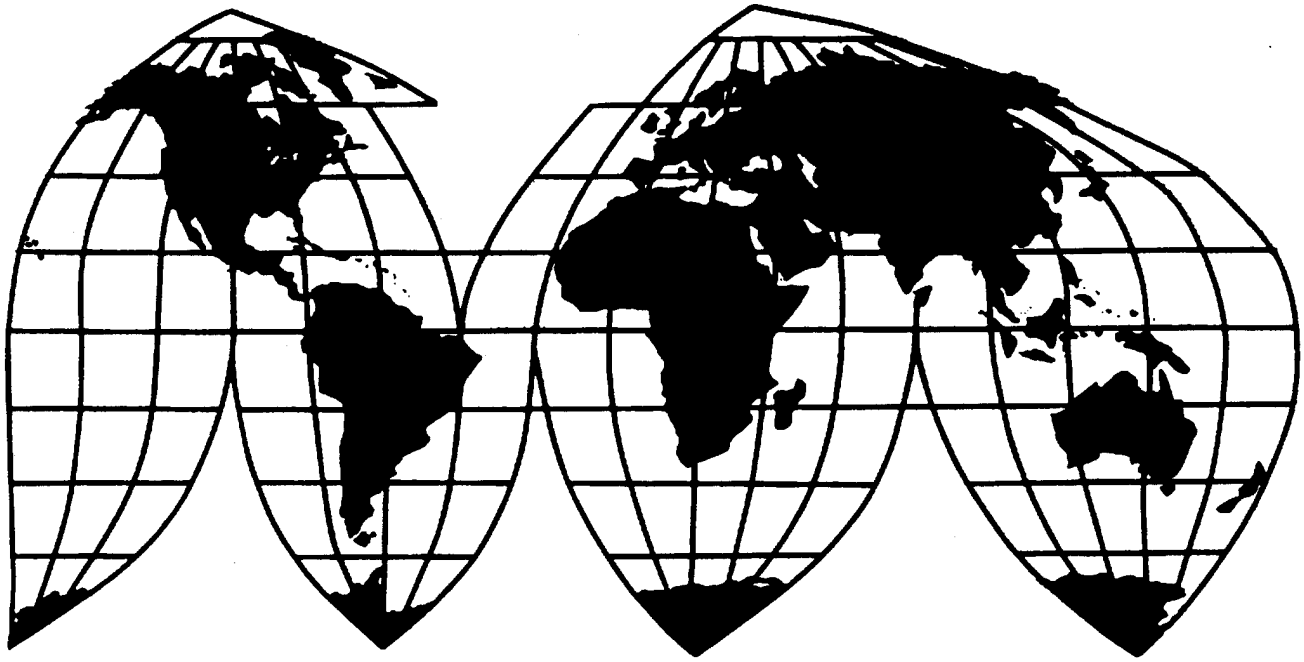
Certain 4,4′-Diamino-2,2′-Stilbenedisulfonic Acid Chemistry From China, Germany, and India

Investigations Nos. 701-TA-435
and 731-TA-1036-1038 (Preliminary)

Publication 3608 **July 2003**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Deanna Tanner Okun, Chairman
Jennifer A. Hillman, Vice Chairman
Marcia E. Miller
Stephen Koplan

Robert A. Rogowsky
Director of Operations

Staff assigned

Cynthia Trainor, *Investigator*
Stephen Wanser, *Industry Analyst*
William Deese, *Economist*
Chand Mehta, *Accountant*
Peter Sultan, *Attorney*
Lemuel Shields, *Statistical Assistant*

Bonnie Noreen, *Supervisory Investigator*

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

Certain 4,4′-Diamino-2,2′-Stilbenedisulfonic Acid Chemistry From China, Germany, and India

Investigations Nos. 701-TA-435
and 731-TA-1036-1038 (Preliminary)

Publication 3608

July 2003

CONTENTS

	Page
Determinations	1
Views of the Commission	3
Part I: Introduction	I-1
Background	I-1
Summary data	I-1
Related investigations	I-2
The nature and extent of alleged subsidies and sales at LTFV	I-2
The subject product	I-3
Scope	I-3
Physical characteristics and uses	I-3
Manufacturing process	I-4
Domestic like product issues	I-7
Common facilities and workers and physical characteristics and uses	I-7
Interchangeability and customer and producer perceptions	I-8
Channels of distribution	I-8
Price	I-9
Part II: Conditions of competition in the U.S. market	II-1
Market characteristics	II-1
U.S. supply	II-1
DAS production	II-1
SFWA production	II-3
Import supply	II-4
China	II-4
Germany	II-4
India	II-5
U.S. demand	II-5
Demand characteristics	II-5
Substitute products	II-6
Cost share	II-7
Substitutability issues	II-7
Factors affecting purchasing decisions	II-7
Comparisons of domestic products and subject imports	II-8
Comparisons of domestic products and nonsubject imports	II-8
Comparisons of subject imports and nonsubject imports	II-9
Comparisons of subject products from the subject countries	II-9
Part III: U.S. producers' production, shipments, and employment	III-1
U.S. producers	III-1
U.S. capacity, production, and capacity utilization	III-1
U.S. producers' shipments	III-2
U.S. producers' inventories	III-4
U.S. employment, wages, and productivity	III-5
Producers' imports and non-import purchases	III-6
Producers' consumption of DAS to make SFWA	III-6

CONTENTS–*Continued*

	Page
Part IV: U.S. imports, apparent consumption, and market shares	IV-1
U.S. importers	IV-1
U.S. imports	IV-1
Apparent U.S. consumption	IV-3
U.S. market shares	IV-5
Part V: Pricing and related information	V-1
Factors affecting prices	V-1
Transportation costs	V-1
Exchange rates	V-1
Pricing practices	V-3
Price data	V-3
Price trends	V-4
Price comparisons	V-5
Lost sales and lost revenues	V-6
Lost sales	V-6
Lost revenues	V-6
Part VI: Financial experience of U.S. producers	VI-1
Background	VI-1
Operations on DAS	VI-1
Operations on SFWA	VI-1
Operations on DAS and SFWA combined	VI-2
Investment in productive facilities, capital expenditures, and research and development expenses	VI-4
Capital and investment	VI-4
Part VII: Threat considerations	VII-1
The industry in China	VII-1
The industry in Germany	VII-2
The industry in India	VII-3
U.S. inventories of product from China, Germany, and India	VII-3

Appendixes

A.	*Federal Register* notices	A-1
B.	Calendar of the public conference	B-1
C.	Summary tables	C-1
D.	Summary of responses to like product questions	D-1
E.	Additional pricing data	E-1

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. 701-TA-435 and 731-TA-1036-1038 (Preliminary)

CERTAIN 4,4'-DIAMINO-2,2'-STILBENEDISULFONIC ACID CHEMISTRY FROM CHINA, GERMANY, AND INDIA

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China, Germany, and India of certain 4,4'-diamino-2,2'-stilbenedisulfonic acid chemistry, provided for in subheadings 2921.59.20 and 3204.20.80 of the Harmonized Tariff Schedule of the United States,[2] that is alleged to be subsidized by the Government of India and that is alleged to be sold in the United States at less than fair value (LTFV).[3]

BACKGROUND

On May 14, 2003, a petition was filed with the Commission and Commerce by Ciba Specialty Chemicals Corp., Tarrytown, NY, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports from India and LTFV imports from China, Germany, and India of certain 4,4'-diamino-2,2'-stilbenedisulfonic acid chemistry. Accordingly, effective May 14, 2003, the Commission instituted countervailing duty and antidumping investigations Nos. 701-TA-435 and 731-TA-1036-1038 (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 23, 2003 (68 FR 28252). The conference was held in Washington, DC, on June 4, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

---

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

[2] 4,4'-Diamino-2,2'-stilbenedisulfonic acid is provided for in subheading 2921.59.20 and stilbenic fluorescent whitening agents are provided for in subheading 3204.20.80.

[3] Vice Chairman Jennifer A. Hillman and Commissioner Marcia E. Miller found two like products in these investigations: 4,4'-diamino-2,2'-stilbenedisulfonic acid and stilbenic fluorescent whitening agents. They found that imports of stilbenic fluorescent whitening agents from China and India are negligible and that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of stilbenic fluorescent whitening agents from Germany or 4,4'-diamino-2,2'-stilbenedisulfonic acid from China, Germany, and India that are allegedly subsidized by the Government of India and sold at LTFV.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain 4,4'-diamino-2,2'-stilbenedisulfonic acid chemistry ("DAS chemistry" or "DAS/SFWA") from India that are alleged to be subsidized by the Government of India, and by reason of imports of DAS chemistry from China, Germany, and India that are alleged to be sold in the United States at less than fair value ("LTFV").[1] [2] [3]

I. LEGAL STANDARDS

A. The Legal Standard for Preliminary Investigations

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[4] 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."[5]

The Court of Appeals for the Federal Circuit has stated that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the "reasonable indication" standard requires more than a finding that there is a "possibility" of material injury.[6] It also has noted that, in a preliminary investigation, the "[t]he statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry."[7] Moreover, the CIT has reaffirmed that in applying the reasonable indication "standard for making a preliminary determination regarding material injury or threat of material injury, the Commission may weigh all evidence before it and resolve conflicts in the evidence."[8]

---

[1] Whether the establishment of an industry is materially retarded is not an issue in these investigations.

[2] The scope of these investigations encompasses 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic flourescent whitening agents (SFWA).

[3] Vice Chairman Hillman and Commissioner Miller find that there are two domestic like products, DAS and SFWA, and determine that imports of SFWA from China and India are negligible.

[4] 19 U.S.C. §1671b(a), 19 U.S.C. §1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (CIT 1999).

[5] American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[6] American Lamb, 785 F.2d at 1004.

[7] Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[8] R-CALF, 74 F. Supp.2d at 1368 (Ct. Int'l Trade 1999).

B. General Legal Standards

Section 771(7)(C)(i) of the Tariff Act of 1930, as amended ("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."[9]

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[10]

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[11] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[12] [13]

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[14] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat

---

[9] 19 U.S.C. § 1677(7)(C)(i).

[10] 19 U.S.C. § 1677(7)(C)(ii).

[11] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885.).

[12] 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 (Feb. 1999) at 25 n.148.

[13] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce estimated dumping margins of 194.9 percent for imports from Germany, 35.7 percent (for comparisons in which normal value is based on home market price) and 139.61 percent (for comparisons in which normal value is based on constructed value) for imports from India, and 156.69 percent for imports from China. Notice of Initiation of Antidumping Duty Investigations: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Flourescent Whitening Agents (SFWA) from Germany, India, and the People's Republic of China, 68 Fed. Reg. 34579, 34581 (June 10, 2003).

[14] 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

factors "as a whole."[15] In making our determination, we have considered all factors that are relevant to these investigations.[16]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether 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."[17] Section 771(4)(A) of the Act defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective

---

[15] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

[16] 19 U.S.C. § 1677(7)(F). The Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

> (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,
> (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
> (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
> (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
> (V) inventories of the subject merchandise,
> (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
> (VII) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),
> (VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and
> (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

Factor VII is inapplicable to these investigations. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

[17] 19 U.S.C. §1677(4)(A).

output of a domestic like product constitutes a major proportion of the total domestic production of the product."[18] 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 . . . ."[19]

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.[20] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[21] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[22] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[23]

B. Product Description

Commerce's notices of initiation define the imported merchandise within the scope of these investigations as:

> 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic flourescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as flourescent brightening agents in the production of certain textiles, paper, and detergent. These investigations cover all DAS and SFWA regardless of end use. DAS is currently classifiable under subheading 2921.59.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification only covers DAS. SFWA is currently classifiable under subheading

---

[18] 19 U.S.C. § 1677(4)(A).

[19] 19 U.S.C. § 1677(10).

[20] See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

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

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

[23] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

3204.20.80 of the HTSUS. This tariff classification represents a basket category which includes SFWA and other synthetic organic coloring matter.[24]

DAS is a molecule with amino and sulfonate functional groups. It is a stilbene (an aromatic compound with two benzene rings attached by an olefinic linkage, i.e., an unsaturated carbon-carbon bond). DAS is used primarily as a chemical intermediate from which SFWA is synthesized. The two amino groups on DAS react with cyanuric chloride that then reacts with different amines to produce SFWA. SFWA have better solubility, pH stability, and fiber affinity than DAS, which allow it to be applied to various substrates. SFWA are used as brighteners primarily in the detergent, paper, and textile industries.[25]

VIEWS OF CHAIRMAN OKUN AND COMMISSIONER KOPLAN (WHO FIND A SINGLE DOMESTIC LIKE PRODUCT)

C. Domestic Like Product

DAS is an intermediate, or precursor, to SFWA.[26] SFWA, in turn, is produced from DAS through a multi-step process that involves reacting DAS with chemicals and other additives, including cyanuric acid and amines.[27] Therefore, in addressing whether DAS and SFWA constitute a single domestic like product, we have applied a semifinished product analysis.[28]

Ciba, the petitioner and only domestic DAS producer, produces SFWA from DAS in a continuous process.[29] According to Ciba, the only commercial use for DAS is to produce SFWA.[30] Thus, the domestically produced upstream article, DAS, is dedicated to the production of the downstream article, SFWA. While the record unambiguously evidences an independent use for DAS in the production of certain dyes, the DAS used for dye production is imported[31] and therefore not included in our consideration of the uses for the domestic like product.

The U.S. commercial market for DAS is extremely limited, with a concentrated customer base of SFWA producers and, to a lesser extent, dye producers. SFWA, in contrast, is marketed for textile, detergent, and paper applications.[32] The record, however, does not indicate that there are separate markets for the upstream and downstream articles. Rather, the record indicates that there is *no* market for

---

[24] 68 Fed. Reg. 34579 and 34582 (June 10, 2003).

[25] Confidential Report, as revised by Memoranda INV-AA-085 and INV-AA-086 ("CR") at I-3-4 and II-1 n. 2, Public Report ("PR") at I-3 and II-1 n.2.

[26] CR at I-11, PR at I-9.

[27] CR at I-7 and I-8, PR at I-6.

[28] Under this 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) the significance and extent of the processes used to transform the upstream into the downstream articles. See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539(A) (Final), USITC Pub. 3213 at 6 n.23 (July 1999).

[29] CR at I-7 and I-8, PR at I-6 and I-7, Conference Transcript ("Tr.") at 10. Ciba has referred to this process as "interdependently linked." Ciba Postconference Brief, Attachment 3 at 1-3.

[30] Petition at 10. See also Petition at 8 n.10 ("Ciba does not use DAS for any purpose other than SFWA.")

[31] CR at II-1 and n.2; PR at II-1 and n.2.

[32] CR at II-1-2, PR at II-1.

the domestic production of the upstream article, as all of Ciba's U.S. shipments of DAS are consumed internally to produce SFWA.[33] The absence of a separate market for the domestically produced upstream article is consistent with the perception of Ciba, the only domestic producer of DAS and the largest domestic producer of SFWA, that separate markets do not exist for the upstream and downstream articles.[34]

DAS, like the other intermediates required to produce SFWA, is a unique chemical, having its own structure and physical/chemical properties.[35] This is equally true, however, of any one of the individual SFWA.[36] DAS has a structure that imparts fluorescence, while other chemicals used in the synthesis of SFWA impart solubility, pH stability, and fiber affinity.[37] SFWA, like DAS, is an optical brightener that increases the intensity of whiteness to the eye.[38] Thus, despite unique physical characteristics, DAS and SFWA share the common function of imparting fluorescence, although the record indicates that SFWA imparts greater fluorescence than DAS.[39] [40]

It is difficult to compare the values of DAS and SFWA, since there are no commercial U.S. sales of domestically-produced DAS (which is internally transferred in solution form rather than in the wet cake and powder forms common to most DAS imports and to certain SFWA).[41] The record, however, clearly indicates that SFWA is costly to produce relative to DAS. DAS accounted for *** percent of Ciba's costs of goods sold in 2002,[42] consistent with, though *** than, market estimates of 23-30 percent of total manufacturing costs.[43] Thus, the record indicates that SFWA production entails substantial costs over and above the cost of acquiring DAS.

DAS production is a multi-step process of nitration, sulfonation, oxidation, and reduction, while the general process for the manufacture of SFWA involves the condensation of DAS with cyanuric acid and amines.[44] This too is a multi-step process, described as "relatively simple" by Ciba and "complex" and requiring "tightly controlled reaction conditions" by Bayer.[45] Overall, however, the SFWA production process, while substantial, appears no more complex than the DAS production process.

The transformation of DAS into SFWA is a costly and complex procedure. Nonetheless, the complete dedication of all domestically-produced DAS to the production of the downstream article, SFWA; the absence of independent uses for domestically produced DAS; the absence of a separate market for domestically produced DAS; and the common function of imparting fluorescence of DAS and SFWA lead us to conclude that DAS and SFWA constitute a single domestic like product.

---

[33] CR at II-1, PR at II-1.

[34] Petition at 11.

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

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

[37] CR at I-4, PR at I-3.

[38] CR at I-3, PR at I-3.

[39] Petitioner appears to concede that SFWA impart greater fluorescence than DAS. Petitioner's Postconference Brief at 5. See also, CR at I-10 and n.32, PR at I-8 and n.32.

[40] We note, however, that common functionality does not imply that DAS and SFWA are interchangeable.

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

[42] CR and PR at Table VI-3.

[43] CR at II-12, PR at II-7. Ciba uses a distinctive technology in the production of DAS, resulting in relatively high fixed costs. CR at II-3, PR at II-2.

[44] CR at I-4-7, PR at I-3-6.

[45] CR at I-7-8, PR at I-6.

D. Domestic Industry and Related Parties

In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[46] Based on our definition of the domestic like product, we define the domestic industry to include all domestic producers of DAS/SFWA.[47]

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[48] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[49] Petitioner Ciba and Bayer are related to exporters of subject merchandise.[50] Each of the producers in the domestic industry, petitioner Ciba as well as Bayer, Clariant, and 3V, are importers of the subject merchandise.[51]

Ciba accounted for all domestic production of DAS and *** percent of domestic production of SFWA in 2002.[52] Ciba imported certain SFWA from Germany that it characterized as specialty SFWA that Ciba does not make at its U.S. facility, or "where Ciba must import in response to dumped and subsidized subject imports."[53] Ciba's SFWA operations were the *** of all the domestic SFWA

---

[46] See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir.1996).

[47] Petitioner has not argued that the firms using imported DAS do not engage in sufficient production related activities to be considered domestic producers, and we believe that such an argument would not be tenable, based on the significant capital investment in plant and equipment to make SFWA from DAS (E.g., Clariant Postconference Brief at 5-6, 3V Postconference Brief at 11-12), the substantial technical expertise involved in this production process (Id.), the large amount of value added (CR at II-12, PR at II-7), and the significant employment levels among these SFWA producers (CR and PR at Table III-7).

[48] 19 U.S.C. § 1677(4)(B).

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

[50] CR at III-9, PR at III-6. Ciba argues that Clariant should be excluded from the domestic industry because Clariant has SFWA operations in China and India. The record does not support Ciba's assertion of a relationship. In its Producers' Questionnaire Response (at p. 3) Clariant reports ***.

[51] CR and PR at Table III-8; CR at III-9, PR at III-6.

[52] CR and PR at Table III-1.

[53] Petitioner's Postconference Brief at 20 n.20.

operations.[54] The ratio of Ciba's imports to its SFWA production, however, did not exceed *** percent (by volume) in any year or interim period of the period examined.[55] Because of the limited extent of these imports and because of Ciba's predominant position in the industry producing DAS/SFWA, and in the absence of any argument that Ciba's profitability is attributable in significant part to its importation of the subject merchandise, we conclude that Ciba's primary interest lies in domestic production and that appropriate circumstances do not exist to exclude Ciba from the domestic industry.

The other three domestic producers – 3V, Bayer, and Clariant – imported DAS, and in some cases purchased imported DAS, from one or more of the subject countries; in addition, Bayer imported SFWA throughout the period examined.[56] Together, these firms accounted for no domestic production of DAS but *** of domestic production of SFWA in 2002.[57] None of the three companies in question have any capability to produce DAS in the United States.[58] Moreover, as discussed in greater detail in the section of our views entitled "Conditions of Competition," the only company in the United States that does produce DAS, petitioner Ciba, did not sell any DAS in the merchant market during the period examined; *** capacity to supply the volume of DAS required to maintain the overall SFWA production levels in the United States; and largely produced SFWA in a form that was not directly compatible, without costly conversion, for use in the non-integrated producers' domestic SFWA operations.[59] Further, there is no indication that inclusion of these companies' data would skew the data for the rest of the industry. As alluded to in our discussion of Ciba's financial performance, the SFWA operations of 3V, Bayer, and Clariant were *** as those of petitioner Ciba in absolute terms. Even in relative terms, however, the SFWA operations of 3V, Bayer, and Clariant ***.[60] In sum, the record evidence does not support a finding that these firms resort to imports primarily to benefit from alleged LTFV or subsidized sales. Accordingly, we have concluded that each of these companies' primary interest lies in the costly

---

[54] CR and PR at Table VI-3. We have focused on Ciba's SFWA operations because all of its U.S. shipments of DAS were consumed internally in the production of SFWA. Ciba's SFWA operating income of $*** in 2000; $*** in 2001; and $*** in 2002 was *** than the combined operating incomes of the remainder of the domestic industry, and its operating income of $*** in interim 2003 was *** to the combined operating incomes of the remainder of the domestic industry. Similarly, Ciba's operating income margins and per-unit operating income *** those for all domestic SFWA operations combined throughout the period examined. Id.

[55] CR and PR at Table III-8.

[56] CR at III-9, PR at III-6, CR and PR at Table III-8.

[57] CR and PR at Table III-1. Clariant was the *** SFWA producer in the United States in 2002 and accounted for *** percent of domestic production in that year, while 3V accounted for *** percent and Bayer accounted for *** percent, even though the latter company ceased its *** U.S. SFWA operations in mid-2002. Tr. at 65; CR and PR at Table III-2 n.1.

[58] CR and PR at Tables III-1 and III-2.

[59] As a result of these distinctive conditions of competition, we place less weight on an analysis of the ratio of imports to U.S. production for the three non-integrated domestic producers of SFWA, as each was required to source DAS in approximate proportion to its SFWA production or, in the case of Bayer, its production of SFWA and dyes. In addition, Bayer's imports included a *** level of SFWA from Germany. We observe, however, that Bayer's SFWA imports were *** in the latter portion of 2002 and in interim 2003. CR and PR at Table III-8. During this time, Bayer was not a domestic producer, since the company ceased domestic production of SFWA in June 2002. Tr. at 64-65.

[60] CR and PR at Table VI-3. Bayer generated *** throughout the period 2000-2002, *** when the company terminated production and sales of domestically-produced SFWA. Clariant and 3V generated *** throughout the period examined. Clariant's operating income margins ranged from *** percent to *** percent and 3V's operating income margins ranged from *** percent to *** percent, while Ciba's operating income margins ranged from *** percent to *** percent.

and complex domestic production of SFWA and that appropriate circumstances do not exist to exclude these firms from the domestic industry.

III. CUMULATION[61]

A. In General

For purposes of evaluating the volume and price effects when determining whether a domestic industry is materially injured by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise 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.[62] In assessing whether subject imports compete with each other and with the domestic like product,[63] 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.[64]

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.[65] Only a "reasonable overlap" of competition is required.[66]

Fungibility. The record in these investigations indicates that, although limited, there is a degree of fungibility between imports from the subject countries, and between the subject imports and the domestic like product. DAS comprises the majority of the subject imports from China and India, while the domestic production and imports from Germany were more evenly divided between DAS and

---

[61] Negligibility is not an issue for us in these investigations.

[62] 19 U.S.C. § 1677(7)(G)(i).

[63] The SAA 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." SAA at 848, 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).

[64] 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).

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

[66] 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. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

SFWA.[67] As discussed above, DAS is an upstream product that requires additional chemical inputs and costly transformation for use as an effective optical brightener. As such, we do not view DAS and SFWA as fungible.

Throughout the period examined, domestic production of the domestic like product and imports of the subject merchandise from each of the subject countries included substantial volumes of DAS. Much of domestically produced DAS is produced as a solution, and therefore is not in a form that can be used by the non-integrated producers.[68] Nonetheless, a *** of the domestic like product is produced in wet cake form, although this product is not made available for sale in the U.S. market.[69] U.S. SFWA producer Bayer imported DAS in wet cake form while it was an active producer[70] and U.S. SFWA producer Clariant can *** use DAS in wet cake and powder forms.[71]

As to SFWA, *** reported that imports from Germany and the domestic product are frequently interchangeable, and *** reported the products to be sometimes interchangeable. There is no information as to the fungibility of the German product and imports from China and India, consistent with the very small volume of SFWA imports from these two countries. Several importers (who tended to report jointly for DAS and SFWA) stated that the domestic products and imports from each subject country were always interchangeable.[72] Thus, we conclude that there is a degree of fungibility, albeit limited, between and among the domestic like product and imports of the subject merchandise from China, Germany, and India.[73]

Geographic Coincidence. The domestic like product and the subject imports are present in the same geographic market to a certain extent. U.S. producers reported that they serve a national market.[74] Many importers reported only selling in the southern United States or in California, although some sold nationwide.[75] Thus, there is a geographic overlap between the domestic like product and the subject imports at least in the southern United States and California.

Channels of Distribution. Imported SFWA and domestically-produced SFWA are sold in the same channels of distribution, namely to the detergent, paper, and textile industries. This criterion is not satisfied to the extent that imported DAS and the domestic product have different channels of distribution. U.S. sales of subject imports are largely to SFWA producers, while domestically-produced DAS is not sold commercially but rather internally consumed.[76]

---

[67] Compare CR and PR at Table III-2 with CR and PR at Table IV-1 and Table IV-2. See also, Ciba's Postconference Brief at 20, n.20 and Tr. at 65.

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

[69] CR at II-3, PR at II-2 (Ciba's exports are in wet cake form); CR and PR at Table III-3 (Ciba exported between *** and *** pounds (on a dry pound basis) of DAS to *** between 2000 and 2002); CR at II-14, PR at II-8; Tr. at 35 (Ciba has not had any U.S. commercial sales of DAS since 1997-98).

[70] CR at IV-1 n.5, PR at IV-1 n.5; Tr. at 59.

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

[72] CR at II-13-14, PR at II-8.

[73] We note that our conclusion with respect to this factor is influenced by our focus on "the domestic like product," as opposed to sales, offers to sell, or established distribution of the domestic like product, which we have examined as appropriate with respect to subsequent factors.

[74] CR at II-15, PR at II-8.

[75] CR at II-15, PR at II-8.

[76] CR at II-1-2, PR at II-1.

Simultaneous Presence in Market. Finally, the record shows that there were imports of the subject merchandise from each of the subject countries in each full and partial year of the period examined.[77]

Conclusion. Consideration of the four factors discussed above indicates a reasonable overlap of competition between the subject imports, and to a significantly lesser degree, between the subject imports and the domestic like product. There is limited fungibility, geographic overlap nationally and regionally, overlapping channels of distribution (similar with respect to SFWA sales but not with respect to DAS shipments), and sustained presence in the U.S. market. Therefore, based on the record in these investigations, we conclude that cumulation of the volume and effects of the subject imports from China, Germany, and India is appropriate.[78]

IV. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE AND SUBSIDIZED IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[79] 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.[80] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[81] 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.[82] 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."[83]

Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of DAS/SFWA from China, Germany, and India that are allegedly sold in the United States at LTFV and/or subsidized.

A. Conditions of Competition

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

---

[77] CR and PR at Tables IV-3 and C-3.

[78] We view the issue of whether the overlap in competition between the domestic like product and subject imports from China and India is "reasonable" as a close one.

[79] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[80] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[81] 19 U.S.C. § 1677(7)(A).

[82] 19 U.S.C. § 1677(7)(C)(iii).

[83] 19 U.S.C. § 1677(7)(C)(iii).

Demand for DAS is largely dependent on U.S. SFWA production. SFWA production, in turn, is influenced by demand for SFWA in the U.S. market and in the export markets that consume U.S.-produced SFWA.[84] U.S. SFWA demand is driven by demand for paper, detergent, and, to a far lesser extent, textile end use applications.[85] Paper production declined in 2000 and 2001 but increased in 2002, while textile production declined in 2000 and sharply in 2001, and was unchanged in 2002.[86] Anecdotal evidence suggests that detergent applications have come under pressure from competing enzymatic whiteners.[87]

Apparent U.S. consumption of DAS fell throughout the period examined, declining from *** pounds[88] in 2000, to *** pounds in 2001, and to *** pounds in 2002; and from *** pounds in interim 2002 to *** pounds in interim 2003.[89] Apparent U.S. consumption of SFWA fluctuated in a *** range, rising from *** pounds in 2000 to *** pounds in 2001 and then falling to *** pounds in 2002; and rising *** from *** pounds in interim 2002 to *** pounds in interim 2003.[90] Apparent U.S. consumption of DAS and SFWA, combined and adjusted to avoid double-counting, declined from 35.3 million pounds in 2000 to 33.9 million pounds in 2001, and to 32.6 million pounds in 2002. There was a slight increase in DAS and SFWA combined consumption over the interim periods, from 8.4 million pounds in interim 2002 to 8.5 million pounds in interim 2003.[91]

The sources for the supply of DAS/SFWA are limited; they consist primarily of (i) Ciba, (ii) the two remaining non-integrated SFWA producers, 3V and Clariant,[92] and (iii) subject imports. Nonsubject imports accounted for no more than 1.0 percent of the DAS/SFWA market in the United States during the period examined.[93]

A number of other factors also affect the supply of DAS/SFWA. Importantly, Ciba, the only domestic producer of DAS, does not make any merchant market sales of DAS, and has not done so since 1997-98.[94] Even if it did, however, its ability to supply DAS to non-integrated SFWA producers would be ***.[95] Moreover, Ciba's typical production process results in liquid DAS that is captively consumed, while the SFWA production processes of the non-integrated producers depend upon wet-cake or powder

---

[84] Exports accounted for *** percent of U.S.-produced SFWA sales in 2000; *** percent in 2001; and *** percent in 2002. CR and PR at Table III-4.

[85] CR at II-10, PR at II-5.

[86] CR and PR at Table II-3.

[87] CR at II-11, PR at II-6.

[88] All references to "pounds" in this opinion are to dry pounds.

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

[90] CR and PR at Table C-2. In contrast, U.S. producers' SFWA exports, which impact DAS demand even though they have no impact on SFWA apparent U.S. consumption, fell by ***, from *** pounds to *** pounds, between 2000 and 2002. Id.

[91] CR and PR at Table C-3.

[92] During most of the period examined, Bayer was also a non-integrated producer of SFWA in the United States. The company ceased producing SFWA in the United States in June 2002. Tr. at 65.

[93] CR and PR at Table IV-9. Nonsubject imports accounted for no more than *** percent of the total DAS/SFWA imports during the period examined. CR and PR at Table IV-3.

[94] CR at II-14, PR at II-8,

[95] In 2000, Ciba's capacity utilization for DAS approached *** percent. Even after the company's capacity utilization rate began to decline following diminished SFWA export sales in 2001 and diminished total SFWA sales in 2002, its available capacity to produce DAS was *** relative to the demand for DAS in the U.S. market (*** pounds in 2002 compared to total imports of *** pounds).

DAS.[96] The supply of SFWA is not similarly ***. While capacity utilization *** for DAS and SFWA combined approached 90 percent in 2000, domestic capacity increased between 2000 and 2002, while aggregate demand and U.S. production declined, resulting in additional available SFWA capacity.[97]

Domestic capacity for the production of SFWA and for DAS and SFWA combined did decline following the cessation of SFWA production at Bayer's facility in South Carolina in June 2002. Bayer's retreat from the domestic production of SFWA took place over several years. Bayer ***, resulting in ***. Subsequently, ***. The company ***, resulting in further cost increases for the remaining ***. As a result of the ***, Bayer's financial performance reflected ***.[98] The company subsequently ***, halting its *** domestic sales and importing to fulfill its existing contracts for SFWA for paper applications.[99]

Imports of DAS declined during the period examined, while SFWA imports increased in 2002 and between the interim periods, reflecting the closure of Bayer's U.S. production facility in June 2002 and its shift to direct importation of SFWA.[100] Imports of DAS and SFWA combined decreased in 2001 but increased in 2002 and were higher in the first quarter of 2003 than in the first quarter of 2002.[101] Imports accounted for a *** share of DAS supplies throughout the entire period examined, as well as for SFWA and for DAS and SFWA between 2000 and 2002, but then increased for SFWA and for DAS and SFWA in the first quarter of 2003.[102]

As discussed above, domestically-produced DAS is not sold commercially in the United States but rather is consumed internally in a liquid form that is incompatible with the requirements of non-integrated SFWA producers, who instead must rely on imported DAS in powder or wet cake form. Thus, U.S. shipments of DAS are not interchangeable with imports of the subject merchandise. SFWA, in contrast, appears to be generally interchangeable regardless of source. Different suppliers, however, concentrate on different end-use applications. The majority of *** sales are for detergent applications, while *** concentrate on sales for paper application.[103] Textile sales are modest (and Bayer has indicated that it actually markets Ciba's SFWA for this end-use application).[104]

B. Volume of Subject Imports

The quantity of subject imports declined from 9.075 million pounds in 2000 to 8.888 million pounds in 2002, and increased between the interim periods, rising from *** pounds in interim 2002 to *** pounds in interim 2003.[105] The value of these imports declined from $16.923 million in 2000 to $13.652 million in 2002, and increased between the interim periods, rising from $*** in interim 2002 to

---

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

[97] CR and PR at Tables III-2, IV-2, and IV-6.

[98] Bayer's *** were $***. The company generated ***. CR and PR at Table VI-3.

[99] Postconference Brief of Bayer at 19-20 and n.51. We discuss the reasons and the implications of Bayer's withdrawal from the domestic industry further in the section of our views entitled "Impact."

[100] CR and PR at Tables IV-1 and IV-2.

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

[102] CR and PR at Tables C-1, C-2, and C-3.

[103] In 2002, detergent applications made up *** percent of *** sales and *** percent of *** sales; and paper applications made up *** percent of *** sales and *** percent of *** sales. CR and PR at Table II-2.

[104] Bayer's Postconference Brief at 19 n. 49; Tr. at 101-102.

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

$*** in interim 2003.[106] The market share of subject imports showed similar trends, falling from 25.2 percent in 2000 to 24.0 percent in 2002, and then increasing from 20.1 percent in interim 2002 to 30.3 percent in interim 2003.[107] [108]

The quantity and market share of subject imports, when viewed in isolation, is significant. However, when evaluated in the context of the conditions of competition – especially the complete absence of any commercial sales of domestically produced DAS and the *** – and in the absence of significant negative price effects, the volume of subject imports is not sufficient to demonstrate that the subject imports themselves made a material contribution to any injury to the domestic industry.

C. Price Effects of the Subject Imports

The information on the record in these investigations indicates that domestically produced SFWA and subject imports of SFWA are largely substitutable. Market participants' views on the importance of non-price factors were mixed.[109]

The Commission collected pricing data for four DAS/SFWA products, three of which are SFWA and one of which is DAS. There were no U.S. merchant market sales of domestically-produced DAS. There is information in the record showing average unit values for sales of DAS by Ciba, but these were ***, and not domestic sales.[110] Accordingly, these average unit values cannot be used as the basis for comparisons with the subject DAS imports. In addition, the price effects of imported DAS cannot be measured by comparing import prices to Ciba's unit costs of production, because the statute requires consideration of the price of domestic like products.[111] In the absence of any domestic sales of DAS, we conclude with respect to the DAS product (Product 4) that there has not been significant price underselling by the imported merchandise as compared with the price of the domestic like product, and that subject imports have not otherwise depressed prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.

Of the three SFWA products for which the Commission collected pricing data, comparisons between subject imports and domestically-produced product were only possible for two products (Products 2 and 3), as there was no importer pricing data for the third product (Product 1).[112] Overall, the cumulated subject imports oversold the domestic like product in 16 of 23 possible quarterly comparisons.[113] Thus, we find that there was not significant underselling by the subject imports.

---

[106] Id.

[107] CR and PR at Table IV-9.

[108] As a ratio to domestic production, subject imports were 20.2 percent in 2000, 17.2 percent in 2001, 25.4 percent in 2002, *** percent in interim 2002, and *** percent in interim 2003. Compare CR and PR at Table IV-3 with CR and PR at Table III-2. A substantial share of shipments, and thus production, is devoted to exports. CR at II-3 (*** percent of DAS shipments), PR at II-2, and CR at II-7 (*** percent of SFWA shipments), PR at II-4. Accordingly, we place limited weight on the volume of imports relative to production in the United States.

[109] CR at II-13-15, PR at II-8.

[110] CR and PR at Table III-3; CR at III-3, PR at III-2.

[111] 19 U.S.C. §1677(c)(ii).

[112] We have considered domestic pricing for all U.S. products combined. Our analysis reflects our findings with respect to the domestic industry as well as the fact that the transformation from DAS to SFWA is complex and costly, and requires the use of other raw materials whose cost far exceeds that of DAS. CR and PR at Table VI-3.

[113] For Product 2 imports from China undersold the domestic product in four out of seven quarterly pricing comparisons, with margins of underselling ranging from 0.1 percent to 6.0 percent. Imports from Germany oversold the domestic product in all eight quarterly pricing comparisons, in each case by substantial margins. Imports from

(continued...)

For Product 2, prices of the domestic product *** from the beginning of the period examined to the end. Domestic prices in January-March 2003 were $*** per pound, compared to $*** per pound in January-March 2000. During the period examined, domestic prices were as high as $*** per pound in 2001 and 2002 and as low as $*** in 2001.[114] In light of the limited and sporadic presence of subject imports and the overall decline in demand, we do not find that these data indicate price depression or price suppression by the subject imports.

For Product 3, prices of the domestic product declined by 10.5 percent between the first quarter of 2000 and the first quarter of 2003.[115] We recognize that the volume of German imports was ***, especially in the last quarter of 2002 and the first quarter of 2003. As noted above, Bayer ceased domestic production of SFWA in June 2002 and turned to imports to satisfy its existing contractual commitments.[116] The record does not indicate that quarterly sales volumes for the domestic like product of Product 3 fell in 2002 or the first quarter of 2003 in response to SFWA imports from Germany. Quarterly sales volumes for U.S.-produced Product 3 in the final three quarters of the period examined were comparable to, or higher than, those during the earlier portion of the period.[117] Thus, we find that Bayer's sales of imported SFWA did not take sales away from other domestic SFWA producers.

Moreover, the decline in the prices of the domestic product for Product 3 is consistent with the decline in the domestic industry's costs over the period examined. While domestic prices fell by 10.5 percent between the first quarter of 2000 and the first quarter of 2003, the domestic industry's cost of goods sold ("COGS") for SFWA declined from $*** per pound to $*** per pound, or by *** percent between 2000 and the first quarter of 2003.[118]

Furthermore, there is no evidence that price competition from subject imports caused a cost-price squeeze for domestic producers of SFWA. The domestic industry's ratio of its COGS to net sales actually declined toward the end of the period examined, when imports from Germany were present in the market in substantial quantities.[119]

Finally, we note also that *** of Ciba's allegations of lost sales and *** allegations of lost revenues were denied by the purchasers involved.[120] The *** allegation resulted in no response.

Based on foregoing evidence, in the absence of significant underselling, price depression, or price suppression, we find that cumulated subject imports from China, Germany, and India did not have significant effects on prices for the domestic like product.

---

[113] (...continued)
India also oversold the domestic product in all five quarterly pricing comparisons, again by substantial margins in each case. CR and PR at Table V-2. For Product 3 the only possible comparisons with subject imports were imports from Germany. Imports from Germany undersold the domestic product in all three quarterly pricing comparisons (which were the last three quarters of the period examined), with margins of underselling ranging from *** percent to *** percent. CR and PR at Table V-3.

[114] CR and PR at Table V-2.

[115] CR and PR at Table V-3.

[116] See, e.g., Tr. at 123-124.

[117] CR and PR at Table V-3.

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

[119] The ratio of COGS to net sales declined from *** percent in 2001 to *** percent in 2002, and from *** percent in interim 2002 to *** percent in interim 2003. CR and PR at Table VI-2.

[120] CR and PR at Table V-4 (lost sales) and Table V-5 (lost revenues).

D. Impact of the Subject Imports

The domestic industry's production of DAS/SFWA decreased by 22.1 percent between 2000 and 2002, and was lower in interim 2003 compared with interim 2002.[121] In contrast, the domestic industry's capacity increased throughout most of the period examined.[122] As a result of increasing capacity and declining output during a period of decreasing demand, the domestic industry's capacity utilization declined over the period examined.[123] Inventories as a ratio to U.S. shipments rose in each full year of the period examined, before declining in interim 2003 relative to interim 2002.[124] Finally, most employment-related indicators followed the domestic industry's output trends over the period examined.[125]

The domestic industry's rising inventory levels and declining output, capacity utilization, and employment largely reflect several relevant factors at work in the U.S. and non-U.S. markets. The total quantity of DAS/SFWA exports declined markedly between 2000 and 2002, falling by *** percent, or ***.[126] During this same period, U.S. domestic shipments (producers' component) declined by a relatively modest 6.4 percent, or 1.7 million pounds.[127] This decline, moreover, was consistent with the overall decline in apparent U.S. consumption of DAS/SFWA, which decreased by 7.7 percent, or 2.7 million pounds, between 2000 and 2002.[128] Neither declining export sales nor declining domestic demand (as approximated by apparent U.S. consumption), however, reflect the direct influence of U.S. imports of the subject merchandise, U.S. shipments of which declined by 12.3 percent.[129]

As noted above, the domestic industry's output, capacity utilization, U.S. shipments, and employment levels were lower in interim 2003 than in interim 2002, notwithstanding a stable level of apparent U.S. consumption and increased exports of DAS/SFWA. These data, however, largely reflect the shift by Bayer from U.S. production of SFWA to direct sourcing from its German parent company,

---

[121] The industry's production was 44.895 million pounds in 2000, 41.571 million pounds in 2001, and 34.973 million pounds in 2002. Production was 8.957 million pounds in interim 2002, and 8.005 million pounds in interim 2003. CR and PR at Table III-2.

[122] The industry's capacity was 50.095 million pounds in 2000, 51.691 million pounds in 2001, and 56.148 million pounds in 2002. Capacity was 13.955 million pounds in interim 2002, and 13.001 million pounds in interim 2003. CR and PR at Table III-2.

[123] Capacity utilization fell from 89.6 percent in 2000 to 80.4 percent in 2001, and to 62.3 percent in 2002. Capacity utilization was 64.2 percent in interim 2002, and 61.6 percent in interim 2003. CR and PR at Table III-2.

[124] The ratio was 9.8 percent in 2000, 11.9 percent in 2001, 12.4 percent in 2002, and 11.3 percent and 10.0 percent in interim 2002 and interim 2003, respectively. CR and PR at Table III-6.

[125] The number of production and related workers fell from 272 in 2000 to 224 in 2001 and to 206 in 2002, and from 206 in interim 2002 to 200 in interim 2003. Hours worked fell from 613,000 hours in 2000 to 503,000 hours in 2001 and to 465,000 hours in 2002, and from 117,000 hours in interim 2002 to 115,000 hours in interim 2003. Wages paid fell from $19.342 million in 2000 to $15.685 million in 2001 and $15.135 million in 2002, and from $3.816 million in interim 2002 to $3.666 million in interim 2003. Hourly wages fell from $31.55 in 2000 to $31.18 in 2001 and then rose to $32.55 in 2002. Hourly wages were $32.62 in interim 2002 and $31.88 in interim 2003. Productivity increased from 73.2 pounds per hour in 2000 to 82.6 pounds per hour in 2001 and then fell to 75.2 pounds per hour in 2002. Productivity fell further over the interim periods, from 76.6 pounds per hour in interim 2002 to 69.6 pounds per hour in interim 2003. CR and PR at Table III-7.

[126] CR and PR at Table C-3.

[127] CR and PR at Table C-3.

[128] CR and PR at Table C-3.

[129] CR and PR at Table C-3.

Bayer AG. Bayer's operations *** in conjunction with the company's departure from detergent grade SFWA in 2000, and the company's cessation of U.S. SFWA production for paper in June 2002. Bayer's departure resulted in an apparent overall decline in output, capacity utilization, and employment levels in the first quarter of 2003, even though the three companies comprising the remaining domestic industry recorded a stronger performance in the first quarter of 2003 than the first quarter of 2002.[130]

The domestic industry's U.S. shipments increased between 2000 and 2001, but then declined in 2002.[131] The industries' net sales (which include export sales) declined throughout the period examined.[132] The domestic industry's market share remained generally stable over the period examined, declining only between the interim periods.[133]

The domestic industry's capital expenditures and research and development expenses decreased between 2000 and 2002, but were higher in the first quarter of 2003 than in the first quarter of 2002.[134] All of the U.S. producers of the domestic like product except *** responded that they had not experienced any actual negative effects from imports of the subject merchandise on their growth, investment, ability to raise capital or development and production efforts.[135] Overall, the domestic industry was profitable in 2000, 2002, and the first quarter of 2003, with operating income and operating margins of $*** (5.4 percent) in 2000, $*** (-1.7 percent) in 2001, $*** (1.7 percent) in 2002, and $*** (5.4 percent) in the first quarter of 2003.[136] While these data do not indicate that subject imports had a significant adverse impact on the domestic industry as a whole, we note several relevant factors that independently influenced the domestic industry's overall financial performance over the period examined.

---

[130] The three domestic producers of DAS/SFWA that constituted the domestic industry in interim 2003 recorded a ***-percent increase in output, a ***-percent increase in capacity, a *** increase in capacity utilization, and mixed but generally *** employment indicia in interim 2003 relative to interim 2002. Table C-3-alternate, contained in staff worksheet.

[131] U.S. shipments were 31.968 million pounds in 2000, 33.089 million pounds in 2001, and 29.693 million pounds in 2002. U.S. shipments were 7.883 million pounds in interim 2002 and 6.972 million pounds in interim 2003. CR and PR at Table III-5.

[132] The domestic industry's net sales were *** pounds in 2000, *** pounds in 2001, and *** pounds in 2002. Net sales were *** pounds in interim 2002 and *** pounds in interim 2003. CR and PR at Table VI-4.

[133] The domestic industry's market share based on quantity was 74.0 percent in 2000, 77.9 percent in 2001, and 75.0 percent in 2002. In terms of value, the domestic industry's market share was 80.5 percent in 2000, 83.5 percent in 2001, and 83.9 percent in 2002. Following Bayer's shift in sourcing, the domestic industry's market share based on quantity was 69.1 percent in interim 2003, compared to 79.7 percent in interim 2002, and, based on value, was 81.0 percent in interim 2003, compared to 85.2 percent in interim 2002. CR and PR at Table IV-9.

[134] The domestic industry's capital expenditures declined from $*** in 2000 to $*** in 2002, reflecting diminished capital expenditures for SFWA operations, but was $*** in the first quarter of 2003 compared to $*** in the first quarter of 2002. The domestic industry's research and development expenses declined from $*** in 2000 to $*** in 2002, primarily due to diminished research and development expenses for SFWA operations, but was $*** in the first quarter of 2003 compared to $*** in the first quarter of 2002. CR and PR at Table VI-5.

[135] CR at VI-11, VI-13 and VI-14, PR at VI-4.

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

First, throughout the period examined, *** consistently reported *** while *** reported ***.[137] The magnitude of *** was ***.[138] ***, however, attributed *** to ***.[139]

Second, Petitioner Ciba's financial performance includes a substantial volume of ***.[140] These DAS exports to *** were converted to wet cake form prior to shipment at an additional cost of production of 10 percent.[141] During the period examined, these *** generated ever-increasing ***.[142]

Finally, the record does not indicate that there is a causal nexus between imports of the subject merchandise and the domestic industry's declines in financial performance in 2001 nor its general recovery in 2002 and the first quarter of 2003. The volume of subject imports and the share of the U.S. market accounted for by subject imports declined between 2000 and 2001, when the domestic industry saw its financial performance worsen,[143] and were higher in 2002 and in the first quarter of 2003 (relative to the first quarter of 2002), when the domestic industry saw its financial performance improve.[144]

For the reasons stated above, in light of the prevailing conditions of competition in the U.S. market, we find that the volume of subject imports was significant only when considered in isolation. Further, we find that the subject imports have not had a significant adverse effect on domestic prices during the period examined. Finally, the record shows no causal nexus between the subject imports and the condition of the domestic industry. In light of these findings, we conclude that the subject imports are not having a significant adverse impact on the domestic industry.

For the foregoing reasons, we determine that the domestic industry producing DAS/SFWA is not materially injured by reason of allegedly subsidized imports from India and allegedly LTFV imports from China, Germany, and India.

V. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE AND SUBSIDIZED IMPORTS

A. Cumulation for Purposes of Threat

Cumulation for threat is treated in section 771(7)(H) of the Act.[145] This provision permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of imports for

---

[137] Compare CR and PR at Tables VI and VI-3 with CR and PR at Table VI-4.

[138] ***. CR and PR at Table VI-3.

[139] CR at VI-3 and VI-10, PR at VI-2. During the period in which the financial performance of *** was depressed, the only non-negligible subject imports of SFWA in the U.S. market were SFWA from Germany imported by Ciba and by Bayer ***. CR and PR at Table III-8; CR at III-9, PR at III-6.

[140] CR and PR at VI-1. Ciba *** during the period examined. CR and PR at Table VI-1.

[141] Tr. at 39.

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

[143] CR and PR at Table IV-3 (subject import volume declined by more than 1.9 million pounds between 2000 and 2001) and CR and PR at Table IV-9 (subject import market share declined by 3.6 percentage points between 2000 and 2001).

[144] CR and PR at Table IV-3 (subject import volume increased by 1.7 million pounds between 2001 and 2002 and was *** pounds higher the first quarter of 2003 than during the first quarter of 2002) and CR and PR at Table C-3 (subject import market share increased by 2.3 percentage points between 2001 and 2002 and was 10.3 percentage points higher the first quarter of 2003 than during the first quarter of 2002).

[145] 19 U.S.C. § 1677(7)(H).

purposes of conducting its threat analysis.[146] The limitations concerning what imports are eligible for cumulation and the exceptions to cumulation are applicable to cumulation for threat as well as to cumulation for present material injury. As with cumulation for material injury, subject imports may be cumulated for threat analysis only if they compete with each other and with the domestic like product. In addition, the Commission also considers whether the imports are increasing at similar rates in the same markets, and whether the imports have similar margins of underselling.[147]

As discussed above, we find that the record indicates a reasonable overlap of competition between the subject imports, and to a significantly lesser degree, between the subject imports and the domestic like product. We also have considered trends in import volumes and margins of underselling among the subject countries. The quantity of subject imports from China and India increased overall between 2000 and 2002. The quantity of subject imports from Germany decreased between 2000 and 2002, but were higher in interim 2003 than in interim 2002, as were those from China. The quantity of subject imports from India were lower in interim 2003 than in interim 2002.[148] Subject imports frequently oversold, rather than undersold, the domestic like product. Subject imports from China were priced higher than comparable sales of the domestic like product in three of seven comparisons, while those from Germany were priced higher in eight of eleven comparisons and those from India were priced higher in five of five comparisons.[149] On balance, we find sufficient similarities in subject import volume trends and underselling to justify exercising our discretion to cumulate the volume and effect of the subject imports for purposes of our threat analysis.[150]

B. Negative Determination for Subject Imports

The domestic industry's overall operating performance during the latter portion of the period examined was mixed relative to its performance during the initial portion of the period. As discussed above, volume-related indicia generally declined over the period examined consistent with trends in exports, apparent U.S. consumption, and Bayer's termination of its *** SFWA production. Price data were mixed. The domestic industry's financial performance was better in both 2002 and the first quarter of 2003 than it was in 2001 and the first quarter of 2002, respectively. On balance, the data concerning the domestic industry's overall performance do not indicate that the domestic industry is vulnerable to material injury by additional volumes of subject imports.

---

[146] See Kern-Liebers v. United States, 19 CIT 87, 103-04 (1995).

[147] See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

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

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

[150] We reiterate our view that the issue of whether the overlap in competition between the domestic like product and subject imports from China and India is "reasonable" is a close one. We also note that similarities in trends between imports from China, Germany, and India are less conclusive when considering differences in product mix. We also have taken into consideration, however, transnational corporate alliances that exist between producers of the subject merchandise. Petitioner Ciba's corporate parent, for instance, maintains productive facilities for DAS/SFWA in each of the three subject countries. CR at VII-1, VII-4, and VII-7, PR at VII-1, VII-2 and VII-3. On balance, we conclude that the record in these investigations justifies the exercise of discretion in cumulating the volume and effect of the subject imports for purposes of our threat analysis.

We conclude that there is not a likelihood of a significant rate of increase in the volume or market penetration of cumulated subject imports. As an initial matter, we note that the volume of subject imports declined both in terms of volume and in terms of market share between 2000 and 2002, before increasing in the first quarter of 2003.[151] In light of the prevailing conditions of competition, in particular the absence of U.S. commercial sales of domestically-produced DAS and Bayer's now-complete transformation from a *** SFWA producer to a U.S. importer of SFWA, we conclude there is not a likelihood that imports of the subject merchandise will increase significantly in the imminent future.

Although DAS capacity increased in the subject countries between 2000 and 2002, capacity utilization remained generally high, decreasing from 93.5 percent in 2000 to 84.5 percent in 2001, then increasing to 86.8 percent in 2002. Capacity in the subject countries was lower in the first quarter of 2003 than the first quarter of 2002, as Bayer scaled back its DAS production; projections for 2003 and 2004 likewise indicate markedly lower levels of capacity. Capacity utilization reached 96.1 percent in the first quarter of 2003, compared to 86.9 percent in the first quarter of 2002. Capacity utilization for 2003 and 2004 is projected to exceed 90 percent.[152] The record also indicates that a large share of DAS production in the subject countries is consumed domestically, either as transfers or as commercial sales, while much of the remainder is sold into other markets. Exports to the United States, in contrast, accounted for only 9.7 percent of total DAS shipments from the subject countries in 2002, down from 9.8 percent in 2001 and 14.4 percent in 2000.[153] We consequently find that the available data on capacity do not indicate a likelihood that DAS manufacturers in the subject countries will substantially increase their exports to the United States.[154]

Similarly, although SFWA capacity increased in the subject countries between 2000 and 2002, capacity utilization remained generally high, decreasing from *** percent in 2000 to *** percent in 2001, but then increasing to *** percent in 2002. Capacity increased *** percent in the first quarter of 2003 over the first quarter of 2002, while projections for 2003 and 2004 indicate moderate increases in capacity. Capacity utilization reached *** percent in the first quarter of 2003, compared to *** percent in the first quarter of 2002, and capacity utilization for 2003 and 2004 is projected to equal or exceed *** percent. The record also indicates that a stable share of SFWA production in the subject countries is consumed domestically, either as transfers or as commercial sales, while the large majority is sold into other non-U.S. markets. Exports to the United States, in contrast, accounted for only *** percent of total SFWA shipments from the subject countries in 2002 and *** percent in the first quarter of 2003. These shares, while low, are higher than during prior years, but largely reflect ***. These shares are projected to decline in 2003 and decline further in 2004.[155] We consequently find that the available data on capacity do not indicate a likelihood that SFWA manufacturers in the subject countries will substantially increase their exports to the United States.

---

[151] The quantity of subject imports declined from 9.075 million pounds in 2000 to 8.888 million pounds 2002, but increased between the interim periods, rising from *** pounds in interim 2002 to *** pounds in interim 2003. CR and PR at Table IV-3. The market share of subject imports showed similar trends, falling from 25.2 percent in 2000 to 24.0 percent in 2002, and then increasing from 20.1 percent in interim 2002 to 30.3 percent in interim 2003. CR and PR at Table IV-9.

[152] For purposes of this projection, we have excluded ***, which provided projections for *** capacity but did not provide production projections. CR and PR at Table VII-1 note 2; CR at VII-4 n.4, PR at VII-2, n.4.

[153] CR and PR at Tables VII-1 (China), VII-3 (Germany), and VII-5 (India).

[154] We reiterate our conclusions regarding the role of imported DAS in the U.S. market, namely that in the absence of any commercial sales of DAS by the sole domestic producer and the near-absence of nonsubject imports, subject imports of DAS are a necessary supply component.

[155] CR and PR at Tables VII-2 (China), VII-4 (Germany), and VII-6 (India).

We have considered the available data on inventories of the subject merchandise and conclude that they do not indicate a likelihood of a significant increase in subject import volume. We note that inventories of DAS in subject countries increased between 2000 and 2002, rising from 2.0 million pounds to 3.8 million pounds, and were 3.4 million pounds in March 2003 compared to 1.5 million pounds in 2002.[156] We do not view these inventories as posing a threat of material injury. First, more than 90 percent of DAS shipments are for markets other than the United States. Second, DAS exports to the United States declined between 2000 and 2002 notwithstanding these inventories. Third, and most importantly, U.S.-produced DAS is not available in the U.S. market. In contrast, inventories of SFWA in subject countries decreased between 2000 and 2002, falling from *** pounds to *** pounds, and were *** pounds in March 2003 compared to *** pounds in March 2002. As a share of total shipments, such inventories also declined, falling from *** percent in 2000 to *** percent in 2002, and were *** percent in interim 2003 compared to *** percent in interim 2002.[157] In light of these declining trends and because more than *** percent of SFWA shipments are for markets other than the United States, we do not view these inventories as posing a threat of material injury. Finally, we note that U.S.-held inventories of subject merchandise increased from 1.4 million pounds in 2000 to 1.8 million pounds in 2002, and were 1.1 million pounds in interim 2003 compared to *** pounds in interim 2002.[158] This increase, however, largely reflects ***.

In evaluating whether there is a likelihood of product shifting, the record indicates that *** of the subject manufacturers produce any products, other than DAS precursors, on the same equipment used to produced the subject merchandise.[159] We have also considered the fact that there is no evidence of dumping in the markets of foreign countries that would suggest a threat of material injury to the domestic industry.[160]

We concluded in section IV.C. that subject imports do not have significant price effects. Nor, in light of their predominant overselling, are subject imports priced at levels that suggest increased demand for further imports. Because we do not believe that there is a likelihood of substantially increased import volumes, we conclude it is likely that subject imports will continue not to have significant price effects in the imminent future.

Several of the Indian subsidies alleged by petitioner Ciba may be export subsidies as described in Article 3 of the Subsidies Agreement. We consider it unlikely that these subsidies will lead to an increase in the volume of subject imports from India, in light of the declining volume of subject imports from India in 2002 and in the first quarter of 2003.[161]

Finally, we observe that *** U.S. producers of the domestic like product – i.e., every producer other than *** – responded that they had not experienced any potential negative effects from imports of the subject merchandise on their growth, investment, ability to raise capital or development and production efforts.[162]

Based on our review of the statutory threat factors, we conclude that a significant increase in the level of subject imports is not imminent and significant negative price effects are not likely. Because

---

[156] CR and PR at Tables VII-1 (China), VII-3 (Germany), and VII-5 (India).

[157] CR and PR at Tables VII-2 (China), VII-4 (Germany), and VII-6 (India).

[158] CR and PR at Table C-3.

[159] CR at VII-1, PR at VII-1 (China); CR at VII-7, PR at VII-2 (Germany); and CR at VII-7 and VII-10, PR at VII-3 (India).

[160] CR at VII-4, PR at VII-1 (China); CR at VII-7, PR at VII-2 (Germany); and CR at VII-10, PR at VII-3 (India).

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

[162] CR at VI-11, VI-13 and VI-14, PR at VI-4.

there is not a likelihood of significantly increased subject import volume and price effects, we conclude that the domestic industry would not be materially injured by reason of subject imports absent issuance of antidumping and countervailing duty orders, particularly in light of our conclusion that the domestic industry is not in a vulnerable condition. We therefore make a negative threat determination with respect to allegedly subsidized imports from India and allegedly LTFV imports from China, Germany, and India.

CONCLUSION

For the foregoing reasons, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of DAS/SFWA from India that are alleged to be subsidized by the Government of India, and by reason of imports of DAS/SFWA from China, Germany, and India that are alleged to be sold in the United States at LTFV.

VIEWS OF VICE CHAIRMAN HILLMAN AND COMMISSIONER MILLER (WHO FIND THAT DAS AND SFWA ARE SEPARATE DOMESTIC LIKE PRODUCTS)

C. Domestic Like Product

Because of the vertical relationship between DAS and SFWA, we have first analyzed the question of the appropriate domestic like product under the Commission's semi-finished product analysis.[163] As explained below, because we find this analysis to be inconclusive, we turn to the Commission's traditional like product criteria. On balance we find that DAS and SFWA are separate like products.

The first factor we examine under the semi-finished analysis is whether the upstream article, DAS, is dedicated to the production of the downstream article, SFWA. The record shows that domestically produced DAS is dedicated to SFWA production. Ciba, the only domestic DAS producer, internally consumes all its DAS in the production of SFWA.[164] While the record evidences an independent use for DAS in the production of certain dyes, the DAS used for dye production is imported and therefore not included in our domestic like product analysis.[165] Accordingly, we determine the upstream article is dedicated to the production of the downstream article.

The second factor we examine is whether there are perceived to be separate markets for the upstream and downstream articles. DAS is marketed as a chemical intermediate in the production of SFWA. The record indicates that there is no market for domestic production of DAS, as Ciba does not sell its DAS on the open market. In contrast, SFWA are sold as a finished product to detergent, paper and textile producers.[166] Thus, DAS and SFWA have separate markets, although we recognize they share an ultimate end use as optical brighteners.

---

[163] Under this 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) the significance and extent of the processes used to transform the upstream into the downstream articles. See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539(A) (Final), USITC Pub. 3213 at 6 n.23 (July 1999).

[164] CR at III-9, PR at III-6.

[165] CR at II-1 and n.2; PR at II-2 and n.2.

[166] CR at I-11, PR at I-8 and I-9.

The third factor we examine is the physical characteristics and functions of the upstream and downstream products. DAS and SFWA have different physical characteristics insofar as they have different chemical structures.[167] On the other hand, both DAS and SFWA share a common physical characteristic in that they both exhibit the property of fluorescence to a greater or lesser degree.[168] The functions of DAS and SFWA differ in that the former is an intermediate input, while the latter is a finished product capable of adhering to a variety of different surfaces, including paper and fabrics.[169]

The fourth factor in the semifinished product analysis is whether there are differences in the cost or value of the upstream and downstream articles. A direct value comparison of DAS and SFWA is difficult given the absence of U.S. merchant market sales of DAS. However, the costs of producing the two products are quite different; DAS accounts for only about 23 to 30 percent of the cost of SFWA.[170] Thus, SFWA production adds 70 percent or more of the value of the finished product. The evidence on the record concerning the value of the two products demonstrates that, depending on concentration, SFWA sells at higher prices and that SFWA production entails substantial costs over and above the cost of acquiring DAS.[171]

The fifth factor in the semifinished product analysis is a consideration of the significance and extent of the processes used to transform the upstream article into the downstream article. The record shows that the process of making SFWA is complex (involving three reaction processes), and that it adds a great deal of value.[172] We recognize that Ciba generally uses a continuous production process to make DAS and SFWA. Although the DAS process is referred to as "continuous," Petitioner acknowledges that it is more appropriate to refer to this process as an "interdependently linked" process which is "segmented into discrete chemical processing steps."[173] The fact that the company *** indicates that the process of making DAS and SFWA is not seamless but designed for interruption.[174] [175]

In sum, the first factor, the degree to which the upstream product is dedicated to the production of the downstream product, suggests finding a single like product. The second factor, the perception of separate markets, suggests finding separate like products, as do the fourth and fifth factors, the relative cost and value of the products and the significance and extent of the downstream production process. The third factor, physical characteristics and uses, is mixed. On balance, we find the semi-finished product analysis to be inconclusive. We have also examined whether DAS and SFWA are separate like products under the traditional like product criteria.

Physical Characteristics and Uses. As described above, the physical characteristics of DAS and SFWA are similar in that both products exhibit fluorescence, but differ in that they have distinct chemical structures. The uses of the two products are different. DAS is used as an intermediate input in the production of SFWA, while SFWA are a finished product used in the detergent, paper and textile

---

[167] CR at I-5 and I-9, PR at I-4 and I-7.

[168] Bayer Postconference Brief, Exhibit 3 (videotape).

[169] CR at II-1, PR at II-1.

[170] CR at II-12, PR at II-7.

[171] CR at II-12, PR at II-7. Inasmuch as there are no U.S. commercial sales (***) of domestic DAS, there are no available price comparisons between domestic DAS and SFWA. However, a comparison between the unit values of U.S. shipments of both domestic and imported product indicate that SFWA unit values are higher on a per-dry pound basis. Compare CR and PR at Table C-1 with CR and PR at Table C-2.

[172] DAS accounts for only about 23 to 30 percent of the cost of SFWA. CR at II-12, PR at II-7.

[173] Ciba Postconference Brief, Attachment 3 at 1-3.

[174] Ciba Postconference Brief, Attachment 3 at 1-3.

[175] We note further that Ciba reported that its DAS and SFWA are produced ***. CR at D-9, PR at D-3.

industries. Thus, the evidence under the first factor of the traditional like product criteria is somewhat mixed but tends to suggest that the two are separate products.

Interchangeability. The second factor suggests two like products because it is undisputed that DAS and SFWA are not interchangeable.[176]

Channels of Distribution. The third factor also suggests two like products, as DAS and SFWA are not sold in the same channels of distribution. DAS is consumed by the whitener industry, whereas SFWA are sold to the paper, textile and detergent industries.[177]

Common Manufacturing Facilities, Employees and Methods. Ciba, the only domestic producer of both DAS and SFWA, produces both products at the same plant, using the same employees.[178] However, the methods and *** used to produce DAS and SFWA are different.[179] The record indicates that the three other domestic producers of SFWA do not use the same facilities or employees to produce both products since they import DAS and produce SFWA from this imported product. The production processes and methods for making DAS and SFWA are distinct and different, as discussed above, also suggesting separate like products. The nature of the chemical reactions required to produce both DAS and SFWA are multi-step processes requiring different, extensive chemical reactions and with specific control measures. Bayer states that SFWA production is technically more complex than DAS production,[180] while Ciba characterizes SFWA as a relatively simple process and that DAS production is more complex and capital intensive.[181] The record indicates that the domestic industry's investment in SFWA production assets was consistently higher than for DAS and the considerable value of both DAS and SFWA production assets demonstrates the significant investment in these two production processes.[182]

Price. Finally, as noted above, the pricing of the products is different. SFWA generally sells at higher prices than DAS (although this depends upon the concentration at which the products are marketed).

Accordingly, consideration of the traditional like product analysis supports finding that DAS and SFWA are separate like products. While the evidence for two of the relevant factors (physical characteristics and uses; and common manufacturing facilities, employees and methods) is somewhat mixed, the other three factors (interchangeability, channels of distribution, and price) strongly support finding separate like products. Therefore, given the inclusive nature of the semi-finished product analysis and the clear result of two like products from the traditional analysis we find two separate like products consisting of DAS and SFWA.

---

[176] CR at I-10, PR at I-8.

[177] CR at II-1, PR at II-1.

[178] CR at I-8, PR at I-6-7.

[179] CR at I-5-7 and D-9, PR at I-4-6 and D-3.

[180] Bayer states that DAS and SFWA are produced under a three reaction process involving inorganic reagents, and organic reagents, respectively, and that SFWA requires tightly controlled conditions (i.e., temperature and pH) to prevent deleterious byproduct formation. Bayer Postconference Brief at 6-7 and Exh. 6.

[181] Ciba Postconference Brief at 9.

[182] The domestic industry's reported value of fixed assets (original cost basis) for DAS operations were $*** in 2000, $*** in 2001, $*** in 2002, and $*** in interim 2003, compared with $***, $***, $*** and $***, respectively, for SFWA fixed assets. CR and PR at Table VI-5.

D. Domestic Industry and Related Parties

In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[183] Based on our definition of the domestic like products, we find that there are two domestic industries, one consisting of the sole U.S. producer of DAS, Ciba, and the other consisting of domestic producers of SFWA.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[184] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[185]

Consistent with our definition of the domestic like products, we must consider whether to exclude Bayer and Ciba from the domestic industry producing SFWA.[186] The basis for excluding Bayer would be that it is related to the exporter of SFWA in Germany, and that it also imported SFWA. The basis for excluding Ciba would be that it is related to an exporter in Germany and that it imported SFWA from Germany.

We have determined to exclude Bayer from the domestic industry producing SFWA. During the period examined, the company transformed itself from a domestic producer to an importer of subject SFWA. Bayer stopped producing SFWA for the detergent market in 2000,[187] and then ceased U.S. production of SFWA altogether in June 2002.[188] Thus, Bayer has a strong interest in maintaining its access to subject imports. Bayer did not cease domestic production of SFWA because of the effects of

---

[183] See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir.1996).

[184] 19 U.S.C. § 1677(4)(B).

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

[186] There are no related party exclusion issues for DAS. Ciba is the only domestic producer of this product. With respect to SFWA, there is no question of whether to exclude 3V because it does not import that product, and it is not related to a producer, exporter or importer of the subject merchandise. Petitioner asserts that Clariant has "SFWA operations in China and India." Ciba Postconference Brief at 20 n.20. The record does not support this assertion. See, Tr. at 104-105. In its Producers' Questionnaire response (at p. 3) Clariant reports ***.

[187] Bayer Postconference Brief at 19, n.50.

[188] Tr. at 65.

subject imports.[189] Accordingly we deem it appropriate to exclude the company from the domestic industry, as it ceased U.S. SFWA production, turning to subject imports.

We have determined not to exclude Ciba from the domestic industry producing SFWA. Ciba is the largest domestic producer of SFWA, accounting for *** percent of domestic production in 2002. Its domestic production of SFWA is much greater than its imports of this product.[190] The fact that it filed the petition in this case also suggests that it does not benefit significantly from access to the subject imports.

III. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.[191] The statute further provides that imports from a single country which comprise less than three percent of total imports of such merchandise, may not be considered negligible if there are several countries subject to investigation that account for less than three percent, and if the sum of such imports from all those countries in the aggregate accounts for more than seven percent of the volume of all such merchandise imported into the United States.[192]

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed seven percent of all such merchandise imported into the United States.[193] By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.[194]

The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.[195]

---

[189] Bayer reported that ***. CR at VI-13, PR at VI-4. See also Bayer Postconference Brief at 19-20 n.51.

[190] Ciba's imports of SFWA and its net SFWA sales were as follows in the period examined: in 2000, net sales were *** pounds and imports were *** pounds; in 2001, net sales were *** pounds, and imports were *** pounds; and in 2002, net sales were *** pounds, and imports were *** pounds. CR and PR at Tables VI-3 and III-8.

[191] 19 U.S.C. § 1677(24)(A)(I)(I).

[192] 19 U.S.C. § 1677(24)(A)(ii). The statute further provides that, in countervailing duty cases involving least developed countries the negligibility limits are 4 percent and 9 percent, rather than 3 percent and 7 percent. 19 U.S.C. § 1677(24)(B). India is such a developing country. See, 19 U.S.C. §1677 (36), 63 Fed. Reg. 29945 (June 2, 1998).

[193] 19 U.S.C. § 1677(24)(A)(iv).

[194] 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

[195] 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) ("SAA").

In these investigations, imports of DAS from none of the subject countries are negligible. DAS imports from China, Germany and India were *** percent, *** percent, and *** percent of total imports, respectively, in the period April 1, 2002 through March 31, 2003.[196]

SFWA imports from China, Germany and India were *** percent, *** percent, and *** percent of total imports, respectively, in the period April 1, 2002 through March 31, 2003.[197] Imports from China and India are negligible for purposes of our analysis of whether there is a reasonable indication of material injury by reason of subject imports, and imports from Germany are not.

We further determine, for purposes of our analysis of whether there is a reasonable indication of material injury by reason of subject imports, that there is not a potential that imports from China and India will imminently exceed the applicable negligibility levels, particularly given the very low level of current exports of SFWA to the U.S. market.[198] While SFWA producers in China and India are operating at relatively *** and *** levels of capacity utilization, respectively, there is little evidence that these producers plan to increase significantly their exports to the United States, or their production capacity, or shift third-country exports to the U.S. market in the near future.[199] [200] Inventories of SFWA held by U.S. importers and by producers in China and India remained modest in the context of the overall U.S. market.[201] Furthermore, SFWA producers in China and India have significant third-country export markets, and there is no suggestion that these producers face barriers in exporting to these markets. Finally, declining demand for SFWA in the United States also makes it unlikely that imports from China and India will imminently exceed the applicable negligibility levels.[202]

IV. CUMULATION

A. In General

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 assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which

---

[196] See, CR and PR at Table IV-1. The petition was filed on May 14, 2003. Because data for the period May 1, 2002 through April 30, 2003 were not available to us, we used data for April 1, 2002 through March 31, 2003.

[197] See, CR and PR at Table IV-1.

[198] Subject imports of SFWA from China were *** pounds in 2000 and 2001, *** pounds in 2002, *** pounds in interim 2002, and *** pounds in interim 2003. Imports of SFWA from India were *** pounds in 2000, *** pounds in 2001, *** pounds in 2002, and *** pounds in interim 2002 and interim 2003. CR and PR at Table IV-2.

[199] CR and PR at Table VII-2 and VII-6. There is one SFWA producer in China and there are two SFWA producers in India that responded to the Commission's questionnaire. Two of these producers, Guangzhou Ciba Specialty Chemicals and Diamond-Dye Chem Ltd. are joint ventures of Ciba's parent. According to Ciba, these firms have ***. See OINV-AA-085 at VII-1 and VII-9. (Both firms reported ***.) The remaining firm, Indian SFWA producer Paramount Minerals and Chemicals Ltd. has *** capacity and its exports to the United States were less than *** percent of its shipments throughout the period examined.

[200] We note that reported data on the Chinese SFWA industry is from Ciba's affiliate in China (Guangzhou Ciba Specialty Chemicals). Given this relationship, we find it unlikely that Guangzhou Ciba would significantly increase exports to the U.S. market in direct competition with Ciba's U.S. SFWA production and imminently exceed the applicable negligibility level. CR and PR at VII-1.

[201] Reported U.S. inventories of subject SFWA from China and India during interim 2003 were *** pounds and *** pounds, respectively. CR and PR at Table VII-8.

[202] CR at II-11, PR at II-6.

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.[203] In assessing whether subject imports compete with each other and with the domestic like product,[204] 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.[205]

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.[206] Only a "reasonable overlap" of competition is required.[207]

Subject imports of DAS and the domestic like product are not fungible, because the domestic product (which is not sold on the merchant market) is produced in a liquid form, whereas the subject imports are in a powder or wet cake form. Domestic producers of SFWA that use the imported DAS contend that they are not able to use the DAS in liquid form.[208] Thus, the first criterion for cumulation is not met. The second criterion is not satisfied because there are no sales or offers to sell subject imports and the domestic like product in the same geographic markets, since domestically-produced DAS is all internally consumed by Ciba. The third criterion is not satisfied because imports and the domestic like product do not share common or similar channels of distribution (as the domestic like product is all internally consumed by Ciba). The fourth criterion is satisfied as the record shows that there were significant volumes of imports of the subject merchandise from each of the subject countries in each year

---

[203] 19 U.S.C. § 1677(7)(G)(i).

[204] The SAA 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." SAA at 848, 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).

[205] 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).

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

[207] 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. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

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

of the period examined.[209] Since most of the criteria for cumulating imports of DAS are not satisfied, we determine not to cumulate imports of DAS from the subject countries and therefore consider whether there is a reasonable indication of material injury from China, India, and Germany, separately.

We are statutorily precluded from cumulating SFWA imports, because imports from China and India are negligible.[210] Thus, we consider whether there is a reasonable indication of material injury or threat thereof by reason of subject imports of SFWA from Germany alone.

V. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE AND SUBSIDIZED IMPORTS

A. In General

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.[211] 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.[212] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[213] 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.[214] 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."[215]

B. Conditions of Competition

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

Demand for DAS is largely, almost exclusively, dependent on U.S. SFWA production. SFWA production is, in turn, influenced by demand for SFWA in the U.S. market and in the export markets that consume U.S.-produced SFWA.[216] U.S. SFWA demand is driven by demand for paper, detergent, and, to

---

[209] CR and PR at Table IV-1.

[210] 19 U.S.C. §1677(7)(G)(ii)(II).

[211] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[212] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[213] 19 U.S.C. § 1677(7)(A).

[214] 19 U.S.C. § 1677(7)(C)(iii).

[215] 19 U.S.C. § 1677(7)(C)(iii).

[216] Exports accounted for *** percent of U.S.-produced SFWA sales in 2000; *** percent in 2001; and *** percent in 2002. See CR and PR at Table C-2. Exports of U.S.-produced SFWA excluding Bayer accounted for *** percent in 2002, *** percent in 2001, and *** percent in 2002. Table C-2-alternate, contained in staff worksheet.

a far lesser extent, textile end use applications.[217] Paper production declined in 2001 but increased in 2002, while textile production declined sharply in 2001 and was unchanged in 2002.[218] Anecdotal evidence suggest that detergent applications have come under pressure from competing enzymatic whiteners.[219]

Apparent U.S. consumption of DAS fell throughout the period examined, declining from *** pounds in 2000, to *** pounds in 2001, and to *** pounds in 2002; and from *** pounds in interim 2002 to *** pounds in interim 2003.[220] Bayer's decision to cease importing DAS accounted for *** pounds of the *** pound decline in DAS consumption from 2000 to 2002, and for *** of the *** pound decline in DAS consumption over the interim periods.[221] Apparent U.S. consumption of SFWA fluctuated in a *** range, rising from *** pounds in 2000 to *** pounds in 2001 and then falling to *** pounds in 2002; and rising *** from *** pounds in interim 2002 to *** pounds in interim 2003.[222]

The sources for the supply of DAS and SFWA are limited; they consist primarily of (i) Ciba, (ii) the two non-integrated SFWA producers, 3V and Clariant,[223] and (iii) subject imports. Nonsubject imports accounted for no more than *** percent of the DAS market and no more than *** percent of the SFWA market in the United States during the period examined.[224]

A number of other factors also affect the supply of DAS and SFWA. Importantly, Ciba, the only domestic producer of DAS, does not make any merchant market sales of DAS. Even if it did, however, its ability to supply DAS to non-integrated SFWA producers would be ***.[225] The supply of SFWA is not similarly ***. Capacity utilization for SFWA was *** percent at its highest in 2000, domestic

---

[217] CR at II-10, PR at II-5.

[218] CR and PR at Table II-3.

[219] CR at II-11, PR at II-6.

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

[221] Compare Bayer importer questionnaire (Bayer's reported consumption of its imports of DAS from Germany to produce SFWA decreased from *** pounds in 2000 to *** pounds in 2002, or by *** pounds, and also decreased from *** pounds in interim 2002 to *** pounds in interim 2003, or by *** pounds) with CR and PR at table C-1 (apparent U.S. consumption of DAS decreased from *** pounds in 2000 to *** pounds in 2002, or by *** pounds, and also decreased from *** pounds in interim 2002 to *** pounds in interim 2003, or by *** pounds).

[222] CR and PR at Table C-2-alternate, contained in staff worksheet. In contrast, U.S. producers' SFWA exports, which impact DAS demand even though they have no impact on SFWA apparent U.S. consumption, fell by ***, from *** pounds to *** pounds, between 2000 and 2002. Id.

[223] During most of the period examined, Bayer was also a non-integrated producer of SFWA in the United States. The company ceased producing SFWA in the United States in ***.

[224] CR and PR at Tables C-1 and C-2. As a share of total DAS imports, nonsubject DAS imports accounted for no more than *** percent and nonsubject SFWA imports accounted for a declining share of total SFWA imports -- dropping from *** percent in 2000 to *** percent in 2002, and *** percent in interim 2003. CR and PR at Tables IV-1and IV-2.

[225] In 2000, Ciba's capacity utilization for DAS approached *** percent. Even after the company's capacity utilization rate began to decline following diminished U.S. producers' SFWA export sales in 2001 and diminished total U.S. producers' SFWA sales in 2002, its available capacity to produce DAS was *** relative to the demand for DAS in the U.S. market (*** pounds in 2002 compared to total imports of *** pounds). Moreover, Ciba's typical production process results in liquid DAS that is captively consumed, while the SFWA production processes of the non-integrated producers depend upon wet-cake or powdered DAS.

capacity increased between 2000 and 2002, while production declined, leaving substantial amounts of available SFWA capacity.[226]

Subject imports of DAS declined during the period examined, while SFWA imports increased in 2002 and between the interim periods, reflecting the closure of Bayer's U.S. production facility and its shift to direct importation of SFWA.[227] U.S. shipments of imports accounted for a relatively stable share of DAS supplies throughout the entire period examined, as well as for SFWA, but then increased for SFWA in the first quarter of 2003 as compared with the first quarter of 2002.[228]

SFWA appears to be generally interchangeable regardless of source. Different suppliers, however, concentrate on different end-use applications. The majority of *** sales are for detergent applications, while *** concentrate on sales for paper application. Textile sales are modest (and Bayer has indicated that it actually markets Ciba's SFWA for this end-use application.[229]

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing DAS is materially injured by reason of the subject imports from India that are allegedly subsidized or by subject imports from China, Germany and India that are allegedly sold at LTFV. We note, as stated above in the conditions of competition, there is no competition between domestic and subject imports of DAS. Accordingly, we do not find present material injury by reason of the subject imports. Further, we determine that there is no reasonable indication that the domestic industry producing SFWA is materially injured by reason of the subject imports from Germany that are allegedly sold at LTFV. (As noted above, we have determined that imports of SFWA from China and India are negligible.)

C. Determination Concerning DAS Imports from China

1. Volumes of Subject Imports

The quantity of the subject imports of DAS from China increased from *** pounds in 2000 to *** pounds in 2002, and also increased over the interim periods, rising from *** pounds in interim 2002 to *** pounds in interim 2003.[230] The value of these imports increased from $*** in 2000 to $*** in 2002, and increased between the interim periods, rising from $*** in interim 2002 to $*** in interim 2003.[231] The market share of subject imports from China on the basis of quantity followed similar trends, rising from *** percent in 2000 to *** percent in 2002, and from *** percent in interim 2002 to *** percent in interim 2003.[232] As a share of domestic production, subject imports from China were *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in interim 2002 and *** percent in interim 2003.[233] Although the volume and market share of subject imports from China increased during the period examined, this increase consisted of DAS that does not compete directly with domestically produced DAS, which is internally consumed in SFWA production.

---

[226] Table C-2-alternate, contained in staff worksheet.

[227] CR and PR at Tables IV-1 and IV-2.

[228] CR and PR at Table C-1 and Table C-2-alternate, contained in staff worksheet.

[229] Bayer's Postconference Brief at 19 n.49; Tr. at 101-102.

[230] CR and PR at Table IV-1.

[231] Id.

[232] CR and PR at Table IV-7.

[233] Compare CR and PR at Table III-2 with CR and PR at Table IV-1.

In view of the fact that there are no domestic commercial sales of DAS, we do not find the volume of imports from China, either in absolute terms or relative to domestic consumption or production, to be significant.

2. Price Effects of the Subject Imports

Because there were no domestic merchant market sales of DAS by the domestic industry, prices of the imported DAS product appear to have little direct effect on the prices of the domestic like product, and, more importantly, no impact on the domestic industry. In other words, the record indicates that the subject imports are not sold in direct head-to-head price competition with the domestic like product. As noted above, the domestically produced DAS is internally consumed in SFWA production, while subject DAS imports are sold to other SFWA producers. Thus, we find that there has not been significant price underselling of the domestic like product, and that the effect of imports have not otherwise depressed prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.

3. Impact of the Subject Imports

Because Ciba, the sole domestic producer of DAS, does not participate in the merchant market for that product the subject imports do not compete with the domestic product and there is no direct head-to-head price competition. Therefore, we conclude that subject imports of DAS from China do not have a significant impact on the domestic industry producing DAS. Accordingly, we determine that the domestic industry producing DAS is not materially injured by reason of allegedly LTFV imports from China.

D. Determination Concerning DAS Imports from Germany

1. Volume of Subject Imports

The quantity of the subject imports of DAS from Germany declined *** from *** pounds in 2000 to *** pounds in 2002. Over the interim periods, imports of DAS from Germany ***, falling from *** pounds in interim 2002 to *** in interim 2003.[234] The value of these imports declined from $*** in 2000 to $*** in 2002, and *** between the interim periods, falling from $*** in interim 2002 to *** in interim 2003.[235] The market share of subject imports from Germany on the basis of quantity followed similar trends, declining from *** percent in 2000 to *** percent in 2002, and from *** percent in interim 2002 to *** percent in interim 2003.[236] As a ratio to domestic production, subject imports from Germany were *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in interim 2002 and *** percent in interim 2003.[237]

In view of the fact that there are no domestic commercial sales of DAS (i.e., the subject imports do not compete directly with DAS produced by the domestic industry, which is internally consumed) and cessation of subject imports from Germany during the period examined, we do not find the volume of

---

[234] CR and PR at Table IV-1.

[235] Id.

[236] CR and PR at Table IV-7.

[237] Compare CR and PR at Table III-2 with CR and PR at Table IV-1.

imports from Germany, either in absolute terms or relative to domestic consumption or production, to be significant.

2. Price Effects of the Subject Imports

The record indicates that the subject imports are not sold in direct head-to-head price competition with the domestic like product. The domestically produced DAS is internally consumed in SFWA production, while subject DAS imports are sold to other SFWA producers. Because there were no domestic merchant market sales of DAS by the domestic industry, we find that there has not been significant price underselling by the imported merchandise as compared with the price of the domestic like product, and that the effect of imports have not otherwise depressed prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.

3. Impact of the Subject Imports

Because Ciba, the sole domestic producer of DAS, does not participate in the merchant market for that product, the subject imports do compete with the domestic product and there is no direct head-to-head price competition. Therefore, we conclude that subject imports of DAS from Germany do not have a significant impact on the domestic industry producing DAS. Accordingly, we determine that the domestic industry producing DAS is not materially injured by reason of allegedly LTFV imports from Germany.

E. Determination Concerning DAS Imports from India

1. Volume of Subject Imports

The quantity of the subject imports of DAS from India increased from *** pounds in 2000 to *** pounds in 2002, but then declined over the interim periods, falling from *** pounds in interim 2002 to *** pounds in interim 2003.[238] The value of these imports declined from $*** in 2000 to $*** in 2002, and also declined between the interim periods, from $*** in interim 2002 to $*** in interim 2003.[239] The market share of subject imports from India on the basis of quantity followed similar trends, rising from *** percent in 2000 to *** percent in 2002, and falling from *** percent in interim 2002 to *** percent in interim 2003.[240] As a ratio to domestic production, subject imports from India were *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in interim 2002 and *** percent in interim 2003.[241] Although the volume and market share of the subject imports increased between 2000 and 2002, this increase consisted of DAS that does not compete directly with the domestic like product, which is internally consumed in the production of SFWA.

In view of the fact that there are no domestic commercial sales of DAS, we do not find the volume of imports from India, either in absolute terms or relative to domestic consumption or production, to be significant.

---

[238] CR and PR at Table IV-1.

[239] Id.

[240] CR and PR at Table IV-7.

[241] Compare CR and PR at Table III-2 with CR and PR at Table IV-1.

2. Price Effects of the Subject Imports

The record indicates that the subject imports are not sold in direct head-to-head price competition with the domestic like product. The domestically produced DAS is internally consumed in SFWA production, while subject DAS imports are sold to other SFWA producers. Because there were no domestic merchant market sales of DAS by the domestic industry, we find that there has not been significant price underselling by the imported merchandise as compared with the price of the domestic like product, and that the effect of imports have not otherwise depressed prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.

3. Impact of the Subject Imports

Because Ciba, the sole domestic producer of DAS, does not participate in the merchant market for that product, the subject imports do not compete with the domestic product and there is no direct head-to-head price competition. Therefore, we conclude that subject imports of DAS from India do not have a significant impact on the domestic industry producing DAS. Accordingly, we determine that the domestic industry producing DAS is not materially injured by reason of allegedly subsidized imports from India and allegedly LTFV imports from India.

F. Determination Concerning SFWA Imports from Germany

1. Volume of Subject Imports

The quantity of the subject imports of SFWA from Germany increased from *** pounds in 2000 to *** pounds in 2002, and also increased over the interim periods, rising from *** pounds in interim 2002 to *** pounds in interim 2003.[242] The value of these imports increased from $*** in 2000 to $*** in 2002, and increased between the interim periods, rising from $*** in interim 2002 to $*** in interim 2003.[243] The market share of subject imports on the basis of quantity followed similar trends, rising from *** percent in 2000 to *** percent in 2002, and rising from *** percent in interim 2002 to *** percent in interim 2003.[244] As a ratio to domestic production, subject imports from Germany were *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in interim 2002 and *** percent in interim 2003.[245] As a ratio to domestic production excluding Bayer, subject imports from Germany were *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in interim 2002, and *** percent in interim 2003.[246]

The volume of imports of SFWA from Germany and the increase in those imports are significant when viewed alone. However, the impact of this volume is lessened somewhat in light of Bayer's transformation from a domestic producer of SFWA (and importer of DAS feedstock) to an importer of

---

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

[243] Id.

[244] CR and PR at Table IV-8.

[245] Compare CR and PR at Table III-2 with CR and PR at Table IV-2.

[246] Compare CR and PR at Table IV-2 with Table C-2-alternate, contained in staff worksheet.

SFWA from Germany and the reasons therefore discussed below.[247] The overall data indicates that the volume of SFWA imported from Germany is *** to that produced by Bayer before it shut down its U.S. SFWA production facilities. Therefore, the increase in subject imports from Germany did not come at the expense of the domestic industry. While the volume itself is significant, we view it in the context of its lack of impact on the domestic industry.

2. Price Effects of the Subject Imports

The limited information on the record in these investigations indicates that domestically produced SFWA and subject imports of SFWA are largely substitutable, and that price is a significant factor in purchasing decisions.[248]

The Commission collected pricing data for three SFWA products. Comparisons between subject imports and domestically-produced product were only possible for two products (Products 2 and 3), as there was no importer pricing data for the other product (Product 1).

For Product 2, prices of the domestic product *** over the period examined. Imports from Germany oversold the domestic product in all eight quarterly pricing comparisons, in each case by substantial margins.[249]

For Product 3, prices of the domestic product fell by 10.5 percent between the first quarter of 2000 and the first quarter of 2003. Imports from Germany undersold the domestic product in all three quarterly pricing comparisons (which were the last three quarters of the period examined), with margins of underselling ranging from *** percent to *** percent.[250] We recognize that the volume of German imports was ***, especially in the last quarter of 2002 and the first quarter of 2003. At first glance, such *** import volumes with *** margins of underselling would appear to be significant. However, in the context of these investigations, we find that they are not. The imports of Product 3 were imports by Bayer.[251] As noted above, Bayer ceased domestic production of SFWA at the end of 2002 and turned to imports to satisfy its existing contractual commitments.[252] The volume of subject imports from Germany largely represents Bayer's shift in production from the United States to Germany.

The decline in the prices of the domestic product for Product 3 is consistent with the decline in the domestic industry's costs over the period examined. While domestic prices fell by 10.5 percent between the first quarter of 2000 and the first quarter of 2003, the domestic industry's COGS declined from $*** per pound to $*** per pound, or by *** percent between 2000 and the first quarter of 2003.[253]

Furthermore, there is no evidence that price competition from subject imports caused a cost-price squeeze for domestic producers of SFWA. The domestic industry's ratio of its cost of good sold to net

---

[247] We note that the increase in subject imports, both in 2002 and between the interim periods is *** than the decreases in production (including Bayer) in the same periods. Compare CR and PR at Table III-2 with CR and PR at Table IV-2. We also note that production excluding Bayer increased between the interim periods. Table C-2-alternate, contained in staff worksheet.

[248] CR at II-13-15, PR at II-9.

[249] CR and PR at Table V-2. See also alternate Table V-2, contained in staff worksheet.

[250] CR and PR at Table V-3. For domestic producers without Bayer, prices of Product 3 fell by *** percent between the first quarter of 2000 and the first quarter of 2003. See, Alternative Table V-3, contained in Staff Worksheet.

[251] See Tr. at 123-124.

[252] Bayer Postconference Brief at 19 and n.51.

[253] CR and PR at Tables VI-2 and V-3; Tables alternate V-3 and C-2-alternate, contained in staff worksheet.

sales actually declined towards the end of the period examined, when imports from Germany were present in the market in substantial quantities.[254]

Finally, we note also that *** of Petitioner's allegations of lost sales and most allegations of lost revenues involving Germany were denied by the purchasers involved.[255]

Based on this evidence, we find that subject imports from Germany have not had significant effects on prices for the domestic like product.

3. Impact of the Subject Imports

We find that subject imports of SFWA from Germany have not had a significant adverse impact on the condition of the domestic industry. As discussed below, overall the domestic industry experienced generally healthy financial performance throughout the period examined. Although the domestic industry exhibited declines in production and employment related indicia, operating margins remained *** healthy. Changes in the domestic industry market share were fairly consistent with market conditions. The domestic industry's U.S. shipments declined *** percent between 2000 and 2002, compared with a *** percent decline in apparent U.S. consumption. Therefore, consistent with our findings that subject imports are not having significant adverse volume effects and adverse effects on domestic prices, we do not attribute declines in production and employment to subject imports. Rather, the record demonstrates that such declines are due to conditions of competition in the U.S. market and other factors unrelated to subject imports, as described below.

Apparent U.S. consumption of SFWA declined *** percent from 2000 to 2002, then increased *** by *** percent between the interim periods.[256] Most output-related indicators of the domestic industry also showed declines from 2000 to 2002, but increased between the interim periods. Production quantity, capacity utilization, and quantity of U.S. shipments all followed this pattern of generally declining between 2000 and 2002, but increasing in interim 2003 as compared with interim 2002.[257] [258] [259] In contrast, U.S. producers' capacity, increased *** percent from 2000 to 2002, and was *** during the interim periods, contributing to ***. U.S. producers' inventories increased both absolutely and relatively between 2000 and 2002, before declining in interim 2003 compared with interim 2002.[260] The domestic industry's capital expenditures and research and development expenses decreased between 2000 and

---

[254] The ratio of COGS to net sales declined from *** percent in 2001 to *** percent in 2002, and from *** percent in interim 2002 to *** percent in interim 2003. CR and PR at Table VI-2. Without Bayer, the ratio of COGS to net sales declined from *** percent in 2001 to *** percent in 2002, and was *** percent in interim 2002 and *** percent in interim 2003. Table C-2-alternate, contained in staff worksheet.

[255] CR and PR at Table V-4 (lost sales) and Table V-5 (lost revenues).

[256] Table C-2-alternate, contained in staff worksheet.

[257] U.S. production declined from *** pounds in 2000 to *** pounds in 2002, then increased from *** pounds in interim 2002 to *** pounds in interim 2003. Table C-2-alternate, contained in staff worksheet.

[258] The quantity of U.S. shipments declined from *** pounds in 2000 to *** pounds in 2002, then was *** at approximately *** pounds in interim 2002 and interim 2003. Table C-2 alternate, contained in staff worksheet.

[259] U.S. capacity utilization declined from *** percent during 2000 to *** percent during 2002, then was *** at *** percent and *** percent during interim 2002 and interim 2003, respectively. Table C-2-alternate, contained in staff worksheet.

[260] End of period inventories reported by producers increased from *** pounds in 2000 to *** pounds in 2002, then declined from *** pounds in interim 2002 to *** pounds in interim 2003. The ratio of inventories to total shipments was *** percent in 2000, *** percent in 2002, and *** percent and *** percent, respectively in interim 2002 and interim 2003. Table C-2-alternate, contained in staff worksheet.

2002, but were higher in the first quarter of 2003 than in the first quarter of 2002.[261] All of the U.S. producers of the domestic like product except *** responded that they had not experienced any actual negative effects from imports of the subject merchandise on their growth, investment, ability to raise capital or development and production efforts.[262]

As domestic producers experienced declining U.S. shipments and increasing inventories, the number of production and related workers, hours worked, and wages paid, declined between 2000 and 2002.[263] However, unrelated to subject imports and more significant, U.S. producers' export shipments declined in each of the full years of the period examined, before a modest improvement between the interim periods.[264] [265] The decline in U.S. producers' export shipments accounted for fully *** percent of the decline and *** percent of the increase in the quantity of net sales between 2000 and 2002 and between interim 2002 and interim 2003, respectively. Net sales declined *** percent, from *** pounds in 2000 to *** pounds in 2002, then increased *** percent in interim 2003 compared with interim 2002.[266] Given the high fixed cost of SFWA production,[267] declining net sales resulted in declining unit operating income and declining profitability. Unit operating income (per pound) for SFWA producers declined *** percent, from $*** to $*** between 2000 and 2002 and was *** lower in interim 2003 than in interim 2002.[268] As a percentage of sales, the domestic industry's operating income declined from *** percent in 2000 to *** percent in 2001, then increased to *** percent in 2002. The *** decline in profitability occurred between 2000 and 2001, during a period when market share of subject imports from Germany remained fairly *** and profitability increased significantly between 2001 and 2002, when subject import volumes from Germany more than ***.[269] Between interim 2002 and interim 2003,

---

[261] The domestic industry's capital expenditures declined from $*** in 2000 to $*** in 2002, but was $*** in the first quarter of 2003 compared to $*** in the first quarter of 2002. Table C-2-alternate, contained in staff worksheet.

[262] CR at VI-11, VI-13 and VI-14, PR at VI-4.

[263] The number of production related workers declined from *** in 2000 to *** in 2002, and was *** in interim 2002 and *** in interim 2003. Hours worked declined from *** in 2000 to *** in 2002, and were *** at approximately *** in interim 2003. Wages paid declined from $*** in 2000 to $*** in 2002, and declined to $*** in interim 2003 compared with $*** in interim 2002. Declines in workers and hours worked were partially offset by gains in productivity, which increased by *** pounds per hour between 2000 and 2002. Table C-2-alternate, contained in staff worksheet.

[264] U.S. exports of SFWA declined *** percent, from *** pounds in 2000 to *** pounds in 2002. Exports increased *** percent from *** pounds in interim 2002 to *** pounds in interim 2003. On an annualized basis, interim 2003 export shipments at *** pounds would still remain below the export level in 2000. Table C-2-alternate, contained in staff worksheet.

[265] *** reported U.S. exports of SFWA during the period examined to diverse foreign markets, including ***. Producer questionnaire responses of Ciba, Clariant, and 3V at 7.

[266] Table C-2-alternate, contained in staff worksheet.

[267] Tr. at 13, 51, and 52. Petitioner's Postconference Brief at 28.

[268] Unit operating income was $*** in 2000, $*** in 2001, $*** in 2002, $*** in interim 2002, and $*** in interim 2003. Table C-2-alternate, contained in staff worksheet.

[269] CR and PR at Table C-2-alternate, contained in staff worksheet; and CR and PR at Table IV-2.

the operating income margin was *** at *** percent as the volume of export shipments and net sales increased *** percent and *** percent, respectively.[270] [271]

For the reasons discussed above, we do not find that the subject import volume had significant adverse effects on the domestic industry during the period examined. The domestic industry's *** declines in industry operating income and other performance indicia between 2000 and 2002, was due to declining export volumes and declining demand in SFWA end use markets, both of which are not related to subject imports.

Accordingly, for the reasons discussed above, we determine that there is no reasonable indication that the domestic SFWA industry is materially injured by reason of subject imports from Germany.

V. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE AND SUBSIDIZED IMPORTS

A. In General

Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of DAS from India that are alleged to be subsidized by the Government of India, imports of DAS from China, Germany and India that are alleged to be sold in the United States at LTFV, and imports of SFWA from Germany that are alleged to be sold in the United States at LTFV.

B. Cumulation

1. DAS

Cumulation for threat is treated in section 771(7)(H) of the Act.[272] This provision permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of imports for purposes of conducting its threat analysis.[273] The limitations concerning what imports are eligible for cumulation and the exceptions to cumulation are applicable to cumulation for threat as well as to cumulation for present material injury. As with cumulation for material injury, subject imports may be cumulated for threat analysis only if they compete with each other and with the domestic like product. In addition, the Commission also considers whether the imports are increasing at similar rates in the same markets, and whether the imports have similar margins of underselling.[274]

---

[270] Table C-2-alternate, contained in staff worksheet.

[271] As previously noted, the *** percentage point increase in subject import market share between the interim periods was *** attributable to ***. The increase in U.S. shipments of subject imports between the interim periods was *** pounds, which *** approximates the reduction of *** pounds in U.S. shipments by Bayer. Table C-2-alternate, contained in staff worksheet.

[272] 19 U.S.C. § 1677(7)(H).

[273] See Kern-Liebers v. United States, 19 CIT 87, 103-04 (1995).

[274] See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

For the reasons discussed in Section IV above relating to our cumulation analysis, there is not a reasonable overlap of competition between subject imports and domestically-produced DAS. Consequently, for purposes of our threat analysis, we have not cumulated the subject imports.

2. SFWA

As explained in Section III above relating to our analysis of negligible imports, we have determined that there is not a potential that imports from China and India will imminently exceed the applicable negligibility levels, and therefore imports from China and India cannot be cumulated with imports from Germany for purposes of our threat analysis.

C. Vulnerability of the Domestic Industries

The evidence on the record does not support a valid finding of vulnerability of the domestic industry producing DAS to a threat of material injury by reason of the subject imports from China, Germany or India. The only data in the record concerning the financial performance of the domestic industry producing DAS is based solely on Ciba's ***.[275] (As noted above, Ciba does not sell domestic DAS on the merchant market in the United States.) Although these data suggest that the industry was performing ***, because they are based on ***, and are limited to Ciba's ***, we are unable to conclude that they accurately portray a domestic industry that is vulnerable.[276]

We find that the domestic industry producing SFWA is not vulnerable to a threat of material injury by reason of the subject imports from Germany. We reach this conclusion based on the industry's *** and improving financial performance from 2001 to 2002, and between the interim periods.[277]

D. Determination Concerning DAS Imports from China

We find that there is no indication that unused production capacity or any imminent increases in production capacity in China will lead to substantially increased imports in the imminent future. Producers in China operated at *** capacity utilization rates during the period examined, and expect to remain at *** levels in the future.[278] Throughout the period examined, Chinese producers exported *** volumes of DAS to other export markets than to the United States,[279] and there is no evidence in the record indicating that these exports will be diverted to the U.S. market given the declining U.S. apparent consumption of DAS.

We find that the rate of increase in the volume and market share of the subject imports does not indicate a likelihood of substantially increased imports. China's increase in market share at the end of the period examined occurred as DAS imports from China essentially replaced DAS imports from Germany in the market rather than significantly displacing the domestic like product.[280] Moreover, the significance of any increased volumes of imports from China is reduced in light of the absence of any commercial sales of DAS by the domestic industry.

---

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

[276] Ciba reported that, ***. Ciba Producer Questionnaire Response at 16.

[277] See, Table C-2 alternative, contained in staff worksheet.

[278] CR and PR at Table VII-1.

[279] Id.

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

We find that imports of DAS from China are not entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, because domestically-produced DAS is not sold in the merchant market. While it is possible that the prices at which DAS from China is entering the United States may increase demand for such imports, we would not view this as significant, because of the absence of merchant market sales by the domestic industry.

Inventories of DAS held by U.S. importers and by producers in China remained modest in the context of the overall U.S. market.[281]

There is no evidence of a potential for product shifting at production facilities in China.

We also find that subject imports are not likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. The domestic industry had significant capital expenditures during the period examined.[282] Research and development outlays declined somewhat over the period examined, but we do not view this as significant.[283]

Finally, there is no evidence of any other demonstrable adverse trends that indicate a probability that the subject imports will materially injure the domestic industry. Accordingly, we find no reasonable indication that the domestic industry producing DAS is threatened with material injury by reason of subject imports from China.

E. Determination Concerning DAS Imports from India

We find that there is no indication that unused production capacity or any imminent increases in production capacity in India will lead to substantially increased imports in the imminent future. Although the capacity utilization rate of producers in India declined *** between 2001 and 2002, the interim data show that their capacity utilization rate had returned to levels higher than at any other point in the period examined by interim 2003.[284] Throughout the period examined, Indian producers exported *** volumes of DAS to other export markets than to the United States,[285] and there is no evidence in the record indicating that these export markets will not be available to Indian producers in the future.

We find that the rate of increase in the volume and market share of the subject imports of DAS does not indicate a likelihood of substantially increased imports. Although imports from India increased between 2000 and 2001, they declined in 2002, and also declined between the interim periods. While the market share of Indian DAS increased from 2000 to 2002, it decreased between the interim periods.

We find that imports of DAS from India are not entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, because domestically-produced DAS is not sold in the merchant market. While it is possible that the prices at which DAS from India is entering the United States may increase demand for such imports, we would not view this as significant, because of the absence of merchant market sales by the domestic industry.

Inventories of DAS held by U.S. importers and by producers in India remained modest in the context of the overall U.S. market.[286]

There is no evidence of a potential for product shifting at production facilities in India.

---

[281] CR and PR at Table VII-1 and Table C-1.

[282] CR and PR at Table VI-5.

[283] Id.

[284] CR and PR at Table VII-5.

[285] Id.

[286] CR and PR at Table VII-3 and Table C-1.

We also find that subject imports are not likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. The domestic industry had significant capital expenditures during the period examined.[287] Research and development outlays declined somewhat over the period examined, but we do not view this as significant.[288]

Additionally, we consider it unlikely that the alleged Indian subsidies, which according to Petitioner may be export subsidies, will lead to an increase in the volume of subject imports from India. As indicated in the record, the volume of subject imports from India declined in 2002, and in interim 2003 when compared with interim 2002.[289]

Finally, there is no evidence of any other demonstrable adverse trends that indicate a probability that the subject imports will materially injure the domestic industry. Accordingly, we find no reasonable indication that the domestic industry producing DAS is threatened with material injury by reason of subject imports from India.

F. Determination Concerning DAS Imports from Germany

Because DAS is no longer produced in Germany except by the German affiliate of Ciba,[290] we determine that there is no reasonable indication that the U.S. industry producing DAS (Ciba) is threatened with material injury by reason of imports of DAS from Germany, since it is unlikely that Ciba's affiliate would target the U.S. market.[291] Furthermore, the absence of any commercial sales of DAS by the domestic industry make it even less likely that imports of DAS from Germany would threaten the domestic industry with material injury.

G. Determination Concerning SFWA Imports from Germany

We find that there is no indication that unused production capacity or any imminent increases in production capacity in Germany will lead to substantially increased imports in the imminent future. The German producers of SFWA had generally *** capacity utilization rates for most of the period examined, particularly in interim 2003.[292] Throughout the period examined, German SFWA producers' exports to other markets *** those to the United States,[293] and there is no evidence in the record suggesting that these export markets will not be available to German producers in the future.

We find that the rate of increase in the volume and market share of the subject imports of SFWA does not indicate a likelihood of substantially increased imports. Although imports from Germany increased between 2000 and 2002, and between the interim periods, these increases largely reflected

---

[287] CR and PR at Table VI-5.

[288] Id.

[289] CR and PR at Table IV-1.

[290] Tr. at 64-65.

[291] We note that Ciba's affiliate had *** exports of DAS to the United States during the period examined and we see no reason to expect a deviation from this pattern. CR at VII-4 n.6, PR at VII-2 n.6. We also note that all of the German DAS exported by Ciba's affiliate was ***. CR at VII-4 n.7, PR at VII-2 n.7.

[292] CR and PR at Table VII-4.

[293] Id.

Bayer's replacement of its domestic production in the United States with imports, and there is no reason to believe that imports from Germany will increase substantially in the near future.[294]

Although we found underselling by German imports of one product in the last three quarters of the period examined, these imports appear to have been to satisfy contracts that Bayer Chemical Corp. had before it ceased domestic production, and we do not view these imports as evidence that imports of SFWA from Germany are likely to depress or suppress domestic prices in the future, or that the prices of German imports are likely to increase demand for further imports.

Inventories of SFWA held by U.S. importers and by producers in Germany remained modest in the context of the overall U.S. market.[295]

There is no evidence of a potential for product shifting at production facilities in Germany.

We also find that subject imports are not likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. Both capital expenditures and research and development outlays declined between 2000 and 2002, but we do not view this as significant given the generally declining demand for SFWA over the period examined.[296]

Finally, there is no evidence of any other demonstrable adverse trends that indicate a probability that the subject imports will materially injure the domestic industry. Accordingly, we find no reasonable indication that the domestic industry producing SFWA is threatened with material injury by reason of subject imports from Germany.

CONCLUSION

For the foregoing reasons, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of DAS from India that are alleged to be subsidized by the Government of India, and by reason of imports of DAS from China, Germany and India that are alleged to be sold in the United States at LTFV; and we also determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of SFWA from Germany that are alleged to be sold in the United States at LTFV.

---

[294] Bayer has explained that it needed to import SFWA after it stopped making the product in the United States at the end of 2002, in order to fulfill existing contracts. Bayer Postconference Brief at 19. Bayer's questionnaire response indicates that ***. Bayer Postconference Brief at 31.

[295] CR and PR at Tables VII-4 and C-2.

[296] CR and PR at Table C-2 alternate, contained in staff worksheet (capital expenditures); compare CR and PR at Table VI-5 with Bayer Producer Questionnaire Response (R&D).

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by Ciba Specialty Chemicals Corp., Tarrytown, NY, on May 14, 2003, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports from India and less-than-fair-value (LTFV) imports from China, Germany, and India of 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA).[1] Information relating to the background of the investigations is provided below.[2]

Date	*Action*
May 14, 2003	Petition filed with Commerce and the Commission; institution of Commission investigations (68 FR 28252, May 23, 2003)
June 4, 2003	Commission's conference[3]
June 10, 2003	Commerce's notices of initiation (68 FR 34579 (antidumping) and 68 FR 34582 (countervailing duty))
June 30, 2003	Commission's vote
June 30, 2003	Commission determinations sent to Commerce
July 8, 2003	Commission views sent to Commerce

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C. Except as noted, U.S. industry data are based on questionnaire responses of one firm that accounted for 100 percent of U.S. production of DAS and four firms that accounted for 100 percent of U.S. production of SFWA during January 2000-March 2003. U.S. imports are based on questionnaire responses of 17 firms that accounted for the majority of imports of DAS and SFWA during the period examined.

---

[1] For purposes of these investigations, DAS is a chemical compound used mostly to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper, and detergent. These investigations covers all DAS and SFWA regardless of end use. DAS is provided for in subheading 2921.59.20 of the Harmonized Tariff Schedules (HTS) with a normal trade relations tariff rate of 6.9 percent *ad valorem*, applicable to imports from China, Germany, and India. SFWA is provided for in subheading 3204.20.80 (a residual or "basket" category) of the HTS with a normal trade relations tariff rate of 6.5 percent *ad valorem*, applicable to imports from China, Germany, and India.

[2] *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.

RELATED INVESTIGATIONS

On March 31, 2003, Ciba filed a petition with the Commission and Commerce alleging that the domestic industry was being injured by reason of subsidized imports of DAS and SFWA from India and LTFV imports from China, Germany, and India. The Commission instituted its investigations[4] into this matter but the petition was withdrawn shortly after filing.[5]

THE NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

The petition alleged subsidy margins of 43.71 percent for India. The period of review for Commerce's subsidy investigation is January 1, 2002, through December 31, 2002. Commerce initiated its investigation into the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in India: (1) The Duty Entitlement Passbook Scheme (DEPB)/Post-Export Credits; (2) Pre-Shipment and Post-Shipment Export Financing; (3) Export Promotion Capital Goods Scheme (EPCGS); (4) Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC); (5) Exemption of Export Credit from Interest Taxes; (6) Export Processing Zones/Export-Oriented Units Programs; (7) Market Development Assistance (MDA); and (8) Special Imprest Licenses.[6]

Table I-1 presents information from Commerce on the estimated dumping margins for the subject countries. The periods of investigation for Commerce's dumping investigations are April 1, 2002 through March 31, 2003 for Germany and India and October 1, 2002 through March 31, 2003 for China.

Table I-1
DAS and SFWA: Commerce's estimated dumping margins at initiation, by sources

Country	Type of comparison	Estimated dumping margin (*percent ad valorem*)
China[1]	Export price to constructed value	156.69
Germany	U.S. prices to constructed value	194.9
India	Export price to home market price	35.7[2]

[1] Petitioners allege, and Commerce concurs, that China should be treated as a non-market economy (NME) for purposes of this investigation, and that India is an appropriate surrogate country for the purpose of initiating this investigation.

[2] Commerce stated that the estimated dumping margin for India, based on a comparison between export price and constructed value, is 139.61 percent. In its petition, Ciba stated that it had "conservatively used the lower of the two in the dumping margin calculations."

Source: Commerce's notice of initiation published in the *Federal Register* (68 FR 34579, June 10, 2003).

[4] Investigations Nos. 701-TA-434 and 731-TA-1030-1032 (Preliminary) were instituted effective March 31, 2003 (68 FR 17084, April 8, 2003).

[5] *See*, 68 FR 19577, April 21, 2003.

[6] *See*, 68 FR 34582, 34583, June 10, 2003.

THE SUBJECT PRODUCT

Scope

The imported product subject to these investigations is defined by Commerce as–

4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper, and detergent. These investigations cover all DAS and SFWA regardless of end-use.

Physical Characteristics and Uses

Fluorescent whitening agents (FWAs),[7] are synthetic organic chemicals[8] which, when added to a substrate such as a detergent, paper, textile, or leather, increase the visible intensity of the whiteness to the eye, often compensating for a naturally occurring yellow cast. The yellow cast is produced by the absorption of short-wavelength light (violet-to-blue). With optical brighteners this lost light is essentially replaced; thus, a complete white is obtained without loss of light. Optical brighteners produce additional light by means of fluorescence. Commercially successful FWAs have at least two requirements: they must not be visible when placed on the substrate, and they must not absorb light in the visible range of the spectrum.[9]

DAS, a molecule with amino and sulfonate functional groups, is used as a chemical intermediate from which the subject SFWAs are synthesized. It is a stilbene–i.e., an aromatic compound with two benzene rings attached by an olefinic linkage (i.e., an unsaturated carbon-carbon bond). There is no ASTM or SAE standard for DAS chemistry.[10] The two amino groups on DAS react with cyanuric chloride that then reacts with different amines to produce SFWA, which has improved solubility, pH stability, and fiber affinity compared with DAS, such that it may be applied to the end use substrate. According to petitioner, SFWA allows DAS to be applied to substrates; petitioner states that it is the olefinic structure (a three-dimensional geometric structure) of DAS itself that imparts fluorescence.[11]

---

[7] FWAs, also referred to as fluorescent brighteners or optical brighteners, take advantage of the fact that at the molecular level, these products absorb ultraviolet (UV) light, which is invisible to the human eye and emit light (i.e., fluoresce) in the visible range (usually in the blue range). The intensity of the emitted (fluorescent) light varies among the different molecules. A further characteristic of synthetic organic fluorescent brighteners is that the molecules involved are composed of atoms that are attached (i.e., chemically bonded) to one another by alternating single and double chemical bonds (i.e., conjugated double bonds). The number of conjugated bonds, the particular atoms comprising the molecule (e.g., carbon, nitrogen, sulfur), the location of the atoms in the molecule, and the three-dimensional configuration of the atoms, strongly influence the fluorescence of the molecule, as well as determine the structure of the molecule. In particular, these characteristics influence the wavelength at which light is absorbed, the amount of absorbed UV light, the wavelength at which the light fluoresces, and the intensity of the emitted light. These are significant properties that can be used to identify individual FWAs.

[8] Certain inorganic chemicals can also fluoresce, but are not relevant to this issue.

[9] Kirk-Othmer, *Encyclopedia of Chemical Technology*, vol. 4, 1978, p. 213.

[10] *See*, petition, pp. 3-4, 6.

[11] *See*, petition, pp. 3-4.

However, 3V and Bayer contend that DAS alone does not fluoresce with sufficient intensity to be a brightener.[12]

Manufacturer specifications for SFWA involve a purity or assay against a DAS standard and color and impurity quality control specifications. The SFWA specification of percent purity or assay is determined by liquid chromatography, with color specification measured by the Gardner Color index, and the maximum permissible impurities level determined by liquid chromatography. The product is tested by the SFWA manufacturer to verify acceptability for DAS application specifications, and accepted by the purchaser with a supplier's Certificate of Analysis.[13]

Manufacturing Process

A flow chart for synthesizing DAS and the products used in its chemical synthesis is given in figure I-1. The chart also indicates (but does not explain) the synthesis of SFWA from DAS. Each intermediate product in the synthesis is a unique chemical, having its own structure and its own set of physical and chemical properties. Furthermore, any individual SFWA, irrespective of how it is synthesized, is a unique chemical, having its own structure and its own set of physical and chemical properties. The following steps are used to synthesize DAS:

> First toluene (A), a product extracted from petroleum refining, is reacted with nitric acid to produce three different isomers (ortho-, meta-, and para-) of toluene. Only the para-nitrotoluene (B) is used in the next reaction. Both ortho- and para-nitrotoluene are sold on the merchant market, and the price of the para-nitrotoluene is influenced by the sales and price of ortho-nitrotoluene.[14]
>
> To begin the DAS synthesis, para-nitrotoluene is reacted with a concentrated sulfuric acid solution to produce para-nitrotoluene sulfonic acid (PNTSA) (C) with its $S0_3H$ functional group specifically located next to the CH_3 on the toluene ring system (ortho to the CH_3 portion). During this process, large quantities of excess sulfuric acid are produced, and must be properly disposed.[15]
>
> PTNSA is oxidized to link two PTNSA molecules, which produces the symmetrical molecule 4,4'-dinitro-2,2'-stilbene disulfonic acid (DNS) (D), the first chemical in the reaction process to contain the stilbene chemical structure. Ciba reports that the use of bleach to carry out oxidization creates a reaction that is difficult to control and does not produce a high yield. Ciba has, however, developed its own proprietary process which has a higher yield.[16] Clariant contends that this process carries a high capital cost, which in turn increases the cost of DAS.[17]

---

[12] *See*, 3V postconference brief, p. 3; Bayer postconference brief, p. 7.

[13] *See*, petition, p. 4.

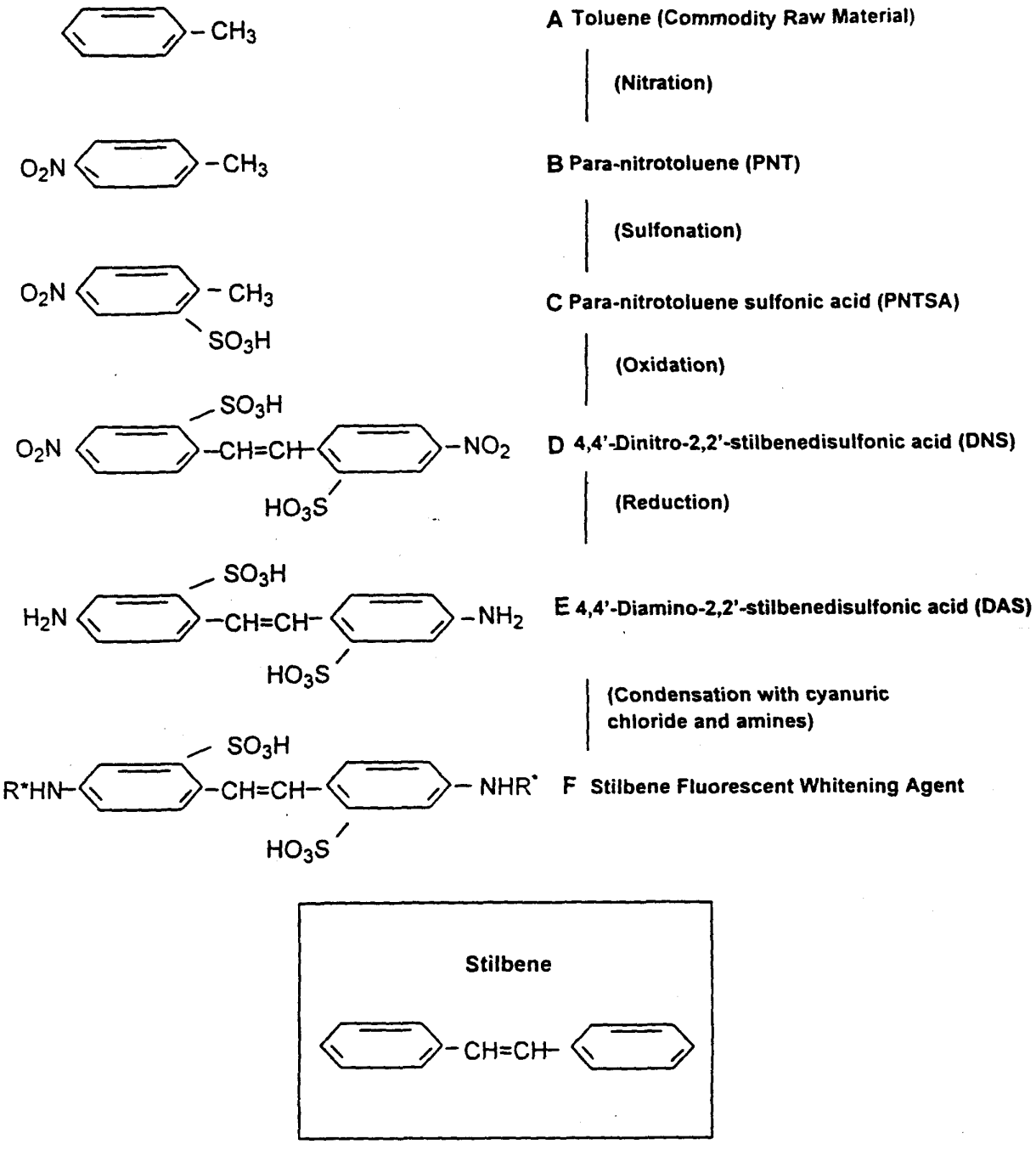
[14] There was an explosion at the only domestic source of para-nitrotoluene, causing the plant to close, which might also affect price of the material. *See* Bayer postconference brief, exh. 11.

[15] Ciba stated that ***. *See*, Ciba postconference brief, exh. 16.

[16] *See*, Ciba postconference brief, exh. 16.

[17] *See*, conference transcript, pp. 51 and 55.

Figure I-1
DAS/Stilbenic FWAs synthesis chemistry



* R is a general term for selected chemical structures. A specific structure determines a specific SFWA.

In the final DAS production step (E), two NO_2 groups on the DNS are reduced (by the addition of hydrogen) to two NH_2 groups to produce DAS. Ciba reports that the traditional methods to make DAS use iron filings in an acidic medium in this final step. Ciba reports using ***. To transport DAS, the sodium salt of DAS can be converted to the free acid and dried, at a 10 percent increase in cost.

SFWAs are manufactured from DAS. Ciba reports a relatively simple 2-step process in which DAS is first reacted with cyanuric chloride to make an intermediate, which then reacts with an amine to produce a particular SFWA. The Bayer, Clariant, and 3V SFWA production processes differ somewhat from both Ciba's and each other's, using the same basic reactants. The specific amine chosen to react with the cyanuric chloride intermediate determines the specific SFWA produced.

With the exception of Ciba in the United States, DAS is made in a multi-step process and then transported to the customer. Ciba, at its plant in McIntosh, AL, makes DAS at the same location it makes SFWA in one continuous process, reacting the DAS directly with chemicals required to produce SFWA, thereby eliminating separate channels of distribution. All other DAS production facilities are located overseas and make DAS as a powder or press cake, which is then exported to the United States.[18]

Bayer reported that SFWA is a chemical compound far more complex than its components – DAS, sulfanilic acid, cyanuric chloride, diethanolamine or other amines, and other additives such as biocides. A substantial transformation of DAS and several other chemical ingredients occurs through a multiple-step process of complicated chemical reactions which require significant expertise and specialized and expensive equipment.

Bayer reports a 3-reaction process of SFWA synthesis. First, cyanuric chloride is reacted with an aromatic amine under tightly controlled conditions (low temperature, pH).[19] In the second step, the reaction product of step 1 is reacted with another aromatic amine.[20] In the third and final step, the reaction product of step 2 is reacted with an aliphatic amine under high temperature conditions.

*** reported *** products produced on the same equipment and machinery used in the production of DAS and/or SFWA.[21] *** reported use of the same production and related workers employed to produce DAS to produce certain dyes; *** reported use of the same production and related workers employed to produce SFWA to produce textile and paper chemicals and dyes and electronic

---

[18] Respondents (domestic producers of the SFWA using the imported DAS) stated that the slurry form made by Ciba was, on occasion, contaminated, and that their requirements were for a dry form of DAS. *See*, conference transcript, pp. 47-48, 53, 58-59, 91, 102-104, and 108. Ciba noted that until the mid 1990s, Clariant and *** had purchased the wet cake form. *See*, Ciba's postconference brief, p. 40 and exh. 27; *See also*, conference transcript, pp. 47-48, 102, and 118-119.

[19] DAS in the case of the Bayer or Ciba process, sulfanilic acid in the case of the Clariant or 3V process. The chemistry is complex and reaction control is important to prevent deleterious byproduct formation; several molecules of amine may attach to the cyanuric chloride or hydrolyze the cyanuric chloride with water. *See* Bayer postconference brief, pp. 6-7 and exh. 6.

[20] Sulfanilic acid in the case of the Bayer or Ciba process, DAS in the case of the Clariant or 3V processes. Each cyanuric group of the reaction product of step 1 has two reactive chlorine atoms, which readily react with amines. Again, the chemistry is complex and requires tightly controlled reaction conditions (temperature, pH) as several deleterious byproducts can form. Ibid., exh. 6.

[21] *** producers' questionnaire responses, pp. 4-5.

chemicals; *** reported that they do not use production and related workers employed to produce DAS and/or SFWA to produce other products.[22]

DOMESTIC LIKE PRODUCT ISSUES

This section presents information on both imported and domestically produced DAS and SFWA, as well as information related to the Commission's "domestic like product" determination.[23] U.S. producers and importers were asked to comment on each of the six factors the Commission typically looks at in making determining the domestic like product; their responses are presented in appendix D.

Common Facilities and Workers and Physical Characteristics and Uses

Ciba, the only domestic producer of DAS, makes SFWA from that DAS in a continuous process and using employees which are common to the entire unit. The other three domestic producers of SFWA, 3V, Bayer, and Clariant, do not produce DAS.

The petitioner states the only commercial use for DAS is to produce SFWA.[24] There are, however, a number of dyes that contain a stilbene structure, i.e., direct yellow dyes and direct orange dyes,[25] and a stilbene dye made directly from DAS.[26] (The structure for stilbene is presented at the bottom of figure I-1.) Petitioner stated that the total value of these non-SFWA uses accounts for a very small portion of DAS consumption, while SFWA accounts for the vast majority of DAS consumption. Bayer stated that it used "hundreds of thousands of pounds of DAS yearly to produce direct dyes; for instance, direct blue 279, direct yellow 4, for sale directly into the paper industry."[27] Ciba stated that the stilbene portion of the SFWA molecule creates the fluorescence, and that other portions of the SFWA are "filler" that add other physical and chemical properties.[28] Bayer stated that "DAS will absorb ultraviolet light and indeed will emit the blue lights known as fluorescence, but it does not provide the intensity of fluorescence necessary for commercial application."[29]

The molecular structures of SFWAs are different than the molecular structure of DAS from which they are derived; physical characteristics of the original molecule have been modified. In the dye and fluorescent brightener industries, it is not unusual to find that once a new color molecule is found, further research (in the form of making derivatives) is conducted to optimize the molecule's commercial value. Depending on the proposed use, its commercial value may be optimized by improving its ability to attach to a substrate, its chemical stability, its solubility, or by modifying its color (fluorescence) or

---

[22] Ibid. ***.

[23] The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. 19 U.S.C. § 1677(4)(A).

[24] Petition, p. 10.

[25] These dyes are listed as direct dyes in the *Colour Index* (vol. 4), 3rd ed., The Society of Dyers and Colourists, p. 197. The products are listed as structures 24860 through 24890.

[26] Kirk-Othmer, *Encyclopedia of Chemical Technology*, (vol. 4), 1978, p. 410.

[27] *See*, conference transcript, p. 59.

[28] According to Ciba, amino groups are added to DAS as "filler" to react with cyanuric chloride that then reacts with different amines, to impart solubility, pH stability, and fiber affinity to DAS, such that it may be applied to the end use substrate. It still has the DAS molecule providing fluorescence. DAS is referred to as SFWA when enhanced with "filler" in the above ways to allow DAS' application." *See*, conference transcript, p. 36.

[29] *See*, conference transcript, p. 61.

brightness. Changing the number of conjugated double bonds and the number and type of functional groups in and appended to a compound changes the character (absorption wavelength, emission wavelength, and fluorescence intensity) of the compound's fluorescence.

Parties were asked to submit "some objective measure"[30] of flourescent intensity of DAS and their commercially successful SFWAs.[31] *** submitted three graph readouts which present the fluorescent intensity of DAS and two commercial SFWAs, that show each product exhibiting approximately the same fluorescent intensity. *** submitted results of similar analyses for their firm's DAS intermediate and three SFWAs, which showed each company's SFWAs with a relatively stronger fluorescent intensity than its DAS. *** also submitted a statement discussing its sample preparation and experimental methodology. However, it is difficult to compare results of different fluorescent analyses without knowledge of all respective methodologies used.[32]

Interchangeability and Customer and Producer Perceptions

The petitioner concedes that DAS and SFWA are not interchangeable.[33] 3V stated that "{g}iven the dissimilar characteristics and uses as described above (in their postconference brief), DAS and SFWA are not interchangeable. DAS is an intermediate product that imparts little or no whitening properties. As such, it cannot be interchanged with SFWA. Importantly, end users of SFWA in the paper, detergent, and textile industries do not purchase DAS."[34] Bayer stated "DAS purchasers are buying a raw material based on specifications for purity and percent of active ingredient ... Purchasers of SFWA, on the other hand, buy the merchandise based on its ability to "whiten" their products."[35]

Further information with respect to interchangeability and customer and producer perceptions can be found in Part II of this report, *Conditions of Competition in the U.S. Market.*

Channels of Distribution

DAS is all sold either directly or through a broker or distributor to producers of SFWA and, to a much lesser degree to producers of dyes. There are primarily three individual end-use markets for SFWA--detergents, paper, and textiles, with different SFWA products used in different markets; there are no sales of DAS directly into any of these three markets. The paper market and the detergent market represents the overwhelming majority of domestic SFWA demand. The petitioner and the respondents

---

[30] *See*, conference transcript, pp. 29 and 100.

[31] ***.

[32] The methodology for measuring fluorescence is discussed in many text books such as Douglas A. Skoog and James J. Leary, *Principles of Instrumental Analysis (4th Edition)*, Harcourt Brace College Publishers, 1982, ch.9, in which a number of factors that can influence fluorescent intensity are discussed. In a postconference informational submission requested by Commission staff, *** submitted a discussion of the methodology for generating consistent fluorescence intensity measurements. Requests for thorough fluorescence intensity methodology documentation were subsequently sent to ***. *** returned documentation that outlined a methodology for generating consistent fluorescence intensity measurements very similar to ***'s methodology. On June 26, 2003, ***.

[33] *See*, Ciba postconference brief, pp. 14-15.

[34] *See*, 3V postconference brief, p. 4.

[35] *See*, Bayer postconference brief, p. 9. The brief went on to state "SFWA purchasers have requirements for color strength, liquid clarity and mass tone color (color depth of the powder or liquid), liquid stability or resistance to precipitation within the product's shelf life, and consistent solubility under specific conditions for SFWA in powder."

indicated they all supplied technical support to the end-use markets, in addition to ensuring pure product. *** and *** both stated that they sold their SFWA products in different end-use markets from Ciba's.[36]

Price

There are no prices available for domestic DAS since Ciba does not sell any of its product in the United States; therefore, there are no price comparisons available between domestic DAS and domestic SFWA. Parties agree that DAS is, in a chemical sense, an intermediate (precursor) to SFWA. Ciba stated that the DAS cost accounted for about 30-40 percent of the cost of a finished SFWA while Clariant stated that it is less than 25 percent.[37] At the conference and in a follow-up clarification with staff, Ciba noted that the price of SFWA varied, depending upon the end-use market, the strength of the active ingredients, and the form (e.g., liquid or powder). Prices range from a low of about 30 cents per pound, in some cases, for liquid SFWA sold to the paper industry to highs of up to $2.00 to $3.00 per pound for powdered SFWA sold to the detergent industry.[38] Bayer stated that "{d}epending on how quantity is measured, DAS sells for substantially more than SFWA on a per pound basis."[39] Clariant noted that with paper companies' consolidation more specialized performance products are required, e.g., for two sub-markets (commodity and specialized) for paper.[40] According to Ciba, "the whole market is commodity-price sensitive."[41] More detailed information on actual prices is presented in Part V of this report, *Pricing and Related Information*.

---

[36] ***.

[37] *See*, conference transcript, pp. 36 and 51.

[38] *See*, conference transcript, p. 19, and e-mail from ***, June 26, 2003. Ciba further elaborated that the wide spread in prices depends on product type, activity, physical form, and ***. E-mail from ***, June 26, 2003.

[39] *See*, Bayer postconference brief, p. 11. However, Bayer did not elaborate on what was meant by "how quantity is measured." It may very well be that Bayer is referring to the forms (liquid vs. presscake vs. powder) in which DAS and SFWA may be sold because, ***.

[40] *See*, conference transcript, pp. 48-50.

[41] *See*, conference transcript, p. 119.

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

MARKET CHARACTERISTICS

Ciba is the sole U.S. producer of DAS and consumes all of its U.S. shipments of DAS internally to produce SFWAs.[1] Some firms, such as ***, import DAS exclusively for their own consumption, and a small number of firms import DAS from the subject countries and sell it in the U.S. commercial market. Considering both imports and domestic production, Ciba's estimated share of the U.S. DAS market was *** percent (on a value basis) in 2002. The market shares of 3V, Bayer, and Clariant, which used imported DAS to produce SFWA were, respectively, *** percent, *** percent, and *** percent. PHT International, which is an importer and reseller of Chinese DAS, had a market share of *** percent. *** importers held the remaining market shares. There is thus considerable concentration in the U.S. DAS market and a limited number of commercial sales.

Ciba competes in the SFWA market with U.S. producers that manufacture SFWA from imported DAS and with importers of SFWA. Ciba also imports some SFWA itself (table II-1). Bayer ceased its U.S. production of SFWA in June 2002; afterwards its imports of SFWA ***. Thus, the SFWA market is also concentrated.

Table II-1
SFWA: Market shares (on a value basis) in 2002, by firm

* * * * * * *

Virtually all DAS output goes into the production of SFWAs, and DAS is a necessary input in the production of SFWA. However, Bayer consumes some DAS in producing dyes.[2] SFWAs are sold to the detergent, paper, and textile industries. The paper industry has less than 100 customers; the detergent industry has many fewer participants than the paper industry, and the textile industry is more fragmented but consumes little at any one plant.[3] 3V alleged that Ciba used its dominant market position to push it out of the paper market for SFWA and to push Clariant and Bayer out of the U.S. detergent market.[4]

U.S. SUPPLY

DAS Production

Available information suggests that the U.S. DAS producer is likely to respond to any antidumping and CVD remedies with small changes in the quantity of DAS shipped to the U.S. market including internal shipments. The firm's production function (or the technology used to transform inputs into outputs), its associated cost structure, market prices, and strategic decisions made by the firm influence the quantity that it ships to the domestic market.

---

[1] Petition, p. 50. Although Ciba internally consumes all of its U.S. shipments of DAS to produce SFWA, it exports some DAS to ***. Conference transcript, pp. 24, 26, and 37-38.

[2] Conference transcript, p. 59 and Bayer's postconference brief, p. 12. Bayer stated that it uses hundreds of thousands of pounds of DAS annually to make dyes. Clariant's postconference brief, p. 8. Non-SFWA consumption of DAS amounted to *** percent of the value of total shipments of imports from all sources in 2000, *** percent in 2001, and *** percent in 2002.

[3] Conference transcript, p. 27.

[4] 3V's postconference brief, p. 26.

Ciba uses a different technology than foreign firms to produce DAS. Ciba uses an ammonia process, in contrast to foreign firms that use an air oxidation process to produce DAS. Ciba stated that its DAS production facility is very efficient and produces a high yield of DAS, but that its fixed costs are high.[5] Vasant, an Indian exporter of DAS, reported that the Ciba's ammonia process is capital intensive and has more variable costs (for ammonia, more power, and pure oxygen) than the air oxidation process.[6] Bayer also reported that Ciba's capital costs and variable costs are high.[7] Bayer believes that Ciba pays more than the market price for PNT, a chemical input in the production of DAS, because an explosion prevented its supplier, First Chemical, from producing PNT. Every production process uses PNT, all of which is now imported into the United States.[8] Ciba stated that, despite high capital and operating costs, its process has low raw material consumption costs because ***.[9]

The Ciba technology produces DAS in solution, which it uses directly to produce SFWA. Other producers of SFWA use DAS in either wet cake or powder form. Ciba stated that converting DAS in solution to wet cake adds about 10 percent to the cost.[10] Clariant uses DAS in the powder form to produce SFWA and can *** use DAS in powder or wet cake form, but does not have the capability to *** liquid form.[11] Clariant purchased DAS from Ciba in the wet cake form in 1995-96.

Ciba converts some DAS to the wet cake form and exports it to ***. Ciba's export shipments of DAS ranged from a low of *** percent of its total quantity of shipments in *** to a high of *** percent of total shipments of DAS in *** (see table III-3). Inventories as a ratio of total shipments decreased from 2001 to 2002 but increased from interim 2002 to interim 2003 (see table III-5).

Unit labor costs for DAS increased from 2001 to 2002 as production declined (see tables III-2 and III-6). Unit labor costs declined *** from interim 2002 to interim 2003 as production increased ***. Productivity in pounds per hour decreased from 2001 to 2002 but increased from interim 2002 to interim 2003. Efficiency trends are thus mixed. More detailed cost information is presented in Part VI of this report.

Ciba stated that it is capable of supplying substantial quantities of DAS to the commercial market.[12] Clariant doubts that Ciba could supply the entire U.S. market with DAS.[13] Ciba used from *** to *** pounds of DAS to produce one pound of SFWA.[14] Applying these input-output coefficients to Ciba's stated capacity to produce SFWA, which is *** pounds per year, shows that Ciba would need from *** to *** pounds of DAS to operate at full capacity. Ciba's stated capacity to produce DAS is *** pounds per year. Thus, if Ciba operated at full capacity and supplied itself with DAS first, the remaining DAS would range from *** to *** pounds of DAS per year, which is *** than annual import quantities from 2000 to 2002.

Ciba may be able to produce DAS at low unit cost when operating at high capacity, but the information regarding efficiency appears inconclusive. Ciba appears to be *** supply the entire U.S. market with DAS. The actual amounts of DAS that Ciba offers commercially would depend upon

---

[5] Petition, p. 47 and conference transcript, p. 12.

[6] Vasant's postconference brief, exh. 2.

[7] Bayer's postconference brief, pp. 25-27.

[8] Conference transcript, p. 57.

[9] Ciba's postconference brief, exh. 16. Ciba added that it has low environmental costs. Conference transcript, pp. 10-11 and 120-121.

[10] Conference transcript, p. 39.

[11] Clariant's postconference brief, pp. 10-11.

[12] Petition, p. 50.

[13] Conference transcript, p. 48.

[14] Calculated from Ciba's producer questionnaire, questions II-11 and II-12.

demand for SFWA and strategic decisions regarding supplying its own SFWA production, the commercial U.S. market, or the export market.

SFWA Production

SFWA producers are likely to respond to any antidumping or CVD remedies with small changes in the quantity of SFWA shipped to the U.S. market. Ciba has argued that the other U.S. producers of SFWA, which use imported DAS, should be excluded from the U.S. industry.[15] If the domestic industry is considered to be only Ciba, there will be an unequivocal positive supply response from the imposition of antidumping and CVD duties. 3V and Clariant, however, argue that they qualify as domestic producers.[16] If all U.S. producers of SFWA are included, the response will be ambiguous because, although the demand for SFWA will shift outward, higher prices for DAS will negatively affect the production of SFWA by firms that import DAS. Each firm's capacity, cost structure, and strategic decisions concerning whether to compete on pricing or in some other manner will determine the volume of SFWA offered in the U.S. market.

The petitioner asserted that its plant in Alabama produces SFWA efficiently using liquid DAS directly in a continuous process.[17] The petitioner added that firms importing DAS incur expenses for converting it to solid form for transport and other expenses for reconverting it to liquid form for fabricating SFWAs.[18] Bayer alleges that Ciba uses molten cyanuric chloride, which is no longer available in the United States. Ciba thus incurs an extra cost to import this product, while other producers use cyanuric chloride in its non-molten state, which can be transported more cheaply.[19] 3V argued that cyanuric chloride is a necessary input, and in some ways as important as DAS, in the production of SFWA.[20] Ciba's data show that from *** to *** percent and from *** to *** percent of the production costs of SFWA are represented by, respectively, DAS and cyanuric chloride.[21]

Clariant uses a technology to manufacture SFWAs that uses DAS in a powder form and has lower fixed costs than Ciba.[22] Although Ciba does not currently offer DAS in powder or wet cake form in the United States, Clariant purchased some DAS in wet cake form from Ciba in 1995-96.[23] Clariant has a process to qualify DAS suppliers and, reportedly, had some quality problems with DAS from Ciba. Clariant alleges that Ciba's SFWA production process results in a level of impurities that many in the paper industry will not accept and that its own production process corrects for these impurities.[24] Ciba disputed this allegation and states that its process controls for impurities.[25] Clariant also states that the paper industry has diverse needs and that it produces at least 25 different specifications of SFWA to meet these needs, in contrast, to many fewer offerings by Ciba.

---

[15] Ciba's postconference brief, pp. 19-20.

[16] 3V's postconference brief, pp. 11-14 and Clariant's postconference brief, pp. 2-7.

[17] Conference transcript, p. 10.

[18] Conference transcript, p. 11.

[19] Bayer's postconference brief, p. 26; *see also*, conference transcript, p. 51.

[20] Conference transcript, p. 73.

[21] Ciba's postconference brief, exh. 8.

[22] Conference transcript, pp. 54-55 and Clariant's postconference brief, pp. 26-27.

[23] Clariant's postconference brief, p. 11.

[24] Clariant's postconference brief, p. 25.

[25] Ciba's postconference brief, exh. 16.

Ciba's commercial shipments of SFWAs *** by *** percent between 2001 and 2002 and by *** percent between interim 2002 and interim 2003. By contrast, Clariant's U.S. shipments of SFWAs *** by *** percent between 2001 and 2002 and by *** percent between interim 2002 and interim 2003. 3V shipments of SFWAs *** by *** percent between 2001 and 2002 but *** by *** percent between interim 2002 and interim 2003. Between 2000 and interim 2003, capacity utilization for SFWAs ranged from *** percent to *** percent for Ciba, from *** percent to *** percent for Clariant, and from *** percent to *** percent for 3V. Productivity (pounds per hour) ranged from *** to *** for Ciba, from *** to *** for Clariant, and from *** to *** for 3V. Unit labor costs (per pound) ranged from $*** to $*** for Ciba, from $*** to $*** for Clariant, and from $*** to $*** for 3V.

For the SFWA industry as a whole, exports ranged from *** percent to *** percent of total shipments of SFWAs between 2000 and interim 2003. This level of exports indicates some ability to access foreign markets. The inventories ranged from *** percent to *** percent of total shipments between 2000 and interim 2003.

IMPORT SUPPLY

China

In 2002, the Chinese capacity to produce DAS was estimated at *** pounds per year, and it operated at *** percent of capacity (see table VII-1). Between 2000 and interim 2003, shipments to the home market ranged from *** percent to *** percent of total shipments. Exports to the United States ranged *** percent to *** percent of total shipments, and exports to third country markets ranged from *** percent to *** percent of total shipments between 2000 and interim 2003. The petitioner alleges that Chinese DAS production is exerting downward pressure on prices.[26]

The petitioner alleges that Chinese SFWA capacity has had a negative effect on world SFWA prices.[27] Chinese exporters traditionally shipped very little SFWA to the United States.[28]

China ships substantial quantities of DAS to its home market and to third country markets, and it has a large capacity to produce DAS. It could divert some of these shipments to the United States. Staff estimate that the Chinese import supply response for DAS will be moderate. Exports of Chinese-produced SFWA to the United States have been small. Staff consider the Chinese supply response for SFWA to be small.

Germany

German capacity to produce DAS was estimated at *** pounds per year in 2002, and the German industry operated at *** percent of capacity (see table VII-3). From 2000 to interim 2003, German firms consumed from *** percent to *** percent of total shipments internally to produce SFWA. They shipped from *** percent to *** percent to the home market, exported from *** percent to *** percent to the United States, and exported from *** percent to *** percent to third country markets.

German capacity to produce SFWA was estimated at *** pounds per year in 2002, and the German industry operated at *** percent of capacity (see table VII-4). Between 2000 and interim 2003, internal consumption and transfers ranged from *** percent to *** percent of total shipments, shipments to the home market ranged from *** to *** percent of total shipments, shipments to the United States

[26] Petition, p. 62.

[27] Petition, p. 62.

[28] Postconference brief of PHT International, p. 2.

ranged from *** to *** percent of total shipments, and exports to third country markets ranged from *** percent to *** percent of total shipments.

Germany has a fairly *** capacity to produce DAS, but *** of this is consumed internally. Staff consider the German supply response for DAS to be relatively small. German capacity to produce SFWAs is ***. Although German exporters have not shipped *** shares of their SFWA production to the United States, they have the potential to divert some shipments from third-country markets to the United States. Staff consider the German supply response for SFWA to be moderate.

India

Indian capacity to produce DAS was estimated at *** pounds per year in 2002 and the Indian industry operated at *** percent of capacity (see table VII-5). Out of the total shipments of DAS between 2000 and interim 2003, Indian firms consumed from *** percent to *** percent internally to produce SFWA, shipped from *** percent to *** percent to the home market, exported from *** percent to *** percent to the United States and exported from *** percent to *** percent to third country markets. Petitioners have alleged that Indian DAS capacity about equals the U.S. market.[29]

Indian capacity to produce SFWA was estimated at *** pounds per year in 2002, and the Indian industry operated at only *** percent of capacity (see table VII-6). Out of the total shipments of SFWA between 2000 and 2002, Indian firms shipped from *** to *** percent to their home market, exported from *** percent to *** percent to the United States, and exported from *** percent to *** percent to the third country markets.

The petitioner alleges that Indian DAS capacity about equals the entire U.S. market.[30] Vasant exports DAS in dry powder form to the United States. It exports to one end user and one trading company, which, in turn, sells to the same end user. The purchasing operations of the end user are in Switzerland, and the purchaser negotiates contracts that include quantities sufficient to supply the United States and other countries at the same time.[31]

India's capacity to produce both DAS and SFWA is ***. Staff considers their supply response in both DAS and SFWA to be small.

U.S. DEMAND

Demand Characteristics

The demand for DAS is derived from the demand for SFWA and to a very limited extent the demand for dyestuffs. The demand response of a factor of production tends to vary with the elasticity of demand for the product that the factor produces. The demand for SFWA, in turn, is derived from the demand for the end-use products, in which it is used. The demand response for SFWA is influenced by output in the end-use industries, the viability of substitutes, and the cost share of SFWA in the end-use products. Consideration of these factors suggests that the demand response is likely to be small.

The petitioner reported that the paper, detergent, and textile industries account for, respectively, 70 to 75 percent, 20 to 21 percent, and 7 percent of the worldwide demand for stilbene-type optical brighteners. The U.S. paper and detergent industries are estimated to account for, respectively, from 53 to 59 percent and from 32 to 38 percent of the U.S. demand for SFWAs, with the textile industry accounting for the remainder. The distribution of each U.S. producer's sales in 2002 is reported in table

[29] Petition, p. 63.

[30] Petition, p. 63.

[31] Conference transcript, p. 75.

II-2. Bayer concentrates on ***. Ciba concentrates on the detergent industry and to a lesser extent the paper industry. Most of Clariant's sales were to the paper industry. 3V concentrates on *** the detergent industry and has nearly equal sales to the paper and textile industries.

Table II-2
SFWA: Sales by U.S. producer by industry, 2002

* * * * * * *

Demand for SFWA is affected by the output of these industries and by the intensity of SFWA use within these industries. Data from the Federal Reserve Board indicate that output fell in the paper and allied products industry and in the textile mill products industry in 2000 and 2001; output increased in the paper and allied products industry and was unchanged in the textile mill products industry in 2002 relative to the levels in 2001 (table II-3). Staff is not aware of a similar series for the detergent industry.

Table II-3
Annual rates of change in industrial production, by selected industries, 2000-02

Industry	2000	2001	2002
Paper and allied products	-4.0	-5.7	3.3
Textile mill products	-6.3	-12.4	0.0

Source: Carol Corrado, "Industrial Production and Capacity Utilization: The 2002 Historical and Annual Revision," *Federal Reserve Bulletin*, April 2003, table A.5.

Ciba reported that weak demand in all of these industries, particularly the paper industry, reduced the consumption of SFWA.[32] *** reported in its questionnaire response that end-user plant closures and production down time due to the weak economy had reduced demand. *** reported that demand is down because many textile mills have exited the U.S. market. Clariant stated that it no longer sells to the detergent industry, which increasingly uses enzymatic whiteners in place of SFWAs.[33] *** reported in its questionnaire response that higher brightness standards in the paper industry had led to increased use of SFWAs. *** also reported that the paper industry is moving towards more specialty products and that it had sold an increasing variety of SFWAs to the paper industry.

*** reported in its questionnaire response that pricing had become the key factor in marketing. *** reported in its questionnaire response that aggressive pricing by Ciba, the market leader, had reduced its profit and market share. *** reported in its questionnaire response that it *** and that its ***. It also reported that substantial consolidation has occurred in the paper industry and that central units in the consolidated firms now purchase SFWA for large groups of plants. It also stated that it exited the detergent market because other U.S. producers priced so low that it could not compete. In the textile industry, it ***, relabels it, and sells it under its own name.

Substitute Products

U.S. producers and importers both reported in their questionnaire responses that there is no substitute for DAS in the production of SFWAs.

[32] Petition, p. 48.

[33] Conference transcript, p. 48.

SFWAs, which cost one half to one third as much as non-stilbenic brighteners, are usually applied to cellulose substrates, including cotton.[34] Non-stilbenic whiteners are typically applied to polyamides, polyesters, and polyacrylics. SFWAs are commonly used in the paper industry because of the lower cost. However, *** stated in its questionnaire response that titanium dioxide, chlorine dioxide, tinting pigment, ozone, elemental chlorine, calcium carbonate, calcined clay, aluminum trihydrate, and hydrogen peroxide are all viable raw materials that the paper industry can use to increase the brightness and whiteness of paper. DSBP, a type of non-stilbenic whitener, is a potential substitute for SFWA for use on cellulose fibers; however, DSBP whiteners are more active chemically, have superior light-stabilizing properties, and are used in South America and Asia, where laundry is dried by sunlight.[35] Light stabilization is less important for U.S. laundry, which is mostly machine-dried. Other non-stilbenic whiteners, enzymatic brighteners, and bleach were cited as substitutes for SFWAs in some instances. A greater number of substitutes would tend to make demand more elastic, other factors being equal.

Cost Share

The petitioner asserts that DAS accounts for about 30 percent of the total manufacturing cost of SFWA and that DAS is the most costly input in the fabrication of SFWA.[36] The other raw material costs are from reacting "filler" materials, such as cyanuric chloride. *** reported that DAS accounts for, respectively, 23 percent and from 25 to 30 percent of the total cost production costs of SFWAs. Importers were not generally aware of the cost share of DAS in the production of SFWAs.

The petitioner asserts that the cost share of DAS chemistry in paper products, detergents, and textiles is usually less than 1 percent.[37] *** reported that SFWAs account for about 0.4 percent of the cost of copy paper and account for about 1.0 percent of the cost of higher brightness paper. A small cost share of a final product indicates that demand is inelastic, other factors being equal.

SUBSTITUTABILITY ISSUES

The degree that domestic and imported DAS and domestic and imported SFWA can be substituted for each other depends upon relative prices, quality, and the conditions of sale. Although information regarding substitutability is not extensive, available data suggest that domestic and imported DAS and domestic and imported SFWA are largely substitutable.

Factors Affecting Purchasing Decisions

Commission questionnaires gathered information regarding prices, lead times, interchangeability, geographic market, and nonprice factors. Prices are discussed in Part V. As previously discussed, DAS is produced in solution, wet cake, and powder forms, and there are different percentages of active substance associated with these different forms. Also, as previously discussed, one form can be converted to another form, but there is a cost for making the transformation. Ciba uses DAS in solution, but imports of DAS are in wet cake or powder form, which the other domestic manufacturers use. Ciba has sold DAS in wet cake form in the past and exports it in this form today; thus, it is likely that Ciba could make DAS in a form used by the other domestic manufacturers of SFWA.

---

[34] Petition, p. 41.

[35] Petition, p. 41.

[36] Petition, p. 39, and conference transcript, p. 13.

[37] Petition, p. 48.

Comparisons of Domestic Products and Subject Imports

The Commission's questionnaire asked U.S. producers and importers to report if domestically produced and subject imported DAS and SFWA is always, frequently, sometimes, or never used interchangeably. *** stated in its questionnaire response that DAS from China, Germany, India, and the United States is always interchangeable. *** stated that DAS from the U.S. and the subject countries is sometimes interchangeable.

*** reported that SFWAs from Germany and the United States are frequently interchangeable. *** reported that SFWA from Germany and India is frequently interchangeable with domestic DAS. *** reported that German and U.S. SFWAs are sometimes interchangeable.

Importers tended to report jointly for DAS and SFWA. *** reported that DAS and SFWA from the United States and each subject country are always interchangeable.

The Commission's questionnaire asked U.S. producers and importers to report if nonprice differences (quality, availability, transportation network, product range, technical support, etc.) between domestically produced and subject imported DAS and SFWA significantly affected their firms' sales of these products. U.S. producers and importers were asked to report if these nonprice differences were always, frequently, sometimes, or never significant. *** reported that there are frequently differences other than price between domestically produced DAS and that produced in each subject country. *** reported that there are never differences other than price between domestically produced and subject imported DAS. *** reported that there are sometimes differences other than price between domestically produced SFWAs and imports from Germany and India. *** also reported that there are never differences other than price between domestically produced and subject imported DAS and SFWA. *** reported that there are sometimes differences other than price between Indian and U.S. DAS and SFWA but never differences other than price between German and U.S. DAS and SFWA.

Ciba reported that the lead time between a customer's order of DAS and delivery was ***. However, Ciba stated at the public conference that it had not had any U.S. commercial sales of DAS since 1997-98 and has not attempted to sell any DAS domestically for over a year. U.S. producers of SFWAs reported lead times ranging from 2 days to a week. Importers of DAS and SFWA reported a mean lead time of 4.8 weeks.

U.S. producers and importers were asked to report the geographic market served by their firms' sales of DAS and/or SFWA and the proportion of sales that occurred within 100 miles, from 101 to 1,000 miles, and over 1,000 miles from their plant, storage facility, or port of entry. All U.S. producers reported that their firms served a nationwide market. Some importers' geographic market was more limited. Many importers reported only selling in the southeast or in California, although some also sold nationwide. U.S. producers reported that 13.3 percent, 58.3 percent, and 28.3 percent of their sales occurred, respectively, less than 100 miles, between 100 and 1,000 miles, and over 1,000 miles from their plant or storage facility. Importers reported that 45.8 percent, 44.5 percent, and 9.7 percent of their sales occurred, respectively, less than 100 miles, between 100 and 1,000 miles, and over 1,000 miles from the port of entry or their storage facility.

Comparisons of Domestic Products and Nonsubject Imports

Many importers and producers reported that they had no knowledge of differences between domestically produced and nonsubject imports of DAS and SFWA. *** reported that domestically produced DAS is always interchangeable with DAS from nonsubject countries. *** reported that there were never any differences other than price between domestic and nonsubject imported DAS and SFWA.

Comparisons of Subject Imports and Nonsubject Imports

Many importers and producers reported that they had no knowledge of differences between subject and nonsubject imports of DAS and SFWA. *** reported that DAS from each subject country is sometimes interchangeable with DAS from nonsubject countries. *** reported that DAS from each subject country is always interchangeable with DAS from nonsubject countries. *** reported that DAS and SFWA from China and India is always interchangeable with DAS and SFWA from nonsubject countries.

Comparisons of Subject Products from the Subject Countries

Information on differences between subject products from the subject countries was limited. *** reported in its questionnaire response that DAS is sometimes interchangeable for each combination of the subject countries. *** reported in its questionnaire response that DAS was always interchangeable for each combination of the subject countries. *** reported that DAS and SFWA for each combination of subject countries is always interchangeable.

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 Part VI and (except as noted) is based on the questionnaire responses of one firm that accounted for all U.S. production of DAS and four firms that accounted for all U.S. production of SFWA during 2002.

U.S. PRODUCERS

U.S. producers of DAS and SFWA, their production locations, corporate affiliations, positions with respect to the petition, and shares of U.S. production are shown in table III-1.

Table III-1
DAS and SFWA: U.S. producers, positions with respect to the petition, production locations, shares of 2002 U.S. production, and corporate affiliations

Firm	Position on petition	Production location(s)	Share of 2002 production (*percent*)		Corporate affiliation
			DAS	SFWA	
3V	Oppose[1]	Georgetown, SC	([2])	***	3V Partecipazioni Industriali, Bergamo, Italy
Bayer	Oppose[1]	Charleston, SC	([2])	***	Bayer AG, Leverkusen, Germany
Ciba	Petitioner	High Point, NC McIntosh, AL	100.0	***	Ciba Specialty Chemicals Holding Inc., Basel, Switzerland
Clariant	Oppose[1]	Charlotte, NC	([2])	***	Clariant AG, Muttenz, Switzerland
Total			100.0	100.0	

[1] Firm appeared in opposition to the petition at the public conference.
[2] Not applicable. The firm does not produce DAS.

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

Source: Responses to the Commission questionnaires, public conference, and petition.

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Table III-2 presents U.S. producers' production capacity, production, and capacity utilization for DAS and SFWA. For both products, capacity utilization decreased during 2000-02; between the interim January-March periods of 2002 and 2003, DAS capacity utilization increased *** while capacity utilization of SFWA continued to decrease.

Table III-2
DAS and SFWA: U.S. producers' capacity, production, and capacity utilization, by product, 2000-02, January-March 2002, and January-March 2003

Item	Calendar year			January-March	
	2000	2001	2002	2002	2003
DAS:					
Capacity (*1,000 dry pounds*)	***	***	***	***	***
Production (*1,000 dry pounds*)	***	***	***	***	***
Capacity utilization (*percent*)	***	***	***	***	***
SFWA:					
Capacity (*1,000 dry pounds*)[1]	***	***	***	***	***
Production (*1,000 dry pounds*)	***	***	***	***	***
Capacity utilization (*percent*)	***	***	***	***	***
DAS and SFWA, combined:					
Capacity (*1,000 dry pounds*)[2]	50,095	51,691	56,148	13,955	13,001
Production (*1,000 dry pounds*)[3]	44,895	41,571	34,973	8,957	8,005
Capacity utilization (*percent*)	89.6	80.4	62.3	64.2	61.6

[1] Although Bayer ceased production in June 2002, ***.
[2] Reported SFWA capacity for all producers plus an allocation of Ciba's DAS capacity to the amount of DAS produced in excess of that which it consumed to make SFWA in each period.
[3] U.S. production of SFWA plus the amount of Ciba's DAS production that was not consumed in its production of SFWA.

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

U.S. PRODUCERS' SHIPMENTS

Tables III-3 and III-4 present U.S. producers' shipments of DAS and SFWA, respectively. U.S. shipments of DAS, which during the period examined were all internal consumption by Ciba to produce SFWA,[1] decreased throughout the period examined while U.S. exports, all to *** fluctuated. U.S. producers' U.S. shipments of SFWA peaked in 2001 and declined in both 2002 and between the interim periods. Although exports decreased *** during 2000-02, they increased between the interim periods. Table III-5 presents U.S. producers' shipments of DAS and SFWA, combined. To avoid double counting, Ciba's internal consumption of its DAS production is excluded.

Table III-3
DAS: U.S. producers' shipments, by types, 2000-2002, January-March 2002, and January-March 2003

* * * * * * *

[1] See conference transcript, pp. 10, 26, and 35.

Table III-4
SFWA: U.S. producers' shipments, by types, 2000-2002, January-March 2002, and January-March 2003

* * * * * * *

Table III-5
DAS and SFWA, combined: U.S. producers' shipments, by types, 2000-2002, January-March 2002, and January-March 2003

Item	Calendar year			January-March	
	2000	2001	2002	2002	2003
			Quantity (*1,000 dry pounds*)		
Commercial shipments	***	***	***	***	***
Internal consumption[1]	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	31,968	33,089	29,693	7,883	6,972
Export shipments	***	***	***	***	***
Total	***	***	***	***	***
			Value (*1,000 dollars*)		
Commercial shipments	***	***	***	***	***
Internal consumption[1]	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	90,822	90,937	79,149	20,718	18,186
Export shipments	***	***	***	***	***
Total	***	***	***	***	***
			Unit value (*per pound*)		
Commercial shipments	$***	$***	$***	$***	$***
Internal consumption[1]	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	2.84	2.75	2.67	2.63	2.61
Export shipments	***	***	***	***	***
Average	***	***	***	***	***

[1] To avoid double counting, Ciba's internal consumption of DAS to produce SFWA are not included.

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

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

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' inventories of DAS and SFWA are presented in table III-6.

Table III-6
DAS and SFWA: U.S. producers' end-of-period inventories, by product, 2000-02, January-March 2002, and January-March 2003

Item	Calendar year			January-March	
	2000	2001	2002	2002	2003
DAS:					
Inventories (*1,000 dry pounds*)	***	***	***	***	***
Ratio to production (*percent*)	***	***	***	***	***
Ratio to U.S. shipments (*percent*)	***	***	***	***	***
Ratio to total shipments (*percent*)	***	***	***	***	***
SFWA:					
Inventories (*1,000 dry pounds*)	***	***	***	***	***
Ratio to production (*percent*)	***	***	***	***	***
Ratio to U.S. shipments (*percent*)	***	***	***	***	***
Ratio to total shipments (*percent*)	***	***	***	***	***
DAS and SFWA, combined:					
Inventories (*1,000 dry pounds*)	3,143	3,947	3,671	3,561	2,793
Ratio to production (*percent*)	7.0	9.5	10.5	9.9	8.7
Ratio to U.S. shipments (*percent*)	9.8	11.9	12.4	11.3	10.0
Ratio to total shipments (*percent*)	***	***	***	***	***

Note.–Because of rounding, figures may not add to totals shown. January-March ratios are annualized.

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

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. producers' employment data are presented in table III-7.

Table III-7
DAS and SFWA: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, by product, 2000-02, January-March 2002, and January-March 2003

Item	Calendar year			January-March	
	2000	2001	2002	2002	2003
DAS:					
Production and related workers	***	***	***	***	***
Hours worked *(1,000)*	***	***	***	***	***
Wages paid *($1,000)*	***	***	***	***	***
Hourly wages	***	***	***	***	***
Productivity *(dry pounds per hour)*	***	***	***	***	***
Unit labor costs *(per dry pound)*	***	***	***	***	***
SFWA:					
Production and related workers	***	***	***	***	***
Hours worked *(1,000)*	***	***	***	***	***
Wages paid *($1,000)*	***	***	***	***	***
Hourly wages	***	***	***	***	***
Productivity *(dry pounds per hour)*	***	***	***	***	***
Unit labor costs *(per dry pound)*	***	***	***	***	***
DAS and SFWA, combined:					
Production and related workers	272	224	206	206	200
Hours worked *(1,000)*	613	503	465	117	115
Wages paid *($1,000)*	19,342	15,685	15,135	3,816	3,666
Hourly wages	$31.55	$31.18	$32.55	$32.62	$31.88
Productivity *(dry pounds per hour)*	73.2	82.6	75.2	76.6	69.6
Unit labor costs *(per dry pound)*	$0.43	$0.38	$0.43	$0.43	$0.46

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

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

PRODUCERS' IMPORTS AND NON-IMPORT PURCHASES

Inasmuch as all U.S.-produced DAS is either internally consumed by Ciba to make SFWA or is exported, all other U.S. SFWA producers either import DAS directly or purchase imported DAS from the importers. Bayer reported subject direct imports from its related German firm; Clariant reported direct imports of Chinese DAS from *** and Indian DAS from Vasant Chemicals Ltd.[2] ***. ***, 3V was a direct importer of ***. Additionally, Ciba and Bayer both reported imports of SFWA from their related German firms.[3] Producers' direct imports and their production of subject products are shown in table III-8.

Table III-8
DAS and SFWA: Producers' production of SFWA and direct subject imports of DAS and SFWA, by firm, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

PRODUCERS' CONSUMPTION OF DAS TO MAKE SFWA

Producers' consume DAS to make SFWA. The shipments of DAS and SFWA, combined, shown in table III-5 do not include internal consumption of DAS by Ciba to produce its SFWA. There is no similar elimination of DAS internally consumed by 3V, Bayer, and Clariant since these firms had no U.S. production of DAS, and inasmuch as the non-DAS components of SFWA make up most of the weight and value of SFWA, no reduction of producers' U.S. shipments of SFWA by the amount of the consumed DAS was deemed appropriate in a table showing only producers' shipments. However, in Part IV of this report, U.S. producers' shipments and U.S. shipments of imports are combined to create apparent U.S. consumption. In order to not double count the imported DAS consumed to make the amount of producers' U.S. shipments of SFWA, staff have derived a "producers' component" of the U.S. shipments of SFWA by producers. It should be noted that this producers' component is not a U.S. component, because staff has no knowledge of the origin of the non-DAS raw materials used to produce SFWA; it is merely a non-foreign-DAS component of producers' U.S. shipments of SFWA. Table III-9 shows DAS consumed by U.S. SFWA producers to make SFWA, their U.S. shipments of SFWA, and the "producers' component" of their U.S. shipments.

Table III-9
DAS and SFWA: Producers' consumption of DAS in the production of SFWA, producers' U.S. shipments of SFWA, and producers' component of such SFWA shipments, by firm, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

[2] *See*, conference transcript, pp. 64 and 94; Clariant's postconference brief, pp. 3-4. Additionally, ***.

[3] *See*, petition, p. 15, n. 18; conference transcript p. 65; 3V's postconference brief, pp. 13-14. ***.

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

U.S. IMPORTERS

The Commission sent questionnaires to 45 firms that were believed might import DAS and/or SFWA from China, Germany, and India during January 2000-March 2003 and received responses from 32 firms. Seventeen firms imported the subject merchandise during this period. Eight firms imported from China,[1] two imported from Germany,[2] five imported from India,[3] and seven imported from other sources.[4]

U.S. IMPORTS

Responding firms' imports of DAS from Germany[5] and India closely approximate official import statistics but reported imports from nonsubject sources are understated and reported imports from China are overstated.[6] Therefore, official Commerce statistics are used for imports of DAS from China and nonsubject sources, adjusted questionnaire data are used for imports of DAS from India, and questionnaire data are used for imports of DAS from Germany and for imports of SFWA.[7] Tables IV-1 and IV-2 present data on U.S. imports of DAS and SFWA, respectively, and table IV-3 presents data on U.S. imports of both products, combined. The quantity of U.S. imports of DAS from China decreased in 2001 and then increased in 2002 to beyond the 2000 level and continued to increase between the interim periods. U.S. imports of DAS from Germany decreased steadily over the period for which data were collected. U.S. imports of DAS from India, which peaked in 2001, decreased in 2002 to a level above that of 2000; such imports in interim 2003 were lower than in interim 2002.

Table IV-1
DAS: U.S. imports, by sources, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

Table IV-2
SFWA: U.S. imports, by sources, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

---

[1] ***.

[2] ***.

[3] ***.

[4] ***.

[5] All of the Commission questionnaires (U.S. producer, importer, and foreign producer) asked that imports be reported on a dry basis. Import quantities of German DAS, as reported in Commission questionnaires averaged only *** percent of the quantity of official imports during 2000-03, however, imports from Germany are in the form of wet cake which is about 65-67 active substance and the rest is moisture. DAS from India and China, however, are imported in the dry form. *See* conference transcript pp. 38 and 59.

[6] Most of the overstatement of Chinese DAS and the understatement of nonsubject DAS appears to be ***. ***.

[7] SFWA is provided for in a residual or "basket" category for import purposes. Therefore, the degree of reporting coverage is not known with any certainty, but it is believed to be substantial. According to Bayer, the only importers of German SFWA are itself, and perhaps Ciba, and it is unaware of any imports of SFWA from either China or India. Conference transcript, p. 65.

Table IV-3
DAS and SFWA: U.S. imports, by sources, 2000-02, January-March 2002, and January-March 2003

Source	Calendar year			January-March	
	2000	2001	2002	2002	2003
	Quantity *(1,000 dry pounds)*				
China[1]	***	***	***	***	***
Germany	***	***	***	***	***
India[2]	***	***	***	***	***
Subtotal	9,075	7,155	8,888	***	***
All other sources[1]	299	160	322	***	***
Total	9,374	7,314	9,210	***	***
	Value *(1,000 dollars)*[3]				
China[1]	***	***	***	***	***
Germany	***	***	***	***	***
India[2]	***	***	***	***	***
Subtotal	16,923	13,381	13,652	***	***
All other sources[1]	1,206	350	621	***	***
Total	18,130	13,730	14,273	***	***
	Unit value *(per dry pound)*[3]				
China[1]	$***	$***	$***	$***	$***
Germany	***	***	***	***	***
India[2]	***	***	***	***	***
Average	1.86	1.87	1.54	***	***
All other sources[1]	4.03	2.19	1.93	***	***
Average	1.93	1.88	1.55	***	***
	Share of quantity *(percent)*				
China[1]	***	***	***	***	***
Germany	***	***	***	***	***
India[2]	***	***	***	***	***
Subtotal	96.8	97.8	96.5	***	***
All other sources[1]	3.2	2.2	3.5	***	***
Total	100.0	100.0	100.0	100.0	100.0
	Share of value *(percent)*				
China[1]	***	***	***	***	***
Germany	***	***	***	***	***
India[2]	***	***	***	***	***
Subtotal	93.3	97.5	95.6	***	***
All other sources[1]	6.7	2.5	4.4	***	***
Total	100.0	100.0	100.0	100.0	100.0

[1] ***.
[2] DAS component of figure shown for 2000 adjusted by staff.
[3] Landed, duty-paid.

Note.–Because of rounding, figures may not add to the totals shown. Unit values and shares calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires, except as noted.

The quantity of U.S. imports of SFWA from China and India were *** throughout the period examined. U.S. imports of SFWA from Germany dipped *** in 2001, increased in 2002 to over *** the 2000 level, and also increased *** between the interim periods.

APPARENT U.S. CONSUMPTION

Tables IV-4 and IV-5 present data on apparent U.S. consumption of DAS[8] and SFWA, respectively. Apparent consumption of DAS decreased continually throughout the period examined. Apparent consumption of SFWA, however, fluctuated around the *** pound-per-year level throughout the period examined.

Table IV-4
DAS: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

Table IV-5
SFWA: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

Because most DAS imported during the period examined was consumed by 3V, Bayer, and Clariant to produce SFWA, it would be inappropriate to simply add U.S. shipments of DAS and SFWA, as shown in tables IV-4 and IV-5, respectively, to derive U.S. consumption of both DAS and SFWA because such figures would be double counted by the amount of the imported DAS. However, because the domestic component of SFWA made from imported DAS is over one-half of the SFWA, on both a quantity and a value basis, it likewise seems inappropriate to consider such SFWA to all be imported product and ignore the production by producers 3V, Bayer, and Clariant. Staff estimated U.S. shipments of DAS and SFWA, combined, as follows: (1) for the foreign component, U.S. shipments of imports of both DAS and SFWA were summed, and (2) for the U.S. producers' component, producers' reported U.S. shipments of SFWA minus an allocation of foreign DAS consumed to produce the amount of SFWA reported as U.S. shipments by 3V, Bayer, and Clariant was used.[9] The resultant estimates of U.S. consumption of DAS and SFWA, combined, are presented in table IV-6 and, as expected, closely approximate U.S. consumption of SFWA.

---

[8] As previously mentioned, data from importer questionnaires are not reliable for DAS from China and nonsubject sources and data for 2000 Indian DAS have been adjusted. Because of substantial inventory changes, as shown in Part VII, as well as exports of *** Chinese DAS to *** reported by ***, staff has estimated U.S. shipments of Chinese DAS by adjusting official statistics to account for the inventory changes and exports. Official import statistics *** for DAS from nonsubject sources because of differences in timing between the reported questionnaire imports and official import statistics and because ***.

[9] In the producer questionnaire, firms were asked to report the amount of DAS (both quantity and value), by source, used in each period to produce the amount of SFWA production reported. Staff allocated a portion of this DAS consumed to adjust U.S. shipments based on each firm's ratio of U.S. shipments of SFWA to production of SFWA for each period.

Table IV-6
DAS and SFWA: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2000-02, January-March 2002, and January-March 2003

Item	Calendar year			January-March	
	2000	2001	2002	2002	2003
	Quantity (*1,000 dry pounds*)				
U.S. producers' U.S. shipments[1]	26,092	26,412	24,414	6,736	5,892
U.S. shipments of imports from–					
China[2]	***	***	***	***	***
Germany	***	***	***	***	***
India[3]	***	***	***	***	***
Subtotal	8,895	7,339	7,802	1,696	2,588
All other[4]	289	154	341	17	52
Total import shipments	9,184	7,492	8,143	1,712	2,640
Apparent consumption	35,276	33,904	32,557	8,448	8,532
	Value (*1,000 dollars*)				
U.S. producers' U.S. shipments[1]	80,899	79,564	71,914	18,897	16,940
U.S. shipments of imports from--					
China[2]	***	***	***	***	***
Germany	***	***	***	***	***
India[3]	***	***	***	***	***
Subtotal	18,259	15,200	13,126	3,234	3,811
All other[4]	1,326	467	645	50	156
Total import shipments	19,585	15,667	13,771	3,284	3,968
Apparent consumption	100,484	95,232	85,685	22,181	20,907

[1] Figures shown are producers' U.S. shipments of SFWA reduced by the amount of foreign DAS that producers reported they consumed to make such SFWA shipped.
[2] Figures shown include staff's estimates for U.S. shipments of Chinese DAS which were derived are from official import statistics, adjusted by staff to remove exports of the imported DAS and to account for inventory changes.
[3] Figure shown for 2000 includes U.S. shipments of Indian DAS, as adjusted by staff.
[4] Figures shown include ***.

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

Source: Compiled from data submitted in response to Commission questionnaires, except as noted.

U.S. MARKET SHARES

Tables IV-7 and IV-8 present data on U.S. market shares based on apparent U.S. consumption of DAS and SFWA, respectively. The U.S. market share of the domestic producer of DAS was *** percent or greater in all periods; the producers' market share of SFWA, which was *** percent or greater through the interim period of 2002, decreased to *** percent in full year 2002 and *** percent during interim 2003, as might be expected with the closure by Bayer of its domestic operating facilities and replacement of its domestic production of SFWA with imports of SFWA.[10] Table IV-9 shows market penetration for DAS and SFWA, combined. The level of producers' share of market penetration was between their share for DAS and their share for SFWA--***. As shown in each of the market penetration tables, the U.S. producers' market share increased in 2001, decreased in 2002, and was lower in interim 2003 than in interim 2002.

Table IV-7
DAS: Apparent consumption and market shares, by sources, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

Table IV-8
SFWA: U.S. consumption and market shares, by sources, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

[10] Bayer ceased its U.S. SFWA production in June 2002 and now supplies its customers solely from imported SFWA from its German affiliate or non-import purchases of SFWA. *See* conference transcript, pp. 64-65.

Table IV-9
DAS and SFWA: Apparent consumption and market shares, by sources, 2000-02, January-March 2002, and January-March 2003

Item	Calendar year			January-March	
	2000	2001	2002	2002	2003
			Quantity *(1,000 dry pounds)*		
Apparent U.S. consumption	35,276	33,904	32,557	8,448	8,532
			Value *(1,000 dollars)*		
Apparent U.S. consumption	100,484	95,232	85,685	22,181	20,907
			Share of quantity *(percent)*		
U.S. producers' shipments	74.0	77.9	75.0	79.7	69.1
U.S. shipments of imports from--					
China	***	***	***	***	***
Germany	***	***	***	***	***
India	***	***	***	***	***
Subtotal	25.2	21.6	24.0	20.1	30.3
All other	0.8	0.5	1.0	0.2	0.6
Total import shipments	26.0	22.1	25.0	20.3	30.9
			Share of value *(percent)*		
U.S. producers' shipments	80.5	83.5	83.9	85.2	81.0
U.S. shipments of imports from--					
China	***	***	***	***	***
Germany	***	***	***	***	***
India	***	***	***	***	***
Subtotal	18.2	16.0	15.3	14.6	18.2
All other sources	1.3	0.5	0.8	0.2	0.7
Total imports	19.5	16.5	16.1	14.8	19.0

Note.–Because of rounding, figures may not add to the totals shown. See table IV-6 for adjustments made by staff.

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

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Transportation Costs

Subject countries incurred relatively small costs to transport DAS and SFWA to the United States (table V-1). 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.

Table V-1
Certain DAS Chemistry: Ocean transportation costs to the U.S. market, by countries

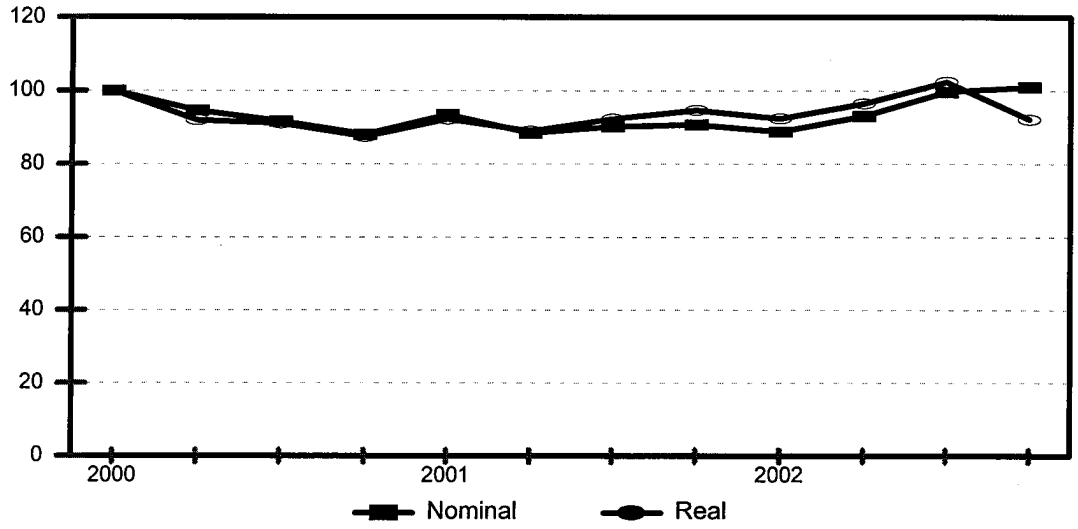
Country	Transportation costs (percent of customs value)	
	DAS	SFWA
China	6.9	1.9
Germany	4.6	4.4
India	3.6	2.6
Source: Compiled from official Commerce statistics.		

U.S. producers and importers were asked to report the percentage of the total delivered cost of DAS and SFWA accounted for by transportation costs. The mean U.S. inland transportation cost was 5.8 percent for U.S. producers and 1.8 percent for importers.

Exchange Rates

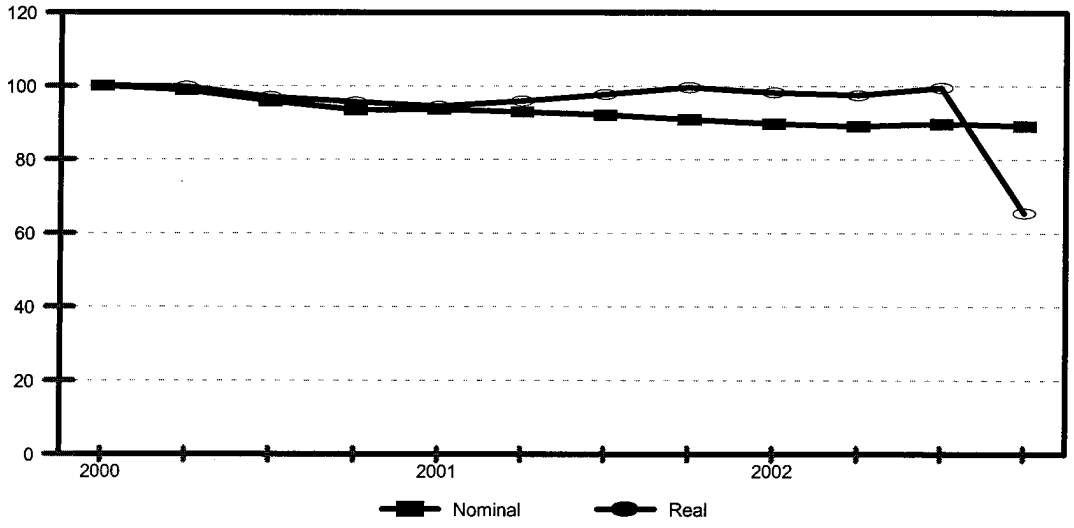
China manages its nominal exchange rate, and the managed rate did not change between the first quarter of 2000 and the fourth quarter of 2002. The International Monetary Fund has not reported a producer price index for China during this period; therefore, a real exchange rate was not calculated. The euro has been the official currency of Germany since 1999. The value of the euro declined relative to the U.S. dollar in 2000. The euro then generally gained in value vis-a-vis the dollar through 2002, and the dollar cost of the euro in the fourth quarter 2002 was close to its cost in the first quarter of 2000 (figure V-1). Nominal and real values have generally been close to each other, although the real value, which had been above the nominal value since the second quarter of 2001, fell markedly below the nominal value in the fourth quarter of 2002. The nominal value of the Indian rupee declined by approximately 11 percent between the first quarter of 2000 and the fourth quarter of 2002 (figure V-2). The real value of the Indian rupee was generally higher than the nominal value until a sharp decline of almost 35 percent during the fourth quarter of 2002.

Figure V-1
Exchange rates: Indexes (first quarter 2000=100) of the nominal and real exchange rates between the European euro and the U.S. dollar, by quarters, first quarter 2000-fourth quarter 2002



Source: International Monetary Fund, *International Financial Statistics*, March 2003.

Figure V-2
Exchange rates: Indexes (first quarter 2000=100) of the nominal and real exchange rates between the Indian rupee and the U.S. dollar, by quarters, first quarter 2000-fourth quarter 2002



Source: International Monetary Fund, *International Financial Statistics*, March 2003.

PRICING PRACTICES

U.S. producers and importers reported various means of determining prices. Negotiation with customers and contracting for multiple shipments was most common. Negotiation with customers was also common for importers, but they also contracted for individual shipments. *** reported that most transactions with the paper industry are conducted through combined volume bids in which a corporate customer combines multiple locations in a single bid. It added that pricing is driven by the competitive environment at the time of offering, and adjustments are only made to meet a competing bid under a meet-or-release clause.

*** reported giving rebates based on the annual volume purchased. Importers tended not to give discounts. U.S. producers and importers reported selling on both an f.o.b. port or warehouse basis and on a delivered basis, although delivered was slightly more common for both.

U.S. producers reported that 85 percent of their sales, on average, were on a contract basis, with the remainder sold on the spot market. Producers reported that contracts were for multiple years and fixed either price and quantity or just price. Contracts usually had meet-or-release provisions. U.S. importers reported that, on average, 42.2 percent of their sales were by contract and 57.8 percent were spot-market sales. If ***, are excluded from the importer data set, *** percent of importer sales were by contract, and *** percent were spot-market sales.

PRICE DATA

The Commission requested that U.S. producers and importers of DAS and SFWA provide data on the total quantity and value of DAS and SFWA that were shipped to unrelated customers in the U.S. market. Quarterly data were requested from the first quarter 2000 through the first quarter 2003. The products for which pricing data were requested are as follows:

Product 1–SFWA for detergents, having the dimorpholino, di-anilino moiety of cyanuric chloride-diamino stilbene (DAS) (disulfonated or "disulfo" category), in the slurry form under such product trade names as Tinopal AMS Slurry (Ciba), Optiblanc 2M Slurry (Sigma 3V), and Blankophor DML Slurry (Bayer) or their equivalent including any strength (i.e., concentration of the active ingredient or percent activity) of this product.

Product 2–SFWA for detergents, having the dimorpholino, di-anilino moiety of cyanuric chloride-diamino stilbene (DAS) (disulfonated or "disulfo" category), in the powder form, under such product trade names as Tinopal AMS-GX (Ciba), Optiblanc 2MGC (Sigma 3V), and Blankophor DML (Bayer), or their equivalent including any strength of this product.

Product 3–SFWA for paper having the disulfanilic, di-DEA (diethanolamine) moiety of CC-DAS (tetrasulfonates or "tetra-sulfo" category), liquid under such product trade names as Tinopal ABP-A (Ciba), Leucophor T-4, T100 (Clariant), Blankophor Phorwhite P, P-150 (Bayer), Optiblanc RL 140, RL 200, NF 140, NF 200 (Sigma 3V), or the equivalent including any strength of this product.

Product 4–4,4'-Diamino-2,2'-stilbenedisulfonic acid (DAS), free acid solid form.

The pricing data are limited because the U.S. producers Bayer, Clariant, and 3V import DAS ***. Ciba captively consumes the DAS that it produces. *** provided usable pricing data for their U.S.-produced products. *** provided pricing data on the imported products.

DAS pricing data (product 4) accounted for approximately 48.2 percent, 29.2 percent, and 72.7 percent of DAS imports from, respectively, China, Germany, and India. As previously stated, there were no commercial sales of U.S. produced DAS. SFWA pricing data (products 1-3) accounted for approximately 19.9 percent, 20.7 percent, and 100.0 percent of SFWA imports from, respectively, China, Germany, and India. U.S. producer pricing data represented 31.9 percent of total U.S. shipments.

Clariant alleges that Ciba defined the like product in a way that the price comparisons are not meaningful.[1] Ciba alleged that ***.[2]

Price Trends

The prices of domestically produced product 1 moved upward slightly from the second quarter of 2001 to the second quarter of 2002, but the level in the first quarter of 2003 was *** percent below that of the first quarter of 2000 (figure V-1). Product 1 is a slurry form of SFWA. *** were the only producers providing pricing data, and there were no importer pricing data for this product.

Figure V-1
Certain DAS chemistry: Weighted-average f.o.b. prices ($/pound) of domestic product 1, by quarters, January 2000-March 2003

* * * * * * *

Product 2 is a powder form of SFWA. Chinese prices of product 2 were *** except for the third quarter of 2002 when a very small quantity sold for an unusually high price (figure V-2). The price of the Chinese product in the fourth quarter of 2002 was *** percent below its level in the second quarter of 2000. Prices of the Indian product were very erratic. Prices of the U.S. product 2 changed ***; it declined by *** percent between the first quarter of 2000 and the first quarter of 2003.

Figure V-2
Certain DAS chemistry: Weighted-average f.o.b. prices ($/pound) of domestic and imported product 2, by quarters, January 2000-March 2003

* * * * * * *

Product 3 is a form of SFWA that is used in the paper industry. U.S. producers provided data, and there were 3 quarters of German data (figure V-3). The U.S. price of this product decreased by 10.5 percent between the first quarter of 2000 and the first quarter of 2003. Prices of the German product increased by *** percent for the three quarters for which data were provided.

Figure V-3
Certain DAS chemistry: Weighted-average f.o.b. prices ($/pound) of domestic and German product 3, by quarters, January 2000-March 2003

* * * * * * *

Product 4 is DAS, and only importers provided pricing data. Chinese prices increased between the first quarter of 2000 and the second quarter of 2001 and then declined irregularly through the first

[1] Clariant's postconference brief, pp. 17-19.

[2] Confidential letter from Ciba dated June 16, 2003.

quarter of 2003 (figure V-4). German prices changed *** between the first quarter of 2000 and the first quarter of 2002, the last quarter for which German data were reported. In the last quarter of 2002, a small quantity of the Indian product sold for a very high price. Otherwise, prices of Indian product 4 generally declined. The price of Indian product 4 decreased by *** percent between the first quarter of 2000 and the first quarter of 2003.

Figure V-4
Certain DAS chemistry: Weighted-average f.o.b. prices ($/pound) of imported product 4, by quarters, January 2000-March 2003

* * * * * * *

Price Comparisons

This section compares domestic prices of SFWA products to those of imported SFWA. In many cases, quantities of the imported product were small, and ocean shipment costs and other fixed charges may represent a higher percent of the price of these products, with the result that unit values for the small quantities are high. Appendix tables E-1 through E-3 present prices of SFWA products 1 through 3, respectively, for each domestic firm. Appendix table E-4 presents importer pricing for product 4 (DAS) by subject country.

Only the domestic firms *** provided pricing data for product 1. For product 2, import quantities for the Chinese product were small (table V-2). The Chinese product undersold the domestic product in four quarters by margins ranging from 0.1 percent to 6.0 percent, and oversold the domestic product in three quarters by margins ranging from 1.1 percent to 144.1 percent. German quantities of product 2 were larger than Chinese quantities but smaller than U.S. quantities. The German product oversold the domestic product in eight quarters by margins ranging from 70.2 percent to 99.2 percent. Indian quantities of product 2 were very small. The Indian product oversold the domestic product in five quarters by margins ranging from 46.3 percent to 204.1 percent. Only German and U.S. data were reported for product 3. There were only three quarters of German data, but quantities were fairly large for these quarters. The German product undersold the domestic product in three quarters by margins ranging from *** percent to *** percent (table V-3).

Table V-2
Certain DAS chemistry: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2000-March 2003

* * * * * * *

Table V-3
Certain DAS chemistry: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, January 2000-March 2003

* * * * * * *

LOST SALES AND LOST REVENUES

Lost Sales

The Commission requested that the U.S. producers of DAS and SFWA report any lost sales that resulted from competition with unfairly priced imports of DAS and SFWA from China, Germany, or India. The petitioner made *** allegations of lost sales, totaling approximately $***; *** alleged lost sales. Staff contacted the *** purchasers, and *** disagreed with the allegations. Lost sales allegations are presented in table V-4.

Table V-4
Certain DAS chemistry: U.S. producers' lost sales allegations

* * * * * * *

*** denied that it had ever bought a comparable *** product from ***. *** may have imported *** at *** per pound. Beginning in ***, *** purchased *** from *** at approximately *** per pound landed duty paid. Ciba offered *** to *** at a lower price, but *** chose to purchase the higher priced product from *** for non-price reasons.

*** reported that Ciba offered to supply it *** in ***. Ciba's price was below the market price at that time, and ***. Then, *** requested ***, but Ciba stated that it was no longer interested in supplying the product, and Ciba has not since offered to sell *** to ***.

*** reported different prices and quantities for the domestic and imported products than those alleged by the petitioner. In one case it paid more for the imported *** product but stated prices were not comparable because the *** product was more concentrated and included better technical service.

*** disagreed with the quantity and price allegations and stated that it purchased the *** from ***'s plant in *** instead of from importers. It is likely, though, that this *** was ***.

*** disagreed that the purchase decision was mostly due to lower priced imports. Other factors considered were technical service, application rates, flexibility of the product line, and the increased costs associated with changing and managing a new supplier. The company uses *** than alleged, and the price quotes were *** to *** percent *** than alleged.

*** disagreed with the quantity and price information. The imported product was not purchased from a subject country but from a new *** supplier. *** stated that it had redesigned its *** to Ciba in such a way that Ciba would still receive the volume to which *** had committed. Ciba is ***.

Lost Revenues

The Commission requested that the U.S. producers of DAS and SFWA report any lost revenues that resulted from competition with unfairly priced imports of DAS and SFWA from China, Germany, or India. The petitioner made *** allegations of lost revenues, which totaled slightly over ***; *** alleged lost sales. Staff contacted all *** purchasers, although only *** responded. All responding purchasers disagreed with the allegations. Lost revenue allegations are presented in table V-5.

Table V-5
Certain DAS chemistry: U.S. producers' lost revenue allegations

* * * * * * *

*** disagreed with the quantities and prices. *** disagreed with ***. *** stated that its business with Ciba represented ***. There was thus increased, not lost, revenue. *** cannot confirm that the *** that it purchased was ***. ***'s primary motivation in splitting its purchases was to assure an adequate supply. ***, and any supply disruption would immediately have negative results. Besides the concern for safety, Ciba claimed that it did not have and still does not have the capacity to supply all of ***. *** stated that no one other than Ciba had made any offers to supply this product ***. Any reduction in price is not due to competition with imports but rather to pressure from ***. Cost is important but assuring that there is product to be sold is more important.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Ciba, the only U.S. producer of DAS, provided financial data on its export shipments to ***. Four producers[1] of SFWA, accounting for 100 percent of known U.S. production of SFWA in 2002, supplied the requested financial data. Ciba uses its DAS production to produce SFWA and provided data on its DAS and SFWA combined operations. The other three producers imported DAS to produce their SFWA, hence, their combined operations of DAS and SFWA are the same as their SFWA operations. Bayer ***. 3V reported that ***.

OPERATIONS ON DAS

Income-and-loss data for the only U.S. producer, Ciba, on its DAS operations are presented in table VI-1. As mentioned before, Ciba provided financial data on its export shipments to ***. These export shipments were valued at ***. Ciba consumed *** of its DAS production to produce SFWA during the period examined. Ciba did not report any commercial sales of DAS in the United States. Hence, there was no fair market value available for domestically produced DAS in the United States. Therefore, Commission staff did not request Ciba to report its internal consumption of DAS in the financial data on its DAS operations and did not ask Ciba to ***.

Table VI-1
Result of operations of Ciba in the production and exportation of DAS, calendar years 2000-2002, January-March 2002, and January-March 2003

* * * * * * *

Ciba reported ***.

OPERATIONS ON SFWA

Income-and-loss data for the U.S. producers on their SFWA operations are presented in table VI-2; selected financial data, by firm, are presented in table VI-3. The operating income margin declined from *** percent of total net sales in 2000 to *** percent in 2001 and then rose to *** percent in 2002. The operating income margin rose from *** percent in January-March 2002 to *** percent in January-March 2003.

Table VI-2
Result of operations of U.S. producers in the production of SFWA, calendar years 2000-2002, January-March 2002, and January-March 2003

* * * * * * *

[1] The four U.S. producers are Bayer, Ciba, Clariant, and 3V. Each company's fiscal year ends on December 31.

Table VI-3
Result of operations of U.S. producers in the production of SFWA, by firms, calendar years 2000-2002, January-March 2002, and January-March 2003

* * * * * * *

From 2000 to 2001, the volume of total net sales declined by *** percent; on a per-pound basis, the average selling price decreased whereas the average cost of goods sold ("COGS") and selling, general, and administrative ("SG&A") expenses increased, resulting in a smaller (***) operating margin. From 2001 to 2002, the volume of total net sales declined by *** percent; on a per-pound basis, the average COGS decreased faster than the decline in the average selling price, resulting in a higher gross profit. The SG&A expenses in absolute dollars declined but increased on a per-pound basis due to the lower volume, resulting in an operating income. Between January-March 2002 and January-March 2003, the volume of total net sales dropped by *** percent; on a per-pound basis, the average selling price increased whereas the average COGS and SG&A expenses decreased, resulting in a higher operating income.

With respect to ***, *** stated that: ***.[2]

If ***'s data are excluded from the aggregate data, the remaining aggregate operating income margins would be *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in January-March 2002, and *** percent in January-March 2003.

With respect to *** on its total sales in each year during 2000 to 2002, *** stated that: ***.[3]

During the period examined, as a percentage of the cost of goods sold, Ciba's domestically produced DAS ranged between *** and *** percent, Bayer's imported DAS ranged between *** and *** percent, Clariant's imported DAS ranged between *** and *** percent, and 3V's imported DAS ranged between *** and *** percent (see table VI-3).

OPERATIONS ON DAS AND SFWA COMBINED

Income-and-loss data for the U.S. producers on their DAS and SFWA combined operations are presented in table VI-4. The operating income margin declined from a positive 5.4 percent of total net sales in 2000 to a negative 1.7 percent in 2001 and then increased to a positive 1.7 percent in 2002. The operating income margin rose from 2.0 percent in January-March 2002 to 5.4 percent in January-March 2003. The operating income margin trend for DAS and SFWA combined operations is similar to that of SFWA operations but margins are *** than for SFWA because of the inclusion of *** on DAS operations of Ciba.

[2] A letter from ***.

[3] A letter from ***.

Table VI-4
Result of operations of U.S. producers in the production of DAS and SFWA combined, calendar years 2000-2002, January-March 2002, and January-March 2003

Item	Calendar years			January-March	
	2000	2001	2002	2002	2003
	Quantity (*1000 pounds, dry basis*)				
Commercial sales	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
Total net sales	***	***	***	***	***
	Value (*$1,000*)				
Commercial sales	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
Total net sales	***	***	***	***	***
Cost of goods sold	***	***	***	***	***
Gross profit	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Interest expense	***	***	***	***	***
Other expense[1]	***	***	***	***	***
Other income items	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Depreciation/amortization	***	***	***	***	***
Cash flow	***	***	***	***	***
	Ratio to net sales (*percent*)				
Cost of goods sold	79.9	84.7	80.0	79.6	78.2
Gross profit	20.1	15.3	20.0	20.4	21.8
SG&A expenses	14.7	17.0	18.4	18.4	16.4
Operating income or (loss)	5.4	(1.7)	1.7	2.0	5.4
Net income or (loss)	4.9	(3.0)	(6.9)	1.4	5.1
	Unit value (*per pound*)				
Net sales	$2.75	$2.69	$2.62	$2.60	$2.65
Cost of goods sold	2.19	2.28	2.10	2.07	2.07
Gross profit	0.55	0.41	0.52	0.53	0.58
SG&A expenses	0.41	0.46	0.48	0.48	0.43
Operating income or (loss)	0.15	(0.04)	0.04	0.05	0.14
Net income or (loss)	0.13	(0.08)	(0.18)	0.04	0.14
	Number of firms reporting				
Operating losses	***	***	***	***	***
Data	4	4	4	4	3

[1] Other expenses include Bayer's shut-down expenses for detergent SFWA in 2001 and Bayer's shut-down expenses for paper SFWA in 2002.

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

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

The responding firms' data on capital expenditures, R&D expenses, and the value of their property, plant, and equipment for their DAS, SFWA, and combined DAS and SFWA operations are shown in table VI-5. Capital expenditures and value of assets, by firm, are shown in table VI-3.

Table VI-5
Capital expenditures, research and development expenses, and value of assets of U.S. producers in the production of DAS and SFWA, calendar years 2000-2002, January-March 2002, and January-March 2003

Item	Calendar years			January-March	
	2000	2001	2002	2002	2003
	Value (*$1000*)				
Capital expenditures:					
DAS	***	***	***	***	***
SFWA	***	***	***	***	***
Combined DAS and SFWA	***	***	***	***	***
R&D expenses:					
DAS	***	***	***	***	***
SFWA	***	***	***	***	***
Combined DAS and SFWA	***	***	***	***	***
Fixed assets:					
DAS:					
Original cost	***	***	***	***	***
Book value	***	***	***	***	***
SFWA:					
Original cost	***	***	***	***	***
Book value	***	***	***	***	***
Combined DAS and SFWA:					
Original cost	183,245	183,723	181,763	180,575	181,089
Book value	***	***	***	***	***

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

CAPITAL AND INVESTMENT

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

Actual negative effects: ***.

Anticipated negative effects: ***.

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 nature of the alleged subsidies was presented earlier in this report; 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 INDUSTRY IN CHINA

Three Chinese producers of DAS, Henshui Jingheng Chemical Products Co. (Henshui), Ltd., Jiangsu Shuanghe Chemicals Co., Ltd. (Jiangsu), and Hebei Huayu Chemical Corp. (Hebei), together accounting for an estimated 75 percent of Chinese DAS production, responded to the Commission's foreign producer/exporter questionnaire.[1] Their data are presented in table VII-1. The companies estimated their aggregate percentage of total Chinese DAS exports to the United States at *** percent, or by company as: Hengshui, ***; Jiangsu, ***; and Hebei, ***. *** reported production of products that are precursors to DAS on the same equipment and machinery and equipment used in the production of DAS.[2] The Chinese producers also reported DAS exports to markets throughout the world, including Europe, South America, the Middle East, Russia, and Southeast Asia.[3]

Table VII-1
DAS: Data for the industry in China, 2000-02, January-March 2002, January-March 2003, and projected 2003-04

* * * * * * *

One producer of Chinese SFWA, Guangzhou Ciba Specialty Chemicals (a joint venture of Ciba's parent) responded to the Commission's questionnaire. The firm reported *** exports to the United States and the other markets for its exports ***. Chinese SFWA data are presented in table VII-2.

Table VII-2
SFWA: Data for the industry in China, 2000-02, January-March 2002, January-March 2003, and projected 2003-04

* * * * * * *

*** reported that *** of total sales in the most recent fiscal year were represented by sales of DAS (*** percent for *** and *** percent for ***), while *** attributed *** percent of its total sales to DAS and Guanzhou Ciba's SFWA accounted for *** percent of its total sales. Reported annual Chinese capacity to produce DAS increased continually during 2000-02 and is projected to be greater in projected

[1] Hengshui exports to ***, Jiangsu exports to ***, and Hebei exports to ***.

[2] ***.

[3] Foreign producer questionnaires, p. 6.

2003-04 than it was in 2002.[4] ***.[5] Subject Chinese product is reportedly not subject to antidumping findings or remedies in any WTO-member countries.

THE INDUSTRY IN GERMANY

Two German producers of both DAS and SFWA, Ciba Spezialitaetenchemie Grenzach GmbH (Ciba GmbH) and Bayer AG, together believed to account for all German DAS and SFWA production during the period examined, responded to the Commission's foreign producer/exporter questionnaire. Their data are presented in table VII-3 for DAS and in table VII-4 for SFWA. In addition to exports to the United States,[6] German producers also report DAS exports to markets in ***[7] and SFWA exports to markets in ***.[8]

Table VII-3
DAS: Data on the industry in Germany, 2000-02, January-March 2002, January-March 2003, and projected 2003-04

* * * * * * *

Table VII-4
SFWA: Data for the industry in Germany, 2000-02, January-March 2002, January-March 2003, and projected 2003-04

* * * * * * *

German producers' capacity to produce SFWA increased continually from 2000 to 2002 and is projected to be higher in 2003-04 than in 2002. German capacity to produce DAS, however, peaked in 2001 before falling in 2002 and is projected to be lower in 2003-04 than it was in 2002.[9] Both firms reported *** of their firm's most recent fiscal year's sales were represented by sales of DAS and SFWA (Ciba GmbH reported *** percent for DAS and *** percent for SFWA and Bayer AG reported *** percent for DAS and *** percent for SFWA). *** reported production of products other than DAS and/or SFWA on the same equipment and machinery used in the production of DAS and/or SFWA; ***. German DAS and SFWA are reportedly not subject to antidumping findings or remedies in any WTO-member countries.[10]

---

[4] ***. Foreign producer questionnaires.

[5] Foreign producer questionnaires, pp. 3-6.

[6] ***.

[7] ***.

[8] Foreign producer questionnaires, p. 6.

[9] Bayer AG's reported capacity to produce DAS decreased from *** to zero in projected 2003-04. Bayer AG ceased DAS production at the end of 2002. Conference transcript, p. 105. ***.

[10] Ibid., pp. 3-6.

THE INDUSTRY IN INDIA

Three Indian producers of subject product, Paramount Minerals and Chemicals Ltd. (Paramount), Vasant Chemicals Ltd. (Vasant), and Diamond-Dye Chem Ltd. (Diamond)--(a joint venture of Ciba's parent) responded to the Commission's foreign producer/exporter questionnaire.[11] Their data are presented in table VII-5 for DAS and table VII-6 for SFWA. Paramount and Vasant estimated that they accounted for *** percent of Indian DAS production, and Paramount and Diamond estimated that they accounted for *** percent of Indian SFWA production. Paramount captively consumes *** of its DAS in SFWA production. Diamond does not produce DAS. Vasant does not produce SFWA. Vasant estimated its percentage of total 2002 Indian DAS exports to the United States at *** percent. *** reported production of *** on the same equipment and machinery used in the production of DAS.[12] Vasant reports DAS exports to *** and Paramount reports SFWA exports to ***. Diamond ***.[13]

Table VII-5
DAS: Data on the industry in India, 2000-02, January-March 2002, January-March 2003, and projected 2003-04

* * * * * * *

Table VII-6
SFWA: Data on the industry in India, 2000-02, January-March 2002, January-March 2003, and projected 2003-04

* * * * * * *

Reported Indian capacity to produce DAS increased, or is projected to increase, continually throughout the period examined.[14] Paramount and Diamond reported that *** percent and *** percent, respectively, of their sales in their most recent fiscal year were SFWA, and Vasant reported that DAS accounted for *** percent of its most recent fiscal year's sales. ***.[15] Indian DAS and SFWA are reportedly not subject to antidumping findings or remedies in any WTO-member countries.

U.S. INVENTORIES OF PRODUCT FROM CHINA, GERMANY, AND INDIA

Tables VII-7 and VII-8 present data on U.S. importers' end-of-period inventories of imported DAS and SFWA. It would appear that in those instances where the importer of record is not the SWFA producer, substantial inventories of DAS may be held by the customer (i.e., the SFWA producer).

---

[11] ***. *** foreign producer questionnaire, p. 2.

[12] ***. *** foreign producer questionnaire, p. 6.

[13] Foreign producer questionnaires, p. 6.

[14] ***. Foreign producer questionnaires, p. 6.

[15] Ibid., pp. 3-6.

Table VII-7
DAS: U.S. importers' end-of-period inventories of imports, by source, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

Table VII-8
SFWA: U.S. importers' end-of-period inventories of imports, by source, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–435 and 731–TA–1036–1038 (Preliminary)]

Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid Chemistry from China, India and Germany

AGENCY: International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–435 (Preliminary) and antidumping investigations Nos. 731–TA–1036–1038 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 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 India of 4,4'-diamino-2,2'-stilbenedisulfonic acid and stilbenic fluorescent whitening agents, provided for in subheadings 2921.59.20 and 3204.20.80, respectively of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and by reason of such imports from China, Germany, and India 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 sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by June 30, 2003. The Commission's views are due at Commerce within five business days thereafter, or by July 8, 2003.

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

EFFECTIVE DATE: May 14, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), 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, 2003, by Ciba Specialty Chemicals Corp., Tarrytown, NY.

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 countervailing duty and 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, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Cynthia Trainor (202–205–3354) not later than June 2, 2003, to arrange for their appearance. Parties in support of the imposition of countervailing and 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, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

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

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

By order of the Commission.

Issued: May 19, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–12938 Filed 5–22–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-885, A-533-834, A-428-838]

Notice of Initiation of Antidumping Duty Investigations: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from Germany, India, and the People's Republic of China

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

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482-0371, AD/CVD Enforcement Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations:

The Petitions

On May 14, 2003, the Department received petitions filed in proper form by Ciba Specialty Chemicals Corporation (Ciba or petitioner). The Department received supplemental information to the petitions from Ciba on May 27, 2003 and May 30, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of 4,4'-Diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA) from Germany, India, and the People's Republic of China (PRC) are, 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 imports from Germany, India, and the PRC are materially injuring, or are threatening to materially injure an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petitions."

Period of Investigation

The anticipated period of investigation (POI) for Germany and India is April 1, 2002, through March 31, 2003; and October 1, 2002, through March 31, 2003 for the PRC.

Scope of Investigations

These investigations cover 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper, and detergent. These investigations cover all DAS and SFWA regardless of end use.

DAS is currently classifiable under subheading 2921.59.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification only covers DAS. SFWA is currently classifiable under subheading 3204.20.80 of the HTSUS. This tariff classification represents a basket category which includes SFWA and other synthetic organic coloring matter. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we sought additional information from the petitioner concerning the scope of the investigations. As a result of this supplemental information, we modified the scope language proposed by the petitioner with regard to the name of the subject merchandise and the description of the products covered.[1]

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all 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, 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 the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies 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. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a

[1] See Memorandum to the File Re: Change to Scope Description (June 3, 2003).

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 U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

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

In this case, the petitions cover a single class or kind of merchandise, DAS and its commercial agent SFWA as defined in the "Scope of Investigations" section, above. The petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Thus, based on our analysis of the information presented to the Department by the petitioner and interested parties, we have determined that there is a single domestic like product which is consistent with the definition of the "Scope of the Investigation" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support and, therefore, polling is unnecessary. *See* Office of AD Enforcement, Initiation Checklist: 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA) from Germany, India, and the People's Republic of China (June 3, 2003) (the Initiation Checklist) at attachment II (on file in the Central Records Unit, Room B-099 of the Department of Commerce).

On May 30, 2003, Bayer Chemicals Corporation (Bayer) submitted an argument in opposition to the petition, and on June 3, 2003, 3V Inc. also submitted an argument in opposition to the petition. However, neither party provided sufficient evidence that would call into question the sufficiency of the petitioner's industry support. *See* Initiation Checklist at attachment II for further details. Therefore, the Department has determined, based on information provided in the petition, that the petitioner represents over 50 percent of total production of the domestic like product. The petitioner is the only U.S. producer of DAS and accounts for over 50 percent of U.S. production of SFWA; thus, Ciba satisfies the requirements of section 732(c)(4)(A)(i) of the Act because it accounts for at least 25 percent of the total production of the domestic like product. Furthermore, the requirements of section 732(c)(4)(A)(ii) of the act are also met. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the "Injury Allegation" section in the Initiation Checklist.

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of India were made at prices below the cost of production (COP) and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with this investigation. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act (URAA), states that an allegation of sales below COP need not be specific to individual exporters or producers. 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." SAA, H.R. Doc. No. 103–316 at 833 (1994).Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that before initiating such an investigation the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred. 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. We have analyzed the country-specific allegation as described below for India. Based on our analysis, we found reasonable grounds to believe or suspect that sales of DAS and SFWA in India were made at prices below cost. *See* the "Normal Value" section for India, below.

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 U.S. and home market prices, and constructed value (CV) are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Germany

Export Price

The petitioner based export price (EP) on average unit values of DAS imports from Germany during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000. *See* Initiation Checklist for further information.

Normal Value

With respect to normal value (NV), the petitioner calculated COM based on the production costs of a German DAS manufacturer, Ciba Spezialitatenschemie Grenzach GmbH, that is affiliated with the petitioner, because home market prices and information related to third country sales were unavailable during the fiscal year 2002. To calculate selling, general and administrative expenses (SG&A) and profit, the petitioner relied on amounts reported in the consolidated financial statements for the 2002 fiscal year of Bayer AG, a German producer of DAS. We relied on the cost data contained in the petition except in the following instances.

1. We recalculated the selling, general and administrative (SG&A) expenses amount per pound of DAS exclusive of

[2] See Algoma Steel Corp. Ltd., v. United States, 688 F. Supp. 639, 642-44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380-81 (July 16, 1991).

movement and import duty expenses. First, we calculated the SG&A rate based on the amounts reported in the unconsolidated financial statements for the 2002 fiscal year of Bayer AG. Second, we applied this SG&A rate to the reported cost of manufacture (COM). Finally, we deducted the amounts contained in the petition for shipping cost from German port to U.S. port, and U.S. import duty from the calculated SG&A amount per pound of DAS because the selling amount contained in the unconsolidated financial statements may include the movement and duty expenses.

2. We recalculated the financial expense amount per pound of DAS. We calculated the financial expense rate based on the amounts reported in the consolidated financial statements for the 2002 fiscal year of Bayer AG. and applied this financial expense rate to the reported COM.

3. We calculated the profit amount per pound of DAS. We calculated the profit rate as a percentage of cost of goods sold and SG&A amounts reported in the unconsolidated financial statements for the 2002 fiscal year of Bayer AG because these unconsolidated financial statements did not itemize the financial expenses, but included them in the basket of non-operating expenses. Therefore, we applied this profit rate to the reported COM and the SG&A expense amount inclusive of shipping cost from German port to U.S. port, and U.S. import duty.

4.We recalculated the CV by adding the reported COM to the calculated SG&A, financial expense, and profit amounts as discussed above.

The estimated dumping margins for subject merchandise from Germany, based on a comparison between the U.S. prices and adjusted CV is 194.9 percent.

India

Export Price

The petitioner based EP on average unit values of DAS imports from India during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000.

Normal Value

With respect to NV, the petitioner provided a home market price for DAS using a price quote obtained from its joint venture in India. This price was quoted in U.S. dollars, FOB Hyderabad.

The petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of DAS in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, financial expenses, and packing expenses.

The petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce DAS in the United States and in India using publicly available data. For one particular raw material, oleum, we noted that the cost was based on amounts purchased from two countries. In order to be conservative in using this estimated cost, we recalculated the oleum costs based on the lower per-unit purchase price. In addition, we also corrected a mathematical error for the cost of another raw material element.

To calculate overhead and SG&A expenses, the petitioner relied upon amounts reported in the 2001–2002 financial statements of an Indian chemical producer. The petitioner did not include packing costs in the CV calculation. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in India on CV. The petitioner calculated CV using the same COM, overhead, and SG&A, and profit expense figures used to compute the Indian home market costs. Consistent with 773(e)(2) of the Act, the petitioner included in CV an amount for profit.

The estimated dumping margin for subject merchandise from India, based on a comparison of EP and home market price, is 35.7 percent. The estimated dumping margin for India based on a comparison between EP and CV is 139.61 percent.

PRC

Export Price

The petitioner based EP on average unit values of DAS imports from the PRC during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000.

Normal Value

With respect to NV, the petitioner provided CV based on Indian surrogate values and the petitioner's own experience producing DAS (its factors of production), adjusted for any known differences between the petitioner's production process and the Chinese DAS production process. Where the petitioner was unable to obtain Indian surrogate values for material inputs, it used a value of zero for such inputs. We also adjusted the value of high pressure steam to zero due to the lack of an appropriate Indian surrogate value. Indian values were converted to U.S. dollars using the exchange rates from the Department's website. Where surrogate values were not contemporaneous with the POI, the petitioner adjusted such values using wholesale price indices from India. For SG&A expenses and profit, the petitioner relied upon amounts reported in the 2001 financial reports of Atul Ltd. (India) and Daurala Organics (India). The petitioner claims that said companies have similar costs to those of a producer of the subject merchandise because said companies produce chemicals similar to the subject merchandise.

The estimated dumping margin for the PRC, based on a comparison of EP and CV, is 156.69 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of DAS and SFWA from Germany, India, and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the cumulated imports from Germany, India, and the PRC of the subject merchandise sold at less than NV.

The petitioner contends that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. 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 properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigations

Based upon our examination of the petitions covering DAS and SFWA, we have found that they meet the requirements of section 732 of the Act. *See* the Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of DAS and SFWA from Germany, India and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Germany, India, and the PRC. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determinations by the ITC

The ITC will determine no later than June 30, 2003, whether there is a reasonable indication that imports of DAS and SFWA from Germany, India, and the PRC 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 thatcountry; 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, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14592 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533–835]

Notice of Initiation of Countervailing Duty Investigation: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from India

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

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein at (202) 482–1391, or Sean Carey (202) 482–3964; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

The Petition

On May 14, 2003, the Department of Commerce (the Department) received a petition filed in proper form by Ciba Specialty Chemicals Corp. (Ciba) (petitioner). *See 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from the PRC, India, and Germany (Petition).* The Department received information supplementing the petition, on May 27 and May 29, 2003. *See Response to the Department's Supplemental Questions Regarding the Countervailing Duty Investigations of Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from the PRC, India, and Germany* (May 27, 2003) (*CVD Supplemental*) and, *Response to Department's Supplemental Questions Regarding the Scope, Standing and Injury Portions of the Petition Regarding Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from India* (May 29, 2003) (*Scope, Standing and Injury Supplemental*).

In accordance with section 702(b)(1) of the Act, petitioner alleges that manufacturers, producers, or exporters of DAS and SFWA in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition*, below.

Period of Investigation

In accordance with 19 CFR 351.204 (b)(2), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

Scope of Investigation

This investigation covers, 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper and detergent. This investigation covers all DAS and SFWA regardless of end use.

DAS is currently classifiable under subheading 2921.59.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification only covers DAS. SFWA is currently classifiable under subheading 3204.20.80 of the HTSUS. This tariff classification represents a basket category which includes SFWA and other synthetic organic coloring matter. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we sought additional information from the petitioner concerning the scope of the investigation. As a result of this supplemental information, we modified the scope language proposed by the petitioner with regard to the name of the subject merchandise and the description of the products covered.[1]

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323* (May 19, 1997). The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 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 determination.

[1] See Memorandum to the File Re: Change to Scope Description (June 3, 2003).

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Tariff Act of 1930, we held consultations with the Government of India (≥GOI") regarding this petition on May 29, 2003. *See Memorandum to the File from Sean Carey: Consultations with the Government of India Regarding the Countervailing Duty Petition on 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and DAS Applicators commonly identified as Stilbenic Fluorescent Whitening Agents (SFWA) from India,* dated May 30, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed *on* behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (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. *See* section 702(c)(4)(A). Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

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

In this case, the petitions cover a single class or kind of merchandise, DAS and its commercial agent SFWA as defined in the *Scope of Investigations* section, above. The petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Thus, based on our analysis of the information presented to the Department by the petitioner and interested parties, we have determined that there is a single domestic like product which is consistent with the definition of the Scope of the Investigation section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See Countervailing Duty Investigation Initiation Checklist: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid and Stilbenic Fluorescent Whitening Agents (DAS and SFWA) from India,* (June 3, 2003) (*CVD Initiation Checklist*), on file in the Central Records Unit, room B-099 of the main Department of Commerce building.

For each country, the Department has determined, based on information provided in the petition, that the petitioner represents over 50 percent of total production of the domestic like product. The petitioner is the only U.S. producer of DAS and accounts for over 50 percent of U.S. production of SFWA. Thus, Ciba satisfies the requirements of section 732(c)(4)(A)(i) of the Act because it accounts for at least 25 percent of the total production of the domestic like product. Furthermore, the requirements of section 702(c)(4)(A)(ii) of the act are also met. Although, on May 30, 2003, Bayer Chemicals Corporation (Bayer) submitted an argument in opposition to the petition, and on June 3, 2003, 3V Inc. also submitted an argument in opposition to the petition, they did not provide evidence that would call into question the sufficiency of Ciba's industry support. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See CVD Initiation Checklist* at Attachment II for further details.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that; (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

1. The Duty Entitlement Passbook Scheme (DEPB)/ Post-Export Credits
2. Pre-Shipment and Post-Shipment Export Financing
3. Export Promotion Capital Goods Scheme (EPCGS)
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Exemption of Export Credit from Interest Taxes
6. Export Processing Zones/ Export-Oriented Units Programs
7. Market Development Assistance (MDA)
8. Special Imprest Licenses

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in

[2] *See Algoma Steel Corp. Ltd., v. United States,* 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380-81 (July 16, 1991).

India. The full discussion of our bases for not initiating on these programs is set forth in the *CVD Initiation Checklist*:

1. Import Mechanisms (Sale of Import Licenses)
2. Duty Drawback on Excise Taxes

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of subsidized imports from India of the subject merchandise. Petitioner contends that the industry's injured condition is evident in the reduced levels of production and capacity utilization, decline in profits, decline in research and development, decreased U.S. market share, lost sales and revenue, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See CVD Initiation Checklist.*

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on DAS and SFWA, and petitioner's responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of DAS and SFWA from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

International Trade Commission Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine, no later than June 28, 2003, whether there is a reasonable indication that imports of subject merchandise from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation 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, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14591 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–DS–S

APPENDIX B

CALENDAR OF THE PUBLIC CONFERENCE

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:

CERTAIN 4,4'-DIAMINO-2,2'-STILBENEDISULFONIC ACID CHEMISTRY FROM CHINA, GERMANY, AND INDIA
Investigations Nos. 701-TA-435 and 731-TA-1036-1038 (Preliminary)

June 4, 2003 - 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 COUNTERVAILING AND ANTIDUMPING DUTIES:

Miller & Chevalier
Washington, DC
on behalf of

Ciba Specialty Chemicals Corp.

Michael Cheek, Business Line Head, Home and Fabric Care, NAFTA Region
Michelle Forte, International Trade Counsel

Peter Koenig)–OF COUNSEL

IN OPPOSITION TO THE IMPOSITION OF COUNTERVAILING AND ANTIDUMPING DUTIES:

Collier Shannon Scott PLLC
Washington, DC
on behalf of

3V Inc.

John Savoretti, President and CEO
Michael T. Kerwin, Economic Consultant, Georgetown Economic Services

Paul C. Rosenthal)
Jennifer E. McCadney) –OF COUNSEL

IN OPPOSITION TO THE IMPOSITION OF COUNTERVAILING AND ANTIDUMPING DUTIES–*CONTINUED*:

Alston & Bird LLP
Washington, DC
on behalf of

Bayer AG and Bayer Chemicals Corp.

Tom Dudman, Manufacturing Consultant, Bayer Chemicals Corp.
Edward Mathews, Marketing Manager, Bayer Chemicals Corp.
Harold Goldsberry, Director of Marketing, Bayer Chemicals Corp.
Todd Portzline, Attorney, Bayer Chemicals Corp.
Andreas Scheurell, Vice President, Bayer Chemicals Corp.
Klaus-Dieter Schultz, Global Director of Manufacturing Operations, Bayer AG

Kenneth G. Weigel)
Laura Fraedrich)–OF COUNSEL
Daniel J. Gerkin)

Barnes, Richardson & Colburn
Washington, DC
on behalf of

Clariant Corp.

Robert L. Beck, Sourcing Manager
Tim Friemark, Vice President, Business Paper
Sam O'Neal, Textiles, Leather, and Paper Superintendent

Matthew T. McGrath)
Stephen W. Brophy) –OF COUNSEL

Garvey, Schubert & Barer
Washington, DC
on behalf of

Vasant Chemicals Ltd.
PHT International, Inc.
A & D International
Jiangsu Shuanghe Chemicals Co. Ltd.

Jean Smith, Vice President, PHT International, Inc.

Lizbeth Levinson)–OF COUNSEL

APPENDIX C

SUMMARY TABLES

Table C-1
DAS: Summary data concerning the U.S. market, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

Table C-2
SFWA: Summary data concerning the U.S. market, 2000-02, January-March 2002, and January-March 2003

* * * * * * *

Table C-3
DAS & SFWA: Summary data concerning the U.S. market, 2000-02, January-March 2002, and January-March 2003

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

Item	Reported data					Period changes			
				January-March					Jan.-Mar.
	2000	2001	2002	2002	2003	2000-02	2000-01	2001-02	2002-2003
U.S. consumption quantity:									
Amount	35,276	33,904	32,557	8,448	8,532	-7.7	-3.9	-4.0	1.0
Producers' component share (1)	74.0	77.9	75.0	79.7	69.1	1.0	3.9	-2.9	-10.7
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Germany	***	***	***	***	***	***	***	***	***
India	***	***	***	***	***	***	***	***	***
Subtotal	25.2	21.6	24.0	20.1	30.3	-1.3	-3.6	2.3	10.3
Other sources	0.8	0.5	1.0	0.2	0.6	0.2	-0.4	0.6	0.4
Total imports	26.0	22.1	25.0	20.3	30.9	-1.0	-3.9	2.9	10.7
U.S. consumption value:									
Amount	100,484	95,232	85,685	22,181	20,907	-14.7	-5.2	-10.0	-5.7
Producers' component share (1)	80.5	83.5	83.9	85.2	81.0	3.4	3.0	0.4	-4.2
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Germany	***	***	***	***	***	***	***	***	***
India	***	***	***	***	***	***	***	***	***
Subtotal	18.2	16.0	15.3	14.6	18.2	-2.9	-2.2	-0.6	3.7
Other sources	1.3	0.5	0.8	0.2	0.7	-0.6	-0.8	0.3	0.5
Total imports	19.5	16.5	16.1	14.8	19.0	-3.4	-3.0	-0.4	4.2
U.S. shipments of imports from:									
China:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Germany:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
India:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subtotal:									
Quantity	8,895	7,339	7,802	1,696	2,588	-12.3	-17.5	6.3	52.6
Value	18,259	15,200	13,126	3,234	3,811	-28.1	-16.8	-13.6	17.9
Unit value	$2.05	$2.07	$1.68	$1.91	$1.47	-18.0	0.9	-18.8	-22.8
Ending inventory quantity	1,406	969	1,774	***	1,090	26.2	-31.1	83.2	***
Other sources:									
Quantity	289	154	341	17	52	17.9	-46.9	122.1	211.2
Value	1,326	467	645	50	156	-51.4	-64.8	38.1	210.9
Unit value	$4.58	$3.04	$1.89	$2.99	$2.98	-58.8	-33.7	-37.8	-0.1
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All sources:									
Quantity	9,184	7,492	8,143	1,712	2,640	-11.3	-18.4	8.7	54.2
Value	19,585	15,667	13,771	3,284	3,968	-29.7	-20.0	-12.1	20.8
Unit value	$2.13	$2.09	$1.69	$1.92	$1.50	-20.7	-1.9	-19.1	-21.6
Ending inventory quantity	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table C-3--Continued
DAS & SFWA: Summary data concerning the U.S. market, 2000-02, January-March 2002, and January-March 2003

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

Item	Reported data					Period changes			
				January-March					Jan.-Mar.
	2000	2001	2002	2002	2003	2000-02	2000-01	2001-02	2002-2003
U.S. producers':									
Average capacity quantity	50,095	51,691	56,148	13,955	13,001	12.1	3.2	8.6	-6.8
Production quantity	44,895	41,571	34,973	8,957	8,005	-22.1	-7.4	-15.9	-10.6
Capacity utilization (1)	89.6	80.4	62.3	64.2	61.6	-27.3	-9.2	-18.1	-2.6
U.S. shipments:									
Quantity	31,968	33,089	29,693	7,883	6,972	-7.1	3.5	-10.3	-11.6
Value	90,822	90,937	79,149	20,718	18,186	-12.9	0.1	-13.0	-12.2
Unit value	$2.84	$2.75	$2.67	$2.63	$2.61	-6.2	-3.3	-3.0	-0.8
U.S. shipments (producers' component)									
Quantity	26,092	26,412	24,414	6,736	5,892	-6.4	1.2	-7.6	-12.5
Value	80,899	79,564	71,914	18,897	16,940	-11.1	-1.6	-9.6	-10.4
Unit value	$3.10	$3.01	$2.95	$2.81	$2.88	-5.0	-2.8	-2.2	2.5
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	3,143	3,947	3,671	3,561	2,793	16.8	25.6	-7.0	-21.6
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	272	224	206	206	200	-24.3	-17.6	-8.0	-2.9
Hours worked (1,000s)	613	503	465	117	115	-24.1	-17.9	-7.6	-1.7
Wages paid ($1,000s)	19,342	15,685	15,135	3,816	3,666	-21.8	-18.9	-3.5	-3.9
Hourly wages	$31.55	$31.18	$32.55	$32.62	$31.88	3.2	-1.2	4.4	-2.3
Productivity (pounds per hour)	73.2	82.6	75.2	76.6	69.6	2.7	12.8	-9.0	-9.1
Unit labor costs	$0.43	$0.38	$0.43	$0.43	$0.46	0.4	-12.4	14.7	7.5
Net sales:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	$2.75	$2.69	$2.62	$2.60	$2.65	-4.6	-2.1	-2.6	1.7
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	$2.19	$2.28	$2.10	$2.07	$2.07	-4.5	3.7	-8.0	-0.1
Unit SG&A expenses	$0.41	$0.46	$0.48	$0.48	$0.43	18.7	12.7	5.4	-9.4
Unit operating income or (loss)	$0.15	($0.04)	$0.04	$0.05	$0.14	-70.4	(2)	(2)	173.6
COGS/sales (1)	79.9	84.7	80.0	79.6	78.2	0.1	4.8	-4.7	-1.4
Operating income or (loss)/ sales (1)	5.4	(1.7)	1.7	2.0	5.4	-3.7	-7.0	3.3	3.4

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

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

SUMMARY OF RESPONSES TO LIKE PRODUCT QUESTIONS

Comparisons Between DAS and SFWA

Firms were asked to describe any similarities and/or differences in the physical characteristics of DAS and SFWA. Their responses are as follows:

* * * * * * *

Firms were asked to describe any similarities and/or differences in the uses for DAS and SFWA in the United States. Their responses are as follows:

* * * * * * *

Firms were asked to describe the degree of interchangeability, if any, between DAS and SFWA (i.e., whether they are used in the same or similar applications) in the U.S. market. Their responses are as follows:

* * * * * * *

Firms were asked to describe any similarities and/or differences in the channels of distribution (e.g., distributors, end users, etc.) for DAS and SFWA. Their answers are as follows:

* * * * * * *

Firms were asked to describe, to the best of their knowledge, any similarities and/or differences in customer and producer perceptions of DAS and SFWA in the U.S. market. Their responses are as follows:

* * * * * * *

Firms were asked to explain whether DAS and SFWA are made in common (i.e., the same or shared) U.S. manufacturing facilities, using common production processes and production employees. Their responses are as follows:

* * * * * * *

Firms were asked to describe any similarities and/or differences in the prices of DAS and SFWA in the U.S. market. Their responses are as follows:

* * * * * * *

APPENDIX E

ADDITIONAL PRICING DATA

Table E-1
SFWA: Prices and quantities of domestic product 1, by U.S. producers and by quarters, January 2000-March 2003

* * * * * * *

Table E-2
SFWA: Prices and quantities of domestic product 2, by U.S. producers and by quarters, January 2000-March 2003

* * * * * * *

Table E-3
SFWA: Prices and quantities of domestic product 3, by U.S. producers and by quarters, January 2000-March 2003

* * * * * * *

Table E-4
DAS: Prices and quantities of imported product 4, by subject country and by quarters, January 2000-March 2003

* * * * * * *