the period of investigation. As discussed above, we find both the absolute and relative increase in volume of subject imports, as well as the underselling by the subject imports, to be significant. As subject imports captured market share, they depressed domestic prices to a significant degree, causing declines in domestic industry performance particularly at the end of the period of investigation. Operating income, operating margins, net sales measured by value, and capital expenditures all declined as the domestic industry lost market share. Downward trends evident in the annual periods surveyed accelerated in interim 2004.

## 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 chlorinated isos from China and Spain that are allegedly sold in the United States at less than fair value.

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[158] CR/PR at Table VI-6. Capital expenditures for the domestic industry increased from $8.9 million in 2001, to $9.9 million in 2002 before decreasing below 2001 levels to $8.1 million in 2003. Capital expenditures were lower in interim 2004 ($675,000) than in interim 2003 ($1.9 million). Research and development expenses decreased from $*** in 2001, to $*** in 2002 before increasing to $*** in 2003. Research and development expenses were lower in interim 2004 ($***) than in interim 2003 ($***). Id.

[159] CR/PR at Table C-1. End-of-period inventories decreased from 26,648 short tons in 2001, to 21,312 short tons in 2002, then increased to 25,457 short tons in 2003. End-of-period inventories were higher (24,808 short tons) in interim 2004 than in interim 2003 (20,335 short tons).

[160] Chinese Respondents' Postconference Brief at 15, 16-18. Arch's Postconference Brief at 2-6.

# PART I: INTRODUCTION

## BACKGROUND

These investigations result from a petition filed on May 14, 2004, with the Commission and the Department of Commerce (Commerce) on behalf of Clearon Corp., Fort Lee, NJ, and Occidental Chemical Corp., Dallas, TX, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of less-than-fair-value imports of chlorinated isocyanurates ("chlorinated isos")[1] from China and Spain. Information relating to the background of these investigations is provided below.[2]

| *Effective Date* | *Action* |
|---|---|
| May 14, 2004 ..... | Petition filed with Commerce and the Commission; institution of Commission investigations (69 FR 29328, May 21, 2004) |
| June 4, 2004 ..... | Commission's conference[3] |
| June 10, 2004 ..... | Commerce's notice of initiation (69 FR 32488) |
| June 28, 2004 ..... | Commission's votes and determinations transmitted to Commerce |
| July 6, 2004 ..... | Commission's views transmitted to Commerce |

In 1984 the Commission and Commerce conducted an antidumping investigation on cyanuric acid and its chlorinated derivitives, including the subject products, that resulted in an antidumping duty order on such products from Japan.[4] In the absence of any review request or objection from a domestic interested party, Commerce revoked the order in 1995 (60 FR 28576, June 1, 1995).

## SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C. U.S. industry data are based on the questionnaire responses of three firms that account for 100 percent of U.S. production of the subject product in the period examined (January 2001-March 2004). U.S. imports are based on the foreign producer questionnaire of the sole producer in Spain exporting to the United States and on the importers' questionnaire responses of U.S. firms that account for the overwhelming bulk, if not all, imports of the product into the United States from China and all other countries.

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[1] The chlorinated isocyanurates subject to these investigations are derivatives of cyanuric acid, described as chlorinated s-triazine triones, and include trichloroisocyanuric acid (trichlor) ($Cl_3(NCO)_3$) and sodium dichloroisocyanurate (dichlor) in both dihydrate ($Cl_2Na(NCO)_3 \cdot 2H_2O$) and anhydrous ($Cl_2Na(NCO)_3$) forms. They are available in powder, granular, and tableted forms, all of which are covered in the scope of the investigations. Such products are provided for in subheading 2933.69.60 and statistical reporting number 2933.69.60.50 of the Harmonized Tariff Schedule of the United States (HTS), along with other chemical compounds. The general-duty rate for subheading 2933.69.60, applicable to China and Spain, is 3.5 percent *ad valorem*. For a more detailed description of the merchandise subject to these investigations, including the like product produced in the United States, see the subsection of Part I entitled, "The Subject Product."

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

[3] A list of witnesses appearing at the conference is presented in app. B.

[4] See *Cyanuric Acid and its Chlorinated Derivatives from Japan,* USITC Pub. 1513, April 1984.

## MAJOR FIRMS INVOLVED IN THE U.S. CHLORINATED ISOS MARKET

Aside from the petitioners and one other U.S. producer, BioLab, Inc., Lawrenceville, GA, there are several U.S. distributors that sell both U.S. and imported product in the United States. These distributors add value to some of the imported product and are specifically identified in Part IV.

## PETITIONERS' ALLEGED DUMPING MARGINS

Using India as a surrogate for the calculation of normal value and Chinese producers' price quotes in the United States for both trichlor and dichlor in the period April 2003-March 2004, petitioners arrived at dumping margins for China, as reported by Commerce, that range from 109.14 percent to 157.82 percent. For Spain, petitioners calculated normal values on the basis of home-market sales. Comparing these with prices in the United States derived from Spanish sales to petitioners' customers, petitioners calculated dumping margins on the Spanish product ranging from 29.68 percent to 42.36 percent, after Commerce's adjustments.

## THE SUBJECT PRODUCT

### Physical Characteristics and Uses

Chlorinated isocyanurates, or chlorinated isos, which consist of trichloroisocyanuric acid (trichlor) ($Cl_3(NCO)_3$) and sodium dichloroisocyanurate (dichlor) in both dihydrate ($Cl_2Na(NCO)_32H_2O$) and anhydrous ($Cl_2Na(NCO)_3$) forms, are chemical compounds used primarily as sanitizing agents for swimming pools, spas, and industrial water, and as disinfecting and bleaching agents for detergents, bleaches, and cleansers. For actual application, these products are sold as a solid, usually in granular, tablet, or stick form. The active ingredient for sanitizing purposes is chlorine, although only a part of the chlorine in these chemicals can perform the necessary sanitizing function. Trichlor and dichlor differ mainly in the percentage of chlorine each has available for sanitizing and the rate of release of that chlorine in water. Trichlor, containing 90 percent available chlorine, has the highest chlorine content, but its chlorine is released relatively slowly in water and therefore it is more widely used for water treatment applications. Dihydrate and anhydrous dichlor contain less available chlorine, 56 percent and 63 percent, respectively, but the chlorine is released relatively quickly, making them more widely used in detergents, bleaches, and cleansers and as "shock" treatments to quickly instill chlorine in swimming pools. Although trichlor and dichlor generally perform the same function, one slower and one faster, one or the other is usually specified for any specific application, and it appears from the record in these investigations that they are generally not used as substitutes in the market. Owing to the relatively larger market for water treatment applications, trichlor accounts for the bulk of U.S. production and consumption and is generally priced lower per pound than dichlor because a greater share of plant fixed costs can be allocated to its production.

Some of the trichlor from China contains active ingredients other than chlorine that provide functions other than sanitizing. These ingredients include aluminum sulfate, which acts as an algicide, and copper sulfate, which acts as a water clarifer. This so-called "blended" trichlor or "3-in-1" tablet is a proprietary formulation developed by a single importer and has been imported by this importer from a single Chinese producer since 2003. A patent for a similar formulation is held by BioLab.

## The Production Process

The raw materials for the production of both trichlor and dichlor are cyanuric acid, caustic soda, and chlorine gas. Cyanuric acid, which U.S. chlorinated isos producers make and derive from urea, is refined and purified and then neutralized with caustic soda to become trisodium cyanurate, the basic feedstock for both trichlor and dichlor. To produce trichlor, chlorine gas is introduced into the feedstock and carefully controlled, resulting in a granular solid that is either packaged in 2,205-pound sacks or 300-pound drums and sold as such, or further processed into tablets or sticks and packaged in 10-50-pound pails. The bulk of trichlor is ultimately consumed as tablets. Although both trichlor and dichlor are produced at the same plants with the same feedstock (except in the case of BioLab, which produces only dichlor), they are generally produced on separate lines of equipment. To produce dichlor, a smaller amount of chlorine gas is introduced into the feedstock, resulting in an acid that is neutralized with caustic soda to produce the dihydrate form of dichlor. This product can be further dried at higher temperatures to produce the anhydrous forms. Most dichlor is sold and used in granular form and is packaged in sacks or drums. For the most part production is continuous, and the equipment and production workers used in the production of chlorinated isos are specific to that purpose.

A number of byproducts result from the production process, including ammonia gas and nitrogen- and chlorine-containing compounds, but virtually all are waste products and must be subjected to further treatment prior to disposal to comply with government environmental regulations. The exception is a relatively small quantity of excess cyanuric acid, which is either sold or traded.

There are three firms in the United States that produce the subject product from raw materials. However, there are at least seven other firms that convert granular trichlor into tablets and package the product for sale. They acquire the granular product from U.S. and/or foreign producers. Petitioners were unable to estimate the share of the total cost of producing trichlor that the tableting and corresponding packaging process account for, stating that the actual amount would vary according to the tablet size, container size, and other factors. They assert, however, that the investment required for equipment to press granular trichlor into tablets is minor in comparison to the overall investment in a plant that produces trichlor from raw materials.[5] Respondents (large distributors and Chinese producers) contend that firms that transform granular product into tablets and package them are part of the U.S. industry. They contend that those firms' capital investments, value added, technical expertise, employment levels, and materials sourced warrant their inclusion in the U.S. industry. [6]

## Distribution and Market Segments

According to the Commission's questionnaire data, swimming pool and spa applications account for over 95 percent of the U.S. chlorinated isos market; industrial applications–i.e., industrial water treatment and use in cleansers, detergents, etc.– account for the remainder. For U.S. and foreign producers, the pool and spa segment of the market consists mostly of (1) converting and repackaging distributors, which buy not only tablet and stick product but also granulated product that they convert to tablets and package for sale to commercial users, such as hotels and public pools, and to retailers, such as pool retail stores, pool service companies, mass merchants, and grocery and hardware stores; and (2) non-converting and repackaging distributors that sell to the same types of commercial users and retailers. To supplement their needs, U.S. producers and distributors may also buy product from each other. The

[5] Postconference brief of petitioners, petitioners' responses to questions from the ITC staff during the staff conference of June 4, 2004, pp. 2-3.

[6] Postconference brief of Garvey Schubert Barer, pp. 6-10.

industrial segment consists largely of manufacturers of cleansers, bleaches, and detergents, and a few distributors that serve the market independently.

In the United States, sanitizing agents such as trichlor and dichlor are statutorily controlled pesticides and must be approved by the Environmental Protection Agency (EPA) for public use. Accordingly, any chlorinated isos destined for use in the pool and spa market must be tested and approved prior to sale. The EPA testing and approval process, known as registration, is specific to each producer's product and is obtained by the U.S. producer for its own production or by the importer for the Chinese-produced product. The Spanish producer, Delsa, possesses the registration for the Spanish product.

## DOMESTIC LIKE PRODUCT ISSUES

The Commission must determine what domestic product is like, or in absence of like, most similar in characteristics and uses to, the imported articles as defined in Commerce's scope. The petitioners consider the domestic like product to be coextensive with the product scope, i.e., all products specified as "chlorinated isocyanurates." Respondents for the Chinese-produced product, however, argue for separate domestic like products within the scope. Arch Chemicals, Inc., a large converting and repackaging distributor, argues that its proprietary 3-in-1 tableted product (and a similar product patented by BioLab) should be considered a separate like product on the grounds that, unlike chlorinated isos in general, it is a patented, multi-function formulation that contains algicides and water clarifiers in addition to chlorine. As such it is not a "pure" chlorinated isos product.[7] Arch Chemicals also asserts that the domestic 3-in-1 product is produced on separate equipment and in different facilities than pure chlorinated isos, is perceived differently by customers, and has different channels of distribution and pricing from those of pure chlorinated isos.[8] A group of other large distributors and Chinese producers argue that there are sufficient differences between trichlor and dichlor, including physical characteristics, uses, production methods, and price, to consider them separate like products.[9]

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[7] Postconference brief on behalf of Arch Chemicals, June 9, 2004, pp. 6-13.

[8] Ibid.

[9] Postconference brief on behalf of Wego Chemical and Mineral Corp.; Alden Leeds Inc.; N. Jonas and Co.; Cadillac Chemical Corp.; Special Materials Co.; Hebei Jiheng Chemical Co.; Changzhou Clean Chemical Co., Ltd.; and Nanning Chemical Industry Co., Ltd., pp. 1-6.

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

## U.S. MARKET SEGMENTS

Chlorinated isos are used primarily by the pool and spa market (over 90 percent of the chlorinated isos market), although there is also demand from the "industrial" segment, which includes makers of detergents and cleansers.[1] The pool and spa market is based around residential pools rather than commercial pools, which tend to use other types of sanitizers.

Chlorinated isos are commonly sold in two forms, trichlor or dichlor,[2] with dichlor being further divided into dihydrous (56 percent chlorine) and anhydrous (63 percent chlorine) categories. The industrial market generally uses dichlor,[3] while the pool and spa market can use both dichlor and trichlor. Trichlor dissolves more slowly in water than dichlor, and is generally sold to the final user as a tablet or stick to the pool and spa market, which uses it for maintenance of pool chlorine levels in a pool.[4] Dichlor dissolves more quickly in water, and is used in the pool and spa market to "shock" a pool by raising the level of chlorine quickly to kill off algae or other organisms that may have developed at lower chlorine levels.[5] However, dichlor may also be used to maintain a pool's chlorine level, although such use would be daily rather than weekly.[6] Dichlor is sold primarily in granular form, as it would dissolve too quickly as a tablet.[7] Because of their different uses and comparable prices, dichlor and trichlor are not commonly substituted for each other, although dichlor is sold for routine pool sanitization in some markets.[8] Overall, tableters *** estimated that 10-15 times as much trichlor as dichlor is sold within the pool and spa segment.[9]

Until 2001, many companies did not sell chlorinated isos to the U.S. pool market due to high entry barriers in the form of EPA registrations.[10] Such pool products are treated as pesticides and therefore must be registered under the FIFRA, the Federal Insecticide, Fungicide, and Rodenticide Act.[11]

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[1] This segment is sometimes also referred to as the "cleaners and sanitizers" segment, but will be referred to as the industrial segment for purposes of this part of the report.

[2] Conference transcript, pp. 29-30. In addition, Arch and BioLab sell a "blended" tablet that mixes trichlor with other chemicals (e.g., anti-algae and water-clarifying chemicals). These blended tablets are proprietary and patented products. Conference transcript, pp. 117-118, and postconference brief of Arch Chemicals, p. 7. ***.

[3] However, some cleaners, such as ***, do use trichlor. Staff conversation with ***.

[4] However, some producers and importers may sell trichlor initially in granular form to downstream "tableters" who form it into tablets.

[5] Conference transcript, p. 37.

[6] There are some markets in the Northwest and Midwest where dichlor in granulated form is marketed as a pool sanitizer to be scattered over the pool's surface. Dichlor may not be appropriate for pools with vinyl (as opposed to concrete) walls, as the dichlor may bleach the vinyl. Conference transcript, p. 141 and staff conversation with ***.

[7] Conference transcript, pp. 93-94.

[8] In the early 1960s, dichlor was used primarily as a pool sanitizer, whereas today it is generally used as a shock treatment. However, trichlor cannot be used as a shock treatment. Staff conversation with ***. *** customers will buy trichlor as their primary pool sanitizer regardless of price. Staff conversation with ***.

[9] Staff conversations with ***.

[10] Conference transcript, p. 14.

[11] Conference transcript, p. 52.

FIFRA required in-depth studies to determine the environmental safety of the product.[12] From 1986 to 2001, a coalition of domestic and foreign producers (the so-called "Ad Hoc Committee" that includes petitioners, Spanish producer Delsa, and certain other foreign producers) had secured licenses to sell chlorinated isos in the United States by jointly paying for the required research. Any new entrant to the market before 2001 would either need to pay for its own research or compensate the Ad Hoc Committee by paying a fee of roughly $400,000.[13] However, in 2001, the mandatory compensation for using the Ad Hoc Committee's research expired. Chinese chlorinated isos now enter the U.S. market, with importers using that research to obtain EPA licenses. However, according to importers, no Chinese producer has yet obtained a license; rather, the U.S. importers of Chinese chlorinated isos hold the licenses.[14] One importer described the licensing process as taking approximately one year.[15] (The industrial segment does not have any EPA licensing requirement because it does not make any claims about ability to kill organisms.)

## CHANNELS OF DISTRIBUTION

There are three manufacturers of chlorinated isos in the United States.[16] Clearon and OxyChem make both dichlor and trichlor, while BioLab manufactures only trichlor and is a buyer of both dichlor and trichlor.[17] Each producer has the capability to tablet and package, and Clearon and OxyChem have both sold chlorinated isos in one-metric-ton sacks to tableters and repackagers. OxyChem manufactures granulated dichlor and trichlor and then contracts the tableting and packaging. Its chlorinated isos are then sold into the retail market under a brand or private label by the tableter or packaging company.[18] Thus, in addition to petitioners and BioLab, there are several merchant tableters and repackagers who buy granular chlorinated isos and form them into tablets and/or package them in smaller containers than the one-metric-ton sacks in which producers often sell chlorinated isos. Imports into the United States are in either granular or tableted form, and can be sold to either tableters/repackagers or to distributors.[19]

At the consumer level, chlorinated isos are sold through mass merchant retailers such as Costco, Home Depot, and Wal-Mart, through "mom and pop" pool specialty stores, through the large pool products chain Leslie's, through pool service companies, and to a lesser degree through grocery and hardware stores.[20] According to ***, pool service companies tend to buy from distributors; pool retail stores tend to buy from tableters/repackagers; and the larger mass merchandiser retailers and Leslie's tend to buy from both producers and tableters. Mass merchandiser retailers offer less expertise and a more narrow range of products to consumers than pool specialty stores, but often sell chlorinated isos at a lower price.[21]

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[12] These studies include subchronic and chronic mammalian toxicology tests as well as mutagenicity, metabolism, and other toxicology tests. Conference transcript, p. 52.

[13] Conference transcript, p. 123.

[14] Conference transcript, pp. 120 and 129.

[15] Conference transcript, p. 137.

[16] Conference transcript, p. 24.

[17] Conference transcript, pp. 38 and 127-128. In addition, BioLab does not supply granulated trichlor. ***.

[18] Conference transcript, p. 39.

[19] Conference transcript, p. 25.

[20] Conference transcript, p. 38.

[21] Staff telephone conversation with ***.

As a result of the varied methods of distribution, producers sometimes end up competing with companies that they have supplied.[22] Petitioners characterized the decision as to whether to supply an end user directly or through a distributor as varying by particular case. Importers stated that petitioners had begun to try to cut tableters out of the distribution chain by directly supplying their largest customers.[23] In one example, Arch mentioned Clearon, previously its largest supplier, positioning itself as a direct competitor to Arch by attempting to sell to Arch's customers directly.[24] Cadillac said that it could not buy from OxyChem, which it described as showing no interest in selling to Cadillac, and described Clearon as a direct competitor.[25]

## SUPPLY AND DEMAND CONSIDERATIONS

### U.S. Supply

#### Domestic Production

Based on available information, U.S. chlorinated isos producers are likely to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced chlorinated isos to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity, some export shipments, and moderately high levels of inventories.

When asked if there had been any changes in product range or marketing of chlorinated isos, *** and four importers said no. Other importers *** cited the improved quality of trichlor and new blended materials (e.g., chlorinated isos blended with other chemicals such as anti-algae and water-clarifying formulas) from Arch and BioLab as improvements in the chlorinated isos available in the U.S. market.

##### *Industry capacity*

The producers of chlorinated isos have a fixed level of capacity that does not have a great amount of flexibility. *** noted capacity limitations in their production.[26] In addition, respondents were under the impression that OxyChem did not have the ability to make additional sales.[27] *** noted a problem of raw material availability in its production process.[28] BioLab has had a recent fire at its plant, but it said that damage was minimal and supply was only briefly interrupted.[29]

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[22] Conference transcript, pp. 89-92.

[23] Conference transcript, p. 113.

[24] Conference transcript, p. 117. Clearon asserts that it never sold chlorinated isos directly to mass market retailers and only minimal amounts directly to pool dealers, and that it made contact with such firms to sell chlorinated isos only after Arch began reducing purchases from Clearon in favor of subject imports. Petitioners' postconference brief, p. 43 and exh. 18.

[25] Conference transcript, pp. 128 and 165.

[26] Compiled from data submitted in response to Commission questionnaires.

[27] Conference transcript, p. 136.

[28] From data submitted by *** in response to Commission questionnaires.

[29] *http://www.e1.greatlakes.com/corp/news/jsp/recent_news_detail.jsp?contentfile=05252004_Conyers_fire.htm* and *http://biz.yahoo.com/prnews/040528/def024_1.html*, retrieved on June 10, 2004.

### *Alternative markets*

Alternative markets globally for isocyanurates include Australia, Brazil, Europe, Mexico, and South Africa.[30] However, the United States is the largest market for pool products and chlorinated isos globally, and U.S. prices are reportedly higher than global prices.[31] U.S. exports of chlorinated isos rose from 2001 to 2002 before falling back in 2003.

### *Inventory levels*

Because chlorinated isos sales are seasonal, companies in this industry build their capacity for several months in order to supply enough for the entire pool season which runs from Memorial Day to Labor Day.[32] Therefore, most sales of chlorinated isos take place in the second and third quarters.[33] If there is a poor season, such as 2003, inventory levels will increase.[34] U.S. producers' inventories fell from 2001 to 2002, and rose from 2002 to 2003.

## Subject Imports

### *China*

Based on available information, the Chinese producers are likely to respond to changes in demand with moderate-to-large changes in the quantity of shipments of chlorinated isos to the U.S. market. The main contributing factors to the moderately high degree of responsiveness of supply are the availability of unused capacity and the existence of alternate markets.[35] U.S. imports from China have risen substantially in 2002 and 2003, even though U.S. producers described 2003 as a low-demand year due to cooler and wetter weather.[36]

According to petitioners, the Chinese industry's capacity is 171,000 metric tons, while global demand is 200,000 metric tons annually.[37] Respondents stated that only approximately 15,000 to 20,000 metric tons are of high enough quality to use in the U.S. market.[38]

The Chinese market for swimming pool products is not very large; therefore many producers are export-oriented. Antidumping duties have been placed on Chinese trichlor in Mexico, and a case is

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[30] Conference transcript, p. 177.

[31] Conference transcript, pp. 8 and 132.

[32] Conference transcript, p. 45.

[33] Ibid.

[34] Conference transcript, p. 143

[35] Conference transcript, p. 22. *** said that Chinese chlorinated isos plants are usually built next to chloroalkalide plants as a complement to production. He said the chlorinated isos are hazardous and high-maintenance chemicals, and so he expects that Chinese producers will come in to the U.S. market for a few years and then drop out (as he said happened with calcium hypochloride). Staff conversation with ***.

[36] Conference transcript, p. 45.

[37] Conference transcript, p. 155.

[38] Conference transcript, pp. 124 and 156.

pending in the European market.[39] According to the petitioners, the Chinese have gained the majority of other global chlorinated isos markets.[40]

### *Spain*

Based on available information, the reporting Spanish producer is likely to respond to changes in demand with moderate changes in the quantity of shipments of chlorinated isos to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity and the existence of alternate markets or inventories. According to the petitioners, imports from Spain increased substantially in 2003, even though it was a poor season for U.S. producers.[41] In response to the petitioners, Delsa stated that it is a price taker in the U.S. market and is not a large enough importer to affect prices.[42]

Delsa recently opened a new factory which petitioners said substantially increased its capacity from their old facility.[43] Delsa disputed that its new capacity is as large as petitioners said, and maintained that it needed to move its factory from a populated area in Barcelona, and that the increased capacity made economic sense as it is cheaper to add capacity in a new factory than to add on at a later date.[44]

## Nonsubject Imports

Imports of chlorinated isos are also available from Japan, Italy, and, to a lesser extent, Mexico.[45] In 2001, French chlorinated isocyanurate producer Autofinas's factory burned, and thus it no longer produces. Autofinas had been a supplier to some U.S. tableters. Delsa stated that the increased capacity in Delsa's new factory is the same size as the French factory that is no longer producing.[46]

# U.S. Demand

## Demand Characteristics

Demand for chlorinated isos consists of two major segments–residential pool sanitizers and industrial (i.e., bleaches and other detergent users). Demand for all end uses generally tracks overall economic activity. According to importers and producers, demand increases for chlorinated isos at a rate of two to six percent per year[47] as the number of pools in the United States increases. However, both producers and importers have stated that weather is sometimes the most important condition affecting demand in a particular year.

Among producers, *** stated that the number of pools is growing between three and six percent per year, increasing demand for chlorinated isos. Nonetheless, weather can affect demand in a particular

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[39] Postconference brief of petitioners, p. 48.

[40] Conference transcript, p. 55

[41] Conference transcript, p. 45.

[42] Conference transcript, p. 147.

[43] Conference transcript, p. 8.

[44] Conference transcript, p. 146, and postconference brief of Delsa, pp. 10-11.

[45] Staff conversation with ***. ***.

[46] Conference transcript, pp. 149 and 171-172.

[47] Compiled from data submitted in response to Commission questionnaires.

year, with cool, wet weather reducing demand.[48] *** stated that increases in demand can also be attributed to increases in technology and efficiency of the trichlor product.[49] *** added that the industrial segment is static or declining as the dishwashing detergent market moves away from chlorinated isos to enzymes.

Among importers, seven saw demand as rising while *** saw demand as mixed due to poor recent weather. Importers saw demand growth in the range of two to five percent per year as the number of pools in the United States grew. Four importers cited shifts away from calcium hypochlorite as reasons for increased demand for trichlor. ***, which stated that demand was generally growing, also noted that 2002 and 2003 were years of reduced demand because of inclement weather.

### Substitute Products

Some producers and importers saw chlorinated isos as taking market share from their past substitutes, although this capture was more of a long-term development than a recent shock. Substitute products for chlorinated isos cited by the producers and importers include sodium hypochlorite, calcium hypochlorite, enzymes, lithium bleach, bromine, and bacquacil. All of these products can be used as replacements as pool shock treatments or pool sanitizers. However, even with the large number of substitute products, only one importer described any change in the price of chlorinated isos due to the use of these products.[50]

## SUBSTITUTABILITY ISSUES

### Factors Affecting Purchasing Decisions

Petitioners describe U.S.-produced chlorinated isos as competing with those produced in China and Spain mostly or entirely on price. While petitioners acknowledge that their product has advantages over Chinese chlorinated isos in delivery and reliability, they said that the increased subject imports are competing with U.S. chlorinated isos entirely on a price basis. According to importers, while the products imported from Spain are of the same quality and similar price as U.S.-produced product, the Chinese product often has a lower quality level and a lower price.

Both producers and importers report a lower price for imports from China; however, some importers reported that the lower quality of Chinese product was the reason for its lower price, while the producers stated that purchasers were making purchasing decisions entirely on price. While importer *** reported that Chinese chlorinated isos were lower quality than U.S. chlorinated isos,[51] *** reported preferring imports from China due to higher quality product than those provided domestically.

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[48] Despite Commission data showing an increase in consumption of chlorinated isos, both producers such as *** and importers such as *** reported that 2002 and/or 2003 were years of reduced demand due to cooler and wetter weather than normal.

[49] Data submitted by *** in response to Commission questionnaires.

[50] Compiled from data submitted in response to Commission questionnaires.

[51] For example, see conference transcript, p. 121.

## Lead times

Among producers, *** reported that *** percent of its material was sold out of inventory and available within ***. *** stated that *** percent of its material was sold out of inventory and available within ***, with *** percent of its material produced to order and available within ***. Importers generally (though not always) reported that most of their material was available out of inventory in one to five days, with material made to order taking eight weeks.

## Comparisons of Domestic Products and Subject Imports

Producers and importers were asked to assess how interchangeable chlorinated isos from the United States are with chlorinated isos from both subject countries and nonsubject countries. Their answers are summarized in tables II-1 and II-2.

**Table II-1**
**Chlorinated isos: U.S. producers' perceived degree of interchangeability of product produced in the United States and in other countries**

* * * * * * *

**Table II-2**
**Chlorinated isos: U.S. importers' perceived degree of interchangeability of product produced in the United States and in other countries**

| Source | Number of firms reporting | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | China | | | | | Spain | | | | | Nonsubject | | | | |
| | A | F | S | N | O | A | F | S | N | O | A | F | S | N | O |
| United States | 4 | 1 | 1 | 1 | 0 | 3 | 2 | 0 | 0 | 2 | 2 | 1 | 0 | 0 | 4 |
| China | - | - | - | - | - | 3 | 1 | 0 | 1 | 2 | 2 | 0 | 0 | 0 | 5 |
| Spain | - | - | - | - | - | - | - | - | - | - | 2 | 1 | 0 | 0 | 4 |

Note: A=Always; F=Frequently; S=Sometimes; N=Never; O=No Familiarity.

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

Producers and importers were asked to assess how often differences other than price were significant in sales of chlorinated isos from the United States, subject countries, or nonsubject countries. Their answers are summarized in tables II-3 and II-4.

**Table II-3**
**Chlorinated isos: U.S. producers' perceived importance of factors other than price in sales of product produced in the United States and in other countries**

* * * * * * *

**Table II-4**
**Chlorinated isos: U.S. importers' perceived importance of factors other than price in sales of product produced in the United States and in other countries**

| Source | Number of firms reporting | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | China | | | | | Spain | | | | | Nonsubject | | | | |
| | A | F | S | N | O | A | F | S | N | O | A | F | S | N | O |
| United States | 4 | 1 | 0 | 1 | 2 | 1 | 1 | 0 | 1 | 5 | 1 | 0 | 0 | 0 | 7 |
| China | - | - | - | - | - | 1 | 1 | 0 | 1 | 5 | 1 | 0 | 0 | 0 | 7 |
| Spain | - | - | - | - | - | - | - | - | - | - | 1 | 0 | 0 | 0 | 7 |

Note: A=Always; F=Frequently; S=Sometimes; N=Never; O=No Familiarity.

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

According to importers, the supply of Chinese products is not always reliable due to shipping and quality concerns. Because of the hazardous nature of chlorinated isos, the product will often be delayed in China due to safety concerns of the shippers.[52] *** and *** said that they must compensate their customers for these increased costs of using Chinese chlorinated isos by selling at a discount to the prices offered by domestic producers. Importers also stated that the Chinese product often is low in quality, with problems of granulation, distribution, the level of fines, minor impurities, and the presence of foreign inert materials.[53] On the other hand, *** stated that many pool supply companies want to purchase a full line of products from a single source, and that domestic producers do not supply products like calcium hypochloride.

[52] Conference transcript, p. 172.

[53] Conference transcript, pp. 125 and 156.

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

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or in Part VI and is based on the questionnaire responses of three firms, Clearon, OxyChem, and BioLab, that accounted for 100 percent of the subject product produced in the United States in the period examined.[1] These producers' plant locations, positions on the petition, and individual shares of U.S. production are presented in table III-1. Clearon and OxyChem produce both trichlor and dichlor; BioLab produces trichlor only. All U.S. producers' product is sold on the open market; however, BioLab accounts for a *** proportion of producers' sales to the market than its production would suggest. To supplement sales from its own production, BioLab purchases *** granular trichlor from ***, converts it into tablets, and packages it for sale. The amount BioLab purchased from *** accounted for *** of U.S. commercial shipments of trichlor, and *** percent of ***'s trichlor shipments in the period examined, making it ***. Unlike the petitioners, ***.[2]

**Table III-1**
**Chlorinated isos: U.S. producers, locations of production facilities, positions with respect to the petition, and shares of U.S. production, January 2001-March 2004**

| Company | Locations of production facilities | Position with respect to the petition | U.S. production *(short tons)* | Share of U.S. production *(percent)* | Imports from subject countries *(short tons)* | Imports from other countries *(short tons)* |
|---|---|---|---|---|---|---|
| Clearon[1] | Charleston, WV | Petitioner | *** | *** | *** | *** |
| Oxychem[2] | Sauget, IL<br>Luling, LA | Petitioner | *** | *** | *** | *** |
| BioLab[3] | Lake Charles, LA<br>Lawrenceville, GA | Support | *** | *** | *** | *** |
| Total | | | 394,853 | 100.0 | *** | *** |

[1] Clearon is wholly owned by Israel Chemicals Limited, Tel-Aviv, Israel.
[2] Occidental is a wholly owned subsidiary of Occidental Petroleum Corp., Los Angeles, CA.
[3] BioLab is wholly owned by Great Lakes Chemical Corp., Indianapolis, IN.

Note.–Because of rounding, figures may not add to the totals shown.

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

Aggregate data for Clearon's, OxyChem's, and BioLab's U.S. operations are shown in table III-2, and selected data by firm are shown in table III-3. The data show relatively consistent capacity in the period examined but declining production and shipments after 2002. Producers reported no plant openings, relocations, expansions, acquisitions, consolidations, closures, or shutdowns, or production

[1] In addition to the three U.S. firms that produce the subject product from raw materials, there are at least seven other firms, all importers, that convert granular trichlor into tablets.

[2] ***.

**Table III-2**
**Chlorinated isos: U.S. producers' production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of U.S. production and related workers, and hours worked by and wages paid to such workers, 2001-03, January-March 2003, and January-March 2004**

(Quantity=*short tons*; value=*1,000 dollars*)

| Item | 2001 | 2002 | 2003 | J-M 2003 | J-M 2004 |
|---|---|---|---|---|---|
| U.S. producers'-- | | | | | |
| Capacity quantity | 149,650 | 150,850 | 152,000 | 38,663 | 38,848 |
| Production quantity | 119,385 | 124,414 | 120,163 | 31,640 | 30,891 |
| Capacity utilization (*percent*) | 79.8 | 82.5 | 79.1 | 81.8 | 79.5 |
| U.S. commercial shipments: | | | | | |
| Trichlor: | | | | | |
| Quantity | *** | *** | *** | *** | *** |
| *Percent* of U.S. shipments | *** | *** | *** | *** | *** |
| Value | *** | *** | *** | *** | *** |
| Unit value (per pound) | *** | *** | *** | *** | *** |
| Dichlor: | | | | | |
| Quantity | *** | *** | *** | *** | *** |
| *Percent* of U.S. shipments | *** | *** | *** | *** | *** |
| Value | *** | *** | *** | *** | *** |
| Unit value (per pound) | *** | *** | *** | *** | *** |
| Total U.S. commercial shipments: | | | | | |
| Quantity | 92,524 | 108,411 | 98,812 | 27,215 | 25,690 |
| Value | 176,181 | 196,847 | 168,101 | 47,026 | 38,861 |
| Export shipments: | | | | | |
| Quantity | 17,239 | 19,033 | 15,960 | 5,334 | 5,281 |
| Value | 25,952 | 25,930 | 22,224 | 7,158 | 7,153 |
| Total shipments: | | | | | |
| Quantity | 109,763 | 127,444 | 114,772 | 32,549 | 30,971 |
| Value | 202,111 | 222,770 | 190,319 | 54,183 | 46,014 |
| Ending inventory quantity | 26,648 | 21,312 | 25,457 | 20,335 | 24,808 |
| Inventories/total shipments (*percent*) | 24.3 | 16.7 | 22.2 | 15.6 | 20.0 |

Table continued on next page.

| Item | 2001 | 2002 | 2003 | J-M 2003 | J-M 2004 |
|---|---|---|---|---|---|
| U.S. commercial shipments to: | | | | | |
| Pool and spa market quantity | 84,607 | 101,862 | 92,995 | 25,804 | 24,344 |
| *Percent* of U.S. shipments | 91.4 | 94.0 | 94.1 | 94.8 | 94.8 |
| Industrial market quantity | 7,917 | 6,549 | 5,817 | 1,411 | 1,346 |
| *Percent* of U.S. shipments | 8.6 | 6.0 | 5.9 | 5.2 | 5.2 |
| Production workers | 336 | 325 | 317 | 328 | 279 |
| Hours worked (*1,000 hours*) | 774 | 749 | 720 | 190 | 150 |
| Wages paid (*1,000 dollars*) | 22,351 | 22,508 | 23,992 | 5,833 | 5,695 |
| Hourly wages | $28.86 | $30.07 | $33.32 | $30.76 | $37.89 |
| Productivity (*tons/1,000 hours*) | 154.2 | 166.2 | 166.9 | 166.9 | 205.5 |

Note.–Because of rounding, figures may not add to the totals shown.

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

curtailments due to outages, strikes, equipment failure, or raw material shortages, or any other intracompany changes that adversely impacted the production quantity or quality of the subject product in the period examined. Trichlor accounted for the bulk of U.S. producers' sales in this period, accounting for between *** percent and *** percent of producers' total U.S. commercial shipments (of which *** represents ***). The most noticeable change in the U.S. shipment data is the decline in unit values. From 2001 to January-March 2004, the unit value of U.S. producers' U.S. shipments of trichlor declined from $0.91 per pound to $0.71 per pound. (It should be noted, however, that the relative mix of granular and tableted trichlor shipments for each period is unknown.) In the same period, U.S. producers' U.S. shipments of dichlor fell from $*** per pound to $*** per pound. Exports, which accounted for about 15 percent of total shipments in the period examined, also declined after 2002. As shown in table III-2, the pool and spa market consumed most of U.S. producers' product, accounting for over 90 percent of U.S. shipments in the period for which data were collected.[3] Employment in the industry declined from 2001 to 2003 and more noticeably from January-March 2003 to January-March 2004. As in most other chemical industries, however, employment in the chlorinated isos industry is relatively small in comparison to investment in plant and equipment. Nevertheless, the data show that productivity for the U.S. producers as a whole increased from 154 tons per 1,000 hours in 2001 to 206 tons per 1,000 hours in January-March 2004.

Selected data by firm are shown in table III-3. The data show that, unlike the petitioners, BioLab's production and U.S. shipments of trichlor increased in the period examined. (The shipments shown for BioLab include only shipments of its own production, not product it purchased, tableted, and resold from ***.) BioLab, however, did share in the aggregate decline in employment from January-March 2003 to January-March 2004.

[3] It should be noted that inventories plus production minus total shipments do not equal inventories in the data shown in table III-2. This is largely due to the loss in product weight during the drying process in transforming the dihydrate form of dichlor into the anhydrous form.

**Table III-3**
**Chlorinated isos: U.S. producers' production, average practical capacity, U.S. trichlor and dichlor shipments, and average number of production and related workers, by firm, 2001-03, January-March 2003, and January-March 2004**

* * * * * * *

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

Most of the chlorinated isos imported into the United States from all sources other than Japan are imported by seven distributors that also process granulated product into tablet form. They include Alden Leeds, Inc., South Kearny, NJ; Arch Chemicals, Inc., Norwalk, CT; Cadillac Chemical Corp., Passaic, NJ;[1] Haviland Consumer Products, Inc., Grand Rapids, MI; SCP Distributors, Covington, IA; Special Materials Co., Cherry Hill, NJ; and Wego Chemical & Mineral Corp., Great Neck, NY. None is related to any foreign producer. Another distributor, Shikoku International Corp., Orange, CA (a wholly owned subsidiary of one of two producers in Japan, Shikoku Chemicals Corp.) accounts for *** of the product imported from Japan. Both trichlor and dichlor are imported from the subject countries, but the relative quantities of granular vs. tableted forms imported are unknown.

U.S. imports, consumption, and market shares for chlorinated isos are shown in table IV-1. The data show a large increase in the quantity and value of subject country imports, particularly from China, from 2001 to 2003. As a share of total imports, subject country imports increased from 42 percent to 74 percent in this period. (Negligibility is not an issue in these investigations.)[2] Japan accounts for most of the product imported from other countries. Included in the data for China is a small quantity of imports from Hong Kong. Since there are no known producers in Hong Kong, it is likely that this material is Chinese-produced product transhipped and exported from Hong Kong and perhaps converted in Hong Kong into tablet form. Although there are several countries from which chlorinated isos have been imported in recent periods, only a few countries–including Italy, Mexico, and South Africa--are known to be producing the product other than the United States, the subject countries, and Japan. Because of the unknown mix of trichlor and dichlor and granulated and tableted product in the data for imports, average unit values cannot be compared from period to period and are not shown in table IV-1.

Imports from all sources, including the subject countries, rose throughout the period examined, reflecting consumption as a whole. As a share of consumption quantity, imports from subject countries increased from 5.5 percent in 2001 to 24.5 percent in January-March 2004. The increase in January-March 2004 was due to the increase in imports from China. Correspondingly, U.S. producers' share of consumption fell from 86.9 percent to 67.0 percent in this period.

To show the relative quantities of trichlor and dichlor imported from subject countries, U.S. shipments of imports from China are shown in table IV-2. (The Commission did not receive adequate information for a corresponding table for Spain, and a number of unresolved discrepancies in the questionnaire data preclude corresponding value and unit value information.) Virtually all of the shipments reported for imports, both from subject countries and all other countries, were to the pool and spa market. The data show that over 80 percent of U.S. shipments of the Chinese-produced product was trichlor in each period for which data were collected. It is not known, however, what percentage of the Chinese product in each period was granulated or tableted. As indicated previously, Arch Chemicals

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[1] Cadillac's tableting is done by a separate firm, Qualco, Inc., at the same location.

[2] 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 during the most recent 12 months for which data are available preceding the filing the petition–in this case May 2003-April 2004. The exact quantity of subject product imports from China and Spain in this period is unknown, but imports from China accounted for *** of all U.S. imports in both 2003 and January-March 2004, while imports from Spain accounted for *** percent and *** percent of all U.S. imports in these periods, respectively. None of the respondents have argued negligibility.

**Table IV-1**
**Chlorinated isos: U.S. imports, apparent U.S. consumption,[1] and market shares, 2001-03, January-March 2003, and January-March 2004**

(Quantity=*short tons*; value=*1,000 dollars*)

| Item | 2001 | 2002 | 2003 | J-M 2003 | J-M 2004 |
|---|---|---|---|---|---|
| U.S. consumption quantity: Amount | 106,533 | 124,437 | 133,374 | 37,504 | 38,307 |
| Producers' share[2] | 86.9 | 87.1 | 74.0 | 72.6 | 67.0 |
| Importers' share: China[2 3] | *** | *** | *** | *** | *** |
| Spain[2] | *** | *** | *** | *** | *** |
| Total subject countries[2] | 5.5 | 7.0 | 19.3 | 18.1 | 24.5 |
| All other countries[2] | 7.7 | 5.9 | 6.6 | 9.4 | 8.4 |
| Total imports[2] | 13.1 | 12.9 | 25.9 | 27.4 | 32.9 |
| U.S. consumption value: Amount | 202,299 | 221,910 | 214,786 | 60,938 | 55,255 |
| Producers' share[2] | 87.1 | 88.7 | 78.3 | 77.2 | 70.3 |
| Importers' share: China[2 3] | *** | *** | *** | *** | *** |
| Spain[2] | *** | *** | *** | *** | *** |
| Total subject countries[2] | 4.8 | 5.4 | 14.8 | 13.4 | 20.5 |
| All other countries[2] | 8.1 | 5.9 | 6.9 | 9.4 | 9.2 |
| Total imports[2] | 12.9 | 11.3 | 21.7 | 22.8 | 29.7 |
| U.S. imports from-- China:[3] | | | | | |
| Quantity | *** | *** | *** | *** | *** |
| Share of total import quantity[2] | *** | *** | *** | *** | *** |
| Value[4] | *** | *** | *** | *** | *** |
| Share of total import value[2] | *** | *** | *** | *** | *** |
| Ratio to U.S. production[2] | *** | *** | *** | *** | *** |
| Spain: | | | | | |
| Quantity | *** | *** | *** | *** | *** |
| Share of total import quantity[2] | *** | *** | *** | *** | *** |
| Value[4] | *** | *** | *** | *** | *** |
| Share of total import value[2] | *** | *** | *** | *** | *** |
| Ratio to U.S. production[2] | *** | *** | *** | *** | *** |

Table continued on next page.

| Item | 2001 | 2002 | 2003 | J-M 2003 | J-M 2004 |
|---|---|---|---|---|---|
| Total subject countries: | | | | | |
| Quantity | 5,848 | 8,667 | 25,705 | 6,779 | 9,401 |
| Share of total import quantity[2] | 41.7 | 54.1 | 74.4 | 65.9 | 74.5 |
| Value[4] | 9,788 | 12,014 | 31,879 | 8,176 | 11,326 |
| Share of total import value[2] | 37.5 | 47.9 | 68.3 | 58.8 | 69.1 |
| Share of U.S. production[2] | 4.9 | 7.0 | 21.4 | 21.4 | 30.4 |
| All other countries: | | | | | |
| Quantity | 8,161 | 7,359 | 8,857 | 3,510 | 3,216 |
| Share of total import quantity[2] | 58.3 | 45.9 | 25.6 | 34.1 | 25.5 |
| Value[4] | 16,330 | 13,049 | 14,805 | 5,737 | 5,068 |
| Share of total import value[2] | 62.5 | 52.1 | 31.7 | 41.2 | 30.9 |
| All countries: | | | | | |
| Quantity | 14,009 | 16,026 | 34,562 | 10,289 | 12,617 |
| Value[4] | 26,118 | 25,063 | 46,685 | 13,912 | 12,390 |

[1] U.S. producers' domestic shipments plus imports.
[2] In *percent.*
[3] Includes imports from Hong Kong.
[4] Landed, duty-paid.

Note.–Because of rounding, figures may not add to the totals shown.

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

**Table IV-2**
**Chlorinated isos: U.S. shipments of product imported from China, 2001-03, January-March 2003, and January-March 2004**

(Quantity=*short tons*)

| Item | 2001 | 2002 | 2003 | J-M 2003 | J-M 2004 |
|---|---|---|---|---|---|
| Trichlor: | | | | | |
| Quantity | 771 | 3,164 | 11,511 | 3,498 | 3,051 |
| *Percent* of U.S. shipments | 89.7 | 94.7 | 89.0 | 83.5 | 95.6 |
| Dichlor: | | | | | |
| Quantity | 88 | 179 | 1,429 | 688 | 141 |
| *Percent* of U.S. shipments | 10.3 | 5.3 | 11.0 | 16.5 | 4.4 |

Note.–Because of rounding, figures may not add to the totals shown.

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

began importing its proprietary 3-in-1 product from China in late 2003. In 2003 it imported *** tons of this product, valued at $***. In January-March 2004 it imported *** tons, valued at $***, which accounts for about *** percent of all chlorinated isos imported from China in that period.

# PART V: PRICING AND RELATED INFORMATION

## FACTORS AFFECTING PRICES

### Transportation Costs to the U.S. Market

Transportation costs for chlorinated isos from China and Spain to the United States (excluding U.S. inland costs) are estimated to be approximately 17.9 percent of the total cost for chlorinated isos from China and 20.2 percent of the total cost for chlorinated isos from Spain. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value. Transportation costs (both to the U.S. market and inland) are significant because of the hazardous nature of chlorine.[1]

### U.S. Inland Transportation Costs

Producers and importers estimated that U.S. inland transportation costs were between 1-5 percent of their costs of chlorinated isos.[2]

### Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the the Chinese yuan remained constant relative to the U.S. dollar from January 2001 to March 2004, while the real and nominal values of the euro appreciated relative to the U.S. dollar (figure V-1). Real values for the Chinese yuan were not available.

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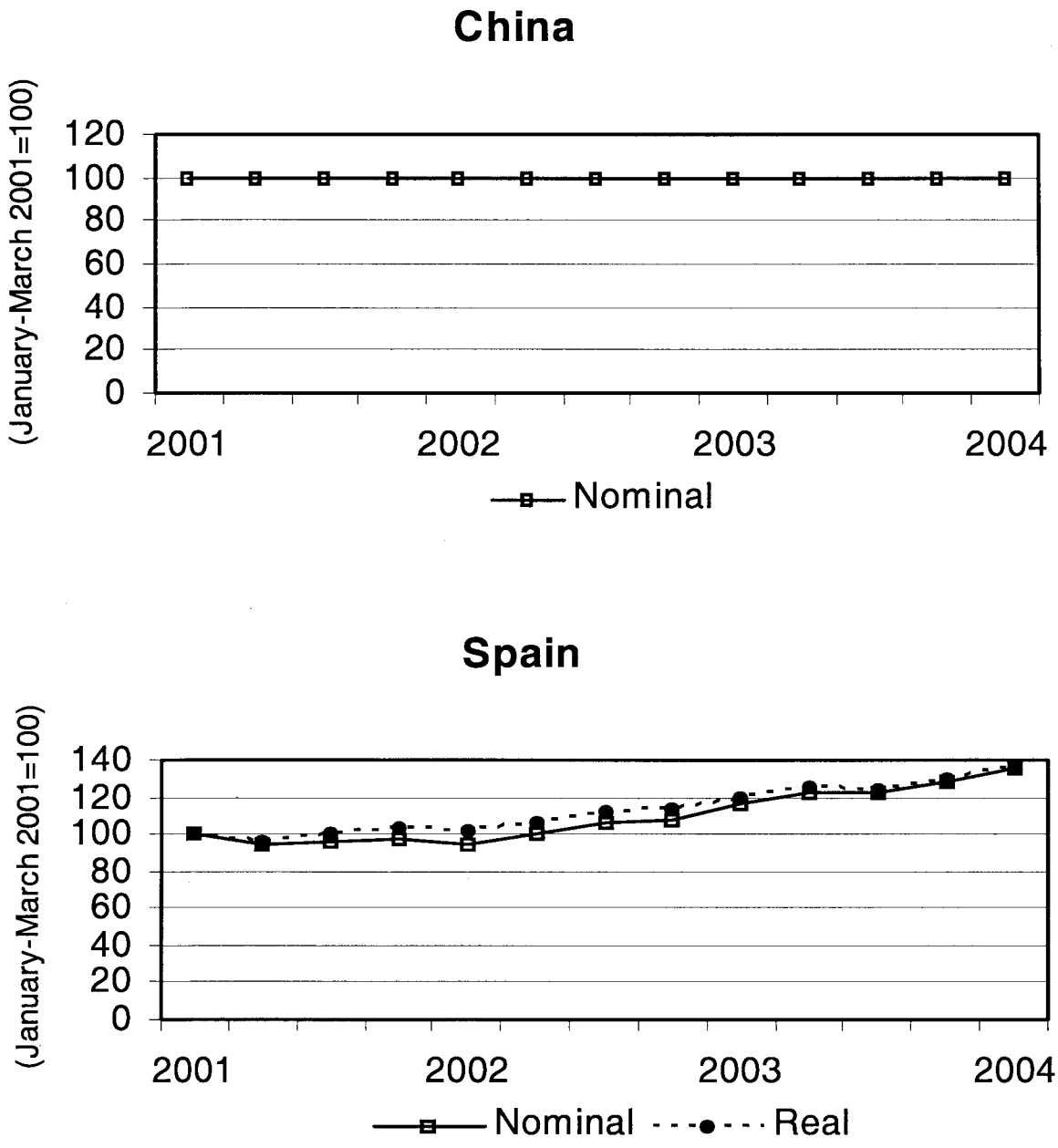
[1] Conference transcript, pp. 172-174.

[2] *** producers reported that they arranged delivery and shipped the vast majority of their chlorinated isos between 101 and 1,000 miles to national markets (although ***). Among importers, seven reported that they arranged sales while *** said that its purchasers do. *** shipped the vast majority of their chlorinated isos less than 100 miles, even though *** claimed national markets while *** indicated that its market was the Northeast. *** shipped most of its chlorinated isos less than 1,000 miles, as did ***, but *** shipped its chlorinated isos more than 1,000 miles. *** all said they had national or nearly national markets.

**Figure V-1**
**Exchange rates: Indices of the nominal and real exchange rates of the Chinese and Spanish currencies relative to the U.S. dollar, by quarters, January 2001-March 2004**




Source: International Monetary Fund, *International Financial Statistics*, June 2002, December 2003, and May 2004.

## PRICING PRACTICES

### Pricing Methods

Producers and importers generally reported that pricing of chlorinated isos involves negotiations based on prevailing market conditions. OxyChem stated that the main selling season is from March through September, with purchasers building inventory in February and March.[3] Among producers, *** reported that its prices are negotiated with customers and revised on a case-by-case basis based on prices charged by its competitors. *** said that the swimming pool and spa market generally has verbal agreements for a season based on negotiations in August to December of the previous year. However, *** added that customers will renegotiate prices or buy from alternate suppliers at any time if they see lower prices in their markets. It also said that the industrial market generally has annual pricing agreed upon at the end of each year for the subsequent year. OxyChem stated that its multi-year contracts often have meet-or-release provisions, and that customers have been using lower priced subject imports to trigger the release.[4] *** reported that its pricing was generally based on transaction-by-transaction negotiations. It said that it did have some long-term contracts, but that they would include changes in price due to market pricing.

Among importers, seven reported some sort of transaction-by-transaction negotiation or pricing based on current competitive conditions. ***.[5]

### Sales Terms and Discounts

Among producers, *** reported no discounts, and *** reported some quantity discounts. *** reported that discounts are rare because sales of chlorinated isos in the swimming pool and spa market are weather dependent, making commitments to quantity difficult. It added that even in cases where it did give quantity discounts, prices were still subject to further renegotiation. Among importers, four reported some sort of quantity discounts, although they did not always use that terminology, preferring sometimes to say that discounts vary by customers, or that they offered no discounts but that larger customers did receive lower prices. Two importers reported no discount policy.

When asked what percentage of their sales are under contract or spot, producers offered seemingly varied responses. (It should be noted, though, that *** producers reported revising prices even on sales under contract.) *** reported that *** percent of its sales were short-term contracts, with *** percent long-term contracts and *** percent spot. *** reported that *** percent of its sales were long-term contracts, *** percent were short-term contracts, and *** percent were spot. *** reported that *** percent of its sales were spot, while *** percent were under long-term contracts. Among importers, *** reported that 90 percent or more of their sales were under short-term contracts, while *** reported that 95 percent or more of their sales were spot. *** reported that its sales were split between 48 percent under long-term contracts and 52 percent spot.

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[3] Conference transcript, p. 86.

[4] Conference transcript, pp. 87-88. Among producers, *** reported that *** had meet-or-release provisions with *** customers, while *** said that *** did not. However, even *** stated that contracts are renegotiated. Among importers, *** reported renegotiations and/or meet-or-release, with *** saying that there were no such provisions and the other importers not responding.

[5] Arch added that it later learned that Clearon was not raising its prices to other customers. It described itself as satisfied with Clearon's prices up to that point. Conference transcript, pp. 114-117. However, petitioners described Arch as switching to subject imports solely on the basis of price. Conference transcript, pp. 56-57.

Most producers and importers reported that contracts lasted one year, although some contracts for producers were multi-year. Among producers, *** said that its contracts are for a customer's requirements, not fixed on price. However, *** said that contracts fix price and estimate quantity, while *** said that contracts fix quantity. Among importers, *** said that contracts fix both price and quantity, while *** said that contracts fix quantity only and *** said that contracts fix price only.

Purchasers who resell chlorinated isos, either after tableting it or having purchased it already tableted, sometimes sell other pool products bundled with the chlorinated isos. Those other products are often where they make a profit, as they often do not make a profit on their sales of chlorinated isos (even though chlorinated isos are the staple product at pool retail stores, i.e., they are the product that draws customers back to the stores for repeated visits).[6]

## Price Trends

Petitioners said that price reductions are forced on them both by their customers buying imported chlorinated isos instead of their product or by customers losing business to other purchasers who have bought imported material.[7] Petitioners also stated that retail prices are transparent at mass merchandiser retailers, since other customers can easily observe what the chlorinated isos are being sold at there.[8] They said that in 2004, prices are continuing to fall as subject imports rise.[9] Petitioners added that rising raw material and energy costs should be forcing chlorinated isos prices higher right now, but for imports of lower-priced subject imports.[10]

Respondents stated that U.S. prices for chlorinated isos had been falling for long before 2001, i.e., before the entrance of imports from China into the U.S. market. They described U.S. prices as falling from $1.65 per pound ten years ago to $0.80 per pound in 2000 due to increased competition among U.S. producers,[11] pressure from mass retailers and pool distributor Leslie's, and attempts by one or more U.S. producers to sell directly to end users (i.e., the customers of their traditional distributing customers).[12]

Respondents also described U.S. prices of chlorinated isos as higher than world prices, in part because of the regulations required in the United States.[13] Both Spanish producer Delsa and petitioners described Chinese chlorinated isos putting price pressure on prices in Europe.[14] Delsa also described

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[6] Conference transcript, pp. 169-170 and staff conversation with ***. In addition, some tableters bundle sales of chlorinated isos with other pool products to ensure that they make a profit on an entire sale, since they will not make a profit on the chlorinated isos alone. Conference transcript, p. 169.

[7] Conference transcript, pp. 41-42.

[8] Conference transcript, pp. 38 and 41-42.

[9] Conference transcript, p. 43.

[10] Petitioners stated that they have tried to raise prices as a result of higher raw material costs, but have been unable to do so. Clearon specifically mentioned trying to raise prices in April 2003 and then rescinding the increase after it failed. Conference transcript, pp. 20, 24, 48, and 58.

[11] In particular, respondents pointed to increased competition for petitioners from fellow U.S. producer BioLab, and increased pressure from large retailers. Conference transcript, p. 164 and staff telephone conversation with ***.

[12] In particular, N. Jonas described rising costs for chlorinated isos while its sales prices remained the same, before it began to import from subject countries. It said it was able to make a profit while its sales prices remained the same because it was able to import from China after 2001. Conference transcript, pp. 135-138, 160, and 166.

[13] Specifically, they said that tablets sell for 90 cents per pound in the United States and 60 cents per pound in Europe and other global markets. Conference transcript, p. 132.

[14] Conference transcript, pp. 47 and 55.

U.S. prices of Spanish chlorinated isos as higher than U.S. prices of Chinese chlorinated isos. Delsa described itself as a price follower in the U.S. market.[15] However, petitioners described Delsa as lowering its U.S. prices even as the euro has been appreciating.[16]

Respondents stated that Chinese prices are lower than U.S. prices because of quality differences and Chinese suppliers' demands that payment arrive early, sometimes even before beginning production, as opposed to U.S. producers, who may allow payment months after delivery.[17] They also stated that prices have fallen because of the expiration of the formerly prohibitive cost of obtaining FIFRA registration of the product for sale to the U.S. market.[18]

With regard to price differences in the pool and industrial markets, *** stated that prices for chlorinated isos sold to the industrial segment were sometimes slightly higher than prices for chlorinated isos sold to the pool and spa market, and attributed the premium to the higher profit margins that industrial purchasers earn, allowing them to pay more.[19] However, while petitioners also stated that prices were sometimes higher in the industrial market than in the pool and spa market, they explained that this premium was due to the industrial market having higher quality requirements.[20]

## PRICE DATA

The Commission requested U.S. producers and importers of chlorinated isos to provide quarterly data for the total quantity and f.o.b. value of chlorinated isos that were shipped to unrelated customers in the U.S. market. Data were requested for the period January 2001-March 2004. The products for which pricing data were requested are as follows:

> ***Product 1.*–Granular tricholoroisocyanuric acid with approximately 90 percent available chlorine content (similar to ACL®90 or CDB®), sold in 2,205-pound polypropylene bags**
>
> ***Product 2.*–Granular sodium dichloroisocyanurate (dihydrate) with approximately 56 percent available chlorine content (similar to ACL®56 or CDB®56), sold in 2,205-pound polypropylene bags, for repackaging for pool treatment use**
>
> ***Product 3.*–Granular sodium dichloroisocyanurate (dihydrate) with approximately 56 percent available chlorine content (similar to ACL®56 or CDB®56), sold in 300-pound drums, for use in cleanser and/or sanitizer applications**

The three U.S. producers[21] and four importers[22] provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. (All the pricing products are granular products, and so both producers and importers who sell tablets of

---

[15] Conference transcript, p. 147.

[16] Conference transcript, p. 47.

[17] The quality differences cited include granulation and impurities. Conference transcript, pp. 124-125 and 182-183. In addition, *** said that Spanish and U.S. prices are sometimes similar, but that ***. See postconference brief of Chinese producers, exhibit 15.

[18] Conference transcript, p. 124.

[19] Staff telephone conversation with ***.

[20] Staff telephone conversation with ***.

[21] ***.

[22] *** provided data for Chinese product.

chlorinated isos do not have those tablets counted here.)[23] Pricing data reported by these firms, shown in tables V-1 to V-3 and figures V-2 to V-7, accounted for approximately 12.9 percent of U.S. producers' shipments of chlorinated isos and 36.2 percent of U.S. imports from China in 2003.

Not all importers, especially importers of Spanish product, were able to provide pricing data because of the nature of their sales. Importers who import and then convert granular chlorinated isos to tablets, and/or repackage tablets or granulated material, do not have sales of any of the pricing products listed above.[24]

Among Commission pricing products, U.S. prices generally fell over January 2001-March 2004 while Chinese prices remained more stable, albeit at lower levels than U.S. prices. U.S. prices of product 1 fell by *** percent from January 2001-March 2004, while U.S. prices of product 2 fell by *** percent and U.S. prices of product 3 fell by *** percent over the same period. Volumes of product 1 from China showed a substantial increase from April-June 2001 to January-March 2004, but volumes of product 2 from China showed a decrease over the same period, albeit after a substantial spike upwards in the first half of 2003.

## Price Comparisons

Product 1 is a standard trichlor product in granular form. Imports from China undersold U.S. product in 10 of 11 quarters where comparisons were possible, with margins of underselling ranging from 7.1 to 30.6 percent. (In one other quarter, U.S. product undersold Chinese product by 3.8 percent.) Margins of Chinese underselling generally decreased over January 2001-March 2004 as U.S. prices moved down toward Chinese prices, which also moved up slightly.[25]

Product 2 is a standard dichlor product for the pool market. Imports from China undersold U.S. product in 10 of 10 quarters where comparisons were possible, with margins of underselling ranging from 15.5 to 43.9 percent.

Product 3 is a dichlor product for the industrial and sanitizer market. Little data were submitted by importers. U.S. producers' prices show a decline over January 2001-March 2004.

**Table V-1**
**Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 1, and margins of underselling/(overselling), by quarters, January 2001-March 2004**

* * * * * * *

[23] The petition did not contain any tablet pricing product. Furthermore, it may be difficult or impossible to collect traditional Commission pricing product data on tableted products because tablets may be made of granulated chlorinated isos from different sources and/or sold together in buckets with tablets made from chlorinated isos from different sources. One repackager testified at the conference that he makes tablets by pouring bags of granular chlorinated isos into his machine, but that he may mix bags of imported and domestic granular. While other converters said that mixing is less likely to happen, they did say that tablets made from chlorinated isos from different national sources may be mixed in the same buckets. In addition, tablets are sold at different levels of trade, to distributors and to retailers. See conference transcript, pp. 94-96 and 162-163, and ***.

[24] Conference transcript, pp. 162-163.

[25] ***. Petitioners said that ***. See staff conversation with ***.

Table V-2
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 2, and margins of underselling/(overselling), by quarters, January 2001-March 2004

* * * * * * *

Table V-3
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 3, and margins of underselling/(overselling), by quarters, January 2001-March 2004

* * * * * * *

Figure V-2
Chlorinated isos: Weighted-average f.o.b. selling prices as reported by U.S. producers and importers of product 1 from China, by quarters, January 2001-March 2004

* * * * * * *

Figure V-3
Chlorinated isos: Quantities as reported by U.S. producers and importers of product 1 from China, by quarters, January 2001-March 2004

* * * * * * *

Figure V-4
Chlorinated isos: Weighted-average f.o.b. selling prices as reported by U.S. producers and importers of product 2 from China, by quarters, January 2001-March 2004

* * * * * * *

Figure V-5
Chlorinated isos: Quantities as reported by U.S. producers and importers of product 2 from China, by quarters, January 2001-March 2004

* * * * * * *

Figure V-6
Chlorinated isos: Weighted-average f.o.b. selling prices as reported by U.S. producers and importers of product 3 from China, by quarters, January 2001-March 2004

* * * * * * *

Figure V-7
Chlorinated isos: Quantities as reported by U.S. producers and importers of product 3 from China, by quarters, January 2001-March 2004

* * * * * * *

## LOST SALES AND LOST REVENUES

The Commission requested that U.S. producers of chlorinated isocyanurates report any instances of lost sales and lost revenues they experienced due to competition from imports from China and Spain since January 1, 2001. All the lost sales and lost revenue allegations are presented in tables V-4 and V-5 and are discussed in more detail below. There were *** lost sales allegations totaling over *** and involving over *** pounds of chlorinated isocyanurates. In addition, there were *** lost revenue allegations totaling over *** and involving over *** pounds of chlorinated isocyanurates. Staff contacted the listed purchasers to confirm or deny the allegations. In addition to summary information provided in tables V-4 and V-5, more detailed descriptions of the allegations follow.

Purchasers were also asked if, since January of 2001, their firm had switched purchases of chlorinated isos from U.S. producers to chlorinated isos imported from China and/or Spain. Four purchasers responded that they had switched, while two responded that they had not switched purchases from U.S. producers to importers from China and/or Spain. If respondents responded that they had switched purchases from U.S. producers to importers from China and/or Spain, they were asked if price was the reason for this shift. Of the four responses, two replied that they had switched because of price, one responded that it had not switched because of price, and one responded that its reason for the change was unknown. Purchasers were also asked if since January 2001, U.S. producers reduced their prices of chlorinated isos in order to compete with chlorinated isos imported from China and/or Spain. Three purchasers responded that U.S. producers had reduced their prices in order to compete with Chinese and/or Spanish prices, while two responded that U.S. producers had not reduced their prices. Additional information is summarized in the individual responses below.

**Table V-4**
**U.S. producers' lost sales allegations**

| | | | | | | |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |

**Table V-5**
**U.S. producers' lost revenue allegations**

| | | | | | | |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| * | * | * | * | * | * | * |

[26] ***.
[27] ***.
[28] ***.
[29] ***.
[30] ***.
[31] ***.
[32] ***.
[33] ***.

# PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

## BACKGROUND

Three U.S. producers (BioLab, Clearon, and OxyChem)[1] provided financial data on their operations on chlorinated isos during the period examined. These data accounted for all known U.S. production of chlorinated isos during 2001-03, interim (January-March) 2003, and interim 2004. ***.

## OPERATIONS ON CHLORINATED ISOS

Results of operations of the U.S. producers on their chlorinated isos operations are presented in table VI-1; data on a per-short-ton basis are shown in table VI-2 and table VI-4.

The quantity sold, net sales value, and operating income all increased from 2001 to 2002, but then decreased from 2002 to 2003 and from interim 2003 to interim 2004. Meanwhile, the average unit value (AUV) of net sales per short ton decreased continuously between 2001 and 2003 and between the two interim periods. Operating income decreased substantially from 2002 to 2003 and from interim 2003 to interim 2004.

From 2001 to 2003, even though AUVs for cost of goods sold (COGS) and selling, general, and administrative (SG&A) expenses declined by about $46 and $31, respectively, the net sales AUV declined by $184 (about 10 percent), resulting in operating income being approximately halved on the AUV and percentage of sales bases. The net sales value per short ton decreased by $90 in 2003 compared to 2002 while COGS increased by $50 per short ton and SG&A expenses decreased by $3, resulting in a $136 decrease in the operating income per short ton. The situation deteriorated even further when comparing interim 2003 to interim 2004, as the approximate 11 percent ($179) decline in net sales AUV was compounded by a $47 increase in the AUV for COGS and a minimal ($8) decrease in the AUV for SG&A expenses. As a result, operating profits became operating losses, a loss of $49 per short ton in interim 2004, and a decrease in the operating income by $218 per short ton from interim 2003.

[1] All producers have December 31 as their fiscal year end.

**Table VI-1**
**Results of operations of U.S. producers in the production of chlorinated isos, calendar years 2001-03, January-March 2003, and January-March 2004**

| Item | Calendar year | | | January-March | |
|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2003 | 2004 |
| | Quantity (*short tons*) | | | | |
| Net sales | 109,763 | 127,444 | 114,772 | 32,549 | 30,971 |
| | Value (*$1,000*) | | | | |
| Net sales[1] | 202,133 | 222,777 | 190,325 | 54,184 | 46,014 |
| COGS | 165,357 | 179,749 | 167,570 | 45,738 | 44,978 |
| Gross profit | 36,776 | 43,028 | 22,755 | 8,446 | 1,036 |
| SG&A expenses | 13,296 | 11,841 | 10,285 | 2,931 | 2,541 |
| Operating income (loss) | 23,480 | 31,187 | 12,470 | 5,515 | (1,505) |
| Interest expense | 2,072 | 1,833 | 788 | 239 | 194 |
| Other expense | 3,079 | 2,015 | 1,566 | 202 | 37 |
| Other income | 60 | 18 | 12 | 4 | 41 |
| Net income (loss) | 18,389 | 27,357 | 10,128 | 5,078 | (1,695) |
| Depreciation/amortization | 21,007 | 21,133 | 21,336 | 5,726 | 5,769 |
| Cash flow | 39,396 | 48,490 | 31,464 | 10,804 | 4,074 |
| | Ratio to net sales (*percent*) | | | | |
| COGS | 81.8 | 80.7 | 88.0 | 84.4 | 97.7 |
| Gross profit | 18.2 | 19.3 | 12.0 | 15.6 | 2.3 |
| SG&A expenses | 6.6 | 5.3 | 5.4 | 5.4 | 5.5 |
| Operating income (loss) | 11.6 | 14.0 | 6.6 | 10.2 | (3.3) |
| | Number of firms reporting | | | | |
| Operating losses | *** | *** | *** | *** | *** |
| Data | 3 | 3 | 3 | 3 | 3 |

[1] Company transfers are less than *** percent of the combined companies' net sales quantity and value in all periods and are not shown separately.

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

**Table VI-2**
**Results of operations (*per short ton*) of U.S. producers in the production of chlorinated isos, calendar years 2001-03, January-March 2003, and January-March 2004**

| Item | Calendar year | | | January-March | |
|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2003 | 2004 |
| | Unit value (*per short ton*) | | | | |
| Net sales | $1,842 | $1,748 | $1,658 | $1,665 | $1,486 |
| COGS | 1,506 | 1,410 | 1,460 | 1,405 | 1,452 |
| Gross profit | 335 | 338 | 198 | 259 | 33 |
| SG&A expenses | 121 | 93 | 90 | 90 | 82 |
| Operating income (loss) | 214 | 245 | 109 | 169 | (49) |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | |

Selected financial data, by firm, are presented in table VI-3. All three producers reported increased net sales quantities, net sales values, and operating profits from 2001 to 2002. From 2002 to 2003, however, two of the three reported decreased net sales quantities and all three reported decreased net sales values and operating profits. This downward trend continued when comparing interim 2004 to interim 2003, as two of the three reported decreased net sales quantities and values and all three reported decreased operating profits.[2] Selected aggregate per-short-ton cost data of the producers on the firms' operations, i.e., COGS and SG&A expenses, are presented in table VI-4. While the SG&A AUVs decreased from period to period, the COGS AUVs decreased irregularly. Raw material costs and direct labor per short ton increased from 2002 to 2003 and from interim 2003 to interim 2004 while factory overhead decreased during the same periods.

**Table VI-3**
**Results of operations of U.S. producers in the production of chlorinated isos, by firm, calendar years 2001-03, January-March 2003, and January-March 2004**

* * * * * * *

[2] ***.

**Table VI-4**
**Per-short-ton costs of U.S. producers in the production of chlorinated isos, calendar years 2001-03, January-March 2003, and January-March 2004**

| Item | Calendar year | | | January-March | |
|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2003 | 2004 |
| COGS: | Value (*per short ton*) | | | | |
| Raw materials | $605 | $573 | $631 | $577 | $706 |
| Direct labor | 177 | 153 | 183 | 144 | 161 |
| Factory overhead[1] | 724 | 684 | 645 | 684 | 585 |
| Total COGS | 1,506 | 1,410 | 1,460 | 1,405 | 1,452 |
| SG&A expenses: | | | | | |
| Selling expenses | 57 | 47 | 44 | 47 | 37 |
| G&A expenses | 64 | 45 | 46 | 43 | 45 |
| Total SG&A expenses | 121 | 93 | 90 | 90 | 82 |
| Total cost | 1,628 | 1,503 | 1,550 | 1,495 | 1,534 |

[1] Per-short-ton value of other factory costs decreased over the period. However, ***.

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

A variance analysis showing the effects of prices and volume on the producers' sales of chlorinated isos, and of costs and volume on their total cost, is shown in table VI-5. The analysis is summarized at the bottom of the table. The analysis indicates that the decrease in operating income ($11.0 million) between 2001 and 2003 was attributable mainly to the negative effect of decreased price ($21.0 million) combined with the positive effects of decreased costs/expenses ($8.9 million) and higher sales volume ($1.1 million). The decrease in operating income between the two interim periods was attributable to an unfavorable price variance (a decrease in the unit sales value) combined with an unfavorable net cost/expense variance (increased unit costs and expenses) and an unfavorable volume variance (lower sales volume).

**Table VI-5**
**Variance analysis of operations of U.S. producers in the production of chlorinated isos, calendar years 2001-03, January-March 2003, and January-March 2004**

| Item | Between calendar years | | | January-March |
|---|---|---|---|---|
| | 2001-03 | 2001-02 | 2002-03 | 2003-04 |
| | Value (*$1,000*) | | | |
| Net sales: | | | | |
| Price variance | (21,032) | (11,916) | (10,301) | (5,543) |
| Volume variance | 9,224 | 32,560 | (22,151) | (2,627) |
| Total net sales variance | (11,808) | 20,644 | (32,452) | (8,170) |
| Cost of sales: | | | | |
| Cost variance | 5,333 | 12,244 | (5,694) | (1,457) |
| Volume variance | (7,546) | (26,636) | 17,873 | 2,217 |
| Total cost variance | (2,213) | (14,392) | 12,179 | 760 |
| Gross profit variance | (14,021) | 6,252 | (20,273) | (7,410) |
| SG&A expenses: | | | | |
| Expense variance | 3,618 | 3,597 | 379 | 248 |
| Volume variance | (607) | (2,142) | 1,177 | 142 |
| Total SG&A variance | 3,011 | 1,455 | 1,556 | 390 |
| Operating income variance | (11,010) | 7,707 | (18,717) | (7,020) |
| Summarized as: | | | | |
| Price variance | (21,032) | (11,916) | (10,301) | (5,543) |
| Net cost/expense variance | 8,951 | 15,841 | (5,315) | (1,210) |
| Net volume variance | 1,072 | 3,782 | (3,101) | (267) |

Note.--Unfavorable variances are shown in parentheses; all others are favorable. The data are comparable to changes in operating income as presented in table VI-1.

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

## CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' aggregate data on capital expenditures and research and development (R&D) expenses are shown in table VI-6 and capital expenditures, by firm, are presented in table VI-7. Capital expenditures increased in 2002 compared to 2001 and then decreased in 2003.[3] R&D expenses decreased from 2001 to 2002 and increased back to about the 2001 level in 2003. Both capital expenditures and R&D expenses decreased from interim 2003 to interim 2004.

**Table VI-6**
**Capital expenditures and R&D expenses by U.S. producers in their production of chlorinated isos, calendar years 2001-03, January-March 2003, and January-March 2004**

| Item | Calendar year | | | January-March | |
|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2003 | 2004 |
| | Value (*$1,000*) | | | | |
| Capital expenditures[1] | 8,881 | 9,853 | 8,130 | 1,853 | 675 |
| R&D expenses[2] | *** | *** | *** | *** | *** |

[1] All companies reported capital expenditures.
[2] *** reported R&D expenses.

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

**Table VI-7**
**Capital expenditures by U.S. producers, by firms, in their production of chlorinated isos, calendar years 2001-03, January-March 2003, and January-March 2004**

* * * * * * *

[3] ***.

## ASSETS AND RETURN ON INVESTMENT

U.S. producers were requested to provide data on their assets used in the production and sales of chlorinated isos during the period examined to assess their return on investments (ROI). Although ROI can be computed in different ways, a commonly used method is income earned during the period divided by the total assets utilized for the operations. Therefore, staff calculated ROI as operating income divided by total assets used in the production and sales of chlorinated isos. Data on the U.S. producers' total assets and their ROI are presented in table VI-8.

While total assets utilized by the U.S. producers in their chlorinated isos operations decreased slightly between 2001 and 2003 and between the two interim periods, the U.S. producers' operating income fluctuated for the same periods, and their ROI increased from 9.0 percent in 2001 to 12.7 percent in 2002 and decreased to 5.2 percent in 2003. Between the two interim periods, ROI decreased from 2.1 percent in interim 2003 to (0.6) percent (a negative ROI) in interim 2004. The trend of ROI over the period examined was the same as the trend of the operating income margin to net sales in table VI-1 over the same period.

In order to put the foregoing data into perspective, in table VI-9 the staff computed the ROI for NAICS (North American Industry Classification System) code 325998 (all other miscellaneous chemical product and preparation manufacturing),[4] based upon data contained in the RMA's Annual Statement Studies, Financial Ratio Benchmarks, 2003-04, NAICS 325998, which covers SIC (Standard Industrial Classification) codes 2819, 2869, and 2899. Even though the RMA Financial Ratio Benchmarks for NAICS 325998 are presented, it should be noted that exact comparisons between the questionnaire data and the RMA data are not advised due to several reasons, primarily to the fact that there are no exact NAICS or SIC codes available for chlorinated isos. There are two benchmarks under NAICS 325998 and 325188 (all other basic inorganic chemical manufacturing) which contain both SIC codes 2819 (industrial inorganic chemicals, not elsewhere classified) and 2869 (industrial organic chemicals, not elsewhere classified). The operating profit margins under the two NAICS codes are quite different; for instance, a 4.8 percent operating income margin for FY 1999 under NAICS 325188 and an 8.1 percent operating loss margin for the same fiscal year under 325998. The computed ROI for NAICS 325188 would have been 6.2 percent for FY 1999, 7.9 percent for FY 2000, 8.0 percent for FY 2001, 5.6 percent for FY 2002, and 8.8 percent for FY 2003, compared to the ROIs in table VI-9. While the questionnaire data strictly relate to chlorinated isos, the RMA data include data on other products and may or may not actually reflect financial ratios for chlorinated isos. While the questionnaire data for three calendar years (2001 to 2003) consist of the data from only three firms with an aggregate sales value of $190 million in 2003, the RMA data for the 12-month period ending March 31, 2003 are for 102 companies with an aggregate sales value over $4 billion. This means that the questionnaire data represent less than 5 percent of the RMA data. Finally, it is not known whether any of the three domestic producers of chlorinated isos provided data to RMA. Therefore, it may not be meaningful to compare the historical RMA data with the questionnaire data.

[4] This NAICS code 325998 was provided by the petitioners' counsel, Gibson, Dunn & Crutcher, LLP for the subject merchandise. Initially, they supplied SIC 2865 (cyclic organic crudes and intermediaries, and organic dyes and pigments). However, Risk Management Association (RMA) annual studies do not cover SIC 2865 or SIC 2812 (alkalies and chlorine) and the most recent RMA annual studies are presented in NAICS format; the NAICS code for the subject merchandise was obtained.

**Table VI-8**
**Value of assets and return on investment of U.S. producers in the production of chlorinated isos, calendar years 2001-03, January-March 2003, and January-March 2004**

| Item | Calendar year | | | January-March | |
|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2003 | 2004 |
| **Value of assets** | **Value (*$1,000*)** | | | | |
| 1. Current assets: | | | | | |
| A. Cash and equivalents | 3 | 3 | 614 | 3 | 177 |
| B. Trade receivables (net) | 33,365 | 34,762 | 28,499 | 47,664 | 40,246 |
| C. Inventory | 45,651 | 36,051 | 46,427 | 37,376 | 47,481 |
| D. All other current | 10,638 | 10,371 | 10,870 | 10,611 | 10,855 |
| Total current | 89,657 | 81,187 | 86,410 | 95,654 | 98,759 |
| 2. Non-current assets: | | | | | |
| A. Long-term investments | 0 | 0 | 0 | 0 | 0 |
| B. Fixed assets (net) | 166,246 | 155,371 | 144,352 | 152,447 | 140,114 |
| C. Intangibles (net) | 4,705 | 9,976 | 8,543 | 9,967 | 8,543 |
| Total non-current | 170,951 | 165,347 | 152,895 | 162,414 | 148,657 |
| **Total assets** | 260,608 | 246,534 | 239,305 | 258,068 | 247,416 |
| | **Value (*$1,000*)** | | | | |
| **Operating income (loss)** | 23,480 | 31,187 | 12,470 | 5,515 | (1,505) |
| | **Ratio of operating income to total assets (*percent*)** | | | | |
| **Return on investment** | 9.0 | 12.7 | 5.2 | 2.1 | (0.6) |

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

**Table VI-9**
**The Risk Management Association data on the number of firms and their sales, operating margins, total assets, and return on investment on their operations for NAICS 325998 (SIC codes 2819, 2869, and 2899) (all other miscellaneous chemical product and preparation manufacturing), for the five one-year periods ending March 31, 2003**

| Item | One-year periods ending on March 31 | | | | |
|---|---|---|---|---|---|
| | 1999 | 2000 | 2001 | 2002 | 2003 |
| | Value (*$1,000*) | | | | |
| Number of companies | 98 | 103 | 120 | 90 | 102 |
| Sales value | $2,624,623 | $2,619,274 | $3,912,471 | $3,688,980 | $4,017,244 |
| Asset value | 1,464,003 | 1,943,332 | 2,898,928 | 2,421,379 | 2,332,718 |
| Operating margin (*percent*) | (8.1) | 7.2 | 5.1 | 5.4 | 5.8 |
| | Ratio of operating income (loss) to assets (*percent*) | | | | |
| **Return on investment**[1] | (14.5) | 9.7 | 6.9 | 8.2 | 10.0 |

[1] Calculated based on sales value, asset value, and operating margin above.

Source: Annual Statement Studies: Financial Ratio Benchmarks, 2003-2004 by the Risk Management Association (RMA). Permission to use the data granted by RMA.



## CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of chlorinated isos from China or Spain 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 in appendix D.

# PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

## THE CHINESE INDUSTRY

The exact number of chlorinated isos producers in China is unknown; however, three are believed to account for all exports to the United States: Hebei Jiheng Chemical Co., Ltd., Hebei Province; Changzhou Clean Chemical Co., Ltd., Jiangsu Province; and Nanning Chemical Industry Co., Ltd., Guanxi. Their combined data for chorinated isos are shown in table VII-1. (Questionnaires were sent to the other Chinese firms listed in the petition but were not returned.) Both capacity and production for these plants increased noticeably in the period examined, although *** through 2005. Exports were large relative to home market sales and accounted for an increasing share of total shipments during the period examined. As a share of total shipments, exports to the United States increased from about 2 percent in 2001 to 24 percent in 2003 and from 24 percent in January-March 2003 to 31 percent in January-March 2004. Export markets other than the United States include France, the United Kingdom, Austria, Spain, Italy, Greece, Belgium, Australia, Mexico, Canada, Korea, Thailand, Malaysia, Indonesia, Singapore, India, Saudi Arabia, Israel, and several countries in South America.

## THE SPANISH INDUSTRY

The Spanish industry consists of two firms. Only one, however, exports to the United States: Aragonesas Delsa S.A. (Delsa). Data for Delsa are shown in table VII-2.[1] ***.

## REMEDIES IN THIRD-COUNTRY MARKETS

In addition to the United States, China and Spain have exported the subject products to Asia, Europe, Australia, South America, Canada, and Mexico. On December 20, 2003, Mexico issued a final antidumping duty order on imports of trichlor from China; the antidumping duty currently being assessed reportedly is equivalent to $0.269 per pound. In addition, in May 2004 Delsa filed an antidumping duty petition with the European Commission on chlorinated isos from China.[2]

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[1] Although complete data for the second producer, Inquide Flix S.A. are not available, it reportedly began operating in 2001 and was slated to have a production capacity of over 7,700 short tons (http://www.asofap.com/eng/boletines/01_j.htm, downloaded June 18, 2004.

[2] Petitioners' postconference brief, pp. 47-48.

**Table VII-1**
**Chlorinated isos: China's production capacity, production, shipments, and inventories, 2001-03, January-March 2003, January-March 2004, and projections for 2004 and 2005[1]**

| Item | Calendar year | | | January-March | | Projected | |
|---|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2003 | 2004 | 2004 | 2005 |
| | Quantity (*short tons*) | | | | | | |
| Capacity | 32,420 | 50,302 | 56,520 | 14,584 | 14,584 | *** | *** |
| Production | 26,617 | 33,965 | 52,470 | 12,101 | 12,091 | 53,500 | 54,600 |
| End-of-period inventories | 5,621 | 6,552 | 7,260 | 4,029 | 2,303 | 7,325 | 7,390 |
| Shipments: | | | | | | | |
| Internal consumption/ intercompany transfers | *** | *** | *** | *** | *** | *** | *** |
| Home market | *** | *** | *** | *** | *** | *** | *** |
| Exports to-- | | | | | | | |
| United States: | | | | | | | |
| Trichlor | *** | *** | *** | *** | *** | *** | *** |
| Dichlor | *** | *** | *** | *** | *** | *** | *** |
| Total | 402 | 3,822 | 12,599 | 3,525 | 5,302 | 12,400 | 12,700 |
| All other markets | 6,800 | 12,259 | 21,275 | 6,401 | 7,837 | 19,600 | 19,600 |
| Total exports | 7,202 | 16,081 | 33,874 | 9,926 | 13,139 | 32,000 | 32,300 |
| Total shipments | 22,594 | 33,035 | 51,761 | 14,624 | 17,048 | 53,435 | 54,535 |
| | Ratios and shares (*percent*) | | | | | | |
| Capacity utilization | 82.1 | 67.5 | 92.8 | 83.0 | 82.9 | *** | *** |
| Inventories/production | 21.1 | 19.3 | 13.8 | 8.3 | 4.8 | 13.7 | 13.5 |
| Inventories/shipments | 24.9 | 19.8 | 14.0 | 6.9 | 3.4 | 13.7 | 13.6 |
| Share of total shipments: | | | | | | | |
| Internal consumption/ intercompany transfers | *** | *** | *** | *** | *** | *** | *** |
| Home market | *** | *** | *** | *** | *** | *** | *** |
| Exports to-- | | | | | | | |
| United States | 1.8 | 11.6 | 24.3 | 24.1 | 31.1 | 23.2 | 23.3 |
| All other markets | 30.1 | 37.1 | 41.1 | 43.8 | 46.0 | 36.7 | 35.9 |
| Total exports | 31.9 | 48.7 | 65.4 | 67.9 | 77.1 | 59.9 | 59.2 |

[1] Data shown are for Hebei Jiheng Chemical Co., Ltd; Changzhou Clean Chemical Co., Ltd.; and Nanning Chemical Industry Co., Ltd.

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

**Table VII-2**
**Chlorinated isos: Spain's production capacity, production, shipments, and inventories, 2001-03, January-March 2003, January-March 2004, and projections for 2004 and 2005**

* * * * * * *

## U.S. INVENTORIES OF IMPORTED PRODUCT

U.S. importers' aggregate end-of-period inventory data for imports of chlorinated isos from China and Spain are shown below:

* * * * * * *

The data show a noticeable increase in inventories for both the Chinese- and Spanish-produced product in January-March 2004 from January-March 2003.

## U.S. IMPORTERS' OUTSTANDING ORDERS

U.S. importers responding to the Commission's questionnaires reported a combined total of 3,778 tons of chlorinated isos from China and *** tons of chlorinated isos from Spain on order as of March 31, 2004. Most of these quantities are scheduled to be delivered before June 30, 2004.

# APPENDIX A

# *FEDERAL REGISTER* NOTICES

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–1082 and 1083 (Preliminary)]**

### Chlorinated Isocyanurates From China and Spain

**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–1082 and 1083 (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 China and Spain of chlorinated isocyanurates, provided for in subheading 2933.69.60 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 preliminary determinations in antidumping investigations in 45 days, or in this case by June 28, 2004. The Commission's views are due at Commerce within five business days thereafter, or by July 6, 2004.

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:** May 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202–205–3187), 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 May 14, 2004, by Clearon Corp., Fort Lee, NJ; and Occidental Chemical Corp., Dallas TX.

*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 June 4, 2004, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than June 2, 2004, to list their appearance and witnesses (if any). 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 June 9, 2004, 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.

Issued: May 17, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–11505 Filed 5–20–04; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–898, A–469–814]**

### Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates From the People's Republic of China and Spain

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

**ACTION:** Initiation of antidumping duty investigation.

**DATES:** *Effective Date:* June 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Paige Rivas (Spain) or Sochieta Moth (PRC), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0651 or (202) 482–0168, respectively.

**Initiation of Investigations**

*The Petitions*

On May 14, 2004, the Department of Commerce (the Department) received petitions on imports of chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC), and Spain, filed in proper form by Clearon Corporation and Occidental Chemical Corporation (referred to hereafter as "the petitioners"). On May 19, May 20, May 25, and May 26, 2004 the Department requested additional information and clarification of certain areas of the petitions. The petitioners filed supplements to the petitions on May 24, 2004, and May 28, 2004. On June 2, 2004, Arch Chemicals, Inc., a U.S. importer of chlorinated isos from the PRC and Spain, submitted a letter challenging the assertion made by the petitioners that they represent more than 50 percent of the domestic production of chlorinated isos. The petitioners rebutted this challenge to their industry support on June 3, 2004.

In accordance with section 732(b)(i) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of chlorinated isos from the PRC and Spain 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 and threaten to injure an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(c) of the Act and the petitioners have demonstrated sufficient industry support with respect to the antidumping investigations that the petitioners are requesting the Department to initiate.

*Period of Investigations*

The period of investigation (POI) for the PRC is October 1, 2003, through March 31, 2004. The POI for Spain is April 1, 2003, through March 31, 2004.

*Scope of Investigations*

The products covered by these investigations are chlorinated isos. Chlorinated isos are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \bullet 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular,

and tabletted forms. These investigations cover all chlorinated isos.

Chlorinated isos are currently classifiable under subheading 2933.69.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification represents a basket category that includes chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise remains dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230. The 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 Petitions*

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 a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) 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.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole 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 the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to 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 domestic like product, such differences do not render the decision of either agency contrary to law.[1]

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 subtitle." 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.

In this case, the petitions cover a single class or kind of merchandise, chlorinated isos, as defined in the "Scope of Investigations" section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Further, based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, chlorinated isos, which is defined in the "Scope of Investigations" section above, and we have analyzed industry support in terms of the domestic like product.

The Department has determinated that the petitioners established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petitions from domestic producers of the like product. The Department received opposition to the petitions from an importer of the domestic like product (see Industry Support Attachment to the Initiation Checklists for the PRC and Spain, dated June 3, 2004, on file in the Central Records Unit, Room B–099 of the Department of Commerce ("Industry Support Attachment")). Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, the domestic producers or workers who support the petitions 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 petitions. Thus, the requirements of section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Industry Support Attachment.

*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 sources of data for the deductions and adjustments relating to export price (EP) and normal value (NV) are discussed in greater detail in the Initiation Checklists. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

The petitions identified 19 producers of chlorinated isos in the PRC (*see* May 14, 2004, petition, Exhibit 5–G) and 2 producers in Spain (*see* May 14, 2004, petition, Exhibit 5–I).

Export Price—The PRC

The petitioners based EP on ten contemporaneous quotations of PRC-manufactured chlorinated isos from two PRC exporters. For prices quoted on an free-on-board PRC port basis, the petitioners deducted inland freight from the manufacturer's plant to the port of exportation. For prices quoted as delivered, the petitioners deducted ocean freight, brokerage and handling, and inland freight. We have examined the information provided regarding EP and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. *See* Initiation Checklist.

Normal Value—The PRC

The petitioners assert that the Department considers the PRC to be a non-market-economy (NME) country and, therefore, they 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 and Negative Final*

[1] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp.* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988).

*Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004). 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 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. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994).

As required by 19 CFR 351.202(b)(7)(i)(c), the petitioners provided dumping margin calculations using the Department's NME methodology described in 19 CFR 351.408. For the calculation of NV, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and overhead), for chlorinated isos on the quantities of inputs used by a U.S. producer of chlorinated isos. The petitioners adjusted the per-unit consumption values of certain inputs to reflect known differences in the production of trichlor and dichlor[2] in the PRC. *See* Initiation Checklist.

The petitioners selected India as their surrogate country. The petitioners stated that India is comparable to the PRC in its level of economic development and is a significant producer of comparable merchandise. The petitioners selected calcium hypochlorite as the comparable merchandise for surrogate country selection since both products are used in swimming pools primarily because of their available chlorine content. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is reasonable for purposes of initiation of this investigation. *See* Initiation Checklist.

The petitioners valued the factors of production for chlorinated isos using publically available data from India for all production inputs except cyanuric acid and chlorine. Where Indian data is not contemporaneous to the POI, the petitioners have adjusted the Indian price to account for inflation using wholesale price indices. The petitioners converted Indian values to U.S. dollars at the POI exchange rate.

The petitioners valued cyanuric acid using the average unit values of imports of this commodity into the United States from Taiwan. The petitioners outlined their unsuccessful efforts to identify a value for cyanuric acid in the countries which the Department has typically used as surrogates for the PRC in the past: India, Pakistan, Sri Lanka, Philippines, and Indonesia. The petitioners state that to their knowledge none of the aforementioned countries produce cyanuric acid. The petitioners also stated that there were no imports of cyanuric acid into the United States from Pakistan, Sri Lanka, the Philippines, or Indonesia.

The petitioners also note that the harmonized tariff systems of the aforementioned countries classify imports of cyanuric acid and chlorinated isos under a single tariff subheading. The petitioners note that imports of this tariff subheading for cyanuric acid into any of these countries would overstate its value because chlorinated isos have greater monetary value. Similarly, the HTSUS classifies imports of cyanuric acid in a basket category. The petitioners demonstrated with Port Import-Export Reporting Service (PIERS) data that all imports from Taiwan within subheading 2933.69.60.50 into the United States consist of only cyanuric acid. Based on the explanations provided, we find petitioners' use of this factor value to be adequate for purposes of initiation as its use meets their burden of data reasonably available to them.

The petitioners valued sulfuric acid and caustic soda using pricing data in the Indian publication *Chemical Weekly*. The petitioners point out that prices of liquid chlorine, a significant input in the production of dichlor and triclor, are not listed in *Chemical Weekly*. Therefore, the petitioners valued chlorine using Indonesian import statistics compiled in *World Trade Atlas* for 2002. Packing inputs include supersacks, plastic drums, and pallets. The petitioners used *Monthly Statistics of the Foreign Trade of India* and data from the *Monthly Times of India* to value these inputs. They valued water using information that they obtained from the *Second Water Utilities Data Book: Asian and Pacific Region* for 1997. The price of electricity was valued based on the most recent statistics available for India which were published by the U.S. Department of Energy in 2003.

The petitioners stated that they are not aware of any producers of trichlor and dichlor in India or any other country commonly used. Therefore, the petitioners calculated factory overhead, selling, general, and administrative (SG&A) expenses, and profit ratios based on the 2002–2003 Annual Report of DSM Shriram Consolidated, Ltd., an Indian producer of sodium hypochlorite, chlorine, and caustic soda. Based on our analysis of the data in the petition, we believe that the petitioners' calculations of NV are reasonable and accurate.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins range from 109.14 percent to 157.82 percent for trichlor and dichlor from the PRC.

Export Price—Spain

To calculate EP, the petitioners started with three price quotes: Two price quotes for Spanish manufactured trichlor and one price quote for Spanish manufactured dichlor. The petitioners calculated net U.S. prices by deducting foreign inland freight, U.S. import duties, U.S. inland freight, insurance, ocean freight, and commission. We reviewed the information provided regarding EP and have determined that it represents information reasonably available to the petitioners. We have also reviewed the adequacy and accuracy of the petitioners' information and calculation. *See* Initiation Checklist.

Normal Value—Spain

To calculate NV, the petitioners obtained through foreign market research, three price quotes for dichlor and three price quotes for trichlor. The petitioners calculated net Spanish prices by deducting the inland freight from the producer to the port of export. We reviewed the NV information provided and have determined that it represents information reasonably available to the petitioners. We have also reviewed the adequacy and accuracy of the petitioners' information and calculation. *See* Initiation Checklist.

Although the petitioners provided margins based on price-to-price comparisons, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of trichlor and dichlor in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. *See*

[2] Trichlor and dichlor are two types of chlorinated isos sold in the U.S. market. The petitioners are not aware of any chlorinated isos other than trichlor and dichlor that are currently produced and sold in commercial quantities.

Initiation of Cost Investigation section *infra* for further discussion.

Pursuant to section 773 (b)(3) of the Act, COP consists of the cost of manufacture (COM), SG&A, financial expenses and packing. The petitioners calculated COP based on the experience of a U.S. trichlor and dichlor producer during 2003, adjusted for known differences between costs incurred to manufacture trichlor and dichlor products in the United States and in Spain using publicly available data which the petitioners stated is the most specific and recent cost data reasonably available. Based upon a comparison of the prices of the foreign like product 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, the petitioners also calculated NV based on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute the COP. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Uralita Group's 2002 financial statements.

The petitioners revised the COM for trichlor and dichlor in their May 25, 2004, submission based on revised labor rates (*i.e.*, the labor rates in Spain). We recalculated the dumping margin based the revised COM of trichlor and dichlor. Based on comparisons of EP (method derived from price quotes) to CV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins range from 29.68 percent to 42.36 percent for trichlor and dichlor from Spain. We note that these margins are conservative since the petitioners did not include packing in the CV calculation.

*Initiation of Cost Investigation*

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of Spain were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation for this country. The Statement of Administrative Action (SAA), accompanying the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *Id.*

Further, the SAA provides that the "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like product to its COP, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in Spain were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

*Fair-Value Comparison*

Based on the data provided by the petitioners, there is reason to believe that imports of chlorinated isos from the PRC and Spain are being, or are likely to be, sold in the United States at less than fair value. As a result of a comparison of EP to NV, based on our recalculations described above, the estimated dumping margins range from 109.14 percent to 157.82 percent for the PRC and from 29.68 percent to 42.36 percent for Spain.

*Allegations and Evidence of Material Injury and Causation*

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evidenced by declining trends in market share, pricing, production levels, profits, sales, utilization of capacity, reduction of labor force, and increasing inventory levels.

These allegations are supported by relevant evidence including import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by adequate evidence and meet the statutory requirements for initiation (*See* Initiation Checklists, Re: Material Injury).

*Initiation of Antidumping Investigations*

Based upon the examination of the petitions on chlorinated isos from the PRC and Spain, and other information reasonably available to the Department, we find that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of chlorinated isos from the PRC and Spain are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

*Distribution of Copies of the Petitions*

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petitions have been provided to the representatives of the governments of the PRC and Spain. We will attempt to provide copies of the public versions of the petitions to each producer named in the petitions, as appropriate.

*International Trade Commission Notification*

We have notified the ITC of our initiations as required by section 732(d) of the Act.

*Preliminary Determination by the ITC*

The ITC will preliminarily determine, no later than June 28, 2004, whether there is a reasonable indication that imports of chlorinated isos from the PRC and Spain are causing material injury, or threatening to cause 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: June 3, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04–13066 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–DS–P

notice of scheduling, which will be published in the **Federal Register** as provided in § 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 the 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 May 14, 2004, a petition was filed with the Commission and Commerce by Clearon Corp., Fort Lee, NJ, and Occidental Chemical Corp., Dallas, TX, alleging that an industry in the United States is materially injured by reason of LTFV imports of chlorinated isocyanurates from China and Spain. Accordingly, effective May 14, 2004, the Commission instituted antidumping duty investigations Nos. 731–TA–1082 and 1083 (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 May 21, 2004 (69 FR 29328). The conference was held in Washington, DC, on June 4, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 28, 2004. The views of the Commission are contained in USITC Publication 3705 (July 2004), entitled *Chlorinated Isocyanurates from China and Spain: Investigations Nos. 731–TA–1082 and 1083 (Preliminary).*

Issued: June 29, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–15110 Filed 7–1–04; 8:45 am]

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## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–1082 and 1083 (Preliminary)]**

### Chlorinated Isocyanurates From China and Spain

**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 China and Spain of chlorinated isocyanurates, provided for in subheading 2933.69.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

**Commencement of Final Phase Investigations**

Pursuant to § 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

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

# APPENDIX B

# CONFERENCE WITNESSES

## CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the following investigations:

### CHLORINATED ISOCYANURATES FROM CHINA AND SPAIN

**Investigations Nos. 731-TA-1082 and 1083 (Preliminary)**

**June 4, 2004 - 9:30 am**

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

**IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING DUTIES:**

Gibson, Dunn & Crutcher LLP
Washington, DC
on behalf of

Clearon
**Scott Johnson**, Vice President of Manufacturing
**Antony Hand**, Vice President of Sales and Marketing

OxyChem, ACL Isocyanurates Division
**David Stephenson**, Director of Sales and Marketing
**Julio Napoles**, General Manager

**Joseph H. Price**
**J. Christopher Wood** ) OF COUNSEL

**IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING DUTIES:**

Arent Fox
Washington, DC
on behalf of

Arch Chemical
**Steven C. Johnson**, Director of Strategic Sourcing

**Matthew Clark** )--OF COUNSEL

Garvey Schubert
Washington, DC
on behalf of

Special Materials Company
**Adam Feldman**, Chief Executive Officer
**David Graham**, Vice President of Sales and Marketing

Cadillac Chemical Corporation
**Peter Ferentinos**, Chief Executive Officer

Wego Chemical & Minerals Corporation
**Frank Abramson**, Product Manager

N. Jonas & Co., Incorporated
**Stephan Jonas**, President

Alden Leeds, Incorporated
**Andy Epstein**, Vice President

**William E. Perry** )--OF COUNSEL

Cameron & Hornbostel LLP
Washington, DC
on behalf of

Aragonesas Delsa, S.A.
**Antonio Calvo de Juan**, Group Chemical Division Commercial Director
**Pedro Balcells**, Commercial Director

**Michele Sherman Davenport** )
**Dennis James, Jr.** ) --OF COUNSEL

# APPENDIX C

# SUMMARY DATA

Table C-1
**Chlorinated isocyanurates: Summary data concerning the U.S. market, 2001-2003, January-March 2003, and January-March 2004**

(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)

| Item | Reported data | | | January-March | | Period changes | | | Jan.-Mar. |
|---|---|---|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2003 | 2004 | 2001-2003 | 2001-2002 | 2002-2003 | 2003-2004 |
| U.S. consumption quantity: | | | | | | | | | |
| Amount | 106,533 | 124,437 | 133,374 | 37,504 | 38,307 | 25.2 | 16.8 | 7.2 | 2.1 |
| Producers' share (1) | 86.9 | 87.1 | 74.1 | 72.6 | 67.1 | -12.8 | 0.3 | -13.0 | -5.5 |
| Importers' share (1): | | | | | | | | | |
| China | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Spain | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Subtotal | 5.5 | 7.0 | 19.3 | 18.1 | 24.5 | 13.8 | 1.5 | 12.3 | 6.5 |
| Other sources | 7.7 | 5.9 | 6.6 | 9.4 | 8.4 | -1.0 | -1.7 | 0.7 | -1.0 |
| Total imports | 13.1 | 12.9 | 25.9 | 27.4 | 32.9 | 12.8 | -0.3 | 13.0 | 5.5 |
| U.S. consumption value: | | | | | | | | | |
| Amount | 202,299 | 221,910 | 214,786 | 60,938 | 55,255 | 6.2 | 9.7 | -3.2 | -9.3 |
| Producers' share (1) | 87.1 | 88.7 | 78.3 | 77.2 | 70.3 | -8.8 | 1.6 | -10.4 | -6.8 |
| Importers' share (1): | | | | | | | | | |
| China | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Spain | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Subtotal | 4.8 | 5.4 | 14.8 | 13.4 | 20.5 | 10.0 | 0.6 | 9.4 | 7.1 |
| Other sources | 8.1 | 5.9 | 6.9 | 9.4 | 9.2 | -1.2 | -2.2 | 1.0 | -0.2 |
| Total imports | 12.9 | 11.3 | 21.7 | 22.8 | 29.7 | 8.8 | -1.6 | 10.4 | 6.8 |
| U.S. imports from: | | | | | | | | | |
| China: | | | | | | | | | |
| Quantity | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Value | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Unit value | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Ending inventory quantity | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Spain: | | | | | | | | | |
| Quantity | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Value | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Unit value | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Ending inventory quantity | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Subtotal: | | | | | | | | | |
| Quantity | 5,848 | 8,667 | 25,705 | 6,779 | 9,401 | 339.6 | 48.2 | 196.6 | 38.7 |
| Value | 9,788 | 12,014 | 31,879 | 8,176 | 11,326 | 225.7 | 22.7 | 165.4 | 38.5 |
| Unit value | $1,674 | $1,386 | $1,240 | $1,206 | $1,205 | -25.9 | -17.2 | -10.5 | -0.1 |
| Ending inventory quantity | 142 | 41 | 1,575 | 222 | 4,842 | 1009.2 | -71.1 | 3741.5 | 2080.9 |
| All other sources: | | | | | | | | | |
| Quantity | 8,161 | 7,359 | 8,857 | 3,510 | 3,216 | 8.5 | -9.8 | 20.4 | -8.4 |
| Value | 16,330 | 13,049 | 14,805 | 5,737 | 5,068 | -9.3 | -20.1 | 13.5 | -11.7 |
| Unit value | $2,001 | $1,773 | $1,672 | $1,634 | $1,576 | -16.5 | -11.4 | -5.7 | -3.6 |
| Ending inventory quantity | 1,012 | 733 | 1,129 | 1,977 | 2,048 | 11.6 | -27.6 | 54.1 | 3.6 |
| All sources: | | | | | | | | | |
| Quantity | 14,009 | 16,026 | 34,562 | 10,289 | 12,617 | 146.7 | 14.4 | 115.7 | 22.6 |
| Value | 26,118 | 25,063 | 46,685 | 13,912 | 16,394 | 78.7 | -4.0 | 86.3 | 17.8 |
| Unit value | $1,864 | $1,564 | $1,351 | $1,352 | $1,299 | -27.6 | -16.1 | -13.6 | -3.9 |
| Ending inventory quantity | 1,154 | 774 | 2,704 | 2,199 | 6,890 | 134.4 | -33.0 | 249.5 | 213.3 |

Table continued on next page.

**Table C-1--Continued**
**Chlorinated isocyanurates: Summary data concerning the U.S. market, 2001-2003, January-March 2003, and January-March 2004**

(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)

| Item | Reported data | | | January-March | | Period changes | | | Jan.-Mar. |
|---|---|---|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2003 | 2004 | 2001-2003 | 2001-2002 | 2002-2003 | 2003-2004 |
| U.S. producers': | | | | | | | | | |
| Average capacity quantity | 149,650 | 150,850 | 152,000 | 38,663 | 38,848 | 1.6 | 0.8 | 0.8 | 0.5 |
| Production quantity | 119,385 | 124,414 | 120,163 | 31,640 | 30,891 | 0.7 | 4.2 | -3.4 | -2.4 |
| Capacity utilization (1) | 79.8 | 82.5 | 79.1 | 81.8 | 79.5 | -0.7 | 2.7 | -3.4 | -2.3 |
| U.S. shipments: | | | | | | | | | |
| Quantity | 92,524 | 108,411 | 98,812 | 27,215 | 25,690 | 6.8 | 17.2 | -8.9 | -5.6 |
| Value | 176,181 | 196,847 | 168,101 | 47,026 | 38,861 | -4.6 | 11.7 | -14.6 | -17.4 |
| Unit value | $1,904 | $1,816 | $1,701 | $1,728 | $1,513 | -10.7 | -4.6 | -6.3 | -12.5 |
| Export shipments: | | | | | | | | | |
| Quantity | 17,239 | 19,033 | 15,960 | 5,334 | 5,281 | -7.4 | 10.4 | -16.1 | -1.0 |
| Value | 25,952 | 25,930 | 22,224 | 7,158 | 7,153 | -14.4 | -0.1 | -14.3 | -0.1 |
| Unit value | $1,505 | $1,362 | $1,392 | $1,342 | $1,354 | -7.5 | -9.5 | 2.2 | 0.9 |
| Ending inventory quantity | 26,648 | 21,312 | 25,457 | 20,335 | 24,808 | -4.5 | -20.0 | 19.4 | 22.0 |
| Inventories/total shipments (1) | 24.3 | 16.7 | 22.2 | 62.5 | 80.1 | -2.1 | -7.6 | 5.5 | 17.6 |
| Production workers | 336 | 325 | 317 | 328 | 279 | -5.7 | -3.3 | -2.5 | -14.9 |
| Hours worked (1,000s) | 774 | 749 | 720 | 190 | 150 | -7.0 | -3.3 | -3.8 | -20.7 |
| Wages paid ($1,000s) | 22,351 | 22,508 | 23,992 | 5,833 | 5,695 | 7.3 | 0.7 | 6.6 | -2.4 |
| Hourly wages | $28.86 | $30.07 | $33.32 | $30.76 | $37.89 | 15.5 | 4.2 | 10.8 | 23.2 |
| Productivity (tons/1,000 hours) | 154.2 | 166.2 | 166.9 | 166.9 | 205.5 | 8.3 | 7.8 | 0.4 | 23.2 |
| Unit labor costs | $187.22 | $180.91 | $199.66 | $184.36 | $184.36 | 6.6 | -3.4 | 10.4 | 0.0 |
| Net sales: | | | | | | | | | |
| Quantity | 109,763 | 127,444 | 114,772 | 32,549 | 30,971 | 4.6 | 16.1 | -9.9 | -4.8 |
| Value | 202,133 | 222,777 | 190,325 | 54,184 | 46,014 | -5.8 | 10.2 | -14.6 | -15.1 |
| Unit value | $1,842 | $1,748 | $1,658 | $1,665 | $1,486 | -10.0 | -5.1 | -5.1 | -10.8 |
| Cost of goods sold (COGS) | 165,357 | 179,749 | 167,570 | 45,738 | 44,978 | 1.3 | 8.7 | -6.8 | -1.7 |
| Gross profit or (loss) | 36,776 | 43,028 | 22,755 | 8,446 | 1,036 | -38.1 | 17.0 | -47.1 | -87.7 |
| SG&A expenses | 13,296 | 11,841 | 10,285 | 2,931 | 2,541 | -22.6 | -10.9 | -13.1 | -13.3 |
| Operating income or (loss) | 23,480 | 31,187 | 12,470 | 5,515 | (1,505) | -46.9 | 32.8 | -60.0 | (2) |
| Capital expenditures | 8,881 | 9,853 | 8,130 | 1,853 | 675 | -8.5 | 10.9 | -17.5 | -63.6 |
| Unit COGS | $1,506 | $1,410 | $1,460 | $1,405 | $1,452 | -3.1 | -6.4 | 3.5 | 3.3 |
| Unit SG&A expenses | $121 | $93 | $90 | $90 | $82 | -26.0 | -23.3 | -3.6 | -8.9 |
| Unit operating income or (loss) | $214 | $245 | $109 | $169 | ($49) | -49.2 | 14.4 | -55.6 | (2) |
| COGS/sales (1) | 81.8 | 80.7 | 88.0 | 84.4 | 97.7 | 6.2 | -1.1 | 7.4 | 13.3 |
| Operating income or (loss)/ sales (1) | 11.6 | 14.0 | 6.6 | 10.2 | (3.3) | -5.1 | 2.4 | -7.4 | -13.4 |

(1) "Reported data" are in percent and "period changes" are in percentage points.
(2) 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.

# APPENDIX D

# ALLEGED EFFECTS OF SUBJECT IMPORTS ON U.S. PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

Responses of U.S. producers to the following questions:

1. Since January 1, 2001, has your firm experienced any actual negative effects on its return on investment or its growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of chlorinated isos from China or Spain?

Responses of the producers are:

**BioLab** ***

**Clearon** ***

**OxyChem** ***

2. Does your firm anticipate any negative impact of imports of chlorinated isos from China or Spain?

Responses of the producers are:

**BioLab** ***

**Clearon** ***

**OxyChem** ***