Slip Op. 26-75

UNITED STATES
COURT OF INTERNATIONAL TRADE

Consol. Ct. No. 21-00219

OCP S.A.,

Plaintiff,

EUROCHEM NORTH AMERICA CORPORATION,

Consolidated Plaintiff,

and

PHOSAGRO PJSC; INTERNATIONAL RAW MATERIALS LTD.; and KOCH FERTILIZER, LLC,

Plaintiff-Intervenors,

v.

UNITED STATES,

Defendant,

and

THE MOSAIC COMPANY and J.R. SIMPLOT COMPANY, LLC,

Defendant-Intervenors.

Before: M. Miller Baker, Judge

OPINION

[Sustaining the International Trade Commission's second remand results.]

Dated: July 15, 2026

Shara L. Aranoff, *et al.*, Covington & Burling LLP, Washington, DC, on the comments for Plaintiff.

Peter Koenig and *Jeremy W. Dutra*, Squire Patton Boggs (US) LLP, Washington, DC, on the comments for Consolidated Plaintiff.

H. Deen Kaplan, *Jared R. Wessel*, and *Michael G. Jacobson*, Hogan Lovells US LLP, Washington, DC, on the comments for Plaintiff-Intervenor Phosagro PJSC.

Paul C. Rosenthal and *Melissa M. Brewer*, Kelley Drye & Warren LLP, Washington, DC, on the comments for Plaintiff-Intervenor International Raw Materials Ltd.

Kenneth G. Weigel and *Lian Yang*, Alston & Bird, Washington, DC, on the comments for Plaintiff-Intervenor Koch Fertilizer, LLC.

Karl von Schriltz, Assistant General Counsel for Litigation, and *Courtney S. McNamara*, Attorney-Advisor, Office of the General Counsel, U.S. International Trade Commission, Washington, DC, on the comments for Defendant.

David J. Ross, *Stephanie E. Hartmann*, and *Alexandra Maurer*, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, on the comments for Defendant-Intervenor The Mosaic Company.

Stephen P. Vaughn and *Patrick J. McLain*, King & Spalding LLP, Washington, DC, on the comments for Defendant-Intervenor J.R. Simplot Company, LLC.

Baker, Judge: This challenge to the International Trade Commission's finding that subsidized imports of phosphate fertilizer from Morocco and Russia materially injured U.S. producers returns from a second court-ordered remand. *See OCP S.A. v. United States*, Slip Op. 25-51, __ F. Supp. 3d __, 2025 WL 1837257 (CIT Apr. 22, 2025) (*OCP II*) (Vaden, J.).[1] For the reasons stated below, the court sustains the redetermination.

I

The non-OCP plaintiffs[2] observe that the Commission's redetermination "voic[ed] its 'respectful disagreement' with [*OCP II*]—*ten times*." ECF 257, at 11

[1] This matter was reassigned after Judge Vaden joined the Executive Branch. The court presumes the reader's familiarity with *OCP II* and its progenitor, *OCP S.A. v. United States*, 658 F. Supp. 3d 1297 (CIT 2023) (*OCP I*). The court also notes that this case gave rise to a kerfuffle over whether the Commission exceeded its statutory authority in indiscriminately denominating record material as confidential. After Judge Vaden declined to honor the agency's blanket redactions, it sought mandamus relief. The Federal Circuit agreed with him, explaining that his enforcement of the right of public access in *OCP II* was "exemplary." *In re United States*, 166 F.4th 1001, 1016 (Fed. Cir. 2026).

[2] The court received two sets of comments challenging the Commission's redetermination. One was filed by OCP, a Moroccan producer. *See* ECF 255. The other was jointly filed by importers Eurochem, Koch Fertilizer, and International Raw Materials and Russian producer Phosagro (the non-OCP plaintiffs). *See* ECF 257. This opinion refers collectively to OCP and the non-OCP plaintiffs as "the plaintiffs."

(emphasis in original). They contend that "[t]his is unlawful and compels a remand for the Commission majority to apply the Court's findings in each instance." *Id.*

But it is not "unlawful" for an agency to disagree with a court's decision. *OCP II* neither instructed the Commission to make any finding nor categorically rejected its previous determinations as contrary to law—rather, the court found aspects of the first remand results unsupported by substantial evidence. Slip Op. 25-51, at 49, 2025 WL 1837257, at *19. "The Commission should take care *to address each error* identified by the Court and remedy each error in a manner supported by substantial evidence." *Id.* (emphasis added).[3]

Thus, the remand order allowed the agency to maintain its previous conclusions *if* it cited substantial evidence justifying them.[4] A decision that does so com-

[3] The non-OCP plaintiffs also assert that the dissenting Commissioner's reasoning is "now" the law of the case because they construe *OCP II* as having incorporated the dissent. *See* ECF 257, at 12–19. The court disagrees with their reading of *OCP II* as well as their assumption that the court *can* adopt the dissenting Commissioner's views. Unlike that official, federal judges are not in the business of making factual findings based on the agency record.

[4] Viewed differently, even if this court *sustains* a finding, the agency may still decide the opposite after reexamining the case on remand if substantial evidence allows that conclusion. *Taiwan Semiconductor Indus. Ass'n v. United States*, 118 F. Supp. 2d 1250, 1254–55 (CIT 2000) (citing *Trent Tube Div., Crucible Materials Corp v. Avesta Sandvik*

(footnote continues on next page)

plies with the order regardless of the Commission's disagreement with the court's reasons for the remand. *Compare Dus & Derrick, Inc. v. U.S. Sec'y of Agric.*, 32 CIT 151, 157 (2008) (noting that agency had complied with remand instructions despite disagreeing with court's conclusions), *with NSK Corp. v. United States*, 637 F. Supp. 2d 1311, 1319, 1321–23 (CIT 2009) (remanding because the ITC "dedicate[d] nearly a third of its remand analysis to vociferously disagree[ing] with the court's holding" and failed to rethink the relevant issues).

In sum, the issue presented here is not whether the Commission paid sufficient obeisance toward *OCP II*. The question is whether the agency's conclusions on the remanded issues are supported by substantial evidence in the administrative record and otherwise in accordance with law. The court turns to that topic.

II

According to their proposed remand orders, the plaintiffs seek reconsideration of what they characterize as the following Commission findings:

1. That domestic producer inventories were available to supply the U.S. market, including

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Tube AB, 975 F.2d 807, 814 (Fed. Cir. 1992) ("[T]he Court found that the determinations were supported by substantial evidence and otherwise were in accord with law. This is not necessarily inconsistent with a holding that the opposite conclusion was also supported by substantial evidence and otherwise in accord with law.")).

> through the reshipment of delivered inventories from one region to other regions.
>
> 2. That the volume of subject imports, including volumes sold to purchasers denied domestic supply and volumes exported to Canada, caused the U.S. market to be oversupplied after the reductions in supply at Plant City and Redwater.
>
> 3. That subject imports were lower-priced and caused lost sales and price depression.
>
> 4. That subject imports were more than a *de minimis* cause of injury to the domestic industry separate from the impact of repeated weather-related demand disruptions.

ECF 255-1, at 2 (OCP proposed order); ECF 257-1, at 2–3 (same submitted by non-OCP plaintiffs). The court considers these issues seriatim.

A

The Commission found that "domestic industry was well positioned to supply the U.S. market in 2019." Appx0022060/Appx0100037.[5] It based this conclusion on U.S. producers' "capability to reship fertilizer if relocation was needed." *Id.* But *even if* that capability were limited, they "possessed excess capacity, substantial inventories (that unlike for importers were not reportedly stranded), extensive inventory loca-

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[5] In this opinion, record citations with dual pagination separated by a slash refer to the public and confidential versions, in that order, of the Commission's redetermination.

tions, and [an] expansive multi-modal distribution network." *Id.*[6]

Regarding reshipping, the Commission found—as its comments point out, *see* ECF 262, at 47–48—that "the movement of . . . inventories [was] a regular business practice and not a rare occurrence or theoretical possibility." Appx0022078/Appx0100058. For this proposition, it cited (among other things) Mosaic and Simplot's questionnaire responses. They showed that the domestic industry's total reshipments during the period of investigation "were equivalent to approximately 23.7 percent of . . . end-of-year inventories during the period." *Id.* The agency contrasted that with the importers' *inability* to do either, and it cited OCP's own evidence that while Mosaic retains title to fertilizer, even in customer warehouses, until it is used or sold to a third party, the importers no longer own the product after they deliver it and thus cannot relocate it. Appx0022080/Appx0100060 (citing Appx0099918).

[6] OCP subtly attempts to recharacterize the agency's finding, asserting that the Commission retreated from "its reliance on reshipments" and now "purports to rely on" excess capacity, substantial inventories, numerous inventory locations, and an extensive distribution network. ECF 255, at 10. The Commission, however, quite plainly identified those factors as *additional* reasons that supported its conclusion that domestic industry could supply the U.S. market. *See* Appx0022060/Appx0100037. Far from "disclaiming" reliance on reshipping, as explained below the agency stood by it.

The Commission's citation of the percentage of overall inventory reshipment is substantial evidence answering *OCP II*'s critique that the agency previously relied on "isolated examples of small-volume inventory reshipment—standing by themselves—[to] prove the existence of a broad capacity to reship." Slip Op. 25-51, at 24, 2025 WL 1837257, at *9.

The plaintiffs do not directly contest this answer. Instead, they simply read the record differently and point to evidence that they say points to a contrary conclusion. See ECF 255, at 8–17 (OCP); ECF 257, at 24–29 (non-OCP plaintiffs). But the fact that plaintiffs "can point to evidence of record which detracts from the evidence which supports the Commission's decision and can hypothesize a reasonable basis for a contrary determination is neither surprising nor persuasive." *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 936 (Fed. Cir. 1984). The agency having supported its conclusion on the remanded issue with substantial evidence, the court sustains it.

B

The plaintiffs' second challenge is to the Commission's redetermination that the volume of subject imports caused the U.S. market to be oversupplied after domestic producers ceased operations at two plants. Appx0022067–0022070 & nn.85–99/Appx0100045–0100048 & nn.85–99. This issue corresponds to 19 U.S.C. § 1677(7)(C)(i), which directs the agency to consider whether the volume of imports, or any increase therein, is significant, either in absolute terms or relative to domestic production or consumption.

In *OCP II*, the court found the Commission's first redetermination unsupported by substantial evidence "because it ignore[d] important, detracting information in the record and fail[ed] to connect the facts found to the choices made." Slip Op. 25-51, at 29, 2025 WL 1837257, at *11. It agreed with the plaintiffs that it was unclear whether the agency had considered "two categories of record evidence—(1) instances where Mosaic refused to sell to domestic trading companies and (2) instances where subject merchandise was re-exported." *Id.*

1

On remand, the Commission emphasized that the imports' volume increased by 36.8 percent between 2017 and 2019, Appx0022081/Appx0100062, and that the increase between 2018 and 2019 came despite apparent U.S. consumption declining by 7.5 percent during the same period, Appx0022082/Appx0100063 (citing Appx0098461). It also found that cumulated subject imports experienced a 10.3-percent increase in market share between 2017 and 2019 while the domestic industry lost 14.3 percent. *Id.* (citing Appx0098461, Appx0098547–0098548). Based on those figures, the Commission deemed both the volume of subject imports and the increase in volume to be significant in both absolute and relative terms. Appx0022083/Appx0100063.

OCP responds primarily by focusing on Mosaic's closure of its production facility in Plant City, Florida, and Nutrien's conversion of a plant in Redwater, Alberta, to other uses. ECF 255, at 28–32. The company flyspecks the evidence the agency cited, arguing that other material in the record is more compelling. It contends, for example, that the Commission did not explain why it found a "contemporaneous" report about Mosaic's post–Plant City capacity "less probative" than a different figure from a 2021 report. *Id.* at 29. But that goes to the weight the agency assigned to the evidence, which is not a matter for this court to reassess.[7]

The defendant-intervenors answer by noting that the statute requires the Commission to consider whether the volume of imports, or any increase therein, is "significant" *either* in absolute terms *or* relative to U.S. consumption or production. "The statute does not require the Commission to assess the significance of subject imports relative to the U.S. supply–demand balance (i.e., the so-called 'supply gap')." ECF 273, at 34. While that argument is correct, the agency found that the volume of subject imports exceeded *both* the amount by which Mosaic estimated it would reduce available supply *and* the amount by which it decreased domestic shipments after shutting down Plant City.[8] Appx0022066–0022068/Appx0100043–0100047.

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[7] Substantial-evidence review does not involve critiquing each piece of evidence and then adding everything in a sort of mathematical calculation. Rather, substantial evidence "is something less than the weight of the evidence," and the focus is on the record as a whole. *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951).

[8] The Commission found the evidence showed that Nutrien increased domestic production to offset the supply lost from

(footnote continues on next page)

Thus, the Commission addressed both sides of the "volume" analysis and supported its conclusions with substantial evidence.

While the non-OCP plaintiffs argue that the agency "ignore[d] . . . public and contemporaneous statements" by the domestic producers, ECF 257, at 23, the Commission's analysis plainly shows otherwise. *See* Appx0022136 n.387/Appx0100121 n.387, Appx0022137 n.388/Appx0100122 n.388 (both addressing "public statements" made "at the time" of the closures). The non-OCP plaintiffs also cite a past agency decision saying that public statements "not made in connection with our investigations" deserve greater weight than conflicting evidence. ECF 257, at 23 (citing USITC Pub. 3639, at 22 n.203).

But the Commission observed that the "volume of cumulated imports exceeded Mosaic's reasonable estimate of the amount by which it reduced its supply to the U.S. market." Appx0022085 n.183/Appx0100066 n.183. The agency's discussion of the amount by which Mosaic estimated the Plant City closure would reduce supply included an examination of testimony from a

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converting its Redwater facility to other purposes. Appx0022069/Appx0100047. OCP objects that other evidence establishes that Nutrien did not compensate for the lost supply, in part because the latter company exported some of the compensatory production to Canada. ECF 255, at 30–31. But the agency cited evidence in the record showing that the increase in Nutrien's domestic production "was more than sufficient to cover its increase in exports that year." Appx0022137 n.388/Appx0100122 n.388 (citing Appx0098434, Appx0086941).

company representative, which the Commission specifically found "credible and consistent with other record evidence." Appx0022067–0022068 nn.85–91/ Appx0100045–0100047 & nn.85–91. It simply determined that because the imports exceeded the anticipated lost production, other evidence in the record took precedence over the testimony. That is a reasonable explanation for departing from any practice—assuming one exists—of giving more weight to outside public statements. *See Huvis Corp. v. United States*, 570 F.3d 1347, 1354 (Fed. Cir. 2009) (stating that an agency may deviate from its practice if it "show[s] that there are good reasons" for doing so).

2

In *OCP II*, the court observed that the plaintiffs have consistently argued that the agency erroneously relied on the importers' questionnaire responses because "the data includes product that was destined for Canada and therefore did not injure U.S. industry." Slip Op. 25-51, at 34, 2025 WL 1837257, at *13. The court held that the failure to address that issue required remand. *Id.*

In response, the Commission maintained that the answers were accurate because the importers listed the entries as being intended for consumption, "even if such imports were at some later, unspecified point in time reexported to Canada," and it stated that it separately collected information about export transactions. Appx0022083–0022084/Appx0100064.

The agency emphasized that it would reach the same volume conclusion regardless of whether it relied on raw figures or data adjusted to exclude re-exports. It observed that the adjusted numbers showed that imports' volume increased by 33.2 percent between 2017 and 2019, which it found comparable to the 36.8-percent increase shown by the unadjusted data. Appx0022084/Appx0100065.

OCP now attacks the remand results, asserting that the Commission "did not follow the Court's directive to consider only imports consumed in the United States." ECF 255, at 25. Rather than doing so, it argues, the agency simply insisted that the data were accurate. *Id.*; *see also* ECF 257, at 10–11 (maintaining that the Commission "ignore[d]" the court's findings). But the second remand decision shows otherwise because it specifically addressed data adjusted to account for re-exported fertilizer and it explained that the conclusion would be the same.[9] Appx0022084/Appx0100064–0100065. The plaintiffs, in turn, do not attack the accuracy of the re-export figures the agency cited on remand. The court therefore concludes that they do not dispute the data's accuracy.

Ultimately, the defendant-intervenors aptly summarize the issue: "[T]he facts OCP points to do not contradict the Commission's findings that subject import

[9] To the extent OCP may be asking the court to find that it was unlawful for the Commission to consider the unadjusted data at all, the court declines. Even if it were error, it was harmless because the agency also analyzed the adjusted figures.

volumes were significant and *contributed* to oversupply conditions in 2019." ECF 273, at 36 (emphasis in original). Because the agency discussed data adjusted to account for re-exports, it has addressed the concerns the court raised in *OCP II* and has supported its decision with substantial evidence.

3

Turning to the question of refusal to sell, the Commission observed that in its view, "any decisions by Mosaic to prioritize its 'loyal customers' over supplying trading companies that compete with it for the same customers as well as its decision to sell directly to customers, rather than selling through a 'middleman,' [do] not constitute a 'refusal to supply the domestic market.'" Appx0022132/Appx0100117. It then discussed data specific to U.S. purchasers. As to almost all of them, the agency found that the evidence showed the buyers were upset that Mosaic was unwilling to sell at their preferred prices or on their preferred terms, not that it categorically refused to sell at all. Appx0022132–0022135/Appx0100117–0100120. It concluded that while there was evidence of some domestic purchasers "being unable to obtain supply from Mosaic at times," the record as a whole established that any harm to the domestic industry was caused more by imports than by "alleged refusals to supply the U.S. market." Appx0022135/Appx0100120.

While the plaintiffs disagree with that conclusion, their arguments hinge on what weight to give the evidence. They argue, for example, that the record shows subject imports were often priced higher than domestic product, such that the agency's conclusion is unsustainable.[10] ECF 255, at 20–21 (OCP); ECF 257, at 29 (non-OCP plaintiffs). Even accepting that as true, substantial evidence still supports the Commission's finding that the domestic purchasers objected to Mosaic's sales terms. "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo*, 383 U.S. at 620.

C

The third issue on which the plaintiffs seek a remand is the Commission's finding—as they characterize it—"[t]hat subject imports were lower-priced and caused lost sales and price depression." ECF 255-1, at 2. Unpacking this formulation, there are two points in dispute—the agency's price effects and lost sales findings.[11]

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[10] OCP does not disguise its efforts to have the court reweigh evidence. *See* ECF 255, at 22 ("The Commission meanwhile gives 'less weight' to evidence showing Mosaic's refusals to sell post-petition, citing 'a supply shock.'") (quoting Appx0022034). The Moroccan producer's "quarrel is with the weight the agency assigned to" different evidence, "which again is a matter outside the judicial province." *Adisseo Espana S.A. v. United States*, Slip Op. 23-178, at 12, 2023 WL 8866562, at *5 (CIT 2023).

[11] These points correspond to different statutory provisions. *See* 19 U.S.C. § 1677(7)(C)(ii) (price effects): *id.* § 1677(7)(C)(iii) (*inter alia*, lost sales).

1

Regarding price effects, the agency observed that the statute requires it to "consider" two factors—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.

Appx0022089–0022090/Appx0100070 (quoting 19 U.S.C. § 1677(7)(C)(ii)).[12]

As to the first statutory factor, the Commission did not find "significant underselling." Appx0022097/ Appx0100078. Even so, it concluded 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

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[12] It also reiterated its conclusion from the earlier decisions that purchasers view domestic and imported fertilizer of the same chemical formulation as interchangeable, with price, availability, and quality being three major considerations for buyers. Appx0022090/Appx0100070–0100071. That finding is not challenged here.

> 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.

Id.

For the second statutory factor, the agency found that "the substantial volume of cumulated subject imports . . . in 2019 . . . adversely impact[ed] U.S. prices as demand remained low due to weather events and flood in the spring of 2019." Appx0022103/Appx0100085; *see also* Appx0022111/Appx0100093 (imports created "oversupply" and had "a depressing effect on domestic prices as demand remained low").

OCP attempts to blur these findings together. The company contends that the Commission failed "to provide a rational connection between its recognition of the 'prevalence of overselling' and its finding that subject imports were lower priced and caused . . . price depression." ECF 255, at 40–41.

But as the defendant-intervenors observe, *see* ECF 273, at 39, the Commission explained that the statute treats underselling as "separate and distinct" from price depression. Appx0022117/Appx0100101; *compare* 19 U.S.C. § 1677(7)(C)(ii)(I) ("there has been significant price underselling by the imported merchandise") *with id*. § 1677(7)(C)(ii)(II) ("the effect of imports of such merchandise *otherwise* depresses prices to a significant degree") (emphasis added). And it found that imports created an "oversupply condition" that had a "depressing effect on domestic prices."

Appx0022111/Appx0100093. Contrary to OCP's argument, that conclusion rationally coexists with the agency's finding of a lack of significant underselling. The agency plainly found that oversupply, not underselling, drove price depression.

As the Commission explained, underselling only occurred "in some instances." Appx0022097/Appx0100078. And in those limited circumstances, the agency reasonably concluded that it marginally[13] contributed to price depression. *See* Appx0022104/Appx0100086 ("[T]his oversupply of subject imports and their competitive . . . prices, including instances of being lower-priced, exerted downward pricing pressure on the domestic like product and significantly depressed U.S. prices in 2019.").

OCP asserts several other arguments against the agency's underselling finding. ECF 255, at 42–48. Precisely because the Moroccan producer's arguments are based on a caricature of the Commission's actual determination as to the source of price depression, the court need not consider them. As the agency argues, it discharged its statutory duty to "consider" whether there was "*significant* underselling." ECF 262, at 22–23 (emphasis added); *see also* 19 U.S.C. § 1677(7)(C)(ii)(I). It found none. Instead, it only found

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[13] Although the agency did not use the adverb "marginally," in context that's implied. *Cf. Swagway, LLC v. Int'l Trade Comm'n*, 934 F.3d 1332, 1342 (Fed. Cir. 2019) ("The caselaw . . . does not require that agencies explicitly spell out their rationale or reasoning in perfect detail or clarity as long as we can discern the path the agency followed.").

limited instances that (at most) marginally contributed to price depression.

Regarding the Commission's finding that *oversupply* was the principal cause of price depression, the plaintiffs have nothing to say. For its part, OCP tries to change the subject back to its caricature of the agency's finding of limited underselling. The company asserts that the Commission "conclude[d] that subject imports' '*lower' prices* caused price depression in 2019." ECF 255, at 56 (emphasis added). And according to OCP, the agency's "lost sales finding is key" to that conclusion. *Id*.

But as explained above, the Commission didn't find that underselling caused price depression. Instead, oversupply from subject imports did, and the isolated instances of underselling merely exacerbated the problem at the margin. Because the plaintiffs do not contest the agency's finding that an "oversupply condition" had a "depressing effect on domestic prices," Appx0022111/Appx0100093, the court presumes it is correct and therefore sustains it. *See* 28 U.S.C. § 2639(a)(1).

2

As to lost sales, the Commission acknowledged that its finding was mostly based on a single company's data.[14] Appx0022092–0022093 & n.210/Appx0100073

[14] The agency and the parties redact the company's name, which is not important here. It is the same firm *OCP II* called "the outlier purchaser." *See, e.g.*, Slip Op. 25-51, at

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& n.210. That firm reported over ten times more lost sales than any other responding company and was the only one to designate all of its subject import purchases as lost sales for the domestic industry. *See OCP II*, Slip Op. 25-51, at 46–47, 2025 WL 1837257, at *18. *OCP II* expressed concern about the company's data and directed the agency to supplement its explanation for relying on that information, if it wished to continue to do so. *Id.* at 47–48, 2025 WL 1837257, at *18.

The agency declined to reject the outlier purchaser's data. It stated that while the company reported that price was its *main* reason for buying imports when they were priced lower, the firm also reported that the most important consideration was product availability—usually imports were cheaper, but it paid more for them when domestic product was unavailable. Appx0022093 n.210/Appx00100073 n.210 (citing Appx0095738). The Commission also explained that even if it narrowed its analysis to credit only a part of that company's reported lost sales, it would still find the volume significant because the company stated that the imports were cheaper "a majority of the time" and the barest majority of its lost sales remained a "significant quantity."[15] Appx0022095/

46–47, 2025 WL 1837257, at *18. While the Commission complains about the word "outlier," *see* ECF 262, at 34, the court uses it for consistency.

[15] OCP complains that the agency gave no reason for citing the specific quantity it did. ECF 255, at 53–54. The Commission responds that the number was just under half the company's reported sales. ECF 262, at 32–33. That explanation is reasonable.

Appx0100076. And it explained that it viewed the company's narrative responses as more probative than the numerical figures because the former "directly corroborate the Commission's findings that subject imports were at times lower priced and exerted competitive pressure on prices for the domestic like product." Appx0022095–0022096/Appx0100077. As one example, it cited the firm's statements that domestic producers cut prices by an estimated 43 percent to compete with imports despite initially not wanting to do so and that import purchases increased because the price difference was greater than normal. Appx0022096/Appx00100077 (citing Appx0088551).

The agency then discussed evidence from other domestic purchasers that it found corroborative of the outlier company's responses. It noted while they all said domestic product pricing was generally either comparable or higher than imports, several added that the imports were sometimes cheaper and that they bought imports because of the lower price. Appx0022096/Appx0100078.

OCP attacks these findings of lost sales on the ground that the number is too small to constitute a "significant" quantity. ECF 255, at 54. It objects that "the total lost sales quantity (733,895 [tons]) is less than 3 percent of the total purchases and imports reported by purchasers during the [period of investigation] (27,468,899 [tons])." *Id.* It also observes that the percentage would be lower if the Commission were to use the "alternative" method of crediting only a portion of the outlier company's lost sales. *Id.* "This negligible amount," it sums up, "can hardly constitute a 'significant' quantity of lost sales." *Id.*

But the company offers no argument as to what quantity would, in its view, be "significant," nor does it cite any authority offering guidance on where or how to draw the line. That's presumably because "significance" is necessarily a fact-bound determination left to the agency's discretion. And while courts decide what the law means, "judicial review of agency . . . factfinding [is] deferential." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024) (citing 5 U.S.C. §§ 706(2)(A), (E)); *see also* 19 U.S.C. § 1516a(b)(1) (establishing the CIT's standard of review in § 1516a actions using the § 706(2)(E) benchmark). Here, as noted above, the Commission explained that it would find the outlier company's volume of lost sales "significant" regardless of whether it used the entire universe or only a part thereof. Appx0022095/Appx0100076. That satisfied its duty to provide a reasoned explanation for its exercise of discretion.

D

The plaintiffs' final issue is whether "subject imports were more than a *de minimis* cause of injury to the domestic industry separate from the impact of repeated weather-related demand disruptions." ECF 255-1, at 2. OCP asserts, relying on Federal Circuit precedent, that subject imports must be "more than a minimal or tangential cause of injury" and that there must be a "sufficient causal, not merely temporal, nexus between subject imports and injury." ECF 255, at 57 (citing *Gerald Metals, Inc. v. United States*, 132

F.3d 716, 719–20, 722 (Fed. Cir. 1997)). Other cases have clarified that the statutory direction that the Commission consider "whether there is material injury *by reason of* imports," 19 U.S.C. § 1677(7)(B)(ii) (emphasis added), "requires, at the least, but-for causation." *Changzhou Trina Solar Energy Co. v. U.S. ITC*, 879 F.3d 1377, 1381–82 (Fed. Cir. 2018). In this context, however, "but-for" does not mean that the imports must be the sole, or even the principal, cause of injury—rather, they must be a "substantial factor." *Nippon Steel Corp. v. Int'l Trade Comm'n*, 345 F.3d 1379, 1381 (Fed. Cir. 2003).

Because "the Commission has broad authority to consider any relevant factors," the courts' "review of [its] causation analysis . . . is therefore limited to whether [it] complied with certain minimum requirements imposed by statutory provisions and principles of administrative law." *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867, 873 (Fed. Cir. 2008) (cleaned up). There is no fixed methodology the agency must use in addressing causation, and it need not "isolate the injury caused by other factors from injury caused by unfair imports nor demonstrate that [they] are the principal cause of injury." *Swiff-Train Co. v. United States*, 793 F.3d 1355, 1363 (Fed. Cir. 2015) (cleaned up). Rather, its task is to "ensure that it is not attributing injury from other sources to the subject imports." *Trina*, 879 F.3d at 1382 (quoting *Mittal*, 542 F.3d at 877). The key is that "*how* the standard is best applied in particular circumstances may vary with the facts" and it is "[t]he substance of the Commission's analysis, not the specific formulation employed, [that] determines whether [it] has adequately answered the question." *Id.* at 1383 (emphasis in original).

OCP contends that the agency failed to establish that fertilizer imports are anything more than a *de minimis* cause of injury to the domestic industry and asserts that "in 2018 and 2019, extreme rainfall threw off the equilibrium between supply and demand in ways no one could have predicted or planned for, but the market adjusted." ECF 255, at 58. The non-OCP plaintiffs cite the combination of bad weather and the domestic producers' own actions in reducing capacity as other causes, arguing that the record "reveals a complete lack of causation" between imports and the domestic industry's performance. ECF 257, at 32–33. They observe that in a 2019 earnings call, Mosaic itself stated that "[s]ales prices and margins have declined throughout 2019, primarily attributable to a weather-related demand decline in North America." *Id.* at 34 (emphasis removed) (quoting Appx0096282). And they contend that the company "only began to take a different position once it brought this trade case. Thus, weather-related demand declines were the reason for any financial downturn in the domestic industry during 2019—not subject imports." *Id.*

The Commission, in turn, found that U.S. importers already had high levels of inventory in place when domestic demand began to decline in the fall of 2018, but they proceeded to bring in "substantial quantities" of additional fertilizer in 2019 despite the decline in demand and "in excess of any purported need to replenish depleted inventories." Appx0022125/ Appx0100109–0100110. The agency cited its earlier findings about record evidence that imports were offered and sold more cheaply than domestic fertilizer, that U.S. producers cut prices to compete, and that some purchasers cited cheaper pricing as the reason for buying imports. "Consequently," it found, "cumulated subject imports—including through their significant volumes that contributed to the oversupply conditions in the U.S. market during the [period of investigation] at competitive and lower prices—depressed prices in the U.S. market to a significant degree." Appx0022125–0022126/Appx0100110. And it cited *OCP's own witnesses' testimony* that there was both a "temporary oversupply" and a "hangover of phosphate inventories after the 2019 spring season," as well as that the New Orleans trading price was heavily discounted because of the inventory imbalance. Appx0022115 n.292/Appx0100098 n.292.

The Commission acknowledged that there were "other economic factors at work" and that "some or all" of them may have weakened the domestic fertilizer industry, including "nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; *or management decisions by domestic producers*." Appx0022126–0022127/Appx0100111 (emphasis added). The italicized words demonstrate that the agency considered issues such as Mosaic's Plant City shutdown and Nutrien's Redwater closure, contrary to the plaintiffs' contentions that it ignored those issues.

It then specifically addressed the argument that the decline in demand was due to "unusually poor weather conditions" affecting three consecutive fertilizer application seasons in 2018 and 2019. It concluded that while bad weather "prompted a decline in demand," the weather alone did 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." Appx0022128–0022129/Appx0100112–0100113. The Commission cited an article in which domestic producer Nutrien observed that the market was oversupplied and that production cuts would result in further imports even if the cuts reduced losses. Appx0022130 n.356/Appx0100114 n.356.

"Where two different, inconsistent conclusions may reasonably be drawn from the evidence in [the] record, an agency's decision to favor one conclusion over the other is the epitome of a decision that must be sustained upon review for substantial evidence." *In re Morsa*, 713 F.3d 104, 109 (Fed. Cir. 2013) (brackets omitted). It is irrelevant whether the court would have reached a different conclusion if it reviewed the matter *de novo*. *SSIH Equip. S.A. v. U.S. Int'l Trade Comm'n*, 718 F.2d 365, 382 (Fed. Cir. 1983). Here, the Commission reasonably explained why it rejected the argument that weather was the *sole cause* of the domestic industry's declining fortunes during 2018 and 2019. It also reasonably explained why it concluded that subject imports were at least one significant cause. That's all the standard of review required.

* * *

The court sustains the second remand determination. A separate judgment will issue. *See* USCIT R. 58(a).

Dated: July 15, 2026 /s/ *M. Miller Baker*
New York, NY Judge