

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN AMMONIUM NITRATE FROM UKRAINE

Investigation No. 731-TA-894 (FINAL)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3448, August 2001)

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**CERTAIN AMMONIUM NITRATE FROM UKRAINE**

**DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports of certain ammonium nitrate from Ukraine, provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to those imports of the subject merchandise from Ukraine that were subject to the affirmative critical circumstances determination by the Department of Commerce.

**BACKGROUND**

The Commission instituted this investigation on October 13, 2000, following receipt of a petition filed with the Commission and the Department of Commerce by counsel for the ad hoc Committee for Fair Ammonium Nitrate Trade (“COFANT”), including Air Products & Chemicals, Inc., Allentown, PA; El Dorado Chemical Co., Oklahoma City, OK; LaRoche Industries, Inc., Atlanta, GA; Mississippi Chemical Corp., Yazoo City, MS; and Nitram, Inc., Tampa, FL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain ammonium nitrate from Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission’s investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of March 14, 2001 (66 FR 14933). The hearing was held in Washington, DC on July 24, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR § 207.2(f)).

## VIEWS OF THE COMMISSION

Based on the record in the final phase of this investigation, we determine that an industry in the United States is materially injured by reason of imports of ammonium nitrate from Ukraine that the U.S. Department of Commerce (“Commerce”) has determined to be sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to subject imports produced and/or exported by Stirol and other Ukrainian producers of the subject ammonium nitrate.

### I. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>6</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>7</sup>

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<sup>2</sup> 19 U.S.C. § 1677(4)(A).

<sup>3</sup> Id.

<sup>4</sup> 19 U.S.C. § 1677(10).

<sup>5</sup> 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).

<sup>6</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>7</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be

Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>8</sup>

## **B. Product Description**

In its final determination, Commerce defined the imported merchandise within the scope of this investigation as:

solid, fertilizer grade ammonium nitrate (“ammonium nitrate” or “subject merchandise”) products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and for purposes of the Customs Service (“Customs”), the written description of the merchandise under investigation is dispositive.<sup>9</sup>

Ammonium nitrate is one of several fertilizers that deliver nitrogen to the soil.<sup>10</sup> Ammonium nitrate is produced by the direct reaction of ammonia (NH<sub>3</sub>) with nitric acid (HNO<sub>3</sub>).<sup>11</sup> Depending on the producer, ammonium nitrate may be produced in granular or prill form.<sup>12</sup>

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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.”)

<sup>8</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

<sup>9</sup> Solid Agricultural Grade Ammonium Nitrate from Ukraine, 66 Fed. Reg. 38632 (July 25, 2001).

<sup>10</sup> Confidential Version of the Staff Report, Mem. INV-Y-147 (Aug. 9, 2001) (“CR”) at I-7; Public Version of Staff Report (“PR”) at I-5.

<sup>11</sup> See, e.g., CR at I-8; PR at I-5.

<sup>12</sup> Prills are spherical shapes that range from 1.5 to 2.5 millimeters in diameter whereas granules are somewhat larger and more irregularly shaped. Granules are formed by layering molten ammonium nitrate onto seed particles in a rotary pan or drum granulator, and prills are formed by spraying molten ammonium nitrate droplets into specially designed towers and allowing the molten droplets to free-fall through an upward current of cool air and solidify into

### **C. Domestic Like Product**

In the preliminary phase of this investigation, the Commission found a single domestic like product consisting of high-density ammonium nitrate (also referred to as HDAN),<sup>13</sup> just as it did in the 1999/2000 antidumping duty investigation of ammonium nitrate from Russia.<sup>14</sup> No party challenged the Commission's domestic like product determination in the final phase of this investigation, and no new evidence has been obtained that warrants reconsideration of the Commission's reasoning in the preliminary phase of this investigation. We, therefore, adopt the Commission's reasoning in the preliminary phase of this investigation and define the domestic like product coextensively with the scope of subject merchandise as fertilizer grade ammonium nitrate products with a bulk density equal to or greater than 53 pounds per cubic foot ("ammonium nitrate").

### **D. Domestic Industry and Related Party Issues**

Section 771(4) of the Act defines the relevant 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."<sup>15</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>16</sup> Based on our definition of the domestic like product, we find that the domestic industry consists of all domestic producers of the domestic like product.<sup>17</sup> Thus, the domestic industry in our analysis is comprised of ten

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small spheres. See, e.g., CR at I-6, I-8; PR at I-4, I-6.

<sup>13</sup> Certain Ammonium Nitrate from Ukraine, Inv. No. 731-TA-894 (Prelim.), USITC Pub. 3374, at 3-5 (Dec. 2000).

<sup>14</sup> Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Prelim.), USITC Pub. 3232, at 5-7 (Sept. 1999); Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3337, at 3-5 (Aug. 2000).

<sup>15</sup> 19 U.S.C. § 1677(4)(A).

<sup>16</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>17</sup> We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case. Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

No party argued for the exclusion of any domestic producer as a related party in this case.

domestic producers: Agrium, Air Products & Chemicals, Inc. (“Air Products”), Coastal Chem, El Dorado Chemical Co. (“El Dorado”), LaRoche Industries, Inc. (“LaRoche”), Mississippi Chemical Corp. (“Mississippi Chemical”), Nitram, Inc. (“Nitram”), PCS Nitrogen, Pro dica LLC, and Wil-Gro.<sup>18</sup>

## II. MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS<sup>19</sup>

In the final phase of an antidumping duty investigation, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>20</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>21</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>22</sup> In assessing whether 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.<sup>23</sup> 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

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\*\*\*, purchased subject ammonium nitrate in late 2000, but we do not find that \*\*\* is a related party under 19 U.S.C. § 1677(4)(B). The \*\*\* of subject merchandise that \*\*\* constituted less than \*\*\* percent of the \*\*\* imported from Ukraine in full year 2000, indicating that \*\*\* exerted no direct or indirect control over \*\*\*. Likewise, \*\*\* of subject merchandise from \*\*\*, which in turn must have purchased the ammonium nitrate directly or indirectly from \*\*\*. \*\*\* purchase constituted only \*\*\* percent of \*\*\* total subject imports for full year 2000 and only \*\*\* percent of the \*\*\* imported from Ukraine in full year 2000, indicating that it exerted no direct or indirect control over \*\*\*. See, e.g., Producers’ Questionnaire Responses of \*\*\* (question II-13); \*\*\* Revised Producers’ Questionnaire Response (question II-13); \*\*\*, \*\*\* Purchasers’ Questionnaire Response (question II-1); \*\*\* Importers’ Questionnaire Response (questions II-7 and II-13); \*\*\* Importers’ Questionnaire Response (question II-6); CR at III-5; PR at III-6.

<sup>18</sup> See, e.g., CR/PR at Table III-1.

<sup>19</sup> Imports of ammonium nitrate from Ukraine are not negligible under 19 U.S.C. § 1677(24), as they constituted more than three percent of total imports of ammonium nitrate into the United States in the most recent twelve-month period preceding the filing of the petition for which data are available. This information was derived from CR/PR at Table IV-1.

<sup>20</sup> 19 U.S.C. § 1673d(b).

<sup>21</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>22</sup> 19 U.S.C. § 1677(7)(A).

<sup>23</sup> 19 U.S.C. § 1677(7)(C)(iii).

industry.”<sup>24</sup>

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from Ukraine that are sold in the United States at less than fair value.

#### **A. Conditions of Competition and Business Cycle**

We find several conditions of competition and aspects of the business cycle relevant to our analysis in this investigation.

Ammonium nitrate is a commodity product, without readily identifiable variations or grades. The quality of the product may deteriorate through exposure to moisture, changes in temperature, or repeated handling, but the addition of anti-caking and stabilizing agents to the product helps reduce these problems.<sup>25</sup> Ammonium nitrate is applied to crops either alone as a direct application fertilizer or after being mechanically blended with other major fertilizer nutrients, phosphorus (“P”) and potassium (“K”), to produce free-flowing bulk blends known as nitrogen/phosphorous/potassium products (“NPKs”). Both prilled and granular forms may be used for direct application or NPK consumption; however, the use of granular ammonium nitrate in NPKs is popular because its irregular surface and larger particle size minimize segregation of blends with other fertilizer nutrients. Ammonium nitrate is used principally to fertilize certain types of row crops (such as corn, soybeans, wheat, cotton, barley, sorghum, oats, and rice), pastures and forage crops, and cash crops (such as tobacco and citrus). Ammonium nitrate is also the preferred nutrient for “no-till” planting.<sup>26</sup>

Ammonium nitrate is one of several single-nutrient, nitrogen-based fertilizers; others include anhydrous ammonia, urea, UAN (a solution of urea and ammonium nitrate), ammonium sulfate, calcium ammonium nitrate, and sodium nitrate. Ammonium nitrate is distinguished from these other nitrogen-based fertilizers by its fast action, good solubility, and low volatility at ambient temperatures.<sup>27</sup> Thirteen purchasers reported that other products could be substituted for ammonium nitrate, whereas seven noted that there are no substitutes. Five of eighteen purchasers reported that they always or almost always evaluate whether to purchase ammonium nitrate based on its price per unit of nitrogen relative to the price per unit of nitrogen of other nitrogen-based fertilizers, four reported a moderate amount of switching among products on this basis, while three reported that this substitution rarely or never occurs. Six purchasers mentioned that climatic conditions determine whether there is an option for substitution whereas three stated that the choice to purchase ammonium nitrate is dictated by the choice of crops.<sup>28</sup>

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<sup>24</sup> Id.

<sup>25</sup> See, e.g., CR at I-6, I-9 & n.19, V-5; PR at I-4, I-6 & n.19.

<sup>26</sup> See, e.g., CR at I-7, II-9; PR at I-5, II-5.

<sup>27</sup> See, e.g., CR at I-7 to I-8, II-12 to II-14; PR at I-5, II-8 to II-9.

<sup>28</sup> See, e.g., CR at II-12 to II-20; PR at II-8 to II-13. We do not find that competition with other nitrogen-based fertilizers explains pricing behavior in the U.S. market during the period of investigation. Various exogenous factors – such as seasonal demand patterns and other downstream demand factors such as acreage planted, crop prices, and farm income – appear to

U.S. consumption of ammonium nitrate is seasonal, with demand peaking in the spring planting season, usually between February and June. Nevertheless, due to the capital-intensive nature of this industry, in order to maximize production efficiencies, producers operate their production facilities throughout the year. During the off-season, producers build up inventories equivalent to a month or two of production and might store an additional month's worth of production on barges. Traditionally, producers offer ammonium nitrate at lower prices (\$15 to \$20 per ton lower) during off-season periods, such as the fall-fill period, to stimulate demand, preserve profitability, and induce purchasers to share some of the storage burden and price risk.<sup>29</sup>

Demand for ammonium nitrate is affected principally by planted acreage and application rates; these factors are in turn influenced by crop prices and weather. Demand for fertilizers is generally considered to be mature.<sup>30</sup> The majority of U.S. suppliers reported that demand has been steady since 1998.<sup>31</sup> Record data reflect different trends depending on whether apparent domestic consumption is measured by quantity or by value. Apparent domestic consumption of ammonium nitrate increased on a quantity basis between 1998 and 1999, but decreased from 1999 to 2000, and was lower in interim 2001 than in interim 2000. On a value basis, apparent domestic consumption fell from 1998 to 1999, but increased between 1999 and 2000, and was higher in interim 2001 than interim 2000.<sup>32</sup>

Importers and domestic producers sell nearly all of their shipments of ammonium nitrate to distributors and retailers, who in turn sell to individual farmers.<sup>33</sup> The Mississippi River system serves as

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affect the overall fertilizer market, although individual nitrogen-based fertilizers may be affected somewhat differently. At the same time, ammonium nitrate prices rose more slowly and to a lesser degree than prices of other nitrogen-based fertilizers in response to the unprecedented increases in natural gas costs during the period of investigation. See, e.g., CR at II-17 to II-20; PR at II-11 to II-13; CR/PR at Figure II-1; Petitioners' Prehearing Brief at 32-33, Exhibits 15, 16; July 24, 2001 Hearing Transcript ("Hearing Tr.") at 44-47; Petitioners' Posthearing Brief at 1-2, 9-10.

<sup>29</sup> See, e.g., CR at II-2 to II-3; PR at II-2; Petitioners' Prehearing Brief at 14-15; Hearing Tr. at 29-30, 76-79, 84-85.

<sup>30</sup> See, e.g., CR at II-9 to II-12; PR at II-5 to II-8.

<sup>31</sup> See, e.g., CR at II-21; PR at II-14.

<sup>32</sup> Apparent domestic consumption increased from 2,381,218 short tons in 1998 to 2,555,054 short tons in 1999, then decreased to 2,305,727 short tons in 2000; apparent domestic consumption in interim 2001 was 708,661 short tons compared to 715,614 short tons in interim 2000. On a value basis, apparent domestic consumption decreased from \$278.3 million in 1998 to \$253.9 million in 1999, then increased to \$261.8 million in 2000; apparent domestic consumption in interim 2001 was \$105.0 million compared to \$76.3 million in interim 2000. CR/PR at Table IV-2; CR at II-22; PR at II-14.

<sup>33</sup> See, e.g., CR at I-10, II-1; PR at I-7, II-1.

an important means for distributing ammonium nitrate, particularly subject merchandise from Ukraine, and many distribution facilities are located along the river system. A substantial amount of ammonium nitrate is sold directly off river barges, and in areas within relatively close proximity to the Mississippi River, in the Southeast, mid-South, and the Plains states; ammonium nitrate also is sold in the upper Midwest, citrus growing areas, California, and the Northwest.<sup>34</sup>

Despite the somewhat higher risk of product degradation associated with subject ammonium nitrate from Ukraine,<sup>35</sup> we find that there is a moderately high degree of substitutability between ammonium nitrate from Ukraine and the domestic like product. The degree of substitution depends on such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, means of delivery (e.g., barge, rail, or truck), payment terms, and product services).<sup>36</sup> All responding domestic producers reported that ammonium nitrate from Ukraine and the domestic like product can be used interchangeably. \*\*\* reported that, for certain applications, Ukrainian product is not well-suited due to prill size variation and the lack of hardness and storability associated with the number of times it has been handled. \*\*\* observed that the Ukrainian product is subject to the rigors of greater handling and may sometimes have a pink/beige color that customers disfavor. Purchasers reported that ammonium nitrate produced in Ukraine is generally comparable in terms of fourteen purchasing factors.<sup>37</sup> Purchasers reported that price is an important factor in purchasing decisions for ammonium nitrate, and other factors such as quality and availability are also important considerations. Eight purchasers reported price as the number one factor in their purchasing decisions, and over half the responding purchasers listed price as their first or second most important purchasing factor.<sup>38</sup>

Another important condition of competition is the presence of non-subject imports in the U.S. market during the period of investigation. Responding domestic producers, purchasers, and importers generally reported that subject imports, the domestic like product, and non-subject imports can be used interchangeably, and we find the record indicates a moderately high degree of substitutability among

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<sup>34</sup> See, e.g., CR at II-1; PR at II-1.

<sup>35</sup> Because of the longer transport distance and the additional handling entailed, ammonium nitrate from Ukraine is exposed more often, and for longer periods of time, to adverse conditions. Thus, Ukrainian ammonium nitrate may have more caking and a higher level of fines than are typical of the domestic like product. These problems are reduced by the addition of anti-caking and stabilizing agents to the product as well as by the importers' practice of scheduling the arrival of the imported product to coincide with the spring planting season, so as to avoid additional storage time. See, e.g., CR at II-23, II-25; PR at II-15, II-16; Nov. 3, 2000 Preliminary Staff Conference Transcript ("Conference Tr.") at 86, 94, 98-99, 139-40, 143-46.

<sup>36</sup> See, e.g., CR at II-22 to II-24; PR at II-14 to II-15.

<sup>37</sup> See, e.g., CR at II-22 to II-26; PR at II-14 to II-17; CR/PR at Table II-4.

<sup>38</sup> See, e.g., CR at II-24 to II-25; PR at II-15 to II-17; CR/PR at Table II-3.

them.<sup>39</sup> Imports of ammonium nitrate from Russia accounted for the largest share of total imports of ammonium nitrate into the United States in 1998 and 1999.<sup>40</sup> On July 23, 1999, however, petitioners in the instant investigation filed an antidumping duty petition against imports of ammonium nitrate from Russia. That petition led to the January 7, 2000, publication of Commerce's preliminary affirmative determination, suspension of liquidation on imports of ammonium nitrate from Russia,<sup>41</sup> and the entry into a suspension agreement between Commerce and the Government of Russia on May 19, 2000 governing ammonium nitrate imports from Russia.<sup>42</sup> On August 2, 2000, the Commission made an affirmative final determination that the domestic industry was materially injured by reason of ammonium nitrate from Russia.<sup>43</sup> Thereafter, ammonium nitrate imports from Russia quickly fell from high levels in 1998 and 1999 to virtually zero in 2000.<sup>44</sup> The volume of non-subject imports of ammonium nitrate in 2000, therefore, was much lower than in prior years.<sup>45</sup> The level of non-subject import shipments in interim 2001, however, was much higher than in interim 2000 because non-subject countries that previously had no presence in the U.S. market, such as Bulgaria, Romania, Spain, and Turkey began selling ammonium nitrate in the U.S. market in interim 2001 while other non-subject countries (such as Canada, the Netherlands, and Russia) continued their presence in the U.S. market.<sup>46</sup> Nonetheless, the record indicates

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<sup>39</sup> See, e.g., CR at II-26; PR at II-17; CR/PR at Table II-4.

<sup>40</sup> See, e.g., CR/PR at Table IV-1.

<sup>41</sup> Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation, 65 Fed. Reg. 1139, 1144 (Jan. 7, 2000).

<sup>42</sup> The suspension agreement provides for a quota of 49,962 metric tons of ammonium nitrate from Russia in 2000, 100,000 metric tons in 2001, and annual increases thereafter through 2004. The suspension agreement also provides that the price at which all imports of ammonium nitrate from Russia are made must be at or above a "reference price" set with reference to weekly market prices in the United States, but at no time lower than a "floor price" of \$85 per ton f.o.b. Russian port. Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation, 65 Fed. Reg. 37759 (June 16, 2000).

<sup>43</sup> Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338 (Aug. 2000). The Commission's affirmative final determination noted the significant underselling and price suppressing and depressing effects of imports of ammonium nitrate from Russia. Commerce and the Commission completed the final phase of their investigations after petitioners filed a request for continuation of the investigation.

<sup>44</sup> Imports of ammonium nitrate from Russia increased from \*\*\* short tons in 1998 to \*\*\* short tons in 1999, then decreased to \*\*\* short tons in 2000. CR/PR at Table IV-1.

<sup>45</sup> Shipments of non-subject imports (including imports from Russia) increased from \*\*\* short tons in 1998 to \*\*\* short tons in 1999, then declined to \*\*\* short tons in 2000, and as a share of apparent domestic consumption by quantity, non-subject imports were \*\*\* percent in 1998, \*\*\* percent in 1999, and \*\*\* percent in 2000. CR/PR at Tables IV-2, IV-3.

<sup>46</sup> CR/PR at Table D-1. Shipments of non-subject imports in interim 2001 were \*\*\* short tons compared to \*\*\* short tons in interim 2000. CR/PR at Table IV-2. The higher level of non-

that the average unit values of non-subject imports (including Russian ammonium nitrate imported under the suspension agreement) in 2000 were much higher than those of subject imports of ammonium nitrate from Ukraine. Further, while non-subject import volumes increased in interim 2001, when there were no imports of subject ammonium nitrate from Ukraine, non-subject imports' average unit values in 2001 were still much higher than the average unit values of the subject imports from Ukraine in 2000.<sup>47</sup>

A final condition of competition that we have considered is the cost of natural gas. Ammonia is the primary raw material in the manufacture of ammonium nitrate, and the basic feedstock for producing ammonia is natural gas. The cost of natural gas represents approximately 70 to 80 percent of the cost of producing ammonia and about 30 to 50 percent of the cost of producing ammonium nitrate.<sup>48</sup> The largest domestic producers are vertically integrated and purchase natural gas and produce ammonia at their own production facilities, whereas other domestic producers purchase ammonia.<sup>49</sup> Natural gas costs of ammonium nitrate production fell irregularly from over \$35 per short ton of ammonium nitrate in January 1998 to a low of just above \$25 per short ton in September 1998.<sup>50</sup> Natural gas costs of ammonium nitrate production then rose irregularly until reaching about \$47 per short ton of ammonium nitrate in May 2000, before rising at a faster pace over the next five months and then skyrocketing in December 2000 and January 2001 to over \$150 per short ton. Gas prices declined in February and March 2001 and have continued to decline since then, but are still at historically high levels.<sup>51</sup> Like natural gas prices, ammonia costs (averaged over those domestic producers that produced ammonia and those that purchased it) fell early in the period of investigation and rose sharply in 2000.<sup>52</sup>

## **B. Volume of Subject Imports**

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to

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subject imports in interim 2001 appears to be in response to the high natural gas costs in the U.S. market and the subsequent increase in prices for ammonium nitrate in the U.S. market.

<sup>47</sup> CR/PR at Table IV-1.

<sup>48</sup> See, e.g., CR at V-1; PR at V-1.

<sup>49</sup> See, e.g., CR at V-1; PR at V-1. During the period of investigation, \*\*\* domestic producers purchased ammonia, \*\*\* produced ammonia, and one firm, \*\*\*, accounting for about \*\*\* percent of industry trade sales, produced ammonium nitrate from ammonia nitrate solution. See, e.g., CR at VI-1; PR at VI-1.

<sup>50</sup> This discussion is based on Henry Hub Terminal natural gas pricing data converted into the natural gas costs to produce a short ton of ammonium nitrate. See Petitioners' Prehearing Brief at Exhibit 34 (providing Inside FERC's Henry Hub Monthly Index Settlement Prices).

<sup>51</sup> See, e.g., CR at V-1; PR at V-1; CR/PR at Figure V-1.

<sup>52</sup> See, e.g., CR at V-2; PR at V-1.

production or consumption in the United States, is significant.”<sup>53</sup>

The volume of subject imports of ammonium nitrate from Ukraine increased both absolutely and relative to apparent domestic consumption over the period of investigation. Subject imports of ammonium nitrate from Ukraine were \*\*\* short tons in 1998, \*\*\* in 1999, and then increased more than \*\*\* over 1998 levels to \*\*\* short tons in 2000; subject imports of ammonium nitrate from Ukraine were \*\*\* in interim 2001 compared to \*\*\* short tons in interim 2000.<sup>54</sup> Subject imports of ammonium nitrate from Ukraine ceased as of December 2000, and respondents conceded that they exited the U.S. market in response to the pendency of this case.<sup>55</sup> Accordingly, we reduced the weight given to this decline in subject import volume pursuant to 19 U.S.C. § 1677(7)(I).

Market share data reflect similar trends to those for volume data. Measured by quantity, the market penetration of subject import shipments was \*\*\* percent in 1998, \*\*\* percent in 1999, and then increased to \*\*\* percent in 2000; subject imports’ share of apparent domestic consumption in interim 2000 was \*\*\* percent, compared to \*\*\* percent in interim 2001.<sup>56</sup> We reiterate our finding from the preliminary phase of this investigation that such a rapid rise in the volume and market share of the subject imports from virtually nothing is evidence of the acceptable and marketable quality of the Ukrainian product, despite respondents’ claim that its quality is inferior.<sup>57</sup>

In the antidumping duty investigation of ammonium nitrate from Russia, the Commission found that imports from Russia had held a significant share of the U.S. market in 1999.<sup>58</sup> The increase of subject imports of ammonium nitrate from Ukraine to the U.S. market between 1999 and 2000 prevented the domestic industry from capturing any additional market share notwithstanding the virtual disappearance of imports of ammonium nitrate from Russia from the U.S. market in 2000.<sup>59</sup> Domestic producers’ share of apparent domestic consumption was 82.3 percent in 1998, 78.9 percent in 1999, and 78.4 percent in 2000; their share of apparent domestic consumption was 70.4 percent in interim 2000 compared to 55.4 percent in interim 2001.<sup>60</sup>

For all of these reasons, we determine that subject import volume and the increase in subject

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<sup>53</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>54</sup> CR/PR at Table IV-1.

<sup>55</sup> See, e.g., CR/PR at Table I-1; Hearing Tr. at 138.

<sup>56</sup> CR/PR at Table IV-3.

<sup>57</sup> Certain Ammonium Nitrate from Ukraine, Inv. No. 731-TA-894 (Prelim.), USITC Pub. 3374, at 11 (Dec. 2000).

<sup>58</sup> Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338 (Aug. 2000).

<sup>59</sup> Indeed, the volume of subject imports from Ukraine in 2000 \*\*\*. This information was derived from CR/PR at Table IV-1.

<sup>60</sup> CR/PR at Table IV-3.

imports in absolute terms and relative to consumption in the United States is significant.

**C. Price Effects of the Subject Imports**

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

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>61</sup>

As noted earlier, the record in this final investigation indicates that ammonium nitrate is a commodity product, there is a moderately high degree of substitution between the domestic like product and subject imports, and price is an important factor in purchasing decisions.<sup>62</sup>

Prices for ammonium nitrate tend to follow seasonal trends. They are generally higher in the spring planting season and lower in the fall and early winter. Thus, price trends are best discerned by comparing prices for the same month over successive years.<sup>63</sup> Measured in this manner, ammonium nitrate prices in the U.S. market declined continuously between 1997 and 1999,<sup>64</sup> while there was little Ukrainian product present in the U.S. market. In 2000, by contrast, as injurious levels of Russian ammonium nitrate exited the U.S. market, a significant volume of subject imports from Ukraine surged into the U.S. market.<sup>65</sup> Simultaneously, prices for ammonium nitrate in the U.S. market generally were higher in 2000 than in 1999, but prices in the U.S. market still did not recover to meet unprecedented production costs.<sup>66</sup>

During the final phase of this investigation, the Commission gathered monthly data on weighted average f.o.b. plant/port/shipping point prices and quantities and weighted-average delivered prices and quantities for shipments of subject ammonium nitrate from Ukraine and the domestic like product. These pricing data reflect significant underselling by subject imports at large margins and in all but one quarter in

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<sup>61</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>62</sup> See, e.g., CR at I-6, I-9 & n.19, II-22 to II-25; PR at I-4, I-6 & n.19, II-14 to II-17; CR/PR at Tables II-3, II-4.

<sup>63</sup> See, e.g., CR at V-12 to V-13; PR at V-7.

<sup>64</sup> See, e.g., CR/PR at Tables V-1, V-2; Certain Ammonium Nitrate from Ukraine, Inv. No. 731-TA-894 (Prelim.), USITC Pub. 3374, at 11 (Dec. 2000).

<sup>65</sup> CR/PR at Table IV-1.

<sup>66</sup> CR/PR at Tables V-1, V-2.

which they were sold in the U.S. market.<sup>67</sup>

In addition to significant underselling, the record indicates that the significant volume of subject imports of ammonium nitrate from Ukraine suppressed price increases for the domestic like product that otherwise would have occurred to a significant degree. In 1998 and 1999, the first two years of our period of investigation, imports from Russia still were present in significant quantities. In its 2000 Russian determination, the Commission found that domestic producers' ammonium nitrate prices during the 1999 fertilizer year were at depressed levels relative to 1997 due to the effect on prices of the imports from Russia of ammonium nitrate.<sup>68</sup> While the record shows that ammonium nitrate prices in the U.S. market were higher in 2000 and interim 2001 than in 1999,<sup>69</sup> during 2000 and interim 2001 (particularly between May 2000 and January 2001), the domestic industry experienced a significant increase in natural gas costs. As noted above, natural gas accounts for 30 to 50 percent of the cost of production of ammonium nitrate.<sup>70</sup> This rise in the cost of natural gas is reflected in the difference in the industry's unit cost of goods sold in 1999 of \$98.82 per short ton compared to \$115.16 per short ton in 2000, and of \$98.41 per short ton in interim 2000 compared to \$167.04 in interim 2001.<sup>71</sup> The evidence indicates that, despite rising prices, the combination of competition from the low-priced subject imports and rising production costs caused the domestic industry to experience a cost-price squeeze.<sup>72</sup>

In these circumstances, even though rising prices, after relief was granted with respect to imports of ammonium nitrate from Russia, allowed domestic producers to pass on at least some of their increasing costs, the price increases were not sufficient to return domestic prices to profitable levels.<sup>73</sup> Accordingly,

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<sup>67</sup> See, e.g., CR at V-8; PR at V-5; CR/PR at Tables V-1, V-2. In addition, we find that the evidence of numerous confirmed instances of lost sales and lost revenues also supports our finding that underselling by the subject imports is significant. See, e.g., CR at V-17 to V-18; PR at V-8 to V-9; CR/PR at Appendix E.

<sup>68</sup> Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 9-11 (Aug. 2000).

<sup>69</sup> CR/PR at Tables V-1, V-2.

<sup>70</sup> See, e.g., CR at V-1; PR at V-1.

<sup>71</sup> CR/PR at Table VI-2. When assessing whether the domestic industry has experienced price suppression, we generally consider the industry's cost of goods sold as a percentage of net sales. In this instance, the ratio of cost of goods sold to net sales was slightly lower in 2000 (95.5 percent) than in 1999 (96.5 percent), but in interim 2001, the ratio of cost of goods sold to net sales was 102.8 percent compared to 84.1 percent in interim 2000. CR/PR at Table VI-1.

<sup>72</sup> A cost-price squeeze occurs when a producer is unable fully to pass on increases in its cost of production in the form of price increases. In the preliminary phase of this investigation, respondents conceded that the domestic industry was facing such a situation. See, e.g., Conference Tr. at 152.

<sup>73</sup> See, e.g., City Lumber Co. v. United States, 311 F. Supp. 340, 347-48 (Cust. Ct. 1970) (in second of two sequential investigations involving imports of the same product from different

based on the high degree of substitutability between the subject imports and the domestic like product, the importance of price in this industry, the industry's need to pass on rising costs in order to regain profitability and recover from the price depressing effects of Russian ammonium nitrate in 1997 to 1999, and the significant underselling by the Ukrainian product, we conclude that subject imports have suppressed price increases that otherwise would have occurred to a significant degree.

Consequently, we find that the subject imports have had significant negative effects on prices of the domestic like product during the period of investigation.

#### **D. Impact of the Subject Imports**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>74</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>75 76 77</sup>

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countries, the Commission may base its injury determination with respect to the second country on sales at less than fair value that continue injury due to subject imports from the first country), aff'd, 457 F.2d 991 (C.C.P.A. 1972). Moreover, while we have considered whether the prices of non-subject imports may be responsible for the failure of domestic prices to recover significantly from their 1999 lows, the average unit values for non-subject imports, including those that entered the U.S. market in interim 2001 during a time when there were no imports of subject ammonium nitrate from Ukraine, were well above those for the subject imports in 2000. CR/PR at Table IV-1.

<sup>74</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

<sup>75</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

<sup>76</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final antidumping duty determination regarding ammonium nitrate from Ukraine, Commerce found that the weighted-average amount by which the normal value exceeded Stinol's export price was 156.29 percent. Commerce assigned the same antidumping duty margin to all other producers/exporters of ammonium nitrate from Ukraine. Solid Agricultural Grade

As noted above, Commerce suspended liquidation of imports of ammonium nitrate from Russia in January 2000, and those imports all but disappeared from the U.S. market in 2000.<sup>78</sup> In light of their virtual disappearance from the U.S. market and the subsequent suspension agreement governing later imports from Russia, we would have anticipated an improvement in the condition of the domestic industry. Instead, consistent with our findings that the volume of subject imports of ammonium nitrate from Ukraine is significant and increased in both absolute terms and relative to apparent domestic consumption and that there is significant price underselling and price suppression by subject imports, we find that subject imports are having a significant adverse impact on the domestic industry. A number of domestic industry performance indicators declined throughout the period of investigation and, importantly, continued to decline in 2000.<sup>79</sup> We find that unfairly traded imports of ammonium nitrate from Ukraine prevented the domestic industry from recovering from its already injured condition at the end of 1999 and impeded the domestic industry's ability to respond to the rapid and unprecedented increases in natural gas costs that occurred in 2000 and early 2001.

Specifically, while the capacity of domestic producers increased marginally during the period of investigation, actual production of ammonium nitrate and capacity utilization decreased significantly during this period.<sup>80 81</sup> We find these production declines to be significant in light of the need for domestic

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Ammonium Nitrate from Ukraine, 65 Fed. Reg. 38632 (July 25, 2001).

<sup>77</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Prelim.), USITC Pub. 3345, at 11, n.63 (Sept. 2000).

<sup>78</sup> CR/PR at Tables IV-1, IV-2.

<sup>79</sup> Production, trade, and financial data on the domestic industry are based on questionnaire responses for eight domestic producers that accounted for approximately \*\*\* percent of domestic ammonium nitrate production in 2000. CR at III-1, VI-1; PR at III-1, VI-1. There were no subject imports of ammonium nitrate from Ukraine during interim 2001, yet the domestic industry's condition remained poor in the interim period relative to interim 2000. The record indicates that Ukrainian ammonium nitrate imported in 2000 continued to be found in the distribution chain and continued to have adverse effects on domestic prices and other performance indicators in interim 2001. See, e.g., Petitioners' Prehearing Brief at 3 & nn. 5 and 8, 37, 39, 40-43, 53-54; Hearing Tr. at 20, 41, 65-68; CR at II-5, II-7; PR at II-3, II-4; CR/PR at Table V-1.

<sup>80</sup> The capacity of domestic producers increased 3.1 percent between 1998 and 2000, from 2.6 million short tons in 1998 to 2.7 million short tons in 1999 and was 2.7 million short tons in 2000. Because actual production of ammonium nitrate decreased by 21.0 percent between 1998 and 2000, from 2.1 million short tons in 1998 to 2.0 million short tons in 1999 and 1.7 million short tons in 2000, capacity utilization decreased by 19.3 percentage points during the same period. Production capacity in interim 2001 was higher than in interim 2000, but both production and capacity utilization were lower in interim 2001 than in interim 2000. CR/PR at Table III-2, CR at

producers to operate their production facilities at high rates of capacity utilization throughout the year to maximize production efficiencies.<sup>82</sup> Rather than accept lower prices to maintain market share and continue production at higher capacity utilization levels, the record indicates that several domestic producers opted to cease ammonium nitrate production for extended periods due to the presence of low-priced subject imports and increasing gas costs.<sup>83</sup> One domestic producer, Wil-Gro, ceased production in December 1999, and domestic producer LaRoche filed for protection under Chapter 11 of the U.S.

Bankruptcy Code on May 3, 2000.<sup>84</sup> Two of LaRoche's plants were acquired by domestic producer El Dorado, but only one of those plants remains in operation today.<sup>85</sup>

Domestic producers were able to reduce their end-of-period inventories during the period of investigation,<sup>86</sup> but their overall shipments and net sales quantities declined.<sup>87</sup> These declines were due to

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III-1; PR at III-1.

<sup>81</sup> One domestic producer, Mississippi Chemical, reported that it has purchased natural gas futures contracts on the New York Mercantile Exchange and has sold them every month since 1990 as part of its normal gas hedging practices in an attempt to reduce production cost uncertainty inherent in the volatile spot market for natural gas. Mississippi Chemical reported that it does not take delivery of gas purchased under hedged contracts, but it separately purchases physical quantities of gas for production. In December 2000, Mississippi Chemical decided to sell all of its future hedged gas contracts earlier than normal because it believed that natural gas prices were at or near a peak level, \*\*\*. See, e.g., Mississippi Chemical's Producers' Questionnaire Response at Attachment to II-11; Petitioners' Prehearing Brief at 45-54; Hearing Tr. at 25-26, 56-58, 96-97; CR at VI-9; PR at VI-4.

<sup>82</sup> See, e.g., CR at II-3; PR at II-2.

<sup>83</sup> See, e.g., Petitioners' Prehearing Brief at 21, 38-41 & n.135, 46-47; Hearing Tr. at 18, 37; CR at II-5 to II-6, II-7, VI-7; PR at II-3, II-4, VI-4.

<sup>84</sup> See, e.g., Hearing Tr. at 22; CR/PR at Table III-1; CR at III-1; PR at III-1.

<sup>85</sup> See, e.g., Hearing Tr. at 22; CR/PR at Table III-1; CR at III-1; PR at III-1.

<sup>86</sup> The domestic producers' end-of-period inventories declined from 352,614 short tons in 1998 to 247,435 short tons in 1999 and 97,376 short tons in 2000, and end-of-period inventories in interim 2001 were 238,766 short tons as compared to 322,720 short tons in interim 2000. CR/PR at Table III-5.

<sup>87</sup> Domestic shipments increased from 1,959,789 short tons in 1998 to 2,014,854 short tons in 1999, and then decreased to 1,807,145 short tons in 2000; domestic shipments were 392,489 short tons in interim 2001 as compared to 503,650 short tons in interim 2000. CR/PR at Table III-3. The domestic industry's net sales increased from 1,996,912 short tons in 1998 to 2,039,952

competition from lower-priced Ukrainian product not only during the regular spring planting season, but also during the domestic industry's off-season fall-fill period.<sup>88</sup> Although net sales value rose slightly from 1999 to 2000, it remained down from 1998 levels,<sup>89</sup> as the domestic industry faced the cost-price squeeze discussed earlier. Consequently, the domestic industry suffered operating losses in 1999 and 2000.<sup>90</sup>

Other domestic industry performance indicators also declined.<sup>91</sup> The average number of production and related workers employed industry-wide declined steadily between 1998 and 2000 and was

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short tons in 1999, before decreasing to 1,821,094 short tons in 2000; net sales in interim 2001 were 382,354 short tons compared to 474,906 short tons in interim 2000. CR/PR at Table VI-1.

<sup>88</sup> The low-priced Ukrainian ammonium nitrate in fall 2000 prevented domestic producers to a significant degree from being able to sell their product at price levels that would cover their production costs, causing them to lose significant sales revenues during the off-season. See, e.g., Petitioners' Prehearing Brief at 14-15; Hearing Tr. at 29-30, 76-79, 84-85.

<sup>89</sup> Net sales value declined from \$240 million in 1998 to \$209 million in 1999, and then recovered to \$220 million in 2000. However, net sales were valued at \$62 million in interim 2001 as compared to \$56 million in interim 2000. CR/PR at Table VI-1.

<sup>90</sup> Of eight domestic producers, the number reporting operating losses increased from three in 1998 to five in 1999 and four in 2000. CR/PR at Table VI-1. Five of the seven domestic producers that provided data for the interim periods reported operating losses in interim 2001 as compared to two in interim 2000. Id. Overall, the domestic industry had operating income of \$16.8 million in 1998, an operating loss of \$8.3 million in 1999, and an operating loss of \$5.5 million in 2000; the domestic industry had an operating loss of \$5.9 million in interim 2001 as compared to operating income of \$5.7 million in interim 2000. CR/PR at Table VI-1. The ratio of the domestic industry's operating income or (loss) to its net sales was 7.0 percent in 1998, (4.0) percent in 1999, and (2.5) percent in 2000; the ratio was (9.6) percent in interim 2001 as compared to 10.3 percent in interim 2000. CR/PR at Table VI-1.

<sup>91</sup> We also examined the decline in apparent domestic consumption during the period of investigation to determine if it could have been responsible for the declines in the performance indicia of the domestic industry. As previously noted, apparent domestic consumption measured in short tons declined in 2000 and was lower in interim 2001 than in interim 2000. CR/PR at Tables IV-2, IV-3. While this decline may have influenced domestic performance indicia in 2000 and interim 2001, its effects alone are not sufficient to explain the magnitude of the overall decline in the domestic industry's performance. See, e.g., CR at II-3 to II-4, II-9 to II-12 & n.30, II-21 to II-22, II-28; PR at II-1 to II-2, II-5 to II-8 & n.30, II-14, II-18; CR/PR at Tables IV-2, IV-3; Petitioners' Prehearing Brief at 42, 58-60, 61-64, Exhibits 2-C, 17, 27; Hearing Tr. at 41-44, 46-47, 58-59, 63-65, 69-70, 74-75, 150-51. The industry's condition in 1999 reflected the significant adverse impact of imports from Russia. The fact that important aspects of the industry's condition deteriorated further in 2000 despite the near-absence of imports from Russia in 2000 indicates that the declining state of the industry cannot be explained by reduced demand alone.

lower in interim 2001 than in interim 2000.<sup>92</sup> The total wages paid to those workers during these periods followed a similar pattern.<sup>93</sup> Average worker productivity likewise fell between 1998 and 2000.<sup>94</sup> Capital expenditures also declined dramatically in the three-year period and the interim period,<sup>95</sup> and at least three U.S. producers reported that they currently are having, or anticipate that they will have, difficulty raising capital to finance needed capital improvement projects.<sup>96</sup> Specifically, Mississippi Chemical's credit rating was downgraded in 2001.<sup>97</sup>

In sum, the record indicates that there have been significant increases in both the absolute and relative volumes of ammonium nitrate imported from Ukraine and these imports significantly undersold and suppressed prices of the domestic like product. The record also shows that these volume increases and their negative price effects were directed at a domestic industry that had not yet recovered from the injury previously inflicted by unfairly traded imports of ammonium nitrate from Russia and they

coincided with unprecedented increases in the cost of natural gas. Accordingly, we find that the subject imports are having a significant adverse impact on the domestic industry.

### III. CRITICAL CIRCUMSTANCES

In its final determination, Commerce made affirmative critical circumstances findings with respect to ammonium nitrate produced and/or exported by Ukrainian producer Stirol and other Ukrainian producers.<sup>98</sup> Because we have determined that the domestic ammonium nitrate industry is materially injured by reason of subject imports, we must further determine "whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the

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<sup>92</sup> The average number of production and related workers employed industry-wide decreased from 426 workers in 1998 to 422 workers in 1999 and 389 workers in 2000, and was 387 in interim 2000 as compared to 362 in interim 2001. CR/PR at Table III-6; CR at III-8; PR at III-7.

<sup>93</sup> The total wages paid to production and related workers remained virtually unchanged at \$18.8 million in 1998 and 1999, but decreased to \$17.4 million in 2000, and was \$4.5 million in interim 2000 as compared to \$4.3 million in interim 2001. CR/PR at Table III-6.

<sup>94</sup> Average worker productivity fell from 2.3 short tons per hour in 1998 to 2.1 short tons per hour in 1999, and 1.9 short tons per hour in 2000, but remained constant at 2.5 short tons per hour from interim 2000 to interim 2001. CR/PR at Table III-6.

<sup>95</sup> Capital investment dropped from \$34.8 million in 1998 to \$19.3 million in 1999 and \$10.4 million in 2000, and was \$2.4 million in interim 2000 as compared to \$392 thousand in interim 2001. CR/PR at Table VI-4.

<sup>96</sup> See, e.g., CR at F-3, F-4, F-7; PR at F-3, F-4.

<sup>97</sup> See, e.g., Petitioners' Prehearing Brief at 44; CR at F-5; PR at F-3, F-4.

<sup>98</sup> Solid Agricultural Grade Ammonium Nitrate from Ukraine, 66 Fed. Reg. 13286, 13291-92 (Mar. 5, 2001).

remedial effect of the antidumping duty order to be issued.”<sup>99</sup> The SAA indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”<sup>100</sup>

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.<sup>101</sup>

Consistent with Commission practice,<sup>102</sup> in considering the timing and volume of subject imports, we have considered import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding subject import volume from Stirol and all other Ukrainian producers.<sup>103</sup> We do not find any significant increase in import volume after the filing of the petition,<sup>104</sup> particularly in light of the seasonal nature of this industry where higher volumes would be expected in advance of the peak planting season (February to June) and during the fall-fill period.<sup>105</sup> The available information also does not indicate a significant buildup of inventories during the post-petition period.<sup>106</sup> Further, the record does not indicate a drop in subject import prices after the petition was filed.

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<sup>99</sup> 19 U.S.C. § 1673d(b)(4)(A)(i).

<sup>100</sup> SAA at 877.

<sup>101</sup> 19 U.S.C. § 1673d(b)(4)(A)(ii).

<sup>102</sup> See, e.g., Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 12-13 (Aug. 2000); Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777 to 79 (Final), USITC Pub. 3159, at 24 (Feb. 1999).

<sup>103</sup> CR/PR at Table I-1.

<sup>104</sup> Subject imports declined based on a comparison of the three- or five-month period prior to and subsequent to the filing of the petition. Total imports from Ukraine between July and September 2000 were \*\*\* short tons compared to \*\*\* short tons between November 2000 and January 2001; likewise, total imports from Ukraine between May and September 2000 were \*\*\* short tons compared to \*\*\* short tons between November 2000 and March 2001. CR/PR at Table I-1. (We have excluded October 2000 because the petition was filed near the middle of that month).

<sup>105</sup> See, e.g., CR at II-7, V-12 to V-13; PR at II-4, V-7; compare, e.g., Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 12-13 (Aug. 2000); Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034, at 34 (Apr. 1997).

<sup>106</sup> U.S. importers’ end-of-period inventories of ammonium nitrate from Ukraine in 2000 were \*\*\* short tons, or \*\*\*, and end-of-period inventories in interim 2001 were \*\*\* short tons, or \*\*\*. CR/PR at Table VII-3. Although end-of-period inventories of subject imports in 2000 were higher than end-of-period inventories in 1999 (\*\*\*), we do not find the absolute quantity of end-

The record indicates that the average unit value of subject imports rose between January and November 2000, although these price increases occurred during a time of historically high gas prices where the market price for ammonium nitrate would have been expected to be higher.<sup>107</sup>

Because the record indicates that there was no significant increase in subject imports from Ukraine subject to Commerce's affirmative critical circumstances findings immediately following the filing of the petition, and there was no substantial increase in inventories of these imports, we conclude that these imports will not undermine the remedial effect of the forthcoming antidumping duty order. Accordingly, we determine that critical circumstances do not exist with respect to the subject imports.

### **CONCLUSION**

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of ammonium nitrate from Ukraine that are being sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to subject imports as to which Commerce made affirmative critical circumstances findings.

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of-period inventories in 2000 to be consistent with a finding that subject imports of ammonium nitrate from Ukraine would undermine seriously the remedial effect of the order, given our findings of no significant increase in import volume after the petition was filed.

<sup>107</sup> CR/PR at Table I-1; CR at V-1; PR at V-1.

