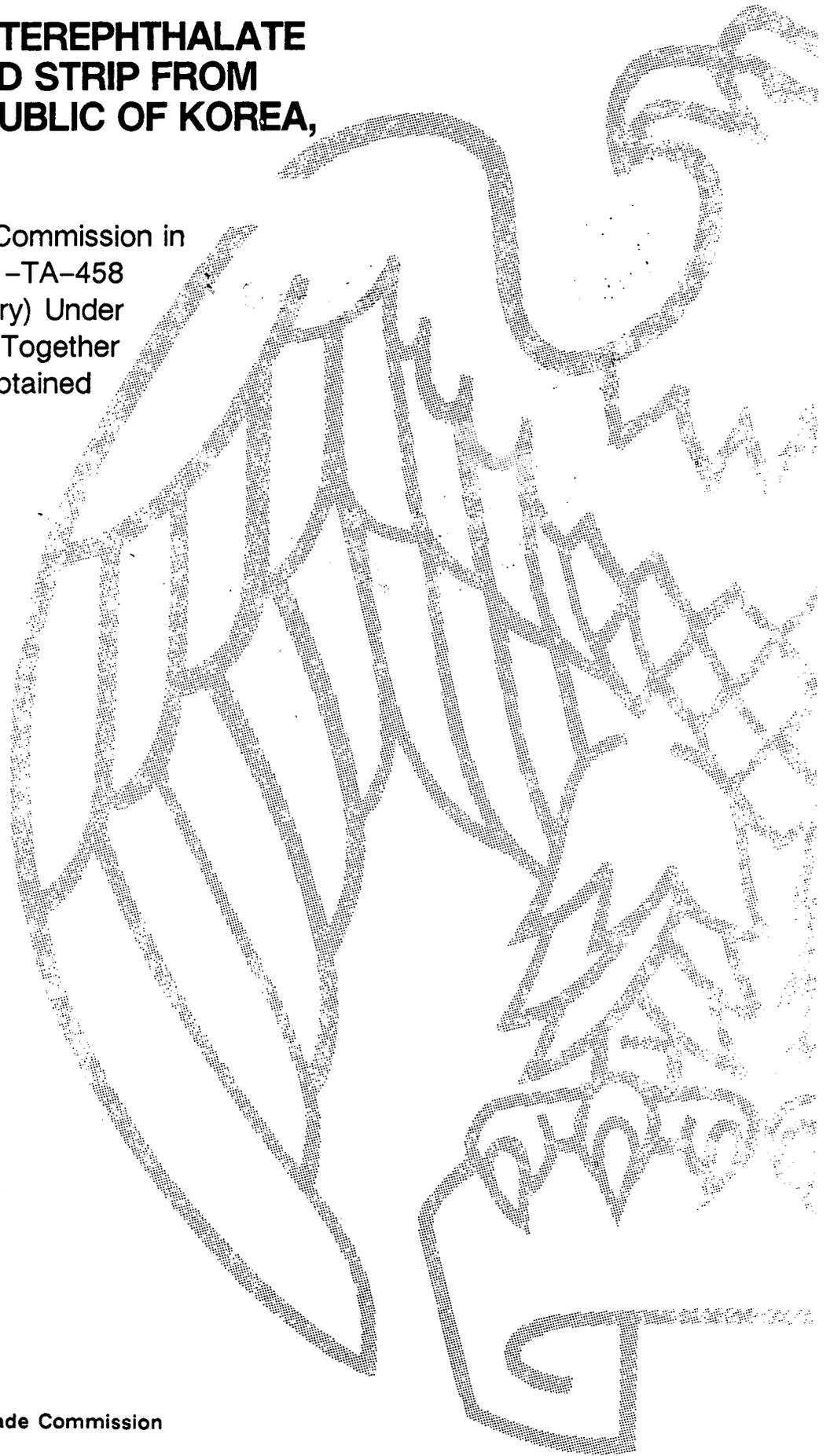


POLYETHYLENE TEREPHTHALATE FILM, SHEET, AND STRIP FROM JAPAN, THE REPUBLIC OF KOREA, AND TAIWAN

Determinations of the Commission in
Investigations Nos. 731-TA-458
through 460 (Preliminary) Under
the Tariff Act of 1930, Together
With the Information Obtained
in the Investigations



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**United States International Trade Commission
Washington, DC 20436**

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Note.--Information that would reveal business proprietary operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-458-460 (Preliminary)

POLYETHYLENE TEREPHTHALATE FILM, SHEET, AND STRIP
FROM JAPAN, THE REPUBLIC OF KOREA, AND TAIWAN

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan and the Republic of Korea (Korea) of polyethylene terephthalate (PET) film, sheet, and strip³ that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of PET film, sheet, and strip³ that are alleged to be sold in the United States at LTFV. The subject product is provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States (previously under item 771.43 of the former Tariff Schedules of the United States).

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

² Chairman Brunsdale not participating.

³ The product covered by these investigations is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of these investigations are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

Background

On April 27, 1990, a petition was filed with the Commission and the Department of Commerce by E.I. Du Pont de Nemours & Co., Hoechst Celanese Corp., and ICI Americas, Inc., alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of PET film, sheet, and strip from Japan, Korea, and Taiwan. Accordingly, effective April 27, 1990, the Commission instituted preliminary antidumping investigations Nos. 731-TA-458-460 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 7, 1990 (55 F.R. 18969). The conference was held in Washington, DC, on May 18, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONERS ECKES, ROHR, LODWICK AND NEWQUIST

On the basis of the information obtained in these preliminary investigations, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of Polyethylene Terephthalate (PET) film, sheet and strip from Japan and Korea that allegedly are sold at less than fair value (LTFV). We further determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of such imports from Taiwan. ¹

The legal standard in preliminary antidumping investigations is set forth in section 733(a) of the Tariff Act of 1930, as amended. ² That section requires the Commission to determine, whether, based on the best information available at the time of the preliminary determination, there is a reasonable indication of material injury to a domestic industry, or threat thereof, or material retardation of establishment of an industry, by reason of the imports alleged to be sold at LTFV. ³

¹ Material retardation of the establishment of an industry is not an issue in these investigations and will not be discussed further.

² 19 U.S.C. § 1673b(a).

³ In American Lamb Co. v. United States, 785 F.2d 994 (Fed Cir. 1986), the United States Court of Appeals for the Federal Circuit addressed the standard for preliminary determinations. The Court held that the reasonable indication standard requires more than a finding that there is a possibility of material injury, and the Commission is to determine if the evidence obtained demonstrates that a reasonable indication exists. The Commission may render a negative preliminary determination only if "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." Id. at 1001.

I. Like Product and Domestic Industry

The Commission begins its analysis by making factual determinations with respect to the "like product" and the "domestic industry." The statute defines "like product" as a "product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation." ⁴ The term "domestic industry" means the "domestic producers as a whole of the like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of the product." ⁵

The Department of Commerce has defined the scope of these investigations to include:

all gauges of raw, pretreated, or primed PET film, sheet, and strip, whether extruded or coextruded. Metallized PET film, sheet, and strip, and PET film, sheet, and strip that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick, are not included in this definition. ⁶

The Commission's decision regarding the appropriate like product or products in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in charac-

⁴ 19 U.S.C. § 1677(10).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 55 Fed. Reg. 21415-21418 (May 24, 1990). While the Commission must accept the Department of Commerce's determination as to which merchandise is within the class of merchandise allegedly sold at LTFV, the Commission determines what domestic products are like the ones in the class defined by Commerce. See *Algoma Steel Corp. Ltd. v. United States*, 12 CIT ___, 688 F. Supp. 639, at 9-10 (Ct. Int'l. Trade 1988), aff'd, 865 F.2d 240 (Fed. Cir. 1989).

teristics and uses" on a case-by-case basis.⁷ In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees, and (6) price.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a given investigation. The Commission may find a like product to be broader than the imported articles described in Commerce's scope of investigation,⁹ or it may find two or more like products corresponding to those articles.¹⁰ The Commission has not found minor variations to be a sufficient basis for a separate like product analysis, but rather, has looked for clear dividing

⁷ See, e.g., Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT ___, 693 F. Supp. 1165, 1168, n.4 (1988) (Asocoflores); Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (January 1989).

⁸ E.g., Fresh and Chilled Atlantic Salmon From Norway, Inv. No. 731-TA-454 (Preliminary), USITC Pub. 2272 (April 1990); Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (March 1989).

⁹ See, e.g., Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary), USITC Pub. 2128 (September 1988); Natural Bristle Paint Brushes from the People's Republic of China, Inv. No. 731-TA-244 (Final), USITC Pub. 1805 (January 1986).

¹⁰ See, e.g., American NTN Bearing Manufacturing Corp. v. United States, Slip Op. 90-50 (May 22, 1990) (Ct. Int'l Trade 1990) at 9-10 & n. 6 ("An ITC 'like product' investigation is conducted for a different purpose than the 'class or kind' investigation made by ITA . . . ITC may determine during the course of its investigation that class or kind of merchandise defined by ITA as being within the scope of ITA's investigation may consist of more than one like product. ITC can reach this result despite the finding by ITA that only once class or kind of merchandise is covered by ITA's investigation").

lines among possible like products. ¹¹

The two principal like product issues in these investigations are (1) whether the like product should be broadened to include products other than PET film, and (2) whether the like product be subdivided.

For purposes of these preliminary investigations, we find a single like product consisting of all PET film, sheet and strip, as requested by the petitioners. ¹² PET film is a clear, flexible, transparent, or translucent material which is produced from PET polymer, a linear thermoplastic polyester resin. ¹³ By manipulating various processing variables, it can be manufactured to have a broad range of additional chemical, physical and thermal properties, making it suitable for a wide range of applications.

A like product broader than the scope of investigation

Du Pont and Kodak both produce captively PET products known respectively as Cronar and Estar. These are finished products, which have been advanced beyond the stage of basic PET film, sheet or strip by the inclusion of coatings. As such, if they were imports, they would fall outside the scope of

¹¹ Fresh and Chilled Atlantic Salmon From Norway, Inv. No. 731-TA-454 (Preliminary), USITC Pub. 2272 (April 1990); Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Inv. Nos. 303-TA-19 and 20, 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989).

¹² Petitioners' have argued, and respondents do not dispute, that there is no generally accepted industry definition of film, sheet, and strip and that there is no differentiation between PET film, sheet and strip. This is confirmed by the responses to the Commission's questionnaires. Report at A-2, n. 2.

¹³ Report at A-2. It is a high performance plastic film that is generally more expensive than other plastic films and therefore tends to be used only for applications that require its unique properties, some of which are high tensile strength, durability, heat resistance, good gas barrier properties, dimensional stability, chemical inertness, and clarity. Id.

these investigations as defined by Commerce. This fact, however, does not prevent us from including such domestically produced products in the like product.¹⁴ Petitioners argue that Du Pont's Cronar should not be included in the like product. Information we currently possess suggests that both Cronar and Estar may be included within the like product. However, we do not include them in the like product for the purpose of our injury analysis in these preliminary investigations because we lack data. We will seek more complete data on these products in the event of any final investigations.¹⁵

Possible subdivision of the like product

Petitioners argue that the Commission should find a single like product consisting of all PET film. Respondents argue that the like product should be subdivided, but they do not agree on the criteria for drawing lines between separate like products. A number of respondents argue that the Commission should find at least four like products, with some respondents arguing for as many as eight. Most argue that (1) packaging film, (2) industrial film, (3) graphics film, and (4) magnetic film should be considered separate like products. Other respondents advanced arguments that one or more of these categories should be further subdivided. Among the subdivisions argued for were: (1) video base film, (2) audio base film, (3) computer base

¹⁴ See, e.g., Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary), USITC Pub. 2128 (September 1988).

¹⁵ See note 34, *infra*. With the exception of Cronar and Estar, no arguably "non-PET" film has been argued to be included in the like product. We determine that the like product does not include products other than PET film for the purpose of these preliminary investigations. Generally PET film competes with a number of substitute materials at the low-price end of the PET product range, but faces few or no substitute products in higher-end applications. Because it is generally more expensive, it tends to be used only for those uses for which its unique properties are required.

film, (4) film for floppy disks, (5) non-tensilized magnetic film, (6) tensilized magnetic film, (7) ultra-thin film, (8) semi-tensilized ultra-thin PET film, under 25 gauge, produced for use as thermal transfer ribbon, (9) super-ultra-thin PET film, under 14 gauge for use in capacitors, (10) pigmented PET film, and (11) silicone-coated PET film.¹⁶

Industrial, packaging, graphics and magnetic film as separate like products

We begin our analysis of these possible multiple like products with the four proposed general categories of industrial, packaging, graphics and magnetic film. We examine them in light of the Commission's traditional like product criteria.

In these preliminary investigations the data gathered with respect to the like product criteria for the four proposed like products are mixed. On the one hand, while certain physical characteristics and uses of PET film products falling within the four categories are similar, other characteristics are not, and a large number of the film products are not substitutable for one another. Further, customers appear to perceive the products as quite different.¹⁷ On the other hand, these four types of PET film are marketed through the same or similar channels of distribution and they appear to use

¹⁶ Postconference brief of Toray; postconference brief of Mitsui at 3-5. Post-conference Economic Brief Prepared by Quick, Finan & Associates on Behalf of Toray Industries, Inc. and Diafoil Company, Inc. of Japan at 4; Postconference brief of Teijin at 3; Postconference brief of SKC at 8.

¹⁷ While it is true that for a wide variety of end uses, different types of PET film are not interchangeable, we note that in the past the Commission has not required complete interchangeability to include products in one like product. See, e.g., Industrial Nitrocellulose from Brazil, Japan, People's Republic of China, Republic of Korea, United Kingdom, West Germany, and Yugoslavia, Inv. Nos. 731-TA-439-445 (Preliminary), Pub. 2231 (Nov. 1989), at 6. Moreover, the Court of International Trade has indicated that in making a like product determination, customer preference alone is not dispositive. *Asociacion Colombia de Exportadores de Flores v. United States*, (Asocoflores), 693 F. Supp. 1165, 1168, (Ct. Int'l Trade 1988.)

the same production employees and similar production equipment.¹⁸ Further, customers also appear to perceive many of the hundreds of specific uses of PET film as different products.

Information obtained in these investigations indicates that manufacturing each type of PET film involves some variation in production and may require some dedicated machinery, but much of the production process and machinery used are the same.¹⁹ Generally the processing steps that impart various specialized characteristics to the product, such as coating, pretreatment, and magnetizing, take place after the basic production process has been completed, or involve adding various chemicals at the beginning of the production process.²⁰ We have only limited evidence relating to the cost of converting production lines from one type of PET film to another, but we intend to gather additional information regarding similarities or differences in production processes for different types of PET film, including the cost of converting production lines, in any final investigations.²¹ We note that the statute's legislative history cautions us that the requirement that a product be "like" the imported article should not be interpreted in an overly narrow

¹⁸ As we possess only limited information regarding the prices of PET film in the four proposed like product categories, this factor is inconclusive.

¹⁹ See, e.g., Tr. at 8.

²⁰ See Report at A-3 to A-6.

²¹ The parties have cited a number of previous Commission determinations that they urge are either relevant or even dispositive of the like product question. However, because the Commission's determinations are sui generis, even if the same product were involved, See Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1079, 1087-89 (Ct. Int'l Trade 1988), no previous determination can control the like product definition in this case. We find the cases cited to be sufficiently different in their facts to offer little concrete guidance for the resolution of the like product issue here.

fashion by focusing on minor differences in physical characteristics or uses. ²²

As noted above, the Commission has always required clear dividing lines. While some ground for dispute exists, for these preliminary determinations, on balance we determine that the categories of packaging, industrial, graphics and magnetic film should not be considered to be separate like products. However, we believe that this issue merits further investigation in any final investigations.

1. Video, audio, computer, and floppy disk

Some respondents argue that not only is magnetic media base film a separate like product from other types of PET film, but that video base, audio base, computer base and film for floppy disks in turn, constitute separate like products. ²³ Given our preliminary finding that PET film for magnetic media does not constitute a separate like product, we decline to find that these four subdivisions of magnetic media film constitute separate like products, but we will reexamine this question in the event the matter returns for any final investigations. ²⁴

2. Ultra-thin film, pigmented film or silicone-coated films as separate like products

As is the case for tensilized magnetic film, in these investigations we requested no separate data for ultra-thin, pigmented or silicone-coated PET film. In addition, petitioners have not addressed specifically the issue of whether these PET film products should be determined to constitute separate like products, nor has the Commission sought data pertaining to the like

²² Sen. Rep. No. 96-249, 96th Cong., 1st Sess. 90-91 (1979).

²³ Postconference brief of Teijin at 3.

²⁴ In these preliminary investigations, we do not possess sufficient information to subdivide the imports in the manner suggested by respondents.

product factors with respect to PET film used in this manner. A determination that ultra-thin, pigmented or silicone-coated films constitute separate like products must therefore rely entirely on the arguments and evidence presented by respondents. In light of these circumstances, we decline to find that separate like products exist with respect to ultra-thin, pigmented or silicone-coated PET film, but intend to investigate the issue in the event of any final investigations.

III. Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines domestic industry as:

. . . the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.²⁵

A. Related Parties

Under section 771(4)(B) of the Tariff Act of 1930, when a producer is related to an exporter or importer of the product under investigation, or is itself an importer of that product, the Commission may exclude such producers from the domestic industry in appropriate circumstances.²⁶ Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case.²⁷

In this investigation, no party has argued that any related parties should be excluded. However, we note that the issue arises due to the fact that certain U.S. producers have imported PET film from Japan, Korea or Taiwan

²⁵ 19 U.S.C. § 1677(4)(A).

²⁶ 19 U.S.C. § 1677(4)(B).

²⁷ Empire Plow Co. v. United States, 11 CIT ___, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

during the period of investigation,²⁸ and thus must be considered related parties under section 771(4)(B).²⁹

While only limited data is currently available on this question, the data we do possess suggests that appropriate circumstances do not exist to exclude any U.S. producers from the domestic industry, and that given the limited number of U.S. producers, such exclusion would skew the domestic industry data.³⁰ We therefore determine for purposes of these preliminary investigations that appropriate circumstances do not exist to exclude any U.S. producers as related parties, but note that we may wish to reexamine this question more closely in any final investigations.

B. Captive Production

Petitioners argue that captive production should be excluded from the domestic industry. It has been the Commission's practice, however, to include all domestic production of the like product in the domestic industry, whether captively consumed or sold in the open market,³¹ and the Commission has noted that there is no statutory basis for excluding captive production from the industry.³² We therefore include captive production within the domestic

²⁸ Report at A-50, table 19.

²⁹ 19 U.S.C. § 1677(4)(B). The identities of the producers are confidential.

³⁰ Report at A-28, Table 19.

³¹ See e.g., Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Japan, Malaysia, and Taiwan, 701-TA-292 and Invs. Nos. 731-TA-400 and 402-404 (Final), USITC Pub. 2152 (January 1989); Hydrogenated Caster Oil From Brazil, Inv. No. 731-TA-236 (Final), USITC Pub. 1884 (Jan. 1986) at 4, n.8 (Stern, Liebeler, Eckes, Lodwick, Rohr).

³² See Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Japan, Malaysia, and Taiwan, 701-TA-292 and Invs. Nos. 731-TA-400 and 402-404 (Final), USITC Pub. 2152 (January 1989),

(continued...)

industry, but are mindful of the fact that unfairly traded imports "may not affect open-market producers and integrated producers in the same way." ³³

IV. Condition of the Domestic Industry ³⁴

In assessing the condition of the domestic industry, we consider, among other factors, domestic consumption, production, capacity, capacity utilization, shipments, inventories, employment, financial performance, capital investment, and research and development efforts. ³⁵ No single factor is dispositive, and in each investigation we consider the particular nature of the industry involved and the relevant economic factors which have a bearing on the state of the industry. ³⁶ ³⁷

Based on the data available in these investigations, we find there is a

³² (...continued)

quoting Industrial Phosphoric Acid from Belgium and Israel, Invs. Nos. 701-TA-285-286 (Preliminary) and 731-TA-365-366 (Preliminary), USITC Pub. 1931 (1986) at 7, n.20.

³³ See, e.g., Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731-TA-406 and 408 (Final), USITC Pub. 2177 (April 1989) at 9.

³⁴ We note that certain U.S. producers have declined to provide us with complete data in these preliminary investigations. We intend to obtain complete information in any final investigations, and note our ability to take adverse inferences, or to take other action against any party withholding information. See, e.g., Limousines from Canada, Inv. No. 701-TA-300 (Preliminary), USITC Pub. 2220 (September 1989) at 14, n.50. See also 19 C.F.R. § 207.8.

³⁵ 19 U.S.C. § 1677(7)(C)(iii).

³⁶ See 19 U.S.C. § 1677(7)(C)(iii), which requires us to consider the condition of the industry in the context of the business cycle and conditions of competition that are distinctive to the domestic industry. See also H.R. Rep. 317, 96th Cong., 1st Sess. at 46; S. Rep. 249, 96th Cong., 1st Sess. at 88.

³⁷ Before describing the condition of the industry, we note that much of the information on which we base our decision is business proprietary, and therefore our discussion of the condition of the industry must necessarily be of a general nature.

reasonable indication that the domestic PET film industry is materially injured.³⁸ At a time of rising domestic consumption, production and shipments of the domestic industry were generally flat. The financial performance of the domestic industry also declined during this period.

Domestic consumption of PET film, both in the merchant market and for captive consumption, increased moderately over the period of investigation,³⁹ while domestic production increased only slightly, from 1987 to 1988, and showed no increase from 1988 to 1989.⁴⁰ U.S. producers commercial shipments of PET film by volume also increased from 1987 to 1988, but decreased in 1989.⁴¹ The number of production and related workers, decreased slightly over the period of investigation, as did productivity. But during that time, average hourly wages, total compensation paid, and unit labor costs increased significantly.⁴² U.S. producers' inventories fluctuated during the period of investigation.⁴³ Capacity increased slightly during the period of investigation, with much of the increase occurring in 1989, while capacity utilization increased in 1988 and then decreased somewhat in 1989 with the rise in capacity.⁴⁴

The data collected in these preliminary investigations reveal that the

³⁸ See Additional Views of Commissioner Eckes at p. 29.

³⁹ Report at A-9.

⁴⁰ Report at A-13.

⁴¹ See Report at A-14, Table 6. The trends with respect to captive shipments were somewhat different. Id.

⁴² Report at A-16 to A-17.

⁴³ Report at A-16.

⁴⁴ Report at A-13, Table 5.

financial performance of the domestic industry has deteriorated greatly during the period of investigation. Operating income of U.S. producers decreased slightly from 1987 to 1988, and plunged in 1989.⁴⁵ Cash flow of domestic producers showed a similar pattern, decreasing dramatically in 1989. At the same time, the cost of goods sold increased substantially, both absolutely and as a share of net sales.^{46 47}

V. Cumulation

A. General

The Commission is required to cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with one another and with the like product of the domestic industry in the United States market.⁴⁸ The only cumulation issue presented by these investigations is whether the imports compete with each other and the domestic like product. In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

⁴⁵ Report at A-18, Table 10.

⁴⁶ Report at A-18, Table 10.

⁴⁷ Commissioner Rohr notes that the Commission's analysis shows the major impact on the industry's financial performance is the changes in cost of goods sold. See Memorandum INV-N-050 (June 4, 1990). Commissioner Rohr further notes that transfer pricing of inputs may have a significant impact on this analysis, which will be further examined if this matter returns to the Commission for a final investigation.

⁴⁸ 19 U.S.C. § 1677(7)(C)(iv).

(2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

(4) whether the imports are simultaneously present in the market. ⁴⁹

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product. ⁵⁰ Only a "reasonable overlap" of competition is required. ⁵¹

Petitioners argue that imports from Japan, Korea, and Taiwan should be cumulated in these investigations. They argue that imports from all three countries compete aggressively on price in the United States, both with each other and with the domestic like product. ⁵² Respondents from Japan and

⁴⁹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 through 280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁵⁰ See Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989); Granges Metallverken AB v. United States, 716 F. Supp. 17 (Ct. Int'l Trade 1989); Florex v. United States, 705 F. Supp. 582 (Ct. Int'l Trade 1989).

⁵¹ See Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989) ("Completely overlapping markets are not required."); Granges Metallverken AB v. United States, 716 F. Supp. 17, 21, 22 (Ct. Int'l Trade 1989) ("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and all domestic like products. . . . the Commission need only find evidence of reasonable overlap in competition"); Florex v. United States, 705 F. Supp. 582, 592 (Ct. Int'l Trade 1989) ("[c]ompletely overlapping markets is [sic] not required.").

⁵² Tr. at 22.

Taiwan argue that cumulation is not appropriate.⁵³ Shinkong, a Taiwanese producer, argues that imports from Taiwan neither compete with imports from Japan and Korea nor with the domestic product due to the lower quality of the Taiwanese imports.⁵⁴ They also argue that imports from Taiwan fall within the negligible import exception, discussed below.⁵⁵

The assessment of whether the imports from Japan, Korea and Taiwan each compete with each other and the domestic like product is complicated by the myriad different types of PET film, sheet and strip. For purposes of these preliminary investigations, however, we find that a "reasonable overlap" in competition exists between the Japanese and Korean imports, and between the imports from Japan and Korea and the domestic like product. We therefore cumulatively assess the volume and price effects of all the imports from Japan and Korea.⁵⁶ At least one respondent has argued that there has been vigorous competition between the Japanese and Koreans and the U.S. product in at least the low end of the PET market,⁵⁷ and questionnaire data still show a not insignificant amount of shipments of imports from Japan into such "low end" segments of the market as packaging.⁵⁸ Generally, the shipments data show

⁵³ Korean respondents do not address the cumulation issue to any significant degree.

⁵⁴ Shinkong submission of Additional Comments on Business Proprietary Information at 8.

⁵⁵ Tr. at 122.

⁵⁶ To the extent that respondents can provide the Commission with specific data that indicates a lack of competition between imports from Japan and Korea based upon differences in such factors as geographic marketing areas, quality or market sector, that data would be considered in any final investigations.

⁵⁷ Tr. at 83; Postconference brief of Toray at 36, 39.

⁵⁸ Report at A-12, Table 4.

that imports from Japan, imports from Korea, and the domestic like product, are each shipped in at least some quantity into the major end-use market segments.⁵⁹ Channels of distribution also appear to be similar, with the bulk of imports from each of three countries and the domestic like product being shipped to nonrelated end users.⁶⁰ The limited data collected on the lost sales allegations made by the petitioner also suggest at least a degree of competition between the Japanese and Koreans and the U.S. like product.⁶¹ The quality issue in particular may need to be further explored in any final investigations.

The degree of overlap of competition between the imports from Taiwan and imports from Korean and Japan and between imports from Taiwan and the domestic like product is difficult to determine due to the very small amounts of Taiwanese product present in the United States. Record evidence, however, supports the Taiwanese assertion that the Taiwanese product is of inferior quality and does not compete. We do not reach the question of whether imports from Taiwan compete with the imports from Japan or Korea, or the domestic product, because we find that the imports from Taiwan are negligible within the meaning of section 771(7)(C)(v) of the Act.⁶²

B. Negligible Import Exception

Section 1330 of the Omnibus Trade and Competitiveness Act of 1988 provides that the Commission is not required to cumulate in any case in which it determines that imports of the merchandise subject to investigation are

⁵⁹ Compare Report at A-7 to A-12.

⁶⁰ See Report at A-11.

⁶¹ Report at A-37.

⁶² 19 U.S.C. 19 U.S.C. § 1667(7)(C)(v).

negligible and have no discernible adverse impact on the domestic industry.⁶³
 In determining whether imports are negligible, we are directed to consider all relevant economic factors including whether:

- (I) the volume and market share of the imports are negligible,
- (II) sales transactions involving the imports are isolated and sporadic, and
- (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

19 U.S.C. § 1677(7)(C)(v).

Both the House Ways and Means Committee Report and the Conference Committee Report stress that we are to apply the exception narrowly and that it is not to be used to subvert the purpose and general application of the mandatory cumulation provision of the statute.⁶⁴ The House Ways and Means Committee Report further emphasizes that whether imports are "negligible" may differ from industry to industry and for that reason the statute does not provide a specific numeric definition of negligibility.⁶⁵

⁶³ 19 U.S.C. § 1677(7)(C)(v).

⁶⁴ See H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. 131 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. at 621. The Ways and Means Committee Report cautions in particular that the exception is to be applied: only in circumstances where it is clear that imports from that source are so small and so isolated that they could not possibly be having any injurious impact on the U.S. industry. The ITC shall apply this exception with particular care in situations involving fungible products, where a small quantity of low-priced imports can have a very real effect on the market.

Id. at 130.

⁶⁵ Id. at 131. Specifically, the House Ways and Means Committee Report notes that:

For an industry which is already suffering considerable injury and has long been battered by unfair import competition, very small additional quantities of unfair imports may be more than negligible. For another industry, not so deeply injured, small additional quantities of unfair imports may have no discernable effect at all.

These investigations squarely raise the issue of the negligible import exception. Imports of PET film from Taiwan as a percentage of reported U.S. total apparent consumption indicate that imports from Taiwan constitute less than 0.1 percent of the market.⁶⁶ While there is no numeric "cut off" for negligible imports, this is a very low percentage. Data indicate that imports for Taiwan for the period of investigation were less than approximately \$500,000.00, a very low figure in light of total U.S. consumption.⁶⁷ The volume of imports from Taiwan was so small that we were unable to determine any price trends in those imports.⁶⁸ Other confidential information supports our conclusion that imports to the United States from Taiwan are negligible.⁶⁹ In addition, data collected in the course of these

⁶⁶ Data regarding the volume of Taiwanese imports was derived from importer questionnaire responses and from official import statistics.

⁶⁷ Report at A-27, Table 18. Official statistics of the U.S. Department of Commerce indicate a slightly larger amount of Taiwanese imports. Such figures may be overstated, but in any event, we find the volume of imports from Taiwan to be negligible. Compare Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-Ta-426 and 428 (Final), USITC Pub. 2237 (November 1989) at 32 (refusing to find imports from Taiwan negligible, in part because they "totalled over \$10 million annually during the period of investigation.").

⁶⁸ Report at A-33. While some allegations have been made that the low-end segments of the market, such as those where the imports from Taiwan are entering, are more price sensitive than other segments of the market, we find the very low level of imports to be more persuasive on the question of whether the imports were "negligible".

⁶⁹ While, as petitioners' argue, a rapid rate of increase in import market share can be a factor against considering imports negligible, their arguments that pertain to future imports from Taiwan ignore the "present tense" wording of the statute. See 19 U.S.C. § 1677(7)(C)(v) ("are" negligible, "have" no discernable adverse impact, volume and market share "are" negligible, sales transactions "are" isolated and sporadic although "can" result in price suppression or depression). Compare, Chaparral Steel Co. v. United States, --- F.2d ---, Slip Op. 89-1338, -1339 (Fed. Cir. April 17, 1989) at 16-17 ("The injury requirement mandates a determination of whether an industry suffers present material injury . . . Even when the

(continued...)

investigations suggests that sales of PET film from Taiwan to U.S. purchasers have been isolated and sporadic. While the segments of the market where the Taiwanese imports are sold, graphics, industrial and packaging, appear to be price sensitive, on balance, in light of the minimal import penetration and value of imports, and the at least somewhat sporadic nature of the imports, we find that the imports from Taiwan should be considered negligible and not cumulated with those from Korea and Taiwan.

VI. Reasonable indication of material injury by reason of imports from Japan and Korea that are allegedly sold at LTFV

Under 19 U.S.C. § 1673b(a), the Commission must determine whether there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports. Material injury is "harm which is not inconsequential, immaterial or unimportant."⁷⁰ The Commission may consider alternative causes of injury, but it is not to weigh causes.⁷¹ The Commission need not determine that imports are the principal or a substantial

⁶⁹ (...continued)

Commission makes a determination of 'threat of material injury' it assesses the 'threat of specific indicia of present material injury.' [citing Rhone Poulenc, 592 F.Supp. at 1322], and at 17 ("The statute is written entirely in the present tense.").

⁷⁰ 19 U.S.C. § 1677(7)(A).

⁷¹ E.g., Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (CIT 1988). Alternative causes may include:

the volume and prices of 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.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. 317, 96th Cong., 1st Sess. 47 (1979).

cause of material injury.⁷² Rather, the Commission is to determine whether imports are a cause of material injury.⁷³

In these preliminary investigations, we find that the volume of imports from Japan and Korea and the increase in their market share are significant. The volume and value of imports of PET film, sheet and strip from Japan and Korea increased substantially throughout the period of investigation.⁷⁴ In addition, as the volume of imports from Japan and Korea increased, so did the share of the domestic market captured by those imports, giving Japanese and Korean exporters a larger share of the expanding U.S. market. Whether measured by volume or by value, the percentage of U.S. merchant market penetration, as well as the percentage of the total market (merchant plus captive), captured by imports from Korea and Japan increased in every period covered by these investigations.⁷⁵

Data collected in these investigations also suggest that prices of imports from Japan and Korea have adversely affected domestic PET film prices. A large number of PET film products exist, making price comparisons somewhat difficult. Nevertheless, questionnaire data reveal that for the 154 quarters for which pricing comparisons were possible, underselling by imports occurred

⁷² "Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports." S. Rep. No. 249, at 74-75.

⁷³ LMI-La Metalli Industriale, S.p.A. v. United States, 712 F. Supp. 959, 971 (CIT 1989), citing; British Steel Corp. v. United States, 8 CIT 86, 593 F. Supp. 405, 413 (1984); Hercules, Inc. v. United States, 673 F. Supp. 454, 481 (CIT 1987). See also, Maine Potato Council v. United States, 613 F. Supp. 1237, 1244 (CIT 1985) (The Commission must reach an affirmative determination if it finds that imports are more than a "de minimis" cause of injury.)

⁷⁴ Report at A-27, Table 18.

⁷⁵ See A-9, Table 2.

in 94 quarters and overselling in 60 quarters.⁷⁶ We find the underselling to be significant, at least for the purposes of these preliminary investigations.

In general, prices for U.S.-produced PET film products rose during the period of investigation, reflecting at least in part, increases in the prices of raw materials. However, domestic profitability plunged, indicating that prices are being suppressed relative to costs.⁷⁷ During the same period, the market share of the imports rose while prices for Japanese PET film fluctuated and prices for Korean PET film fell, suggesting that imports from Japan and Korea have had a price suppressing effect.⁷⁸ In the event of any final investigations, the Commission will request further data regarding the pricing of Japanese and Korean imports, particularly in specific market segments.⁷⁹

Based upon the information collected in these preliminary investigations, we determine that a reasonable indication exists that the domestic PET film industry has been materially injured by reason of imports from Japan and Korea that are allegedly sold at LTFV.

VII. No reasonable indication of material injury by reason of allegedly LTFV imports from Taiwan.

Based upon the information collected in these preliminary investigations, we determine that no reasonable indication exists that the domestic PET film industry has been materially injured by reason of imports from Taiwan that are allegedly sold at LTFV. That data show that the first

⁷⁶ See Report at A-34, Table 23. Data collected regarding allegations of lost sales and lost revenues were generally inconclusive.

⁷⁷ Report at A-18, Table 10.

⁷⁸ Report at A-33 to A-34.

⁷⁹ To the extent that certain domestic purchasers purchase their raw materials from related companies, we will consider whether internal transfer prices have affected their profitability.

imports from Taiwan occurred in 1989, and were negligible in volume and market share.⁸⁰ We were able to obtain only three instances of price comparisons between Taiwanese and domestic products due to the extremely limited sales of Taiwanese product in the United States, and one of these three comparisons showed overselling by the imports from Taiwan. Under the circumstances, we are unable to find that such underselling is "significant" within the meaning of the statute.⁸¹

In addition, as discussed above, sales of PET film from Taiwan to U.S. customers have been somewhat sporadic, and data collected in these investigations indicate that Taiwanese imports of PET film are perceived by at least some purchasers to be of unacceptably low quality.⁸² Thus, we find that imports from Taiwan have not had a price depressive or suppressive effect. With respect to petitioners' assertion that imports from Taiwan are having a price suppressing effect through offer activity, we note that no lost sales allegations and only one specific lost revenue allegation were made with respect to imports from Taiwan and that allegation was not confirmed.⁸³

⁸⁰ Report at A-27, Table 18; A-29, Table 20.

⁸¹ Compare USX Corp. v. United States, 698 F. Supp. 234, 239 (Ct. Int'l Trade 1988) (reasonable to give evidence of underselling less weight where the sample is small); Copperweld Corp. v. United States, 682 F. Supp. 552 (Ct. Int'l Trade 1988).

⁸² Report at A-36 to A-37.

⁸³ Report at A-36 to A-37. The only other statements made with respect to sales of Taiwanese imports did not allege any specific information that could be investigated by the Commission as lost sales or revenue allegations.

IV. No reasonable indication of threat of material injury by reason of allegedly LTFV imports from Taiwan⁸⁴

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." We may not base an affirmative threat determination on mere supposition or conjecture.⁸⁵

The factors the Commission must consider in its threat analysis are:

(I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate probability that importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product shifting if production facilities

⁸⁴ Because we find imports from Taiwan to be "negligible," we decline to consider the cumulative effect of the imports from Taiwan with the imports from Japan and Korea in our threat analysis. See 19 U.S.C. § 1677(7)(C)(v).

⁸⁵ See 19 U.S.C. § 1677(7)(F)(ii).

owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports or both raw agricultural product (within the meaning of paragraph (4)(E)(iv) and any product processed from such raw agricultural product, the likelihood there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.⁸⁶

In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a reasonable indication of threat of material injury by the domestic industry.⁸⁷ We consider these factors in turn.

Factors I, VIII, and IX are inapplicable to this investigation. With respect to threat factor II, "any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States," we note that confidential information does not reveal any increase in capacity or any unused capacity likely to result in such an increase in imports.⁸⁸

While some increase in market penetration and market share by Taiwanese imports is possible, in light of the negligible volume of imports, there is no indication that the penetration will increase to an injurious level.

⁸⁶ 19 U.S.C. § 1677(7)(F).

⁸⁷ 19 U.S.C. § 1677(7)(F)(iii).

⁸⁸ Report at A-26 to A-27; A-26, Table 17.

There is no indication that imports from Taiwan are likely to have a price suppressing or depressing effect. As mentioned above, imports from Taiwan were negligible in both volume and market share, to the extent that price trends could not be determined.⁸⁹ In addition, evidence gathered in these investigations indicates that the Taiwanese imports are perceived, by at least some customers, to be of lower quality than the domestically produced product.⁹⁰

We note that imports from Taiwan have not entered the United States for a sufficient period of time to enable a trend in the level of inventories in the United States to be discerned.⁹¹ Inventories of the imports from Taiwan were nonexistent until 1989.⁹² In addition, there is no evidence of product shifting in this investigation, because there are no known antidumping or countervailing duty investigations or orders that apply to Taiwanese production facilities that may be used to produce PET film.

Given the minimal volume and market share of the imports from Taiwan, and their lack of a price suppressive or depressive effect, we find no meaningful evidence of actual or potential negative effects on efforts to develop a derivative or more advanced version of the like product. Finally, we find no other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of actual injury.

⁸⁹ Compare National Association of Mirror Manufacturers v. United States, 696 F. Supp. 641 (Ct. Int'l Trade 1988), (upholding a negative threat determination based on a finding of no likelihood of a price suppressive or depressive effect due to the small market penetration of the imports).

⁹⁰ See e.g., Report at A-36 to A-37.

⁹¹ Report at A-23, Table 14.

⁹² Report at A-23.

Based on the threat factors discussed above, we find no reasonable indication of threat of real or imminent material injury to the domestic industry producing PET film by reason of the importation of PET film, sheet or strip from Taiwan.

Conclusion

For the reasons set forth above, we determine that there is a reasonable indication that the domestic industry producing PET film is materially injured by reason of allegedly LTFV imports from Korea and Japan. We also find, based on the information obtained in these preliminary investigations, under the preliminary standard set forth by the Federal Circuit in American Lamb v. United States, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly LTFV imports from Taiwan. We also note that there is no likelihood that contrary evidence would be developed in any final investigations.

ADDITIONAL VIEWS OF VICE CHAIRMAN RONALD A. CASS

Polyethylene Terephthalate Film, Sheet and Strip
from Japan, the Republic of Korea and Taiwan
Inv. Nos. 731-TA-458-460
(Preliminary)

I concur with the Commission's affirmative determinations respecting the subject imports from Japan and the Republic of Korea, and its negative determination respecting the subject imports from Taiwan. I join in those portions of the Views of the Commission that discuss whether the subject Taiwanese imports should be cumulated with the subject imports from Japan and Korea, and whether those same Taiwanese imports threaten any domestic industry with material injury.

I offer these Additional Views for three reasons. First, my analysis of the like product issues presented in these investigations differs from that of my colleagues. Second, the legal and analytical approach that I have employed in assessing whether a domestic industry has suffered material injury by reason of the less-than-fair-value ("LTFV") sales of imports that have allegedly taken place likewise differs from that of my colleagues. Third, I will be leaving the Commission shortly and this is the last opinion that I will be writing in a Title VII investigation. During my tenure at the Commission, I have generally not missed any opportunity to share my views -- often at length that has required the patience of the reader -- with the parties to our investigations and with other interested followers of Commission proceedings. I see no reason why I

should give preferential treatment to the parties to these investigations by sparing them a similar discourse.

I. DEFINITION OF DOMESTIC LIKE PRODUCTS AND INDUSTRIES

In preliminary investigations under the antidumping laws,^{1/} the Commission must assess the effects of LTFV imports on the industry in the United States comprised of "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."^{2/} The term "like product," in turn, is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."^{3/}

A. Arguments of the Parties

In these investigations, the parties have staked out starkly differing positions on the like product issue. Petitioners argue that there is but a single like product consisting of all types of polyethylene terephthalate film, sheet and strip (hereafter, "PET film"), but excluding certain types of finished products made from such film.^{4/} With the exception of Taiwanese

^{1/} 19 U.S.C. § 1673b.

^{2/} 19 U.S.C. § 1677(4).

^{3/} 19 U.S.C. § 1677(10).

^{4/} Post-Conference Brief of E.I. du Pont de Nemours & Company, Inc., Hoechst Celanese Corporation, and ICI Americas Inc. ("Petitioners Postconference Brief") at 3. The general characteristics and varied uses of PET film are described in the

Respondent Shinkong (which accepted Petitioner's proposed definition for the purposes of these preliminary investigations),^{5/} all of the Respondents urged the Commission to find that there is more than one like product.

Korean Respondent SKC argued that the Commission should find at least four like products: magnetic media base film; graphic arts base film; packaging base film; and industrial base film.^{6/} SKC also asserted that the Commission would be justified in finding that magnetic media base film is subdivided into four separate like products: audio film; video film; computer film; and film used in floppy disks.^{7/}

Each of the Japanese Respondents has argued that there are more like products than the four basic products identified by the Korean Respondent SKC. The position of Japanese Respondent Teijin comes closest to that taken by SKC. Teijin argues that there are seven like products, including graphic arts film, film for packaging, industrial film and the four types of magnetic film that SKC suggests could each be treated as separate like products.^{8/} Japanese Respondents Diafoil and Toray, on the other hand, do not propose to subdivide magnetic media film on the

Views of the Commission.

^{5/} Post-Conference Submission on Behalf of Shinkong Synthetic Fibers Corporation ("Shinkong Postconference Brief") at 2, note 2.

^{6/} Post-Conference Brief on Behalf of SKC Limited and SKC America, Inc. ("SKC Postconference Brief") at 8.

^{7/} Id. at 8-9.

^{8/} Post-Hearing Brief on Behalf of Respondents Teijin Limited and Teijin America, Inc. ("Teijin Postconference Brief") at 3.

basis of the basis of the film's end use, but argue that magnetic media is divisible into two like products depending upon whether it is "tensilized" or "non-tensilized".^{9/} Like Korean Respondent SKC and Japanese Respondent Teijin, these Respondents urge the Commission to treat graphics film, industrial film and packaging film each as separate like products.^{10/} Further, Diafoil and Toray ask the Commission to carve out "ultra-thin" film -- film of extremely fine gauge used only in thermal transfer ribbon and capacitor insulation -- as a separate additional like product.^{11/}

B. Like Product Distinctions

On the basis of the limited information available to us in these preliminary investigations, it is anything but easy to decide which of these proposed definitions best describes the product classes for which we should conduct separate inquiries into the effects of allegedly LTFV imports. Indeed, it is not clear whether any of the categories proposed by the parties best fits the statutory command. At the same time, however, the choice of a like product is not of great moment to the outcome of these investigations. The Commission has been able to collect only a very limited amount of data on the different types of PET film that the Korean and Japanese Respondents urge the Commission to break out as separate like products. Accordingly, for the

^{9/} Post-Conference Brief on Behalf of Diafoil Co., Ltd. ("Diafoil Postconference Brief") at 3; Post-Conference Brief on Behalf of Toray Industries, Inc. and Toray Marketing and Sales (America) inc. ("Toray Post-Conference Brief") at 2.

^{10/} Id.

^{11/} See Toray Postconference Brief at 12-13.

purpose of disposing of these preliminary investigations, we are required to analyze some aspects of the effects of the subject, allegedly LTFV imports on domestic industry by considering the data that we have gathered for "all PET film", the narrowest product line for which data on these aspects is available.^{12/}

That said, I believe that is nevertheless important for commissioners to provide the parties with some guidance respecting our views on the like product definition that might be employed (and for which data should therefore be collected) by the Commission in any final investigations. In that spirit, I offer the following, somewhat tentative observations on the like product issue.

First, under the like product criteria traditionally employed by the Commission,^{13/} I believe that there are at least four separate products "like" the imports subject to these investigations. These products consist of the four basic like products identified by Korean Respondent SKC: magnetic media film, graphic arts film, packaging film and industrial film. Although the record on the issue is not as clear-cut or complete as one might like, it appears that each of these products has

^{12/} See 19 U.S.C. § 1677(4)(D).

^{13/} The Commission's general approach to defining the like product entails the examination of six factors: (1) physical characteristics and uses; (2) interchangeability, (3) channels of distribution; (4) customer or producer perceptions of the relevant articles; (5) common manufacturing equipment, facilities, and production employees; and (6) price. See, e.g., Polychloroprene from France and the Federal Republic of Germany, USITC Pub. 2233, Inv. Nos. 731-TA-446-447 (Preliminary) 3 (Nov. 1988) (Views of the Commission).

different physical characteristics and correspondingly different end uses and pricing levels. It also appears that none of these four types of PET is interchangeable in practice for any of the other three film types.^{14/} Differences in products' uses critically affect the way in which they compete with one another, which in turn determines the effects that flow from LTFV pricing of imports. The very essence of the like product determination is identification of the coherently defined set of products identical, or most similar to, and therefore a fortiori most directly competitive with, the allegedly unfairly-priced imports. The producers of these products necessarily will be those who are most adversely affected by the "unfair trade practice" that gives rise to LTFV investigations.

While these considerations, thus, are most important secondary considerations, they confirm the view that several discrete like products are before us in these investigations. For example, there is substantial evidence that both consumers and producers of PET film, including Petitioners themselves, perceive the four types of film described above as fundamentally different products.^{15/} Further, there is some evidence that it

^{14/} Although Petitioners argue that higher-value films, such as magnetic media film, may be "downgraded" and used for lower value uses, such as packaging (see Petitioners' Postconference Brief at 8), given the significant disparities in the prices of video film and packaging film, one would expect this to be a relatively rare occurrence.

^{15/} See SKF Postconference Brief at 10-14.

is not easy for PET film producers to shift production from one type of film to another.^{16/}

In addition to these four like products, a plausible case has been made that the various types of magnetic film -- video, audio, computer, and floppy disk -- should each be treated as separate like products in their own right. The same is true of ultrathin film. However, the evidence critical to this judgment is quite limited at present; as previously discussed, it appears that Respondents do not agree, even among themselves, as to just where the dividing lines on the basis of end use among the various types of magnetic media film should be drawn or whether a given characteristic better distinguishes these products. Accordingly, for present purposes, I simply note that these issues warrant careful scrutiny in any final investigations.

C. Bright Line Problems

I do not want to pass too quickly over a point pressed assiduously by Petitioners. Just as I do not find the record adequate to identify clear dividing lines within the category of magnetic media, Petitioners argue that clear lines cannot now be drawn among the four categories of PET film that I believe define separate like product. Petitioners rightly note that the Commission often has referred to the absence of such clarity as a basis for conflating products of significant heterogeneity into a

^{16/} See Report at A-8. See also Teijin Postconference Brief at 5; Diafoil Postconference Brief at 4-6; SKC Postconference Brief at 24-25.

single-like product classification. The Commission has relied on this argument in disparate settings.

First, in some investigations products differ principally in a single dimension, commonly size, with products corresponding to a great many points along that dimension.^{17/} Although the products corresponding to the end points of this linear array may be so different in that one dimension as to be parts of different markets, bought by different consumers at quite different prices, there may be no point or points at which a significant difference can be identified. The choice, then, is between erring (distorting our analysis of the effects of the subject LTFV imports) by treating the entire array of products on one side of a dividing point as different from products adjacent to it on the "other side." The Commission has preferred the former error, which does not require explanation of a somewhat arbitrary decision, to the latter error, which would require explanation for the point selected. Debate over this choice may be far more a matter of taste than of logic or law.

Second, in some investigations products differ along many different dimensions, but the differences in one dimension do not align systematically with differences in another dimension. Bearings, for example, come in different sizes, materials, tolerances, end shapes, with each of the qualities varying

^{17/} Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, USITC Pub. 2046, Inv. No. 731-TA-367 (Final) (Dec. 1987).

independently of the others.^{18/} For such products, the Commission might treat each combination of attributes as defining a separate like product, perhaps describing thousands of products many of which, while not interchangeable, compete significantly, often at the "design stage" of other products. Alternatively, the Commission might find that the absence of any set of clear lines requires treatment of all of these products,^{19/} or all within each of a few categories of products distinguished along a single dimension,^{20/} as the same like product. Again, either choice may affect the Commission's judgment respecting the effects of the trade practices and imports at issue. Again, the Commission generally has opted more for errors of inclusion than for errors of exclusion.

The third setting in which the bright line issue is raised differs modestly but importantly from the second in that, while differences are observed in various dimensions, not all of which are fully congruent, product categories can be identified that largely separate products that consumers treat as dissimilar from

^{18/} Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, USITC Pub. 2185, Inv. Nos. 303-TA-19 and 20 and 731-TA-391-399 (Final) (May 1989) ("Antifriction Bearings").

^{19/} Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No. 731-TA-390 (Final) (Jan. 1989); Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom and West Germany, USITC Pub. 2194, Inv. Nos. 701-TA-293 and 731-TA-412-419 (Final) (May 1989); 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2170, Inv. No. 731-TA-389 (Final) (Mar. 1989).

^{20/} Antifriction Bearings, note 18 supra.

products they treat as similar. In such investigations, the Commission has not followed a single path; at times it has endeavored to specify a number of product categories that circumscribe the great bulk of products that compete most closely (although there is inevitably some "leakage" at the edges of each category) and at times has simply eschewed that effort, finding the absence of bright line divisions dispositive.^{21/} In this setting, unlike the two previously discussed, the Commission's reluctance to draw lines among products does not seem readily supported.

Over the past few years I have felt uncomfortable with my own disposition of like product issues often enough that it would be fatuous to suggest that I see any easy solution to the problems raised in like product definition. Nonetheless, I believe that the Commission too often has been swayed by descriptions of product similarities to take account of their differences. The like product inquiry cannot be undertaken as an abstract search for distinctions, but must instead be placed in its statutory context as setting bounds around our analysis of the effects of an unfair trade practice. Able practitioners invariably will be able to describe ways in which products are alike and to find ways in which the lines of demarcation are

^{21/} Compare Certain Steel Wheels from Brazil, USITC Pub. 2193, Inv. No. 701-TA-296 (Final) (May 1989) with Generic Cephalixin Capsules from Canada, USITC Pub. 2211, Inv. No. 731-TA-423 (Final) (Aug. 1989) and Certain Brass Sheet and Strip from Japan and the Netherlands, USITC Pub. 2099, Inv. Nos. 731-TA-379 and 380 (Final) (July 1988).

breached, with one or another characteristic or use found in some measure on either side of the line.

The governing law, however, appears to contemplate a narrow, not a broad, product class and industry definition as the focus of our inquiry. The alternative definitions of the relevant product class are (1) "a product which is like . . . the article subject to investigation" or (2) "in the absence of [such a product, one that is] most similar in characteristics and uses with . . . the articles subject to investigation"22/ By making the most similar product an alternative to the more restrictive and statutorily preferred definition of a "like" product, Title VII's draftsmen strongly signalled that the Commission confine its inquiry rather narrowly. Acceptance of the "slippery slope" argument against line-drawing in the third sort of investigation described above plainly frustrates that command. The Commission's frequent aversion to line-drawing judgments often does not affect the outcome of our decisions, but it doubtless affects some. Moreover, it provides Petitioners with incentives to select the products to an investigation with an eye to the way industry definition affects outcomes, a game surely not discouraged by approaches resting heavily on data descriptive of gross financial performance or trends for the domestic industry (not fettered to reflect the role played by the LTFV imports). However earnestly the Petitioners here believe that the products before us defy separation, I cannot accept the

22/ 19 U.S.C. § 1677(10).

premise that difficulty in drawing clear lines, standing alone, should preclude definition of finer product classes where evidence on the record establishes significant differences in product use that correlate well, if imperfectly, with particular product features or characteristics. I believe that these investigations do not correspond to either the first or second setting described above and do not believe the absence of unbreachable lines should affect our like product decision.

D. Non-Parallel Products: Tensilized Magnetic PET Film

Finally, the argument advanced by Japanese Respondents Diafoil and Toray that "tensilized" and "non-tensilized" magnetic film should be treated as separate like products for the purposes of these Title VII antidumping investigations merits comment. It is not clear that the imported tensilized film and non-tensilized film subject to investigation constitute discrete types of products, although Diafoil and Toray provide some evidence that they are. Even if that proposition is established, however, an equally serious question remains: can the Commission treat tensilized and non-tensilized film as separate products for the purposes of assessing the effects of the subject, allegedly LTFV imports on a domestic industry, given that there are currently no domestic producers of tensilized film.^{23/}

In another case, Digital Readout Systems and Subassemblies

^{23/} Petitioners' Postconference Brief at 27.

Thereof from Japan, 24/ I discussed at some length the difficulties presented in such circumstances. The question in brief is whether each category of imports for which the Commission makes an effects inquiry must have a separate domestic like product and industry or, instead, whether separate determinations can be made respecting the effects of distinct categories of LTFV imports on a single domestic industry. This issue appears to have received little, if any, explicit attention by the Commission over the years. It is hard to find either instances in which the Commission has accepted arguments in favor of such an approach or in which the rejection of such arguments has been explained.

Clearly, there is no statutory authority for the Commission to exclude imports from investigation. By the same token, we cannot assume that the absence of a U.S. industry producing parallel products means that the non-parallel class of LTFV imports cannot be materially injuring a domestic industry. To answer that question requires examination of the LTFV imports' effects on the producers of the most similar product. The issue here is whether we could undertake such analysis.

So far as I can discern, there are three arguments against separate analysis of LTFV imports' effects on a single domestic industry: inadequate statutory basis; comity for Commerce's determination on scope; and risk of excessive disaggregation.

24/ Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No. 731-TA-390 (Final) (Jan. 1989) 88-96 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass)

All are essentially arguments about the meaning of Title VII, and each provides arguable but not strongly convincing basis for rejecting the approach urged by Diafoil and Toray.

The first argument is that the statute does not provide a basis for division of the imports into different categories. Title VII simply directs the Commission to explore the effect of a class of LTFV imports on the domestic industry making products that are most like the imports. The only basis for division of imports, then, would be the Commission's determination that the domestic industry's products so differ that they cannot be aggregated into a single category. Absent such a determination, the argument goes, the Commission has no charter to analyze separately imports' effects.

This argument is certainly plausible. It is not, however, obvious. The initial difficulty with the argument is its assumption that the law provides a fairly clear direction for the Commission to divide imports for purposes of our injury analysis to parallel the divisions in the domestic industry. But if one looks simply at the text of the statute, no such plain instruction is apparent. Title VII directs the Commission to find the domestic industry that produces a product like the imported articles; it does not direct the Commission to find the domestic industry or industries that produce products similar to the imports. Moreover, the statute certainly does not read as though the Commission's like product decision is to be made prior to and independent of an examination of the imports: Title VII does not expressly direct the Commission to examine the domestic

industry, define coherent "like product" groups, and then identify the corresponding imports among those subject to investigation. The basis for our division of domestic products into various like product categories is the apparent statutory understanding that narrowly drawn product categories were at issue. That understanding, while most clearly embodied in the definition of the domestic like product, seems equally applicable to the imports. Indeed, the narrow definition of like product in the statute appears to follow from an understanding that the imports at issue comprise a very narrow product set.

It may be argued that the Commission lacks authority to make any division of either the imports or the U.S. products that compete most closely with them. Such an argument would swim upstream against Commission and court precedent, however. Notwithstanding the absence of a very clear statutory basis for the practice, the Commission routinely has divided the class of imports subject to investigation and analyzed the effects of subgroups among that class on more than one domestic industry for some time.^{25/} The Court of International Trade has affirmed that practice in the face of vigorous challenge. In Badger-Powhatan v. United States,^{26/} for instance, the court approved a division of the import class into seven different categories. The Commission found that only two categories of LTFV imports injured

^{25/} See Certain Valves, Nozzles, and Connectors of Brass from Italy for Use in Fire Protection Systems, USITC Pub. 1649, Inv. No. 731-TA-165 (Final).

^{26/} 9 Ct. Int'l Trade 213, 608 F. Supp. 653 (1985).

a parallel domestic industry, and the court approved the imposition of antidumping duties on only those two categories of imports.^{27/}

Accepting the court's determination on that issue, it is difficult to identify an easy distinction between that case and this. In each instance, the Commission would examine the effect of imports subject to investigation on the domestic industry producing a product most like the imports. In each instance, the Commission would examine the effects of all of the imports subject to investigation, not excluding any imports from consideration. And in each instance, the Commission will make different inquiries with respect to different categories of imports.

Further, there is a logical basis for treating both sorts of determination, the "parallel categories" determination and the "uneven categories" determination, as similarly within our statutory authority or beyond it. Although our statutory mandate is focused on the domestic industry, we can only make like product determinations after we have at least tentatively examined the class of imports under investigation. We do not decide which subject imports are most like the domestic product categories we have identified; the statute sets our responsibility the other way around. Hence, if we can find more than one domestic like product, by implication we must first have found more than one type of imported product. And if the

^{27/} 608 F. Supp at 657.

imported products differ in the way consumers use them, then the effects of LTFV sales of those different imported products will differ and should be separately analyzed.

A second argument against allowing the Commission to make an inquiry into the injury caused by LTFV imports with uneven categories of imported and domestic products focuses on the implications for our relations with the Department of Commerce. Responsibility for various decisions under Title VII is divided between the Commission and Commerce. Commerce, not the Commission, determines the scope of the investigation. In making this determination, Commerce must decide that the imports under investigation are sufficiently similar to constitute a class or kind or merchandise.^{28/} Arguably, dividing the imports into different categories for separate injury determinations fails to grant adequate respect for Commerce's determination.

Certainly, this is a matter to which the Commission should be sensitive. And there is a similarity between our judgment and that made by Commerce. Nonetheless, the two determinations are by no means identical, as our reviewing courts have recently affirmed.^{29/} Certainly, as a formal matter, we do not take action at odds with Commerce's determination when we subdivide the imports under investigation; we examine effects of all the imports Commerce's decision makes subject to investigation.

^{28/} 19 U.S.C. § 1673(1).

^{29/} Mitsubishi Electric Corp. v. United States, Fed. Cir. Appeal No. 89-1514, 1515, -1525, -1540 (Mar. 15, 1990) at 14-15.

Further, again, the comity argument seems equally applicable to the parallel categories and uneven categories situations.

The third argument presents the most difficulty: it draws a functional distinction between the two situations in which the Commission might subdivide a class of imports into different categories for purposes of our injury analysis. When we examine the effect of a category of imports on the domestic industry producing a parallel product, our inquiry focuses on the U.S. industry on which the imports are likely to have their greatest effect. There is no real risk that our treatment of the like-product/domestic-industry issue will cause us to fail to identify instances in which a domestic industry is materially injured by LTFV imports. If, however, a class of imports that most directly affects a single domestic industry is divided into different categories for separate analysis, it is possible that no category of imports will be found to have materially injured the domestic industry even though the class as a whole would have been found to have done so.

This is essentially the same problem as that addressed by Congress in adding the "cumulation" provision to Title VII.30/ That provision directs the Commission to assess together the effects of imports from different countries if they are subject to investigation contemporaneously, compete with one another, and compete with the same U.S. like product. It would be anomalous to provide for cumulation of such imports but allow disaggregated

30/ 19 U.S.C. § 1677(7)(C)(iv).

analysis of imports from a single country competing with the same U.S. like product.

Of course, this problem need not be resolved by completely precluding disaggregated analysis of single-country imports facing an uneven set of U.S. like product categories. Instead, the resolution could be limitation of disaggregated analysis to instances in which cumulation would not be appropriate had the imports been from different countries. Only when there is not sufficient competition among the categories of imports and between the imports and the domestic product to support cumulation could the effects of discrete categories of imports be addressed.

This solution is problematic not because it produces results functionally at odds with those reached in various analogous situations but because it requires a complex set of determinations without clear statutory guidance. Such constructions of the law are and should be disfavored.

At the same time, readings of the law that create inexplicable differences among cases that seem similar also are disfavored. Failure to treat disparate imports separately runs such a risk. If the effects of tensilized film imports on U.S. businesses are relatively clearly distinguishable from the effects of non-tensilized film imports, why should the imposition or non-imposition of antidumping duties on those imports depend on the fortuity of the existence of a parallel U.S. industry? The problem becomes especially acute where a small volume of non-parallel imports, not priced so far below "fair value" as a

larger volume of related imports, is analyzed together with those related imports even though the effects of the non-parallel imports would not suffice for a finding of material injury were there a U.S. product competing more closely with (more "like") those imports. Although the record in these investigations does not permit the separate evaluation of tensilized LTFV imports, and although there are serious questions respecting its advisability were the record adequate to that task, I would urge careful reconsideration of this issue in any final investigation.

III. REASONABLE INDICATION OF MATERIAL INJURY
BY REASON OF LTFV IMPORTS: PET FILM FROM
JAPAN, THE REPUBLIC OF KOREA AND TAIWAN

In order to determine the effects on the four domestic industries of the alleged LTFV imports that are the subject of these investigations, it is necessary both to compare the condition of each domestic industry to the condition that would have existed had there not been LTFV imports, and to determine whether the change in the circumstances of the industry that resulted from the alleged unfair trade practice constitutes material injury.^{31/} Title VII directs the Commission, in assessing the causation of injury by LTFV imports, to consider, among other factors:

- (i) the volume of imports of the merchandise which is the subject of the investigation,

^{31/} See, e.g., 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2076, Inv. No. 731-TA-389 (Preliminary) (April 1988) (Views of Commissioner Cass).

- (ii) the effect of imports of that merchandise on prices in the United States for like products, and
- (iii) the impact of imports of such merchandise on domestic producers of like products"32/

Subsequent provisions of the statute describe these three factors with greater particularity.

The statute does not identify all of the factors relevant to an assessment of whether unfairly traded imports have materially injured a domestic industry. In fact, the statute explicitly contemplates that the Commission will consider relevant economic factors in addition to those described specifically in the statute.^{33/} The factors that are listed in the statute and the order in which they are listed nevertheless provide us with important guidance respecting the essential elements of the inquiry that the Commission must perform. In particular, three

^{32/} See 19 U.S.C. § 1677(7)(B).

^{33/} See 19 U.S.C. § 1677(7)(C).

Under Title VII, as amended by the Omnibus Trade and Competitiveness Act of 1988, we are required to explain how these factors affect the outcome reached in any particular investigation. The statute also requires Commissioners to describe the relevance of other economic factors that we consider in addition those specifically identified in the statute. See Pub. L. No. 100-418, § 1328(1), 102 Stat. 1107, 1205 (to be codified as 19 U.S.C. § 1677(7)(B)(ii)). I have explained in detail in other opinions how the three-part inquiry that I employ considers certain other economic factors relevant to an assessment of the impact of unfairly traded imports on the domestic industry producing the like product -- *e.g.*, dumping margins -- in addition to the specific factors listed in the statute. See, *e.g.*, New Steel Rails from Canada, USITC Pub. 2135, Inv. Nos. 701-TA-297 and 731-TA-422 (Preliminary) 35-37 (Nov. 1988) (Additional Views of Commissioner Cass) ("New Steel Rails I"); Generic Cephalixin Capsules from Canada, USITC Pub. 2143, Inv. No. 731-TA-423 (Preliminary) 56-58 (Dec 1988) (Dissenting Views of Commissioner Cass).

closely-related questions are identified as critical to an assessment of the possible existence of material injury by reason of LTFV imports.

First, the Commission must examine the volumes of imports of the merchandise under investigation. In so doing, it is important to consider both the absolute volumes of the imports and their magnitude in relation to domestic consumption and in relation to production of the competing like product. The effects of dumping on the prices of the imports are also important in this context, as the change in import volumes brought about by dumping will be closely related to changes in the prices of the imports that occurred as a result of sales at LTFV prices.

Second, we must attempt to determine how LTFV sales of the subject imports affected prices, and concomitantly sales, of the domestic like product. In addition to evidence relating to the prices at which imports and domestic like products are sold, evidence bearing on three other issues is critical to assessment of this question: the share of the domestic market held by the subject imports; the degree to which consumers see the imported and domestic like products as similar (the substitutability of the subject imports and the domestic like product); and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products.

Finally, we must evaluate the extent to which changes in demand for the domestic like product that were caused by LTFV

imports affected the financial and employment performance of the domestic industry. In cases where such effects are evident, we must also determine whether they rise to the level of the material.^{34/} In evaluating those questions, we must consider data relating to such factors as return on investment, the level of employment and employment compensation, industry capital and research expenditures, and so on.^{35/}

In these investigations, data constraints limit our ability to analyze fully and separately the effects of the subject, allegedly LTFV imports on each of the four domestic industries producing the four like products. Specifically, a great deal of the data before us are not disaggregated on the basis of the four like products that I have determined to exist. For example, key data relating to the magnitude of the dumping that allegedly occurred, and the financial and employment performance of the domestic industry, have been collected only for "all PET film" as if such film were a single indivisible product group produced by a single domestic industry. Hence, in accordance with the command of the statute, in those cases where product-specific data are not available, I have used the data that we have

^{34/} The judgment as to whether these effects are "material" within the meaning of the statute may be assimilated to the third inquiry or may be seen as a fourth part of our inquiry. See Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No. 731-TA-390 (Final) 117-119 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass).

^{35/} In making each of these inquiries under the statute, we are to consider the particular dynamics of the industries and markets at issue. See new Section 771(7)(C)(iii) of the statute (to be codified at 19 U.S.C. § 1677(7)(C)(iii)). See also S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987).

collected for the narrowest product for which data are available -- that is, "all PET film" -- as the best available information.

The evidence, viewed as a whole, provides a reasonable indication that the subject allegedly LTFV imports from Korea and Japan cumulatively have caused material injury to the four domestic industries. However, the record does not provide any such indication with respect to the subject imports from Taiwan, the volume and effects of which, for the reasons stated in the Views of the Commission, are not to be cumulated with those associated with the imports from Japan and Korea.

A. Volumes and Prices of the Subject Imports

In 1989, which encompassed a portion of the period during which dumping is alleged to have occurred, imports of PET film from Japan amounted to [* *] pounds of material valued at about \$[* *].^{36/} During that same year, [* *] pounds of PET film, valued at approximately \$[* *], were imported from Korea.^{37/} Taiwanese imports were far lower than those reported for Japan and Korea: in 1989, only about [* *] of PET film were imported from Taiwan, with a value of well under \$[* *].^{38/}

During the first three months of this year, which also encompasses a portion of the period during which dumping is alleged to have occurred, imports from Japan were somewhat

^{36/} Report at A-27, Table 18.

^{37/} Id.

^{38/} Id.

higher, and imports from Korea were substantially higher, than those reported during the comparable three-month period in 1989.^{39/} The same pattern emerges from an examination of the current level of imports from Korea and Japan in relation to those recorded during earlier periods covered by our investigation: Japanese imports have risen approximately [*]% from 1987 levels, while Korean imports [* *] over the same period.^{40/}

The Commission does not have import data per se for the various categories of imports corresponding to the four like products that I have identified. However, we do have certain data respecting domestic shipments by importers of the subject imports.^{41/} These data suggest that imports of graphics film and magnetic media film constitute a substantial portion of imports from Japan. They also suggest that imports in these two categories have risen most significantly in recent periods; imports of packaging film have actually fallen somewhat, while imports of industrial film have either risen or fallen slightly, depending upon whether one uses 1987 or 1988 as the base year for comparison.^{42/}

^{39/} Id. No imports of PET film from Taiwan were reported for the first three months of 1989; imports from Taiwan during the first three months of this year occurred at levels that would be, if continued, somewhat higher than those reported for that country for 1989. Id.

^{40/} Id. No Taiwanese imports were reported before 1989.

^{41/} See Report at A-12, Table 4.

^{42/} Id.

The profile that emerges from an examination of shipments of Korean imports is quite different. During 1989, for example, U.S. shipments of Korean PET film consisted overwhelmingly of industrial film and graphics film, with packaging film and magnetic media film ranking a distant third and fourth, respectively. Data suggest, moreover, that graphics film accounts for [* * *] the recently reported significant increase in Korean imports.^{43/}

Consistent with the Commission's finding that they are "negligible" for the purposes of the cumulation provisions of Title VII, U.S. shipments of imports from Taiwan were small during 1989 and during the first three months of 1990.^{44/}

[* *] film accounted for the bulk of these shipments.^{45/}

The record evidence contains a reasonable indication that import volumes from all three subject countries may have increased as a result of sales at LTFV prices. Petitioners have not provided the Commission (or the Commerce Department) with information that would permit us to evaluate the magnitude of the dumping that allegedly has occurred on a product-specific basis, that is, for each of the four categories of imports corresponding to the four like domestic products. Petitioners have, however, alleged that imports of all types of PET film were sold at prices reflecting significant margins of dumping, ranging up to 52.5% in

^{43/} Id.

^{44/} Id.

^{45/} Id.

the case of Korea, 26.0% for Japan and 14% in the case of Taiwan.^{46/} These allegations must, in my view, be credited as best available information in analyzing the effect of LTFV sales of the subject imports on all four domestic industries with respect to the narrow evidentiary issue they address: the difference in prices of Respondents' sales of PET film to the U.S. market and sales of such products to the Respondents' respective home markets.^{47/} The legislative history of the Trade Agreements Act of 1979 makes clear that, in preliminary investigations in antidumping cases, the Commission "will be guided by the description of the allegation of the margin of dumping contained in the petition or as modified by . . . [Commerce]".^{48/}

Such dumping margins are not, however, conclusive of the effects of dumping on the prices of the subject imports.^{49/} In general, dumping margins (as alleged or as determined by Commerce) measure the difference between prices in two markets, but they do not measure the extent to which the prices of subject

^{46/} Report at A-8.

^{47/} In Title VII preliminary investigations such as these, these alleged margins are the best evidence available to us, and we are, in my view, generally required to accept them as such. See New Steel Rails I, note 33 supra, at 39-40.

^{48/} Statements of Administrative Action, Trade Agreements Act of 1979, at 415.

^{49/} See, e.g., New Steel Rails I, supra, at 42; Granular Polytetrafluoroethylene Resin from Japan and the Netherlands, USITC Pub. 2112, Inv. Nos. 731-TA-385 and 386 (Final) 74 (Aug. 1988) (Additional Views of Commissioner Cass); Certain Bimetallic Cylinders from Japan, USITC Pub. 2080, Inv. No. 731-TA-383 (Final) 44 (May 1988) (Additional Views of Commissioner Cass).

imports declined as the result of charging different prices in the two markets (that is, as a result of dumping). In most cases, the actual price decrease in sales to the United States that occurs consequent to dumping will be less than the full amount of the dumping margin.^{50/} In cases where, as here, the alleged dumping margins at issue reflect an assertion that the subject foreign producers/exporters have charged a lower price for their product in the United States than the price that they have charged in their home market (or another foreign market used as the surrogate for the home market), the actual decrease in the U.S. price of the subject imports that occurred consequent to dumping will be only a fractional percentage of the dumping margin. This percentage, in turn, will be in large measure a function of the proportion of the total sales of the subject foreign producer(s) in the U.S. and the exporter's home market (or other surrogate foreign market) that is accounted for by sales in the home market.^{51/}

^{50/} The reason for this is explained in 3.5" Microdisks and Media Thereof from Japan, USITC Pub. 2170, Inv. No. 731-TA-389 (Final) 82-89 (Mar. 1989) (Dissenting Views of Vice Chairman Cass). See also note 51, *infra*.

^{51/} See, e.g., Certain All-Terrain Vehicles from Japan, USITC Pub. 2163, Inv. No. 731-TA-388 (Final) 58-60 (March 1989) (Additional Views of Commissioner Cass); Granular Polytetrafluoroethylene Resin from Japan and the Netherlands, USITC Pub. 2112, Inv. Nos. 731-TA-385 and 386 (Final) 74 (Aug. 1988) (Additional Views of Commissioner Cass); Certain Bimetallic Cylinders from Japan, USITC Pub. 2080, Inv. No. 731-TA-383 (Final) 44 (May 1988) (Additional Views of Commissioner Cass). The price decline in the United States will be a function both of the difference in competitive conditions faced by the dumping firm in the United States and in its home market and of the value to the firm of sales in each of those markets. The dumping margin, if properly calculated, reflects the first of these

For each of the three subject countries, the foreign producers' sales of PET film in their respective home markets have consistently and heavily outweighed their sales of such products in the United States.^{52/} Accordingly, for the purpose of these preliminary investigations, there is a plausible basis for inference that the alleged dumping caused prices of the subject imports from Japan, Korea, and Taiwan to decline by a very substantial percentage of the alleged dumping margins.^{53/}

Given import price declines of this magnitude, there is also a plausible basis for inference that LTFV-induced price

considerations, and the relative shares of sales by the firm in the two markets reflects the second (at least over the time frame relevant to our dumping investigations). For that reason, a proportional fraction of the dumping margin equal to the portion of the firm's combined U.S.-home market sales accounted for by sales to the home market will, by combining these two considerations, approximate the price change consequent to dumping.

In reality, an estimate of the decrease in the price of the dumped product that is derived in this fashion will be somewhat overstated as it represents an approximate upper bound of that decrease. For a thorough explication of this subject, see Office of Economics, Assessing the Effects on the Domestic Industry of Price Dumping, USITC Memorandum EC-L-149 at 1, n. 1, 13, 19-21 (May 10, 1988). A more accurate statement of the effects of dumping on import prices also may require some adjustment to reflect the fact that dumping margins are calculated on an ex-factory, rather than final sales price, basis. However, the evidence that would be necessary to make such an adjustment is not contained in the record here.

^{52/} See Report at A-24, Table 15; A-25, Table 16; A-26, Table 17. The Commission has not yet collected information on these producers home market sales disaggregated by the four types of PET film corresponding to the four like products. Accordingly, I have used the information gathered by the Commission for all types of PET film as the best information available in these preliminary investigations.

^{53/} See note 51 supra and authorities cited therein.

decreases brought about some increase in import volumes from Japan and Korea and, to a much lesser extent, Taiwan. The extent to which decreases in subject import prices cause increases in subject import sales is, in large measure, a function of the degree to which the imported goods are substitutable for the domestically produced product. As explained in more detail in the succeeding section of these Views, the arguments presented to the Commission on this issue by the parties are in sharp conflict. Given the legal standard applicable in preliminary investigations, there is sufficient record evidence to support an inference that the substitutability of the subject imports from Japan and Korea was not so limited as to preclude the possibility that LTFV pricing of the subject imports resulted in significantly increased imports from those two countries. The evidence does not support a similar inference in the case of Taiwan, however.

B. Effects on Domestic Prices and Sales

In determining the extent to which LTFV sales of the subject imports affected prices, and concomitantly sales, of the domestic like product, certain evidence in addition to the record evidence relating to import volumes must be considered. Information respecting three issues is central to analysis of such price effects: the share of the domestic market held by the subject imports; the substitutability of the subject imports and the domestic like product; and the degree to which domestic consumers change their purchasing decisions for these products based on

variations in the prices of those products.^{54/} The record evidence on these issues, viewed as a whole, indicates that there is a reasonable indication that LTFV sales of the subject imports from Japan and Korea had a significant effect on prices and sales of the domestic like product, but no reasonable indication that the subject Taiwanese imports had any such effect.

1. Japan and Korea

The level of market penetration by the subject Japanese and Korean imports is significant. The Commission has collected import market penetration data per se only for all types of PET film. During 1989, the subject Japanese imports accounted for [*]% of the total quantity and [*]% of the total value of domestic consumption of PET film (including captive consumption).^{55/} During the first three months of this year, import market penetration was even higher: [*]% measured on the basis of quantity and [*]% on the basis of value.^{56/} In the case of Korea, imports accounted for [*]% of the quantity of

^{54/} The statute instructs us to consider evidence of significant price underselling or of price suppression or depression. See 19 U.S.C. § 1677(7)(C)(ii). In these investigations, the Commission has collected data indicating that certain of the subject imports have been sold at prices lower than those of certain domestic products that the Commission has selected for purposes of comparison. However, as discussed infra, there is also significant evidence of disparities in the quality of the domestic and imported products that may account for these observed price differences. This is not unusual in Title VII investigations. See, e.g., Certain Granite from Italy and Spain, USITC Pub. 2110, Inv. Nos. 701-TA-289 and 731-TA-381 (Final) (Aug. 1988).

^{55/} Report at A-29, Table 21.

^{56/} Id.

domestic consumption and [*]% of the value of consumption in 1989, and rose to [*]% on a quantity-measured basis and 4.8% on a value-measured basis in the first three months of the current year.^{57/} For both countries, these figures represent significant increases from earlier reported levels.^{58/}

The Commission has also collected domestic shipment data that allow for at least a rough measure of the importance of the subject Japanese and Korean imports in the four separate domestic markets in which they are sold.^{59/} In 1989, for example, these data indicate that Japanese imports accounted for about [*]% of shipments of magnetic film; [*]% of shipments of graphics film, [*]% of domestic shipments of industrial film, and [*]% of shipments of packaging film. Clearly, the Japanese imports were far more prominent in the domestic market for magnetic media film, but even their relatively small participation in the industrial and packaging film markets cannot be dismissed as insignificant, especially when considered in conjunction with the volume of imports from Korea.

In 1989, the available domestic shipment data suggest that Korean imports represented [*]% of domestic shipments of packaging film, [*]% of shipments of graphics film, [*]% of shipments of packaging film and [*]% of shipments of magnetic media film. Again, these data suggest import volumes that vary

^{57/} Id.

^{58/} Id.

^{59/} See id. at A-7, Table 1; A-12, Table 4.

widely from market to market, but plainly cannot be viewed as insignificant when cumulated with the Japanese imports.

The next important issue that requires consideration is the extent to which the subject Japanese and Korean imports are substitutable for the domestic like product. The Japanese and Korean Respondents contend that there are major limitations on the substitutability of their products for those of the domestic producers. Japanese Respondents Diafoil and Toray assert that the domestic producers of PET film are not fully competitive in the magnetic media market because, inter alia, they do not make tensilized film.^{60/} Japanese Respondent Teijin made the same type of argument with a slightly different twist, arguing that the domestic producers have lost sizeable sales in various segments of the magnetic media market because of widely perceived deficiencies in the quality of their products.^{61/} Korean Respondent SKC advanced many of the same arguments.^{62/}

In response, Petitioners asserted flatly that they produce a product that is of a quality competitive with the subject imports.^{63/} They acknowledge that this may not be true in certain segments of the market -- i.e., the tensilized film business -- which Petitioner du Pont asserts that it was forced to abandon because of unfairly low import prices.

^{60/} See Diafoil Postconference Brief at 17-19. See also Toray Postconference Brief at 40-46.

^{61/} Teijin Postconference Brief at 22A-34.

^{62/} See SKC Postconference Brief at 28-37.

^{63/} See Petitioners' Postconference Brief at 30-34.

In my view, for the purposes of these preliminary investigations, the evidence on this issue is sufficiently unclear and/or conflicting as to preclude our finding that the substitutability of the subject imports for the domestic like products is so limited as to leave no reasonable indication in the record that LTFV sales of the subject imports from Japan and Korea had a material adverse effect on prices and sales of the domestic like product. That said, I note, however, that Respondents have presented the Commission with a compelling story outlining in detail significant alleged differences in the quality of the domestic and imported products, particularly insofar as magnetic media film is concerned. Were this a final investigation, I would have no difficulty in finding that Respondents have had far the better of the argument on this issue. That does not mean that the effects of the low-priced imports, even those that differ appreciably, is nil, but it does suggest that limited substitutability significantly reduced the effect LTFV sales of those products had on domestic producers.

The remaining issue that must be considered in evaluating the effects that dumping of the subject imports had on prices and sales of the domestic like product relates to the degree to which domestic consumers of the various types of PET film respond to changes in the price of these products. When consumer demand for the domestic and imported products as a group is highly responsive to changes in price, the effects of dumping on prices and sales of the domestic like product is attenuated, for in that case the lower prices resulting from dumping will stimulate

significantly increased domestic demand for the lower priced product. Much greater effects will be felt by U.S. producers when consumers perceive no difference between the imported and domestic product other than price but their overall purchases of these products are relatively unresponsive to price changes. In the latter case, consumers will simply switch their purchases from U.S.-made to lower-priced imported products, resulting in detrimental impacts on both prices of the U.S. product and sales of that product.

In these investigations, consideration of this issue, on balance, lends additional support for the inference, otherwise suggested by the record evidence, that LTFV sales of the subject imports from Japan and Korea have adversely and significantly affected prices and sales of the domestic like product. It appears that there are few, if any, substitutes for graphics and magnetic media film.^{64/} Other plastics and other materials compete with industrial film and packaging film, but the extent of such competition is not clear from the record now before us. Accordingly, there is reason to believe that all four of the domestic industries at issue have experienced significantly decreased prices and/or sales of their products by reason of LTFV sales of the subject imports from Japan and Korea.

2. Taiwan

As previously discussed, there is, however, no reasonable indication that the alleged LTFV sales of the subject Taiwanese

^{64/} Report at A-11.

imports had similarly deleterious effects on any domestic industry. By any measure, the level of Taiwanese market penetration is small; indeed, it is so small that we have characterized the Taiwanese imports as negligible for purposes of our analysis of the cumulation issue. There is also strong, essentially unrefuted, evidence that the Taiwanese product has been substitutable to only a very limited extent for the domestic like products. The Taiwanese are new entrants to the PET film business, and they have experienced quality problems [* *]

BUSINESS PROPRIETARY INFORMATION DELETED

* *]^{65/} For these reasons, it is plain that LTFV sales of the subject Taiwanese imports, standing alone, did not cause significant decreases in either prices or sales of the domestic like product.

C. Investment and Employment

As in other Title VII investigations, it is extraordinarily difficult to divine the impact of the subject, allegedly dumped, imports on the domestic industry based solely on consideration of the financial and employment data that the Commission has collected. For one thing, as previously noted, the Commission has compiled only gross data on the operations of firms producing all types of PET film; no disaggregated information is available for any of the domestic industries producing the four like products in these investigations. Further, many factors entirely unrelated to LTFV sales of the subject imports inevitably have

^{65/} Shinkong Postconference Brief at 16-18.

influenced the performance of the industry during the period covered by our investigation. For example, it is evident that there have been significant increases in the cost of various raw materials used in the production of PET film, notably ethylene glycol, dimethyl terephthalate and terephthalic acid.^{66/} Significant increases in other costs, such as wages and depreciation, have also occurred.^{67/} Accordingly, the raw financial and employment data collected by the Commission in these investigations, if viewed in isolation, cannot provide a very meaningful indication of the extent to which LTFV sales of the subject imports affected the domestic industries.

Consider, for example, the profitability data for those firms producing PET film. Measured by operating income, the profitability of these firms dropped sharply in 1989.^{68/} As previously suggested, this decrease coincided with a sharp increase in the cost of goods sold reported by these firms. At the same time, however, it is impossible to say with any degree of certainty that LTFV sales of the subject imports were not in some way responsible for the relatively weak financial performance of the domestic producers of PET film (by preventing them from passing along cost increases or otherwise).

The data relating to employment are similarly difficult to interpret. On the whole, these indicators registered only slight

^{66/} Report at A-17.

^{67/} Id.

^{68/} Id. at A-18, Table 10.

(and in some cases positive) changes during the period covered by our investigation (including 1989 and the first three months of 1990, which encompassed the period during which dumping is alleged to have occurred).^{69/} In short, there is simply nothing in the employment data that, standing alone, provides any credible indication as to the effects that LTFV sales of the subject imports had on the domestic industries.

Accordingly, in these investigations, I have attached great weight to the other previously-discussed evidence respecting the effects that LTFV sales of the subject imports had on prices and sales of the domestic like product, and very little weight to the gross indicators of the financial and employment performance of all firms producing PET film. As previously discussed, this evidence provides a reasonable indication that such sales of imports from Japan and Korea adversely and significantly affected the four domestic industries producing, respectively, graphics, magnetic media, packaging and industrial. This same evidence also shows plainly, however, that LTFV sales of imports from Taiwan had no such effects.

CONCLUSION

For the foregoing reasons and for reasons stated in the Views of the Commission, I have reached an affirmative determination in the Commission's investigations of the subject imports from Japan and Korea, and a negative determination in our investigation respecting the subject imports from Taiwan.

^{69/} See Report at A-16, Table 9.

ADDITIONAL VIEWS OF COMMISSIONER ALFRED ECKES

In these investigations I have made separate findings regarding injury to the domestic industry and causation, as is my customary practice.

It is my impression that some of my colleagues take a different position on this issue, and employ what is frequently labelled "unitary analysis." One colleague has said: "... the statute under which the Commission conducts Title VII investigations does not contemplate that the Commission will make a separate legal finding respecting the condition of the domestic industry."¹

Debate within the Commission over the lawfulness of unitary analysis has continued for many months, and no purpose would be served to repeat, or even summarize, the many pages of prose. But, simply stated my position is that only the bifurcated, or dual requirement, approach involving separate injury and causation findings has been upheld by the Commission's reviewing courts.² Presumably the

¹ See Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Preliminary), USITC Pub. 2284 (May 1990), at 17, 21, notes 48 and 68. [hereinafter "Handtools."]

² For a more complete discussion of my analytical approaches, see New Steel Rails from Canada, Inv. No. 701-TA-297 (Final), USITC Pub. 2217 (September 1989), at 29-70 [hereinafter "Rails"]; Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989), at 63-100 [hereinafter "Phones I"]; Drafting Machines and Parts

judiciary is the ultimate authority on what is, or is not, compatible with the statute.

I note with considerable interest that in a recent Federal Circuit decision, Chaparral Steel Co. v. United States, the Court stated: "The injury requirement mandates [emphasis added] a determination of whether an industry suffers present [sic] material injury."³ The Federal Circuit then cited American Spring Wire Corp. v. United States for the proposition that the Commission makes "an affirmative finding only [emphasis added] when it finds both (1) present [sic] material injury (or threat to or retardation of the establishment of an industry) and (2) that the material injury is 'by reason of' the subject imports."

From my vantage point the individual Commissioners who tenaciously hold to the proposition that "an independent

Thereof from Japan, Inv. No. 731-TA-432 (Final), USITC Pub. 2247 (December 1989), at 67-99 [hereinafter "Drafting Machines"]; Certain Telephone Systems and Subassemblies Thereof from Korea, Inv. No. 731-TA-427 (Final), USITC Pub. 2254 (January 1990), at 15-21 [hereinafter "Phones II"]; and Mechanical Transfer Presses from Japan, Inv. No. 731-TA-429 (Final), USITC Pub. 2257 (February 1990), at 33-58 [hereinafter "Transfer Presses"]. For a similar perspective from another colleague, see the "Additional Views" of Commissioner Rohr, Rails, supra, at 71-82.

³ Chaparral Steel Company v. United States, slip. op. 89-1338, (Fed Cir. 1990), at 16. On May 16 the Federal Circuit denied appellees' petition for rehearing. On May 29, 1990, the Federal Circuit issued an order declining appellees' suggestion for rehearing in banc. [Hereinafter "Chaparral Steel."]

determination [of injury] is [n]either required by the statute [n]or useful," have an obligation to confront the long history of case law and explain how their approach is compatible with the interpretations of the Commission's reviewing courts.⁴ As I have noted elsewhere, they have a duty to address directly the Court's holdings in a number of cases extending over the last 11 years.⁵

In my opinion, the recent decision in Chaparral Steel drives another silver spike through a second critical element of the unitary-analysis approach. One of my colleagues has asserted that our international obligations under the General Agreement on Tariffs and Trade (GATT) and U.S. statutes require the Commission to consider only dumped

⁴ Handtools, supra, at 17, note 48.

⁵ Under provisions of the 1921 Antidumping Act bifurcated analysis was affirmed in Pasco Terminals, Inc., v. United States, 477 F. Supp. 201 (Customs 1979), aff'd, 634 F.2d 610 (CCPA 1980); and Armstrong Bros. Tool Co. v. United States, 483 F. Supp. 312 (Customs 1980); aff'd, 626 F.2d 168 (CCPA 1980).

Under the 1979 Act, bifurcated analysis has been approved in American Spring Wire Corporation v. United States, 590 F. Supp. 1273, 1276, 1281 (CIT 1984); aff'd, 760 F. 2d 249 (Fed. Cir. 1985). National Association of Mirror Manufacturers v. United States, 696 F. Supp. 642, 647 (CIT 1988); Roses, Inc. v. United States, 720 F. Supp. 180, 184 (CIT 1989).

In Rails, supra, at 70, I observed that "in light of the judicial precedents, the real question for trade law administrators is not whether the bifurcated method is lawful, but instead whether unitary analysis is in any way compatible with the required two-factor approach to material injury and causation."

or subsidized imports in making injury determinations.⁶ Commissioner Cass, the leading advocate of this approach, states:

...certain of my colleagues have expressed the view that it is not the Commission's job to determine whether unfair trade practices, such as dumping or subsidization, have materially injured the domestic industry. Rather, according to these Commissioners, the Commission's task is to ascertain whether the imports that were the subject of the Commerce Department's investigation -- whether or not fairly traded -- caused material injury. [footnote omitted] In other words, in this view, the Commission need not make any effort to assess the effects of the unfair trade practices themselves.⁷

Commissioner Cass then asserts "such an interpretation of our trade law is, on its face, wholly inconsistent with the GATT." He proceeds to discuss his own interpretation of the GATT obligations, and then of U.S. law, saying: "An interpretation of our trade law that dispenses with any effort to assess the effects of unfair trade practices on domestic industry is no less inconsistent with U.S. law than it is inconsistent with the GATT."

It is not necessary to reiterate my own response to these claims. The interested reader can revisit this phase of our protracted debate in Drafting Machines, Phones II and

⁶ Rails, supra, at 127-137.

⁷ Rails, supra, at 127. In Phones I, supra, at 231-2, Commissioner Cass states: "The law expressly asks this Commission to determine whether a domestic industry in the United States is suffering material injury by reason of [sic] the imports found by Commerce to have been dumped or subsidized...." [emphasis added]

Transfer Presses among the many cases.⁸

However, since my last discussion of these issues, the Court of Appeals for the Federal Circuit has offered additional words of support for the traditional analysis that I espouse. In Chaparral Steel Company v. United States the CAFC stated in a footnote explanation of cumulation that the "ITC makes a determination whether or not unfair imports from the country under investigation cause material injury or threat of material injury. Whether the unfairness arises from dumping or subsidies does not matter."[emphases added]⁹

In light of this judicial dictum I believe that advocates of the unitary approach are standing on unsound legal ground. In my opinion there is no obvious way to reconcile the claim that Commissioners are required to examine the impact of individual unfair trade practices like dumping and subsidization with the Court's conclusion that "whether the unfairness arises from dumping or subsidies does not matter."

⁸ See footnote 1.

⁹ Chaparral Steel Company v. U.S., supra, at 5, note 2.

INFORMATION OBTAINED IN THE INVESTIGATIONS

Introduction

On April 27, 1990, a petition was filed with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) by counsel for E.I. Du Pont de Nemours & Co. (Du Pont), Wilmington, DE; Hoechst Celanese Corp. (Hoechst), Charlotte, NC; and ICI Americas Inc. (ICI), Wilmington, DE, alleging that an industry in the United States is being materially injured and is threatened with further material injury by reason of imports from Japan, the Republic of Korea (Korea), and Taiwan of polyethylene terephthalate (PET) film, sheet, and strip¹ that are allegedly sold in the United States at less than fair value (LTFV). Accordingly, effective April 27, 1990, the Commission instituted antidumping investigations Nos. 731-TA-458 through 460 (Preliminary), under section 733(a) of the Tariff Act of 1930, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

Notice of the institution of these investigations was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register of May 7, 1990 (55 F.R. 18969). Commerce published its notice of initiation in the Federal Register of May 24, 1990 (55 F.R. 21415). Copies of the Commission's and Commerce's Federal Register notices are presented in appendix A. The Commission held a public conference in Washington, DC, on May 18, 1990, at which time all interested parties were allowed to present information and data for consideration by the Commission. A list of the participants in the conference is presented in appendix B. The Commission voted on these investigations on June 6, 1990. The statute directs the Commission to make its preliminary determinations within 45 days after receipt of the petition, or in these investigations by June 11, 1990. The Commission has not conducted any previous investigations on PET film, sheet, or strip.

The Product

Product description

The imported product subject to these investigations consists of all gauges of raw, pretreated, or primed PET film, sheet, and strip, whether

¹ For purposes of these investigations, "PET film, sheet, and strip" is defined as all gauges of raw, pretreated, or primed film, sheet, and strip, whether extruded or coextruded, produced from the chemical base of polyethylene terephthalate, as provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States (HTS) (previously under item 771.43 of the former Tariff Schedules of the United States (TSUS)). Films excluded from the scope of these investigations are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

extruded or coextruded (hereafter collectively referred to as "PET film"),² excluding metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous layer more than 0.00001 inches (0.254 micrometers) thick.³ PET film was introduced commercially in the 1950s and is also known in the industry as polyester film. It is a clear, flexible, transparent, or translucent material produced from PET polymer, a linear, thermoplastic polyester resin. PET film is a high-performance plastic film usually produced by large, diversified, multinational firms. It is generally more expensive than other plastic films and is only used when its unique properties are required.

PET film has certain inherent desirable qualities such as high tensile strength, durability, heat resistance, good gas-barrier properties, dimensional stability, chemical inertness, and clarity. However, it also has certain shortcomings; e.g., it is not heat sealable and is vulnerable to attack by strong chemical bases.⁴

PET film is available commercially in a range of widths, thicknesses, and properties depending upon the needs of end users. It can be made as a single layer or can be coextruded with other polymers into a multilayer film encompassing the desired characteristics of each material. PET film is available from the production line in widths generally ranging from about 20 inches up to about 400 inches, and in thicknesses reportedly ranging from about 2 gauge up to about 1,400 gauge (i.e., 0.00002 to 0.014 inches).

The petitioners contend that imports of PET film from Japan, Korea, and Taiwan compete with the domestic product over the range of film grades and end-use applications. However, it appears that certain types of imported PET film, e.g., tensilized magnetic film, are not currently produced in the United States. Respondents claim that U.S. producers have chosen to not produce for, or have been unable to qualify their domestic product for, certain growing end-use applications, especially in high-quality, high-technology segments of the market, and indeed import PET film themselves.

² Although a distinction is occasionally made on the width and thickness of the product, there appears to be no clear industry definition of PET film, sheet, and strip. According to questionnaire responses, close to 100 percent of the subject product is considered "film." All of the subject product originates as a master roll of film, and off-line machinery subsequently cuts the master roll into sheet and strip according to customer specifications. Therefore, any price difference may be reflected in the extra cost of sheeting or stripping the film.

³ Du Pont manufactures a product in the United States, namely Cronar, that is heavily coated and is * * *. Petitioners' counsel contends that this product, which is used primarily in photographic film and x-ray applications, is reportedly manufactured in one continuous process * * *.

* * *.

⁴ A base is any of a large class of compounds with one or more of the following properties: bitter taste, slippery feeling in solution, ability to turn litmus blue and to cause other indicators to take on characteristic colors, and ability to react with (neutralize) acids to form salts. Included are certain hydroxides and oxides of metals.

The distinct physical properties of the various grades of PET film can be imparted into the product either during the polymerization of the PET resin precursor by the addition of chemicals such as slip modifiers (a surface modifier) or color additives, or subsequently during the PET film production process where various surface finishes may also be imparted by externally treating the films' surface(s). Virtually all PET film is biaxially oriented (i.e., stretched at elevated temperatures, first lengthwise and then laterally).⁵ This biaxial orientation of the PET film makes it suitable for such applications as food packaging, electrical insulation, and printing sheets by increasing the product's crystallinity⁶ and thereby improving its tensile strength, heat resistance, and gas-barrier properties.

Manufacturing processes

The manufacturing facilities for PET film are capital intensive and a 2-year leadtime is required to build a PET line. More time is required to enable the production line to operate at capacity. In order to assure strict thickness control, the manufacturing facilities require strong foundations and reinforced flooring to prevent vibrations.

PET resin is prepared from the polymerization of ethylene glycol (from ethane feedstock) with either terephthalic acid (from para-xylene feedstock) or dimethyl terephthalate (also from para-xylene feedstock). In the first process (usually called the DMT process), dimethyl terephthalate and ethylene glycol are fed into the reactor vessel as liquids. The second process (usually called the TPA process) is initiated by slurring powdered or granulated terephthalic acid and ethylene glycol before feeding into the reactor vessel. Each process has some unique advantages and disadvantages, but the resultant polymer produced by both processes is essentially the same.⁷

The molten or melt-phase polymer can be pumped directly to film extrusion machines or solidified and pelletized for storage and blending before being fed to the film extruders.⁸ Virtually all PET film produced

⁵ Tensilized film is stretched lengthwise an additional time to add tensile strength. This film, used primarily in long-playing magnetic recordings, is currently not produced in the United States and according to an industry source accounts for *** percent of U.S. consumption and *** percent of worldwide consumption. * * *

⁶ Crystallinity is a state of molecular structure in some resins attributed to the existence of solid crystals with a definite geometric form. Such structures are characterized by uniformity and compactness.

⁷ According to questionnaire responses, * * *.

⁸ In addition to film, PET melt-phase polymer is also used in the production of other PET-based products. For example, it is used in the production of PET or polyester fiber for textile fiber-grade materials for such uses as apparel, home furnishings, carpets and so forth, and for industrial fiber-grade polymer for use in such applications as tire cord. Polyester fiber accounts for most of the total consumption of PET melt-phase polymer capacity; PET solid-state resins (also known as bottle-grade resins) account for a smaller share; and PET film, the subject of these investigations, accounts for 10 percent or less. In recent years, the

(continued...)

domestically is made by the cast-tenter process.⁹ A flow chart of the cast-tenter process, supplied by the petitioners, is shown in figure 1.

Molten polymer is extruded through a slotted die onto some type of "quenching" device, usually a rotating polished metal drum internally cooled by chilled water.¹⁰ The extruded sheet, which generally ranges in width from approximately 20 to 80 inches, is completely solidified into a continuous sheet after one revolution of the "quench drum."

The PET product is initially in the form of sheet. This sheet is continuously drawn by a series of rolls and/or edge clamps through heating, stretching, annealing, and cooling until it is stretched approximately 3 to 5 times its original length and width. This stretching process, which gives PET film its high tensile strength and thermal stability, is accomplished by the controlled alignment and crystallation of the polymer's long-chain molecules in the principal stretching directions. The process must be precisely controlled to ensure the required thickness and uniformity. Sophisticated control systems are required to regulate speeds, temperatures, and stretch conditions. Very often the entire process is contained in a "clean room" environment to protect the finished film from microscopic airborne contamination. Elaborate vacuum cleaners and static electricity equipment must be employed to further ensure the ultimate cleanliness of the finished film.

Many of the physical properties required for specific applications are imparted during both the polymerization and film-treatment stages of manufacture. The surface finish is one of the most specialized properties for these applications, as it permits better adhesion by various materials to the surface of the film. Various surface finishes can be created by the inclusion of microscopic particles of specific sizes and concentrations in the molten

⁸ (...continued)

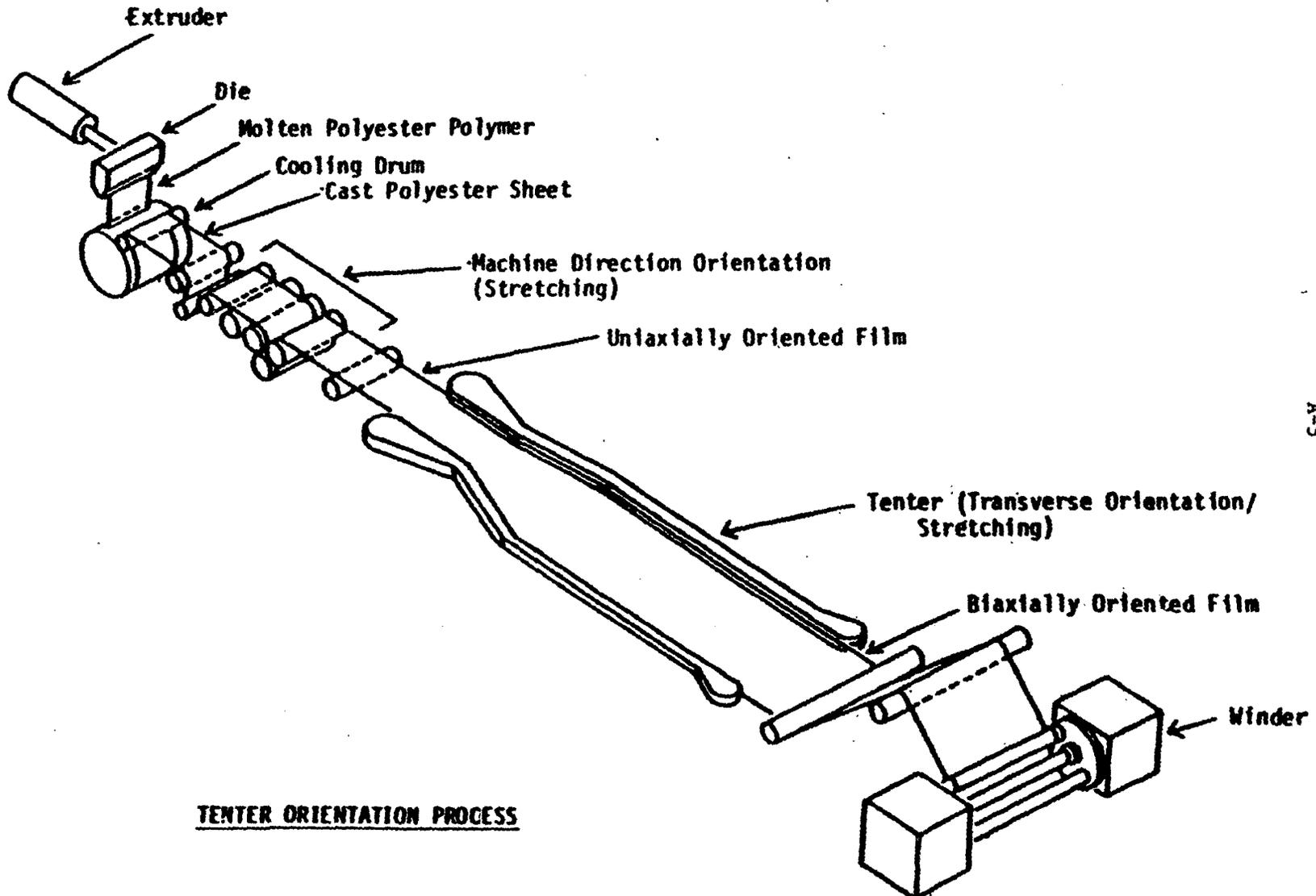
individual production of PET film, PET fiber, and solid-grade PET resins has reflected the share of total PET melt-phase polymer capacity that each of these product categories represents.

The molecular weight of the PET resin used for each of these major PET end-use markets is what primarily distinguishes one PET resin from another. PET resin used to make film has an intrinsic viscosity similar to that of textile fiber-grade PET (i.e., about 0.6 deciliters per gram), but reportedly has a higher purity than the fiber-grade PET resin. To a lesser extent, the choice of additives and catalyst system distinguishes between fiber-grade PET, bottle-grade PET, and film-grade PET.

⁹ Small quantities of PET film also are made by a blow-bubble process in which a tubular film is simultaneously stretched in both directions. This process is less expensive than the cast-tenter process, but gauge and product uniformity reportedly are not as easily maintained.

¹⁰ For thin-film processing, contact with a water-cooled roll positioned close to the extruder die is necessary. For thicker films, cooling in a water bath is necessary to bring the polymer quickly below the glass transition (T_g) temperature, which for amorphous (noncrystalline) PET polymer is about 165 degrees Fahrenheit. In the subsequent orientation process, the PET polymer is heated above its T_g temperature and stress is applied to orient the polymer chains into an extended alignment with increased molecular orientation and some crystallinity.

Figure 1
Typical cast-tenter process



A-5

Source: Antidumping petition on behalf of E.I. Du Pont de Nemours & Co., Inc.; Hoechst Celanese Corp., and ICI Americas, Inc.

polymer, or by externally treating one or both of the surfaces of the film. Chemical, physical, and thermal characteristics are imparted by the use of proprietary chemicals and/or unique combinations of the extrusion, heating, stretching, annealing, cooling, and surface treatment steps. The petitioners report that this technology is generally proprietary among the various PET film manufacturers and adds materially to manufacturing costs.

Production of the various types of PET film (i.e., for magnetic media, for electrical use, etc.) is conducted on the same types of production lines but the production must be interrupted to modify the amounts or types of additives or surface treatments required for the different grades. Some grades are sold in high volume and have production runs of weeks; other grades are periodically run for only hours or days. The proportion of off-grade and scrap production varies considerably across grades.

Property differences among types of PET film include film thickness, surface treatment, and polymerization additives. The chemical base of polyethylene terephthalate is the same for all PET film and the addition of minor amounts of additive chemicals does not change the basic chemistry. The production process--either batch or continuous--is essentially the same and results in film that has identical basic chemistry but not necessarily equal performance characteristics. All PET film represents continuous gradations along a spectrum of attributes ranging from the thinnest to the thickest, the clearest to the most opaque, or the most balanced or unbalanced biaxial orientation.

The film is wound into large rolls, which can be either sold directly to customers or slit and rewound into smaller rolls to match the customer's equipment. PET film customers manufacture semifinished or finished products from these films. Their processes can generally be characterized as coating, metallizing, forming, dying, punching, or laminating.

Uses

The broad range of chemical, physical, and thermal properties available in the PET family of film grades permits this product to enter a wide range of markets. The petitioners report that there are over 150 different areas of application for PET film in the United States. The Commission's questionnaires requested U.S. producers and importers to provide shipment data on PET film by four general market segments: (1) graphics, (2) industrial, (3) magnetic recordings (further subdivided into video recordings, audio recordings, computer tapes, and floppy disks), and (4) packaging.¹¹ These data are presented in table 1.¹² In 1989, the highest volume PET film markets were the graphics application (e.g., x-ray screens, microfilm/microfiche, drafting films, etc.), which accounted for approximately *** percent of U.S. PET film consumption, and the industrial market (e.g., circuit board overlay, motor insulation, membrane switches, etc.), which represented about *** percent of PET film's reported U.S. consumption. Magnetic recordings, (e.g., videotape, audiotape, computer tape, and floppy disks, etc.) accounted for approximately *** percent of reported consumption; packaging (e.g., snack foods, boil-in-bag pouches, cheese wrap, meat wrap, peelable lid film, etc.)

¹¹ Firms were also requested to provide data under a category entitled "unknown" if they were not sure of the market segment to which certain sales were destined.

¹² * * * did not report shipment data according to market segment. * * *

Table 1
 PET film: Quantity of U.S. producers' and importers' U.S. shipments,¹ by market segments, 1987-89, January-March 1989, and January-March 1990

Market segment	1987	1988	1989	January-March--	
				1989	1990
	<u>U.S. producers' U.S. shipments (million pounds)</u>				
Graphics.....	***	***	***	***	***
Industrial.....	***	***	***	***	***
Magnetic recordings:					
Video recordings....	***	***	***	***	***
Audio recordings....	***	***	***	***	***
Computer tapes.....	***	***	***	***	***
Floppy disks.....	***	***	***	***	***
Packaging.....	***	***	***	***	***
Other ²	***	***	***	***	***
Unknown.....	***	***	***	***	***
Total.....	***	***	***	***	***
	<u>U.S. importers' U.S. shipments (million pounds)</u>				
Graphics.....	***	***	***	***	***
Industrial.....	***	***	***	***	***
Magnetic recordings:					
Video recordings....	***	***	***	***	***
Audio recordings....	***	***	***	***	***
Computer tapes.....	***	***	***	***	***
Floppy disks.....	***	***	***	***	***
Packaging.....	***	***	***	***	***
Other ²	***	***	***	***	***
Unknown.....	***	***	***	***	***
Total.....	***	***	***	***	***
	<u>Share of total U.S. shipments (percent)</u>				
Graphics.....	***	***	***	***	***
Industrial.....	***	***	***	***	***
Magnetic recordings:					
Video recordings....	***	***	***	***	***
Audio recordings....	***	***	***	***	***
Computer tapes.....	***	***	***	***	***
Floppy disks.....	***	***	***	***	***
Packaging.....	***	***	***	***	***
Other.....	***	***	***	***	***
Unknown.....	***	***	***	***	***
Total.....	100.0	100.0	100.0	100.0	100.0

¹ Consists of total reported shipments in the U.S. market, whether commercial or captive. Data presented are estimated to represent approximately *** percent of 1989 U.S. producers' U.S. shipments (commercial plus captive) excluding Cronar and Estar, and approximately *** percent including Cronar and Estar. Data are estimated to account for approximately *** percent of 1989 U.S. importers' reported total U.S. shipments (commercial plus captive).

² Products reported by U.S. producers and importers in the "other" market segment include * * *.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

represented about *** percent of reported consumption; and "other" applications accounted for the *** percent of reported consumption.

Substitute products

In many applications, there are no substitutes that could compete with PET film without sacrificing performance characteristics of the product (e.g., strength, flatness, clarity, tear resistance, thermal stability, and chemical resistance). These applications, where no substitutes exist, are primarily graphics¹³ and magnetic recordings, for which quality specifications are relatively high.

However, in other applications, for which a high value-added property and certain PET performance characteristics may not be needed, PET film competes with a wide variety of substitute materials. These applications tend to fall in the low end of the product range, where other plastic films (e.g., polyvinyl chloride, polypropylene, cellophane, polystyrene, and polyethylene films), paper, and aluminum or other metal foils may be considered as lower-priced substitutes. Price-sensitive applications for which a variety of substitute products may exist are primarily packaging and general-purpose industrial applications.

More problematic is the question of to what extent different types of PET film are substitutable for each other. Properties and performance characteristics can vary substantially, depending on the type of application for which a type of PET film is produced and sold.

U.S. tariff treatment

Effective January 1, 1989, imports of PET film are provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States (HTS).¹⁴ The current column 1-general rate of duty for PET film, applicable to imports from Japan, Korea, and Taiwan, is 4.2 percent ad valorem. PET film was previously provided for in schedule 7 of the former Tariff Schedules of the United States (TSUS), primarily under TSUS item 771.43.

The Nature and Extent of Alleged Sales at LTFV

In order to calculate the estimated dumping margins for PET film from Japan, Korea, and Taiwan, the petitioners compared the U.S. price of the subject product with estimates for foreign market value, which were calculated on the basis of constructed value and adjusted home-market prices obtained from affiliate companies in each country. The LTFV margins, alleged by petitioners and adjusted by Commerce, range from 14.1 to 26.0 percent for Japan, 10.6 to 52.5 percent for Korea, and 14.2 percent for Taiwan.

¹³ However, cellulose triacetate may serve as a substitute product for microfilm and motion picture film.

¹⁴ The petitioners claim that only a portion of PET film imports since Jan. 1, 1989, have been properly classified under subheading 3920.62.00. The petitioners report that other HTS subheadings under which PET film imports appear to have entered the United States include 3920.00.00, 3920.63.10, 3920.63.20, and 3920.69.00.

The U.S. Market

Apparent U.S. consumption

According to Modern Plastics,¹⁵ apparent U.S. consumption (including merchant and captive markets) of PET film increased by 8 percent from 1987 to 1988 and increased by 2 percent in 1989, as shown in the following tabulation (in millions of pounds):

<u>Product</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
PET film ¹	545	590	601

¹ Includes all types of PET film, including Cronar and Estar.

The data collected by the Commission on apparent U.S. commercial consumption and on total apparent U.S. consumption (commercial plus captive) of PET film are presented in table 2.

Table 2

PET film: U.S. producers' domestic commercial and captive shipments, U.S. importers' U.S. shipments, apparent U.S. commercial consumption, and total apparent U.S. consumption, 1987-89, January-March 1989, and January-March 1990¹

<u>Item</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>January-March--</u>	
				<u>1989</u>	<u>1990</u>
	*	*	*	*	*

¹ *** U.S. producers reported domestic commercial and captive shipments. These shipments are estimated to account for approximately *** percent of total U.S. shipments excluding Cronar and Estar, and approximately *** percent of total U.S. shipments including Cronar and Estar. *** U.S. importers reported U.S. shipments. These shipments are estimated to account for approximately *** percent of 1989 total imports of PET film.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Total reported apparent U.S. commercial consumption, by quantity, increased by *** percent from 1987 to 1988, fell by *** percent in 1989, and rose *** percent from January-March 1989 to January-March 1990. In terms of value, total reported apparent U.S. commercial consumption increased by *** percent from 1987 to 1988, fell by *** percent in 1989, and fell by *** percent in January-March 1990. Total reported apparent U.S. consumption

¹⁵ Modern Plastics, January 1989 and 1990.

(commercial and captive), by quantity and value, increased in each period of investigation, with the exception of a drop in value of *** percent in January-March 1990.

U.S. producers

The petitioners (Du Pont, Hoechst, and ICI) identified themselves as the major U.S. commercial producers of PET film, together accounting for 95 percent of U.S. production for the merchant market.¹⁶ The firms also produce PET film outside the United States--Du Pont in Luxembourg; Hoechst AG (Hoechst's parent company) in West Germany; and ICI in the Netherlands, the United Kingdom, and Brazil.¹⁷ Four additional U.S. producers of PET film were identified by the petitioners, of which two (Eastman Kodak (Kodak) and 3M) produce the subject product almost exclusively for captive consumption.¹⁸ The Commission sent producers' questionnaires to these seven firms and to one additional firm¹⁹ that was believed to produce PET film in the United States during the period of investigation.²⁰ *** companies provided the Commission with responses to the request for information, *** did not provide the Commission with a response,²¹ and *** responded that * * * did not produce the product under investigation.²² All responding firms, their shares of total reported U.S. production, positions regarding the petition, and locations are presented in table 3.

Table 3
 PET film: U.S. producers, shares of reported U.S. production in 1989, position on the petition, and location

Firm	Share of production (Percent)	Position	Location
*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. importers

Twenty-three firms were named in the petition as importers of PET film from Japan, Korea, and Taiwan. The Commission sent questionnaires to the 23 firms named in the petition and to an additional 31 firms, each identified as

¹⁶ Petition, p. 6.

¹⁷ * * *

¹⁸ * * *

¹⁹ The U.S. firm not named in the petition, General Binding Corporation (GBC), produces blown polyester film and coextruded polyester film for captive use in Addison, IL.

²⁰ * * *

²¹ * * *

²² * * *

having imported at least * * * worth of material classified under subheading 3920.62.00 of the HTS during January-December 1989, according to information provided to the Commission by * * *. In these investigations, 14 firms responded that they did not import the product under investigation and 30 firms reported such imports. Ten firms did not respond to the Commission's request for information. Data presented in this report are estimated to account for approximately 85 percent of the subject imports from Japan, Korea, and Taiwan.

Channels of distribution

U.S. producers and importers of PET film sell the largest share of their total shipments directly to end users and sell the remainder to distributors. However, the end use markets where PET film is sold differed somewhat depending on the country of origin.

U.S. producers and importers were requested to report the quantity of PET film sold to related distributors, nonrelated distributors, related end users, and nonrelated end users. In 1989, *** percent of the PET film sold by domestic producers went directly to nonrelated end users. U.S. producers sold *** percent to related end users²³ and the remaining *** percent to nonrelated distributors. Importers of Japanese PET film made *** percent of their sales to nonrelated end users, *** percent to related end users, *** percent to nonrelated distributors, and *** percent to related distributors. Importers of Korean PET film sold *** percent of their PET film to nonrelated end users, *** percent to nonrelated distributors, and *** percent to related end users. Importers of Taiwan PET film made *** percent of their sales to nonrelated end users and the *** percent to nonrelated distributors.

In quantity terms, U.S. producers' reported sales of PET film for use in graphics or industrial applications accounted for * * * of their total 1989 shipments. A * * * amount was sold for packaging applications, and the * * * share went for use in magnetic recording applications.²⁴

U.S. importers' U.S. shipments of PET film, by market segment and by country of origin, are shown in table 4. These data show that in 1989 * * * of Japanese PET film was sold for use in magnetic recording applications (primarily for magnetic video uses) and that * * * were sold in the graphics market and other markets. During 1989, reporting importers of PET film from Korea and Taiwan generally sold to the same end-use markets as U.S. producers did; most Korean and * * * Taiwan PET film was sold for use in * * * applications.²⁵

²³ U.S. producers' U.S. shipments made to related end users are reportedly company transfers of PET film used in the production of other products.

²⁴ * * *.

²⁵ Data received in response to the Commission's questionnaire on U.S. importers' shipments of PET film from Taiwan * * *. Taiwan respondents suggest that PET film from Taiwan is sold to * * *. Comments on business proprietary information on behalf of Shinkong Synthetic Fibers Corp., p. 9.

Table 4

PET film: Quantity of U.S. importers' U.S. shipments by market segments and country of origin¹, 1987-89, January-March 1989, and January-March 1990
(In millions of pounds)

Market segment	1987	1988	1989	January-March--	
				1989	1990
<u>From Japan</u>					
Graphics.....	***	***	***	***	***
Industrial.....	***	***	***	***	***
Magnetic recordings:					
Video recordings....	***	***	***	***	***
Audio recordings....	***	***	***	***	***
Computer tapes.....	***	***	***	***	***
Floppy disks.....	***	***	***	***	***
Packaging.....	***	***	***	***	***
Other ²	***	***	***	***	***
Unknown.....	***	***	***	***	***
Total.....	***	***	***	***	***
<u>From Korea</u>					
Graphics.....	***	***	***	***	***
Industrial.....	***	***	***	***	***
Magnetic recordings:					
Video recordings....	***	***	***	***	***
Audio recordings....	***	***	***	***	***
Computer tapes.....	***	***	***	***	***
Floppy disks.....	***	***	***	***	***
Packaging.....	***	***	***	***	***
Other ²	***	***	***	***	***
Unknown.....	***	***	***	***	***
Total.....	***	***	***	***	***
<u>From Taiwan</u>					
Graphics.....	***	***	***	***	***
Industrial.....	***	***	***	***	***
Magnetic recordings:					
Video recordings....	***	***	***	***	***
Audio recordings....	***	***	***	***	***
Computer tapes.....	***	***	***	***	***
Floppy disks.....	***	***	***	***	***
Packaging.....	***	***	***	***	***
Other.....	***	***	***	***	***
Unknown.....	***	***	***	***	***
Total.....	***	***	***	***	***

¹ Data presented are estimated to represent approximately *** percent, *** percent, and *** percent of 1989 U.S. importers' reported total U.S. shipments of PET imports from Japan, Korea, and Taiwan, respectively.

² Products reported by U.S. producers and importers in the "other" market segment include * * *.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Consideration of Alleged Material Injury

The information presented in this section of the report is based on responses to Commission questionnaires. *** producers, accounting for an estimated *** percent of U.S. producers' capacity to produce PET film, provided responses to the Commission's request for data. Du Pont's response concerning Cronar and Kodak's response concerning Estar, which are not included in the aggregate data, are presented in appendix C.

U.S. production, capacity, and capacity utilization

Capacity data collected on all PET film on the basis of weight (million pounds) are somewhat inexact and of limited use because of the wide variety of product mix, shifts in the product mix, and differences in weight among product types. Moreover, * * * reported capacity on the basis of * * *; * * * reported capacity on the basis of * * *; and * * * reported capacity on the basis of * * *.²⁶

Reported U.S. average-of-period capacity increased throughout each period covered in the investigations owing to * * * (table 5).²⁷ Reported production data show a ***-percent increase from 1987 to 1988, with * * * reported from 1988 to 1989. An increase of *** percent was observed between January-March 1989 and January-March 1990. Capacity utilization rose from *** percent in 1987 to *** percent in 1988, falling to *** percent in 1989. Capacity utilization was higher in January-March 1990 than in the corresponding period of the previous year.

Table 5
PET film: U.S. capacity, production, and capacity utilization, 1987-89, January-March 1989, and January-March 1990¹

Item	1987	1988	1989	January-March--	
				1989	1990
* * *	*	*	*	*	*

¹ Data presented are from *** firms, accounting for an estimated *** percent of 1989 U.S. production of PET film excluding Cronar and Estar, and approximately *** percent including Cronar and Estar.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. producers' U.S. shipments (commercial and captive) and export shipments

Information on U.S. producers' U.S. shipments (commercial and captive), and export shipments, as discussed in this section of the report, are presented in table 6.

²⁶ * * *
²⁷ * * *

Table 6
 PET film: U.S. producers' U.S. shipments (commercial and captive), export shipments, and total shipments, 1987-89, January-March 1989, and January-March 1990¹

Item	1987	1988	1989	January-March--	
				1989	1990
<u>Quantity (million pounds)</u>					
U.S. shipments:					
Commercial.....	***	***	***	***	***
Captive.....	***	***	***	***	***
Subtotal.....	***	***	***	***	***
Export shipments.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***
<u>Value (million dollars)</u>					
U.S. shipments:					
Commercial.....	***	***	***	***	***
Captive ²	***	***	***	***	***
Subtotal ²	***	***	***	***	***
Export shipments.....	***	***	***	***	***
Total shipments ²	***	***	***	***	***
<u>Unit value (per pound)³</u>					
U.S. shipments:					
Commercial.....	***	***	***	***	***
Captive ²	***	***	***	***	***
Average ²	***	***	***	***	***
Export shipments.....	***	***	***	***	***
Average ²	***	***	***	***	***

¹ * * *. * * *, data presented are from *** firms, accounting for an estimated *** percent of 1989 U.S. production of PET film excluding Cronar and Estar, and approximately *** percent including Cronar and Estar.

² * * *.

³ For firms that reported quantity and value. Unit value may be affected by product mix.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Commercial U.S. shipments.--Reported U.S. commercial shipments of PET film increased by *** percent in volume from 1987 to 1988, but fell by *** percent in 1989. Between January-March 1989 and January-March 1990, an increase of *** percent was reported. In terms of value, U.S. merchant shipments increased by *** percent in 1988, fell by *** percent in 1989, and fell by *** percent in January-March 1990. Unit values increased from 1987 to 1989 but decreased from January-March 1989 to January-March 1990.

Captive U.S. shipments.--In terms of quantity, captive shipments fell *** percent from 1987 to 1988 but increased *** percent from 1988 to 1989. An

increase of *** percent was also reported between January-March 1989 and January-March 1990. In terms of value,²⁸ the trend was much the same, with a ***-percent drop from 1987 to 1988 and a ***-percent increase in 1989. Likewise, between January-March 1989 and January-March 1990, a ***-percent increase was reported. Unit values followed the trends of quantity and value for calendar years 1987 to 1989, with a decline in unit values from 1987 to 1988 and an increase in 1989. The unit value reported in January-March 1990, however, was *** percent lower than the unit value in January-March 1989.

Total U.S. shipments.--U.S. producers' total U.S. shipments increased by *** percent in volume from 1987 to 1988, with an increase of *** percent reported from 1988 to 1989. An increase of *** percent was reported for the period January-March 1989 to January-March 1990. These shipments, by value, rose by *** percent from 1987 to 1988, with an increase of *** percent reported from 1988 to 1989, and a drop of *** percent in January-March 1990. Unit values increased from 1987 to 1989 but fell in January-March 1990. U.S. producers' U.S. shipments, by firm, are presented in table 7.

Table 7

PET film: U.S. producers' U.S. shipments (commercial and captive), by firms, 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
*	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Export shipments.--*** U.S. producers reported export shipments of PET film. These export shipments of PET film were reportedly destined for primarily * * *. Exports accounted for *** percent of total U.S. producers' shipments in 1987, *** percent in 1988, *** percent in 1989, *** percent in January-March 1989, and *** percent in January-March 1990. These shipments, by quantity, fell by *** percent from 1987 to 1989, but increased by *** percent between the first quarter periods of 1989 and 1990. In terms of value, export shipments fell by *** percent from 1987 to 1989, and by *** percent from January-March 1989 to January-March 1990. Unit values of exports increased from 1987 to 1988 but fell throughout all other periods covered by these investigations.

Total shipments.--U.S. producers' total shipments increased by *** percent from 1987 to 1988, fell by *** percent from 1988 to 1989, and increased by *** percent between January-March 1989 and January-March 1990. In terms of value, total shipments increased by *** percent from 1987 to 1988, but fell by *** percent in 1989, to a level above that of 1987. A ***-percent decrease in January-March 1990 was reported. Unit values increased from 1987 to 1989, but fell from January-March 1989 to January-March 1990.

U.S. producers' inventories

End-of-period inventories of PET film rose by *** percent from 1987 to 1988, fell by *** percent in 1989, and fell by *** percent between January-March 1989 and January-March 1990 (table 8). The same trend was reported for inventories as a percent of U.S. shipments and of total shipments. Note that production and shipment data reported earlier in this section do not reconcile with inventory data because of * * *.²⁹

Table 8

PET film: U.S. producers' end-of-period inventories, inventories as a share of U.S. shipments, and inventories as a share of total shipments, as of Dec. 31, 1987-89, Mar. 31, 1989, and Mar. 31, 1990¹

Item	Dec. 31 of--			Mar. 31 of--	
	1987	1988	1989	1989	1990
	*	*	*	*	*

¹ * * *, data presented are from *** firms, accounting for an estimated *** percent of 1989 U.S. production of PET film excluding Cronar and Estar, and approximately *** percent including Cronar and Estar. * * *.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. employment, wages, and productivity

*** U.S. producers supplied data on employment--* * * (table 9). * * * reported a reduction in the number of production and related workers of at least 5 percent or 50 workers. These reductions, which occurred in * * *, were reportedly due to * * *. Likewise, * * * reported * * *. According to * * *, *** percent of the employees at * * * are * * *.

Table 9

PET film: Average number of production and related workers, hours worked, wages paid, hourly wages, total compensation paid, productivity, and unit labor costs, 1987-89, January-March 1989, and January-March 1990¹

Item	1987	1988	1989	January-March--	
				1989	1990
	*	*	*	*	*

¹ Data presented are reported by * * *, whose U.S. production accounted for *** percent of total 1989 reported U.S. production of PET film excluding Cronar and Estar, and *** percent including Cronar and Estar.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The number of production and related workers as well as the number of hours worked fell from 1987 to 1988; however, during the same period, wages paid, total compensation paid, average hourly wages paid, productivity, and unit labor costs increased. For 1989, all employment indicators increased, with the exception of falling productivity.³⁰ Between January-March 1989 and January-March 1990, most indicators continued to increase, with the exception of the number of production and related workers and hours worked, which fell during January-March 1990, and unit labor costs, which remained constant during this period.

Financial experience of U.S. producers

*** producers (* * *), accounting for approximately *** percent of 1989 U.S. production of PET film excluding Cronar and Estar and *** percent of 1989 U.S. production of PET film including Cronar and Estar, furnished financial data.³¹ * * *.³²

Operations on PET film.--The income-and-loss experience of the reporting U.S. producers is presented in table 10. Net sales increased by *** percent from \$*** in 1987 to \$*** in 1988. Sales declined by *** percent to \$*** in 1989. Operating income was \$*** in 1987, \$*** in 1988, and \$*** in 1989. Operating income margins, as a share of net sales, were *** percent in 1987, *** percent in 1988, and *** percent in 1989. * * *.

Interim 1990 sales were \$***, representing a decrease of *** percent from interim 1989 sales of \$***. Operating income was \$*** in interim 1989 and \$*** in interim 1990. Operating income margins were *** percent in interim 1989 and *** percent in interim 1990. Selected income-and-loss data for each producer are shown in table 11. * * * producers suffered a large reduction in profitability, as measured by operating income, between 1988 and 1989. The profitability decline * * * in the first quarter of 1990 * * *.

Higher raw material costs were a key factor contributing to the * * * during the period covered by the investigation. * * * reported increased costs of *** percent for ethylene glycol between 1987 and 1989. Dimethyl terephthalate (DMT) costs increased *** percent, and the cost of terephthalic acid (TPA) increased *** percent during the same period.³³ Thus, while aggregate sales rose \$*** between 1987 and 1989, the cost of goods sold increased \$*** during this time. Out of the total cost increase, raw material cost increases accounted for \$*** or *** percent. Increases in wages, depreciation, and other general cost items affected profitability * * *.

³⁰ Productivity data are influenced by the product mix.

³¹ * * *.

³² * * *.

³³ * * *.

Table 10

Income-and-loss experience of U.S. producers on their operations producing PET film, 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
Value (1,000 dollars)					
Net sales.....	***	***	***	***	***
Cost of goods sold.....	***	***	***	***	***
Gross profit.....	***	***	***	***	***
Selling, general and administrative expenses...	***	***	***	***	***
Operating income.....	***	***	***	***	***
Startup or shutdown expense.....	***	***	***	***	***
Interest expense.....	***	***	***	***	***
Other (income) or expense, net.....	***	***	***	***	***
Net income or (loss) before income taxes.....	***	***	***	***	***
Depreciation and amorti- zation included above.....	***	***	***	***	***
Cash-flow ¹	***	***	***	***	***
Share of net sales (percent)					
Cost of goods sold.....	***	***	***	***	***
Gross profit.....	***	***	***	***	***
Selling, general and administrative expenses...	***	***	***	***	***
Operating income.....	***	***	***	***	***
Net income or (loss) before income taxes.....	***	***	***	***	***
Number of firms reporting					
Operating losses.....	***	***	***	***	***
Net losses.....	***	***	***	***	***
Data.....	***	***	***	***	***

¹ Cash-flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 11

Selected income-and-loss data of U.S. producers of PET film, by producers, 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
*	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Income-and-loss data for each producer on a dollars-per-pound basis are presented in table 12. These data indicate that the average unit selling price increased between 1987 and 1989 but declined in the interim periods. Average unit costs rose * * * between 1987 and 1989 and to a * * * extent during the interim periods.

* * * average unit selling prices and cost structure were * * * than those of * * *. * * *.³⁴

* * * * * * * * *

Table 12

Selected "per pound" income-and-loss experience of U.S. producers on their operations producing PET film, by producers, 1987-89, January-March 1989, and January-March 1990

Item	(Per pound)				
	1987	1988	1989	Interim period	
				ended Mar. 31--	
	1989	1990			
*	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital expenditures.--Capital expenditures for * * * are shown in the tabulation below (in thousands of dollars):

Company	1987	1988	1989	January-March--	
				1989	1990
*	*	*	*	*	*

³⁴ See discussion of research at the conference, transcript, pp. 44-48.

Research and development expenses.--The PET research and development expenses of * * * are shown in the following tabulation (in thousands of dollars):

<u>Company</u>	<u>January-March--</u>				
	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1989</u>	<u>1990</u>
* * *	*	*	*	*	*

Investment in productive facilities.--The investment in property, plant, and equipment for * * * and their return on investment are shown in table 13.

Table 13

Property, plant, and equipment of U.S. producers of PET film, as of the end of accounting years 1987-89 and as of Mar. 31, 1989, and Mar. 31, 1990

<u>Item</u>	<u>As of the end of accounting year--</u>			<u>As of March 31--</u>	
	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1989</u>	<u>1990</u>
* * *	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital and investment.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of PET film from Japan, Korea, and Taiwan on their firm's growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of PET film). The producers' responses are presented in appendix D.

Consideration of the Question of
Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors ³⁵--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

³⁵ Sec. 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.³⁶

Available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury." Information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of alleged material injury." Item (I), regarding subsidies, and item (IX), regarding agricultural products, are not relevant in these investigations. Presented below is available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets.

³⁶ Sec. 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

U.S. inventories of PET film from Japan, Korea, and Taiwan

End-of-period inventories held by importers are presented in table 14. These inventories, on the basis of quantity, increased in every period for Japan, Korea, and Taiwan, with the largest jump experienced by importers of the subject product from Japan and Korea in 1988. The ratio of U.S. importers' end-of-period inventories to U.S. importers' U.S. shipments for Japan and Korea increased irregularly from 1987 to 1989; for Taiwan it was nonexistent until 1989. Between March 31, 1989, and March 31, 1990, an increase was observed for all countries. As a ratio to their reported U.S. shipments, total end-of-period inventories of imports from Japan, Korea, and Taiwan were larger than U.S. producers' end-of-period inventories in 1988, 1989, and as of March 31, 1990, but were smaller in 1987 and as of March 31, 1989. Note that import and shipment data do not reconcile with inventory data, because of one firm's exclusion of data, two additional firms' inclusion of small amounts of PET film that were purchased domestically, and because of a small amount of PET film that was reported by several importers to be reduced to chip.

Table 14

PET film: End-of-period inventories of imported products, by sources, as of Dec. 31, 1987-89, Mar. 31, 1989, and Mar. 31, 1990¹

Item	December 31--			March 31-- ²	
	1987	1988	1989	1989	1990
	*	*	*	*	*

¹ Data presented are reported by *** firms that are estimated to account for approximately *** percent of total imports of PET film in 1989.

² Inventories as of Mar. 31 as a percent of shipments during January-March.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Ability of foreign producers to generate exports and the availability of export markets other than the United States

Japan.--*** Japanese producers provided data on their foreign operations producing the subject products. These firms are believed to have represented approximately *** percent of Japanese annual capacity to produce PET film as of January 1, 1988. Data received by the Commission on these firms are presented in table 15.

There was an increase in capacity in each year of the period under investigation. These increases were reportedly due to the introduction of several new production lines and to the "de-bottlenecking" of existing lines. Levels of production likewise increased throughout the period of investigation, by *** percent in 1988, by *** percent in 1989, and by *** percent from January-March 1989 to January-March 1990. In addition, *** of

Table 15

PET film: Japanese capacity, production, capacity utilization, end-of-period inventories,¹ inventories as a share of total shipments, exports to the United States, exports to all other countries, home-market shipments,² and total shipments, 1987-89, January-March 1989, and January-March 1990³

Item	1987	1988	1989	January-March--	
				1989	1990
*	*	*	*	*	*

¹ * * * indicated that reported data did not reconcile because of a rounding error or because of * * *.

² * * *, representing *** percent of 1989 reported Japanese production, has indicated that although its home-market shipments have * * *, they have * * *. This is due to * * *.

³ Data presented are estimated to represent approximately *** percent of Japanese annual capacity to produce PET film as of Jan. 1, 1988. * * * are believed to represent *** percent of Japanese annual capacity for the subject product as of Jan. 1, 1988. * * * is believed to represent approximately *** percent of Japanese annual capacity for the subject product as of Jan. 1, 1988.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

the *** reporting firms indicated that increases in capacity and production are projected for 1990 and 1991.³⁷ Capacity utilization fell from *** percent in 1987 to *** percent in 1989 but rose from January-March 1989 to January-March 1990. End-of-period inventories, as well as the ratio of end-of-period inventories to total shipments, have risen. Shipments to the United States, which accounted for approximately *** percent of total shipments during the period covered by the investigations, increased during the period of investigation, as did total export shipments and home-market shipments.

Projections reported by Japan for 1990 and 1991 indicate an expected increase in capacity, production, and total shipments, although it was projected that exports to the United States would fall. * * * did not report projections for 1990 and 1991; therefore, for purposes of comparisons with actual data, the projections must stand alone. The tabulation below presents the reported projections.

Item	1990	1991
*	*	*

Korea.--All four firms³⁸ named in the petition provided the Commission with data in response to its request. The data presented in table 16 are believed to represent 100 percent of PET film production in Korea.

³⁷ * * *.
³⁸ * * *.

Table 16

PET film: Korean capacity, production, capacity utilization, end-of-period inventories, inventories as a share of total shipments, exports to the United States, exports to all other countries, home-market shipments, and total shipments, 1987-89, January-March 1989, and January-March 1990¹

Item	1987	1988	1989	January-March--	
				1989	1990
*	*	*	*	*	*

¹ Data presented are for *** firms believed to account for *** percent of PET film production in Korea.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The capacity to produce the subject product increased in all periods of the investigation. These capacity increases are partially explained by not only *** reported by ***, but also by ***. In addition, production of the subject product also increased in each period of the investigation. Capacity utilization, however, fell from *** percent in 1987 to *** percent in 1989, and from *** percent to *** percent for the periods January-March 1989 and January-March 1990, respectively.

End-of-period inventories, as well as the ratio of end-of-period inventories to total shipments, have risen. Exports to the United States, accounting for approximately *** percent of total shipments, increased from 1987 to 1989, as did all other shipments by Korean producers. While home-market shipments and total shipments increased in January-March 1990 compared with the corresponding period of 1989, reported exports to the United States and to all other countries decreased.

The tabulation below presents the projections of the Korean PET film industry for 1990 and 1991. All indicators in these years, with the exception of end-of-period inventories and inventories as a ratio to shipments, show an anticipated increase.

<u>Item</u>	<u>1990</u>	<u>1991</u>
*	*	*

European Communities' antidumping investigation concerning imports from Korea.--In September 1987 the Commission of the European Communities (EC Commission) received a complaint lodged by the European Plastic Films, Membrane and Covering Manufacturers Association (AEC) on behalf of producers representing the total EC production of PET film³⁹ against imports of PET film

³⁹ The EC producers were identified as Du Pont de Nemours, Luxembourg; Hoechst AG, West Germany; ICI, United Kingdom; and Rhone-Poulenc, France.

originating in Korea.⁴⁰ On October 17, 1989, the EC Commission concluded that for the period under investigation, imports of all types of PET film from Korea⁴¹ did not cause injury to the complainant companies and that no material injury in the thin-film sector existed. Subsequent to the notification of the EC Commission findings, the complainant withdrew the complaint because of "changes in the market conditions between the period under investigation--the year 1987--and 1989."

In February 1990, the AEC lodged a complaint alleging that imports of thin PET film originating in Korea are being dumped and are thereby causing injury to the EC thin PET film industry. The product allegedly being dumped is thin PET film, of a thickness below 25 microns,⁴² which is used as a base film principally for applications such as capacitors, magnetic tapes, stamping foil, metallization, and packaging. According to EC sources, a determination will likely be made in early 1991.

Taiwan.--* * * provided the Commission with data concerning its production of PET film in Taiwan.⁴³ These data are presented in table 17.

Table 17

PET film: Taiwan's capacity, production, capacity utilization, end-of-period inventories, inventories as a share of total shipments, exports to the United States, exports to all other countries, home-market shipments, and total shipments, 1987-89, January-March 1989, and January-March 1990¹

Item	1987	1988	1989	January-March--	
				1989	1990
* * *	*	*	*	*	*

¹ Data presented account for *** percent of Taiwan production for 1987 and 1988, and account for *** percent in 1989 and 1990. Reported data may not reconcile due to * * *.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The Taiwan PET-film industry, introduced in * * *, reported * * *.

⁴⁰ Korean producers identified as exporters of the subject product to the EC are Kolon Industries Inc. and SKC Ltd.

⁴¹ The investigation of dumping covered the year 1987; the trends in the relevant economic factors to determine whether the EC industry was suffering material injury were examined for 1984 to 1987.

⁴² Approximately 92 gauge.

⁴³ Nan Ya, a Taiwan producer of other plastic products (e.g., PVC), began production of PET film, sheet, and strip in Taiwan in * * *; however, a company source indicated that the firm, to date, * * *. Home-market shipments by * * *, to date, are: * * *.

Although end-of-period inventories * * *. Exports to the United States, although * * *, were reported to be *** percent of total Taiwan shipments of the subject product in 1989. U.S. exports in January-March 1990 * * * January-March 1989, to a level accounting for *** percent of total Taiwan shipments of the subject product. Although home-market shipment * * * were observed * * *, the * * * in January-March 1990 was * * *.

Projections reported for the Taiwan PET-film industry for 1990 and 1991 are presented in the following tabulation. Capacity, production, exports to the United States, other exports, and home-market shipments are projected to * * * from actual reported 1989 data to projected 1990 data; * * *.

<u>Item</u>	<u>1990</u>	<u>1991</u>
* * * * *	*	*

Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury

U.S. imports

Questionnaires were sent to 23 firms identified by the petitioner as importers of PET film from Japan, Korea, and Taiwan. The Commission sent questionnaires to an additional 31 firms that were identified as large importers of the subject product entered under subheading 3920.62.00 of the HTS. Data received in response to these questionnaires are estimated to account for approximately 85 percent of total subject imports in 1989.

U.S. imports of PET film from Japan, in terms of quantity, increased by *** percent from 1987 to 1988, and by *** percent in 1989 (table 18).⁴⁴ There was a ***-percent increase between January-March 1989 and January-March 1990. In terms of value, PET film imports from Japan increased by *** percent from 1987 to 1988, by *** percent from 1988 to 1989, and by *** percent in January-March 1990. Average unit values increased irregularly through the period of investigation.

Table 18
PET film: U.S. imports from Japan, Korea, Taiwan, and all other countries, 1987-89, January-March 1989, and January-March 1990¹

<u>Item</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>January-March--</u>	
				<u>1989</u>	<u>1990</u>
* * * * *	*	*	*	*	*

¹ Data presented are reported by *** firms that are estimated to account for approximately *** percent of total subject imports in 1989.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

⁴⁴ At least in one instance of reported imports from Japan, this increase was due to * * *.

Imports of Korean PET film, in terms of quantity, jumped by *** percent from 1987 to 1988, with a decrease of *** percent in 1989. For January-March 1990, an increase of *** percent was reported. In terms of value, PET film imports from Korea jumped by *** percent from 1987 to 1988, with a further increase of *** percent in 1989. An increase of *** percent was reported for January-March 1990. Average unit values increased from 1987 to 1989 but fell in January-March 1990.

U.S. imports were first reported for Taiwan-produced PET film in 1989. These imports accounted for approximately *** percent of total reported U.S. imports of PET film in terms of quantity and approximately *** percent in terms of value in 1989 and in January-March 1990. Average unit values of the subject product from Taiwan, falling from \$*** per pound in 1989 to \$*** per pound in January-March 1990, were lower than those reported for imports from Japan and Korea in the same periods.

In response to a question asked by the Commission on the importation of PET film from the subject countries for delivery after March 31, 1990, U.S. importers reported that approximately *** pounds of imported PET film are scheduled for delivery.

U.S. producers' imports

*** U.S. producers of PET film reported imports of such film during the period covered by the investigations. The producers' imports are presented, by firms, in table 19.

Table 19

PET film: U.S. producers' imports from Japan, Korea, and all other countries, by firms, 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
*	*	*	*	*	*

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

* * * reported no imports from Japan, Korea, or Taiwan during the period of investigation. Imports for these firms are reported as * * *. Imports reported by * * * consist of shipments from * * *. * * *.

U.S. market penetration by the subject imports

Market penetration as presented in this section is calculated using data submitted in response to the Commission's questionnaires (tables 20 and 21).

Table 20

PET film: U.S. producers' U.S. shipments (commercial and captive), U.S. importers' U.S. shipments, apparent U.S. commercial consumption, and total apparent U.S. consumption, 1987-89, January-March 1989, and January-March 1990¹

Item	1987	1988	1989	January-March--	
				1989	1990
*	*	*	*	*	*

¹ *** U.S. producers reported domestic commercial and captive shipments. These shipments are estimated to account for approximately *** percent of total U.S. shipments excluding Cronar and Estar, and approximately *** percent of total U.S. shipments including Cronar and Estar. *** U.S. importers reported U.S. shipments. These shipments are estimated to account for approximately *** percent of 1989 total imports of PET film.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 21

PET film including Cronar and Estar: U.S. producers' U.S. shipments (commercial and captive), U.S. importers' U.S. shipments, apparent U.S. commercial consumption, and total apparent U.S. consumption, 1987-89, January-March 1989, and January-March 1990¹

Item	1987	1988	1989	January-March--	
				1989	1990
*	*	*	*	*	*

¹ *** U.S. producers reported domestic commercial and captive shipments. These shipments are estimated to account for approximately *** percent of total U.S. shipments excluding and including Cronar and Estar. *** U.S. importers reported U.S. shipments. These shipments are estimated to account for approximately *** percent of 1989 total imports of PET film.

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

In terms of volume and value, U.S. commercial market penetration, as well as total (commercial plus captive) market penetration by subject imports from Japan and Korea increased in virtually every period covered by the investigations. U.S. imports from Taiwan were * * * in 1987 and 1988 and represented *** percent of U.S. commercial consumption and total (commercial and captive) U.S. consumption in 1989 and in January-March 1990, in terms of both volume and value.

Prices

The demand for PET film is derived from the demand for a large number of end-use and intermediate-use applications including graphics, packaging, flexible magnetic media (video, audio, computer tape, etc.), metallizing, electrical, and other industrial uses.⁴⁵

In general, U.S. producers and importers reported recent growth in the overall demand for PET film, although the rate has varied depending on the end-use market. U.S. producers and importers reported growing demand in packaging applications because of increasing use in microwave and other prepared-food products. Demand for PET film used in magnetic recording applications is seen as stable or growing; whereas demand for PET film used in floppy disks, audiotape, and videotape is increasing, this growth is partially offset by declining demand for computer-tape-based PET film. Applications in metallizing, electrical, and other industrial uses were also reported to be either stable or growing. The demand for PET film used in graphics applications is believed to be relatively flat overall. While the demand for layout, reprographic, and masking base film is increasing and the demand for x-ray and other photographic films is constant, the mature market for microfilm base is declining.

PET film competes with a number of substitute materials at the low-price end of the PET product range but faces few or no substitute products in higher end applications. In packaging applications, substitutes include paper, cellophane, nylon, oriented polypropylene, foil laminates, and some polyolefins. There are also substitutes in general purpose/industrial applications. PET film competes with polypropylene in cable wrap; with wet inks using solvents in hot-stamping applications; with polyamide film, varnished glass cloth, and resin-impregnated paper in flexible printed circuits; with polypropylene in pressure-sensitive tapes; and with polyvinyl chloride and polypropylene in various office supplies (e.g., page protectors, overlays, and index tabs). Metallized PET film competes with nylon, polycarbonate, biaxially oriented polypropylene, olefin extrusions, and polyethylene.

However, in most of the higher end applications, such as graphics and magnetic recordings, accounting for approximately *** percent of total 1989 U.S. shipments of PET film, there are no effective substitutes. This is especially true of the PET film used in magnetic-recording applications, and that used in ultra-thin applications such as thermal transfer ribbons and capacitor insulation. There are no effective substitutes for PET film used in any graphics applications other than microfilm, in which cellulose acetate is an alternative material. In photographic applications, most or all x-ray and instant films are PET based, and motion picture film is made from cellulose acetate.⁴⁶

In general, U.S. producers and importers reported that different types of PET film are not substitutable. * * *. * * * reported that the products for which the Commission obtained pricing data are not interchangeable. * * * stated that two of the products are interchangeable in noncritical

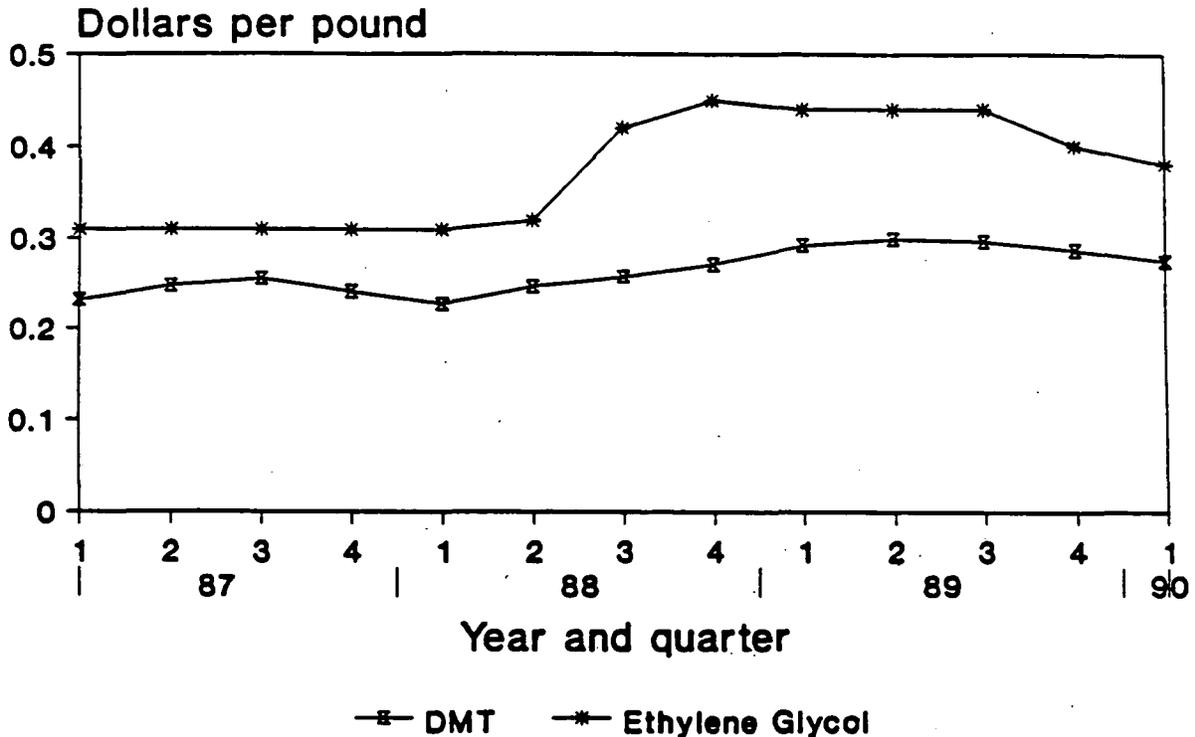
⁴⁵ Petition, p. 13.

⁴⁶ * * *.

applications, and * * * ambiguously reported that certain PET films can substitute for other PET film products.

Since raw material costs account for *** percent of manufacturing costs,⁴⁷ changes in the costs of dimethyl terephthalate and ethylene glycol, two of the main raw material inputs for PET film, can influence significantly the price of PET film.⁴⁸ Market prices for DMT and ethylene glycol are presented in figure 2. Market prices of DMT increased by 30 percent, from 23 cents per pound in January-March 1987 to 30 cents per pound in April-June 1989. Prices then fell by 7 percent, to 28 cents per pound in January-March 1990. Prices for ethylene glycol initially showed little movement but then increased sharply, by 41 percent, to 45 cents per pound in October-December 1988 before falling by 16 percent, to 38 cents per pound in January-March 1990. The net increase in the price of ethylene glycol in 1987-89 was 38 percent.

Figure 2
DMT and ethylene glycol: Prices, by quarters, January 1987-April 1990



Sources: Paraxylene Newsletter, Tecnon, Ltd., No. 133, Jan. 31, 1990;
Chemical Marketing Reporter, Jan. 29, 1990.

47 * * * *
48 * * * *

Domestic producers obtain their raw materials by internal manufacture and purchase in the open market or through contracts. Long-term contract terms can differ from prices on the open market and domestic producers reported cost increases of ethylene glycol of * * *.

Another factor that affects the price of PET film is the amount of processing that the film undergoes.

Most U.S.-produced and imported PET film is sold directly to end users. A smaller percentage is sold to distributors or shipped initially to company-owned warehouses. Most U.S. producers and importers sell in all of the major U.S. market regions. Overland shipments are usually arranged by the seller and made by truck. Shipping charges typically account for less than 5 percent of the delivered price of PET film. The standard minimum-quantity requirements for U.S.-produced PET film are * * *. * * *. * * * generally charge a 5- to 10-cent-per-pound premium for subminimum-quantity orders. Average leadtimes for warehouse sales of * * * PET film were between 1 and 3 days. Leadtimes for domestic * * *, whereas sales of imported made-to-order PET film required longer leadtimes of between 45 to 120 days.

The majority of U.S.-produced PET film is sold on a contract basis, although smaller volumes of surplus and second-grade film are sold on a spot basis. * * *. Prices are generally quoted on a delivered basis and are usually the result of negotiations for multiple sales over a period of time. In some cases, firms offer quantity discounts, freight and trim allowances,⁴⁹ and discounts for multiyear contracts. Since prices are usually negotiated, price lists generally serve only as a starting point for negotiations. Typical sales terms are net 30 to 60 days.

Questionnaire price data.--The Commission requested U.S. producers and importers to provide quarterly price data for January 1987 through March 1990 for eight representative PET film products. The selected products are used in a variety of PET film applications. Product 1 is used in graphics; product 2 in packaging; products 3 and 4 in magnetic recordings; product 5 in metallized tape; and products 6, 7, and 8 in electrical and general industrial applications. For each product listed below, price data for the largest sales and sales to all customers were requested for each quarter:

⁴⁹ Occasionally, when a customer requires immediate shipment from a firm's warehouse stock and the required width is not available, trim allowances are given to adjust to the customer's required width.

- PRODUCT 1: 300-gauge engineering (drafting) - plain, Du Pont (DP) 300J, Hoechst Celanese (HC) 4507, ICI (ICI) 505
- PRODUCT 2: 48-gauge plain packaging, DP 48LB, DP 48LBT, HC 2460, HC 2461, ICI 800
- PRODUCT 3: 57-gauge video base, DP 57VB
- PRODUCT 4: 142-gauge computer base, DP 142PB, HC 2100, ICI 901
- PRODUCT 5: 92 to 200-gauge metallizing - extra clear, HC 5000, ICI 442
- PRODUCT 6: 700 to 759-gauge motor insulation, DP 750MO, HC 2000, ICI 226
- PRODUCT 7: 48-gauge roll leaf - plain, DP48A, ICI HS, HC 2364
- PRODUCT 8: 20-gauge capacitor

*** U.S. producers and *** importers reported price data for the period covered by the investigation, although not for all periods or for each product requested.⁵⁰ The responding U.S. producers accounted for about *** percent, by quantity, of total reported domestic shipments of PET film in 1989. The responding importers accounted for *** percent of total reported U.S. imports of PET film from Japan, Korea, and Taiwan in 1989.

Price trends.--In general, prices for U.S.-produced PET film products rose during the period January 1987-March 1990, reflecting upward movements in the costs of DMT and ethylene glycol. At the same time, prices for Japanese products showed mixed upward and downward movement and Korean prices moved downward. The Commission did not receive enough price data from importers of Taiwan PET film products to determine price trends.

Quarterly weighted-average net delivered selling prices for U.S. producers' shipments of five of the eight PET film products increased during the 3 years covered by the investigation (tables 22-23).⁵¹ Figures 3-4 show the range and weighted-average prices of seven of the eight U.S. PET film products. * * * reported prices for product 3 and those prices did not change during most of the investigation period. Prices for products 1, 2, 4, 5, and 6 increased erratically by amounts ranging from *** to *** percent. Prices for products 7 and 8 fluctuated slightly during the investigation period, falling by *** percent overall.

Prices for U.S. importers' shipments of four Japanese PET film products fell during the investigation period. Prices for products 2, 3, 5, and 8 increased erratically but then decreased significantly, particularly during

⁵⁰ *** importers also reported limited purchaser price data for *** PET film products. Although the different price series showed varying trends during the investigation period, all of the series decreased overall.

⁵¹ Staff also computed unit values for U.S. and Japanese PET film products 1-8. These unit values showed substantially the same trends and margins of underselling as the reported weighted-average prices.

Table 22

Certain PET film: Weighted-average net delivered prices of PET film products 1-4 reported by U.S. producers and importers of Japanese and Korean PET film, by products and by quarters, January 1987-March 1990

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 23

Certain PET film: Weighted-average net delivered prices of PET film products 5-8 reported by U.S. producers and importers of Japanese, Korean, and Taiwan PET film, by products and by quarters, January 1987-March 1990

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 3

PET film products 1, 2, 4, and 5: Range and weighted-average delivered prices of U.S. PET film products, by quarters, January 1987-March 1990

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 4

PET film products 6, 7, and 8: Range and weighted-average delivered prices of U.S. PET film products, by quarters, January 1987-March 1990

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

the final two quarters of the investigation period. Overall, prices for these products fell by amounts ranging from *** to *** percent. Prices for products 1, 6 and 7 rose slightly, by *** percent, *** percent, and *** percent, respectively. * * *

The Commission received sufficient data to present price series for five PET film products imported from Korea. During the investigation period, prices for products 2, 3, 5, and 7 fell by amounts ranging from *** to *** percent. The price for product 6 increased by *** percent.

Price comparisons.--Comparisons of prices for similar U.S.- and Japanese-produced PET film products are presented in table 24. In the

Table 24

Certain PET film: Average margins of underselling (overselling) by the subject imports from Japan, by products and by quarters, January 1987-March 1990

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

majority of cases for which comparisons were possible, U.S. prices were lower than Japanese prices for products 1, 3, 5, and 7, but were higher than Japanese prices for products 2, 6, and 8. U.S. products 1, 3, 5, and 7 were priced lower than Japanese products during 43 of the 50 quarters for which comparisons were available, whereas prices for Japanese products 2, 6, and 8 were lower than U.S. prices during 27 of the 38 quarters for which comparisons were available. Margins of underselling ranged from *** to *** percent for product 2, *** to *** percent for product 6, and *** to *** percent for product 8.

Comparisons of prices for U.S.- and Korean-produced PET film were available for products 2, 3, 5, 6, and 7 (table 25). In almost all cases, Korean products were priced lower than U.S. products. Prices for Korean products 3 and 6 were lower than U.S. prices during all quarters for which comparisons were available. Korean prices for products 2, 5, and 7 were lower than U.S. prices during 34 of the 39 quarters for which comparisons were possible. Margins of underselling ranged from *** to *** percent for product 2, *** to *** percent for product 3, *** to *** percent for product 5, *** to *** percent for product 6, and *** to *** percent for product 7. The Commission received * * * quarters of price data from importers of Taiwan-produced PET film products. Prices for Taiwan product *** were *** percent * * * than U.S. prices during July-September 1989 and *** percent * * * in January-March 1990. U.S. prices were *** percent * * * during October-December 1989.

Table 25

Certain PET film: Average margins of underselling (overselling) by the subject imports from Korea, by products and by quarters, January 1987-March 1990

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that the currencies of the three countries subject to this investigation appreciated in relation to the U.S. dollar over the periods for which data

were collected (table 26).⁵² The nominal values of the Japanese, Korean, and Taiwan currencies appreciated by 3.6 percent, 23.9 percent, and 34.0 percent, respectively. When adjusted for movements in producer price indexes in the United States and the specified countries, the real values of the Japanese currency depreciated by 6.1 percent, whereas the Korean and Taiwan currencies appreciated by 16.2 percent and 11.7 percent, respectively.

Table 26

Exchange rates:¹ Indexes of nominal and real exchange rates of selected currencies and indexes of producer prices in specified countries,² by quarters, January 1987-March 1990

Period	(January-March 1987 = 100)										
	U.S. pro- ducer price index	Japan			Korea			Taiwan			
	Pro- ducer price index	Nominal exchange rate index	Real exchange rate index ³	Pro- ducer price index	Nominal exchange rate index	Real exchange rate index ³	Pro- ducer price index	Nominal exchange rate index	Real exchange rate index ³		
1987:											
Jan.-Mar.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	
Apr.-June.....	101.6	99.2	107.4	104.8	101.1	103.4	102.8	99.2	107.9	105.3	
July-Sept.....	102.8	100.5	104.3	101.9	101.2	106.0	104.4	98.4	114.7	109.8	
Oct.-Dec.....	103.2	100.1	112.8	109.5	101.6	107.1	105.5	97.4	118.3	111.6	
1988:											
Jan.-Mar.....	103.8	99.0	119.7	114.1	103.3	110.9	110.4	95.9	122.2	112.9	
Apr.-June.....	105.6	98.6	121.9	113.9	103.4	116.3	113.8	97.2	122.0	112.2	
July-Sept.....	107.1	99.5	114.6	106.5	104.2	118.4	115.2	98.2	121.7	111.6	
Oct.-Dec.....	107.6	98.7	122.3	112.2	104.2	123.0	119.1	98.1	123.2	112.4	
1989:											
Jan.-Mar.....	109.9	99.2	119.2	107.6	104.6	126.3	120.2	98.3	126.4	113.0	
Apr.-June.....	111.8	101.8	110.9	101.1	105.4	128.3	121.0	97.9	133.1	116.5	
July-Sept.....	111.3	102.6	107.6	99.2	105.3	128.0	121.0	96.1	135.8	117.3	
Oct.-Dec.....	111.8	102.4	107.1	98.1	105.8	127.2	120.4	95.2	134.6	114.7	
1990:											
Jan.-Mar.....	113.5	102.9	103.6	93.9	106.4	123.9	116.2	94.6 ⁴	134.0 ⁴	111.7 ⁴	

¹ Exchange rates expressed in U.S. dollars per unit of foreign currency.

² Producer price indexes--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of the International Financial Statistics.

³ The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and the specified countries.

⁴ Derived from Taiwan exchange rate and price data reported for January only.

Source: International Monetary Fund, International Financial Statistics, May 1990.

Lost sales and lost revenues

*** firms reported *** allegations of lost revenues, involving *** customers, and *** allegations of lost sales, regarding *** customers. Allegations of lost revenues totaled \$*** and allegations of lost sales, \$***. Staff contacted the *** customers listed below concerning *** allegations, representing \$*** in alleged lost revenues, and *** allegations, representing \$*** in alleged lost sales.

* * * was named by * * * in one allegation of lost revenues of * * * because of competition with imports of PET film produced by * * * from Korea. * * * confirmed that * * * had lowered its price on this product from * * * as a result of competition from the Korean product produced by * * *, although he was uncertain as to the quantity of PET film involved. Whereas * * * is * * *

domestic supplier, the company is also currently purchasing the imported product from * * *. According to * * *, the * * * price has been " * * * " than * * *, whereas * * * 's product was competitively priced with * * *. The company has previously purchased PET film from the * * * supplier * * * and from the * * * suppliers * * *. The film supplied by * * * is manufactured by * * *.

* * * noted that the Korean companies are more amenable than the Japanese to warehousing PET film in the United States. He observed that * * * has offered PET film priced below the domestic product, * * * product has been offered at \$***, and an Indian product has been offered at a low price.⁵³ Neither the Taiwan nor the Indian products have been purchased. He also commented that the PET film offered by Japanese producers has been slightly more expensive than the domestic product with the exception of PET film offered by * * *.

* * * was named by * * * in one allegation of lost revenues of \$*** on a sale of *** pounds of PET film in * * * as a result of competition with a * * * product. * * * was not able to confirm this allegation and stated that * * *. He reported that in * * *, * * * gave * * *.⁵⁴ This business was awarded for the period * * * at \$***, the same price charged by * * *, but * * * than the \$*** price received by * * * for its remaining sales of this product to * * *. * * * was awarded this business because it was willing to meet * * * 's price and is a more "responsive" supplier. * * * stated that this contract with * * * would likely be renewed * * *.

* * * noted that until recently the Japanese product had been superior to * * *, and that this qualitative difference had been the company's major reason for purchasing it. However, * * * is now the company's preferred supplier because its product is comparable or slightly better than the Japanese product, it is more responsive to requests for product modifications, and it provides faster delivery.⁵⁵ In addition to the business transferred from * * *, * * * supplies * * * with *** pounds of PET film monthly at a price of \$*** per pound. * * * also supply *** pounds per month to * * * at \$***. Since January 1, 1990, * * * 's price has been \$***, * * * 's \$***, and * * * 's \$***. Prices have decreased over the past year. In 1989, * * * 's prices were \$***, * * * 's \$***, and * * * 's \$***.⁵⁶ * * * stated that * * *, a * * * company, had recently sent him a letter offering to supply PET film at \$***, but he did not feel this product would be satisfactory. Purchases are not made from * * * because its price is too high and it does not produce the product as frequently as * * *.

* * * was named by * * * in one lost revenue allegation of \$*** on * * *, involving *** pounds of * * *. According to * * *, it lowered its price for this product from \$*** to \$*** as a result of pressure from a product from * * *. * * * of * * * stated that this allegation was incorrect. He stated that no negotiations occurred with * * *. He stated that * * * 's

⁵³ * * * said the Taiwan and Indian products had not been evaluated, but he had heard that the Taiwan product was of an inferior quality.

⁵⁴ * * *.

⁵⁵ * * * provides next day delivery whereas * * * require two days to deliver.

⁵⁶ * * *.

price for this product in 1989 was \$*** and not \$***; the price was \$*** in 1988.

According to * * *, * * * negotiations for 1990 prices began in the fall of 1989. Quotes were received from * * *. Multiple rounds of negotiation were conducted with * * *. * * * was finally awarded *** percent of the business for this product at \$*** per pound. In order to obtain the remaining *** percent of this business and remain a qualified supplier, * * * agreed to supply the product at \$***.

* * * was named by * * * in *** lost-sale allegation for *** pounds of * * * valued at \$*** from * * *. * * * alleged that * * * offered to supply the product at \$*** per pound and that * * * won the contract at a price of \$*** per pound. * * * denied this allegation. He said he only purchased *** pounds of * * *. He confirmed that * * * had * * * lowered their prices to \$*** per pound earlier this year in response to his request that they meet the competition from the * * *, which are offering this product at less than \$*** per pound.⁵⁷ * * * was chosen as a supplier because it supplies a higher quality film than * * *. * * * reported that the terms and service offered by * * * were comparable. He stated that * * *'s price had been comparable to * * *'s over the period of investigation but that the prices offered by the * * * companies * * * had been lower.⁵⁸ He noted that * * * had enhanced its position as a supplier by * * *.

According to * * *, * * * was * * *'s preferred supplier in the 1970s but was replaced by * * * in the earlier 1980s when * * * was disqualified because of quality. * * * became the company's major supplier in 1985 when * * * discontinued producing * * *. * * * replaced * * * as a supplier in 1987 because the quality of its product had improved and was better than * * *'s.

* * * was named by * * * in *** allegation of lost sales of * * * of * * * PET film * * * to the * * * producer * * *. According to * * *, he requested lower prices from his suppliers to make his own product, * * *, more competitive with imports from * * *. He stated that * * * had eventually matched * * *'s offer, but only after * * *'s offer had been accepted. He added that * * *'s * * * product is much better than * * *'s and that his company would have catastrophic yields if they only used the * * * product. The *** pound contract lost by * * * represented about *** to *** percent of * * *'s consumption of the * * * product. * * * is the only company currently supplying this product. * * * have not passed the * * * qualification requirement. * * * has been a supplier of this product to * * * for the past *** years.

⁵⁷ * * * stated that he is having difficulty competing with imports of * * * from * * *.

⁵⁸ * * * stated that the quality of the * * * product was variable. He had purchased a product from * * * but returned it because it was of inferior quality.

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APPENDIX A
FEDERAL REGISTER NOTICES

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: April 27, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Trimble (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on April 27, 1990, by E.I. Du Pont de Nemours & Co., Inc., Wilmington, DE; Hoechst Celanese Corp., Charlotte, NC; and ICI Americas Inc., Wilmington, DE.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the later entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on May 18, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Trimble (202-252-1193) not later than May 18, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before May 22, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due May 23, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-458-460 (Preliminary)]

Polyethylene Terephthalate Film, Sheet, and Strip From Japan, the Republic of Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-458-460 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan, the Republic of Korea, and Taiwan of polyethylene terephthalate (PET) film, sheet, and strip,¹ provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States (previously under item 771.43 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 11, 1990.

¹ The product is defined in these investigations as all gauges of raw, pretreated, or primed PET film, sheet, and strip. Metallized PET film, sheet, and strip, and PET film, sheet, and strip that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00301 inches (0.254 micrometers) thick are not included in this definition.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than May 25, 1990. Such additional comments must be limited to comments on business proprietary information received on or after the written briefs. A nonbusiness proprietary version of such additional comments is due May 29, 1990.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: May 1, 1990.

Kenneth R. Mason,
Secretary.

[FR Doc. 90-10540 Filed 5-4-90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF COMMERCE**International Trade Administration****[A-588-814]****Initiation of Antidumping Duty Investigation: Polyethylene Terephthalate Film From Japan****AGENCY:** Import Administration, International Trade Administration, Department of Commerce.**ACTION:** Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of polyethylene terephthalate film, sheet, and strip (hereinafter referred to as PET film) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of PET film from Japan are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 11, 1990. If that determination is affirmative, we will make a preliminary determination on or before October 4, 1990.

EFFECTIVE DATE: May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman at (202) 377-8498, Mark Wells at (202) 377-3003, or Bradford Ward at (202) 377-5288, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**The Petition**

On April 27, 1990, we received a petition filed in proper form by E.I. Du Pont de Nemours & Company, Inc., Hoechst Celanese Corporation, and ICI Americas, Inc. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12 (1989)), petitioners allege that imports of PET film from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petition because they

are interested parties, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioners' estimate of United States Price (USP) for PET film is based on prices obtained by industry sales agents. Adjustments were made, where appropriate, for ocean freight and insurance, U.S. inland freight, warehousing and handling, direct selling expenses, U.S. duty, home market freight, and credit expenses.

Petitioners provide estimates for foreign market value (FMV) based on two methodologies: adjusted home market prices and constructed value.

Petitioners obtained home market prices from affiliate companies in Japan. Adjustments were made, where appropriate, for home market freight, selling expenses or commissions, credit expenses, differences in packing expenses, and differences in circumstances of sale. Based on a comparison of USP with home market prices, petitioners allege margins ranging from 17.20 to 27.40 percent.

Petitioners also allege that the adjusted home market prices are below the cost of production (COP). Therefore, petitioners provide margins based on a comparison of USP with constructed value ranging from 39.40 to 84.50 percent. However, petitioners have not submitted sufficient and timely evidence (pursuant to 19 CFR 353.51) to provide the Department with reasonable grounds to believe or suspect that home market sales are made at prices that are less than COP. While petitioners provided additional data regarding COP in a petition supplement on May 17, 1990, the information was received too late for consideration for this initiation. However, we will continue to analyze submitted information to determine if initiation of a COP investigation is

warranted in this case. Accordingly, the Department has based its acceptance of the petition on the comparison of USP and home market prices.

Petitioners' margin calculation in purchase price situations is inconsistent with Department methodology. Therefore, the Department has recalculated the margins using the information provided in the petition. The recalculated margins based on a comparison of USP with home market prices range from 14.10 to 28.00 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on PET film from Japan and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of PET film from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 4, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS sub-headings. HTS sub-headings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The product covered by this investigation is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of this investigation are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer

more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under HTS sub-heading 3920.62.00.00.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 11, 1990 whether there is a reasonable indication that imports of PET film from Japan are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 17, 1990.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-12130 Filed 5-23-90; 8:45 am]
BILLING CODE 3510-08-M

(A-583-809)

Initiation of Antidumping Duty Investigation: Polyethylene Terephthalate Film from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of polyethylene terephthalate film, sheet, and strip (hereinafter referred to as PET film) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of PET film

from Taiwan are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 11, 1990. If that determination is affirmative, we will make a preliminary determination on or before October 4, 1990.

EFFECTIVE DATE: May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman at (202) 377-8498, Mark Wells at (202) 377-3003, or Bradford Ward at (202) 377-5288, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On April 27, 1990, we received a petition filed in proper form by E. I. Du Pont de Nemours & Company, Inc., Hoechst Celanese Corporation, and ICI Americas, Inc. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12 (1989)), petitioners allege that imports of PET film from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioners' estimate of United States price (USP) for PET film is based on a price obtained by industry sales agents.

Adjustments were made, where appropriate, for ocean freight and insurance, U.S. inland freight, warehousing and handling, direct selling expenses, U.S. duty, home market freight, and credit expenses.

Petitioners provide estimates for foreign market value (FMV) based on two methodologies: adjusted home market price and constructed value.

Petitioners obtained a home market price from affiliate companies in Taiwan. Adjustments were made, where appropriate, for home market freight, selling expenses or commissions, credit expenses, differences in packing expenses, and differences in circumstances of sale. Based on a comparison of USP with home market price, petitioners allege a margin of 15.80 percent.

Petitioners also allege that the adjusted home market price is below the cost of production (COP). Therefore, petitioners provide a margin based on a comparison of USP with constructed value of 68.60 percent. However, petitioners have not submitted sufficient and timely evidence (pursuant to 19 CFR 353.51) to provide the Department with reasonable grounds to believe or suspect that home market sales are made at prices that are less than COP. While petitioners provided additional data regarding COP in a petition supplement on May 17, 1990, the information was received too late for consideration for this initiation. However, we will continue to analyze submitted information to determine if initiation of a COP investigation is warranted in this case. Accordingly, the Department has based its acceptance of the petition on the comparison of USP and home market price.

Petitioner's margin calculation in a purchase price situation is inconsistent with Department methodology. Therefore, the Department has recalculated the margin using the information provided in the petition. The recalculated margin based on a comparison of USP with home market price is 14.20 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on PET film from Taiwan and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in

accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of PET film from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 4, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS sub-headings. HTS sub-headings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The product covered by this investigation is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of this investigation are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under HTS sub-heading 3920.62.00.00.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 11, 1990 whether there is a reasonable indication that imports of PET film from Taiwan are materially injuring, or threaten material injury to, a U.S.

industry. If its determination is negative, the investigation will be terminated; otherwise the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 17, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-12131 Filed 5-23-90; 8:45 am]

BILLING CODE 3510-09-M

[A-580-807]

Initiation of Antidumping Duty Investigation: Polyethylene Terephthalate Film From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of polyethylene terephthalate film, sheet, and strip (hereinafter referred to as PET film) from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of PET film from the Republic of Korea are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 11, 1990. If that determination is affirmative, we will make a preliminary determination on or before October 4, 1990.

EFFECTIVE DATE: May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman at (202) 377-8498, Mark Wells at (202) 377-3003, or Bradford Ward at (202) 377-5288, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On April 27, 1990, we received a petition filed in proper form by E.I. Du Pont de Nemours & Company, Inc., Hoechst Celanese Corporation, and ICI

Americas, Inc. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12 (1989)), petitioners allege that imports of PET film from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraph (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for PET film is based on prices obtained by industry sales agents. Adjustments were made, where appropriate, for ocean freight and insurance, U.S. inland freight, warehousing and handling, direct selling expenses, U.S. duty, home market freight, and credit expenses.

Petitioners provide estimates for foreign market value (FMV) based on two methodologies: adjusted home market prices and constructed value.

Petitioners obtained home market prices from affiliate companies in Republic of Korea. Adjustments were made, where appropriate, for home market freight, selling expenses or commissions, credit expenses, differences in packing expenses, and differences in circumstances of sales. Based on a comparison of USP with home market prices, petitioners allege margins ranging from 11.20 to 57.10 percent.

Petitioners also allege that the adjusted home market prices (with one exception) are below the cost of production (COP). Therefore, petitioners

provide margins based on a comparison of USP with constructed value ranging from 30.80 to 49.40 percent. However, petitioners have not submitted sufficient and timely evidence (pursuant to 19 CFR 353.51) to provide the Department with reasonable grounds to believe or suspect that home market sales are made at prices that are less than COP. While petitioners provided additional data regarding COP in a petition supplement on May 17, 1990, the information was received too late for consideration for this initiation. However, we will continue to analyze submitted information to determine if initiation of a COP investigation is warranted in this case. Accordingly, the Department has based its acceptance of the petition on the comparison of USP and home market prices.

Petitioners' margin calculation in purchase price situations is inconsistent with Department methodology. Therefore, the Department has recalculated the margins using the information provided in the petition. The recalculated margins based on a comparison of USP with home market prices range from 10.60 to 52.50 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on PET film from the Republic of Korea and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of PET film from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 4, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn

from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS sub-headings. HTS sub-headings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The product covered by this investigation is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of this investigation are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under HTS sub-heading 3920.62.00.00.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 11, 1990 whether there is a reasonable indication that imports of PET film from Republic of Korea are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 17, 1990.
Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 90-12129 Filed 5-23-90; 8:45 am]
BILLING CODE 3510-06-01

APPENDIX B
LIST OF WITNESSES

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE

Investigations Nos. 731-TA-458 to 460 (Preliminary)

POLYETHYLENE TEREPHTHALATE FILM, SHEET, AND STRIP
FROM JAPAN, THE REPUBLIC OF KOREA, AND TAIWAN

Those listed below appeared at the United States International Trade Commission's conference held in connection with the subject investigations on May 18, 1990, in Hearing Room 101 of the USITC Building, 500 E Street, SW., Washington, DC.

In support of the imposition of antidumping duties

Wilmer, Cutler & Pickering--Counsel
Washington, DC
on behalf of--

E.I. Du Pont de Nemours & Co., Inc.

Mary Jane Koch, Business Manager, Polyester Film Enterprise,
E.I. Du Pont de Nemours & Co., Inc.

Hoechst Celanese Corp.

Robert M. Kimmel, Business Manager, Polyester Film Division,
Hoechst Celanese Corp.

ICI Americas, Inc.

Michael A. Upton, Commercial Director, ICI Americas, Inc.

John D. Greenwald--OF COUNSEL

In opposition to the imposition of antidumping duties

Ablondi & Foster--Counsel
Washington, DC
on behalf of--

Nippon Magphane Co., Ltd. (NMC)

Italo Ablondi)
Jack Simmons)--OF COUNSEL

In opposition to the imposition of antidumping duties--Continued

Akin, Gump, Strauss, Hauer & Feld--Counsel
Washington, DC
on behalf of--

Shinkong Synthetic Fibers Corp.

Valerie A. Slater--OF COUNSEL

Dow, Lohnes & Albertson--Counsel
Washington, DC
on behalf of--

SKC Ltd.

Jon K. Lee, Manager, Film Division, SKC America, Inc.
William Kutsch, Vice President, Research & Development,
Foilmak, Inc.
Peter Scarpa, Marketing Manager, SKC, Inc.

Michael P. House)
Douglas J. Heffner)--OF COUNSEL

Steptoe & Johnson--Counsel
Washington, DC
on behalf of--

Teijin Ltd.
Teijin America, Inc.

Ronald Menard, Director of Materials Management, BASF Information
Systems, BASF Corp.
William Hiegel, Procurement Manager, Memorex Corp.
Bruce P. Malashevich, President, Economic Consulting Services, Inc.

W. George Grandison)
Gracia Berg)--OF COUNSEL

Weil, Gotshal & Manges--Counsel
Washington, DC
Weil, Gotshal & Manges--Counsel
New York, NY
on behalf of--

Toray Industries, Inc. ("Toray")
Toray Marketing and Sales (America) Inc. ("TMAS")

William F. Finan, Quick, Finan & Associates

A. Paul Victor--OF COUNSEL

APPENDIX C

DU PONT'S RESPONSE CONCERNING CRONAR
AND KODAK'S RESPONSE CONCERNING ESTAR

Petitioners' counsel contends that Du Pont's Cronar product is * * * and, therefore, has no relevance to these investigations. Counsel explains that it is a "very heavily coated product" and is produced in a "continuous process from PET polymer."¹ However, in the Commission's request for information, Du Pont's response refers to Cronar as * * *. Also, respondents point out that * * *.

In addition, Kodak considers its Estar product to be * * *.

* * *. The aggregate of Kodak's complete data response concerning Estar and Du Pont's response concerning Cronar is presented in table C-1.

Table C-1

Du Pont's Cronar and Kodak's Estar responses: Aggregate capacity, production, capacity utilization, U.S. shipments (commercial and captive), export shipments, and end-of-period inventories, 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
* * *	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

¹ Postconference brief of Du Pont, Hoechst, and ICI, p. 19.

APPENDIX D

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS
OF PET FILM FROM JAPAN, KOREA, AND TAIWAN ON THEIR GROWTH, INVESTMENT,
ABILITY TO RAISE CAPITAL, OR EXISTING DEVELOPMENT AND PRODUCTION EFFORTS

The Commission requested U.S. producers to describe and explain the actual and potential negative effects, if any, of imports of PET from Japan, Korea, and Taiwan on their firm's growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of PET film). The producers' responses are presented below:

* * * * *