Certain Stilbenic Optical Brightening Agents from China and Taiwan

Investigation Nos. 731-TA-1186-87 (Preliminary)

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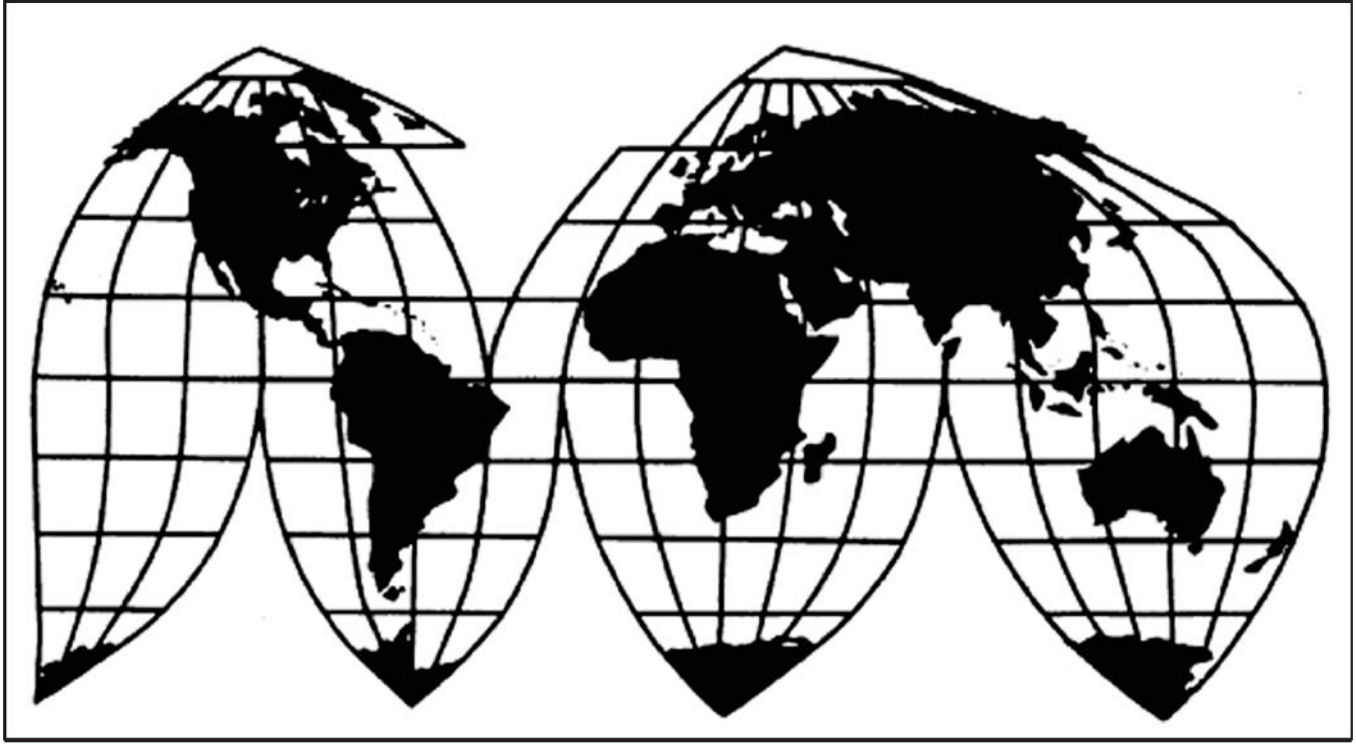
U.S. International Trade Commission



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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1186-87 (Preliminary)

CERTAIN STILBENIC OPTICAL BRIGHTENING AGENTS FROM CHINA AND TAIWAN

DETERMINATIONS

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Taiwan of certain stilbenic optical brightening agents, provided for in subheadings 3204.20.80, 2933.69.6050, 2921.59.40, and 2921.59.8090 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

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

BACKGROUND

On March 31, 2011, a petition was filed with the Commission and Commerce by Clariant Corp., Charlotte, NC, alleging that an industry in the United States is materially injured by reason of LTFV imports of certain stilbenic optical brightening agents from China and Taiwan. Accordingly, effective March 31, 2011, the Commission instituted antidumping duty investigation Nos. 731-TA-1186-87 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 7, 2011 (76 FR 19383). The conference was held in Washington, DC, on April 21, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain stilbenic optical brightening agents ("CSOBAs") from China and Taiwan that are allegedly sold in the United States at less than fair value ("LTFV").

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

II. BACKGROUND

The petition in these investigations was filed on March 31, 2011, by Clariant Corporation ("Petitioner" or "Clariant"), a U.S. producer of CSOBAs that accounts for the majority of domestic production of CSOBAs. Clariant participated in the staff conference and filed a postconference brief. A second U.S. producer of CSOBAs, BASF Corporation ("BASF"), also participated in the staff conference and it filed a postconference letter. The Fong Ming International Co., Ltd. and TFM North America, Inc. (collectively "Respondents" or "TFM"), the Taiwan producer/exporter and its U.S. importer that account for nearly all subject merchandise from Taiwan, participated in the staff conference and filed a postconference brief.

U.S. industry data in these investigations are based on the domestic producer questionnaire responses of three firms that accounted for 100 percent of U.S. production of CSOBAs during January 2008 through December 2010 – the period of investigation ("POI") covered by these preliminary phase investigations.[3] U.S. import data in the staff report are based on the responses to U.S. importer questionnaires of 13 companies that accounted for the majority of subject imports from China and Taiwan during the POI.[4] Foreign industry data are based on foreign producer questionnaire responses of three

[1] 19 U.S.C. § 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

[3] Confidential Staff Report ("CR") and Public Staff Report ("PR") at III-1.

[4] CR, PR at IV-1. Commerce statistics were not used because the relevant HTS reporting numbers are basket categories that include nonsubject merchandise. Id.

firms, *** from China accounting for an estimated *** percent of Chinese production, and *** from Taiwan accounting for an estimated *** percent of Taiwan production.[5] [6]

We note that, based on input from parties, questionnaire respondents were asked to report each piece of quantity data using two different bases – 1,000 dry pounds (100 percent active ingredient) and 1,000 pounds in solution. However, not all questionnaire respondents did so; some appear to have reported part of their data on a dry basis and part on a solution basis.[7] Therefore, while the data on the two bases should mirror each other, in many cases they do not. We rely on the dry basis data in these views unless otherwise indicated. However, the two data sets show generally similar trends, and use of the data on a solution basis would not have led to a different result. We invite suggestions from the parties on ways of collecting relevant data to avoid similar issues in any final phase investigations.

III. DOMESTIC LIKE PRODUCT

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[8] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Tariff Act"), defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[9] In turn, the Tariff 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 ... ."[10]

A. Scope Definition

The Department of Commerce ("Commerce") has defined the scope of the imported merchandise under investigation as follows:

> all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis [1, 3, 5-triazin-2-yl] amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are

[5] CR at VII-1, VII-6, PR at VII-1-VII-2.

[6] Chairman Okun notes that the statute authorizes the Commission to take adverse inferences but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. See 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties' suggested interpretations of the record evidence. Regardless of the level of participation, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." Uruguay Round Agreements Act Statement of Administrative Action, H.R. Rep. 103-316, vol. I at 869 (1994).

[7] See, e.g., CR, PR at IV-1 n.2.

[8] 19 U.S.C. § 1677(4)(A).

[9] 19 U.S.C. § 1677(4)(A).

[10] 19 U.S.C. § 1677(10).

> themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.
>
> Excluded from these investigations are all forms of 4,4'-bis [4-anilino-6-morpholino-1, 3, 5-triazin-2-yl] amino-2,2'-stilbenedisulfonic acid, $C_{40}H_{40}N_{12}O_8S_2$ ("Fluorescent Brightener 71"). These investigations cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.[11]

CSOBAs are organic chemicals primarily used for brightening paper products. Without brightening, many paper products have an aesthetically unappealing yellowish cast. When applied to paper, CSOBAs absorb ultraviolet light and emit blue light (a property also known as fluorescence), compensating for the yellowish cast and making the paper appear a brighter white. As a result of the fluorescent properties of these OBAs, they are also referred to as fluorescent whitening agents (or "FWAs").[12]

CSOBAs are built upon diaminostilbene disulfonic acid ("DAS"), a synthetic organic chemical. Attached to the DAS structure are two 1,3,5-trianzinyl rings; attached to each of the trianzinyl rings are a derivative of aniline and an additional chemical component, typically an amine. The derivative of aniline used can either be aniline itself; sulfanilic acid; or aniline disulfonic acid.[13]

CSOBAs are made in three main categories – "di," "tetra," and "hexa" – based on the number of sulfonate groups that the molecule contains, which is determined by the derivative of aniline used in the production process. The number of sulfonate groups on the molecule affect the solubility of the CSOBA in water and determine when the specific CSOBA is best applied in the paper making process.[14]

The di category contains two sulfonate groups and is produced using aniline. This category of CSOBA is usually applied to the pulp slurry before the paper web is formed. The tetra category contains four sulfonate groups and is produced using sulfanilic acid. Tetra CSOBAs are the most versatile of the CSOBAs. They can be added to the pulp slurry before the paper web is formed, in the size press, or in coating applications. The hexa category contains six sulfonate groups and is produced using aniline sulfanilic acid. Application of hexa CSOBAs tends to be limited to the surface coating operations.[15]

Within the United States, CSOBAs are shipped as aqueous solutions with the percentage of the active ingredient typically 20 percent for di CSOBAs, 23 percent for tetra CSOBAs, and 16 percent for hexa CSOBAs. CSOBAs can be shipped in bulk or nonbulk containers. Bulk deliveries are made in tank truck or rail cars. Non-bulk deliveries are in drums that can hold approximately 450 lbs. of material, or intermediate bulk containers that hold approximately 2,400 lbs.[16]

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[11] 76 Fed. Reg. 23554, 23559 (Apr. 27, 2011).

[12] See, e.g., CR at I-4, PR at I-3; Petition at 10.

[13] See, e.g., CR at I-4, PR at I-3-I-4.

[14] See, e.g., CR at I-5, PR at I-4.

[15] See, e.g., CR at I-5-I-6, PR at I-4.

[16] See, e.g., CR at I-6-I-7, PR at I-4-I-5.

B. Parties' Arguments

Petitioner. Clariant argues the Commission should find a single domestic like product consisting of all forms, states, concentrations, and compositions of triazinylaminostilbenes ("TASs") except Fluorescent Brightener 71 ("FB 71"). TASs, Clariant points out, may be grouped into three categories according to the number of sulfonate groups: "di" for two, "tetra" for four, and "hexa" for six sulfonate groups. Clariant argues that the di, tetra, and hexa categories of TASs constitute a single like product because of significant similarities in the products under the three categories in terms of each of the six factors the Commission traditionally considers in analyzing domestic like product.[17] Clariant argues that FB 71 is the exception, however, and is a distinct TAS product that should not be included in the single like product definition.[18] Clariant also argues that, under the Commission's semifinished products analysis, the single like product definition should include the intermediate products within the scope of investigation that are produced during the synthesis of the final OBA products.[19]

Respondents. Respondents do not argue against a single domestic like product that includes intermediate products. However, Respondents argue for a broader like product, stating that Petitioner's position is inconsistent with the domestic like product definition applied by the Commission in the 2003 investigations[20] of certain brighteners.[21] They further contend that the definition should not incorporate product usage and allege that this is precisely what Petitioner is doing by stating that CSOBAs are used in paper applications and that FB 71 is used in detergent applications. Respondents argue that stilbenic OBAs provide the same key attribute in all applications, namely adding brightness.[22]

C. Analysis

We address the following two domestic like product issues based on the record before us: whether, under the Commission's traditional six-factor test, CSOBAs should be defined as a single domestic like product consisting of all forms, states, concentrations, and compositions of final stilbenic OBA products corresponding to the scope; and whether, under a semifinished products analysis, intermediate stilbenic OBA products are part of the domestic like product. As discussed below, we agree with Clariant's proposed definition, and do not expand the domestic like product beyond the scope to include FB 71.

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[17] Revised Post-Conference Brief of Petitioner Clariant Corporation ("Pet. Postconf. Br.") at 4-7.

[18] Pet. Postconf. Br. at 8-11. Petitioner also argues that even if FB 71 is included as part of a single domestic like product, it would not impact the ultimate outcome that the domestic industry is suffering material injury by reason of the subject imports. Pet. Postconf. Br. at 11-12.

[19] Pet. Postconf. Br. at 7-8. These intermediate products are TASs with the 4 and/or 6 positions of the 1, 3, 5-triazine moieties occupied by chlorine atoms instead of by functional groups such as amino or alkoxy.

[20] See Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid Chemistry from China, Germany, and India. Inv. Nos. 701-TA-435 and 731-TA-1036-1038 (Preliminary), USITC Pub. 3608 (July 2003) ("2003 Certain DAS Chemistry Preliminary").

[21] Revised and Corrected Transcript of Staff Conference ("Tr.") at 128 (Mr. Koenig); Post-Conference Brief of Taiwan Respondents TFM ("Resp. Postconf. Br.") at 13. We note that every investigation is *sui generis* and that the Commission must make its findings anew such that a determination in one investigation does not mandate a similar determination in another investigation. See, e.g., Nucor Corp. v. United States, 318 F. Supp.2d 1207, 1247 (Ct. Int'l Trade 2004) ("It is a well-established proposition that the ITC's material injury determinations are sui generis; that is, the agency's findings and determinations are necessarily confined to a specific period of investigation with its attendant, peculiar set of circumstances.").

[22] Resp. Postconf. Br. at 13-15; CR at I-11, PR at I-7.

(1) Whether CSOBAs should be defined as a single domestic like product consisting of all forms, states, concentrations, and compositions of final stilbenic OBAs corresponding to the scope.

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.[23] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[24] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[25] Although the Commission must accept Commerce's determination as to the scope of the imported merchandise that is sold at LTFV,[26] the Commission determines what domestic product is like the imported articles Commerce has identified.[27] The Commission may, where appropriate, include domestic articles in the domestic like product in addition to those described in the scope.[28] In past investigations involving whether to expand the definition beyond the scope, the Commission has based its like product determination on the traditional six-factor test, comparing domestically produced products within the scope to those outside the scope.[29]

Physical characteristics and uses. CSOBAs all have the same general use – brightening paper products. CSOBAs in each of the three categories have the same basic molecular structure, but may be

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[23] See, e.g., Cleo Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); 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 the following: (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).

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

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

[26] See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), aff'd, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

[27] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 ("Commerce's {scope} finding does not control the Commission's {like product} determination."); Torrington, 747 F. Supp. at 748-52 (affirming the Commission's determination defining six like products in investigations where Commerce found five classes or kinds).

[28] See, e.g., Pure Magnesium from China and Israel, Invs. Nos. 701-TA-403 and 731-TA-895-96 (Final), USITC Pub. 3467 (Nov. 2001) at 8, n. 34; Torrington Co. v. United States, 747 F.Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) (holding that the Commission is not legally required to limit the domestic like product to the product advocated by the petitioner, co-extensive with the scope).

[29] See Superalloy Degassed Chromium, USITC Pub. 3768 at 7; Aluminum Plate from South Africa, USITC Pub 3734 at 7; Ironing Tables and Certain Parts Thereof from China, Inv. No. 731-TA-1047 (Final), USITC Pub. 3711 at 6-7 (Jul. 2004); Certain Wax/Resin Thermal Transfer Ribbons from France and Japan, Invs. Nos. 731-TA-1039-1040 (Final), USITC Pub. 3683 at 8 (Apr. 2004).

marketed in different forms, different states, different concentrations, and different compositions. The percentage of active ingredient in a marketed product may vary, even for active ingredients of the same molecular structure by the same manufacturer. The form, state, concentration, and composition of the final product confer subtle differences in properties, but no party has suggested that a clear dividing line exists amongst the in-scope products. Moreover, despite the subtle differences among the final OBA products, such as the di, tetra, and hexa categories that are loosely correlated with the stage of the papermaking process at which they are best introduced, all of these products are typically used to brighten paper and share other similar physical characteristics: all adhere effectively to paper; all fluoresce in the visible blue portion of the electromagnetic spectrum; and all are practically colorless once applied to paper.[30]

FB 71, on the other hand, appears to be distinct from these other OBA products. FB 71 has different physical characteristics, the most significant of which is its low solubility in water. As one witness explained at the staff conference, "FB-71 is typically not applied to paper, in part because the morpholino [group] results in a compound with low solubility in water," which is significant because "in the case of CSOBAs . . . solubility of the OBA in water is an important factor."[31] Given this low solubility, it is difficult to produce FB 71 in the solution state required by U.S. paper mills.[32]

Because of differing physical characteristics, FB 71 has a different end use as well. Whereas the in-scope products are typically used to brighten paper, FB 71 is used as a detergent brightener. The record evidence demonstrates that, although it is theoretically possible to use FB 71 to brighten paper, this is not done as a practical, commercial matter; nor are the other OBA products used in detergent applications.[33]

Interchangeability. The in-scope final products are generally interchangeable. They all function to brighten paper, and depending upon the product and application, more than one category may be used together for this purpose. Some categories work better than others in certain applications; for example, hexa is most commonly used with ColorLok technology. However, the record also shows that paper makers may be able to use different OBA products at different stages of the paper production process to achieve similar brightness goals.[34] No party has suggested that a dividing line exists amongst the in-scope products in terms of interchangeability.

There is no record evidence that FB 71 and the in-scope final products are interchangeable in any practical or commercial fashion.[35] While TFM pointed out instances in which different categories of CSOBAs are used interchangeably,[36] it did not describe any instances in which FB 71 is used instead of or in conjunction with CSOBAs.

Channels of Distribution. The in-scope OBA products have the same channels of distribution. They are overwhelmingly sold to paper manufacturers as the end-user, either directly by the OBA producers (the primary channel) or through distributors.[37] There is no evidence on the record of these investigations that FB 71 is sold through different channels in the marketplace.

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[30] See, e.g., CR at I-4-I-7, PR at I-3-I-5; Petition at 10-15.

[31] Tr. at 18, 59 (Mr. Dickson); see also Petition Exh. I-3 at D (Statement of Dr. Jackson).

[32] See, e.g., CR at I-6, PR at I-4.

[33] See, e.g., Tr. at 18 (Mr. Dickson), 69-70 (Mr. Dettlaff); Pet. Postconf. Br. Exh. 3 at ¶3 (Statement of Mr. Dettlaff), Exh. 5 at ¶4 (Statement of ***).

[34] Tr. at 111-112, 115 (Dr. Nelson).

[35] See, e.g., Tr. at 18 (Mr. Dickson), 69-70 (Mr. Dettlaff); Pet. Postconf. Br. Exh. 3 at ¶3 (Statement of Mr. Dettlaff), Exh. 5 at ¶4 (Statement of ***).

[36] See, e.g., Tr. at 111-112 (Dr. Nelson).

[37] CR, PR at II-1 & Tables II-1-II-2.

Customer and producer perceptions. The in-scope final OBA products are viewed similarly by producers and consumers. The record confirms that manufacturers' product literature and their websites group these final OBAs together.[38] Their testimony indicates that this is done in order to provide "customers with a full product line of brightening and coloring agents for paper."[39] No party has suggested that a dividing line exists amongst the in-scope OBA products in terms of this like product factor, and ***.[40]

Producers and customers appear to perceive the in-scope OBA products and FB 71 as different products. There is no evidence that producers market them together in their product literature or websites. Clariant does not even produce or offer FB 71 "because it is not sought after by U.S. papermakers."[41] Clariant also states that "papermakers do not view [FB] 71 as a viable alternative [to CSOBAs] in practice."[42] The website of the Chinese producer Hongda explicitly lists FB 71 as a detergent brightener.[43]

Manufacturing Facilities, Production Processes, and Employees. The record shows that the final OBA products are all produced through a sequence of three chemical reactions.[44] Introduction of different reactants at different stages of the production process results in different final OBA products, but the production of any of these final OBA products may be conducted at the same manufacturing facilities, by the same employees, employing the same basic processes.[45] ***, and Petitioner does not claim that this like product factor distinguishes FB 71 from the in-scope product.[46]

Price. The evidence in the record is that final OBA products are sold within a relatively narrow range of prices, whether through fixed-price, fixed-term contracts, or one-time contracts in the merchant market.[47] Petitioner argues that CSOBAs and FB 71 have been subject to different price trends. Petitioner attributes this to ***.[48] The only available data for comparison is per-unit revenues, which increased overall from 2008 to 2010 for domestically produced FB 71 (***), but fell for the in-scope final OBA products (***).[49]

Conclusion. The record demonstrates significant similarities for in-scope final OBA products with respect to each one of the six domestic like product factors. The products share physical characteristics and uses, are interchangeable, are sold in the same channels of distribution, are perceived

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[38] Petition Exh. I-5-I-6 (sample product literature from different domestic and foreign producers).

[39] Pet. Postconf. Br. Exh. 3 at ¶4 (Statement of Mr. Dettlaff).

[40] ***.

[41] Pet. Postconf. Br. Exh. 3 at ¶¶3-4 (Statement of Mr. Dettlaff).

[42] Pet. Postconf. Br. Exh. 3 at ¶¶3-4 (Statement of Mr. Dettlaff).

[43] Petition Exh. I-14.

[44] CSOBAs are typically produced in a three-step process. In the first step, cyanuric chloride reacts with DAS to produce the first intermediate in CSOBA production. (DAS is either purchased from other chemical companies, as in the case of Clariant and 3V, or produced by the CSOBA manufacturer, in the case of BASF. CR at I-8, PR at I-5.) In the second step, the first intermediate is reacted with a derivative of aniline, which replaces one of the remaining chlorine atoms on the 1,3,5-triazinyl group to form a second intermediate. In the third step, the second intermediate is reacted with a final chemical component, typically an amine, to confer desired chemical and physical properties to the CSOBA. The final chemical component replaces the remaining chlorine atom on each of the 1,3,5-triazinyl groups. See, e.g., CR at I-7, PR at I-5. An alternative production process to the main process described above is also possible in which the first and second steps are altered. See, e.g., CR at I-7-I-8, PR at I-6.

[45] See, e.g., CR at I-7-I-8, PR at I-5-I-6.

[46] CR at II-7, PR at II-6.

[47] See, e.g., Petition at 28; Tr. at 12 (Mr. Ellis).

[48] Pet. Postconf. Br. at 11.

[49] Pet. Postconf. Br. at 11; ***.

as similar by producers and customers, have common manufacturing facilities, production processes and production employees, and overlap in terms of price. The record does not indicate any clear dividing line between in-scope final OBA products, and no party has suggested that such a dividing line exists. The in-scope final OBA products, which have various forms, states, concentrations, and compositions, constitute a continuum without any clear dividing line.

The record further demonstrates that FB 71, which is excluded from the scope, should not be included in an expanded single domestic like product definition. FB 71 is significantly different from the in-scope final OBA products in terms of its physical characteristics and uses, degree of interchangeability, and perceptions of producers and customers. The available information regarding price also points to a different product, possibly the result of demand trends and competition factors that are distinct from those for the in-scope final OBA products. The information regarding manufacturing facilities/processes/employees and channels of distribution is limited and, on this record, FB 71 does not appear to be different than the in-scope final OBA products in terms of these two factors. However, these factors are significantly outweighed by the first three factors indicating a clear dividing line. The price factor also supports our conclusion not to expand the domestic like product definition to include FB 71, though this factor is not necessary to our determination.

TFM's arguments for a broader like product definition are unavailing. As noted, TFM claims that the like product definition in the 2003 Certain DAS Chemistry Preliminary governs here. This argument ignores the *sui generis* nature of Commission investigations, including the Commission's domestic like product determinations.[50] Moreover, the 2003 investigations involved a different and broader scope and a different record as to the domestic like product and other issues, and, therefore, there is no inconsistency between the two domestic like product definitions. In addition, the analysis we have performed takes into account each of the six factors the Commission traditionally considers in like product analysis and appropriately weighs physical characteristics and uses along with (and together with) the test's other factors. Therefore, the Commission's domestic like product determination is not, contrary to TFM's suggestion, based solely on the use of FB 71.

We therefore find a single domestic like product that covers all forms, states, concentrations, and compositions of final stilbenic OBA products except FB 71, that is, all final stilbenic OBA products co-extensive with the scope of investigation.

(2) Whether the intermediate products are part of a single domestic like product of stilbenic OBAs.

The scope of investigation includes all forms of the intermediate products that are produced during (a) the first step of the chemical synthesis when DAS is used in the first step, and (b) the second step of the chemical synthesis regardless of whether DAS is used in the first or second step.[51] Because intermediate and final OBA products are articles within the scope at different levels of processing, we refer to the semifinished products like product analysis to examine whether they should be in the same domestic like product.

Under the semifinished products analysis, in making its determination on whether to treat the semifinished and finished products as one like product or two, the Commission considers (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3)

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[50] See, e.g., Cleo Inc. v. United States, 501 F.3d 1291 (Fed. Cir. 2007).

[51] 76 Fed. Reg. at 23559 ("The certain stilbenic OBAs covered by this investigation include final OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final OBA products."); Petition at 8 & Figures 1, 2; see CR at I-7-I-8, PR at I-5-I-6 (describing the intermediate products and their synthesis).

differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the cost or value of the vertically differentiated articles; and (5) the significance and extent of the process used to transform the upstream into the downstream articles.[52]

As noted above, no party has argued against including the intermediate products in a single like product.

Whether Upstream Article Dedicated to Production of Downstream Article. The intermediate products are dedicated to the production of the final OBA products that are within the scope. They generally serve no other purpose.[53]

Independent Markets for Upstream and Downstream Articles. There is no separate retail or wholesale market for the intermediate OBA products. In fact, 100 percent of these intermediate products produced by the domestic industry is used in the production of final OBA products.[54]

Differences in Physical Characteristics and Functions of the Upstream and Downstream Articles. The intermediate products at issue are themselves triazinylaminostilbenes. Their central molecular structure is therefore the same as for the final OBA products at issue. As a result, the intermediate products also have the ability to adhere to paper and fluoresce in a visible blue portion of the electromagnetic spectrum. Replacement of the chlorine atoms on the intermediate products with various functional groups to produce final products adjusts the conditions under which these products may adhere to paper, but does not alter their principal characteristics.[55]

Differences in Cost or Value of the Vertically Differentiated Articles. There is a minimal difference in the cost and value between intermediate and final OBA products. The difference in cost is due to the additional cost of the functional groups that replace the chlorine atoms, and any processes such as clarification or filtration undertaken after completion of the chemical synthesis.[56]

Significance and Extent of Processes Used to Transform Upstream into Downstream Articles. The process used to transform intermediates into final OBA products are relatively straightforward chemical reactions that replace the chlorine atoms on the intermediate OBA with the chosen functional groups, followed by post-synthesis processes such as clarification or filtration.[57]

Conclusion. We find that the intermediate products within the scope are not a separate domestic like product from the in-scope final OBA products.

Accordingly, in these investigations, we define the like product as a single domestic like product that is co-extensive with the scope.

IV. DOMESTIC INDUSTRY

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

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[52] See, e.g., Outboard Engines from Japan, Inv. No. 731-TA-1069 (Final), USITC Pub. 3752 (Feb. 2005) at 6.

[53] Petition at 29; Tr. at 13 (Mr. Ellis).

[54] Petition at 29-30; Tr. at 13 (Mr. Ellis).

[55] Petition at 30; Tr. at 13 (Mr. Ellis).

[56] Petition at 30; Tr. at 13 (Mr. Ellis); CR at I-7-I-8, PR at I-5-I-6; CR, PR at II-1.

[57] Petition at 30; Tr. at 13 (Mr. Ellis), 58 (Mr. Dickson).

[58] 19 U.S.C. § 1677(4)(A).

A. Parties' Arguments

Clariant argues that the domestic industry consists of all U.S. producers of the domestic like product: Clariant, BASF, and 3V.[59] In Clariant's view, the domestic CSOBA industry does not include the third-party tollers and importers that convert CSOBA that is imported in powder state to liquid state.[60] Clariant also contends that the Commission should not exercise its discretion under the related party provision of the Act to exclude *** from the domestic industry producing CSOBAs.[61]

TFM makes no argument with respect to domestic industry.

B. Analysis

We address the following two domestic industry issues: whether or not converters – those firms that "let down" the imported dry product to solution – are domestic producers; and whether *** should be excluded from the domestic industry as a related party.

(1) Converters

To be included in the domestic industry, the Tariff Act requires that a company be a producer of a domestic like product in the United States.[62] When assessing the nature and extent of production-related activities associated with particular operations, the Commission usually considers the following:

(1) source and extent of the firm's capital investment;
(2) technical expertise involved in the production activities;
(3) value added to the product;
(4) employment levels;
(5) quantity, type and source of parts; and
(6) any other costs and activities directly leading to production of the like product.[63]

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation.

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[59] Pet. Postconf. Br. Exh. 1 at 9-10.

[60] Pet. Postconf. Br. Exh. 1 at 10-12.

[61] Pet. Postconf. Br. Exh. 1 at 12.

[62] 19 U.S.C. § 1677(4)(A).

[63] See, e.g., Lightweight Thermal Paper from China, Germany, and Korea, Inv. No. 701-TA-451 and 731-TA-1126 to 1128 (Prelim.), USITC Pub. 3964 at n.76 (Nov. 2007); Diamond Sawblades and Parts Thereof from China and Korea, Invs. Nos. 731-TA-1092 to 1093 (Final), USITC Pub. 3862 at 8-11 (Jul. 2006) (assemblers included in the industry); Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-68 (Final), USITC Pub. 3748 at 12-14 (Jan. 2005) (breading, marinating/saucing, and skewering not viewed as sufficient to constitute domestic production) (but washing, sorting, cooking, deheading, grading, removing the tail, packaging, machine peeling, deveining, and freezing all constituted domestic production); Greenhouse Tomatoes from Canada, Inv. No. 731-TA-925 (Final), USITC Pub. 3499 at 10-11 (Apr. 2002) (packers included in the industry along with growers); Honey from Argentina and China, Invs. Nos. 701-TA-402 and 731-TA-892-893 (Final), USITC Pub. 3470 (Nov. 2001) (honey packers included in the industry along with beekeepers); Pure Magnesium from China and Israel, Invs. Nos. 701-TA-403 and 731-TA-895-96 (Final), USITC Pub. 3467 at 9-11 (Nov. 2001) (grinding was sufficient production-related activity to constitute "production," although the Commission majority noted that the evidence was mixed).

CSOBA from Taiwan and China is shipped either as an aqueous solution ready for final use in paper making or as a powder that must be dissolved in water ("letdown")[64] before use. "Letdown" is done by an affiliate of the importer, a third-party tolling operation, or the final user.[65] Shipments in powder form are a relatively recent development in this market. The record indicates that the sole reason for powder imports is to reduce transportation costs.[66]

The converting process was described as follows at the staff conference. The converter, often a warehouse operation,

> uses a very simple stainless steel stirred tank with a stirrer in it and you put a certain amount of water in it and then the OBA would come in what we call bulk bags, which would be typically 500 kilograms.
>
> You put a certain amount of water in, being stirred, forklift operator comes up, opens up the bottom of the bulk bag, the material drops down into the water about 15 or 20 degrees centigrade, which is around room temperature, it's stirred for a period of time, tested for completion of solubility. They know what the required ratio is – it is given to them, essentially the product is ready.[67]

The same witness characterized the letdown process as "the absolute opposite of rocket science."[68] Another testified that it is "a very minor process, it's really the warehouse that's doing it, it's not much more than warehousing and stirring it up into water."[69]

The capital investment, expertise, and employment levels are minimal, and the key "part" in the activity – the powder CSOBA – is imported product. Conversion was also described as providing "very little value added."[70] In addition, according to data provided by ***, the cost of the letdown associated with its shipments of powder CSOBA ***.[71]

Conclusion. The activities performed by converters are minimal in general and do not amount to sufficient production-related activity to warrant treating the converters as producers of CSOBAs. Accordingly, we do not include converters in the domestic industry.

(2) Related Parties

Subsection 1677(4)(B) of the Tariff Act authorizes the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of

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[64] Tr. at 21 (Mr. Dickson).

[65] CR at I-6, PR at I-5.

[66] See, e.g., Tr. at 125 (Mr. Ellis).

[67] Tr. at 70-71 (Mr. Dickson) (noting also that a stabilizing agent may be added to the water).

[68] Tr. at 72.

[69] Tr. at 80 (Ms. Holec).

[70] Tr. at 72 (Mr. Dickson).

[71] CR at V-10 n.39, PR at V-10 n.39.

subject merchandise or which are themselves importers.[72] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation.[73]

*** imported subject merchandise during the POI. In 2008, *** imported *** lbs. of subject merchandise as measured dry (or *** lbs. measured as solution).[74] ***.[75] *** did not import any subject merchandise in 2009 or 2010.[76]

*** is the *** U.S. producer, accounting for *** percent of total U.S. production of CSOBA in 2010.[77] The ratio of its subject imports to domestic production in 2008 was *** percent (dry) or *** percent (solution).[78] *** ratio of operating income to net sales was *** the industry average in 2008 and also in 2009 and 2010, when it did not import any subject merchandise.[79] [80] [81] ***.[82]

Conclusion. The record shows that (1) *** imported a limited volume of subject merchandise and did so only in 2008, (2) *** primary interest is in domestic production rather than importation, (3) *** is the *** domestic producer, (4) *** does not appear to have benefitted from its imports, and (5) no

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[72] 19 U.S.C. § 1677(4)(B).

[73] The primary factors we have examined in deciding whether appropriate circumstances exist to exclude a related party are as follows: (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 producer 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 (Ct. Int'l Trade 1992), aff'd mem., 991 F.2d 809 (Fed. Cir. 1993). We have also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. These latter two considerations were cited as appropriate factors in Allied Mineral Products, Inc. v. United States, 28 CIT 1861, 1864 (2004) ("The most significant factor considered by the Commission in making the 'appropriate circumstances' determination is whether the domestic producer accrued a substantial benefit from its importation of the subject merchandise."); USEC, Inc. v. United States, 132 F. Supp. 2d 1, 12 (Ct. Int'l Trade 2001) ("the provision's purpose is to exclude from the industry headcount domestic producers substantially benefitting from their relationships with foreign exporters."), aff'd, 34 Fed. Appx. 725 (Fed. Cir. April 22, 2002); S. Rep. No. 249, 96th Cong. 1st Sess. at 83 (1979) ("where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry").

[74] CR, PR at Table III-9.

[75] CR at III-9, PR at III-3.

[76] CR, PR at Table III-9.

[77] CR, PR at Table III-1.

[78] CR, PR at Table III-9.

[79] CR, PR at Table VI-3.

[80] Consistent with her practice in past investigations and reviews, Commissioner Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the domestic like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation.

[81] For purposes of these preliminary investigations, Commissioner Pinkert does not rely upon the related party's financial performance as a factor in determining whether there are appropriate circumstances to exclude them from the domestic industry and relies instead on other information relevant to this issue. The present record is not sufficient to link the related party's profitability on U.S. operations to any specific benefit it derives from importing or from its relationships to foreign producers. See Allied Mineral Products, 28 CIT at 1865-67.

[82] ***.

party has argued that it should be excluded. We therefore find that appropriate circumstances do not exist for the exclusion of *** from the domestic industry as a related party.

Accordingly, we define the domestic industry as all U.S. producers of the domestic like product, namely Clariant, BASF, and 3V.

V. CUMULATION[83]

A. Background

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.[84] In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
(2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
(4) whether the subject imports are simultaneously present in the market.[85] [86]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject

[83] Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations. Based on the importer questionnaire data, in 2010 subject imports from China represented 15.6 percent and 39.6 percent of total imports of CSOBA as measured by quantity on dry and solution bases, respectively. CR, PR at Tables IV-2 & IV-3. In 2010 subject imports from Taiwan represented 72.7 percent and 31.6 percent of total imports of CSOBA, respectively, by the same measures. CR, PR at Tables IV-2 & IV-3. Because subject imports from China and Taiwan were well-above the statutory negligibility threshold, we find that subject imports are not negligible under 19 U.S.C. § 1677(24).

[84] 19 U.S.C. § 1677(7)(G)(i).

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

[86] Commissioner Lane notes with respect to the first factor that her analysis does not require such similarity of products that a perfectly symmetrical fungibility is required. See Separate Views of Commissioner Charlotte R. Lane, Certain Lightweight Thermal Paper from China, Germany, and Korea, Inv. Nos. 701-TA-451 and 731-TA-1126-1128 (Preliminary), USITC Pub. 3964 (Nov. 2007).

imports compete with each other and with the domestic like product.[87] Only a "reasonable overlap" of competition is required.[88]

B. Parties' Arguments

Petitioner argues that the Commission should cumulate subject imports from Taiwan and China because "more than" a reasonable overlap of competition exists between and among subject imports from the subject countries and the domestic like product, based on the Commission's four factors.[89] Respondents contend that subject imports from Taiwan are not a source of pricing competition for the domestic industry and that CSOBAs from China and Taiwan are not competing against each other because the Taiwan product is superior to both Chinese product and domestically produced CSOBAs. Therefore, Respondents argue, the Commission should not cumulate subject imports from Taiwan and China.[90]

C. Analysis

The statutory threshold for cumulation is satisfied in these investigations because the petitions concerning subject imports from China and Taiwan were filed on the same day, March 31, 2011. None of the statutory exceptions to cumulation applies. As discussed below, we further find a reasonable overlap of competition between subject imports from Taiwan and China, and between subject imports from each subject country and the domestic like product.

Fungibility. The data collected indicate that CSOBAs produced domestically and those imported from China and Taiwan during January 2008-December 2010 are at least moderately substitutable.[91] All of the responding U.S. producers reported that CSOBAs produced in the United States and imported from China and Taiwan were "always" or "frequently" interchangeable.[92] With one exception, all of the responding U.S. importers reported that CSOBAs produced in the United States and imported from China and Taiwan were "always" interchangeable.[93] The only exception was ***, which indicated that these sources of CSOBA were "sometimes" interchangeable,[94] and which has based ***.[95]

The domestic industry has vigorously disputed that any quality differences exist, as discussed below in our injury analysis, and TFM's argument against cumulation is contradicted by the uniform reports of all other responding U.S. importers that CSOBA products, whether sourced from the U.S.,

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

[88] The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 848 (1994) ("SAA") expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." SAA at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd, 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[89] Pet. Postconf. Br. at 12-15.

[90] Resp. Postconf. Br. at 15.

[91] See CR at II-20, PR at II-15.

[92] CR, PR at Table II-3.

[93] CR, PR at Table II-3; CR at II-24-II-25, PR at II-18-II-19.

[94] CR at II-24-II-25, PR at II-18-II-19.

[95] Resp. Postconf. Br. at 15.

China, or Taiwan, are "always" interchangeable.[96] We therefore find that domestically produced CSOBAs and subject imports from Taiwan and China are sufficiently fungible to demonstrate a reasonable overlap of competition under the first factor of our analysis.

Geographic overlap. CSOBAs produced in the United States are sold nationwide.[97] Imports of CSOBAs from China principally entered the United States through Customs districts in the East and West, and imports of CSOBAs from Taiwan principally entered through Customs districts in the South, West, and Midwest. However, while imports of CSOBAs from the subject countries may enter select Customs districts, these products are then generally sold nationwide.[98]

Channels of distribution. The *** of U.S. shipments of CSOBAs, whether domestically produced product or subject imports from Taiwan or China, was to end-users.[99]

Simultaneous market presence. The data indicate that U.S.-produced CSOBAs in all three categories (di, tetra, and hexa) have been present and sold to varying degrees in the U.S. market in each of the years in the 2008-2010 period.[100]

Conclusion. Based on these factors, we conclude that there is a reasonable overlap of competition between and among subject imports and the domestic like product and, therefore, we cumulatively assess the volume and effect of subject imports from Taiwan and China for purposes of determining whether there is a reasonable indication of material injury by reason of subject imports.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT MERCHANDISE FROM CHINA AND TAIWAN

A. Legal Standard

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.[101] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[102] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[103] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[104] No single factor is

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

[97] CR at IV-14, PR at IV-3.

[98] CR at IV-14, PR at IV-3; see also CR, PR at II-4.

[99] CR, PR at Tables II-1-II-2.

[100] See, e.g., CR at IV-5, PR at IV-2. See also Pet. Postconf. Br. Exh. 9 (data on subject imports broken out by month; showing that subject imports were arriving and being sold in the United States in almost every month of the POI).

[101] 19 U.S.C. §§ 1671b(a), 1673b(a).

[102] 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).

[103] 19 U.S.C. § 1677(7)(A).

[104] 19 U.S.C. § 1677(7)(C)(iii).

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."[105]

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is "materially injured by reason of" unfairly traded imports,[106] it does not define the phrase "by reason of," indicating that this aspect of the injury analysis is left to the Commission's reasonable exercise of its discretion.[107] In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the "by reason of" standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.[108]

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.[109] In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.[110] Nor does the

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[105] 19 U.S.C. § 1677(7)(C)(iii).

[106] 19 U.S.C. §§ 1671b(a), 1673b(a).

[107] Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) ("{T}he statute does not 'compel the commissioners' to employ {a particular methodology}."), aff'g 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996).

[108] The Federal Circuit, in addressing the causation standard of the statute, has observed that "{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement." Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was re-affirmed in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), in which the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that "this court requires evidence in the record 'to show that the harm occurred "by reason of" the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.'" See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

[109] Statement of Administrative Action ("SAA") on Uruguay Round Agreements Act ("URAA"), H.R. Rep. 103-316, Vol. I at 851-52 (1994) ("{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."); S. Rep. 96-249 at 75 (1979) (the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."); H.R. Rep. 96-317 at 47 (1979) ("in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;" those factors include "the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry"); accord Mittal Steel, 542 F.3d at 877.

[110] SAA at 851-52 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports."); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int'l Trade 2002) ("{t}he Commission is not required to isolate the effects of subject

"by reason of" standard require that unfairly traded imports be the "principal" cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.[111] It is clear that the existence of injury caused by other factors does not compel a negative determination.[112]

Assessment of whether material injury to the domestic industry is "by reason of" subject imports "does not require the Commission to address the causation issue in any particular way" as long as "the injury to the domestic industry can reasonably be attributed to the subject imports" and the Commission "ensure{s} that it is not attributing injury from other sources to the subject imports."[113] [114] Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed "rigid adherence to a specific formula."[115]

The Federal Circuit's decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases in which the relevant "other factor" was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit's guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject

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imports from other factors contributing to injury" or make "bright-line distinctions" between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that "{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an 'other causal factor,' then there is nothing to further examine regarding attribution to injury"), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute "does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.").

[111] S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

[112] See Nippon Steel Corp., 345 F.3d at 1381 ("an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the 'dumping' need not be the sole or principal cause of injury.").

[113] Mittal Steel, 542 F.3d at 877-78; see also id. at 873 ("While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured 'by reason of' subject imports, the Commission is not required to follow a single methodology for making that determination ... . {and has} broad discretion with respect to its choice of methodology.") citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

[114] Commissioner Pinkert does not join this paragraph or the following three paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of nonsubject imports, albeit without reliance on presumptions or rigid formulas. Mittal explains as follows:

> What Bratsk held is that "where commodity products are at issue and fairly traded, price-competitive, nonsubject imports are in the market," the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether nonsubject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

[115] Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 ("Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was 'by reason' of subject imports.").

imports.[116] The additional "replacement/benefit" test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission's interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have "evidence in the record 'to show that the harm occurred 'by reason of' the LTFV imports,'" and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.[117] Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.[118] [119]

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.[120]

B. Conditions of Competition and the Business Cycle

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

(1) Demand Conditions

U.S. demand for CSOBAs is affected by changes in overall U.S. economic activity. CSOBA demand is derived from demand in sectors in which it is used, largely the paper-producing sector.[121] The decline and weak recovery of the general economy during the POI have reduced CSOBA demand.[122] Of

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[116] Mittal Steel, 542 F.3d at 875-79.

[117] Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission's alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

[118] Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

[119] To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

[120] Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

[121] CR, PR at II-1; CR at II-14, PR at II-10.

[122] CR at II-14, PR at II-10.

12 responding firms (domestic producers and U.S. importers), five indicated that demand had decreased since the start of the POI, five indicated that it had fluctuated, and two reported no change.[123]

*** and *** generally agreed that the trend for overall CSOBA demand during the POI was "at the very worst flat or slightly above because of brightness increases."[124] *** also indicated that it generally agreed with *** that, while demand for newsprint has declined with the advent of e-reading devices, demand for printed writing paper and coated paper have held their own. Moreover, use of CSOBAs in paper production has increased due to new standards for paper brightness, new paper technologies such as ColorLok, and the increased use of recycled fibers in paper production, all of which require more CSOBAs per free sheet of paper.[125]

Demand for CSOBAs, as measured by quantity (on a dry basis) of apparent U.S. consumption, decreased by *** percent from 2008 to 2009, then increased by *** percent in 2010, ending at *** percent below the 2008 level.[126] We will explore demand conditions further in any final phase investigations.

(2) Supply Conditions

As noted above, three firms accounted for all of the domestic production of CSOBAs – Clariant, BASF, and 3V. ***.[127] In 2010, Clariant, BASF, and 3V accounted for, respectively, *** percent, *** percent, and *** percent of total domestic production of CSOBAs.[128]

The domestic industry's share of apparent U.S. consumption declined throughout the POI, from *** percent in 2008 to *** percent in 2009 and *** percent in 2010.[129] The market share for subject imports from China was *** percent in 2008, *** percent in 2009, and *** percent in 2010.[130] The market share for subject imports from Taiwan rose from *** percent in 2008 to *** percent in 2009 and *** percent in 2010.[131] Nonsubject imports, on the other hand, were imported in only limited quantities.[132] Total nonsubject imports' market share was *** percent in 2008, *** percent in 2009, and *** percent in 2010.[133]

*** agreed that there was a DAS supply disruption during mid-year 2008 stemming from the Beijing Olympic Games that summer.[134] China is the main supplier of this key CSOBA input and

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[123] CR at II-17-II-18, PR at II-12-II-13.

[124] CR at II-17 n.37, PR at II-13 n.37.

[125] CR at II-17-II-18 n.31, PR at II-13 n.37.

[126] CR at II-14, PR at II-10; CR, PR at Tables IV-13, C-1. Apparent consumption on a solution basis fell by *** percent in 2009, then rose by *** percent in 2010, ending at *** percent above the 2008 level. CR at Tables IV-14, C-2.

[127] CR at III-2, PR at III-1.

[128] CR, PR at Table III-1.

[129] CR, PR at Table IV-15. On a solution basis, the domestic industry's share was*** in 2008, *** percent in 2009, and *** percent) in 2010. CR, PR at Table IV-16.

[130] CR, PR at Table IV-15. On a solution basis, the market share for subject imports from China was *** percent in 2008, *** percent in 2009, and *** percent in 2010. CR, PR at Table IV-16.

[131] CR, PR at Table IV-15. On a solution-measurement basis, the market share for subject imports from Taiwan were *** in 2008, *** percent in 2009, and *** percent in 2010. CR, PR at Table IV-16.

[132] Nonsubject import sources include Canada, India, Indonesia, Italy, and the United Kingdom. CR at II-13, PR at II-9.

[133] CR, PR at Table IV-15. On a solution basis, nonsubject imports' market share was *** percent in 2008, *** percent in 2009, and *** percent in 2010. CR, PR at Table IV-16.

[134] See, e.g., CR at II-21, PR at II-15.

reportedly ordered the stoppage of certain manufacturing activities that included DAS production during the run-up to the 2008 Summer Games.[135] *** disagreed, however, on the impact, if any, that this input shortage had on the supply or perception of supply of CSOBAs to the U.S. market.[136] All three U.S. producers reported that there were no supply disruptions for U.S.-produced CSOBAs.[137] *** specifically asserted that shortages of DAS in 2008 did not result in shortages of CSOBAs in the United States ***, and further stated that *** during the POI and that *** during this period.[138] TFM, on the other hand, asserted that the global DAS shortage led to a serious CSOBA shortage in the United States, and that this shortage spurred U.S. paper companies into more global sourcing of their CSOBAs.[139] We will explore these issues further in any final phase investigations, including the impact, if any, the temporary DAS shortage had on domestic CSOBA supply and price and the role, if any, it played in U.S. purchasers' sourcing decisions at the time following any real or perceived supply disruption.

(3) Substitutability

The degree of substitutability between CSOBAs produced domestically and those imported from China and Taiwan depends upon such factors as conditions of sales, purchaser supply requirements, and product differentiation. Product differentiation, in turn, depends on factors such as the range of products, quality, availability, reliability of supply, product services, and the market perception of these factors.[140]

Based on the information reported in these investigations, we find at least a moderate degree of substitutability regardless of the source.[141] Nine of 10 responding U.S. producers and importers reported that domestically produced CSOBAs and those imported from China and Taiwan and nonsubject countries were "always" or "frequently" interchangeable.[142] *** lone voice that these sources of CSOBA supply were only "sometimes" interchangeable is outweighed on this record.

We further find that price is an important consideration in CSOBA purchasing decisions in the U.S. market.[143] Responding U.S. producers reported that differences in non-price factors among CSOBAs produced in the United States and imported from China and Taiwan were "never" or were only "sometimes" significant in sales of the domestic product and the subject imports from both subject countries.[144] The U.S. importers' responses were more varied. Those responses were almost equally in the "always," "frequently," "sometimes," or "never" significant categories.[145] The evidence in this record therefore is consistent with price being an important – though not exclusive – consideration in U.S. purchasers' sourcing decisions depending upon the circumstances discussed above surrounding the sale.

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[135] See, e.g., Tr. at 37 (Mr. Dettlaff).

[136] DAS accounted for approximately *** percent of U.S. producers' total cost of goods sold during the POI and its price as an input appears to have spiked in mid-2008, likely reflecting shortages or a perception of shortages for a period. CR at V-1-V-2 & n.7, PR at V-I & n.7; CR, PR at Fig. V-1.

[137] CR at II-8, PR at II-6.

[138] CR at II-21, PR at II-15.

[139] CR at II-21, PR at II-15.

[140] CR at II-20, PR at II-15.

[141] See, e.g., CR at II-20-II-26, PR at II-15-II-19.

[142] CR at II-23-II-24, PR at II-17-II-18; CR, PR at Table II-3.

[143] See, e.g., CR at II-20-II-26, PR at II-15-II-19.

[144] CR, PR at Table II-4.

[145] CR, PR at Table II-4; CR at II-25, PR at II-18.

TFM argued that its CSOBAs enjoy a significant quality advantage over domestically produced CSOBAs, particularly as it relates to the purity of product and technical services that accompany it.[146] Clariant countered that CSOBAs are essentially a commodity product because all major CSOBA producers competing in the market must meet minimum standards for these products to function in paper manufacturing equipment.[147] Clariant claimed that its own analyses reveal comparable purity percentages amongst the products and, in any event, that concentration and effectiveness – not purity beyond a certain threshold – are the most important measures is assessing CSOBA quality and further demonstrate a lack of product quality differences.[148] Clariant also responded that domestic producers provide at least comparable levels of technical services to their customers, that ***, and that it is not aware of a single customer suggesting that TFM provides superior service.[149] We will examine further in any final phase investigations the issue of quality differences between domestically produced CSOBAs and subject imports and the role that price and non-price factors play in purchasers' buying decisions in the U.S. CSOBA market.

C. Volume of Cumulated Subject Imports from China and Taiwan

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."[150]

The volume of cumulated subject imports increased dramatically over the POI, in absolute and relative terms. Subject imports increased 67 percent between 2008 and 2009, from *** pounds in 2008 to *** pounds in 2009, and rose an additional 63 percent from 2009 to 2010, ending at *** pounds in 2010.[151] The total increase in cumulated subject import volume in absolute terms during 2008-10 was 236 percent.[152]

Cumulated subject imports consistently increased their share of apparent U.S. consumption during the POI, whether consumption was falling (between 2008 and 2009) or rebounding (between 2009 and 2010).[153] Cumulated subject imports' market share increased *** percentage points in a period of declining consumption, from *** percent in 2008 to *** percent in 2009, and captured an additional *** percentage points in 2010, ending the period at *** percent of apparent U.S. consumption when the market was rebounding from its 2009 consumption low for the period.[154]

The bulk of cumulated subject imports' increase in market penetration from 2008 to 2010 came at the direct expense of the domestic industry. During that period, while cumulated subject imports' share of apparent U.S. consumption increased overall by *** percentage points, the domestic industry's share

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[146] See, e.g., Resp. Postconf. Br. at 6-9; Tr. Exh. 2.

[147] See, e.g., Pet. Postconf. Br. at 16.

[148] See, e.g., Pet. Postconf. Br. at 16-19, 35-37 & Exhs. 3-4.

[149] See, e.g., Pet. Postconf. Br. at 37-39.

[150] 19 U.S.C. § 1677(7)(C)(i).

[151] CR, PR at Table IV-2.

[152] CR, PR at Table IV-2.

[153] CR, PR at Table C-1.

[154] CR, PR at Table C-1. The trends were similar on a solution basis, with cumulated subject import market share of *** percent in 2008, *** percent in 2009, and *** percent in 2010. CR, PR at Table C-2.

declined by *** percentage points.[155] Nonsubject imports' share of U.S. consumption declined overall by *** percentage points, from *** percent in 2008 to *** percent in 2010.[156]

The volume of cumulated subject imports also increased substantially relative to the domestic industry's production. The ratio of cumulated subject imports to domestic production increased from *** percent in 2008 to *** percent in 2009 and *** percent in 2010.[157]

Based on the data collected in these preliminary phase investigations, we conclude that the volume of cumulated subject imports and the increase in that volume during the POI are significant both in absolute terms and relative to consumption and production in the United States.

D. Price Effects of the Cumulated Subject Imports from China and Taiwan

> Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[158]

Pricing of CSOBAs can fluctuate based on demand factors, such as overall U.S. economic activity and sectoral demand fluctuations, particularly in paper production. Other factors affecting prices include raw material costs, product specifications, shipping costs, and shipment size.[159]

As addressed above in conditions of competition, the record in these preliminary phase investigations indicates that there is at least a moderate degree of substitutability between subject imports and the domestic like product and that price is an important consideration in purchasing decisions.[160]

The Commission collected pricing data on two CSOBA products, Fluorescent Brightener 220 in solution in bulk (product 1) and non-bulk (product 2) packaging.[161] *** U.S. producers (***), two U.S. importers of CSOBAs from China (***), and one U.S. importer of CSOBAs from Taiwan (***) reported price information, though not necessarily for all products or periods.[162] Prices were requested on both a delivered and an f.o.b. basis because suppliers generally sell on a delivered price basis. However, substantial U.S. freight costs indicate that f.o.b. prices are the better basis upon which to make price comparisons, and we have relied primarily on those prices.[163]

U.S. producers reported pricing data that accounted for *** percent of their total reported U.S. commercial shipments over the POI.[164] The responding U.S. importers reported pricing data that

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[155] CR, PR at Table C-1.

[156] CR, PR at Table C-1.

[157] CR, PR at Table IV-2.

[158] 19 U.S.C. § 1677(7)(C)(ii).

[159] CR, PR at V-1.

[160] See, e.g., CR at II-20-II-26, PR at II-15-II-19; CR, PR at Tables II-3-II-4. As noted in conditions of competition, we will explore further in any final phase investigations substitutability issues, including the role of non-price factors in purchasing decisions.

[161] CR at V-8, PR at V-5.

[162] CR at V-9, PR at V-5.

[163] CR at V-8 & n.33, PR at V-5 & n.33.

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

accounted for *** percent of total reported U.S. commercial shipments of subject imports from China[165] and *** percent of subject imports from Taiwan.[166] The quantities of domestic product and subject imports were typically *** for sales in bulk packaging (product 1) than sales in non-bulk packaging (product 2). Prices of the bulk sales were typically *** than the non-bulk sales.[167]

A total of *** quarterly price comparisons on a net f.o.b. price basis were possible between the domestic pricing products and those imported from China. The imported Chinese products undersold the domestic product in *** comparisons and oversold the domestic product in ***.[168] Underselling by subject imports from China was therefore demonstrated in *** percent of available quarterly comparisons, and the underselling margins ranged from *** percent to *** percent.[169] We note that the quarters in which there was underselling involved 9.6 percent of the total volume of subject imports from China reported for the pricing comparisons; the quarters in which there was overselling involved the remainder, 90.4 percent.[170]

A total of *** quarterly price comparisons on a net f.o.b. price basis were possible between the domestic pricing products and those imported from Taiwan. The Taiwan products imported as solution undersold the domestic product in *** comparisons and oversold the domestic product in ***.[171] The Taiwan products imported in dry form (and sold as solution) undersold the domestic product in *** comparisons and oversold the domestic product in ***.[172] Underselling by subject imports from Taiwan was therefore demonstrated in a total of *** percent of available comparisons, and the underselling margins ranged from *** percent (reconstituted imports in dry state) and *** percent (solution).[173] We note that the quarters in which there was underselling involved 29.3 percent of the total volume of subject imports from Taiwan reported for the pricing comparisons; the quarters in which there was overselling involved the remainder, 70.7 percent.[174]

Based on these data, which show mixed underselling and overselling, and predominant overselling when weighed by volume of imports, we do not find for purposes of the preliminary phase of these investigations that there has been significant underselling of the domestic like product by subject imports from China and Taiwan.

We have also considered movements in the prices of products 1 and 2 over the POI. Price trends of the domestic products and subject imports appear to be influenced, at least partially, by price fluctuations of raw materials, particularly price increases for DAS that peaked in mid-year 2008.[175]

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[165] CR at V-9, PR at V-6. We note that the *** for subject import pricing from China, ***, did not report comparable quantities of its delivered and U.S. f.o.b. price data. ***. CR at V-9 & n.36, PR at V-6 & n.36. Nevertheless, we have used *** pricing data as the best information available on this record.

[166] CR at V-10, PR at V-6. We note that *** reported price data for ***. CR at V-9, PR at V-6. All sales quantities with respect to product from Taiwan were reported in pounds of solution. CR at V-10 n.39, PR at V-6 n.39.

[167] CR at V-10-V-11, PR at V-6; CR, PR at Tables V-1-V-2.

[168] CR at V-20, PR at V-8; CR, PR at Tables V-1-V-2.

[169] CR, PR at Table V-4.

[170] See CR, PR at Table V-4.

[171] CR at V-20, PR at V-8; CR, PR at Table V-2.

[172] CR at V-20, PR at V-8; CR, PR at Table V-2.

[173] CR, PR at Table V-5.

[174] See CR, PR at Table V-5.

[175] CR at V-18, PR at V-7.

Quarterly prices of the domestic products ***.[176] Prices of the domestic products ended the POI ***.[177] Given these trends in the reported domestic prices, for purposes of these preliminary phase investigation we do not find evidence of significant price depression.[178]

Nor do we find evidence of significant price suppression on this record. The unit value of the cost of goods sold ("COGS") for the domestic producers fell from 2008 to 2010.[179] The ratio of COGS to net sales increased between 2008 and 2009 but declined in 2010 to a level *** higher than that in 2008.[180] On a per-unit basis, raw material costs fell from 2008 to 2010, while as a ratio to sales, such costs fell from 2008 to 2009 and were flat between 2009 and 2010.[181] Based on these data, we do not find evidence of significant price suppression for purposes of these preliminary phase investigations.

Clariant has stated that it lost numerous sales and millions of dollars in revenue due to underselling by Taiwan and Chinese producers in the U.S. market.[182] Indeed, *** claim they have lost sales and revenues to low-priced subject imports during the POI.[183] In sum, there were 75 lost sales allegations totaling $60.9 million and involving more than 104.6 million pounds of CSOBAs, and 22 lost revenue allegations totaling $2.2 million and involving more than 59.2 million pounds of CSOBAs.[184]

***. Staff received responses for 50 lost sales allegations.[185] Responding purchasers agreed with 7 lost sales allegations involving 12.5 million pounds of CSOBAs, and disagreed with 36 of the allegations, which involved 50.1 million pounds of CSOBAs. The allegations confirmed by purchasers in the preliminary phase of these investigations totaled more than $7.6 million in lost sales to lower priced subject imports.[186]

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[176] CR, PR at Tables V-1-V-2 & Figs. V-2-V-3.

[177] CR, PR at Tables V-1-V-2 & Figs. V-2-V-3.

[178] Commissioner Pinkert finds evidence of price depression. With respect to Product 1, between October 2008 and June 2009, the subject imports in dry form (sold in solution) from Taiwan consistently undersold the domestic product while more than doubling in volume. This appears to have caused domestic prices to drop significantly. CR, PR at Table V-1. With respect to Product 2, between October 2008 and June 2010, the subject imports in dry form (sold in solution) from Taiwan also consistently undersold the domestic product, while fluctuating but increasing in volume. This also appears to have weighed on domestic prices. CR, PR at Table V-2.

[179] The average unit value of COGS (based on sales of CSOBA as measured in dry form) declined from $*** in 2008 to $*** in 2010. CR, PR at Tables VI-1 & VI-2 (showing same trends based on sales of CSOBA as measured in solution).

[180] The ratio of COGS to net sales (as measured in dry form) was *** percent in 2008, *** percent in 2009, and *** percent in 2010. CR, PR at Tables VI-1 & VI-2 (showing same trends based on sales of CSOBA as measured in solution).

[181] Raw material unit prices (based on sales of CSOBA as measured in dry form) were $*** in 2008, $*** in 2009, and $*** in 2010. CR at Tables VI-1 & VI-2 (same trends based on sales of CSOBAs as measured in solution). Raw material prices as a ratio to sales (as measured in dry form) were *** percent in 2008 and *** percent in 2009 and 2010. CR, PR at Tables VI-1 & VI-2 (same trends based on sales of CSOBAs as measured in solution).

[182] See, e.g., Tr. at 36-37 (Mr. Dettlaff). See also BASF Postconf. Letter (stating that BASF "has suffered material injury, including lost sales and revenues, based upon low-priced competing offers by Taiwan[] and Chinese producers, including TFM.").

[183] In the petition, *** provided specific allegations of lost revenues and lost sales to subject imports. CR at V-23, PR at V-9. In addition, *** provided a total of five lost revenue allegations and six lost sales allegations with respect to low-priced subject imports during the POI, but it did not provide contact information. CR at V-23, PR at V-9.

[184] CR at V-23, PR at V-9.

[185] There were no responses, confirming or denying, the lost revenue allegations.

[186] See CR at V-23-V-31, PR at V-9-V-10; CR, PR at Table V-7.

Petitioner has also alleged that, in the face of price competition from subject imports, it has been unable to implement price increases even to cover temporary spikes in raw material costs, most importantly during the middle of 2010, and that it remains unable to implement prices increases.[187] Notwithstanding the lack of questionnaire data evidencing any significant cost/price squeeze, reports in industry publications are consistent with these characterizations of import competition and its impact on domestic producers' pricing experiences.[188]

In sum, the data in this record on price are mixed and, for the above reasons, we determine that there is an insufficient evidentiary basis for finding significant adverse price effects on domestic products for purposes of these preliminary investigations. We will seek further information on price effects of the subject imports in any final phase investigations.

E. Impact of the Cumulated Subject Imports from China and Taiwan[189]

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."[190] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[191]

Domestic industry performance indicators declined, overall, between 2008 and 2010, demonstrating an industry in a weakened state notwithstanding recently rebounding demand. Production declined overall, falling from *** pounds in 2008 to *** pounds in 2009, then rising to *** pounds in 2010, for an overall decline of *** percent.[192] U.S. producers did not add to production capacity during the POI; therefore, capacity utilization followed the same trend as production. Capacity utilization fell from *** percent in 2008 to *** percent in 2009 before increasing *** to *** percent in 2010, for an overall decline of *** percentage points.[193]

Domestic producers' U.S. shipments declined from *** pounds in 2008 to *** pounds in 2009, then increased *** to *** pounds in 2010, for an overall drop of *** percent.[194] The *** pound overall decline in quantity of U.S. shipments from 2008 to 2010 was more than double the *** pound decline in

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[187] See, e.g., Petition at 46.

[188] See, e.g., Petition Exh. I-11 at 12, 14.

[189] In its notice initiating antidumping duty investigations on CSOBAs from China and Taiwan, Commerce reported estimated dumping margins ranging from 80.64 percent to 203.16 percent on subject merchandise from China, and from 61.79 percent to 109.45 percent on subject merchandise from Taiwan. 76 Fed. Reg. at 23558.

[190] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.").

[191] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[192] CR, PR at Table C-1.

[193] CR, PR at Table C-1.

[194] CR, PR at Table C-1. With U.S. shipments constituting the vast majority of the domestic industry's shipments, an increase in export shipments from *** pounds in 2008 to *** pounds in 2010 did not alter the overall downward trend in the domestic industry's condition during the POI. CR, PR at Table C-1. Ending inventory quantities decreased overall during the POI by *** percent, finishing at *** pounds in 2010. CR, PR at Table C-1.

apparent U.S. consumption during the same period.[195] As a result, the domestic industry's share of apparent U.S. consumption also fell, declining from *** percent in 2008 to *** percent in 2009, and falling to a period low of *** percent in 2010.[196]

The number of production workers declined, from *** in 2008 to *** in 2009 and *** in 2010, an overall decline of *** percent.[197] Hours worked similarly fell from *** in 2008 to *** in 2009 and *** in 2010, a decline of *** percent.[198] Hourly wages were ***, starting the POI at *** and ending at *** in 2010.[199] Productivity increased overall with the decline in production workers, finishing the period at *** pounds per hour, a *** percent increase over 2008.[200]

The industry's overall declines in output and steady drop in market share between 2008 and 2010 corresponded with overall declines in its net sales revenues.[201] The industry experienced an operating *** throughout the POI. The ***.[202] In 2010, *** of the three domestic producers reported operating ***.[203] The domestic industry's operating margins worsened from *** percent in 2008 to *** percent in 2009 before increasing *** to *** percent, an overall decline of *** percentage points.[204] Finally, capital expenditures declined overall, from $*** in 2008 to $*** in 2010, while return on investment was *** percent in 2008, *** percent in 2009, and *** percent in 2010.[205]

Accordingly, while some of the industry's performance indicators improved in 2010, even as subject imports reached their highest levels for the period, essentially all remained significantly below their levels at the start of the period. The volume and increase in volume of cumulated subject imports, in absolute terms and in terms of share of apparent U.S. consumption, significantly increased throughout the POI, while the domestic industry's share of U.S. consumption correspondingly significantly declined. Given that the record shows at least moderate substitutability between the products regardless of source, a price competitive market, and some evidence that subject imports undersold the domestic like product and compete in the United States based on lower prices, we find that subject imports have significantly displaced domestic production, leading to significant declines in the domestic industry's production, shipments, market share, capacity utilization, employment, and profitability.

We have considered the role of other factors, such as demand and nonsubject imports, to ensure that we are not attributing injury from such other factors to the subject imports. We find that demand trends do not explain the domestic industry's current condition. Although the recent economic downturn affected the U.S. CSOBA market, demand appears to have rebounded. Moreover, the decline in the domestic industry's shipments was more than double any decline in apparent U.S. consumption. The record shows that subject imports captured an increasing share of the market from the domestic industry while apparent U.S. consumption declined. Then, when apparent U.S. consumption rose, subject imports

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[195] CR, PR at Table C-1.

[196] CR, PR at Table IV-15. On a solution basis, the domestic industry's share of apparent U.S. consumption declined ***, from *** percent in 2008 to *** percent in 2009 and *** percent in 2010. CR, PR at Table IV-16.

[197] CR, PR at Table C-1.

[198] CR, PR at Table C-1.

[199] CR, PR at Table C-1.

[200] CR, PR at Table C-1.

[201] The quantity and value of the industry's total net sales fell from 2008 to 2009 and increased *** in 2010. Net sales declined overall from *** lbs. in 2008 to *** lbs. in 2010, and from $*** in 2008 to $*** in 2010, overall declines of *** percent and *** percent, respectively. CR, PR at Table C-1.

[202] CR, PR at Table VI-2.

[203] CR, PR at Tables VI-3 & VI-4.

[204] CR, PR at Tables C-1, VI-1.

[205] CR, PR at Tables VI-6 & VI-7.

captured a large part of the growth, while the domestic industry's share continued to decline. The domestic industry's loss of market share to subject imports is therefore not a function of demand and, notwithstanding any demand declines during the POI, the record provides a reasonable indication that subject imports are a significant cause of the domestic industry's declining performance.

We have also considered the role of nonsubject imports during the POI. Their volume was *** and declined overall over the POI.[206] [207] Even as demand rebounded in 2010, nonsubject import volume remained ***. Moreover, nonsubject imports lost market share when demand declined, and their volume remained *** when demand increased. Thus, nonsubject imports do not appear to have played a role in the current condition of the domestic industry.

Finally, the DAS shortages in mid-year 2008 do not appear to explain the domestic industry's current condition. Those shortages took place in the middle of the first year of the POI, and were resolved relatively early in the period. For purposes of these preliminary phase investigations, we find that these shortages have not played a role in the current condition of the domestic industry. However, the full impact of these shortages is unclear on this record, as discussed above, and we intend to explore the issue further in any final phase investigations.

Consequently, the record in these preliminary phase investigations indicates a causal nexus between the subject imports and the adverse condition of the domestic industry and thus demonstrates a reasonable indication of material injury by reason of subject imports. We therefore conclude, for purposes of these preliminary phase investigations, that subject imports have had a significant adverse impact on the domestic industry.

CONCLUSION

For the above-stated reasons, and based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly dumped imports of CSOBAs from China and Taiwan.

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[206] As noted above, nonsubject import market share was *** percent in 2008, *** percent in 2009, and *** percent in 2010. CR, PR at Table IV-15. On a solution-measurement basis, nonsubject import market share was *** percent in 2008, *** percent in 2009, and *** percent in 2010. CR, PR at Table IV-16.

[207] For purposes of the analysis required by the Federal Circuit in Bratsk and Mittal, Commissioner Pinkert finds that price-competitive nonsubject imports did not have a significant presence in the U.S. market during the period of investigation.

PART I: INTRODUCTION

BACKGROUND

These investigations results from a petition filed by Clariant Corp. ("Clariant"), Charlotte, NC, on March 31, 2011, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports from China and Taiwan of certain stilbenic optical brightening agents ("CSOBAs").[1] Information relating to the background of the investigations is provided below.[2]

Effective date	Action
March 31, 2011	Petition filed with Commerce and the Commission; institution of Commission investigations (76 FR 19383, April 7, 2011)
April 21, 2011	Commission's conference[3]
April 27, 2011	Commerce's notice of initiation (76 FR 23554, April 27, 2011)
May 16, 2011	Commission's vote
May 16, 2011	Commission determinations to Commerce
May 23, 2011	Commission views to Commerce
[1] App.B contains a list of witnesses that appeared at the conference	

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C. Except as noted, U.S. industry data are based on questionnaire responses of three firms that accounted for 100 percent of U.S. production of CSOBAs during 2008-10. U.S. imports are based on questionnaire responses of 13 firms that accounted for the majority of imports of CSOBAs during the period examined. Foreign industry data are based on questionnaire responses of three firms: *** from China and *** from Taiwan. CSOBAs are traded both as a dry product and in solution and the Commission requested that data be reported both ways, as 1,000 dry pounds (100-percent active ingredient basis) and as 1,000 pounds solution, such that data reported should be equivalent to each other but in different forms.

RELATED INVESTIGATIONS

On March 31, 2003, Ciba Specialty Chemicals Corp. ("Ciba"), Tarrytown, NY, filed a petition with the Commission and Commerce alleging that the domestic industry was being injured by reason of subsidized imports of certain 4,4'-diamino-2,2'stilbenedisulfonic acid chemistry from India and LTFV

[1] Stilbenic optical brightening agents are synthetic organic products normally used in the production of certain paper, detergents, and textiles. CSOBAs are provided for in subheadings 3204.20.80 and 2921.59.40 and may have been imported under subheadings 2921.59.80 and 2933.69.60 (statistical reporting numbers 2921.59.8090 and 2933.69.6050), These products are residual or "basket" categories covering other products in addition to the subject product. Each of the subheadings has a normal trade relations tariff rate of 6.5 percent *ad valorem* applicable to imports from China and Taiwan.

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

imports from China, Germany, and India. The Commission instituted its investigations[3] into this matter but the petition was withdrawn shortly after filing.[4]

On May 14, 2003, Ciba filed a petition with the Commission and Commerce alleging that the domestic industry was being injured by reason of subsidized imports of certain 4,4'-diamino-2,2'stilbenedisulfonic acid chemistry from India and LTFV imports from China, Germany, and India. The Commission instituted its investigations[5] into this matter and on June 30, 2003 the Commission determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury or that the establishment of an industry in the United States is materially retarded, by reason of imports from China, Germany, and India of certain 4,4'-diamino-2,2'stilbenedisulfonic acid chemistry, provided for in subheadings 2921.59.20 and 3204.20.80 of the Harmonized Tariff Schedule of the United States, that is alleged to be subsidized by the Government of India and that is alleged to be sold in the United States at less than fair value .[6]

THE NATURE AND EXTENT OF ALLEGED SALES AT LTFV

Table I-1 presents information from Commerce on the estimated dumping margins for the subject countries. The period of investigation for the China dumping investigation is July 1, 2010, through December 31, 2010, and for the Taiwan investigation is July 1, 2010 through December 31, 2010.[7]

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

Country	Type of comparison	Estimated dumping margin[1] (*percent ad valorem*)
China[2]	Export price to constructed value	solution state.....205.0 powder state..... 83.0
Taiwan	Export price to constructed value	solution state.....109.0 powder state..... 62.0

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

Source: Commerce's notice of initiation published in the *Federal Register* (76 FR 23554, April 27, 2011).

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

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

[5] Investigation Nos. 701-TA-435 and 731-TA-1036-1038 (Preliminary) were instituted effective May 14, 2003 (68 FR 28252, May 23, 2003).

[6] *See*, 68 FR 41661, July 14, 2003.

[7] 76 FR 23554, April 27, 2011.

THE SUBJECT PRODUCT

Scope

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

*all form (whether free acid or salt) of compounds known as triazinylaminostilbenes (i.e., all derivatives of 4,4'-bis***amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.*

*Excluded from these investigations are all forms of 4,4'-bis***amino-2,2'-stilbenedisulfonic acid, $C_{40}H_{40}N_{12}O_8S_2$ ("Fluorescent Brightener 71").*

These investigations cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (i.e., mixtures or blends, whether of certain stilbenic OBAs with each other, or of certian stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.80 of the Harmonized Tariff Sheduled of the United States ("HTS"), but they may also enter under subheadings 2933.69.6050, 2921.59.40, and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Tariff Treatment

During the period of investigation, CSOBAs were provided for in Harmonized Tariff Schedule of the United States ("HTS") subheadings 3204.20.80 and 2921.59.40 and may have been imported under subheadings 2921.59.80 and 2933.69.60 (statistical reporting numbers 2921.59.8090 and 2933.69.6050), These products are residual or "basket" categories covering other products in addition to the subject product. Each of the subheadings has a normal trade relations tariff rate of 6.5 percent *ad valorem* applicable to imports from China and Taiwan.

Physical Characteristics and Uses

The subject certain stilbenic optical brightening agents are organic chemicals primarily used for brightening paper products.[8] Without brightening, many paper products have an aesthetically unappealing yellowish cast.[9] When applied to paper, CSOBAs absorb ultraviolet light and emit blue light, compensating for the yellowish cast and making the paper appear a brighter white.

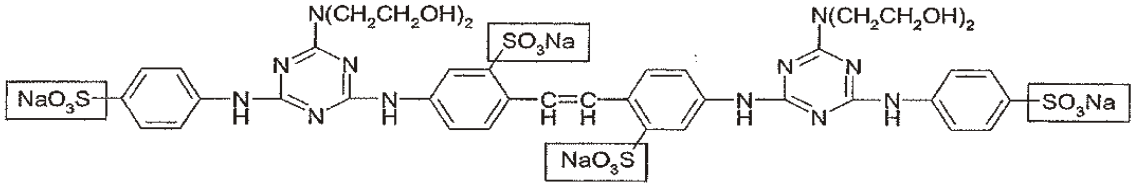
All CSOBAs are built upon diaminostilbene disulfonic acid (DAS), a synthetic organic chemical.[10] Attached to the DAS structure are two 1,3,5-triazinyl rings. Attached to each of the 1,3,5-triazinyl groups are a derivative of aniline and an additional chemical component, typically an amine. The derivative of aniline used can either be aniline itself; sulfanilic acid, which contains one sulfonate

[8] Petition Vol. 1, p. 10.

[9] Ibid., Exhibit I-2, p. 1.

[10] Ibid., p. 5.

group; or aniline disulfonic acid, which contains two sulfonate groups.[11] The specific derivative of aniline that is used determines whether the molecule is classified as a "di," "tetra," or "hexa" CSOBA, as explained in more detail below. The identity of a CSOBA is specified by both the derivative of aniline used and the identity of the other chemical group attached to the 1,3,5-triazinyl ring. For example, the CSOBA known as Fluorescent Brightener 220 (F.B. 220) uses sulfanilic acid as the aniline derivative and diethanolamine as the other chemical group attached to the 1,3,5-triazinyl group. The structure of Fluorescent Brightener 220 is shown below.[12]



CSOBAs are made in three main categories based on the number of sulfonate groups that the molecule contains, which is determined by the derivative of aniline used in the production process.[13] The number of sulfonate groups on the molecule affect the solubility of the CSOBA in water and determine where the specific CSOBA is best applied in the paper making process.[14]

The "di" category of CSOBAs contains two sulfonate groups and is produced using aniline. In paper making, the "di" category of CSOBAs is usually applied to the pulp slurry before the paper web is formed.[15]

The "tetra" category of CSOBAs contains four sulfonate groups and is produced using sulfanilic acid. "Tetra" CSOBAs are the most versatile of the CSOBAs and can be applied at multiple locations in the paper making process. "Tetra" CSOBAs can either be added to the pulp slurry before the paper web is formed, in the size press, or in coating applications.[16] F.B. 220, which is the most widely used CSOBA,[17] is in the "tetra" category.

The "hexa" category of CSOBAs contains six sulfonate groups and is produced using aniline disulfonic acid. Application of the "hexa" CSOBAs in the paper making process is limited to the surface coating operations.[18]

The CSOBA known as Fluorescent Brightener 71 (F.B. 71) is excluded from the scope of this investigation. According to the petitioner, F.B. 71 is primarily used as a additive in detergents and is not used as an optical brightening agent for paper.[19]

Within the United States, CSOBAs are shipped as aqueous solutions with the percentage of the active ingredient typically 20 percent for "di" CSOBAs, 23 percent for "tetra" CSOBAs and 16 percent

[11] Ibid., p. 16.

[12] Ibid., Exhibit I-3, p. 6.

[13] Petition Vol. 1, p. 6.

[14] Conference transcript, p. 67 (Dickson).

[15] Petition Vol. 1, p. 14.

[16] Ibid., p. 14.

[17] Conference transcript, p. 18 (Dickson).

[18] Petition Vol. 1, p. 14.

[19] Conference transcript, p. 18 (Dickson).

for "hexa" CSOBAs.[20] CSOBAs can be shipped in bulk or nonbulk containers.[21] Bulk deliveries are made in tank truck or rail cars. Non-bulk deliveries are in drums, which can hold approximately 450 lbs, or intermediate bulk containers, which hold approximately 2,400 lbs of material.[22] For shipment from China and Taiwan, CSOBAs are either shipped as aqueous solutions ready for final use in paper making or as a powder that must be dissolved in water before use.[23] For CSOBAs shipped as powder, an affiliate of the importer, a third party tolling operation, or the final user prepares the CSOBA in an aqueous solution at the desired concentration.[24] Powdered CSOBA is shipped in "bulk bags" of various sizes.

For a specific CSOBA, for example, F.B. 220, the active ingredient produced in the United States is identical to that produced in China and Taiwan. However, the product in aqueous solution may have additives[25] and impurities that differ among the domestic producers and foreign producers. The respondents in this case claim that the subject product from Taiwan has fewer impurities than the domestic like product.[26] According to their conference testimony, these impurities can increase the unattractive yellow hue and decrease the overall brightness of paper.[27] Product quality issues are discussed in more detail in Part II of this report.

Manufacturing Processes

The primary inputs in the production of CSOBAs are DAS, cyanuric chloride, and derivatives of aniline. DAS is generally the most expensive of these inputs.[28] DAS contains the stilbene structure that CSOBAs are built upon. Cyanuric chloride contains the 1,3,5-triazinyl structure with chlorine atoms at the 2, 4, and 6 positions.[29] As explained above, the derivative of aniline used in the production determines whether the specific CSOBA is in the "di," "tetra," or "hexa" category.

CSOBAs are typically produced in a three step process.[30] In the first step, cyanuric chloride reacts with DAS to produce the first intermediate in CSOBA production. In the second step, the first intermediate is reacted with a derivative of aniline, which replaces one of the remaining chlorine atoms on the 1,3,5 triazinyl group, to form the second intermediate. In the third step, the second intermediate is reacted with a final chemical component, typically an amine, to confer desired chemical and physical properties to the CSOBA. The final chemical component replaces the remaining chlorine atom on each of the 1,3,5-triazinyl groups.

An alternate production process is also possible where the first and second steps are different from those mentioned above.[31] In the first step, cyanuric chloride reacts with a derivative of aniline. The intermediate produced in the first step of this alternate process is then reacted with DAS. This alternative

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[20] Conference transcript, p. 20 (Dickson).

[21] Petition Vol. 1, p. 23.

[22] Ibid., p. 24.

[23] Ibid., p. 24.

[24] Ibid., p. 24.

[25] Additives can include biocides, urea, polyvinyl alcohol, or polyethylene glycol, which provide certain desirable characteristics for the final product. Petition Vol. 1, p. 18.

[26] Respondent TFM's postconference brief, p. 6.

[27] Conference transcript, p. 88–89 (Nelson).

[28] Conference transcript, p. 37 (Dettlaff).

[29] Petition Vol. 1, p. 15, footnote 44.

[30] Ibid., p. 15–16.

[31] Ibid., p. 16–17.

process produces the same intermediate that results from step two of the process given above. The third step in the alternative process is the same as in the process described above.

A by product of these reactions is sodium chloride.[32] The sodium chloride is removed from the final CSOBA product by reverse osmosis or ultrafiltration.[33] The sodium chloride solution is sent to a wastewater treatment facility and released back into the environment after treatment.[34]

According to conference testimony, two of the domestic producers, Clariant and 3V, use batch processes to carry out the reaction steps above and produce CSOBAs.[35] These producers purchase DAS from other chemical companies. DAS is primarily produced in China and, to some extent, in India.[36] One domestic producer, BASF, uses a continuous process that starts with the production of DAS from toluene and other inputs.[37] According to conference testimony, producers in China and Taiwan likely use a batch process similar to that used by Clariant and 3V.[38]

DOMESTIC LIKE PRODUCT

The Commission's determination regarding the appropriate domestic products that are "like" the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

Petitioners argue that there is a single like product comprised of triazinylaminostilbenes ("TASs") that serve as final OBA products, with the exception of Fluorescent Brightener 71.[39] These final OBA products have similar physical characteristics and end uses. These products may be grouped into three categories according to the number of sulfonate groups: "di" for two sulfonate groups; "tetra" for four sulfonate gruops; and "hexa" for six sulfonate groups. Clariant submits that all three of these categories of TASs constitute a single like product.[40] The subtle differences among these OBA products loosely correlate with the stage of the papermaking process at which they are best introduced; all of these OBA products are normally used to brighten paper and share the characteristics of adhering effectively to paper during the paper production process; fluorescing in the visible blue portion of the electromagnetic spectrum, and being practically colorless once applied to paper.[41]

These final OBA products in the di, tetra, and hexa categories are largely interchangeable because they all function to brighten paper - more than one category may be used together to whiten paper.[42] Certain final OBA products may not work in certain specialty paper applications, but for the most part, paper manufacturers may be able to utilize different final OBA products at different stages of the paper

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[32] Conference transcript, p. 59 (Dickson).

[33] Conference transcript, p. 59 (Dickson).

[34] Conference transcript, p. 64 (Dickson) and p. 65 (Golder).

[35] Conference transcript, p. 65 (Dickson).

[36] Conference transcript, p. 102 (Nelson).

[37] Conference transcript, p. 66 (Dickson). A description of the process used by BASF is found in *Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid Chemistry from China, Germany, and India, Invs. No. 701-TA-435 and 731-TA-1036-1038 (Preliminary)*, USITC Publication 3608, July 2003, p. I-4.

[38] Conference transcript, p. 65 (Dickson).

[39] Petition, p. 26.

[40] Clariant's postconference brief, p. 4.

[41] Petition, p. 26.

[42] Clariant's postconference brief, p. 5.

production processes to achieve similar brightness goals.[43] Final OBA products have the same channels of distribution. They are sold to paper manufacturers, and the sales take place either directly by the OBA producers, or through affiliated or unaffiliated distributors or brokers.[44] Final OBA products are viewed similarly by producers and consumers. Product literature and websites group these final OBA products together to provide customers with a full product line of brightening and coloring agents for paper.[45] Final OBA products share common manufacturing facilities, production processes, and production employees. They are all produced through a sequence of three chemical reactions; however, introduction of different reactants at different stages of the production process results in different final OBA products, but the production of any of these final OBA products may be conducted at the same manufacturing facilities by the same employees. These final OBA products are sold within a relatively narrow range of prices, whether through fixed price, fixed term contracts or one-time contracts in the merchant market.[46] There is not a clear dividing line among triazinylaminostilbenes that serve as final OBA products, with the exception of Fluorescent brightener 71, which is typically not used to brighten paper and is viewed differently by producers and consumers.[47]

Clariant further indicated that intermediate product TASs with the 4 and/or 6 positions of the 1,3,5-triazine moieties occupied by chlorine atoms instead of by functional groups such as amino or alkoxy are part of the single like product.[48] Intermediate TAS products are dedicated to the production of the final CSOBA products that are within the scope of the investigation and generally serve no other purpose than the creation of the downstram final products.[49] There is no separate U.S. market for intermediate TAS products - they are entirely consumed in the production of final CSOBAs. Because there is no separate retail or wholesale market for these intermediate TAS products in the United States, no separate market for the upstream and downstream articles exists.[50] The principal physical characteristics of the upstream and downstream articles are the same, inasmuch as the intermediate products at issue are themselves TASs. There is minimal difference in the cost or value of intermediate and final TASs; once DAS, the most expensive input, has been utilized to obtain a TAS structure, the cost diffeential between the resultant intermediate and final products is relatively minimal.[51] The processes used to transform the upstream articles into the downstream articles are relatively simple - the same type of chemical reaction is used for all three steps, with each step being relatively straightforward.[52]

Respondent TFM cites Clariant's arguments with respect to domestic like product as inconsistent. Clariant seeks to focus just on CSOBAs used by paper mills; however, ***.[53] For all these applications, OBAs provide the same key attribute - i.e., adding brightness. TFM opines that Clariant's limiting a domestic like product to a particular use is contrary to Commission precedent such as in the PET film cases, where the domestic like product is FET film irrespective of its various uses.[54]

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[43] Ibid.

[44] Ibid., p. 6.

[45] Ibid.

[46] Ibid.

[47] Petition, pp. 27-28.

[48] Ibid., p. 7.

[49] Ibid.

[50] Ibid., p. 8.

[51] Ibid.

[52] Ibid.

[53] TFM's postconference brief, pp. 13-14.

[54] Ibid., p. 14.

TFM further indicated that *** rendering its claims unpersuasive and unsupported.[55]

TFM cited that Clariant stated that its petition only covers certain stilbenic flourescent whitening agents used in paper applications at the conference; however, in the petition, only the CSOBA used for detergent is excluded. TFM stated that based on its knowledge, one of the three grades of OBA specifically covered in the petition, "di" grade, is used in the textile industry as well.[56] TFM opined that by Clariant's terms, the petition covers subject CSOBAs for both the paper and textile industries, not just paper, as the OBA sold to textile industry is covered by the scope of this investigation.

Interchangeability and Customer and Producer Perceptions

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

Channels of Distribution

CSOBAs are all sold either directly or through a broker or distributor to paper producers. Information on CSOBA channels of distribution is presented in Part II of this report, *Conditions of Competition in the U.S. Market*.

Price

Detailed information on the pricing of CSOBAs is presented in Part V of this report, *Pricing and Related Information*.

[55] Ibid.

[56] Ibid.

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

CHANNELS OF DISTRIBUTION

The three reporting U.S. producers of CSOBAs and the responding U.S. importers of CSOBAs from China, Taiwan, and nonsubject countries shipped their products mostly to U.S. end users (primarily to paper-producing companies), during January 2008-December 2010, with the remainder of their domestic and imported CSOBAs shipped to distributors. The shares of the reported quantity of U.S. shipments of the domestic and imported CSOBAs shipped to distributors and to end users during January 2008-December 2010 are shown on a dry basis and a solution basis in tables II-1 and II-2, respectively.[1]

MARKET CHARACTERISTICS

CSOBAs are normally used as optical brighteners in the production of paper.[2] Accordingly, demand for CSOBAs is largely derived from demand for paper that use CSOBAs as an input. CSOBAs are produced in various molecular structures (di, tetra, and hexa), forms (free acid or salt), states (dry, slurry, or solution), concentrations,[3] compositions (mixtures or blends), and fluorescent brightener capacities.[4] The efficacy of these different CSOBA products reportedly differ depending on the stage of the paper-production process and certain CSOBA products may not work in certain specialty paper applications.[5]

[1] U.S. producer and importer questionnaire responses, sections II-8-10 in each questionnaire.

[2] Petition, Volume I, pp. 10-11.

[3] Each of the molecular structures involve particular ranges of concentration of active ingredients (staff telephone interview with ***, March 30, 2011). Within their respective ranges, di solutions typically contain approximately 20 percent active ingredients, tetra solutions typically contain approximately 23 percent, and hexa solutions typically contain approximately 16 percent active ingredients (Petition, Volume I, pp. 14-15).

[4] These product differences reportedly confer subtle differences in chemical and physical properties (Petition, Volume I, p. 11).

[5] Petition, Volume I, pp. 14 and 27.

Table II-1
CSOBAs: Channels of distribution for domestic product and U.S. imports sold in the U.S. market as a share of U.S. shipment quantities on a dry basis (as dry pounds; 100-percent active ingredient basis), annually, 2008-10

Item	2008	2009	2010
U.S. producer's U.S. shipments of CSOBAs to--			
Distributors	***	***	***
End users	***	***	***
Total	100.0	100.0	100.0
Importers' U.S. shipments of CSOBAs from China to–[1]			
Distributors	***	***	***
End users	***	***	***
Total	100.0	100.0	100.0
Importers' U.S. shipments of CSOBAs from Taiwan to--			
Distributors	***	***	***
End users	***	***	***
Total	100.0	100.0	100.0
Importers' U.S. shipments of CSOBAs from all other countries to--			
Distributors	***	***	***
End users	***	***	***
Total	100.0	100.0	100.0
Total U.S. shipments to--			
Distributors	1.7	([2])	0.8
End users	98.3	99.9	99.2
Total	100.0	100.0	100.0

[1] There was no explanation from one of the responding importers of *** CSOBAs (***) of why it had some shipments to distributors for the products as solution, but none for the products as dry form.
[2] Less than 0.05 percent.

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

Table II-2
CSOBAs: Channels of distribution for domestic product and U.S. imports sold in the U.S. market as a share of U.S. shipment quantities on a solution basis, annually, 2008-10

Item	2008	2009	2010
U.S. producer's U.S. shipments of CSOBAs to--			
Distributors	***	***	***
End users	***	***	***
Total	100.0	100.0	100.0
Importers' U.S. shipments of CSOBAs from China to–[1]			
Distributors	***	***	***
End users	***	***	***
Total	100.0	100.0	100.0
Importers' U.S. shipments of CSOBAs from Taiwan to--			
Distributors	***	***	***
End users	***	***	***
Total	100.0	100.0	100.0
Importers' U.S. shipments of CSOBAs from all other countries to--			
Distributors	***	***	***
End users	***	***	***
Total	100.0	100.0	100.0
Total U.S. shipments to--			
Distributors	9.7	0.1	0.9
End users	90.3	99.9	99.1
Total	100.0	100.0	100.0

[1] There was no explanation from one of the responding importers of *** CSOBAs (***) of why it had some shipments to distributors for the products as solution, but none for the products as dry form.

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

The three U.S. producers of CSOBAs, five U.S. importers of CSOBAs from China (***), one U.S. importer of CSOBAs from Taiwan (***), and five U.S. importers of CSOBAs from nonsubject countries (***) reported the U.S. geographic market area(s) to which they shipped their domestic and imported CSOBAs.[6] Their responses are shown in the following tabulation.[7]

U.S. geographic areas	U.S. product	Imported from China	Imported from Taiwan	Imported from all other countries
	Number of firms responding			
Northeast[1]	***	1	***	2
Midwest[2]	***	3	***	3
Southeast[3]	***	4	***	4
Central Southwest[4]	***	1	***	1
Mountains[5]	***	1	***	-
Pacific Coast[6]	***	2	***	1
Other[7]	***	-	***	-

[1] Includes CT, ME, MA, NH, NJ, NY, PA, RI, and VT.
[2] Includes IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, and WI.
[3] Includes AL, DE, DC, FL, GA, KY, MD, MS, NC, SC, TN, VA, and WV.
[4] Includes AR, LA, OK, and TX.
[5] Includes AZ, CO, ID, MT, NV, NM, UT, and WY.
[6] Includes CA, OR, and WA.
[7] Includes all other markets in the United States not previously listed, including AK, HI, PR, and VI, among others.

The three U.S. producers of CSOBAs, one U.S. importer of CSOBAs from China (***), and one U.S. importer of CSOBAs from Taiwan (***) reported their lead times for delivery of their products and their U.S. commercial shipment shares (based on U.S. f.o.b. values) during 2010 that were from U.S. inventory and from production.[8] The weighted-average shipment shares and the lead times are shown in the tabulation below.

* * * * * * *

[6] U.S. producer and importer questionnaire responses, sections IV-11 and III-12, respectively.

[7] Geographical markets, as well as quantitative measures relating to fungibility and presence in the market, are discussed in Part IV of the report under the section entitled “Cumulation Considerations.”

[8] U.S. producer and importer questionnaire responses, sections IV-9 and III-10, respectively.

SUPPLY AND DEMAND CONSIDERATIONS[9]

U.S. Supply[10]

U.S. Production

Based on available information, U.S. producers had the ability to respond to changes in U.S. demand with relatively *** changes in the quantity of shipments of U.S.-produced CSOBAs to the U.S. market during 2008-10. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

Based on U.S. producers' reported capacity and production of CSOBAs on a solution basis, the domestic industry's capacity utilization for CSOBAs *** during 2008-10, from *** percent in 2008 to *** percent in 2010 and averaged *** percent during the full period. This level of capacity utilization indicates that U.S. producers of CSOBAs had a *** amount of available capacity with which they could have increased production of CSOBAs in the short run in the event of a price change during 2008-10.[11]

Inventory levels

U.S. producers of CSOBAs reported combined end-of-period inventory quantities on a solution basis that *** during 2008-10, ranging from *** percent of their total shipments in 2008 to *** percent of shipments during 2010. These levels of inventories suggest that U.S. producers may have had *** ability to use inventories to respond to price changes in the short run. This flexibility may be restrained in the short run to the extent that U.S. producers' inventories consist of products that are not required by the increased demand, or consist of products already committed to customers in the U.S. and/or export markets.[12]

Alternate markets

Responding U.S. producers' total reported exports of their U.S.-produced CSOBAs averaged *** percent of the quantity of their total shipments of U.S.-produced CSOBAs in either solution or converted to the dry form during 2008-10. This level of exports during the period indicates that domestic producers of CSOBAs may have had *** ability to shift shipments between the United States and other markets in the short run in response to price changes. This flexibility may be restrained in the short run to the extent that U.S. producers' sales of CSOBAs exported to third-country markets were not used/acceptable in the

---

[9] Short-run effects discussed in the supply and demand sections refer to changes that could occur within 12 months, unless otherwise indicated. CSOBA's discussed in this section of Part V are based on products on a solution basis, which is how the domestic and imported products are typically sold. The CSOBAs on a dry basis usually follow similar trends as the products on a solution basis; as a result, products on a dry basis are not discussed separately unless substantial differences exist between the two states of CSOBAs.

[10] Data on U.S. CSOBAs production, production capacity, capacity utilization, inventories, and exports are shown in detail in Part III.

[11] This supply flexibility may be constrained to the extent that there is any limited capability of specific U.S. producers to produce the required specific CSOBA products demanded.

[12] As indicated later in Part V, about *** percent of U.S. producer's 2010 U.S. commercial shipments were based on long-term contracts that were typically for *** years.

U.S. market or vice-versa, or to the extent that U.S. producers have binding supply agreements longer than 12 months with customers in the U.S. and/or export markets.

Production alternatives

*** responding U.S. producers of CSOBAs reported producing *** on the same equipment and with the same labor that they used to produce CSOBAs;[13] this other product accounted for *** percent of industry production capacity (on a solution basis) in 2010 for CSOBAs and other products combined. In addition, U.S. producers of CSOBAs reported constraints on their ability to shift production among products.[14] The three U.S. producers reported the following constraints: ***. The ability of U.S. producers to shift production between CSOBAs and other products enhances their supply responsiveness in the short run in response to relative price changes between CSOBAs and alternative production products.

Supply disruptions

U.S. producers were asked to discuss any supply problems for U.S.-produced CSOBAs that occurred since January 1, 2008.[15] The three U.S. producers reported that there were no supply disruptions for U.S.-produced CSOBAs.

U.S. producers were also asked to discuss trends in raw material prices for U.S.-produced CSOBAs and whether any such trends are expected to continue.[16] All three responding U.S. producers noted fluctuations in prices of raw materials during 2008-10, especially prices of DAS, and they expected currently rising prices of raw materials to increase.

Supply of Imported CSOBAs from China to the U.S. Market

Based on available information from the *** responding Chinese producers, staff believes that Chinese producers of CSOBAs may have the ability to respond to changes in demand with *** changes in shipments of CSOBAs to the U.S. market. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

The *** responding Chinese producers reported combined capacity utilization for CSOBAs on a solution basis that *** during 2008-10, from *** percent in 2008 to *** percent in 2010 and averaged *** percent during the full period. This level of capacity utilization indicates that Chinese producers of CSOBAs may have had *** available capacity with which they could increase production of CSOBAs in the short run in the event of a price change.[17]

The *** responding Chinese producers reported *** on the same equipment and machinery that they used to produce CSOBAs, such that measures of capacity and capacity utilization for each type of

[13] U.S. producer questionnaire responses, section II-3.

[14] U.S. producer questionnaire responses, section II-4.

[15] U.S. producer questionnaire responses, section IV-17.

[16] U.S. producer questionnaire responses, section IV-18.

[17] Data submitted by Chinese producers of CSOBAs included capacity and production projections for full-year 2011 and for 2012. Based on these projections, capacity utilization based on CSOBAs on a solution basis is estimated to *** from almost *** percent in 2011 to *** percent in 2012; annual capacity is estimated to *** while production is estimated to *** during 2011-12.

product, including CSOBAs, may be subject to *** as relative prices and demand for the various types of products change.

Inventory levels

The *** responding Chinese producers of CSOBAs reported combined end-of-period inventories on a solution basis in China that *** in absolute terms and *** as a share of shipments during 2008-10. The Chinese inventories of CSOBAs *** from *** percent of total shipments in 2008 to *** percent in 2010.[18] These data indicate that Chinese producers may have had *** ability to use inventories as a means to increase shipments to the U.S. market in the short run. This flexibility may be restrained in the short run to the extent that Chinese producers' inventories consist of products not useable/acceptable in the U.S. market, or consist of products already committed to customers in home and/or third-country markets.

U.S. importers of CSOBAs from China reported U.S. end-of-period inventories in solution that *** in absolute terms and as share of U.S. shipments of the products during 2008-10. U.S. inventories of the imported Chinese products as a share of shipments *** from *** percent in 2008 to *** percent in 2009 and then *** to *** percent 2010.

Alternate markets

The two responding Chinese producers of CSOBAs reported that their products (on a solution basis) were shipped principally to *** during 2008-10.[19] This shipment pattern was projected ***. These data indicate that Chinese CSOBAs producers have a *** home market and *** third-country markets from which they may be able to shift shipments of CSOBAs to the United States in the short run in the event of a price change in the U.S. market. This flexibility may be restrained in the short run to the extent that Chinese producers' sales of CSOBAs in their home market and/or exported to third-country markets were not used/acceptable in the U.S. market, or to the extent that Chinese producers have binding supply agreements longer than 12 months with customers in the home and/or third-country markets.

Production alternates

As indicated earlier, the *** responding Chinese producers reported *** on the same equipment and machinery that they used to produce CSOBAs;[20] these *** percent of the responding firms' combined overall production capacity on a solution basis for CSOBAs and these other products in 2010. In addition, Chinese producers of CSOBAs reported that there were *** on their ability to shift production among products.[21] The *** responding Chinese producers reported ***. The ability of Chinese producers to shift production between CSOBAs and other products enhances their supply responsiveness in the short run in response to relative price changes between CSOBAs and alternative production products.

[18] Combined end-of-period inventories (on a solution basis) of the two responding Chinese producers were projected to *** from *** percent of total shipments in 2011 to *** percent in 2012.

[19] During 2008-10, Chinese shipments of CSOBAs on a solution basis ***.

[20] Foreign producer questionnaire responses, section II-4.

[21] Foreign producer questionnaire responses, section II-6.

Supply disruptions

U.S. importers were asked to discuss any supply problems for imported Chinese CSOBAs in the U.S. market that occurred since January 1, 2008.[22] All four responding importers reported that no such supply problems have occurred.

U.S. importers were also asked to discuss trends in raw material prices for Chinese produced CSOBAs and whether any such trends are expected to continue.[23] All four responding importers noted the fluctuations in raw material prices during 2008-10. Two importers indicated that raw material prices were increasing, one importer indicated that it did not expect future increases in prices of raw materials, and the remaining importer indicated only that such prices fluctuate.

Supply of Imported CSOBAs from Taiwan to the U.S. Market

Based on available information, staff believes that the *** responding Taiwan producer of CSOBAs (***) had the ability to respond to changes in demand with *** in shipments of CSOBAs to the U.S. market during ***, but this ability appears *** during ***. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

*** reported total capacity utilization for CSOBAs on a solution basis that averaged almost *** percent during ***, but was *** percent in *** (***). This level of capacity utilization indicates that *** had *** available capacity with which it could have increased production of CSOBAs in the short run during *** in the event of a price change.[24]

Inventory levels

*** reported end-of-period inventories of CSOBAs in Taiwan (on a solution basis) that *** from *** percent of total shipments during 2008 to *** percent during 2010. These data indicate that *** an ability to use inventories as a means to increase shipments to the U.S. market in the short run. This flexibility may be restrained in the short run to the extent that *** inventories consist of products not useable/acceptable in the U.S. market, or consist of products already committed to customers in home and/or third-country markets.

***, the single responding U.S. importer of CSOBAs from Taiwan, reported U.S. end-of-period inventories on a solution basis that *** in absolute terms but *** as a share of U.S. shipments of the products during 2008-10. U.S. inventories of the imported Taiwan products as a share of shipments *** from *** percent in 2008 to *** percent in 2009 and then *** to *** percent 2010.

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[22] U.S. importer questionnaire responses, section III-18.

[23] U.S. importer questionnaire responses, section III-19.

[24] Data submitted by *** included capacity and production projections for full-year 2011 and for 2012. Based on these projections, capacity utilization of CSOBAs on a solution basis is estimated to average *** percent during 2011-2012 as ***.

Alternate markets

*** reported that its CSOBA products on a solution basis were shipped *** during 2008-10.[25] This shipment pattern was generally projected *** in full year 2011 and in 2012, although ***. These data for alternate markets indicate that *** had *** non-U.S. markets from which they may be able to shift shipments of CSOBAs to the United States in the short run in the event of a price change in the U.S. market. This *** flexibility may *** in the short run to the extent that *** sales of CSOBAs used in the home market or exported to third-country markets were not used/acceptable in the U.S. market, or to the extent that *** has binding supply agreements longer than 12 months with customers in home or third-country markets.

Production alternates

*** reported that it *** other products on the same equipment and machinery that it produced CSOBAs.[26] Any ability of Taiwan producers to shift production between CSOBAs and other products would enhance their supply responsiveness in the short run in response to relative price changes between CSOBAs and alternative production products.

Supply disruptions

U.S. importers were asked to discuss in their questionnaire responses any supply problems for imported Taiwan CSOBAs in the U.S. market that occurred since January 1, 2008.[27] The *** responding importer, ***, reported that it experienced no such supply problems.

U.S. importers were also asked to discuss trends in raw material prices for Taiwan produced CSOBAs and whether any such trends are expected to continue.[28] The *** responding importer of CSOBAs from Taiwan, ***, noted the fluctuations in raw material prices during 2008-10, particularly DAS, and asserted that the prices of raw materials will be in an upward trend.[29]

Supply of Nonsubject Imports of CSOBAs to the U.S. Market

Based on import questionnaire data (presented in Part IV), CSOBAs are typically imported in limited quantities and only from a few nonsubject countries. The specific nonsubject countries identified in questionnaire responses were Canada, India, Indonesia, Italy, and the United Kingdom.

U.S. importers were also asked to discuss trends in raw material prices for CSOBAs imported from nonsubject countries and whether any such trends are expected to continue.[30] The three responding importers (***), representing imports from Indonesia, Italy, and the United Kingdom, noted the

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[25] During 2008-10, *** shipments of CSOBAs on a solution basis to the U.S. market averaged *** percent of their total shipment quantities of CSOBAs; exports to the home market averaged *** percent of the total; and exports to third-country markets averaged the remaining *** percent of the total.

[26] Foreign producer questionnaire responses, section II-4.

[27] U.S. importer questionnaire responses, section III-18.

[28] U.S. importer questionnaire responses, section III-19.

[29] *** reported that it expects prices of raw material to increase based on the following factors: more than *** of raw materials for OBA production are from China; the appreciating RMB currency, and the Chinese government's environmental policies toward domestic chemical industry. These factors will affect the availability of raw material supply (especially DAS).

[30] U.S. importer questionnaire responses, section III-19.

fluctuating prices of raw materials during 2008-10 and indicated that they expect current increases in raw material prices to continue.

U.S. Demand

Demand for CSOBAs, as measured by the quantity (on a solution basis) of apparent U.S. consumption, decreased by 13.2 percent during 2008-09, then increased during 2010 by 18.9 percent from the level in 2009 to end at 3.2 percent above the 2008 level.

Business Cycles

Based on questionnaire responses of U.S. producers and importers, U.S. demand for CSOBAs is affected by changes in overall U.S. economic activity and, as an intermediate product, is derived from demand in the sectors in which it is used, principally the paper producing sector.[31] CSOBAs are used principally as an optical brightener in paper production. The decline and weak recovery of the general economy[32] have reduced CSOBA demand. Quarterly U.S. real gross domestic product (GDP) is shown in figure II-1 and U.S. producers' shipments of paper products are shown in figure II-2.

The overall economy, as measured by real GDP, fell on a quarterly basis during January 2008-June 2009 before recovering during July 2009-December 2010 (figure II-1). Real GDP first decreased irregularly from a seasonally adjusted annual rate of $13.34 trillion during January-March 2008 to a period low of $12.81 trillion during April-June 2009, then increased to a period high of $13.38 trillion during October-December 2010.[33]

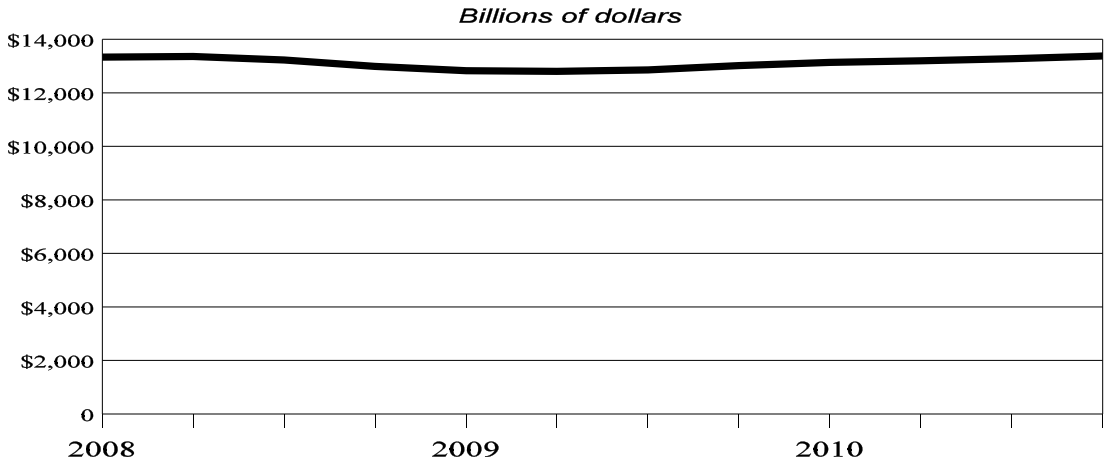
U.S. producers' shipments of paper, pulp, and paperboard mills (paper products), on a seasonally-adjusted monthly value basis, fluctuated during January 2008-February 2011 (figure II-2). The monthly value of shipments of paper products decreased from approximately $7.0 billion in January 2008 to a period low of approximately $6.1 billion by August 2009. Paper products shipments then generally increased to almost $6.8 billion by December 2010, before decreasing somewhat to approximately $6.7 billion by February 2011, which was approximately 4.4 percent less than the initial-period value but almost 10.5 percent above the period-low value.

[31] U.S. demand for CSOBAs may also be affected by changes in the level of imported downstream products (imported paper) that compete with the U.S.-produced products containing CSOBAs and by competing downstream products in the export market.

[32] U.S. real GDP exhibited zero growth in 2008, decreased by 2.6 percent in 2009, and increased by 2.9 percent in 2010. Real GDP is forecast to increase by 2.9 percent in 2011 and by 3.2 percent in 2012. *Blue Chip Economic Indicators*, Vol. 36, No. 2, April 10, 2011.

[33] The recent U.S. recession reportedly lasted from December 2007 through June 2009, the longest U.S. recession since World War II, but the recovery since June 2009 has been sluggish and uneven. National Bureau of Economic Research, *U.S. Business Cycle Expansions and Contractions*, http://www.nber.org/cycles/cyclesmain.html, retrieved September 29, 2010; and *NBER Says Recession Ended in June 2009*, http://www.thestreet.com/story/10865728/1/, retrieved September 29, 2010.

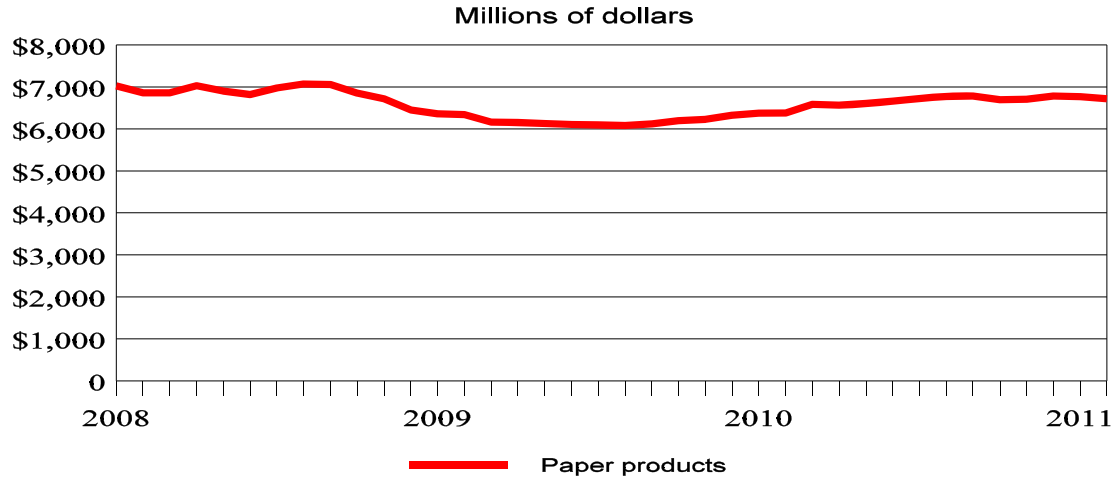
Figure II-1
U.S. real gross domestic product (GDP): Real GDP, by quarters, January 2008-December 2010



Note.–Quarterly values are seasonally adjusted annual rates.

Source: *National Income and Product Accounts–Table 1.2.6, Real Gross Domestic product, Chained (2005) Dollars*, Bureau of Economic Analysis, DOC, http://www.bea.gov/national/nipaweb/, retrieved April 13, 2011.

Figure II-2
Value of U.S. producers' shipments of paper products: Paper products (paper, pulp, and paperboard mills), by months, January 2008-February 2011



Note.--Monthly figures are seasonally adjusted shipment values.

Source: *Manufacturers' Shipments, Inventories, and Orders*, U.S. Census Bureau, http://www.census.gov/manufacturing/m3/historical_data/index.html, retrieved April 12, 2011.

Questionnaire responses concerning business cycles for CSOBAs

U.S. producers and importers were requested to indicate whether the U.S. market for CSOBAs was subject to business cycles or conditions of competition (including seasonal business) that was distinctive to CSOBAs, and whether any such factors changed since January 1, 2008.[34] Three U.S. producers and nine U.S. importers provided useable responses, with one U.S. producer and seven importers reporting no such factors and the remaining two U.S. producers (***) and two importers (***) reporting such factors.[35] The responses of the *** firms, which also represented changes since January 1, 2008, are discussed here.

*** indicated that CSOBAs were affected by the recession. *** reported the following:

> "Demand for CSOBAs is relatively stable without significant seasonal changes. However, it did go down with economy after 2008 when people started to think about holding down costs and replace with less whiteness paper. Further, it was affected by the introduction of e-books. Prior to 2008, the U.S. CSOBA market was controlled by few suppliers. During 2008, many U.S. paper mills came to Asia for new suppliers because of the increased prices of raw materials and shortage in supply. Thus it brought us an opportunity."

*** reported the following:

> "The overall competition is much tougher today due to consolidations in the paper industry and additional imports of finished paper products, which have reduced the overall CSOBA demand."

Questionnaire Responses Concerning Changes in U.S. Demand

U.S. producers and importers of CSOBAs were requested to indicate whether U.S. demand for CSOBAs increased, decreased, fluctuated, or did not change since January 1, 2008 and to identify the principal factors affecting any changes in demand.[36] Useable responses are summarized in the following tabulation.

U.S. demand changes for CSOBAs since January 2008

Types of firms	Number of firms responding			
	Increase	Decrease	Fluctuate	No change
U.S. producers	***	***	***	***
U.S. importers	***	***	***	***
Total	0	5	5	2

Note.–***.

[34] U.S. producer and importer questionnaire responses, sections IV-16 and III-17, respectively.

[35] *** reported as both a producer and importer and provided the same response in each questionnaire.

[36] U.S. producer and importer questionnaire responses, sections IV-14a and III-15a, respectively.

The majority of questionnaire responses indicates that U.S. demand for CSOBAs has decreased or fluctuated since January 2008. Reported factors that led to decreases included the following: the recession; increased imports of finished paper products; consolidation in the paper industry; structural decline in the United States of uncoated freesheet paper (primary paper segment for OBA use); and the introduction of e-books. Reported factors that led to fluctuating demand included the following: recession and subsequent recovery; fluctuating demand for paper; and demand for higher levels of brightness in paper.[37] In addition, *** reported the following additional reasons for the subsequent and continuing increase in U.S. demand for OBAs as the economy continues to grow: market pulp price; customers' end uses of paper; new paper grade developments; and paper companies' strategies.

Substitute Products

Based on available information, U.S. users of CSOBAs may respond to changes in the prices of CSOBAs with small changes in their purchases of CSOBAs, such that U.S. demand may be price inelastic. The main contributing factors to this level of responsiveness of demand is the level of substitute products and the low cost share.

U.S. producers and importers of CSOBAs were requested to report substitutes for CSOBAs in the U.S. market.[38] The three responding U.S. producers and eight of nine responding U.S. importers reported that no substitutes existed for CSOBAs,[39] whereas the remaining U.S. importer (***) reported four substitutes, but indicated that the use of these products as substitutes were limited and changes in the prices of these substitutes did not result in any changes in the price or quantity of CSOBAs during 2008-10. The four substitutes reported by ***, their uses, and their shortcomings are discussed below.

Titanium dioxide can be used in size press and coating. It provides partial substitution for CSOBAs, but such substitution, as a high whitening agent, is limited due to its high cost.
Chlorine dioxide can be used in whitening pulp. It provides a low degree of substitutability for CSOBAs, because it is used for bleaching only pulp.
Ansilex and other bright clays can be used in the wet end of paper production in acid machines to get brightness, but its substitutability for CSOBAs is limited by retention and sheer strength.
Hydrogen peroxide can be used in pulping and the wet end of paper production. This is only partially substitutable for CSOBAs because it does not provide a high degree of whiteness, and more intensive use of this product to get higher levels of whiteness would reduce specified levels of opacity.

[37] *** generally agreed with *** that the trend line for overall CSOBA demand during 2008-10 was "at the very worst flat or slightly above because of the brightness increases." *** also indicated that it generally agrees with *** that, while demand for newsprint has declined with the advent of e-readers, demand for printing, writing paper, and coated paper have generally held their own or leveled out, especially with new standards for paper brightness and new paper technologies such as ColorLok (both of the latter require more CSOBAs per free sheet of paper), and increased use of recycled fibers in paper production. (Petitioner's postconference brief, exhibit 1, p. 4). In addition, *** indicated that the continued increase in whiteness standards for paper mitigated any impact that consolidation of the paper industry may have had on demand for CSOBAs during 2008-10 (petitioner's postconference brief, exhibit 1, p. 2).

[38] U.S. producer and importer questionnaire responses, sections IV-13 and III-14, respectively.

[39] ***, which responded as a U.S. producer and importer that no substitutes existed for CSOBAs, indicated that bleach and high-grade pulp can provide brightness but not fluorescence.

Cost Share

As noted earlier, CSOBAs are used primarily as optical brighteners in paper manufacturing. Based on useable responses of three U.S. producers and six U.S. importers regarding requests for CSOBAs cost share in downstream products, paper was by far the most frequently reported end use product followed by textiles and pigments.[40] Reported cost shares of CSOBAs in the production of paper ranged from 0.5-5.0 percent.

Foreign Demand

U.S. producers and importers of CSOBAs were asked whether foreign demand for CSOBAs increased, decreased, fluctuated, or did not change since January 2008.[41] Useable responses are summarized in the following tabulation.

Foreign demand changes for CSOBAs since January 2008

Types of firms	Number of firms responding			
	Increase	Decrease	Fluctuate	No change
U.S. producers	***	***	***	***
U.S. importers	***	***	***	***
Total	1	2	5	2

Note.–***.

Questionnaire responses most frequently indicated that foreign demand for CSOBAs have fluctuated since January 2008. The single firm reporting an increase ***, stated the following: "Demand for CSOBAs increased, especially in emerging markets such as China, South America, India, and some other Asian countries. Currently the total CSOBA consumption in Asia plus South America is around 50-60% of annual consumption in North America (less than 40% in paper industry). However, based on the population and growth of economies in Asia and South America (especially in China and Brazil), in the next 5 years, we expect that the annual consumption of CSOBAs in these two regions combined will reach a similar level as in the North American market today (60% growth or 10-15% growth every year). *** is preparing for potential growth in both regions, especially China (after the ECFA between China and Taiwan became effective in 2010, China will impose zero import duties on CSOBA products from Taiwan beginning in 2012)."

The single firm (***) reporting decreased foreign demand for CSOBAs,[42] indicated that such demand has fallen due to consolidation of paper companies and the world-wide economic slowdown. The firms citing fluctuating foreign demand for CSOBAs cited the recession and recovery of foreign economies and new paper mills.[43] The firms citing no change in foreign demand did not provide any comments.

[40] U.S. producer and importer questionnaire responses, sections IV-12 and III-13, respectively. ***. Ibid.

[41] U.S. producer and importer questionnaire responses, sections IV-14b and III-15b, respectively.

[42] The firm reported as both the U.S. producer and importer.

[43] In addition, *** noted that CSOBA demand is affected by (1) the demand for paper and (2) the demand for higher levels of paper brightness.

SUBSTITUTABILITY ISSUES

The degree of substitution in demand between CSOBAs produced in the United States and those imported from China and Taiwan depends upon such factors as conditions of sales (order lead times, payment terms, availability, supplier qualification/preference, "Buy America" laws/policies/practices, etc.), purchaser supply requirements, and product differentiation. Product differentiation depends on factors such as the range of products, quality (grade standards, purity, defect rates, etc.), availability, reliability of supply, product services, and the market perception of these factors. Based on the reported information in these investigations, there appears to be at least a moderate degree of substitution in demand between CSOBAs produced domestically and those imported from China and Taiwan during 2008-10.

U.S. producers and importers of the subject CSOBAs were requested to describe any significant changes in the product range or marketing of CSOBAs in the United States since January 1, 2008.[44] The three U.S. producers of CSOBAs and 8 of 10 responding U.S. importers of CSOBAs reported no changes, while the 2 remaining importers reported that changes had occurred. *** reported that new products were developed to work with ColorLok copy paper. *** reported that more disulfo products were sold to the paper industry (end users) between 2008-10, while some tetra demand was replaced by the disulfo products.

*** agreed that there was a shortage of DAS used to produce CSOBAs during mid-year 2008 but differed on the impact the input shortage had on the supply of CSOBAs to the U.S. market. *** asserted that shortages of DAS in 2008 did not result in shortages of CSOBAs in the United States ***.[45] On the other hand, *** asserted that the DAS shortage led to a serious CSOBA shortage.[46] *** also asserted that ***.[47] On the other hand, TFM asserted that the reportedly U.S. CSOBA shortage pulled U.S. paper companies into more global sourcing of their CSOBAs.[48]

Clariant disputed TFM's assertion that the imported Taiwan products were higher in purity than the domestic product. TFM asserted that its products had impurity levels under 2.5 percent compared to such levels of 18-20 percent for Clariant and 15 percent for 3V.[49] On the other hand, Clariant asserted that beyond a threshold purity level of 85 percent, which reportedly all major producers meet, the remaining impurities in the CSOBAs have little impact on CSOBAs' performance.[50] Clariant maintains that the concentration of the CSOBA active ingredients in the solution is a more critical parameter in assessing the effectiveness of CSOBA products.[51]

Clariant also disputed TFM's assertion that the Taiwan producer offers better technical service than the domestic producers. TFM asserted that it has *** personnel dedicated to technical services,[52] providing training programs, on-site audits, OBA optimization, and many other technical supports to its

---

[44] U.S. producer and importer questionnaire responses, sections IV-15 and III-16, respectively.

[45] Petitioner's postconference brief, exhibit 1, p. 4.

[46] Respondent TFM's postconference brief, p. 1.

[47] Petitioner's postconference brief, exhibit 1, p. 4.

[48] Respondent TFM's postconference brief, p. 5. TFM also asserted that CSOBAs are a very small percent of the total cost of paper, such that price reportedly takes a back seat to reliable supply and quality (Ibid.).

[49] Respondent TFM's postconference brief, p. 6. TFM further asserted fewer impurities in a CSOBA product will result in a lower dose of CSOBA to attain a target whiteness level (Ibid, p. 7).

[50] Petitioner's postconference brief, p. 21.

[51] Ibid, p. 22.

[52] TFM reported that *** (respondent TFM' postconference brief, p. 9).

U.S. customers.[53] Clariant indicated that it has *** personnel and *** dedicated to providing technical support to their U.S. CSOBA customers.[54]

Comparisons of the Domestic and Imported CSOBAs

U.S. producers and importers of CSOBAs were requested to report on the extent of interchangeability (products from different countries physically capable of being used in the same applications) of CSOBAs produced domestically, imported from China and Taiwan, and imported from nonsubject countries.[55] They were also asked to report the extent of any non-price differences that would affect sales in the U.S. market among these various sources of CSOBAs.[56] Responses of the U.S. producers and importers regarding the degree of interchangeability between domestic and imported CSOBAs are summarized in table II-3 and their responses regarding differences other than price affecting competition are summarized in table II-4. U.S. producers and importers were also requested in their questionnaires to provide any comments where products are sometimes or never interchangeable and where nonprice factors were always or frequently significant in competition between the domestic and imported CSOBAs. These comments are included in the text.

For responses regarding the degree of interchangeability, the three U.S. producers of CSOBAs and six U.S. importers (***) reported the requested information, but not necessarily for every country pair (table II-3). The responding U.S. producers and importers generally asserted that CSOBAs produced in the United States and imported from China, Taiwan, and nonsubject countries were "always" or "frequently" interchangeable. The only exception was the response of *** that indicated these sources of CSOBA supply were "sometimes" interchangeable. Two firms provided additional comments, which are discussed below.

***:

> "Most paper mills throughout the world use the same types of CSOBAs. These CSOBAs were made structurally identical (same chlorine content)."

***:

> "Due to quality differences between *** products and other products in the market, customers normally see *** niche as saving the customers' usages of OBAs and other chemicals and quality consistency. *** products normally perform better and are more stable while other variations are under control."

[53] Respondent TFM's postconference brief, pp. 8-9, and TFMNA's U.S. importer questionnaire response, section III-21.

[54] Petitioner's postconference brief, p. 53.

[55] U.S. producer and importer questionnaire responses, sections IV-19 and III-20, respectively.

[56] U.S. producer and importer questionnaire responses, sections IV-20 and III-21, respectively.

Table II-3
CSOBAs: Perceived degree of interchangeability among U.S.-produced CSOBAs and those imported from China, Taiwan, and nonsubject countries, based on sales in the U.S. market

Country pair	Number of U.S. producers' responses				Number of U.S. Importers' responses			
	A	F	S	N	A	F	S	N
United States vs.--								
China	2	1	-	-	6	-	-	-
Taiwan	2	1	-	-	3	-	1	-
Other countries[1]	2	1	-	-	4	-	-	-
China vs.--								
Taiwan	2	1	-	-	3	-	1	-
Other countries[1]	2	1	-	-	4	-	-	-
Taiwan vs.--								
Other countries[1]	2	1	-	-	3	-	1	-

[1] None of the responding firms identified specific other countries.

Note.--A = Always, F = Frequently, S = Sometimes, N = Never.

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

Table II-4
CSOBAs: Perceived degree of importance of differences in nonprice factors among U.S.-produced CSOBAs and those imported from China, Taiwan, and nonsubject countries, based on sales in the U.S. market

Country pair	Number of U.S. producers' responses				Number of U.S. importers' responses			
	A	F	S	N	A	F	S	N
United States vs.--								
China	-	-	1	2	1	2	1	2
Taiwan	-	-	1	2	2	-	1	1
Other countries[1]	-	-	1	2	1	1	1	1
China vs.--								
Taiwan	-	-	1	2	1	1	1	1
Other countries[1]	-	-	1	2	1	1	1	1
Taiwan vs.--								
Other countries[1]	-	-	1	2	1	1	1	1

[1] None of the responding firms identified specific other countries.

Note.--A = Always, F = Frequently, S = Sometimes, N = Never.

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

For responses regarding differences in factors other than price affecting competition, the three U.S. producers of CSOBAs and six U.S. importers (***) reported the requested information, but not necessarily for every country pair (table II-4). The responding U.S. producers asserted that differences in nonprice factors among CSOBAs produced in the United States and imported from China, Taiwan, and nonsubject countries were "never" or "sometimes" significant among sales of the domestic and imported products. On the other hand, U.S. importers assertions were not concentrated in any one category but reported that nonprice factors were almost equally likely to be "always", "frequently", "sometimes", or "never" significant. Three firms provided additional comments, which are discussed below.

***:

> "In Asia, some suppliers produce CSOBAs with higher purity and hence deliver whitening performance, therefore, it reduces the consumption of CSOBAs in paper mills and further benefits paper mills in the U.S. market. Depending on producers, the quality of the products may significantly affect the performance thus reducing the usage of CSOBAs in applications."

***:

> "CSOBAs are considered true commodities due to the maturity of the market, so customers have significant experience using them. Therefore, all sellers offer the primary product types and technical service is typically not critical. Product quality can also vary because the desired endpoint in the paper process can be met using more/less of the CSOBA and or other materials (colorants, etc.). The biggest differentiating characteristic

for CSOBAs is the price. Being closer to the customer base does not provide any competitive advantage."

***:

"**Quality**: *** products can save customers 10-50% on OBA usages, mainly because of the much lower impurity level. In addition, due to *** high purity products, customers are normally able to save usages of other chemicals such as dyes (blue, violet, and/or red dyes) and be able to see consistent performance from our products.

Availability: Since 2005 while IP (International Paper) announced increasing standard brightness from 88 GE BR to 92 GE BR, the demand of OBA in global markets (especially the U.S. market) has dramatically increased. Even though during the financial crisis in 2009 there was shrinking paper capacity due to weak demand and mill closures in U.S. market, OBA demand was relatively stable compared to the reduction of paper production. OBA demand has recovered slowly since 2010 and has increased in 2011. Especially in 2010 due to high pulp prices, most of US mills used more low cost pulp/fiber and tried to achieve brightness targets by using more OBA. This partly explains why demand for OBA increased since 2010. Besides, with shrinking demand of newsprint paper, more and more newsprint paper producers are looking for high value-added products to replace their original newsprint paper capacity. Most of the "high value-added" grades require OBAs (which were rarely used by newsprint paper mills before); most newsprint paper mills have restrictions on their pulping process and can only produce low brightness/high lignin content pulp such as mechanical pulp (without bleaching)]."

In the summer of 2008, there was a serious global shortage of DAS (the main raw material of subject goods, produced in China, and lesser in India, on which all OBA producers in the globe, including ***, rely for their supply), and most OBA producers could not supply enough OBAs to the U.S. market (including ***). *** was able to supply both *** contractual customers during the crisis while both producers were short of raw material supply.

*** strong and stable supply was proved during the global-wise OBA shortage during the summer of 2008. *** successfully supplied to ***, and other customers while *** had no shortage of supply or delay of delivery to existing contractual customer (***). US customers need and seek a second source to insure supply; they cannot afford to rely on one source (e.g., ***). Moreover, the total capacity dedicated to paper OBA by the 3 U.S. domestic producers is not sufficient to cover the demand.

Technical Support: *** has a very strong technical team in the U.S. market (*** sales/technical representatives, where every member has more than *** experience in the paper industry). *** has provided training program, on-site audits, OBA optimization, and many other technical supports to existing and potential customers in the U.S. market. By offering technical support, *** can help customers optimize cost savings by improving their process with *** high quality products. None of *** competitors including all domestic producers provide similar services to customers in the U.S. market now.

*** has a very efficient production process design, a high reputation in the U.S. market for high quality products, and highly skilled technical team in the U.S. market. We believe that the reasons our customers select us as their long-term partner/supplier are not only because of our superior quality but also the overall value we can offer to them (which all domestic producers and foreign competitors cannot match)."

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

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of three firms that accounted for 100 percent of U.S. production of CSOBAs during 2010.

U.S. PRODUCERS

U.S. producers of CSOBAs, their production locations, corporate affiliation, position with respect to the petition, and share of 2010 U.S. production are shown in table III-1.

Table III-1
CSOBAs: U.S. producers, position with respect to the petition, production locations, share of 2010 U.S. production, and corporate affiliation

Firm	Position on petition	Production location(s)	Share of 2010 production (*percent*)	Corporate affiliation
3V	***	Georgetown, SC	***	3V Chemical SpA, Milano, Italy
BASF	***	McIntosh, AL	***	BASF, Ludwigshafen, Germany
Clariant	Petitioner	Martin, SC	***	Clariant AG, Muttenz, Switzerland
Total			100.0	

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

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Table III-2 presents U.S. producers' production capacity, production, and capacity utilization for CSOBAs. Capacity utilization fluctuated downward during 2008-10, decreasing from approximately *** percent in 2008 to about *** percent in 2009, before rising to near *** percent in 2010. ***[1].

Table III-2
CSOBAs: U.S. producers' capacity, production, and capacity utilization, 2008-10

* * * * * * *

[1] ***'s U.S. Producer Questionnaire Response, section II-2.

U.S. PRODUCERS' SHIPMENTS

Tables III-3 and III-4 presents U.S. producers' shipments of CSOBAs in both dry pounds (100 percent active ingredient) and in solution, respectively. Commercial U.S. shipments of CSOBAs, flucuated downward throughout the period examined while U.S. exports increased. ***.[2] U.S. producers' U.S. shipments of CSOBAs peaked in 2008, declined in 2009, and increased in 2010.

Table III-3
CSOBAs: U.S. producers' shipments, by types, 2008-10

* * * * * * *

Table III-4
CSOBAs: U.S. producers' shipments, by types, 2008-10

* * * * * * *

*** reported that it produces *** on the same equipment and machinery used in the production of CSOBAs; however, no other products can be made on these production lines ***. ***.[3] *** reported that it does not produce, nor anticipate producing in the future, other products on the same equipment and machinery used in the production of CSOBAs; however, ***.[4] *** described the constraints that set limits on its production capacity and ability to shift production capacity between products as ***.[5] *** reported that the same production and related workers employed to produce CSOBAs ***.[6] ***.[7]

U.S. producers were asked to report their firms' commercial U.S. shipments of CSOBAs by di-, tetra-, and hexa- categories. Tables III-5 and III-6 present U.S. producers' commercial U.S. shipments of CSOBAs by category.

Table III-5
CSOBAs: U.S. producers' commercial shipments, by category, 2008-10

* * * * * * *

Table III-6
CSOBAs: U.S. producers' commercial shipments, by category, 2008-10

* * * * * * *

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' inventories of CSOBAs are presented in table III-7.

---

[2] U.S. Producer Questionnaire Responses, sections II-8a and II-8b.

[3] ***'s U.S. Producer Questionnaire Response, sections II-3 and II-4.

[4] ***'s U.S. Producer Questionnaire Response, section II-3.

[5] ***'s U.S. Producer Questionnaire Response, section II-4.

[6] ***'s U.S. Producer Questionnaire Response, section II-3.

[7] ***'s U.S. Producer Questionnaire Response, section II-4.

Table III-7
CSOBAs: U.S. producers' end-of-period inventories, 2008-10

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. producers' employment data are presented in table III-8. ***.[8] ***.[9] ***.[10]

Table III-8
CSOBAs: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2008-10

* * * * * * *

PRODUCERS' IMPORTS AND NON-IMPORT PURCHASES

***.[11] ***.[12] Additionally, *** reported nonsubject direct imports from ***.[13] ***.[14] ***.[15] ***.[16] Producers' subject direct imports and production of subject products are shown in table III-9.

Table III-9
CSOBAs: Producers' production of CSOBAs and direct subject imports of CSOBAs, by firm, 2008-10

* * * * * * *

[8] ***'s U.S. Producer Questionnaire Response, section II-2.

[9] ***'s U.S. Producer Questionnaire Response, section II-2.

[10] ***'s U.S. Producer Questionnaire Response, section II-2.

[11] ***'s Importer Questionnaire Response, section II-4.

[12] ***'s Importer Questionnaire Response, section II-4.

[13] Ibid.

[14] ***'s U.S. Producer Questionnaire Response, sections II-12a and II-12b.

[15] Ibid. ***.

[16] ***'s U.S. Producer Questionnaire Response, sections II-12a and 12b; Importer Questionnaire Response, section II-4.

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

U.S. IMPORTERS

The Commission sent questionnaires to 56 firms (including the three U.S. producers) that were believed might import CSOBAs from China and Taiwan during January 2008-December 2010 and received responses from 13 firms. Seven firms imported the subject merchandise during this period. Five firms imported from China, two imported from Taiwan, and eight imported from other sources.[1] Table IV-1 lists all responding U.S. importers of CSOBAs and their quantity of imports, by source, in 2010. *** is the largest importer from China and accounted for *** percent of all reported U.S. dry imports of CSOBAs and *** percent of reported U.S. solution imports from China in 2010. *** is the largest importer of CSOBAs from Taiwan and accounted for *** percent of reported U.S. dry imports of CSOBAs and *** percent of reported U.S. solution imports of CSOBAs from Taiwan in 2010. *** U.S. importers entered the subject product into or withdrew it from foreign trade zones or bonded warehouses.

U.S. IMPORTS

Official Commerce statistics for HTS subheadings 3204.20.80 and 2921.59.40 and HTS statistical reporting number 2921.59.8090 are basket categories and thus overstated; therefore, questionnaire data are used for imports of CSOBAs. CSOBAs are imported both as a dry product and in solution; therefore, import quantity data are presented both as 1,000 dry pounds (100-percent active ingredient basis) and as 1,000 pounds solution.[2]

Table IV-1
CSOBAs: Reported U.S. imports, by importer and by source of imports 2010

* * * * * * *

Tables IV-2 and IV-3 present data on U.S. imports of CSOBAs in dry pounds (100 percent active ingredient basis) and solution, respectively. The quantity of U.S. imports of CSOBAs from China in dry pounds and solution both decreased from 2008 to 2009 and then increased in 2010. U.S. imports of CSOBAs from Taiwan in dry pounds increased steadily over the period for which data were collected; whereas, U.S. imports of CSOBAs from Taiwan in solution fluctuated downward over the period for which data were collected.[3]

Table IV-2
CSOBAs: U.S. imports, by sources, 2008-10

* * * * * * *

[1] ***.

[2] Respondents were requested to report the same quantity data on two different bases: as 1,000 dry pounds (100-percent active ingredient) and as 1,000 pounds solution. ***.

[3] Respondents were requested to report the same quantity data on two different bases; as 1,000 dry pounds (100-percent active ingredient) and as 1,000 pounds solution. ***.

Table IV-3
CSOBAs: U.S. imports, by sources, 2008-10

* * * * * * *

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) the degree of fungibility, including specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Channels of distribution are discussed in *Part II* of this report; fungibility, geographical markets, and presence in the market are discussed below.

Fungibility and Presence in the Market

Tables IV-4 through IV-11 present U.S. commercial shipment quantities and U.S. importers' U.S. commercial shipment quantities by category (di-, tetra-, and hexa-) and state (dry or solution) for the period for which data were collected. The data indicate that, during the period for which data were collected, U.S.-produced CSOBAs, as well as imports from China and Taiwan were present, to varying degrees, in all three categories of the CSOBA market. Additional discussion of fungibility is presented in *Part II*.

Table IV-4
CSOBAs: U.S. producers' U.S. commercial shipments, by category, 2008-10

* * * * * * *

Table IV-5
CSOBAs: U.S. producers' U.S. commercial shipments, by category, 2008-10

* * * * * * *

Table IV-6
CSOBAs: U.S. commercial shipments of imports from China, by category, 2008-10

* * * * * * *

Table IV-7
CSOBAs: U.S. commercial shipments of imports from China, by category, 2008-10

* * * * * * *

Table IV-8
CSOBAs: U.S. commercial shipments of imports from Taiwan, by category, 2008-10

* * * * * * *

Table IV-9
CSOBAs: U.S. commercial shipments of imports from Taiwan, by category, 2008-10

* * * * * * *

Table IV-10
CSOBAs: U.S. commercial shipments of imports from all other sources, by category, 2008-10

* * * * * * *

Table IV-11
CSOBAs: U.S. commercial shipments of imports from all other sources, by category, 2008-10

* * * * * * *

Geographical Markets

CSOBAs produced in the United States are reportedly shipped nationwide. While imports of CSOBAs from the subject countries may enter select Customs districts, such products are then generally sold nationwide. Table IV-12 presents information on shares of U.S. imports of CSOBAs entered by regions and Customs districts during 2008-10. Imports of CSOBAs from China principally entered through Customs districts in the East and West, while imports of CSOBAs from Taiwan principally entered though Customs districts in the South, West, and Midwest.

Table IV-12
CSOBAs: U.S. imports by sources and regions, 2008-10

Region	China			Taiwan		
	2008	2009	2010	2008	2009	2010
	Shares of total quantity (*percent*)					
East[1]	52.1	58.3	74.8	0.2	0.4	0.8
South[2]	1.5	11.3	1.5	12.3	48.9	35.2
West[3]	26.9	16.5	7.3	29.2	20.9	26.6
Midwest[4]	19.5	13.9	16.4	58.3	29.8	37.4
Total	100.0	100.0	100.0	100.0	100.0	100.0

[1] Includes: Baltimore, MD; Boston, MA; Charleston, SC; Charlotte, NC; New York, NY; Ogdensburg, NY; Philadelphia, PA; Savannah, GA; and St. Albans, VT.
[2] Includes: Houston-Galveston, TX; Mobile, AL; New Orleans, LA.
[3] Includes: Anchorage, AK; Columbia-Snake, OR; Los Angeles, CA; San Francisco, CA; and Seattle, WA.
[4] Includes: Buffalo, NY; Chicago, IL; Cleveland, OH; Detroit, MI; Duluth, MN; Milwaukee, WI; and Minneapolis, MN.

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

Source: Compiled from official Commerce Statistics.

APPARENT U.S. CONSUMPTION

Tables IV-13 and IV-14 present data on apparent U.S. consumption of CSOBAs both dry form and in solution, respectively. Apparent consumption of CSOBAs as dry pounds (100-percent active ingredient basis) fluctuated downward over the period examined; however, apparent consumption of CSOBAs in solution increased irregularly over the period examined.[4]

Table IV-13
CSOBAs: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent U.S. consumption, 2008-10

* * * * * * *

Table IV-14
CSOBAs: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent U.S. consumption, 2008-10

* * * * * * *

U.S. MARKET SHARES

Tables IV-15 and IV-16 present data on U.S. market shares based on apparent U.S. consumption of CSOBAs in dry pounds and solution pounds, respectively. The U.S. market share of the domestic producers of CSOBAs declined from 2008 to 2009 and from 2009 to 2010 for both dry pounds and solution pounds.[5]

Table IV-15
CSOBAs: Apparent U.S. consumption and market shares, by sources, 2008-10

* * * * * * *

Table IV-16
CSOBAs: Apparent U.S. consumption and market shares, by sources, 2008-10

* * * * * * *

[4] Respondents were requested to report the same quantity data on two different bases; as 1,000 dry pounds (100-percent active ingredient) and as 1,000 pounds solution. ***.

[5] Respondents were requested to report the same quantity data on two different bases; as 1,000 dry pounds (100-percent active ingredient) and as 1,000 pounds solution. ***.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICING

U.S. prices of CSOBAs can fluctuate based on demand factors such as overall U.S. economic activity and sectoral demand fluctuations, particularly in paper production.[1] On the supply side, prices of CSOBAs also can differ because of a number of factors such as raw material costs, product specifications, and shipping costs (distance and mode of shipment). The prices of CSOBAs can also fluctuate due to the size of the shipment and extent of competition.[2]

Raw Material Costs

Total raw material costs averaged *** percent of the responding U.S. producers' total costs of goods sold to produce CSOBAs during 2008-10. DAS, a substantial input used to produce domestic CSOBAs, accounted for approximately *** percent of U.S. producers' total cost of goods sold during this period (***).[3] Other important raw material inputs used to produce domestic CSOBAs are aniline (di CSOBAs), cyanuric chloride (all CSOBAs), and sulfanilic acid (tetra CSOBAs).[4] U.S. producers, ***, reported that no public price data exists for their inputs used to produce CSOBAs.[5] U.S. import statistics provide unit values for some of the major chemical inputs based on landed, duty-paid, U.S. ports-of-entry values during 2008-10, which may be indicative of price trends of these chemicals in the U.S. market during this period.[6] Quarterly trends in unit values of imported DAS, cyanuric acid, and sulfanilic acid during 2008-10 are shown in figure V-1. Unit values of the chemicals, particularly DAS, peaked during April-June or July-September 2008, depending on the chemical, and then moderated.[7]

---

[1] Conference transcript, pp. 40-41 (Dettlaff).

[2] Part II discusses in detail substitution between CSOBAs and alternative products.

[3] BASF reported that *** (importer questionnaire response, section IV-18). The chemical pNT reportedly was in short supply during 2008 (respondent TFM's postconference brief, p. 2).

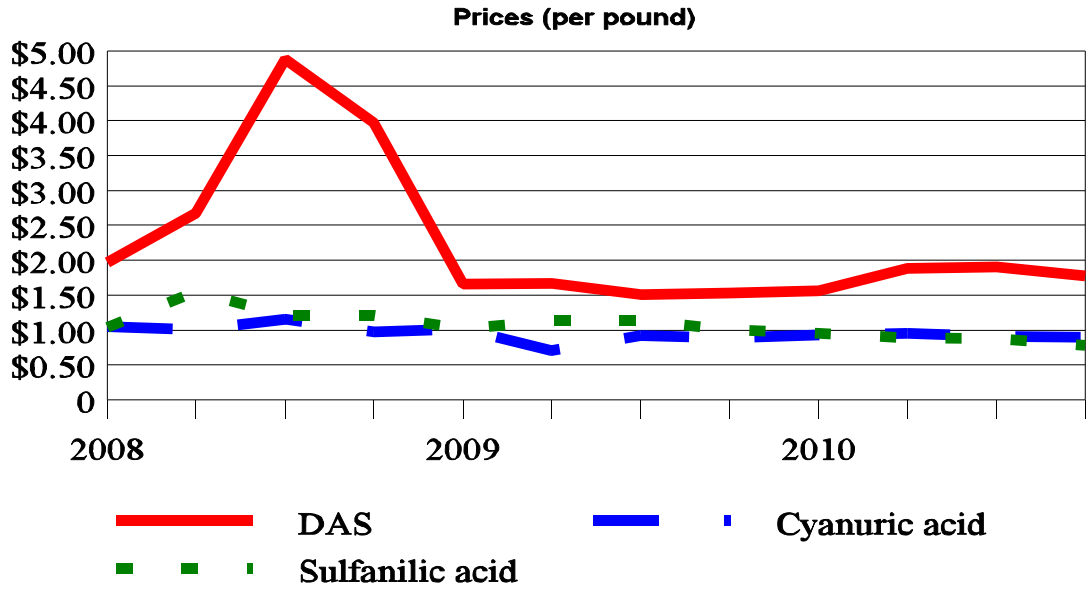
[4] Petition, Volume I, p. 16.

[5] Staff telephone interview with ***, April 15, 2011.

[6] Respondent TFM's postconference brief, pp. 9-10.

[7] DAS showed the most prominent price spike, likely reflecting shortages or a perception of shortages of this chemical for a period. During 2008-10, average quarterly unit values for imported DAS increased from an initial value of $1.97 per pound during January-March 2008 to a period high of $4.88 per pound by July-September 2008, then decreased to a period low of $1.53 per pound by October-December 2009, before unit values fluctuated but increased to end at $1.80 per pound by October-December 2010. TFM asserted that all CSOBA producers, including Clariant, and 3V rely on China for their supply of DAS (respondent TFM's postconference brief, p. 1).

Figure V-1
CSOBAs' input chemicals: Net weighted-average landed, duty-paid, U.S. ports-of-entry unit values of DAS, cyanuric acid, and sulfanilic acid, by quarters, January 2008-December 2010



Note.–Unit values in dollars per pound were calculated from quantities reported in kilograms.

Source: DataWeb, retrieved April 18, 2011.

U.S. CSOBA producers described the changes in prices of their raw materials and other inputs that were used to produce CSOBAs during 2008-10 and whether they expected any price trends to continue.[8] *** stated that "***." *** asserted that CSOBA demand for these inputs do not drive their costs significantly, but that oil prices and agricultural use of these inputs were the key drivers in the costs of these inputs.[9] All three U.S. producers reported that they expected currently increasing cost trends to continue.[10]

U.S. Inland Transportation Costs

The three U.S. producers of CSOBAs, two U.S. importers of CSOBAs from China (***), and one importer of CSOBAs from Taiwan (***) reported the average U.S. freight costs to their U.S. customers' locations for their total sales of CSOBAs during 2008-10.[11] Weighted-average U.S.-inland freight costs for domestic CSOBAs averaged *** percent of the delivered prices, and U.S.-inland freight costs of

[8] U.S. producer questionnaire responses, section IV-18.

[9] Petitioner's postconference brief, exhibit 1, p. 1.

[10] U.S. producer questionnaire responses, section IV-18.

[11] U.S. producer and importer questionnaire responses, sections IV-10 and III-11, respectively. The three U.S. producers and the responding importers of the subject CSOBAs reported that they generally arranged the U.S. freight to their customers (ibid). The lone exception was ***, which did not always know the freight costs as it sold some of its imported *** CSOBAs f.o.b. its U.S. shipping point.

CSOBAs from China and Taiwan averaged *** percent and *** percent, respectively, of the delivered prices.[12]

In addition, U.S. producers of CSOBAs and importers of CSOBAs from China and Taiwan reported in their questionnaire responses their quarterly net U.S. delivered and f.o.b. price data for two specified CSOBA products sold to paper companies during January 2008-December 2010. In the U.S. market, CSOBAs are shipped in bulk and non-bulk containers; the delivered price of CSOBAs is typically less in bulk containers compared to non-bulk containers for equal distances shipped.[13] The calculated weighted-average U.S. freight shares of their delivered prices and the per pound freight costs for each of the two specified CSOBAs products for the full period are shown in the following tabulation.

* * * * * * *

The three U.S. producers of CSOBAs, two U.S. importers of CSOBAs from China (***), and one importer of CSOBAs from Taiwan (***) estimated their U.S. sales of domestic and subject imported CSOBAs that were shipped to U.S. customers in three specified distance categories during January 2008-December 2010.[14] U.S. producers' and importers' weighted-average shipment shares of domestic and subject imported CSOBAs during this period, by distance categories from their U.S. selling locations, are shown in the following tabulation.[15]

* * * * * * *

PRICING PRACTICES[16]

The three U.S. producers of CSOBAs, one U.S. importer of CSOBAs from China (***), and one importer of CSOBAs from Taiwan (***) reported their 2010 U.S. commercial shipments by type of sale;[17] their weighted-average shipment shares, based on f.o.b. sales values, are shown in the following tabulation.[18]

* * * * * * *

Two U.S. producers (***) and the lone responding importer of CSOBAs from Taiwan (***) reported that their long-term contracts were typically *** and, the three U.S. producers and *** reported

[12] Ibid.

[13] Petition, Volume I, pp. 23-24. Bulk containers include tank trucks/road tankers (45,000 pounds or 5,000 gallons), and rail cars (180,000 pounds or 20,000 gallons). Non-bulk containers include drums (450 pounds or 50 gallons) and totes/intermediate bulk containers (2,400 pounds or 250 gallons). E-mail from ***, April 12, 2011. Drums are cylindrical containers and totes are rectangular containers (Petition, Volume I, pp. 23-24).

[14] U.S. producer and importer questionnaire responses, sections IV-10 and III-11, respectively.

[15] ***.

[16] Information on pricing practices discussed in this section was based on questionnaire responses of the U.S. producers and importers of the domestic and imported Chinese and Taiwan CSOBAs, unless otherwise noted.

[17] U.S. producer and importer questionnaire responses, sections IV-6 and III-7, respectively.

[18] Spot sales are usually one-time delivery, within 30 days of the purchase agreement; short-term sales are for multiple deliveries for up to 12 months after the purchase agreement; and long-term sales are for multiple deliveries for more than 12 months after the purchase agreement. Short-term and long-term sales may be arranged by contracts or oral agreements.

that there short term contracts were typically ***.[19] One responding importer of the imported Chinese CSOBAs (***) reported that its long-term contracts were ***, and two other responding importers of the Chinese CSOBAs (***) reported that their short-term contracts ranged from ***.[20] U.S. producers reported that their long-term and short-term contracts ***.[21] U.S. importers of the Chinese and Taiwan CSOBAs reported that their long-term and short-term contracts ***.[22]

The three U.S. producers of CSOBAs reported that sales prices were determined on both transaction-by-transaction and contract bases.[23] The three responding U.S. importers of CSOBAs from China (***) reported that sales prices were determined on a transaction-by-transaction, contract, and/or (for ***) other basis.[24] ***, the responding importer for Taiwan CSOBAs, reported selling ***.[25]

The three U.S. producers of CSOBAs, five responding U.S. importers of CSOBAs from China (***), and one responding importer of CSOBAs from Taiwan (***) reported generally quoting prices on a delivered basis, with the suppliers arranging the freight.[26] U.S. producers of CSOBAs and U.S. importers of CSOBAs from the subject countries typically offered payment terms of net 30 days, although *** also offered net 45 day payment terms.[27] One of three responding U.S. producers of CSOBAs (***), two of three responding U.S. importers of CSOBAs from China (***), and the one responding importer of CSOBAs from Taiwan (***) reported that they did not offer volume discounts for large order shipments.[28] Another responding U.S. producer (***) and one responding importer of the Chinese CSOBAs (***) reported offering volume discounts, whereas the remaining U.S. producer (***) explained that the firm ***.[29]

QUESTIONNAIRE PRICE DATA

U.S. selling value and quantity data were requested for the following two CSOBA products[30] produced in the United States and imported from China and Taiwan during January 2008-December 2010:[31]

---

[19] U.S. producer and importer questionnaire responses, sections IV-7/8 and III-8/9, respectively.

[20] U.S. importer questionnaire responses, sections III-8/9.

[21] U.S. producer questionnaire responses, sections IV-7/8.

[22] U.S. importer questionnaire responses, sections III-8/9. On the other hand, *** reported that ***.

[23] U.S. producer questionnaire response, section IV-3.

[24] U.S. importer questionnaire responses, section III-4. *** reported that *** (ibid).

[25] Ibid.

[26] U.S. producer and importer questionnaire responses, sections IV-5/10 and III-6/11, respectively. The only exception was *** (Ibid).

[27] Ibid.

[28] U.S. producer and importer questionnaire responses, sections IV-4 and III-5, respectively.

[29] Ibid.

[30] These products are the tetra molecular structure of CSOBAs; this category accounted for *** percent of U.S. producers' reported U.S. commercial shipment quantities of all CSOBAs on a solution basis during 2008-10; *** percent of reported U.S. commercial shipment quantities of CSOBAs imported from China; and *** percent of reported U.S. commercial shipment quantities of CSOBAs imported from Taiwan during this period.

[31] The petitioner suggested these product categories and indicated that collecting prices on delivered and U.S. f.o.b. bases, in dollars per pound of solution, was appropriate (Petition, Volume I, pp. 47-48; staff telephone interviews with ***, March 28-29, 2011; and staff interviews with ***, March 30, 2011 and April 4 and 6, 2011.

Product 1.–4,4'-bis[4-[bis (2-hydroxyethyl) amino]-6-(4-sulfoanilino)-1,3,5-triazin-2-yl]amino-2,2'-stilbenedisulfonic acid, $C_{40}H_{44}N_{12}O_{16}S_4$ ("Fluorescent Brightener 220") --
For example:
Clariant's Leucophor T-100 Liquid, T-105 Liquid, or T-4 Liquid;
BASF's Tinopal ABP-A Liquid;
TFM's Taflunol UMS T/P Dry form or UMS 640L Liquid; and
Hongda's 4PL-C, BBU-D, or Elcowhite TS.
Report Fluorescent Brightener 220 **in solution**, in bulk packaging (e.g., *tank trucks/road tankers and/or rail cars*);

Product 2.–Fluorescent Brightener 220 **in solution**, in non-bulk packaging (e.g., *drums and/or totes/intermediate bulk containers*).

The price data were based on quarterly net U.S. delivered and f.o.b. selling price data[32] of U.S. producers and importers for their shipments of the specified domestic CSOBAs products and those imported from China and Taiwan, during January 2008-December 2010, to U.S. paper-producing companies unrelated to the selling firms.[33] In addition, each U.S. importer was requested to provide the selling price data for the specified products that they imported from their largest nonsubject country source.

*** U.S. producers of CSOBAs (***), two U.S. importers of CSOBAs from China (***), and one U.S. importer of CSOBAs from Taiwan (***) reported useable price information, but not necessarily for all products or periods. In addition, price data were reported by a single U.S. importer of CSOBA s from India (***) and a single importer of CSOBAs from Indonesia (***).[34] All firms but *** were able to report comparable quantities of both the requested delivered and f.o.b. price data.[35] *** reported price data of its imported CSOBAs from Taiwan for its imports ***.[36]

The responding U.S. producers reported a total quantity (in pounds of solution on a net U.S. f.o.b. price basis) of the U.S.-produced CSOBAs for pricing purposes during 2008-10 that accounted for *** percent of their total reported U.S. commercial shipments of U.S.-produced CSOBAs during this period. The responding U.S. importers reported total sales quantities (in pounds of solution on a net U.S. f.o.b. price basis) of the imported CSOBAs from the subject countries for pricing purposes during 2008-10 that

[32] Prices were requested on both bases because suppliers generally sell on a delivered price basis, but substantial U.S. freight costs suggest that f.o.b. prices may be a better basis for price comparisons. To estimate selling prices on a f.o.b. basis, the reporting firms were requested to deduct from their delivered selling prices U.S. freight from their U.S. plants (producers) or from their U.S. ports-of-entry (importers). Reporting firms were requested to report quantities (in pounds of solution) separately for their delivered and f.o.b. selling prices, where the respective quantities should correspond to shipments that were reported on a delivered and f.o.b. basis, respectively.

[33] U.S. importers of CSOBAs from China and Taiwan that imported the products in dry form and then reconstituted the products into liquid form (typically called a let-down process) were asked to provide the requested selling price data for the let-down products separately from sales of CSOBAs imported as a solution. In addition, importers of CSOBAs in dry form from the subject countries were requested to provide the share of their average delivered price that was accounted for by the let-down process for each such country, product, and year that price data were reported.

[34] U.S. importers reported the requested pricing data for product 1 from India and products 1 and 2 from Indonesia; all such products were imported as solution.

[35] *** (staff telephone interview with ***, April 21, 2011). ***.

[36] The U.S. producers of CSOBAs reported selling their products in solution only. The reporting U.S. importers of CSOBAs from China, India, and Indonesia reported pricing data for imports of the products in solution only.

accounted for *** percent of total U.S. commercial shipments of imports of CSOBAs from China[37] and *** percent of CSOBAs from Taiwan during this period.[38] In addition, responding U.S. importers reported total sales quantities (in pounds of solution on a net U.S. f.o.b. sales basis) of CSOBAs from the nonsubject countries for pricing purposes during 2008-10 that accounted for *** percent of total reported U.S. commercial shipments of imports of CSOBAs from nonsubject countries during this period.

The total sales quantities (on a net U.S. f.o.b. price basis) of the specified CSOBA products to U.S. paper companies for which U.S. producers and subject importers reported the requested pricing data during 2008-10 are shown in the following tabulation.

* * * * * * *

As seen in the tabulation, quantities of the domestic and subject imported products were typically *** for sales in bulk packaging (product 1) than sales in non-bulk packaging (product 2). As seen later in the pricing tables, prices of the bulk sales were typically *** than the non-bulk sales.

Trends in net weighted-average prices of the domestic CSOBAs and imported CSOBAs from China and Taiwan and comparisons of the weighted-average prices of the domestic and imported products from China and Taiwan are based on the responding firms' reported quarterly net delivered and f.o.b. U.S. selling price data to paper companies. Based on reported U.S. f.o.b. prices,[39] quarterly net weighted-average selling prices and quantities of the domestic and subject imported products 1 and 2 are shown by products in tables V-1 and V-2, respectively, and in figures V-2 and V-3, respectively; price comparisons between the domestic and the subject imported products are also shown in these tables.[40] The reported delivered price data are shown in appendix D. The reported quarterly quantities and net weighted-average U.S. f.o.b. prices of the specified products imported from India and Indonesia are briefly discussed in appendix E.

Table V-1
CSOBAs: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported CSOBA product 1[1] and margins of underselling/(overselling), by quarters, January 2008-December 2010

* * * * * * *

[37] The reported sales quantities (in pounds of solution on a delivered price basis) of CSOBAs from China for pricing purposes accounted for *** of total U.S. commercial shipments of imported CSOBAs from China during this period.

[38] The pricing data coverage for Taiwan includes imports of CSOBAs in solution and dry form, but all sales quantities were in pounds of solution. *** (U.S. importer questionnaire response, section III-3c).

[39] The net U.S. f.o.b. price data are shown in the text, because this data is believed to be appropriate for price comparison purposes where U.S. freight costs are substantial. In addition, the quantities associated with the U.S. f.o.b. price data were generally the same as that for the delivered price data for each reporting firm.

[40] The products from Taiwan involved imports in solution and in dry form, the latter was reconstituted to a solution prior to sale; these price data are shown separately.

Table V-2
CSOBAs: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported CSOBA product 2[1] and margins of underselling/(overselling), by quarters, January 2008-December 2010

* * * * * * *

Figure V-2
CSOBAs: Net weighted-average U.S. f.o.b selling prices and quantities of domestic and subject imported CSOBA product 1,[1] by quarters, January 2008-December 2010

* * * * * * *

Figure V-3
CSOBAs: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported CSOBA product 2,[1] by quarters, January 2008-December 2010

* * * * * * *

Price Trends

The weighted-average quarterly net U.S. f.o.b. selling prices and quantities of the specified CSOBA products produced domestically and imported from China and Taiwan fluctuated during 2008-2010 (tables V-1 and V-2 and figures V-2 and V-3). Prices of the domestic and subject imported products generally ***, except for the domestic product 2 that ***.[41] Price trends of the domestic and subject imported CSOBAs appear to be influenced, at least partially, by price fluctuations of raw materials, particularly price increases of DAS that peaked in mid-year 2008, and by the recession during 2008 through the first half of 2009. Quarterly prices of the domestic products ***. Prices of the Chinese products ***. Prices of the Taiwan products imported as solution ***.[42] A summary of price trends and high/low prices for the domestic products and the imported products from China and Taiwan is shown in table V-3.

U.S. quarterly shipment quantities of U.S.-produced and imported Chinese products 1 and 2 and imported Taiwan product 1 (imported as solution) *** during January 2008-December 2010. U.S. quarterly shipment quantities of the Taiwan product 2 (imported as solution) and products 1and 2 imported in dry form but sold as solution generally *** during this period.

Table V-3
CSOBAs: Summary of trends in quarterly net weighted-average U.S. f.o.b. selling prices for domestic and subject imported CSOBA products 1-2, by country of origin, January 2008-December 2010

* * * * * * *

Price Comparisons

A total of *** quarterly price comparisons on a net U.S. f.o.b. price basis were possible between the domestic CSOBA products 1 and 2 and those imported from China that were shipped to U.S. paper companies during 2008-10. The imported Chinese products were priced less than the domestic products in *** f.o.b. selling price comparisons, while *** f.o.b. price comparisons showed the imported Chinese

[41] Although not evident in tables V-1 and V-2, ***.

[42] Prices of the Taiwan products imported in dry form but sold as solution ***.

products priced higher than the domestic products. The selling price comparisons are summarized in table V-4, by period and by product, based on quantity (in solution) of the imported Chinese CSOBA products.[43]

A total of *** quarterly price comparisons on a net U.S. f.o.b. price basis were possible between the domestic CSOBA products 1 and 2 and those imported from Taiwan that were shipped to U.S. paper companies during 2008-10. The Taiwan products imported as solution were priced less than the domestic products in *** of a total of *** f.o.b. selling price comparisons, while *** comparisons showed that the imported Taiwan products were priced higher than the domestic products. The Taiwan products imported in dry form (and sold in solution) were priced less than the domestic products in *** of a total of *** f.o.b. selling price comparisons, while *** price comparisons showed the imported Taiwan products priced higher than the domestic products. The selling price comparisons are summarized in table V-5, by period and by product, based on quantity (in solution) of the imported Taiwan CSOBA products.[44]

Table V-4
CSOBAs: Number of quarterly net weighted-average U.S. f.o.b. selling price comparisons between U.S.-produced and imported CSOBAs from China, January 2008-December 2010

* * * * * * *

Table V-5
CSOBAs: Number of quarterly net weighted-average U.S. f.o.b. selling price comparisons between U.S.-produced and imported CSOBAs from Taiwan, January 2008-December 2010

* * * * * * *

LOST REVENUES AND LOST SALES

The Commission requested U.S. producers of CSOBAs to report any instances of lost revenues or lost sales they experienced due to competition from imports of CSOBAs from China and Taiwan since January 2008. In the petition, *** provided allegations of lost revenues and sales. In addition, one *** U.S. producer, ***, provided a total of five lost revenues allegations and six lost sales allegations as a result of competition with imported CSOBAs from China and Taiwan, but did not provide any contact information.[45] The 22 lost revenues allegations made by producers totaled $2.2 million and involved more than 59.2 million pounds of CSOBAs and the 75 lost sales allegations totaled $60.9 million and involved more than 104.6 million pounds of CSOBAs. ***. The staff received responses for 50 lost sales allegations. Responding purchasers reported that they agreed with 8 lost sales allegations involving 13.7 million pounds of CSOBAs, and disagreed with 35 lost sales allegations involving 48.9 million pounds of CSOBAs. There were no responses for the lost revenue allegations. A summary of the investigated information is shown in table V-6 for lost revenue allegations and table V-7 for lost sale allegations. Additional comments from purchasers are presented in the text. In addition, the petitioners provided short descriptions of its severe lost revenue and lost sale allegations, which are also included.

*****:**

***.

[43] Delivered price comparisons (appendix D) showed somewhat fewer instances of underselling by the Chinese products than the f.o.b. price comparisons. This may be due to the delivered price data for the Chinese products reported by *** that did not include all U.S.-inland freight.

[44] Delivered price comparisons (appendix D) showed more instances of underselling by the Taiwan products than the f.o.b. price comparisons. This is likely due to the *** (discussed earlier in Part V).

[45] U.S. producer questionnaire response, sections IV-22/23.

Table V-6
CSOBA: U.S. producers' lost revenue allegations

* * * * * * *

Table V-7
CSOBAs: U.S. producers' lost sales allegations

* * * * * * *

*****:**

***.

*****:**

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*****:**

*** asserted the following –
"***."
*** asserted the following–
"***."

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*****:**

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*** asserted the following–
"***."
"***."
*** asserted the following–
"***."
***.

*****:**[46]

*** asserted the following–
"***."

*****:**

***

Purchasers were also requested to indicate if they had switched purchases of CSOBAs from U.S. producers to the subject imports and provide reasons for the shift. Five of seven responding purchasers named in lost sales and lost revenue allegations indicated that they switched purchases of CSOBAs from U.S. producers to suppliers of CSOBAs from China or Taiwan since January 2008. Four of these five purchasers indicated that price was the reason for the shift. The remaining purchaser *** reported that reliability of supply and better payment terms were the reasons for the shift, not price. Purchasers *** indicated that U.S. producers reduced their prices of CSOBAs in order to compete with prices of CSOBAs from China and Taiwan since January 2008, but *** noted that the price differential was still too significant and it continued to purchase imported product instead of domestic product. Four purchasers reported that domestic prices of CSOBAs have fluctuated, but were unable to determine if the fluctuations were due to competition with Chinese or Taiwanese imports.

[46] This firm was not contacted by the staff, but the allegation was included here to provide the discussion reported by ***, the alleging U.S. producer.

Although none of the U.S. producers reported any shortages or delays in supplying their U.S.-produced CSOBAs,[47] U.S. purchasers *** reported issues with the reliability of domestic supply in their response to lost sales allegations. *** stated that "one of the issues with one of the suppliers on this list (***) was their product availability. When CSOBAs were in short supply in the recent past, they advised us that they would not be able to meet our requirements for one of our mills they were currently supplying. In addition, the *** is a higher quality product based on purity than the other products (***)." U.S. purchasers *** also reported changing suppliers due to issues with product efficiency, as well as price and service failures of the domestic supplier.

[47] U.S. producer questionnaire responses, section IV-17.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Three U.S. firms provided usable financial data on their operations producing CSOBAs.[1] These reported data are believed to represent all known U.S. CSOBA production in the period for which data were gathered.

OPERATIONS ON CSOBAs

Income-and-loss data for the reporting U.S. producers of CSOBAs are presented in tables VI-1 and VI-2, on a 100-percent active ingredient dry basis and in solution, respectively.[2] Results are briefly summarized here:

- The quantity and value of total net sales fell from 2008 to 2009 and increased *** in 2010. The average unit value ("AUV") of sales also fell from 2008 to 2009 and were lower in 2010 compared with 2009.[3]
- The absolute value of the cost of goods sold ("COGS") fell from 2008 to 2009 and then declined in 2010. The AUV of COGS fell between each of the three years; the ratio of COGS to sales increased between 2008 and 2009 but declined in 2010 to a level *** higher than that in 2008. Raw material costs fell between 2008 and 2009 and then increased *** in 2010;[4] as a per-unit, raw material costs fell from 2008 to 2010, while as a ratio-to-sales, such costs fell from 2008 to 2009 and were flat between 2009 and 2010. The dollar value, ratio-to-sales, and per-unit values of other factory costs rose from 2008 to 2009; although these measures were lower in 2010 compared with 2009, they were higher than in 2008.
- Selling, general, and administrative ("SG&A") expenses followed the trend of sales, decreasing from 2008 to 2009, and were higher in 2010. The AUV of SG&A expenses rose *** from 2008 to 2009 and was basically flat from 2009 to 2010. The SG&A expense-to-sales ratio rose from 2008 to 2010.[5]

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[1] The firms are: BASF, Clariant, and 3V. Each of the reporting firms has a fiscal year that ends on or about December 31. ***. There are minor differences between data reported in the trade and financial sections of the Commission's producers' questionnaire, which are attributable to rounding.

[2] The Commission's questionnaire requested data on an in-solution basis as well as on a dry weight basis. The responding U.S. producers produce, sell, and maintain their books and records on an in-solution basis.

[3] One U.S. producer attributed the decline in sales to "decreased demand due to increased imports of finished paper products, consolidations in the paper industry, and due to the recession. In our opinion, the overall demand for CSOBAs today is lower than 2008 levels." *** U.S. producer questionnaire response, section IV-14. Others disagreed in part, stating that demand had increased in the paper-manufacturing industry for increased levels of optical brightness, particularly for use with recycled paper, in magazine publishing, and cited the application of color lock technology that is used for copy paper, as well. Conference transcript, pp. 55-56 (Dettlaff) and 105-107 and 114-115 (Nelson). Mr. Nelson stated that overall demand was probably flat to slightly higher due to increases in brightness. Conference transcript, p. 121 (Nelson).

[4] There were reported supply shortages of DAS in 2008. Conference transcript, p. 103 (Nelson). See also postconference brief of TFM, pp. 1-5. Raw materials are discussed later in this section of the report as well as in Part V.

[5] Sales values and SG&A expenses were adjusted to remove freight charges on shipments to customers for . *** to an f.o.b. basis.

- The operating *** increased from 2008 to 2009 and was less in 2010 but still *** higher than in 2008. Measures of profitability on a per-unit basis or ratio-to-sales followed the dollar value.
- After adding interest and other expenses (thought to be chiefly charges for restructuring), net losses increased from 2008 to 2009 but were lower in 2010 than in 2009. Cash flow was negative in each yearly period and was greater in 2009 and 2010 than in 2008 because of ***.[6]

Table VI-1 presents data for CSOBAs on a 100 percent active ingredient dry weight basis while table VI-2 presents the same data on a solution basis. Tables VI-3 and VI-4 follow a similar format in presenting the data on a firm-by-firm basis. Table VI-4 differs from table VI-3 in that it presents only sales quantity and AUVs; value data and ratio to sales are the same as in table VI-3.

Table VI-1
CSOBAs: Results of operations of U.S. producers, 2008-10

* * * * * * *

Table VI-2
CSOBAs: Results of operations of U.S. producers, 2008-10

* * * * * * *

Raw materials utilized in the production of CSOBAs include such inputs as DAS, which is the single most expensive input, aniline derivatives, and others.[7] The price for DAS (and its precursor, p-nitrotoluene) reportedly spiked in 2008 due to alleged shortages caused by the shutdown of production facilities in China during the Beijing Olympics.[8] U.S. producers stated at the conference that they had lost the ability to pass price increases for raw material costs on to customers.[9] As noted earlier, sales and raw material costs fell from 2008 to 2009. The dollar value of sales fell more than did the dollar value of raw material costs ($*** versus $***), but the ratio of raw material costs to sales fell *** percentage points between the two years, and the AUV of sales fell less than did the AUV of raw material costs (*** per pound (solution basis). From 2009 to 2010 sales values increased ***. The ratio of raw material costs to sales was ***; the AUV of sales declined by *** per pound (solution basis) compared with a fall in the AUV of raw material costs of *** (solution basis).

COGS, however, were affected more by changes in other factory costs than by raw material costs. By their nature, raw material costs vary with usage while other factory costs stay the same and reflect the "fixed" nature of production costs. Other factory costs increased as a ratio to sales as well as on a per-unit basis from 2008 to 2009 and, although they declined somewhat in 2010, they were higher in 2010 than in 2008.[10]

Table VI-3 depicts operating data for CSOBAs on a dry weight, 100 percent active ingredient basis, by-firm.

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[6] Net income before taxes is calculated after deducting interest charges (the largest single item) and other expenses and adding other income items to operating income. Cash flow is the sum of net income plus depreciation.

[7] While ***. Natural gas and electricity also are used in the production process and are classified in "other factory costs."

[8] Conference transcript, pp. 37-38 (Dettlaff). See also postconference brief of TFM, pp. 1-5. This was echoed in questionnaire responses of U.S. producers. See U.S. producers' questionnaire response of ***, section IV-18. *** responded that "since December 2010, our raw material costs have been increasing." Ibid.

[9] Conference transcript, pp. 28 (Golder), 37-38 (Dettlaff), and 138 (Kelly).

[10] ***.

Table VI-3
CSOBAs: Selected results of operations of U.S. producers, by firm, 2008-10

* * * * * * *

Table VI-4 presents data by weight and per-unit values for CSOBAs in solution by-firm. Table VI-4 differs from table VI-3 in that it presents only sales quantity and AUVs; value data and ratio to sales are the same as in table VI-3.

Table VI-4
CSOBAs: Selected results of operations of U.S. producers, by firm, 2008-10

* * * * * * *

BASF, ***, acquired Ciba Specialty Chemicals in April 2009, including the plant at McIntosh, AL, where it produces CSOBAs. BASF is integrated backward to the production of DAS and uses a continuous process. Hence, BASF's income statement reflects that integration–***. It was *** for which data were gathered. The quantity, value, and AUVs of BASF's sales *** between 2008 and 2009 and *** in 2010. Its operating ***. While most costs ***.[11] BASF reported ***.[12]

Clariant, *** produces CSOBAs at its plant in Martin, SC (*** of that plant's production). It uses the batch process and ***. The quantity and value of Clariant's sales ***. Clariant was *** of the yearly periods; its operating ***.

3V is the ***, and it produces CSOBAs via the batch process at its plant in Georgetown, SC. Like Clariant, 3V ***. 3V's total net sales ***. Its sales AUV also ***. Although 3V ***.

A variance analysis for the operations of U.S. producers of CSOBAs is presented in summary form in table VI-5. The information for this variance analysis is derived from tables VI-1 and VI-2.[13] The analysis shows that the increase of $*** in the operating loss from 2008 to 2010 was attributable to the unfavorable price variance (unit sales values fell) that was greater than the favorable net cost/expense variance (unit costs decreased). The operating loss was lower by $*** in 2010 compared with 2009.

Table VI-5
CSOBAs: Variance analysis on the operations of U.S. producers, 2008-10

* * * * * * *

[11] As noted in tables VI-1 and VI-2, BASF ***. ***.

[12] E-mail to staff from ***, April 22, 2011.

[13] A variance analysis is calculated in three parts: sales variance, cost of sales variance, and SG&A expense variance. Each part consists of a price variance (in the case of the sales variance) or a cost or expense (cost/expense) variance (in the case of the cost of sales and SG&A expense variance), and a volume variance. The sales or cost/expense variance is calculated as the change in unit price or per-unit cost/expense times the new volume, while the volume variance is calculated as the change in volume times the old unit price or per-unit cost/expense. Summarized at the bottom of the table, the price variance is from sales; the cost/expense variance is the sum of those items from COGS and SG&A variances, respectively, and the volume variance is the sum of the volume components of the net sales, COGS, and SG&A expense variances. The overall volume component of the variance analysis is generally small.

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The reported capital expenditures are shown in table VI-6. Clariant's 2008 capital expenditures of $*** were for ***.[14] No U.S. producer reported any expenses related to research and development.

Table VI-6
CSOBAs: Capital expenditures of U.S. producers, 2008-10

* * * * * * *

ASSETS AND RETURN ON INVESTMENT

Data on the U.S. producers' total assets and their return on investment ("ROI") are presented in table VI-7. Total assets utilized in the production, warehousing, and sale of CSOBAs for reporting U.S. producers decreased by *** percent from 2008 to 2010 led by ***. ROI, which is calculated as the ratio of operating income to total assets, therefore followed the trend of operating income, and was *** in 2009 than in 2008; although it increased in 2010 from 2009, ROI remained *** compared with 2008.

Table VI-7
CSOBAs: The value of assets and return on investment of U.S. producers, fiscal years 2008-10

* * * * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers of CSOBAs to describe any actual or potential negative effects of imports of CSOBAs from China and Taiwan on their firms' growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Their responses are as follows:

Actual Negative Effects

BASF: ***.

Clariant: ***.

3V: ***.

Anticipated Negative Effects

BASF: ***.

Clariant: ***.

3V: ***.

[14] E-mail to staff from ***, April 26, 2011.

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

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

THE INDUSTRY IN CHINA

*** Chinese producers of CSOBAs, ***, together accounting for an estimated *** percent of Chinese CSOBA production, responded to the Commission's foreign producer/exporter questionnaire.[1] The companies estimate their aggregate percentage of total Chinese CSOBA exports to the United States at *** percent, or by company as: ***. ***.[2] *** reported *** as constraints on its production capacity, while *** reported *** as constraints on its production capacity.[3] The Chinese CSOBA producers reported exports to markets in ***.[4]

***.[5] ***.[6]

Table VII-1
CSOBAs: Data for the industry in China, 2008-10 and projected 2011-12

* * * * * * *

Table VII-2
CSOBAs: Data for the industry in China, 2008-10 and projected 2011-12

* * * * * * *

Table VII-3
CSOBAs: Chinese producers' export shipments to the United States, by category, 2008-10

* * * * * * *

[1] Foreign producer questionnaire responses, (section II-10a and II-10b). ***, (section I-3).

[2] Ibid. (sections II-4 and II-6).

[3] Ibid. (section II-5).

[4] Ibid. (sections II-10a and II-10b).

[5] Ibid. (section II-7).

[6] Ibid. (section II-8).

THE INDUSTRY IN TAIWAN

*** producer of CSOBAs in Taiwan, ***, accounting for an estimated *** percent of CSOBA production in Taiwan in 2010, responded to the Commission's foreign producer/exporter questionnaire.[7] *** reported ***.[8] *** estimates that it accounts for *** percent of total CSOBA exports to the United States from Taiwan. *** also exports CSOBAs to markets in ***.[9]

*** reported that *** percent of its firm's most recent fiscal year's sales were represented by sales of CSOBAs. *** reported changes in operations due to ***.[10] Specifically, *** will relocate its plant to Yilan County, Taiwan in May 2011, due to old plant housings and facilities and no space to install new monitoring equipment. Since 2009, ***.[11] *** report production of products other than CSOBAs on the same equipment and machinery used in the production of CSOBAs, maintenance of inventories in the United States, or being subject to antidumping findings or remedies in any WTO-member countries.[12] *** as constraints that set the limits on its production capacity.[13] *** further indicated that its sales ***.[14]

Table VII-4
CSOBAs: Data on the industry in Taiwan, 2008-10 and projected 2011-12

* * * * * * *

Table VII-5
CSOBAs: Data for the industry in Taiwan, 2008-10 and projected 2011-12

* * * * * * *

Table VII-6
CSOBAs: Taiwan producers' export shipments to the United States, by category, 2008-10

* * * * * * *

U.S. INVENTORIES OF PRODUCT FROM CHINA AND TAIWAN

Tables VII-7 and VII-8 present data on U.S. importers' end-of-period inventories of imported CSOBAs.

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[7] ***'s foreign producer questionnaire (sections II-12a and II-12b).

[8] Ibid. (section I-3).

[9] Ibid. (sections II-12a and II-12b).

[10] Ibid. (section II-2).

[11] Ibid.

[12] Ibid. (sections II-4, II-8, and II-9).

[13] Ibid. (section II-5).

[14] Ibid. (section II-3).

Table VII-7
CSOBAs: U.S. importers' end-of-period inventories of imports, by source, 2008-10

* * * * * * *

Table VII-8
CSOBAs: U.S. importers' end-of-period inventories of imports, by source, 2008-10

* * * * * * *

U.S. IMPORTERS' IMPORTS SUBSEQUENT TO DECEMBER 31, 2010

The Commission requested importers to indicate whether they imported or arranged for the importation of CSOBAs from China or Taiwan after December 31, 2010. The tabulation below shows the importer, the quantity of CSOBAs imported or arranged for importation subsequent to December 31, 2010, and the country of origin of the imports.

* * * * * * *

ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS

There are no known CSOBA third-country import relief investigations or existing antidumping or countervailing duty orders on the subject product from China or Taiwan in countries other than the United States.[15] No subject countries' exports of CSOBAs are subject to tariff or non-tariff barriers to trade in any countries other than the United States, nor are these exports subject to current proceedings in any countries other than the United States that might result in tariff or non-tariff barriers to trade.[16]

INFORMATION ON NONSUBJECT COUNTRIES

In assessing whether the domestic industry is materially injured or threatened with material injury "by reason of subject imports," the legislative history states "that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) 'to ensure that it is not attributing injury from other sources to the subject imports.'"[17]

During the preliminary phase of these investigations, the Commission sought pricing data from U.S. importers of CSOBAs from China, Taiwan, and all other countries. Those data are presented in Part V and Appendices D and E of this report. With respect to foreign nonsubject industry information, publicly available information regarding international producers of CSOBAs in Germany, India, and Switzerland follows. These three countries are accounted for a large majority of CSOBA imports from nonsubject countries for 2008-10.

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[15] Conference Transcript, p. 83 (Ellis).

[16] Importer Questionnaire Responses (section I-10); Foreign Producer Questionnaire Responses, (section II-9).

[17] Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

Germany

At least two firms in Germany produce optical brighteners for paper products, BASF and Blankophor. BASF announced in November 2010 that it will cease production of optical brighteners at its plant in Grenzach, Germany, and move production of its paper chemicals to India.[18] BASF plans for this restructuring to take place in the period 2011 to 2013.[19] Blankophor (formerly known as Germany Catec GmbH) purchased its optical brightening agents production facility from Kemira Oyj on September 30, 2010.[20] Kemira stated that it divested because it had been struggling to run the OBA operation profitably and it wants to prioritize product lines that are relevant for all its industry segments.[21]

India

Two firms in India produce CSOBAs. Paramount Minerals and Chemicals Limited (Paramount) produces di, tetra, and hexa CSOBAs.[22] According to its website, Paramount has an annual production capacity of 30,000 metric tons, including the capability of producing 2,500 metric tons annually of OBAs in powder form.[23] Daikaffil Chemicals India Limited has an annual capacity of 20,000 metric tons for various OBA products.[24] Daikaffil produces it own DAS for use in the production of CSOBAs.[25] Additionally, BASF has announced that it will move production for its paper chemicals business to India over the next two years.[26]

Switzerland

Both BASF and Clariant produce CSOBAs in Switzerland.[27] Clariant has announced plans to cease production of CSOBAs in Switzerland and move production to Prat, Spain, in 2011.[28]

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[18] BASF, "BASF gears paper chemicals business toward growth markets," November 11, 2010, http://www.basf.com/group/pressrelease/P-10-472 (accessed May 4, 2011).

[19] Ibid.

[20] Kemira Oyj, "Kemira closes the Blankophor (previously German Catec) deal," October 1, 2010, http://www.kemira.com/en/media/pressreleases/Pages/1448386_20101001144600.aspx (accessed May 4, 2011).

[21] PaperChemReport, "Kemira to Divest FWAs business," June 2010, 11 (see Petition Vol. 1, Exhibit I-11).

[22] Paramount Minerals and Chemicals Limited, "Products," http://www.pmclindia.com/products.aspx (accessed May 4, 2011).

[23] Paramount Minerals and Chemicals Limited, "Infrastructure," http://www.pmclindia.com/infrastructure.aspx (accessed May 4, 2011).

[24] Daikaffil Chemicals India Limited, "Products," http://www.daikaffil.com/products.htm (accessed May 4, 2011).

[25] Daikaffil Chemicals India Limited, "Factory," http://www.daikaffil.com/factory.htm (accessed May 4, 2011).

[26] BASF, "BASF gears paper chemicals business toward growth markets," November 11, 2010, http://www.basf.com/group/pressrelease/P-10-472 (accessed May 4, 2011).

[27] Petition Vol. 1, Exhibit I-4.

[28] PaperChemReport, "Kemira to Divest FWAs business," June 2010, 12 (see Petition Vol. 1, Exhibit I-11).

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1186–1187 (Preliminary)]

Certain Stilbenic Optical Brightening Agents From China and Taiwan

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731–TA–1186–1187 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Taiwan of certain stilbenic optical brightening agents, provided for in subheading 3204.20.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair

value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 16, 2011. The Commission's views are due at Commerce within five business days thereafter, or by May 23, 2011.

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

DATES: *Effective Date:* March 31, 2011.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 31, 2011, by Clariant Corporation, Charlotte, NC.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 1 p.m. on April 21, 2011, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Requests to appear at the conference should be filed in writing with the Secretary to the Commission on or before March 18, 2011. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 26, 2011, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

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

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

By order of the Commission.

Issued: April 1, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–8222 Filed 4–6–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–972, A–583–848]

Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations

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

DATES: *Effective Date:* April 27, 2011.

FOR FURTHER INFORMATION CONTACT: Shawn Higgins at (202) 482–0679 or Robert Bolling at (202) 482–3434 (People's Republic of China), AD/CVD Enforcement, Office 4 or Hermes Pinilla at (202) 482–3477 or Sandra Stewart at (202) 482–0768 (Taiwan), AD/CVD Enforcement, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 31, 2011, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of certain stilbenic optical brightening agents (stilbenic OBAs) from the People's Republic of China (PRC) and Taiwan filed in proper form by the Clariant Corporation (the petitioner). *See Antidumping Duty Petitions on Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan* (March 31, 2011) (the Petitions). The petitioner is a domestic producer of stilbenic OBAs. On April 4, 2011, the Department issued a request for additional information and clarification of certain areas of the Petitions. On April 7, 2011, in response to the Department's request, the petitioner filed an amendment to the Petitions. *See Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Amendment to Petitions* (April 7, 2011) (Supplement to the PRC AD Petition or Supplement to the Taiwan AD Petition).

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

The Department finds that the petitioner filed these Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioner is requesting. *See* the "Determination of Industry Support for the Petitions" section below.

Period of Investigation

Because the Petitions were filed on March 31, 2011, the period of investigation (POI) for the PRC investigation is July 1, 2010, through December 31, 2010. The POI for the Taiwan investigation is January 1, 2010, through December 31, 2010. *See* 19 CFR 351.204(b)(1).

Scope of the Investigations

The products covered by these investigations are certain OBAs from the PRC and Taiwan. For a full description of the scope of the investigations, see the "Scope of the Investigations," in Appendix I of this notice.[1]

Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 10, 2011, twenty calendar days from the signature of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Comments on Product Characteristics for Antidumping Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of stilbenic OBAs to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

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

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, we must receive comments at the above address by May 10, 2011. Additionally, rebuttal comments limited to those issues raised in the comments must be received by May 17, 2011.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers who support the petition account for (i) at least 25 percent of the total production of the domestic like product and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers accounting for more than 50 percent of the total production of the domestic like product, the Department shall (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the

[1] *See also* Memorandum to File from Shawn Higgins, dated April 14, 2011, regarding telephone conversation with counsel for the petitioner regarding the scope of the Petitions.

Department's determination is subject to limitations of time and information because the Department determines industry support at the time of initiation. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (CAFC 1989), *cert.* denied 492 U.S. 919 (1989).

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

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of these investigations. Based on our analysis of the information submitted on the record, we have determined that stilbenic OBAs constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like-product analysis in these cases, see the Antidumping Duty Investigation Initiation Checklist: Certain Stilbenic Optical Brightening Agents from the PRC (PRC Initiation Checklist) at Attachment II and the Antidumping Duty Investigation Initiation Checklist: Certain Stilbenic Optical Brightening Agents from Taiwan (Taiwan Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room 7046 of the main Department of Commerce building.

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry-support data contained in the Petitions with reference to the domestic like product as defined in the "Scope of the Investigations" in Appendix I of this notice. To establish industry support, the petitioner provided its own 2010 production data of the domestic like product and compared this to total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petitions at 3 and Exhibits I–1 and I–16; *see also* PRC Initiation Checklist at Attachment II and Taiwan Initiation Checklist at Attachment II.

The Department's review of the data provided in the Petitions, supplemental responses, and other information readily available to the Department indicates that the petitioner has established industry support. First, based on information provided in the Petitions, the petitioner established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* section 732(c)(4)(D) of the Act; *see also* PRC Initiation Checklist at Attachment II and Taiwan Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product. *See* PRC Initiation Checklist at Attachment II and Taiwan Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See id.*

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigations that it is requesting the Department to initiate. *See id.*

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production, a lower capacity-utilization rate, fewer shipments, underselling, price depression or suppression, lost revenue, decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are supported by adequate evidence and meet the statutory requirements for initiation. *See* PRC Initiation Checklist at Attachment III and Taiwan Initiation Checklist at Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate investigations of imports of stilbenic OBAs from the PRC and Taiwan. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the PRC Initiation Checklist and Taiwan Initiation Checklist.

Alleged U.S. Price and NV: The PRC

The petitioner states that PRC exporters/producers first sell subject merchandise in the United States to unaffiliated resellers. *See* Volume III of the Petitions at 13–14. The petitioner does not have access, however, to the prices charged by PRC producers to U.S. resellers. *Id.* As a result, to calculate export price (EP), the petitioner based its calculation on the prices charged by U.S. resellers of PRC stilbenic OBAs to a U.S. customer. *Id.* Specifically, the petitioner calculated EP based on a price at which revenues were lost due to a competing bid from a supplier of PRC stilbenic OBAs. *See* Supplement to the PRC AD Petition at Exhibits 32 and 33. The petitioner substantiated the price used as a basis for the EP calculation with an affidavit. *See* Supplement to the PRC AD Petition at Exhibit 32. The price used as a basis for the EP calculation is a delivered price to an end-user for stilbenic OBAs supplied in a solution state. *See* Volume III of the Petitions at 14. To calculate EP for stilbenic OBAs in a solution state, the petitioner adjusted the EP based on the terms of sale for brokerage and handling in the port of export, international freight, U.S. customs duties, U.S. reseller markup, and U.S. inland freight. To calculate EP for stilbenic OBAs in a powder state, the petitioner adjusted the EP based on the terms of sale for brokerage and handling in the port of export, international freight, U.S. customs duties, U.S. reseller markup, further manufacturing (*i.e.,* dilution), and U.S. inland freight.

See Volume III of the Petitions at 13–17 and Supplement to the PRC AD Petition at Exhibit 33.

The petitioner states that the PRC is a non-market economy (NME) country and no determination to the contrary has been made by the Department. *See* Volume III of the Petitions at 2–3. In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of the PRC investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of the PRC investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC's NME status and the granting of separate rates to individual exporters.

Citing section 773(c)(4) of the Act, the petitioner contends that India is the appropriate surrogate country for the PRC because it is at a level of economic development comparable to that of the PRC and it is a significant producer of stilbenic OBAs. *See* Volume III of the Petitions at 3–5 and Exhibit III–1. Also, the petitioner states that Indian data for valuing factors of production are available and reliable. *See* Volume III of the Petitions at 3. Based on the information provided by the petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate-country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

The petitioner calculated the NV and dumping margins for the U.S. prices, discussed above, using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. The petitioner calculated NVs for stilbenic OBAs in both solution and powder state based on its own consumption rates for producing stilbenic OBAs. *See* Volume III of the Petitions at 5–6, 11–12, and Exhibit III–2. In calculating NV, the petitioner based the quantity of each of the inputs used to manufacture and pack stilbenic OBAs in the PRC based on its own production experience during the POI because it stated that the actual usage rates of the foreign manufacturers of stilbenic OBAs were not reasonably available. *Id.* The petitioner stated, however, that its production process and cost structure is representative of the PRC stilbenic OBAs producers because the production of stilbenic OBAs "involves the same basic technology worldwide." *See* Volume III of the Petitions at 6. The petitioner adjusted its factor inputs to reflect any known differences between the petitioner's production process and the process employed by PRC producers. *See* Volume III of the Petitions at 11–12 and Exhibit III–2. The petitioner also adjusted its factor inputs to reflect higher usage rates for energy and labor in the production of stilbenic OBAs in powder state. *See* Volume III of the Petitions at 12 and Supplement to the PRC AD Petition at Exhibit 31.

The petitioner valued the factors of production based on reasonably available, public surrogate-country data, including Indian import statistics from the Global Trade Atlas (GTA). *See* Volume III of the Petitions at 6–7 and Exhibit III–4 and Supplement to the PRC AD Petition at Exhibit 29. The petitioner excluded from these import statistics imports from countries previously determined by the Department to be NME countries, *i.e.,* it excluded imports from Indonesia, the Republic of Korea, and Thailand, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies, and it excluded imports labeled as being from "unspecified countries." *See* Volume III of the Petitions at 6–7 and Exhibit III–4. In addition, the petitioner made currency conversions, where necessary, based on the POI-average rupee/U.S. dollar exchange rate as reported on the Department's Web site. *See* Volume III of the Petitions at 12 and Exhibit III–13 and Supplement to the PRC AD Petition at Exhibits 30–31. The petitioner determined labor costs using the labor consumption, in hours, derived from its own experience. *See* Volume III of the Petitions at 11 and Supplement to the PRC AD Petition at Exhibits 30–31. The petitioner valued labor costs using the Department's current methodology of calculating an hourly wage rate by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. *See* Volume III of the Petitions at 7–8 and 10 and Supplement to the PRC AD Petition at 3 and Exhibit 28.

The petitioner determined electricity costs using the electricity consumption, in kilowatt hours, derived from its own experience. *See* Volume III of the Petitions at 11–12 and Supplement to the PRC AD Petition at Exhibits 30–31. The petitioner valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. *See* Volume III of the Petitions at 8–9 and Exhibit III–26.

The petitioner determined natural gas costs using the natural gas consumption derived from its own experience. *See* Volume III of the Petitions at 11–12 and supplement to the PRC AD Petition at Exhibits 30–31. The petitioner valued natural gas using data obtained from the Government of India Ministry of Petroleum and Natural Gas as well as the gas transmission costs from the Gas Authority of India Ltd. *See* Volume III of the Petitions at 9 and Exhibit III–8.

The petitioner determined water costs using the water consumption derived from its own experience. *See* Volume III of the Petitions at 11–12 and Supplement to the PRC AD Petition at Exhibits 30–31. The petitioner valued water based on information that is contemporaneous with the POI from the Maharashtra Industrial Development Corporation. *See* Volume III of the Petitions at 9 and Supplement to the PRC AD Petition at 2 and Exhibit 27.

The petitioner based factory overhead, selling, general and administrative (SG&A), and profit on data from Daikaffil Chemicals India Limited (Daikaffil Chemicals), an Indian producer of stilbenic OBAs, for the fiscal year April 2009 through March 2010. *See* Volume III of the Petitions at 10 and Exhibits III–9 and III–10. The petitioner states that Daikaffil Chemicals was an Indian producer of stilbenic OBAs during fiscal year 2009–2010. *See* Volume III of the Petitions at 10. Therefore, for purposes of the initiation, the Department finds the petitioner's use of Daikaffil Chemicals' financial ratios appropriate. *See* 19 CFR 351.408(c)(4).

Alleged U.S. Price and NV: Taiwan

The petitioner calculated two constructed export prices (CEPs) (one for stilbenic OBAs in solution and one in powder state) using a price quote it obtained from a credible source for stilbenic OBAs in the solution state. The petitioner substantiated the U.S. price quote with an affidavit and a declaration from the person who obtained the information. To calculate CEP for stilbenic OBAs in a solution state, the petitioner adjusted the CEP based on the

terms of sale for brokerage and handling incurred in Taiwan and the United States, international freight, U.S. customs duties, U.S inland freight, U.S. indirect selling expenses, and CEP profit. To calculate CEP for stilbenic OBAs in a powder state, the petitioner adjusted the CEP based on the terms of sale for brokerage and handling incurred in Taiwan and the United States, international freight, U.S. customs duties, U.S. inland freight, U.S. indirect selling expenses, further manufacturing (*i.e.,* dilution), and CEP profit. *See* Volume II of the Petitions at 7–19, Exhibits II–18 through II–26, Supplement to the Taiwan AD Petition at Exhibit 28, and Taiwan Initiation Checklist.

With respect to NV, the petitioner calculated NV based on constructed value (CV). The petitioner computed a CV for stilbenic OBAs in the solution state and in the powder state, using the same methodology described below.

Pursuant to section 773(a)(4) of the Act, the petitioner calculated CV using the cost of manufacturing, SG&A expenses, packing expenses, and financial expenses. The petitioner then added the average profit rate based on the most recent financial statements of a company in the same general industry in Taiwan as the producer. *See* Taiwan Initiation Checklist.

The petitioner calculated raw materials, labor, energy, and packing based on its own production experience, adjusted for known differences to manufacture stilbenic OBAs in Taiwan using publically available data. *See* Taiwan Initiation Checklist for details of the calculation of raw materials, labor, energy, and packing. To calculate the factory overhead, SG&A, financial expenses, and the profit rate, the petitioner relied on cost data from a Taiwanese producer of optical brighteners. *See* Volume II of the Petitions at 8–12 and Exhibits II–16 and II–17 and Taiwan Initiation Checklist.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of stilbenic OBAs from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EPs to NVs in accordance with section 773(c) of the Act, the estimated dumping margins for stilbenic OBAs from the PRC range from 80.64 percent to 203.16 percent. *See* the PRC Initiation Checklist. Based on comparisons of CEPs to CVs in accordance with section 773(a)(4) of the Act, the estimated dumping margins for stilbenic OBAs from Taiwan range from 61.79 percent to 109.45 percent. *See* Taiwan Initiation Checklist.

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on stilbenic OBAs from the PRC and Taiwan, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of stilbenic OBAs from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in AD investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5). *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008). The Department stated that "withdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area." *Id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegation is due no later than 45 days before the scheduled date of the preliminary determinations.

Respondent Selection

The PRC

Following standard practice in AD investigations involving NME countries, the Department will request quantity and value information from all known exporters and producers identified with complete contact information in Volume III of the Petitions and Supplement to the PRC AD Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008), and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005). On the date of publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* and a response to the quantity and value questionnaire is due no later than May 11, 2011. Also, the Department will send the quantity and value questionnaire to those PRC companies identified in Volume I of the Petitions at Exhibit I–8.

Taiwan

Following standard practice in AD investigations involving market-economy countries, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under HTSUS number 3204.20.80 during the POI. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market- Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf.* Based on our experience in

processing the separate-rate applications in previous AD investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See, e.g., Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China,* 72 FR 43591, 43594–95 (August 6, 2007). The specific requirements for submitting the separate-rate application in the NME investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register.** The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents. As explained in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates in an NME Investigation

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

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the Government of the PRC and Taiwan authorities. Because of the large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC and Taiwan authorities, consistent with 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than May 16, 2011, whether there is a reasonable indication that imports of stilbenic OBAs from the PRC and Taiwan are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD or countervailing duty (CVD) proceeding must certify to the accuracy and completeness of that information. See section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The certain stilbenic optical brightening agents ("OBA") covered by these investigations are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4′-bis [1,3,5- triazin-2-yl] amino-2,2′-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.

Excluded from these investigations are all forms of 4,4′-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] amino-2,2′-stilbenedisulfonic acid, $C_{40}H_{40}N_{12}O_8S_2$ ("Fluorescent Brightener 71"). These investigations cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States ("HTSUS"), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2011–10188 Filed 4–26–11; 8:45 am]

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APPENDIX B

CALENDAR OF PUBLIC CONFERENCE

CALENDAR OF PUBLIC PRELIMINARY CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's preliminary conference:

Subject: Certain Stilbenic Optical Brightening Agents from China and Taiwan

Inv. Nos.: 731-TA-1186 and 1187 (Preliminary)

Date and Time: April 21, 2011 - 1:00 p.m.

Sessions were held in connection with these preliminary investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:

Petitioner (**Richard L.A. Weiner**, Sidley Austin LLP)
Respondents (**Peter J. Koenig**, Squire, Sanders & Dempsey (US) LLP)

In Support of the Imposition of Antidumping Duty Orders:

Sidley Austin LLP
Washington, D.C.
on behalf of

Clariant Corporation

Kenneth Golder, President, Chief Executive Officer, *and* Chief Financial Officer, Clariant Corporation

Matthew Dettlaff, Senior Products Manager, Clariant Corporation

Lynn Holec, Consultant, ITR LLC
John Dickson, Consultant

Neil R. Ellis)
Richard L.A. Weiner)
) – OF COUNSEL
Rajib Pal)
Jill Caiazzo)

In Opposition to the Imposition of
Antidumping Duty Orders:

Squire, Sanders & Dempsey (US) LLP
Washington, D.C.
on behalf of

TFM North America, Inc.

Randall B. Nelson, Manager, Technical Services, TFM North America, Inc.

Mark Huang, General Manager, TFM North America, Inc.

Peter J. Koenig) – OF COUNSEL

OTHER PARTIES:

BASF Corporation
Charlotte, NC

Ted Kelly, Vice President, Paper Chemicals

Steven J. Goldberg, Vice President and Associates General Counsel, Regulatory Law and Government Affairs

CLOSING REMARKS:

Petitioner (**Neil R. Ellis**, Sidley Austin LLP)
Respondents (**Peter J. Koenig**, Squire, Sanders & Dempsey (US) LLP)

-END-

APPENDIX C

SUMMARY DATA

CSOBAs: Summary tables		
Table No.	**Imports**	**Countries cumulated**
C-1	Market shares for subject country imports are based on **shipments** of U.S. imports; quantity (1,000 dry pounds, 100-percent active ingredient basis).	**China and Taiwan**.
C-2	Market shares for subject country imports are based on **shipments** of U.S. imports; quantity (1,000 pounds solution).	**China and Taiwan**.

Table C-1
CSOBAs: Summary data concerning the U.S. market, 2008-2010

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Table C-2
CSOBAs: Summary data concerning the U.S. market, 2008-2010

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APPENDIX D

REPORTED DELIVERED PRICE DATA OF CSOBA PRODUCTS PRODUCED DOMESTICALLY AND IMPORTED FROM CHINA AND TAIWAN

The delivered selling price data were reported for CSOBA products 1 and 2 produced domestically and imported from China and Taiwan. The products from Taiwan involved imports of solution and powder, the latter was reconstituted to a solution prior to sale; these price data are shown separately. Based on reported U.S. delivered prices, quarterly net weighted-average selling prices and quantities of the domestic and subject imported specified products 1 and 2 are shown by products in tables D-1 and D-2, respectively, and in figures D-1 and D-2, respectively; price comparisons between the domestic and the subject imported products are also shown in these tables. In addition, the selling price comparisons between the domestic products and those imported from China and Taiwan are summarized in tables D-3 and D-4, respectively, by period and by product based on quantity of the imported CSOBA products.

Table D-1
CSOBAs: Net weighted-average U.S. delivered selling prices and quantities of domestic and subject imported CSOBA product 1[1] and margins of underselling/(overselling), by quarters, January 2008-December 2010

* * * * * * *

Table D-2
CSOBAs: Net weighted-average U.S. delivered selling prices and quantities of domestic and subject imported CSOBA product 2[1] and margins of underselling/(overselling), by quarters, January 2008-December 2010

* * * * * * *

Figure D-1
CSOBAs: Net weighted-average U.S. delivered selling prices and quantities of domestic and subject imported CSOBA product 1,[1] by quarters, January 2008-December 2010

* * * * * * *

Figure D-2
CSOBAs: Net weighted-average U.S. delivered selling prices and quantities of domestic and subject imported CSOBA product 2,[1] by quarters, January 2008-December 2010

* * * * * * *

Price Comparisons

A total of *** quarterly price comparisons on a net U.S. delivered price basis were possible between the domestic CSOBA products 1 and 2 and those imported from China that were shipped to U.S. paper companies during 2008-10. The imported Chinese products were priced less than the domestic products in *** delivered selling price comparisons, while *** delivered price comparisons showed the imported Chinese products priced higher than the domestic products. The selling price comparisons are summarized in table D-3, by period and by product, based on the quantity (in solution) of the imported Chinese CSOBA products.

A total of *** quarterly price comparisons on a net U.S. delivered price basis were possible between the domestic CSOBA products 1 and 2 and those imported from Taiwan that were shipped to U.S. paper companies during 2008-10. The Taiwan products imported as solution were priced less than the domestic products in *** of a total of *** delivered selling price comparisons, *** comparisons showed the imported Taiwan products priced higher than the domestic products, and *** price comparisons showed the imported Taiwan and domestic products to be priced the same. The Taiwan products imported as powder (and sold as solution) were priced less than the domestic products in *** of a total of *** delivered selling price comparisons, *** price comparisons showed the imported Taiwan products priced higher than the domestic products, and *** price comparisons showed the imported Taiwan and domestic products to be priced the same. The selling price comparisons are summarized in table D-4, by period and by product, based on the quantity (in solution) of the imported Taiwan CSOBA products.

Table D-3
CSOBAs: Number of quarterly net weighted-average U.S. delivered selling price comparisons between U.S.-produced and imported CSOBAs from China, January 2008-December 2010

* * * * * * *

Table D-4
CSOBAs: Number of quarterly net weighted-average U.S. delivered selling price comparisons between U.S.-produced and imported CSOBAs from Taiwan, January 2008-December 2010

* * * * * * *

APPENDIX E

PRICE COMPARISONS AMONG THE U.S.-PRODUCED AND SUBJECT IMPORTED CSOBA PRODUCTS AND THOSE IMPORTED FROM NONSUBJECT COUNTRIES

Selling price data were reported for CSOBAs imported from two nonsubject countries, which involved product 1 from India and products 1 and 2 from Indonesia. Selling prices of the specified CSOBA products imported from these nonsubject countries were generally higher than selling prices of the products produced domestically and imported from China and Taiwan during 2008-10. The following tabulation presents the number of quarterly net U.S. f.o.b. selling price comparisons showing under/overselling or where the prices were equal for the reported specified products imported from the nonsubject countries vis-a-vis the products produced domestically and imported from China and Taiwan during 2008-10.

* * * * * * *

Figures E-1 and E-2 show the quarterly net U.S. f.o.b. selling prices and quantities of the specified products 1 and 2, respectively, for domestic CSOBA, imported CSOBA from China and Taiwan, and, as applicable, imported CSOBA from India and Indonesia during 2008-10.

Figure E-1
CSOBAs: Net weighted-average U.S. f.o.b selling prices and quantities of domestic and imported CSOBA product 1, by quarters, January 2008-December 2010

* * * * * * *

Figure E-2
CSOBAs: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and imported CSOBA product 2, by quarters, January 2008-December 2010

* * * * * * *