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Views of the Commission

By opinion and order dated September 19, 2023, the U.S. Court of International Trade, remanded the Commission's final affirmative injury determinations in *Phosphate Fertilizers from Morocco and Russia*, Inv. Nos. 701-TA-650-651 (Final), USITC Pub. 5172 (March 2021).¹ Upon consideration of the remand order and evidence in the record of these investigations, the Commission determines again that an industry in the United States is materially injured by reason of phosphate fertilizers from Morocco and Russia found by the U.S. Department of Commerce ("Commerce") to be subsidized by the governments of Morocco and Russia.²

I. Background

In March 2021, the Commission determined that an industry in the United States was materially injured by reason of subject imports from Morocco and Russia.³ Plaintiffs OCP S.A. ("OCP"), a producer and exporter of phosphate fertilizers in Morocco, and EuroChem North America Corporation ("EuroChem"), a U.S. importer of subject merchandise from Morocco and Russia, appealed the Commission's final affirmative determinations. Several respondent interested parties participated as plaintiff-intervenors: PhosAgro PJSC ("PhosAgro"), a producer and exporter of phosphate fertilizers in Russia, and International Raw Materials Ltd. ("IRM") and Koch Fertilizer ("Koch"), U.S. importers of subject merchandise. Petitioner the Mosaic

¹ *OCP S.A. v. United States*, Consolidated Court No. 21-00219, Slip Op. 23-136 (Sept. 19, 2023) ("Remand Order").

² Chairman Johanson again determines that an industry in the United States is not materially injured or threatened with material injury by reason of subject imports from Morocco and Russia. See Dissenting Views of Chairman David S. Johanson.

³ *Phosphate Fertilizers from Morocco and Russia*, Inv. Nos. 701-TA-650-651 (Final), USITC Pub. 5172 (March 2021) and accompanying Confidential Views ("Original Views"). Citations to the page numbers of the Original Views herein refer to the Confidential Views.

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Company (“Mosaic”) and J. R. Simplot Company (“Simplot”), another domestic producer, also participated in the litigation as defendant-intervenors.

In its remand order, the court found that the Commission’s finding that fertilizer could be reshipped from one destination to another to meet existing demand, was unsupported by the record evidence.⁴ Further, the court opined that this Commission finding “undergirds the Commission’s determination across all statutory factors.”⁵ The court indicated that on remand, the “Commission may take new evidence, reconsider existing evidence, or take any other action allowed by its procedures” to arrive at a conclusion supported by substantial evidence.⁶

On October 27, 2023, the Commission published notice of its remand proceedings in the Federal Register.⁷ In the notice, the Commission explained that it was reopening the record in these proceedings for the limited purpose of issuing a short supplemental questionnaire to U.S. producers and U.S. importers.⁸ The Commission did not otherwise reopen the record for the collection of new factual information.⁹ The notice further “permit{ted} the parties to file written comments limited to addressing new factual information obtained during the remand proceedings and how the Commission could best comply with the Court’s remand instructions.”¹⁰ Accordingly, domestic interested parties Mosaic and Simplot filed comments as did respondent interested parties, OCP, Eurochem, PhosAgro, IRM, Koch. The notice provided

⁴ Remand Order at 49.

⁵ Remand Order at 3.

⁶ Remand Order at 49.

⁷ *Phosphate Fertilizers from Morocco and Russia*, 88 Fed. Reg. 73873 (Oct. 27, 2023). The Commission subsequently issued a correction to the notice of remand proceedings correcting the effective date of the notice to October 23, 2023. *Phosphate Fertilizers From Morocco and Russia; Notice of Remand Proceedings; Correction*, 88 Fed. Reg. 75308 (Nov. 2, 2023).

⁸ 88 Fed. Reg. 73873.

⁹ 88 Fed. Reg. 73873.

¹⁰ 88 Fed. Reg. 73873.

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that “[t]he Commission will reject submissions containing additional factual information or arguments pertaining to issues other those defined above.” Notwithstanding this, some of the parties included in their remand comments arguments regarding issues outside the scope of the remand request. We have not rejected those submissions but have disregarded arguments in the remand comments concerning non-remand issues. Accordingly, we have considered remand comments only insofar as they addressed issues on which the court has remanded this matter.¹¹

Domestic interested parties contend that the remand questionnaires demonstrates that reshipment of fertilizers is a normal business practice that occurs routinely as part of the conditions of competition in the fertilizers industry, including during the spring of 2019 when flooding affected the Mississippi River system.¹² In support, they note that domestic producers reported [REDACTED], which means that they are best positioned to deliver product and, if needed, redirect when there are supply chain disruptions, such as flooding and related logistics problems.¹³ They also refer to remand questionnaire responses to show that product was [REDACTED] as well as that of importer [REDACTED].¹⁴ Domestic interested parties contend that the significant volume of cumulated subject imports that entered the U.S. market were not due to any supply

¹¹ We note, however, that we did have the benefit of arguments on all issues that were made during the original investigations, and as necessary, considered the arguments made in submissions already on the record.

¹² Mosaic Comments at 2-5; Simplot Comments at 2-5.

¹³ Mosaic Comments at 3-4; Simplot Comments at 3.

¹⁴ Mosaic Comments at 3-5; Simplot Comments at 4-5.

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gap or because domestic product was “practically unavailable.”¹⁵ Mosaic argues that new evidence disproves respondents’ claims about weather-related effects.¹⁶ Simplot also argues that NOLA {the Port of New Orleans, Louisiana} benchmark prices “showed no sign of ‘high demand’ areas with unmet demand as they “plummeted to historically low levels in 2019,” belying respondents’ assertions that increased U.S. shipments and inventories were “somehow benign responses to weather-related supply misallocations.”¹⁷

Respondents assert that the Commission’s original material injury analysis rests on the erroneous finding that subject imports oversupplied the market in 2019 based on the assumption that existing inventories could be re-barged and reshipped to other areas of the United States.¹⁸ They argue that newly obtained information in the remand proceedings demonstrates that the U.S. fertilizer distribution network is unidirectional, not only for importers but also for domestic producers.¹⁹ Respondents further contend that the remand questionnaire responses demonstrate that reshipment of subject import inventories is not possible on a large scale or a “normal business practice,” but rather it is cost prohibitive and not economically feasible.²⁰ Respondents argue that, because the Commission’s finding that subject imports were “oversupplied” was “central to {the Commission’s} determination that the volume, price effects, and impact of subject imports was significant,” the Commission should

¹⁵ Mosaic Comments at 7-9; Simplot Comments at 5-8.

¹⁶ Mosaic Comments at 10-15.

¹⁷ Simplot Comments at 8-12.

¹⁸ OCP Comments at 1-4; PhosAgro Comments at 1-8.

¹⁹ OCP Comments at 5-13; PhosAgro Comments at 8-12; Koch Comments at 3-4; IRM Comments at 3-4; Eurochem Comments at 1-2.

²⁰ OCP Comments at 7-13; PhosAgro Comments at 11-14; Koch Comments at 3-4; IRM Comments at 3-4.

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reach negative determinations on remand.²¹ In respondents' view, as explained by OCP, the court's identification of "oversupply" as being "central" to the injury determination means that the Commission's finding of a causal link between imports and material injury is not supported by any record evidence.²²

II. Material Injury By Reason of Subject Imports

In responding to the Court's remand instructions, we have considered the factual record as a whole, as well as arguments made by the parties in their submissions in both the proceedings of the original investigations and the remand proceedings. We have adopted in their entirety the Commission's original findings, analysis, and conclusions regarding issues not raised on appeal: the legal standards, domestic like product, domestic industry, negligibility, and cumulation.²³

As an initial matter, we respectfully address the court's characterization of our observation in the Original Views that importers conceded that it was possible albeit not economical to reship product from existing inventories to other locations.²⁴ The court understood this to be an "important" finding upon which the Commission's "theory" that imports contributed to the oversupply conditions in the U.S. market "rests like an inverted pyramid on an unsupported finding regarding what might be possible if economics did not matter."²⁵ We clarify that this observation was not central to our material injury analysis and,

²¹ OCP Comments at 15-25; PhosAgro Comments at 15-23 Koch Comments at 5-6; IRM Comments at 5-6; Eurochem Comments at 1-2.

²² OCP Comments at 23-24.

²³ Additionally, in our analysis below, we do not readdress several arguments raised by the parties in the original investigations that pertain to issues that were not challenged on appeal, but we adopt and incorporate our discussions and conclusions regarding those issues here.

²⁴ Original Views at 43 n.161, 56 n.217.

²⁵ Remand order at 29, 35.

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as described below, continue to find that an industry in the United States is materially injured by reason of phosphate fertilizers from Morocco and Russia that Commerce has found to be subsidized by the governments of Morocco and Russia, without reliance upon that original finding.

A. Conditions of Competition and the Business Cycle**1. Demand Conditions**

As explained in the Original Views,²⁶ U.S. demand for phosphate fertilizers is primarily driven by agricultural plantings, particularly for crops that consume the most fertilizer (*i.e.*, corn, soybeans, and wheat). Weather volatility, cropping practices and crop rotation, and agricultural commodity prices also affect U.S. demand.²⁷

Due to its relationship to agricultural plantings, U.S. demand for phosphate fertilizers is subject to seasonal business cycles, with most market participants reporting peak demand in the spring (second quarter, prior to planting) and fall (fourth quarter, after harvest).²⁸ Mosaic states that to meet the two seasonal surges in demand, producers manufacture phosphate fertilizers throughout the year, and the supply chain, including wholesalers and retailers, moves product into position during the off seasons.²⁹ According to respondents, it takes time for distributors to obtain fertilizer and move it through the supply chain into warehouses in the off seasons for use by farmers, and distributors therefore rely on demand projections in obtaining

²⁶ Original Views at 20-22.

²⁷ CR/PR at II-11; Mosaic Prehearing Br. at 20; OCP Prehearing Br. at 6, 33; Gavilon Prehearing Br. at 10; PhosAgro Prehearing Br. at 6; PhosAgro Posthearing Br. at 3, 6.

²⁸ CR/PR at II-15.

²⁹ Mosaic Prehearing Br. at 24. U.S. producers reported that [REDACTED] percent of their commercial shipments in 2019 came from inventory with lead times averaging [REDACTED] days. CR/PR at II-17.

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product.³⁰ We note however that, notwithstanding this, the record shows that foreign producers and/or importers are able to move quickly to respond to changes in the market. Specifically, as we noted in the Original Views, the parties agreed that the filing of the petitions on June 26, 2020 resulted in a large decrease in the volume of cumulated subject imports.³¹ Indeed, the monthly volume of subject imports decreased from 62,426 short tons in June 2020 to 57,660 short tons in July 2020, 14,365 short tons in August 2020, and 10,599 in September 2020.³²

As we discussed in our Original Views,³³ the parties agree that while U.S. demand increased between 2017 and 2018, the U.S. market experienced unusually wet weather conditions that impacted three consecutive planting seasons beginning in the fall of 2018 and continuing into the spring of 2019 and fall of 2019. Consequently, crop plantings fell and U.S. demand for phosphate fertilizers declined in 2019. U.S. demand, however, rebounded in

³⁰ OCP Prehearing Br. at 6, 37-39; Koch Prehearing Br. at 6-7; OCP Posthearing Br. at Responses to Questions pp. 27-28, 39; IRM Posthearing Br. at 7; Koch Posthearing Br. at 11-12; EuroChem Posthearing Br. at 8. U.S. importers reported that [REDACTED] percent of their commercial shipments in 2019 came from inventory with lead times averaging [REDACTED] days. Importers also reported [REDACTED] percent of their commercial shipments came from foreign producers' inventories, with lead times averaging [REDACTED] days. CR/PR at II-17.

³¹ Original Views at 34 n.134; Mosaic Prehearing Br. at 43-44, 91; Simplot Prehearing Br. at 29-30, 34; Simplot Posthearing Br. at Responses to Questions pp. 53-54; Mosaic Posthearing Br. at Responses to Questions pp. 69-70; OCP Posthearing Br. at 12, Responses to Questions pp. 33, 67-73; EuroChem Posthearing Br. at 11; IRM Posthearing Br. at 8-9; PhosAgro Posthearing Br. at 12-13, Responses to Questions. Some U.S. importers indicated that they stopped bringing in subject imports "because the buyers and the sellers agreed that the risk of 75 percent countervailing duties was higher than either of them wanted to take." Hearing Tr. at 337 (Aranoff); *see also* EuroChem Posthearing Br. at 11 (stating that as a result of the filing of the petitions, it shifted its purchases of phosphate fertilizers from Morocco and Russia to other global sources); [REDACTED] U.S. Purchaser Questionnaire Response at III-11 (reporting that Koch and IRM will not quote or import material until the countervailing duty decision is issued); [REDACTED] U.S. Purchaser Questionnaire Response at III-11 (reporting that Helm, Koch, and OCP "cut off" supplying imported product to the U.S. market in the summer of 2020).

³² CR/PR at Table IV-6.

³³ Original Views at 21-22.

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January to September (“interim”) 2020 with increased crop plantings.³⁴ Most responding U.S. producers, importers, and purchasers reported that U.S. demand for phosphate fertilizers either fluctuated or did not change during the period of investigation.³⁵

As we previously explained, data from the U.S. Department of Agriculture’s (“USDA”) Farm Service Agency confirm that total planted acres increased from 2017 and 2018, decreased between 2018 and 2019, then increased again between 2019 and 2020.³⁶ Overall, total acres planted was 3.6 percent lower in 2019 compared to 2017 and 0.6 percent lower in 2020 compared to 2017.³⁷ Apparent U.S. consumption for phosphate fertilizers increased from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018, then decreased to [REDACTED] short tons in 2019 for an overall decline of [REDACTED] percent between 2017 and 2019; it was [REDACTED] percent lower in interim 2020, at [REDACTED] short tons, than in interim 2019, at [REDACTED] short tons.³⁸

2. Supply Conditions

The domestic industry was the largest supplier of phosphate fertilizers to the U.S. market throughout the POI. Its share of apparent U.S. consumption declined from [REDACTED] percent in 2017 to [REDACTED] percent in 2018 and [REDACTED] percent in 2019, representing an overall

³⁴ CR/PR at II-11, Figure II-1; Mosaic Prehearing Br. at 20-21; OCP Prehearing Br. at 6, 34-36, 43-51; IRM Prehearing Br. at 15-17; Gavilon Prehearing Br. at 11-12, 14-16; PhosAgro Prehearing Br. at 6-7.

³⁵ CR/PR at Table II-4. Specifically, two of three responding domestic producers, seven of 10 U.S. importers, and 14 of 28 U.S. purchasers indicated that U.S. demand fluctuated since January 1, 2017, while one domestic producer, two U.S. importers, and eight purchasers reported that demand did not change. *See id.*

³⁶ The USDA reported that acres planted for corn, soybeans, and wheat were 226.4 million in 2017, 225.9 million in 2018, 211.3 million in 2019, and 218.4 million in 2020. It projected the acres planted for these crops to be 227.0 million in 2021. CR/PR at II-11 n.23.

³⁷ CR/PR at II-11, Figure II-1.

³⁸ CR/PR at Tables IV-7, C-1.

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decrease of [REDACTED] percentage points between 2017 and 2019.³⁹ The domestic industry's share of apparent U.S. consumption was [REDACTED] percent in interim 2019 and [REDACTED] percent in interim 2020.⁴⁰

In addition to supplying the majority of the U.S. market, the domestic industry also exported substantial volumes of phosphate fertilizers to third country markets, although these volumes declined after the petitions were filed. The domestic industry's export shipments accounted for [REDACTED] percent of its total shipments in 2017, [REDACTED] percent in 2018, and [REDACTED] percent in 2019; its export shipments accounted for a lower share of its total shipments in interim 2020 at [REDACTED] percent than in interim 2019 at [REDACTED] percent.⁴¹ [REDACTED] largest export market was [REDACTED], while [REDACTED] largest export market was Canada.⁴²

During the POI, three firms – Mosaic, Nutrien, and Simplot – accounted for the vast majority of all known U.S. production of phosphate fertilizers, with Mosaic the leading producer.⁴³ Mosaic reported several changes in operations during the POI. In December 2017,

³⁹ CR/PR at Tables IV-8, C-1.

⁴⁰ CR/PR at Tables IV-8, C-1.

⁴¹ CR/PR at Table III-6. U.S. producers' export shipments declined from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018, before increasing in 2019 to [REDACTED] short tons. Their export shipments were lower in interim 2020, at [REDACTED] short tons, than in interim 2019, at [REDACTED] short tons. *See id.*

⁴² CR/PR at III-11 n.26. [REDACTED] accounted for [REDACTED] percent of [REDACTED] export shipments between 2017 and 2019. [REDACTED] also shipped product to [REDACTED]. At least [REDACTED] percent of [REDACTED] exports and [REDACTED] percent of [REDACTED] exports went to Canada during 2017-2019 and interim 2020. They also exported product to [REDACTED]. *See id.*

⁴³ CR/PR at I-3, Table III-1. In 2019, Mosaic accounted for [REDACTED] percent of domestic production. CR/PR at Table III-1. Over the past several decades, the domestic industry experienced significant contraction in the number of producers and production facilities. Mosaic Prehearing Br. at 22; OCP Prehearing Br. at 6-16; Gavilon Prehearing Br. at 17-19; IRM Prehearing Br. at 4-6. According to respondents, depleted U.S. phosphate ore reserves (from which the primary raw material phosphate

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Mosaic idled its 2 million ton production facility in Plant City, Florida for 18 months and then permanently shuttered the facility in June 2019.⁴⁴ In March 2019, Mosaic announced a 300,000 short ton curtailment in production, and in September 2019, Mosaic temporarily idled operations at its facilities in Saint James (Faustina) and Uncle Sam, Louisiana, curtailing production by 500,000 short tons. It restarted operations at these facilities in December 2019, but idled its plant in Barstow, Florida that same month, curtailing production by 165,000 tons per month. Mosaic resumed production at its Barstow facility in February 2020.⁴⁵

From 2017 to 2018, Nutrien increased its capacity and production at its Aurora, North Carolina and White Springs, Florida phosphate facilities.⁴⁶ In May 2019, Nutrien converted its phosphate operation in Redwater, Canada to an ammonium sulfate plant.⁴⁷ Nutrien's CEO stated at the time that the increase in production in North Carolina and Florida was expected to offset the reduction in supply from its Redwater facility.⁴⁸ Nutrien's U.S. production increased by [REDACTED] percent from 2018 to 2019 and its production and production capacity increased [REDACTED] of the POI.⁴⁹

rock is refined), caused this consolidation of the domestic industry. OCP Prehearing Br. at 6-16; Gavilon Prehearing Br. at 17-19; IRM Prehearing Br. at 4-6. Mosaic and Simplot maintain, however, that the United States has plenty of remaining and untapped phosphate rock reserves and that mining capacity currently exceeds production capacity. Hearing Tr. at 139-143 (Stone, O'Rourke). Indeed, Mosaic reports that its phosphate rock production and quality have remained consistent over the POI. Mosaic Prehearing Br. at 92-93; Mosaic Postconference Br. at Exhibit 31. OCP itself acknowledges that U.S. annual phosphate rock production represents nearly 15 percent of global production, rendering the United States the world's third largest producer. OCP Prehearing Br. at 11.

⁴⁴ CR/PR at III-3.

⁴⁵ Mosaic Prehearing Br. at 2; Mosaic Posthearing Br. at Responses to Questions pp. 22-23.

⁴⁶ CR/PR at III-3 and Table III-3. [REDACTED] production capacity increased by [REDACTED] short tons, from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018, due to [REDACTED]. CR/PR at III-5 n.18.

⁴⁷ CR/PR at Table III-3.

⁴⁸ CR/PR at III-3.

⁴⁹ CR/PR at Table III-3.

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As a result of these operational changes and curtailments, and notwithstanding that [REDACTED] increased its production capacity by [REDACTED] short tons from 2017 to 2018, the domestic industry's capacity decreased from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018 and [REDACTED] short tons in 2019.⁵⁰ The domestic industry's capacity was higher in interim 2020 at [REDACTED] short tons than in interim 2019 at [REDACTED] short tons.⁵¹ The domestic industry's production and U.S. shipments also decreased each full year of the POI, and the domestic industry consequently had available excess capacity throughout the POI.⁵²

Subject imports accounted for the second largest source of supply to the U.S. market. Their share of apparent U.S. consumption rose from [REDACTED] percent in 2017 to [REDACTED] percent in 2018 and [REDACTED] percent in 2019, an increase of [REDACTED] percentage points over the POI.⁵³ Subject imports' share of apparent U.S. consumption was [REDACTED] percent in interim 2019 and [REDACTED] percent in interim 2020.⁵⁴

Nonsubject imports were the smallest source of supply to the U.S. phosphate fertilizer market. Their share of apparent U.S. consumption increased from [REDACTED] percent in 2017 to [REDACTED] percent in 2018, before declining to [REDACTED] percent in 2019.⁵⁵ Nonsubject imports' share of apparent U.S. consumption was [REDACTED] percent in interim 2019 and [REDACTED] percent in interim

⁵⁰ CR/PR at Table III-3.

⁵¹ CR/PR at Tables III-4, C-1.

⁵² The domestic industry's capacity utilization rate was [REDACTED] percent in 2017, [REDACTED] percent in 2018, and [REDACTED] percent in 2019; it was lower in interim 2020, at [REDACTED] percent, than in interim 2019, at [REDACTED] percent. CR/PR at Tables III-5, C-1.

⁵³ CR/PR at Tables IV-8, C-1.

⁵⁴ CR/PR at Tables IV-8, C-1.

⁵⁵ CR/PR at Tables IV-8, C-1.

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2020.⁵⁶ According to questionnaire data, the largest nonsubject source of phosphate fertilizers to the U.S. market in 2019 was Saudi Arabia, which accounted for [REDACTED] percent of total phosphate fertilizer imports.⁵⁷

As we discussed in our Original Views,⁵⁸ [REDACTED] U.S. producers, five of ten importers, and 16 of 28 purchasers reported experiencing supply constraints during the POI.⁵⁹ However, the parties disagree on the extent of any supply shortages. Respondents generally argued that the shuttering of Mosaic's Plant City facility in 2017 and Nutrien's announcement and subsequent closure of its Redwater, Canada facility in 2019 left a "gaping hole in supply," and that imports were "pulled into" the market as a result.⁶⁰ Ten purchasers reported experiencing delays, shortages, and/or allocations from Mosaic, and [REDACTED] elaborated that Mosaic has refused to supply the firm [REDACTED] and that this caused delays in its ability to supply its customers.⁶¹ U.S. producer [REDACTED]

[REDACTED],⁶² while Mosaic acknowledged that after its decision to idle its Plant City facility in December 2017, it reduced its phosphate sales volume targets with certain

⁵⁶ CR/PR at Tables IV-8, C-1.

⁵⁷ CR/PR at IV-2, Table IV-2. Nonsubject imports from Saudi Arabia increased from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018 and [REDACTED] short tons in 2019; they were [REDACTED] short tons in interim 2019 and [REDACTED] short tons in interim 2020. In 2014, Mosaic acquired a 25 percent equity interest in Ma'aden Wa'ad Al Shamal Phosphate Company ("MWSPC"), a joint venture that began to produce phosphate fertilizers in Saudi Arabia in 2017. MWSPC currently has an annual capacity of 3.3 million short tons. CR/PR at VII-21; Mosaic Prehearing Br. at Exhibit 7 p.3.

⁵⁸ Original Views at 25-27.

⁵⁹ CR/PR at II-8 – II-9.

⁶⁰ See e.g., OCP Posthearing Brief at 2-8 and Responses to Questions pp. 7-26, 29-32, and 74-82; PhosAgro Posthearing Brief at 3; Koch's Posthearing Brief at 14; IRM Posthearing Brief at 4-7, and 9-11.

⁶¹ CR/PR at II-8-9.

⁶² CR/PR at II-8.

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larger customers – specifically, with CHS by 200,000 tons and with Gavilon by 100,000 tons relative to the prior year.⁶³ Mosaic reported that [REDACTED]
[REDACTED]
[REDACTED]”].⁶⁴

As an initial matter, we wish to clarify that to the extent that we referenced any “supply gap” in our Original Views,⁶⁵ we did so in the context of discussing party argument regarding respondents’ assertions that subject imports were “pulled” into the U.S. market to fill an alleged domestic industry supply gap. As detailed below, we find that the record does not support respondents’ assertions that the imports were “pulled into” the U.S. market to fill a “gaping hole in supply” of 1.1 million short tons that was filled by the over 1 million short ton increase in subject imports in 2018.⁶⁶

As we noted in our Original Views,⁶⁷ Mosaic asserted that idling the Plant City facility resulted in approximately 700,000 short tons of reduced supply to the U.S. market between 2017 and 2018.⁶⁸ We find Mosaic’s estimate to be credible and consistent with other record evidence.⁶⁹ We also note that, notwithstanding this estimate, the record shows that Mosaic’s

⁶³ Mosaic Posthearing Br. at Responses to Questions p. 83.

⁶⁴ Mosaic U.S. Producer Questionnaire Response at IV-16.

⁶⁵ Original Views at 26-27.

⁶⁶ See e.g., OCP Posthearing Brief at 2-8 and Responses to Questions pp. 7-26, 29-32, and 74-82; PhosAgro Posthearing Brief at 3; Koch’s Posthearing Brief at 14; IRM Posthearing Brief at 4-7, and 9-11.

⁶⁷ Original Views at 26-27.

⁶⁸ Hearing Tr. at 39 (McLellan) (“Plant City...produced about 1.4 million short tons when it was idled in 2017. We sold about 700,000 short tons of that production into the U.S. market.”).

⁶⁹ Original Views at 26, CR/PR at III-11, Mosaic Revised Domestic Producer Questionnaire at II-7. Specifically, a representative from Mosaic testified that Plant City produced about 1.4 million short tons at the time it was idled in 2017. Mosaic exported [REDACTED] percent of its total shipments in 2017, with U.S. shipments accounting for [REDACTED] percent of total shipments that year, which would be consistent with

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U.S. shipments actually only decreased from 2017 to 2018 by [REDACTED] short tons.⁷⁰ The volume of cumulated subject imports, however, increased by a greater amount – more than one million short tons – during this time, and importers’ U.S. shipments of subject imports increased by 604,000 short tons.^{71 72} We therefore find that the volume of cumulated subject imports far exceeded either the Mosaic’s reasonable estimate of its reduced supply or the

the estimate that the idling of Plant City reduced domestic supply by only 700,000 short tons rather than the full 1.4 million short tons produced at the Plant City facility. CR/PR at III-11 n.26. In contrast, export shipments accounted for a [REDACTED] during 2017-2019 and in both interim periods, accounting for no more than [REDACTED] percent in any period. *Id.*

⁷⁰ Mosaic Revised Domestic Producer Questionnaire at II-7.

⁷¹ Subject imports increased from 1,971,222 short tons in 2017 to 2,978,803 short tons in 2018. CR/PR at Table IV-2. Mosaic indicated that when it idled Plant City, it anticipated that “there would be some new imports coming in to satisfy the short-term need” because it “takes time for us to adjust.” However, it further stated that “{w}e shipped into the U.S. market from Plant City approximately 700,000 short tons. What came in was a million short tons of imports.”). Mosaic Posthearing Br. at 2-3, 13, Responses to Questions pp. 19-20; Hearing Tr. at 111 (McLellan), 127-28 (O’Rourke). Mosaic added that following a reduction in subject imports resulting from filing of the CVD petition, some [REDACTED] [REDACTED]. CR/PR at II-8-9. As evidence that subject imports exceeded the decrease in volume to the U.S. market from Plant City, although apparent U.S. consumption was [REDACTED] short tons ([REDACTED] percent) lower in 2019 than in 2017, the volume of cumulated subject imports was 725 thousand short tons higher and importers’ U.S. shipments of subject imports were 735 thousand short tons higher in 2019 than in 2017. CR/PR at Tables IV-2, C-1.

⁷² Moreover, from 2017 to 2018, while Mosaic’s U.S. shipments declined by [REDACTED] short tons, U.S. shipments of total imports (subject and nonsubject imports) increased by 967,904 short tons, with cumulated subject imports accounting for 604,981 short tons (62.5 percent of the increase in shipments of total imports). CR/PR at Table C-1. Thus, the decrease in Mosaic’s supply was offset by increased nonsubject imports as well as the larger increase in subject imports, in addition to the increased production from [REDACTED]. CR/PR at Table III-4. From 2018 to 2019, when demand decreased, U.S. shipments of nonsubject imports decreased by 65,262 short tons while U.S. shipments of subject imports increased by 148,957 short tons. CR/PR at Table C-1. Importers’ U.S. shipments of total imports increased by 1.05 million short tons from 2017 to 2019, with subject imports accounting for 71.7 percent of the increase. CR/PR at Table IV-7. In terms of import volumes (rather than importers’ U.S. shipments of imports) total imports increased by 1.4 million short tons from 2017 to 2018, with cumulated subject imports accounting for 1.0 million short tons (70.1 percent) of the increase in total import volume. CR/PR at Table IV-2. Between 2018 and 2019, the volume of cumulated subject imports was higher 725,044 short tons higher in 2019 than in 2017 and total imports were 1.05 million short tons higher, with subject imports accounting for 68.9 percent of the increase in total import volume. CR/PR at Table IV-7.

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amount by which it actually reduced its U.S. shipments, following the idling of its Plant City facility.⁷³ As such, we find respondents' argument that cumulated subject imports were merely "pulled into" the market as a result to be unavailing.⁷⁴

We likewise find unavailing the argument that Nutrien's closure of its Redwater facility in Canada in May 2019 contribute to a reduction in the supply of fertilizers in the United States.⁷⁵ As we previously explained, at the time that the closure was announced, Nutrien's CEO stated that it would increase production at its U.S. facilities to offset the reduction in supply from its Canadian facility and ensure a continued supply of phosphate fertilizers to customers in Canada.⁷⁶ Nutrien did, in fact, increase production as well as capacity in the United States.⁷⁷ Specifically, between 2018 and 2019, Nutrien increased its U.S. production by [REDACTED] short tons, which was more than sufficient to cover its [REDACTED] short ton increase in exports during that time, and Nutrien reported [REDACTED] short tons in unused capacity in 2019.⁷⁸

As we previously noted, the domestic industry had available excess capacity throughout

⁷³ We also observe that, as discussed below, combining U.S. importers' December 2018 end-of-period inventories of [REDACTED] short tons with the volume of imports in January 2019 of 720,728 short tons totals approximately [REDACTED] short tons, which exceeds even the 1.1 million short ton "supply gap" alleged by respondents in the month of January alone. CR/PR at Tables IV-6, D-1.

⁷⁴ We observe that U.S. importers' end-of-period inventories of subject imports increased from [REDACTED] short tons in 2017, which was equivalent to [REDACTED] percent of their U.S. shipments of subject imports, to [REDACTED] short tons in 2018 (equivalent to [REDACTED] percent of their U.S. shipments of subject imports) and were [REDACTED] short tons in 2019 (equivalent to [REDACTED] percent of their U.S. shipments). CR/PR at Table VII-11.

⁷⁵ See *e.g.*, OCP Posthearing Brief at 2-8 and Responses to Questions pp. 7-26, 29-32, and 74-82; PhosAgro Posthearing Brief at 3; Koch's Posthearing Brief at 14; IRM Posthearing Brief at 4-7, and 9-11.

⁷⁶ Original Views at 24, 54; CR/PR at III-3.

⁷⁷ Original Views at 24, 54; CR/PR at Table III-4.

⁷⁸ CR/PR at Table III-4; PCS/Nutrien Domestic Producer Questionnaire at II-7.

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the POI.⁷⁹ Even without Mosaic's data, in 2018, Nutrien and Simplot had a combined [REDACTED] short tons of excess capacity, which was more than sufficient to cover either Mosaic's estimated 700,000 short ton reduction in supply or its actual reduction of U.S. shipments in the amount of [REDACTED] short tons from 2017 to 2018.⁸⁰ Likewise, Nutrien and Simplot had a combined excess capacity of [REDACTED] short tons in 2019, which more than would have covered the reduction in supply due to the idling of Mosaic's Plant City facility as well as the [REDACTED] short ton increase in Nutrien's exports during that time.⁸¹ Moreover, the domestic industry maintained substantial and increasing inventories throughout the POI.⁸²

Thus, we do not find that the record indicates that there was a domestic industry supply gap and, to the extent that there was a reduction in supply related to Mosaic's idling of its Plant City facility, the increase in volume of cumulated subject imports eclipsed any such reduction, as further discussed below.

3. Substitutability and Other Conditions

We continue to find that there is a high degree of substitutability between the domestic like product and phosphate fertilizers from subject sources that are of the same chemical formulations,⁸³ and that phosphate fertilizers with different chemical formulations are broadly interchangeable, particularly when used in blends.⁸⁴ As we previously observed, the record

⁷⁹ Original Views at 24.

⁸⁰ CR/PR at Table III-4; Mosaic Revised Domestic Producer Questionnaire at II-7; Hearing Tr. at 39 (McLellan).

⁸¹ CR/PR at Table III-4.

⁸² The domestic industry's ending inventory quantities were [REDACTED] short tons in 2017 and [REDACTED] short tons in 2018 and 2019; they were [REDACTED] short tons in interim 2019 and [REDACTED] short tons in interim 2020. CR/PR at Table C-1.

⁸³ CR/PR at II-17.

⁸⁴ CR/PR at I-8-10; Mosaic Prehearing Br. at 30-31; Hearing Tr. at 32-33 (Jung).

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shows the vast majority of the domestic industry's U.S. shipments and U.S. importers' U.S. shipments of subject imports were of the same types of phosphate fertilizers – specifically, MAP and DAP.⁸⁵ Moreover, all three responding U.S. producers and most purchasers (17 of 25 firms) reported that the domestic like product and phosphate fertilizers from Morocco and Russia were always interchangeable; most U.S. importers (8 of 10 firms regarding Morocco and 8 of 9 firms regarding Russia) reported that the domestic like product and phosphate fertilizers from each subject country were always or frequently interchangeable.⁸⁶ The vast majority of responding purchasers also indicated that both domestically produced and subject imports always or usually met minimum quality specifications,⁸⁷ and only one of 27 responding purchasers reported that a domestic or foreign supplier had failed in its attempt to qualify phosphate fertilizers or had lost its approved status since 2017.⁸⁸

As discussed in the Original Views,⁸⁹ price, along with availability and quality, are important considerations in purchasing decisions. When asked to report the top three factors considered in their purchasing decisions, U.S. purchasers most often cited price (23 firms) and availability and quality (17 firms each) as their top three factors. Purchasers most frequently cited price (11 firms) as their first-most important factor, followed by availability (9 firms),⁹⁰ and the majority of purchasers (17 of 28 firms) reported that they usually purchased the lowest-

⁸⁵ CR/PR at Table IV-4.

⁸⁶ CR/PR at Table II-10.

⁸⁷ CR/PR at Table II-11.

⁸⁸ CR/PR at II-20. Specifically, [REDACTED] reported that it “typically do(es) not handle Moroccan or [REDACTED] fertilizer because it does not meet {its} product specifications in available Sulfur, and water solubility.” It also added that “[REDACTED].” [REDACTED] U.S. Purchaser Questionnaire Response at III-20; CR/PR at II-20.

⁸⁹ Original Views at 29.

⁹⁰ CR/PR at Table II-6.

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priced product.⁹¹ When asked to rate the importance of 16 factors in their purchasing decisions, U.S. purchasers most frequently cited availability and quality meets industry standards (27 firms each), followed by price and reliability of supply (26 firms).⁹² Pluralities of U.S. producers, importers, and purchasers reported that differences other than price between the domestic like product and subject imports from Morocco were sometimes significant and pluralities of U.S. importers and purchasers also reported that differences other than price between the domestic like product and subject imports from Russia were sometimes significant, while two of three U.S. producers reported that they were never significant.⁹³ In addition, majorities or pluralities of purchasers reported that the domestic like product and subject imports from each subject country were comparable on all factors (including price, availability, quality, and reliability of supply) except for one – U.S. distribution network – for which the majority of which reported that the U.S. product was superior.⁹⁴

As discussed in the Original Views,⁹⁵ U.S. prices of phosphate fertilizers are highly transparent. Phosphate fertilizer prices are reported in trade publications such as Argus Phosphates (“Argus”), CRU Phosphate Fertilizer Market Outlook (“CRU”), and Green Markets.⁹⁶

⁹¹ CR/PR at II-19.

⁹² CR/PR at Table II-7.

⁹³ CR/PR at Table II-12.

⁹⁴ CR/PR at Table II-9. Twenty of 24 responding purchasers reported that domestically manufactured phosphate fertilizers and subject imports from Morocco were comparable on price, as did 20 of 23 responding purchasers with respect to subject imports from Russia. No purchaser reported that the U.S. product was superior on price (*i.e.*, lower priced) to subject imports from Morocco or Russia. Sixteen of 24 responding purchasers reported that the U.S. product was superior or comparable on availability and reliability of supply to subject imports from Morocco, as did 20 of 23 responding purchasers with respect to subject imports from Russia. *Id.*

⁹⁵ Original Views at 30.

⁹⁶ CR/PR at V-5-6; Mosaic Prehearing Br. at 29; OCP Posthearing Br. at 6; Koch Prehearing Br. at 2; Koch Posthearing Br. at 1; Hearing Tr. at 195-196 (McGinn).

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These trade publications gather market intelligence for sales transactions, including in the NOLA region, and publish the collected range of prices on a daily or weekly basis.⁹⁷ This price information is then quickly transmitted throughout the U.S. market.⁹⁸ Two of three U.S. producers ([REDACTED]), two of nine U.S. importers ([REDACTED]), and 16 of 28 purchasers reported that they refer to and use prices published in trade publications when negotiating prices.⁹⁹

As previously noted, both domestically produced and imported phosphate fertilizers are primarily sold from inventories.¹⁰⁰ U.S. producers reported that [REDACTED] percent of their commercial shipments in 2019 came from inventory, with lead times averaging [REDACTED] days, and importers reported that [REDACTED] percent of their commercial shipments in 2019 came from inventory, with lead times averaging [REDACTED] days.¹⁰¹ The [REDACTED] of U.S. producers' U.S. commercial shipments and [REDACTED] half of U.S. importers' U.S. commercial shipments were made on a spot sale basis in 2019.¹⁰²

During the POI, phosphate fertilizers from all sources were shipped through the same

⁹⁷ CR/PR at V-5; Hearing Tr. at 147 (O'Rourke). Two of three U.S. producers, six of ten importers, and 12 of 27 purchasers reported their own prices to trade publications. CR/PR at V-6.

⁹⁸ Simplot Posthearing Br. at Responses to Questions pp. 60-61.

⁹⁹ Purchasers reported using Green Markets (9 firms); Profercy (6 firms); Argus and Fertecon (3 firms); ICIS (2 firms); and CRU, FIS Index, and FMB (1 firm each). Several reported using NOLA barge or NOLA f.o.b. prices, but did not specify a particular publication. CR/PR at V-6.

¹⁰⁰ CR/PR at II-17.

¹⁰¹ CR/PR at II-17. Importers also reported that [REDACTED] percent of their commercial shipments in 2019 came from the foreign manufacturers' inventories, with lead times averaging [REDACTED] days, and [REDACTED] percent were produced-to-order, with lead times averaging [REDACTED] days.

¹⁰² CR/PR at Table V-3. U.S. producers reported that [REDACTED] percent of their U.S. sales were made on a spot basis, [REDACTED] percent on a short-term contract basis, and [REDACTED] percent on a long-term contract basis. U.S. importers reported that [REDACTED] percent of their U.S. sales were made on a spot basis, [REDACTED] percent on a short-term contract basis, and [REDACTED] percent on an annual contract basis. *See id.* Furthermore, more than half of the responding purchasers (15 of 29 firms) reported that they purchase phosphate fertilizers on a daily or weekly basis. CR/PR at V-7.

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channels of distribution (mainly to retailers, followed by distributors)¹⁰³ primarily by either barge, rail, or truck.¹⁰⁴ Specifically, U.S. importers reported that 61.6 percent of their 2019 sales of subject fertilizers were shipped by barge, 10.8 percent by rail, and 27.7 percent by truck.¹⁰⁵ U.S. producers reported that 12.4 percent of their U.S. shipments were by barge, 47.1 percent by rail, 24.7 percent by truck, and 15.8 percent by another method (including by vessel or title transfer).¹⁰⁶ U.S. producers and importers responding to the questionnaires in the remand proceedings reported using a variety of modes of transportation (including barge, rail, truck, and intermodal) to ship phosphate fertilizer during the POI.¹⁰⁷

As discussed above, most U.S. purchasers reported that the domestic like product's U.S. distribution network was superior to that of subject imports.¹⁰⁸ Respondents state that most imports of phosphate fertilizers from Morocco and Russia were shipped to NOLA, loaded on barges, and transported up the Mississippi River and its tributaries.¹⁰⁹ Mosaic reports that like subject imports, it transloads product onto river barges at NOLA that are moved up the Mississippi River to warehouse positions located on the inland U.S. waterways.¹¹⁰ Mosaic explains that its U.S. distribution network is expansive, comprising nearly [REDACTED] with approximately [REDACTED] short tons in storage capacity, which allows it to reach customers located throughout the United States. Specifically, its network includes: [REDACTED]

¹⁰³ CR/PR at Table II-1.

¹⁰⁴ CR/PR at V-4.

¹⁰⁵ CR/PR at V-4.

¹⁰⁶ CR/PR at V-4.

¹⁰⁷ See Remand Questionnaire Responses at 2(d).

¹⁰⁸ CR/PR at Table II-9.

¹⁰⁹ CR/PR at IV-11 n.16, V-4; Gavilon Prehearing Br. at 28-29; PhosAgro Prehearing Br. at 3; IRM Prehearing Br. at 14-15; Koch Posthearing Br. at 3-4.

¹¹⁰ Mosaic Prehearing Br. at 32; Mosaic Posthearing Br. at Responses to Questions, pp. 91-93.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹¹¹ In addition, Simplot, whose production facilities are located in Pocatello, Idaho and Rock Spring Wyoming, states that it ships product to and has warehouses in the West and Midwest regions of the United States.¹¹²

The additional questionnaire information gathered in these remand proceedings further demonstrate the breadth and superiority of U.S. producers' distribution networks. For example, Mosaic reiterates that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹¹³ Mosaic describes that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹¹ Mosaic Posthearing Br. at Responses to Questions pp. 91-93.

¹¹² CR/PR at Table III-1; Simplot Posthearing Br. at Responses to Question pp. 24-25, Exhibits 4, 20. Simplot explains that it has supply chain operations and warehouses [REDACTED] and that it has sold product not only to the West, but also Midwest, regions of the United States for years. Simplot Posthearing Br. at Responses to Question pp. 24-25, Exhibits 4, 20.

¹¹³ Mosaic Domestic Producer Remand Questionnaire at 2(a) – 2(d).

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[REDACTED].¹¹⁴ According to Mosaic, [REDACTED]

[REDACTED]

[REDACTED].¹¹⁵ For example, Mosaic reports

that [REDACTED]

[REDACTED]

[REDACTED].¹¹⁶

Simplot reports that [REDACTED]

[REDACTED]

[REDACTED].¹¹⁷ Simplot reports that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹¹⁸ Simplot further reports that [REDACTED]

[REDACTED]

[REDACTED].¹¹⁹ In addition, PCS Phosphate Company, Inc. (Nutrien)

reports that [REDACTED].¹²⁰ PCS (Nutrien) reports

that [REDACTED]

[REDACTED].¹²¹

¹¹⁴ Mosaic Domestic Producer Remand Questionnaire at 2(a).

¹¹⁵ Mosaic Domestic Producer Remand Questionnaire at 2(a) – 2(c).

¹¹⁶ Mosaic Domestic Producer Remand Questionnaire at 2(c).

¹¹⁷ Simplot Domestic Producer Remand Questionnaire at 2(a) – 2(c).

¹¹⁸ Simplot Domestic Producer Remand Questionnaire at 2(a).

¹¹⁹ Simplot Domestic Producer Remand Questionnaire at 2(b)-2(c). Simplot further explains that

[REDACTED] . *Id.* at 2(c).

¹²⁰ PCS (Nutrien) Domestic Producer Remand Questionnaire at 2(a).

¹²¹ PCS (Nutrien) Domestic Producer Remand Questionnaire at 2(b).

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Importers, on the other hand, report less extensive inventory networks,¹²² and less movement of inventories, although one importer did report relocating [REDACTED] short tons of product in 2019 due to [REDACTED].¹²³ The remaining importers report that their distribution networks were “unidirectional” and that once delivered to an inventory or customer location, product was not subsequently relocated but rather remained at that location.¹²⁴ OCP also claims that, unlike [REDACTED], importers do not retain title to product that is delivered to its intended destination, meaning that [REDACTED].¹²⁵ Thus, we find that the record in the remand proceedings continues to show that domestic producers possess superior distribution capabilities compared to importers of subject merchandise. Further, the remand record shows that domestic producers reported moving substantial quantities of inventory between locations and that importers did not do so for subject imports.¹²⁶

¹²² See, e.g., EuroChem Importer Remand Questionnaire at 2(a) (reporting [REDACTED]); Koch Importer Remand Questionnaire at 2(a) (reporting [REDACTED]); Macrosource (formally Gavilon) Importer Remand Questionnaire at 2(a) (reporting [REDACTED]); ADM Importer Remand Questionnaire at 2(a) (reporting [REDACTED]); ADM Importer Remand Questionnaire at 2(a) (reporting [REDACTED]). [REDACTED] did not report any inventories of subject imports during the POI and importers [REDACTED] did not specify the locations of any inventories that they maintained during the POI. See Importer Remand Questionnaires of [REDACTED].

¹²³ [REDACTED] Importer Remand Questionnaire at 2(b).

¹²⁴ See Importer Remand Questionnaires of [REDACTED].

¹²⁵ OCP Comments at 11.

¹²⁶ See Remand Questionnaires at 2(b).

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As we further found in the Original Views,¹²⁷ in addition to possessing an extensive distribution network, the domestic industry is vertically integrated with respect to the main raw material inputs used to produce phosphate fertilizers – sulfur, ammonia, and phosphate rock.¹²⁸ [REDACTED] produce sulfur and mine and beneficiate phosphate rock, although these raw materials are sometimes purchased.¹²⁹ Moreover, [REDACTED] and Mosaic produces and purchases ammonia.¹³⁰ During the period of investigation, prices of phosphate rock reported in CRU was relatively stable, while prices of ammonia fluctuated widely from January 2017 to January 2020, stabilized, then decreased between April and July 2020.¹³¹ Prices for sulfur increased from January 2017 to the end of 2018, decreased through January 2020, stabilized, then increased and remained stable through July 2020.¹³² Consistent with this, [REDACTED] and five of nine importers reported that raw material costs fluctuated with no clear trend over the POI.¹³³ Domestic producers' raw material costs as a share of cost of goods sold ("COGS") increased by [REDACTED] percentage points from [REDACTED] percent in 2017 to [REDACTED] percent 2019 and was [REDACTED] percent in interim 2020.¹³⁴

¹²⁷ Original Views at 31-33.

¹²⁸ CR/PR at V-1. U.S. producers reported that sulfur comprised approximately [REDACTED] percent of their total raw material costs in 2019, ammonia [REDACTED] percent, phosphate rock [REDACTED] percent, and other raw material inputs [REDACTED] percent. *See id.*

¹²⁹ CR/PR at V-1. [REDACTED] reported purchasing sulfur, and respondent OCP stated that [REDACTED].
[REDACTED].
CR/PR at V-1; OCP Prehearing Br. at 14-15.

¹³⁰ CR/PR at V-1. Mosaic stated that it produces one-third of its ammonia, purchases another third on the open market, and acquires a third through a long-term contract with CF Industries. Mosaic Posthearing Br. at Responses to Questions p. 95.

¹³¹ CR/PR at Figure V-1.

¹³² CR/PR at Figure V-1.

¹³³ CR/PR at Table V-1.

¹³⁴ CR/PR at V-1.

Public Version**B. Volume of Subject Imports**

Section 771(7)(C)(i) of the Tariff Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹³⁵

As in the Original Views,¹³⁶ we continue to find that the volume of cumulated subject imports and the increase in that volume were significant in absolute terms and relative to apparent consumption in the United States during the POI. As we found in the Original Views,¹³⁷ the volume of cumulated subject imports increased from 2.0 million short tons in 2017 to 3.0 million short tons in 2018, before decreasing to 2.7 million short tons in 2019, for an overall increase of 36.8 percent between 2017 and 2019.¹³⁸ Cumulated subject imports were lower in interim 2020 at 1.2 million short tons than in interim 2019, at 2.0 million short tons.¹³⁹ U.S. importers’ U.S. shipments of subject imports increased from 1.8 million short tons in 2017

¹³⁵ 19 U.S.C. § 1677(7)(C)(i).

¹³⁶ Original Views at 33-35.

¹³⁷ Original Views at 33-35.

¹³⁸ CR/PR at IV-3, Table IV-2.

¹³⁹ CR/PR at Table IV-2. As previously discussed, the parties acknowledge that the filing of the petitions at the end of June 2020 resulted in a large decrease of subject imports to the U.S. market. Mosaic Prehearing Br. at 43-44, 91; Simplot Prehearing Br. at 29-30, 34; Simplot Posthearing Br. at Responses to Questions pp. 53-54; Mosaic Posthearing Br. at Responses to Questions pp. 69-70; OCP Posthearing Br. at 12, Responses to Questions p. 33, 67-73; EuroChem Posthearing Br. at 11; IRM Posthearing Br. at 8-9; PhosAgro Posthearing Br. at 12-13, Responses to Questions. Some U.S. importers indicated that they stopped bringing in subject imports “because the buyers and the sellers agreed that the risk of 75 percent countervailing duties was higher than either of them wanted to take.” Hearing Tr. at 337 (Aranoff); *see also* EuroChem Posthearing Br. at 11 (stating that as a result of the filing of the petitions, it shifted its purchases of phosphate fertilizers from Morocco and Russia to other global sources); [REDACTED] U.S. Purchaser Questionnaire Response at III-11 (reporting that Koch and IRM will not quote or import material until the countervailing duty decision is issued); [REDACTED] U.S. Purchaser Questionnaire Response at III-11 (reporting that Helm, Koch, and OCP “cut off” supplying imported product to the U.S. market in the summer of 2020). Monthly import data also confirm that subject import volume from Morocco and Russia showed notable declines after the petitions were filed at the end of June 2020, and subject import end-of-quarter inventories also declined. CR/PR at Tables IV-6 and D-1.

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to 2.4 million short tons in 2018, and increased again to 2.5 million short tons in 2019. U.S. shipments of subject imports declined between the interim periods, from 1.9 to 1.3 million short tons.¹⁴⁰

Cumulated subject imports' market share also increased from 2017 to 2019. U.S. shipments of subject imports increased from [REDACTED] percent of apparent U.S. consumption in 2017 to [REDACTED] percent in 2018. Although the volume of cumulated imports of subject phosphate fertilizers decreased between 2018 and 2019, the volume of U.S. shipments of subject imports increased by 6.2 percent while apparent U.S. consumption declined by [REDACTED] percent during the same period.¹⁴¹ Consequently, cumulated subject imports continued to gain market share, which increased from [REDACTED] percent in 2018 to [REDACTED] percent in 2019, for an overall [REDACTED] percentage point increase in market share between 2017 and 2019 as the domestic industry lost [REDACTED] percentage points of market share over the same period.^{142 143}

We therefore continue to find that the volume of cumulated subject imports and the

¹⁴⁰ CR/PR at Table C-1. End-of-period inventories of subject imports held by U.S. importers [REDACTED] percent between 2017 and 2018, from [REDACTED] short tons to [REDACTED] short tons, before a decline to [REDACTED] short tons in 2019.

¹⁴¹ CR/PR at Tables IV-2, IV-7-8, C-1.

¹⁴² CR/PR at Tables IV-8, C-1. The domestic industry's market share declined from [REDACTED] percent in 2017 to [REDACTED] percent in 2018 and [REDACTED] percent in 2019. *See id.*

¹⁴³ Subject imports decreased substantially after the filing of the petitions at the end of June 2020. CR/PR at Table IV-6. As a result, subject imports' market share was lower in interim 2020, at [REDACTED] percent than in interim 2019, at [REDACTED] percent. CR/PR at Tables IV-8, C-1. At the same time, the domestic industry's U.S. shipments and market share increased. Mosaic diverted shipments that had been destined for export markets and drew down inventories, for a total of [REDACTED] short tons in additional sales in interim 2020 compared to interim 2019. Mosaic Posthearing Br. at Responses to Questions p. 84; Mosaic U.S. Producer Questionnaire Response at IV-16. [REDACTED] also reported more U.S. shipments in interim 2020 than in interim 2019. [REDACTED] U.S. Producer Questionnaire Responses at II-7; [REDACTED] U.S. Producer Questionnaire Responses at II-7. Consequently, the domestic industry's market share was higher in interim 2020, at [REDACTED] percent than in interim 2019 at [REDACTED] percent.

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increase in that volume were significant in absolute terms and relative to apparent consumption in the United States during the period of investigation.

As directed by the court, in this remand determination, we have added to our volume analysis an explanation of how our volume findings are consistent with our findings on conditions of competition in the U.S. phosphate fertilizer market. Nonetheless, we respectfully maintain that our original determinations are consistent with our statutory mandate, and that, while the statute permits the Commission to look beyond the quantitative volume data for purposes of its volume findings, the statute nowhere mandates that the Commission perform such an analysis.

In its opinion, the court stated that 19 U.S.C. § 1677(7)(C)(iii) requires that the Commission “apply its findings regarding the conditions of competition to its analysis of the three statutory factors: subject import volume, price effects, and impact on the domestic industry.”¹⁴⁴ The specific clause cited by the court, however, applies only to the Commission’s impact analysis.¹⁴⁵ Section 1677(7)(C) is divided into four clauses: (i) Volume; (ii) Price; (iii) Impact on affected domestic industry; and (iv) Captive production. The requirement to consider the conditions of competition follows directly after, and specifically refers to the impact clause (clause (iii)): “The Commission shall evaluate all relevant economic factors

¹⁴⁴ Remand Order at 26 (citing *Altx, Inc. v. United States*, 26 CIT 709, 719 (2002); *Nucor Corp. v. United States*, 28 CIT 188, 207 (2004), *aff’d*, 414 F.3d 1331 (Fed. Cir. 2005); *Nippon Steel Corp. v. United States*, 25 CIT 1415, 1420 (2001); *Hynix Semiconductor, Inc. v. United States*, 30 CIT 1208, 1222 (2006)). We note that the finding in *Hynix Semiconductor* is consistent with what we view to be the plain language of the statute, as the issue in that case concerned the Commission’s impact analysis. See 30 CIT at 1220. Likewise, in affirming the trial court in *Nucor*, the Federal Circuit held that “Section 1677(7)(C)(iii) in turn requires the Commission, in determining the *impact* of the subject imports on domestic producers, to ‘evaluate all relevant economic factors which have a bearing on the state of the industry in the United States.’” 414 F.3d at 1336-37 (emphasis added).

¹⁴⁵ 19 U.S.C. § 1677(7)(C)(iii).

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described **in this clause** within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁴⁶ Lest there be any doubt that each of the four roman numerals constitutes a “clause,” this is made clear in the captive production clause (clause (iv)), wherein the statute explicitly refers to elements of the impact analysis as falling within “clause (iii)”: “[T]he Commission, in determining market share and the factors affecting financial performance set forth in **clause (iii)**, shall focus primarily on the merchant market for the domestic like product.”¹⁴⁷ Thus, on its face, section 1677(7)(C)(iii) requires that the Commission consider the relevant economic factors described in the impact clause, clause (iii), within the context of business cycle and conditions of competition but does not impose such a requirement with respect to its analysis of volume, clause (i), and price effects, clause (ii).^{148 149} Although we comply with the court’s remand instructions below, this statutory framework informs our analysis.¹⁵⁰

To comply with the court’s remand instructions, we now assess whether “fertilizer was

¹⁴⁶ *Id.* (emphasis added).

¹⁴⁷ 19 U.S.C. § 1677(7)(C)(iv) (emphasis added).

¹⁴⁸ We note that, although 19 U.S.C. § 1677(7)(C)(iii) is not applicable to the Commission’s volume and price effects analyses, the statute does not preclude the Commission from considering conditions of competition or other relevant economic factors in its volume and price effects analyses, if the Commission finds it appropriate to do so, as it did here, for example, in considering the weather events and demand conditions in its price effects analysis. See 19 U.S.C. § 1677(7)(B)(ii).

¹⁴⁹ The interrelationship between the conditions of competition requirement and the impact analysis is further supported by the reference in that paragraph to conditions “that are distinctive to the affected industry.” 19 U.S.C. § 1677(7)(C)(iii). Without question “the affected industry” refers to the domestic producers of the domestic like product, as reflected in the statute’s definition of “industry.” 19 U.S.C. § 1677(4). In turn, clause (iii) of section 1677(7)(C) (Impact) requires an evaluation of “all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry” – an evaluation that is logically connected to the conditions of competition distinctive to that industry.

¹⁵⁰ As the Federal Circuit ultimately held in *Altx*, the court should not “ask more of the Commission than required by the statute.” *Altx, Inc. v. United States*, 370 F. 3d 1108, 1123 (Fed. Cir. 2004).

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‘practically unavailable from U.S. sources’ to supply high-demand regions in 2019 because doing so would not have been economically viable.”¹⁵¹ ¹⁵² Despite declines in the domestic industry’s capacity during the POI,¹⁵³ the domestic industry had excess capacity throughout the

¹⁵¹ See Remand Order at 41.

¹⁵² We understand the court’s reference to “U.S. sources” in its remand order in the context of its review of the Commission’s volume discussion to refer to domestically produced fertilizers. This appears to be consistent with the court’s citation to *Altx v. United States*, 26 CIT 709 (2002), in which the court held that “the Commission failed to analyze whether the increase in volume and market share of subject imports corresponds, in whole or in part, to that portion of the market recognized by the Commission as not supplied by the domestic industry (either because of incapability or lack of viability)” and instructed the Commission to “analyze the significance of subject import volume in terms of product types and availability and practically unavailable from U.S. sources during the POI, and to the extent possible, group the data on viability of domestic sources in a manner that reflects the actual limitations.” In any event, even if the court intended “U.S. sources” to include U.S. shipments of subject imports, it would not alter our finding that the volume of cumulated subject imports, and increase in their volume, were significant. As we found in our original price effects analysis and again explain below in our analysis of price effects, the volume of cumulated subject imports exceeded demand in 2019, irrespective of the reshipment issue. Accordingly, even assuming that fertilizer was practically unavailable from *subject imported* inventories held by U.S. importers to supply regions not affected by the extreme weather in 2019, we would continue to find the volume of cumulated subject imports, and increase in that volume, to be significant.

¹⁵³ As described in our Original Views, the domestic industry’s capacity decreased from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018 and [REDACTED] short tons in 2019, and the declines in the domestic industry’s capacity were attributed to Mosaic. Original Views at 23, 49; CR/PR at Table III-4. The larger decline from 2017 to 2018 coincided with its idling of the Plant City facility in December 2017. Additionally, we note that, contrary to respondents’ claims, this did not cause a “supply gap” that explains the increase subject import volume, as discussed above. The domestic industry’s capacity declined to a lesser extent from 2018 to 2019, but as described above, even with these reductions in capacity, the domestic industry maintained excess capacity. We further note that Simplot maintained the same level of capacity throughout the POI, while Nutrien increased capacity from 2017 to 2018 and maintained the same level of capacity from 2018 to 2019. CR/PR at Table III-4. Moreover, we observe that in 2019, Nutrien was reported in an *Argus* article as “refer[ing] to potential further US production cuts as ‘a futile game’ . . . , stating that any cut would simply result in greater imports.” Petitions, Exhibit I-43. The article continues –

Nutrien argues that the market is weak because of fundamental structural oversupply and that further cuts simply signal to OCP, Russian and other producers to ship to the US. It is a clear message to its competitor, Mosaic, which accounts for around three-quarters of US phosphates production. It is rare for any producer to speak in such plain language, but the assessment is spot on.... Nutrien’s view that

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POI, and in 2019, its capacity utilization was [REDACTED] percent, meaning that the domestic industry had [REDACTED] short tons of excess capacity in 2019.¹⁵⁴

We also note that, in addition to this excess capacity, domestic producers maintained substantial inventories in 2019. Domestic producers' end-of-period inventories by quarter were [REDACTED] short tons in March 2019, [REDACTED] short tons in June 2019, and [REDACTED] short tons in September and December 2019.¹⁵⁵ Furthermore, the supplementary questionnaire information obtained in these remand proceedings indicates that domestic producers maintain these inventories [REDACTED] [REDACTED].¹⁵⁶ We observe that the record both in the original investigations and as supplemented on remand show that domestic producers rely upon [REDACTED] [REDACTED], and newly obtained information confirms that domestic producers [REDACTED] [REDACTED].¹⁵⁷

supply cuts in the US will not deter shipments from competitors is correct but Mosaic has little choice.... The supplier is now left with the uncomfortable decision of whether to cut production in a bid to stop losing money and eroding shareholder value, or cede domestic market share to foreign lower-cost producers.

Id.

¹⁵⁴ CR/PR at Tables III-4, C-1.

¹⁵⁵ CR/PR at Table D-1.

¹⁵⁶ See [REDACTED]

¹⁵⁷ See [REDACTED]

[REDACTED] . Although we note that Mosaic reports that [REDACTED] [REDACTED] Mosaic Domestic Producer Remand Questionnaire at 2(c). Likewise, Simplot reports that [REDACTED]

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In sum, we find that the record from the original investigations and as supplemented in these remand proceedings indicates that the domestic industry's excess capacity, substantial inventories, extensive inventory locations, expansive multi-modal distribution network, and demonstrated ability to move and relocate product where it was needed shows that domestic producers were well-positioned to supply the U.S. market in 2019. Accordingly, having considered the conditions of competition as directed by the court in its remand order, we find that the record does not indicate that fertilizer was "practically unavailable from U.S. sources" such that it would alter our finding that that the volume of cumulated subject imports and the increase in that volume were significant in absolute terms and relative to apparent consumption in the United States during the POI.

C. Price Effects of the Subject Imports

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

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁵⁸

As previously discussed, we continue to find that there is a high degree of substitutability between subject imports and the domestic like product that are of the same

. Simplot Domestic Producer Remand Questionnaire at 2(a) – 2(c).

¹⁵⁸ 19 U.S.C. § 1677(7)(C)(ii).

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chemical formulation, and price is an important consideration in purchasing decisions, along with availability and quality.

As discussed in the Original Views,¹⁵⁹ the Commission in the final phase of these investigations collected monthly pricing data from U.S. producers and importers for the total quantity and f.o.b. value of two phosphate fertilizer products shipped in bulk (*i.e.*, barge-load) from NOLA to unrelated U.S. agricultural customers.^{160 161} One U.S. producer ([REDACTED]) and seven importers provided usable pricing data, although not all firms reported pricing for both products for all months of the POI.¹⁶² Pricing data reported by these firms accounted for approximately [REDACTED] percent of U.S. producers' U.S. shipments, [REDACTED] percent of U.S. shipments of subject imports from Morocco, and [REDACTED] percent of U.S. shipments of subject imports from Russia in 2019.¹⁶³

The pricing data show that cumulated subject imports undersold the domestic like

¹⁵⁹ Original Views at 35-39.

¹⁶⁰ CR/PR at V-9. The two pricing products were: (1) Standard-grade monoammonium phosphate (MAP), chemical formula $\text{NH}_4\text{H}_2\text{PO}_4$, granular, excluding high-purity MAP; and (2) Standard-grade diammonium phosphate (DAP), chemical formula $(\text{NH}_4)_2(\text{HPO}_4)$, granular. *See id.*

¹⁶¹ The record indicates that the "f.o.b. NOLA price" is a universal price benchmark denoting a loaded barge at a dock/fleeting point in New Orleans irrespective of where the product originated, and is used as a primary point of reference in price negotiations in the U.S. market. Mosaic Posthearing Br. at Responses to Questions pp. 28-32; Simplot Posthearing Br. at Responses to Questions pp. 60-62; Hearing Tr. at 33-34 (Jung), 287 (Grodén). In their daily or weekly price listings, trade publications Argus and Green Markets include "f.o.b. from NOLA" or "NOLA Barge" phosphate fertilizer prices. CR/PR at V-5 n.5. Domestic producers, therefore, compete with subject imports upon the f.o.b. NOLA price in selling product, and Mosaic states that to compete against subject imports at NOLA from its plants in Florida, it has to absorb the \$20 per short ton cross-Gulf freight costs. Mosaic Posthearing Br. at Responses to Questions pp. 29-32; Simplot Posthearing Br. at Responses to Questions pp. 60-62. Thus, "for a selling price of \$300/ST fob NOLA to be competitive with subject imports, it would have to be priced at \$280/ST fob Florida plant." Mosaic Posthearing Br. at Responses to Questions p.30.

¹⁶² CR/PR at V-9. [REDACTED]

[REDACTED] . CR/PR at V-9 n.12.

¹⁶³ CR/PR at V-9.

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product in 34 of 170 instances (involving 381,132 short tons) at underselling margins ranging from 0.02 to 4.4 percent and an average underselling margin of 1.7 percent. Subject imports oversold the domestic like product in the remaining 136 instances (involving 2.0 million short tons) at overselling margins between 0.02 and 17.6 percent with an average overselling margin of 3.7 percent.¹⁶⁴

We observe that underselling and overselling margins were small and prices of the domestic like product and subject imports tracked each other closely over the POI.¹⁶⁵ That subject imports and the domestic like product were similarly priced is consistent with the high degree of substitutability between the domestic like product and subject imports, as well as the price transparency that existed in the U.S. phosphate fertilizer market. Most purchasers reported that prices of the domestic like product were comparable to prices of subject imports from Morocco and Russia (the remaining purchasers reported that prices for the domestic like product were inferior, *i.e.*, higher priced).¹⁶⁶ Some purchasers also confirmed purchasing subject imports instead of the domestic like product due to their lower prices. Seventeen of 28

¹⁶⁴ CR/PR at Table V-7.

¹⁶⁵ CR/PR at Tables V-4-5, V-7. On average, the underselling margin was [REDACTED] percent for product 1 and [REDACTED] percent for product 2 while the overselling margin was [REDACTED] percent for product 1 and [REDACTED] percent for product 2. CR/PR at Table V-7. A Mosaic representative testified at the hearing that “{t}he Commission's price data show more instances of overselling than underselling. The Commission should not construe this as evidence of the absence of adverse price effects to the domestic industry. First, prices are close, with average over- or underselling margins within {what} one would expect for a commodity industry with transparent pricing. But the price trends between U.S. producers and importers were very highly correlated over time.” Hearing Tr. at 51 (Klett).

¹⁶⁶ CR/PR at Table II-9. Twenty of 24 firms reported that the domestic like product and subject imports from Morocco were comparable on price; 20 of 23 did so for the domestic like product and subject imports from Russia. Four and three purchasers reported prices of the domestic like product to be inferior (*i.e.*, higher priced) to prices of subject imports from Morocco and Russia, respectively, while no purchaser reported prices of the domestic like product to be superior (*i.e.*, lower priced) to prices of subject imports from Morocco or Russia. *Id.*

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U.S. purchasers reported that they had purchased imported phosphate fertilizers from Morocco and/or Russia instead of the domestic like product. Nine of these 17 purchasers reported that subject imports were lower priced than the domestic product, and 5 of these 9 purchasers reported that price was a primary reason for purchasing subject imports rather than the domestic like product.¹⁶⁷ Four U.S. purchasers confirmed lost sales totaling 733,895 short tons over the POI.¹⁶⁸ In addition, as discussed further below, the record indicates that importers of

¹⁶⁷ CR/PR at Table V-9.

¹⁶⁸ CR/PR at Table V-9. Respondents argued that [REDACTED], which accounted for [REDACTED] percent of the total quantity of reported lost sales, directly contradicted its lost revenue response submitted in the preliminary phase of the investigations, and upon this basis, request that [REDACTED] reported amount be discounted. OCP Prehearing Br. at 96-97; Gavilon Prehearing Br. at 50. We continue to find, however, that the record does not support disregarding the [REDACTED] short tons of subject imports that [REDACTED] reported purchasing instead of the domestic like product due at least in significant part to the lower price of subject imports. In these final phase investigations, Growmark reported that subject imports were priced lower than the domestic product, and that price was a primary reason for purchasing subject imports instead of domestic product. [REDACTED]

[REDACTED]

CR/PR at V-23 n.14 (emphasis provided). Thus, while some portion of the reported quantity of lost sales may also have been influenced by non-price reasons, [REDACTED] clarified that [REDACTED] and that [REDACTED].

We also note that [REDACTED] response regarding U.S. producers' price reductions further supports that it increased its purchases of subject imports for price reasons. In reporting that U.S. producers [REDACTED]

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subject merchandise in instances offered lower prices than domestic producers during 2019 in a declining market.¹⁶⁹ Thus, while we recognize the prevalence of overselling in the pricing data, we continue to find that the record demonstrates that, consistent with the high degree of price transparency in this market, the prices of the domestic product and subject imports tracked each other closely and were generally comparable with small margins of underselling and overselling, that subject imports were in some instances lower priced, and the domestic industry lost sales to subject imports because of lower prices.

We also considered price trends for the domestic like product and subject imports. During the POI, prices for both the domestic like product and subject imports increased between 2017 and most of 2018, and then declined between 2018 and 2019.¹⁷⁰ Prices in interim 2020 increased, but remained below levels in January 2017 until after the filing of the petitions at the end of June 2020, after which prices experienced dramatic increases as subject import volumes to the U.S. market decreased and subject import end-of-period inventory levels decreased.¹⁷¹

[REDACTED]

CR/PR at V-26.

¹⁶⁹ Mosaic Posthearing Brief at Responses to Questions, pp. 44-46 and Exhibits 50 and 51.

¹⁷⁰ CR/PR at Tables V-4-5.

¹⁷¹ CR/PR at Tables V-4-5, Figure V-4. Between 2017 to 2019, prices for the domestic like product decreased overall by [REDACTED] percent for pricing product 1 and by [REDACTED] percent for pricing product 2. Prices for subject imports decreased overall by [REDACTED] percent for pricing product 1 and by [REDACTED] percent for pricing product 2. Derived from CR/PR at Tables V-4-5. U.S. importers' inventories of subject imports declined from [REDACTED] short tons at the end of the interim 2019 period to [REDACTED] short tons at the end of the interim 2020 period. CR/PR at Table C-1.

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The record shows that significant and increasing volumes of subject imports entered the U.S. market between 2017 and 2018 and remained at significant levels in 2019 despite a substantial demand decline due to what an OCP witness characterized as “Black Swan” level of rainfall beginning in the fall of 2018 and lasting through 2019.^{172 173} As respondents acknowledge, heavy precipitation in the fall of 2018, a polar vortex in the winter of 2018-2019, and record setting precipitation in the spring of 2019 caused massive flooding and prolonged river closures along the Mississippi River system that stranded fertilizer barges and resulted in delayed, destroyed, or abandoned plantings, especially in the Midwest and Great Plains regions.¹⁷⁴ Accordingly, while U.S. demand increased overall between 2017 and 2018, demand began to decline in the latter part of 2018 and continued into 2019, as the unusual weather conditions impacted three consecutive planting seasons - fall of 2018, spring of 2019, and fall of 2019. OCP observed that the USDA’s Farm Service Agency, which tracks agricultural acreage that farmers did not use in a particular season, reported that the volume of “prevented planting acreage” in 2019 set a U.S. record – by a wide margin – at 19.6 million acres.¹⁷⁵ Apparent U.S.

¹⁷² Hearing Tr. at 191-93 (Rahm); *see also* Mosaic Prehearing Br. at 88-91; Mosaic Posthearing Br. at 3, 13, Responses to Questions pp. 20-21.

¹⁷³ We note that, although the statute does not require us to consider conditions of competition and business cycles in our price effects analysis, we have considered certain pertinent conditions of competition and business cycles here.

¹⁷⁴ *See, e.g.*, OCP Prehearing Br. at 35-36, 46-48; Gavilon Prehearing Br. at 11-12; PhosAgro Prehearing Br. at 6-7; IRM Prehearing Br. at 15-16; PhosAgro Posthearing Br. at 3-4. As further detailed below, the trade publication Argus repeatedly referenced oversupply conditions in early 2019, as follows: “The ‘polar vortex’ in the US midwest saw temperatures plummet. The US domestic market followed suit. Put simply, the US market ‘tanked’ on cold weather, a full pipeline and heavy imports (January 31, 2019); “[T]he US is awash with imports . . . Pushing so much DAP/MAP to the US has led to oversupply” (February 7, 2019); “The US has a record surplus of phosphates entering the spring season, boosted by weak sales, terrible weather conditions and heavy 1Q imports, which reached a record 1.2mn t of DAP/MAP, up 27pc yoy” (March 28, 2019). Petition, Volume I, Exhibits I-29, I-30, I-33.

¹⁷⁵ OCP Prehearing Br. at 47-48.

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consumption of phosphate fertilizers declined by [REDACTED] percent from 2018 to 2019, by more than [REDACTED] short tons, to below the level of apparent U.S. consumption in 2017.^{176 177}

Yet despite these market conditions, subject imports continued to enter the market in large volumes in 2019 and in excess of any purported need to restock inventory in regions that were unaffected by weather.¹⁷⁸ It is uncontroverted that the volume of cumulated subject imports increased from 2.0 million short tons in 2017 to 3.0 million short tons in 2018.¹⁷⁹ It is

¹⁷⁶ U.S. apparent consumption declined by [REDACTED] percent from 2018 to 2019, reflecting a [REDACTED] percent decline in U.S. producers' U.S. shipments, an 11.8 percent decline in U.S. shipments of nonsubject imports, and a 6.2 percent *increase* in U.S. shipments of cumulated subject imports. CR/PR at Table C-1. As a result, from 2018 to 2019, cumulated subject imports' market share increased by [REDACTED] percentage points; the domestic industry's market share decreased by [REDACTED] percentage points; and nonsubject imports' market share decreased by [REDACTED] percentage points. *Id.*

¹⁷⁷ In its remand order, the court addressed the Commission's finding that subject imports exceeded demand, contributing to oversupply conditions that resulted in price depression. The court stated that this finding "was vulnerable to the Plaintiffs' rebuttal that bad weather, not imports, was responsible for declining demand. Section 1677(7) requires that any material injury be 'by reason of' subject imports, and unprecedented weather events that frustrated demand projections were a potential intervening cause." Remand order at 42-43. To clarify, we did not and do not find that subject imports were responsible for declining demand. Rather, as discussed above, we previously found and continue to find that weather events beginning in 2018 and continuing into 2019, caused demand to decline. We also previously found and continue to find that, although cumulated subject imports did not cause the decline in demand, they increased from 2017 and to 2018, and remained at elevated levels in 2019, despite declining demand. Indeed, cumulated subject imports further increased their market share from 2018 to 2019 as the quantity of importers' U.S. shipments of subject imports even increased by 6.2 percent between 2018 and 2019 despite the [REDACTED] percent decrease in apparent U.S. consumption. CR/PR at Table C-1. As further discussed below, other record evidence (including from purchaser questionnaire responses and contemporaneous trade publications) corroborates that cumulated subject imports had significant depressing effects on U.S. prices. As also discussed below, we have examined other factors, including declining demand, to ensure that we are not attributing injury from any such factors to subject imports.

¹⁷⁸ OCP Comments at 1, 15-16; PhosAgro Comments at 15; Koch Comments at 2-3.

¹⁷⁹ CR/PR at Table IV-2. We again note that this one million short ton increase in the volume of cumulated subject imports in 2018 was not due to a "supply gap" in domestic supply. As discussed above, although Mosaic reduced its production capacity in 2018, it reduced its U.S. shipments of fertilizers by only [REDACTED] short tons, while importers' U.S. shipments of subject imports increased by 604,901 short tons in 2018, and were 753,638 short tons higher in 2019 than in 2017. CR/PR at Table C-1; Mosaic Revised Domestic Producer Questionnaire at II-7. Moreover, during that time, Mosaic as well as Simplot and Nutrien possessed excess capacity. CR/PR at Table III-4.

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likewise uncontroverted that demand for fertilizers in the U.S. market began to decline in 2018 due to heavy precipitation in the fall of 2018 as well as a polar vortex in the winter of 2018 to 2019.¹⁸⁰ In the context of the increased volume of cumulated subject imports in 2018 along with declining demand towards the latter part of that year, U.S. importers' end-of-period inventories were [REDACTED] short tons in December 2018, which was their highest level thus far in the POI.¹⁸¹

Notwithstanding end-of-period inventories that were higher than the levels earlier in the POI and the decline in demand, cumulated subject imports nonetheless surged into the U.S. market as 2019 began. In January 2019, the volume of cumulated subject imports reached its highest monthly level of the entire POI at 720,728 short tons, a level that was almost double the level of monthly imports in January 2018 (312,960 short tons) and more than triple the level of monthly imports in January 2017 (202,768 short tons).¹⁸² Thus, in the context of phosphate fertilizers consumption beginning in the fall of 2018, which precipitated the high levels of end-of-period inventories in December 2018, subject imports surged into the market in January 2019 and remained substantial (relative to other monthly import volumes) in February and March 2019. That cumulated subject imports exceeded demand at the beginning of 2019 is further supported by the fact that U.S. importers' end-of-period inventories increased from [REDACTED] short tons in December 2018, which had been their highest level at that point in the

¹⁸⁰ Original Views at 40 (citing OCP Prehearing Br. at 35-36, 46-48; Gavilon Prehearing Br. at 11-12; PhosAgro Prehearing Br. at 6-7; IRM Prehearing Br. at 15-16; PhosAgro Posthearing Br. at 3-4).

¹⁸¹ CR/PR at Table D-1. We also note that importers' ending inventories of subject imports in each quarter in 2018 and 2019 [REDACTED] exceeded their 2017 volumes, and their ending inventories in March, June, and September 2019 were larger than their ending inventories for those months in 2018. CR/PR at Table D-1.

¹⁸² CR/PR at Table IV-6.

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POI, to [REDACTED] short tons in March 2019, their highest level of the entire POI, which contradicts respondents' arguments that subject imports were continuing to be imported to serve regions unaffected by severe weather.¹⁸³ Notwithstanding this high level of inventories, which according to respondents remained in place after delivery and were not otherwise relocated, substantial volumes of cumulated subject imports still continued to enter the market even as demand remained low due to flooding that occurred in the spring and fall of 2019.¹⁸⁴

As we previously noted in our Original Views, several contemporaneous industry publications were reporting on oversupply conditions and price declines in the earlier part of 2019.¹⁸⁵ Specifically, trade publication *Argus* reported:¹⁸⁶

- January 10, 2019: "US remains an outlet for 1Q.... With OCP also shipping considerably more this quarter, producers remain set on offloading tonnage in the only market that can absorb such volumes without pricing.... The US phosphate market continues to feel the pressure of a full supply chain and steady import lineup as both DAP and MAP barges declined this week. Limited buying activity caused DAP Nola to drop by nearly \$1/st from the previous week to \$383-386/st fob Nola on confirmed trades. MAP barge values fell by nearly \$5/st from last week's midpoint to \$388-395/st fob Nola."¹⁸⁷
- January 17, 2019: "US phosphate prices continue to wilt as heavy supply

¹⁸³ CR/PR at Table D-1. We further note that U.S. importers' quarterly ending inventories in March, June, and September 2019 were larger than their ending inventories for those months in 2018. *Id.*

¹⁸⁴ CR/PR at Table IV-6.

¹⁸⁵ Original Views at 41-42, citing Petition, Volume I, Exhibits I-29 – I-35; *see also* Mosaic Prehearing Br. at 59-63; Mosaic Posthearing Br. at 10-11; Simplot Prehearing Br. at 27-28; Simplot Posthearing Br., Responses to Questions pp. 16, 50-51. These articles discuss demand in the U.S. market as a whole and do not mention anywhere that there were areas of the U.S. market where demand was increasing.

¹⁸⁶ We note that subject imports from Morocco and Russia accounted for 84.1 percent of total import volume in 2019, up from 83.0 percent in 2018. CR/PR at Table IV-2. The volume of cumulated subject imports declined by 9.5 percent between 2018 and 2019, while the volume of nonsubject imports declined by 16.0 percent. CR/PR at Table IV-2. U.S. shipments of subject imports increased by 6.2 percent between 2018 and 2019, while shipments of nonsubject imports decreased by 11.8 percent. CR/PR at Table C-1.

¹⁸⁷ Petition Volume 1, Exhibit I-31.

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pressures suffocate buyer demand.”¹⁸⁸

- January 31, 2019: “The cold weather and full pipeline makes the US a less likely export for 1Q. There is no chance of an early application season in the south and the weather forecast is poor to March.... The ‘polar vortex’ in the US midwest saw temperatures plummet. The US domestic market followed suit. Put simply, the US market ‘tanked’ on cold weather, a full pipeline and heavy imports. US DAP barges fell \$10/st in a week. MAP prices are now in the mid/high-\$360s/st fob Nola. Firstly, with the US having covered 60pc of its 1Q 2018 total import requirements already, and with reports of heavy congestion at Nola on high water in the river system, the strategy of pushing more product into the US looks risky, at least in the short term.”¹⁸⁹
- February 7, 2019: “{T}he US is awash with imports ... Pushing so much DAP/MAP to the US has led to oversupply ... US phosphate prices dipped again this week as wholesalers try to incentivize buying during this period of low demand.”¹⁹⁰
- February 28, 2019: “{T}he US market fell dramatically with DAP into the \$300s/st fob Nola, down around \$15/st in a single week.... The heavy import line-up and ‘polar vortex’ in the US has resulted in Nola DAP barges trading at \$330-338/st – down by \$14/st this week.... US phosphate prices moved sharply lower this week as the market continues to be plagued by ample supplies and absent demand.”¹⁹¹
- March 28, 2019: “OCP, in its 2018 financial results, projected softer prices in the first half of this year, driven by a drop in the cost of raw materials and higher inventories in the cost of raw materials and higher inventories in the US and India. It is a fair assessment. The US has a record surplus of phosphates entering the spring season, boosted by weak sales, terrible weather conditions and heavy 1Q imports, which reached a record 1.2mn t of DAP/MAP, up 27pc yoy.... The US DAP market softened this week as buyers were again put off by the combination of heavy supplies and a probably limited spring application season.... Heavy January commitments by foreign producers lifted first quarter US phosphate imports past previous expectations.”¹⁹²
- April 18, 2019: “DAP/MAP supply for 1Q is estimated at 2.3mn t. The US DAP barge price fell again by \$5/st on oversupply amid heavy imports.... Heavy supplies and light demand continue to weigh heavily on the domestic phosphate

¹⁸⁸ Petition Volume 1, Exhibit I-32.

¹⁸⁹ Petition, Volume I, Exhibit I-33.

¹⁹⁰ Petition, Volume I, Exhibit I-29.

¹⁹¹ Petition, Volume I, Exhibit I-34.

¹⁹² Petition, Volume I, Exhibit I-30.

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market as DAP values continue to trickle downward. Nola DAP barges were assessed down by \$5/st from the midpoint last week to \$320-325/st as buyers remain off put by limited field activity and prolonged closure of the upper Mississippi river. {also noting} Record import levels.”¹⁹³

Additionally, in April 2019, [REDACTED] also reported on the oversupply condition in the U.S. market due to a poor application season in the fall of 2018 and a “surge in imports in recent months.”¹⁹⁴

Thus, the record shows that regardless of whether subject import inventories were being reshipped once they reached their destination, the substantial volume of cumulated subject imports continuing to enter the United States in 2019 was adversely impacting U.S. prices as demand remained low due to weather events and flood in the spring of 2019.¹⁹⁵ As

¹⁹³ Petition, Volume I, Exhibit I-35.

¹⁹⁴ Mosaic Posthearing Br. at Exhibit 3.

¹⁹⁵ As we noted in our Original Views, respondents blamed the oversupply conditions on demand projections that failed to materialize. OCP Prehearing Br. at 70-73; Koch Prehearing Br. at 6-7; EuroChem Prehearing Br. at 8-9; EuroChem Posthearing Br. at 8-9; OCP Posthearing Br. at Responses to Questions pp. 27-30; Gavilon Posthearing Br. at Responses to Questions pp. 5-6; IRM Posthearing Br. at 7. OCP further argues that in finding that subject imports contributed to oversupply conditions “regardless of the reasonableness of any demand projections,” the Commission “ignored” that phosphate fertilizer is procured in advance based on forecasted demand. OCP Comments at 24. Contrary to OCP’s argument, we recognize that distributors rely on demand projections in obtaining product. First, we note that, in 2019, [REDACTED] percent of U.S. importers’ U.S. commercial shipments were spot sales. CR/PR at Table V-3. Further as discussed above, cumulated subject imports entered the U.S. market in significant volumes, contributed to oversupply conditions, and depressed U.S. prices to a significant degree, regardless of how they were ordered. U.S. importers claimed that they were [REDACTED]

[REDACTED]. See, e.g., ADM Posthearing Br. at 8-9 (stating that [REDACTED]); Hearing Tr. at 227 (Lambert) (stating that “[t]hose vessels were coming. And once they’re on their way, they’re coming here”); 223-224 (Niederer). Regardless of why or when they were ordered, however, the record shows that the subject imports had depressing effects on U.S. prices during 2019. We also observe, as discussed above, that notwithstanding these assertions, foreign producers and importers of subject merchandise were able to respond to market changes after the petitions were filed by decreasing the volume of imports entering the U.S. market.

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explained in the Original Views,¹⁹⁶ this oversupply of subject imports and their low prices exerted downward pricing pressure on the domestic like product and significantly depressed U.S. prices in 2019.

Further, the record, including as supplemented by the remand questionnaires, does not support respondents' assertions that additional volumes of subject imports in the latter half of 2019 merely replenished depleted inventories in areas unaffected by flooding. As detailed above, U.S. importers' end-of-period inventories of cumulated subject imports reached their highest level of the POI in March 2019.¹⁹⁷ Yet, according to respondents themselves, subject imports that arrived in 2019 had been delivered "by the time record precipitation thwarted fertilizer application in certain regions."¹⁹⁸ Moreover, the supplementary questionnaire information obtained in these remand proceedings suggests that the vast majority of subject imports, once delivered, are not relocated or otherwise moved, but rather remain in regional inventories until used in a subsequent application period.¹⁹⁹ Consequently, we find that the record indicates that substantial quantities of subject imports were in place in regional

¹⁹⁶ Original Views at 39-46.

¹⁹⁷ CR/PR at Table D-1.

¹⁹⁸ OCP Comments at 15. Respondents maintain that most subject imports of phosphate fertilizer enter through the port at NOLA, where they are loaded from vessels onto barges, barged up the Mississippi River and its tributaries, and then shipped north, west, and east by rail and truck to meet demand from farmers, which apply phosphate fertilizer twice a year in two limited windows of time. They claim that distributors and retailers store phosphate fertilizer in warehouses close to farmers and that such fertilizer stays there until it is used in those narrow application windows. They assert that in the event of unexpected reductions in demand, such as weather or other unpredictable events, inventories are not returned or moved to other regions but instead are held and sold to farmers during the next application season. OCP Comments at 5; PhosAgro Comments at 8-12; Koch Comments at 3-4; IRM Comments at 3-4; Eurochem Comments at 1-2.

¹⁹⁹ See *generally* Importers Remand Questionnaires. Additionally, OCP also claims that the new questionnaire evidence "makes clear that even as inventories built up in flooded regions, it was normal practice to keep inventories at their original intended destinations in preparation for the next application window." OCP Comments at 18.

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inventories by December 2018 and March of 2019, prior to the flooding that occurred in spring 2019, and such imports remained in those locations, available for subsequent application in the latter part of 2019. Thus, the POI-high level of inventories of cumulated subject imports in March 2019 exceeded the levels maintained in prior years and according to respondents were already in place in regional locations prior to flooding. Yet, monthly cumulated subject import volume peaked in January 2019 and continued to enter at substantial volumes.²⁰⁰ Taken together with the lower demand in three consecutive application periods, the record does not support a conclusion that inventories of U.S. imports were depleted such that the observed volumes of subject imports were needed.²⁰¹ This is particularly so in light of the substantial inventories, expansive network of inventories, and extensive multi-modal distribution capabilities of the domestic industry.

However, even assuming for the sake of argument that importers of subject merchandise did, as respondents argue, deplete some portion of these inventories to serve areas that were unaffected by flooding, we find that the record shows that the volume of cumulated subject imports continued to exceed any demand created by alleged restocking needs. As discussed above, U.S. importers' end-of-period inventories of cumulated subject imports reached their highest level of the POI in March 2019 at [REDACTED] short tons.²⁰² U.S. importers' next reported end-of-period inventories in June 2019 were [REDACTED] short tons.²⁰³

²⁰⁰ CR/PR at Table IV-6.

²⁰¹ Indeed, importers' end-of-period inventories of cumulated subject imports increased from June 2019 to September 2019, with both months' inventory volumes larger than in the respective months in 2018. CR/PR at Table D-1.

²⁰² CR/PR at Table D-1. As discussed above, this was up from [REDACTED] short tons in 2018. *Id.*

²⁰³ CR/PR at Table D-1. We note that this was higher than the quarterly inventories in June 2018 of [REDACTED] short tons. *Id.*

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Accordingly, U.S. importers' end-of-period inventories of cumulated subject imports from March 2019 to June 2019 were reduced by [REDACTED] short tons. Cumulated subject imports, however, far exceeded this amount in those months and the months that followed. Indeed, over 329,000 short tons of subject imports entered from April to June 2019.²⁰⁴ Moreover, whereas the difference between end-of-period inventories from March 2019 to June 2019 was only [REDACTED] short tons, in July 2019 alone, the volume of cumulated subject imports was 281,132 short tons, and cumulated subject imports continued to enter the U.S. market at elevated levels – 264,191 short tons in August 2019 and 178,304 short tons in September 2019 – for a three-month total of 723,627 short tons.²⁰⁵

This pattern continued later in 2019. U.S. importers' end-of-period inventories of cumulated subject imports in September 2019 were [REDACTED] short tons, higher than in June of 2019 but lower, by [REDACTED] short tons, than in March 2019.²⁰⁶ Even assuming that this represents a depletion of inventories to serve areas unaffected by flooding, the record shows that the volume of cumulated subject imports far exceeded this amount in the months that followed. Indeed, in October 2019 alone, the volume of cumulated subject imports was 244,672 short tons, and cumulated subject imports continued to enter the U.S. market at elevated levels – 164,187 short tons in November 2019 and 227,543 short tons in December 2019 – for a three-month total of 636,402 short tons.²⁰⁷ Thus, whether or not U.S. importers depleted inventories to serve areas that were unaffected by flooding in 2019, the record shows

²⁰⁴ CR/PR at Table IV-6.

²⁰⁵ CR/PR at Table IV-6.

²⁰⁶ CR/PR at Table D-1.

²⁰⁷ CR/PR at Table IV-6.

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that cumulated subject imports nonetheless continued to enter the U.S. market in excess of any purported need to replenish inventories, further contributing to the oversupply conditions.²⁰⁸

In fact, as we previously noted in our Original Views, several contemporaneous industry publications were reporting on oversupply conditions and price declines persisted in the latter part of 2019.²⁰⁹ For example, trade publication *Argus* reported:²¹⁰

- July 18, 2019: “The US is looking fragile due to import length. Widespread estimates of substantial carryover from spring are also hurting prices.... Ample spot availability has driven US phosphate values down this week to \$304-310/st fob Nola DAP/MAP on confirmed trade.... Price pressure is poised to persist in the near-term with continued imports scheduled for July discharge.”²¹¹
- August 4, 2019: “Rather than maintain prices, OCP appears to be gunning for volume. . . . Downward price pressure persisted along the US Gulf coast this week, with DAP barge values assessed at \$298-300/st fob Nola – the lowest price level in nearly two years on a midpoint basis, according to Argus data.... A slate of three additional cargoes from Morocco for August arrival is anticipated to keep a lid on near-term prices, which have been steered by imports following spring applications. DAP imports during the 2018-19 fertilizer year reached an all-time high of 1.26mn/t on increased shipments from Morocco and Russia, according to customs data.”²¹²
- August 15, 2019: “In the US, DAP barge prices fell to the equivalent of \$315/t cfr amid fears over more imports and large carryover.... In the US, two DAP barges traded in a \$288-294/st fob range for September – a 10-year low. The paper market was even more aggressive. The driver is a substantial domestic carryover from spring, plus heavy imports and lower grain prices.... DAP barges traded at a

²⁰⁸ Again, we note that subject imports from Morocco and Russia accounted for 84.1 percent of total import volume in 2019, up from 83.0 percent in 2018. CR/PR at Table IV-2. The volume of cumulated subject imports declined by 9.5 percent between 2018 and 2019, while the volume of nonsubject imports declined by 16.0 percent. CR/PR at Table IV-2. U.S. shipments of subject imports increased by 6.2 percent between 2018 and 2019, while shipments of nonsubject imports decreased by 11.8 percent. CR/PR at Table C-1.

²⁰⁹ Original Views at 41-42, citing Petition, Volume I, Exhibits I-36 – I-44; *see also* Mosaic Prehearing Br. at 59-63; Mosaic Posthearing Br. at 10-11; Simplot Prehearing Br. at 27-28; Simplot Posthearing Br., Responses to Questions pp. 16, 50-51.

²¹⁰ These articles discuss demand in the U.S. market as a whole and do not mention anywhere that there were areas of the U.S. market where demand was increasing.

²¹¹ Petition, Volume I, Exhibit I-36.

²¹² Petition, Volume I, Exhibit I-37.

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10-year low early this week at \$288/st fob Nola for September shipment – pressuring the low end of this week’s assessment.... Prices at Nola are poised to face ongoing headwinds as offshore volumes continue to trickle to port.... Downstream demand is expected to remain suppressed until the fourth quarter, when post-harvest applications resumes. In-season consumption will be key to draw down carryover inventories, and help bring the market closer to balanced.”²¹³

- September 26, 2019: “Mosaic has sold three October-loading DAP barges at \$288/st fob Nola. But the slight firmness in the US DAP market exhibited after the Mosaic production cut subsided this week as barge values slipped below \$290/st fob Nola for October shipment. DAP traded at \$286-288/st fob Nola – the lowest price level since early-September. Market sentiment ... remained bearish for near-term price movement, especially as imports continue to discharge at the US Gulf coast at the current pace. The 500,000t of lost production at Mosaic’s Faustina plant during the fourth quarter is poised to be replaced by offshore volumes, likely minimizing upward momentum to Nola values.”²¹⁴
- October 10, 2019: “In the U.S., DAP trade reached a new decade low of \$275/st fob Nola for October shipment, a further decrease from the \$280-\$290/st fob assessed last week, although Mosaic did report a single DAP barge at \$285/st fob. Bearish sentiment persists even after Mosaic idled its Faustina phosphate complex on 1 October which reduces total domestic production by 500,000t through the fourth quarter. Inventories are estimated to be higher than usual as the spring application season was weak this year, and the window for fall application is narrowing.”²¹⁵
- October 14, 2019: “In the US, DAP barges traded at a new decade low of \$265/st fob Nola for October shipment, the lowest price since November 2009 ... total with few imports and a healthy export lineup, sources said it could be enough to draw inventories down to a normal level and support prices later this quarter or

²¹³ Petition, Volume I, Exhibit I-38.

²¹⁴ Petition, Volume I, Exhibit I-39. We note that, as discussed above, the volume of cumulated subject imports in October 2019 alone was 244,672 short tons, and cumulated subject imports continued to enter the U.S. market at elevated levels, 164,187 short tons in November 2019 and 227,543 short tons in December 2019, for a three-month total of 636,402 short tons. CR/PR at Table IV-6. Quarterly inventories of cumulated subject imports were lower in December 2019, at [REDACTED] short tons compared to December 2018, at [REDACTED] short tons; however, they remained at substantially elevated levels compared to December 2017 when they were [REDACTED] short tons. CR/PR at Table D-1.

²¹⁵ Petition, Volume I, Exhibit I-40.

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in early 2020.”²¹⁶

- October 31, 2019: “There was scant good news for phosphate producers this week – the US continued its inexorable slide with DAP a fresh decade low of \$253/st fob Nola.”²¹⁷
- November 7, 2019: “US producer Nutrien called further US production cuts a ‘futile game’ this week. Nutrien argues that the market is weak because of fundamental structural oversupply and that further cuts simply signal to OCP, Russian and other producers to ship more to the US.... Phosphate barge values continued to fall this week as high buyer inventories and delays to fall application season weighed on market sentiment.... With inventories still full from two lackluster application seasons and more phosphate fertilizer shipments on the way, many doubt fall demand will be enough to rebalance the domestic phosphates market.... But buyer inventories are full following two lacklustre application seasons and high first-quarter imports.”²¹⁸
- December 12, 2019: “Nola barge prices fell to new lows this week in the first DAP trades for nearly a month.... Price support is doubted into early-2020 as additional imports and the expectation that production will resume at Mosaic’s plant in Faustina, Louisiana, loom ahead.”^{219 220}

Thus, the record shows that cumulated subject imports entered the U.S. market in the latter part of 2019 in excess of any purported depletion of inventories, contributing to

²¹⁶ Petition, Volume I, Exhibit I-41. We note that Mosaic indicated in September 2019 that it was idling its Louisiana operations “as imports into the country have pushed down prices.” Petition, Volume 1, I-46 “‘Phosphate prices have declined further through the summer, with excess imports continuing to enter the U.S. on top of high channel inventories,’ President and CEO Joc O’Rourke said in a statement. ‘We expect our move to idle production to tighten supply and rebalance the market.’” *Id.*

²¹⁷ Petition, Volume I, Exhibit I-42.

²¹⁸ Petition, Volume I, Exhibit I-43.

²¹⁹ Petition, Volume 1, Exhibit I-44.

²²⁰ Other publications, including [REDACTED], discussed the [REDACTED] [REDACTED]. Simplot Posthearing Br. at Exhibits

6 ([REDACTED] reporting [REDACTED]

[REDACTED]”), 18 ([REDACTED] [REDACTED]”), 19 [REDACTED] [REDACTED]”).

reporting [REDACTED]”). Moreover, respondents’ witness even testified that NOLA prices were lower than prices in Brazil due to a market imbalance, and that inventory build-up was due to excessive rainfall and was not worked down “until the end of the strong fall 2020 application season.” Hearing Tr. at 192-193 (Rahm).

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oversupply conditions, and having a depressing effect on domestic prices as demand remained low through 2019.²²¹ Importers' end-of-period inventories were at their highest levels of the POI in December 2018 and March 2019, as subject imports peaked in January 2019.²²² The domestic industry's sales prices for both pricing products began declining in the third quarter of 2018 and decreased to be below January 2017 levels by [REDACTED] 2019, and remained there until [REDACTED] 2020, after the petitions were filed and subject import volumes decreased.²²³ While apparent U.S. consumption declined by [REDACTED] percent from 2018 to 2019, the domestic industry's U.S. shipment quantity decreased by [REDACTED] percent by volume but [REDACTED] percent by value.²²⁴

Additionally, the fact that cumulated subject imports continued to gain market share in 2019 as demand declined and the U.S. market contracted further demonstrates that they were not merely replenishing depleted inventories. As we observed in our Original Views,²²⁵ U.S. shipments of subject imports increased by 148,957 short tons (6.2 percent) between 2018 and 2019, and subject imports increased their share of the market at the expense of the domestic industry and nonsubject imports.²²⁶

In sum, the record shows that significant volumes of subject imports entered the U.S. market between 2017 and 2018, and as demand began to decline in the fall of 2018, U.S.

²²¹ As we noted in our Original Views, U.S. importers' ending inventories of subject imports in 2018 and 2019 were [REDACTED] percent and [REDACTED] percent higher, respectively, than ending inventories in 2017. CR/PR at Table C-1. Subject import inventory levels remained at elevated levels at the end of the first and second quarters of 2020, but dropped at the end of the third quarter of 2020 as subject imports decreased after the petitions were filed at the end of June 2020. CR/PR at Table D-1.

²²² CR/PR at Tables IV-6, C-1, D-1.

²²³ CR/PR at Tables V-4, V-5, Figure V-4.

²²⁴ CR/PR at Table C-1.

²²⁵ Original Views at 41-43.

²²⁶ CR/PR at Table C-1.

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importers' inventories reached their highest level of those two years. Notwithstanding these substantial inventories and declining demand in late 2018, subject imports surged into the U.S. market in January 2019, and continued to enter the U.S. market in large quantities, even as demand remained low in 2019. That the continued flow of subject imports exceeded demand in the contracting U.S. market is further demonstrated by the fact that U.S. importers' quarterly inventories reached their highest level in March 2019. Consequently, the record shows that cumulated subject imports were contributing to oversupply conditions in the beginning of 2019. Subject imports nonetheless continued to enter the U.S. market in the latter part of 2019 in excess of any purported need to replenish depleted inventories, thereby further contributing to the oversupply conditions that continued to plague the U.S. market in the latter half of 2019. At the same time, cumulated subject imports increased their market share at the expense of both the domestic industry as well as nonsubject imports.²²⁷ Numerous contemporaneous trade publications documented the oversupply conditions throughout 2019, with several noting that high levels of imports contributed to these conditions, as well as the effect that these conditions had on prices in the U.S. market. Indeed, market prices for phosphate fertilizer DAP decreased in 2019 [REDACTED] for non-phosphate fertilizers potash and urea, such that DAP prices [REDACTED] [REDACTED].²²⁸

²²⁷ From 2018 to 2019, cumulated subject import market share increased [REDACTED] percentage points, while the market shares of the domestic industry and nonsubject imports decreased [REDACTED] and [REDACTED] percentage points, respectively. CR/PR at Table C-1.

²²⁸ CR/PR at Figure V-5; see also CR/PR at Figure V-6 (public prices for DAP and MAP [REDACTED]).

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Moreover, as we observed in the Original Views,²²⁹ U.S. purchasers also reported on the adverse effects caused by subject imports, particularly during 2019. For instance, U.S. purchaser [REDACTED] informed how [REDACTED] [REDACTED] and that “more cargo containers appear to be arriving to the U.S. on consignment with no price point established up front ... {which} can lead to larger drops in price with weak demand.”²³⁰ U.S. purchaser [REDACTED] reported that [REDACTED] [REDACTED].²³¹ In reporting that domestic producers had reduced prices in order to compete with low-priced subject imports from Morocco, U.S. purchaser [REDACTED] explained that [REDACTED] [REDACTED].²³²

In addition to this record evidence of oversupply and imports’ exertion of downward pressure on prices in the U.S. market, we also continue to find that other record evidence shows that subject imports were being offered at low prices during this time. For instance, in

²²⁹ Original Views at 44-45.

²³⁰ CR/PR at II-2; [REDACTED] U.S. Purchaser Questionnaire Response at III-8(b). As we noted above, [REDACTED] also reported that [REDACTED]

[REDACTED] CR/PR at Table V-11.

²³¹ [REDACTED] U.S. Purchaser Questionnaire Response at II-2. In reporting that U.S. producers lowered prices by an estimated [REDACTED] percent in order to compete with lower-priced subject imports, [REDACTED] stated that [REDACTED]

[REDACTED] CR/PR at Table V-11.

²³² CR/PR at Table V-11.

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January 2019, [REDACTED]

[REDACTED].^{233 234} Record

evidence also indicates that domestic producers reduced prices to compete with subject imports. Of the 28 responding purchasers, seven reported that U.S. producers had reduced prices in order to compete with lower-priced imports from the subject countries.²³⁵ Five purchasers estimated domestic price reductions to compete with product imported from Morocco, and four estimated domestic price reductions to compete with product imported from Russia. The reported estimated price reductions ranged from [REDACTED] percent to [REDACTED] percent, for an average of 16.0 percent.²³⁶

The record shows that, even though subject importers' inventories generally were not being re-shipped, the significant volumes of cumulated subject imports that continued to enter the market had significant depressing effects on U.S. prices. The contemporaneous trade publications cited above as well as purchasers' questionnaire responses show that the volumes of imports entering the port of New Orleans contributed to oversupply in the U.S. market and

²³³ Mosaic Posthearing Br. at Responses to Questions pp. 36-37, Exhibits 41-46. U.S. purchaser [REDACTED] reported that [REDACTED]. [REDACTED] U.S. Purchaser Questionnaire Response at III-29(b). Simplot also claims that lower-priced imports forced it to lower its prices. Simplot Posthearing Br. at Responses to Questions pp. 35-37, Exhibit 4.

²³⁴ We also note that record information shows that [REDACTED] was the lowest priced in the U.S. market [REDACTED]

[REDACTED]. Mosaic Posthearing Br. at Responses to Questions pp. 45-46, Exhibit 51 (exhibit data sourced from responses to Commission questionnaires).

²³⁵ CR/PR at Table V-11. Seven purchasers reported that U.S. producers had not reduced prices in order to compete with lower-priced imports from the subject countries, and 14 reported that they did not know. CR/PR at V-25.

²³⁶ CR/PR at V-25.

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had adverse effects on NOLA market prices.²³⁷ As previously noted, U.S. prices of phosphate fertilizers are highly transparent; they are published in multiple trade publications, including for the NOLA region.²³⁸ Most responding purchasers (16 of 28) reported that they use prices reported in trade publications to negotiate purchase prices, and they cite several examples of trade publications that use NOLA-based prices.²³⁹ Simplot reports that [REDACTED]
[REDACTED]
[REDACTED].²⁴⁰ [REDACTED] reported using NOLA-based prices published by a number of trade reports.²⁴¹ Purchaser responses also confirm the adverse effects of subject imports on U.S. prices and that domestic producers competed with subject imports based on NOLA prices.²⁴² Thus, even though subject importer distribution networks moved inventories “unidirectionally,” the record shows that the volumes of cumulated subject imports entering the U.S. market had significant price depressing effects.

In light of the foregoing, we continue to find that the record demonstrates that subject imports exerted downward pricing pressure on the domestic like product and significantly depressed U.S. prices during the POI. Although we acknowledge that some purchasers reported being unable to obtain supply from Mosaic at times during the POI,²⁴³ we find that the record as a whole shows that subject imports contributed significantly to oversupply conditions

²³⁷ We observe that New Orleans was the port of entry for nearly all U.S. imports of phosphate fertilizers from Morocco and the vast majority of U.S. imports from Russia. CR/PR at IV-11 n.16.

²³⁸ CR/PR at V-5; Hearing Tr. at 147 (O’Rourke).

²³⁹ CR/PR at V-5-6.

²⁴⁰ CR/PR V-5.

²⁴¹ CR/PR at V-5-6.

²⁴² CR/PR at Table V-11.

²⁴³ See, e.g., Gavilon Prehearing Br. at 20-24, Exhibit 7; IRM Prehearing Br. at 12-15, 18-19; IRM Posthearing Br. at Exhibit 4; ADM Posthearing Br. at Exhibit 1; Hearing Tr. at 205-206 (Coppess); Response of [REDACTED], CR/PR at Table V-11.

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in a declining market and had significant price-depressing effects on prices in the U.S. market in 2019. Additionally, as discussed in greater detail below, these prices remained at depressed levels in 2020 before the petitions were filed and increased sharply as subject imports exited the market.

Respondents argue that the price declines were attributable to declines in global prices and U.S. demand, rather than subject imports.²⁴⁴ Although those factors may have contributed to price movements in the U.S. market, we continue to find that they do not negate the significant role that subject imports played in depressing domestic prices. As shown by the evidence previously discussed, notwithstanding that demand in the U.S. market began to decline in the fall of 2018 and remained low throughout 2019, cumulated subject imports continued to enter the U.S. market at elevated levels, contributing to oversupply conditions, and having depressing effects on U.S. prices. Respondents' arguments also fail to account for the fact that prices in other global markets were also affected by exports from subject producers in Morocco and Russia, collectively the world's largest exporters of phosphate fertilizers.²⁴⁵ Moreover, in 2019, U.S. prices were lower than and decreased by more than global phosphate fertilizer prices.²⁴⁶ Although U.S. prices began to increase in the beginning of 2020 as weather conditions improved, they remained at levels lower than those that existed in

²⁴⁴ OCP Prehearing Br. at 77, 88; PhosAgro Prehearing Br. at 26; Koch Prehearing Br. at 2; EuroChem Prehearing Br. at 2; OCP Posthearing Br. at 9-11; PhosAgro Posthearing Br. at 12-13; Koch Posthearing Br. at 1, 4-7.

²⁴⁵ CR/PR at Table VII-14.

²⁴⁶ Derived from CR/PR at Tables V-4-5 and Figure V-7; *see also* OCP Posthearing Br. at 11, Responses to Questions pp. 67-69; *see also* CR/PR at Table V-11 (response of U.S. purchaser [REDACTED]), reporting that U.S. producers reduced prices by an estimated [REDACTED] percent due to competition from subject imports: [REDACTED]

[REDACTED]).

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2017 and 2018 until after the filing of the petitions at the end of June 2020, at which point they sharply increased to levels above other global markets.²⁴⁷

Thus, for the foregoing reasons, we find that subject imports from Morocco and Russia depressed prices to a significant degree.

We have also considered whether subject imports prevented price increases of the domestic like product, which otherwise would have occurred to a significant degree. The record indicates the domestic industry's ratio of COGS to net sales decreased from [REDACTED] percent in 2017 to [REDACTED] percent in 2018 and then increased to [REDACTED] percent in 2019; it was higher in interim 2020 at [REDACTED] percent than in interim 2019 at [REDACTED] percent.²⁴⁸

Between 2017 and 2018, the domestic industry's total COGS decreased by [REDACTED] percent. The domestic industry's net sales volume, however, also decreased, resulting in the industry's unit COGS increasing from \$[REDACTED] per short ton in 2017 to \$[REDACTED] per short ton in 2018. Specifically, the domestic industry's unit raw material costs increased from \$[REDACTED] per short ton in 2017 to \$[REDACTED] per short ton in 2018, and the industry's unit other factory costs increased from \$[REDACTED] per short ton in 2017 to \$[REDACTED] per short ton in 2018, while the industry's unit direct labor costs remained the same at \$[REDACTED] per short ton in 2017 and 2018.²⁴⁹

Notwithstanding this, the domestic industry's COGS to net sales ratio declined because the

²⁴⁷ CR/PR at Tables V-4-5. Cumulated subject imports declined substantially after the filing of the petitions, and subject imports from Morocco ceased entirely beginning in August 2020. CR/PR at Table IV-6. Total import volumes of phosphate fertilizers were lower in the third quarter of 2020 than in the third quarters of every other year in the POI. *See id.*

²⁴⁸ CR/PR at Tables IV-2, VI-1, and C-1.

²⁴⁹ CR/PR at Table VI-1.

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domestic industry's unit net sales value, which increased from \$[REDACTED] per short ton in 2017 to \$[REDACTED] per short ton in 2018, exceeded the increase in the domestic industry's unit COGS.²⁵⁰

Between 2018 and 2019, the domestic industry's total COGS decreased by another [REDACTED] percent, while the domestic industry's net sales volume declined by [REDACTED] percent and net sales value declined by [REDACTED] percent, resulting in an increase in the industry's COGS to net sales ratio.²⁵¹ The domestic industry's unit COGS increased from \$[REDACTED] per short ton in 2018 to \$[REDACTED] per short ton in 2019, with its unit raw material costs increasing from \$[REDACTED] per short ton in 2018 to \$[REDACTED] per short ton in 2019, and the industry's unit other factory costs increasing from \$[REDACTED] per short ton in 2018 to \$[REDACTED] per short ton in 2019, while the industry's unit direct labor costs decreased from \$[REDACTED] per short ton in 2017 and 2018 to \$[REDACTED] per short ton in 2019.²⁵² Thus, while unit COGS increased slightly by \$[REDACTED] per short ton ([REDACTED] percent) from 2018 to 2-019, the domestic industry's net sales unit value declined substantially, by \$[REDACTED] per short ton ([REDACTED] percent), from \$[REDACTED] per short ton in 2018 to \$[REDACTED] per short ton in 2019,²⁵³ resulting in a substantial [REDACTED] percentage point increase in the domestic industry's COGS to net sales ratio.²⁵⁴ This occurred as poor weather conditions led to a decline in U.S. demand in 2019, U.S. importers further increased the share of subject imports in the U.S. market (up [REDACTED] percentage points from 2018), and a significant volume of low priced subject imports continued to enter the U.S. market, putting additional pressure on domestic prices, and substantially contributing to oversupply conditions. Although the domestic industry

²⁵⁰ CR/PR at Table VI-1.

²⁵¹ CR/PR at Table VI-1.

²⁵² CR/PR at Table VI-1.

²⁵³ CR/PR at Table VI-1.

²⁵⁴ CR/PR at Table C-1.

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attempted to offset the collapse in U.S. prices by idling capacity and curtailing production,²⁵⁵ the record as a whole indicates that subject imports contributed significantly to the market imbalance between supply and demand and, as found above, depressed prices to a significant degree.²⁵⁶

In sum, for the foregoing reasons, we find that subject imports from Morocco and Russia depressed prices to a significant degree. We thus continue to conclude that subject imports had significant price effects.

D. Impact of the Subject Imports

Section 771(7)(C)(iii) of the Tariff Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”²⁵⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²⁵⁸

²⁵⁵ CR/PR at Table III-3; Mosaic Prehearing Br. at 2, Mosaic Posthearing Br. at Responses to Questions pp. 10-23, Exhibits 17-19.

²⁵⁶ Mosaic Prehearing Br. at 59-63; Mosaic Posthearing Br. at 10-11. Mosaic states that in addition to idling facilities and curtailing production, it also increased exports because the U.S. market could not absorb additional supply. Mosaic Posthearing Br. at 11.

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

²⁵⁸ 19 U.S.C. § 1677(7)(C)(iii). This provision was amended by the Trade Preferences Extension Act of 2015, Pub. L. 114-27.

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As we observed in our Original Views,²⁵⁹ the domestic industry's output indicators declined from 2017 to 2019, but were higher in interim 2020 than in interim 2019.²⁶⁰ Specifically, the domestic industry's share of apparent U.S. consumption declined from [REDACTED] percent in 2017 to [REDACTED] percent in 2018 and [REDACTED] percent in 2019; its market share was higher in interim 2020, at [REDACTED] percent than in interim 2019, at [REDACTED] percent.²⁶¹ Its production decreased by [REDACTED] percent between 2017 and 2019 from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018 to [REDACTED] short tons in 2019; its production was higher in interim 2020, at [REDACTED] short tons, than in interim 2019, at [REDACTED] short tons.²⁶² Its capacity declined by [REDACTED] percent from 2017 to 2019, from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018 and [REDACTED] short tons in 2019,²⁶³ and its capacity utilization increased by [REDACTED] percentage points from [REDACTED] percent in 2017 to [REDACTED] percent in 2018 to [REDACTED] percent in 2019.²⁶⁴ The domestic industry's capacity was higher in interim 2020, at [REDACTED] short tons, than in interim 2019, at [REDACTED] short tons,

²⁵⁹ Original Views at 49-53.

²⁶⁰ As previously noted, after the petitions were filed at the end of June 2020, subject imports decreased in the U.S. market. Mosaic restarted production at previously idled facilities, diverted shipments that had been destined for export markets, and drew down inventories, for a total of [REDACTED] short tons in additional sales in interim 2020 compared to interim 2019. Mosaic U.S. Producer Questionnaire Response at IV-16. [REDACTED] also reported more U.S. shipments in interim 2020 than in interim 2019. [REDACTED] U.S. Producer Questionnaire Responses at II-7; [REDACTED] U.S. Producer Questionnaire Responses at II-7. Consequently, the domestic industry's market share, capacity, production, and U.S. shipments were higher in interim 2020 than in interim 2019. CR/PR at Table C-1.

²⁶¹ CR/PR at Tables IV-8, C-1.

²⁶² CR/PR at Tables III-4, C-1.

²⁶³ CR/PR at Tables III-4, C-1.

²⁶⁴ CR/PR at Tables III-4, C-1.

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while its capacity utilization was lower in interim 2020, at [REDACTED] percent, than in interim 2019, at [REDACTED] percent.²⁶⁵

The domestic industry's U.S. shipments declined by [REDACTED] percent between 2017 and 2019, from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018 and [REDACTED] short tons in 2019; its U.S. shipments were higher in interim 2020, at [REDACTED] short tons, than in interim 2019, at [REDACTED] short tons.²⁶⁶ The domestic industry's end-of-period inventories increased by [REDACTED] percent from 2017 to 2019, from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018 and 2019; its end-of-period inventories were lower in interim 2020, at [REDACTED] short tons, than in interim 2019, at [REDACTED] short tons.²⁶⁷ The domestic industry's ratio of end-of-period inventories to total shipments increased steadily from 2017 to 2019 but was lower in interim 2020 than in interim 2019.²⁶⁸

Employment indicators for the domestic industry also declined between 2017 and 2019. The domestic industry's number of production and related workers ("PRWs") fell from [REDACTED] in 2017 to [REDACTED] in 2018 and [REDACTED] in 2019; its number of PRWs was lower in interim 2020, at [REDACTED], than in interim 2019, at [REDACTED].²⁶⁹ Total hours worked,²⁷⁰ wages paid,²⁷¹ and

²⁶⁵ CR/PR at Tables III-4, C-1.

²⁶⁶ CR/PR at Tables III-6, C-1.

²⁶⁷ CR/PR at Tables III-7, C-1.

²⁶⁸ CR/PR at Tables III-7, C-1. The ratio of end-of-period inventories to U.S. shipments was [REDACTED] percent in 2017, [REDACTED] percent in 2018, and [REDACTED] percent in 2019. It was lower in interim 2020 at [REDACTED] percent than in interim 2019 at [REDACTED] percent. *Id.*

²⁶⁹ CR/PR at Tables III-9; C-1.

²⁷⁰ CR/PR at Tables III-9; C-1. Total hours worked decreased from [REDACTED] hours in 2017 to [REDACTED] hours in 2018 and [REDACTED] hours in 2019. *See id.*

²⁷¹ CR/PR at Tables III-9; C-1. Wages paid decreased from \$[REDACTED] in 2017 to \$[REDACTED] in 2018 to \$[REDACTED] in 2019. *See id.*

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productivity²⁷² also fell from 2017 to 2019. Total hours worked and wages paid were lower in interim 2020 than in interim 2019 while productivity was higher between the interim periods.²⁷³

The domestic industry's net sales, gross profit, operating income, and net income increased between 2017 and 2018, but deteriorated in 2019. Most of the industry's financial indicators were lower in interim 2020 than in interim 2019.²⁷⁴ Specifically, the domestic industry's net sales by value increased from \$[REDACTED] in 2017 to \$[REDACTED] in 2018, then declined to \$[REDACTED] in 2019; its net sales by value was lower in interim 2020, at \$[REDACTED], than in interim 2019, at \$[REDACTED].²⁷⁵ Its gross profit increased from \$[REDACTED] in 2017 to \$[REDACTED] in 2018, then declined to [REDACTED]; its gross profit was lower in interim 2020, at [REDACTED], than in interim 2019, at [REDACTED].²⁷⁶ The industry's operating income increased from \$[REDACTED] in 2017 to \$[REDACTED] in 2018, then declined to [REDACTED] in 2019; its operating income was lower in interim 2020, at [REDACTED], than in interim 2019, at [REDACTED].²⁷⁷ The ratio of operating income to net sales increased from [REDACTED] percent in 2017 to [REDACTED] percent in 2018, then declined to [REDACTED] percent in 2019; it was lower in interim

²⁷² CR/PR at Tables III-9; C-1. Productivity per 1,000 hours decreased from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018 and [REDACTED] short tons in 2019. *See id.*

²⁷³ Total hours worked were [REDACTED] hours in interim 2019 and [REDACTED] hours in interim 2020. Wages paid were \$[REDACTED] in interim 2019 and \$[REDACTED] in interim 2020. Productivity was [REDACTED] short tons in interim 2019 and [REDACTED] short tons in interim 2020. CR/PR at Tables III-9; C-1.

²⁷⁴ U.S. prices at the beginning of 2019 were higher than later in the year. Consequently, interim 2020 prices, although increasing substantially in the last three months of the POI after the petitions were filed, remained at lower levels than in interim 2019, which, in turn resulted in lower gross profit levels despite increasing net sales quantity and lower COGS. CR/PR at VI-9, Tables V-4-5, VI-1-2.

²⁷⁵ CR/PR at Tables VI-1, C-1.

²⁷⁶ CR/PR at Tables VI-1, C-1.

²⁷⁷ CR/PR at Tables VI-1, C-1.

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2020, at [REDACTED] percent, than in interim 2019, at [REDACTED] percent.²⁷⁸ The domestic industry’s net income increased from \$[REDACTED] in 2017 to \$[REDACTED] in 2018, then declined to [REDACTED]; its net income was higher in interim 2020, at [REDACTED], than in interim 2019, at [REDACTED].²⁷⁹

Domestic producers’ capital expenditures increased from \$[REDACTED] in 2017 to \$[REDACTED] in 2018 and \$[REDACTED] in 2019,^{280 281} while research and development expenses decreased each year, from \$[REDACTED] in 2017 to \$[REDACTED] in 2018 and \$[REDACTED] in 2019.²⁸² [REDACTED] also reported negative effects on investment and growth and development that [REDACTED] attributed to subject imports.²⁸³

As discussed above, we have found that the volume of cumulated subject imports and the increase in the volume were significant during the period of investigation, and subject imports gained [REDACTED] percentage points in market share at the expense of the domestic industry from 2017 to 2019 ([REDACTED] percentage points from 2017-2018 and [REDACTED] percentage

²⁷⁸ CR/PR at Tables VI-1, C-1.

²⁷⁹ CR/PR at Tables VI-1, C-1. The ratio of net income to net sales increased from [REDACTED] percent in 2017 to [REDACTED] percent in 2018, then declined to [REDACTED] percent in 2019; it was slightly higher in interim 2020 at [REDACTED] percent than in interim 2019, at [REDACTED] percent. *Id.*

²⁸⁰ CR/PR at Tables VI-6, C-1. The domestic producers’ capital expenditures were higher in interim 2020, at \$[REDACTED], than in interim 2019, at \$[REDACTED]. *See id.*

²⁸¹ All three U.S. producers reported [REDACTED].

[REDACTED]. Specifically, Mosaic explained that [REDACTED]

[REDACTED]. Nutrien reported that its capital expenditures related to “[REDACTED]”. Simplot reported that “[REDACTED]”.

[REDACTED]. CR/PR at Table VI-7.

²⁸² CR/PR at Tables VI-6, C-1. The domestic producers’ research and development expenses were lower in interim 2020, at \$[REDACTED], than in interim 2019, at \$[REDACTED]. *See id.*

²⁸³ CR/PR at Tables VI-9-10.

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points from 2018-2019).²⁸⁴ The record also shows that the volume of cumulated subject imports increased by one million short tons between 2017 and 2018, and as demand began to decline in the fall of 2018, U.S. importers' inventories reached their highest level of those two years. Notwithstanding these substantial inventories and declining demand, subject imports surged into the U.S. market in January 2019 and continued to flow into the U.S. market in substantial quantities, reaching 2.7 million short tons that year, even as demand declined in 2019.²⁸⁵ U.S. importers' quarterly inventories reached their highest level in March 2019, but subject imports nonetheless continued to enter the U.S. market in the latter part of 2019 in excess of any purported need to replenish depleted inventories in the latter part of 2019. Moreover, as previously discussed, the record shows that regardless of the "unidirectional" movement of subject importers' inventories, the volumes of subject imports entering the U.S. market had significant depressing effects on U.S. prices. Record evidence shows subject imports being offered and sold at lower prices, domestic producers lowering prices to compete with subject imports, and certain purchasers purchasing subject imports rather than the domestic like product for price reasons. Consequently, subject imports – through their significant volumes that contributed to the oversupply conditions in the U.S. market during the POI and low prices – depressed prices in the U.S. market to a significant degree.

The downward pricing pressure exerted by subject imports forced the domestic industry to reduce prices, which in turn caused its revenues to be lower than they would have been otherwise. The domestic industry's U.S. shipment average unit value declined to \$[REDACTED] per

²⁸⁴ CR/PR at Table C-1.

²⁸⁵ CR/PR at Tables IV-2, IV-6.

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short ton in 2019, down from \$[REDACTED] per short ton in 2018 and \$[REDACTED] per short ton in 2017.²⁸⁶

The domestic industry's sales revenues declined considerably in 2019 (down from 2018 [REDACTED] percent by quantity and [REDACTED] percent by value) along with its profitability as its COGS to net sales ratio rose above [REDACTED] percent.²⁸⁷ Sales revenues and profitability continued to be weak and the industry's COGS to net sales ratio remained above [REDACTED] percent into interim 2020.²⁸⁸

As a consequence, we find that subject imports had a significant impact on the domestic industry.

We have evaluated the above factors within the context of the business cycle and conditions of competition distinctive to the industry. In doing so, we note that, in many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.²⁸⁹ In

²⁸⁶ CR/PR at Table C-1.

²⁸⁷ CR/PR at Tables VI-1, C-1.

²⁸⁸ CR/PR at Table VI-1, C-1.

²⁸⁹ The Statement of Administrative Action for the Uruguay Round Agreements Act ("SAA") at 851-52 ("[T]he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."); S. Rep. 96-249 at 75 (1979) (the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."); H.R. Rep. 96-317 at 47 (1979) ("in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;" those factors
(continued...)

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performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.²⁹⁰ Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, which may be contributing to overall injury to an industry.²⁹¹ It is clear from the statute and decisions of the Federal Circuit and Court of International Trade that the existence of injury caused by other factors does not compel a negative determination.²⁹²

Within this framework, we have considered respondents’ arguments that the domestic industry’s poor performance was not caused by subject imports, but rather was the result of other factors. Specifically, we considered the role of declining U.S. demand due to unusually poor weather conditions, which began in the latter part of 2018 and affected three consecutive

include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); *accord Mittal Steel*, 542 F.3d at 877.

²⁹⁰ SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); *Taiwan Semiconductor Industry Ass’n*, 266 F.3d at 1345 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); *see also Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, *i.e.*, it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), *citing Gerald Metals*, 132 F.3d at 722 (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

²⁹¹ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

²⁹² *See Nippon Steel Corp.*, 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

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application sessions – fall 2018, spring 2019, and fall 2019.²⁹³ Although demand declines in 2019 may have exerted some degree of downward force on the domestic industry's condition, we again note that the Commission need not isolate the injury caused by other factors from injury caused by subject imports and that the "by reason of" standard does not require that unfairly traded imports be the "principal" cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, which may be contributing to overall injury to an industry. As described above, the volume of cumulated subject imports and inventories of such merchandise increased significantly from 2017 to 2018, and remained significant in 2019 despite decreased apparent U.S. consumption. In the latter half of 2019, as demand remained low due to further adverse weather conditions, U.S. importers continued to maintain elevated levels of inventories and continued to import more subject merchandise than was needed to replenish any depletion of these inventories. Moreover, as previously discussed, contemporaneous trade publications and U.S. purchaser questionnaire responses documented the adverse impact of imports on U.S. prices. Therefore, the adverse weather conditions that affected the U.S. market and prompted a decline in demand do not rebut the fact that the industry's performance would have been stronger in the absence of the significant volume of subject imports from Morocco and Russia that exerted downward pricing pressure on the domestic industry. In other words, we have observed material injury to the domestic industry by reason of subject imports that is distinct from the declining demand so as to ensure that we are not attributing injury from declining demand to the subject imports.

²⁹³ OCP Prehearing Br. at 108-116; Gavilon Prehearing Br. at 10-11, 64-65; PhosAgro Prehearing Br. at 21-22; IRM Prehearing Br. at 31; PhosAgro Posthearing Br. at 9-10.

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Respondents argue that subject imports merely filled a supply gap created by Mosaic's decision to idle its Plant City facility in December 2017,²⁹⁴ which was exacerbated by Nutrien's announcement in February 2018 that it would close its Redwater facility in Canada.²⁹⁵ Mosaic concedes that after it had idled Plant City, it reduced its phosphate sales volume targets with certain larger customers – specifically, with CHS by 200,000 tons and with Gavilon by 100,000

²⁹⁴ OCP Prehearing Br. at 7, 24-32, 62-63; Gavilon Prehearing Br. at 20, 34, 60-63; IRM Prehearing Br. at 6-9, 19-20, 24-25; OCP Posthearing Br. at 2, 4, Responses to Questions pp. 14-15, 77-78; IRM Posthearing Br. at 5. Respondents, referring to Mosaic's public statements regarding giving up "1 million tonnes of market here in the U.S. intentionally," argue that idling the facility was part of Mosaic's global strategy to invest in lower-cost production facilities overseas and bring in product from its joint venture in Saudi Arabia. Mosaic firmly denies that it deliberately idled Plant City – which it states had accounted for 700,000 short tons of phosphate fertilizer sold into the U.S. market in 2017 – for this purpose, and we observe that Mosaic [REDACTED] import from its joint venture in Saudi Arabia during the POI, and that imports from Saudi Arabia remained at much lower levels than subject imports and increased by substantially less than subject imports did during the POI. CR/PR at IV-6 & Tables IV-2, C-1. Mosaic claims that the increasing volumes of subject imports played a significant role in driving prices to levels that made it uneconomical for it to operate its Plant City facility in 2017 in the first instance, and that its decision to idle Plant City ultimately helped balance global phosphate supply and demand, and tightened U.S. supply, which caused U.S. prices to increase in 2018. This price increase, Mosaic asserts, was temporary as subject imports increased, causing a supply glut and declining prices. Mosaic Prehearing Br. at 58-59; Mosaic Posthearing Br. at Responses to Questions pp. 10-17, Exhibit 14. Incurring tens of millions of dollars in costs to idle Plant City, Mosaic states that it preserved the option of reopening the facility in the event of a significant, sustained improvement in market conditions, which did not occur due to subject imports. It ultimately was forced to close the facility in June 2019. Mosaic Posthearing Br. at Responses to Questions pp. 22-23.

²⁹⁵ OCP Posthearing Br. at 3, Responses to Questions pp. 15-16; IRM Posthearing Br. at 3; Koch Posthearing Br. at 2. In May 2019, Nutrien converted its phosphate operation in Redwater, Canada ([REDACTED]) to an ammonium sulfate plant. CR/PR at III-3 and Table III-3. As discussed above, Nutrien announced at the time that it was increasing production at its U.S. facilities in Aurora, North Carolina and White Springs, Florida in order to offset any reduction in supply from Redwater and ensure a continued supply of phosphate fertilizers to customers in Canada. CR/PR at III-3; Mosaic Prehearing Br. at Exhibit 13. Indeed, [REDACTED], Nutrien [REDACTED] its U.S. production between 2018 and 2019 and this increase was more than sufficient to cover its increase in exports that year. CR/PR at Table III-4; PCS/Nutrien Domestic Producer Questionnaire at II-7. The record also shows that between 2017 and 2018, Nutrien had increased its capacity by 400,000 short tons due to [REDACTED]. CR/PR at Table III-4 and III-5, n.18.

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tons relative to the prior year – as well as to some [REDACTED],²⁹⁶ we find that the volume of cumulated subject imports eclipsed any reduction in U.S. production as a result of Mosaic’s idling of its facility in 2017. As discussed above, we find Mosaic’s estimate that the idling of the Plant City facility reduced its supply to the U.S. market by approximately 700,000 tons to be credible and consistent with other record evidence. Additionally, notwithstanding this estimate, the record shows that Mosaic’s U.S. shipments decreased by only [REDACTED] short tons from 2017 to 2018. Subject imports, however, increased by 1 million short tons from 2017 to 2018, and U.S. shipments of subject imports increased by 604,981 short tons from 2017 to 2018 and by 753,638 short tons from 2017 to 2019.²⁹⁷ Moreover, as record-setting

²⁹⁶ [REDACTED] U.S. Producer Questionnaire Response at IV-16. Mosaic further states that

[REDACTED]. Moreover, Mosaic states that it [REDACTED]. Mosaic Posthearing Br. at Responses to Questions, p. 85. Mosaic also disputes other allegations of its refusal or inability to supply product during the POI. Specifically, Mosaic disputes ADM’s testimony that Mosaic “categorically refuses to sell to us.” Mosaic asserts that [REDACTED]. Mosaic Posthearing Br. at Responses to Questions pp. 86-87. Mosaic also contends that some of the supply issues identified by respondent parties are with broker/traders such as ADM and Koch that compete with the domestic industry for sales and rely on a small margin, high volume business model. Mosaic Final Comments at 6; *see also* Simplot Posthearing Br. at Responses to Questions pp. 9-10, 21, 64 and Exhibit 5. Mosaic further contends that it has never had a sales relationship with IRM, and that it [REDACTED]. Mosaic Posthearing Br. at Responses to Questions, pp. 87-88. Mosaic argues that many of the other alleged instances identified by respondents dealt with post-petition supply issues experienced by U.S. importers after their Moroccan and Russian suppliers largely and abruptly exited the U.S. market. Mosaic asserts that there was a supply shock, and Mosaic responded by diverting shipments headed to export markets and drawing down inventories. Mosaic Posthearing Br. at Responses to Questions p. 84; Mosaic Final Comments at 6.

²⁹⁷ CR/PR at Tables IV-2, IV-7.

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precipitation impacted three planting seasons in a row beginning in the fall of 2018, the volume of subject imports persisted beyond levels demanded, resulting in a substantial buildup of U.S. importer inventories of subject imports and an oversupply condition in the U.S. market.^{298 299}

Respondents further claim that Mosaic deliberately refused to supply U.S. customers in favor of exporting product.³⁰⁰ The record, however, does not support respondents' contention that domestic producers prioritized export shipments over U.S. shipments. To the contrary, after subject imports declined in the U.S. market following the filing of the petitions, the domestic industry increased production and U.S. shipments, and also diverted export shipments to make additional product available to U.S. customers.³⁰¹ Mosaic explains that its export markets, such as India and Brazil, help support year-round capacity utilization rates during the "off-season" periods in the United States³⁰² and are also used for "risk management" and to retain flexibility to ship product to third country markets during times when U.S.

²⁹⁸ CR/PR at Tables IV-2, IV-7. Respondents argue that imported product was necessary to serve demand in U.S. regions unaffected by the poor weather conditions. However, as discussed above, the record shows that the volume of cumulated subject imports in 2019 exceeded what was necessary to replenish any depleted inventories.

²⁹⁹ Moreover, while demand as measured by apparent U.S. consumption declined by [REDACTED] short tons between 2018 and 2019, U.S. shipments of subject imports increased by [REDACTED] short tons. CR/PR at Table C-1. Although apparent U.S. consumption was [REDACTED] short tons lower in 2019 than in 2017, the volume of cumulated subject imports was 725 thousand short tons higher and importers' U.S. shipments of subject imports 743 thousand short tons higher in 2019 than in 2017. CR/PR at Tables IV-2, C-1.

³⁰⁰ Koch Prehearing Br. at 3-5; PhosAgro Prehearing Br. at 3; Koch Prehearing Br. at 2; EuroChem Prehearing Br. at 5; OCP Posthearing Br. at 6-7.

³⁰¹ CR/PR Tables III-5, IV-7; Mosaic Posthearing Br. at Responses to Questions p. 84; Mosaic Final Comments at 6. Mosaic states that due to the abrupt departure of subject imports after the filing of the petitions and because facilities need time to ramp up production, it also had to import product from Saudi Arabia for the first time in late 2020. Hearing Tr. at 103-104 (Jung); Mosaic Posthearing Br. at Response to Questions p. 17 n.165.

³⁰² Mosaic Prehearing Br. at 54.

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demand is low, such as in 2019.³⁰³

Further undermining respondents' assertions of widespread or problematic issues with supply from domestic sources compared to subject sources, is the fact that the majority of purchasers reported that the domestically produced product was either comparable or superior to product from Morocco (16 of 24 firms) and Russia (20 of 23 firms) in availability and reliability of supply.³⁰⁴ As previously discussed, most U.S. purchasers reported that the domestic product's U.S. distribution network was superior to that of subject imports.³⁰⁵ The additional questionnaire responses gathered in these remand proceedings demonstrate the breadth and superiority of U.S. producers' distribution networks, and that the domestic industry reported moving inventories between locations while importers generally did not.³⁰⁶

We also find that the record does not support respondents' arguments that the domestic industry's financial declines were due to its cost challenges.³⁰⁷ As previously discussed, all major U.S. producers are vertically integrated with respect to the main raw material inputs used to produce phosphate fertilizers – sulfur, ammonia, and phosphate rock.³⁰⁸

³⁰³ Mosaic Posthearing Br. at 14; Hearing Tr. at 118-120 (O'Rourke).

³⁰⁴ CR/PR at Table II-9. Although 16 of 28 purchasers reported experiencing supply constraints, we note that three of those purchasers ([REDACTED], [REDACTED], and [REDACTED]) specifically implicated U.S. importers only. Moreover, three other purchasers ([REDACTED], [REDACTED], and [REDACTED]) pointed to experiencing constraints from both U.S. importers and domestic producers. And one purchaser ([REDACTED]) pointed to [REDACTED]. [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] U.S. Purchaser Questionnaire Responses at III-11. Consequently, only nine of 28 responding purchasers – three of which were U.S. importers ([REDACTED], [REDACTED], and [REDACTED]) of subject phosphate fertilizers and [REDACTED] – reported supply constraints with respect to the domestic like product only.

³⁰⁵ CR/PR at Table II-9.

³⁰⁶ See above Section II.A.3; Remand Questionnaire Responses at 2(a)-(c).

³⁰⁷ OCP Prehearing Br. at 113-115; EuroChem Prehearing Br. at 3-4.

³⁰⁸ CR/PR at V-1.

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To the extent domestic producers purchased certain quantities of raw materials,³⁰⁹ this did not adversely impact the domestic industry's total COGS, which declined over the POI and was lower in interim 2020 than in interim 2019.³¹⁰

Finally, we have also examined the role of nonsubject imports. Nonsubject imports increased over the POI,³¹¹ but they had a small presence in the U.S. phosphate fertilizer market. Their market share fluctuated, increasing from [REDACTED] percent in 2017 to [REDACTED] percent in 2018, before declining to [REDACTED] percent in 2019, for an overall increase of [REDACTED] percentage points between 2017 and 2019.³¹² Subject imports, however, gained a larger amount, [REDACTED] percentage points of market share, as [REDACTED] percentage points of market share shifted from domestic to import sources from 2017-2019 ([REDACTED] percentage points from 2018-2019).³¹³ Moreover, between 2018 and 2019 when demand and prices declined, subject import market share increased by [REDACTED] percentage points (from 29.0 percent to 33.3 percent), while nonsubject import market share decreased by [REDACTED] percentage points (from [REDACTED] percent to

³⁰⁹ For instance, Mosaic states that it produces one-third of its ammonia, purchases another third on the open market, and acquires a third through a long-term contract with CF Industries. Mosaic Posthearing Br. at Responses to Questions p. 95.

³¹⁰ CR/PR at VI-1. Raw material costs increased from \$[REDACTED] in 2017 to \$[REDACTED] in 2018, then decreased to \$[REDACTED] in 2018 and were lower in interim 2020, at \$[REDACTED], than in interim 2019, at \$[REDACTED], even as production and sales were higher. *See id.*

³¹¹ CR/PR at Tables IV-2. Nonsubject imports increased from [REDACTED] short tons in 2017 to [REDACTED] short tons in 2018, then declined to [REDACTED] short tons in 2019; they were higher in interim 2020, at [REDACTED] short tons, than in interim 2019, at [REDACTED] short tons. *See id.*

³¹² CR/PR at Tables IV-8, C-1. Nonsubject imports' market share was lower in interim 2020, at [REDACTED] percent, than in interim 2019, at [REDACTED] percent. *See id.* Nonsubject imports did not fill the supply vacated when subject imports decreased following the filing of the petitions, as total import volumes of phosphate fertilizers were lower in the third quarter of 2020 than in the third quarters of every other year of the POI. CR/PR at Table IV-6.

³¹³ CR/PR at Table C-1.

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[REDACTED] percent).³¹⁴ As discussed above, the record, including the volume of subject imports, information from purchaser questionnaire responses, and contemporaneous trade publications, indicates that subject imports contributed to oversupply conditions in the U.S. market and had significant depressing effects on U.S. prices.³¹⁵ Thus, based on the available evidence, nonsubject imports cannot explain the magnitude of the adverse impact on the domestic industry.³¹⁶

Accordingly, we continue to find that cumulated subject imports had a significant impact on the domestic industry.

III. Conclusion

For the foregoing reasons, we again determine that an industry in the United States is

³¹⁴ CR/PR at Table C-1. Subject and nonsubject import market shares were both lower in interim 2020 than in interim 2019, by [REDACTED] percentage points and [REDACTED] percentage points, respectively. *Id.*

³¹⁵ *See, e.g.*, CR/PR at Table V-11. Responding purchasers specifically discussed imports from Morocco and Russia and their impact on the U.S. market. As previously discussed, subject imports from Morocco and Russia accounted for 84.1 percent of total import volume in 2019, up from 83.0 percent in 2018. CR/PR at Table IV-2. The volume of cumulated subject imports declined by 9.5 percent between 2018 and 2019, while the volume of nonsubject imports declined by 16.0 percent. CR/PR at Table IV-2. U.S. shipments of subject imports increased by 148,957 short tons, 6.2 percent, between 2018 and 2019, while U.S. shipments of nonsubject imports decreased by 11.8 percent during that time. CR/PR at Table C-1.

³¹⁶ As noted above, nonsubject imports from Saudi Arabia increased each year of the POI until Saudi Arabia was the largest source of nonsubject imports by 2019. CR/PR at IV-2. While Mosaic has a 25 percent equity interest in MWSPC, a producer of phosphate fertilizers in Saudi Arabia, it was not the U.S. importer of nonsubject imports from Saudi Arabia until the last quarter of 2020. CR/PR at IV-6; *see* Mosaic U.S. Importer Questionnaire Response at I-2a, II-2a. It maintains that it had invested in the Saudi facility to serve India and other parts of Asia, not the U.S. market, as evidenced by the fact that after it had idled Plant City, it “imported zero phosphate fertilizer from Saudi Arabia,” but rather “sold [REDACTED] percent of its offtake from MWSPC in India.” Mosaic Posthearing Br. at Responses to Questions pp. 16-17. The record indicates that India was the largest destination for exports from Saudi Arabia during the POI. CR/PR at Table VII-13. Mosaic’s [REDACTED]. *See id.* at Responses to Questions p. 17 n.165. Mosaic did so, rather than utilize its excess capacity because the “nature of phosphate fertilizer production makes it difficult to ramp up production quickly.” *See id.* at Responses to Questions pp. 24-26.

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materially injured by reason of subject imports of phosphate fertilizers from Morocco and Russia that are subsidized by the governments of Morocco and Russia.

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Dissenting Views of Chairman David S. Johanson

I dissented when this investigation was originally before the Commission, determining that the domestic industry was neither materially injured nor threatened with material injury by reason of subject imports of phosphate fertilizers from Morocco and Russia. On remand from the U.S. Court of International Trade,¹ there is nothing in the record that changes my original analysis, findings, or determinations. I therefore adopt and incorporate my original dissent in full. See *Phosphate Fertilizers from Morocco and Russia*, Inv. Nos. 701-TA-650-651 (Final), USITC Pub. 5172 (March 2021) at 45-69 (Dissenting Views of Commissioner David S. Johanson); APPX0099630-0099666 (confidential version of same with citation to joint appendix of appellate record). I write further, however, to address the limited additional information gathered on remand, which consists of thirteen responses of certain importers and producers to remand questionnaires and the written comments of seven parties.² The additional evidence further supports negative determinations. This is an injury case that did not demonstrate, and on remand continues not to demonstrate, present or threatened material injury.

The limited new evidence obtained on remand, as discussed below, confirms that the normal distribution flow of phosphate fertilizer in the United States is in one direction with fertilizer moving from port of entry (for imports) or production facility (for domestic product) to

¹ *OCP S.A. v. United States*, Consolidated Court No. 21-00219, Slip Op. 23-136 (Sept. 19, 2023).

² The Commission received U.S. Importer Remand Questionnaire responses from ADM, CHS, EuroChem, Growmark, IRM, Koch, MacroSource (formerly Gavilon), Mosaic, Nutrien, and OCP. The Commission received U.S. Producer Remand Questionnaire responses from Mosaic, PCS, and Simplot. The Commission received Remand Comments from EuroChem, IRM, Koch, Mosaic, OCP, PhosAgro, and Simplot.

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inventory terminals, usually upriver by barge or overland by train, and then distributed to retailers and eventually farmers. The reshipment of inventory from its original intended destination to another region with stronger demand is a not a normal business practice in the United States, regardless of source, and numerous reasons explain this one-way distribution of fertilizer, including the lack of infrastructure to support such movement, shipping logistics, and prohibitive costs and economics. Importers reported as follows, for example:

- [REDACTED]³
- [REDACTED]⁴
- [REDACTED]⁵
- [REDACTED]⁶
- [REDACTED]

³ U.S. Imp. Remand Q. of OCP at 2(a).

⁴ U.S. Imp. Remand Q. of Koch at 2(a).

⁵ U.S. Imp. Remand Q. of MacroSource at 2(a).

⁶ U.S. Imp. Remand Q. of IRM at 2(a).

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[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

Domestic producers' description of their distribution network confirms this one-way pattern. For example, Mosaic described distribution from [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷ U.S. Imp. Remand Q. of ADM at 2(c).

⁸ U.S. Imp. Remand Q. of CHS at 2(a).

⁹ U.S. Imp. Remand Q. of EuroChem at 2(a).

¹⁰ U.S. Imp. Remand Q. of OCP at 2(a).

¹¹ U.S. Imp. Remand Q. of OCP at 2(a); *see also* U.S. Imp. Remand Q. of GrowMark at 2(a) (noting [REDACTED]).

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[REDACTED]]¹² Similarly, Simplot explained that it ships fertilizer [REDACTED]

[REDACTED]

[REDACTED]]¹³ PCS reported that, [REDACTED]

[REDACTED]

[REDACTED]]¹⁴

Importantly, the several reported examples of exceptions to this normal flow of fertilizer through the distribution network prove the rule. Mosaic stated that it [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]]¹⁵ However, Mosaic [REDACTED]

[REDACTED].

The vagueness of this response and its wording support the underlying point about the normal distribution pattern. Simplot claimed to [REDACTED]

[REDACTED]],¹⁶ but [REDACTED]

[REDACTED]].¹⁷ The record does not

indicate [REDACTED]

[REDACTED]], but the reported volume makes the underlying point in any event,

as it accounts for only [REDACTED]] percent of Simplot’s total U.S. shipments during the period of

¹² U.S. Prod. Remand Q. of Mosaic at 2(b).

¹³ U.S. Prod. Remand Q. of Simplot at 2(b).

¹⁴ U.S. Prod. Remand Q. of PCS at 2(b).

¹⁵ U.S. Prod. Remand Q. of Mosaic at 2(c).

¹⁶ U.S. Prod. Remand Q. of Simplot at 2(a).

¹⁷ U.S. Prod. Remand Q. of Simplot at 2(c).

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investigation.¹⁸ Finally, ADM explained that it moved [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

].¹⁹

In short, the remand questionnaires reveal a distribution network designed and built to move phosphate fertilizer in one direction – from production facility or port to intermediary warehouses to customer locations. Phosphate fertilizer does not flow backwards down the Mississippi and its tributaries, or from inland distribution hubs back to river terminals. Unsold inventory remains onsite until the next application season rather than move to a different region of the country with higher contemporaneous demand. There is no evidence that the reshipment of inventory from its original intended destination to another region with higher demand occurred (or even could have occurred) at the scale necessary to move any commercially meaningful quantities of unused inventory, in 2019 or at any other time, much less that such reshipment is standard industry practice. The record clearly shows, to the contrary, that this is not standard practice for reasons including logistics and costs.

I addressed the issue of inventory reshipment in the original investigation in the context of rebutting any claim that the volume of subject imports in the U.S. market during the demand shocks of 2019 provided the requisite causal link to price declines in 2019. See USITC Pub. 5172 at 52-54 (public version); APPX0099641-0099643 (pages 14-16 of confidential version). This part of my original dissent ran three pages with extensive citations, one paragraph of which

¹⁸ See U.S. Prod. Remand Q. of Simplot at 2(c); U.S. Prod. Final Q. of Simplot at II-7.

¹⁹ U.S. Imp. Remand Q. of ADM at 2(b)-(c).

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addressed inventory reshipment, on which I found that inventories were stuck upriver, without the ability to ship back downriver to supply other parts of the market. USITC Pub. 5172 at 53 & nn.64-65; APPX0099642 & nn.64-65. I cited as examples of record support the hearing testimony of Messrs. Lambert of EuroChem and Niederer of ADM. USITC Pub. 5172 at 53 nn.64-65; APPX0099642 at nn.64-65. Their hearing testimony is now corroborated and bolstered by the reopened record on remand, as discussed above.

Accordingly, the remand record supports my original determinations and does not alter my original analysis or findings. A further takeaway on remand is that the evidentiary issue of inventory reshipment was not the only shortcoming in this injury case; it formed only a part of my rebuttal of any allegation of injury due to subject imports in 2019, and this rebuttal, in turn, formed only part of my analysis finding no present material injury or threat of material injury on the record. See USITC Pub. 5172 at 45-69; APPX0099630-0099666.

Based on the record of this investigation as supplemented on remand, and for all of the reasons stated above and in my original dissent, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of phosphate fertilizers from Morocco and Russia.