

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN AMMONIUM NITRATE FROM RUSSIA

Investigation No. 731-TA-856 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3338, August 2000)

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## CERTAIN AMMONIUM NITRATE FROM RUSSIA

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines,<sup>2</sup> 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 from Russia of certain ammonium nitrate, 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 respect to the subject imports.

### BACKGROUND

The Commission instituted this investigation effective July 23, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by the ad hoc Committee for Fair Ammonium Nitrate Trade.<sup>3</sup> The final phase of the investigation was scheduled<sup>4</sup> by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain ammonium nitrate from Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). On May 19, 2000, Commerce entered into a suspension agreement with Russia; subsequently both Commerce and the Commission suspended their investigations. On June 29, 2000, the petitioner requested a continuation of the investigation and both Commerce and the Commission resumed their investigations. Notice of the scheduling of the Commission's continuation of the 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 July 5, 2000 (65 FR 41489). The hearing was held in Washington, DC, on July 11, 2000, 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)).

<sup>2</sup> Commissioner Jennifer A. Hillman not participating.

<sup>3</sup> The Committee for Fair Ammonium Nitrate Trade consisted of the following companies: Air Products & Chemicals, Inc., Allentown, PA; El Dorado Chemical Co., Oklahoma City, OK; LaRoche Industries, Inc., Atlanta, GA; Mississippi Chemical Corp., Yazoo City, MS; Nitram, Inc., Tampa, FL; and Wil-Gro Fertilizer, Inc., Celina, TX.

<sup>4</sup> 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 notice in the *Federal Register* of January 18, 2000 (65 FR 2643).

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is materially injured by reason of imports of certain ammonium nitrate from Russia that the Department of Commerce (“Commerce”) found to be sold in the United States at less than fair value (“LTFV”).<sup>5</sup> We also determine that critical circumstances do not exist with respect to the subject imports.

### I. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. Domestic Like Product

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>6</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>7</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>8</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>9</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>10</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>11</sup> Although the Commission must accept the determination of Commerce as to the scope of the imported

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<sup>5</sup> Commissioner Hillman did not participate in the final phase of this investigation.

<sup>6</sup> 19 U.S.C. § 1677(4)(A).

<sup>7</sup> 19 U.S.C. § 1677(4)(A).

<sup>8</sup> 19 U.S.C. § 1677(10).

<sup>9</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>10</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>11</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 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”).

merchandise that has been found to be sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>12</sup>

Commerce defined the scope of subject merchandise as follows in its final determination:

solid, fertilizer grade ammonium nitrate 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).<sup>13</sup>

Ammonium nitrate is one of several fertilizers that deliver nitrogen to the soil.<sup>14</sup> Ammonium nitrate is produced by the direct reaction of ammonia (NH<sub>3</sub>) with nitric acid (HNO<sub>3</sub>).<sup>15</sup> Depending on the producer, ammonium nitrate may be produced in granular or in prill form.<sup>16</sup>

In its preliminary determination, the Commission found a single domestic like product coextensive with the scope and consisting of solid, fertilizer grade ammonium nitrate products with a bulk density equal to or greater than 53 pounds per cubic foot.<sup>17</sup> The Commission considered whether low density (industrial) ammonium nitrate – ammonium nitrate with a bulk density less than 53 pounds per cubic foot – should be included in the domestic like product, and concluded that it should not be.<sup>18</sup>

No party has challenged the Commission's domestic like product determination in the final phase of this investigation and the record contains no new evidence that would call into question the Commission's reasoning in its preliminary determination.<sup>19</sup> Consequently, for purposes of this final

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<sup>12</sup> 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 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

<sup>13</sup> 65 Fed. Reg. 42669, 42670 (July 11, 2000).

<sup>14</sup> Confidential Report ("CR") at I-7, Public Report ("PR") at I-5. In these Views, the term "ammonium nitrate" refers to high density ammonium nitrate unless otherwise specified.

<sup>15</sup> CR at I-5, PR at I-4.

<sup>16</sup> 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 small spheres. CR at I-5, PR at I-4.

<sup>17</sup> Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Preliminary), USITC Pub. 3232 at 3-7 (Sept. 1999) (hereinafter "Preliminary Determination").

<sup>18</sup> Preliminary Determination, USITC Pub. 3232 at 5-7 (finding some similarities between high and low density ammonium nitrate (*e.g.*, raw materials used and nitrogen content), but concluding that they are outweighed by the differences, particularly with respect to physical characteristics and uses, interchangeability, producer and customer perceptions, and channels of distribution).

<sup>19</sup> In the preliminary determination, the Commission stated that it would revisit in any final phase investigation the issue of whether the Commission should include any nitrogen-based fertilizers other than ammonium nitrate in the domestic like product. Preliminary Determination, USITC Pub. 3232 at 5 n.17. Respondents did not identify in the preliminary phase of the investigation what, if any, nitrogen-based fertilizers should be included in the

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determination we again define the domestic like product coextensively with the subject merchandise: fertilizer grade ammonium nitrate products with a bulk density equal to or greater than 53 pounds per cubic foot.

## **B. Domestic Industry**

### **1. Generally**

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . . .”<sup>20</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>21</sup> We define the domestic industry in this investigation as all domestic producers of high density ammonium nitrate.

### **2. Related Parties**

We also 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). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry a producer that is related to an exporter or importer of subject merchandise, or which is itself an importer.<sup>22</sup> Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.<sup>23</sup>

The related party issue in the final phase of this investigation is the same as the one discussed in the preliminary determination: whether two domestic producers, LaRoche Industries, Inc. (“LaRoche”) and

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<sup>19</sup> (...continued)

domestic like product. They likewise failed to do so in the final phase. The record in the final phase investigation, as that in the preliminary phase, indicates clear distinctions between ammonium nitrate and other nitrogen-based fertilizers with respect to product characteristics, *see* CR at I-5, PR at I-3, Hearing Transcript (“Tr.”) at 15 (Baumes); customer perceptions, Table II-1, CR at II-13-15, PR at II-8-10; and price, *see* Petitioner’s Prehearing Brief, exhibit 7.

<sup>20</sup> 19 U.S.C. § 1677(4)(A).

<sup>21</sup> *See United States Steel Group v. United States*, 873 F. Supp. 673, 681-684 (Ct. Int’l Trade 1994), *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996).

<sup>22</sup> 19 U.S.C. § 1677(4)(B).

<sup>23</sup> *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d without opinion*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (Feb. 1997).

El Dorado Chemical Co. (“El Dorado”), are subject to exclusion as related parties by virtue of their purchases of subject ammonium nitrate from Russia during the period of investigation. In previous investigations, the Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist where a domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial.<sup>24</sup>

LaRoche purchased \*\*\* short tons of subject merchandise in 1997, \*\*\* short tons in 1998, and \*\*\* short tons in 1999.<sup>25</sup> Its purchases were from three different sellers: \*\*\*.<sup>26</sup> El Dorado’s purchases of subject merchandise amounted to \*\*\* short tons in 1997, \*\*\* short tons in 1998, and \*\*\* short tons in 1999.<sup>27</sup> El Dorado \*\*\*.<sup>28</sup> \*\*\*.<sup>29</sup>

In its preliminary determination, the Commission concluded that neither LaRoche nor El Dorado was a related party because neither firm controlled a large share of subject imports and because the purchases were either from several sellers (in the case of LaRoche) or constituted a \*\*\* (in the case of El Dorado).<sup>30</sup> The record in the final phase of this investigation warrants a similar conclusion. Accordingly, we find that no domestic producers are related parties in the final phase of this investigation.

## II. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of an antidumping investigation, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation. 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>31</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>32</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

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<sup>24</sup> See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (Apr. 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (Apr. 1997).

<sup>25</sup> CR at III-7, PR at III-5.

<sup>26</sup> LaRoche Producer’s Questionnaire.

<sup>27</sup> CR at III-7, PR at III-5.

<sup>28</sup> El Dorado Producer’s Questionnaire.

<sup>29</sup> Investigator’s Telephone Notes.

<sup>30</sup> Preliminary Determination, USITC Pub. 3232 at 8; see also Confidential Preliminary Determination at 11-12.

<sup>31</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>32</sup> 19 U.S.C. § 1677(7)(A).

United States.<sup>33</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 industry.”<sup>34</sup>

For the foregoing reasons, we determine that the domestic ammonium nitrate industry is materially injured by reason of LTFV imports from Russia.

#### **A. Conditions of Competition**

There are several conditions of competition that are relevant to our analysis in this investigation. First, 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. Demand for ammonium nitrate is affected principally by planted acreage and application rates; these factors are in turn influenced by crop prices and weather.<sup>35</sup> Demand for fertilizers is generally considered to be mature.<sup>36</sup> In questionnaire responses, most U.S. producers and importers characterized demand for ammonium nitrate as being steady to falling and most purchasers characterized demand as stable.<sup>37</sup>

Apparent U.S. consumption of ammonium nitrate rose slightly during the period of investigation. Apparent consumption increased from 2.4 million short tons in 1997 to 2.5 million short tons in 1998, and then to 2.6 million short tons in 1999.<sup>38</sup>

Consumption of ammonium nitrate is seasonal, with large shipments typically moving to the farmer during the spring planting season. Nevertheless, product is produced throughout the year; traditionally, producers offer ammonium nitrate at lower prices during off-season periods to stimulate demand. Purchasers that purchase ammonium nitrate during off-season periods, such as the “fall fill” period, store it in preparation for sales to farmers during the next planting season.<sup>39</sup>

Ammonium nitrate is one of several nitrogen-based fertilizers; others include anhydrous ammonia, urea, UAN solutions, ammonium sulfate, calcium ammonium nitrate, and sodium nitrate.<sup>40</sup> Ammonium nitrate is distinguished from these other nitrogen-based fertilizers by its fast action, good solubility, and low volatility at ambient temperatures.<sup>41</sup> Purchaser responses concerning the conditions under which they substitute other fertilizers for ammonium nitrate varied widely. A substantial minority of purchasers (10 of 28) indicated they do not substitute other fertilizers for ammonium nitrate. Of the purchasers that indicated they do substitute, some indicated that they substituted between fertilizers freely, but half indicated that substitution was infrequent or was limited by factors such as weather conditions.<sup>42</sup>

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<sup>33</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>34</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>35</sup> CR at II-8, PR at II-5.

<sup>36</sup> CR at II-8, PR at II-5.

<sup>37</sup> CR at II-10-11, PR at II-7.

<sup>38</sup> Table IV-3, CR at IV-5, PR at IV-4.

<sup>39</sup> CR at II-4-5, PR at II-3.

<sup>40</sup> CR at I-7, PR at I-5.

<sup>41</sup> CR at I-5, PR at I-3; *see* Tr. at 15 (Baumes).

<sup>42</sup> Table II-1, CR at II-13-15, PR at II-8-10.

Price is an important factor in purchasing decisions for ammonium nitrate. More purchasers listed price as the number one factor in their purchasing decisions than any other factor, and over half the responding purchasers listed price as their first or second most important purchasing factor.<sup>43</sup>

All responding U.S. producers, purchasers, and importers responded that the domestic like product and the subject imports can be used interchangeably.<sup>44</sup> A plurality or majority of purchasers surveyed found that the domestic like product and the subject imports were comparable on 10 of 14 factors.<sup>45</sup>

Producers, purchasers, and importers also uniformly responded that the domestic like product and nonsubject imports can be used interchangeably.<sup>46</sup> The bulk of these nonsubject imports originated from Canada and the Netherlands.<sup>47</sup> A plurality or majority of the responding purchasers found the nonsubject imports comparable to U.S.-produced ammonium nitrate with respect to all product characteristics except availability and transportation network.<sup>48</sup>

The quantity of nonsubject imports increased from 189,289 short tons in 1997 to 262,214 short tons in 1998 and then to \*\*\* short tons in 1999.<sup>49</sup> The market penetration of nonsubject imports, measured by quantity, increased from 8.0 percent in 1997 to 10.3 percent in 1998, and then declined to \*\*\* percent in 1999.<sup>50</sup>

## **B. Volume of the 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.”<sup>51</sup>

The quantity of subject imports increased from 198,701 short tons in 1997 to 261,545 short tons in 1998 and then to \*\*\* short tons in 1999.<sup>52</sup> Subject import market penetration, measured by quantity, also increased throughout the period of investigation, rising from 7.9 percent in 1997 to 9.0 percent in 1998 and then to \*\*\* percent in 1999.<sup>53</sup> We find this volume of subject imports to be significant.<sup>54</sup>

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<sup>43</sup> Table II-3, CR at II-20, PR at II-14.

<sup>44</sup> CR at II-21, PR at II-15.

<sup>45</sup> Table II-4, CR at II-22, PR at II-15. A majority or plurality of purchasers, however, found that the domestically-produced product was superior in product quality, product consistency, and reliability of supply. *Id.* There were reports that the Russian-produced product did not hold up as well in storage as domestically-produced ammonium nitrate and that it is subject to more degradation because it is handled more during transportation. CR at II-21, PR at II-15.

<sup>46</sup> CR at II-22, PR at II-16.

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

<sup>48</sup> Table II-5, CR at II-23, PR at II-16.

<sup>49</sup> Table IV-1, CR at IV-2, PR at IV-2.

<sup>50</sup> Table IV-3, CR at IV-5, PR at IV-4.

<sup>51</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>52</sup> Table IV-1, CR at IV-2, PR at IV-2.

<sup>53</sup> Tables IV-2, IV-3, CR at IV-4-5, PR at IV-3-4. The annual data to some extent understate the increase in subject import volume and market penetration during the latter portion of the period of investigation. Subject import volumes declined appreciably after the filing of the petition on July 23, 1999, and subject imports

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Subject imports increased at a faster rate than did domestic shipments. Consequently, while market penetration of the subject imports was rising, the domestic producers' share of U.S. apparent consumption, measured by quantity, declined from 84.1 percent in 1997 to 80.7 percent in 1998 and then increased to 80.8 percent in 1999.<sup>55</sup>

### 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>56</sup>

Prices for both the subject imports and the domestic like product declined sharply during the period of investigation. Prices were lower in 1998 than in 1997, and lower in 1999 than in 1998, although within each year prices generally rose in the spring, the period of peak demand for ammonium nitrate. During the last month for which pricing data were collected, December 1999, prices for domestically-produced ammonium nitrate were 32.4 percent lower and prices for the subject imports were \*\*\* percent lower than they were in January 1997, the first month for which data were collected.<sup>57</sup> The subject imports undersold the domestic like product in 33 out of 35 monthly pricing comparisons, with substantial underselling margins that exceeded 15 percent in 29 months.<sup>58</sup>

As previously stated, price is an important factor in purchasing decisions for ammonium nitrate. Moreover, domestically-produced ammonium nitrate and the subject imports, which purchasers generally considered comparable in most respects, are relatively substitutable. In these circumstances, we conclude that the underselling by the subject imports has been significant. Indeed, the record provides many instances of confirmed lost sales and lost revenue allegations.<sup>59</sup>

We also conclude that the substantial volumes of subject imports that entered the U.S. market substantially depressed and suppressed prices for the domestic like product during the period of investigation, as evidenced by the sharp declines in the prices for both the subject imports and domestically-

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<sup>53</sup> (...continued)

essentially disappeared from the market after November 1999. *See* CR at IV-3, PR at IV-1. Prior to the filing of the petition, subject import penetration reached \*\*\* percent in the first half of 1999, as compared to \*\*\* percent in the first half of 1998. *See* Letter from Valerie Slater to Donna R. Koehnke, Attachment at 1 (July 28, 2000).

<sup>54</sup> Commissioner Askey does not find the overall volume of subject imports to be significant. Moreover, based on her review of all data on the record, including official import statistics, she finds that the increase in the subject imports' market share is not significant, particularly given that the majority of the 1997-99 increase in subject imports took place between 1997 and 1998. CR and PR at Table IV-1; CR at IV-3, PR at IV-1.

<sup>55</sup> Table IV-3, CR at IV-5, PR at IV-4.

<sup>56</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>57</sup> Table V-1, CR at V-10-11, PR at V-6-7. *See also* CR at V-8-9, PR at V-9-10.

<sup>58</sup> Table V-1, CR at V-10-11, PR at V-6-7.

<sup>59</sup> CR at V-15, E-13-26, PR at V-10, E-3-10.

produced ammonium nitrate. Industry witnesses testified that, because of the low-priced subject imports, they were forced to cut prices to retain market share.<sup>60</sup>

We also examined several exogenous factors to determine whether they could have been responsible for the price declines. We conclude that they cannot, either individually or in conjunction, explain the magnitude of these declines.

One factor we examined was raw material costs. Ammonia is the basic raw material used in the production of ammonium nitrate. In turn, natural gas is the basic feedstock for producing ammonia.<sup>61</sup> Natural gas and ammonia prices fluctuated over the period of investigation; per unit prices of each product declined from 1997 to 1998, and then increased from 1998 to 1999 to a level below that of 1997.<sup>62</sup> By contrast, prices for the domestic like product declined throughout the period of investigation, including from 1998 to 1999. Consequently, the decline in prices for the domestic like product did not simply reflect changes in raw material costs.<sup>63</sup>

Another factor we examined was nonsubject imports, which during the period of investigation came principally from Canada and the Netherlands. As previously discussed, nonsubject import volumes increased throughout the period of investigation, and nonsubject import market penetration was higher in 1999 than in 1997. Additionally, nonsubject imports are generally good substitutes for domestically-produced ammonium nitrate.<sup>64</sup> Nonsubject imports from Canada, however, sold at average unit values (AUVs) that were consistently above those for the domestic like product.<sup>65</sup> Although the AUVs for the imports from other nonsubject sources, most notably the Netherlands, were below those for domestically-produced ammonium nitrate, they were above those of the subject imports and declined by considerably less than the AUVs for the subject imports during the period of investigation.<sup>66</sup> Moreover, a majority of responding purchasers found nonsubject imports from the Netherlands and domestically-produced ammonium nitrate comparable in terms of price.<sup>67</sup> In light of these considerations, we cannot conclude that the sharp declines in prices for domestically-produced ammonium nitrate during the period of investigation were a function of nonsubject imports.

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<sup>60</sup> Tr. at 9 (Porvaznik), 69 (Ewing).

<sup>61</sup> CR at V-1, PR at V-1. The cost of natural gas represents approximately 70 to 80 percent of the cost of producing ammonia and about 30 to 50 percent of producing ammonium nitrate. *Id.*

<sup>62</sup> CR at V-1-2, PR at V-1.

<sup>63</sup> Commissioner Bragg did not restrict her analysis to an examination of raw material costs alone, but instead examined the cost of goods sold as a whole. Commissioner Bragg notes that although the per unit cost of goods sold for domestic producers declined \*\*\* percent between 1997 and 1999, the average unit value of domestic producers' U.S. shipments declined 27.4 percent and the average unit value of subject imports declined \*\*\* percent during the same period; pricing data depict similar declines, with reported prices for domestic producers declining 32.4 percent between January 1997 and December 1999, while subject import prices declined \*\*\* percent during the same period. *See* CR and PR, Tables V-1 and C-1. Commissioner Bragg concludes that any price based competition arising from modestly declining production costs among domestic producers does not account for the dramatic and significant declines in U.S. price levels evidenced on the record.

<sup>64</sup> *See* CR at II-22-23, PR at II-16.

<sup>65</sup> *Compare* Table III-3, CR at III-4, PR at III-3 *with* Table IV-1, CR at IV-2, PR at IV-2. Because there are no significant problems of variation of "product mix" with ammonium nitrate, we believe AUV data provide reasonably probative information on the relative price levels and price movements of nonsubject imports.

<sup>66</sup> Table IV-1, CR at IV-2, PR at IV-2. Between 1997 and 1999, AUVs for imports from nonsubject sources other than Canada declined by \*\*\* percent, while AUVs for subject imports declined by \*\*\* percent. *Id.*

<sup>67</sup> Table II-5, CR at II-23, PR at II-16.

We have also considered pricing trends for other nitrogen-based fertilizers. It is true that during the period of investigation, U.S. prices for fertilizers such as urea, ammonia, and UAN also declined, although the magnitude of price fluctuations varied to some degree from product to product.<sup>68</sup> However, many purchasers consider these products' substitutability with ammonium nitrate to be either limited or non-existent. As previously discussed, of 28 purchasers who responded to the Commission's questionnaire, a majority stated that they either did not substitute other fertilizers for ammonium nitrate or substituted other fertilizers only under limited conditions.<sup>69</sup> Ammonium nitrate's share of the total U.S. market for nitrogen-based fertilizers has been relatively steady since 1990, suggesting that relative price shifts between types of fertilizers is unlikely to significantly affect ammonium nitrate demand relative to other fertilizers.<sup>70</sup> Moreover, most domestic ammonium nitrate producers indicate that they do not reference prices for other nitrogen-based fertilizers in establishing prices for ammonium nitrate, and that their customers do not reference prices for these fertilizers in making decisions to purchase ammonium nitrate.<sup>71</sup> In light of these considerations we cannot conclude that price changes in other nitrogen-based fertilizers provide a sufficient explanation for the sharp drop in ammonium nitrate prices during the period of investigation.

#### **D. Impact of the Subject Imports on the Domestic Industry**

Section 771(7)(C)(iii) of the Act 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." 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>72 73 74</sup>

The subject imports, because of their significant effects on prices for domestically-produced ammonium nitrate, adversely affected the domestic industry's revenue and financial performance. The domestic industry's U.S. shipments rose during the period of investigation, increasing from 1.99 million

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<sup>68</sup> See Figure I-1, CR at I-9, PR at I-6.

<sup>69</sup> Table II-1, CR at II-13-15, PR at II-8-10.

<sup>70</sup> Petitioner's Prehearing Brief, ex. 17.

<sup>71</sup> Petitioner's Posthearing Brief, tab H, exhibit 2.

<sup>72</sup> 19 U.S.C. § 1677(7)(C)(iii). See also Uruguay Round Agreements Act Statement of Administrative Action (SAA), H.R. Rep. 103-316 at 851, 885 (1994); Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>73</sup> As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider "the magnitude of the margin of dumping" in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determination, Commerce determined the weighted-average dumping margin was 253.98 percent for both JSC Nevinomyssky Azot, the one exporter/manufacturer that received a firm-specific margin, and for all other exporter/manufacturers. 65 Fed. Reg. 42669, 42673 (July 11, 2000).

<sup>74</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).

short tons in 1997 to 2.05 million short tons in 1998 and then to 2.10 million short tons in 1999.<sup>75</sup> Because of the significant declines in domestic prices, however, the domestic industry's sales revenues declined from \*\*\* million in 1997 to \*\*\* million in 1998 and \*\*\* million in 1999.<sup>76</sup>

Although domestic producers' costs did decline somewhat during the period of investigation, the cost declines were nowhere as steep as the declines in sales revenues. On a per short ton basis, cost of goods sold declined from \*\*\* in 1997 to \*\*\* in 1999, and sales, general, and administrative expenses declined from \*\*\* in 1997 to \*\*\* in 1999. By contrast, net sales values declined from \*\*\* per short ton in 1997 to \*\*\* in 1999.<sup>77</sup>

As a consequence, notwithstanding increasing shipments, domestic producers' operating performance deteriorated significantly during the period of investigation. Domestic industry operating income declined from \*\*\* in 1997 to \*\*\* in 1998, and in 1999 the domestic industry sustained a \*\*\* operating loss, with six \*\*\* domestic producers submitting data reporting operating losses.<sup>78</sup> One domestic ammonium nitrate producer, Wil-Gro Fertilizer, Inc., ceased producing the domestic like product in December 1999. Another producer, LaRoche, filed for protection under Chapter 11 of the U.S. Bankruptcy Code in May 2000.<sup>79</sup> At the hearing, a LaRoche official testified that revenue losses attributable to the subject imports contributed to his firm's decision to file for bankruptcy protection.<sup>80</sup>

Several other industry indicators also showed declines during the period of investigation. Employment declined from 499 production and related workers in 1997 to 449 in 1999.<sup>81</sup> Capital expenditures declined from \*\*\* in 1997 to \*\*\* in 1999.<sup>82</sup>

The domestic industry's declines in performance indicia during the period of investigation were attributable to lower prices, which caused sales revenues to decline notwithstanding that shipments and apparent consumption were increasing. As previously explained in the discussion on price effects, these lower prices were attributable to the significant price-depressing and -suppressing effects of the subject imports. We therefore conclude that the subject imports had a significant adverse impact on the domestic ammonium nitrate industry.

### III. CRITICAL CIRCUMSTANCES

In its final determination, Commerce made affirmative critical circumstances findings with respect to all subject imports.<sup>83</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 remedial effect of the antidumping duty order to be issued."<sup>84</sup> The SAA indicates that the Commission is to

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<sup>75</sup> Table III-3, CR at III-4, PR at III-3.

<sup>76</sup> Table VI-1, CR at VI-3, PR at VI-2.

<sup>77</sup> Table VI-2, CR at VI-4, PR at VI-3.

<sup>78</sup> Table VI-1, CR at VI-3, PR at VI-2.

<sup>79</sup> CR at III-1, PR at III-1.

<sup>80</sup> Tr. at 9-10 (Porvaznik).

<sup>81</sup> Table III-5, CR at III-6, PR at III-5.

<sup>82</sup> Table VI-5, CR at VI-11, PR at VI-5.

<sup>83</sup> See 65 Fed. Reg. at 42670.

<sup>84</sup> 19 U.S.C. § 1673d(b)(4)(A)(i).

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>85</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>86</sup>

Consistent with Commission practice, 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.<sup>87</sup> The record contains monthly official statistics from Commerce on subject import volume. Because sales of ammonium nitrate tend to be seasonal, we compared monthly subject import volumes for the post-petition period with subject import volumes for both the period immediately preceding the petition and the period from the prior year.<sup>88</sup> No matter what period of measurement is used, subject import volume was substantially lower in the post-petition period than in the pre-petition period.<sup>89</sup> The available information indicates that there was not a buildup of inventories during the post-petition period.<sup>90</sup>

Because the record indicates that there was no increase in subject imports from Russia subject to Commerce’s affirmative critical circumstances finding immediately following filing of the petition, nor was there any substantial increase in inventories of these imports, we conclude that these imports will not undermine the remedial effect of any antidumping duty order that may be issued with respect to unliquidated entries should the current suspension agreement between the United States and the Russian Federation be terminated. Accordingly, we determine that critical circumstances do not exist with respect to the subject imports.

## CONCLUSION

For the foregoing reasons, we have determined that the domestic ammonium nitrate industry is materially injured by reason of LTFV imports from Russia.

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<sup>85</sup> SAA at 877.

<sup>86</sup> 19 U.S.C. § 1673d(b)(4)(A)(ii).

<sup>87</sup> See, e.g., Certain Preserved Mushrooms from China, India, and Indonesia, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 at 24 (Feb. 1999).

<sup>88</sup> Compare Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 34 (Apr. 1997).

<sup>89</sup> CR at IV-3, PR at IV-1.

<sup>90</sup> Table VII-1, CR at VII-1, PR at VII-1.