

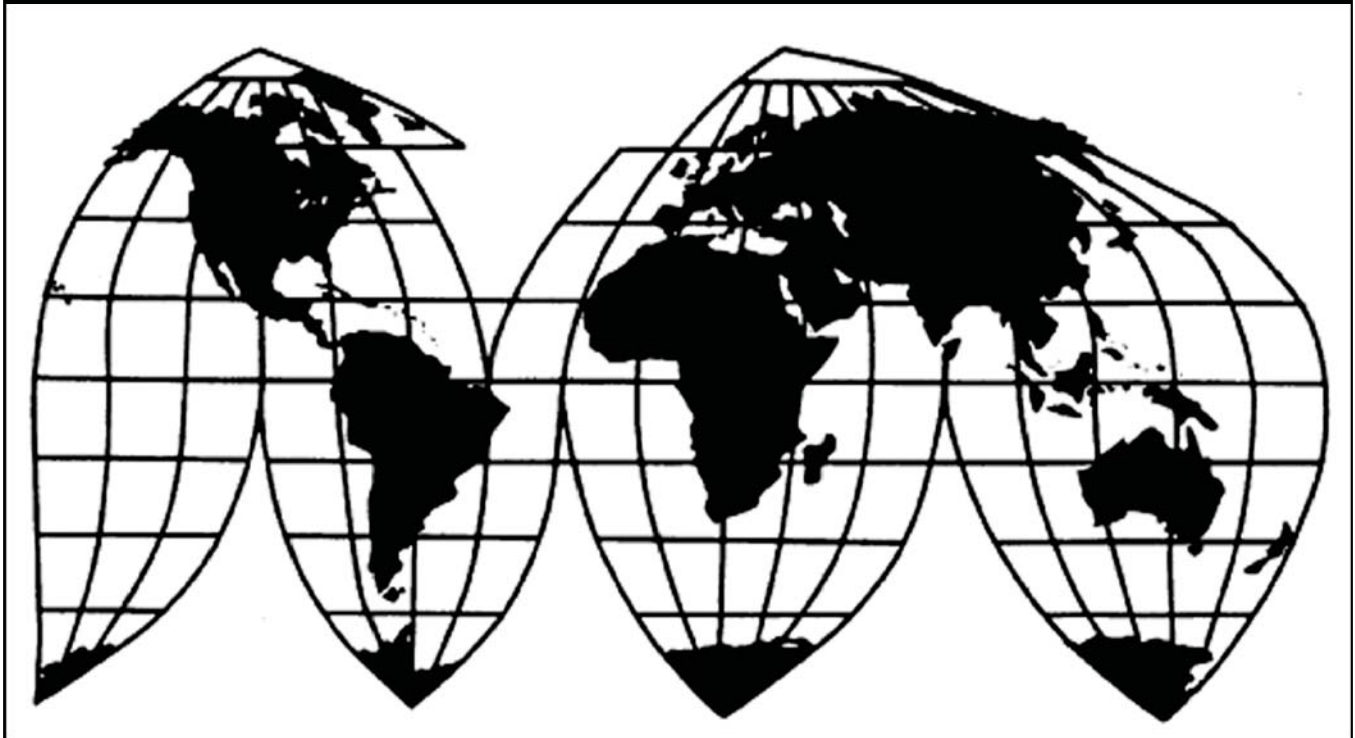
# **Sorbitol from France**

Investigation No. 731-TA-44 (Third Review)

**Publication 4164**

**June 2010**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

# UNITED STATES INTERNATIONAL TRADE COMMISSION

## Investigation No. 731-TA-44 (Third Review)

### *Sorbitol from France*

#### **DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675d(c)) (the Act), that revocation of the antidumping duty order on sorbitol from France, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### **BACKGROUND**

The Commission instituted this review on July 1, 2009 (74 FR 31762, July 2, 2009) and determined on October 6, 2009 that it would conduct a full review. Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on December 17, 2009 (74 FR 66992). The hearing was held in Washington, DC, on May 11, 2010, 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 five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order on crystalline sorbitol from France would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### I. BACKGROUND

#### A. The Original Determination

In March 1982, the U.S. International Trade Commission (the “Commission”) determined that an industry in the United States was being materially injured by reason of imports of sorbitol from France that were being sold at less than fair market value.<sup>1</sup> Subsequently, the U.S. Department of Commerce (“Commerce”) issued an antidumping duty order covering these imports.<sup>2</sup>

In July 1983, the U.S. Court of International Trade remanded the investigation to the Commission on the ground that information from certain questionnaires was not considered by the Commission.<sup>3</sup> In both its original determination and on remand, the Commission found two domestic industries, one producing liquid sorbitol and one producing crystalline sorbitol.<sup>4</sup> In the original determination, the Commission found that each domestic industry was materially injured by reason of subject imports of crystalline sorbitol and liquid sorbitol, respectively.<sup>5</sup> On remand, however, the Commission made an affirmative determination only with respect to imports of crystalline sorbitol.<sup>6</sup> It reached a negative determination with respect to subject imports of liquid sorbitol; the antidumping duty order on imports of liquid sorbitol was subsequently revoked after the U.S. Court of International Trade affirmed the Commission’s remand determination.<sup>7</sup>

#### B. The Commission’s Five-Year Reviews

In March 1999, the Commission completed an expedited review<sup>8</sup> in its first five-year review of the order on crystalline sorbitol. The Commission determined that revocation of the order would be likely

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<sup>1</sup> Sorbitol from France, Inv. No. 731-TA-44 (Final), USITC Pub. 1223 (March 1982) (“Original Determination”).

<sup>2</sup> 47 Fed. Reg. 15391 (Apr. 9, 1982).

<sup>3</sup> Roquette Frères, Inc. v. United States, 6 CIT 42 (1983).

<sup>4</sup> See e.g., Original Determination at 5 (Views of Chairman Alberger and Vice Chairman Calhoun) (finding two like products and two industries), 9 (Views of Commissioner Stern) (noting concurrence with finding of two like products but finding available data insufficient to disaggregate production for separate industry analyses) & 11 (Views of Commissioner Eckes) (finding one like product and one domestic industry); Sorbitol from France, Inv. No. 731-TA-44 (Remand), USITC Pub. 1441 at 4 (Oct. 1983) (“Remand Determination”).

<sup>5</sup> The Commission was unanimous (4-0) in its determination with respect to crystalline sorbitol and was evenly divided (2-2) with respect to liquid sorbitol. Original Determination at 4 (Views of Chairman Alberger and Vice Chairman Calhoun) (affirmative determination regarding producers of crystalline sorbitol and negative determination regarding producers of liquid sorbitol) & 9 (Views of Commissioners Stern and Eckes) (affirmative determination regarding producers of all sorbitol).

<sup>6</sup> Remand Determination at 3-4 (Views of Commissioners Stern, Haggart and Lodwick).

<sup>7</sup> Roquette Frères, Inc. v. United States, 583 F. Supp. 599 (Ct. Int’l Trade 1984); 49 Fed. Reg. 26773 (June 29, 1984) (revoking antidumping duty order with respect to liquid sorbitol).

<sup>8</sup> 19 U.S.C. § 1675(c)(3)(B).

to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>9</sup>

In July 2004, the Commission completed an expedited review in its second five-year review. The Commission determined that revocation of the order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>10</sup>

### **C. The Current Review**

The Commission instituted this five-year review on July 2, 2009.<sup>11</sup> The Commission received responses to the notice of institution from two domestic producers of crystalline sorbitol: Archer Daniels Midland Co. (“ADM”) and Corn Products International, Inc. (“CPI”).<sup>12</sup> Although it found that the domestic interested party group response was adequate and that the respondent interested party group response was inadequate, the Commission determined to conduct a full review in light of information received regarding possible changes in conditions of competition.<sup>13</sup>

Commerce expedited its five-year review and published its final affirmative review determination on November 6, 2009.<sup>14</sup>

In this third five-year review, the Commission received prehearing and posthearing briefs from ADM and CPI in support of continuation of the order. The Commission received joint prehearing and posthearing briefs in support of revocation of the order from foreign producer Roquette Frères (“RF”) and its U.S. subsidiary, Roquette America, Inc. (“RA”) (also a domestic producer and importer of crystalline sorbitol).

Three U.S. producers that accounted for virtually all U.S. production during the period of review (ADM, CPI, and RA) provided complete responses to the Commission’s questionnaires.<sup>15</sup> The Commission received questionnaire responses from seven importers accounting for virtually all imports of the subject merchandise during the period of review.<sup>16</sup> The Commission received a foreign producer questionnaire from RF, \*\*\*, stating that it accounted for an estimated \*\*\* percent of total production of

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<sup>9</sup> Sorbitol from France, Inv. No. 731-TA-44 (Review), USITC Pub. 3165 at 1-15 (March 1999) (“First Review Determination”). Two Commissioners dissented. First Review Determination at 15-17 (Dissenting Views of Chairman Bragg and Commissioner Askey).

<sup>10</sup> Sorbitol from France, Inv. No. 731-TA-44 (Second Review), USITC Pub. 3706 (July 2004) (“Second Review Determination”). Chairman Koplan and Commissioners Hillman and Miller made an affirmative determination. Vice Chairman Okun and Commissioners Lane and Pearson dissented and determined that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States. Vice Chairman Okun and Commissioners Lane and Pearson dissented on the grounds that the likely volume of subject imports would not be significant upon revocation because subject import volumes were minimal, the U.S. market was dominated by domestic and nonsubject suppliers, and any increase in subject imports would not be likely to have any significant price effects or have an adverse impact on the domestic industry. See Second Review Determination at 17-26.

<sup>11</sup> 74 Fed. Reg. 31762 (July 2, 2009).

<sup>12</sup> CR/PR at I-1 n.2.

<sup>13</sup> 74 Fed. Reg. 54068 (Oct. 5, 2009). Commissioners Williamson and Pinkert voted to conduct an expedited review, citing both the lack of adequate respondent participation and their finding that the record in the adequacy phase did not indicate sufficient changes in the conditions of competition since the original investigation and the first and second five-year reviews to warrant conducting a full review. CR/PR at I-1 n.3.

<sup>14</sup> 74 Fed. Reg. 56793 (November 3, 2009).

<sup>15</sup> CR at I-16, PR at I-12.

<sup>16</sup> CR at I-18-I-19, PR at I-13; CR/PR at Table I-6.

crystalline sorbitol in France in 2008.<sup>17</sup> The Commission did not receive a questionnaire response from Syral SAS (“Syral”), the only other known French producer of crystalline sorbitol during the period of review.<sup>18</sup> The Commission also received usable questionnaire responses from 14 U.S. purchasers, 3 of whom are believed to account for the vast majority of direct purchases of crystalline sorbitol from U.S. producers during the period of review.

## **II. DOMESTIC LIKE PRODUCT**

In making its determination under section 751(c) of the Act, the Commission defines “the domestic like product” and the “industry.”<sup>19</sup> 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 under this subtitle.”<sup>20</sup> The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any completed reviews and consider whether the record indicates any reason to revisit the prior findings.<sup>21</sup>

### **A. Product Description**

In its third five-year review, Commerce defined the subject merchandise as “crystalline sorbitol,” which it described as “a polyol produced by the hydrogenation of sugars (glucose).”<sup>22</sup> <sup>23</sup> Crystalline sorbitol is a sugar-free sweetener used primarily in the production of sugarless gum, candy, specialty foods, and pharmaceuticals.<sup>24</sup> It is made from a crude sorbitol solution that is purified and evaporated to eliminate any liquid content and is available in granular and powdered forms.<sup>25</sup>

### **B. The Commission’s Original Determination and Prior Reviews**

In the original investigation, as noted above, the Commission found two like products corresponding to the scope, liquid and crystalline sorbitol.<sup>26</sup> Although the Commission again found two like products in its remand determination, the majority made an affirmative determination with respect to subject imports of crystalline sorbitol, but a negative determination with respect to subject imports of

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<sup>17</sup> CR at IV-9, PR at IV-5.

<sup>18</sup> CR at IV-9, PR at IV-5.

<sup>19</sup> 19 U.S.C. § 1677(4)(A).

<sup>20</sup> 19 U.S.C. § 1677(10); *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); *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); *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); *see also* S. Rep. No. 249, 96th Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>21</sup> *See, e.g., Internal Combustion Industrial Forklift Trucks From Japan*, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 8-9 (December 2005); *Crawfish Tail Meat From China*, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (July 2003); *Steel Concrete Reinforcing Bar From Turkey*, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (February 2003).

<sup>22</sup> 74 Fed. Reg. 56793 (Nov. 3, 2009).

<sup>23</sup> Subject imports are currently classifiable under item 2905.44.00 of the Harmonized Tariff Schedule of the United States. 74 Fed. Reg. 56793 (Nov. 3, 2009).

<sup>24</sup> CR at I-14, PR at I-10.

<sup>25</sup> CR at I-15, PR at I-11.

<sup>26</sup> Original Determination at 3-5.

liquid sorbitol.<sup>27</sup> Thus, in the first and second five-year reviews, the scope was limited to crystalline sorbitol, and the Commission found one domestic like product, crystalline sorbitol.<sup>28</sup>

### C. Analysis and Conclusion

Domestic producers ADM and CPI urge the Commission again to find a single domestic like product.<sup>29</sup> No facts have arisen that call into question the domestic like product definition used in the first and second five-year reviews.<sup>30</sup> No party has argued to the contrary.<sup>31</sup> Accordingly, we find that there is no basis to define the domestic like product differently than we did in those reviews. Therefore, we define the domestic like product in this five-year review as all crystalline sorbitol, coextensive with Commerce's scope.

## III. DOMESTIC INDUSTRY AND RELATED PARTIES

Section 771(4)(A) of the Act defines the relevant industry 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."<sup>32</sup> 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.

As discussed above, in the original investigation after remand, the Commission, having found two like products, also found two domestic industries: (1) all producers of liquid sorbitol and (2) all producers of crystalline sorbitol.<sup>33</sup> There were no issues regarding related parties in the original investigation.

In the first and second five-year reviews (which pertained only to crystalline sorbitol), the Commission found that the domestic industry consisted of all producers of crystalline sorbitol, consistent with its like product definition.<sup>34 35</sup>

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<sup>27</sup> Remand Determination at 3-9.

<sup>28</sup> First Review Determination at 5; Second Review Determination at 5-6.

<sup>29</sup> ADM Prehearing Br. at 1-2; ADM Response to the Notice of Institution at 18 (July 31, 2009); CPI Response to the Notice of Institution at 5 (July 31, 2009).

<sup>30</sup> ADM Prehearing Br. at 4-5; CPI Prehearing Br. at 7.

<sup>31</sup> RF and RA did not present any arguments regarding the domestic like product definition in this third five-year review.

<sup>32</sup> 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677.

<sup>33</sup> Remand Determination at 4.

<sup>34</sup> In the first five-year review, the Commission found that two of the producers, RA and SPI Polyols ("SPI"), qualified as related parties within the meaning of the Act because they had imported subject merchandise during the period of review. No party sought their exclusion from the domestic industry, however, and the evidence showed that their primary interests were in the domestic production of crystalline sorbitol rather than in its importation. Accordingly, the Commission determined not to exclude either producer from the domestic industry. See First Review Determination at 5-6.

<sup>35</sup> In the second five-year review, the Commission again found that neither RA nor SPI should be excluded from the domestic industry. Because SPI did not import subject merchandise during the period of review, the Commission concluded that it was not a related party under 19 U.S.C. § 1677(4)(B). Although noting that RA qualified as a related party under 19 U.S.C. § 1677(4)(B) because it imported subject merchandise from its French parent, RF, the

(continued...)

During the period covered by this third five-year review, three firms produced crystalline sorbitol in the United States – ADM, CPI, and RA. In the current review, RA qualifies as a related party because it is owned by subject producer RF and also imported subject merchandise from RF during the review period.<sup>36</sup> No party has argued that appropriate circumstances exist to exclude any firm (including RA) from the domestic industry as a related party.<sup>37</sup>

RA's imports of subject merchandise were equivalent to only \*\*\*.<sup>38</sup> RA is \*\*\* crystalline sorbitol, accounting for \*\*\* percent of U.S. shipments of domestically produced crystalline sorbitol in 2009.<sup>39</sup> During the review period, RA also made significant capital expenditures in its U.S. production facilities, which totaled more than \$\*\*\*.<sup>40</sup> Unlike in the first and second five-year reviews when it supported continuation of the order, however, RA now opposes the continuation of the antidumping duty order.<sup>41</sup> Based on the above information, we find that RA's primary interests are in domestic production rather than importation. Thus, appropriate circumstances do not exist to exclude RA from the domestic industry.

Accordingly, we find that, consistent with our like product definition, the appropriate definition of the domestic industry in this full five-year review includes all domestic producers of crystalline sorbitol, (ADM, CPI, and RA).

#### **IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED**

##### **A. Legal Standard**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping or countervailing duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping or countervailing duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>42</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>43</sup> Thus, the

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<sup>35</sup>(...continued)

Commission concluded that appropriate circumstances did not exist to exclude RA from the domestic industry, finding that RA opposed revocation of the order and that its primary interests were in the domestic production of crystalline sorbitol rather than in its importation. See Second Review Determination at 6-7.

<sup>36</sup> CR/PR at Table III-7.

<sup>37</sup> Domestic producer ADM argues that the Commission should define the domestic industry as all domestic producers of crystalline sorbitol, i.e., ADM, CPI, and RA. ADM Prehearing Br. at 2-3; ADM Response to the Notice of Institution at 18 (July 31, 2009); CPI Response to the Notice of Institution at 5 (July 31, 2009).

<sup>38</sup> CR/PR at Table III-7.

<sup>39</sup> CR/PR at Table I-5.

<sup>40</sup> CR/PR at Table III-14.

<sup>41</sup> CR/PR at Tables I-5 & III-1.

<sup>42</sup> 19 U.S.C. § 1675a(a).

<sup>43</sup> SAA at 883-84. The SAA states that “{t}he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” Id. at 883.

likelihood standard is prospective in nature.<sup>44</sup> The U.S. Court of International Trade has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>45 46 47</sup>

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>48</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”<sup>49</sup>

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”<sup>50</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is

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<sup>44</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>45</sup> See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d mem., 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn.3, 6 (2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, 26 CIT 767, 794 (2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>46</sup> For a complete statement of Commissioner Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, Germany, and Italy, Invs. Nos. 701-TA-362 (Review) and 731-TA-707 to 710 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

<sup>47</sup> Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape From Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in these reviews and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

<sup>48</sup> 19 U.S.C. § 1675a(a)(5).

<sup>49</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

<sup>50</sup> 19 U.S.C. § 1675a(a)(1).

terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>51</sup> The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination.<sup>52</sup>

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked and the suspended investigations are terminated, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>53</sup> In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>54</sup>

In evaluating the likely price effects of subject imports if the orders and finding under review were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.<sup>55</sup>

In evaluating the likely impact of imports of subject merchandise if the orders and finding under review are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to the following: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>56</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry. As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order were revoked.<sup>57</sup>

Finally, when appropriate in this review, we have relied on the facts otherwise available, which consist of information from the original investigation and the first and second five-year reviews, as well

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<sup>51</sup> 19 U.S.C. § 1675a(a)(1). We note that no duty absorption findings have been made by Commerce.

<sup>52</sup> 19 U.S.C. § 1675a(a)(5). Although the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>53</sup> 19 U.S.C. § 1675a(a)(2).

<sup>54</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>55</sup> See 19 U.S.C. § 1675a(a)(3). The SAA states that "{c}onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

<sup>56</sup> 19 U.S.C. § 1675a(a)(4).

<sup>57</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

as information submitted in this review, including information provided by the domestic industry, questionnaire responses, and information available from published sources.<sup>58 59</sup>

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

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>60</sup>

### **1. The Commission’s Original Determination and Prior Reviews**

In its original determination, the Commission did not specifically address any conditions of competition or the business cycle.

In the first expedited five-year review, the Commission highlighted several conditions of competition that were pertinent to its analysis. Demand in the United States had nearly doubled since the original investigation, and the substantial volumes of imports from France had declined. In 1980, apparent U.S. consumption was \*\*\* pounds, and imports from France held a \*\*\* percent share of the U.S. market.<sup>61</sup> In 1997, apparent U.S. consumption had risen to \*\*\* pounds, and imports from France accounted for \*\*\* of apparent U.S. consumption.<sup>62</sup> Information on supply conditions was limited. Neither ADM nor SPI submitted capacity utilization data, but the record indicated that each \*\*\* in 1997 and that RA appeared to be utilizing approximately \*\*\* percent of its capacity.<sup>63</sup>

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<sup>58</sup> 19 U.S.C. § 1677e(a) authorizes the Commission to “use the facts otherwise available” in reaching a determination when (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to 19 U.S.C. § 1677m(I). The verification requirements in 19 U.S.C. § 1677m(I) are applicable only to Commerce. See Titanium Metals Corp. v. United States, 155 F. Supp. 2d 750, 765 (Ct. Int’l Trade 2002) (“the ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of Commission investigations.”).

<sup>59</sup> Commissioner Okun notes that the statute authorizes the Commission to take adverse inferences in five-year reviews, 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.” SAA at 869.

<sup>60</sup> 19 U.S.C. § 1675a(a)(4).

<sup>61</sup> First Review Determination at 8.

<sup>62</sup> First Review Determination at 8.

<sup>63</sup> First Review Determination at 8.



The Commission found that large contracts, often of multiyear duration, dominated the crystalline sorbitol market. Thus, winning or losing a single contract could have serious consequences for a producer and for the domestic industry as a whole. The Commission further found that crystalline sorbitol, whether produced domestically or in France, was highly substitutable and easily transported.<sup>64</sup>

In the second expedited five-year review, the data showed a significant increase in apparent U.S. consumption from 1997, the last full year for which data were available in the first review, to 2003.<sup>65</sup> The Commission found that, as in the first review, information regarding supply conditions was limited. The Commission found that the vast majority of the demand in the U.S. market was supplied by domestic producers.<sup>66</sup> Domestic producers' share of the U.S. market had remained stable since 1997.<sup>67</sup> Since the first review, the remainder of the market had largely been supplied by nonsubject imports. Crystalline sorbitol imports from France accounted for less than \*\*\* percent of apparent U.S. consumption in 1997 and \*\*\* percent of apparent U.S. consumption in 2003.<sup>68</sup>

As in the first review, the Commission found that large contracts, often of multiyear duration, dominated the U.S. market.<sup>69</sup> It further found that crystalline sorbitol, whether produced domestically or in France, was highly substitutable and easily transportable.<sup>70</sup> The Commission concluded that there was nothing in the record to suggest that the nature of sales of crystalline sorbitol in the U.S. market or its substitutability across sources had changed since the first review.<sup>71</sup> Accordingly, the Commission found that crystalline sorbitol competed primarily on the basis of price.<sup>72</sup> The Commission also observed that the domestic industry had consolidated since the first review. In 1998, the domestic industry consisted of six producers.<sup>73</sup> During the second review period, just three producers accounted for all known U.S. production of crystalline sorbitol.<sup>74</sup>

## **2. The Current Review**

As noted in the two previous five-year reviews, there have been substantial changes in the conditions of competition since the Commission's original investigation in 1982. We find the following conditions of competition relevant to our determination.

### **a. Demand**

Demand for crystalline sorbitol depends upon the demand for products in which it is used, including sugar-free gum, mints, and cookies, as well as meat seasonings, glazes, and over-the-counter pharmaceutical products.<sup>75</sup> Apparent U.S. consumption of crystalline sorbitol increased \*\*\* after the

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<sup>64</sup> First Review Determination at 8.

<sup>65</sup> Second Review Determination at 9-10.

<sup>66</sup> Second Review Determination at 10.

<sup>67</sup> Second Review Determination at 10.

<sup>68</sup> Second Review Determination at 10.

<sup>69</sup> Second Review Determination at 10.

<sup>70</sup> Second Review Determination at 10-11.

<sup>71</sup> Second Review Determination at 11.

<sup>72</sup> Second Review Determination at 11.

<sup>73</sup> Second Review Determination at 11.

<sup>74</sup> Second Review Determination at 11.

<sup>75</sup> CR at II-4 to II-5, PR at II-3 to II-4.

original investigation and first five-year review.<sup>76</sup> Consumption increased further during the current review period to \*\*\* pounds in 2009.<sup>77</sup> <sup>78</sup> Overall, apparent U.S. consumption for crystalline sorbitol increased by \*\*\* percent between 2004 and 2009.<sup>79</sup> U.S. demand for sorbitol is also expected to increase, albeit modestly, in the reasonably foreseeable future.<sup>80</sup>

Global demand for crystalline sorbitol has increased since \*\*\*.<sup>81</sup> Demand for crystalline sorbitol in \*\*\* grew more quickly than demand in the \*\*\*, and demand in these other markets is projected to rise more quickly in the reasonably foreseeable future.<sup>82</sup>

The U.S. customer base for crystalline sorbitol is dominated by three large purchasers, \*\*\*, that accounted for a combined total of \*\*\* percent of the total value of purchases in 2009. \*\*\* accounted for \*\*\* percent, \*\*\* \*\*\* percent, and \*\*\* \*\*\* percent.<sup>83</sup> Although U.S. purchasers typically purchase crystalline sorbitol from a single supplier, this is not always the case. For example, \*\*\* dual-sources its supply of crystalline sorbitol by purchasing from both \*\*\*.<sup>84</sup>

## **b. Supply**

The domestic industry has consolidated and changed in several important ways since the original investigation. In 1982, during the time of the original investigation, six companies were identified as U.S. producers of sorbitol – Hoffman-LaRoche and Co.; ICI Americas, Inc. (“ICI Americas”); Pfizer, Inc. (“Pfizer”); Lonza, Inc. (“Lonza”); Merck & Co., Inc.; and Ethichem Corp. (“Ethichem”).<sup>85</sup> These companies all produced liquid sorbitol;<sup>86</sup> only ICI Americas and Pfizer were identified as producers of crystalline sorbitol. Pfizer was the sole petitioner in the original investigation.<sup>87</sup>

By the time of the Commission’s first five-year review in 1998, the composition of the crystalline sorbitol industry in the United States had changed. Between 1982 and 1993, RF invested in the

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<sup>76</sup> Apparent U.S. consumption of crystalline sorbitol in 1980, the last full year for which data were available in the original investigation, was \*\*\* pounds. CR/PR at Table I-1. Apparent U.S. consumption of crystalline sorbitol in 1997, the last full year for which data were available in the first five-year review, was \*\*\* pounds. CR/PR at Table I-1.

<sup>77</sup> Apparent U.S. consumption was \*\*\* pounds in 2003, the last year covered by the second five-year review. It then increased irregularly between 2004 and 2009, increasing from \*\*\* pounds in 2004 to \*\*\* pounds in 2005 and \*\*\* pounds in 2006, falling to \*\*\* pounds in 2007, increasing to \*\*\* pounds in 2008, and falling to \*\*\* pounds in 2009. The decline in apparent U.S. consumption between 2008 and 2009 coincided with the downturn in the U.S. economy in those years. CR/PR at Tables I-1 & C-3.

<sup>78</sup> Most questionnaire respondents indicated that demand in the U.S. market has increased since 1984. CR at II-4, PR at II-3.

<sup>79</sup> CR/PR at Table C-1.

<sup>80</sup> CR at IV-23 to IV-25, PR at IV-11.

<sup>81</sup> CR at IV-23, PR at IV-11.

<sup>82</sup> During the period of review, the most robust increases in demand for crystalline sorbitol occurred in \*\*\*. For example, \*\*\*, crystalline sorbitol demand increased by \*\*\*. Similarly, in \*\*\*, crystalline sorbitol demand increased by between \*\*\* after 2005. By contrast, since 2004, demand in the \*\*\* has grown at only about \*\*\* annually. CR at IV-23 to IV-25, PR at IV-11.

<sup>83</sup> CR at II-7, PR at II-5.

<sup>84</sup> ADM Posthearing Br. at 12.

<sup>85</sup> CR/PR at III-1.

<sup>86</sup> CR/PR at III-1.

<sup>87</sup> CR/PR at III-1.

acquisition, construction, and development of facilities in Gurnee, Illinois, and Keokuk, Iowa.<sup>88</sup> RF's U.S. subsidiary, RA, began its domestic sorbitol production in mid-1983.<sup>89</sup> In 1994, ADM purchased Pfizer's sorbitol business. That same year, SPI acquired ICI America's sorbitol facilities and purchased Ethichem's U.S. sorbitol business.<sup>90</sup> At the time of the first five-year review, ADM, RA, and SPI were believed to be, by far, the largest U.S. producers of crystalline sorbitol.<sup>91</sup>

In 2000, \*\*\*.<sup>92</sup> In 2003, three firms, ADM, RA, and SPI, were believed to account for all known U.S. production of crystalline sorbitol.<sup>93</sup> Most recently, in February 2007, CPI acquired the food business assets and accompanying sorbitol production facilities of SPI.<sup>94</sup>

Currently, three U.S. producers account for all known U.S. crystalline sorbitol production – ADM, CPI, and RA.<sup>95</sup> During the current review period, RA \*\*\* crystalline sorbitol, accounting for \*\*\* percent of total U.S. shipments of domestically produced sorbitol in 2009.<sup>96</sup> ADM accounted for \*\*\* percent of U.S. shipments in that year, and CPI accounted for \*\*\* percent of U.S. shipments.<sup>97</sup>

In this third five-year review, as in the original investigation and the first and second five-year reviews, the vast majority of the U.S. market is supplied by domestic producers of crystalline sorbitol. The domestic industry's U.S. market share generally has grown since the original investigation, but was only slightly above the level in the original investigation in 2009.<sup>98</sup> U.S. sorbitol producers accounted for \*\*\* percent of apparent U.S. consumption in 1980, the last year covered by the original investigation, and \*\*\* percent in 2009, the final year of the current review period.<sup>99</sup> The domestic industry's U.S. market share declined overall between 2004 and 2009, but ranged from \*\*\* percent to \*\*\* percent.<sup>100</sup>

During the period of review, RF \*\*\* of the subject merchandise, although \*\*\* since the original investigation.<sup>101</sup> RF estimated that in 2008 it accounted for \*\*\* percent of total production of crystalline sorbitol in France and \*\*\* percent of total French crystalline sorbitol exports to the United States.<sup>102</sup> As

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<sup>88</sup> CR/PR at III-1.

<sup>89</sup> CR/PR at III-1.

<sup>90</sup> CR/PR at III-1.

<sup>91</sup> CR/PR at III-1.

<sup>92</sup> CR at III-2, PR at III-1.

<sup>93</sup> CR at III-2, PR at III-1.

<sup>94</sup> CR at III-2 & n.10, PR at III-1 & n.10.

<sup>95</sup> CR/PR at Table I-5.

<sup>96</sup> CR/PR at Table I-5.

<sup>97</sup> CR/PR at Table I-5.

<sup>98</sup> CR/PR at Table I-1.

<sup>99</sup> By quantity, the domestic industry's U.S. market share declined from \*\*\* percent in 2004 to \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007, then increased slightly to \*\*\* percent in 2008 and \*\*\* percent in 2009. By value, the domestic industry's U.S. market share declined from \*\*\* percent in 2004 to \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007, and then increased to \*\*\* percent in 2008 and \*\*\* percent in 2009. CR/PR at Tables I-1 & C-1.

<sup>100</sup> CR/PR at Table I-1.

<sup>101</sup> RF's production was \*\*\* pounds in 2009, but \*\*\* pounds in 1980, the final year of the original investigation. RF's production capacity was \*\*\* pounds in 2009, compared with \*\*\* pounds in 1980. CR/PR at Table IV-5.

<sup>102</sup> CR at IV-9, PR at IV-5.

discussed previously, there is only one other known French producer of crystalline sorbitol, Syral.<sup>103</sup> Syral, however, is \*\*\*, and \*\*\*.<sup>104 105</sup> As noted above, Syral \*\*\*.

In this five-year review, only small and declining volumes of subject imports, ranging from just \*\*\* percent to \*\*\* percent of apparent U.S. consumption, entered the U.S. market.<sup>106</sup> RA reported that its subject imports were \*\*\*.<sup>107</sup> Unlike subject imports, nonsubject imports maintained a large and growing presence in the U.S. market during the review period, increasing irregularly from \*\*\* percent of apparent U.S. consumption in 2004 to \*\*\* percent in 2009.<sup>108</sup>

### **c. Other Conditions**

In the first and second five-year reviews, the Commission found that large contracts, often of multiyear duration, dominated the U.S. market.<sup>109</sup> The Commission further found in those reviews that crystalline sorbitol, whether produced domestically or in France, is highly substitutable and that price is an important factor in purchasing decisions.<sup>110</sup> There is nothing in the record before us to suggest that these conditions of competition have changed since the first and second reviews.

## **C. Likely Volume of Subject Imports**

### **1. The Commission's Original Determination and Prior Reviews**

In the original investigation, the Commission found that from 1978 to 1980, France was the primary source of imported crystalline sorbitol, accounting for nearly \*\*\* percent of the total quantity of all imports during the period.<sup>111</sup> The Commission also found that imports from France increased rapidly, rising from \*\*\* pounds in 1978 to \*\*\* pounds in 1979 and \*\*\* pounds in 1980.<sup>112</sup> The market share of imports from France grew from \*\*\* percent to \*\*\* percent in the same period.<sup>113</sup>

In the first five-year review, the Commission found that the subject import volume was likely to be significant and increase significantly if the order were revoked. The Commission noted, based on the

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<sup>103</sup> CR at IV-8 to IV-9, PR at IV-4 to IV-5.

<sup>104</sup> CR at IV-8 to IV-9, PR at IV-4 to IV-5; CR/PR at IV-1 n.2.

<sup>105</sup> Syral, \*\*\*. This plant \*\*\*. Syral's \*\*\*. \*\*\*. According to RF and RA, this is a liquid sorbitol facility. CR at IV-10 to IV-11, PR at IV-6.

<sup>106</sup> By quantity, the U.S. market share of subject imports decreased from \*\*\* percent in 2003 to \*\*\* percent in 2004, \*\*\* percent in 2005, and \*\*\* percent in 2006, increased to \*\*\* percent in 2007, and then decreased to \*\*\* percent in 2008 and \*\*\* percent in 2009. By value, the U.S. market share of subject imports increased from \*\*\* percent in 2004 to \*\*\* percent in 2005, dropped to \*\*\* percent in 2006, increased to \*\*\* percent in 2007, declined to \*\*\* percent in 2008, and fell again to \*\*\* percent in 2009. CR/PR at Table I-1 & C-1.

<sup>107</sup> RA Prehearing Br. at 3-4.

<sup>108</sup> CR/PR at Table I-1. By quantity, the U.S. market share of nonsubject imports increased from \*\*\* percent in 2004 to \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007, and then declined to \*\*\* percent in 2008 and \*\*\* percent in 2009. By value, the U.S. market share of nonsubject imports increased from \*\*\* percent in 2004 to \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007, declined to \*\*\* percent in 2008, and then increased slightly to \*\*\* percent in 2009. CR/PR at Tables I-1 & C-1.

<sup>109</sup> Second Review Determination at 9-10.

<sup>110</sup> Second Review Determination at 9-10.

<sup>111</sup> Original Determination at 6.

<sup>112</sup> Original Determination at 6.

<sup>113</sup> Original Determination at 6.

record of the original investigation, that French crystalline sorbitol producers had demonstrated an ability and willingness to establish a significant presence in the U.S. market.<sup>114</sup> The Commission found there had been a significant expansion of French production capacity led by RF, the world's largest crystalline sorbitol producer.<sup>115</sup> It further found that the U.S. market was an important one for French producers before the order issued and that its importance was likely enhanced by the substantial growth in demand in the U.S. market since the original investigation.<sup>116</sup> The Commission also noted that the Roquette Group was bidding on large supply accounts in the United States and found that the volume required to supply these accounts, if acquired, would substantially exceed the capacity of its U.S. plant.<sup>117</sup> The Commission concluded that significant volumes were likely to be exported to the United States in the reasonably foreseeable future, particularly in light of contracting methods in the crystalline sorbitol market, and that such imports likely would regain significant market share absent the restraining effect of the order.<sup>118</sup>

In the second five-year review, the Commission concluded that the subject import volume was likely to be significant and increase significantly if the order were revoked.<sup>119</sup> This conclusion was based on the records of the original investigation and the first five-year review, as well as information submitted by the domestic industry. Although acknowledging that the volume and market share of subject imports had declined between 1980 and 2003, the Commission found that “\*\*\* decreases in volume are likely due to the restraining effects of the order.”<sup>120</sup> In finding that the volume of subject imports was likely to be significant upon revocation, the Commission relied upon the feasibility of product shifting by subject producers from liquid sorbitol to crystalline sorbitol, RF's continued status as the world's largest sorbitol producer, and the substantial increase in apparent U.S. consumption since the first five-year review.<sup>121</sup>

## **2. The Current Review**

Subject imports of crystalline sorbitol from France were minimal during the period examined in this review.<sup>122</sup> Subject imports accounted for \*\*\* percent of apparent U.S. consumption in 1980, the final year of the original investigation.<sup>123</sup> By comparison, subject imports ranged from just \*\*\* to \*\*\* percent of apparent U.S. consumption between 2004 and 2009.<sup>124</sup> Subject imports were \*\*\*.<sup>125</sup>

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<sup>114</sup> First Review Determination at 9.

<sup>115</sup> First Review Determination at 9.

<sup>116</sup> First Review Determination at 9.

<sup>117</sup> First Review Determination at 9-10.

<sup>118</sup> First Review Determination at 9-10.

<sup>119</sup> Second Review Determination at 11.

<sup>120</sup> Second Review Determination at 11.

<sup>121</sup> Second Review Determination at 11-12.

<sup>122</sup> CR/PR at Table I-1.

<sup>123</sup> During the original investigation, the U.S. market share of subject imports was \*\*\* percent in 1978, \*\*\* percent in 1979, and \*\*\* percent in 1980. CR/PR at Table I-1.

<sup>124</sup> By quantity, the U.S. market share of subject imports decreased from \*\*\* percent in 2004 to \*\*\* percent in 2005 and \*\*\* percent in 2006, increased to \*\*\* percent in 2007, and then decreased to \*\*\* percent in 2008 and \*\*\* percent in 2009. By value, the U.S. market share of subject imports increased from \*\*\* percent in 2004 to \*\*\* percent in 2005, dropped to \*\*\* percent in 2006, increased to \*\*\* percent in 2007, declined to \*\*\* percent in 2008, and fell again to \*\*\* percent in 2009. CR/PR at Tables I-1 & C-1.

<sup>125</sup> RA Posthearing Br. at 3-4.

In evaluating the likely volume of subject imports if the order were revoked, we examine the foreign producers of sorbitol in France, the ability of the foreign producers to increase exports to the United States, and factors affecting the foreign producers' ability to increase shipments to the United States.

As discussed above, subject sorbitol is produced in France by RF and Syral, with RF accounting for \*\*\* of production during the period examined (an estimated \*\*\* percent of the total production of sorbitol in France in 2008).<sup>126</sup> Although still sizable, RF's production capacity was considerably smaller during the review period than in the original investigation.<sup>127</sup> Since 2004, RF has \*\*\*.<sup>128</sup>

Apart from its production base in France, RF has made substantial investments in sorbitol production facilities in various markets, including the United States, China, Europe, South Korea, India, and Mexico.<sup>129</sup> RF generally \*\*\*.<sup>130</sup> Consistent with RF's \*\*\*, which accounted for \*\*\* percent of RF's commercial shipments in 2009.<sup>131</sup> For the remainder of RF's export shipments, the leading markets included \*\*\*.<sup>132</sup> RF is participating in the U.S. market virtually entirely through production by its U.S. affiliate, which now accounts for over \*\*\* percent of domestic sorbitol production. As discussed above, Syral is \*\*\*, and there were \*\*\* during the period of review.<sup>133</sup> Accordingly, our analysis of the likely volume of subject imports focuses mostly on RF.

We find that the subject producers would have only a limited ability to increase shipments to the United States if the order were revoked.<sup>134</sup> RF's capacity utilization for the subject merchandise ranged from \*\*\* percent to \*\*\* percent during the period of review and was usually above \*\*\* percent.<sup>135</sup> In light of its \*\*\*size, Syral has \*\*\* than RF. Accordingly, the subject producers have little excess capacity that could be directed to the United States market.<sup>136</sup> RF reports that the limiting factor in its production process is \*\*\*.<sup>137</sup> Accordingly, a diversion of liquid sorbitol would not allow RF to increase its capacity

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<sup>126</sup> CR at IV-9, PR at IV-5.

<sup>127</sup> In 1980, the final year of the original investigation, RF's reported production capacity was \*\*\* pounds. By comparison, in 2009, RF's reported production capacity was \*\*\* pounds. CR/PR at Table IV-5.

<sup>128</sup> CR/PR at Table IV-6.

<sup>129</sup> For example, in 2008, RF acquired \*\*\*. CR at IV-10, PR at IV-5.

<sup>130</sup> See, e.g., RF and RA Posthearing Br., Exh. B, Sworn Declaration of Etienne Duhamel (Senior Legal Counsel to RF) at ¶ 4 & Sworn Declaration of Gina Steffensmeier (RA's Director of Marketing) at ¶ 2.}

<sup>131</sup> CR/PR at Table IV-6.

<sup>132</sup> CR at IV-14, PR at IV-7.

<sup>133</sup> CR/PR at Table IV-6. Although Syral did not respond to the Commission's foreign producer questionnaire, RF estimates that Syral accounted for less than \*\*\* percent of French sorbitol production in 2008.

<sup>134</sup> Chairman Okun and Commissioner Pearson note further that \*\*\* RF and RA's Posthearing Br., Exh. D to Duhamel Sworn Declaration.

<sup>135</sup> CR/PR at Table IV-6. RF reported that its capacity utilization was \*\*\* percent in 2004, \*\*\* percent in 2005, \*\*\* percent in 2006, \*\*\* percent in 2007, \*\*\* percent in 2008, and \*\*\* percent in 2009. CR/PR at Table IV-6.

<sup>136</sup> ADM contends that French subject producers can engage in product shifting, as they possess the ability to reduce their liquid sorbitol output and divert it to the production of crystalline sorbitol. ADM Prehearing Br. at 7-8.

<sup>137</sup> See RF Foreign Producer Questionnaire at II-6.

to produce crystalline sorbitol. We also note that there are no known barriers to exports of the subject merchandise (crystalline sorbitol from France) in third-country markets.<sup>138 139</sup>

Even if the subject producers had the ability to increase shipments to the United States substantially, a number of economic factors would provide disincentives to do so. To begin with, RF would have no incentive to redirect shipments currently destined for France and other European Union markets to the United States. Prices for sorbitol in the EU market are high, due perhaps in part to a nine percent EU duty on imported sorbitol, which tends to shield French producers from foreign competition, allowing them to obtain higher prices in that market than in the United States.<sup>140 141</sup> In the absence of any evidence to the contrary, it does not appear that it would be in RF's interests to redirect shipments from nearby and relatively high-priced markets to the United States. Nor does it appear that RF has an incentive to divert shipments currently directed to \*\*\*. Demand for sorbitol in these markets \*\*\*, and RF would have an obvious interest in maintaining its presence in \*\*\*,<sup>142</sup>

Another major disincentive to increase shipments to the United States is RF's substantial investment in its U.S. affiliate, RA, and, as discussed below, RA's \*\*\*.<sup>143</sup> RA began sorbitol production in 1982, and since that time, RF has invested more than \$\*\*\* in RA's U.S. manufacturing operations, \*\*\* of which was invested during the period of review.<sup>144</sup> As a result of its investments in its U.S. subsidiary, RA is \*\*\* of sorbitol, accounting for \*\*\* percent of U.S. shipments of domestically produced sorbitol in 2009.<sup>145</sup> In light of these substantial investments by RF in its U.S. subsidiary, and RA's \*\*\* in the U.S. market, we do not find it likely that, if the order were revoked, RF would act in such a manner to take market share and volume away from RA.<sup>146</sup>

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<sup>138</sup> We note that Pakistan recently decided in a five-year review to continue its antidumping duty order on imports of liquid sorbitol from France. CR at IV-16, PR at IV-7 to IV-8. This does not apply, however, to crystalline sorbitol, the subject merchandise covered by this review.

<sup>139</sup> The dumping margins calculated by Commerce in its most recently completed administrative review of sorbitol from France were 2.9 percent for Syral and 12.9 percent for RF. CR/PR at Table I-1. We note that although Syral's dumping margin is substantially lower than RF's, Syral has not exported to the United States, while RF has exported relatively small volumes of \*\*\*. CR/PR at Table IV-1.

<sup>140</sup> The EU market is more attractively priced than the United States. The average unit values ("AUVs") for RF's exports to the EU were approximately \*\*\* percent higher than those for exports to the United States in every year between 2004 and 2009. CR/PR at Table IV-6. AUVs for RF's exports to third-country markets were also generally higher than those for exports to the United States between 2004 and 2009. CR/PR at Table IV-6. Although we acknowledge that AUVs can be skewed by virtue of product-mix variations, sorbitol does not appear to be a product that is characterized by differences in product mix.

<sup>141</sup> We note that the EU export subsidy previously applicable to sorbitol exports was discontinued in 2007 and, therefore, is not an issue in this five-year review. See, e.g., RF and RA Posthearing Br. at 11.

<sup>142</sup> CR at IV-23 to IV-25, PR at IV-11.

<sup>143</sup> Commissioner Lane and Commissioner Pinkert do not join in this paragraph. The substantial level of RA's unused domestic capacity discussed in the text below is far more central to their determination of likely import volume than is the theory that RF is generally unwilling given its relationship with RA to increase its shipments of subject merchandise to the U.S. market.

<sup>144</sup> RF and RA Posthearing Br. at 5; CR/PR at Table III-14.

<sup>145</sup> CR/PR at Table I-5.

<sup>146</sup> Although the record lacks information on the extent to which these disincentives would apply to Syral, RF is on record as supporting revocation of the order, \*\*\*. RF indicates that previously it was concerned that Syral's predecessor might invest in a capacity expansion that would allow it to ship considerable volumes to the United States. Now that Syral has taken ownership of the assets, RF no longer believes that an expansion of Syral's capacity is likely. Because the record indicates that Syral \*\*\*, and there is no evidence that Syral plans to increase

(continued...)

Domestic producers ADM and CPI argue that revocation of the order would likely result in a significant volume of subject imports due to alleged production constraints at RA. They maintain that RA is currently operating at or near full capacity and, if it were to win new sales from several large U.S. customers, would be forced to supply these new customers with subject imports from RF.<sup>147</sup> We are not persuaded. As an initial matter, it is speculative that RA will win substantial additional sales in the reasonably foreseeable future and that it would necessarily supply those customers from its facility in France rather than from its U.S. producer or from one of its other production facilities. Moreover, the record demonstrates that domestic producer RA \*\*\* with which to supply any additional shipments to the U.S. market. RA reported its crystalline sorbitol production capacity as \*\*\* pounds per year, which far exceeded its production in every year of the review period.<sup>148</sup>

ADM and CPI note that RA estimated its capacity on the basis of operating \*\*\*, and assert that such an estimate is unreasonable, as it does not allow for maintenance and downtime.<sup>149</sup> RA responds that it rarely shuts down its sorbitol production process altogether and provided the methodology it used to calculate its capacity, which was based on an hourly throughput rate. Even after adjusting RA's estimate to account for 25 days of downtime,<sup>150</sup> however, the record indicates that RA nevertheless would possess ample excess capacity and would not need to turn to imports from RF to supply U.S. demand.<sup>151</sup>

ADM and CPI also speculate that RA's capacity calculation is incorrectly based on its capacity to produce liquid sorbitol, instead of the dry form that is at issue in this investigation.<sup>152</sup> RA, however, confirms that it reported capacity on a dry basis, and there is no credible evidence in the record to the contrary.<sup>153</sup>

Finally, ADM and CPI suggest that RA overstated its crystalline sorbitol production capacity by failing to account for the alleged fact that it \*\*\*, based on an affidavit by a person who has no direct

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<sup>146</sup>(...continued)

that capacity, we find that Syral lacks the capacity to ship a significant volume of subject merchandise to the United States in the reasonably foreseeable future. See RF and RA Posthearing Br., Exh. B, Sworn Declaration of \*\*\*.

<sup>147</sup> See ADM Posthearing Br. at 2-3 & CPI Posthearing Br. at 4-6.

<sup>148</sup> RA's reported production was \*\*\* pounds in 2004, \*\*\* pounds in 2005, \*\*\* pounds in 2006, \*\*\* pounds in 2007, \*\*\* pounds in 2008, and \*\*\* pounds in 2009. CR/PR at Table III-3. Accordingly, given RA's reported annual production capacity of \*\*\* pounds, its excess capacity was \*\*\* pounds in 2004, \*\*\* pounds in 2005, \*\*\* pounds in 2006, \*\*\* pounds in 2007, \*\*\* pounds in 2008, and \*\*\* pounds in 2009. Derived from CR/PR at Table III-3.

<sup>149</sup> ADM Posthearing Br. at 2-3; CPI Posthearing Br. at 4-6.

<sup>150</sup> RA reported that its throughput rate was \*\*\* to \*\*\* pounds per hour and used this rate to estimate its capacity based on operating 24 hours per day, 7 days a week, and 340 days per year. On this basis, RA estimates that its capacity ranges between \*\*\* and \*\*\* pounds. We note that RA's estimated throughput rate has not been challenged by ADM or CPI. See e.g., RF and RA Posthearing Br. at 7-8.

<sup>151</sup> Assuming that RA's capacity was \*\*\* pounds in every year between 2004 and 2009, RA's excess capacity would have been \*\*\* pounds in 2004, \*\*\* pounds in 2005, \*\*\* pounds in 2006, \*\*\* pounds in 2007, \*\*\* pounds in 2008, and \*\*\* pounds in 2009. On this basis, its capacity utilization would have been \*\*\* percent in 2004, \*\*\* percent in 2005, \*\*\* percent in 2006, \*\*\* percent in 2007, \*\*\* percent in 2008, and \*\*\* percent in 2009. Derived from CR/PR at Table III-3.

<sup>152</sup> ADM Posthearing Br. at 3.

<sup>153</sup> See e.g., RA's U.S. Producer Questionnaire Response at II-8.



knowledge of RA's crystalline sorbitol production operation.<sup>154</sup> RA reports, however, that it \*\*\*.<sup>155</sup> We find that the affidavit does not provide persuasive evidence that RA has misreported its production capacity for crystalline sorbitol nor does the record support the argument that RA has overstated or otherwise misreported its production capacity for crystalline sorbitol. We thus do not conclude that RA has overstated its capacity.

In sum, we find that the subject French producers have only a limited ability to increase shipments to the United States if the order were revoked in that RF, \*\*\*, has relatively little excess capacity. Nor do we find that RF has a significant ability to engage in product shifting. We also find various significant disincentives to French producers substantially increasing exports to the United States. Proximity and relatively favorable prices favor continued shipments by RF to France and other European Union markets, and growth in demand in its other major export markets favors RF's continued presence in those markets. Moreover, RF would have no incentive to increase shipments and market share in the United States at the expense of its subsidiary RA, \*\*\* in the U.S. market and has substantial excess capacity.<sup>156</sup> Although ADM and CPI contend that RA would be forced to supply large new U.S. customers with subject imports from RF, this theory is speculative and its major premise (that RA is currently operating at near full capacity) unfounded. For all the reasons discussed above, we cannot conclude that subject imports from France would be likely to increase to a significant level if the order were revoked.

#### **D. Likely Price Effects of Subject Imports**

##### **1. The Commission's Original Determination and Prior Reviews**

In the original investigation, the Commission found that imports from France exhibited significant margins of underselling. Although domestic producers' prices increased in each quarter of the period of investigation, those increases failed to keep pace with price increases for the key raw material used in the production of sorbitol, *i.e.*, dextrose. Lost sales data further supported the finding of adverse price effects.<sup>157</sup>

In the first five-year review, the Commission noted that crystalline sorbitol from all sources was essentially a fungible product that must meet the same specifications for use in the U.S. market and that the product was easy to transport. The Commission thus found that crystalline sorbitol was highly substitutable regardless of its source. The Commission noted that, although the available pricing data were limited, the domestic industry had supplied information demonstrating price declines. The Commission found that the excess capacity available to French producers provided a strong incentive to engage in aggressive pricing behavior. Given the substitutability of the product, prices for domestically produced crystalline sorbitol would likely continue to decline to a significant degree if the order were revoked due to the effects of increased volumes of subject imports offered at lower prices. The "current softness" in the market, the Commission stated, supported a finding that any significant increase in supply would likely suppress domestic prices. Moreover, adverse price effects would be magnified given the large size and lengthy duration of typical crystalline sorbitol contracts. Accordingly, the Commission found that revocation of the antidumping duty order would likely lead to significant price effects,

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<sup>154</sup> See e.g., ADM Posthearing Br. at 3-4; CPI Posthearing Br. at 4-6 and at Exh. A, Billig Aff. at ¶ 3.

<sup>155</sup> See e.g., RF and RA Final Comments at 4.

<sup>156</sup> For Commissioner Lane's and Commissioner Pinkert's view regarding this finding, see footnote 144 above.

<sup>157</sup> Original Determination at 4, 7.

including significant underselling by subject imports, as well as significant price depression and suppression, in the reasonably foreseeable future.<sup>158</sup>

In the second five-year review, the Commission noted that, despite increases in U.S. demand for crystalline sorbitol, price competition in the U.S. market continued to be stiff.<sup>159</sup> The Commission found that the prevailing competitive market conditions indicated that French subject producers would likely sell at prices discounted from prevailing U.S. prices in order to gain sales and market share.<sup>160</sup> The Commission also highlighted the importance of price in the crystalline sorbitol market and the high degree of substitutability between subject imports and domestically produced crystalline sorbitol.<sup>161</sup> Accordingly, the Commission concluded that, if the order were revoked, significant volumes of subject imports likely would significantly undersell the domestic like product to gain market share and likely would have significant depressing or suppressing effects on the prices of the domestic like product.<sup>162</sup>

## 2. The Current Review

In this third five-year review, the Commission asked U.S. producers and importers of crystalline sorbitol to provide quarterly data for the total quantity and value of four products that were shipped to unrelated customers in the U.S. market for the period 2004-09.<sup>163</sup> Three U.S. producers and one importer reported varying amounts of price data.<sup>164</sup>

Between 2004 and 2009, subject imports from France were priced above the domestic like product in \*\*\* of \*\*\* comparisons, or \*\*\*, with margins of overselling ranging from \*\*\* to \*\*\* percent.<sup>165</sup> By contrast, prices for crystalline sorbitol imported from France were below those for U.S.-produced crystalline sorbitol in \*\*\* of \*\*\* comparisons, or \*\*\* percent, with margins of underselling ranging from \*\*\* to \*\*\* percent.<sup>166</sup>

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<sup>158</sup> First Review Determination at 10-12.

<sup>159</sup> Second Review Determination at 13.

<sup>160</sup> Second Review Determination at 13.

<sup>161</sup> Second Review Determination at 13.

<sup>162</sup> Second Review Determination at 13-14.

<sup>163</sup> The products for which pricing data were requested are as follows:

**Product 1.**—Crystalline sorbitol coarse powder: 1800 lb. or 1 metric ton (2205 lbs) super sack for food or pharmaceutical use.

**Product 2.**—Crystalline sorbitol coarse powder: 300 lb. drum for food or pharmaceutical use.

**Product 3.**—Crystalline sorbitol coarse powder: 50 lb. bag or box for food or pharmaceutical use.

**Product 4.**—Crystalline sorbitol granular: 200 lb. drum for food or pharmaceutical use.

CR at V-9, PR at V-4.

<sup>164</sup> U.S. producer shipment data for the four products for which prices were reported accounted for \*\*\* percent of all U.S. shipments of crystalline sorbitol during 2004-09. CR at V-9, PR at V-4. U.S. shipment data for the two imported products from France on which prices were reported (Products 1 and 3) accounted for \*\*\* percent of all imports from France during 2004-09. CR at V-9, PR at V-4.

<sup>165</sup> CR/PR at Table V-9.

<sup>166</sup> CR/PR at Table V-9.

U.S. producer prices for all four products increased overall during the five-year period.<sup>167</sup> Prices of imports from France also increased irregularly during the period.<sup>168</sup> As described above, U.S. demand for crystalline sorbitol is expected to continue to increase, albeit modestly, which will likely result in upward pressure on domestic crystalline sorbitol prices within the reasonably foreseeable future.

Because we do not find it likely, for the reasons described previously, that revocation of the order would result in a significant increase in the volume of subject imports, we also do not find it likely that any increase in the volume of subject imports would depress or suppress the domestic industry's prices to any significant degree.<sup>169</sup> Given \*\*\* RA in the U.S. market, and the fact that RA is a subsidiary of the dominant French crystalline sorbitol producer, it is unlikely that, absent the order, any resulting subject imports would be sold at prices that would have significant adverse effects on the domestic industry. Although the domestic industry's price increases have not been sufficient to fully cover its increased costs,<sup>170</sup> we do not find it likely that the relatively small volumes of subject imports that would be likely upon revocation of the order would likely have any significant price suppressing or price depressing effects. Especially in light of \*\*\*, and RF's \*\*\* in France, there is no incentive for RF to engage in aggressive pricing practices with regard to exports to the U.S. market if the order is revoked.

Although ADM and CPI assert that the prices of crystalline sorbitol produced in the United States by RA necessarily predict the likely prices of future exports of crystalline sorbitol from France, the record evidence tends toward a contrary conclusion. Whereas RA \*\*\* that could motivate it to sell at lower prices in order to gain market share, RF \*\*\*, meaning that it lacks the same incentive. In addition, the fact that production, transportation, and other costs differ for RF and RA undermines the assumption that RF would necessarily sell crystalline sorbitol in the United States at the same prices. Moreover, even if the assertion of ADM and CPI were confirmed, it would tend to show only that subject imports are likely to be sold at prices that are the same as, and not lower than, the prices of the \*\*\*, RA. In addition, the establishment of RA in 1982, and its continued operation over the last 28 years, constitutes a fundamental shift in conditions of competition such that the underselling that occurred during the original investigation is not necessarily probative of likely import pricing in the reasonably foreseeable future. For the reasons indicated above, we find that revocation of the antidumping duty order likely would not lead to significant underselling by the subject imports of the domestic like product, or to significant price depression or suppression, within a reasonably foreseeable time.

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<sup>167</sup> CR/PR at Tables V-4 to V-7.

<sup>168</sup> CR/PR at Tables V-4 & V-6.

<sup>169</sup> Commissioner Lane and Commissioner Pinkert do not join in this paragraph. Their reasons for not finding it likely that revocation of the order would result in a significant increase in the volume of subject imports do not center on the \*\*\* of RA in the U.S. market, nor do they center on the fact that RA is a subsidiary of the dominant French sorbitol producer. Rather, they center on the sufficiency of RA's unused capacity to serve the needs of RA's likely customers. In other words, a significant increase in imports from the dominant French sorbitol producer RF is unnecessary as a matter of RA-RF's corporate strategy. For precisely this reason, Commissioner Lane and Commissioner Pinkert also do not find it likely that subject imports would depress or suppress the domestic industry's prices to a significant degree within a reasonably foreseeable time.

<sup>170</sup> The domestic industry's cost of goods sold ("COGS") to net sales ratio increased irregularly during the review period, increasing from \*\*\* percent in 2004 to \*\*\* percent in 2005, falling to \*\*\* percent in 2006, and then increasing steadily from \*\*\* percent in 2007 to \*\*\* percent in 2008 and \*\*\* percent in 2009. CR/PR at Table C-3.

## **E. Likely Impact of Subject Imports<sup>171</sup>**

### **1. The Commission's Original Determination and Prior Reviews**

In the original investigation, the Commission found material injury to the domestic industry by reason of increased LTFV imports of crystalline sorbitol. The Commission found declines in U.S. producers' production, commercial shipments, and market share, as well as declines in capacity utilization and employment, and a deterioration of the domestic industry's financial condition.<sup>172</sup>

In the first five-year review, the Commission noted that there was little information in the record on the current condition of the domestic industry. The Commission found that the industry was not vulnerable to material injury as contemplated by the Act given that none of the available information demonstrated vulnerability. The Commission noted that since the imposition of the antidumping duty order, the domestic industry's market share had increased as subject imports virtually exited the market. The domestic industry, rather than nonsubject imports, gained the most from the declines in subject imports. The substitutability of the product had also enabled the domestic industry to readily replace subject imports in the U.S. market. The Commission thus found that any future increase in the imports' market share would be largely at the expense of the domestic industry.<sup>173</sup>

Reiterating its findings in the original investigation regarding likely volume and price effects, the Commission concluded that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry, particularly given the contracting methods in the sorbitol market. Declines in those performance indicators would have a direct adverse impact on the industry's profitability and employment levels, as well as its ability to raise capital and make necessary investments. Accordingly, the Commission determined that, based on the available information, subject imports would likely have a significant adverse impact on the domestic industry within a reasonably foreseeable time.<sup>174</sup>

The Commission made the same determination in the second five-year review.<sup>175</sup> Although it found that the domestic industry was not vulnerable, the Commission emphasized that "[w]ith the capacity expansion reportedly taking place in France and the focus of that industry's exports away from

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<sup>171</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885, 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Tariff Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

Commerce expedited its determination in its third five-year review of crystalline sorbitol from France and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. It found a likely dumping margin for RF and all others of 2.9 percent. 74 Fed. Reg. at 56793 (Nov. 3, 2009).

<sup>172</sup> Original Determination at 5-7.

<sup>173</sup> First Review Determination at 12.

<sup>174</sup> First Review Determination at 12-13.

<sup>175</sup> Sorbitol from France, Inv. No. 731-TA-44 (Second Review), USITC Pub. 3706 (July 2004) ("Second Review Determination"). Chairman Koplan and Commissioners Hillman and Miller made an affirmative determination. Vice Chairman Okun and Commissioners Lane and Pearson dissented and determined that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States.

Asian markets . . . the attractive and growing U.S. market will likely become, once again, an important destination for exports from France absent the order.”<sup>176</sup> It found that, given the substitutable nature of the product, the likely volume of subject imports would likely have a significant adverse impact on the domestic industry’s production, shipments, sales and revenue levels.<sup>177</sup> The Commission also found that the likely volume of subject imports would be significant and that the imports would have significant adverse price effects if the order were revoked.<sup>178</sup> As a result of these findings, the Commission concluded, based on the limited record in the review, that subject imports would likely have a significant adverse impact on the domestic industry within a reasonably foreseeable time if the antidumping order were revoked.<sup>179</sup>

## 2. The Current Review

In the current review, ADM and CPI argue that the domestic industry is in a weakened and vulnerable state, citing their own financial performance as well as the financial performance of RA. The record in this second review, however, is mixed regarding the financial performance of the domestic industry. The domestic industry as a whole was profitable throughout the 2004-2009 period of review, with operating profits ranging from \$\*\*\* to \$\*\*\*, although it experienced deteriorating profitability as price increases have not kept pace with increased costs.<sup>180 181</sup>

The domestic industry’s U.S. market share has increased slightly since the original investigation.<sup>182</sup> In 1980, the final year of the original investigation, U.S. sorbitol producers accounted for \*\*\* percent of apparent U.S. consumption, compared with \*\*\* percent in 2009, the final year of the current review period.<sup>183</sup> Although the industry’s market share declined irregularly between 2004 and 2009, it remained substantial, ranging from \*\*\* percent to \*\*\* percent during this period.<sup>184</sup>

Although domestic producers’ U.S. shipments of crystalline sorbitol, by quantity and value, decreased slightly between 2004 and 2009, such shipments have increased substantially overall since the original investigation.<sup>185</sup> Net sales, by quantity, increased irregularly between 2004 and 2009.<sup>186</sup> Net

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<sup>176</sup> Second Review Determination at 15-16.

<sup>177</sup> Second Review Determination at 16.

<sup>178</sup> Second Review Determination at 16.

<sup>179</sup> Second Review Determination at 16.

<sup>180</sup> The domestic industry’s operating income was \$\*\*\* in 2004, \$\*\*\* 2005, \$\*\*\* in 2006, \*\*\* in 2007, \*\*\* in 2008, and \*\*\* in 2009. As a ratio to net sales, the domestic industry’s operating income was \*\*\* percent in 2004, \*\*\* percent in 2005, \*\*\* percent in 2006, \*\*\* percent in 2007, \*\*\* percent in 2008, and \*\*\* percent in 2009. CR/PR at Table C-3. CR/PR at Tables I-1 & C-3.

<sup>181</sup> As noted above, the domestic industry’s COGS to net sales ratio increased irregularly during the review period, increasing from \*\*\* percent in 2004 to \*\*\* percent in 2005, falling to \*\*\* percent in 2006, and then increasing steadily from \*\*\* percent in 2007 to \*\*\* percent in 2008 and \*\*\* percent in 2009. CR/PR at Table C-3.

<sup>182</sup> CR/PR at Table I-1.

<sup>183</sup> By quantity, the domestic industry’s U.S. market share declined from \*\*\* percent in 2004 to \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007, then increased slightly to \*\*\* percent in 2008 and \*\*\* percent in 2009. By value, the domestic industry’s U.S. market share declined from \*\*\* percent in 2004 to \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007, and then increased to \*\*\* percent in 2008 and \*\*\* percent in 2009. CR/PR at Tables I-1 & C-1.

<sup>184</sup> CR/PR at Table I-1.

<sup>185</sup> Domestic producers’ U.S. shipments of crystalline sorbitol, by quantity, declined irregularly from \*\*\* pounds in 2004 to \*\*\* pounds in 2009. Domestic producers’ U.S. shipments, by value, declined irregularly from \$\*\*\* in

(continued...)

sales, by value, decreased irregularly between 2004 and 2009, but nevertheless remained at levels far above those in the original investigation.<sup>187</sup> U.S. producers' inventories increased irregularly between 2004 and 2009.<sup>188</sup> The domestic industry's capital expenditures increased irregularly from \$\*\*\* in 2004 to \$\*\*\* in 2009.<sup>189</sup>

Although the number of production-related workers (PRWs) employed by the domestic industry and hours worked declined slightly between 2004 and 2009,<sup>190</sup> hourly wages increased during the review period.<sup>191</sup> Because the domestic industry's production capacity remained relatively stable and its production fell by less than \*\*\* percent during the review period,<sup>192</sup> the industry's capacity utilization rate increased irregularly from \*\*\* percent in 2004 to \*\*\* percent in 2009.<sup>193</sup>

Based on the foregoing, we conclude that the domestic industry, on balance, is not in a weakened state and therefore is not vulnerable to material injury within the meaning of the statute.

As discussed above, we do not find it likely that revocation of the order would result in a significant increase in the volume of subject imports. Although we do not rule out the possibility of a small increase in the volume of subject merchandise in the event of revocation, we do not find it likely that any increase in the volume, market share, or underselling by subject imports would depress or suppress the domestic industry's prices significantly or have a significant adverse impact on the domestic industry's production, shipments, sales, employment, and revenue. Any marginal reduction in the domestic industry's production, shipments, sales, employment, and revenue would not have a significant adverse impact on the domestic industry's profitability or its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the record in this review, we conclude that, in the event of revocation of the order, subject imports from France likely would not have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

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<sup>185</sup>(...continued)

2004 to \$\*\*\* in 2009. By quantity, domestic producers' U.S. shipments of sorbitol were \*\*\* in 1980, the final year of the original investigation. By value, domestic producers' U.S. shipments of sorbitol were \$\*\*\* in 1980. CR/PR at Tables I-1 & C-3.

<sup>186</sup> U.S. producers' net sales, by quantity, increased from \*\*\* pounds in 2004 to \*\*\* pounds in 2005 and \*\*\* pounds in 2006, declined to \*\*\* pounds in 2007, increased to \*\*\* pounds in 2008, and then fell to \*\*\* pounds in 2009. CR/PR at Tables I-1 & C-1.

<sup>187</sup> U.S. producers' net sales, by value, ranged from \$\*\*\* to \$\*\*\* during the period of original investigation. By contrast, U.S. producers' net sales, by value, ranged from \$\*\*\* to \$\*\*\* between 2004 and 2009. CR/PR at Tables I-1 & C-3.

<sup>188</sup> U.S. producers' inventories were \*\*\* pounds in 2004, \*\*\* pounds in 2005, \*\*\* pounds in 2006, \*\*\* pounds in 2007, \*\*\* pounds in 2008, and \*\*\* pounds in 2009. CR/PR at Tables I-1 & C-1.

<sup>189</sup> The domestic industry's capital expenditures were \$\*\*\* in 2004, \$\*\*\* in 2005, \$\*\*\* in 2006, \$\*\*\* in 2007, \$\*\*\* in 2008, and \$\*\*\* in 2009. CR/PR at Tables I-1 & C-1.

<sup>190</sup> CR/PR at Tables I-1 & C-3. The number of PRWs employed by the domestic industry declined irregularly during the review period from \*\*\* in 2004 to \*\*\* in 2009. The number of hours worked by domestic industry employees also declined irregularly from \*\*\* hours per week in 2004 to \*\*\* hours per week in 2009. CR/PR at Tables I-1 & C-1.

<sup>191</sup> Hourly wages earned by employees for the domestic industry increased irregularly during the review period from \$\*\*\* per hour in 2004 to \$\*\*\* in 2009. CR/PR at Tables I-1 & C-1.

<sup>192</sup> The domestic industry's capacity was \*\*\* pounds in 2004, 2005, and 2006, \*\*\* pounds in 2007, and \*\*\* pounds in 2008 and 2009. The domestic industry's production was \*\*\* pounds in 2004, \*\*\* pounds in 2005, \*\*\* pounds in 2006, \*\*\* pounds in 2007, \*\*\* pounds in 2008, and \*\*\* pounds in 2009. CR/PR at Tables I-1 & C-1.

<sup>193</sup> The domestic industry's capacity utilization rate was \*\*\* percent in 2004, \*\*\* percent in 2005, \*\*\* percent in 2006, \*\*\* percent in 2007, \*\*\* percent in 2008, and \*\*\* percent in 2009. CR/PR at Tables I-1 & C-1.

## **CONCLUSION**

For the above reasons, we determine that revocation of the antidumping duty order on crystalline sorbitol from France would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.





## PART I: INTRODUCTION AND OVERVIEW

### BACKGROUND

On July 2, 2009, the U.S. International Trade Commission (“Commission” or “USITC”) gave notice, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”),<sup>1</sup> that it had instituted a review to determine whether revocation of the antidumping duty order on sorbitol from France would likely lead to the continuation or recurrence of material injury to a domestic industry.<sup>2 3</sup> On October 5, 2009, the Commission determined that it would conduct a full review pursuant to section 751(c)(5) of the Act.<sup>4</sup> Selected information relating to the schedule of the current five-year review appears in the following tabulation.<sup>5</sup>

Effective date	Action
April 9, 1982	Department of Commerce’s antidumping duty order (47 FR 15391)
July 18, 1983	Commission publishes notice of institution of investigation on remand (48 FR 35186, August 3, 1983) <sup>1</sup>
October 26, 1983	Commission publishes determination on remand (48 FR 49560) <sup>2</sup>
June 29, 1984	Commerce publishes revocation in part of antidumping duty order (49 FR 26773) <sup>3</sup>
October 1, 1998	Commission’s institution (63 FR 52757) and Commerce’s initiation (63 FR 52683) of first review
February 4, 1999	Commerce’s final results of expedited first review (64 FR 5636)

Continued on next page.

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<sup>1</sup> 19 U.S.C. 1675 (c).

<sup>2</sup> All interested parties were requested to respond to this notice by submitting the information requested by the Commission. This notice was effective July 1, 2009. *Sorbitol from France*, 74 FR 31762, July 2, 2009. The Commission received responses to its notice of institution from two domestic producers of sorbitol, Archer Daniels Midland Co. (“ADM”) and Corn Products International, Inc. (“CPI”).

<sup>3</sup> In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of a five-year review of the subject antidumping duty order concurrently with the Commission’s notice of institution. *Initiation of Five-year (“Sunset”) Review*, 74 FR 31412, July 1, 2009.

<sup>4</sup> The Commission found that the domestic interested party group response to its notice of institution was adequate and that the respondent interested party group response with respect to France was inadequate. The Commission determined to conduct a full review in light of information regarding possible changes in conditions of competition. Commissioners Irving A. Williamson and Dean A. Pinkert voted to conduct an expedited review, citing both the lack of adequate respondent participation and their finding that the record in the adequacy phase did not indicate sufficient changes in conditions of competition since the original investigation and the first and second five-year reviews to warrant conducting a full review. *Sorbitol from France*, 74 FR 54068, October 21, 2009 and the *Explanation of the Commission Determination on Adequacy*.

<sup>5</sup> The Commission’s notice of institution, scheduling notice, and statement on adequacy appear in app. A and may also be found at the Commission’s web site (internet address [www.usitc.gov](http://www.usitc.gov)). Commissioners’ votes on whether to conduct an expedited or full review may also be found at the web site. App. B includes a list of witnesses who appeared at the Commission’s hearing.

Effective date	Action
March 10, 1999	Commission's expedited first review determination (64 FR 11948)
August 6, 1999	Commerce's first continuation order concerning the antidumping duty finding (64 FR 42920)
February 2, 2004	Commission's institution (69 FR 4981) and Commerce's initiation (69 FR 4921) of second review
June 28, 2004	Commerce's final results of expedited second review (69 FR 36062)
July 23, 2004	Commission's expedited second review determination (69 FR 44061)
August 5, 2004	Commerce's second continuation order concerning the antidumping duty finding (69 FR 47415)
July 1, 2009	Commission's institution (74 FR 31762, July 2, 2009) and Commerce's initiation (74 FR 31412) of third review
October 5, 2009	Commission's determination to conduct a full five-year review (74 FR 54068, October 21, 2009)
November 3, 2009	Commerce's final results of expedited third review (74 FR 56793)
December 10, 2009	Commission's scheduling of the review (74 FR 66992, December 17, 2009)
May 11, 2010	Commission's hearing
June 15, 2010	Commission's vote
July 1, 2010	Commission's determinations transmitted to Commerce
<p><sup>1</sup> The Court of International Trade ("CIT") remanded the investigation for a new determination. See <i>Roquette Frères v. United States</i>, Slip Op. 83-71, July 18, 1983.</p> <p><sup>2</sup> On remand, the Commission reaffirmed its affirmative determination with respect to crystalline sorbitol but made a negative determination with respect to liquid sorbitol.</p> <p><sup>3</sup> Commerce revoked the antidumping duty order with respect to liquid sorbitol following the CIT's affirmation of the Commission's remand results. See <i>Roquette Frères and Roquette Corporation v. United States</i>, Slip Op. 84-22, March 19, 1984. The antidumping duty order was continued on imports of crystalline sorbitol from France.</p>	

### The Original Investigation

The original investigation resulted from a petition filed by counsel on behalf of Pfizer Inc. ("Pfizer") on June 15, 1981, alleging that an industry in the United States is materially injured and threatened with material injury by reason of dumped imports of sorbitol from France.<sup>6</sup> The Commission determined that the domestic sorbitol industry was being materially injured by reason of imports of sorbitol from France that were being sold at less than fair value.<sup>7</sup> After receipt of the Commission's determination, Commerce issued an antidumping duty order covering imports of sorbitol from France.<sup>8</sup>

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<sup>6</sup> *Sorbitol from France*, 46 FR 32700, June 24, 1981.

<sup>7</sup> See *Sorbitol from France, Inv. No. 731-TA-44 (Final)*, USITC Pub. No. 1233, March 1982.

<sup>8</sup> *Sorbitol from France*, 47 FR 15391, April 9, 1982.

The antidumping duty margins, for all producers/exporters in France, were 2.9 percent *ad valorem* for crystalline sorbitol and 5.5 percent *ad valorem* for liquid sorbitol.<sup>9</sup>

### Subsequent Proceedings

In July 1983, the CIT remanded the investigation to the Commission. In its original determination and in response to the remand from the CIT, the Commission found two domestic industries, one producing liquid sorbitol and one producing crystalline sorbitol. In the original determination the Commission made affirmative findings for both industries. However, in its remand determination, the Commission made an affirmative finding only with respect to the producers of crystalline sorbitol.<sup>10</sup> Commerce subsequently revoked the antidumping duty order in part, by revoking the order with respect to liquid sorbitol.<sup>11</sup>

On October 1, 1998, the Commission instituted the first five-year review on sorbitol. On March 2, 1999, the Commission determined<sup>12</sup> that revocation of the antidumping duty order on sorbitol from France would be likely to lead to a continuation or recurrence of material injury.<sup>13</sup>

On February 2, 2004, the Commission instituted the second five-year review on sorbitol. On July 16, 2004, the Commission determined<sup>14</sup> that revocation of the antidumping duty order on sorbitol from France would be likely to lead to a continuation or recurrence of material injury.<sup>15</sup>

### Summary Data

Table I-1 presents a summary of data from the original investigation, the first expedited five-year review, the second expedited five-year review, and from the current full review.

The quantity of apparent U.S. consumption has increased since the period examined in the original investigation, the first review, and the second review. U.S. producers' share of consumption has fluctuated, falling to its lowest level as recently as 2007 (\*\* percent), and reaching its highest level in 1978 and 2004 (\*\* percent). Following issuance of the antidumping duty order, the share of subject imports declined overall, while the share of nonsubject imports increased. Nonsubject imports peaked as a share of the U.S. market in 2007 when they accounted for \*\* percent of the market.

Since 1980, the final calendar year examined in the original investigation, the quantity of U.S. shipments has increased. Employment diminished from the end of the original investigation while average wages increased during 2004-09. The trend in productivity gains witnessed in the original investigation accelerated. After a year of operating losses in 1980, the U.S. industry generated positive operating income every year from 2004-09, but the ratio of operating income to net sales has diminished since 2006.

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<sup>9</sup> Ibid.

<sup>10</sup> See *Sorbitol from France, Inv. No. 731-TA-44(Final– Court Remand)*, USITC Pub. No. 1441, October 1983. *Sorbitol from France, Inv. No. 731-TA-44 (Review)*, USITC Pub. No. 3165, March 1999, p. I-3.

<sup>11</sup> *Sorbitol from France; Revocation in Part of Antidumping Duty Order*, 49 FR 26773, June 29, 1984.

<sup>12</sup> Chairman Bragg and Commissioner Askey dissenting.

<sup>13</sup> *Sorbitol from France, Determination*, 64 FR 11948, March 10, 1999.

<sup>14</sup> Vice Chairman Deanna Tanner Okun and Commissioners Charlotte R. Lane and Daniel R. Pearson dissenting.

<sup>15</sup> *Sorbitol from France, Determination*, 69 FR 44061, July 23, 2004.

Table I-1

Sorbitol: Summary data from the original investigation, the first five-year review, the second five-year review, and the current five-year review, 1978-1980, 1997, 2003, and 2004-09

\* \* \* \* \*

## STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

### Statutory Criteria

Section 751(C) of the Act requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation “would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.”

Section 752(a) of the Act provides that in making its determination of likelihood of continuation or recurrence of material injury--

*(1) IN GENERAL.-- . . . the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account--*

*(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,*

*(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,*

*(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and*

*(D) in an antidumping proceeding . . . , (Commerce’s findings) regarding duty absorption . . .*

*(2) VOLUME.--In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including--*

*(A) any likely increase in production capacity or existing unused production capacity in the exporting country,*

*(B) existing inventories of the subject merchandise, or likely increases in inventories,*

*(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and*

*(D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.*

*(3) PRICE.--In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether--*

*(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and*

*(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.*

*(4) IMPACT ON THE INDUSTRY.--In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to--*

*(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,*

*(B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and*

*(C) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.*

The Commission shall evaluate all such relevant economic factors . . . within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

Section 752(a)(6) of the Act states further that in making its determination, “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.”

### **Organization of the Report**

Information obtained during the course of the review that relates to the statutory criteria is presented throughout this report. A summary of trade and financial data for sorbitol as collected in the review is presented in appendix C. U.S. industry data are based on the questionnaire responses of three U.S. producers that are believed to have accounted for nearly all U.S. production of sorbitol during 2004-09. U.S. import data and related information are based on seven U.S. importer questionnaire responses that are believed to account for virtually all subject U.S. imports from France during 2004-09. Foreign industry data and related information are based on the questionnaire response of one sorbitol

producer in France accounting for an estimated \*\*\* percent of subject French production. Responses by U.S. producers, importers, purchasers, and foreign producers of sorbitol to a series of questions concerning the significance of the existing antidumping duty order for France and the likely effects of revocation of the order are presented in appendix D.

## **COMMERCE'S REVIEWS<sup>16</sup>**

### **Administrative Reviews**

Commerce has conducted numerous administrative reviews with respect to imports of sorbitol from France. After seven administrative reviews, on April 14, 1993, Commerce published its notice of intent to revoke the antidumping duty order because it had not received a request to conduct an administrative review of the order for the most recent four consecutive anniversary months.<sup>17</sup> On April 30, 1993, domestic producer, Lonza Inc. ("Lonza") objected to Commerce's intent to revoke the order. Therefore, Commerce determined not to revoke the order.<sup>18</sup> In April 2010, ADM and CPI requested an administrative review of Syral SAS's ("Syral") entries of subject merchandise during the April 1, 2009 through March 31, 2010 period of review.<sup>19</sup> The results of Commerce's latest review are not available. The results of the completed administrative reviews are shown in table I-2.

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<sup>16</sup> No scope rulings and no duty absorption findings have been made with respect to the antidumping duty order.

<sup>17</sup> Commerce may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. *Sorbitol from France; Intent to Revoke Antidumping Duty Order*, 58 FR 19406, April 14, 1993.

<sup>18</sup> *Sorbitol from France; Determination Not To Revoke Antidumping Duty Order*, 58 FR 44658, August 24, 1993.

<sup>19</sup> ADM's posthearing brief, app., p. 56.

**Table I-2****Sorbitol: Administrative review of the antidumping duty order for France**

Date results published	Period of review	Producer or exporter	Margin (percent)
March 22, 1984 (49 FR 10695)	10/01/1981-05/31/1982	Roquette Frères All others	3.69 3.69
November 26, 1986 (51 FR 42873)	06/01/1982-03/31/1983	Roquette Frères All others	0.70 0.70
November 26, 1986 (51 FR 42873)	04/01/1983-03/31/1984	Roquette Frères All others	0.96 0.96
November 26, 1986 (51 FR 42873)	04/01/1984-03/31/1985	Roquette Frères All others	0.21 0.21
June 1, 1987 (52 FR 20444)	04/01/1985-03/31/1986	Roquette Frères All others	12.07 12.07
June 8, 1988 (53 FR 21506)	04/01/1986-03/31/1987	Roquette Frères All others	0.46 0.46
February 26, 1990 (55 FR 6668)	04/01/1987-03/31/1988	Roquette Frères All others	0.94 0.94
August 11, 1994 59 FR 41272	04/01/1993-03/31/1994	Roquette Frères All others	( <sup>1</sup> ) ( <sup>1</sup> )
February 14, 2000 (65 FR 7361)	04/01/1998-03/31/1999	Roquette Frères All others	12.07 2.90
April 25, 2001 (66 FR 20788)	04/01/1999-03/31/2000	Roquette Frères All others	( <sup>2</sup> ) ( <sup>2</sup> )

<sup>1</sup> The administrative review was terminated because Lonza, a domestic manufacturer of sorbitol, timely withdrew its request for administrative review and there were no other requests for an administrative review of the order.

<sup>2</sup> The administrative review was rescinded because Commerce determined that the respondents had no shipments during the period of review.

Source: Cited *Federal Register* notices.

**Five-Year Review**

Commerce has issued the final results of its expedited review with respect to France. Table I-3 presents the margins calculated by Commerce in its original investigation, first review, second review, and the current review.

**Table I-3****Sorbitol: Commerce's original, first five-year review, second five-year review, and current review antidumping duty margins for producers/exporters in France**

Producer/exporter	Original margin (percent)	First five-year review margin (percent)	Second five-year review margin (percent)	Current review margin (percent)
Roquette Frères	2.9	2.9	2.9	2.9
All others	2.9	2.9	2.9	2.9

Source: *Sorbitol from France: Final Determination*, 47 FR 15391, April 9, 1982; *Final Results of Expedited Sunset Review. Sorbitol from France*, 64 FR 5636, February 4, 1999. *Sorbitol from France: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 69 FR 36062, June 28, 2004. *Sorbitol from France: Final Results of Expedited Five-year (Sunset) Review of Antidumping Duty Order*, 74 FR 56793, November 3, 2009.

## DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET ACT FUNDS

The Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”) (also known as the Byrd Amendment) provides that assessed duties received pursuant to antidumping or countervailing duty orders must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such orders.<sup>20</sup> During the review period, qualified U.S. producers of sorbitol<sup>21</sup> were eligible to receive disbursements from U.S. Customs and Border Protection (“Customs”) under CDSOA relating to the antidumping duty order on the subject product from France.<sup>22</sup> However, no firms received CDSOA funds in federal fiscal years 2004-09.<sup>23</sup>

### THE SUBJECT MERCHANDISE

#### Commerce’s Scope

The imported product subject to the antidumping order has been defined by Commerce as:

*Crystalline sorbitol (sorbitol), a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals.*<sup>24</sup>

#### Tariff Treatment

Sorbitol is currently classified under subheading 2905.44.00 of the Harmonized Tariff Schedule of the United States (HTS).<sup>25</sup> The tariff rates that apply to imports of sorbitol entering the United States appear below in table I-4.

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<sup>20</sup> Section 754 of the Tariff Act of 1930, as amended (19 U.S.C. § 1675(c)).

<sup>21</sup> Pfizer and Lonza were eligible to receive such funds. ADM purchased Pfizer’s sorbitol business in 1994. SPI Polyols purchased the polyols business of Lonza in 2000. CPI purchased SPI Polyols in 2007. *Sorbitol from France, Inv. No. 731-TA-44 (Second Review)*, USITC Pub. 3706, July 2004, p. I-6.

<sup>22</sup> 19 CFR 159.64 (g).

<sup>23</sup> Customs’ annual reports for fiscal years 2004-09, found at [http://www.cbp.gov/xp/cgov/trade/priority\\_trade/add\\_cvd/cont\\_dump/](http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/), retrieved March 22, 2010.

<sup>24</sup> *Sorbitol from France: Final Results of Expedited Five-year (Sunset) Review of Antidumping Duty Order*, 74 FR 56793, November 3, 2009.

<sup>25</sup> The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive. *Sorbitol from France: Final Results of Expedited Five-year (Sunset) Review of Antidumping Duty Order*, 74 FR 56793, November 3, 2009.



**Table I-4**  
**Sorbitol: Tariff treatment, 2010**

HTS provision	Article description	General	Special <sup>1</sup>	Column 2
		Rates (percent <i>ad valorem</i> )		
2905	II. ALCOHOLS AND THEIR HALOGENATED, SULFONATED, NITRATED OR NITROSATED DERIVATES  Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:  Other polyhydric alcohols:			
2905.44.0000	<i>D</i> -Glucitol (Sorbitol) . . . . .	4.9%	Free (A, AU, BH, CA, CL, E, IL, J, JO, MA, MX, OM, P, PE, SG)	50%
<sup>1</sup> General note 3(c)(i) to the HTS lists the programs related to the enumerated special duty rate symbols.				
Source: HTS (2010).				

## THE PRODUCT<sup>26</sup>

### Description and Applications

Sorbitol derives its name from the sorb berry (*Sorbus aucuparia*), from which it was first extracted in 1872.<sup>27</sup> It was initially produced by Atlas Chemical Industries, Inc.<sup>28</sup> in 1932 and was obtained as a byproduct in the production of mannitol.<sup>29</sup> By the 1950s, sorbitol had become commercially developed and is now the most consumed sugar alcohol.<sup>30</sup>

Sorbitol belongs to a group of chemicals known as polyols, which are organic compounds containing more than one hydroxyl group (OH). Each hydroxyl group in the generic polyol is attached to separate carbon atoms of an aliphatic (non-cyclic) skeleton chain.<sup>31</sup> Chemically, polyols are considered polyhydric alcohols or sugar alcohols, because part of their structure resembles sugar and part is similar to alcohols. However, polyols are neither sugars nor alcohols, as these words are commonly used.

<sup>26</sup> Information in this section is largely drawn from *Sorbitol from France, Inv. No. 731-TA-44 (Second Review)*, USITC Pub. 3706, July 2004, p. I-8.

<sup>27</sup> Roquette Frères company website, *Neosorb® sorbitol powder, Introduction*, found at [http://www.roquette-food.com/delia-CMS/search\\_product/topic\\_id-1720/article\\_id-3661/pdf](http://www.roquette-food.com/delia-CMS/search_product/topic_id-1720/article_id-3661/pdf), retrieved March 31, 2010.

<sup>28</sup> In 1971, Atlas Chemical Industries, Inc. was acquired by Imperial Chemical Industries, Ltd., the largest chemical firm in the United Kingdom at that time. *Sorbitol from France, Inv. No. 731-TA-44 (Final)*, USITC Pub. 1233, March 1982, p. A-7.

<sup>29</sup> Ibid.

<sup>30</sup> SRI Consulting, CEH Report Sorbitol, *Abstract*, found at <http://www.sriconsulting.com/CEH/Public/Reports/693.1000/>, retrieved March 30, 2010.

<sup>31</sup> McGraw-Hill Encyclopedia of Science and Technology, *Sci-Tech Encyclopedia*, found at <http://www.answers.com/topic/polyol>, retrieved March 15, 2010.

Although polyols are derived from sugars, they are not processed in the human body like sugars. As a sweetener sorbitol possesses several advantages over sugar, including reduced calories, reduced insulin response,<sup>32</sup> and non-promotion of tooth decay. Products containing sorbitol may be labeled as “sugar-free” or “no sugar added.”<sup>33</sup> Sorbitol is the most consumed of all polyols as a sugar-free sweetener<sup>34</sup> and has 60 percent of the sweetness of sugar.<sup>35</sup> The other most commonly used polyols are erythritol, isomalt, lactitol, maltitol, mannitol, and xylitol.<sup>36</sup>

Sorbitol is used in a variety of applications, and its demand is largely a function of its unique properties as a humectant, sweetener, bulking agent, stabilizer, softener, and emulsifier.<sup>37</sup> Sorbitol is widely used in food and is a main ingredient in sugar-free gum and mints. It is also used in candy, cookies, and specialty foods.<sup>38</sup> It is used in pharmaceuticals as an intermediate in the manufacture of vitamin C.<sup>39</sup> In addition, sorbitol is used in the production of cosmetics,<sup>40</sup> polyurethanes, adhesives, paper, joint compounds, tobacco, and many other goods. Liquid sorbitol, which is outside of the scope of this investigation, is commonly used in oral care, specifically in toothpaste and mouthwash.<sup>41</sup>

### Manufacturing Processes

Crystalline sorbitol has the chemical formula  $C_6H_8(OH)_6$  and is available in granular and powdered forms. United States Pharmacopeia (“USP”) specifications for crystalline sorbitol allow for up to 9 percent of impurities, with virtually all crystalline sorbitol marketed in the United States being USP grade.<sup>42</sup>

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<sup>32</sup> Sorbitol does not require insulin for digestion and therefore is a suitable sugar substitute in diabetic foods and candies.

<sup>33</sup> Unlike high potency sweeteners like aspartame which is used in very small amounts, polyols are used in the same quantity as sucrose.

<sup>34</sup> Sebastian Bizzari, SRI Consulting, *Sorbitol*, found at <http://www.sriconsulting.com/CEH/Public/Reports/693.1000/>, retrieved March 15, 2010.

<sup>35</sup> Cargill company website, *Sorbidex™ Sorbitol*, found at <http://www.cargill.com/food/na/en/products/sweeteners/polyol-sweet>, retrieved January 26, 2010.

<sup>36</sup> European Association of Polyol Producers, *What are Polyols?*, found at <http://www.polyols-eu.com/polyols.php>, retrieved March 30, 2010.

<sup>37</sup> SRI Consulting, *CEH Report Sorbitol*, Abstract, found at <http://www.sriconsulting.com/CEH/Public/Reports/693.1000/>, retrieved March 30, 2010.

<sup>38</sup> ADM’s posthearing brief, app., p. 8.

<sup>39</sup> Sorbitol is the primary input used in the traditional manufacturing of vitamin C by the Reichstein Process and in the newer two-step fermentation process that was developed in China. Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India, found at <http://www.dsir.gov.in/reports/techreports/tsr132.pdf>, retrieved March 30, 2010.

<sup>40</sup> In cosmetics, polyols are used in lotions, moisturizers, soaps, shampoos, and other hair care products to provide conditioning, gloss, humectancy, and texture. European Association of Polyol Producers, *What are Polyols?*, found at <http://www.polyols-eu.com/polyols.php>, retrieved March 30, 2010.

<sup>41</sup> Sorbitol is well suited to oral care applications because it has non-cariogenic properties (it does not promote tooth decay), is a humectant, is sweet, and can be used in clear gels. European Association of Polyol Producers, *What are Polyols?*, found at <http://www.polyols-eu.com/polyols.php>, retrieved March 30, 2010. ADM’s posthearing brief, app., p. 8.

<sup>42</sup> *Sorbitol From France: Investigation No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, pp. I-3-I-4.

Sorbitol is found naturally in rose hips and rowan berries<sup>43</sup> and is produced synthetically by the catalytic reduction of glucose with hydrogen (or hydrogenation).<sup>44</sup> The production of crystalline sorbitol is capital intensive and requires a number of steps.<sup>45</sup> Initially, dextrose is dissolved in water to a 50-percent solution, to which a catalyst is added.<sup>46</sup> Next, the dextrose solution is heated and reacts with hydrogen under pressure. The resulting crude sorbitol solution is purified and evaporated to reduce the liquid content to 30 percent. The solution is then further concentrated to obtain sorbitol in a crystalline form. In this manner, crystalline sorbitol (100 percent solution) is obtained from liquid sorbitol (70 percent solution).<sup>47</sup> Crystalline sorbitol, in turn, is available in coarse powder and granular forms. These forms are chemically identical.<sup>48</sup>

## DOMESTIC LIKE PRODUCT ISSUES

In making its injury determinations the Commission first determines the domestic like product. 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” (19 USC § 1677(10)).<sup>49</sup>

In the original investigation, the Commission found two like products corresponding to the scope (which then consisted of sorbitol in liquid and crystalline forms), liquid and crystalline sorbitol.<sup>50</sup> In its remand determination, the Commission maintained its finding of two like products.<sup>51</sup> In the first and in the second five-year reviews, in which the scope consisted of crystalline sorbitol only, the Commission found one like product, crystalline sorbitol.<sup>52</sup>

In response to a question soliciting comments regarding the appropriate domestic like product in the Commission’s notice of institution of this review, the domestic interested parties agreed with the Commission’s definition as set out in the Commission’s notice.<sup>53</sup>

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<sup>43</sup> Extraction of sorbitol from natural sources is not economically efficient.

<sup>44</sup> *A Dictionary of Chemistry*, Sixth Edition, 2008, found at <http://www.answers.com/library/Chemistry+Dictionary-cid-77008>, retrieved March 15, 2010.

<sup>45</sup> To the best of ADM’s knowledge, Roquette Frères and Syral use the same basic production process as the domestic producers. ADM’s posthearing brief, app., p. 7.

<sup>46</sup> ADM uses a portion of the production stream from its corn wet milling operations in Decatur, IL, to produce liquid sorbitol. Hearing transcript, p. 14 (Oakley).

<sup>47</sup> *Sorbitol From France, Inv. No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, p. I-4.

<sup>48</sup> According to a witness for ADM, coarse powder is the most popular form because the major sugar free chewing gum producers prefer it. The granular form is more frequently used in tableting processes for the production of products such as mints. Hearing transcript, pp. 15-16 (Oakley). Mints use compressed sorbitol which does not require a binder because it holds its shape when compressed. ADM’s posthearing brief, app., p. 5.

<sup>49</sup> The Commission’s decision regarding the appropriate domestic product that is “like” the subject imported product is based on a number of factors including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and where appropriate, (6) price.

<sup>50</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Second Review)*, USITC Pub. 3706, July 2004, p. 6.

<sup>51</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, p. 5.

<sup>52</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Second Review)*, USITC Pub. 3706, July 2004, p. 6.

<sup>53</sup> Domestic interested party, ADM’s response to the notice of institution, July 31, 2009, p. 18. Domestic interested party, CPI’s response to the notice of institution, July 31, 2009, p. 5.

## U.S. MARKET PARTICIPANTS

### U.S. Producers

In this current review, the domestic interested parties identified the following three U.S. producers of sorbitol in their responses to the Commission's notice of institution: CPI, ADM, and Roquette America Inc. ("Roquette America").<sup>54</sup> The Commission mailed questionnaires to these companies, all of which provided the Commission with information on their sorbitol operations. These three firms, accounting for virtually all 2009 production, have filed notices of appearance in this review. \*\*\* representing \*\*\* percent of 2009 shipments, \*\*\* the antidumping duty order<sup>55</sup> while \*\*\*,<sup>56</sup> representing \*\*\* percent of 2009 shipments, \*\*\*. Details regarding each firm's position on continuation of the antidumping duty order, production location, parent company, and share of reported 2009 sorbitol shipments, are presented in table I-5.

**Table I-5**

**Sorbitol: U.S. producers, position on continuation, production location, parent company, and share of U.S. shipments in 2009**

Firm name	Position on continuation	Production location	Parent company	Share of reported U.S. shipments (percent)
Archer Daniels Midland Company	***	Decatur, IL	None	***
Corn Products International, Inc.	***	Mapleton, IL	None	***
Roquette America, Inc.	***	Gurnee, IL Keokuk, IA	***% Roquette Frères, France	***
Source: Compiled from data submitted in response to Commission U.S. producer questionnaires, sections I-2, I-3, and I-4.				

Two domestic sorbitol producers are related to foreign producers and importers. U.S. producer \*\*\* has \*\*\* in \*\*\* and \*\*\*,<sup>57</sup> \*\*\* is related to nonsubject importer \*\*\*<sup>58</sup> but this foreign firm reportedly \*\*\*,<sup>59</sup> \*\*\* is related to a subject importer and producer \*\*\*,<sup>60</sup> In addition, \*\*\* has \*\*\* located in \*\*\*.<sup>61</sup>

<sup>54</sup> Domestic interested party, ADM's response to the notice of institution, July 31, 2009, p. 13. Domestic interested party, CPI's response to the notice of institution, July 31, 2009, p. 4.

<sup>55</sup> \*\*\*.

<sup>56</sup> \*\*\*.

<sup>57</sup> \*\*\*. \*\*\* U.S. producer questionnaire response, section I-7.

<sup>58</sup> \*\*\* U.S. producer questionnaire response, section I-6.

<sup>59</sup> Ibid.

<sup>60</sup> \*\*\* U.S. producer questionnaire response, sections I-5 and I-7.

<sup>61</sup> Ibid. E-mail from \*\*\*, April 13, 2010. \*\*\*.

\*\*\* also reported \*\*\*.<sup>62</sup> It explained that \*\*\*.<sup>63</sup> The company imported sorbitol in \*\*\*.<sup>64</sup> Roquette America stated that it conducts its business separately and independently from Roquette Frères.<sup>65</sup>

The responding domestic producers reported that since January 1, 2004, \*\*\*.<sup>66</sup> \*\*\* reported the production of sorbitol in a foreign trade zone.<sup>67</sup>

### **U.S. Importers**

The Commission received usable data from 14 importers of crystalline and liquid sorbitol during the original investigation that accounted for an average of 80 percent of total U.S. imports of sorbitol and virtually all imports of sorbitol from France during the period of investigation.<sup>68</sup> The subsequent reviews were both expedited and did not utilize importer questionnaires. In the current review, 7 firms reported importing sorbitol since January 1, 2004. Table I-6 presents a summary of information regarding U.S. importers of sorbitol.<sup>69</sup>

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<sup>62</sup> \*\*\* U.S. producer questionnaire response, section II-14.

<sup>63</sup> \*\*\* U.S. importer questionnaire response, section II-6. Witnesses for the domestic and respondent interested parties estimated that the demand for non-GMO sorbitol is less than one percent of the overall U.S. market. Hearing transcript, pp. 49-50 (Oakley), p. 137 (Steffensmeier). According to ADM's witness, because analysis cannot reveal whether sorbitol was produced using non-GMO corn, the market place relies on certifications. Hearing transcript, p. 50, (Buck).

<sup>64</sup> \*\*\* U.S. importer questionnaire response, section II-7a.

<sup>65</sup> Roquette's posthearing brief, sworn declaration of Gina Steffensmeier, p. 3. Roquette submits that Roquette America is managed according to business plans developed by its executive management teams and approved by its board of directors. Roquette America may coordinate global marketing and strategic planning with its parent and sister companies but its consent is required to implement sales and marketing plans that would affect the North American market.

<sup>66</sup> U.S. producer questionnaire responses, section II-12.

<sup>67</sup> U.S. producer questionnaire responses, section II-13.

<sup>68</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Final)*, USITC Pub. 1233, March 1982, p. A-9.

<sup>69</sup> \*\*\* importers reported entering or withdrawing sorbitol from foreign trade zones or bonded warehouses. U.S. importer questionnaire responses, sections I-9 and I-10.

Table I-6

**Sorbitol: Reporting U.S. importers, location(s), parent company, source of imports, and shares of reported 2009 total U.S. imports**

Firm	Location(s)	Parent company	Source of imports	Share of reported 2009 total U.S. imports (percent)
Brenntag North America	Santa Fe Springs, CA Durham, NC Henderson, KY Reading, PA Fisher Road, TX Wauwatosa, WI <sup>1</sup>	***% Brenntag North America, Inc., U.S.	●***	***
Cargill Incorporated	Wayzata, MN	None	●***	***
EMD Chemicals	Gibbstown, NJ	***%, Merck KgaA, Germany	●***	***
Meelunie America Inc.	Farmington Hills, MI	None	●***	***
Roquette America, Inc.	Keokuk, IA	***%, Roquette Frères, France	●***	***
The Ingredients Company, Inc.	Farmington Hills, MI	***%, Nidera, Netherlands	●***	***
Toyota Tsusho America, Inc.	Portland, OR	***%, Toyota Tsusho Corp., Japan	●***	***
<sup>1</sup> Brenntag Great Lakes, Wauwatosa, WI is ***.				
Source: Compiled from data submitted in response to Commission importer questionnaires, sections I-2, I-3, and I-7.				

At the time of the original investigation, it was reported that U.S. importers of sorbitol were generally chemical dealers or distributors.<sup>70</sup> Several of the responding importers in this review fit that profile. The \*\*\* responding sorbitol importer, \*\*\* describes itself as a \*\*\* and sells sorbitol in \*\*\*.<sup>71</sup> EMD Chemicals is a provider of industrial and laboratory chemicals and sells sorbitol in both liquid and powder forms.<sup>72</sup> Toyota Tsusho America, Inc. has diverse business segments including chemicals and plastics, food and agricultural products, metals, automotive, and others. The chemical group has four divisions that serve the industrial, electronic, petrochemical, nutrition and biotechnology, and medical

<sup>70</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Final)*, USITC Pub. 1233, March 1982, p. A-9.

<sup>71</sup> \*\*\*

<sup>72</sup> EMD Chemicals company website, *EMD Chemicals USA* and *EMD4Pharma USA*, found at <http://www.emdchemicals.com/>, retrieved March 31, 2010.

segments of the market.<sup>73</sup> Brenntag North America is part of the Brenntag Group, a leading global chemical distributor. Brenntag has eight regional and specialty headquarters in the United States.<sup>74</sup>

Several responding importers have international business affiliations. \*\*\* has subsidiary nonsubject producers in \*\*\* and in \*\*\*.<sup>75</sup> French producer \*\*\* is the parent company of importer \*\*\*.  
\*\*\*.<sup>76</sup>

Two importers have ties to subject importers/exporters. \*\*\* is related to \*\*\* in \*\*\*.<sup>77</sup> \*\*\* parent company, \*\*\* is a subject sorbitol exporter.<sup>78</sup>

Finally, several importers are related to nonsubject sorbitol importers/exporters. \*\*\* has subsidiary nonsubject importers/exporters in \*\*\* and in \*\*\*.<sup>79</sup> \*\*\* parent company is the \*\*\*.<sup>80</sup> \*\*\* is related to \*\*\* of \*\*\*.<sup>81</sup>

## **U.S. Purchasers**

Purchaser questionnaires were mailed to 25 firms that were believed to have purchased sorbitol during 2004-09. Twelve firms submitted questionnaires, and one submitted a “no” response. Of the 12 purchasers that submitted questionnaires, 7 are end users of sorbitol that produce a variety of products including sugarless gum, sugarless mints, other food products, pharmaceutical and hygiene products, and 5 are distributors. Seven of the purchasers bought only U.S.-produced sorbitol during 2004-09, one only purchased sorbitol imported from France, and four purchased both U.S.-produced sorbitol and sorbitol imported from nonsubject countries. Six of the purchasers are located in the Midwest, four are located in the East, one is in the West, and one is on the West Coast.

## **APPARENT U.S. CONSUMPTION AND MARKET SHARES**

Table I-7 and figure I-1 present apparent U.S. consumption of sorbitol for the review period, 2004-09. Table I-8 presents U.S. consumption and market shares for the same period. The quantity of apparent U.S. consumption fluctuated but increased overall by \*\*\* percent. The quantity of apparent U.S. consumption increased steadily from 2004 until reaching a peak in 2006. It declined somewhat in 2007 but increased in 2008 and declined again in 2009. However, apparent U.S. consumption in 2009 was \*\*\* pounds greater than that in 2004. The U.S. producers’ share of apparent consumption was highest at the beginning of the period, in 2004 and decreased over the next three years as the share held by nonsubject imports in particular increased from \*\*\* percent to \*\*\* percent. After 2007, the U.S. producers’ share of apparent consumption increased each full year, gaining market share from subject and nonsubject imports.

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<sup>73</sup> Toyota Tsusho America, Inc., company website, *About Us* and *Chemicals & Plastics*, found at <http://www.taiaamerica.com/cp.html>, retrieved March 31, 2010.

<sup>74</sup> Brenntag North America company website, *Company Profile*, found at <http://www.brenntagnorthamerica.com/en/>, retrieved March 31, 2010.

<sup>75</sup> \*\*\* U.S. importer questionnaire response, section I-6.

<sup>76</sup> \*\*\* U.S. importer questionnaire response, section I-6. E-mail from \*\*\*, April 13, 2010.

<sup>77</sup> \*\*\*, \*\*\* U.S. importer questionnaire response, section I-4.

<sup>78</sup> \*\*\* U.S. importer questionnaire response, section I-4.

<sup>79</sup> \*\*\* U.S. importer questionnaire response, section I-5.

<sup>80</sup> \*\*\* U.S. importer questionnaire response, sections I-5 and I-6.

<sup>81</sup> \*\*\* U.S. importer questionnaire response, section I-5.

**Table I-7**

**Sorbitol: U.S. shipments of domestic product, U.S. shipment of imports, by sources, and apparent U.S. consumption, 2004-09**

\* \* \* \* \*

**Figure I-1**

**Sorbitol from France: Apparent U.S. consumption, by sources, 2004-09**

\* \* \* \* \*

**Table I-8**

**Sorbitol: Apparent U.S. consumption and market shares, 2004-09**

\* \* \* \* \*



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

### Introduction

Most sales of U.S.-produced and imported sorbitol are to end users rather than distributors as shown in table II-1. During 2004-09 \*\*\* sales of imports from France were to end users.

**Table II-1**

**Sorbitol: Share of U.S. producers' and U.S. importers' U.S. shipments, by channels of distribution, 2004-09**

Item	Year					
	2004	2005	2006	2007	2008	2009
<b>Share of shipments (percent)</b>						
<b>United States</b>						
Distributors	***	***	***	***	***	***
End users	***	***	***	***	***	***
<b>France</b>						
Distributors	***	***	***	***	***	***
End users	***	***	***	***	***	***
<b>Nonsubject Countries</b>						
Distributors	0.0	0.5	1.6	0.9	0.3	1.7
End users	100.0	99.5	98.4	99.1	99.7	98.3
Source: Compiled from data submitted in response to Commission questionnaires.						

U.S.-produced and imported sorbitol are sold throughout the United States. Among the three U.S. producers, \*\*\*. Roquette America, the importer of sorbitol from France, reported that it sells \*\*\*. Among the six importers from nonsubject countries, two sell in all areas of the United States, two sell throughout the continental United States, one sells only in the Mountain and Pacific Coast regions, and one sells in the Pacific Coast regions and other markets including Alaska, Hawaii, and Puerto Rico.

Lead times for delivery of sorbitol that is maintained in inventory are much shorter than for sorbitol that is produced to order. Among the three U.S. producers, ADM, CPI and Roquette America, lead times range from \*\*\* for sorbitol that is in inventory, and from \*\*\* weeks for sorbitol produced to order. Among the producers, the percentage of sales from inventory ranges from 90 to 98 percent, and the percentage produced to order ranges from 2 to 10 percent. \*\*\*. Among importers of sorbitol from nonsubject countries, lead times range from 1 to 5 days for sorbitol in inventory within the United States, and from 60 to 70 days for sorbitol in a foreign manufacturers' inventory. One importer of nonsubject product reported that for the small share of its sorbitol produced to order, the lead time for delivery is 5 to 7 days. Among the six importers from nonsubject countries, four reported that 90 to 100 percent of their sales are from inventories maintained in the United States, while two reported that their sales are entirely from foreign manufacturers inventories.

## **SUPPLY AND DEMAND CONSIDERATIONS**

### **Supply**

#### **U.S. Supply**

Based on available information, U.S. sorbitol producers have the ability to respond to changes in demand with large changes in the quantity of shipments of U.S.-produced sorbitol to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity, inventories of sorbitol, and export markets.

#### ***Industry capacity***

Over 2004-09, the industry capacity utilization rate ranged from a low of \*\*\* percent in 2004 to a high of \*\*\* percent in 2006. During 2009 it was \*\*\* percent.

#### ***Alternative markets***

Exports as a percentage of total shipments ranged from a low of \*\*\* percent in 2004 to a high of \*\*\* percent in 2007. During 2009, they accounted for \*\*\* percent of total shipments.

When asked whether their exports of sorbitol are subject to tariffs or nontariff barriers to trade in other countries, two U.S. producers, \*\*\* and \*\*\* answered yes and \*\*\* answered no. \*\*\* and \*\*\* reported that extremely high tariffs are in effect in the European Union (EU) that effectively prohibit exports. \*\*\* estimated that the duties in the EU are equivalent to 40 to 50 percent *ad valorem*. In addition, duties of 20 percent apply in Brazil, duties of 31 percent apply in both China and Colombia, and duties of 22 percent apply in Japan.

#### ***Inventory levels***

Over 2004-09, inventories as a percentage of total shipments ranged from a low of \*\*\* percent in 2005 to a high of \*\*\* percent in 2007. During 2009, they accounted for \*\*\* percent of total shipments.

#### ***Production alternatives***

Since 1982, \*\*\*.

#### **Subject Import Supply From France**

Roquette Frères of France was the only foreign producer to submit a questionnaire. Based on available information, Roquette Frères may have the ability to respond to changes in demand with moderate changes in the quantity of shipments of French-produced sorbitol to the U.S. market. The main contributing factor to the potential responsiveness of supply is the existence of Roquette Frères's \*\*\* for sorbitol.

#### ***Industry capacity***

During the 2004-09 period, Roquette Frères's capacity utilization rate range from a low of \*\*\* percent in 2009 to a high of \*\*\* percent in 2008.

### ***Alternative markets***

Exports to the United States account for \*\*\* of Roquette Frères's total shipments. During 2004-09, they ranged from a low of \*\*\* percent in 2005 to a high of \*\*\* percent in 2007. During 2009, the United States market accounted for \*\*\* percent of its total shipments. Roquette Frères's largest market was \*\*\*. During 2004-09, shipments to \*\*\* ranged from a low of \*\*\* percent in 2009 to a high of \*\*\* percent in 2005. Much smaller shares of Roquette Frères's shipments went to \*\*\*.

### ***Inventory levels***

Roquette Frères \*\*\* inventories during 2004-09.

### ***Production alternatives***

Roquette Frères \*\*\* used to produce sorbitol since 1982.

## **U.S. DEMAND**

### **Demand Characteristics**

Demand for sorbitol depends upon the demand for products in which it is used; products include sugar-free gum, mints, and cookies, as well as meat seasonings, glazes, and over-the-counter pharmacy products. The overall U.S. demand for sorbitol, as measured by apparent U.S. consumption, increased irregularly from \*\*\* pounds in 2004 to \*\*\* pounds in 2006, and then decreased irregularly to \*\*\* pounds in 2009.

When asked whether the demand for sorbitol had increased, decreased, fluctuated, or remained unchanged since 1982, the majority of questionnaire respondents reported that demand had increased.<sup>1</sup> All three U.S. producers and four of five responding importers reported that demand had increased, while one importer reported that demand was unchanged. Among eight responding purchasers, four reported that demand had increased, two reported that it had fluctuated, and two reported that it was unchanged. Firms reporting an increase in demand attributed the increase to a growing demand for sugar-free gum, mints, baked goods, and other products.

### **Business Cycles**

When asked whether the sorbitol market is subject to business cycles or conditions of competition distinctive to sorbitol, 12 of 13 responding purchasers answered no.<sup>2</sup> One purchaser reported that the pricing and availability of sorbitol is driven by the sugar crop.

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<sup>1</sup> Questionnaire respondents were also asked whether demand for sorbitol outside the United States had changed since 1982. All three U.S. producers and three responding importers reported that demand had increased. They generally attributed the increase to an increase in demand for sugarless gum and confectionaries. Three of the four purchasers that responded reported that there has been no change in the demand for sorbitol. One purchaser reported an increase in demand outside of the United States due to a shift away from sugar gum and into sugar-free gum.

<sup>2</sup> At the hearing, a business director for food additives for ADM stated that there is no significant seasonality in the demand for sorbitol. Hearing transcript, p. 35 (Oakley).

## Substitute Products

When asked if there are substitutes for sorbitol, three U.S. producers, 2 of 7 importers and 5 of 13 purchasers listed a variety of substitutes. Frequently cited substitutes were xylitol, maltitol, mannitol (which can be used in sugar-free gum and mints), and glycerin (which competes with sorbitol for use in candy, toothpaste, and cough syrup). Other possible substitutes mentioned as alternatives to sorbitol in gum and candy were erythritol, tagatose, isomaltose, and liquid polyols. With the exception of glycerin, none of the substitute products were considered to be price-competitive with sorbitol.

When asked whether liquid sorbitol can be used as a substitute for crystalline sorbitol, two of five responding purchasers answered yes, and three answered no. Of the two purchasers answering yes, one reported that it depends upon the application, and one answered that it can be substituted under certain circumstances. Of the two purchasers answering no, one stated that it is cost prohibitive and one said that it would not work in their formula. Another stated that it would increase the water content to too high of a level in gum.

## Cost Share

When asked to estimate the cost of sorbitol as a percentage of the total cost of end-use products, questionnaire responses from producers and purchasers indicate that these costs can be significant in some applications, though estimates often varied widely.<sup>3</sup> For sugarless gum, estimates of sorbitol costs ranged from 6 to 40 percent of the cost of the final product, and for sugarless mints, they ranged from 17 to 98 percent. Other cost share estimates were 18 to 20 percent for sugar-free cookies, 30 to 42 percent for meat seasonings, 65 percent for glazes, less than 50 percent for pharmaceuticals, less than 25 percent for over-the-counter tablets, and less than 50 percent for prescription tablets. Estimates for other over-the-counter pharmaceuticals ranged from 25 to 33 percent.<sup>4</sup>

## SUBSTITUTABILITY ISSUES

This section examines the degree of substitutability between domestic products and subject imports, between domestic products and nonsubject imports, and between subject and nonsubject imports. Much of the discussion is based on information obtained from questionnaire responses.

Of the 14 purchasers that submitted questionnaires, 5 are distributors, and 9 are end users that produce a variety of products including sugarless gum, sugarless mints, and other food, pharmaceutical, and hygiene products. The distributors reported sales to bakeries, candy and confectionery companies, companies making personal care products, pharmaceutical firms, and firms producing other products. Eight of the purchasers bought only U.S.-produced sorbitol during 2004-09, one purchased sorbitol imported only from France, one purchased U.S.-produced sorbitol and sorbitol from France, and four purchased both U.S.-produced sorbitol and sorbitol imported from nonsubject countries. Nonsubject countries listed included China, Indonesia, and the Netherlands. During 2009, the total purchases by the 13 firms were valued at \$61.3 million. Purchases of imports from France were \*\*\* percent of the total.

The three largest purchasers of sorbitol, \*\*\*, accounted for a combined total of \*\*\* percent of the total value of purchases in 2009, with \*\*\* accounting for \*\*\* percent, \*\*\* accounting for \*\*\* percent, and \*\*\* accounting for \*\*\* percent. \*\*\*.

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<sup>3</sup> Importers were asked to estimate the cost share of sorbitol imported from France. The only importer reporting imports from France, \*\*\*, was not able to estimate a cost share for any end-use product.

<sup>4</sup> Estimates for other products were 1 to 3 percent for surimi and less than 2 percent for training pants.

## Factors Affecting Purchasing Decisions

When asked to rank the three most important factors involved in purchasing decisions, the 10 responding purchasers most frequently selected quality and price or cost as the most important factors (table II-2). Other factors mentioned included availability, product consistency, contracts, and service.

**Table II-2**

**Sorbitol: Ranking of factors used in purchasing decisions reported by U.S. purchasers**

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Price or cost	2	4	3
Quality	3	4	1
Other <sup>1</sup>	6	3	6
<sup>1</sup> Other factors included availability, contracts and product consistency. One firm ranked quality, availability, and price together as a number one factor.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Purchasers were also asked whether their firm purchases sorbitol at the lowest possible price. When 14 responding purchasers were given a choice of answering “always,” “usually,” “sometimes,” or “never,” one purchaser answered “always,” five answered “usually,” six answered “sometimes,” and two answered “never.”

When purchasers were asked whether they require suppliers to be certified or prequalified before purchasing sorbitol, 6 of 13 purchasers answered yes, and 7 answered no. For firms requiring certification, lab tests are sometimes performed. Reported periods for full certification ranged from 30 to 180 days.

In addition, purchasers were asked to indicate whether the 17 factors listed in table II-3 were “very important,” “somewhat important,” or “not important” in their purchasing decisions. The factors ranked “very important” most frequently were availability (14 purchasers) and availability in crystalline form (12 purchasers), reliability of supply (12 purchasers), and product consistency (12 purchasers). A majority of purchasers also ranked delivery terms, price, and quality as very important.

**Table II-3****Sorbitol: Importance of purchasing factors, as reported by U.S. purchasers**

Factor	Very important	Somewhat important	Not Important
	Number of firms responding		
Availability	14	0	0
Availability in crystalline form	12	2	0
Availability in solution form	3	2	8
Delivery terms	9	5	0
Delivery time	7	6	1
Discounts offered	5	6	2
Extension of credit	6	6	2
Minimum quantity requirement	3	7	4
Packaging	7	7	0
Price	10	4	0
Product consistency	12	2	0
Product range	2	5	7
Quality is USP certified	7	2	3
Quality exceeds USP certification	2	4	5
Reliability of supply	12	2	0
Technical support/service	7	6	1
U.S. transportation costs	6	8	0
Source: Compiled from data submitted in response to Commission questionnaires.			

### Comparisons of Domestic Products and Subject and Nonsubject Imports

When purchasers were asked whether their customers ever specifically order sorbitol from one country in particular over other possible supply sources, 11 of the 13 purchasers answered no and 2 answered yes. Of the two that answered yes, both cited the United States. One stated that its only approved source was the United States, and the other stated that a U.S. source met their specifications.

When asked whether certain grades of sorbitol are available from only a single source, domestic or foreign, seven purchasers answered no and three answered yes. One purchaser reported that certain coarse grade powder is only available from a U.S. producer, ADM. Another purchaser reported that high viscosity sorbitol is only available from ADM and compressed tableting sorbitol is only available from Roquette America. Another purchaser reported that slight differences are perceived by some customers for all grades.

To determine whether U.S.-produced sorbitol generally can be used in the same applications as imports from France and nonsubject sources, producers, importers, and purchasers were asked whether the product can “always,” “frequently,” “sometimes,” or “never” be used interchangeably (table II-4). Overall, the majority of questionnaire respondents reported that U.S.-produced sorbitol is “always” or “frequently” interchangeable with imports from France. However, two of three importers reported that

the products are “sometimes” interchangeable. Producer \*\*\* stated that the products are sometimes interchangeable, depending upon the domestic production capability of producing non-GMO<sup>5</sup> grades. Importer \*\*\* reported that for all country pairs, sorbitol used in sugar-free bakery products can be interchanged quite easily. However, for applications where the product is compressed, minute differences in product form/granulation/crystalline structure can lead to poor compression quality. Purchaser \*\*\* reported that the interchangeability of two sources is determined by the qualification process. Once two suppliers are equally qualified to be used, price and availability become the determining factors in choosing the supplier.

**Table II-4**

**Sorbitol: Perceived degree of interchangeability of product produced in the United States and in other countries<sup>1</sup>**

Country comparison	U.S. producers				U.S. importers				Purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. France	2	0	0	0	1	0	2	0	1	2	1	0
U.S. vs. Other countries	2	0	0	0	1	0	2	0	0	0	3	1
France vs. Other countries	0	0	1	0	0	0	3	0	0	0	1	0
<sup>1</sup> Producers, importers, and purchasers were asked if sorbitol produced in the United States and in other countries is used interchangeably.  Note.-- “A” = Always, “F” = Frequently, “S” = Sometimes, and “N” = Never.  Source: Compiled from data submitted in response to Commission questionnaires.												

In addition to questions concerning interchangeability, questionnaire respondents were also asked to compare U.S.-produced products with imports from France and nonsubject sources in terms of product differences other than price (such as quality, availability, product range, and other characteristics) as a factor in their sales of sorbitol (table II-5). The single U.S. producer, \*\*\*, that responded to the question answered “never,” while responses by importers and purchasers were varied with none answering never. One importer, \*\*\*, reported that it imports non-GMO sorbitol and that some customers only accept non-GMO product. \*\*\* stated that depending on what technology producers use, differences in crystalline structure (product range) can cause issues in application development. According to \*\*\* it is easier for product sources from France and other countries outside of North America to be certified non-GMO.

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<sup>5</sup> Genetically modified organism. Evidence from the hearing indicates that sales of non-GMO sorbitol account for less than one percent of the market in the United States. Hearing transcript pp. 49-50 (Oakley) and p. 137 (Steffensmier).

**Table II-5**

**Sorbitol: U.S. producers' importers, and purchasers perceived importance of factors other than price in sales of products produced in the United States and in other countries<sup>1</sup>**

Country comparison	U.S. producers				U.S. importers				Purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. France	0	0	0	1	0	1	2	0	1	0	3	0
U.S. vs. Other countries	0	0	1	0	0	2	2	0	2	1	2	0
France vs. Other countries	0	0	0	0	0	0	3	0	1	0	1	0
<sup>1</sup> Producers, and importers, and purchasers were asked if differences other than price between sorbitol produced in the United States and in other countries are a significant factor in their firms' sales of sorbitol.  Note: "A" = Always, "F" = Frequently, "S" = Sometimes, and "N" = Never.  Source: Compiled from data submitted in response to Commission questionnaires.												

Purchasers also were asked to compare U.S.-produced sorbitol and imported sorbitol from France with respect to the 17 selected characteristics listed in table II-6, noting whether the domestic product was superior, comparable, or inferior to the imported product. Four purchasers responded. A clear majority of the small number of purchasers ranked the U.S. product superior in availability, availability in solution form, delivery terms, delivery time, discounts offered, product range, quality exceeding USP specifications, reliability of supply, and U.S. transportation costs.

One purchaser \*\*\* also compared the U.S. product with imports from Germany in the 17 characteristics. It ranked the U.S. product superior in availability in solution form, delivery terms, delivery time, discounts offered, price, reliability of supply, and U.S. transportation costs, and comparable to the German product in all other characteristics.

## ELASTICITY ESTIMATES

This section discusses elasticity estimates; parties were encouraged to comment on these estimates in their briefs. The domestic interested parties criticized the supply elasticity estimate in their prehearing briefs. However, the respondents did not comment on any of the estimates.

### U.S. Supply Elasticity

The domestic supply elasticity for sorbitol measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of sorbitol. The elasticity of domestic supply depends on several factors, including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced sorbitol. Analysis of these factors, including the \*\*\*, indicates that the elasticity is likely to be relatively high. A range of 5 to 10 is estimated.

One of the domestic interested parties, ADM, stated in its prehearing brief that this supply elasticity estimate is \*\*\*, and therefore, there is no basis for revising the supply elasticity estimate.



**Table II-6**

**Sorbitol: Comparisons between U.S.-produced and products from France as reported by U.S. purchasers**

Factor	U.S. vs. France		
	S	C	I
	Number of firms responding		
Availability	3	1	0
Availability in crystalline form	2	2	0
Availability in solution form	2	0	0
Delivery terms	3	1	0
Delivery time	3	1	0
Discounts offered	3	1	0
Extension of credit	2	2	0
Minimum quantity requirements	1	3	0
Packaging	1	3	0
Price <sup>1</sup>	2	2	0
Product consistency	1	3	0
Product range	3	1	0
Quality is USP certified	1	2	0
Quality exceeds USP certification	2	1	0
Reliability of supply	2	1	0
Technical support/service	2	2	0
U.S. transportation costs <sup>1</sup>	3	1	0
<sup>1</sup> A rating of superior on price and U.S. transportation costs indicates that the first country generally has lower prices/U.S. transportation costs than the second country.  Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.  Source: Compiled from data submitted in response to Commission questionnaires.			

### U.S. Demand Elasticity

The U.S. demand elasticity for sorbitol measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of sorbitol. This estimate depends on factors discussed earlier, such as the existence, availability, and commercial viability of substitute products, as well as the component share of sorbitol in the production of any downstream products. Since there are potential substitutes for this product and the cost share of sorbitol in some applications can be high, the demand elasticity is likely to be in the range of -0.8 to -1.2.

### **Substitution Elasticity**

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.<sup>6</sup> Product differentiation, in turn, depends upon such factors as quality (e.g., chemistry, appearance, etc.) and conditions of sale (availability, sales terms/discounts/promotions, etc.). Based on available information, the elasticity of substitution between U.S.-produced sorbitol and imported sorbitol is likely to be in the range of 3 to 5.

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<sup>6</sup> The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

## PART III: CONDITION OF THE U.S. INDUSTRY

### OVERVIEW

In 1982, during the time of the original investigation, six companies were identified as U.S. producers of sorbitol: Hoffman-LaRoche and Co.; ICI Americas, Inc. (“ICI Americas”); Pfizer; Lonza; Merck & Co., Inc.; and Ethichem Corp. (“Ethichem”).<sup>1</sup> These companies all produced liquid sorbitol;<sup>2</sup> however, only ICI Americas and Pfizer were further identified as producers of the crystalline variety. Pfizer was the sole petitioner in the original investigation.<sup>3</sup>

By the time of the Commission’s first five-year review in 1998, the composition of the crystalline sorbitol industry in the United States had changed. Between 1982 and 1993, Roquette Frères invested in the acquisition, construction, and development of production and operating facilities in Gurnee, IL, and Keokuk, IA. Roquette Frères’ subsidiary, Roquette America,<sup>4</sup> began production in mid-1983.<sup>5</sup> In 1994, ADM purchased Pfizer’s sorbitol business. That same year, SPI Polyols acquired ICI Americas’s sorbitol facilities, and purchased Ethichem’s U.S. sorbitol business.<sup>6</sup> At the time of the first review, ADM, Roquette America, and SPI Polyols were believed to be by far the largest U.S. producers of crystalline sorbitol.<sup>7</sup>

Between the first and second reviews \*\*\*.<sup>8</sup> During the second five-year review, in 2003, three firms, ADM, Roquette America, and SPI Polyols, provided the Commission with questionnaire responses and were believed to account for all known U.S. production of crystalline sorbitol during that year.<sup>9</sup> Since the second review there has been another change in the ownership of domestic sorbitol production. In February 2007, CPI acquired the food business assets of SPI Polyols.<sup>10</sup>

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<sup>1</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, p. I-4.

<sup>2</sup> As previously noted, Commerce revoked the antidumping duty order concerning liquid sorbitol in June 1984.

<sup>3</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, p. I-4.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Second Review)*, USITC Pub. 3706, July 2004, p. 21. Domestic Interested Party, CPI’s response to the Commission’s notice of institution, July 31, 2009, p. 2. E-mail from \*\*\*, April 6, 2010. Keokuk, IL became Roquette’s U.S. corporate headquarters in 1991, following Roquette America’s acquisition of the Hubinger Company. Roquette’s posthearing brief, sworn declaration of Gina Steffensmeier, exh. A, p. 2.

<sup>6</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, p. I-4.

<sup>7</sup> Hoffman-LaRoche and Co. and Lonza were also identified as sorbitol producers during the first five-year review. Hoffman-LaRoche and Co. reportedly captively consumes all of its U.S. sorbitol production. *Sorbitol from France, Inv. No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, pp. I-4 and I-9.

<sup>8</sup> \*\*\* U.S. producer questionnaire response, section II-2.

<sup>9</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Second Review)*, USITC Pub. 3706, July 2004, p. I-11.

<sup>10</sup> SPI Polyols was a subsidiary of UK-based ABF North America Holdings, Inc. As part of this purchase, CPI also acquired the common shares of an SPI Polyols unit that owned the 50 percent share of Getec Guanabara Quimica Industrial S.A. (“GETEC”) not previously held by CPI. GETEC is a major Brazilian producer of polyols, including liquid sorbitol and mannitol for the personal care, food, candy, confectionary, and pharmaceutical markets. CPI’s response to the Commission’s notice of institution, July 31, 2009, p. 2. Corn Products International, Annual Report, 2008, p. 40.

## Background

Information in this section is based on the questionnaire responses of three producers that are believed to have accounted for all U.S. production of sorbitol during 2009: ADM, CPI, and Roquette America.<sup>11</sup>

## Existing Operations

Domestic producers were asked to indicate whether their firms had experienced any plant openings, plant closings, relocations, expansions, acquisitions, consolidations, prolonged shutdowns or production curtailments, revised labor agreements, and any other changes in their sorbitol operations since January 1, 1982. All domestic producers indicated that \*\*\*, and their responses are presented in table III-1.

**Table III-1**

**Sorbitol: Changes in the character of U.S. producers' operations since January 1, 1982**

\* \* \* \* \*

## Anticipated Changes in Existing Operations

The Commission asked domestic producers to report anticipated changes in the character of their operations relating to the production of sorbitol. Their responses appear in table III-2.

**Table III-2**

**Sorbitol: Anticipated changes in the character of U.S. producers' operations**

\* \* \* \* \*

## U.S. PRODUCERS' CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data on U.S. producers' capacity, production, and capacity utilization for sorbitol are presented in table III-3. For 2009, \*\*\* reported the highest capacity \*\*\*, \*\*\* had the second largest capacity \*\*\*, and \*\*\* reported capacity of \*\*\* pounds. During 2004-09, total capacity decreased by \*\*\* percent (\*\*\* pounds) as a result of a reduction in \*\*\* capacity by \*\*\*, though mitigated by the addition of \*\*\* pounds of capacity by \*\*\*.<sup>12</sup> \*\*\* reported constant production capacity.

Total domestic production initially increased from 2004-06 when it reached its peak for the period. It then fluctuated and was slightly lower in 2009 compared to 2004, by \*\*\*. According to \*\*\*, it \*\*\*,<sup>13</sup> Capacity utilization was lowest at the beginning of the period and never exceeded \*\*\* percent at its peak in 2006.

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<sup>11</sup> Two domestic producers responded to the Commission's notice of institution of this review, ADM and CPI.

<sup>12</sup> U.S. producer questionnaire responses, section II-8.

<sup>13</sup> \*\*\* U.S. producer questionnaire response, section II-2.

**Table III-3**  
**Sorbitol: U.S. producers' capacity, production, and capacity utilization, 2004-09**

\* \* \* \* \*

The three domestic producers all reported their operations based on operating \*\*\* hours per week. ADM reported based on \*\*\* weeks, CPI based on \*\*\* weeks, and Roquette America based on \*\*\* weeks, per year.<sup>14</sup> CPI noted that \*\*\*.<sup>15</sup> In their briefs and at the Commission's hearing, counsel for ADM and CPI critiqued the capacity reported by Roquette America as being theoretical, not actual capacity, and therefore overstated.<sup>16</sup> They provided alternative calculations of Roquette America's capacity and reached a figure of \*\*\*.<sup>17</sup> Roquette America maintains that it properly reported its sorbitol capacity and based its figures on hourly production capacity rates.<sup>18</sup>

### Constraints on Capacity

The Commission asked domestic producers to report constraints on their capacity to produce sorbitol. The firms provided the information presented in table III-4 regarding their constraints on capacity.

**Table III-4**  
**Sorbitol: U.S. producers' constraints on capacity**

\* \* \* \* \*

### Alternative Products

The Commission asked domestic producers to report production of other or downstream products on the same equipment and machinery, and/or using the same production and related workers employed to produce sorbitol. The three domestic producers reported that \*\*\*.<sup>19</sup>

The Commission asked domestic producers whether their firms were able to switch production between sorbitol and other products in response to a change in the price of sorbitol vis-à-vis the price of other products, using the same equipment and labor. All producers responded \*\*\*.<sup>20</sup> \*\*\*<sup>21</sup>

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<sup>14</sup> U.S. producer questionnaire responses, section II-8.

<sup>15</sup> \*\*\* U.S. producer questionnaire response, section II-8.

<sup>16</sup> Letter from \*\*\*, ADM's posthearing brief, pp. 2-4, CPI's posthearing brief, attachment A, p. 1.

<sup>17</sup> Posthearing brief of ADM, p. 5.

<sup>18</sup> According to Roquette America, its hourly peak production capacity for sorbitol varies between \*\*\* metric tons per hour. Its U.S. producer questionnaire estimate of \*\*\* pounds per year equates to a \*\*\* operation at the hourly rate of \*\*\* metric tons per hour, or \*\*\* operation at an hourly rate of \*\*\* metric tons per hour. Posthearing brief of Roquette, sworn declaration of Gina Steffensmeier, p. 2.

<sup>19</sup> \*\*\* U.S. Producer Questionnaire responses, section II-5.

<sup>20</sup> \*\*\* U.S. Producer Questionnaire responses, section II-7.

<sup>21</sup> \*\*\* U.S. Producer Questionnaire response, section II-7.

## **U.S. PRODUCERS' DOMESTIC SHIPMENTS, COMPANY TRANSFERS, AND EXPORT SHIPMENTS**

Data on domestic producers' shipments of sorbitol are presented in table III-5. The domestic producers reported \*\*\*. After initially increasing from 2004-06, the quantity of U.S. shipments fluctuated and was \*\*\* percent lower in 2009 compared with 2004. As a share of total shipments, commercial shipments fluctuated within \*\*\* percentage points. Overall the share of commercial shipments declined by \*\*\* percent while the share of export shipments increased by the same amount.

**Table III-5**  
**Sorbitol: U.S. producers' shipments, by types, 2004-09**

\* \* \* \* \*

\*\*\* domestic producers identified \*\*\* as principal export markets. \*\*\* also identified \*\*\* as a principal export market.<sup>22</sup> ADM and CPI indicated that they export sorbitol to the subsidiary plants of some of their major U.S. customers and that the exported product is used for the same applications at home and abroad.<sup>23</sup>

The average unit values of U.S. commercial shipments were consistently higher than the average unit values of export shipments, but both followed the same general trends. Average unit values for commercial shipments and export shipments were higher in 2004 (\$\*\*\*, respectively) than in 2009 (\$\*\*\*).

## **U.S. PRODUCERS' INVENTORIES**

Data collected in this review on domestic producers' end-of-period inventories of sorbitol are presented in table III-6. Inventories increased overall by \*\*\* percent and \*\*\*. Inventories were highest in \*\*\*. That year \*\*\*.

**Table III-6**  
**Sorbitol: U.S. producers' end-of-period inventories, 2004-09**

\* \* \* \* \*

## **U.S. PRODUCERS' IMPORTS AND PURCHASES**

One domestic producer reported importing sorbitol since January 1, 2004, and information on its imports appears in table III-7. \*\*\* was the only producer to report imports of subject sorbitol. It

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<sup>22</sup> \*\*\* U.S. Producer Questionnaire responses, section II-8. At the Commission's hearing, a witness for ADM stated that "there are significant barriers to the export of U.S.-produced sorbitol to other markets such as Europe, South America, and Asia. We face prohibitive tariffs in these markets." Hearing transcript, p. 20, (Oakley). CPI stated that the EU barrier is equivalent to a 40 to 50 percent tariff. CPI posthearing brief, p. 2.

<sup>23</sup> Hearing transcript, p. 35 (Oakley) and (Billig).

imported sorbitol produced by \*\*\*,<sup>24</sup> The three responding domestic producers reported \*\*\* of sorbitol since January 1, 2004.<sup>25</sup>

**Table III-7**

**Sorbitol: U.S. producers' imports, 2004-09**

\* \* \* \* \*

### U.S. PRODUCERS' EMPLOYMENT, WAGES, AND PRODUCTIVITY

The U.S. producers' aggregate employment data for sorbitol are presented in table III-8. The number of production-related workers ("PRWs") employed by U.S. sorbitol producers initially increased slowly from 2004-06 at a time of increasing production. However, after production declined by \*\*\* percent from 2006 to 2007, the industry shed \*\*\* jobs by 2008, representing a \*\*\* percent reduction in employment. Overall, hourly wages increased incrementally but because the number of PRWs dropped by \*\*\* percent, unit labor costs \*\*\*, \*\*\*.<sup>26</sup>

**Table III-8**

**Sorbitol: U.S. producers' employment related indicators, 2004-09**

\* \* \* \* \*

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<sup>24</sup> \*\*\* U.S. importer questionnaire response, section II-7.

<sup>25</sup> \*\*\* U.S. producer questionnaire responses, section II-11.

<sup>26</sup> \*\*\* U.S. producer questionnaire response, section II-2.

## FINANCIAL CONDITION OF U.S. PRODUCERS

### Background

Three U.S. sorbitol producers – ADM, CPI, and Roquette America – provided usable financial data for their operations on sorbitol.<sup>27</sup> These firms accounted for the vast majority of the domestic industry’s production/sales volume during 2009. \*\*\*, reported transfers to related parties that accounted for less than \*\*\* percent of total net sales values in 2009. \*\*\*.<sup>28</sup>

### Operations on Sorbitol

Results of operations of the U.S. producers on their sorbitol operations are presented in table III-9, which includes data on a per-unit basis as well as operating income to net sales ratio.

Net sales quantities and values increased steadily from 2004 to 2006, and then decreased irregularly through 2009.<sup>29</sup> Compared to 2004, net sales quantities in 2009 were \*\*\* higher while net sales values were \*\*\* lower. On the other hand, operating costs (particularly raw materials) increased from period to period, and were \*\*\* higher in 2009 than in 2004. The result of the foregoing was that \*\*\* levels and \*\*\* measures of income \*\*\* from period to period (except 2006), and were all \*\*\* lower in 2009 compared to 2004. Operating income decreased by \*\*\* percent, and the operating income ratio fell \*\*\* percentage points, reflecting both lower unit net sales values and higher per-unit total costs.

**Table III-9**

**Sorbitol: Results of operations of U.S. producers, fiscal years 2004-09**

\* \* \* \* \*

From 2004 to 2009, unit net sales values decreased by \*\*\*<sup>30</sup> (reflecting the increase in sales quantities and the decrease in sales values) while unit total costs (cost of goods sold (“COGS”) and selling, general and administrative (“SG&A”) expenses combined) increased by \*\*\*, reflecting the much higher absolute value of costs and expenses (almost all of which was raw materials). This trend is also evidenced by higher ratio of COGS to net sales over the period (\*\*\* percent in 2004 compared to \*\*\* percent in 2009).

Selected financial data, by firm, are presented in table III-10. \*\*\*, reported positive operating income during the entire six years, while \*\*\*, reported operating losses from 2007 to 2009. As the data illustrate, the combined results of the industry have been affected by \*\*\* and the subsequent acquisition of its assets by \*\*\*. Specifically, the net sales quantities and values and operating income reported by \*\*\*. The per-unit sales values, per-unit COGS and per-unit SG&A of \*\*\*.

Initially, \*\*\*.

At the time of CPI’s acquisition of the SPI Polyol’s assets, SPI Polyol produced \*\*\* at its production facility in New Castle, DE. However, CPI did not purchase the entire Delaware facility, only some of the assets. CPI subsequently \*\*\*. Furthermore, \*\*\*.<sup>31</sup> As indicated in the per-unit sales values

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<sup>27</sup> \*\*\* while the other two producers’ fiscal years end on December 31.

<sup>28</sup> Emails from \*\*\*, supplemental responses and revised submission from \*\*\*, March 11 and 16, 2010.

<sup>29</sup> As noted in the company-by-company discussion that follows, the 2007 to 2009 data are heavily influenced by \*\*\* assets.

<sup>30</sup> Throughout this section, the per-unit values are presented in three decimal points rather than in the usual two decimal points because two decimal points might not indicate any changes in the per-unit values due to rounding.

<sup>31</sup> Emails from \*\*\*, and supplemental responses and revised submission from \*\*\*, March 11 and 16, 2010.



and per-unit COGS in table III-10, the unit sales values and unit total costs differ widely among producers, especially \*\*\*.

**Table III-10**

**Sorbitol: Results of operations of U.S. producers, by firm, fiscal years 2004-09**

\* \* \* \* \*

Selected aggregate per-unit cost data of the producers on their operations, i.e., COGS and SG&A expenses, are presented in table III-11. Raw material costs increased substantially in the most recent three years, for two reasons. First, \*\*\* in 2007 and 2008 resulted in increased expenses. Second, the two other producers reported substantial increases in corn prices during this period. Generally, direct labor and factory overhead were lower in 2007 and 2008 because \*\*\*. Per-unit COGS and total cost (which included SG&A expenses) increased continuously from 2004 to 2009, while per-unit SG&A fluctuated during the same period. SG&A expenses increased substantially in 2007, the result of lower production/sales quantities, CPI's new entrance to this industry, and ADM's 2005 to 2007 \*\*\*.<sup>32</sup>

**Table III-11**

**Sorbitol: Per-unit costs of U.S. producers, fiscal years 2004-09**

\* \* \* \* \*

The variance analysis showing the effects of prices and volume on the producers' sales of sorbitol, and of costs and volume on their total cost, is shown in table III-12. The analysis is summarized at the bottom of the table. The analysis indicates that the decrease in operating income (\$\*\*\* million) between 2004 and 2009 was attributable mainly to the combined negative effects of decreased sales prices (\$\*\*\*) and increased costs/expenses (\$\*\*\*). The decrease in operating income in 2009 relative to 2008 was attributable to a negative cost/expenses variance in conjunction with a negative volume variance, despite a minor positive sales price variance.

**Table III-12**

**Sorbitol: Variance analysis of operations of U.S. producers, fiscal years 2004-09**

\* \* \* \* \*

### Capital Expenditures and Research and Development Expenses

The responding firms' aggregate data on capital expenditures and research and development ("R&D") expenses are presented in table III-13. \*\*\* accounted for the majority of the domestic industry's capital expenditures. Capital expenditures fluctuated over the period, increasing from 2004 to 2005 due to \*\*\*<sup>33</sup> but were lower in 2006 and 2007 until they increased substantially in 2008, due mainly to \*\*\*.<sup>34</sup> Capital expenditures, by firm, are presented in table III-14 and some details of the major capital expenditures of certain producers are also described in this table. \*\*\* producers reported R&D expenses. R&D expenses also fluctuated over the period.

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<sup>32</sup> Email and supplemental responses from \*\*\*, March 8, 15, and 17, 2010.

<sup>33</sup> Email, supplemental responses and revised submission from \*\*\*, March 16, 2010.

<sup>34</sup> Emails from \*\*\*, supplemental responses and revised submission from \*\*\*, March 11 and 16, 2010.

**Table III-13**

**Sorbitol: Capital expenditures and R&D expenses by U.S. producers, fiscal years 2004-09**

\* \* \* \* \*

**Table III-14**

**Sorbitol: Capital expenditures by U.S. producers, by firms, fiscal years 2004-09**

\* \* \* \* \*

### **Assets and Return on Investment**

U.S. producers were requested to provide data on their assets used in the production and sales of sorbitol during the period for which data were collected, in order to assess their return on investment (“ROI”). Although ROI can be computed in different ways, a commonly used method is operating income earned during the period divided by the total assets utilized for the operations. Therefore, staff calculated ROI as operating income divided by total assets used in the production and sale of sorbitol. Data on the U.S. producers’ total assets and their ROI are presented in table III-15.

The value of total assets increased steadily between 2004 and 2009 (except for 2007) as original cost and net book value of property, plant, and equipment (“PPE”) increased (except for 2006 and 2007) over the period. Original cost and net book value of PPE decreased substantially from 2006 to 2007, due primarily to \*\*\*,<sup>35</sup> the value of PPE and total assets substantially increased in 2008 and 2009, and was even larger than in 2006. The trend of ROI over the period was the same as the trend of the operating loss margin to net sales in table III-9 over the same period.

**Table III-15**

**Sorbitol: Value of assets and return on investment of U.S. producers, fiscal years 2004-09**

\* \* \* \* \*

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<sup>35</sup> Emails from \*\*\*, supplemental responses and revised submission from \*\*\*, March 11 and 16, 2010.

## **PART IV: U.S. IMPORTS AND THE FOREIGN INDUSTRY**

### **U.S. IMPORTS**

#### **Overview**

The Commission sent questionnaires to 25 firms believed to have imported sorbitol since 2004. It received usable data from seven of the firms; two of the firms provided certification that they had not imported sorbitol during the period for which data were collected.<sup>1</sup> Staff believes that the data reported by the responding U.S. importers comprises virtually all subject imports of sorbitol from France<sup>2</sup> and the majority of nonsubject imports believed to be entering the United States during 2004-09. Import data in this report are derived from questionnaire responses because the HTS subheading for sorbitol includes liquid sorbitol, a product that is outside of the scope of this review.

In their responses to the Commission's notice of institution of this review, domestic producer ADM identified Roquette America as an importer of sorbitol from France and noted that recently, SPI Pharma Inc. of Wilmington, DE, has acted as an importer of sorbitol from France.<sup>3</sup> In its separate response, domestic producer, CPI, identified Roquette America as the principal importer of crystalline sorbitol from France produced by Roquette Frères. CPI was not aware of the identity of the importer of sorbitol produced by Amylum France.<sup>4</sup>

#### **Imports from Subject and Nonsubject Countries**

Data regarding U.S. imports of sorbitol are presented in table IV-1 and are based on questionnaire responses. Initially, imports from France fluctuated within a narrow range before reaching their period high in 2007. The quantity of subject imports then declined in 2008 and 2009. At the same time, nonsubject imports increased from \*\*\* pounds at the beginning of the period to a high of \*\*\* pounds in 2007. The quantity of nonsubject imports was lower in 2008 but registered a small increase in 2009.<sup>5</sup>

The share of total U.S. imports held by subject imports decreased steadily from a high of \*\*\* percent in 2004 to a low of \*\*\* percent in 2009. At the same time, the share of total U.S. imports held by nonsubject imports increased from \*\*\* percent at the beginning of the period to \*\*\* percent by 2009.

The trends in unit values of imported sorbitol from subject and nonsubject sources diverged. Subject unit values increased steadily from 2004 through 2008 and were higher in 2009 than in every prior year except for 2004, while nonsubject unit values fluctuated and were lower in 2009 compared to 2004 and 2005. Subject unit values were between \$\*\*\* and \$\*\*\* lower than nonsubject unit values in 2004 and 2005, respectively. After 2005, subject unit values were between \$\*\*\* and \$\*\*\* higher than nonsubject unit values.

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<sup>1</sup> The response rate is explained by the fact that the Commission's importer mailing list is derived in large part from the Customs Net Import File. This file identifies importers of sorbitol at the 10 digit HTS level which includes nonsubject liquid sorbitol.

<sup>2</sup> Importer, \*\*\* accounted for \*\*\* percent of subject producer \*\*\* 2009 exports to the United States. \*\*\* foreign producer/exporter questionnaire response, section I-3.

<sup>3</sup> Domestic Interested Party, ADM's response to the Commission's notice of institution, July 31, 2009, p. 14. \*\*\*.

<sup>4</sup> Domestic Interested Party, CPI's response to the Commission's notice of institution, July 31, 2009, p. 4. According to proprietary Customs data, Amylum France \*\*\*.

<sup>5</sup> The primary nonsubject sources were Germany and Indonesia.

The ratio of subject U.S. imports of sorbitol from France to U.S. production of sorbitol was \*\*\* percent in 2004 and reached a peak of \*\*\* percent in 2007. The ratio of nonsubject U.S. imports of sorbitol to U.S. production of sorbitol climbed steadily from 2004 through 2007 when it reached \*\*\* percent. The ratio was somewhat lower in 2008 \*\*\* and in 2009 \*\*\*.

**Table IV-1**  
**Sorbitol: U.S. imports, by sources, 2004-09**

\* \* \* \* \*

Figure IV-1 presents the quantity of imports of sorbitol from France and from all other sources from 2004 to 2009.

**Figure IV-1**  
**Sorbitol: U.S. imports, by sources, 2004-09**

\* \* \* \* \*

Table IV-2 presents information on total sorbitol (crystalline and liquid) imports and is based on official Commerce statistics. According to Commerce data, imports of all sorbitol from France in 2009 totaled 2.5 million pounds and were valued at \$1.227 million. According to data reported by \*\*\*, crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports from France in 2009. According to import data presented in the original investigation, crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports from France (based on quantity) in 1980. In the second review, crystalline sorbitol accounted for \*\*\* percent (based on quantity) of total sorbitol imports from France in 2003.<sup>6</sup>

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<sup>6</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Second Review)*, Confidential staff report, INV-BB-069, June 3, 2004, p. 1-13.

**Table IV-2****Liquid and crystalline sorbitol: U.S. imports from France and leading nonsubject sources, 2004-09**

Source	Calendar year					
	2004	2005	2006	2007	2008	2009
<b>Quantity (1,000 pounds)</b>						
France	14,975	1,538	2,177	3,420	1,598	2,514
Germany	3,361	4,923	6,115	4,598	5,369	4,977
Indonesia	14,764	18,078	17,709	20,894	19,153	23,843
All other	5,017	4,960	4,578	4,852	1,837	2,206
Total	38,116	29,500	30,578	33,764	27,957	33,539
<b>Value (1,000 dollars)<sup>1</sup></b>						
France	4,033	732	1,147	2,147	2,047	1,227
Germany	3,452	5,315	5,108	4,505	5,054	4,492
Indonesia	5,312	5,381	5,363	6,170	6,283	7,863
All other	1,541	1,144	1,333	1,787	783	778
Total	14,338	12,573	12,952	14,608	14,168	14,359
<b>Unit value (per pound)</b>						
France	\$0.27	\$0.48	\$0.53	\$0.63	\$1.28	\$0.49
Germany	\$1.03	\$1.08	\$0.84	\$0.98	\$0.94	\$0.90
Indonesia	\$0.36	\$0.30	\$0.30	\$0.30	\$0.33	\$0.33
All other	\$0.31	\$0.23	\$0.29	\$0.37	\$0.43	\$0.35
Average	\$0.38	\$0.43	\$0.42	\$0.43	\$0.51	\$0.43
<sup>1</sup> Landed, duty-paid.						
Source: Compiled from official Commerce statistics under HTS statistical reporting number 2905.44.0000.						

Importers were asked to indicate whether their firm had experienced any office or warehouse openings, office or warehouse closings, relocations, expansions, acquisitions, consolidations, prolonged shutdowns or importation curtailments, revised labor agreements, and any other changes in their sorbitol import operations since 1982. Three responding importers indicated that they had experienced such changes, and their responses are presented in table IV-3.<sup>7</sup> The Commission also asked importers to report anticipated changes in the character of their operations relating to the importation of sorbitol. All importers reported that they \*\*\*.<sup>8</sup>

<sup>7</sup> Four importers reported that they experienced no such changes since 1982: \*\*\*. U.S. importer questionnaire responses, section II-2.

<sup>8</sup> Importers reporting that they do not anticipate any changes in their operations were: \*\*\*. U.S. importer questionnaire responses, section II-3.

**Table IV-3**  
**Sorbitol: Changes in the character of U.S. importers' operations since 1982**

\* \* \* \* \*

### U.S. IMPORTERS' IMPORTS SUBSEQUENT TO JANUARY 1, 2010

The Commission requested importers to indicate whether they imported or arranged for the importation of sorbitol from France for delivery after January 1, 2010. \*\*\*, reported that it arranged for \*\*\* pounds of sorbitol to be delivered from France after January 1, 2010.<sup>9</sup> No other responding importers had made such arrangements.<sup>10</sup>

### U.S. IMPORTERS' INVENTORIES

Data relating to U.S. importer's inventories of sorbitol are presented in table IV-4. Importers reported \*\*. Inventories of nonsubject imports increased sharply between 2005 and 2006 and nearly \*\*\* in 2007. Inventories of nonsubject imports reached their peak in 2007, but the ratio of inventories to imports and to U.S. shipments of imports was greatest in 2006.

**Table IV-4**  
**Sorbitol: U.S. importers' end-of-period inventories of imports, by source, 2004-09**

\* \* \* \* \*

The Commission asked importers whether their firms entered sorbitol into, or withdrew sorbitol from, foreign trade zones or bonded warehouses. \*\*\* reported entering sorbitol into, or withdrawing sorbitol from, foreign trade zones or bonded warehouses.<sup>11</sup> The Commission also asked importers whether their firms had imported sorbitol under the temporary importation under bond ("TIB") program. \*\*\* importer reported using the TIB program.<sup>12</sup>

## THE INDUSTRY IN FRANCE

### Overview

During the period of the original investigation, Roquette Frères was identified as the only producer of crystalline sorbitol in France. It had manufactured sorbitol since the 1960s, and, at the time of the investigation, was the largest sorbitol producer in the world.<sup>13</sup> During the first five-year review Roquette Frères was again identified as the only crystalline sorbitol producer in France.<sup>14</sup> In its response to the Commission's notice of institution of the first review, SPI Polyols responded with information that Roquette Frères' French operations accounted for \*\*\* percent of total world production of crystalline

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<sup>9</sup> \*\*\* U.S. importer questionnaire response, section II-5. This amount is equivalent to \*\*\* percent of the 2009 U.S. apparent consumption quantity.

<sup>10</sup> \*\*\* U.S. importer questionnaire responses, section II-5.

<sup>11</sup> U.S. importer questionnaire responses, section I-9.

<sup>12</sup> U.S. importer questionnaire responses, section I-12.

<sup>13</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Final)*, USITC Pub. 1233, March 1982, p. A-9.

<sup>14</sup> *Sorbitol from France, Inv. No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, p. I-10. *Sorbitol from France, Inv. No. 731-TA-44 (Second Review)*, USITC Pub. 3706, July 2004, p. I-16.

sorbitol in 1997. At that time, SPI was in the process of establishing a joint-venture facility in France with Amylum France SAS, known as Amylum SPI, that would produce crystalline sorbitol beginning in early 1999.<sup>15</sup> However, in a letter to Commerce, dated March 3, 2004, Amylum France SAS reported that the joint venture no longer existed.<sup>16</sup>

In its response to the Commission's notice of institution of the current review, ADM stated that it \*\*\*.<sup>17</sup> According to ADM, \*\*\*.<sup>18</sup> In its response to the Commission's notice of institution, CPI stated that it believed that \*\*\* and that \*\*\*.<sup>19</sup>

A response to the Commission questionnaire was received from one producer. Accordingly, the data presented on French production of sorbitol for the current review are for Roquette Frères, which estimates that in 2008 it accounted for \*\*\* percent of total production of sorbitol in France and \*\*\* percent of total exports to the United States of sorbitol from France.<sup>20</sup> Sorbitol represented \*\*\* percent of Roquette Frères' total sales in the most recent fiscal year.<sup>21</sup>

Roquette Frères is part of the Roquette Group, headquartered in Lestrem, France. It is a private, family-owned business that was founded in 1933, and is recognized as a world leader in polyols (sugar alcohols including sorbitol).<sup>22</sup> Since the 1980s, the Roquette Group has been strengthening its international presence and now runs more operations outside of France than within it. In the early 1980s, Roquette Frères \*\*\*.<sup>23</sup> In \*\*\*.<sup>24</sup> According to ADM's response to the Commission's notice of institution of the review, in 2004, Roquette Frères began operating its new sorbitol facility in China. Then in 2008, Roquette Frères acquired a 67 percent stake in Nanning Chemical Pharma, a Chinese company with additional capacity to produce crystalline sorbitol.<sup>25</sup> Today, the Roquette Group consists of 30 establishments (18 production sites and 12 offices) on 3 continents: 15 in Europe, 2 in the United States, 1 in Mexico, 10 in Asia, and 2 in India).<sup>26</sup> According to Roquette Frères, it is the Roquette Group's policy to \*\*\* each major region of the world using \*\*\*.<sup>27</sup>

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<sup>15</sup> *Sorbitol from France*, Inv. No. 731-TA-44 (First Review), INV-W-019, February 11, 2009, p. I-10. *Sorbitol from France*, Inv. No. 731-TA-44 (Second Review), USITC Pub. 3706, July 2004, p. I-16.

<sup>16</sup> *Ibid.* This joint venture may have ended as early as 1999 according to Roquette Frères. Roquette's posthearing brief, sworn declaration of Etienne Duhamel, p. 1.

<sup>17</sup> The European Polyol Association's members are the principal producers of polyols (including sorbitol) in the European Union. Both Roquette Frères and Syral SAS are members. European Association of Polyol Producers, *Membership List*, found at <http://www.polyols-eu.com/membership.php>, retrieved March 30, 2010.

<sup>18</sup> Domestic Interested Party, ADM's response to the Commission's notice of institution, July 31, 2009, p. 14.

<sup>19</sup> Domestic Interested Party, CPI's response to the Commission's notice of institution, July 31, 2009, pp. 2-3.

<sup>20</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-14.

<sup>21</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-8.

<sup>22</sup> Chem Europe, *Roquette Frères*, found at <http://www.chemeurope.com/firmen/e/print/16188/>, retrieved March 31, 2010.

<sup>23</sup> Roquette Frères' foreign producer/exporter questionnaire response, section I-4.

<sup>24</sup> E-mail from \*\*\* , April 13, 2010.

<sup>25</sup> Roquette Frères reportedly also announced plans to double Nanning Chemical Pharma's existing annual production capacity for crystalline sorbitol through an \$8.5 million investment. Domestic Interested Party, ADM's response to the Commission's notice of institution, July 31, 2009, pp. 6-7, exh. 3.

<sup>26</sup> Roquette Group company website, *Roquette Worldwide*, found at [http://www.roquette.com/delia-CMS/t1/topic\\_id/worldwide-presence](http://www.roquette.com/delia-CMS/t1/topic_id/worldwide-presence), retrieved January 26, 2010.

<sup>27</sup> Roquette's posthearing brief, sworn statement of Etienne Duhamel, p. 3, and exh. B.

Syral, \*\*\*.<sup>28</sup> This plant \*\*\*.<sup>29</sup> The Nesle plant also site processes wheat into glucose syrups with a high dextrose content, of which a large part is dispatched to an operation in Aalst, Belgium, for a second processing. It also produces polyols and alcohols (superfines and bioethanol), the latter in a joint-venture with the Frandino Group.<sup>30</sup> Syral's \*\*\*.<sup>31</sup> \*\*\*.<sup>32</sup> This is a liquid sorbitol facility according to Roquette.<sup>33</sup> \*\*\*.<sup>34</sup>

### Actual and Anticipated Changes in Capacity

Historical data regarding Roquette Frères' sorbitol operations are limited. Table IV-5 presents comparative information available from the original investigation and the current review.

**Table IV-5**  
**Sorbitol: Comparison of Roquette Frères' select industry data, 1980 and 2009**

\* \* \* \* \*

### Sorbitol Operations

Data provided by Roquette Frères concerning its sorbitol operations in France during calendar years 2004-09 are presented in table IV-6.

**Table IV-6**  
**Sorbitol: Data for Roquette Frères in France, 2004-09**

\* \* \* \* \*

Roquette Frères capacity to produce sorbitol in France \*\*\* from 2004 to 2009. Roquette Frères reported capacity based on operating \*\*\* hours per week, \*\*\* weeks per year and noted that \*\*\*.<sup>35</sup> In response to a Commission question on capacity constraints, Roquette Frères reported \*\*\*.<sup>36</sup> Roquette Frères capacity utilization rate remained \*\*\* percent and was close to \*\*\* percent in \*\*\*.

Total shipments of sorbitol by Roquette Frères \*\*\* and began to \*\*\*. Total shipments in \*\*\*. Roquette Frères reported \*\*\* of sorbitol. Home market shipments \*\*\* and despite \*\*\* remained \*\*\*.

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<sup>28</sup> \*\*\*

<sup>29</sup> Ibid.

<sup>30</sup> Syral SAS company website, *Manufacturing Sites*, found at [http://www.syral.com/web/syral\\_web.nsf/Page/U1D5T1Q0/Manufacturing\\_sites?opendocument#nsl](http://www.syral.com/web/syral_web.nsf/Page/U1D5T1Q0/Manufacturing_sites?opendocument#nsl), retrieved March 24, 2010.

<sup>31</sup> \*\*\* According to Roquette, Tereos is a producer mainly of sugar and bioethanol, and more recently starch derivatives. Its business is focused on Europe and Latin America (mainly Brazil). Roquette's posthearing brief, sworn declaration of Etienne Duhamel, p. 2.

<sup>32</sup> Ibid.

<sup>33</sup> Roquette's posthearing brief, sworn declaration of Etienne Duhamel, p. 2.

<sup>34</sup> Ibid.

<sup>35</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-14.

<sup>36</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-6.



The largest change occurred in the category of \*\*\* which experienced a change \*\*\*. \*\*\*. \*\*\* constituted the \*\*\* of the French producers' shipments in every year.<sup>37</sup>

In 2008, Roquette Frères' principal \*\*\*, its principal \*\*\*, and its principal \*\*\*.<sup>38</sup> The Commission asked foreign producers to identify export markets (other than the United States) that they have developed or where they have increased sales of sorbitol since 1982. Roquette Frères reported that it had \*\*\*.<sup>39</sup>

In response to a Commission question about changes to the character of its sorbitol operations since 1982, Roquette Frères reported on \*\*\* and an \*\*\*.<sup>40</sup> Roquette Frères indicated that it \*\*\*.<sup>41</sup>

Roquette Frères \*\*\*.<sup>42</sup> In addition, Roquette Frères is \*\*\*.<sup>43</sup> Since 2004, Roquette Frères has \*\*\*.<sup>44</sup>

The Commission asked foreign producers/exporters to provide a copy of their company's business plan or any internal documents that describe, discuss, or analyze expected future market conditions for sorbitol. Roquette Frères responded that the \*\*\*. However, in response to the same request made to U.S. producers of sorbitol, \*\*\* replied that "\*\*\*\*".<sup>45</sup> During the Commission's hearing the request for Roquette's business plans was repeated by several Commissioners. In its posthearing brief, Roquette submitted "redacted relevant portions of Roquette Frères' business plans" because of the highly sensitive nature of the information.<sup>46</sup>

### **Tariff or Non-Tariff Barriers to Trade**

The Commission asked importers whether sorbitol has been the subject of any other import relief investigations in the United States or in any other countries. All importers responded that \*\*\*.<sup>47</sup>

The Commission asked producers of sorbitol in France to identify tariff or non-tariff barriers to trade (for example, antidumping or countervailing duty findings or remedies, tariffs, quotas, or regulatory barriers) concerning their exports of sorbitol to countries other than the United States. The Commission also asked the subject foreign producers to identify ongoing investigations in countries other than the United States that could result in tariff or non-tariff barriers to trade for their exports of sorbitol. Roquette Frères responded \*\*\*.<sup>48</sup>

In its response to the Commission's notice of institution, the domestic interested party, ADM, reported that Pakistan recently decided in its five-year review to continue its antidumping duty on imports

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<sup>37</sup> As of October 2007, the EU has ceased to provide an export refund for soribtol. Roquette's posthearing brief, p. 11, and sworn declaration of Etienne Duhamel, p. 2.

<sup>38</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-14.

<sup>39</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-11.

<sup>40</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-2.

<sup>41</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-3.

<sup>42</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-5.

<sup>43</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-7.

<sup>44</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-9.

<sup>45</sup> \*\*\* U.S. producer questionnaire response, section I-8.

<sup>46</sup> Roquette's posthearing brief, sworn statement of Etienne Duhamel, p. 3.

<sup>47</sup> U.S. importer questionnaire responses, section I-12.

<sup>48</sup> Roquette Frères' foreign producer/exporter questionnaire response, section II-10.

of sorbitol from France. Roquette Frères did not participate in the review. The order imposes a 96.50 percent tariff on sorbitol (70 percent solution) exported by Roquette Frères to Pakistan.<sup>49</sup>

## GLOBAL MARKET

### Production

Global sorbitol production capacity has increased since the prior reviews. \*\*\*.<sup>50</sup> The growth in global production capacity \*\*\*.<sup>51</sup> The production of sorbitol was historically concentrated in Europe and North America but has expanded in the Asia Pacific region.<sup>52</sup> The Asia Pacific region has \*\*\*.<sup>53</sup>

Table IV-7 presents information on producers of sorbitol by share of world capacity, in descending order.

**Table IV-7**

**Sorbitol: Company, location(s), annual capacity by region, and share of world capacity, mid-2008**

\* \* \* \* \*

As detailed in the table, \*\*\*. For example, Roquette Frères has operations in the United States, France, \*\*\*.<sup>54</sup>

Table IV-8 presents information on the total annual capacity for the production of all sorbitol by country.

**Table IV-8**

**Sorbitol: World producers capacity, by country, mid-2008**

\* \* \* \* \*

As of mid-2008, \*\*\*. Given their large sorbitol capacity, it is not surprising that \*\*\*.<sup>55</sup> In addition, \*\*\*.<sup>56</sup>

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<sup>49</sup> Domestic Interested Party, ADM's response to the Commission's notice of institution, July 31, 2009, p. 7, and exh. 5.

<sup>50</sup> \*\*\*

<sup>51</sup> Ibid.

<sup>52</sup> CCM International Limited, *The Survey of Sorbitol in Asia Pacific*, Abstract, May 2009, found at <http://www.mindbranch.com/listing/product/R3539-183.html>, retrieved March 31, 2010.

<sup>53</sup> \*\*\*

<sup>54</sup> \*\*\*

<sup>55</sup> \*\*\*

<sup>56</sup> \*\*\* Cuba \*\*\* does have sorbitol production. The Cuban sorbitol plant reportedly had a 15 percent capacity utilization rate last year due to insufficient supplies of glucose, which is used as a raw material. In order to increase sorbitol production, a glucose and fructose plant will be built in 2010. DT Cuba, *Cuba to Increase Sorbitol Production*, February 15, 2010, found at <http://www.dtcuba.com/shownews.aspx?c=31139&Ing=2>, retrieved March 31, 2010.

China began producing sorbitol in the late 1950s as a necessary input for its vitamin C manufacture. According to one industry study, the quality of Chinese-produced sorbitol, the crystalline form in particular, has improved. However, at least two \*\*\*.<sup>57</sup>

Large manufacturers, including joint ventures, reportedly dominate sorbitol production in China and are pushing minor producers out of the market.<sup>58</sup> In February 2004, Chinese corn-based sweeteners producer, Global Sweeteners, formed a joint venture for a sorbitol plant in Changchun, China with Japan's Mitsui.<sup>59</sup> In January 2008, Global Sweetener Holdings bought out Mitsui's share of their sorbitol joint venture.<sup>60</sup> Mitsui did not give any reasons for why it was pulling out of the joint venture.<sup>61</sup> The Changchun plant had a capacity of 60,000 metric tons per year in 2008 and 100,000 metric tons per year in 2009.<sup>62</sup> According to the Global Sweeteners' company website, it will be increasing its overseas sales and expanding its overseas market share in the coming two to five years. Currently, the Group is exporting its products to: Ethiopia, Indonesia, Korea, Pakistan, The Philippines, Taiwan, Thailand, Vietnam, and West Africa.<sup>63</sup>

Indonesia is home to the second largest producer of sorbitol and starch sweeteners in the world, PT Sorini Agro Asia Corp. Tbk ("PT Sorini"). The company commissioned its first commercial operation in 1987 with an initial capacity of 5,000 metric tons of liquid sorbitol annually.<sup>64</sup> Today PT Sorini has 330,000 MT of sorbitol and starch sweetener capacity reportedly making it the largest producer of such products in the Asia Pacific region. PT Sorini produces sorbitol powder and liquid<sup>65</sup> and its sales accounted for 74 percent of company revenues in 2008, and 67 percent of sales volume.<sup>66</sup> PT Sorini's exports of sorbitol (70 percent solution) are subject to an antidumping duty tariff of 22.26 percent in Pakistan.<sup>67</sup> Imports of sorbitol into the United States from Indonesia are eligible for duty-free treatment

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<sup>57</sup> In \*\*\* and \*\*\*, ADM's posthearing brief, app., p. 39.

<sup>58</sup> CCM International Limited, *Market Survey on Sorbitol Industry in China*, Abstract, found at <http://www.reports-research.com/studien/market-survey-sorbitol-industry-china-p-22237.html>, retrieved April 7, 2010.

<sup>59</sup> Food Navigator, *Global Sweeteners buys out sorbitol JV partner*, January 11, 2008, found at <http://www.foodnavigator.com/content/view/print/142519>, retrieved March 30, 2010.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Global Sweeteners Holdings Limited company website, *Production Sites & Capacity*, found at [http://www.todayir.com/cms2/html/client/globalsweeteners/html/bus\\_capacity.php](http://www.todayir.com/cms2/html/client/globalsweeteners/html/bus_capacity.php), retrieved March 31, 2010. Confectionary News, *Chinese up sorbitol production*, February 10, 2004, found at <http://www.confectionarynews.com/content/view/print/89355>, retrieved March 31, 2010.

<sup>63</sup> Global Sweeteners Holdings Limited company website, *Future Development*, found at [http://www.todayir.com/cms2/html/client/globalsweeteners/html/bus\\_future.php](http://www.todayir.com/cms2/html/client/globalsweeteners/html/bus_future.php), retrieved March 31, 2010.

<sup>64</sup> PT Sorini, 2008 Annual Report, p. 6.

<sup>65</sup> PT Sorini company website, *Products*, found at <http://www.sorini.com.co.id/v2/sd/index.php?id=126>, retrieved April 1, 2010.

<sup>66</sup> PT Sorini, 2008 Annual Report, pp. 14 and 20.

<sup>67</sup> In 2008, Pakistan reviewed its antidumping duty order covering imports of sorbitol 70 percent solution from Indonesian producer PT Sorini and upon reaching an affirmative determination continued its duty for another period of five years effective from July 19, 2008. Government of Pakistan, National Tariff Commission, A.D.C. No. 002/2003/SB//SR/08, *Notice of Conclusion of Sunset Review of Anti-dumping Duties Imposed on Dumped Imports of Sorbitol 70% Solution Originating in and/or Exported from the Republic of France and the Republic of Indonesia*, included in Domestic Interested Party, ADM's response to the Commission's notice of institution, July 31, 2009, exh. 5.

under the Generalized System of Preferences.<sup>68</sup> ADM believes that such imports are largely sold to the surimi industry.<sup>69</sup>

In February 2008 it was announced that India's largest calcium carbonate producer, Gulshan Sugar & Chemicals, would merge with sorbitol producer Gulshan Polyols Limited. Both companies belong to the Gulshan group. Gulshan Polyols Limited operates a facility with 30,000 metric tons per year of sorbitol capacity for use in the manufacture of pharmaceuticals and cosmetics.<sup>70</sup> Gulshan's plant has the largest capacity in India and is capable of producing crystalline and non-crystalline sorbitol, which, according to Gulshan, is a "unique feature as compared to other domestic plants."<sup>71</sup>

There are two known sorbitol producers in Germany, Cargill Deutschland and Ecogreen.<sup>72</sup> Cargill has been active in Germany since 1955<sup>73</sup> and it acquired Cerestar, a leading provider of starch and starch derivatives, in 2002.<sup>74</sup> The company produces sorbitol by the catalytic hydrogenation of D-glucose.<sup>75</sup> Cargill sells crystalline and liquid sorbitol under its C☆PharmSorbitol trademark and lists applications for its sorbitol powder in solid dosage forms and in medicated confectionary (chewing gum).<sup>76</sup> Ecogreen reportedly \*\*\*.<sup>77</sup> \*\*\*<sup>78</sup> Imports of sorbitol from Germany into the United States are subject to the 4.9 percent *ad valorem* rate of duty.<sup>79</sup>

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<sup>68</sup> E-mail from Daniel Shepherdson, Attorney, U.S. International Trade Commission, Office of Tariff Affairs and Trade Agreements, May 20, 2010.

<sup>69</sup> ADM's posthearing brief, app., p. 36. Surimi is a fish-based food product intended to mimic the taste and color of the meat of lobster, crab, and other shellfish. Found at <http://en.wikipedia.org/wiki/surimi>, retrieved on May 22, 2010.

<sup>70</sup> ICIS News, *India calcium carbonate, sorbitol producers merge*, February 14, 2008, found at <http://www.icis.com/Articles/Article.aspx?liArticleID=9101016&PrinterFriendly=true>, retrieved March 31, 2010.

<sup>71</sup> Gulshan company website, *Sorbitol*, found at <http://www.gulshanindia.com/aboutus.htm>, retrieved March 31, 2010.

<sup>72</sup> ADM's posthearing brief, app., p. 16.

<sup>73</sup> Cargill company website, *Cargill Starches & Sweeteners Europe*, found at <http://www.cargill.com/company/businesses/cargill-starches-sweeteners-europe/index.jsp>, and, *Cargill in Germany*, found at <http://www.cargill.de/eng/index.shtml>, retrieved May 20, 2010.

<sup>74</sup> Cargill company website, *Krefeld*, found at <http://www.cargill.de/eng/locations/krefeld-corn.shtml>, retrieved May 20, 2010.

<sup>75</sup> Cargill company website, *C☆PharmSorbitol™ sorbitol*, found at <http://www.cargill.com/products/pharmaceutical/products/sorbitol/index.jsp>, retrieved May 20, 2010.

<sup>76</sup> Cargill company website, *C☆PharmSorbitol™ sorbitol*, found at <http://www.cargill.com/products/pharmaceutical/products/sorbitol/index.jsp>, retrieved May 20, 2010. CPI believes that imports from Germany are for the relatively small pharmaceutical products market. CPI's posthearing brief, p. 9.

<sup>77</sup> \*\*\* cited in ADM's posthearing brief, app., p. 17.

<sup>78</sup> \*\*\*

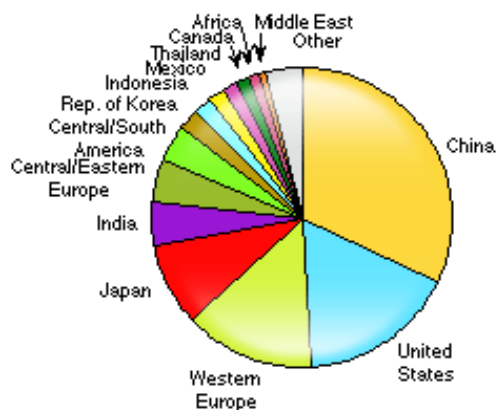
<sup>79</sup> E-mail from Daniel Shepherdson, Attorney, U.S. International Trade Commission, Office of Tariff Affairs and Trade Agreements, May 20, 2010.

## Consumption

Global demand for sorbitol has increased since \*\*\*. The largest increases in demand occurred in \*\*\*. Demand also grew, albeit much more slowly, in \*\*\* and \*\*\*. Figure IV-2 presents information on world consumption of sorbitol, in all forms, in 2007.

**Figure IV-2**

**Sorbitol: World consumption of sorbitol, crystalline and liquid, 2007**



Source: SRI Consulting, Sorbitol, Abstract, found at <http://www.sriconsulting.com/CEH/Public/Reports/693.1000/>, retrieved March 29, 2010.

Sorbitol demand \*\*\*.<sup>80</sup> \*\*\*.<sup>81</sup> But now that \*\*\*,<sup>82</sup> \*\*\*.<sup>83</sup> \*\*\*.<sup>84</sup> In \*\*\*.<sup>85</sup> \*\*\*.<sup>86</sup> Finally, \*\*\*.<sup>87</sup> \*\*\*.<sup>88</sup> \*\*\*.<sup>89</sup> \*\*\*.<sup>90</sup> Japan is one of the largest importers of sorbitol and accounted for 19 percent of world imports in 2009.<sup>91</sup> In Japan, \*\*\*.<sup>92</sup>

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<sup>80</sup> \*\*\*

<sup>81</sup> \*\*\*

<sup>82</sup> China now accounts for over 90 percent of world vitamin C production. SRI Consulting, Sorbitol, Abstract, found at <http://www.sriconsulting.com/CEH/Public/Reports/693.1000/>, retrieved March 29, 2010. \*\*\*

<sup>83</sup> \*\*\*

<sup>84</sup> \*\*\*

<sup>85</sup> \*\*\*

<sup>86</sup> \*\*\*

<sup>87</sup> \*\*\*

<sup>88</sup> \*\*\*

<sup>89</sup> \*\*\*

<sup>90</sup> \*\*\*

<sup>91</sup> GTIS, World Trade Atlas Database, accessed March 23, 2010.

<sup>92</sup> \*\*\*



## PART V: PRICING AND RELATED INFORMATION

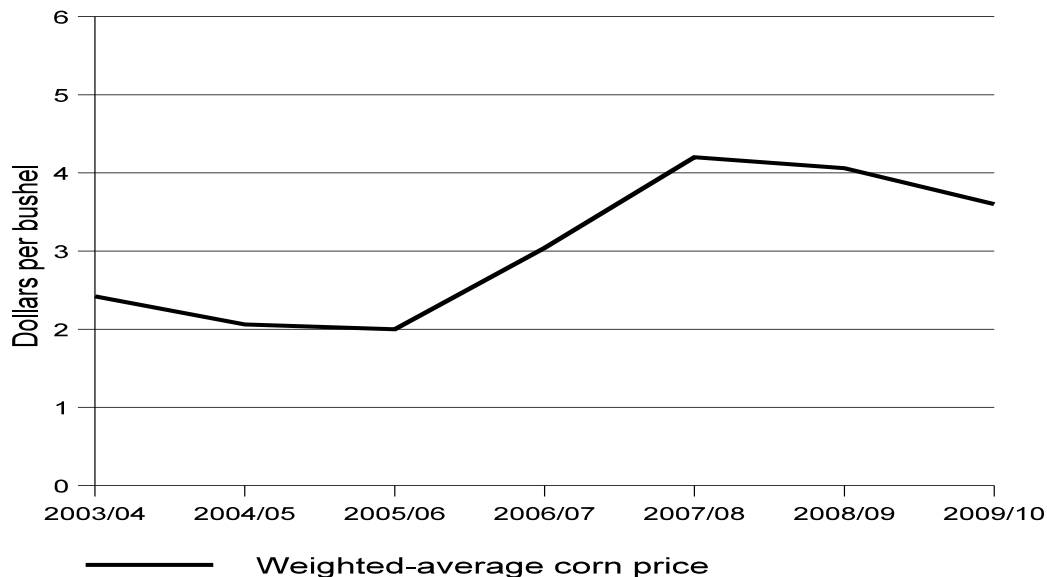
### FACTORS AFFECTING PRICING

#### Raw Material Costs

Raw material costs account for a significant share of the cost of producing sorbitol. During 2004-09, raw material costs as a percentage of the cost of goods sold ranged from a low of \*\*\* percent in 2005 to a high of \*\*\* percent in 2008. During 2009 these costs were equal to \*\*\* percent of the cost of goods sold. The price of corn is a major factor in the cost of sorbitol produced in the United States.<sup>1</sup> Weighted-average seasonal prices of corn are presented in figure V-1 for the 2003/04 crop years through the 2009/10 crop years.

**Figure V-1**

**Corn: Weighted-average farm prices, by market year, 2003/04-2009/10**



Source: Department of Agricultural, Economic Research service, <http://www.ers.usda.gov/data>.

#### Transportation Costs to the U.S. Market

Ocean transportation costs for crystalline sorbitol cannot be determined from official import statistics because the HTS number 2905.44.000 includes both crystalline and liquid sorbitol. In their posthearing brief, ADM estimated that the cost of shipping crystalline sorbitol from France to the United States is about \$0.06 per pound. With an average unit value of imports from France of \$\*\*\* per pound in

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<sup>1</sup> Hearing transcript, p. 14 and p. 17 (Oakley) and p. 66 (Billig).

2009 (table IV-1), this would be equal to about \*\*\* percent of the landed cost per pound of sorbitol.<sup>2</sup> Roquette America estimated that the cost of shipping crystalline sorbitol from France to the United States is \*\*\* percent of the total cost per pound of sorbitol.<sup>3</sup>

### **Exchange Rates**

Both nominal and real<sup>4</sup> quarterly exchange rates for the euro in relation to the U.S. dollar are shown in figure V-2 for the period 2004-09 and nominal rates are also shown for the first quarter of 2010.<sup>5</sup> The data show that the nominal rates increased irregularly over the period shown, while real rates fluctuated with no clear trend.

### **U.S. Inland Transportation Costs**

Estimates of the percentage of the delivered cost of sorbitol accounted for by U.S. inland transportation costs were varied. For the two responding U.S. producers, estimates ranged from \*\*\* percent to \*\*\* percent. Among six responding importers, estimates ranged from \*\*\* percent to \*\*\* percent.

Producers and importers were asked to provide their total quantities of commercial shipments involving distances of less than 100 miles, 101 to 1,000 miles, and distances over 1,000 miles. Using weighted-averages of individual producer responses, 50 percent of shipments were for distances less than 100 miles, 45 percent were for distances of 101 to 1,000 miles, and 5 percent were shipped over 1,000 miles. Using the weighted-average of individual importer responses, 54 percent of shipments were for distances less than 100 miles, 44 percent were for distances of 101 to 1,000 miles, and 2 percent were shipped over 1,000 miles.

### **PRICING PRACTICES**

Prices of sorbitol are determined by transaction by transaction negotiations, contracts, and set price lists. All three of the U.S. producers reported that they use all three methods in arriving at prices. Two of the firms that make use of price lists reported that the lists are for internal use only and are not provided to customers. Among the seven responding importers, three make use of transaction by transaction negotiations, contracts and set price lists in arriving at prices, two rely strictly on contracts, one only uses transaction by transaction, and one uses a combination of transaction by transaction negotiations and contracts.

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<sup>2</sup> ADM's posthearing brief app., p. 15.

<sup>3</sup> Roquette America's posthearing brief, p. 2

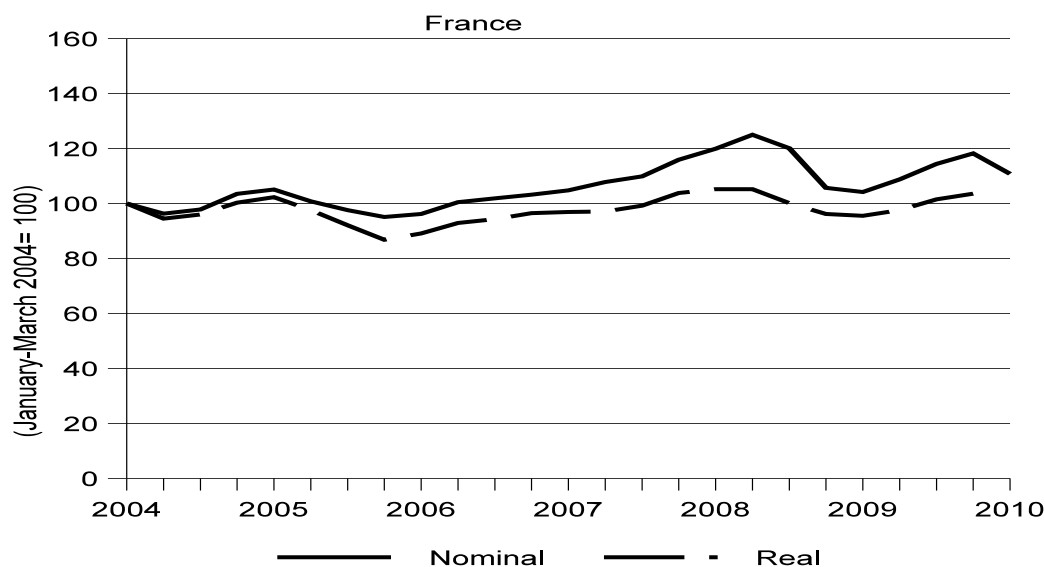
<sup>4</sup> Real exchange rates are calculated by adjusting the nominal rates for movements in producer prices in the United States and other countries.

<sup>5</sup> At the hearing, the relationship between the dollar and the euro was mentioned as a factor affecting exports of sorbitol to the United States. See Hearing Transcript, (Sierk) p. 84 and (Lindquist) p. 115.



**Figure V-2**

**Exchange rates: Indexes of the nominal rate of the euro relative to the U.S. dollar, by quarters, 2004-09 and January-March 2010, and the real rate for 2004-09**



Source: International Monetary Fund, *International Financial Statistics* online, <http://imfstatistics.org/imf>

Discount policies on sales of sorbitol are varied from firm to firm. Two of the three U.S. producers reported that they both provide quantity discounts and annual total volume discounts, while the third producer reported that it does not offer such discounts. \*\*\* are provided on sales of imports from France. Among the six importers of sorbitol from nonsubject countries, one firm reported that it provides quantity discounts and annual total volume discounts, while the other five firms do not offer these discounts. None of the producers or importers provide discounts for early payments of accounts.

Prices of sorbitol are commonly quoted on either an f.o.b. or delivered basis. Among the three U.S. producers, two quote prices on a delivered basis and one quotes on an f.o.b. basis. Among importers, three quote f.o.b. prices and one quotes delivered prices.

Most U.S.-produced sorbitol is sold on long-term or short-term contract basis, while imports are sold on either a short-term contract or spot basis. All three producers reported that 90 percent or more of their sales were under either short-term or long-term contracts. Producer contracts range in duration from 1 to 3 years with prices and quantities frequently fixed during the contract period. Meet-or-release provisions vary from company to company. \*\*\*. Sales of imports from nonsubject countries are sold on either a short-term contract or spot basis. None are sold on a long-term contract basis. Among the six importers from nonsubject sources, three reported that 95 to 100 percent of their sales are on a short-term contract basis, one reported that 100 percent of its sales are on a spot basis, one reported that 80 percent are on a spot basis, and one reported that its sales are divided evenly between short-term contracts and

spot sales. Contracts for sales of nonsubject imports range in duration from three months to one year with prices and/or quantities fixed during the contract period. Meet-or-release provisions vary.<sup>6</sup>

Producers and importers were asked to submit separate detailed data on their largest long-term contracts (more than 12 months long) and short-term contracts (12 months or less) on which they submitted bids for delivery of sorbitol during 2007-09. Roquette America, a producer, \*\*\*. \*\*\* was also submitted by Roquette America in its producer questionnaire, and by ADM. Four importers, Cargill, Meelunie, Roquette America (in its importer questionnaire), and Toyota Tsusho America, also \*\*\*. The data are presented in tables V-1, V-2, and V-3.

**Table V-1**

**Sorbitol: \*\*\* bid data reported by Roquette America in its producer questionnaire**

\* \* \* \* \*

**Table V-2**

**Sorbitol: \*\*\* bid data reported by ADM and Roquette America in their producer questionnaire**

\* \* \* \* \*

**Table V-3**

**Sorbitol: \*\*\* bid data reported by Cargill, Meelunie, Roquette America, and Toyota Tsusho America in their importer questionnaire**

\* \* \* \* \*

## PRICE DATA

The Commission asked U.S. producers and importers of sorbitol to provide quarterly data for the total quantity and value of four products that were shipped to unrelated customers in the U.S. market for the period 2004-09. The products for which pricing data were requested are as follows:

**Product 1.**—Crystalline sorbitol coarse powder: 1800 lb. or 1 metric ton (2205 lbs) super sack for food or pharmaceutical use.

**Product 2.**—Crystalline sorbitol coarse powder: 300 lb. drum for food or pharmaceutical use.

**Product 3.**—Crystalline sorbitol coarse powder: 50 lb. bag or box for food or pharmaceutical use.

**Product 4.**—Crystalline sorbitol granular: 200 lb. drum for food or pharmaceutical use.

Three U. S. producers and one importer reported varying amounts of price data. U.S. producer shipment data for the four products for which prices were reported accounted for \*\*\* percent of all U.S. shipments of sorbitol during 2004-09. U. S. shipment data for the two imported products from France on which prices were reported accounted for \*\*\* percent of all shipments from France during 2004-09.

## Price Trends

Quarterly price data for the four products are shown in tables V-4 through V-7 and figure V-3 for the period 2004-09. U.S. producer prices for all four products increased overall during the five year

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<sup>6</sup> \*\*\*.

period. Prices of imports from France also tended to increase irregularly during the period.<sup>7</sup> A summary of price trends is shown in table V-8.

**Table V-4**

**Sorbitol: Weighted-average delivered selling prices and quantities of domestic and imported product 1<sup>1</sup> and margins of underselling/(overselling), by quarters, 2004-09**

\* \* \* \* \*

**Table V-5**

**Sorbitol: Weighted-average delivered selling prices and quantities of domestic product 2<sup>1</sup>, by quarters, January 2006-September 2009**

\* \* \* \* \*

**Table V-6**

**Sorbitol: Weighted-average delivered selling prices and quantities of domestic and imported product 3<sup>1</sup> and margins of underselling/(overselling), by quarters, 2004-09**

\* \* \* \* \*

**Table V-7**

**Sorbitol: Weighted-average delivered selling prices and quantities of domestic product 4<sup>1</sup>, by quarters, 2004-09**

\* \* \* \* \*

**Figure V-3**

**Sorbitol: Weighted-average selling prices and quantities of domestic and imported product 1, by quarters, 2004-09**

\* \* \* \* \*

**Table V-8**

**Sorbitol: Summary of U.S. weighted-average f.o.b. selling prices for products 1-4 from the United States and France**

\* \* \* \* \*

### Price Comparisons

Margins of underselling and overselling for the period are presented in table V-9. As shown in the table, prices for sorbitol imported from France were below those for U.S.-produced sorbitol in 14 of 37 comparisons; margins of underselling ranged from \*\*\* to \*\*\* percent.<sup>8</sup> In the other 23 comparisons, prices for sorbitol imported from France were between \*\*\* and \*\*\* percent above prices for the domestic product.

**Table V-9**

**Sorbitol: Summary of quarterly weighted-average f.o.b. selling price comparisons between the domestic and imported products from France, 2004-09**

\* \* \* \* \*

<sup>7</sup> The \*\*\*. Email from \*\*\*, March 17, 2009.

<sup>8</sup> In the remand investigation, imported crystalline sorbitol from France was \*\*\*. Confidential version of the original staff report, October 3, 1983, p. A-55.



## **APPENDIX A**

### ***FEDERAL REGISTER* NOTICES AND ADEQUACY STATEMENT**



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**INTERNATIONAL TRADE  
COMMISSION**

**[Investigation No. 731-TA-44 (Third  
Review)]**

**Sorbitol From France**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Institution of a five-year review  
concerning the antidumping duty order  
on sorbitol from France.

**SUMMARY:** The Commission hereby gives  
notice that it has instituted a review  
pursuant to section 751(c) of the Tariff  
Act of 1930 (19 U.S.C. 1675(c)) (the Act)  
to determine whether revocation of the  
antidumping duty order on sorbitol  
from France would be likely to lead to  
continuation or recurrence of material  
injury. Pursuant to section 751(c)(2) of  
the Act, interested parties are requested  
to respond to this notice by submitting  
the information specified below to the  
Commission;<sup>1</sup> to be assured of

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<sup>1</sup> No response to this request for information is  
required if a currently valid Office of Management

consideration, the deadline for responses is July 31, 2009. Comments on the adequacy of responses may be filed with the Commission by September 15, 2009. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

**DATES:** *Effective Date:* July 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Mary Messer (202–205–3193), 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 at 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 this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.* On April 9, 1982, the Department of Commerce issued an antidumping duty order on imports of sorbitol from France (47 FR 15391). Following five-year reviews by Commerce and the Commission, effective March 17, 1999, Commerce issued a continuation of the antidumping duty order on imports of sorbitol from France (64 FR 42920, August 6, 1999). Following second five-year reviews by Commerce and the Commission, effective August 5, 2004, Commerce issued a continuation of the antidumping duty order on imports of sorbitol from France (69 FR 47415). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to

determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.* The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is France.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and in response to the July 18, 1993, order of the United States Court of International Trade remanding the investigation, the Commission defined two *Domestic Like Products*, crystalline and liquid sorbitol. In its original determination, the Commission made affirmative findings for both *Domestic Like Products*; however, in the remand investigation, the Commission made an affirmative determination with respect to crystalline sorbitol only. Certain Commissioners defined the *Domestic Like Product* differently in the original and remand investigations. In its expedited first and second five-year review determinations, the Commission found that the appropriate definition of the *Domestic Like Product* was the same as Commerce's scope: crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals. For the purposes of this notice, you should consider the *Domestic Like Product* to be crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and in response to the July 18, 1993, order of the United States Court of International Trade remanding the investigation, the Commission defined two *Domestic Industries*, one producing crystalline sorbitol and one producing liquid sorbitol. In its original determination, the Commission made affirmative findings for both *Domestic Industries*; however, in the remand

investigation, the Commission made an affirmative determination with respect to only the U.S. producers of crystalline sorbitol. Certain Commissioners defined the *Domestic Industry* differently in the original and remand investigations. In its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* to encompass all U.S. producers of crystalline sorbitol. For the purposes of this notice, you should consider the *Domestic Industry* to be all U.S. producers of crystalline sorbitol.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.* Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 09–5–199, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.



*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.* Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.* Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 15, 2009. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the

review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.* Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any

known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2003.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales,

internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of

*Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2003, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

**Marilyn R. Abbott,**  
*Secretary.*

Issued: June 29, 2009.

**William R. Bishop,**  
*Acting Secretary to the Commission.*

[FR Doc. E9-15645 Filed 7-1-09; 8:45 am]

**BILLING CODE P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-44 (Third Review)]

### Sorbitol From France

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of a full five-year review concerning the antidumping duty order on Sorbitol from France.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on Sorbitol from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* December 10, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Dana Lofgren (202-205-2539), 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 this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On October 6, 2009, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (74 FR 54068, October 21, 2009). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

**Participation in the review and public service list.**—Persons, including

industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

**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 this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the review will be placed in the nonpublic record on April 14, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 4, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 28, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 30, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing

testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.**—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 23, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 13, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 13, 2010. On June 3, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 7, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (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:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 11, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-29981 Filed 12-16-09; 8:45 am]

**BILLING CODE 7020-02-P**

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sunset review of this antidumping duty order. As a result of this sunset review, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels identified below in the "Final Results of Sunset Review" section of this notice.

**EFFECTIVE DATE:** November 3, 2009.

**FOR FURTHER INFORMATION:** David Cordell, AD/CVD Operations, Office 7, or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0408, or (202) 482-1391, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 1, 2009, the Department initiated a sunset review of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 74 FR 31412 (July 1, 2009). The Department received a notice of intent to participate from one domestic interested party, Archer Daniels Midland Company (ADM) within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations.<sup>1</sup> A second domestic interested party, Corn Products International (Corn Products) filed its intent to participate on July 22, 2009, a week after the regulatory deadline. Further, Corn Products filed comments on July 31, 2009. The Department rejected Corn Products' filings as untimely on August 11, 2009. *See* Letter to Corn Products, dated August 11, 2009.

ADM claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise. On July 31, 2009, the Department received complete substantive responses from ADM within the 30-day deadline specified in 19 CFR 351.218(d)(3)(ii). However, the Department received no substantive responses from respondent interested parties.<sup>2</sup> As a result, pursuant to section

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-427-001]**

**Sorbitol from France: Final Results of Expedited Five-year (Sunset) Review of Antidumping Duty Order**

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

**SUMMARY:** On July 1, 2009, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested party, and the lack of a response from respondent interested parties, the Department conducted an expedited (120-day)

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<sup>1</sup> Counsel for ADM notified the Department by telephone that ADM intended to participate in this proceeding and requested that ADM be permitted to file its notification one day after the regulatory deadline of July 16, 2009. The Department acceded to this request and accepted ADM's notice of intent, filed on July 17, 2009. *See* Memorandum to the file from Dana S. Mermelstein dated July 21, 2009.

<sup>2</sup> Roquette Freres, a respondent interested party, made a submission to the Department on August 17, 2009, containing comments on the notices of intent to participate by domestic interested parties. *See* Issues and Decision Memorandum for details. ADM

Continued

751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited sunset review of this order.

#### Scope of the Orders

The products covered by this order are shipments of crystalline sorbitol (sorbitol), a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals. The above-described sorbitol is classified under HTS subheading 2905.44.00. The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive.

#### Analysis of Comments Received

All issues raised in this case are addressed in the "Issues and Decision Memorandum" from Richard Weible, Director Office 7 to John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, Import Administration, dated October 28, 2009, (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room 1117 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Final Results of Sunset Reviews

The Department has determined that revocation of the antidumping duty order on sorbitol from France would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
Roquette Freres .....	2.90 percent
All Others .....	2.90 percent

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the

return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing these results and this notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-26427 Filed 11-2-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

*Sorbitol from France*  
Inv. No. 731-TA-44 (Third Review)

On October 5, 2009, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. §1675(c)(5)).

The Commission received responses to the notice of institution from two domestic producers of sorbitol: (1) Archer Daniels Midland Co. (“ADM”), and (2) Corn Products International, Inc. (“CPI”). The Commission found the individual response of each of these domestic producers, which contained company-specific data, to be adequate. Because the two producers that provided company-specific data collectively account for a substantial proportion of domestic production of sorbitol, the Commission further determined that the domestic interested party group response was adequate.

The Commission did not receive a response to the notice of institution from any respondent interested party. The Commission determined that the respondent interested party group response was inadequate in this review.

Notwithstanding the Commission’s determination that the respondent interested party group response was inadequate, the Commission determined to conduct a full review in light of information regarding possible changes in conditions of competition.<sup>1</sup> These include changes in domestic and global market conditions, including trends in U.S. demand, and substantial increases in U.S. imports of sorbitol from France since the second five-year review.

A record of the Commissioners’ votes is available from the Office of the Secretary and the Commission’s web site ([www.usitc.gov](http://www.usitc.gov)).

---

<sup>1</sup> Commissioners Williamson and Pinkert voted to conduct an expedited review, citing both the lack of adequate respondent participation and their finding that the record in this adequacy phase did not indicate sufficient changes in the conditions of competition since the original investigation and the first and second five-year reviews to warrant conducting a full review.





**APPENDIX B**  
**HEARING WITNESSES**



## CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

**Subject:** Sorbitol from France  
**Inv. Nos.:** 731-TA-44 (Third Review)  
**Date and Time:** May 11, 2010 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room, 500 E Street (room 101), SW, Washington, D.C.

### **OPENING REMARKS:**

In Support of Continuation of Order (**Warren E. Connelly**,  
Akin Gump Strauss Hauer & Feld LLP)  
In Opposition to Continuation of Order (**Eric Lindquist**,  
Fox Horan & Camerini LLP )

### **In Support of Continuation of Antidumping Duty Order:**

Akin Gump Strauss Hauer & Feld LLP  
Washington, D.C.  
on behalf of

Archer Daniels Midland Company ("ADM")

**John Oakley**, Business Director Food Additives,  
Special Food Ingredients, ADM

**Allan Buck**, Director Technical Services, Special  
Food Ingredients, ADM

**Fred Kenney**, Corporation Counsel, ADM

**Warren E. Connelly** )  
 ) – OF COUNSEL  
**Jarrold M. Goldfeder** )

**In Support of Continuation of  
Antidumping Duty Order (continued):**

Cameron LLP  
Washington, D.C.  
on behalf of

Corn Products International Inc. (“CP”)

**Jeffrey L. Billig**, Business Director Confectionary,  
Pharmaceutical and Personal Care Division,  
Polyols Operations, CP

**Michael N. Levy**, Counsel, North American Operations,  
CP

**Alexander W. Sierck** ) – OF COUNSEL

**In Opposition to Continuation of  
Antidumping Duty Order:**

Fox Horan & Camerini LLP  
New York, NY  
on behalf of

Roquette Frères and Roquette America, Inc.

**Gina Steffensmeier**, Director, Marketing, Roquette  
Frères and Roquette America, Inc

**Eric Lindquist** )  
 ) – OF COUNSEL

**SooJung Han** )

**REBUTTAL/CLOSING REMARKS:**

In Support of Continuation of Order (**Warren E. Connelly**,  
Akin Gump Strauss Hauer & Feld LLP)

In Opposition to Continuation of Order (**Eric Lindquist**,  
Fox Horan & Camerini LLP )

**APPENDIX C**  
**SUMMARY DATA**



**Table C-1**  
**Sorbitol: Summary data concerning the U.S. market, 2004-09**

\* \* \* \* \*





## **APPENDIX D**

### **COMMENTS BY U.S. PRODUCERS, IMPORTERS, PURCHASERS, AND FOREIGN PRODUCERS/EXPORTERS REGARDING THE EFFECTS OF THE ORDER AND THE LIKELY EFFECTS OF REVOCATION**



## **U.S. PRODUCERS' COMMENTS REGARDING THE EFFECTS OF THE ORDER AND THE LIKELY EFFECTS OF REVOCATION**

### **Significance of Order In Terms of Trade and Related Data**

The Commission requested U.S. producers to describe the significance of the existing antidumping duty order covering imports of sorbitol from France in terms of its effect on production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values. Their responses are as follows:

#### **Corn Products International**

\*\*\*

#### **Archer Daniels Midland**

\*\*\*

#### **Roquette America, Inc.**

\*\*\*

### **Anticipated Operational and Organizational Changes If The Order Were To Be Revoked**

The Commission requested U.S. producers to describe any anticipated changes in the character of their operations or organization relating to the production of sorbitol in the future if the antidumping duty order on sorbitol from France was to be revoked. Their responses are as follows:

#### **Corn Products International**

\*\*\*

#### **Archer Daniels Midland**

\*\*\*

#### **Roquette America, Inc.**

\*\*\*

### **Anticipated Changes in Trade and Related Data If The Order Were To Be Revoked**

The Commission requested U.S. producers to describe any anticipated changes in their production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures or asset values relating to the production of sorbitol in the future if the antidumping duty order on sorbitol from France was to be revoked. Their responses are as follows:

#### **Corn Products International**

\*\*\*

**Archer Daniels Midland**

\*\*\*

**Roquette America, Inc.**

\*\*\*

**U.S. IMPORTERS' COMMENTS REGARDING THE EFFECTS OF THE ORDER  
AND THE LIKELY EFFECTS OF REVOCATION**

**Significance of Order In Terms of Trade and Related Data**

The Commission requested U.S. importers to describe the significance of the antidumping duty order covering imports of sorbitol from France in terms of its effect on their imports, U.S. shipments of imports, and inventories. Their responses are as follows:

\*\*\*

“Not applicable.”

\*\*\*

“We are \*\*\* and sell sorbitol powder from \*\*\*. We are small and do not know if we will be effected.”

\*\*\*

“Because we started importing sorbitol since 1996 we are not sure how this order has had an impact on our company’s imports.”

\*\*\*

No response was given.

\*\*\*

“No effects due to the small quantities and specific quality of \*\*\*. French-produced sorbitol is demanded in the U.S. mainly with customers that require sorbitol made from non-genetically modified (non-GM) grain.”

\*\*\*

“None.”

\*\*\*

“No effect.”

**Anticipated Operational and Organizational Changes  
If The Order Were To Be Revoked**

The Commission requested importers to describe any anticipated changes in the character of their operations or organization relating to the importation of sorbitol in the future if the antidumping duty order on sorbitol from France were to be revoked. Their responses are as follows:

\*\*\*

“No.”

\*\*\*

“No. Did not know there were antidumping duties on sorbitol crystalline- but we do not import from France any crystalline sorbitol.”

\*\*\*

“No.”

\*\*\*

“Yes. Likely lost market share which would require us to reduce SG&A costs.”

\*\*\*

“No.”

\*\*\*

“No.”

\*\*\*

“No.”

#### **Anticipated Changes in Trade and Related Data If The Order Were To Be Revoked**

The Commission requested importers to describe any anticipated changes in their imports, U.S. shipments of imports, or inventories of sorbitol in the future if the antidumping duty order on sorbitol from France were to be revoked. Their responses are as follows:

\*\*\*

“Yes. Supplier may be changed from Asian to European.”

\*\*\*

“If France would import a lot more inventory and lower prices, yes it would be a severe problem but if prices did not decrease, then no.”

\*\*\*

“No. Whether or not our business will be affected depends on how much French sorbitol supplier’s price will be. At this moment we are not sure at all at what price level they are going to offer.”

\*\*\*

“Yes. Lost market share and/or reduced pricing (profit).”

\*\*\*

“No. None at all.”

\*\*\*

“No.”

\*\*\*

“No.”

**U.S. PURCHASERS' COMMENTS REGARDING THE EFFECTS OF THE ORDER  
AND THE LIKELY EFFECTS OF REVOCATION**

**Effects on Future Activities of the Firms and the U.S. Market as a Whole**

The Commission requested purchasers to comment on the likely effects of revocation of the antidumping duty order for imports of sorbitol from France on (1) the future activities of their firms and (2) the U.S. market as a whole. Their responses are as follows:

\*\*\*

(1) The future activities of their firms:

“This will have no effect on us. We purchase all of our product in the U.S. It might make our product cheaper.”

(2) The U.S. market as a whole:

“No response.”

\*\*\*

(1) The future activities of their firms:

“Unknown.”

(2) The U.S. market as a whole:

“Unknown.”

\*\*\*

(1) The future activities of their firms:

“We do not import from France. No impact.”

(2) The U.S. market as a whole:

“No impact.”

\*\*\*

(1) The future activities of their firms:

“None.”

(2) The U.S. market as a whole:

“None.”

\*\*\*

(1) The future activities of their firms:

“No response.”

(2) The U.S. market as a whole:

“No response.”

\*\*\*

(1) The future activities of their firms:

“I would think we would see more aggressive prices from our suppliers due to the increased competition.”

(2) The U.S. market as a whole:  
“I would assume prices in the U.S. would drop as a result of the increased supply.”

\*\*\*

(1) The future activities of their firms:  
“None.”

(2) The U.S. market as a whole:  
“Not known.”

\*\*\*

(1) The future activities of their firms:  
“No effects anticipated.”

(2) The U.S. market as a whole:  
“Unknown.”

\*\*\*

(1) The future activities of their firms:  
“None.”

(2) The U.S. market as a whole:  
“No knowledge.”

\*\*\*

(1) The future activities of their firms:  
“No change - maybe price is reduced.”

(2) The U.S. market as a whole:  
“Lower prices.”

\*\*\*

(1) The future activities of their firms:  
“No response.”

(2) The U.S. market as a whole:  
“No response.”

\*\*\*

(1) The future activities of their firms:  
“No response.”

(2) The U.S. market as a whole:  
“No response.”

\*\*\*

(1) The future activities of their firms:  
“We will continue to buy U.S.-produced material as freight deters importation from any location.”

(2) The U.S. market as a whole:  
“Same as #(1)”

\*\*\*

(1) The future activities of their firms:  
“We buy only \*\*\* of \*\*\* polyols that comes indirectly from \*\*\*. The impact of antidumping is not so significant. Our strategy will be to continue buying \*\*\* products from the current supplier.

(2) The U.S. market as a whole:  
“No response.”

## **FOREIGN PRODUCERS’ COMMENTS REGARDING THE EFFECTS OF THE ORDER AND THE LIKELY EFFECTS OF REVOCATION**

### **Significance of Order In Terms of Trade and Related Data**

The Commission requested foreign producers to describe the significance of the antidumping duty order covering imports of sorbitol from France in terms of its effect on the firms’ production capacity, production, home market shipments, exports to the United States and other markets, and inventories. Their responses are as follows:

**Roquette Frères**  
\*\*\*

#### **Anticipated Operational and Organizational Changes If The Order Were To Be Revoked**

The Commission requested foreign producers to describe any anticipated changes in the character of their operations or organization relating to the production of sorbitol in the future if the antidumping duty order on sorbitol from France was to be revoked. Their responses are as follows:

**Roquette Frères**  
\*\*\*

#### **Anticipated Changes in Trade and Related Data If The Order Were To Be Revoked**

The Commission requested foreign producers to describe any anticipated changes in their production capacity, production, home market shipments, exports to the United States and other markets, or inventories relating to the production of sorbitol in the future if the antidumping duty order on sorbitol from France was to be revoked. Their responses are as follows:

**Roquette Frères**  
\*\*\*



