

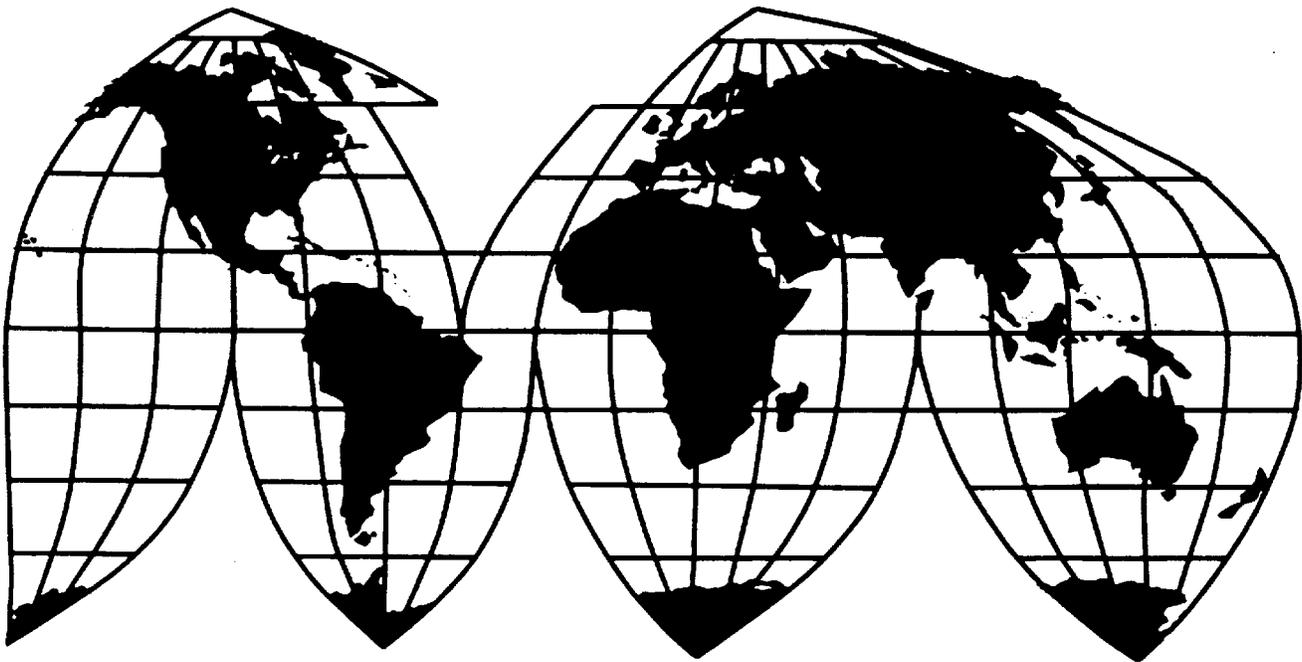
Sodium Nitrite From China and Germany

Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Preliminary)

Publication 3979

January 2008

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

COMPANY GLOSSARY

<u>Company name</u>	<u>Short form</u>
Allied Chemical & Dye Corporation	Allied
BASF Aktiengesellschaft	BASF AG
BASF Corporation	BASF Corp.
Deepak Nitrite Ltd.	Deepak
E.I. duPont de Nemours and Company, Inc.	DuPont
General Chemical LLC	General Chemical
Repauno Products LLC	Repauno
U.S. Salt Holdings	U.S. Salt
Zakłady Azotowe Kędzierzyn SA	ZAK

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Preliminary) Sodium Nitrite from China and Germany

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of sodium nitrite, provided for in subheading 2834.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China. The Commission further determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Germany of sodium nitrite, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations concerning sodium nitrite from China and Germany. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On November 8, 2007, a petition was filed with the Commission and Commerce by General Chemical LLC, Parsippany, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of sodium nitrite from China, and by reason of LTFV imports of sodium nitrite from China and Germany. Accordingly, effective November 8, 2007, the Commission instituted countervailing and antidumping duty investigations Nos. 701-TA-453 and 731-TA-1136-1137 (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*

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

of November 15, 2007 (72 FR 64241). The conference was held in Washington, DC, on November 27, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of sodium nitrite from the Federal Republic of Germany (“Germany”) that are allegedly sold in the United States at less than fair value as well as imports from the People’s Republic of China (“China”) that are allegedly subsidized and sold at less than fair value in the United States.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”²

II. BACKGROUND

General Chemical LLC (“General Chemical”) filed antidumping and countervailing duty petitions on November 8, 2007, regarding allegedly unfairly traded imports of sodium nitrite from China and Germany. General Chemical, which is headquartered in Parsippany, New Jersey, has a production facility in Solvay, New York where it has been producing sodium nitrite since 1920.³ Representatives from General Chemical appeared at the staff conference accompanied by counsel, and General Chemical filed a postconference brief. Representatives for BASF Aktiengesellschaft (“BASF AG”), a producer of subject merchandise from Germany, and BASF Corp., an importer of subject merchandise from Germany (collectively “BASF”), appeared at the staff conference accompanied by counsel and submitted a postconference brief. No producer, exporter, or importer of the subject merchandise from China appeared at the conference or submitted a postconference brief.⁴

¹ 19 U.S.C. §§ 1671b(a), 1673b(a); see, e.g., Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294 (Fed. Cir. 2004); American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

³ See, e.g., Transcript of Nov. 27, 2007, Preliminary Staff Conference (“Confer. Tr.”) at 9 (McFarland). Confidential Staff Report, Mem. INV-EE-173 at III-1 (Dec. 13, 2007) (“CR”); Public Staff Report, Sodium Nitrite from China and Germany, Invs. Nos. 701-TA-453, 731-TA-1136 to 1137 (Prelim.), USITC Pub. 3979 at III-1 (Jan. 2008) (“PR”). General Chemical is the only known company currently producing sodium nitrite in the United States. General Chemical’s parent company, Gen Tek Inc. (“Gen Tek”), acquired the only other domestic producer of sodium nitrite, Repauno Products LLC (“Repauno”), from U.S. Salt Holdings, LLC (“U.S. Salt”) in July 2006, and closed the Repauno facility in Gibbstown, New Jersey several months later, in November 2006. See, e.g., Petitions Vol. I at 3; CR at III-2 to III-3; PR at III-2.

⁴ The Commission received questionnaire responses covering *** of domestic production and shipments; a foreign producer questionnaire response from BASF AG, the only known German producer; and no foreign producer questionnaire response from any Chinese producer of subject merchandise. See, e.g., CR at I-3, VII-2; PR at I-3, VII-2. The Commission also received usable questionnaire responses from seven importers representing slightly

(continued...)

III. DOMESTIC LIKE PRODUCT

A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁶ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁷

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁰ Although the Commission must accept the determination of Commerce as to the scope of the allegedly unfairly traded imported merchandise,¹¹ the Commission determines what domestic product is like the imported articles Commerce has identified.¹² The Commission must base its domestic like product

⁴ (...continued)

more than half of total U.S. imports from China by quantity in 2006, and from *** U.S. importers representing all U.S. imports from Germany. See, e.g., CR at IV-1; PR at IV-1; CR/PR at Table III-1.

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

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

¹⁰ Nippon, 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.”).

¹¹ See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 at 9 (Fed. Cir. April 25, 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

¹² Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five

(continued...)

determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.¹³

B. Product Description

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

sodium nitrite in any form, at any purity level. {Sodium nitrite in the scope of these investigations} may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The American Chemical Society Chemical Abstract Service (“CAS”) has assigned the name “sodium nitrite” to sodium nitrite. The CAS registry number is 7632-00-0. While the HTSUS subheading, CAS registry number, and CAS registry are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.¹⁴

C. Analysis and Conclusion

Petitioner General Chemical asks the Commission to define a single domestic like product consisting of all grades and forms of sodium nitrite.¹⁵ German respondent BASF does not disagree with petitioner’s proposed definition.¹⁶ We considered whether there are clear dividing lines between different grades and/or forms of sodium nitrite such that there is more than one domestic like product corresponding to the scope of these investigations.¹⁷ As we explain below, we define the domestic like product as sodium nitrite, regardless of form or grade, coextensive with the scope of these investigations.

¹² (...continued)
classes or kinds).

¹³ Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

¹⁴ 72 Fed. Reg. 68563 (Dec. 5, 2007) (initiation of antidumping investigations); 72 Fed. Reg. 68568 (Dec. 5, 2007) (initiation of countervailing duty investigation).

¹⁵ See, e.g., Petitions Vol. I at 30-34; Petitioner’s Postconf. Br. at 1-9.

¹⁶ See, e.g., Confer. Tr. at 93-95, 114 (McGrath).

¹⁷ As we have previously stated, the Commission “normally does not find separate like products based on different grades of chemicals or mineral products.” Liquid Sulfur Dioxide from Canada, Inv. No. 731-TA-1098 (Prelim.), USITC Pub. 3826 at 6 (Dec. 2005) quoting Bulk Acetylsalicylic Acid (Aspirin) from China, Inv. No. 731-TA-828 (Final), USITC Pub. 3314 at 5-6 (June 2000); Sulfanilic Acid from Hungary and Portugal, Invs. Nos. 701-TA-426 and 731-TA-984 to 985 (Final), USITC Pub. 3554 at 7 n.34 (Nov. 2002); Barium Carbonate from China, Inv. No. 731-TA-1020 (Prelim.), USITC Pub. 3561 at 7 n.28 (Nov. 2002).

Physical Characteristics and Uses. Sodium nitrite is an industrial inorganic chemical with a chemical formula of NaNO_2 .¹⁸ In the United States, sodium nitrite is produced in various forms (granular, flake, or liquid). When in granular or flake form, sodium nitrite is a white to slightly yellowish crystalline material that is hygroscopic and very soluble in water, but relatively insoluble in most organic solvents.¹⁹ When dissolved in water, sodium nitrite forms a clear to slightly yellow solution (referred to as its “liquid” or “liquor” form).²⁰

Sodium nitrite is an intermediate chemical that provides either nitrogen or oxygen in the chemical process used to produce products for a wide variety of applications.²¹ Its uses include: (1) active oxidizing agent;²² (2) reducing agent;²³ (3) source of nitrous acid in a number of organic syntheses;²⁴ (4) forming organic nitrites when reacted with organic alcohols in an acid medium;²⁵ (5) ingredient in the manufacture of inks, dyes, and other chemicals;²⁶ (6) curing meat products such as hot dogs;²⁷ (7) additive in the manufacture of synthetic rubber and blowing compounds;²⁸ (8) wastewater treatment;²⁹ and (9) human and veterinary medicine as a vasodilator, a bronchodilator, an intestinal relaxant or laxative, and as an antidote for cyanide poisoning.³⁰

Sodium nitrite is sold in a variety of grades depending on the end-use application or the purchasers’ handling requirements (such as their process equipment and facilities and their inventory storage capabilities). General Chemical reports producing seven grades of sodium nitrite: (1) high-purity granular; (2) granular free-flowing technical grade; (3) high-purity flake; (4) granular free-flowing food

¹⁸ See, e.g., Petitions Vol. I at 4; CR at I-6; PR at I-5.

¹⁹ See, e.g., Petitions Vol. I at 4; CR at I-6 to I-7; PR at I-5.

²⁰ See, e.g., Petitions Vol. I at 4; CR at I-6; PR at I-5.

²¹ See, e.g., Confer. Tr. at 29 (Nelson); CR at I-6 to I-7; PR at I-5; CR/PR at Table I-2; Petitioner’s Postconf. Br. at 4.

²² As an oxidizing agent, sodium nitrite is used for corrosion inhibition in liquids having contact with metals (such as automobile antifreeze and paints), alkaline de-tinning of scrap tin plate, and in phosphating metals. See, e.g., Petitions Vol. I at 4.

²³ Sodium nitrite is used as a reducing agent toward oxidizing agents such as dichromate, permanganate, chlorate, and chlorine. See, e.g., Petitions Vol. I at 4.

²⁴ In the presence of acids, sodium nitrite forms nitrous acid. Due to its instability, nitrous acid is not commercially available, so sodium nitrite serves as the principal source of nitrous acid in a number of organic syntheses. Petitioner asserts that two of the more important uses of nitrous acid in organic syntheses are in the diazotization and nitrosation of organic amines. See, e.g., Petitions Vol. I at 4-5.

²⁵ When reacted with organic alcohols in an acid medium, sodium nitrite forms organic nitrites such as amyl nitrite and amine nitrite (cyclohexylamine nitrite). According to petitioner, these derivatives are utilized to some extent as diesel fuel additives and volatile corrosion inhibitors. See, e.g., Petitions Vol. I at 5.

²⁶ See, e.g., Petitions Vol. I at 5, 30; Confer. Tr. at 11 (McFarland); CR at I-7; PR at I-6.

²⁷ See, e.g., Petitions Vol. I at 5; Confer. Tr. at 11 (McFarland); CR at I-7 to I-8; PR at I-6.

²⁸ See, e.g., Petitions Vol. I at 5; CR at I-7; PR at I-6.

²⁹ See, e.g., Petitions Vol. I at 5; CR at I-7; PR at I-6.

³⁰ See, e.g., Petitions Vol. I at 31; Confer. Tr. at 11 (McFarland); CR at I-8; PR at I-6. General Chemical reports that researchers are currently investigating using sodium nitrite for the treatment of specific diseases. Id.

grade; (5) pure liquid; (6) high-purity special granular; and (7) crystal-reagent quality.³¹ High-purity granular is the product that comes out of General Chemical's centrifuge and is then dried and packed for shipment. This product is hygroscopic and subject to caking, but is supplied to some customers.³² For other customers, General Chemical adds an anti-caking agent such as petro AG³³ to high-purity granular sodium nitrite to yield granular free-flowing technical-grade sodium nitrite.³⁴ Because not all of its customers want even small traces of an anti-caking agent, for other customers, General Chemical compresses high-purity granular product into a thin cake using compression rollers and then breaks up the compressed product to produce a free-flowing high-purity flake sodium nitrite product that does not have anti-caking agent impurities.³⁵ With respect to food-grade sodium nitrite, General Chemical asserts that its technical- and food-grade sodium nitrite products are basically the same. The company's plant is certified to the Food and Drug Administration ("FDA") food chemical codex ("FCC") standards, meaning that the company must maintain certain records, follow current Good Manufacturing Practice ("cGMP"), and be regularly audited by the FDA. The only real difference between the two products for General Chemical's purposes is that it segregates products that are for sale as food-grade sodium nitrite for certification as meeting food-grade requirements, but it does not certify the technical-grade product.³⁶

In order to produce pure liquor sodium nitrite, because it uses a soda ash-based production process,³⁷ General Chemical takes high-purity granular product, adds water, heat, and agitation to form a liquid solution. Different customers have different specifications or concentrations for their sodium nitrite liquid, so General Chemical makes it to their requirements.³⁸ As for high-purity special granular, General Chemical sells this product to only two or three customers, and produces it by spraying an additional solution on the sodium nitrite.³⁹ General Chemical reports that crystal-reagent sodium nitrite is an even more specialized high-purity product that undergoes additional testing and is for a single customer as a processing reagent grade.⁴⁰ General Chemical asserts that regardless of form, all sodium nitrite has the same chemical structure.⁴¹

³¹ See, e.g., Petitions Vol. I at Exh. I-2.

³² See, e.g., Confer. Tr. at 10, 18, 47 (McFarland); Petitioner's Sodium Nitrite Process Flow Conference Exhibit.

³³ Petro AG is an Akzo Nobel naphthalene sulfonate surfactant. See, e.g., CR at I-9 n.24; PR at I-7 n.24.

³⁴ See, e.g., Confer. Tr. at 10, 18 (McFarland).

³⁵ See, e.g., Confer. Tr. at 10-11, 58-59 (McFarland). Thus, the three "high-purity" grades involve products to which no "impurities" (such as anti-caking agent) are added. Id. at 28 (Nelson).

³⁶ See, e.g., Confer. Tr. at 27-28, 55, 75-76 (McFarland).

³⁷ When it was operating, Repauno had a caustic soda-based production process that yielded pure liquid sodium nitrite at an earlier stage of the production process, as the product came through the absorption tower into the liquor tubs, as explained in more detail below. The concentration of General Chemical's solution, however, is not suitable for commercial sale at this stage without additional processing. See, e.g., Petitions Vol. I at 11, 32-33; Confer. Tr. at 9-10, 17, 44-45 (McFarland), Sodium Nitrite Process Flow Conference Exhibit.

³⁸ See, e.g., Petitions Vol. I at 4; Confer. Tr. at 9-10, 17, 84-85 (McFarland), 50-51 (Nelson); Petitioners' Sodium Nitrite Process Flow Conference Exhibit. General Chemical reports that sodium nitrite liquid with a 40 percent sodium nitrite concentration is a common standard. See, e.g., CR at I-9; PR at I-7.

³⁹ See, e.g., Confer. Tr. at 56-57 (Nelson).

⁴⁰ See, e.g., Confer. Tr. at 61-62 (Nelson); Petitioner's Postconf. Br. at Exh. 1 at 1-2.

⁴¹ See, e.g., Confer. Tr. at 27 (Nelson).

Interchangeability. Although General Chemical reports producing seven grades of sodium nitrite, it asserts that there are two primary quality grades: technical and food grade.⁴² The food grade is subject to higher quality specifications, especially with respect to the presence of heavy metals, compliance with FCC and cGMP, and registration with the FDA.⁴³ Sodium nitrite meeting only technical-grade specifications is not approved for use in food products, but sodium nitrite meeting food-grade specifications can be substituted for sodium nitrite that meets technical-grade specifications.⁴⁴ General Chemical reports that more than one grade of sodium nitrite may be used for the same end-use applications, but that all grades have the same basic chemical structure.⁴⁵ According to General Chemical, it produces different forms of sodium nitrite in response to the handling requirements of its customers, many of whom could switch from one form to another if they modified their production process and made certain capital investments.⁴⁶

Channels of distribution. The dry forms of sodium nitrite are sold in bags, drums, and super sacks, and the liquid form is sold in tank trucks and rail cars.⁴⁷ General Chemical sells sodium nitrite directly to commercial users and to distributors, and it reports that pricing to distributors is normally *** than to end-users, a trend that has been stable since 2004.⁴⁸

Common Manufacturing Facilities, Production Processes, and Production Employees. To produce sodium nitrite, producers oxidize ammonia vapor with air at high temperatures in a catalytic bed to form nitrogen oxides (NO and NO₂). Either caustic soda or soda ash in solution is then reacted with the nitrogen oxides in an absorption tower to form sodium nitrite solution.⁴⁹ The solution is next concentrated and purified in an evaporator-crystallizer where sodium nitrite crystals are formed. The solution is then centrifuged to separate the sodium nitrite crystals. The crystals then are either: (1) dried and packed for shipment; (2) dried and blended with an anti-caking agent such as silicon dioxide and packed for shipment; or (3) dried, compacted, flaked, and packed for shipment.⁵⁰ General Chemical reports that it uses the same production facilities and employees to produce sodium nitrite of different grades and physical forms, although some sodium nitrite is treated with an anti-caking agent, some is compressed into flake form, some is sprayed, and some is certified for a particular end use.⁵¹

⁴² See, e.g., Petitions Vol. I at 31; CR at II-1; PR at II-1.

⁴³ See, e.g., Petitions Vol. I at 31; CR at II-1; PR at II-1.

⁴⁴ See, e.g., Petitions Vol. I at 31; Confer. Tr. at 27-28 (Nelson); CR at II-1; PR at II-1.

⁴⁵ See, e.g., CR/PR at Table I-2; Petitioner's Postconf. Br. at 4-5.

⁴⁶ See, e.g., Confer. Tr. at 11 (McFarland), 27-29 (Nelson).

⁴⁷ See, e.g., Petitions Vol. I at 4, Exh. V-1; CR at I-7; PR at I-5.

⁴⁸ See, e.g., Petitions Vol. I at 5; Petitioner's Postconf. Br. at 6, Exh. 1 at 2; CR/PR at Table I-3.

⁴⁹ See, e.g., CR at I-8 to I-9; PR at I-6 to I-7. General Chemical currently uses soda ash for this production step, but Repauno used caustic soda. The primary difference between using soda ash versus caustic soda reportedly is that the sodium nitrite solution formed at this stage using caustic soda is concentrated and pure enough to be sold directly, but not if the solution is generated from soda ash inputs. In contrast to products in solution form, all crystalline products formed at this stage, whether produced from soda ash or caustic soda, must undergo additional production steps. See, e.g., Petitions Vol. I at 11, 32-33; Confer. Tr. at 9-10, 17, 44-45, 83-84 (McFarland), Sodium Nitrite Process Flow Conference Exhibit; CR at I-9; PR at I-6.

⁵⁰ See, e.g., Petitions Vol. I at 13, 32-33, Exh. II-7, III-9, V-1; Confer. Tr. at 9; CR at I-9; PR at I-6 to I-7; Petitioner's Postconf. Br. at 6-7.

⁵¹ See, e.g., Petitions Vol. I at 32-33; CR at I-9; PR at I-6 to I-7.

Producer/Customer Perceptions. Although General Chemical lists multiple grades in its marketing and sales brochures, it claims that this is more of a marketing pitch directed at its customer base to provide them with the handling characteristics they want: sodium nitrite in solution or dry form, with or without impurities.⁵² General Chemical also reports that some customers purchase multiple grades of sodium nitrite.⁵³

Price. General Chemical acknowledges that prices for sodium nitrite vary depending on the product grade, with technical-grade sodium nitrite generally being lower priced and food-grade being higher priced. High-purity flake and granular products are higher priced than those with impurities such as anti-caking agent additives.⁵⁴ General Chemical asserts that it prices its sodium nitrite in liquid form based on its knowledge of prices for sodium nitrite in dry form as well as the costs to put it in solution and transport it from the distributor or blender to the end-user.⁵⁵

We find there is a continuum of sodium nitrite products of different grades and/or forms, without clear dividing lines based on grade and/or form.⁵⁶ Sodium nitrite is produced in varying forms and grades for a variety of end uses, and its physical appearance thus varies. Nevertheless, the record in the preliminary phase of these investigations suggests that all forms of sodium nitrite share the same chemical composition, and all are used for their nitrogen or oxygen properties. There are some limitations in interchangeability among grades (such as between food-grade and technical-grade sodium nitrite for use in food applications), but as the Commission has indicated in other investigations where the domestic like product, like the scope, encompassed a wide variety of products, a lack of interchangeability among types of products comprising a continuum is not unexpected.⁵⁷ The only domestic producer asserts that all sodium nitrite is part of the same domestic like product, and it reports that some customers purchase more than one form of sodium nitrite and that others developed preferences over time but could switch between forms or grades in some situations. There are some differences in price based on the form or grade of sodium nitrite and in how the dry and liquid forms are packaged. Although there are some differences in the manufacturing processes for the various forms and grades, there also appears to be considerable overlap as well. In light of these facts, and in the absence of any contrary arguments, we define one domestic like product coextensive with the scope and consisting of all sodium nitrite regardless of form or grade.

⁵² See, e.g., Petitions Vol. I at Exh. I-2; Confer. Tr. at 18, 48 (McFarland), 28-29 (Nelson); Petitioner's Postconf. Br. at 7-8.

⁵³ See, e.g., Petitions Vol. I at 33-34.

⁵⁴ See, e.g., Petitions Vol. I at 33; Confer. Tr. at 29 (McFarland), 75 (Nelson); CR at I-13 to I-14; PR at I-9 to I-10.

⁵⁵ See, e.g., Confer. Tr. at 42 (Nelson); Petitioner's Postconf. Br. at Exh. 1 at 2.

⁵⁶ See, e.g., Softwood Lumber from Canada, Invs. Nos. 701-TA-404 and 731-TA-928 (Final), USITC Pub. 3509 at 6-15 (May 2002); Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA- 571 (Final), USITC Pub. 2658 at 8-10, 49-51 (Jul. 1993) (Commission found two like products based on operating element – cutting tool and sanding/grinding tool – and declined to further subdivide more narrowly into 28 families of tools); Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea ("PET Film"), USITC Pub. 2383 at 8, 10 (May 1991) ("a continuum product without clear dividing lines between the multiple like products ... {a}lthough there are many distinct end uses for different types of PET film ... essential characteristics are common to all PET film").

⁵⁷ See, e.g., Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey, Invs. Nos. 731-TA-1099 & 1101 (Prelim.), USITC Pub. 3832 at 10 (Jan. 2006); Outboard Engines from Japan, Inv. No. 731-TA-1069 (Prelim.), USITC Pub. 3673 at 7-8 (Mar. 2004).

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁵⁸ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁵⁹

General Chemical requests that the Commission define the domestic industry as General Chemical.⁶⁰ German respondent BASF does not argue otherwise. Based on our finding of a single domestic like product coextensive with the scope of these investigations, we find that the domestic industry consists of all U.S. sodium nitrite producers,⁶¹ *i.e.*, Repauno while it was operating during the period of investigation and General Chemical.

⁵⁸ 19 U.S.C. § 1677(4)(A).

⁵⁹ United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁶⁰ See, e.g., Petitions Vol. I at 3, 34; Petitioner’s Postconf. Br. at 9.

⁶¹ We must 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), which 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. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each investigation. No party argues, and there is no evidence on the current record that either General Chemical or Repauno is related to any producer, exporter, or importer of subject merchandise in China or Germany or that General Chemical or Repauno imported or purchased any subject merchandise from China or Germany. See, e.g., CR at III-16; PR at III-6. Accordingly, we do not find either to be a related party.

V. CUMULATION⁶²

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 cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and the domestic like product in the U.S. market.⁶³ In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including by reference to specific customer requirements and other quality-related questions;
- (2) the presence of sales or offers to sell subject imports from different countries and the domestic like product in the same geographic markets;
- (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 and domestic like product are simultaneously present in the market.⁶⁴

⁶² Pursuant to Section 771(24) of the Act, imports from a subject country of merchandise corresponding to a domestic like product that account for less than 3 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. 19 U.S.C. §§ 1671b(a), 1673b(a), 1677(24)(A)(i)(I). Before reaching the issue of whether subject imports from China and Germany are negligible, we must first decide which data to use to measure subject and non-subject imports into the U.S. market. For purposes of deciding negligibility, the Commission is authorized to make “reasonable estimates on the basis of available statistics” of pertinent import levels. 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”). Sodium nitrite is classified under HTSUS statistical reporting number 2834.10.1000. During the course of these investigations, the parties discussed whether the imports from Chile, Canada, the Netherlands, and Norway reflected in the official Commerce import statistics were sodium nitrite or some other product, such as sodium nitrate, that was improperly classified as sodium nitrite. See, e.g., Petitions Vol. I at 38 n.4; Confer. Tr. at 52-53 (McFarland), 89-90 (Nelson, McFarland); BASF’s Postconf. Br. at Answers to Staff Questions at 2, 6, 12. Staff confirmed with importers accounting for 100 percent of reported imports of sodium nitrite from Chile, Japan, the Netherlands, and Norway and with importers accounting for the majority of reported imports of sodium nitrite from Canada that they did not import sodium nitrite and that their imports were either incorrectly classified or labeled. See, e.g., CR at I-5, IV-1, nn.1-2, IV-4; PR at IV-1, nn.1-2. For purposes of our consideration of negligibility, to measure the volume of subject and non-subject imports, and to measure apparent U.S. consumption, we relied on the staff report wherein imports from each subject and non-subject country are based on official Commerce statistics on imports for consumption as revised to exclude imports from Canada, Chile, Japan, the Netherlands, and Norway that were found to have been incorrectly classified. See, e.g., CR at I-5, IV-1, nn.1-2, IV-4, IV-9 to IV-10; PR at I-4, IV-1 nn.1-2, IV-3, IV-8 to IV-9. Based on the adjusted data, subject imports from China and Germany were well above three percent of total imports for the most recent 12-month period preceding the filing of the petitions (October 2006 to September 2007). Subject imports from China accounted for 14.2 percent, and subject imports from Germany accounted for 81.8 percent, of total imports of the merchandise in that period. See, e.g., CR at IV-10; PR at IV-9. Consequently, we find that subject imports from China and Germany are not negligible.

⁶³ 19 U.S.C. § 1677(7)(G)(i).

⁶⁴ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

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

B. Parties’ Arguments

Petitioner General Chemical requests that the Commission cumulate subject imports from China and Germany.⁶⁷ German respondent BASF does not make any arguments against cumulation at this time, although it notes that there is limited information available addressing the statutory criteria for cumulation, apart from the facts that imports from China appear to be sold mostly in prilled form, imports from Germany are mostly of granular form, and neither subject country generally imports sodium nitrite in liquid form. BASF adds that it has not encountered Chinese product in the U.S. market, so it believes that competition between the subject imports is low or non-existent.⁶⁸

C. Analysis

In these investigations, the threshold criterion is satisfied because the antidumping and countervailing duty petitions with respect to both of the subject countries were filed on the same day, November 8, 2007. None of the cumulation exceptions apply.⁶⁹ Subject imports from China and Germany thus are eligible for cumulation. We consequently examine whether there is a reasonable overlap of competition between subject imports from China and Germany, as well as between subject imports and the domestic like product with regard to the four factors customarily considered.

1. Fungibility

The record in the preliminary phase of these investigations indicates that there are two primary grades of sodium nitrite sold in the U.S. market, food grade and technical grade. The parties appear to agree that food-grade sodium nitrite must meet specific quality standards. According to the FDA, technical-grade sodium nitrite cannot be used in food-grade applications, whereas food-grade sodium nitrite could be used in technical-grade applications.⁷⁰ Questionnaire data indicate that both food-grade and technical-grade sodium nitrite produced by the domestic, German, and Chinese industries have been sold in the U.S. market during the period of investigation.⁷¹

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

⁶⁶ The SAA 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); Goss Graphic Systems, 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”); Wieland, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁶⁷ See, e.g., Petitions Vol. I at 35-36; Petitioner’s Postconf. Br. at 9-10.

⁶⁸ See, e.g., Confer. Tr. at 137-38 (McGrath); BASF’s Postconf. Br. at Answers to Staff Questions at 6-7.

⁶⁹ See 19 U.S.C. § 1677(7)(G)(ii).

⁷⁰ See, e.g., CR at II-1, II-9; PR at II-1, II-6.

⁷¹ See, e.g., CR/PR at Tables V-1, V-2. With respect to food-grade sodium nitrite, although General Chemical and BASF were not aware of any imports of food-grade sodium nitrite from China, see, e.g., Confer. Tr. at 76-77 (Nelson), BASF’s Postconf. Br. at 3, relatively small volumes of FCC and cGMP-certified sodium nitrite sales were reported by U.S. importers of sodium nitrite from China. See, e.g., CR/PR at Table V-2. We note that ***. See

(continued...)

Sodium nitrite is sold in a variety of forms (flake, prilled, liquid, and granular). While there are some differences in the forms of sodium nitrite sold in the U.S. market by the domestic industry and subject producers from China and Germany, there is overlap between the subject imports from China and Germany and between the subject imports and the domestic like product in terms of sodium nitrite in granular form. According to questionnaire responses, in 2006, *** percent of General Chemical's U.S. shipments, *** percent of BASF's U.S. shipments, and *** percent of U.S. shipments of subject merchandise from China were of sodium nitrite in granular form.⁷²

On the other hand, according to questionnaire responses, *** percent of domestic industry shipments in 2006 were of sodium nitrite in flake form whereas no imports from China and Germany in 2006 were of sodium nitrite in flake form.⁷³ Sodium nitrite in prilled form is only supplied to the U.S. market by Chinese producers,⁷⁴ and *** percent of imports from China were in prilled form in 2006.⁷⁵ BASF also points out that there were only limited subject imports of sodium nitrite in liquid form during the period of investigation and that it is not economical for subject producers to export sodium nitrite in liquid form to the United States.⁷⁶ According to questionnaire responses, in 2006, the largest percentage of the domestic industry's sales were of sodium nitrite in liquid form (*** percent);⁷⁷ *** percent of BASF's U.S. shipments in 2006 consisted of liquid sodium nitrite; and *** of the imports from China were in liquid form.⁷⁸ Questionnaire respondents also report that subject imports are relatively interchangeable with each other and with the domestic like product.⁷⁹

⁷¹ (...continued)

e.g., BASF's Postconf. Br. at 7; CR/PR at Table V-2.

⁷² See, e.g., CR/PR at Table IV-4.

⁷³ See, e.g., CR/PR at Table IV-4; Staff Confer. Tr. at 60-61 (McFarland). BASF reports that it ***. See, e.g., BASF's Postconf. Br. at 3-7, Answers to Staff Questions at 1, 4-5.

⁷⁴ Instead of adding an anti-caking agent to their sodium nitrite, some Chinese producers perform an additional production step by re-dissolving the sodium nitrite and putting it through a "prilling" tower to form small pellets. See, e.g., Petitions Vol. I at 23-24, 33; Confer. Tr. at 21-23 (McFarland), 123-24 (Work); CR at I-10; PR at I-7. According to General Chemical, prilling does not affect customer or producer perceptions of sodium nitrite, but provides a free-flowing form that is not subject to caking that is similar to granular sodium nitrite mixed with an anti-caking agent or sodium nitrite in a flake form. See, e.g., Petitions Vol. I at 32; CR at I-12; PR at I-9.

⁷⁵ See, e.g., CR/PR at Table IV-4.

⁷⁶ Because BASF uses a caustic soda-based production process, it does produce saleable pure liquid earlier in the production process, at the "liquor tub" phase before the evaporation, crystallization, and centrifuge stages. But, BASF argues it is not practical to transport the pure liquid sodium nitrite overseas due to the large unit costs associated with shipping sodium nitrite in a water solution. See, e.g., Petitions Vol. I at 11, 32-33; Confer. Tr. at 9-10, 17 (McFarland); Petitioners' Sodium Nitrite Process Flow Conference Exhibit; BASF's Postconf. Br. at 4-6.

⁷⁷ See, e.g., CR/PR at Tables III-5, IV-4; Confer. Tr. at 6 (McGrath). When Repauno was operating, over *** percent of total U.S. commercial shipments were of *** sodium nitrite. As Repauno reduced its production and eventually closed, U.S. commercial shipments were increasingly in *** form. See, e.g., CR at IV-10; PR at IV-9.

⁷⁸ See, e.g., CR/PR at Table IV-4.

⁷⁹ General Chemical reported that U.S. sodium nitrite is *** interchangeable with imports from both China and Germany. BASF reported that U.S. sodium nitrite is *** interchangeable with sodium nitrite from China and from Germany. BASF noted that ***. Importers of sodium nitrite from China reported that U.S. produced sodium nitrite is either always or frequently interchangeable with Chinese and German product. One importer of Chinese material, ***, reported that the Chinese product cakes which limits acceptance of the product; it further noted that anti-caking agents cause the solution to look cloudy. See, e.g., CR at II-13; PR at II-7; CR/PR at Table II-1; Petitions Vol. I at 31-32, 35; Confer. Tr. at 41-42 (Nelson).

In short, although there are some differences in terms of the forms sold by the domestic, Chinese, and German industries in the U.S. market, there is also some overlap, particularly for technical-grade and food-grade granular sodium nitrite. Thus, we find that the record in the preliminary phase of these investigations indicates sufficient fungibility to cumulate subject imports from China and Germany.

2. Geographic Overlap

General Chemical and BASF reported selling their products ***. None of the responding importers of sodium nitrite from China reported selling the product nationwide; rather they reported selling in one or two specific market areas. Nevertheless, the market areas reported by these importers covered virtually the entire continental United States.⁸⁰ Thus, we find that subject imports from China and Germany and the domestic like product are sold in the same geographic markets.

3. Channels of Distribution

Both domestic and imported sodium nitrite are sold to distributors and end users. According to questionnaire responses, an increasing amount of U.S. producers' shipments over the period of investigation went to distributors, rising from *** percent in 2004 to *** percent in 2006; U.S. producers' shipments to end users declined from *** percent in 2004 to *** percent in 2006. Imports of sodium nitrite from Germany also increasingly went to distributors, rising from *** percent in 2004 to *** percent in 2006; shipments of German sodium nitrite to end users, thus, declined from *** percent in 2004 to *** percent in 2006. Between 2004 and 2006, the vast majority of shipments of imported sodium nitrite from China were made to distributors (over *** percent in each year). In interim 2007, however, *** of the shipments of Chinese sodium nitrite were to end users (**% percent).⁸¹ We find that there is an overlap in the channels of distribution for subject imports from China and Germany and the domestic like product.

4. Simultaneous Presence

Like domestic shipments of sodium nitrite, sodium nitrite produced in China and Germany was present in the U.S. market throughout the period of investigation. Based on Commerce statistics, imports of sodium nitrite from China entered the United States with increasing monthly frequency over the period of investigation while those from Germany entered the United States during every month of the period of investigation.⁸²

5. Conclusion

For all of these reasons, we conclude that there is a reasonable overlap of competition between subject imports from China and Germany and between subject imports and the domestic like product. We therefore cumulatively assess the volume and effects of subject imports for purposes of determining whether there is a reasonable indication of material injury to the domestic industry by reason of subject imports.

⁸⁰ See, e.g., CR at II-1, IV-15; PR at II-1, IV-10; CR/PR at Tables IV-5 and IV-6.

⁸¹ See, e.g., CR at I-13 to I-14, II-2 to II-3; PR at I-9 to I-10, II-1 to II-2; CR/PR at Table I-3.

⁸² See, e.g., CR/PR at Tables IV-7, V-1, V-2.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS OF SODIUM NITRITE FROM CHINA AND GERMANY

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁸³ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁸⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁸⁵ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁸⁶ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸⁷ For the reasons stated below, we determine that there is a reasonable indication that the domestic industry producing sodium nitrite is materially injured by reason of subject imports from China and Germany.

A. Conditions of Competition and the Business Cycle

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

1. Product Considerations

Sodium nitrite is produced in several different forms and/or grades, as discussed above, and is a convenient source of nitrous acid for the production of other products. Sodium nitrite accounts for a relatively small portion of the total cost of the various end products in which it is used.⁸⁸ According to ***, oxidizing agents such as sodium nitrite can be used for various reactions. Large-scale operations usually choose either nitrous acid or chlorine as the active oxidant, but conversion from nitrous acid made in situ from sodium nitrite would require a significant investment in process changes and equipment. When asked whether there are substitutes for sodium nitrite, General Chemical and *** importers reported that there are no products that can be substituted for sodium nitrite.⁸⁹

⁸³ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁸⁴ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... {and} explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also, e.g., Angus Chem. Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁸⁵ 19 U.S.C. § 1677(7)(A).

⁸⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁸ *** reported cost shares for textiles and pigments of ***, crop protection and pharmaceuticals of ***, heat transfer of ***, and metal surface treatment of ***. ***, an importer of Chinese sodium nitrite estimated sodium nitrite’s cost shares for water treatment of *** and for antifreeze syrups of ***. See, e.g., CR at II-8 to II-9; PR at II-5 to II-6.

⁸⁹ See, e.g., CR at II-8; PR at II-5; Petitions Vol. I at 31.

2. Demand Considerations

General Chemical reports that it has approximately 50 active sodium nitrite customers in the United States. General Chemical contends that there are primarily two national distributors with locations throughout the United States that account for the majority of the distributor volume as well as several smaller “mom and pop” distributors. It argues that there has been recent consolidation within the distributor channel but that all distributors, regardless of size, are competing for the same business.⁹⁰ In addition to distributors, General Chemical asserts that there are some small-volume and some large-volume end-users.⁹¹ Overall, General Chemical argues that about 8 to 16 of its customers make up 80 percent of its total sales volume, so losing one of these customers “would have a huge impact.”⁹²

Questionnaire respondents disagree about whether sodium nitrite demand in the U.S. market is stable, increasing, or decreasing.⁹³ Available data on apparent U.S. consumption indicate that demand in the U.S. market declined from *** pounds in 2004 to *** pounds in 2005 and to *** pounds in 2006, and was lower in interim 2007 (*** pounds) than in interim 2006 (*** pounds).⁹⁴ During this time, two large purchasers of sodium nitrite, Chemtura (a rubber processing chemical producer and distributor) and PMC Specialties (a saccharin producer), each initially reduced their sodium nitrite purchases and then ultimately moved almost all production operations overseas and ceased buying sodium nitrite in the United States.⁹⁵ Much of the decline in apparent U.S. consumption during the period of investigation is related to these events.⁹⁶ Despite the decline in demand for sodium nitrite for use in rubber and saccharin production, as well as declines in demand for sodium nitrite for ink/dye applications, General Chemical asserts that there are some other sodium nitrite applications that continue to grow at moderate rates, such as for water treatment and corrosion.⁹⁷ General Chemical also reports that research is ongoing for some possible new medical applications for sodium nitrite, although these applications are not expected to be large.⁹⁸

In any final phase investigations, we intend to seek more information about demand, including the size and number of customers in the U.S. market and the extent to which demand for sodium nitrite in the U.S. market is expected to increase, decrease, or remain stable for particular applications. At this time and based on the current record, because of the multiplicity of uses for sodium nitrite and the fact that

⁹⁰ See, e.g., Confer. Tr. at 30-31 (Nelson).

⁹¹ See, e.g., Confer. Tr. at 31 (Nelson).

⁹² See, e.g., Confer. Tr. at 31-32, 63 (Nelson), 64 (McFarland).

⁹³ See, e.g., Confer. Tr. at 7 (McGrath); CR at II-7 to II-8; PR at II-4 to II-5.

⁹⁴ See, e.g., CR/PR at Table C-1.

⁹⁵ See, e.g., CR at III-13 to III-14; PR at III-5; CR/PR at Table III-6; Dec. 10, 2007 e-mail from ***; Dec. 7, 2007 e-mail from ***.

⁹⁶ During the period of investigation, these customers purchased sodium nitrite *** from ***. Combined U.S. shipments to these two customers for *** declined from *** pounds in 2004, to *** pounds in 2005, and *** pounds in 2006, and was *** pounds in interim 2006 and *** pounds in interim 2007. See, e.g., CR at III-13 to III-14, n.28, IV-3 to IV-4; PR at III-5, IV-3, n.28; Dec. 10, 2007 e-mail from ***; Dec. 7, 2007 e-mail from ***.

⁹⁷ See, e.g., Confer. Tr. at 73-74 (McFarland).

⁹⁸ See, e.g., Confer. Tr. at 32-33, 53-54 (Nelson) (discussing on-going National Institute of Health studies), 54-55 (McFarland).

demand for some end uses varies from demand for other products in which sodium nitrite is used, we are unable to conclude that there is a regular business cycle for sodium nitrite.⁹⁹

3. Supply Considerations

There are three sources of supply in the U.S. market: imports of subject merchandise from China and Germany, imports from non-subject countries, and production by the domestic industry.

a. Imports of Subject Merchandise from China and Germany

Based on the record in the preliminary phase of these investigations, there is one known producer of sodium nitrite in Germany, BASF AG.¹⁰⁰ Petitioner General Chemical identified 92 potential producers of sodium nitrite in China, and staff successfully transmitted foreign producer questionnaires to 82 of them. No Chinese producer of sodium nitrite submitted a questionnaire response, although several importers of subject merchandise from China did submit questionnaire responses concerning their imports of subject merchandise from China.¹⁰¹

b. Non-Subject Imports

During the period of investigation, in addition to subject countries China and Germany, sodium nitrite was imported in small quantities into the United States from three non-subject countries (India, Poland, and, in 2004, the United Kingdom). Imports from Poland were the only non-subject imports present in the U.S. market throughout the period of investigation. ***, which imported the sodium nitrite from the United Kingdom in 2004, has since ***.¹⁰²

c. Domestic Supply

As noted earlier, there were two domestic producers during the period of investigation, General Chemical and Repauno. In 1999, U.S. Salt, a manufacturer of salt and other inorganic chemicals based in Jacksonville, Florida, acquired the sodium nitrite business then owned by E.I. DuPont de Nemours & Co. Inc. (“DuPont”) and created a subsidiary, Repauno, to operate that business. In 2005, General Chemical and Repauno began discussing a potential acquisition. In July 2006, Repauno was acquired by General Chemical’s parent, GenTek. The acquisition included the manufacturing facility and its 23 employees for a purchase price of approximately \$4.5 million cash, plus working capital (ultimately valued at \$6 million).¹⁰³ General Chemical explains that it made the decision to buy Repauno in order to increase its own capacity utilization from *** to 100 percent due to the high fixed costs associated with sodium nitrite production. General Chemical intended to focus its Solvay, New York facility on producing dry sodium

⁹⁹ See, e.g., Confer. Tr. at 7 (McGrath); CR at I-6 to I-8, II-8; PR at I-5 to I-6.

¹⁰⁰ See, e.g., CR at VII-5; PR at VII-5; BASF’s Postconf. Br. at Answer’s to Staff Questions at 5.

¹⁰¹ According to questionnaire respondents that reported importing sodium nitrite from China, *** produce subject merchandise in China. Only the last producer was also identified by the petition as a potential producer of sodium nitrite in China. See, e.g., CR at VII-2 to VII-3; PR at VII-2.

¹⁰² See, e.g., CR at IV-7; PR at IV-6; CR/PR at Table IV-3.

¹⁰³ See, e.g., CR at III-2 to III-3; PR at III-2.

nitrite, for which it was the more efficient producer, and to use Repauno's Gibbstown, New Jersey operation to supply residual liquid sodium nitrite demand, where Repauno had a production advantage.¹⁰⁴

At the end of 2006, General Chemical made what it characterizes as a "hard decision" to shut down Repauno.¹⁰⁵ According to General Chemical, there were several reasons why: (1) Repauno's costs of caustic soda and natural gas escalated significantly through 2005, the latter related to Hurricane Katrina;¹⁰⁶ (2) imports from Germany and China increased after 2004;¹⁰⁷ and (3) two of Repauno's top three customers (Chemtura and PMC Specialties) closed their U.S. sodium nitrite-consuming operations for rubber processing and saccharin, respectively, and moved overseas.¹⁰⁸

During the time that it operated the Repauno facility, General Chemical owned the production equipment but did not own the land. It was allowed to operate the facility on land that was subject to a 99-year lease from DuPont.¹⁰⁹ When the Repauno facility was closed, General Chemical exited from the site, returned the land to DuPont, and ***. General Chemical does not currently have the ability to reopen Repauno or to produce sodium nitrite at that facility.¹¹⁰ General Chemical accounted for *** percent of total reported U.S. production in 2006, and Repauno accounted for *** percent of total reported U.S. production in 2006, the year that it was closed.¹¹¹

d. Share of Apparent U.S. Consumption

The domestic industry's share of the quantity and value of apparent U.S. consumption of sodium nitrite decreased from 2004 to 2006, while imports from China and Germany increased in terms of quantity and value. The domestic industry's market share by quantity was *** percent in 2004, *** percent in 2005, *** percent in 2006, and *** percent in interim 2006 as compared to *** percent in interim 2007.¹¹² Subject imports' market share by quantity was *** percent in 2004, *** percent in 2005, *** percent in 2006, and *** percent in interim 2006 as compared to *** percent in interim 2007.¹¹³ Throughout the period of investigation, non-subject imports accounted for a very small and stable share of the market in terms of quantity and value, less than *** percent in each individual period.¹¹⁴

¹⁰⁴ See, e.g., Confer. Tr. at 12-13, 35-36 (McFarland); CR at I-9 to I-10, III-3, III-5; PR at I-6, III-2, III-3. General Chemical can shift its production capacity between product forms, but must ***. See, e.g., CR at III-7; PR at III-4.

¹⁰⁵ See, e.g., Confer. Tr. at 12-13 (McFarland).

¹⁰⁶ See, e.g., Confer. Tr. at 25 (McFarland); Petitioner's Postconf. Br. at 13.

¹⁰⁷ See, e.g., Confer. Tr. at 35-36 (McFarland), 80 (Jaffe); Petitioner's Postconf. Br. at 13.

¹⁰⁸ See, e.g., Confer. Tr. at 13-14, 35, 80 (McFarland), 79-80 (Jaffe); CR at III-3; PR at III-2; Petitioner's Postconf. Br. at 13-14.

¹⁰⁹ See, e.g., Confer. Tr. at 40 (McFarland).

¹¹⁰ See, e.g., Confer. Tr. at 65-67 (McFarland); CR at III-3; PR at III-2; Petitioner's Postconf. Br. at Exh. 1 at 5.

¹¹¹ See, e.g., CR/PR at Table III-1.

¹¹² See, e.g., CR/PR at Table IV-9.

¹¹³ See, e.g., CR/PR at Table IV-9.

¹¹⁴ See, e.g., CR at IV-21 to IV-22; PR at IV-13; CR/PR at Table IV-9. Non-subject imports' share of the U.S. market declined from *** percent in 2004 to *** percent in 2005, and then increased to *** percent in 2006, and was *** percent in interim 2006 as compared to *** percent in interim 2007. See, e.g., CR/PR at Table IV-9.

e. Other Supply Considerations

General Chemical runs its sodium nitrite production facility “on a 24/7 basis” with an annual shutdown and asserts that other sodium nitrite producers must also run their facilities at full capacity. The catalyst bed operates at over a thousand degrees Fahrenheit and cannot be easily switched on and off; the absorption towers also have to be run around the clock; and running these processes requires an operator around the clock. General Chemical testified that the difference in fixed operating costs for it to run at 15,000 tons versus 29,000 tons is not significant, so every ton of reduced production raises the company’s production costs. As a result, General Chemical asserts that it cannot afford to lose one of its large-volume customers at the risk of having to spread its fixed overhead over a smaller volume of production.¹¹⁵ Because General Chemical only produces sodium nitrite at its facility, if it cannot produce sodium nitrite, it will have to close.¹¹⁶

According to General Chemical, ammonia prices are up about 50 percent since 2003, and they more than doubled since 2002, due to increasing natural gas costs and developments in the fertilizer market.¹¹⁷ General Chemical reports benefitting from relatively low-priced mined soda ash (trona), but its soda ash prices are still 50 percent higher since 2003.¹¹⁸ In contrast, it reports that its Chinese competitors use either higher-priced synthetic soda ash or caustic soda made from an energy-intensive synthetic process.¹¹⁹ Former U.S. producer Repauno as well as German and Chinese producers using caustic soda reportedly would have seen prices of this input increasing well over 50 percent over the last three years.¹²⁰ Whereas there have been announcements of a \$75/ton increase in caustic soda prices in 2007, General Chemical’s pricing is up only by this same amount per ton over the last five years.¹²¹ General Chemical also reports increased energy costs for steam, electricity, and natural gas over the period of investigation.¹²²

4. Substitutability

General Chemical asserts that sodium nitrite is a commodity product, with subject imports and the domestic like product competing mostly on the basis of price.¹²³ Although BASF agrees with General Chemical that there is a single domestic like product consisting of all grades and forms of sodium nitrite and does not object to cumulating subject imports from China and Germany, it emphasizes that there is only attenuated competition between subject imports and the domestic like product. Although General Chemical sells seven forms of sodium nitrite in the U.S. market, BASF exports only two forms to the U.S. market (granular free-flowing food-grade and high-purity granular sodium nitrite), and there are only limited forms of sodium nitrite imported from China. Thus, BASF asserts, General Chemical has no competition in most of the U.S. market, such as for sodium nitrite in liquid and flake forms, and only has

¹¹⁵ See, e.g., Confer. Tr. at 9, 26 (McFarland), 29-32 (Nelson).

¹¹⁶ See, e.g., Confer. Tr. at 40-41 (McFarland).

¹¹⁷ See, e.g., Confer. Tr. at 23-26 (McFarland).

¹¹⁸ See, e.g., Confer. Tr. at 24 (McFarland).

¹¹⁹ See, e.g., Confer. Tr. at 24 (McFarland).

¹²⁰ According to General Chemical, Repauno was particularly hurt by rising energy costs associated with the Gulf hurricanes in 2004 and 2005. See, e.g., Confer. Tr. at 23-26, 34-35 (McFarland).

¹²¹ See, e.g., Confer. Tr. at 23-24 (McFarland).

¹²² See, e.g., Confer. Tr. at 25-26 (McFarland).

¹²³ See, e.g., Petitions Vol. I at 38.

*** competition for a limited portion of the U.S. sodium nitrite market, an important ramification for the Commission's causation analysis.¹²⁴

General Chemical disagrees with BASF's characterization of the U.S. market and argues that BASF does not take into account that sodium nitrite in dry form can be and has been used for the same applications as sodium nitrite in solution form and that customers are aware of the prices of sodium nitrite in dry and liquid forms and use these prices in negotiations.¹²⁵ Although it acknowledges that converting dry sodium nitrite into a liquid form is theoretically possible and relatively straightforward, BASF argues that importing the product in dry form and then converting the product to solution is basically a function of the scale of the production facility or operation and generally is not practical.¹²⁶ Because General Chemical is able to produce solution with fewer impurities in the United States, needs fewer production steps, and is geographically closer, BASF argues that General Chemical has been, is now, and will continue to be in a superior and exclusive position in the U.S. sodium nitrite pure liquid market.¹²⁷ BASF reports that it does not believe that any of its customers are buying sodium nitrite in dry form and converting it into solution; since liquid customers are charged based on the price of the dry material in the solution, it would not be economical to buy the dry material and perform additional processing steps needed to produce the solution. Likewise, BASF is not aware of any distributors or end-users that have used the price of dry sodium nitrite as leverage in price negotiations for sodium nitrite in solution form. Finally, BASF has not seen customers switch from dry sodium nitrite to sodium nitrite in solution form in their production processes.¹²⁸

The record in the preliminary phase of these investigations suggests that sodium nitrite of the same form and grade is generally interchangeable regardless of origin. Although there is some information on the current record concerning this issue,¹²⁹ we intend to further explore in any final phase investigation the relationship between sodium nitrite in dry form and sodium nitrite in liquid form.

B. Cumulated Volume of Subject Imports

Section 771(7)(C)(I) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."¹³⁰ For purposes of the preliminary phase of these investigations, we find that cumulated subject import volume and the increase in that volume was significant during the period of investigation both in absolute terms and relative to consumption and production in the United States.

¹²⁴ See, e.g., Confer. Tr. at 6, 92-95 (McGrath), 97-102 (Work); BASF's Postconf. Br. at 3-8, Answers to Staff Questions at 7-9.

¹²⁵ See, e.g., Confer. Tr. at 19-21 (Nelson), 42 (Nelson), 45-46 (Nelson, McFarland), 59-60 (McFarland), 69-71 (Nelson), 86-89 (Nelson, McFarland); Petitioner's Postconf. Br. at 7-8, 15-16, Exh. 1 at 3-5. In response to a request from staff, General Chemical provided the names of two companies *** that it believed switched from domestic liquid sodium nitrite to German dry sodium nitrite. Petitioner's Postconf. Br. Ex. 1 at 4-5. ***.

¹²⁶ See, e.g., Confer. Tr. at 111-12 (Work), 129, 134 (Work); BASF's Postconf. Br. at 4-6, Answers to Staff Questions at 3-4, 11, Att. 2. As an experiment, BASF ***, but found this to be uneconomical. See, e.g., BASF's Postconf. Br. at 4-5, Answers to Staff Questions at 3-4. BASF ***, See, e.g., BASF's Postconf. Br. at 5.

¹²⁷ See, e.g., BASF's Postconf. Br. at 4-5.

¹²⁸ See, e.g., BASF's Postconf. Br. at 4-6, Answers to Staff Questions at 7-8.

¹²⁹ See, e.g., CR at II-10 to II-12; PR at II-6 to II-7.

¹³⁰ 19 U.S.C. § 1677(7)(C)(i).

In absolute terms, the cumulated volume of subject imports more than doubled, increasing from 5.4 million pounds in 2004 to 8.2 million pounds in 2005 and 11.2 million pounds in 2006.¹³¹ Subject import volume was 10.4 million pounds in interim 2007 compared to 8.6 million pounds in interim 2006.¹³²

The share of apparent U.S. consumption held by cumulated subject imports, by quantity, increased by *** percentage points from 2004 to 2006, rising from *** percent in 2004 to *** percent in 2005, before increasing further to *** percent in 2006.¹³³ During this same period, the overall volume shipped and the market share held by the domestic industry fell, due in part to the closure of two large consumers of domestic sodium nitrite. As total apparent U.S. consumption decreased by *** percent from 2004 to 2006, the share of apparent U.S. consumption represented by the domestic industry's U.S. shipments, by quantity, declined from *** percent in 2004 to *** percent in 2005 and *** percent in 2006, an overall decrease of *** percentage points.¹³⁴ The domestic industry's market share was *** percent in interim 2007 compared to *** percent in interim 2006.¹³⁵

Throughout the period of investigation, non-subject imports were not an important presence in the market, accounting for a relatively stable share of the market in terms of quantity and value, less than *** percent in each individual period.¹³⁶ Non-subject imports' share of the U.S. market declined from *** percent in 2004 to *** percent in 2005, and then increased to *** percent in 2006, and was *** percent in interim 2006 as compared to *** percent in interim 2007.¹³⁷

We find for purposes of the preliminary phase of these investigations that the volume of cumulated subject imports and the increase in that volume during a period of declining apparent U.S. consumption was significant during the period of investigation, both in absolute terms and relative to consumption and production in the United States.

C. Price Effects of the Cumulated Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports,

the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses

¹³¹ See, e.g., CR/PR at Table C-1.

¹³² See, e.g., CR/PR at Table C-1.

¹³³ See, e.g., CR/PR at Table C-1. The market share held by cumulated subject imports was *** percent in interim 2007 as compared to *** percent in interim 2006. Id.

¹³⁴ See, e.g., CR/PR at Table C-1.

¹³⁵ See, e.g., CR/PR at Table C-1. As a ratio to U.S. production, by quantity, cumulated subject imports increased from *** percent in 2004 to *** percent in 2005 and *** percent in 2006, for a period increase of *** percentage points. See, e.g., CR/PR at Table IV-10. Subject imports were equivalent to *** percent of U.S. production in interim 2007 as compared to *** percent in interim 2006. Id.

¹³⁶ See, e.g., CR at IV-21 to IV-22; PR at IV-13; CR/PR at Table IV-9.

¹³⁷ See, e.g., CR/PR at Table IV-9.

prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹³⁸

A large portion of sodium nitrite sales in the U.S. market are made through short-term contracts and spot sales.¹³⁹ According to the record in the preliminary phase of these investigations, price is a relatively important factor in purchasing decisions.¹⁴⁰ We intend to explore the importance of non-price factors in any final phase investigations.

In these investigations, the sole domestic producer, General Chemical, and seven responding U.S. importers of sodium nitrite provided quarterly pricing data for two sodium nitrite products: (1) technical-grade sodium nitrite with or without an anti-caking agent in granular or prilled form; and (2) food-grade sodium nitrite with or without an anti-caking agent in granular or prilled form.¹⁴¹ By quantity, pricing data reported by responding firms accounted for *** percent of the domestic industry's U.S. shipments of sodium nitrite, *** percent of U.S. shipments of imports from China, and *** of U.S. shipments of imports from Germany.¹⁴²

Prices for U.S.-produced product 1 (technical-grade sodium nitrite) increased overall by *** percent over the period of investigation. Prices for product 1 imported from China fluctuated over this period with no clear trend; these prices were *** percent lower in July-September 2007 than they were in January-March 2004. With regard to imports of product 1 from Germany, prices for this product *** throughout the period of investigation. Prices for German product 1 were *** higher (*** percent) at the end as compared to the beginning of the period of investigation.¹⁴³ Prices for U.S.-produced product 2 (food-grade sodium nitrite) fluctuated with an upward trend during the period of investigation; these prices were *** percent higher in the third quarter of 2007 as compared to the first quarter of 2004.¹⁴⁴ Prices for product 2 imported from China were only reported for the period January-March 2004 through April-June 2006, and in about one half of those quarters, the quantities reported were *** (*i.e.*, *** pounds). These prices were ***. Prices for product 2 imported from Germany were only reported for the period April-June 2006 through July-September 2007. During that time, these prices fluctuated but ended the period of investigation at a level that was *** percent below the initial level.¹⁴⁵

The pricing data collected in the preliminary phase of these investigations showed mostly underselling by subject imports. Subject imports undersold the domestic like product in 27 of 30 comparisons for product 1, with the margins of underselling ranging from *** percent to *** percent.¹⁴⁶ For product 2, subject imports undersold the domestic like product in 13 of 16 comparisons, with the margins of underselling ranging from *** to *** percent.¹⁴⁷ We find this underselling to be significant.

¹³⁸ 19 U.S.C. § 1677(7)(C)(ii).

¹³⁹ *See, e.g.*, CR at V-4; PR at V-3.

¹⁴⁰ *See, e.g.*, CR at II-4, II-5; PR at II-4; CR/PR at Table II-2.

¹⁴¹ *See, e.g.*, CR at V-7; PR at V-4.

¹⁴² *See, e.g.*, CR at V-7; PR at V-4.

¹⁴³ *See, e.g.*, CR at V-7, V-11; PR at V-4, V-5.

¹⁴⁴ *See, e.g.*, CR/PR at Table V-2, Figure V-3.

¹⁴⁵ *See, e.g.*, CR at V-11; PR at V-5.

¹⁴⁶ *See, e.g.*, CR/PR at Table V-1.

¹⁴⁷ *See, e.g.*, CR/PR at Table V-2.

We have also considered movements in sodium nitrite prices over the period of investigation. For product 1, the domestic industry's prices generally increased over the period of investigation, as did the domestic industry's prices for product 2.¹⁴⁸ Thus, we do not find for purposes of these preliminary determinations that price depression has occurred.

Despite some increases in prices during the period of investigation, the domestic industry's cost of goods sold ("COGS") as a share of net sales increased over the period of investigation from *** percent in 2004 to *** percent in 2005 and *** percent in 2006, and was *** percent in interim 2007 compared to *** percent in 2006.¹⁴⁹ Unit COGS also increased from \$*** per pound in 2004 to \$*** per pound in 2005 and \$*** per pound in 2006, and was \$*** per pound in interim 2007 compared to \$*** per pound in interim 2006.¹⁵⁰ Based on the current record and for purposes of the preliminary phase of these investigations, we find a reasonable indication of price suppression by subject imports. We intend to explore the significance of this price suppression and explanations for it in any final phase investigations; in particular, we intend to more closely examine the relationship between trends in the ratio of COGS to net sales and the volume of subject imports.

For these reasons, for purposes of the preliminary phase of these investigations, we find that subject imports significantly undersold the domestic like product. We intend to seek further information on the price effects of the cumulated subject imports in any final phase investigations.

D. Impact of the Cumulated Subject Imports¹⁵¹

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹⁵² These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all

¹⁴⁸ See, e.g., CR/PR at Tables V-1, V-2.

¹⁴⁹ See, e.g., CR/PR at Table C-1.

¹⁵⁰ See, e.g., CR/PR at Table C-1.

¹⁵¹ In its notice of initiation, Commerce estimated the dumping margins for subject imports from China to range from 131.72 to 190.74 percent and the dumping margins for subject imports from Germany to be between 65.58 and 151.98 percent ad valorem, based on a comparison of constructed export price and constructed value, and 237 percent based on a comparison of export price and constructed value. See, e.g., 72 Fed. Reg. 68563, 68567 (Dec. 5, 2007). In its notice of initiation, Commerce indicated that it was going to investigate a number of programs alleged in the petitions to have provided countervailable subsidies to producers of sodium nitrite in China: Government of China Loan Program; Government of China Grant Programs; Government of China Provision of Goods or Services for Less than Adequate Remuneration; Government of China Income Tax Programs; Government of China Indirect Tax Programs and Import Tariff Programs; Provincial Loan Program; Provincial Grant Programs; Provincial and Local Provision of Goods for Less Than Adequate Remuneration; and Provincial and Local Income Tax Programs. See, e.g., 72 Fed. Reg. 68568 (Dec. 5, 2007).

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

relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁵³

We have examined performance indicia for the domestic industry producing sodium nitrite. These data indicate declining overall trends. We recognize that some of these declines are related to the loss of two of Repauno’s three largest customers during the period of investigation. These companies first reduced their sodium nitrite needs and then moved their rubber processing and saccharin operations overseas. As a result, they no longer needed sodium nitrite for these U.S. operations. These events were unrelated to subject imports.

The domestic industry’s production of sodium nitrite declined progressively over the period of investigation, and was *** percent lower in 2006 than in 2004, and *** percent lower in interim 2007 compared to interim 2006, after the Repauno facility was shuttered.¹⁵⁴ The domestic industry’s total U.S. shipments of sodium nitrite declined by *** percent from 2004 through 2006, and were *** percent lower in interim 2007 than in interim 2006, after the change in the former Repauno’s customer base.¹⁵⁵ U.S. end-of-period inventories of sodium nitrite, which were generally small throughout the period of investigation, increased by *** percent from 2004 through 2006 but were *** percent lower in interim 2007 than in interim 2006.¹⁵⁶ The domestic industry’s production capacity was ***, but declined thereafter as General Chemical bought and then closed Repauno.¹⁵⁷ Capacity utilization declined between 2004 and 2006, but was higher in interim 2007 than in interim 2006, once Repauno’s New Jersey facilities ceased operating.¹⁵⁸ The average number of production and related workers and the domestic

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

¹⁵⁴ Production declined from *** pounds in 2004 to *** pounds in 2005 and to *** pounds in 2006. See, e.g., CR/PR at Table C-1. Production was *** pounds in interim 2007 as compared to *** pounds in interim 2006. Id.

¹⁵⁵ U.S. shipments of sodium nitrite declined from *** pounds in 2004 to *** pounds in 2005 and *** pounds in 2006. See, e.g., CR/PR at Table C-1. U.S. shipments were *** pounds in interim 2007 as compared to *** pounds in interim 2006. Id. Exports, which were a *** share of the domestic industry’s total shipments, also declined by *** percent over this same period, although they were *** percent higher in interim 2007 than in interim 2006. U.S. export shipments of sodium nitrite declined from *** pounds in 2004 to *** pounds in 2005 and *** pounds in 2006. See, e.g., CR/PR at Table C-1. U.S. export shipments were *** pounds in interim 2007 as compared to *** pounds in interim 2006. Id.

¹⁵⁶ U.S. end-of-period inventories of sodium nitrite increased from *** pounds in 2004 to *** pounds in 2005 and *** pounds in 2006. See, e.g., CR/PR at Table C-1. U.S. end-of-period inventories were *** pounds in interim 2007 as compared to *** pounds in interim 2006. Id. The increase in end-of-period inventories by 2006 was related to General Chemical’s closure of Repauno and assumption of its inventory, but end-of-period inventories both absolutely and as a ratio to production and shipments returned to a relatively low level in interim 2007. See, e.g., CR at III-15; PR at III-5; CR/PR at Table III-6.

¹⁵⁷ The domestic industry’s production capacity was *** pounds in 2004 and 2005 but then declined to *** pounds in 2006, and declined from *** pounds in interim 2006 to *** pounds in interim 2007. See, e.g., CR/PR at Table C-1.

¹⁵⁸ The domestic industry’s capacity utilization level declined from *** percent in 2004 to *** percent in 2005 and to *** percent in 2006 but increased from *** percent in interim 2006 to *** percent in interim 2007. See, e.g., CR/PR at Table C-1. The parties appear to agree that sodium nitrite plants need to operate continuously and at high capacity utilization levels. See, e.g., Confer. Tr. at 9, 26 (McFarland), 29-32 (Nelson), 99 (Work), 101 (Work), 131-33 (Work, McGrath)

industry's productivity declined from the beginning to the end of the period of investigation, although wages improved somewhat.¹⁵⁹

The domestic industry's financial indicators also declined overall during the period of investigation. Operating income fell from \$*** in 2004 to losses of \$*** in 2005 before improving to a positive \$*** in 2006.¹⁶⁰ The domestic industry's ratio of operating income to sales fell by *** percentage points from 2004 to 2006. The domestic industry's operating income margin declined from *** percent in 2004 to *** percent in 2005 and *** percent in 2006.¹⁶¹

Net sales declined by *** percent from 2004 to 2006 when measured by quantity, or by *** percent over the same period when measured by value. Net sales continued to decline by both measures in interim 2007 as compared to interim 2006.¹⁶² As discussed previously, COGS as a share of net sales increased over the period of investigation from *** percent in 2004 to *** percent in 2005 and *** percent in 2006, and was *** percent in interim 2007 compared to *** percent in 2006.¹⁶³ Unit COGS also increased from \$*** in 2004 to \$*** in 2005 and \$*** in 2006, and was \$*** in interim 2007 compared to \$*** in interim 2006.¹⁶⁴ In any final phase investigations, we intend to more closely examine the correlation between these trends and subject imports.

Capital expenditures for General Chemical declined from \$*** in 2004 to \$*** in 2005, before increasing to \$*** in 2006.¹⁶⁵ The value of capital expenditures in 2006 includes \$***, which represented the acquisition of Repauno by General Chemical in that year.¹⁶⁶ Research and development expenses by General Chemical increased from \$*** in 2004 to \$*** in 2005 and *** in 2006.¹⁶⁷

Based on the foregoing data, we find that the domestic sodium nitrite industry has experienced rising costs of production. Although the domestic industry's prices rose somewhat, the industry

¹⁵⁹ The average number of production and related workers declined from *** in 2004 to *** in 2005, before increasing to *** in 2006, and was *** in interim 2007 as compared to *** in interim 2006 after the positions at the Repauno facility were terminated. See, e.g., CR at III-17; PR at III-6; CR/PR at Table C-1. Productivity declined from *** pounds per hour in 2004 to *** pounds per hour in 2005, and to *** pounds per hour in 2006, and was *** pounds per hour in interim 2007 as compared to *** pounds per hour in interim 2006. See, e.g., CR/PR at Table C-1. Hourly wages decreased from \$*** in 2004 to \$*** in 2005, before increasing to \$*** in 2006, and was \$*** in interim 2007 as compared to \$*** in interim 2006. See, e.g., CR/PR at Table C-1.

¹⁶⁰ See, e.g., CR/PR at Table C-1. Operating income was *** in interim 2007 as compared to \$*** in interim 2006. Id.

¹⁶¹ See, e.g., CR/PR at Table C-1. The operating income margin was *** percent in interim 2007 as compared to *** percent in interim 2006. Id.

¹⁶² See, e.g., CR/PR at Table C-1. Net sales measured by quantity declined from *** pounds in 2004 to *** pounds in 2005 and to *** pounds in 2006, and were *** pounds in interim 2007 as compared to *** pounds in interim 2006. See, e.g., CR/PR at Table C-1. Net sales measured by value declined from \$*** in 2004 to \$*** in 2005, and to \$*** in 2006, and were \$*** in interim 2007 as compared to \$*** in interim 2006. See, e.g., CR/PR at Table C-1.

¹⁶³ See, e.g., CR/PR at Table C-1.

¹⁶⁴ See, e.g., CR/PR at Table C-1.

¹⁶⁵ See, e.g., CR/PR at Table C-1. Capital expenditures were \$*** in interim 2007 as compared to \$*** in interim 2006. Id.

¹⁶⁶ See, e.g., CR at VI-8; PR at VI-3.

¹⁶⁷ See, e.g., CR/PR at Table C-1. Research and development expenses were \$*** in interim 2007 as compared to \$*** in interim 2006. Id.

experienced progressively poorer financial results as its COGS to sales ratio increased, with positive operating income in 2004 turning to operating losses in 2005, and positive operating income continuing to be lower at the end of the period of investigation than at the beginning. The industry experienced declines in U.S. shipments, production levels, and exports, in an industry where production facilities need to be run continuously at high capacity utilization levels. We intend to seek more information about the price effects of the cumulated subject imports and intend to examine more closely the extent to which declines in the domestic industry's performance were related to changes in demand or other factors, in addition to increases in cumulated subject imports.

Given our finding of a significant volume and significant increase in the cumulated volume of subject imports notwithstanding declines in apparent U.S. consumption during the period of investigation, our finding of significant underselling by subject imports, our finding of some evidence of price suppression, and our finding concerning the declines in the domestic industry's performance during the period of investigation, we find for purposes of the preliminary determination that subject imports are having a significant adverse impact on the domestic sodium nitrite industry.^{168 169}

CONCLUSION

For the reasons stated above, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly unfairly traded subject imports from China and Germany that are sold in the U.S. market.

¹⁶⁸ Regardless of whether sodium nitrite is a commodity product, information collected in the preliminary phase of these investigations indicates that the second predicate for conducting a Bratsk replacement/benefit test, that non-subject imports are a significant factor in the U.S. market, is not met. See Bratsk Aluminium Smelter v. United States, 444 F.3d 1369, 1375 (Fed. Cir. 2006). As discussed above, non-subject imports as a share of apparent U.S. consumption never exceeded *** percent of apparent U.S. consumption, declining from *** percent in 2004 to *** percent in 2005 and then increasing somewhat to *** percent in 2006 and was *** percent in interim 2006 compared to *** percent in interim 2007. See, e.g., CR/PR at Table C-1. As a share of total imports, non-subject imports declined from 7.0 percent in 2004 to 1.6 percent in 2005 before increasing to 3.1 percent in 2006 and were 3.4 percent in interim 2007 compared to 2.0 percent in interim 2006. See, e.g., CR/PR at Table IV-2. Accordingly, we need not apply the analysis dictated by Bratsk, because the record does not indicate that imports from non-subject countries are a significant factor in the U.S. market. In any final phase investigations, any party holding a contrary view should so indicate and provide the basis for its view when providing written comments on the draft questionnaires. If warranted, we will reconsider the applicability of Bratsk in any final phase investigations.

¹⁶⁹ For a complete statement of Chairman Pearson and Commissioner Okun's interpretation of Bratsk in a preliminary investigation, see Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminium v. United States in Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Prelim.), USITC Pub. 3912 at 19-25 (Apr. 2007).

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by General Chemical LLC (“General Chemical”) of Parsippany, NJ, a domestic producer of sodium nitrite, on November 8, 2007, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of sodium nitrite¹ from China and less-than-fair-value (“LTFV”) imports of sodium nitrite from China and Germany. Information relating to the background of the investigations is provided below.²

Effective date	Action
November 8, 2007	Petition filed with Commerce and the Commission; institution of the Commission's investigations (72 FR 64241, November 15, 2007)
November 27	Commission's conference ¹
December 5	Commerce's notice of initiation (72 FR 68563 and 68568)
December 19	Commission's scheduled vote
December 26	Commission's determination transmitted to Commerce
January 3, 2008	Commission's views transmitted to Commerce

¹ A list of witnesses appearing at the conference is presented in app. B.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

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

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

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

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

¹ The definition of the sodium nitrite subject to these investigations is presented later in Part I of this report in the section entitled “The Subject Merchandise.”

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

...
In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

...
In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

...
(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of the Report

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

MARKET SUMMARY

Sodium nitrite is an industrial chemical that is used in a range of applications and chemical reactions including the following: alkaline detinning of scrap tin plate, chemical manufacturing, cooling systems, corrosion inhibition, heat transfer salts, meat curing, medicine, organic synthesis/AZO dyes and inks, and wastewater odor control. Consumption of sodium nitrite totaled approximately \$*** (***) pounds) in the U.S. market in 2006. Currently, only one firm, General Chemical, produces sodium nitrite in the United States.³ U.S. producers' reported U.S. shipments of sodium nitrite totaled \$*** (***) in 2006 and accounted for *** percent of apparent U.S. consumption by value and *** percent by quantity. U.S. imports from China totaled \$245,000 (1.0 million pounds) in 2006 and accounted for *** percent of

³ Repauno Products LLC ("Repauno") ceased production in 2006. Petition, p. 41.

apparent U.S. consumption by value and *** percent by quantity. U.S. imports from Germany totaled \$2.1 million (10.2 million pounds) in 2006 and accounted for *** percent of apparent U.S. consumption by value and *** percent by quantity. U.S. imports from nonsubject sources (primarily India and Poland) totaled \$69,000 (359,000 pounds) in 2006 and accounted for *** percent of apparent U.S. consumption by value and *** percent by quantity.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigations is presented in appendix C, table C-1. U.S. industry data are based on the questionnaire response of General Chemical, which also provided separate information for Repauno's operations during 2004-06. General Chemical accounted for all U.S. production of sodium nitrite during January-September 2007. U.S. imports are based on official statistics from the Department of Commerce ("Commerce") and have been adjusted to exclude incorrectly classified imports from Canada, Chile, Japan, the Netherlands, and Norway. Data regarding the German industry are based on the questionnaire response of BASF Aktiengesellschaft ("BASF AG"), the sole German exporter of sodium nitrite. Data regarding the industry in China are based on the petition, conference testimony, post-conference briefs, and importer questionnaire responses. Data regarding sodium nitrite from other countries are based on public sources, where available.

PREVIOUS AND RELATED INVESTIGATIONS

The Commission has not previously conducted an investigation of sodium nitrite. However, the Commission has conducted investigations on other sodium compounds, including sodium thiosulfate from China, Germany, and the United Kingdom,⁴ anhydrous sodium metasilicate from France,⁵ and sodium azide from Japan.⁶ The Commission is currently conducting an investigation on sodium metal from France, Inv. No. 731-TA-1135 (Preliminary), and an investigation on sodium hexametaphosphate from China, Inv. No. 731-TA-1110 (Final).

NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

On December 5, 2007, the Commission received notification of Commerce's initiation of a countervailing duty investigation concerning sodium nitrite from China. Commerce is investigating the following programs, alleged in the petition to have provided countervailable subsidies to producers and exporters of sodium nitrite: GOC Loan Program, GOC Grant Programs, GOC Provision of Goods or Services for Less than Adequate Remuneration, GOC Income Tax Programs, GOC Indirect Tax Programs and Import Tariff Programs, Provincial Loan Program, Provincial Grant Programs, Provincial

⁴ Because no domestic interested parties participated in Commerce's second review of the orders on sodium thiosulfate, the orders were terminated by Commerce in May 2005. *Sodium Thiosulfate from the People's Republic of China, Germany, and the United Kingdom: Final Results of Sunset Reviews and Revocation of the Orders*, 70 FR 24393, May 9, 2005.

⁵ Because no domestic interested parties participated in Commerce's second review of the order on anhydrous sodium metasilicate, the order was terminated by Commerce in October 2004. *Anhydrous Sodium Metasilicate From France: Revocation of Antidumping Duty Order*, 69 FR 61789, October 21, 2004.

⁶ The suspension agreement on sodium azide from Japan was terminated by Commerce because no domestic interested party responded to the notice initiating a sunset review of the suspended investigation. *Sodium Azide from Japan*, 67 FR 1439, January 11, 2002.

and Local Provision of Goods for Less Than Adequate Remuneration, and Provincial and Local Income Tax Programs.⁷

On December 5, 2007, the Commission received notification of Commerce's initiation of an antidumping duty investigation concerning sodium nitrite from China and Germany.⁸ The estimated weighted-average dumping margins (in percent *ad valorem*), as reported by Commerce (based on petitioners' comparison of the constructed export price and constructed value) for Germany ranged from 65.58 percent to 151.98 percent.⁹ Based on a comparison of export price and constructed value, the estimated dumping margin for Germany is 237.0 percent. The estimated weighted-average dumping margins (in percent *ad valorem*), as reported by Commerce (based on petitioners' comparison of the export price and normal value) for China ranged from 131.72 percent to 190.74 percent.¹⁰

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the imported product subject to these investigations as:

*Sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these investigations may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite's chemical composition is NaNO₂. The American Chemical Society Chemical Abstract Service ("CAS") has assigned the name "Sodium Nitrite." The CAS registry number is 7632-00-0.*¹¹

Tariff Treatment

The product subject to these investigations is currently classified in subheading 2834.10 of the Harmonized Tariff Schedule of the United States ("HTSUS") at a Column 1-general rate of duty of 5.5 percent *ad valorem*.¹²

⁷ *Sodium Nitrite from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 72 FR 68568, December 5, 2007.

⁸ *Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 72 FR 68563, December 5, 2007.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Sodium Nitrite from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 72 FR 68568, December 5, 2007.

¹² For purposes of the scope of these investigations, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes only.

**Table I-1
Sodium nitrite: Tariff treatment, 2007**

HTS provision	Article description	General	Special ¹	Column 2
		Rates (<i>percent ad valorem</i>)		
2834 2834.10. 2834.10.1000	Nitrites; nitrates: Nitrites: Of sodium	5.5%	Free (A, AU, BH, CA, CL, E, IL, J, JO, MA, MX, P, SG)	54%
¹ General note 3(c)(i) to the HTS lists the programs related to the enumerated special duty rate symbols.				
Source: HTS (2007).				

THE DOMESTIC LIKE PRODUCT

The Commission’s determination regarding the appropriate domestic product that is “like” the subject imported product 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. The petition contends that the domestic like product is all sodium nitrite corresponding to the scope,¹³ and no party has argued for a separate like product.¹⁴

Physical Characteristics and Uses¹⁵

Sodium nitrite is an industrial chemical with a chemical formula of NaNO₂. It is a pale straw-colored material that is very soluble in water, where it forms a clear to slightly yellowish solution. Pure sodium nitrite melts at about 284°C and begins to decompose at about 320°C into sodium oxide, nitrogen oxides, and nitrogen. Sodium nitrite is hygroscopic and very soluble in water, but relatively insoluble in most organic solvents. Sodium nitrite is an active oxidizing agent and also functions as a reducing agent toward such powerful oxidizing agents as dichromate, permanganate, chlorate, and chlorine. In the presence of acids, sodium nitrite forms nitrous acid.¹⁶ In an acid medium, sodium nitrite reacts with organic alcohols and amines to form organic nitrites such as amyl nitrite and amine nitrite.

Sodium nitrite is produced in both dry (flake, granular, or prill) and liquid, also known as sodium nitrite in solution, forms. Dry sodium nitrite is sold in bags, drums, and super sacks, and the liquid is sold in tank trucks and rail cars. The flake form is sodium nitrite that has been fed through a compactor and then broken into flakes by a screen. Because of this additional processing it may be slightly more expensive than the granular product. Granular sodium nitrite is a powder that may or may not be treated

¹³ Petition, pp. 4-5.

¹⁴ Hearing transcript, p. 114 (McGrath).

¹⁵ The content of this section is drawn from the Petition, pp. 4-5, and General Chemical’s company website, found at <http://www.genchemcorp.com/products/sodiumnitrite.shtml>, retrieved on October 17, 2007.

¹⁶ Since nitrous acid is not commercially available due to its instability, sodium nitrite serves as the principal source of nitrous acid in a number of organic syntheses. Petition, pp. 4-5, and General Chemical’s company website, found at <http://www.genchemcorp.com/products/sodiumnitrite.shtml>, retrieved on October 17, 2007.

with an anti-caking agent.¹⁷ If not treated the sodium nitrite will harden into a solid brick-like mass over time that must be broken up. The prill form of sodium nitrite sold in the U.S. market is produced in China. It is a granular product that is similar in form to tapioca, i.e., small spherical shaped pieces that do not clump together or harden. The liquid form is sodium nitrite powder dissolved in water, typically to a 40 percent solution.¹⁸

Many industrial applications of sodium nitrite are based on its oxidizing properties and its decomposition in an acid solution to nitrous acid. Some of the principal applications of sodium nitrite are in the production of chemicals and dyes including azo,¹⁹ food, and textile dyes. Sodium nitrite is used with metals for coating, detinning, plating, and corrosion inhibition. It is also used by the rubber industry in synthetic rubber and blowing compounds. In addition, sodium nitrite is used in heat transfer salts. It is also used in wastewater treatment to control odor and to inhibit the growth of bacteria. Finally, sodium nitrite is used in meat curing as a food preservative.²⁰ In the medical field, sodium nitrite is an antidote to cyanide poisoning and as such is used in cyanide antidote kits. A new medical application for sodium nitrite is being explored by the *** which is ***.²¹ Table I-2 details the major end uses of sodium nitrite, the forms used by each end use, and the application process.

**Table I-2
Sodium nitrite: End-use applications, forms used, and application process**

* * * * *

Manufacturing Facilities and Production Employees²²

The industrial manufacturing process to produce sodium nitrite relies on the transformation of liquid ammonia and caustic soda or soda ash. Liquid ammonia is oxidized with air at a high temperature in a catalytic bed using a *** to form nitrogen oxides (NO and NO₂). The nitrous acids enter an absorption tower where they react with either soda ash (calcium carbonate) or caustic soda (sodium hydroxide) to form a sodium nitrite solution. If caustic soda is used the liquid formed at this stage is sufficiently concentrated and pure to be sold directly to some customers for certain uses. If however, soda ash is used, the liquid is highly diluted and must go through several steps to remove water, thereby increasing the sodium nitrite concentration. Regardless of whether soda ash or caustic soda is used as raw material, all sodium nitrite destined for sale as a dry product must undergo additional processing. The sodium nitrite liquid is pumped through an evaporator-crystallizer where sodium nitrite crystals are

¹⁷ Food grade sodium nitrite is granular sodium nitrite that has been treated with an anti-caking agent, Petro AG, tested for purity, and certified as meeting Food and Drug Administration standards. Conference transcript, p. 10 (McFarland), pp. 28-29 (Nelson).

¹⁸ Conference transcript, pp. 22-23 (McFarland), p. 23 (Jaffe).

¹⁹ Azo dyes are any of a large class of synthetic organic dyes that contain nitrogen as the azo group –N=N– as part of their molecular structures; more than half the commercial dyes belong to this class. Depending on other chemical features, these dyes fall into several categories defined by the fibers for which they have affinity or by the methods by which they are applied. Encyclopedia Britannica online, found at <http://www.brittanica.com/eb/article-9011550/azo-dye>, retrieved on December 6, 2007.

²⁰ Petition, exh. I-2.

²¹ Staff field trip report, General Chemical, November 19, 2007.

²² The public content of this section is drawn from the Petition, pp. 32-33, and the conference transcript, pp. 9-11, 16-18 (McFarland). The confidential content of this section is drawn from the staff field trip report, General Chemical, November 19, 2007.

formed.²³ The crystals are centrifuged to separate the sodium nitrite crystals. The sodium nitrite crystals are then either dried (which yields a high purity product), dried and blended with an anti-caking agent²⁴ (which increases the flowability of the powder), or further dried, compacted into a thin cake and then flaked. Food-grade sodium nitrite then undergoes a testing process which permits the manufacturer to certify that the sodium nitrite sold as food grade meets specific quality standards, especially with respect to the presence of heavy metals; compliance with the Food Chemical Codex (FCC) and current Good Manufacturing Practice (cGMP); and registration with the Food and Drug Administration (FDA).²⁵ If the sodium nitrite was produced using soda ash it must be dissolved to form a liquid product, if that is the saleable form preferred by the customer. This is done by dissolving the centrifuged crystals in water and applying heat. Each shipment is diluted to the specific customer's specifications, although a liquid with a 40 percent sodium nitrite concentration is a common standard.

The industrial production of sodium nitrite is believed to be similar in the United States, China, and Germany. BASF AG is vertically integrated in the production of the raw materials for sodium nitrite, ammonia and caustic soda.²⁶ BASF AG produces sodium nitrite using caustic soda and therefore can sell the liquid solution that is produced in the absorption tower, unlike General Chemical's Solvay, NY, plant, whose solution is not sufficiently concentrated at this stage.²⁷ The former Repauno plant used caustic soda as a raw material and had a production flow similar to that of BASF AG.²⁸

Production in China differs slightly because not all Chinese producers have been able to add an anti-caking agent successfully. Instead, they use a different method to achieve a product that flows.²⁹ At the end of the production process in China, the sodium nitrite is re-dissolved in water and put through a prill tower to form small beads or pellets.³⁰ This additional step yields small spherical pellets of sodium nitrite.³¹

Figure I-1 is a chemical process flow diagram of General Chemical's sodium nitrite production operation. The process is asserted to be similar when caustic soda (sodium hydroxide) is used as a reactant instead of soda ash (sodium carbonate), the primary difference being that the sodium nitrite solution emerging from the "Liquor Tub" is much more concentrated and may be sold directly as liquid sodium nitrite (solution) in the 40-percent concentration range.

The process shown in the flow diagram is a "continuous process," as contrasted with a "batch process." In a continuous process reactants, intermediate and final products flow through the reactors uniformly and continuously rather than through open or closed reaction tanks. All process equipment in the process train must be sized to design throughput, as there is little or no intermediate storage. Continuous processes tend to be more efficient when being used for limited specialized production, as opposed to batch operations, which tend to have greater operating flexibility.³²

²³ General Chemical operates a *** while Repauno had a ***. Staff field trip report, General Chemical, November 19, 2007.

²⁴ General Chemical uses Petro AG. Conference transcript, p. 10 (McFarland). Petro AG is an Akzo Nobel naphthalene sulfonate surfactant, found at <http://www.chembuyersguide.com/partners/akzosurface.html>, retrieved on December 3, 2007.

²⁵ Petition, p. 12.

²⁶ Conference transcript, p. 96 (Work).

²⁷ Conference transcript, pp. 131-132 (McGrath).

²⁸ Conference transcript, p. 17 (McFarland) and (Jaffe).

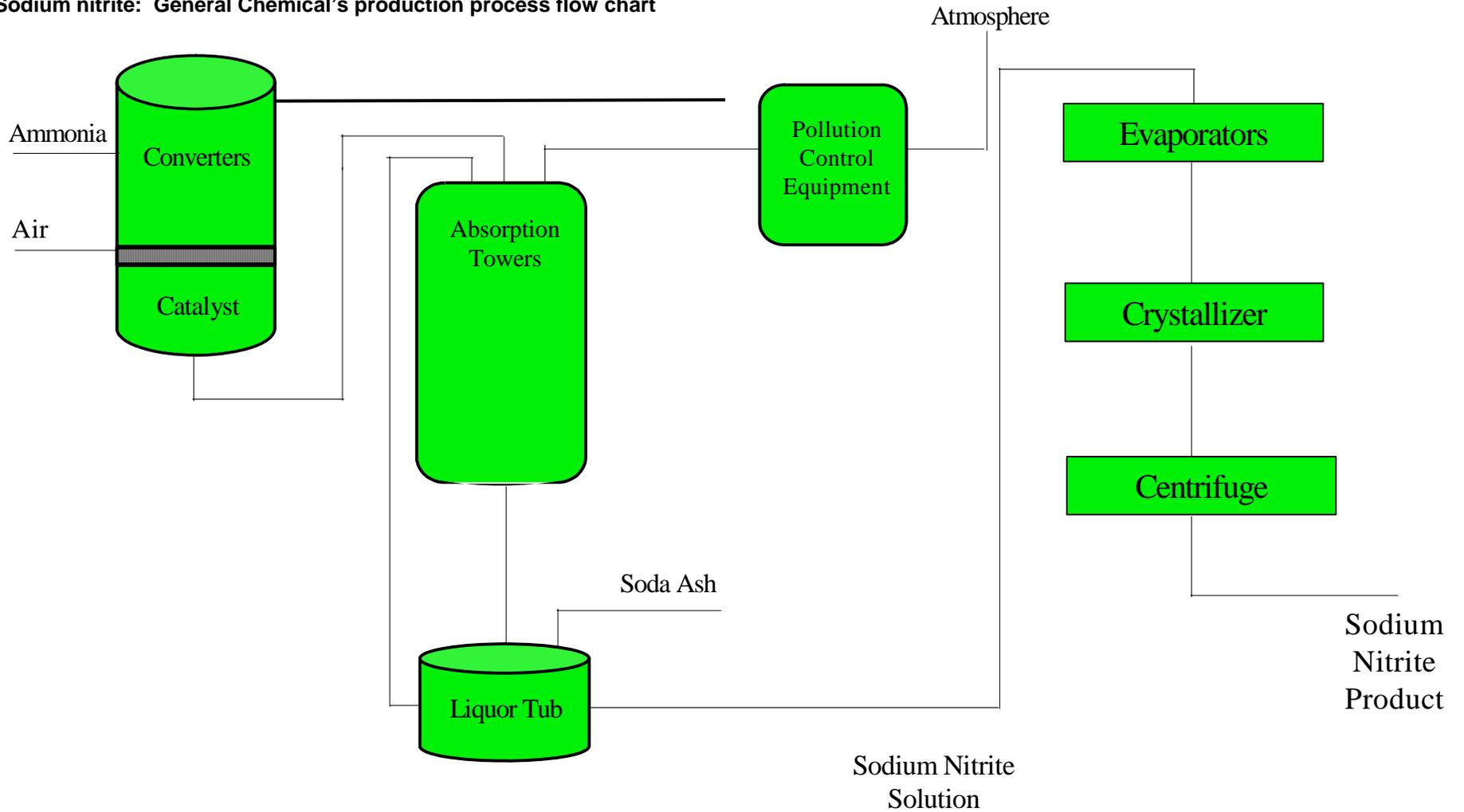
²⁹ Conference transcript, p. 124 (Work).

³⁰ Petition, 24, Conference transcript, p. 22 (Jaffe).

³¹ Petition, 24 and 33.

³² See, e.g. Staff field trip report, General Chemical, November 19, 2007. See also conference transcript, p. 26 (McFarland), and pp. 131-133 (Work) and (McGrath).

Figure I-1
Sodium nitrite: General Chemical's production process flow chart



8-1

Interchangeability

The U.S. producer of sodium nitrite reports that the U.S.-produced and imported products are *** interchangeable within grades. Importer BASF Corp. reports that U.S.-produced and imported products are *** interchangeable. With regard to interchangeability between U.S. and Chinese sodium nitrite, the majority (3 of 4) of responding importers report that the products are always or frequently interchangeable.

More detailed information on interchangeability, including the extent to which specific grades or forms of sodium nitrite are interchangeable with one another, can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

Customer and Producer Perceptions

In commenting on customer and producer perceptions, the U.S. producer stated that neither customers nor producers perceive sodium nitrite that meets applicable standards to be distinguishable, regardless of where the sodium nitrite is produced. According to the U.S. producer, although the subject merchandise from China is often sold in prilled form in the United States, prilling allegedly does not affect customer or producer perceptions of sodium nitrite because it only affects the physical form of the sodium nitrite.³³

Channels of Distribution

Sodium nitrite customers purchase the domestically produced and imported products directly from the manufacturer, as well as from local, regional, and national distributors. Over the period for which data were collected, the quantity of U.S. producers' sales to distributors decreased by *** percent from 2004 to 2006 but the proportion of such shipments increased during each full year. By January-September 2007 shipments to distributors *** shipments to end users. U.S. importers' sales to distributors increased by *** percent from 2004 to 2006 and the proportion of such shipments also increased.³⁴ Table I-3 presents both producers' and importers' reported methods of distribution. Additional information on channels of distribution can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

Table I-3
Sodium nitrite: U.S. producers' and importers' channels of distribution, 2004-06, January-September 2006, and January-September 2007

* * * * *

Price

Petitioners contend that the market for sodium nitrite is highly price-sensitive and that competition occurs mostly on the basis of price.³⁵ According to the petitioner, prices for sodium nitrite vary depending on the product form and grade being sold. Prices for the technical grade sodium nitrite are generally lower than the prices for food and other grades, while the liquid form is generally priced higher

³³ Postconference brief of General Chemical LLC, pp. 7-8.

³⁴ This increase in sales to distributors may be partially explained by the consolidation that has occurred during the period of review in the distributor market. Staff field trip report, General Chemical, November 19, 2007. Conference transcript, p. 31 (Nelson).

³⁵ Petition, pp. 33-34, 38. Conference transcript, p. 43 (Jaffe), p. 44 (Nelson).

than the other forms.³⁶ Table I-4 and figure I-2 present average unit values for U.S. shipments of sodium nitrite in the United States from various sources. Average unit values for domestic sodium nitrite increased each year from 2004 to 2006 and were higher in January-September 2007 than in January-September 2006 by *** per pound. Throughout the period for which data were collected the average unit value for U.S. shipments of sodium nitrite imports from China were lower than the value for imports from Germany. These data are in contrast to official Commerce statistics which report that German unit values were lower than unit values for imports from China. For periods for which data on shipments of imports from all other sources are available, nonsubject sodium nitrite imports were priced higher than subject imports from China and Germany. Pricing practices and prices reported for specific types of sodium nitrite in response to the Commission's questionnaires are presented in Part V of this report, *Pricing and Related Information*.

Table I-4

Sodium nitrite: Average unit values of U.S. shipments, by source, 2004-06, January-September 2006, and January-September 2007

* * * * *

Figure I-2

Sodium nitrite: Average unit values of U.S. shipments, by source, 2004-06, January-September 2006, and January-September 2007

* * * * *

³⁶ Postconference brief of General Chemical LLC, pp. 9-10, exh. 1, pp. 2-3.

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

U.S. MARKET CHARACTERISTICS

Sodium nitrite is available in two principal grades, technical grade and food grade. Food grade sodium nitrite is subject to specific quality standards, especially with respect to the presence of heavy metals; compliance with the Food Chemical Codex (FCC) and current Good Manufacturing Practice (cGMP); and registration with the Food and Drug Administration (FDA). Sodium nitrite that meets only technical grade specifications should not be used in food products; however, sodium nitrite that meets food grade specifications can be substituted for sodium nitrite that meets technical grade specifications.¹

Sodium nitrite is also available in different forms, specifically, dry and liquid. Dry sodium nitrite is available in multiple varieties, such as granular, flake, and prilled while the liquid is available in multiple purity levels.² The dry form is sold in bags and the liquid is sold in tanks and rail cars.³

When firms were asked to list market areas in the United States where they sell sodium nitrite, General Chemical and BASF reported that selling their products ***. None of the responding importers of sodium nitrite from China reported selling the product nationwide, rather they reported selling in one or two specific market areas. Market areas reported by these importers include the Northeast, West Coast, MidAtlantic, MidWest, Southeast, and Southwest.

U.S. producer General Chemical reported that *** are made from inventory, while *** of its sales were produced to order.⁴ Lead times for delivery of sodium nitrite for General Chemical were *** days for sales from inventory and ranged from *** to *** days for sales that were produced to order. BASF reported that approximately *** percent of its sales are from inventory and *** percent are made to order. Lead times reported by BASF were *** days for sales from inventory and *** for sales of product produced to order.⁵ One half of responding importers of sodium nitrite from China (3 of 6 firms) reported that *** percent of their sales were from inventory; two other importers reported that *** percent of their sales were produced to order. The remaining importer of Chinese material reported that its sales were split with *** percent sold from inventory and *** percent sold produced to order. Lead times for delivery of imports of sodium nitrite from China were between *** for product sold from inventory and *** weeks for product produced to order.

CHANNELS OF DISTRIBUTION

Both domestic and imported sodium nitrite are sold to distributors and end users. According to General Chemical, there are primarily *** large national distributors and those firms make up the majority of the volume of the distributor business in the U.S. sodium nitrite market; there are also a number of large end users as well. While General Chemical reported that there are a number of small distributors and end users, it publicly stated that the top 8 to 16 firms likely make up about 80 percent of

¹ Petition, p. 31.

² General Chemical produces and sells some high purity granular sodium nitrite product, but for customers that want a free flowing product, General Chemical adds an anti-caking agent and markets the resulting product as granular free-flowing sodium nitrite (Conference transcript, p.18 (McFarland)).

³ Petition, p. 4.

⁴ General Chemical reported that it considered sales that *** to be products that were produced to order; in addition, General Chemical also reported *** (General Chemical's producer questionnaire response, section IV-9).

⁵ BASF importer questionnaire response, section III-9.

General Chemical's business.⁶ Based on questionnaire responses, an increasing amount of U.S. producers' shipments went to distributors over the period for which data were collected; these shipments rose from *** percent in 2004 to *** percent in 2006. On the other hand, U.S. producers' shipments to endusers declined from *** percent in 2004 to *** percent in 2006.⁷ Imports of sodium nitrite from Germany also increasingly went to distributors over the period, with the percentage rising from *** percent in 2004 to *** percent in 2006; shipments of German sodium nitrite to end users, thus, declined from *** percent in 2004 to *** percent in 2006. During 2004-06, the vast majority of shipments of imports of sodium nitrite from China were made to distributors (over *** percent in each year). However, in January-September 2007, *** of the shipments of Chinese sodium nitrite were to end users (*** percent).

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

The supply response of U.S. producers of sodium nitrite to changes in price depends on such factors as the level of excess capacity, the availability of alternate markets for U.S.-produced sodium nitrite, inventory levels, and the ability to shift to the manufacture of other products. The evidence indicates that the U.S. supply is likely to be elastic, due primarily to available unused capacity and limited inventories combined with the existence of export markets and production alternatives.

Industry capacity

U.S. producers' capacity to produce sodium nitrite was constant in 2004 and 2005 at *** pounds and declined by *** percent to *** in 2006. Interim data show a *** decline (*** percent) from *** pounds in January-September 2006 to *** pounds as General Chemical closed the sodium nitrite facility in Gibbstown, NJ, that it had purchased.⁸ U.S. producers' capacity utilization declined from *** percent in 2004 to *** percent in 2005 and then further to *** percent in 2006. Interim data indicate that capacity utilization reached *** percent in interim 2007. Despite the increase in the most recent interim

⁶ General Chemical stated that pricing to distributors is normally *** than to endusers and this relationship has been *** since 2004 (Petitioner's postconference brief, Ex. 1, p. 2). With regard to pricing for distributors and endusers, BASF reported that "pricing is generally based on the competitive situation, expected volume, and freight considerations. BASF pricing is *** but the distributors need to add their margin on top of BASF pricing, resulting higher price to their customers" (BASF postconference brief, Attachment 1, p. 9).

⁷ This trend was the same with the interim data, with shipments to distributors increasing and shipments to end users declining from interim 2006 to interim 2007.

⁸ In July 2006, General Chemical acquired the assets of Repauno, a U.S. producer of sodium nitrite with a facility in Gibbstown, NJ. General Chemical decided to close the Repauno facility in late 2006 and reported that, "as of today, General Chemical does not have the ability to reopen Repauno and produce sodium nitrite at that facility (Conference transcript, p. 40 (McFarland) and Petitioner's postconference brief, p. 14). Therefore, U.S. industry data for 2004-06 and for interim 2006 represent data for both General Chemical and Repauno and data for interim 2007 represent data for General Chemical alone.

period, this level of capacity utilization indicates that the U.S. producer has excess capacity with which it could increase production of sodium nitrite in the event of a price increase.⁹

Alternative markets

Total exports by U.S. producers, as a share of total shipments, increased from *** percent in 2004 to *** percent in 2006; interim data reflect exports rising from *** percent in January-September 2006 to *** percent in the same period of 2007. These data indicate that the U.S. sodium nitrite producer may have some ability to divert shipments to or from alternative markets in response to changes in the price of sodium nitrite.

Inventory levels

The domestic industry's ratio of end-of-period inventories to total shipments increased from *** percent in 2004 to *** percent in 2005 and then to *** percent in 2006. Interim data, however, indicate a decline, with the ratio of inventories decreasing from *** percent in January-September 2006 to *** percent in the same period of 2007. While the annual data indicate that U.S. producers had a moderate ability to use inventories as a means of increasing shipments of sodium nitrite to the U.S. market, the most recent interim data indicates that this ability may be somewhat limited for General Chemical.

Production alternatives

General Chemical reported that it does produce a purge stream, using the same equipment, machinery, and employees as is used to produce sodium nitrite.¹⁰

Subject Imports

The responsiveness of supply of imports from China and Germany to changes in price in the U.S. market is affected by such factors as capacity utilization rates, the availability of home markets and other export markets, and inventories. No Chinese producer provided any data to the Commission, therefore no analysis of supply responsiveness is presented.¹¹ Based on available information, the producer in Germany is likely to respond to changes in demand with at least moderate changes in the quantity of shipments of sodium nitrite to the U.S. market. The main contributing factors to this degree of responsiveness of supply in the case of Germany are the existence of alternate markets.

Industry capacity

There is one producer of sodium nitrite in Germany, BASF AG. During the period for which data were collected, the capacity utilization rate for BASF AG decreased from *** percent in 2004 to *** percent in 2006; interim data, however, show an increase from *** percent in January-September

⁹ General Chemical reported that its production capacity is *** (General Chemical producer questionnaire response, section II-4). These factors may constrain General Chemical's ability to increase production overall or of the dry product.

¹⁰ General Chemical's purge stream is actually a waste product that is created in the production of sodium nitrite. General Chemical has been able to sell this byproduct (Conference transcript, p. 78 (McFarland)). ***.

¹¹ China is a leading global exporter of metallic nitrites, a group of products that includes sodium nitrite; however, the amount of sodium nitrite exports by China is unknown.

2006 to *** percent in the same period of 2007. BASF AG reported that capacity utilization rates are projected to be *** percent in 2007 and *** percent in 2008. Based on these data, there is little excess with which BASF AG could increase its production of sodium nitrite to respond to price changes in the U.S. market.

Alternative markets

Available data indicate that the producer in Germany has the ability to divert shipments to or from alternative markets in response to changes in the price of sodium nitrite. During the period of investigation, the largest market for shipments of sodium nitrite for BASF AG was non-U.S. export markets, primarily ***. The percentage of BASF AG's shipments that were made to non-U.S. export markets ranged between *** and *** percent during the period for which data were collected. Shipments of sodium nitrite from Germany to the United States increased as a share of total shipments, rising from *** percent in 2004 to *** percent in 2006; interim data show a *** increase from *** percent in January-September 2006 to *** percent in the same period of 2007. While the share of BASF AG's total shipments that went to the home market declined from 2004 to 2006, they still accounted for between *** and *** percent. The existence of both home market sales and significant non-U.S. export markets give the German producer the flexibility to divert shipments to the U.S. market in response to price changes.

Inventory levels

The German producer's inventories, as a share of total shipments, decreased from *** percent in 2004 to *** percent in 2006 and are projected to be *** in 2007 and 2008. These data indicate that the German producer is constrained in its ability to use inventories as a means of increasing shipments of sodium nitrite to the U.S. market.

Nonsubject Imports

Based on official import statistics of Commerce, as revised, U.S. imports of sodium nitrite from nonsubject sources accounted for between 1.6 and 7.0 percent of the quantity of total U.S. imports in between 2004 and 2006. These imports were 3.4 percent of total U.S. imports of sodium nitrite during January-September 2007.

U.S. Demand

Demand Characteristics

The evidence discussed below indicates that the demand for sodium nitrite is likely to be relatively price inelastic. Apparent U.S. consumption decreased by *** percent from 2004 to 2006; interim period data indicate that apparent U.S. consumption was *** percent lower in January-September 2007 than in the same period of 2006.

When asked how the overall demand for sodium nitrite has changed since January 2004, General Chemical stated the following:

“***.”¹²

¹² General Chemical's producer questionnaire response, section IV-14.

General Chemical also noted that while some of the end users of sodium nitrite have moved overseas, which has negatively affected demand in the U.S. market, there are some end uses that will continue to grow. For example, General Chemical stated that it believes that the use of sodium nitrite in water treatment and corrosion inhibition will continue and grow at a modest rate.¹³ In addition, while sodium nitrite has been used to treat cyanide poisoning, there are potential other medical applications that are being examined.¹⁴ General Chemical did note, however, that it believed that “the pharmaceutical market is never going to be large.”¹⁵

BASF reported that it ***.¹⁶ Of the six responding importers of Chinese sodium nitrite, three reported no change in demand in the U.S. market. The other three importers reported an increase in demand. Reasons given include an increase in German product (as it does not cake), GDP growth, and new demand as company began importing and selling into the U.S. market in 2003.

Substitute Products

Sodium nitrite is used as an intermediate product that is used in a variety of end uses such as printing, dyes, corrosion inhibitors, rubber chemicals, metal coatings, heat transfer, and as food additives (e.g., curing agent in meat and meat products and in the manufacture of synthetic caffeine and saccharin). When asked whether there are substitutes for sodium nitrite, *** reported that there are no products that can be substituted for sodium nitrite. *** explained that sodium nitrite is a convenient source of nitrous acid in the manufacture of dyes, pigments, rubber processing chemicals, and blowing agents. According to ***, oxidizing agents (such as sodium nitrite) can be used for various reactions and large scale operations usually choose either nitrous acid or chlorine. And while either product could be used, any conversion from sodium nitrite would require a significant investment in process changes and equipment.¹⁷

Cost Share

U.S. producers and importers were asked to estimate the share of the total cost of end products which is accounted for by the cost of sodium nitrite. *** did not provide any cost share estimates and it noted that “cost share information is proprietary and is based on the customer’s process”.¹⁸ *** reported cost shares for textiles and pigments ***, crop protection and pharmaceuticals ***, heat transfer ***, and metal surface treatment ***. ***, an importer of Chinese sodium nitrite also provided estimates for

¹³ Conference transcript, p. 73 (McFarland).

¹⁴ An NIH study indicate that “sodium nitrite, a naturally occurring chemical and common meat preservative, is only used medically to treat cyanide poisoning. But if the results of a new animal study hold up under further research in people, the chemical may one day be used to protect and preserve tissue and organ function after heart attack, high risk abdominal surgery, and organ transplantation” (*NHLBI Study: The Promise of New Medical Uses for Sodium Nitrite for Heart Attack and Organ Damage*, <http://www.nih.gov/news/pr/apr2005/nhlbi-14.htm>, retrieved on December 5, 2007).

¹⁵ Conference transcript, p. 54 (McFarland). General Chemical also stated that it continues to try to expand demand by finding new uses for sodium nitrite. For example, if General Chemical gets a request for samples and it knows of a manufacturer in a specific industry who is using it in a new application, General Chemical will look at the trade associations and the industry associations of the product and try to get other manufacturers to see sodium nitrite as an option (Conference transcript, p. 54 (McFarland)).

¹⁶ BASF importer questionnaire response, section III-14.

¹⁷ ***.

¹⁸ BASF importer questionnaire response, section IV-12.

water treatment *** and for antifreeze syrups ***. These relatively low cost shares contribute to the low elasticity of demand for sodium nitrite.

SUBSTITUTABILITY ISSUES

The degree of substitutability between domestic products and subject and nonsubject imports and between subject and nonsubject imports is examined in this section. The discussion is based upon the results of questionnaire responses from U.S. producers, U.S. importers, and additional information obtained from U.S. purchasers.

Factors Affecting Sales and Purchases

As noted earlier, sodium nitrite is available in different grades (technical and food grade) and in different forms (granular, flake, liquid, and prill). With regard to the different grades of sodium nitrite, food grade must meet specific quality standards, and while a customer could purchase food grade sodium nitrite and use it in a technical application, the reverse is not true. Available information indicates that both grades have been available from domestic, German, and Chinese sources during the period for which data were collected.¹⁹ With regard to the different forms of sodium nitrite, General Chemical sold granular, flake, and liquid in the U.S. market. In 2006, the largest percentage of General Chemical's sales were of sodium nitrite in liquid form (*** percent); the next largest amount was granular (*** percent), followed by flake (*** percent). BASF's shipments in the U.S. market, on the other hand, have been almost exclusively sodium nitrite in dry form; ***.²⁰ Data on shipments of Chinese product indicate that there have been sales of both granular and prilled sodium nitrite; in 2006, *** percent of shipments of Chinese sodium nitrite was granular product and *** percent was prilled.

General Chemical has reported that customers use sodium nitrite of the same form from different sources interchangeably and it stated that sometimes customers switch between different forms.²¹ According to General Chemical, BASF's dry sodium nitrite has in the past directly competed against domestically produced sodium nitrite liquid.²² General Chemical stated that customers that normally buy liquid can take the granular dry product and liquify it for use in their production process.²³ BASF, on the other hand, has stated that it believes that there is little competition between sodium nitrite in dry form and sodium nitrite in liquid form.²⁴ According to BASF, it does not believe that any of its customers are buying granular product and converting it into solution in their own facilities. BASF noted that, for the same reasons that it is uneconomical for BASF to perform the necessary operations to convert dry to liquid, it would likewise be uneconomical for BASF's customers.²⁵ BASF also stated that it has never seen a customer switch from using granular to using solution in their production process.

¹⁹ See tables V-1 and V-2, pp. V-8 and V-9 of this report.

²⁰ ***.

²¹ Petitioner's postconference brief, p. 8.

²² In response to a request from staff, General Chemical provided the names of two companies *** that it believed switched from domestic liquid sodium nitrite to German dry sodium nitrite (Petitioner's postconference brief, Ex. 1, p. 4). ***.

²³ Conference transcript, p. 42 (Nelson).

²⁴ Conference transcript, p. 95 (McGrath).

²⁵ BASF stated that it believes that the decision to purchase dry or liquid is, in large part, a function of scale of size of plant/operation.

The Commission contacted purchasers to obtain additional information on the interchangeability between dry and liquid sodium nitrite and the ability of switching between the two products.²⁶ The following tabulation summarizes the information obtained from purchasers with regard to interchangeability.

Purchasers were also asked whether or not they had tried liquid sodium nitrite if they had only purchased dry sodium nitrite and vice versa (i.e., tried dry if only bought liquid). These firms were also asked to describe any modifications to their plant or production process that may be necessary for them to switch to a different form. Responses from purchasers are summarized in the following tabulation.

* * * * *

Comparison of Domestic Product and Subject Imports

In order to determine whether U.S.-produced sodium nitrite can generally be used in the same applications as imports from China and Germany, U.S. producer and importers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. As indicated in table II-1, General Chemical reported that U.S. sodium nitrite is *** interchangeable with imports from both China and Germany. BASF reported that U.S. sodium nitrite is *** interchangeable with sodium nitrite from China and from Germany. BASF noted that ***. Importers of sodium nitrite from China reported that U.S. produced sodium nitrite is either always or frequently interchangeable with Chinese and German product. One importer of Chinese material, ***, reported that the Chinese product cakes which limits acceptance of the product; it further noted that anti-caking agents cause the solution to look cloudy.

Table II-1
Sodium nitrite: Perceived degree of interchangeability of product produced in the United States and in other countries

* * * * *

U.S. producers and importers were also asked if differences other than price were significant in their sales of sodium nitrite. As seen in table II-2, General Chemical reported that non-price factors are *** a significant factor in its sales of sodium nitrite while BASF noted that these factors are *** a factor. BASF noted that whether or not these factors are significant depends on the end user’s application. ***, an importer of Chinese sodium nitrite, reported that sodium nitrite from Germany is an excellent product while there are sometimes problems with caking and clogging with Chinese sodium nitrite. Another importer of Chinese material, ***, reported that differences in distribution are factors that differentiate the domestic and Chinese products; it noted that U.S. producers sell through other distribution networks, generally larger distributors than its *** business.²⁷

Table II-2
Sodium nitrite: Differences other than price between products from different sources

* * * * *

²⁶ Purchasers that were sent questions were those that were listed in General Chemical and BASF’s questionnaires as the top ten customers for each supplier. Staff sent requests 18 different purchasers and received information from 5 firms.

²⁷ *** importer questionnaire response, section III-18.

Other Country Comparisons

In addition to comparisons between the U.S. product and imports from the subject countries, U.S. producers and importers comparisons between the United States and imports from nonsubject countries and between subject imports and nonsubject imports are also shown in tables II-1 and II-2. According to General Chemical, imports from India and Poland are *** interchangeable and non-price considerations are *** a factor.

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

U.S. PRODUCERS

The petition identified one current and one former U.S. producer of sodium nitrite. The Commission received a completed questionnaire response from the petitioner, General Chemical.¹ General Chemical's headquarters are located in Parsippany, NJ, and its sodium nitrite plant is located in Solvay, NY, west of Syracuse. General Chemical accounted for *** percent of total reported U.S. production in 2006 and Repauno accounted for *** percent of total reported U.S. production in 2006, the year that it was closed. Table III-1 presents U.S. producers' positions on the petition, ownership, plant locations, and shares of total reported U.S. production in 2006.

Table III-1
Sodium nitrite: U.S. producers, positions on the petition, ownership, plant location, and shares of total reported 2006 U.S. production

Firm	Position on petition	Firm ownership	U.S. plant location	2006 U.S. production	
				Quantity (1,000 pounds)	Share (percent)
General Chemical	Support/Petitioner	General Chemical Performance Products LLC ¹	Solvay, NY	***	***
Repauno ²	Not applicable	General Chemical	Gibbstown, NJ	***	***
Total				***	100.0
¹ An indirect wholly-owned subsidiary of GenTek, Inc. ² Stopped production in November 2006.					
Source: Compiled from data submitted in response to Commission questionnaires and from the Petition, p.3.					

General Chemical was founded in 1899 by the merger of 12 chemical producers. In 1920 General Chemical was one of five companies that merged to form Allied Chemical & Dye Corporation ("Allied") and in that year the sodium nitrite plant was erected and began production. In 1986 Allied spun off 35 of the company's marginal businesses and General Chemical re-emerged as a stand-alone company. In 1996 General Chemical became a publicly-traded firm. General Chemical subsequently acquired Peridot Holdings, a manufacturer of sulfuric acid, water treatment chemicals, and aluminum sulfate products, and Reheis Inc., a producer of specialty chemicals. In 1999, in a move to consolidate its core industrial chemicals business, General Chemical spun off its specialty chemicals and auto parts businesses into a new company, Gen-Tek, Inc. ("GenTek").² Today, General Chemical is a subsidiary of

¹ General Chemical provided data on behalf of former producer, Repauno, which it acquired and subsequently closed in 2006. In addition, the Commission mailed domestic producer questionnaires to potential producers, E.I. duPont de Nemours and Company, Inc. ("DuPont"), and GFS Chemicals Inc. DuPont submitted a questionnaire response certifying that it has not produced sodium nitrite since January 1, 2004. No response was received from GFS Chemicals Inc.

² The General Chemical Group Inc., "Company History," found at <http://www.fundinguniverse.com/company-histories/TheGeneral-Chemical-Group-Inc-Company-History.html>, retrieved on November 29, 2007.

General Chemical Performance Products LLC which is a subsidiary of GenTek and is traded on the NASDAQ (trading symbol GETI).³

Repauno began in 1880 as a joint venture between DuPont and other investors to produce explosives in Gibbstown, NJ. In 1884 DuPont became the majority owner, and expanded the product line at the Gibbstown facility. Over time the production of explosives, ammonia, and industrial diamonds ended, leaving only the production of sodium nitrite on-site in 1999.⁴ That same year U.S. Salt Holdings (“U.S. Salt”), a manufacturer of salt and other inorganic chemicals based in Jacksonville, FL, acquired DuPont’s sodium nitrite business and created a subsidiary known as Repauno Products LLC to operate the sodium nitrite business.⁵ Repauno continued to produce sodium nitrite under U.S. Salt’s ownership. In 2005 General Chemical and Repauno began discussing a potential acquisition. In July 2006 Repauno was acquired by GenTek Inc., the parent company of General Chemical Inc. The acquisition included the manufacturing facility and its 23 employees for a purchase price of approximately \$4.5 million cash, plus working capital (ultimately valued at \$6 million).⁶ Commenting on the acquisition, General Chemical’s General Manager, Thomas Testa, stated, “This acquisition strengthens our market position with our present customer base and will make us a much more efficient supplier of sodium nitrite into North America.”⁷ General Chemical’s aim was to boost capacity utilization at its Solvay, NY, facility by focusing production there on dry sodium nitrite, of which it was the more efficient producer, and using the Gibbstown, NJ, operation to supply residual liquid sodium nitrite demand.⁸

As related by the petitioner, several events changed General Chemical’s plans for the Gibbstown facility: natural gas prices were driven higher by Hurricane Katrina, two of Repauno’s top three customers closed,⁹ and imports increased.¹⁰ Faced with this competitive situation General Chemical closed the Repauno facility in November 2006. This closure included the ***.¹¹ The Gibbstown site was turned back over to DuPont.¹² Hence, General Chemical does not have the ability to reopen Repauno or produce sodium nitrite at that facility.¹³

³ General Chemical’s domestic producer questionnaire response, I-2, and General Chemical, Overview, found at <http://www.genchemcorp.com/profile/overview.shtml>, retrieved on November 29, 2007.

⁴ DuPont Heritage, “Gibbstown, New Jersey,” found at http://heritage.dupont.com/floater/fl_gibbstown/floater.shtml, retrieved on November 28, 2007.

⁵ Jacksonville Business Journal, “US Salt purchases DuPont’s sodium nitrite operations,” March 5, 1999, found at <http://jacksonville.bizjournals.com/jacksonville/stories/1999/03/08/newscolumn1.html>, retrieved on October 17, 2007.

⁶ GenTek Inc., 2006 form 10-K, pp. 1 and 23.

⁷ GenTek Investor Relations, “GenTek Inc. Announces the Acquisition of the Assets of Repauno Products LLC,” July 27, 2006, found at <http://www.gentek-global.com/news/2006-7-27.cfm>, retrieved on November 28, 2007.

⁸ Conference transcript, p. 35 (McFarland).

⁹ Chemtura and PMC Specialties. Conference transcript, pp. 13-14 (McFarland). According to BASF, these purchasers used sodium nitrite in liquid form only. Postconference brief of BASF AG and BASF Corp., p. 13. However, General Chemical has stated that PMC Specialties purchased mostly sodium nitrite liquid ***. Postconference brief of General Chemical, exh. 1, p. 7. General Chemical ***. E-mail from ***.

¹⁰ Conference transcript, p. 13 (McFarland).

¹¹ Postconference brief of General Chemical, exh. 1, p. 6.

¹² General Chemical’s domestic producer questionnaire response, II-2, Petition, p. 41, and Staff field trip report, General Chemical, November 19, 2007. ***.

¹³ Conference transcript, p. 40 (McFarland).

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Table III-2 presents data on U.S. producers' capacity, production, and capacity utilization between 2004 and 2006, as well as for the interim (January-September) periods of 2006 and 2007. The data are graphically presented in figure III-1. The production data are those of General Chemical for the entire period, and Repauno for 2004-06 and January-September 2006.¹⁴

Table III-2
Sodium nitrite: U.S. capacity, production, and capacity utilization, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Figure III-1
Sodium nitrite: U.S. capacity, production, and capacity utilization, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Reported U.S. capacity to produce sodium nitrite was stable in 2004 and 2005 but decreased overall from *** pounds in 2004 to *** pounds in 2006. Further, capacity was *** pounds lower in interim 2007 than in interim 2006 because of the closure of Repauno's plant. U.S. production of sodium nitrite decreased each year between 2004 and 2006, for an overall decrease of *** percent, and was *** percent lower in January-September 2007 than in January-September 2006. The average capacity utilization for U.S. producers fell from *** percent in 2004 to *** percent in 2006 when both producers were operating, but was *** percent in interim 2007 when only General Chemical was producing sodium nitrite.

General Chemical acquired Repauno in part to increase the capacity utilization of the Solvay, NY, plant.¹⁵ Prior to acquisition, General Chemical's capacity utilization had fallen to approximately *** but company executives wanted to increase General Chemical's capacity utilization to close to *** percent. Their plan was to run the Solvay, NY, plant at full capacity to take advantage of fixed cost benefits, and run the former Repauno plant ***.¹⁶

General Chemical reported two constraints on its production capacity. First, production capacity is limited by the plant's ***.¹⁷ ***.¹⁸ The plant can shift its production capacity between product forms

¹⁴ General Chemical ***. General Chemical's domestic producer questionnaire response, I-6.

¹⁵ Conference transcript, p. 13 (McFarland).

¹⁶ Postconference brief of General Chemical, p. 25.

¹⁷ A ***. U.S. Environmental Protection Agency, Operating Permits, found at <http://www.epa.gov/air/oaqps/permits/>, retrieved on December 12, 2007.

¹⁸ General Chemical's domestic producer questionnaire response, II-4, and Staff field trip report, General Chemical, November 19, 2007. *** is equal to an annual production capacity of approximately *** pounds.

but must ***.¹⁹ General Chemical's Solvay plant equipment is ***.²⁰ General Chemical ***.²¹ Since January 1, 2004, General Chemical ***.²²

As a by-product of General Chemical's production process, a purge stream is generated from the absorption tower when the water has been repeatedly recycled and reaches unacceptable levels of impurities. This purge stream is a liquid mixture containing sodium nitrate and nitrite and is a waste product. The company has been able to market it as "technical liquor" (sodium nitrite in solution) to a small number of customers who buy it at a "very low price."²³ The production of this technical liquid product was equivalent to *** percent of General Chemical's total production in 2006.²⁴

U.S. PRODUCERS' SHIPMENTS

Table III-3 presents information on U.S. producers' shipments of sodium nitrite between January 2004 and September 2007. ***. U.S. producers' U.S. commercial shipments of sodium nitrite decreased by *** percent by quantity and *** percent by value from 2004 to 2006. General Chemical individually increased its U.S. commercial shipments of sodium nitrite by *** percent by quantity between 2004 and 2006. General Chemical's U.S. commercial shipments in January-September 2007 were greater than such shipments in January-September 2006 by *** percent. The unit values of U.S. shipments and exports increased *** each year between 2004 and 2006. Total shipment unit values were higher in 2006 than in 2004 by *** percent, or \$*** per pound of sodium nitrite. Total shipment unit values were higher in January-September 2007 than in January-September 2006 by *** percent, or \$*** per pound of sodium nitrite. Rising average unit values, however, did not fully offset declining shipment quantities, especially in the domestic market, and total shipment values for the domestic producers declined in each period-on-period comparison.

Table III-3

Sodium nitrite: U.S. producers' shipments, by types and shares, 2004-06, January-September 2006, and January-September 2007

* * * * *

General Chemical and Repauno reported exports, which constituted *** of the quantity of U.S. producers' shipments of sodium nitrite throughout the period for which data were collected. U.S. producers of sodium nitrite reported exporting to ***.²⁵ General Chemical's exports were *** in every period. During the conference held in connection with these investigations, petitioner claimed that Repauno lost market share in Canada to imports from Germany, BASF AG specifically.²⁶

¹⁹ General Chemical's domestic producer questionnaire response, II-4.

²⁰ Staff field trip report, General Chemical, November 19, 2007. General Chemical's domestic producer questionnaire response, II-3.

²¹ General Chemical's domestic producer questionnaire response, II-7.

²² General Chemical's domestic producer questionnaire response, II-6.

²³ Conference transcript, pp. 77-78 (McFarland).

²⁴ General Chemical's domestic producer questionnaire response, II-3.

²⁵ General Chemical's domestic producer questionnaire response, II-9.

²⁶ Conference transcript, pp. 13, 34 (McFarland).

In 2006, two of Repauno's customers, Chemtura (a rubber producer) and PMC Specialties (a saccharine producer), moved their operations overseas and ceased buying sodium nitrite from Repauno.²⁷ This change in Repauno's customer base accounts in part for the decrease in Repauno's commercial shipments in 2006. Table III-4 presents information on the quantity of General Chemical's and Repauno's shipments to these former customers for the period for which data were collected. Information regarding *** shipments to Chemtura and PMC Specialties is presented in part IV of this report. During 2004 to 2006, these customers purchased sodium nitrite *** from ***. Chemtura purchased *** sodium nitrite exclusively while PMC Specialties predominantly purchased the *** but also purchased *** sodium nitrite between 2004 and 2006.²⁸

Table III-4
Sodium nitrite: General Chemical's and Repauno's shipments to individual customers, by quantity, 2004-06, January-September 2006, and January-September 2007

* * * * *

Table III-5 presents information on U.S. producers' U.S. commercial shipments of sodium nitrite by form in 2004-06 and January-September 2007. General Chemical did not provide data for Repauno's shipments prior to its acquisition in 2006. Accordingly, staff applied the ratio of Repauno's shipments by form in 2006 (*** to the company's shipment quantities in 2004 and 2005). Over *** of U.S. shipments (by quantity) of sodium nitrite in 2006 were in *** form but this reflects in part the sale of Repauno's inventories that were acquired by General Chemical that year. Post-acquisition, General Chemical increased its shipments of *** sodium nitrite and decreased its shipments of *** sodium nitrite. In table III-5, and throughout this report, quantities of liquid sodium nitrite are reported on a dry measure basis.

Table III-5
Sodium nitrite: U.S. producers' U.S. shipments, by form, 2004-06, and January-September 2007

* * * * *

U.S. PRODUCERS' INVENTORIES

Table III-6, which presents end-of-period inventories for sodium nitrite, shows that inventories were relatively low as a ratio to production and shipments at the beginning of the period but that by 2006 such inventories had increased because of the closure of Repauno and General Chemical's assumption of Repauno's inventory. However, inventories in absolute terms and as a ratio to production and shipments returned to a relatively low level in January-September 2007.

Table III-6
Sodium nitrite: U.S. producers' end-of-period inventories, 2004-06, January-September 2006, and January-September 2007

* * * * *

²⁷ Conference transcript, pp. 13-14 (McFarland). The closure of Chemtura's U.S. operations was described as "being of concern, but contained." The exact volume of Repauno's sales to these companies appears in table III-4. Conference transcript, p. 13 (McFarland).

²⁸ Repauno's sales of sodium nitrite to PMC Specialties decreased from *** in 2004 to *** in 2005 to *** in 2007, to *** in 2007.

U.S. PRODUCERS' IMPORTS AND PURCHASES

During the period for which data were collected *** sodium nitrite.²⁹ In addition, ***.³⁰ General Chemical reported that it ***.³¹

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-7 presents data on U.S. producers' employment-related indicia. Because the Repauno plant was not closed until November 2006, the impact of the resulting decrease in employment is not apparent in the data for 2006. A comparison between interim 2006 and 2007 data shows that employment of production-related workers ("PRWs") in the U.S. sodium nitrite industry was *** percent lower and hours worked was *** percent lower following the plant closure. Wages paid to PRWs also declined throughout the period but hourly wages were relatively stable. Productivity decreased throughout the period for which data were collected.

Table III-7

Sodium nitrite: U.S. producers' employment-related data, 2004-06, January-September 2006, and January-September 2007

* * * * *

When General Chemical acquired Repauno in July 2006, it offered jobs to the former Repauno employees, but when the plant was closed in November 2006 those employee positions were terminated. In January 2007, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance applicable to workers of the former Repauno plant. The intent of the certification was to include all workers of General Chemical who were adversely affected by increased imports.³²

²⁹ General Chemical's domestic producer questionnaire response, II-8.

³⁰ General Chemical's domestic producer questionnaire response, II-12.

³¹ General Chemical's domestic producer questionnaire response, I-5.

³² *General Chemical Performance Products, Repauno Products LLC, Gibbstown, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance*, 72 FR 11906, March 14, 2007.

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

U.S. IMPORTERS

The Commission sent importer questionnaires to 31 firms believed to have imported sodium nitrite between January 2004 and September 2007, and received usable data from 11 firms, partial information from 4 firms, and confirmation of non-importation by 9 firms.¹ Seven firms did not respond to the Commission's questionnaire. Import data in this report are based on official Commerce statistics on imports for consumption as revised to exclude imports from Canada, Chile, Japan, the Netherlands, and Norway that were found to have been incorrectly classified.²

Of the importers that submitted useable data in response to the Commission's U.S. importers' questionnaire, seven indicated that they imported sodium nitrite from China, two imported from Germany, one from India, and one from the United Kingdom. BASF Corp.'s imports of sodium nitrite from Germany are believed to account for *** of U.S. imports from Germany, by quantity, in 2004-06 and January-September 2007. The responding firms' imports of sodium nitrite from China account for slightly more than one-half of total U.S. imports from China by quantity in 2006, and all U.S. imports from Germany as measured in official Commerce statistics. Table IV-1 presents information on U.S. importers.

¹ One firm, ***, provided data but because the quantities of its imports of sodium nitrite from *** were so small that they were measured in milligrams, that firm's data could not be used. One firm, ***, provided partial data. Two firms that did not provide questionnaire responses did respond by telephone. The first, ***, confirmed that its imports from *** were of a different product, ***. The second, ***, explained that it imports a chemical product *** produced by its parent company *** in *** using sodium nitrite from ***. This product is warehoused in the *** and accounted for all imports from *** during the period for which data were collected. Staff telephone interviews with *** and ***. Nine firms reported that they did not import sodium nitrite during the period for which data were collected.

² Importers accounting for 100 percent of reported imports of sodium nitrite from Chile, Japan, the Netherlands, and Norway confirmed that they did not import sodium nitrite and that their imports were either incorrectly classified or labeled. Importers accounting for the majority of reported imports of sodium nitrite from Canada confirmed that they did not import sodium nitrite and that their imports were either incorrectly classified or labeled.

Table IV-1
Sodium nitrite: U.S. importers and imports, by source, 2006

Importer	China	Germany	All others	China	Germany	All other sources
	Quantity (1,000 pounds)			Share by source (percent) ¹		
Allchem Industries (Gainesville, FL)	***	***	***	***	***	***
BASF Corp. (Florham Park, NJ)	***	***	***	***	***	***
Connell Bros. Co., Ltd. (San Francisco, CA)	***	***	***	***	***	***
Global Chemical Resources (Toledo, OH)	***	***	***	***	***	***
Hilti Inc. ² (Tulsa, OK)	***	***	***	***	***	***
Magnum International Inc. (Lansing, MI)	***	***	***	***	***	***
PAK Technologies ³ (Milwaukee, WI)	***	***	***	***	***	***
Pennzoil-Quaker State Co. ⁴ (Houston, TX)	***	***	***	***	***	***
PerkinElmer, LAS (Shelton, CT)	***	***	***	***	***	***
PHT International (Charlotte, NC)	***	***	***	***	***	***
SDA Chemicals Inc. (Garden Grove, CA)	***	***	***	***	***	***
Telechem International, Inc. ⁶ (Sunnyvale, CA)	***	***	***	***	***	***
Wego Chemical & Mineral Corp. (Great Neck, NY)	***	***	***	***	***	***
Total reported imports	***	***	***	100.0	100.0	100.0
¹ Shares are based on imports reported in importer questionnaires. ² Imported from ***. ³ Imported from ***. ⁴ Imported from ***. ⁵ PerkinElmer's imports from ***. ⁶ Imported from ***.						
Source: Compiled from data submitted in response to Commission questionnaires.						

Reporting U.S. importers of sodium nitrite are scattered throughout the United States with the only concentration, three, in California. Two U.S. importers reported having business affiliations with subject countries. *** is related to ***, an exporter of sodium nitrite to the United States.³ BASF Corp. of the United States is a wholly owned subsidiary of German sodium nitrite producer BASF AG.⁴ BASF Corp. imports sodium nitrite produced by its parent company ***.

One importer reported importing the subject product through a foreign trade zone.⁵ The same importer reported entering or withdrawing sodium nitrite from a U.S. bonded warehouse.⁶ No importers reported importing sodium nitrite under the temporary-importation-under-bond program.

The Commission asked importers to comment on any changes in the character of their operations or organization relating to sodium nitrite. *** cited the closure of its *** and explained that it was ***.⁷ *** reported that *** was a transition year during which the company ***.⁸

During the period for which data were collected, importer *** did not sell sodium nitrite to ***, but did sell to ***. *** sales of sodium nitrite to *** totaled *** pounds in 2004 and *** pounds in 2005 and were all of *** sodium nitrite.⁹ In 2006 *** explored the possibility of producing sodium nitrite *** in the United States both by ***.¹⁰ A portion of the ***, *** pounds, was sold to *** in 2006 along with *** pounds of *** sodium nitrite.¹¹ The *** sodium nitrite sold to *** was produced by *** a *** in *** located close to the ***, ***.” Although *** closed its saccharin operations it maintains other production capabilities and continues to purchase *** sodium nitrite from ***. In January-September 2007 *** sold *** pounds of *** sodium nitrite to ***.¹²

U.S. IMPORTS

Table IV-2 and figure IV-1 present and depict U.S. imports of sodium nitrite during 2004 to 2006 and January-September 2006 and 2007. U.S. import data are based on official Commerce statistics for sodium nitrite as revised to exclude incorrectly classified imports from Canada, Chile, Japan, the Netherlands, and Norway.¹³

³ *** importer questionnaire response, section I-4.

⁴ *** importer questionnaire response, section I-3.

⁵ *** importer questionnaire response, I-8.

⁶ *** importer questionnaire response, I-8.

⁷ *** importer questionnaire response, I-2 and II-2.

⁸ *** importer questionnaire response, section II-6a. ***. Ibid.

⁹ *** supplemental response to staff questions, December 7, 2007, pp. 1-2.

¹⁰ Postconference brief of BASF AG and BASF Corp., p. 5 (also noting, ***). *See also* *** supplemental response to staff questions, December 7, 2007, pp. 1-2.

¹¹ This quantity does not account for the total amount of ***. In 2006, *** percent of *** sales, or *** pounds, were of liquid sodium nitrite. *** importer questionnaire response, sections II-6a and II-6b.

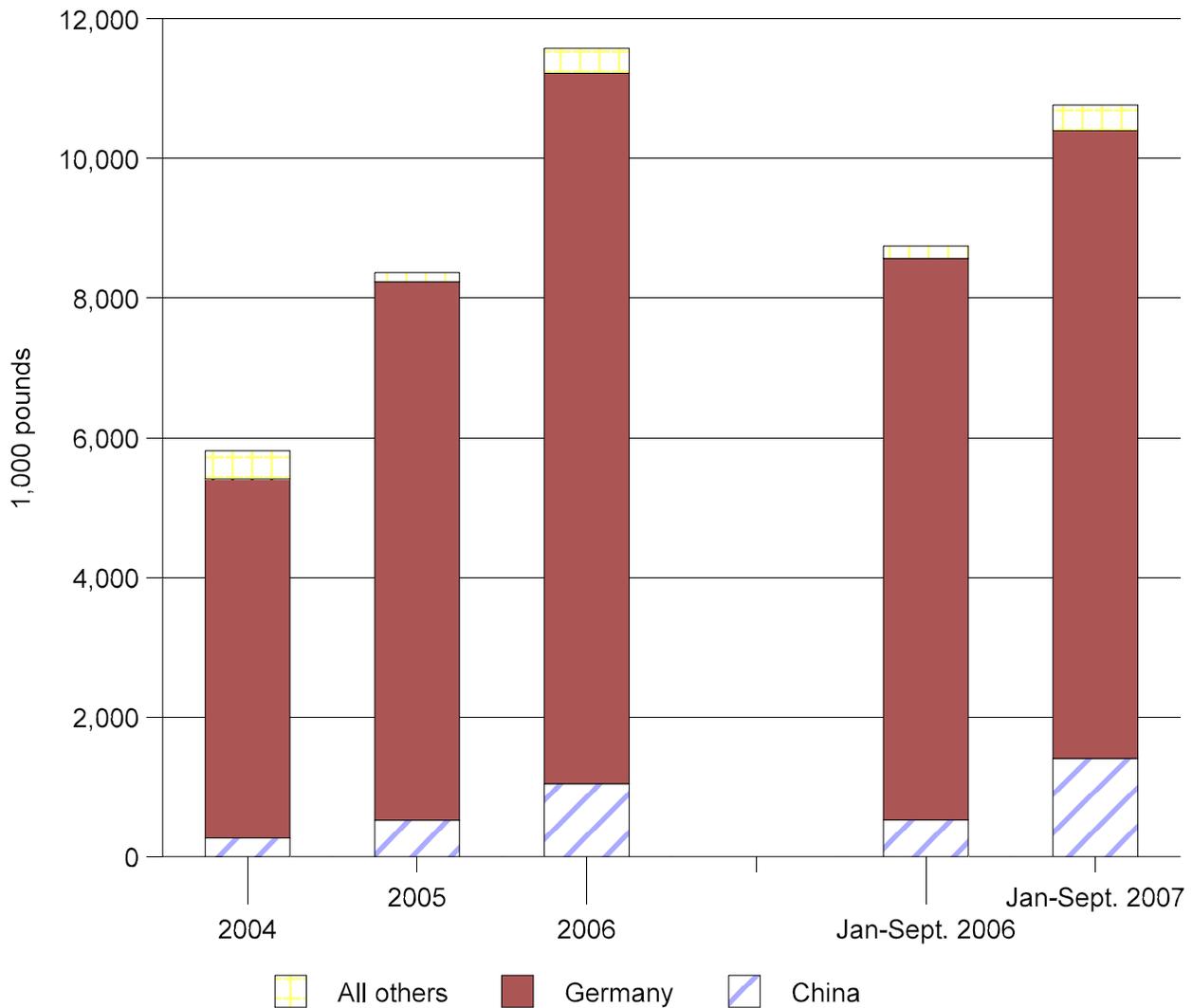
¹² *** supplemental response to staff questions, December 7, 2007, pp. 1-2.

¹³ HTS statistical reporting number 2834.10.1000.

Table IV-2
Sodium nitrite: U.S. imports, by sources, 2004-06, January-September 2006, and January-September 2007

Source	Calendar year			January-September	
	2004	2005	2006	2006	2007
<i>Quantity (1,000 pounds)</i>					
China	267	519	1,044	523	1,405
Germany	5,140	7,717	10,175	8,046	8,997
Subtotal	5,406	8,236	11,219	8,568	10,402
All other sources	409	132	359	176	363
Total	5,816	8,368	11,578	8,745	10,765
<i>Value (1,000 dollars)¹</i>					
China	62	122	245	120	337
Germany	1,006	1,627	2,072	1,616	2,007
Subtotal	1,069	1,750	2,318	1,736	2,344
All other sources	72	17	69	21	73
Total	1,140	1,767	2,387	1,757	2,417
<i>Unit value (per pound)¹</i>					
China	\$0.23	\$0.24	\$0.24	\$0.23	\$0.24
Germany	0.20	0.21	0.20	0.20	0.22
Average	0.20	0.21	0.21	0.20	0.23
All other sources	0.17	0.13	0.19	0.12	0.20
Total	0.20	0.21	0.21	0.20	0.22
<i>Share of quantity (percent)</i>					
China	4.6	6.2	9.0	6.0	13.1
Germany	88.4	92.2	87.9	92.0	83.6
Subtotal	93.0	98.4	96.9	98.0	96.6
All other sources	7.0	1.6	3.1	2.0	3.4
Total	100.0	100.0	100.0	100.0	100.0
<i>Share of value (percent)</i>					
China	5.5	6.9	10.3	6.8	13.9
Germany	88.3	92.1	86.8	92.0	83.0
Subtotal	93.7	99.0	97.1	98.8	97.0
All other sources	6.3	1.0	2.9	1.2	3.0
Total	100.0	100.0	100.0	100.0	100.0
¹ Landed, duty-paid. Note.— Imports from Canada, Chile, Japan, the Netherlands, and Norway have been excluded based on confirmation of no imports from those countries. Source: Compiled from official Commerce statistics.					

Figure IV-1
Sodium nitrite: Quantity of subject and nonsubject U.S. imports, 2004-06, January-September 2006, and January-September 2007



Source: Table IV-2.

Between 2004 and 2006 U.S. imports of sodium nitrite from China and Germany increased each year. Imports from China increased from 267,000 pounds to 1.0 million pounds or by 291.4 percent by quantity between 2004 and 2006, and were 168.9 percent higher in January-September 2007 than in January-September 2006. Imports of sodium nitrite from Germany increased from 5.1 million pounds to 10.2 million pounds or by 98.0 percent by quantity between 2004 and 2006, and were 11.8 percent higher in January-September 2007 than in January-September 2006. U.S. imports from all other sources, in contrast, decreased by 12.4 percent by quantity between 2004 and 2006. However, in January-September 2007 the quantity of nonsubject imports was more than double the quantity of such imports in January-September 2006. The average unit values of imports from China were higher than those of Germany in

each full and partial year.¹⁴ The average unit values of imports from Germany, in turn, were higher than those from nonsubject sources (primarily Poland) in each full and partial year.

During the period for which data were collected, in addition to the two subject countries, sodium nitrite was imported into the United States from three other countries, India, Poland, and, in 2004, the United Kingdom. However, as shown in table IV-3, Germany has been, and continues to be, the largest single source of U.S. imports of sodium nitrite. As noted previously, the total quantity of sodium nitrite imports from all nonsubject sources decreased from 2004 to 2006 by 12.4 percent. Poland was the only nonsubject country that was present in the U.S. market in each period, 2004-06 and January-September 2007. The average unit values of imports from Poland were notably lower than those for the subject countries, by as much as 11 cents per pound in 2005, and remained the lowest of all sources in each year and the interim periods. Imports from the United Kingdom in 2004 were accounted for by ***; the company has since ***.¹⁵

¹⁴ In importer questionnaire data however, the average unit values of imports from China were lower than or equal to the average unit values of imports from Germany in each year.

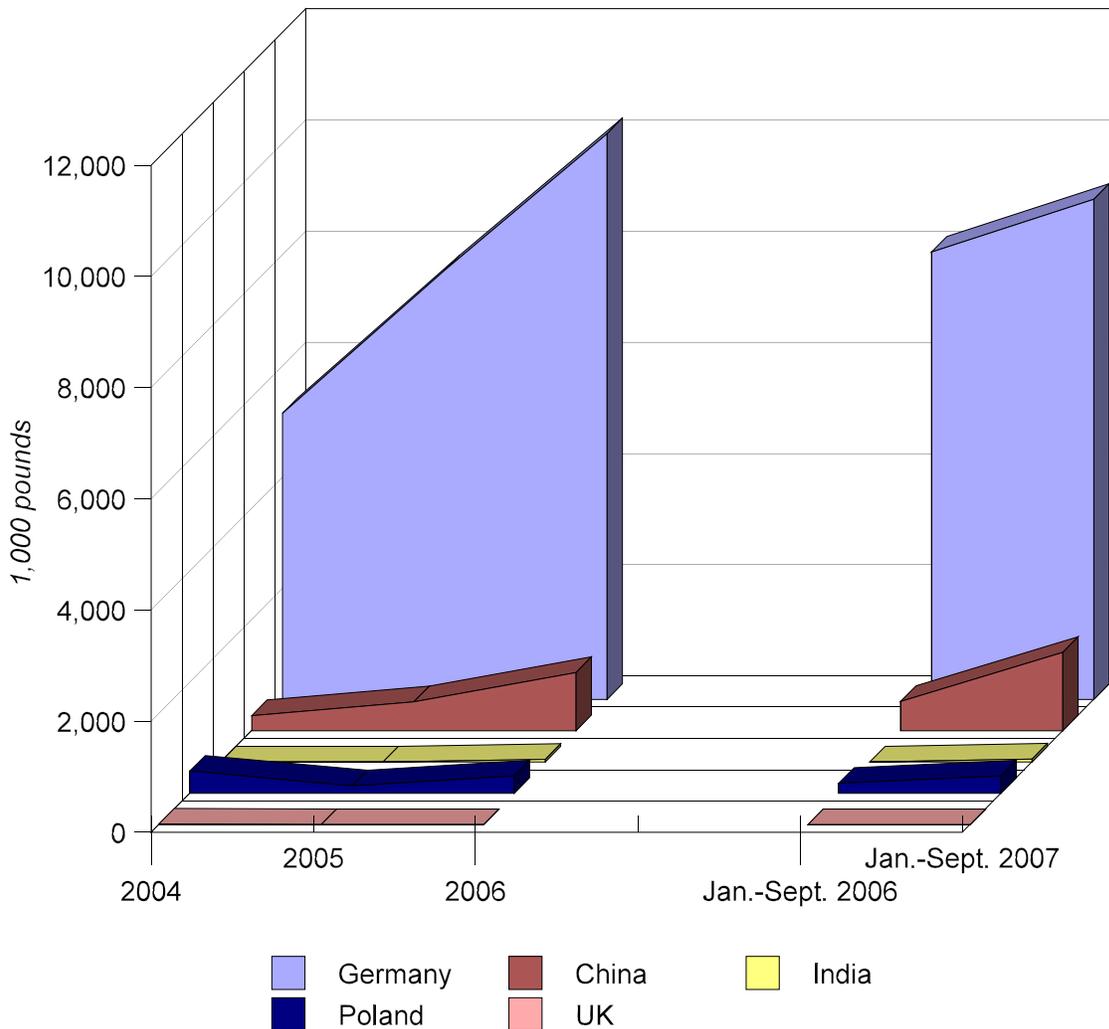
¹⁵ *** importer questionnaire response, I-2 and II-2.

Table IV-3
Sodium nitrite: U.S. imports, by individual sources, 2004-06, January-September 2006, and
January-September 2007

Source	Calendar year			January-September	
	2004	2005	2006	2006	2007
Quantity (1,000 pounds)					
China	267	519	1,044	523	1,405
Germany	5,140	7,717	10,175	8,046	8,997
Subtotal	5,406	8,236	11,219	8,568	10,402
India	0	0	46	0	50
Poland	399	132	313	176	313
United Kingdom	10	0	0	0	0
Total	5,816	8,368	11,578	8,745	10,765
Value (1,000 dollars)¹					
China	62	122	245	120	337
Germany	1,006	1,627	2,072	1,616	2,007
Subtotal	1,069	1,750	2,318	1,736	2,344
India	0	0	22	0	19
Poland	64	17	47	21	54
United Kingdom	8	0	0	0	0
Total	1,140	1,767	2,387	1,757	2,417
Unit value (per pound)¹					
China	\$0.23	\$0.24	\$0.24	\$0.23	\$0.24
Germany	0.20	0.21	0.20	0.20	0.22
Subtotal	0.20	0.21	0.21	0.20	0.23
India	(²)	(²)	0.49	(²)	0.39
Poland	0.16	0.13	0.15	0.12	0.17
United Kingdom	0.75	(²)	(²)	(²)	(²)
Total	0.20	0.21	0.21	0.20	0.22
¹ Landed, duty-paid. ² Not applicable.					
Note.— Imports from Canada, Chile, Japan, the Netherlands, and Norway have been excluded based on confirmation of no imports from those countries.					
Source: Compiled from official Commerce statistics.					

Figure IV-2 presents imports from China, Germany, and all other sources over the period for which data were collected.

Figure IV-2
Sodium nitrite: Quantity of U.S. imports, by sources, 2004-06, January-September 2006, and
January-September 2007



Source: Table IV-3.

NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.¹⁶ Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all

¹⁶ Section 733(a)(1) of the Act.

such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.¹⁷ Subject imports from China accounted for 14.2 percent and subject imports from Germany accounted for 81.8 percent, of total imports of sodium nitrite by quantity between October 2006 and September 2007, the most recent period for which data are available.¹⁸

CUMULATION CONSIDERATIONS

In assessing whether subject imports are likely to compete with each other and with the domestic like product with respect to cumulation, the Commission generally has considered the following four factors: (1) the degree of fungibility, including specific customer requirements and other quality-related questions; (2) presence of sales or offers to sell in the same geographic markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Channels of distribution and fungibility (interchangeability) are discussed in Parts I and II of this report. Additional information concerning fungibility, geographical markets, and simultaneous presence in the market is presented below.

Fungibility

U.S. producers and importers of sodium nitrite were asked to provide data concerning their U.S. (commercial) shipments of sodium nitrite by form in 2004-06 and January-September 2007. These data are presented in table IV-4. U.S. producers' U.S. shipments were concentrated in three forms: ***. When Repauno was operating, over *** percent of total U.S. commercial shipments were of *** sodium nitrite. As Repauno reduced its production and eventually closed, U.S. commercial shipments were increasingly in *** form. In contrast, the composition of U.S. shipments of imports from China and Germany changed less noticeably over the period, 2004-06 and January-September 2007, and involved substantially less sodium nitrite in liquid form. The smaller volumes of imports of liquid (or sodium nitrite in solution form) is consistent with testimony that "shipping solution internationally means shipping approximately 60 percent water, dramatically increasing the unit shipping cost of the sodium nitrite."¹⁹ U.S. shipments of imports from China were approximately *** and *** sodium nitrite. No shipments of *** sodium nitrite from China were reported. U.S. shipments of imports from Germany were *** sodium nitrite. BASF Corp., reported that in 2006 *** percent and in 2007, *** percent of its shipments of imports were in the ***. These shipments were the end result of an experiment in which BASF Corp. attempted to import granular product from Germany and ***. This experiment was abandoned because it was not economical and the resulting product was not competitive with the prices being offered by the domestic industry.²⁰

**Table IV-4
Sodium nitrite: U.S. producers' and importers' commercial shipments, by form, 2004-06 and January-September 2007**

* * * * *

¹⁷ Section 771(24) of the Act.

¹⁸ Calculated from official Commerce statistics as adjusted to exclude incorrectly classified imports from Canada, Chile, Japan, the Netherlands, and Norway.

¹⁹ Postconference brief of BASF AG and BASF Corp., p. 4.

²⁰ Postconference brief of BASF AG and BASF Corp., p. 4, Conference transcript, p. 113 (Work).

Geography

As noted previously, sodium nitrite produced in the United States is shipped nationally. Imports of sodium nitrite are predominantly shipped nationally but are also shipped regionally. Information summarizing the shipments of sodium nitrite is presented in Part II of this report. Table IV-5 presents imports from China by Customs districts from 2004 to 2006, and January-September 2007, while table IV-6 presents imports from Germany by Customs districts for the same period. Chicago, IL, was the largest district of entry for imports from China, accounting for 37.6 percent of total subject imports during 2004-06 and January-September 2007. Los Angeles, CA was the second largest port, with 26.8 percent of imports from China, followed by Buffalo, NY, and New York, NY. Cleveland, OH, was the largest district of entry for imports from Germany, accounting for 31.6 percent of total subject imports during 2004-06 and January-September 2007. New York, NY, was the next largest port with 24.2 percent of subject imports, followed by Norfolk, VA, and Chicago, IL.

Table IV-5
Sodium nitrite: U.S. imports from China, by Customs district, 2004-06 and January-September 2007

Customs district	Calendar year			Jan.-Sept.	Total
	2004	2005	2006	2007	
Quantity (1,000 pounds)					
Buffalo, NY	0	0	0	441	441
Chicago, IL	88	209	349	569	1,216
Cleveland, OH	0	86	126	0	212
Detroit, MI	0	0	0	2	2
Los Angeles, CA	90	180	336	260	866
Milwaukee, WI	0	0	46	0	46
New York, NY	88	44	44	132	309
San Juan, PR	0	0	55	0	55
Savannah, GA	0	0	88	0	88
Total	267	519	1,044	1,405	3,235
Source: Compiled from official Commerce statistics.					

Table IV-6
Sodium nitrite: U.S. imports from Germany, by Customs district, 2004-06 and January-September 2007

Customs district	Calendar year			January-Sept.	Total
	2004	2005	2006	2007	
Quantity (1,000 pounds)					
Buffalo, NY	0	1	42	0	43
Charleston, SC	294	475	340	548	1,657
Chicago, IL	294	1,016	1,048	1,382	3,741
Cleveland, OH	694	3,575	4,093	1,751	10,112
Detroit, MI	0	0	76	72	147
Houston-Galveston, TX	303	546	794	886	2,529
Los Angeles, CA	294	307	415	624	1,639
New Orleans, LA	42	0	0	0	42
New York, NY	769	1,159	2,780	3,051	7,759
Norfolk, VA	2,366	480	589	573	4,008
Philadelphia, PA	0	82	0	36	118
San Francisco, CA	84	76	0	74	233
Total	5,140	7,717	10,175	8,997	32,029
Source: Compiled from official Commerce statistics.					

Presence in the Market

Sodium nitrite produced in China and Germany was present throughout the period for which data were collected. Table IV-7 presents monthly import entries into the United States by sources. Based on Commerce statistics, imports of sodium nitrite from China entered the United States with increasing monthly frequency over the period while those from Germany entered the United States consistently in every month.

Table IV-7**Sodium nitrite: U.S. imports, monthly entries into the United States, by sources, 2004-06 and January-September 2007**

Source	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
2004:													
China	44	44	44	0	93	0	0	0	42	0	0	0	267
Germany	326	446	582	91	330	444	292	850	292	252	698	536	5,140
Subtotal	370	490	626	91	423	444	292	850	334	252	698	536	5,406
All other	0	88	0	54	0	0	0	88	44	134	0	0	409
Total	370	578	626	145	423	444	292	938	378	386	698	536	5,816
2005:													
China	0	0	49	0	44	44	0	86	165	44	87	0	519
Germany	407	790	572	494	656	825	514	496	458	894	563	1,047	7,717
Subtotal	407	790	621	494	700	869	514	582	623	938	650	1,047	8,236
All other	44	44	0	0	0	0	0	0	44	0	0	0	132
Total	451	834	621	494	700	869	514	582	667	938	650	1,047	8,368
2006:													
China	0	174	44	42	43	44	88	43	44	265	127	130	1,044
Germany	864	790	1,383	813	1,177	878	736	847	558	410	1,114	606	10,175
Subtotal	864	964	1,427	855	1,220	922	824	890	602	675	1,241	735	11,219
All other	44	0	44	0	44	0	0	44	0	0	138	44	359
Total	908	964	1,471	855	1,265	922	824	934	602	675	1,379	779	11,578
2007:													
China	46	389	249	384	120	40	44	44	88	(¹)	(¹)	(¹)	1,405
Germany	1,224	410	1,013	1,266	947	1,460	869	1,153	653	(¹)	(¹)	(¹)	8,997
Subtotal	1,270	799	1,262	1,650	1,068	1,500	914	1,198	742	(¹)	(¹)	(¹)	10,402
All other	49	0	44	0	52	44	0	42	132	(¹)	(¹)	(¹)	363
Total	1,318	799	1,306	1,650	1,119	1,544	914	1,240	874	(¹)	(¹)	(¹)	10,765

Continued on the following page.

Table IV-7-- Continued
Sodium nitrite: U.S. imports, monthly entries into the United States, by sources, 2004-06 and January-September 2007

¹ Data not available.

Note.-- Imports from Canada, Chile, Japan, the Netherlands, and Norway have been excluded based on confirmation of no imports from those countries.

Source: Compiled from official statistics of Commerce.

APPARENT U.S. CONSUMPTION

Table IV-8 presents data on the apparent U.S. consumption of sodium nitrite. Figure IV-3 graphically presents data on apparent U.S. consumption.

Table IV-8
Sodium nitrite: Apparent U.S. consumption, by sources, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Figure IV-3
Sodium nitrite: Apparent U.S. consumption, by sources, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

During 2004-06, total apparent U.S. consumption decreased by *** percent by quantity and *** percent by value. The quantity of subject imports more than doubled between 2004 and 2006 while U.S. producers' U.S. shipments decreased by ***. From 2004 to 2006, imports of sodium nitrite from China increased by 291.4 percent, and imports from Germany increased by 98.0 percent while imports from nonsubject sources decreased by 12.4 percent. Imports from China, Germany, and nonsubject sources increased between the interim periods.

U.S. MARKET SHARES

Table IV-9 presents data on apparent U.S. consumption and market shares in 2004 to 2006, January-September 2006, and January-September 2007. Figure IV-4 graphically presents data on U.S. market shares. U.S. producers' U.S. shipments' share of the quantity and value of apparent U.S. consumption of sodium nitrite decreased from 2004 to 2006, while imports from China and Germany increased in both share of quantity and share of value. Throughout the period for which data were collected, nonsubject imports accounted for a relatively stable share of the market in terms of quantity and value, less than *** percent in each individual period.

Table IV-9
Sodium nitrite: Apparent U.S. consumption and market shares, by sources, 2004-06, January-September 2006, and January-September 2007

* * * * * * *

Figure IV-4
Sodium nitrite: Market shares, by sources, 2004-06, January-September 2006, and January-September 2007

* * * * *

RATIO OF IMPORTS TO U.S. PRODUCTION

Table IV-10 presents information on the ratio of subject and nonsubject imports to U.S. production of sodium nitrite. The ratio of subject imports to U.S. production increased from *** percent in 2004 to *** percent of U.S. production in 2006. Nonsubject imports as a share of U.S. production also increased from *** percent of production in 2004 to *** percent in 2006, reflecting declining domestic production, rather than increases in nonsubject imports. In January-September 2007 imports from China and Germany, had the highest ratio to U.S. production, *** percent for China and *** percent for Germany, for the period.

Table IV-10
Sodium nitrite: Ratios of U.S. imports to U.S. production, by sources, 2004-06, January-September 2006, and January-September 2007

* * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

The raw materials used to produce sodium nitrite include ammonia, soda ash, and caustic soda; all producers use ammonia but the use of caustic soda or soda ash depends upon the production process of the sodium nitrite manufacturer. U.S. producer General Chemical uses soda ash to produce its sodium nitrite while former U.S. producer Repauno used caustic soda. General Chemical reported that raw material costs have increased over the period for which data were collected. In particular, General Chemical noted that the price it pays for ammonia is about 50 percent higher than in 2003.¹ Similarly, General Chemical noted that, while it pays “a very competitive price for its soda ash,” the price of soda ash has also risen by about 50 percent.² In addition, General Chemical also noted that prices for steam, electricity, and natural gas have increased by 10, 25, and 30-40 percent respectively.³ Further information on U.S. producers’ raw material costs over the period for which data were collected is provided in part VI.

Transportation Costs to the U.S. Market

Transportation costs for sodium nitrite shipped from China to the United States averaged 37.7 percent of the customs value during 2006; transportation costs for sodium nitrite shipped from Germany to the United States averaged 42.5 percent of the customs value during 2006. These estimates are derived from official import data.⁴

U.S. Inland Transportation Costs

U.S. producer General Chemical reported that *** of its sales (***) percent) are made within 101 and 1,000 miles of its production facility. Approximately *** percent of sales are to customers located over 1,000 miles of General Chemical’s production facility and the remaining *** percent are made to customers located within 100 miles. According to General Chemical, U.S. inland transportation costs average *** percent. BASF reported that *** of its sales (***) percent) were made to customers located over 1,000 miles from its storage facility; the remainder of BASF’s sales (***) percent) were made within 100 miles of its facility. BASF noted that ***. U.S. inland transportation costs for BASF were estimated to be *** percent. Importers of Chinese sodium nitrite were mixed with regard to distances of shipments. Of the seven responding firms, three reported that at least 75 percent of their shipments were within 100 miles; two additional firms reported that all shipments are within 101 and 1,000 miles of their facility. The final two firms reported most sales (***) and (***) percent) were made to customers located more than 1,000 miles from their facility.

¹ Conference transcript, p. 23 (McFarland).

² Conference transcript, p. 24 (McFarland).

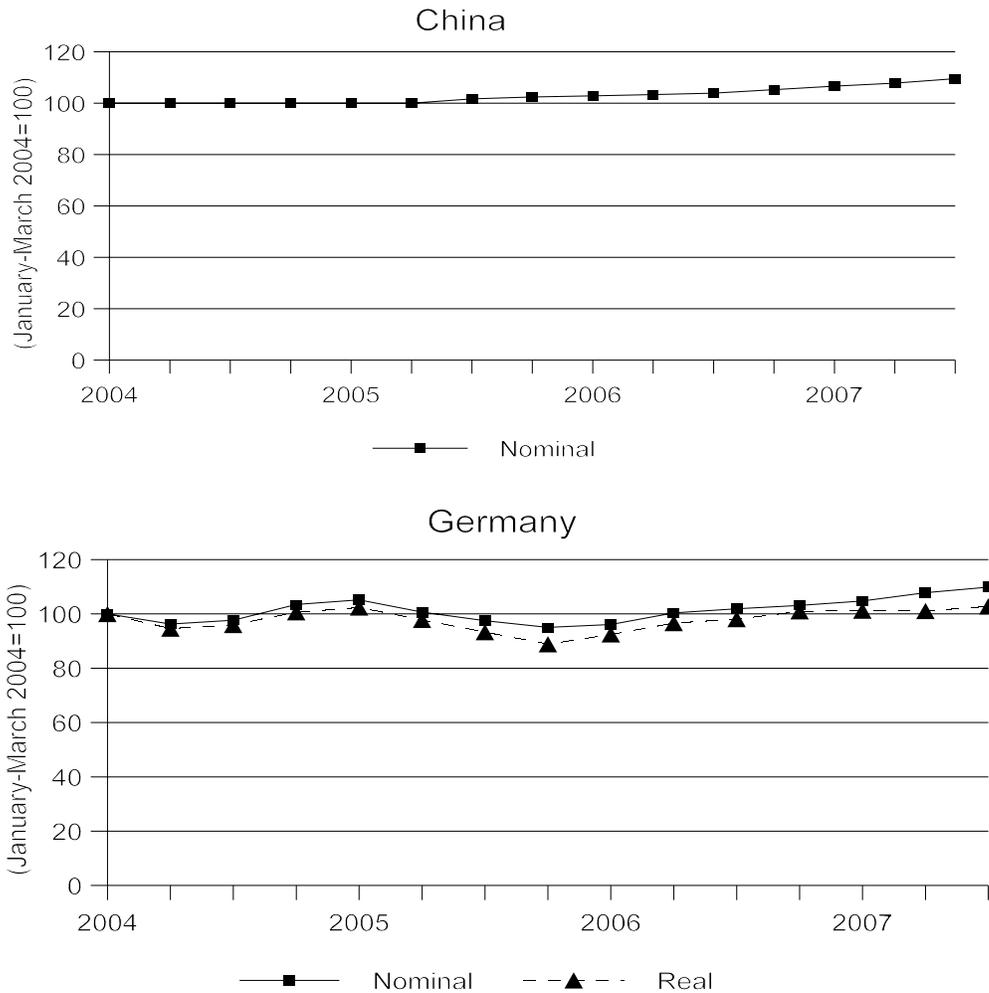
³ Conference transcript, p. 25 (McFarland).

⁴ The estimated cost was obtained by subtracting the customs value from the c.i.f. value of the imports for 2006 and then dividing by the customs value.

Exchange Rates

Nominal and real exchange rate data for China and Germany are presented on a quarterly basis in figure V-1.⁵ While the nominal exchange rate for the Chinese yuan was pegged to the U.S. dollar during the first half of the period of investigation, the dollar depreciated by 9.5 percent relative to the yuan in nominal terms from the third quarter of 2005 to the third quarter of 2007. The nominal and real exchange rates of the U.S. dollar relative to the euro depreciated over the period, with the nominal value depreciating 9.9 percent and the real value depreciating by 2.8 percent.

Figure V-1
Exchange rates: Indices of the nominal and real exchange rates of the Chinese and German currencies relative to the U.S. dollar, by quarters, January 2004-September 2007



PRICING PRACTICES

Pricing Methods

General Chemical reported that pricing for sodium nitrite is set ***. General Chemical noted that ***. For sales to distributors, General Chemical reported that ***. BASF, the principal importer of German product, reported that it ***; for its large volume accounts, BASF noted that ***. Importers of Chinese sodium nitrite reported making sales using price lists (which are based on market prices) and by transaction-by-transaction negotiations.

U.S. producers and importers of sodium nitrite from China and Germany were asked to report the percentage of their sales that were on a (1) long-term contract basis (multiple deliveries for more than 12 months), (2) short-term contract basis, and (3) spot sales basis (for a single delivery) in 2006. U.S. producer General Chemical reported that *** percent of its sales of sodium nitrite were on a long-term contract basis, *** percent were on a short-term contract basis, and *** percent were on a spot basis. BASF reported that its sales of sodium nitrite imported from Germany were split between short term contracts (*** percent) and spot sales (*** percent). Five of the six responding importers of Chinese sodium nitrite reported that *** percent of their sales were made on a spot basis; the remaining importer reported that *** of its sales were on a short-term contract basis. The following tabulation summarizes the responses of the U.S. producer and U.S. importers with regard to short-term contract provisions.

* * * * *

BASF was the only firm that reported using the internet to sell sodium nitrite. However, BASF does not use the internet to auction sodium nitrite, rather it is used as an order placement channel.⁶ BASF's WorldAccount online system provides existing customers with 24 hour/7 day a week access to their accounts. Customers can place orders and can access current data on any existing orders.⁷ BASF noted that its internet business was growing and also has contributed to controlling selling costs.⁸

Sales Terms and Discounts

General Chemical reported that it *** a discount policy for its sales of sodium nitrite. However, General Chemical noted that there are specific products that historically have been priced with *** percent discounts; these products include ***. General Chemical reported that its sales terms for sodium nitrite are typically *** and its prices of sodium nitrite are usually quoted on ***. For its sales of German sodium nitrite, BASF reported that ***. BASF also reported that its sales terms are generally *** and it sells its sodium nitrite on ***. Of the five responding importers of Chinese sodium nitrite, four reported that they have no set discount policy for their sales of sodium nitrite. The remaining importer noted that it does not have one discount policy, rather it normally offers slightly better prices for purchases of more than one ton. All of the responding importers of Chinese sodium nitrite reported that their sales terms were ***. These importers were mixed with regard to whether their sales were done on an f.o.b. basis (3 firms reporting) or a delivered basis (1 firm); one of these importers noted that it sells on ***.

⁶ Conference transcript, p. 126 (Work).

⁷ BASF website (<http://www.ecommerce.basf.com>), retrieved on November 26, 2007.

⁸ Conference transcript, p. 126 (Work).

PRICE DATA

The Commission requested U.S. producers and importers of sodium nitrite to provide quarterly data for the total quantity and f.o.b. value of selected products that were shipped to unrelated U.S. customers.⁹ Data were requested for the period January 2004-September 2007. The products for which pricing data were requested are as follows:¹⁰

Product 1 --Minimum sodium nitrite component of 98.0 percent. Sodium nitrite may or may not contain an anti-caking agent. Sodium nitrite may or may not be sold in prill form. Does not include flake, liquor or products that meet the Product 2 definition.

Product 2.— Minimum sodium nitrite component of 99.0 percent. Certified as complying with the Food Chemical Codex (FCC) and current Good Manufacturing Practice (cGMP). Sodium nitrite may or may not contain an anti-caking agent. Sodium nitrite may or may not be sold in prill form. Does not include flake or liquor.

The Commission received usable pricing data for sales of the requested products from the sole U.S. producer (General Chemical) and from seven importers, although not all firms reported pricing for all products for all quarters.¹¹ Pricing data reported by these firms accounted for *** percent of U.S. producers' U.S. shipments of sodium nitrite during January 2004-September 2007, *** percent of U.S. shipments of imports from China and *** of U.S. shipments of imports from Germany.

Price Trends

Prices for U.S.-produced product 1 (technical grade sodium nitrite) increased steadily from January-March 2004 to January-March 2006, rising by *** in that time (table V-1 and figure V-2).¹² After a slight decrease (*** percent) in the second quarter of 2006, prices for U.S.-produced product 1 then increased by *** percent by the end of the period (July-September 2007). Overall, prices for

⁹ ***.

¹⁰ Prices for sodium nitrite in liquid form were not requested from U.S. producers and importers as the suggested products were chosen to represent substantial sales of both domestic and imported sodium nitrite products and there have been limited sales of imported liquid sodium nitrite. General Chemical reported that *** (Petitioner's postconference brief, Ex. 1, p. 2).

Purchasers were asked if there are price differences between the different forms of sodium nitrite and if so, are the prices of various forms discussed in their purchasing negotiations. Two purchasers, *** reported that there are differences between the various forms. *** noted that the prices of different forms are "frequently" and *** reported that they are "always" discussed.

¹¹ The Commission requested importers to provide data for sales of sodium nitrite imported from any country, including nonsubject sources. Only one firm, *** provided price data for sales of sodium nitrite from a nonsubject country. *** reported that it sold ***.

¹² General Chemical reported that food grade sodium nitrite is usually priced *** higher than technical free flowing sodium nitrite. However, in some quarters of the data reported by General Chemical, ***. General Chemical explained this outcome as follows: (1) the aggregate food grade price sometimes is *** than technical grade because *** and (2) the Product 1 definition that General Chemical provided to the Commission was developed to ensure that it captured competitive Chinese "prilled" product. However, by defining the product to include product "without anti-caking agents", the data for product 1 include data for sales of High Purity Granular and High Purity Special Granular". According to General Chemical, the incorporation of the prices for these product forms in the product 1 definition *** (Petitioner's postconference brief, Ex. 1, pp. 2-3).

domestically produced product 1 increased *** percent. Prices for product 1 imported from China fluctuated over the period with no clear trend; these prices were *** percent lower in July-September 2007 than they were in January-March 2004. With regard to imports of product 1 from Germany, prices for this product fluctuated *** throughout the period for which data were collected. Prices for German product 1 were *** higher (*** percent) at the end of the period as compared to the beginning of the period.

Table V-1

Sodium nitrite: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 2004-September 2007

* * * * *

Table V-2

Sodium nitrite: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2004-September 2007

* * * * *

Prices for U.S.-produced product 2 (food grade sodium nitrite) fluctuated with an upward trend during the period for which data were collected. These prices were *** percent higher in July-September 2007 as compared to January-March 2004 (table V-2 and figure V-3). Prices for product 2 imported from China were only reported for the period January-March 2004 through April-June 2006 and in about one half of those quarters the quantities reported were *** (i.e., *** pounds). These prices were *** during that period and were *** in April-June 2006 compared with January- March 2004. Prices for product 2 imported from Germany were only reported for the period April-June 2006 through July-September 2007. During that time, these prices fluctuated but ended the period at a level that was *** percent below the initial level.

Figure V-2

Sodium nitrite: Weighted-average prices of domestic and imported product 1, by quarters, January 2004-September 2007

* * * * *

Figure V-3

Sodium nitrite: Weighted-average prices of domestic and imported product 2, by quarters, January 2004-September 2007

* * * * *

Price Comparisons

Margins of underselling and overselling for the period are presented by product category in table V-3. As can be seen from the table, prices for sodium nitrite imported from China were below those for U.S.-produced sodium nitrite in 22 of 25 instances; margins of underselling ranged from *** to *** percent. In the remaining three instances, prices for Chinese sodium nitrite were between *** and *** percent above prices for the domestic product. With regard to Germany, prices for German sodium nitrite were below those for U.S.-produced sodium nitrite in 18 of 21 instances; margins of underselling ranged from *** to *** percent. In the remaining three instances, prices for German sodium nitrite were between *** and *** percent above those for U.S.-produced sodium nitrite.

Table V-3

Sodium nitrite: Instances of underselling/overselling and the range and average of margins for products 1 and 2, January 2004-September 2007

	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
By product:						
Product 1	27	***	***	3	***	***
Product 2	13	***	***	3	***	***
By country:						
China	22	***	***	3	***	***
Germany	18	***	***	3	***	***
Total	40	***	***	6	***	***
Source: Compiled from data submitted in response to Commission questionnaires.						

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of sodium nitrite to report any instances of lost sales or revenues they experienced due to competition from imports of sodium nitrite from China and/or Germany since January 2004. *** provided *** lost sales allegations and *** lost revenues allegations involving sodium nitrite imported from Germany and *** lost sales allegations and *** lost revenues allegation involving sodium nitrite imported from China. The lost sales allegations totaled \$*** and the lost revenue allegations totaled \$***. Staff contacted the purchasers cited in the allegations and the results are summarized in tables V-4 and V-5 and discussed below.

Table V-4

Sodium nitrite: U.S. producers' lost sales allegations

* * * * *

Table V-5

Sodium nitrite: U.S. producers' lost revenue allegations

* * * * *

General Chemical named *** in *** concerning imports of sodium nitrite from ***. *** disagreed with *** and stated that price was not the reason for switching from the domestic producer. ***.”

General Chemical named *** in *** involving imports from *** and in ***. *** agreed with *** and noted that it switched purchases from U.S. producers to *** producers because of price. While *** did not respond directly to ***, it did report that since January 2004, U.S. producers did reduce their prices of sodium nitrite in order to compete with prices of sodium nitrite from ***.

*** was named by General Chemical in *** involving imports of sodium nitrite from ***. While *** did not provide information on the specific allegation, it did note that it had been using ***. *** used *** and just ***. It noted that ***. ***, thus, *** is not buying ***. This was due to ***. According to ***, *** did shift to buying from *** as the price for material from *** per pound less.

*** was cited by General Chemical in *** involving imports of sodium nitrite from ***. While *** did not provide information on the specific allegation, it did note that *** of the sodium nitrite that *** buys is ***. According to ***, most companies buying sodium nitrite compare prices of dry sodium nitrite from different suppliers as opposed to comparing them to prices of liquid. With regard to relative prices, *** noted that prices for Chinese sodium nitrite are the lowest and prices for German are “more reasonable.” *** noted that ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

General Chemical¹ provided usable financial data on its operations and those of Repauno that have produced sodium nitrite since 2004. The reported data are believed to represent all the production of sodium nitrite in the United States in the period for which data were collected.

OPERATIONS ON SODIUM NITRITE

Combined income-and-loss data for General Chemical's and Repauno's sodium nitrite operations are presented in table VI-1, and are briefly summarized here. The quantity and value of total sales fell *** between 2004 and 2006, and were lower in January-September 2007 than in the same period in 2006, attributable ***.² The average unit value of sales increased between 2004 and 2006 and was higher in January-September 2007 than in January-September 2006. The absolute value of the cost of goods sold ("COGS") decreased overall, after rising between 2004 and 2005, driven by lower quantity sold, but the average unit value of COGS increased as did the ratio of COGS to sales, as per-unit raw materials and other factory costs increased. Operating income fell *** between 2004 and 2005 before partially recovering *** in 2006; it also was higher in January-September 2007 than during the same period in 2006. The average unit value of operating income and the ratio of operating income to sales followed the changes in the value of operating income.

Table VI-1

Sodium nitrite: Combined results of operations of General Chemical and Repauno, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * *

The decline in sales reflected in table VI-1 is primarily attributable to the reduced operations and shutdown of Repauno. Demand for sodium nitrite in the U.S. market has reportedly been in decline for several years as customers in the textile and rubber industries have shifted consumption abroad.³ Overall, the value of COGS and SG&A expenses declined with the fall in sales volume although "other factory costs" (which includes many indirect variable and fixed costs) increased. Raw material costs decreased irregularly between 2004 and 2006 and were lower in January-September 2007 than in the same period in 2006; on the other hand, other factory costs increased between 2004 and 2006 and were

¹ General Chemical has a fiscal year ending ***. It reported data on its operations at Solvay, NY, for the entire period for which data were collected and for Repauno (Gibbstown, NJ) for 2004-06 and for January-September 2006. The Gibbstown facility was leased from DuPont by U.S. Salt Holdings, and operated by that firm under the name of Repauno Products, LLC, from 1999 until July 2006. General Chemical purchased the assets of Repauno in July 2006 but closed the operation in November 2006, ***, and relinquished the property lease back to DuPont. Conference transcript, pp. 35 and 40 (Jaffe and McFarland) and General Chemical's postconference brief, exh. 1, item 11. Both the Solvay, NY, and Gibbstown, NJ, facilities produced only sodium nitrite during the period investigated.

² During the staff conference, representatives of General Chemical stated that Repauno had lost one of its major accounts in early 2006 and another major account in mid-2006 as both firms moved operations using sodium nitrite offshore. Conference transcript, p. 13 (McFarland). Repauno's sales fell by *** between 2004 and 2005, and by *** between 2005 and 2006. Additional account-specific data appear in Part III of this report.

³ Conference transcript, pp. 34 and 73 (McFarland).

higher in January-September 2007 than they were in the same period in 2006. Both raw material and other factory costs were higher when measured either as a ratio to sales or on a per-unit basis.⁴ Table VI-2 presents data on total net sales, COGS, selling, general, and administrative (“SG&A”) expenses, and operating income on a firm-by-firm basis.

Table VI-2
Sodium nitrite: Results of operations of General Chemical and Repauno, by firm, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * *

During the staff conference, a witness from General Chemical stated that the firm experienced increases in raw material costs as well as in energy and utility costs. For that firm, the value of direct raw material costs increased by approximately 50 percent while energy and utility costs nearly doubled.⁵ Total raw material costs generally accounted for about *** percent of COGS for both General Chemical and Repauno. Table VI-3 presents data on the value, unit value, and ratio to total net sales of the two U.S. firms’ raw material and energy costs.

Table VI-3
Sodium nitrite: Raw material and energy costs of General Chemical and Repauno, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * *

A variance analysis for the two U.S. firms is presented in table VI-4, based on information derived from table VI-1. The variance analysis assesses changes in profitability as related to changes in pricing, cost, and volume. Operating income decreased by \$*** between 2004 and 2006, attributable to higher unit prices (favorable price variance) offset by higher unit costs (unfavorable net cost/expense) and lower volume. The increase in operating income between January-September 2006 and the same period in 2007 of \$*** was for similar reasons.

Table VI-4
Sodium nitrite: Variance analysis on results of operations of General Chemical and Repauno, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * *

⁴ With regard to raw material input and energy cost increases and the relationship of fixed costs to capacity utilization, *see* conference transcript, pp. 24-26 (McFarland). Also, *see* note 2 in table VI-1 regarding other factory costs. A witness for General Chemical stated that Repauno was affected more than General Chemical by increased raw material and energy costs. He stated that the “objective of the acquisition was to, first of all, fill up the Syracuse facility {run it at full capacity because of the capital intensive nature of sodium nitrite production}, and, secondly it was to run the Repauno facility as appropriate;” finally, as imports reached “record levels, coupled with the loss of two of Repano’s domestic customers, General Chemical decided to close Repauno and increase capacity utilization at the Syracuse facility.” Conference transcript, pp. 34-35 (McFarland).

⁵ Conference transcript, pp. 12 and 24-26 (McFarland). While the absolute value of these costs does not appear to change (because of the decline of Repauno’s sales), cost increases are shown in changes in the ratio to sales and per-unit values of each category.

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

General Chemical reported data on its capital expenditures and research and development (“R&D”) expenses related to the production of sodium nitrite, which are shown in table VI-5.

Table VI-5
Sodium nitrite: Capital expenditures and R&D expenses of General Chemical, fiscal years 2004-06, January-September 2006, and January-September 2007

* * * * *

The value of capital expenditures in 2006 includes \$*** which represented the acquisition of Repauno by General Chemical in that year. The total of capital expenditures (except in 2006) is a *** of depreciation in each period investigated, usually considered a sign that equipment is becoming obsolete faster than it is being replaced or improved.

ASSETS AND RETURN ON INVESTMENT

The Commission’s questionnaire requested data on assets used in the production, warehousing, and sale of sodium nitrite to compute return on investment (“ROI”) for 2004 to 2006. The data for operating income are from table VI-1. Operating income was divided by total assets, resulting in ROI, shown in table VI-6.

Table VI-6
Sodium nitrite: Value of assets used in the production, warehousing, and sale, and return on investment of General Chemical and Repauno, fiscal years 2004-06

* * * * *

Accounts receivable and inventories of finished goods increased between 2004 and 2006. Other non-current assets also increased in 2006 from 2005 attributable to increased values of intangible assets and assets held for sale, both related to the Repauno purchase.

CAPITAL AND INVESTMENT

The Commission requested U.S. firms to describe any actual or potential negative effects of imports of sodium nitrite from China and Germany on the 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). General Chemical’s responses are shown below.

Actual Negative Effects

General Chemical

***.

Anticipated Negative Effects

General Chemical

***.⁶

⁶ Following this statement was a table with three lost sales/lost revenue allegations that are presented in Part V of the report.

PART VII: THREAT CONSIDERATIONS AND *BRATSK* CONSIDERATIONS

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

(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 title 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

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider *** . . . as a whole in making a determination of 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 under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

under section 705(b)(1) or 735(b)(1) 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).²

Information on the nature of the alleged subsidies and sales at less than fair value 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;" and dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission in relation to *Bratsk* rulings.

THE INDUSTRY IN CHINA

Overview

The petition identified 92 potential producers of sodium nitrite in China but was unable to identify manufacturers that export sodium nitrite to the United States.³ Staff sent the foreign producer questionnaire, by fax and by e-mail, to all manufacturers listed and successfully transmitted the questionnaire to 82 companies in China. However, no questionnaire responses were received from producers of the subject merchandise in China. One company, ***, responded with a list of the company's products that included several sodium chemicals but did not list sodium nitrite specifically.⁴ Importer questionnaire respondents that identified the foreign producer of their imports of sodium nitrite from China listed six producing firms: ***.⁵ Only the last producer was also identified by the petition as a potential producer of sodium nitrite in China.⁶

Sodium nitrite produced in China is available for sale on the internet from such marketing sites as Alibaba and Global b2b Network. The sodium nitrite from China sold online is packaged in 25, 50, and 1,000 kg plastic woven bags, some lined with polyethelene bags. It is described as a white or light

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

³ Petition, exh. I-4.

⁴ Correspondence from ***, November 13, 2007.

⁵ Importers' questionnaire responses, section II-5a.

⁶ Petition, exh. I-4, listing 40.

yellow prismatic crystal that is minimally 99.0 percent pure and that dissolves easily in water.⁷ One online source of sodium nitrite lists its annual production capacity as 50,000 MT.⁸

Sodium Nitrite Operations

Table VII-1 presents data on exports of metallic nitrites (HTS 2834.10) from China as reported by Global Trade Atlas and compiled from official sources. This is a larger commodity category, at the 6-digit international harmonization level, than 2834.10.10, the subject sodium nitrite. It is not known by exactly how much this categorical coverage distorts the statistical information presented. It is likely to be very large however, given that U.S. imports of sodium nitrite from China were slightly more than one million pounds in 2006 and the Global Trade Atlas reports exports of metallic nitrites from China to the United States of 13.4 million pounds in 2006. China is a net exporter of metallic nitrites.⁹

⁷ Chongqing Fuyuan Chemical Co., Ltd., found at http://fuyuanchem.en.alibaba.com/product/50122758/50559926/Inorganic_Chemicals.html, retrieved on November 30, 2007. Shandong Ocean Chemical Import and Export Co., Ltd. Of Weifang City, found at http://www.sdhaihua.en.alibaba.com/product/50123192/50561639/Chemicals/Sodium_Nitrite.html, retrieved on November 30, 2007. Qindao Hengyuan Chemicals Co., Ltd., found at http://www.germes-online.com/catalog/98/99/573/144261/sell_normal_sodium_nitrite.html, retrieved on November 30, 2007.

⁸ Qingdao Chinabridge Import and Export Co. Ltd. of Qingdao City, found at http://www.global-b2b-network.com/b2b/98/592/177625/sodium_nitrite.html, retrieved on November 30, 2007.

⁹ In 2004 China imported 828,938 pounds and exported 74,650,726 pounds; in 2005 China imported 1,287,499 pounds and exported 73,111,899 pounds; and in 2006 China imported 1,772,516 pounds and exported 75,124,720 pounds of metallic nitrites.

Table VII-1
Metallic nitrites: China's exports, by quantity and average unit value, 2004-06

Destination	2004	2005	2006	2004	2005	2006
	Exports (1,000 pounds)			Unit value (dollars per pound)		
United States	11,299	12,597	13,397	\$0.13	\$0.12	\$0.13
India	6,840	10,200	13,282	0.11	0.12	0.12
South Korea	15,588	14,008	12,428	0.15	0.13	0.12
Indonesia	9,672	6,097	6,537	0.11	0.12	0.12
Taiwan	4,128	3,536	4,336	0.12	0.12	0.12
Thailand	3,835	2,662	3,236	0.12	0.12	0.12
United Arab Emirates	3,522	4,020	2,799	0.12	0.13	0.13
Egypt	1,614	1,684	2,370	0.11	0.12	0.12
Pakistan	1,622	866	1,779	0.11	0.11	0.11
Iran	1,438	1,017	1,549	0.14	0.15	0.13
South Africa	1,754	1,725	1,146	0.12	0.13	0.14
Japan	390	798	1,091	0.32	0.21	0.15
Colombia	496	606	917	0.12	0.12	0.13
Argentina	1,102	1,036	791	0.12	0.13	0.12
Vietnam	426	463	784	0.12	0.14	0.12
Australia	891	634	747	0.12	0.16	0.13
Russia	1,074	1,382	709	0.17	0.15	0.19
Netherlands	518	529	628	0.14	0.14	0.16
Spain	0	781	582	(¹)	0.12	0.13
Singapore	1,828	1,296	551	0.11	0.15	0.15
All other	6,614	7,172	5,462	0.13	0.12	0.13
Total	74,650	73,111	75,124	0.13	0.13	0.12

¹ Data not available.

Source: Global Trade Atlas, Exports of Metallic Nitrites (HTS 2834.10) from China, 2004-06.

THE INDUSTRY IN GERMANY

Overview

The petition identified one producer of sodium nitrite in Germany: BASF Aktiengesellschaft (“BASF AG”). BASF AG has confirmed that there are no other sodium nitrite producers in Germany.¹⁰ BASF AG entered a notice of appearance, submitted both a foreign producer and an importer questionnaire, participated at the Commission’s conference, and provided a postconference brief. One responding importer, ***, reported small import volumes, in milligrams, of sodium nitrite in liquor form from Germany, shipped by ***.¹¹ According to BASF AG, *** manufactures ***. One of the ***, called a sodium nitrite ***, is not bulk sodium nitrite liquid, but a ***.¹²

Sodium Nitrite Operations

BASF AG is a global company that operates a sodium nitrite facility in Ludwigshafen, Germany. Sodium nitrite sales represented *** percent of BASF AG’s total sales in 2006.¹³ Table VII-2 presents data for BASF AG during 2004-06, January-September 2006, January-September 2007, and forecasts for 2007 and 2008. BASF AG reported that ***.¹⁴ BASF AG’s projected capacity is ***.¹⁵ BASF’s capacity is limited by ***.¹⁶

Table VII-2

Sodium nitrite: BASF AG’s operations, 2004-06, January-September 2006, January-September 2007, and projected 2007-08

* * * * *

BASF AG’s production decreased steadily between 2004 and 2006, by *** percent overall. However, production in January-September 2007 was *** percent higher than production in January-September 2006 and BASF AG projects that full year 2007 production will be greater than that in 2006. As production decreased between 2004 and 2006, internal consumption, home market shipments, inventories, and exports to all other markets also decreased. At the same time exports to the United States increased in each year, by *** percent overall.

The inventories reported by BASF AG include both saleable solution held only in Germany and all forms of the crystal product and the crystal inventory which is designated for specific customers (i.e. with custom bag markings and labels, which cannot be sold to other customers).¹⁷ End-of-period inventories declined between 2004 and 2006 but were higher in January-September 2007 than in January-September 2006.

¹⁰ Postconference brief of BASF AG and BASF Corp., attachment 1, p. 5.

¹¹ *** importer questionnaire response, section II-6a.

¹² Postconference brief of BASF AG and BASF Corp., attachment 1, p. 3, fn 11.

¹³ BASF AG’s foreign producer questionnaire response, section II-2.

¹⁴ BASF AG’s foreign producer questionnaire response, section II-1.

¹⁵ BASF AG’s foreign producer questionnaire response, section II-7b.

¹⁶ BASF AG’s foreign producer questionnaire response, section II-7b.

¹⁷ Postconference brief of BASF AG and BASF Corp., attachment 1, p. 3.

BASF AG reported that, since 2004, ***.¹⁸ BASF AG reported that it does not have commodity inventories in Germany or elsewhere because all sodium nitrite is “made-to-order.” The crystalized or powder form of sodium nitrite is stored for a few days only in a transit warehouse awaiting shipment, and the solution or liquid form (which is only sold in Europe) is stored in a tank in which material is pumped after production. According to BASF AG, the solution or liquid form is the only portion of BASF AG’s production of sodium nitrite that is not “made-to-order.”¹⁹

Principal export markets for BASF AG’s sodium nitrite are those in ***.²⁰ Some customers in the European Community market have shifted their operations to Asia but according to BASF AG, this loss of demand has been made up for by increased demand for new special sodium nitrite applications.²¹ In 2006, *** percent of BASF AG’s exports to the United States were imported by BASF AG’s U.S. subsidiary, BASF Corporation.²²

The reported trade data are based on the production of all grades of sodium nitrite at the BASF AG facility including solution with either 37 or 42 percent sodium nitrite concentrations. ***.²³ BASF AG produces the following four grades: high quality non-food grade (with and without an anticaking agent);²⁴ food grade (with and without an anticaking agent);²⁵ solution “N” (normal) with 37 percent and 40 percent NaNO₂; and solution “S” (special) with 28 percent and 40 percent NaNO₂.²⁶ BASF AG does not produce a flake sodium nitrite product.²⁷ The company reported that ***.²⁸ BASF AG ***.²⁹

U.S. IMPORTS SUBSEQUENT TO SEPTEMBER 30, 2007

The Commission requested importers to indicate whether they imported or arranged for the importation of sodium nitrite from any country source after September 30, 2007. Four importers reported arrangements for the importation of sodium nitrite from China and Germany for delivery in the future. No future orders for importation of sodium nitrite from nonsubject sources were reported. Eight importers reported that they did not have any orders for future delivery of sodium nitrite.³⁰ Data relating to U.S. importers’ orders for importation of sodium nitrite from China and Germany for entry into the United States in the period of October 2007 to September 2008, are presented in table VII-3.

¹⁸ BASF AG’s foreign producer questionnaire response, section I-4.

¹⁹ Postconference brief of BASF AG and BASF Corp., attachment 1, p. 2.

²⁰ BASF AG’s foreign producer questionnaire response, section II-7b.

²¹ Postconference brief of BASF AG and BASF Corp., attachment 1, pp. 1-2.

²² BASF AG’s foreign producer questionnaire response, section I-3.

²³ BASF AG’s foreign producer questionnaire response, section II-7b.

²⁴ According to General Chemical, this product, “granular high purity grade” is comparable to General Chemical’s technical free-flowing grade. Postconference brief of General Chemical, p. 15.

²⁵ BASF AG has various certifications for food grade: ***. Postconference brief of BASF AG and BASF Corp., attachment 1, p. 12.

²⁶ BASF Group company website, Sodium Nitrite Grades, and Sodium Nitrite Solution, found at http://www.inorganics.basf.com/p02/CAPortal/en_GB/portal/Natriumnitrite/content, retrieved on December 12, 2007.

²⁷ Postconference brief of BASF AG and BASF Corp., attachment 1, p. 1.

²⁸ Postconference brief of BASF AG and BASF Corp., attachment 1, p. 5.

²⁹ BASF AG’s foreign producer questionnaire response, section II-3.

³⁰ Importers responding “no” to this question, II-3, included: ***.

Table VII-3
Sodium nitrite: U.S. importers' current orders from China and Germany, October 2007 - September 2008

* * * * *

U.S. IMPORTERS' INVENTORIES

Inventories of U.S. imports as reported are presented in table VII-4. Inventories of Chinese and German sodium nitrite increased from 2004 to 2006, while the ratios of such inventories to imports and to U.S. shipments of imports also increased. Inventories from all other sources were small in each full year and reached *** in January-September 2007.

Table VII-4
Sodium nitrite: U.S. importers' end-of-period inventories of imports, by source, 2004-06, January-September 2006, and January-September 2007

* * * * *

DUMPING IN THIRD-COUNTRY MARKETS

Exports of sodium nitrite from China and Germany are subject to antidumping duty orders in India. No questionnaire respondent reported any other countervailing or antidumping duty orders on sodium nitrite from China and/or Germany in third-country markets.³¹

In 2000, India imposed an antidumping duty order on imports of sodium nitrite from China with an antidumping duty of the difference between US\$524.63 per MT (\$0.24 per pound) and the landed price of imports per MT on all imports of sodium nitrite from China.³² No producer or exporter in China participated in the original investigation.³³ After conducting a review of the order in 2005, the Government of India continued the order on imports of sodium nitrite from China.³⁴

The Indian antidumping duty order on imports from Germany was imposed in November 2002 and is currently being reviewed.³⁵ The results of this sunset review are due to be published in March 2008.³⁶ The applicable tariff rate is \$51.83 per metric ton (\$0.02 per pound). BASF AG did not participate in the original investigation or the sunset review because of the "low overall importance" of the Indian market to BASF AG.³⁷ According to BASF AG, the Indian antidumping duty order did not have any impact on BASF AG's exports to other markets ***. BASF AG provided its export volumes to India before and after the imposition of the antidumping duty order, presented in the following tabulation.³⁸

³¹ All importer questionnaire responses, I-10.

³² Postconference brief of General Chemical, exh. 11, Final Finding Notification, Section 13.

³³ Postconference brief of General Chemical, exh. 11, Final Finding Notification, Dumping.

³⁴ Postconference brief of General Chemical, exh. 11, Sunset Review, Final Findings, Section I, 59.

³⁵ BASF AG's foreign producer questionnaire response, section II-6. Postconference brief of BASF AG and BASF Corp., attachment 1, p. 6.

³⁶ Staff telephone interview with *** of Barnes, Richardson & Colburn, counsel to BASF AG and BASF Corp., December 4, 2007.

³⁷ Postconference brief of BASF AG and BASF Corp., attachment 1, p. 6.

³⁸ BASF AG's postconference brief, attachment 1, p. 1.

* * * * *

INFORMATION ON NONSUBJECT SOURCES

“Bratsk” Considerations

As a result of the Court of Appeals for the Federal Circuit (“CAFC”) decision in *Bratsk Aluminum Smelter v. United States* (“Bratsk”), the Commission is directed to:

*undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.” The additional inquiry required by the Court, which we refer to as the Bratsk replacement / benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.”*³⁹

Nonsubject Source Information

During the preliminary phase of these investigations, the Commission sought pricing data from U.S. importers of sodium nitrite from China, Germany, and all other countries. Those data are presented in part V of this report. With respect to foreign nonsubject sources of supply, the Commission sought publicly available information regarding international suppliers of sodium nitrite since 2004 from national import and export statistics, from conference testimony, and from interviews with industry sources.

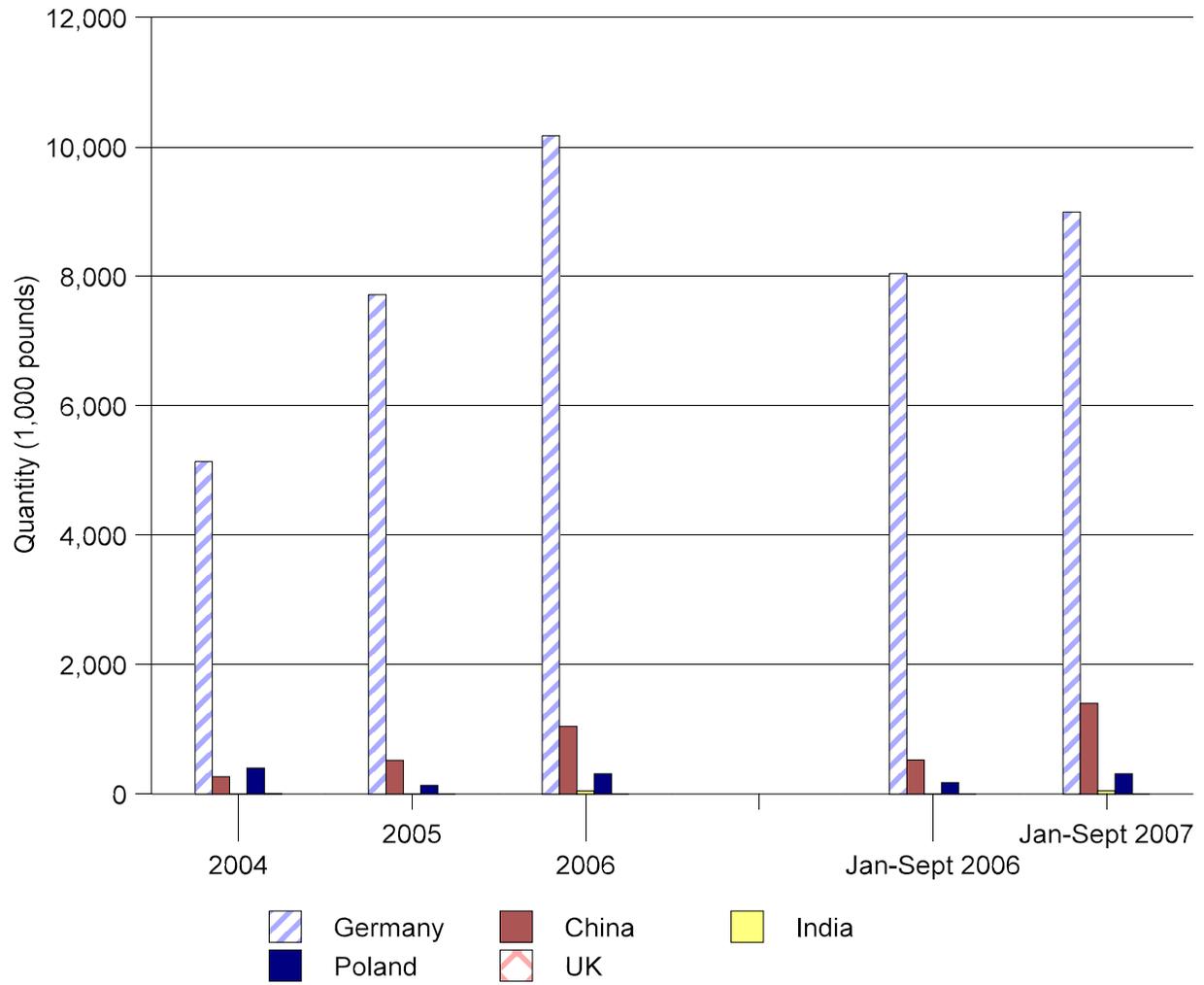
Overview

As discussed in Part IV of this report, the leading nonsubject source of sodium nitrite is Poland and the only other nonsubject source countries are India and the United Kingdom. In 2004, one entry into the United States from the United Kingdom was imported by ***. This shipment was of *** of sodium nitrite from *** for use at *** facility that has since ***.⁴⁰ No further imports from the United Kingdom have been reported. Imports from all nonsubject sources combined accounted for only 3.1 percent, by quantity, of total U.S. imports of sodium nitrite during 2006. Figure VII-1 shows the volume of subject and nonsubject imports for the period for which data were collected. However, because imports from the United Kingdom were present in 2004 only and totaled 10,000 pounds in that year, they are not apparent in the figure. Similarly, imports from India, which were 46,000 pounds in 2006 and 50,000 pounds in January-September 2007 are barely visible in the figure. Figure VII-2 shows the average unit values of imports from China, Germany, India, Poland, and the United Kingdom during the period for which data were collected.

³⁹ *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

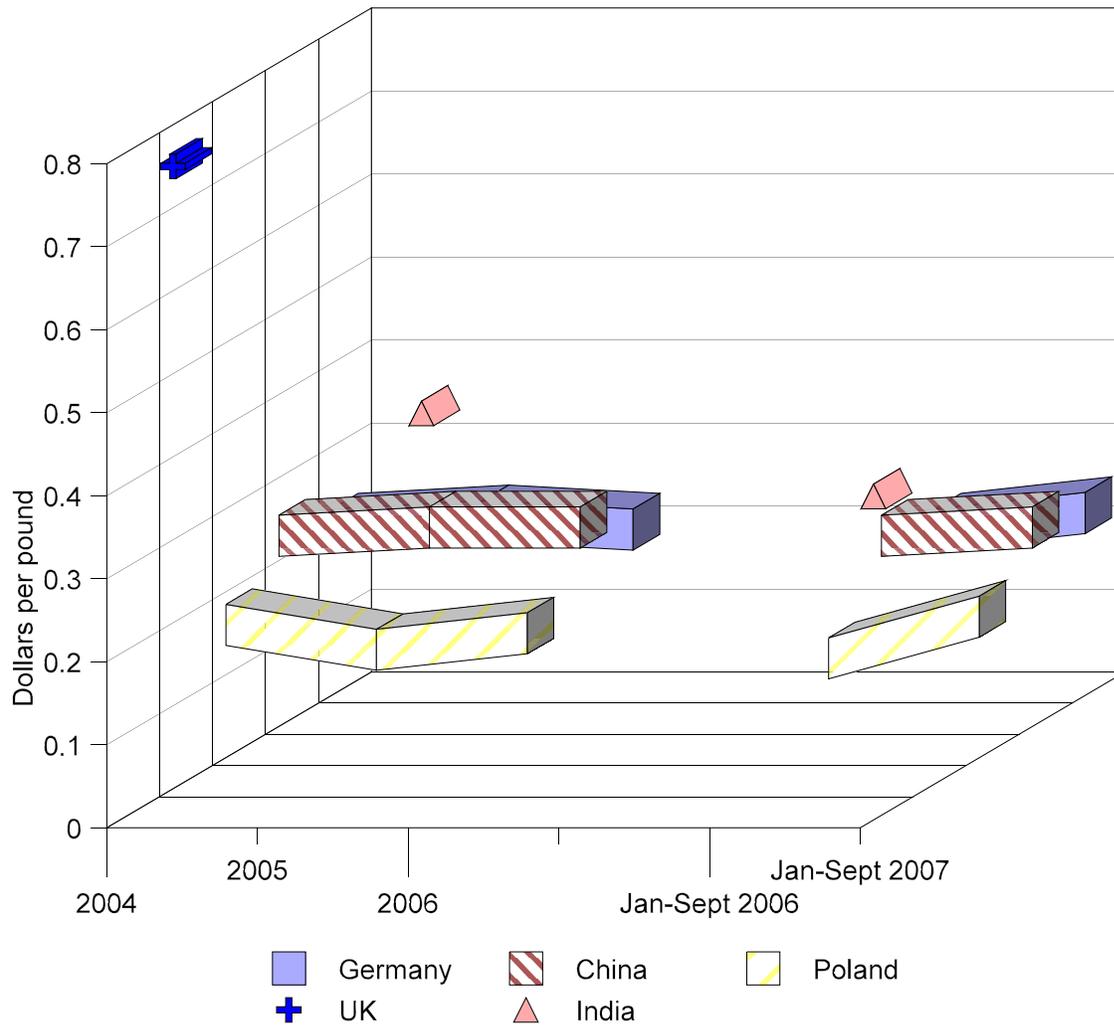
⁴⁰ *** importer questionnaire response, sections I-2, II-2, and II-7a.

Figure VII-1
Sodium nitrite: U.S. imports, by sources, 2004-06, January-September 2006, and January-September 2007



Source: Table IV-3.

Figure VII-2
Sodium nitrite: Average unit values of U.S. imports, by sources, 2004-06, January-September 2006, and January-September 2007



Source: Table IV-3.

Table VII-5 presents information on global exports of metallic nitrites (HTS 2834.10) during 2004-06 as reported by Global Trade Atlas and compiled from official statistics. As noted previously, metallic nitrites encompass a larger commodity category, at the 6-digit international harmonization level, than subject sodium nitrite (HTS 2834.10.10). In addition, because not all countries report official statistics, not all countries are included in Global Trade Atlas data, and since 2004, the EU-27 has reported only EU-bloc external trade, suppressing internal trade reports and individual country reports.

Table VII-5
Metallic nitrites: Global exports, by quantity and average unit value, 2004-06

Reporting country	2004	2005	2006	2004	2005	2006
	Exports (1,000 pounds)			Unit value (U.S. \$/pound)		
China	74,650	73,111	75,124	\$0.13	\$0.13	\$0.12
Ukraine	6,687	13,952	14,015	0.13	0.14	0.15
United States	8,127	12,785	9,765	0.31	0.30	0.35
India	4,832	4,916	4,196	0.16	0.25	0.18
EU-27 (external)	67,847 ¹	3,741	4,050	0.15	0.20	0.26
Singapore	13,787	6,828	2,426	0.16	0.18	0.21
Malaysia	305	1,680	1,396	0.39	0.13	0.12
Hong Kong	1,346	1,091	1,348	0.18	0.26	0.20
Russia	1,451	652	1,011	0.21	0.36	0.23
Japan	37,936 ²	981	669	0.00 ²	0.47	0.49
South Africa	645	417	389	0.28	0.21	0.47
Canada	56	51	255	0.59	0.41	0.27
All other	2,998	2,425	588	0.27	0.39	0.59
Total	220,665	122,628	115,232	0.13	0.17	0.16

¹ 2004 was the last full year for which the EU-27 reported internal trade by individual countries.
² These values likely reflect reporting errors.

Source: Global Trade Atlas. Exports of HTS 2834.10, metallic nitrites, from reporting countries.

Leading Nonsubject Sources of Sodium Nitrite

India

According to the Government of India's Ministry of Commerce and Industry, there are four manufacturers that have the capacity to produce sodium nitrite in India: Deepak Nitrite Ltd. ("Deepak"), Punjab Chemicals and Pharmaceuticals Ltd., National Fertilizers Ltd., and Rashtriya Chemicals and Fertilizers Ltd. In addition, Thomas Global online lists 39 companies in India as sodium nitrite producers. However, these companies have not been verified as authentic producers and/or exporters of sodium nitrite, nor is it known whether they have ever exported to the United States.⁴¹

⁴¹ Thomas Global, Industry Directory, found at <http://www.thomasglobal.com/search/>, retrieved on December 5, 2007.

Deepak Nitrite Ltd. is the largest of the four producers with 64 percent of domestic production in the period April 1, 2000 through March 31, 2001.⁴² Deepak's capacity to produce nitrites and nitrates was 59.5 million pounds (27,000 MT) in each year from 1997 to 2001.⁴³ Indian producers' total domestic sales of sodium nitrite were 51.7 million pounds (23,464 MT) in 1998-99.⁴⁴

Table VII-6 shows exports of metallic nitrites (HTS 2834.10) as reported by Global Trade Atlas and compiled from official sources. This is a larger commodity category than the subject product. India is a net importer of metallic nitrites.⁴⁵

⁴² Government of India, *Anti-dumping Investigation Concerning Imports of Sodium Nitrite from European Union (EU) and Taiwan- Final Findings*, October 28, 2002, attached to petitioner General Chemical's postconference brief, exh. 10.

⁴³ Ibid.

⁴⁴ Government of India, *Anti-Dumping Investigation Concerning Imports of Sodium Nitrite from China PR- Final Findings* (Nov. 3, 2000); *Sunset Review Regarding Anti-Dumping Imposed on Sodium Nitrite Originating in or Exported from China PR- Final Findings* (Dec. 1, 2005), attached to General Chemical's postconference brief, exh. 11.

⁴⁵ In 2004 India imported 12,524,461 pounds and exported 4,832,532 pounds; in 2005 India imported 19,081,008 pounds and exported 4,916,308 pounds; and in 2006 India imported 18,728,269 pounds and exported 4,195,396 pounds of metallic nitrites.

Table VII-6
Metallic nitrites: India's exports, by quantity and average unit value, 2004-06

Destination	Exports (1,000 pounds)			Unit value (U.S. \$/pound)		
	2004	2005	2006	2004	2005	2006
United Kingdom	597	780	1,012	\$0.18	\$0.17	\$0.18
France	1,034	1,074	507	0.15	0.16	0.16
South Africa	324	463	417	0.17	0.16	0.17
Australia	0	72	278	(¹)	0.14	0.16
Israel	234	232	276	0.13	0.15	0.16
Canada	46	185	231	0.18	0.18	0.19
Belgium	93	0	231	0.15	(¹)	0.17
Taiwan	540	197	216	0.13	0.19	0.18
United States	51	258	214	0.18	1.54	0.27
Italy	272	320	190	0.14	0.16	0.20
Indonesia	53	46	185	0.12	0.12	0.11
Spain	368	147	99	0.14	0.17	0.18
Bangladesh	7	0	66	3.52	(¹)	0.17
Bahrain	93	93	46	0.17	0.18	0.18
Turkey	370	93	44	0.14	0.15	0.17
Thailand	0	93	33	(¹)	0.09	0.32
Georgia	0	0	33	(¹)	(¹)	0.21
Tanzania	22	52	21	0.18	0.20	0.23
Singapore	0	0	20	0.91	(¹)	0.20
United Arab Emirates	94	11	15	0.23	1.59	0.36
All other	635	802	61	0.18	0.27	0.55
Total	4,832	4,916	4,196	0.16	0.25	0.18
¹ Data not available.						
Source: Global Trade Atlas, exports of metallic nitrites (HTS 2834.10) from India, 2004-06.						

Poland

In a cover letter to its foreign producer questionnaire submission, BASF AG noted that sodium nitrite is also imported into the United States from a number of other countries, including India and Poland.⁴⁶ One U.S. importer was identified from proprietary Customs data as an importer of sodium nitrite from Poland, ***. This company is the consignee and merely arranges feeder transport for the importer, ***, which has not provided a completed importer questionnaire.⁴⁷ Export data for metallic nitrites from Poland are not available because the European Community, of which Poland is a member, does not report exports on a country-by-country basis.

One sodium nitrite producer in Poland has been identified, Zakłady Azotowe Kędzierzyn SA (“ZAK”). In addition to sodium nitrite, ZAK produces other basic chemicals, oxo alcohols, plasticizers, and nitrogen fertilizers. Sodium nitrite is not a leading product line for ZAK as evidenced by its 2006 revenues by division: plasticizers (54.8 percent), fertilizers (38.8 percent), power engineering (5.7 percent) and “other,” which includes sodium nitrite, (0.7 percent). Of its overall production in 2006 ZAK sold 50.0 percent domestically, 41.0 percent within the European Community, and exported 9.0 percent.⁴⁸

ZAK began producing sodium nitrite in the 1960's and also produces ammonia (a major raw material in the production of sodium nitrite) in a facility that was built in the early 1990's.⁴⁹ The plant's annual production capacity for sodium nitrite is not publicly available and is listed as being “as needed.” ZAK does not produce food grade sodium nitrite.⁵⁰ The technical grade sodium nitrite produced by ZAK has a minimum NaNO₂ content of 98.7 percent, a maximum water content of 0.4 percent, a maximum sodium nitrate content of 1.0 percent, a maximum water insoluble matter content of 0.05 percent and a maximum chlorides content of 0.1 percent.⁵¹ The company sells its sodium nitrite in 25-kg bags.⁵²

⁴⁶ Letter from ***, BASF Corp., November 19, 2007.

⁴⁷ Staff telephone interviews with *** November 13, 2007 and *** November 29, 2007.

⁴⁸ ZAK Company website, 2006 Annual Report, found at http://www.zak.com.pl/attach/Pliki/zak_rr2006_ang.pdf, retrieved on December 11, 2007.

⁴⁹ ZAK Company website, History, found at <http://www.zak.com.pl/?dzial=13&lang=GB&node=13&doc=1000145>, retrieved on December 11, 2007.

⁵⁰ ZAK Company website, Frequently Asked Questions, found at <http://www.zak.com.pl/?dzial=16&lang=GB&node+23>, retrieved on December 11, 2007.

⁵¹ ZAK Company website, Sodium Nitrite Quality Specification, found at <http://www.zak.com.pl/popup.php?doc=1000175&rekord=1&lang=GB>, retrieved on December 11, 2007.

⁵² ZAK Company website, Frequently Asked Questions, found at <http://www.zak.com.pl/?dzial=16&lang=GB&node+23>, retrieved on December 11, 2007.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Preliminary)]

**Sodium Nitrite From China and
Germany**

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping duty 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-453 (Preliminary) and antidumping duty investigation Nos. 731-TA-1136-1137 (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 China and Germany of sodium nitrite, provided for in subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China

and 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) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping duty investigations in 45 days, or in this case by December 24, 2007. The Commission's views are due at the Department of Commerce within five business days thereafter, or by January 2, 2008.

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: November 8, 2007.

FOR FURTHER INFORMATION CONTACT:

Dana Lofgren (202-205-3185 or dana.lofgren@usitc.gov), 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>).

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on November 8, 2007, by General Chemical Co. Inc. (Parsippany, NJ).

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 November 27, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Dana Lofgren (202-205-3185 or dana.lofgren@usitc.gov) not later than November 21, 2007, 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 November 30, 2007, 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.

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: November 8, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-22296 Filed 11-14-07; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-428-841, A-570-925]

Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations

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

EFFECTIVE DATE: December 5, 2007.

FOR FURTHER INFORMATION CONTACT:

Brian Smith (Federal Republic of Germany) or Magd Zalok (People's Republic of China), AD/CVD Operations, Offices 2 and 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-4162, respectively.

SUPPLEMENTARY INFORMATION:**The Petitions**

On November 8, 2007, the Department of Commerce (the Department) received petitions concerning imports of sodium nitrite from the Federal Republic of Germany (Germany) (German petition) and the People's Republic of China (PRC) (PRC petition) filed in proper form by General Chemical LLC (petitioner). See the Petitions on Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China submitted on November 8, 2007. On November 14, 2007, the Department issued a request for additional information and clarification of certain areas of the petitions. Based on the Department's requests, the petitioner filed additional information on November 19, 2007 (three distinct submissions on General, Germany-only and PRC-only material). The period of investigation (POI) for Germany is October 1, 2006, through September 30, 2007. The POI for the PRC is April 1, 2007, through September 30, 2007. See 19 CFR 351.204(b)(1).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of sodium nitrite from Germany and the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because the

petitioner 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 duty investigations that the petitioner is requesting that the Department initiate (*see* "Determination of Industry Support for the Petitions" section below).

Scope of Investigations

The merchandise covered by each of these investigations is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these investigations may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of signature of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), 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 to consult with parties prior to the issuance of the preliminary determinations.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the

appropriate physical characteristics of sodium nitrite to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as 1) general product characteristics and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe sodium nitrite, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by December 18, 2007. Additionally, rebuttal comments must be received by December 28, 2007.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total

production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

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

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that sodium nitrite constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* the Antidumping Investigation Initiation Checklist: Sodium Nitrite from the Federal Republic of Germany, Industry Support at Attachment II (Germany Initiation Checklist) and the

Antidumping Investigation Initiation Checklist: Sodium Nitrite from the People's Republic of China (PRC), Industry Support at Attachment II (PRC Initiation Checklist) on file in the CRU, Room B-099 of the main Department of Commerce building.

Our review of the data provided in the petitions, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support. To establish industry support, the petitioner demonstrated that it was the sole producer of the domestic like product in 2006. Therefore, the petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). See Section 732(c)(4)(D) of the Act. In addition, the domestic producers have met the statutory criterion for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petitions account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criterion for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Germany Initiation Checklist at Attachment II (Industry Support) and PRC Initiation Checklist at Attachment II (Industry Support).

The Department finds that the petitioner filed the petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping investigations that it is requesting the Department initiate. See Germany Initiation Checklist at Attachment II (Industry Support) and PRC Initiation Checklist at Attachment II (Industry Support).

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 imports of the subject merchandise sold at less than normal value (NV). The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production, capacity and capacity utilization rate, reduced shipments, underselling and price depressing and suppressing effects, lost revenue, reduced employment, decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See Germany Initiation Checklist at Attachment III (Injury) and PRC Initiation Checklist at Attachment III (Injury).

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations of imports of sodium nitrite from Germany and the PRC. The sources of data for the deductions and adjustments relating to the U.S. price, constructed value (CV) (for Germany), and the factors of production (for the PRC) are also discussed in the country-specific initiation checklists. See Germany Initiation Checklist and PRC 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 will reexamine the information and revise the margin calculations, if appropriate.

Germany

Constructed Export Price (CEP) and Export Price (EP)

The petitioner calculated three CEPs based on price quotes during the POI obtained from U.S. distributors for German-produced sodium nitrite. The petitioner also calculated an EP using the average unit customs value (AUV) of imports of subject merchandise from Germany during the POI derived from U.S. Census Bureau import statistics. Specifically, for CEPs based on price quotes, the petitioner made adjustments to the starting price, where applicable, for discounts, foreign inland freight, ocean freight, marine insurance, U.S. inland freight and trans-loading fees, U.S. customs and port fees, and warehousing expenses. The petitioner calculated foreign inland freight, ocean

freight, marine insurance, U.S. inland freight and trans-loading fees, and warehousing expenses based on price quotes obtained from custom brokers, freight forwarders, and other service providers. U.S. customs and port fees (*i.e.*, U.S. duty, harbor maintenance and processing fees) were based on standard U.S. government percentages, as applied to the petitioner's estimate of entered value. Because the petitioner's calculation of entered value incorrectly excluded foreign inland freight and included U.S. inland freight and trans-loading fees, we have recalculated U.S. customs and port fees based on entered value exclusive of all movement expenses except foreign inland freight. The petitioner also made an adjustment for CEP profit. To calculate CEP profit, the petitioner derived the profit margin from U.S. chemical-industry-wide statistical gross-margin data from the U.S. Census Bureau and applied this profit ratio to gross unit price. However, the petitioner's CEP profit calculation methodology is not in accordance with the Department's practice (*i.e.*, the petitioner applied the profit ratio to gross unit price rather than to CEP selling expenses) (*see, e.g.*, Policy Bulletin 97.1: Calculation of Profit for Constructed Export Price Transactions (September 4, 1997)). The petitioner's methodology overstates the amount of profit included in CEP. The Department requested that the petitioner provide the information necessary to make the proper calculation, but the petitioner stated that this information was not reasonably available to it. Therefore, to be conservative, we have disallowed this adjustment and have recalculated the CEP-to-NV margins exclusive of the CEP profit adjustment for purposes of initiating this investigation. For EP based on AUV, the petitioner made an adjustment only for foreign inland freight, as the AUV is based on FOB foreign port price. See Germany Initiation Checklist and "Fair Value Comparisons" section below for the revised CEP-to-NV margins.

NV Based on CV

With respect to NV, the petitioner states that neither home-market prices nor third-country prices of German-produced sodium nitrite were reasonably available. According to the petitioner, it was unsuccessful in obtaining such pricing information, despite its best efforts. See German petition at page 10 and the November 19, 2007, supplement to the German petition at pages 4-5. Therefore, the petitioner based NV on CV.

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacture

(COM); selling, general and administrative (SG&A) expenses; packing expenses; and profit. In calculating COM and packing, the petitioner based the quantity of each of the inputs used to manufacture and pack sodium nitrite in Germany on its own production experience during the POI. The petitioner then multiplied the usage quantities by the value of the inputs used to manufacture and pack sodium nitrite in Germany based on publicly available data, data obtained from market research, or its own costs. See Volume I of the German petition at pages 10–13.

Raw material (*i.e.*, ammonia and caustic soda) is the most significant input used in the production of sodium nitrite. The petitioner determined the usage of ammonia and caustic soda based on the quantities it used to produce a short ton of sodium nitrite (*i.e.*, technical and food grades). The values of ammonia and caustic soda were based on price data obtained from market research. The price data from market research were contemporaneous with the POI. The values for other raw material inputs and packing material inputs (*e.g.*, silicon dioxide, bags) were based either on a price quote from market research (silicon dioxide) or on the petitioner's own experience (packing materials). See Volume I of the German petition at pages 12–13 and 15, and the November 19, 2007, supplement to the German petition at pages 7–9.

The petitioner determined labor costs using the labor inputs derived from its own experience which it valued using an industrial German wage rate obtained from the International Labour Organization's "Laborsta" database at <http://laborsta.ilo.org>. See Volume I of the German petition at page 15.

The petitioner determined energy costs (*i.e.*, electricity, natural gas, steam, cooling water, and city water) using German price data from market research. See Volume I of the German petition at pages 13–14.

To calculate factory overhead, the petitioner relied on its own experience (excluding depreciation) and on a German sodium nitrite producer's parent company's consolidated financial data (for depreciation). See Volume I of the German petition at pages 15–16.

To calculate SG&A expenses and profit, the petitioner relied on a German sodium nitrite producer's parent company's consolidated financial data, for the fiscal year ending December 31, 2006, the period most contemporaneous with the POI for which the petitioner was able to obtain such information. See Volume I of the German petition at pages 16–17.

PRC

EP

The petitioner calculated three EPs from price quotes for sodium nitrite manufactured in the PRC¹ and one EP from the AUVs of imports from the PRC that were classified under HTSUS number 2834.10.1000 for the period April 2007 through September 2007, as reported by the U.S. Census Bureau. Specifically, the petitioner calculated EPs from the price quotes by deducting from the prices, where applicable, the costs associated with exporting and delivering the product, including foreign inland freight, ocean freight and marine insurance, U.S. inland freight, U.S. warehousing expenses, and U.S. duties and port charges. See PRC Initiation Checklist. The petitioner calculated foreign inland freight expense using the Indian truck freight rate used by the Department in the investigation of certain lined paper products from the PRC,² and information it obtained regarding distances between sodium nitrite producers and the likely port of exportation. See Exhibit III–2 of the PRC petition, and Exhibit 2 of the November 19, 2007, supplement to the PRC petition. The petitioner based ocean freight and marine insurance expenses, U.S. warehousing, and rail and truck expenses on price quotes obtained from service providers. See Exhibits III–2–5 of the PRC petition. The petitioner based U.S. duties and port charges (*i.e.*, U.S. duty, harbor maintenance and processing fees) on standard charges and duties applicable to sodium nitrite imported under HTSUS number 2834.10.1000. The petitioner calculated an EP from import data by deducting from the AUV of April through September 2007 PRC imports under HTSUS number 2834.10.1000 the expenses for transporting the product from the PRC factory to the port of exportation (the AUV is based on an FOB foreign port price). See Exhibit 3 of the November 19, 2007, supplement to the PRC petition. We recalculated the EPs to correct certain errors in the petitioner's calculations. See PRC Initiation Checklist.

¹ The prices quotes are for three different types of sodium nitrite falling within the scope of these investigations, for delivery to the U.S. customer within the POI.

² See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695 (April 17, 2006).

NV

The petitioner stated that the PRC is a non-market economy (NME) country and no determination to the contrary has been made by the Department. Recently, the Department examined the PRC's status and determined that NME status should continue for the PRC. See the memorandum to David Spooner, Assistant Secretary for Import Administration, regarding "The People's Republic of China (PRC) Status as a Non-Market Economy (NME)," dated May 15, 2006 (this document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>). In addition, in two recent antidumping duty investigations, the Department determined that the PRC is an NME country. See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007); see also *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. Because the presumption of NME status for the PRC has not been revoked by the Department, it remains in effect for purposes of this initiation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. After initiation, all parties will have the opportunity to provide relevant information regarding the PRC's NME status and whether separate rates should be granted to individual exporters.

The petitioner selected India as the surrogate market economy country. The petitioner claimed, pursuant to section 773(c)(4) of the Act, that India is an appropriate surrogate country because it is at a level of economic development comparable to that of the PRC and is a significant producer of sodium nitrite. See Volume I of the PRC petition at pages 21–23. Based on the information provided by the petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation, we will solicit comments regarding surrogate country selection.

The petitioner calculated NVs for each U.S. price discussed above using the NME methodology required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Because the quantities of

factors of production consumed by Chinese producers in manufacturing sodium nitrite are not available to the petitioner, the petitioner calculated NVs using its own consumption rates for producing sodium nitrite during the last two completed quarters. See the PRC petition at page 23, Exhibit III-9 in Volume I of the PRC petition, and the November 19, 2007, supplement to the PRC petition at Exhibit 9. The petitioner adjusted its NV calculation to account for certain differences between its own manufacturing process and the prilling process used by PRC producers. See the PRC petition at page 27, and Exhibit 9 of the November 19, 2007, supplement to the PRC petition. One adjustment involved the number of labor hours required to produce a unit of output. Specifically, the petitioner stated that the production and packing of subject merchandise is more labor intensive in the PRC than in the United States, requiring twice as much labor to produce the same amount of finished product. The petitioner explained that this adjustment is based on its employees' commercial knowledge, observations of production in the PRC, and company resources. See Exhibit III-9 of the PRC petition, and the November 19, 2007, supplement to the PRC petition at page 8.

The petitioner based the value of material inputs on official Indian trade statistics from the Indian Department of Commerce's Export-Import Data Bank and prices in the periodical, *ICIS Chemical Bulletin*, dated September 10, 2007. See the PRC petition at Exhibits III-12 and III-13. In calculating surrogate values from Indian import data, the petitioner excluded the values of imports from unspecified countries, NME countries, and countries which the Department has found to maintain broadly available, non-industry-specific export subsidies (*i.e.*, Indonesia, the Republic of Korea and Thailand). See *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision Memorandum at Comment 23. The surrogate values used by the petitioner for material and packing inputs consist of information reasonably available to the petitioner and are, therefore, acceptable for purposes of initiation.

The petitioner was unable to obtain surrogate values that were contemporaneous with the POI for all material inputs and, accordingly, it relied upon the most recently available information. Where a surrogate value was in effect during a period preceding

the POI, the petitioner adjusted it using the Indian wholesale price index in the publication, *International Financial Statistics*, which is published by the International Monetary Fund. However, because the petitioner incorrectly calculated these adjustments, the Department has revised them. See the PRC Initiation Checklist.

The petitioner based factory overhead expenses, SG&A expenses, and profit on data from an Indian sodium nitrite producer, Deepak Nitrite Limited. The data comes from Deepak Nitrite Limited's most recently available financial statement which covers the period April 1, 2006, through March 31, 2007. See the November 19, 2007, supplement to the PRC petition at Exhibit 16. We find the petitioner's use of Deepak Nitrite Limited's data is appropriate for purposes of this initiation. See the NV calculation in the November 19, 2007, supplement to the PRC petition at Exhibit 10.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of sodium nitrite from Germany and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of CEP and CV, calculated in accordance with section 773(a)(4) of the Act, the revised estimated dumping margins for sodium nitrite from Germany range from 65.58 to 151.98 percent. Based on a comparison of EP and CV, calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margin for sodium nitrite from Germany is 237 percent. See *Germany Initiation Checklist*. Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the revised estimated dumping margins for sodium nitrite from the PRC range from 131.72 percent to 190.74 percent. See PRC Initiation Checklist.

Initiation of Antidumping Investigations

Based upon the examination of the petitions on sodium nitrite from Germany and the PRC, the Department finds that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of sodium nitrite from Germany and the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, *e.g.*, *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice.

Respondent Selection

For these investigations, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under HTSUS number 2834.10.1000 during the POI. We intend to make our decisions regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of

investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation. (Emphasis added.)

Separate Rates and Combination Rates Bulletin, at page 6.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the petitions have been provided to the representatives of the Governments of Germany and the PRC. We will attempt to provide a copy of the public version of the petitions to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

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

Preliminary Determinations by the International Trade Commission

The ITC will preliminarily determine, no later than December 24, 2007, whether there is a reasonable indication that imports of sodium nitrite from Germany and the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination with respect to either of the investigations will result in that investigation being terminated; 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: November 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-23489 Filed 12-4-07; 8:45 am]

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DEPARTMENT OF COMMERCE**International Trade Administration**

[C-570-926]

Sodium Nitrite from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: (December 5, 2007.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3964 and (202) 482-3586, respectively.

SUPPLEMENTARY INFORMATION:**Initiation of Investigation:****The Petition**

On November 8, 2007, the Department of Commerce (the Department) received a petition filed in proper form by General Chemical LLC (petitioner). On November 14 and November 15, 2007, the Department issued requests for additional information and clarification of certain areas of the petition involving general issues and the countervailable subsidy allegations, respectively. Based on the Department's request, petitioner filed additional information concerning the petition on November 19 and November 20, 2007.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), petitioner alleges that manufacturers, producers, or exporters of sodium nitrite in the People's Republic of China (the PRC) received countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring or threatening material injury to an industry in the United States.

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 petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it

is requesting the Department to initiate (see, *infra*, "Determination of Industry Support for the Petition").

Period of Investigation

The anticipated period of investigation (POI) is calendar year 2006. See 19 CFR 351.204(b)(2).

Scope of Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0. For purposes of the scope of this investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with petitioner to ensure that it is an accurate reflection of the merchandise for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), 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 to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the People's Republic of China (the GOC)

for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China with representatives of the GOC on November 26, 2007. See the Memorandum to the File, entitled, "Consultations with Officials from the Government of the People's Republic of China on the Countervailing Duty Petition: *Sodium Nitrite from the People's Republic of China*" (November 26, 2007), a public document on file in the CRU.

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 a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 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: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

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

United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

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

With regard to the domestic like product, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that sodium nitrite constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Countervailing Duty Investigation Initiation Checklist: Sodium Nitrite from the People's Republic of China (PRC) (Initiation Checklist)*, Industry Support at Attachment II, on file in the CRU.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioner has established industry support. To establish industry support, the Petitioner demonstrated that it was the sole producer of the domestic like product in 2006. Therefore, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). See Section 702(c)(4)(D) of the Act. In addition, the domestic producers have met the statutory criterion for industry support under 702(c)(4)(A)(i) because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criterion for industry support under 702(c)(4)(A)(ii) because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the

Petition. Accordingly, the Department determines that the petition was 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 (Industry Support).

The Department finds petitioner has filed the petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate. *See Initiation Checklist* at Attachment II.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

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 subsidized imports of the subject merchandise. The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production capacity and capacity utilization rate, reduced shipments, underselling and price depressing and suppressing effects, lost revenue, reduced employment, decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment III (Injury).

Subsidy Allegations

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) of the Act and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The Department has examined the countervailing duty petition on sodium nitrite from the PRC and found that it

complies with 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 sodium nitrite in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see Initiation Checklist*.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise:

GOC Loan Program

1. Loans and Interest Subsidies Related to the Northeast Revitalization Program

GOC Grant Programs

2. The State Key Technology Renovation Project Fund
3. Grants to Loss-Making State-Owned Enterprises

GOC Provision of Goods or Services for Less than Adequate Remuneration

4. Provision of Electricity to State-Owned Enterprises (SOEs) for Less than Adequate Remuneration
5. Provision of Land to SOEs for Less than Adequate Remuneration

GOC Income Tax Programs

6. Income Tax Exemption for Export-Oriented FIEs
7. Preferential Tax Policies for Foreign Invested Enterprises (FIEs) (Two Free, Three Half Program)
8. Reduced Income Tax Rates for FIEs Based on Location
9. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
10. Reduced Income Tax Rate for New or High Technology Enterprises
11. Preferential Tax Policies for Research and Development by FIEs
12. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
13. Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs
14. Reduced Income Tax Rate for FIEs Under the West Revitalization Program
15. Income Tax Reduction or Exemption for Export-Oriented or High Technology Enterprises under the West Revitalization Program
16. Preferential Tax Policies Under the West Revitalization Program

GOC Indirect Tax Programs and Import Tariff Programs

17. VAT Rebate for FIE Purchases of Domestically Produced Equipment

18. VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Provincial Loan Program

19. Reduced Interest Rate Loans Provided by Liaoning Province

Provincial Grant Programs

20. Provincial Export Interest Subsidies (Guangdong and Zhejiang Provinces)
21. Guangdong Province Funds for Outward Expansion of Industries

Provincial and Local Provision of Goods for Less than Adequate Remuneration

22. Provision of Land for Less than Adequate Remuneration (Jiangsu and Zhejiang Provinces, and Chongqing Municipality)
23. Provision of Electricity for Less than Adequate Remuneration (Jiangsu and Zhejiang Provinces)
24. Provision of Water for Less than Adequate Remuneration (Zhejiang Province)

Provincial and Local Income Tax Programs

25. Income Tax Exemption and Reduction Programs (Provinces of Jiangsu, Zhejiang, Guangdong, and Shandong; Municipalities of Beijing, Tianjin, Shanghai, and Chongqing) For further information explaining why the Department is investigating these programs, see the Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

GOC Loan Program

1. Government Policy Lending Program
Petitioner alleges that under the GOC's National Tenth Five-year Plan as well as the Tenth and Eleventh Five-year plans of the Chemical Industry, sodium nitrite producers may benefit from the provision of loans by state-owned commercial banks as part of the GOC's policy to encourage and to advance the chemical industry. In support of its allegation, Petitioner provided translated copies of the "Tenth Five-year Plan for National Economic and Social Development," and the "Tenth Five-year Plan of the Chemical Industry and Its Development," and a short, translated excerpt of the "Eleventh Five-year Plan of the Chemical Industry and Its Development." Our review of these documents did not indicate that financing or loans were available pursuant to the GOC's Chemical Policy.

Accordingly, we find that petitioner has not provided sufficient information to warrant initiation of an investigation of this program.

GOC Provision of Goods for Less than Adequate Remuneration

2. Provision of Natural Gas and Water to State-Owned Enterprises (SOEs) for Less than Adequate Remuneration

Petitioner alleges that the GOC provides natural gas and water to SOEs and special industrial sectors at subsidized prices. Petitioner further alleges that end-user prices for natural gas and for water are set by the National Development and Reform Commission, and rarely reflect the true market price of these commodities. For purposes of this initiation, we find that petitioner has not sufficiently alleged the elements necessary for a less than adequate remuneration subsidy, as identified in 19 CFR 351.511. Petitioner has not provided sufficient information demonstrating that the GOC has provided natural gas and water for less than adequate remuneration and that this program is specific. Accordingly, we find that petitioner has not provided sufficient information to warrant initiation of an investigation of these programs.

GOC Indirect Tax Program and Import Tariff Program

3. VAT Exemptions on Exports

Petitioner alleges that the GOC enterprises are exempted from paying import tariffs and VAT payments on imported equipment provided that these goods are not for resale. Petitioner notes that in certain cases, a full 17-percent VAT exemption will apply upon export. Petitioner states that the program, by definition, is conditioned upon export performance, and therefore, is an export subsidy. Petitioner further alleges that this is a prohibited export subsidy if the exemption or reduction of indirect taxes on the exported product exceeds the indirect taxes levied on the inputs into the exported product. We find that Petitioner has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we are not initiating an investigation of this program.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any

determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2001 Administrative Review*, 68 FR 70488, 70488–89 (December 18, 2003).

In the final affirmative countervailing duty determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the countervailing duty law. *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying *Issues and Decision Memorandum*, at Comment 1. Therefore, because petitioner has provided sufficient allegations and support of its allegations to meet the statutory criteria for initiating a countervailing duty investigation of sodium nitrite from the PRC, initiation of a countervailing duty investigation is warranted in this case.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

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 GOC. To the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which

it receives notice of this initiation, whether there is a reasonable indication that imports of subsidized sodium nitrite from the PRC are materially injuring, or threatening material injury to, a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the 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: November 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23573 Filed 12–4–07; 8:45 am]

BILLING CODE 3510–DS–S

APPENDIX B
CONFERENCE WITNESSES

**In Opposition to the Imposition of
Antidumping and Countervailing Duties:**

Barnes Richardson & Colburn
Washington, D.C.
on behalf of

BASF Corporation

William J. Work, Business Manager Inorganics & Electronic Chemicals,
BASF Corporation

Steven Goldberg, Vice President and Associate General Counsel,
BASF Corporation

Matthew T. McGrath, Esq.) – OF COUNSEL

REBUTTAL/CLOSING REMARKS:

Petitioners (Matthew P. Jaffe, Crowell & Moring LLP)
Respondents (Matthew T. McGrath, Barnes Richardson & Colburn)

APPENDIX C
SUMMARY DATA

Table C-1

Sodium nitrite: Summary data concerning the U.S. market, 2004-06, January-September 2006, and January-September 2007

(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			
	2004	2005	2006	January-September		2004-06	2004-05	2005-06	Jan.-Sept. 2006-07
				2006	2007				
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Germany	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Germany	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. imports from:									
China:									
Quantity	267	519	1,044	523	1,405	291.4	94.6	101.1	168.9
Value	62	122	245	120	337	294.3	96.4	100.8	180.8
Unit value	\$0.23	\$0.24	\$0.24	\$0.23	\$0.24	0.7	0.9	-0.2	4.4
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Germany:									
Quantity	5,140	7,717	10,175	8,046	8,997	98.0	50.1	31.9	11.8
Value	1,006	1,627	2,072	1,616	2,007	105.9	61.7	27.3	24.2
Unit value	\$0.20	\$0.21	\$0.20	\$0.20	\$0.22	4.0	7.7	-3.4	11.1
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subtotal:									
Quantity	5,406	8,236	11,219	8,568	10,402	107.5	52.3	36.2	21.4
Value	1,069	1,750	2,318	1,736	2,344	116.9	63.7	32.5	35.0
Unit value	\$0.20	\$0.21	\$0.21	\$0.20	\$0.23	4.5	7.5	-2.8	11.2
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity	409	132	359	176	363	-12.4	-67.7	171.2	105.6
Value	72	17	69	21	73	-3.8	-75.7	296.3	245.0
Unit value	\$0.17	\$0.13	\$0.19	\$0.12	\$0.20	9.8	-24.8	46.1	67.8
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All sources:									
Quantity	5,816	8,368	11,578	8,745	10,765	99.1	43.9	38.4	23.1
Value	1,140	1,767	2,387	1,757	2,417	109.3	55.0	35.1	37.6
Unit value	\$0.20	\$0.21	\$0.21	\$0.20	\$0.22	5.1	7.7	-2.4	11.8
Ending inventory quantity	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table C-1--Continued

Sodium nitrite: Summary data concerning the U.S. market, 2004-06, January-September 2006, and January-September 2007

(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			
	2004	2005	2006	January-September		2004-06	2004-05	2005-06	Jan.-Sept. 2006-07
				2006	2007				
U.S. producers:									
Average capacity quantity	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000s)	***	***	***	***	***	***	***	***	***
Hourly wages	***	***	***	***	***	***	***	***	***
Productivity (pounds per hour)	***	***	***	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***	***	***	***
Net sales:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***
Unit operating income or (loss)	***	***	***	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***	***	***	***

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

(2) Undefined.

Note.-- 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 and from official Commerce statistics.