

UNITED STATES INTERNATIONAL TRADE COMMISSION

CREATINE MONOHYDRATE FROM THE PEOPLE'S REPUBLIC OF CHINA

Investigation No. 731-TA-814 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

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## CREATINE MONOHYDRATE FROM THE PEOPLE'S REPUBLIC OF CHINA

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of creatine monohydrate, provided for in subheading 2925.20.90 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 INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. 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 an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. 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 investigation.

### BACKGROUND

On February 12, 1999, a petition was filed with the Commission and the Department of Commerce by Pfanstiehl Laboratories, Inc., Waukegan, IL, alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFV imports of creatine monohydrate from the People's Republic of China. Accordingly, effective February 12, 1999, the Commission instituted antidumping investigation No. 731-TA-814 (Preliminary).

Notice of the institution of the Commission's investigation 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 February 22, 1999 (64 FR 8629). The conference was held in Washington, DC, on March 8, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of creatine monohydrate from China that allegedly are sold in the United States at less than fair value (“LTFV”).

### **I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS**

The legal standard for preliminary antidumping determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly LTFV imports.<sup>1</sup> 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.”<sup>2</sup>

### **II. DOMESTIC LIKE PRODUCT AND INDUSTRY**

#### **A. In General**

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>3</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>4</sup> In turn, the Act defines “domestic like product” as: “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>5</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>6</sup> No single factor is dispositive, and the Commission may

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<sup>1</sup>19 U.S.C. §§ 1671b(a) and 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT \_\_, Slip Op. 96-51 at 4-6 (March 11, 1996).

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

<sup>3</sup>19 U.S.C. § 1677(4)(A).

<sup>4</sup>19 U.S.C. § 1677(4)(A).

<sup>5</sup>19 U.S.C. § 1677(10).

<sup>6</sup>See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production

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consider other factors it deems relevant based on the facts of a particular investigation.<sup>7</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>8</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>9</sup>

## **B. Product Description**

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as:

creatine monohydrate or creatine. The chemical name for creatine covered under this investigation is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service (CAS) registry numbers for this product are 57-00-1 and 6020-87-7. Pure creatine is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue.<sup>10</sup>

Creatine monohydrate (hereinafter “creatine,” unless otherwise indicated) is an amino acid produced in the human body that plays a role in replenishing the energy supply to muscle cells.<sup>11</sup> Creatine is usually produced to a purity of 99.5 percent or higher.<sup>12</sup> Until recently, the primary use for creatine was as a laboratory reagent, demand for which was relatively limited.<sup>13</sup> In the early 1990’s, however, weight trainers and other athletes began using creatine in the belief that it stimulates muscle growth and reduces muscle fatigue.<sup>14</sup>

## **B. Domestic Like Product Issues**

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<sup>6</sup>(...continued)

employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>7</sup>See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

<sup>8</sup>Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 249, 96th Cong., 1st Sess. 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.”).

<sup>9</sup>Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

<sup>10</sup>64 Fed. Reg. 11834, 11834 (March 10, 1999).

<sup>11</sup>Confidential staff report (“CR”) at I-3 to I-4, public staff report (“PR”) at I-2 to I-3.

<sup>12</sup>CR at I-3, PR at I-2.

<sup>13</sup>Transcript of conference held March 8, 1999 (“tr.”) at 15-17, 56 (testimony of Edward S. Holstein, Executive Vice President for Petitioner Pfanstiehl Laboratories, Inc.).

<sup>14</sup>Petition at 7; tr. at 15-17 (Holstein), 68-69 (Leo Cullen, Vice President of Sales and Marketing for MW International (“MW”)); and Postconference Brief of MW and GCI Nutrients, Inc. (“GCI”) at Appendix 1, p. 3.

Petitioner asserts that the domestic like product should consist of creatine only.<sup>15</sup> Respondents argue that the domestic like product should include five other nutritional supplements that promote muscle growth. The other supplements fall into two groups: supplements made using creatine (the “downstream products”) and supplements not chemically related to creatine (HMB and glutamine). As discussed below, we determine for purposes of this preliminary phase of the investigation that the domestic like product consists of creatine only.<sup>16</sup>

#### 1. Downstream products

The Commission has generally determined in past investigations that the domestic like product should not include downstream products that are made using the product subject to investigation, unless those downstream products are also themselves included in the scope of the subject merchandise.<sup>17</sup> As the Commission has explained previously, if downstream products are included in the domestic like product, the domestic industry must then include companies that do not produce the product, but rather only purchase it in order to make a downstream product.<sup>18</sup> The interests of these companies may be different from those of the producers of the product, and their inclusion could thus skew the Commission’s evaluation of the condition of industry.<sup>19 20</sup>

The downstream creatine products at issue in this investigation are creatine liquid, creatine phosphate, and creatine citrate. Creatine liquid (also known as “creatine serum”) contains creatine, honey, and other ingredients.<sup>21</sup> Some creatine liquid may contain a stabilizing agent, the stated purpose of which is

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<sup>15</sup>Petitioner also argued that the domestic like product should include creatine of all purity levels. Petitioner’s Postconference Brief at 6-10. Respondents did not oppose Petitioner on the issue of purity and, in fact, the record indicates that nearly all creatine is produced to purities of 99.5 percent or higher. CR and PR at I-3. Customers do not differentiate among purity levels in this range. Tr. at 48-49 (Holstein). For purposes of this preliminary phase of the investigation, we define the domestic like product to include creatine of all purity levels.

<sup>16</sup>For the reasons set out in footnote 42, *infra*, Commissioner Crawford finds that the downstream products should be included in the domestic like product.

<sup>17</sup>See, e.g., Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Inv. Nos. 701-TA-376-379 (Preliminary) and 731-TA-788-793 (Preliminary), USITC Pub. 3107 at 5 (May 1998); Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Preliminary), USITC Pub. 2955 at 3-6 (April 1996); and Tungsten Ore Concentrates from the People’s Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 at 7 (March 1991). Similarly, the Commission has in past investigations declined to apply the semi-finished/finished product analysis to a downstream product that is not within the scope of the investigation. Beryllium Metal and High-Beryllium Alloys from Kazakhstan, 731-TA-746 (Final) USITC Pub. 3019 at 5 (Feb. 1997), and Manganese Metal from the People’s Republic of China, Inv. No. 731-TA-724 (Final), USITC Pub. 2939 at 4 (Dec. 1995).

<sup>18</sup>Bulk Ibuprofen from India, Inv. Nos. 701-TA-308 and 731-TA-526 (Preliminary), USITC Pub. 2428 at 10, (Sept. 1991) and Tungsten Ore Concentrates from the People’s Republic of China at 9.

<sup>19</sup>Bulk Ibuprofen from India at 10, and Tungsten Ore Concentrates from the People’s Republic of China at 9.

<sup>20</sup>Commissioner Crawford notes that the statutory definition of like product requires an analysis of what domestic product(s) is “like” the subject imports. Thus, the interests of domestic producers of the like product are not part of the like product analysis, but rather a consequence of it. Therefore, Commissioner Crawford does not base her like product finding on an analysis of the interests of any particular group of domestic companies or whether the inclusion or exclusion of any company or companies would “skew” the Commission’s evaluation of the “condition of the industry.”

<sup>21</sup>CR at I-5 and PR at I-3.

to prevent the creatine from breaking down into a different chemical prior to consumption by the purchaser.<sup>22</sup> The available record information indicates that the second downstream creatine product, despite being marketed as “creatine phosphate,” does not contain the chemical creatine phosphate, but is instead a mixture of creatine and either sodium phosphate or calcium phosphate.<sup>23</sup> In contrast to both creatine liquid and creatine phosphate, creatine citrate contains no creatine in the monohydrate form, but is instead a different chemical compound produced from a reaction of creatine and citric acid.<sup>24</sup>

We evaluate the possible inclusion of these downstream products in the domestic like product using the six traditional like product factors. In some instances, however, the record evidence pertaining to some of these factors is limited.

*Physical Characteristics and Uses.* Creatine citrate differs from creatine in physical characteristics because it is chemically distinct, although it is produced from a reaction involving creatine.<sup>25</sup> Creatine liquid and creatine phosphate are similar to creatine because they contain creatine, yet they also differ in physical characteristics because they contain other ingredients as well.<sup>26</sup> All three downstream products have the same use as creatine: to replenish energy to muscle cells.<sup>27</sup>

*Interchangeability.* Record information on the interchangeability of the downstream products with creatine is limited. Creatine liquid is billed in product advertisements as more convenient to use, which, if true, suggests that some users would not consider it interchangeable with creatine for reasons of convenience.<sup>28</sup> Some creatine liquid may lack the allegedly important stabilizing agent, which would further limit interchangeability with creatine.<sup>29</sup> The record also indicates that the creatine content of creatine liquid may be far lower than creatine in its powdered form, constituting a further possible limitation on interchangeability.<sup>30</sup>

Product advertising makes contradictory claims regarding whether creatine phosphate or creatine citrate provides energy to the muscle cell more rapidly than creatine.<sup>31</sup> The limited record information does not allow us to evaluate these claims, or to draw a clear conclusion as to any limits on interchangeability of creatine with either creatine phosphate or creatine citrate.

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<sup>22</sup>Postconference Brief of MW and GCI at Appendix 1, pages 1-2.

<sup>23</sup>CR at I-5 and PR at I-3, tr. at 56-57 (James K. Thomson, Vice President for Scientific Affairs for Petitioner) and 87 (Leo Cullen, Vice President of Sales and Marketing for MW International).

<sup>24</sup>CR at I-5 and PR at I-3.

<sup>25</sup>CR at I-5 and PR at I-3.

<sup>26</sup>CR at I-5 and PR at I-3.

<sup>27</sup>Postconference Brief of MW and GCI at App. 1, pages 1-2, 5-7.

<sup>28</sup>*Id.* at App. 1, pages 1-2.

<sup>29</sup>*Id.* at App. 1, pages 2, 8.

<sup>30</sup>*Id.* at App. 1, page 8.

<sup>31</sup>*Id.* at App. 1, pages 4-10.

*Customer and Producer<sup>32</sup> Perceptions.* The parties generally contend that customers view the products as substitutes.<sup>33</sup> Product advertising, however, claims that the downstream products deliver creatine to the muscle more rapidly, or may be more convenient to use than creatine, suggesting that customers may view creatine and the downstream products differently.<sup>34</sup> Still other product advertising indicates that creatine is superior.<sup>35</sup> Although we do not have direct evidence of their perceptions, customers appear to prefer creatine over downstream products, because the latter account for only about ten percent of creatine consumption.<sup>36</sup>

*Common Manufacturing Processes,<sup>37</sup> Facilities, and Employees.* None of the downstream products is produced in significant quantities by any of the domestic producers of creatine, indicating that creatine and the downstream products are not produced using common manufacturing facilities or employees.<sup>38</sup>

*Price.* The record contains little information on the price of the downstream products. One product advertisement claims that creatine and creatine liquid are priced comparably.<sup>39</sup> Although not necessarily reflective of price, the downstream products may cost more to produce than creatine, because creatine represents only 50 to 80 percent of the cost of the downstream products.<sup>40</sup>

Although our analysis is limited by a lack of information pertaining to some of the six like product factors,<sup>41</sup> we find that the information available indicates a clear dividing line between creatine and the downstream products. Accordingly, we decline to include the downstream creatine products in the definition of the like product. In the event of a final investigation, however, we intend to gather additional information on this issue.<sup>42</sup>

## 2. HMB and Glutamine

The Respondents also urge that the Commission should include beta-hydroxyl-beta-methylbutyrate (“HMB”) and glutamine in the domestic like product. These nutritional supplements do not contain and are

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<sup>32</sup>There is insufficient record evidence to permit a comparison of producer perceptions of creatine and the downstream products.

<sup>33</sup>Tr. at 56 (Holstein) (downstream products “probably” interchangeable) and Postconference Brief of MW and GCI at 3-5.

<sup>34</sup>Postconference Brief of MW and GCI at App. 1 at pages 1-2, 5-6.

<sup>35</sup>Id. at App. 1, pages 4, 7-10.

<sup>36</sup>CR at II-4 and PR at II-3.

<sup>37</sup>There is insufficient record evidence to allow a comparison of the processes used to make creatine and the downstream products.

<sup>38</sup>CR at I-6 to I-7 text and n.23 and PR at I-4 to I-5 text and n.23.

<sup>39</sup>Postconference Brief at MW and GCI at Appendix 1, page 1.

<sup>40</sup>CR at II-4 and PR at II-3.

<sup>41</sup>There is insufficient information pertaining to the channels of distribution through which the downstream products are sold to allow a comparison to creatine on this factor.

<sup>42</sup>Commissioner Crawford includes the derivative products in the same like product as creatine. She finds that these products all use creatine to replenish energy to the muscle cells. As such, these products are simply different forms of creatine or an alternative method of delivering creatine to the muscle. Given the lack of data on these forms of creatine, Commissioner Crawford bases her determination on the record evidence for creatine.

not derived from creatine.<sup>43</sup> As in the case of the downstream creatine products, the factual record is not highly developed as to HMB and glutamine for each of the six like product factors.

*Physical Characteristics and Uses.* Both HMB and glutamine are chemically distinct from creatine.<sup>44</sup> Available record information indicates that creatine acts differently on the muscle cell than does either HMB or glutamine. Creatine aids in replenishing energy to the cell, whereas HMB and glutamine aid in the metabolism of proteins.<sup>45</sup> HMB is also described as a “fat burner,” a claim not made in connection with creatine or glutamine.<sup>46</sup> The limited record evidence indicates that, because they act in different ways, creatine and HMB have complementary uses but not the same use.<sup>47</sup>

*Interchangeability.* The limited available evidence indicates only a limited degree of interchangeability between creatine and either HMB or glutamine, because creatine differs from the other two products both in physical characteristics and, to a lesser degree, in uses.<sup>48 49</sup>

*Customer and Producer Perceptions.* The record contains little information on customer and producer perceptions of creatine compared to HMB or glutamine. Although the record does not indicate why, customers purchase much more creatine than HMB or glutamine.<sup>50</sup>

*Common Manufacturing Processes, Facilities and Employees.* Although the record does not indicate the processes by which HMB and glutamine are manufactured, their distinct chemical composition indicates that they are not made by the same processes used to make creatine. Moreover, creatine and the other two products are not made in the same facilities, or by the same employees, because none of the domestic producers of creatine make HMB or glutamine.<sup>51</sup>

*Price.* Creatine is priced significantly lower than HMB or glutamine.<sup>52</sup>

Based on the foregoing, we find a clear dividing line between creatine and HMB and glutamine, and therefore decline to include these products in the definition of the domestic like product.<sup>53</sup>

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<sup>43</sup>See CR at I-5 and PR at I-3 to I-4.

<sup>44</sup>See CR at I-5 and PR at I-3 to I-4.

<sup>45</sup>Postconference Brief at MW and GCI at Appendix 2.

<sup>46</sup>Id. at Appendix 2, page 4, and tr. at 37 (Holstein).

<sup>47</sup>Tr. at 35-37 (Holstein, Thomson). See CR at II-3 to II-4 and PR at II-3.

<sup>48</sup>See CR at I-5, II-3 to II-4 and PR at I-3 to I-4, II-3; and tr. at 35-37 (Holstein, Thomson).

<sup>49</sup>Information on channels of distribution is too limited to allow a comparison of creatine to HMB or glutamine.

<sup>50</sup>Tr. at 37 (Holstein) and 84 (Cullen), and Postconference Brief of TSI at Exhibit 1, page 1.

<sup>51</sup>CR at I-6 to I-7 text and n.23 and PR at I-4 to I-5 text and n.23.

<sup>52</sup>CR at I-8 n.34 and PR at I-6 n.34, and tr. at 84 (Cullen).

<sup>53</sup>In investigations of products with medicinal applications, the Commission generally has not included in the domestic like product other products with the same general therapeutic purpose, based on its analysis of the six like product factors. Bulk Ibuprofen from India, at 12, Generic Cephalexin Capsules from Canada, 731-TA-423 (Final), USITC Pub. 2211 at 9-10 (Aug. 1989), and Certain Acetylsalicylic Acid (Aspirin) from Turkey, Inv. Nos. 701-TA-283, 731-TA-364 (Final), USITC Pub. 2001 at 4, n.5 (Aug. 1987). Although creatine is not a medicine, we believe that analysis of the six factors leads to the same result in this investigation. Of course, the Commission must base its domestic like product determination on the record in this investigation and is not bound by prior determinations. Nippon Steel, 19 CIT at 454-55; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169, n.5 (Ct. Int'l Trade 1988) (“Asocoflores”)(particularly addressing like product determination); Citrosuco Paulista, S.A. v. United (continued...)



### 3. Conclusion

For the reasons described above, we define the domestic like product to include only creatine for purposes of this preliminary phase of the investigation.

#### **D. Domestic Industry**

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . . .”<sup>54</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>55</sup> Based on our finding that the domestic like product consists of creatine, for purposes of this preliminary phase of the investigation we find that the domestic industry consists of all domestic producers of creatine.

### **III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>56 57</sup> In making this determination, the Commission must

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

States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

<sup>54</sup>19 U.S.C. § 1677(4)(A).

<sup>55</sup>See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>56</sup>19 U.S.C. §§ 1671b(a) and 1673b(a).

<sup>57</sup>Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly  
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consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>58</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial or unimportant.”<sup>59</sup> 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.<sup>60</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>61</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing creatine is materially injured by reason of subject imports from China.

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

The first condition of competition pertinent to our analysis in this investigation is the evolution of creatine from a small-volume “niche market” product to a high-volume “mass market” product.<sup>62</sup> This change began in approximately 1993 as sales moved beyond specialized applications, such as use as a laboratory reagent, to more general use predominantly as a nutritional supplement for an “elite” group of weight trainers and other athletes.<sup>63</sup> Beginning around 1996, use spread beyond this group to the more general population.<sup>64</sup> Before creatine’s transition to a mass market product, Petitioner supplied almost all the demand for the product.<sup>65</sup> In the course of the transition, Petitioner encountered increasing competition both from imports and new domestic producers, although it remains the largest domestic producer.<sup>66</sup> Despite competing with it for sales, Petitioner obtained a license from \*\*\* production process. Petitioner also \*\*\* from \*\*\*.<sup>67</sup> The impact of this relationship on the industry, if any, is unclear.<sup>68</sup> Petitioner also encountered greater competition from existing producers, which, like Petitioner, expanded production both by dedicating a

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<sup>57</sup>(...continued)

holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’d* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

<sup>58</sup>19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>59</sup>19 U.S.C. § 1677(7)(A).

<sup>60</sup>19 U.S.C. § 1677(7)(C)(iii).

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

<sup>62</sup>Postconference Briefs of Petitioner at 17-18, MW and GCI at 16-19, and TSI at 2.

<sup>63</sup>Postconference Briefs of Petitioner at 17, MW and GCI at 16, and TSI at 3.

<sup>64</sup>Postconference Briefs of Petitioner at 17-18, MW and GCI at 16, TSI at 3.

<sup>65</sup>Petitioner’s Postconference Brief at 17, tr. at 38 (Holstein) and 78 (Chris Johnson, counsel for MW and GCI).

<sup>66</sup>Postconference Briefs of Petitioner at 18, MW and GCI at 17-19, and TSI at 4 (greater competition from imports and new domestic producers); and Tr. at 7 (Craig Redinger, counsel for petitioner) (Petitioner remains the largest domestic producer).

<sup>67</sup>CR at III-3 and PR at III-1, Petitioner’s Postconference Brief at 2.

<sup>68</sup>In the event of a final phase investigation, we intend to gather more information about the relationship between Petitioner and \*\*\*. As noted below, however, for purposes of the preliminary phase of the investigation we find no evidence that Petitioner \*\*\*.

greater share of multi-use facilities to create production and by adding dedicated equipment and facilities.<sup>69</sup> It appears that the production investments and greater economies of scale resulted in lower production costs in 1998 compared to 1997.<sup>70</sup> The transition has been marked by falling prices, which began prior to the entry of the subject imports.<sup>71</sup> It has also been marked by the entry and exit of various producers.<sup>72 73</sup>

A second condition of competition is the presence of significant volumes of non-subject merchandise. The non-subject imports held an approximately \*\*\* percent market share in each year during the period of investigation.<sup>74</sup> The non-subject imports generally are priced \*\*\* than the domestic product.<sup>75</sup>

A third condition of competition is the divergent reaction of some createine purchasers to the relatively sudden presence in the market of significant volumes of the subject merchandise beginning in 1997, some of which was of lower quality or perceived to be of lower quality than the domestic product or the non-subject imports.<sup>76</sup> Most consumers were apparently willing to purchase the less expensive subject merchandise despite the real or perceived quality differences, but some were willing to pay a higher price for the domestic product and the non-subject imports.<sup>77</sup>

Purchasers do not always know where the createine they purchase is manufactured, however, because some createine packages do not indicate the country of origin.<sup>78</sup> Moreover, even where producers market createine to quality-sensitive customers, the pricing of that createine is still apparently affected by the subject merchandise, as the prices of createine from all sources has declined.<sup>79</sup> Additionally, the proportion of purchasers that are quality-sensitive is diminishing as the quality of the subject merchandise, and perception of that quality, appear to have improved.<sup>80</sup>

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

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<sup>69</sup>Tr. at 30 (Kaplan)(increased volume of non-subject imports), 38 (Holstein)(new domestic producers), 15-19 (Holstein)(expansion by Petitioner and other existing producers), CR at III-4 to III-6 (including table III-4) and PR at III-1 to III-4 (including table III-4).

<sup>70</sup>Tr. at 22 (Holstein), and CR at VI-6 and PR at VI-2.

<sup>71</sup>Tr. at 31 (Kaplan), 68-69 (Cullen), Postconference Briefs of Petitioner at 18, and TSI at 4.

<sup>72</sup>CR at III-3 to III-5 and PR at III-2 to III-3.

<sup>73</sup>Following a period of steady growth, apparent consumption of createine fell in the latter two quarters of 1998. Table IV-4, CR at IV-5 and PR at IV-3. In the event of a final phase investigation, the Commission intends to gather more information that would confirm whether apparent consumption varies seasonally and/or is in decline.

<sup>74</sup>Table IV-5, CR at IV-6 and PR at IV-4. The market share held by the non-subject imports was \*\*\* percent in the last quarter of 1998, although it was at or near \*\*\* percent during the first three quarters of 1998. Table IV-6, CR at IV-7 and PR at IV-5.

<sup>75</sup>Compare table III-5, CR at III-7 and PR at III-4 (unit values of U.S. shipments of domestic product) with table IV-1, CR at IV-2 and PR at IV-1 (unit values of imports from countries other than China).

<sup>76</sup>Postconference Briefs of Petitioner at Exhibit 2, MW and GCI at 26-27, and TSI at 11-12; and tr. at 48 (Holstein), 72-73, 79-80 (Cullen).

<sup>77</sup>CR and PR at II-1, Postconference Briefs of Petitioner at Exhibit 2, and MW and GCI at 26-28.

<sup>78</sup>Tr. at 28 (Seth T. Kaplan, economic consultant on behalf of Petitioner).

<sup>79</sup>Table V-1, CR at V-6 and PR at V-4.

<sup>80</sup>Tr. at 48 (Holstein) and 73-74, 79-81 (Cullen). See CR at II-1, II-5 and PR at II-1 and II-3 to II-4.

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>81</sup>

The absolute volume of imports of the subject merchandise increased rapidly, and accounted for a significant share of apparent consumption by the end of the period of investigation. The subject imports were \*\*\* kilograms (kg.) in 1996, \*\*\* kg. in 1997, and \*\*\* kg. in 1998.<sup>82</sup> That rapid increase continued through 1998, as indicated by quarter-by-quarter data for that year.<sup>83 84 85</sup> In market share, the subject merchandise also increased rapidly, accounting for a \*\*\* percent of apparent consumption in 1996, \*\*\* percent in 1997, and \*\*\* percent in 1998.<sup>86</sup> The market share increase was even more dramatic when measured on a quarter-by-quarter basis in 1998.<sup>87</sup>

Based on the foregoing, we find that the volume of imports of the subject merchandise from China, and their increase, are significant both in absolute terms and relative to consumption.

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

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>88</sup>

Several factors resulted in greater price competition during the course of the period of investigation. During this time, creatine completed the transition from a niche to a mass market product. The number of suppliers and customers increased, and many of the new customers in the emerging mass market were more price-conscious.<sup>89</sup> Price information became readily available over the Internet.<sup>90</sup> Moreover, creatine is essentially a commodity-like product. Although some of the earlier imports of subject merchandise were of lower quality than the domestic product or the non-subject imports, quality differences and perceptions of

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<sup>81</sup>19 U.S.C. § 1677(7)(C)(i).

<sup>82</sup>Table IV-1, CR at IV-2 and PR at IV-1.

<sup>83</sup>Table IV-2, CR at IV-3 and PR at IV-1.

<sup>84</sup>As in past investigations, the Commission views quarterly data with caution. Data for a particular quarter may be aberrational. Also, such data may not be a reliable indicator as it may instead reflect factors such as seasonality. Still, the Commission frequently examines quarterly data in its analysis, such as in price comparisons and in considering changes in interim periods of less than one year at the end of the period of investigation. In this investigation, yearly data may obscure significant shorter term market events because of the very rapid increase in the volume of the subject imports, and the resulting rapid changes in market conditions. We thus give some weight to quarterly data in this investigation.

<sup>85</sup>Commissioner Crawford does not rely on quarterly data in her determination.

<sup>86</sup>Table IV-5, CR at IV-6 and PR at IV-4.

<sup>87</sup>Table IV-6, CR at IV-7 and PR at IV-5 (showing market shares of the subject merchandise as \*\*\* percent for the four quarters, respectively).

<sup>88</sup>19 U.S.C. § 1677(7)(C)(ii).

<sup>89</sup>Postconference Briefs of Petitioner at 18 and at Exhibit 2, MW and GCI at 17-19, 26-28, and TSI at 4. CR and PR at II-1.

<sup>90</sup>Tr. at 58 (Kaplan).

quality differences have greatly diminished.<sup>91</sup> Another factor influencing prices is that domestic producers have lowered production costs by investing in new equipment and greater capacity.<sup>92 93</sup>

The record indicates significant price underselling by the subject merchandise. The subject merchandise undersold the domestic product in seven out of nine quarterly price comparisons, by an average margin of 17.2 percent.<sup>94</sup> Moreover, price underselling was most pronounced when the volume and market share of the subject imports were highest. During 1998, the year accounting for the great bulk of the subject imports, there was price underselling in all four quarterly comparisons, and by progressively greater volumes and margins in each quarter.<sup>95</sup>

The increased volumes of subject imports together with underselling by progressively greater margins depressed prices for domestically produced creatine to a significant degree. Prices for domestic creatine fell significantly from 1996 to 1997, and from 1997 to 1998.<sup>96</sup> We do not attribute a significant proportion of the 1996-97 price decline to the subject imports, because of their relatively small volume and market share in those years. Moreover, some decline in price is to be expected in light of the development of

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<sup>91</sup>CR at II-5 and PR at II-3 to II-4, and tr. at 19, 21 (Holstein).

<sup>92</sup>Tr. at 22 (Holstein) and CR at VI-6 and PR at VI-2.

<sup>93</sup>Commissioner Crawford finds that the subject imports likely are not having significant effects on domestic prices, and thus does not join the remainder of this discussion. To evaluate the effects of dumping on domestic prices, Commissioner Crawford compares the domestic prices that existed when the imports were allegedly dumped with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In this investigation, the alleged dumping margins are very large, exceeding 120 percent. Thus, prices for the subject imports likely would have increased significantly if they had been priced fairly, and most, if not all, of the demand for them likely would have shifted away from the subject imports. In this investigation, nonsubject imports held a market share of \*\*\* percent in 1998 and thus appear to represent substantial competition for the domestic product. As discussed above, creatine is essentially a commodity-like product, and thus the subject imports, the domestic product, and the nonsubject imports likely are all fairly good substitutes for each other. Therefore, demand for the subject imports likely would have shifted to both the domestic product and the nonsubject imports had the subject imports been fairly traded. The domestic industry's market share is more than \*\*\* times that of the nonsubject imports in 1998, and thus a substantial portion of the demand for the subject imports likely would have shifted to the domestic product. Although the market share of the subject imports is only moderately large, \*\*\* percent in 1998, the shift in demand toward the domestic product likely would have been significant had the subject imports not been dumped. Nonetheless, the significant shift in demand likely would not have allowed the domestic industry to raise its prices. The nonsubject imports have a large presence in the market, and thus appear to represent substantial competition for the domestic industry that likely would have prevented price increases. However, in this market Petitioner dominates the domestic industry and operates under a licensing agreement with \*\*\*. Thus, the licensing arrangement and petitioner's dominance *might* have allowed it to raise its prices. Notwithstanding these facts, for purposes of this preliminary determination Commissioner Crawford finds that there is substantial competition between the nonsubject imports and the domestic product. In addition, the domestic industry's capacity utilization was only \*\*\* percent in 1998, and therefore it had substantial unused production capacity available, as well as inventories, that would have been available to satisfy the increase in demand. Thus, available capacity and inventories, combined with substantial competition from the nonsubject imports, likely would have enforced price discipline in the market. In these circumstances, any effort by a domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of the subject imports. Consequently, Commissioner Crawford finds that the subject imports from China are not having significant effects on prices for domestic creatine.

<sup>94</sup>CR at V-5, PR at V-4.

<sup>95</sup>Table V-1, CR at V-6 and PR at V-4.

<sup>96</sup>Table V-1 and Figure V-2, CR at V-6 to V-7 and PR at V-4.

the “mass market,” the increase in supply and, therefore, competition in the market, and the fungible nature of the product. From 1997 to 1998, however, the subject imports increased by a factor of \*\*\* in absolute volume, and from \*\*\* to \*\*\* percent in market share.<sup>97</sup> The non-subject imports, by contrast, increased by a factor of less than \*\*\* in absolute volume, and from \*\*\* to \*\*\* in market share.<sup>98</sup> Thus, although we do not attribute all of the price decline from 1997 to 1998 to the subject imports, we find that they contributed to the decline to a significant degree.<sup>99</sup> For the reasons given above, we find that the subject imports are having significant adverse price effects on domestically produced creatine.

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

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.” These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>100 101</sup>

Consistent with our finding that the volume, and increase in volume, of the subject imports were significant, and that the subject imports contributed in significant part to the decline in prices for domestically produced creatine from 1997 to 1998, we find that the subject imports are having a significant adverse impact on domestic producers.<sup>102</sup>

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<sup>97</sup>Table IV-5, CR at IV-6 and PR at IV-4.

<sup>98</sup>Table IV-5, CR at IV-6 and PR at IV-4.

<sup>99</sup>We are cognizant that prices for domestically produced creatine appeared to stabilize in the last two quarters of 1998, despite increased volumes of subject imports. In the face of the lower prices of subject imports, it appears that the Petitioner and other domestic producers decided not to reduce prices further in the latter part of 1998, and instead accepted declining sales and market share. Tr. at 46 (Holstein). See Table V-1, CR at V-6 and PR at V-4 (prices) and Table IV-6, CR at IV-7 and PR at IV-5 (market share).

<sup>100</sup>19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

<sup>101</sup>As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce identified estimated dumping margins for China ranging from 120.9 to 153.7 percent. 64 Fed. Reg. 11834, 11835 (March 10, 1999).

<sup>102</sup>Commissioner Crawford does not base her determination on an analysis of the trends in the statutory impact factors, and thus does not join the remainder of this discussion. However, she concurs in her colleagues’ conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of allegedly dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry’s prices, sales and overall revenues is critical, because the impact on the other industry indicators (e.g., employment, wages, etc.) is derived from this impact. As she noted earlier, Commissioner Crawford finds that the domestic industry would not have been able to increase its prices had the subject imports been priced fairly. Therefore,

(continued...)

Various indicators of the condition of the domestic industry fell from 1997 to 1998, and these declines appear to have intensified during 1998, based on available quarterly information. Shipments of the domestic product rose from \*\*\* kg. in 1997 to \*\*\* kg. in 1998, but the value of those shipments fell from \$\*\*\* to \$\*\*\*.<sup>103</sup> Quarterly data from 1998 indicate lower production volumes at the end of that year, and an even steeper decline in production values. The volume of U.S. shipments of domestically produced creatine increased \*\*\* from \*\*\* kg. in the first quarter, to \*\*\* kg. in the second quarter.<sup>104</sup> These shipments fell thereafter, however, to \*\*\* kg. in the third quarter, and further to \*\*\* kg. in the fourth quarter.<sup>105</sup> The value of the shipments fell in each successive quarter, from \$\*\*\* to \$\*\*\*, then to \$\*\*\*, and finally to \$\*\*\*.<sup>106</sup>

Other indicators show declines as well. After holding steady at \*\*\* percent in 1996 to \*\*\* percent in 1997, the market share for domestically produced creatine fell to only \*\*\* percent in 1998.<sup>107</sup> A steeper decline is shown by quarterly data, as the market share of domestically produced creatine fell from \*\*\* percent to \*\*\* percent, then to \*\*\* percent, and finally to \*\*\* percent in the successive quarters in 1998.<sup>108</sup> Capacity utilization by the domestic industry declined from \*\*\* to \*\*\* percent from 1997 to 1998.<sup>109</sup> This decline at first reflected increased capacity rather than reduced production, but after the second quarter of 1998 capacity utilization declined also as a result of lower production.<sup>110</sup>

These declines in production and market share are reflected in the negative trends in the financial results for the domestic industry. The very high operating income of the domestic industry as a percentage of net sales in 1996, (\*\*\*) percent, was tempered by the greater competition from the new domestic producers and non-subject imports in 1997, when operating income fell to \*\*\* percent.<sup>111</sup> From 1997 to 1998, operating income again fell, to \*\*\* percent, as competition from the subject imports increased both in volume

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<sup>102</sup>(...continued)

any impact of the allegedly dumped imports on the domestic industry would have been on the domestic industry's output and sales. Even though there is substantial competition from nonsubject imports, a significant amount of the demand satisfied by the subject imports likely would have shifted to the domestic product had the subject imports not been dumped. The increase in demand for the domestic product would have been substantial, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for the subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped. Therefore, the domestic industry likely would have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of the allegedly dumped imports of creatine from China.

<sup>103</sup>Table IV-3, CR at IV-4 and PR at IV-2.

<sup>104</sup>Table IV-4, CR at IV-5 and PR at IV-3.

<sup>105</sup>Table IV-4, CR at IV-5 and PR at IV-3.

<sup>106</sup>Table IV-4, CR at IV-5 and PR at IV-3.

<sup>107</sup>Table IV-5, CR at IV-6 and PR at IV-4.

<sup>108</sup>Table IV-6, CR at IV-7 and PR at IV-5.

<sup>109</sup>Table III-2, CR at III-6 and PR at III-4.

<sup>110</sup>Table III-2, CR at III-6 and PR at III-4 (showing an increase in capacity from \*\*\* kg. in 1997 to \*\*\* kg. in 1998, and an increase in production from \*\*\* kg. to \*\*\* kg. in the same years, respectively), and table III-3, CR at III-6 and PR at III-4 (showing lower production volumes after the second quarter of 1998, and capacity utilization rates of \*\*\* percent, \*\*\* percent, \*\*\* percent, and \*\*\* percent for the four quarters of 1998, respectively).

<sup>111</sup>Table VI-2, CR at VI-4 and PR at VI-1.

and margins of underselling, while the market share of the non-subject imports essentially held steady.<sup>112</sup> The operating income of the domestic industry fell from \$\*\*\* in 1996, to \$\*\*\* in 1997, to \$\*\*\* in 1998.<sup>113</sup> Quarterly data show that in the first three quarters of 1998 operating income fell from \$\*\*\* to \$\*\*\* to \$\*\*\*, and then turned to an operating loss of \$\*\*\* in the fourth quarter.<sup>114</sup> This progressive deterioration in operating income coincided with the sharp increase in the volume and market share of the subject imports over the period of investigation, which occurred even as the market share of the non-subject imports essentially held steady.

The domestic industry first cut prices in response to the subject imports (and thus experienced a decline in the net sales value of its sales), although it maintained and even expanded production. In the second half of 1998, however, the domestic industry attempted to halt price erosion, but then experienced sharp losses in market share and production volumes, as well as the consequent deterioration in revenue and operating income, due to increasing volumes of lower-priced subject imports.<sup>115</sup> We thus find that the subject imports are having an adverse impact on the domestic industry.<sup>116</sup>

#### **E. Conclusion**

For the reasons stated above, we find that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from China.

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<sup>112</sup>Table VI-2, CR at VI-4 and PR at VI-1. Although the volume of the non-subject imports was greater than the subject imports in 1997 and 1998, their market share essentially held steady, rising from \*\*\* percent to \*\*\* percent, in those years, respectively). Meanwhile, the subject imports rose sharply from \*\*\* to \*\*\* percent in market share. Table IV-5, CR at IV-6 and PR at IV-4. Also, the domestic industry did not lose market share from 1996 to 1997, when it faced competition from the non-subject imports only.

<sup>113</sup>Table VI-1, CR at VI-2 and PR at VI-1.

<sup>114</sup>Table VI-3, CR at VI-7 and PR at VI-3.

<sup>115</sup>See tr. at 46 (Holstein).

<sup>116</sup>We have considered the argument of Respondents that Petitioner was injured because it voluntarily incurred high costs, both in the \*\*\* creatine production process, and in agreeing to \*\*\*. The record, however, does not bear out Respondents' argument. Petitioner states that it \*\*\*. Petitioner's Postconference Brief at 2. Moreover, Petitioner's \*\*\*. CR at table VI-2, CR at VI-4 and PR at VI-1. Respondents offered no evidence to support their argument.