Disposable Lighters From Thailand

Investigation No. 731-TA-701 (Final)

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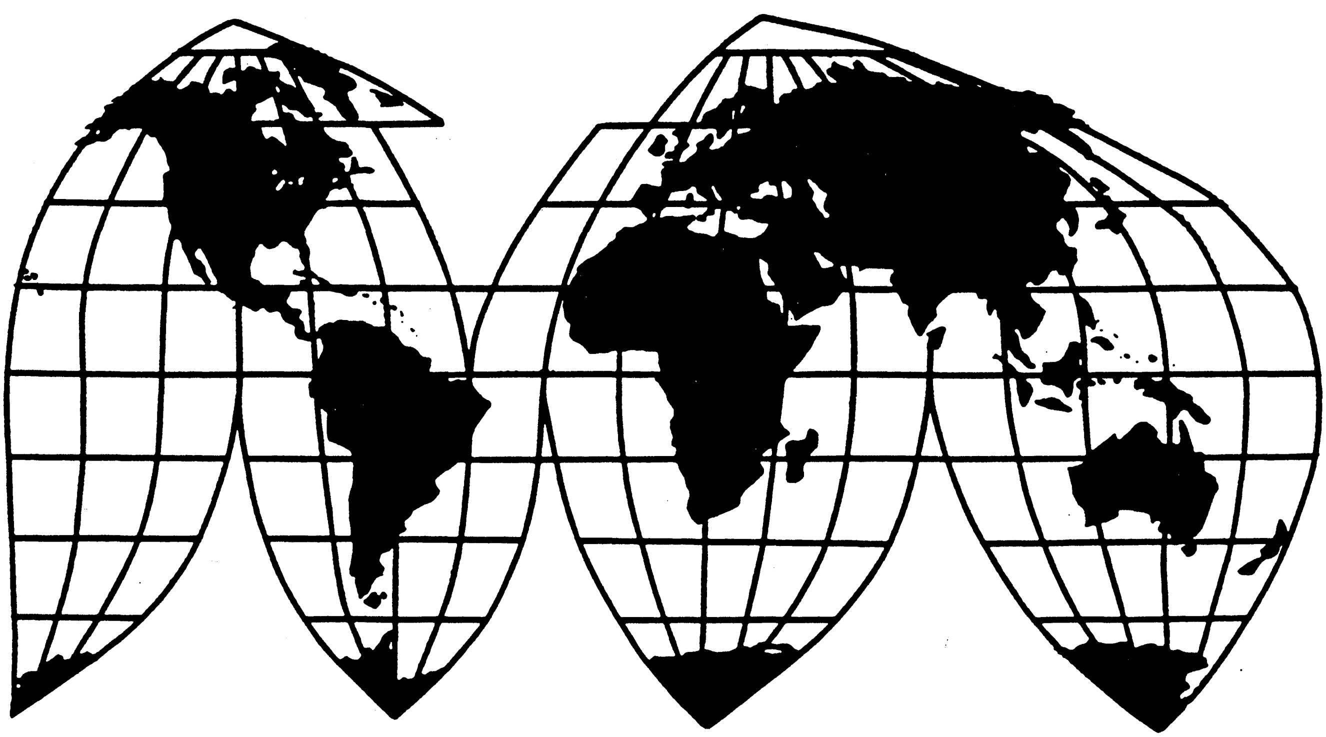

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

PART I

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-701 (Final)

DISPOSABLE LIGHTERS FROM THAILAND

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Thailand of disposable pocket lighters, provided for in subheadings 9613.10.00 and 9613.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 24, 1994, following a preliminary determination by the Department of Commerce that imports of disposable pocket lighters from Thailand were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 9, 1994 (59 F.R. 55853). The hearing was held in Washington, DC, on March 21, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Commissioners Rohr and Newquist dissenting.

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that the industry in the United States producing disposable lighters is neither materially injured, nor threatened with material injury, by reason of imports from Thailand that are sold in the United States at less than fair value ("LTFV").[3] [4]

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930, as amended (the "Act"), defines the relevant 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."[5] In turn, 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."[6] The Commission's decision regarding the appropriate like product or products is essentially a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[7] No single factor is dispositive, and the Commission may consider factors it deems relevant based upon the facts of a particular investigation. The Commission looks for "clear dividing lines among possible like products" and disregards minor variations.[8]

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[3] Commissioners Rohr and Newquist determine that a threat to the domestic industry exists by reason of the subject imports. See their dissenting views.

[4] The petition alleged Thailand was providing a subsidy to disposable lighters and that a countervailing duty should be imposed. Commerce recently made a negative final determination with respect to the alleged subsidy and terminated that investigation. 60 Fed. Reg. 13,961 (Mar. 15, 1995). Accordingly, we do not make a determination as to whether the domestic industry is materially injured, or threatened with material injury, by reason of subsidized imports of disposable lighters from Thailand.

The petition also alleged material injury, or the threat of material injury, by reason of LTFV imports of disposable lighters from China. Commerce has delayed its final determination in that investigation, and we will make our determination with respect to the subject imports from China in early June 1995.

The petition seeking initiation of this investigation was filed prior to the effective date of the Uruguay Round Agreements Act. These investigations thus remain subject to the substantive and procedural rules of the pre-existing law. See Pub. L. 103-465, 108 Stat. 4809 (1994), at § 291.

Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

[5] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(10).

[7] See Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

[8] Torrington Co. v. United States, 747 F. Supp. at 748-49.

B. Like Product Issues

The imported articles subject to this investigation are:

> disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (24 degrees Celsius) exceeds a gage pressure of 15 pounds per square inch.[9]

In our preliminary investigations, we found one like product, consisting of standard and child-resistant[10] disposable lighters, and we did not include refillable non-disposable lighters.[11] No new evidence requires us to alter our determination in this final investigation.

1. Standard and Child-Resistant Lighters[12]

Many consumers prefer standard lighters over child-resistant lighters because of the lower price of the former as well as their greater ease of operation. Consumers indicated, however, that the two types of lighters are functionally interchangeable.[13] In view of the fact that petitioner is beginning to market a child-resistant lighter that is as easy to use as a standard lighter,[14] the distinction between the products is blurred even further. We conclude, therefore, that standard and child-resistant lighters are interchangeable.

The channels of distribution are virtually the same for standard and child-resistant lighters. Standard lighters have been, and will continue to be, sold through the same distribution outlets as child-resistant lighters until existing supplies have been exhausted.[15]

Because standard lighters can no longer be produced in the United States, the facilities used to manufacture them are being converted to the production of child-resistant

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[9] 60 Fed. Reg. 14,263, 14,264 (Mar. 16, 1995).

[10] Disposable Lighters from the People's Republic of China and Thailand, Invs. Nos. 303-TA-25 & 731-TA-700-701 (Preliminary), USITC Pub. 2792 (June 1994), at I-8.

On July 12, 1993, the Consumer Product Safety Commission ("CPSC") issued a safety standard requiring disposable and novelty lighters (those that have entertaining audio or visual effects, or that depict or resemble articles appealing to or intended for use by children under 5) to be child-resistant. The regulation defines disposable lighters as those that either (1) are non-refillable with fuel or (2) use butane or similar fuels and have a Customs Valuation or ex-factory price under $2.00. The rule requires each manufacturer or importer of covered lighters to certify that its product conforms to the CPSC standard. Lighters that are not certified as child-resistant may not be manufactured or imported into the United States after July 12, 1994. 58 Fed. Reg. 37,557 (July 12, 1993).

In addition, the rule contains anti-stockpiling provisions that limited the amount of non-complying lighters to be produced or imported between July 12, 1993 and July 12, 1994. 58 Fed. Reg. 37,562. Non-complying lighters manufactured or imported into the United States before July 12, 1994 can be legally sold to consumers at any time, but are subject to the anti-stockpiling rule.

[11] Disposable Lighters, USITC Pub. 2792, at I-8, I-10.

[12] Both Chinese and Thai respondents argued that the Commission should determine standard and child-resistant lighters to be separate like products. See, e.g., Gao Yao's Prehearing Brief at 3-4; Gladstrong's Posthearing Brief at 2-3; PolyCity's Posthearing Brief at 2-3; Thai Merry's Posthearing Brief at 3-4; Tr. at 147.

[13] Confidential Report ("CR") at I-79, Public Report ("PR") at II-28 - II-29; see Tr. at 93-94, 124.

[14] See Tr. at 125-26, 149-50, 204-11.

[15] See CR at I-22 - I-23, PR at II-12 - II-13.

lighters. While requiring some expense and effort, little retooling is required.[16] The production process is virtually the same, as it is not until the final assembly phase that the additional parts are added to the lighter, rendering it child-resistant.[17]

Most of the physical characteristics of the lighters are identical, although the child-resistant model has three additional parts to reduce the possibility of use by children.[18] Prices of child-resistant lighters are significantly higher than standard lighters, reflecting the investment associated with devising and securing patents for the design.[19]

On balance, in view of the generally similar physical characteristics and uses, interchangeability, channels of distribution, production process, manufacturing facilities and production employees, we find that child-resistant and standard lighters comprise one like product.

2. Non-disposable Lighters[20]

The scope of Commerce's investigation includes imports of disposable lighters that are refillable.[21] There is no domestic production of disposable, refillable lighters.[22] One U.S. manufacturer, Zippo Manufacturing Co. ("Zippo"), produces non-disposable lighters (which, by definition, are refillable), but does not produce any disposable lighters.[23] Accordingly, we address whether non-disposable lighters are the same like product as disposable lighters.[24]

The uses of disposable and non-disposable lighters clearly are the same. Non-disposable liquid-fuel lighters, such as those produced by Zippo, vary greatly from subject disposable lighters, fueled by liquified petroleum gas (LPG) in most other respects. They differ in terms of design,[25] the mode of operation,[26] degree of interchangeability, consumer

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[16] See Tr. at 26-27, 72.

[17] See Petitioner's Prehearing Brief at 11; see also Tr. at 72, 166.

[18] See CR at I-9 - I-11, PR at II-6 - II-8.

[19] Compare prices of product 1 (standard lighters) with product 2 (child-resistant lighters). Table 29, CR at I-92, PR at II-33; Table 30, CR at I-93, PR at II-33. Petitioner spent $22 million and seven years developing the patented design of its child-resistant lighter. CR at I-10, PR at II-6.

[20] While the Thai respondent agrees with petitioner that the Commission should not include non-disposable lighters in its definition of the like product, see Thai Merry's Posthearing Brief at 2-3, Chinese respondents PolyCity Industrial, Ltd. and New York Lighter Company, Inc. argue for the contrary result. See PolyCity's Posthearing Brief, Exh. C. at 3-4.

[21] In the preliminary investigations, one respondent, KGM Industries Co. ("KGM"), asserted that the scope arguably included its windproof refillable lighters. Commissioners Rohr, Newquist, Crawford, and Bragg assumed, although it was unclear, that these lighters were included within Commerce's scope. Disposable Lighters, USITC Pub. 2792, at I-9, I-25. Vice Chairman Nuzum determined that because the refillable lighters manufactured by KGM are not disposable, they were not included in Commerce's scope. Disposable Lighters, USITC Pub. 2792, at I-29 (dissenting views of Vice Chairman Janet A. Nuzum). Commerce has, however, since clarified its scope and excluded windproof refillable lighters, thus mooting the issue. 59 Fed. Reg. 64,191, 64,192 (Dec. 13, 1994).

[22] See CR at I-19 & n.32, PR at II-11 & n.32.

[23] See CR at I-19 n.32, PR at II-11 n.32.

[24] See 19 U.S.C. § 1677(10).

[25] To render a disposable lighter refillable, one need only drill a hole in the bottom of the lighter and insert an inexpensive refill valve. Tr. at 77. A non-disposable liquid-fuel lighter is of a significantly different design altogether. CR at I-12 n.21, PR at II-9 n.21.

perceptions,[27] manufacturing facilities and employees,[28] and price.[29] In addition, disposable lighters are usually sold in multipacks, whereas non-disposable liquid-fuel lighters are sold as single items.[30] Non-disposable lighters are also sold in specialty stores, such as jewelry stores and tobacco shops, while disposable lighters are sold as "impulse items" in convenience stores, independently owned food stores, drug stores, and mass merchandise outlets.[31] In view of the foregoing, we determine that there is no basis for including Zippo's non-disposable lighters in the same like product as disposable lighters.[32]

In sum, we determine that there is a single like product, consisting of all disposable lighters.

C. Domestic Industry

Based upon the definition of the like product, the domestic industry consists of the sole domestic producer of standard and child-resistant disposable lighters, i.e. petitioner BIC Corporation ("BIC").[33]

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[26] (...continued)

[26] In a non-disposable, refillable liquid-fuel lighter, a flint and spark wheel ignites liquid fuel (typically naphtha) drawn through a wick. CR at I-12 n.21, PR at II-9 n.21. The fuel in disposable lighters is gaseous in nature and is released by a jet lifted by a fork. See CR at I-5, I-8, PR at II-4, II-7. In addition, non-disposable liquid-fuel lighters usually have a cap for shutting off the oxygen supply to the lighter to extinguish the flame, whereas disposable lighters have a fork spring that automatically returns the jet to a shut-off position. CR at I-8, I-12 n.21, PR at II-7, II-9 n.21.

[27] Because non-disposable and disposable lighters produce a flame that is used to light tobacco products, there is functional interchangeability. The liquid-fuel refilling procedure is relatively inconvenient and messy, and the liquid fuel is unpressurized and tends to evaporate. CR at I-12, n.21, PR at II-9 n.21. In addition, consumers must purchase the fuel for non-disposable liquid fuel lighters and fill them before their initial use, CR at I-12, n.21, PR at II-9 n.21, whereas consumers know when they purchase disposable LPG lighters that no fueling is necessary. Consumers are also aware that non-disposable liquid fuel lighters last much longer than disposable lighters.

[28] See CR at I-11 - I-12 n.20, PR at II-6 n.20.

[29] Liquid-fuel lighters are priced higher than disposable lighters. CR at I-12, PR at II-9.

[30] CR at I-12 n.21, I-22, PR at II-9 n.21, II-12.

[31] CR at I-12 n.21, I-22, PR at II-9 n.21, II-12.

[32] The issue of whether or not disposable electronic lighters, i.e. those lighters containing the piezo-electric spark lighting mechanism, should be included within the definition of the like product was not raised during the preliminary investigations. One Chinese respondent argued during the final investigations that the Commission should find that a clear dividing line exists between imported electronic lighters and flint lighters, such as those manufactured by petitioner. See Cli-Claque's Prehearing Brief at 1-5. Because there are no domestically-produced electronic lighters, CR at I-84, PR at II-31, we must determine which domestically-produced lighters are "most similar" to the imported electronic lighters. 19 U.S.C. § 1677(10); see Fresh Cut Roses from Colombia and Ecuador, Invs. Nos. 731-TA-684-685 (Preliminary), USITC Pub. 2766 (Mar. 1994), at I-8 - I-9. We find that the domestically-produced lighters most similar to the subject disposable electronic lighters included in the scope are petitioner's disposable lighters.

[33] Because there is only one domestic producer, most empirical information pertaining to the domestic industry may not be discussed in a public opinion. We have been granted permission by petitioner to discuss in the public opinion general trends pertaining to the domestic industry.

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured or threatened with material injury by reason of LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[34] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[35]

An important condition of competition in this investigation is the Consumer Product Safety Commission ("CPSC") ban on the manufacture or importation of standard lighters after July 12, 1994. This ban forced a fundamental structural change in the industry, requiring the conversion of production facilities to produce a different type of lighter. Promulgation of the rule also led to the buildup of U.S. inventories of standard lighters, both domestic and foreign, in 1994.[36] The rule also excluded many suppliers from the market, due to their inability to comply with the CPSC requirement.[37]

We have considered all the data that we have obtained from 1991 through 1994. The imposition of the CPSC ban in mid-1994 complicates analysis of 1994 data on a full-year basis and renders year-to-year comparisons of industry and market indicators less probative than otherwise might be the case. In order to assess accurately the impact of subject imports on the domestic industry in the context of the implementation of the CPSC ban, we examined carefully not only the data for July-December 1994, but also the data for January-June 1994, and how these two periods related to one another.[38]

A second condition of competition is the concentration of higher-priced, higher-quality, brand name disposable lighters, such as BIC's, at one end of the market and the concentration of lower-priced, lower-quality private label brands, including the subject imports, at the lower end of the market.[39] [40] Purchasers, (e.g. retailers and buyers for independently owned food stores) may buy high-end product, low-end product, or a combination of both to provide various price points for their end-user consumers.[41]

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[34] 29 U.S.C. § 1677(7)(C)(iii).

[35] 19 U.S.C. § 1677(7)(C)(iii).

[36] See Tr. at 20, 73.

[37] See Table 20, CR at I-61, PR at II-24 (only two of the six Chinese disposable lighter producers that responded to the Commission's questionnaires actually shipped child-resistant lighters after the July 12, 1994 CPSC ban was in place).

[38] Commissioner Crawford does not rely on year-to-year comparisons of the data in her determination of material injury by reason of dumped imports. In light of the importance of the CPSC ban and the changes resulting from it, Commissioner Crawford based her evaluation principally on the period after the implementation of the ban.

[39] CR at I-79, PR at II-28 - II-29.

[40] For Commissioners Rohr and Newquist, the existence of "market segments" is not an important condition of competition. In their view, such alleged "segments" bear more directly on the like product definition. Because they have found one like product, Commissioners Rohr and Newquist believe that further discussion of the "high-end" and "low-end" segments of the disposable lighter market is irrelevant.

[41] CR at I-79, PR at II-28 - II-29.

By quantity, apparent U.S. consumption for all disposable lighters increased from 1992 to 1994, but decreased between the first and second halves of 1994.[42] The value of U.S. consumption for all disposable lighters decreased from 1992 to 1993, then remained steady from 1993 to 1994. The value of U.S. consumption decreased again between the first and second halves of 1994, although not as markedly as the quantity decrease in U.S. consumption during this same period.[43]

U.S. shipments increased in quantity from 1992 to 1993, then decreased in 1994 to near 1992 levels. U.S. shipments were higher in the first half of 1994 than in the second half. The value of U.S. shipments followed the same trend.[44] The U.S. producer's quantity share of the domestic market decreased from 1992 to 1994, but increased between the first and second halves of 1994. In contrast, the U.S. producer's value share of the domestic market increased from 1992 to 1993, then decreased in 1994 although it still remained above 1992 levels. Domestic market share was higher in the second half of 1994 than in the first half.[45]

Production increased from 1992 to 1993, and then declined in 1994. Production was lower in the second half of 1994 than in the first half.[46] Average-of-period capacity decreased slightly from 1992 to 1993, and further decreased in 1994. Second-half 1994 average-of-period capacity was lower than first-half 1994 capacity.[47] Capacity utilization increased from 1992 to 1993, then remained steady in 1994. First-half 1994 capacity utilization was higher than in the second half of 1994.[48]

The number of production and related workers decreased from 1992 to 1994. Although there was a decrease between the first and second halves of 1994, this decrease involved workers producing standard lighters.[49] Hours worked declined from 1992 to 1994, and fell more between the first and second halves of 1994.[50] Wages increased from 1992 to 1993, then decreased slightly in 1994. There was a decrease in wages paid between January-June 1994 and July-December 1994.[51]

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[42] Apparent consumption increased from ***. Table 1, CR at I-16, PR at II-10.

In this investigation, because of the unique importance of the CPSC regulation in shaping the marketplace, the interim periods are defined as pre-and post-implementation of that prohibition. That is, data acquired for January through June 1994 (prior to implementation of the CPSC ban) are compared to that obtained for July through December 1994 (after implementation of the CPSC ban).

[43] The value of consumption for all lighters decreased from ***. Table 1, CR at I-16 - I-17, PR at II-10.

[44] U.S. producer's shipments increased from ***. The value of U.S. producer's shipments increased from ***. Table 1, CR at I-16 - I-17, PR at II-10.

[45] By quantity, the domestic producer's share of consumption was ***. Table 28, CR at I-72 - I-73, PR at II-26.

[46] The domestic producer manufactured ***. Table 2, CR at I-25, PR at II-13.

These trends were due to the increase in the production of standard lighters, then the decrease in that production due to the promulgation of the CPSC prohibition. The production of standard lighters increased from ***. Table 2, CR at I-25, PR at II-13.

[47] Average-of-period capacity decreased from ***. Table 2, CR at I-25, PR at II-13.

[48] Average capacity utilization was ***. Table 2, PR at I-25, CR at II-13.

[49] There were ***. Table 5, CR at I-31, PR at II-14.

[50] Production and related workers worked ***. Table 5, CR at I-31, PR at II-14.

[51] Production and related workers were paid ***. Table 5, CR at I-31, PR at II-14.

Net sales, by quantity, increased between 1992 and 1993, but decreased in 1994. Between January-June 1994 and July-December 1994, net sales declined. By value, net sales followed a similar trend.[52]

Legal fees and liability insurance premiums, comprising product liability expenses (which are a large component of selling, general and administrative ("SG&A") expenses), both declined steadily between 1992 and 1994[53] and were the primary reason for the steady decrease in SG&A expenses during this period.[54] SG&A expenses also decreased between the first and second halves of 1994.[55] Conversely, research and development expenditures, a significant SG&A expense, increased from 1992 to 1994.[56] Petitioner spent $22 million and seven years developing the patented design of its child-resistant lighter.[57] Capital expenditures also increased from 1992 to 1993, then decreased from 1993 to 1994.[58]

The ratio of cost of goods sold to net sales increased between 1992 and 1994, and increased further between the first and second halves of 1994.[59] Although this increase was evident before and after implementation of the CPSC regulation, the larger increase in the latter half of 1994 indicates the effects of converting production from standard to child-resistant lighters.[60] [61]

III. CUMULATION

In determining whether there is material injury by reason of LTFV imports, the Commission is required to assess cumulatively the volume and price effects of imports from two or more countries of articles subject to investigation if such imports compete with each other and with the domestic like product in the United States market.[62] Cumulation is not required, however, when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.[63]

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[52] There were ***. Table 7, CR at I-39, PR at II-19.

[53] For its trade-only operations for all disposable lighters, petitioner's legal fees declined from *** during this period. Table 8, CR at I-41, PR at II-19; see CR at I-50, PR at II-20.

[54] Selling, general and administrative expenses totaled ***. Table 7, CR at I-39, PR at II-19.

[55] Between the first and second halves of 1994, these expenses decreased from ***. Table 7, CR at I-39, PR at II-19.

[56] The domestic producer spent ***. Table 17, CR at I-52, PR at II-21. The shift from the production of standard to child-resistant lighters is the reason for the increased research and development expenditures. See CR at I-50, PR at II-20.

[57] CR at I-10, PR at II-6.

[58] Capital expenditures totaled ***. Table 16, CR at I-52, PR at II-20.

[59] In 1992, this ratio was ***. Table 7, CR at I-39, PR at II-19.

[60] Vice Chairman Nuzum finds that many of the industry indicators discussed in this section, including production, shipments, capacity utilization, inventories, and financial performance, were affected by the CPSC ban. The relationship between the CPSC ban and the domestic industry's performance is more fully discussed in the section on the impact of subject imports on the domestic industry, infra.

[61] Commissioners Rohr and Newquist find that, although the domestic industry is not currently experiencing material injury, it is threatened with injury. Therefore they do not join the remainder of this opinion. See their separate dissenting views, infra.

[62] 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

[63] 19 U.S.C. § 1677(7)(C)(v).

Imports of disposable lighters from China, as well as from Thailand, are subject to investigation.[64] We examine whether there is reasonable overlap of competition between the subject imports and the domestic products, as well as between the Chinese and Thai products. We then address the application of the negligible imports exception to this investigation.

A. Competition Between the Imports and Between the Imports and the 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 imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(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 of imports from different countries and the domestic like product; and

(4) whether the imports are simultaneously present in the market.[65]

While no single factor is determinative, and the list of factors is not exclusive, these factors provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[66] Only a "reasonable overlap" of competition is required.[67] In this investigation, the parties do not dispute that there is a reasonable overlap of competition between subject imports from China and Thailand, or between subject imports and the domestic like product.

We find that the subject imports and the domestic product are somewhat fungible. Although two-thirds of the purchasers responding to the Commission's questionnaires reported that there were no significant differences between the domestic and imported products, nearly one-half of responding purchasers found the subject imports to be of lower quality than the domestic product.[68] This is reflected in the low and high ends of the market for disposable lighters. As stated above, while the domestic product is concentrated in the high end of the market and the Thai and Chinese lighters occupy the low end,[69] purchasers

[64] As noted above, Commerce extended the date for its final LTFV determination with respect to China and we shall make our determination with respect of imports of disposable lighters from China in early June 1995.

[65] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), at 8 n.29, 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).

[66] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[67] See, e.g., United States Steel Group v. United States, Slip Op. 94-210 (Ct. Int'l Trade Dec. 30, 1994).

[68] CR at I-84 - I-85, PR at II-31.

[69] CR at I-79, PR at II-28- II-29.

may still buy a combination of lighters from both market segments in order to provide various price points for their end-user consumers and to maximize sales.[70]

The record also demonstrates that domestic lighters and subject imports are sold throughout the United States,[71] through similar channels of distribution.[72] They also compete head-to-head in a substantial portion of the retail market in which disposable lighters are sold,[73] and have been present in the market throughout the period of investigation.[74] Notwithstanding evidence indicating somewhat limited fungibility between the domestic product and the subject imports,[75] we find that there is a reasonable overlap of competition between subject imports from China and Thailand, as well as between the subject imports and the domestic like product.

B. Negligible Imports Exception

The Act 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 negligible and have no discernable adverse impact on the domestic industry."[76]

None of the parties offered any argument that imports from either China or Thailand are negligible. Nor do the facts here warrant a negligibility finding. The market shares and absolute volumes and values of the subject imports were at levels well above those that the Commission has considered to be negligible in prior investigations.[77] Imports from China and Thailand were neither isolated nor sporadic; they entered the United States in every reporting period examined and were sold throughout the country, as was the domestic product.[78] Accordingly, we find that neither the imports from China nor the imports from Thailand are negligible.

In view of the above discussion, we determine to assess cumulatively the volume and price effects of imports from China and Thailand.

IV. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In final antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of imports subject to investigation that Commerce has determined to be sold at LTFV.[79] In making this determination, the Commission must consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product, but only in

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[70] CR at I-79, I-80, I-103 - I-108, PR at II-28 - II-29, II-37 - II-39.

[71] CR at I-20, PR at II-11.

[72] Both are distributed and marketed primarily by sale to distributors and retailers. CR at I-22 - I-24, PR at II-12 - II-13.

[73] See CR at I-79 - I-80 n.83, PR at II-28 - II-29 n.83 (according to BIC, it ***).

[74] Tables 29-32, CR at I-92 - I-95, PR at II-33.

[75] There is no question that the subject imports compete directly with each other. See CR at I-79 - I-81 & nn.83, 85-86, PR at II-28 - II-29 nn.83, 85-86.

[76] 19 U.S.C. § 1677(7)(C)(v).

[77] See Table 28, CR at I-71 - I-73, PR at II-26.

[78] CR at I-20, Tables 29-32, CR at I-92 - I-95, PR at II-11, II-33.

[79] 19 U.S.C. § 1673d(b).

the context of U.S. production operations.[80] Although the Commission may consider alternative causes of injury to the domestic industry other than the LTFV imports, it is not to weigh causes.[81] [82] [83]

For the reasons discussed below, we determine that the domestic industry producing disposable lighters is not materially injured by reason of LTFV imports from Thailand.

A. The Volume of Subject Imports

The cumulated volumes of subject imports increased between 1991 and 1994, and were at substantial levels throughout this period.[84] However, these volumes must be considered in light of the increased levels of consumption.[85] Although U.S. market share declined by quantity from 1991 to 1994, the decline was very small.[86] Further, the decline

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[80] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[81] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following: 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.. No. 317, 96th Cong., 1st Sess. 47 (1979).

[82] For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement and Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772, at I-14 n.68 (May 1994).

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

[84] Shipments of subject imports increased from ***. Table 1, CR at I-16, PR at II-10, Table D-7, CR at D-13, PR at D-4.

In terms of value, shipments of subject imports increased from ***. The value of subject imports' shipments climbed to ***. Table 1, CR at I-17, PR at II-10, Table D-7, CR at D-13, PR at D-4.

These figures are also reflected in the subject imports' market share, the quantity of which increased from ***. Table 28, CR at I-72, PR at II-26.

[85] See Table 1, CR at I-16, PR at II-10, Table D-7, CR at D-13, PR at II-D-4.

[86] Table 28, CR at I-72 - I-73, PR at II-26, Table D-7, CR at D-13, PR at D-4.

occurred in the context of increasing consumption.[87] When measured by value, moreover, domestic market share actually increased from 1992 to 1994.[88] Finally, the market share of nonsubject imports declined steadily from 1991 to 1994, and to a much greater degree than domestic market share, suggesting that the subject imports are displacing nonsubject imports rather than the domestic product.[89]

As a consequence of the imposition of the CPSC ban on standard lighters, subject imports lost market share between the first and second halves of 1994 while the domestic industry experienced a gain.[90] BIC's share of the quantity of the market increased by *** percentage points, and the value of its market share increased by *** percentage points during this period. Simultaneously, the quantity share of subject imports declined *** percentage points and the value share declined by *** percentage points.[91]

As discussed earlier, brand name disposable lighters such as BIC's are concentrated in the high end of the market, while lower-quality, private label lighters, such as the subject imports, are concentrated in the low end of the market. The volume of subject imports increased as the size of the low end of the market increased. We are not persuaded that low-cost subject import lighters are displacing domestic brand name lighters. We conclude, therefore, that the foregoing factors discount the significance of the volume and market share of subject imports.

B. The Effect of Subject Imports on Domestic Prices

In evaluating the effect of LTFV imports on domestic prices, the Commission considers whether there has been significant price underselling by subject imports and whether the imports depress prices to a significant degree or prevent price increases that otherwise would have occurred, to a significant degree.[92] We have evaluated the price effects of the subject imports on a cumulated basis.

The record indicates that subject imports undersold domestic product in all pricing comparisons, and the margins of underselling are large.[93] This is not surprising, however, given the evidence that subject imports are concentrated in the low end of the market and the domestic product is concentrated in the high end of the market. Standard lighters in the high-end segment typically range between 30 cents and 40 cents per lighter. Prices in the low-end segment vary from 10 cents to 20 cents per lighter.[94] The disposable lighters selling at the high end of the market enjoy brand name recognition, as well as a reputation for quality and safety that is not characteristic of the lower-priced imports.[95] In fact, BIC itself believes that the quality and safety of its lighters are superior to that of the imports, and that some of its customers purchase from it exclusively because of these features, even though the

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[87] Table 28, CR at I-72 - I-73, PR at II-26, Table D-7, CR at D-13, PR at D-4.

[88] Table 28, CR at I-72 - I-73, PR at II-26, Table D-7, CR at D-13, PR at D-4.

[89] Table 28, CR at I-72, PR at II-26.

[90] Table 28, CR at I-72, PR at II-26.

[91] In terms of quantity, BIC's share of domestic consumption rose from *** percent in the last half. The subject imports, however, lost market share: they experienced a decrease from *** percent. The value of BIC's market share increased from *** percent during this period, while the value of the subject imports' market share decreased from *** percent. Table 28, CR at I-72 - I-73, PR at II-26.

[92] 19 U.S.C. § 1677(7)(C)(ii).

[93] Tables 29-31, CR at I-92 - I-94, PR at II-33, Table 33, CR at I-97, PR at II-34.

[94] CR at I-79, PR at II-28 - II-29.

[95] See CR at I-80, PR at II-29.

domestic lighters are priced higher than the subject imports.[96] Purchasers agree that the primary advantage of the domestic product is its quality, brand name recognition and its advertising/promotional support.[97] We discount the significance of the underselling for these reasons.

The wide divergence in products sold in the low and the high ends of the market also makes it less likely that domestic price declines are due, to a significant degree, to the subject imports. The products in the low and high ends of the market are different to the point where events affecting prices in the low end of the market have limited, if any, effect on prices in the high end, where the domestic product is concentrated. In fact, there is evidence in the record that if the Chinese or Thai products were no longer in the market, it is likely that purchasers who base their buying decisions solely on price would buy the next cheapest disposable lighter, and not BIC's higher priced product.[98] [99]

In any event, we are not persuaded that the price declines for domestic lighters during the period of investigation are significantly adverse. For example, the record indicates that, with respect to full-year data, prices for BIC's standard lighter sales fell most rapidly between 1992 and 1993,[100] although the volumes associated with those sales increased.[101] BIC's operating income for its standard lighter sales *** during this period.[102]

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[96] CR at I-35, I-83 - I-84, PR at II-17, II-30 - II-31.

[97] CR at I-85, PR at II-31.

[98] CR at I-80 n.86, PR at II-29.

[99] Commissioner Crawford does not join the remainder of this discussion on pricing. To evaluate the effects of the dumping on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In this investigation, the dumping margins are fairly high for Thai imports and the largest Chinese exporter, and even higher for a substantial portion of Chinese imports. Thus, prices for the subject imports would have risen by a significant amount if they had been priced fairly, and they would have become more expensive relative to the domestic product and nonsubject imports. In such a case, if the products are substitutable, purchases would have shifted towards the relatively less expensive products. The magnitude of this shift in demand is determined by the substitutability among the products. As discussed above, sales of BIC's domestic lighters are concentrated in the higher-quality, higher-priced end of the market, while subject imports are concentrated in the lower-quality, lower-priced end of the market. This two-tiered market structure demonstrates that subject imports and domestic lighters are not very good substitutes for each other. The substantial difference in prices in the two tiers, from 10 cents to 20 cents per lighter in the low-end tier of the market to 30 cents to 40 cents in the high-end tier, is further evidence that the two are not good substitutes. On the other hand, nonsubject imports, particularly Cricket's and Scripto's low-end products, are fairly good substitutes for subject imports. As discussed above, there is evidence in the record that if Chinese or Thai products were no longer in the market, it is likely that purchasers who base their buying decisions solely on price would buy the next cheapest disposable lighter, and not BIC's higher priced product. Consequently, if subject imports had been priced fairly they would have still been priced in the low-end tier of the market, and demand would have shifted to nonsubject imports, not to domestic lighters. With no shift in demand towards domestic lighters, the domestic industry would not have been able to increase its prices. In short, if subject imports had been priced fairly, any effect on prices would have occurred in the low-end of the market, not in the high-end of the market where domestic lighters are concentrated. For these reasons, Commissioner Crawford finds that subject imports are not having significant effects on prices for domestic lighters.

[100] <u>See</u> Table 29, CR at I-92, PR at II-33.

[101] <u>See</u> Table 1, CR at I-15, PR at II-10.

[102] Table A-5, CR at A-10, PR at A-3.

Similarly, the largest decline in the prices for BIC's child-resistant lighters occurred between 1993 and 1994,[103] at the same time that its operating income for child-resistant lighters increased significantly.[104] Further, the declines in prices for child-resistant lighters may be attributable to economies of scale as BIC's production of child-resistant lighters increases.[105]

In addition, imposition of the CPSC ban in the latter half of 1994 explains the presence of the lower prices in that period, as BIC liquidated its inventories of standard lighters while its inventories of child-resistant lighters increased.[106]

In view of the foregoing, we conclude that the subject imports have not suppressed or depressed prices to a significant degree.

C. Impact on the Domestic Industry

We find that there has been no significant impact on the domestic industry by the cumulated subject imports. The domestic industry retained a relatively stable share (by value) of a growing market,[107] and was profitable throughout most of the period of investigation,[108] even though domestic production decreased.[109]

In our view, the decrease in production from 1993 to 1994, attributable to the sharp decline experienced in the production of standard lighters between the first and second halves of 1994,[110] is clearly related to implementation of the CPSC regulation. Production was also reduced due to the need to convert the facilities used to produce standard lighters to plants

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[103] See Table 30, CR at I-93, PR at II-33.

[104] Table A-6, CR at A-12, PR at A-3.

[105] See Tr. at 89.

[106] See Table 4, CR at I-30, PR at II-14.

[107] See Table 1, CR at I-16, PR at II-10, Table 28, CR at I-72, PR at II-26, Table D-7, CR at D-13, PR at D-4.

[108] See Table 7, CR at I-39, PR at II-19; Tr. at 216. Petitioner argues that its profits are "far below the typical industry average" for toiletries and cosmetics industries. Tr. at 216. We note that Congress has explained that we are to determine an industry's health in the context of the impact imports are having on that industry, not in relation to other industries or manufacturers as a whole. S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987). Accordingly, petitioner's argument that we should consider its profits in the context of the absolute level of profits of other manufacturers is without merit. See Tr. at 216, 220.

[109] Table 2, CR at I-25, PR at II-13. Indeed, in 1991, when the subject imports' market share was at its lowest, the domestic industry was ***. Table D-7, CR at D-13 - D-14, PR at D-4 - D-5.

The decrease in overall disposable lighter production was due to the decrease in production of standard lighters following the imposition of the CPSC ban, and the fact that capacity to produce child-resistant lighters had not fully replaced standard lighter capacity. See Table 2, CR at I-25, PR at II-13. BIC was able to maintain its market share (by value) because its shipments were made from inventories of standard lighters, which had been built up in 1993 and the first half of 1994. See Table 4, CR at I-30, PR at II-14. The value of shipments increased between 1992 and 1994 as more child-resistant lighters were shipped. Table 1, CR at I-15, I-17, PR at II-10. As explained in the text below, production also decreased due to the conversion of the standard lighters manufacturing facilities to enable production of child-resistant lighters.

[110] Domestic production of standard lighters decreased by *** percent between the first and second halves of 1994. Table A-5, CR at A-9, PR at A-3. In contrast, domestic production of child-resistant lighters increased by *** percent between the first and second halves of 1994. Table A-6, CR at A-11, PR at A-3. Overall, production decreased by *** percent during this time. Table A-7, CR at A-13, PR at A-4.

producing child-resistant lighters.[111] The CPSC ban also relates to the declines in shipments,[112] production and related workers, capacity and capacity utilization.[113] [114]

Moreover, once the CPSC ban was in place in mid-1994, the overall decrease in production due to the decreased production of standard lighters[115] resulted in rising unit costs in 1994.[116] As BIC admitted in its 1994 third-quarter report, the conversion of facilities to enable the production of child-resistant lighters as opposed to standard lighters resulted in costs incurred to modify equipment.[117] These factors, when combined, led to a large decline in operating income between January-June 1994, before the ban on standard lighters became effective, and July-December 1994, after the ban took effect.[118]

We also note that examining standard lighter and child-resistant lighters operating income margins separately further highlights the impact of the CPSC rule on BIC's performance. Standard lighters operating income margin peaked in the first half of 1994,[119] at the same time that BIC's market share was at its lowest for the entire period of

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[111] CR at I-30, PR at II-14. Petitioner testified at the hearing that conversion of the first lighter line required approximately three to six months, although later conversion requires only three to four weeks. Tr. at 26-27, 72.

[112] BIC's U.S. shipments decreased from ***. Table 1, CR at I-16, PR at II-10.

[113] There was a loss of standard lighter production workers between the first and second halves of 1994, as well as a decrease in standard lighter capacity and capacity utilization. Table A-5, CR at A-9 - A-10, PR at A-3. In contrast, child-resistant lighter production workers increased between the first and second halves of 1994, as did capacity and capacity utilization. Table A-6, CR at A-11 - A-12, PR at A-3.

[114] Commissioner Crawford does not join the remainder of this discussion on impact. In her analysis of material injury by reason of dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when the imports were dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of the subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices, sales and overall revenues is critical, because the impact on the other industry indicators (e.g. employment, wages, etc.) is derived from this impact. As she noted earlier, Commissioner Crawford finds that demand for domestic lighters would not have increased significantly had subject imports been priced fairly. Thus, the domestic industry would not have been able to increase significantly either its prices or the quantity sold. Without an increase in either prices or quantity sold, the domestic industry would not have increased its revenues significantly, and thus would not have been materially better off if the subject imports had been priced fairly. Therefore, Commissioner Crawford determines that the domestic industry is not materially injured by reason of the subject imports.

[115] See Table 2, CR at I-25, PR at II-13.

[116] See CR at I-37, PR at II-18.

[117] CR at I-35, PR at II-16. While capital expenditures for standard lighters decreased between 1993 and 1994, capital expenditures related to child-resistant lighters increased by almost the same margin. Table 16, CR at I-52, PR at II-20. In addition, ***. CR at I-30, PR at II-14, Table 5, CR at I-32, PR at II-14.

[118] Operating income was ***. Table 7, CR at I-39, PR at II-19. Notwithstanding petitioner's arguments to the contrary, we routinely examine both trade sales and company transfers in reaching our determination as to whether subject imports are a cause of material injury to the domestic industry.

[119] Table A-5, CR at A-10, PR at A-3.

investigation[120] and subject import market share was at its highest.[121] Standard lighters operating income margin turned negative in the second half of 1994,[122] concurrent with the reduction in production and capacity utilization.[123]

Child-resistant lighters operating income margin improved from a *** loss in the first half of 1994 to a period high in the second half of 1994.[124] As noted above, most of the indicators for child-resistant lighters showed strong gains in the second half of 1994.[125] Considering that only child-resistant lighters may now be produced in or imported into the United States, the record indicates that BIC is well-positioned to compete in this market.

The evidence is not consistent with an adverse impact by the subject imports. On the contrary, while BIC experienced declines in its operating income and increased costs in response to the implementation of the CPSC regulation, it was the non-subject imports that were affected by the subject imports.[126]

V. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

A. Cumulation

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has discretion to cumulate the volume and price effects of such imports if they compete with each other and the domestic like product.[127] In prior determinations, the Commission has considered whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling or pricing patterns, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.[128]

For the same reasons we cumulated imports to make our present material injury determination, we have determined to cumulate the subject imports in this investigation.[129] In addition, the CPSC regulation makes cumulation appropriate. All current and future imports must be child-resistant and thus the regulation enhances the likelihood of competition between the domestic product and subject imports, as well as between the subject imports.[130]

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[120] Table 28, CR at I-72, PR at II-26.

[121] Table 28, CR at I-72, PR at II-26.

[122] Table A-5, CR at A-10, PR at A-3.

[123] Table 2, CR at I-25, PR at II-13.

[124] Table A-6, CR at A-12, PR at A-3.

[125] See Table A-6, CR at A-11 - A-12, PR at A-3.

[126] See Table 1, CR at I-17, PR at II-10. For instance, the value of the shipments of non-subject imports declined by approximately one-fourth between Jan.-June 1994 and July-Dec. 1994, while the corresponding value of domestic shipments was reduced by a much smaller percentage.

[127] 19 U.S.C. § 1677(7)(F)(iv).

[128] See Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992), aff'd, 991 F.2d 809 (Fed. Cir. 1993); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

[129] Commissioner Bragg declines to cumulate imports from China and Thailand based on the differing patterns of import volumes and import penetration, and does not join the remainder of this opinion. See her additional views.

[130] Vice Chairman Nuzum does not join the second and third sentences of this paragraph.

Although the import volume trends are divergent,[131] the pricing trends and margins of underselling are similar.[132] The Chinese and Thai producers also have similar projected capacities for the production of child-resistant lighters,[133] for which the United States is currently the sole market.[134]

B. No Threat of Material Injury

Section 771(7)(F) of the Act 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 actual injury is imminent." The Commission is not to make such a determination "on the basis of mere conjecture or supposition."[135]

We have considered all the statutory factors that are relevant to this investigation.[136] The presence or absence of any single factor is not dispositive.[137] We do not find that there is a threat of material injury to the domestic industry by reason of the subject imports.

The combined capacity of China and Thailand to produce subject disposable lighters, including both standard and child-resistant lighters, is quite substantial.[138] Due to the CPSC regulation, all imports of disposable lighters in the future must be child-resistant. Therefore, only the Thai and Chinese existing and future capacity to produce child-resistant lighters is evidence of any threat of material injury to the domestic industry.

In 1994, the combined capacity to produce child-resistant disposable lighters was only *** percent of the capacity to produce subject standard and child-resistant lighters in that year.[139] Similarly, the projected increase in capacity to produce child-resistant lighters for 1995 represents only approximately *** of the capacity to produce all subject lighters in that year.[140] The 1995 projected capacity to produce child-resistant lighters represents *** percent

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[131] See Table 1, CR at I-16, PR at II-10.

[132] See Tables 29-31, CR at I-92 - I-94; Table 33, CR at I-97, PR at II-33 - II-34.

[133] See Table 20, CR at I-61, PR at II-24, Table 22, CR at I-62, PR at II-24, Table 25, CR at I-64, PR at II-25.

[134] Tr. at 112.

[135] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984), aff'd, 760 F.2d 249 (Fed. Cir. 1985).

[136] 19 U.S.C. § 1677(7)(F)(i)(I)-(X). In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. § 1677(7)(F)(iii)(I). Factor I is not relevant because no subsidy is involved. Factor VIII is not applicable as none of the foreign producers' disposable lighters facilities is used to produce other products subject to final antidumping or countervailing duty orders. Because this investigation does not involve an agricultural product, Factor IX is not applicable.

[137] See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

[138] Table 23, CR at I-63, PR at II-24, Table 26, CR at I-64, PR at II-25.

[139] Compare Tables 20, 22 & 25, CR at I-61, I-62, I-64, PR at II-24 - II-25, with Tables 23 & 26, PR at I-63, I-64, PR at II-24 - II-25.

[140] Compare Tables 20, 22 & 25, CR at I-61, I-62, I-63, PR at II-24, II-25, with Tables 23 & 26, CR at I-63, I-64, PR at II-24, II-25.

of total subject imports in 1994.[141] Thus, even if all child-resistant capacity is used to produce products shipped to the United States, fewer lighters could be shipped in terms of volume and market share than when China and Thailand were shipping both standard and child-resistant lighters. Subject imports, therefore, will decrease in the immediate future. Consequently, any increase in production capacity or existing unused capacity will not result in any increase, much less a significant increase, in subject imports.

BIC contends that Chinese and Thai producers can and will easily convert their standard lighter capacity to child-resistant lighter capacity in order to increase their shipments of child-resistant lighters to the United States.[142] Accordingly, we also considered whether the overall Chinese and Thai capacity to produce disposable lighters constitutes evidence of a threat of material injury. We conclude it does not.

First, Chinese and Thai producers had substantial and increasing capacity throughout the entire period of investigation.[143] Yet, that capacity did not result in production and shipments of disposable lighters in injurious volumes to the United States.[144] Therefore, even if Chinese and Thai producers were to increase their capacity to produce child-resistant lighters somewhat, we are not persuaded these increases are likely to result in increases in subject imports to injurious levels. Certainly, there is no evidence that all capacity to produce disposable lighters in the subject countries is likely to be dedicated to making child-resistant lighters.[145]

Second, Chinese and Thai producers also sell disposable lighters to other markets, some of which account for larger shares of their respective export shipments than do their exports to the United States.[146] BIC has not provided evidence, and we have found none, that indicates Chinese and Thai producers are preparing to abandon those other markets, which consume standard lighters, in order to ship more child-resistant lighters to the United States. Thus, it would be speculative to conclude that this would occur. Therefore, we find that the information concerning capacity and capacity utilization in Thailand and China does not constitute evidence that any threat of material injury is real or that actual injury is imminent.

Although the subject imports' market share increased substantially from 1992 to 1994, there was a large decrease between the first and second halves of 1994.[147] Subject import volumes followed the same trend.[148] However, in 1994, *** percent of subject

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[141] Tables 20, 22, 25, & 27, CR at I-61, I-62, I-64, I-66, PR at II-24 - II-25, II-26.

[142] BIC's Prehearing Brief at 50-53, BIC's Posthearing Brief at 12-3 - 12-6.

[143] Tables 23 & 26, CR at I-63, I-64, PR at II-24, II-25.

[144] See Tables 23 & 26, CR at I-63, I-64, PR at II-24, II-25.

[145] Commissioner Crawford does not join this paragraph. In her view, the capacity to produce child-resistant lighters is the only capacity that is commercially relevant to the U.S. market. She finds that the time and costs required to design child-resistant lighters, obtain CPSC approval, obtain patents and avoid patent infringement, and convert production facilities and equipment from standard lighters to child resistant lighters represent significant barriers to increasing Thai and Chinese capacity to produce child-resistant lighters. For this reason, she finds that it is unlikely that a significant amount of capacity to produce standard lighters in Thailand and China will be converted to producing child-resistant lighters.

[146] See Tables 23 & 26, CR at I-63, I-64, PR at II-24, II-25.

[147] Table 28, CR at I-72, PR at II-26.

[148] Table 27, CR at I-66, PR at II-26; Table A-7, CR at A-13, PR at A-4. In contrast, the market share held by non-subject imports was substantial throughout the period, and declined only slightly between Jan.-June 1994 and July-Dec. 1994. Table 28, CR at I-72, PR at II-26.

imports were standard disposable lighters.[149] To the extent any rapid increase in market penetration occurred due to imports of standard lighters, the CPSC regulation directly limits any future increase in market penetration. That is, the prohibition on imports of standard lighters imposed by the CPSC ban makes it unlikely that the Thai and Chinese subject imports' market penetration will rise to an injurious level.

We find that Argentina's and the European Union's ("EU's") dumping findings against disposable lighters from China and Thailand do not constitute evidence that any threat of material injury is real.[150] There is evidence on the record that standard, not child-resistant, lighters are the predominant component of shipments of these lighters to Argentina and the EU.[151] To divert these lighters to the U.S. market, the facilities used to manufacture standard lighters would have to be converted to the manufacture of child-resistant lighters. As discussed above, it would be speculative to conclude that such conversion will occur in the immediate future when other important markets, including their home markets, exist for standard lighters manufactured in China and Thailand.[152] In addition to converting their manufacturing facilities, the importers of Chinese and Thai products would be required to obtain CPSC certification for all of their imports. There is no evidence in the record that either conversion or certification is imminent.

For the same reasons, we see no effects flowing from the increased antidumping duty margin for imports of disposable lighters from China,[153] nor from any potential increase in duties imposed on Thai imports to the EU.[154] Consequently, we conclude that the dumping findings do not suggest a threat of material injury to the domestic industry.

Current importer inventories consist almost entirely of child-resistant lighters.[155] While inventories are large,[156] we do not find that this factor alone is sufficient to constitute a threat of material injury to the domestic industry that is real.

As discussed earlier, the record did not indicate that subject imports had significant adverse effects on domestic prices.[157] We find no evidence of changes in market conditions or other factors that indicate subject imports are likely to enter at prices that will have depressing or suppressing effects on domestic prices in the imminent future.

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[149] Table 27, CR at I-66, PR at II-26.

[150] See CR at I-59 n.68, PR at II-23.

[151] CR at I-59 n.68, PR at II-23.

[152] See Gao Yao's Posthearing Brief at 9; Thai Merry's Prehearing Brief at 62, 72-73; Thai Merry's Posthearing Brief at 4, Exh. 5 at 1; see also Table 23, CR at I-63, PR at II-24, Table 26, CR at I-64, II-25. In 1994, Chinese exports of all lighters to the United States were approximately one-half of exports to all other markets, and the projected figure for 1995 is less than one-third of the exports to all other markets. Moreover, home market shipments surpassed exports to the United States in July-Dec. 1994, and are expected to do the same in 1995 and 1996. Table 23, CR at I-63, PR at II-24. With respect to Thailand, exports to the home market of all lighters are anticipated to exceed exports to the United States in 1995 and 1996, as are exports to all other markets. Table 26, CR at I-64, PR at II-25.

[153] We note that the EU determined to increase the antidumping duty margin for China from 16.9 to 80.3 percent in April 1995. CR at I-59 n.68, PR at II-23 n.68.

[154] See CR at I-59 n.68, PR at II-23. In addition, Thai Merry recently contracted to deliver a very large quantity of lighters to an Asian country in 1995. Thai Merry's Prehearing Brief at 74, Exh. 36.

[155] Table 18, CR at I-57, PR at II-23.

[156] See Table 18, CR at I-57, PR at II-23.

[157] See text, supra.

We find no adverse trends indicating the probability that the subject imports will be the cause of actual injury to the domestic industry. The domestic industry's capital expenditures increased between 1992 to 1994 and remain high, and research and development expenses continue to climb.[158] Thus, there are no potential negative effects on development and production efforts.

Accordingly, for all the reasons stated above, we find that the domestic industry is not threatened with material injury by reason of subject imports from Thailand.

CONCLUSION

In light of the foregoing, we determine that the domestic industry is not materially injured or threatened with material injury by reason of LTFV imports of disposable lighters from Thailand.

[158] Tables 16 & 17, CR at I-52, PR at II-20 - II-21.

ADDITIONAL VIEWS OF COMMISSIONER LYNN M. BRAGG

I concur with the majority of my colleagues that the domestic industry producing disposable pocket lighters is neither materially injured, nor threatened with material injury by reason of LTFV imports from Thailand. I concur with the majority's views on like product and domestic industry, condition of the industry, cumulation, and material injury. These additional views constitute my analysis with respect to threat of material injury due to imports from Thailand.

In analyzing whether the domestic industry is threatened with material injury by reason of the subject imports, I decline to cumulate imports from China with those from Thailand. I note that cumulation for threat purposes is discretionary.[159] My determination not to cumulate imports from the two subject countries for threat purposes is based on considerably different levels of import volumes and market penetration, and dissimilar directions in these trends for all disposable pocket lighters between 1991 and 1994, and in particular for child resistant disposable pocket lighters between the first and second halves of 1994.[160]

The statute directs that an affirmative threat determination be made "on the basis of evidence that the threat of material injury is real and the actual injury is imminent."[161] Based on a careful consideration of all of the available evidence on the record, for the following reasons I determine that there is no threat of material injury by reason of imports from Thailand. My determination regarding threat is based on data for child resistant disposable pocket lighters since, as noted previously, the CPSC regulation banned imports of standard disposable pocket lighters beginning July 12, 1994. Any imports that would pose a real threat of imminent injury, therefore, would be of the child resistant variety.

In making my negative threat determination on Thailand, first, the production capacity for child resistant lighters in Thailand did, indeed, show a large increase between 1993 and 1994.[162] However, the data received from the one major Thai producer, Thai Merry, show that this increase in child resistant capacity between 1993 and 1994 was coincident with a nearly equal reduction in the overall capacity for standard lighters.[163] It appears, therefore, that the Thai producer converted the necessary amount of production capacity from standard to child resistant lighters in order to continue to serve the U.S. market with approximately the same volume of child resistant lighters as it had with standard lighters before the imposition of the CPSC ban. Indeed, even if the Thai producer were to ship its entire production from this added capacity to the U.S. market, the volume of imports would be slightly less than the total volume of shipments of Thai product in the U.S. in 1994.[164] I did not find present injury from the existing 1994 volumes; therefore, it is not plausible that I would find threat from smaller volumes of projected imports. Moreover, Thai capacity for child resistant lighters is not projected to increase in 1995 or 1996 from the

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[159] 19 U.S.C. § 1677(7) (F) (iv) (1994). I consider the same factors upon which I rest my decision to cumulate subject imports for the purpose of making my present injury determination, as well as whether the imports are increasing at similar rates; Kerns-Liebers v. United States, Consol. Ct. No. 93-09-00552, Slip Op. at 37 (Jan. 27, 1995); Asociacion Colombian de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1171-72 (Ct. Int'l Trade 1988).

[160] See Table 1, CR at I-15 I-16, PR at II-10, Table 28, CR at I-71 - I-72, PR at II-26.

[161] 19 U.S.C. § 1677(7)(F)(ii) (1994).

[162] Table 25, CR at I-64, PR at II-25.

[163] Table 24, CR at I-63, PR at II-25.

[164] Table 1, CR at I-16, PR at II-10.

levels added in 1994.[165] In addition, shipments to the United States as a percentage of total Thai shipments decreased slightly in 1994 and are projected to decline considerably in 1995 and 1996 as the share of total shipments to the home market increases,[166] thus further reducing the likelihood that the threat of material injury is real or imminent.

Next, the market penetration levels for imports of child resistant disposable pocket lighters from Thailand increased from very low levels in 1993, the first year in which these imports were shipped, to significant levels in 1994.[167] However, between the first and second halves of 1994, shipments of Thai imports in the U.S. nearly doubled, but the Thai market share was reduced by more than half.[168] This is due to in part to a substantial increase in the domestic producer's shipments and other subject imports from China,[169] which drove the market penetration ratio for Thai imports down sharply.

The pricing of the subject Thai lighters further poses no threat of imminent injury to the domestic industry producing disposable pocket lighters. As noted in the section on present material injury, there was underselling by the subject imports.[170] However, I did not find adverse price effects sufficient to warrant a present injury determination due to factors such as the concentration of the domestic product and subject Thai imports at different ends of the market, perceived quality and performance differences among the domestic and Thai products, and widely disparate prices such that movements in prices at the lower end of the market where Thai imports are concentrated have no significant effect on prices at the higher end of the market where the petitioner's product is sold. I find no evidence to support a different conclusion in my threat determination with respect to Thailand.

I further do not find that the substantial increase in ending U.S. inventories of child resistant lighters from Thailand poses imminent threat to the domestic industry. Ending inventories did increase by a substantial amount during 1994[171], but I do not find this increase to be significant. The 1994 ending inventories of child resistant lighters still represent a relatively small portion of total consumption of all disposable lighters during the same year.[172] In this instance, I look at total consumption because it appears that the imports were brought into the U.S. market in the second half of 1994, but because of substantially higher prices, they were not able to compete with existing inventories of standard lighters that were still clearing the market.[173] It seems likely that once inventories of standard lighters were depleted, these inventories of child resistant lighters would be shipped. If not for the large inventories of standard lighters,[174] these inventories of child resistant lighters would have been depleted much sooner, and the ending inventory levels would be much lower. Nonetheless, for the reasons noted above, sales of these ending inventories of Thai child resistant lighters are not likely to have price suppressing or depressing effects on prices for the domestic product, and hence, do not pose a threat of injury.

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[165] Table 25, CR at I-64, PR at II-25.

[166] Table 25, CR at I-64, PR at II-25.

[167] Table 28, CR at I-71, PR at II-26.

[168] Table 1, CR at I-15, PR at II-10, Table 28, CR at I-71, PR at II-26.

[169] Table 1, CR at I-15, PR at II-10.

[170] See, majority opinion, supra.

[171] Table 18, CR at I-57, PR at II-23.

[172] Compare Table 1, CR at I-16, PR at II-10, with Table 18, CR at I-57, PR at II-23.

[173] The CPSC ban pertains to imports after July 12, 1994, but does not affect shipments of existing inventories already in the United States.

[174] See, Table 18, CR at I-57, PR at II-23.

The outstanding antidumping order by the European Union (EU) against Thai lighters provides no basis for a conclusion that the threat of material injury is real or imminent.[175] It is very unlikely that the Thai producer would divert these shipments from the EU to the U.S. market. First, the Thai home market is projected to account for an increased share of total Thai shipments in 1995 and 1996, and it is more likely that if any shipments were to be diverted, they would be shipped to the home market rather than to the U.S. market. More importantly, the relatively minor EU antidumping duties (14.1 and 5.8 percent) against two Thai producers are unlikely to lead to any significant diversions from that market. Indeed, "...the EU is to reexamine existing duties on imports of Thai-produced lighters, which the Federation of European Lighters Manufacturers has said are not high enough to counter alleged dumping."[176] Based on this report, it appears that the duties have not had much, if any, effect on Thai shipments to the EU. Moreover, it would be speculative to conclude that the EU will increase its duties on Thai lighters as a result of its inquiry.

Finally, there do not appear to be any adverse trends suggesting that the subject imports from Thailand threaten to cause material injury to the domestic industry. The domestic industry's capital expenditures increased between 1992 and 1994, and research and development expenses are continuing to increase, thus minimizing the potential for any negative effects on the industry's development and production efforts.[177]

Based on the foregoing reasoning, I do not find that imports of child resistant disposable pocket lighters from Thailand are threatening the domestic industry.

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[175] See, CR at I-59, n.68, PR at II-23.

[176] Staff Report, I-59, n. 68, PR at II-23.

[177] Tables 16 and 17, CR at I-52, PR at II-20 - II-21.

DISSENTING VIEWS OF COMMISSIONER DAVID B. ROHR
FINDING THREAT OF MATERIAL INJURY
Inv. No. 731-TA-701 (Final)

I set forth these separate views because I determine that the domestic industry in this investigation is threatened with material injury by reason of imports of disposable lighters from Thailand that are sold in the United States at less than fair value (LTFV). I concur in the views of my colleagues about the proper definition of the like product and the domestic industry. Additionally, I concur with my colleagues' description of the condition of the industry.

Section 771(7) 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. The Commission cannot base such a determination on mere conjecture or supposition."[178]

A. Vulnerability

While I conclude that the industry is not currently experiencing material injury, the evidence suggests a vulnerability to the adverse effects of imports of disposable lighters from Thailand. Although consumption increased in 1992-1994 and SG&A expenses decreased over the period of investigation (POI), the petitioner, BIC Corporation, experienced a decline in operating income in 1993-1994, resulting in an operating loss in July-December 1994. Furthermore, gross profit decreased over the POI, net sales decreased in 1993-1994 and in the interim period (January-June 1994 and July-December 1994), and domestic market share declined steadily in 1992-1994. Finally, production decreased in 1993-1994 and in the interim period, and capacity decreased over the POI.[179]

B. Statutory Factors to be Considered in Determining Threat

The Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

> (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;
>
> (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;

[178] 19 U.S.C. § 1677(7)(F)(ii).

[179] Confidential Staff Report (hereinafter referred to as "CR") at Tables 1, 2, 7, & 28; Public Staff Report (hereinafter referred to as "PR") at Tables 1, 2, 7, & 28.

(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;

(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 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 subtitle 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 1671d(b)(1) or 1673d(b)(1) of this title 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.[180] [181]

The presence or absence of any single threat factor is not necessarily dispositive.[182] In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.[183]

C. Threat of Material Injury by Reason of the LTFV Imports from Thailand

All seven of the relevant statutory factors support a finding that the U.S. industry is threatened with material injury by reason of imports of disposable lighters from Thailand. Since the importation of standard disposable lighters has been banned by the CPSC, I consider the data for child resistant disposable lighters to be most relevant in assessing the threat posed to the domestic industry by subject Thai imports.

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[180] 19 U.S.C. § 1677(7)(F)(i)(I)-(X) Factor I is not relevant because no subsidy is involved. Factor VIII is not applicable as none of the foreign producers' disposable lighters facilities is used to produce other products subject to final antidumping or countervailing duty orders. Because this investigation does not involve an agricultural product, Factor IX is not applicable.

[181] Although the petition alleged Thailand was providing a subsidy to disposable lighters, Commerce reached a negative final determination (60 Fed. Reg. 13,961 (Mar. 15, 1995)), thus only an antidumping duty investigation remains.

[182] See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

[183] 19 U.S.C. § 1677(7)(F)(iii)(I).

The production capacity for child resistant disposable lighters in Thailand has increased markedly over the POI, from *** in 1992 to *** million units in 1994. Although capacity utilization decreased by *** percent from 1993-1994, this decrease occurred while production and capacity to produce increased from *** million units in 1993. The Thai manufacturer produced *** million units in 1994.[184] In 1994, *** percent of the *** million standard disposable lighters produced in Thailand were exported to the United States.[185] With the CPSC ban in effect, Thailand could shift this excess capacity to production of child resistant disposable lighters.

I find that this excess capacity is likely to result in a significant increase in U.S. imports of child resistant disposable lighters from Thailand. First, in July-December 1994, Thailand exported over *** million child resistant disposable lighters to the United States, a product that they did not produce prior to 1993.[186] Second, the United States is Thailand's primary export market, accounting for *** to *** percent of Thailand's shipments of standard disposable lighters during the POI, and for almost *** percent of Thailand's child resistant disposable lighters exports during this period. Finally, the Thai producer has also demonstrated its ability to rapidly increase production and exports of subject disposable lighters to the United States.[187]

Market penetration of the child resistant disposable lighters from Thailand increased from *** percent in 1993 to *** percent in 1994. Although there was a decline in market share in the interim period from *** percent to *** percent, this can be largely attributed to the CPSC ban. While the absolute quantity of U.S. imports of child resistant disposable lighters from Thailand increased, market penetration decreased due to the substantial increase in apparent U.S. consumption.[188] I find that the decline in the interim period is not indicative of future trends in market penetration.

In assessing the threat posed by the subject Thai industry, I considered U.S. importers' inventories of both standard and child resistant disposable lighters, and the Thai producer's child resistant disposable lighters held in inventory in Thailand to be relevant. I did not consider the inventories of standard disposable lighters in Thailand to be relevant since the CPSC prohibits such imports. Combined importer inventories of standard and child resistant disposable lighters from Thailand reached *** million units in 1994, up from *** million units in 1992. Inventories of child resistant disposable lighters in Thailand accounted for an additional *** million units in 1994.[189] I find these inventory levels to be significant.

In July-September 1993, the margin of underselling of retail chain sales of Thai child resistant disposable lighters was *** percent, increasing to *** percent in July-September 1994.[190] The Thai lighters undersold the domestic product in all five comparable periods. The net delivered average price to retail chains for Thai child resistant disposable lighters decreased from *** cents per unit in third quarter 1993, to *** cents per unit in same quarter 1994.[191] I therefore find that there is a probability that imports of the subject merchandise will have a depressing or suppressing effect on domestic prices.

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[184] CR at Table 25; PR at Table 25.

[185] CR at Table 24; PR at Table 24.

[186] CR at Table 27; PR at Table 27.

[187] CR at Tables 24-27; PR at Tables 24-27.

[188] CR at Tables 27 & 28; PR at Tables 27 & 28.

[189] CR at Tables 18 & 28; PR at Tables 18 & 28.

[190] CR at Table 33; PR at Table 33.

[191] CR at Table 30; PR at Table 30.

In assessing the threat posed to the domestic industry by imports from Thailand, the demonstrable adverse trends of other unfairly traded imports warrant consideration.[192] The aggregate market share of subject U.S. imports from China and Thailand, based on quantity, increased from *** percent in 1992, to *** percent in 1994.[193] U.S. imports of Thai and Chinese standard disposable lighters increased from *** million units in 1992 to *** million units in 1993. While U.S. imports of standard disposable lighters declined in 1994 in part due to the CPSC ban, child resistant disposable lighters increased from *** million units in 1993 to *** million units in 1994.[194] Additionally, U.S. importers' end-of-period inventories of disposable lighters from China and Thailand increased from *** million units in 1992, to *** million units in 1994.[195] Finally, the Chinese and Thai lighters undersold the U.S. products in all comparable periods. The average margin of underselling between BIC's U.S.-produced disposable lighter and the Chinese product from 1991 through third quarter 1994 was *** percent, and the average margin of underselling between the domestic and the Thai product for this period was *** percent.[196]

In light of the evidence that imports of the subject disposable lighters from Thailand are likely to increase in the imminent future, that market share of the subject imports is likely to increase, that inventories are significant, that subject imports are likely to have a depressing or suppressing effect on prices, that there is a significant presence of unfairly traded imports in the market, and that the domestic industry is vulnerable, I conclude that the threat of material injury by reason of the imports of disposable lighters from Thailand is real and that actual injury is imminent.

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[192] China and Thailand were both subject to investigation, they compete with one another and with the domestic industry, and they have similar trends with respect to volume of imports, market share, inventories, and pricing. It is for these reasons that I find it appropriate to consider the joint impact of imports from both countries as another demonstrable adverse trend.

[193] CR at I-75; PR at II-27.

[194] CR at Tables 18 & 27; PR at Tables 18 & 27.

[195] CR at Table 18; PR at Table 18. In addition, aggregate inventories of child resistant disposable lighters in China and Thailand rose from *** units in 1993 to *** units in 1994.

[196] CR at I-96; PR at II-34.

DISSENTING VIEWS OF COMMISSIONER NEWQUIST

In this investigation, I determine that the domestic industry is threatened with material injury by reason of unfairly traded imports from Thailand.[197] I join the majority's discussion of like product, domestic industry, and condition of the domestic industry, and begin these views with further elaboration on the latter.

I. CONDITION OF THE DOMESTIC INDUSTRY

Based on the record in this investigation, I find that the domestic industry is vulnerable to the continuing adverse effects of unfairly traded imports.[198] As noted in the majority opinion, the Consumer Product Safety Commission (CPSC) in 1993 established a safety standard that requires all disposable lighters produced in, or imported into, the United States on or after July 12, 1994, to meet strict child resistant standards.[199] This regulatory mandate required the domestic industry to substantially modify its production processes.[200] This modification adversely affected the industry's financial performance during the latter part of the period of investigation. Forced to shoulder the involuntary expense of a massive production shift away from standard lighters, the domestic industry has become vulnerable to the adverse impact of unfairly traded imports.

Between 1992 and 1994, the domestic industry began the process of switching production from standard lighters to child resistant lighters. Thus domestic capacity and production of standard lighters declined during this period while capacity and production of child resistant lighters increased.[201] While domestic shipments of all (standard and child resistant) disposable lighters increased between 1992 and 1993, shipments declined between 1993 and 1994 as the CPSC ban came into effect.[202]

The financial effects of the production modifications mandated by the CPSC were evident in the third and fourth quarters of 1994. The conversion to child resistant lighters

[197] As I have made a final affirmative threat of material injury determination with regard to imports from Thailand, the statute requires that I make an additional finding indicating whether I would have found present material injury "but for" the suspension of liquidation of the subject imports pursuant to the preliminary affirmative determination. In this investigation, suspension of liquidation occurred on October 24, 1994. I find that the domestic industry would not have been materially injured by imports from Thailand absent the suspension of liquidation.

[198] As a preliminary matter, I note that the statute does not require that a finding of vulnerability be linked directly to the effects of unfairly traded imports. Accordingly, I do not need to find that the domestic industry's vulnerable condition is by reason of the subject imports.

[199] 58 F.R 37557, July 12, 1993.

[200] BIC, the petitioner in these investigations, developed a Child Guard lighter after a seven-year, $22 million research and development program. Confidential Report ("CR") at I-10; Public Report ("PR") at II-6.

[201] Domestic capacity to produce standard lighters fell from approximately *** units in 1992 to slightly over *** units in 1994, while capacity to produce child resistant lighters rose from over *** units in 1992 to over *** units in 1994. Domestic production of standard lighters fell from approximately *** units in 1992 to less than *** in 1994, while production of child resistant lighters surged from less than *** units in 1992 to over *** in 1994. The effect of the CPSC standard is especially evident in comparing the interim 1994 periods (Jan.- Jun. and Jul.-Dec.). Production of standard lighters in the first half of 1994 stood at over *** units, then dropped to less than *** in the second half of 1994. CR at I-25, Table 2; PR at II-13, Table 2.

[202] CR at I-26, I-27, Table 3; PR at II-13, II-14, Table 3.

increased unit production costs for lighters in 1994,[203] and reduced profitability for the domestic industry. Thus operating income declined in 1994 despite an increase in the average selling price.[204] This decline was especially pronounced in the second half of 1994, as the CPSC standard went into effect.[205]

Accordingly, while I do not conclude that this industry is currently experiencing "harm which is not inconsequential, immaterial, or unimportant",[206] I do find that the industry is currently experiencing conditions that make it vulnerable to the continuing adverse effects of unfairly trade imports. Therefore, after addressing cumulation, I proceed to a threat of material injury analysis.

II. CUMULATION

As a preliminary matter, I more fully explain the administrative history of this investigation. The preliminary investigations of disposable lighters from Thailand and China were simultaneously instituted by the Commission on May 9, 1994. However, the respondents subsequently applied for, and received, postponements of preliminary (China) and final (China and Thailand) LTFV determinations by the Commerce Department. The effect of these three postponements requires that the Commission vote separately on the two investigations. These separate votes notwithstanding, imports from both countries are "subject to investigation," and eligible for cumulation.

For purposes of a threat analysis, cumulation is discretionary. Specifically, the cumulation provision provides that

> [for purposes of a threat of material injury analysis]
> the Commission may cumulatively assess the volume and price effects of imports from two or more countries if such imports--compete with each other, and with the products of the domestic industry in the United States market...[207]

In my view, the statutory factors for cumulation are satisfied in this investigation. As in the preliminary investigations, none of the parties contest the simultaneous presence of subject imports in the same geographical markets as the domestic like product. The record indicates that both the domestic product and the subject imports are generally sold throughout the United States, and are distributed and marketed in a similar manner.[208] Moreover, subject imports from both countries were present in the U.S. market during every period of the investigations.[209]

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[203] CR at I-37; PR at II-18. Cost of goods sold rose from slightly less than *** in the first half of 1994 (Jan. - Jun.) to well over *** in the second half of 1994 (Jul - Dec.). CR at I-39, Table 7; PR at II-19, Table 7.

[204] CR at I-37; PR at II-18. Operating income fell from almost *** in 1993 to approximately *** in 1994, at the same time that unit values rose from *** to *** between 1993 and 1994. CR at I-39, Table 7; PR at II-19, Table 7.

[205] The conversion to child resistant lighter production in the second half of 1994 (Jul.-Dec.) caused the domestic industry to suffer operating losses in that period. CR at I-39, Table 7; PR at II-19, Table 7.

[206] 19 U.S.C. § 1677(7)(A).

[207] 19 USC § 1677(7)(F)(iv)(I) (emphasis added).

[208] CR at I-20, I-22 - I-24; PR at II-11, II-12 - II-13.

[209] CR at I-92 - I-95, Tables 29-32; PR at II-33, Tables 29 -32.

With regard to mandatory cumulation for present injury, the Commission is not required to cumulate imports that "are negligible and have no discernible adverse impact on the domestic industry."[210] In my view, although cumulation for threat is discretionary, the negligibility analysis is helpful in determining whether to exercise such discretion. What level of imports may be considered negligible is, for the most part, a function of the relative health of the domestic industry.

I do not find imports from either country to be negligible and without discernible impact. None of the parties have made arguments concerning negligibility, and the market shares and absolute volumes and values of imports from China and Thailand are at levels that, in my view, preclude a negligibility finding.[211]

Therefore, based on the vulnerable state of the industry and the considerable market penetration by subject imports from each country individually over the period of investigation, I determine that none of the imports are negligible and that all may be cumulated for purposes of a threat of material injury analysis.

III. THREAT OF MATERIAL INJURY

Like my negligibility analysis above, the condition of the domestic industry is a significant factor affecting my assessment of whether there is a threat of material injury to the industry by reason of LTFV imports from the subject countries. Section 771(7)(F) of the Act directs the Commission to consider whether an industry in the United States is threatened with material injury by reason of subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[212] The Commission is directed to consider ten factors in the threat analysis.[213]

Upon careful examination of the data gathered in these final investigations, and particularly in light of the vulnerable state of the domestic industry, I determine that there is a real and imminent threat of material injury to the domestic industry by reason of the cumulated subject imports. Virtually every factor considered in a threat analysis is satisfied in this case.

In fact, in my view, it is rare to find such a clear case of an industry threatened with material injury because of dumped imports.

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[210] 19 U.S.C. § 1677(7)(C)(v). In determining whether imports are negligible, the statute directs the Commission 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.

[211] Imports from Thailand accounted for *** of domestic consumption in 1993, while imports from China accounted for almost *** of domestic consumption in 1994. CR at I-72, Table 28; PR at II-26, Table 28. For further discussion of the relationship between the condition of the industry and a negligibility finding in a cumulation for threat analysis, see my additional views in Carbon Steel Butt-weld Pipe Fittings, ITC Pub. 2970 (April 1995).

[212] 19 U.S.C. §771(7)(F).

[213] See 19 U.S.C. § 1677(7)(F)(i).

The cumulated foreign producers' capacity to produce all disposable lighters increased substantially during the period of investigation.[214] More importantly, the subject countries' capacity to produce child resistant lighters, which data are more compelling in a threat context given the CPSC's ban on importation of all lighters other than child resistant lighters, rose exponentially during the period of investigation,[215] and is projected to continue to grow substantially in 1995 and 1996.[216]

Cumulated production of all disposable lighters grew from roughly *** units in 1992 to over *** units in 1994, a year when domestic consumption of all disposable lighters was less than *** units.[217] Cumulated foreign production of child resistant lighters, again the more compelling factor, reached almost *** units in 1994, and is projected to increase to almost *** units by 1996.[218]

Capacity utilization for production of all disposable lighters by the subject foreign producers was relatively high in 1992, but then fell in 1993 and continued to decline even more dramatically in 1994.[219] More remarkably, the cumulated foreign producers utilized only *** of their production capacity to produce roughly the equivalent of 3/4 of domestic consumption of child resistant lighters in that year.[220]

A substantial portion of the cumulated foreign producers' shipments of all disposable lighters reached the United States market.[221] More importantly, almost all shipments of child resistant lighters from the cumulated countries were directed toward the United States market, as the U.S. is the only country to mandate production and importation of such lighters to the exclusion of other types of lighters.[222] In 1994, the cumulated countries exported almost ***

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[214] The cumulated foreign producers' capacity to produce all disposable lighters surged from *** units in 1992 to over *** units in 1994. CR at I-63 and I-64, Tables 23 and 26; PR at II-24 - II-25, Tables 23 and 26.

[215] The cumulated countries' capacity to produce child resistant lighters rose from *** units in 1993 to *** in 1994. CR at I-61, I-62 and I-64, Tables 20, 22, and 25; PR at II-24 and II-25, Tables 20, 22, and 25. In 1994, domestic consumption of child resistant lighters stood at *** units. CR at A-11, Table A-6; PR at A-3, Table A-6.

[216] The capacity of the cumulated countries to produce child resistant lighters is projected to reach *** units in 1995 and *** units in 1996. CR at I-61, I-62, and I-64, Tables 20, 22, and 25; PR at II-24 - II-25, Tables 20, 22, and 25.

[217] CR at I-63 and I-64, Tables 23 and 26; and I-16, Table 1; PR at II-25 and II-26, Tables 23 and 26; and II-10, Table 1.

[218] CR at I-61, I-62, and I-64, Tables 20, 22, and 25; PR at II-24 and II-25, Tables 20, 22, and 25.

[219] Cumulated capacity utilization was *** in 1992, *** in 1993 and *** in 1994. CR at I-63 and I-64, Tables 23 and 26; PR at II-24 and II-25, Tables 23 and 26.

[220] CR at I-61, I-62, and I-64, Tables 20, 22, and 25; PR at II-24 and II-25, Tables 20, 22, and 25. The cumulated foreign producers produced *** child resistant lighters in 1994; domestic consumption of child resistant lighters in 1994 was *** units. CR at I-61, I-62, and I-64, and A-11 , Tables 20, 22, 25, and A-6; PR at II-24, II-25, and A-3, Tables 20, 22, 25, and A-6.

[221] In 1992 *** of all disposable lighters shipped by the cumulated producers were imported into the U.S. This percentage grew to *** in 1993, and although it declined in 1994, that decline reflects the switch from shipments of standard lighters to shipments of child resistant lighters. CR at I-63 and I-64, Tables 23 and 26; PR at II-24 and II-25, Tables 23 and 26.

[222] Exports to the U.S. of child resistant lighters accounted for *** of all cumulated exports of such lighters between 1992 and 1994. CR I-61, I-62, and I-64, Tables 20, 22, and 25; PR at II-24 and II-25, Tables 20, 22, and 25.

child resistant lighters to the U.S.,[223] and this amount is projected to almost double by 1996.[224]

The cumulated countries substantially increased their share of domestic consumption of disposable lighters during the period of investigation. Cumulated imports of all disposable lighters accounted for *** of domestic consumption in 1992, *** in 1993, and *** in 1994.[225] More relevant, cumulated imports' share of domestic consumption of child resistant lighters surged from *** in 1993 to an astounding *** in 1994.[226] The surge is most notable in the second half of 1994, when the CPSC ban came into effect, as the imports' share of the domestic market rose from *** in the first half of 1994 to *** in the second half of 1994.[227]

End-of-period inventories of the cumulated imports held by U.S. importers also rose dramatically during the period of investigation. Inventories of all disposable lighters quadrupled during the period of investigation, rising from roughly *** units in 1992 to over *** units in 1994.[228] Inventories of child resistant lighters were non-existent in 1992, but surged from *** units in 1993 to over *** units in 1994, with the largest increase, again, occurring in the second half of 1994.[229]

The record indicates that the cumulated subject imports undersold the domestic prices by substantial margins throughout the period of investigation. Subject imports undersold the U.S. product in every product category and in every comparison for which data were available.[230] Chinese lighters undersold the U.S. product in 28 of 28 comparisons by margins ranging from 44.9% to 76.6%.[231] Lighters from Thailand undersold their domestically-produced counterparts in 58 of 58 comparisons by margins ranging from 25.3% to 75.6%.[232] In my view, these figures confirm that subject imports will continue to enter the domestic market at prices that will probably have a depressing or suppressing effect on domestic prices.

Finally I note that lighters from both countries currently face outstanding antidumping orders in the European Union and Argentina.[233] While these antidumping orders apply to standard lighters only, and not to child resistant lighters, their existence reinforces the likelihood of, and incentive for the subject foreign producers to shift away from the production of standard lighters to the production of child resistant lighters which could then be exported to the more lucrative United States market.

In conclusion, I emphasize that each of the statutory factors overwhelmingly points to a conclusion that the domestic industry is currently threatened with material injury. I therefore find that the domestic industry producing disposable lighters is threatened with material injury by reason of subject imports from China and Thailand and that the threat of injury is real and imminent.

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[223] Id. Again, domestic consumption of child proof lighters in 1994 was only *** units.

[224] Id.

[225] CR at I-71, I-72, Table 28; PR at II-26, Table 28.

[226] CR at A-11, Table A-6; PR at A-3, Table A-6.

[227] Id.

[228] CR at I-57, Table 18; PR at II-23, Table 18.

[229] Id.

[230] CR at I-96; PR at II-34.

[231] Id.

[232] Id.

[233] Petitioner's Pre-Hearing Brief at 54-55.

PART II

INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

These investigations result from a petition filed by BIC Corporation (BIC), Milford, CT, on May 9, 1994, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less than fair value (LTFV) imports of disposable lighters[1] from the People's Republic of China (China) and LTFV and subsidized imports of disposable lighters from Thailand.[2] Information relating to the background of the investigations is provided below.[3]

Date	*Action*
May 9, 1994	Petition filed with Commerce and the Commission; institution of Commission preliminary investigations
May 31, 1994	Commerce's notice of initiation
June 23, 1994	Commission's preliminary determinations
August 9, 1994	Commerce's preliminary negative countervailing duty determination for Thailand (59 F.R. 40525)[4]
September 20, 1994	Commerce's postponement of preliminary antidumping duty determination for China (59 F.R. 48284)
October 24, 1994	Commerce's preliminary LTFV determination for Thailand (59 F.R. 53414); institution of Commission final investigation for Thailand (59 F.R. 55853, November 9, 1994)
November 16, 1994	Commerce's postponement of final LTFV determination for Thailand (59 F.R. 59210); revised schedule for Commission's investigation for Thailand (59 F.R. 66973, December 28, 1994)
December 13, 1994	Commerce's preliminary LTFV determination for China (59 F.R. 64191)[5]

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[1] For purposes of these investigations, disposable lighters are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75°F (24°C) exceeds a gauge pressure of 15 pounds per square inch. Disposable lighters are provided for in subheadings 9613.10.00 (nonrefillable) and 9613.20.00 (refillable) of the *Harmonized Tariff Schedule of the United States* (*HTS*) with most-favored-nation tariff rates of 9.6 and 9 percent ad valorem, respectively, applicable to imports from the People's Republic of China and Thailand. Imports from Thailand are eligible for duty-free entry under the Generalized System of Preferences.

[2] A summary of the data collected in the investigations is presented in app. A.

[3] *Federal Register* notices cited in the tabulation are presented in app. B.

[4] On September 13, 1994, Commerce published a notice that aligned the due date for the final countervailing duty determination with the date of the final antidumping duty determination for Thailand (59 F.R. 46961).

[5] Commerce calculated preliminary LTFV margins to be as follows: China National Overseas Trading Corp., 37.48 percent; Cli-Claque Co., Ltd., 7.03 percent; Gao Yao (HK) Hua Fa Industrial Co., Ltd., 0.10 percent (de minimus); Guangdong Light Industrial Products Import and Export Corp., 35.08 percent; PolyCity Industrial, Ltd., 63.09 percent; and all others, 197.85 percent.

Commerce's notice stated that "windproof refillable lighters, as described in a memorandum to Barbara R. Stafford, dated December 5, 1994, are excluded from the scope of this investigation." According to that memorandum, windproof lighters mix the fuel with air internally by built-in suction bores. The mixture is ignited internally by a spark from an electric piezo and burned inside an internal burner cylinder. A catalyzer coil at the outlet at the top of the cylinder is heated to extremely high temperatures, which creates an uninterrupted igniting device for the continuously ejected mixture of combustible gas and air which reignites if blown out by wind. The metal outer casing of the lighter gives it a more substantial feel when compared to the

(continued...)

January 4, 1995	Commerce's preliminary determination of critical circumstances for China (60 F.R. 436)
January 31, 1995	Commerce's postponement of final LTFV determination for China (60 F.R. 5899); institution of Commission final investigation (60 F.R. 6289, February 1, 1995)
February 9, 1995	Commission's revised schedule for hearing and related dates (60 F.R. 8733, February 15, 1995)
February 16, 1995	Commerce's amendment to preliminary LTFV determination for China (60 F.R. 9008)[6]
March 3, 1995	Commerce's preliminary negative determination of critical circumstances for Thailand (60 F.R. 13956, March 15, 1995)
March 8, 1995	Commerce's final negative countervailing duty determination for Thailand (60 F.R. 13961, March 15, 1995); Commerce's final LTFV determination[7] and final negative critical circumstances determination for Thailand (60 F.R. 14263, March 16, 1995)
March 21, 1995	Commission determination to conduct a portion of the hearing *in camera* for China and Thailand (60 F.R. 14961)[8]
April 13, 1995	Date of the Commission's vote for Thailand
April 21, 1995	Commission determination transmitted to Commerce for Thailand
April 27, 1995	Scheduled date for Commerce's final LTFV determination for China
June 2, 1995	Scheduled date for the Commission's vote for China
June 12, 1995	Commission determination due to Commerce for China

THE PRODUCT

Description and Uses

Disposable pocket lighters are flame-producing consumer products commonly used to ignite tobacco in cigarettes, cigars, and pipes. These lighters are normally nonrefillable, and are meant to be disposed of after the fuel supply, usually a type of butane or propane, is depleted. Such lighters are composed of a body, a base, a lever or fork, a jet, a lighting mechanism, a valve, fuel, and other minor components. In the most widely used operating method, a flint and spark wheel ignite a jet of butane gas released by a thumb-operated valve and lever assembly.[9] The flame is extinguished when the lever is released.

The Consumer Product Safety Commission (CPSC) established a safety standard that requires disposable and novelty lighters, as those terms are defined in the standard, to meet specified

[5] (...continued)
typical disposable lighters, as does the feature of a hinged cover that can be opened and closed. Disposable lighters tend to be of simpler design, and tend to use less expensive materials.

[6] The revised estimated LTFV margin for PolyCity Industrial, Ltd. is 39.37 percent.

[7] Commerce calculated final LTFV margins to be as follows: Thai Merry Co., Ltd. (Thai Merry) and all others, 25.04 percent.

[8] A list of witnesses appearing at the hearing is presented in app. C.

[9] Counsel for Cli-Claque argued in its prehearing brief that lighters with electronic ignition should be treated as a separate like product from lighters with flint ignition, Ober, Kaler, Grimes & Shriver prehearing brief, pp. 1-7. ***.

requirements for child resistance (58 F.R. 37557, July 12, 1993).[10] This standard applies to all disposable lighters produced in or imported into the United States on or after July 12, 1994. The CPSC definition of a disposable lighter is a lighter that either is (1) not refillable with fuel or (2)(i) its fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these liquified petroleum gases (LPGs), whose vapor pressure at 75°F (24°C) exceeds a gauge pressure of 15 psi (103 Kpa), and (ii) it has a customs valuation or ex-factory price of under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993.[11] The CPSC definition constitutes the current market definition of disposable lighters.

Whereas disposable lighters are most often nonrefillable and are meant to be disposed of after the fuel supply is depleted, inexpensive refillable LPG lighters are, in fact, present in the market and meet the CPSC definition of disposable lighters.[12] Pocket lighters that use LPG fuel and are valued $2.00 or more and lighters that use liquid fuel such as naphtha are not covered by the CPSC standard for child resistance. The time period covered by the data collected in these investigations spans periods before and after the effective date of the applicable CPSC safety standard.[13] [14]

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[10] Exhibit 4 of the petition contains a copy of the *Federal Register* notice of the CPSC Child-Resistant Lighter Safety Standard.

[11] 58 F.R. 37584, July 12, 1993.

[12] The following firms reported imports of refillable disposable lighters: ***.

[13] Data presented in the prehearing report for 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994 are now presented in app. D.

[14] The following definitions are used in this report to explain the coverage for the different categories of pocket lighters for which data are presented.

<u>Nonrefillable disposable pocket lighters</u>.--Nonrefillable disposable pocket lighters are disposable pocket lighters whose fuel is butane, isobutane, propane, or other LPG, whose vapor pressure at 75°F (24°C) exceeds a gauge pressure of 15 pounds per square inch. These lighters have no provision to be refilled with LPG and are normally discarded when the initial fuel supply is exhausted. Nonrefillable disposable pocket lighters are classified under subheading 9613.10.00 of the *HTS*.

<u>Refillable disposable pocket lighters</u>.--Refillable disposable pocket lighters are disposable pocket lighters whose fuel is LPG, whose vapor pressure at 75°F (24°C) exceeds a gauge pressure of 15 pounds per square inch. These lighters have a provision to be refilled with LPG and may or may not be discarded when the initial fuel supply is exhausted. For purposes of these investigations, refillable disposable pocket lighters are those meeting the previous descriptions that have a customs or ex-factory unit value under $2.00. Refillable disposable pocket lighters are classified under subheading 9613.20.00 of the *HTS*.

<u>Standard disposable pocket lighters</u>.--Standard disposable pocket lighters are pocket lighters that meet the previous definitions for nonrefillable and refillable disposable pocket lighters, but do not meet the requirements for "child resistant disposable pocket lighters" (defined below).

<u>Child resistant disposable pocket lighters</u>.--Child resistant disposable pocket lighters are pocket lighters that meet the previous definitions for nonrefillable and refillable pocket lighters and, in addition, meet the requirements of the CPSC as described in its Child-Resistant Lighter Safety Standard (16 C.F.R. Part 1210).

<u>All other pocket lighters</u>.--For purposes of these investigations, all other pocket lighters are pocket lighters not meeting the above definitions of disposable lighters. Such lighters would include all lighters using non-LPG fuel (such as Zippo lighters), all lighters whose customs or ex-factory unit value is $2.00 or more, and all lighters whose fuel is LPG, whose vapor pressure at 75°F (24°C) is 15 pounds per square inch or less.

BIC, the only U.S. producer of disposable pocket lighters, manufactured two types of disposable lighters domestically during 1992-94: the BIC Fixed Flame lighter[15] and the BIC Child Guard lighter.[16] The patented Child Guard lighter is now in production at its Milford, CT, facility.[17]

Figures 1 and 2 show the component parts of the Fixed Flame and Child Guard models. The Fixed Flame lighter has 17 component parts. The Child Guard has three additional parts that were incorporated to make the lighters child resistant: (1) a jet spring that retards jet movement, (2) a latch that restricts the fork (which lifts the jet that allows fuel release) when not in use, and (3) a latch spring that returns the latch automatically to latched position. The Child Guard lighter is the result of a 7-year, $22 million development program. All BIC lighters meet the safety standards of the American Society for Testing and Materials (ASTM) Standard Consumer Safety Specification for Lighters (F-400-92).

Most disposable lighters imported from China and Thailand have parts similar to those found in the BIC lighters. However, respondents have stated that the BIC disposable lighters are of higher quality than those imported from China or Thailand.[18]

Production Process

The production process for most disposable lighters consists of five operations: (1) components manufacture; (2) subassembly; (3) final assembly; (4) test and inspection; and (5) packaging. BIC's production operations are highly automated; ***.

BIC purchases most materials within the United States.[19] ***.

* * * * * * *

According to testimony presented at the Commission's hearing, disposable lighters imported from China and Thailand are produced using the same manufacturing technologies, with the only differences being the degree of automation and the quality control in the production facility.[20]

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[15] BIC also manufactures a "Limited Edition" line of fixed flame disposable lighters that have a designer or fashion wrap. The wrap designs, such as major league sports logos, are more expensive than the company's basic fixed flame lighter.

[16] The Child Guard lighter was developed by BIC to meet the CPSC standard which addresses the risks of injury associated with lighters that can be operated by young children.

[17] The Child Guard lighter, designated as model J-16, is a modification of BIC's fixed flame J-6 model. Production of the first generation of Child Guard lighters began in June 1992 ***. ***.

[18] BIC's lighter is made of stronger plastic than Thai or Chinese lighters, the BIC lighter has a fixed instead of an adjustable flame, and the BIC lighter holds more fuel and therefore has more lights than the Thai and Chinese lighter, hearing TR, p. 121.

[19] Hearing TR, p. 29.

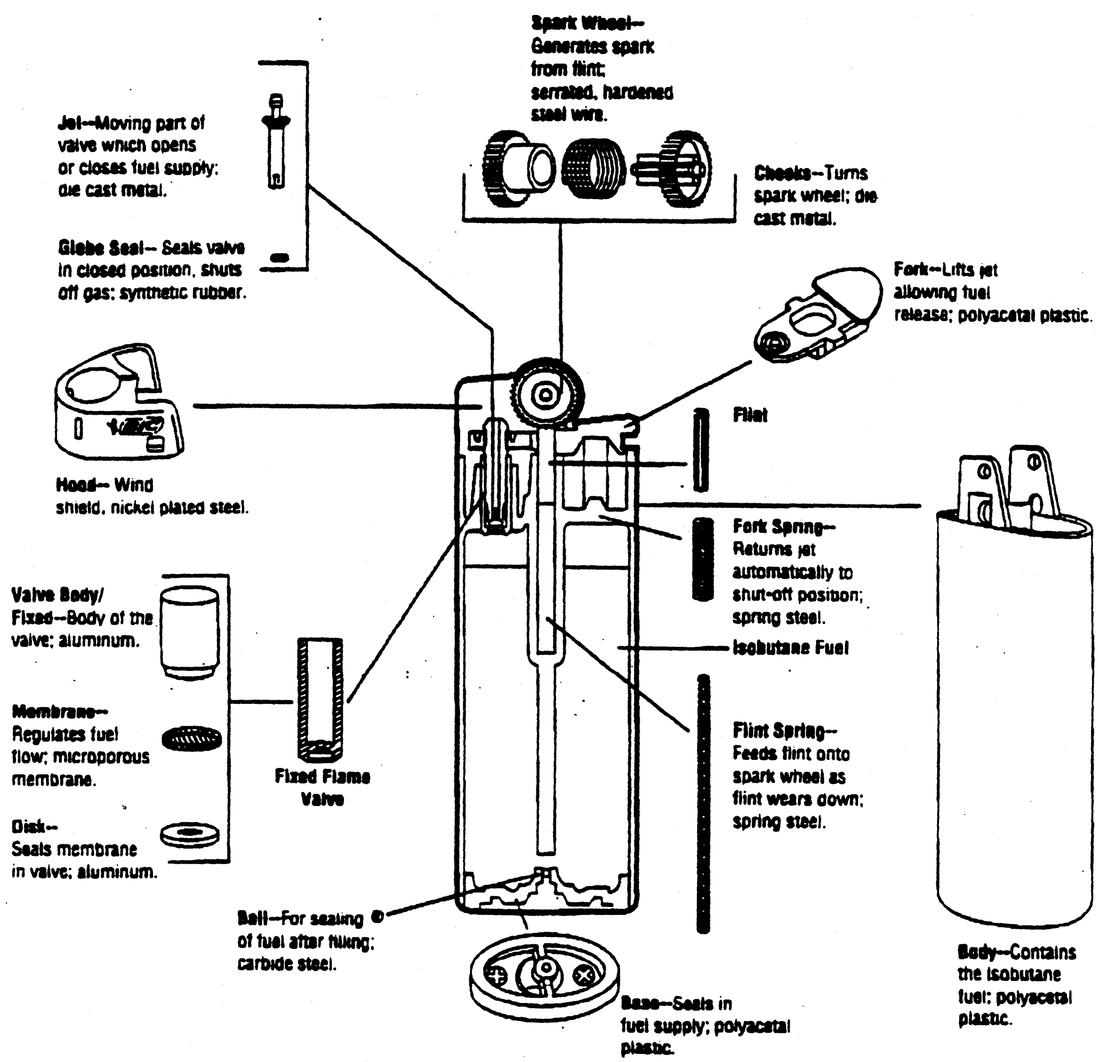
[20] Hearing TR, p. 24. However, nondisposable lighters, such as those produced by Zippo, can not be produced in the same manufacturing facilities used to produce disposable lighters, petitioner's posthearing brief, attachment 9, p. 7.

Figure 1
BIC Fixed Flame lighter

BIC

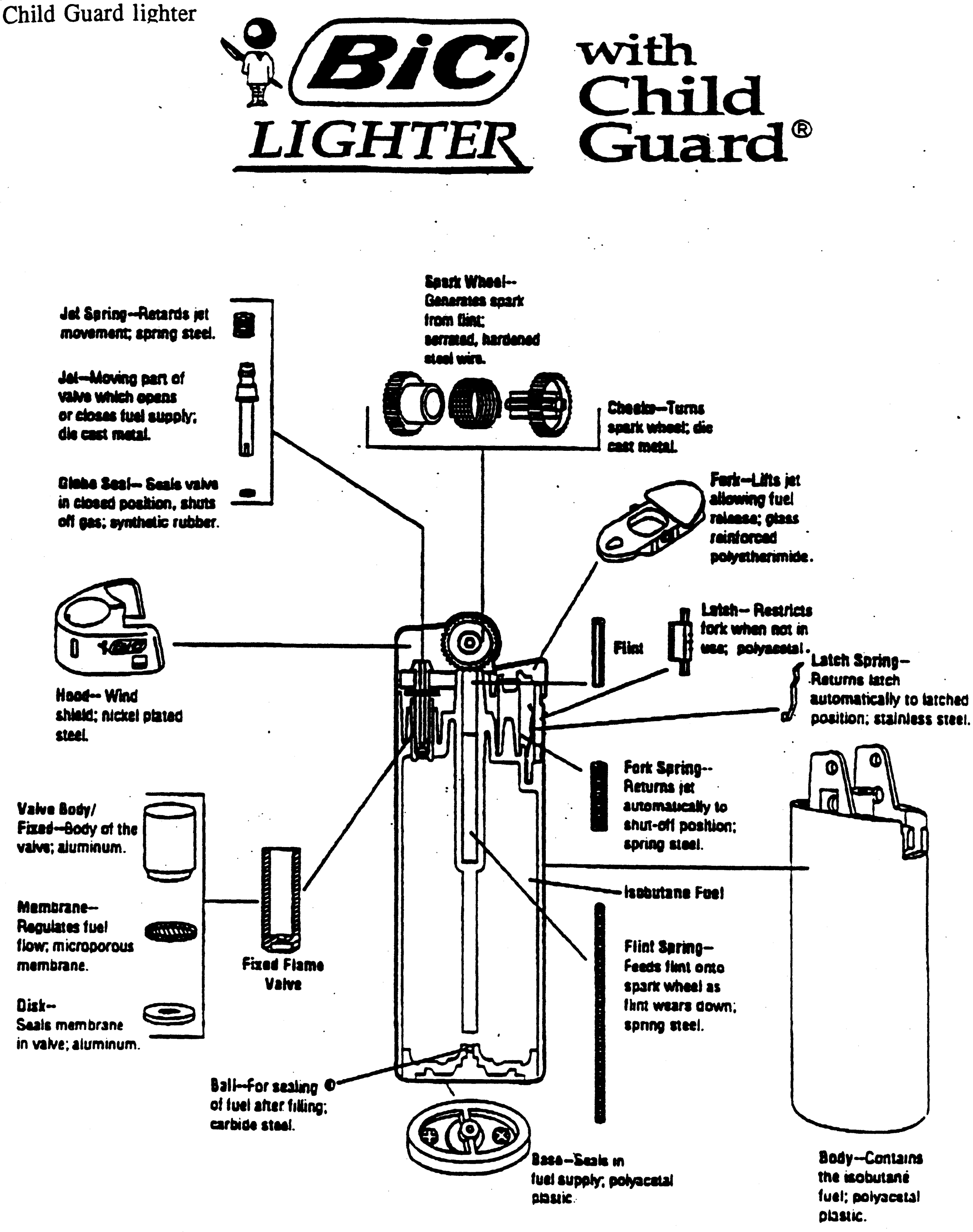
LIGHTER

With Fixed Flame



Source: BIC Corp., "Disposable Lighters from the People's Republic of China and Thailand," (petition before the U.S. International Trade Commission), exhibit 1, May 9, 1994.

Figure 2
BIC Child Guard lighter



Source: BIC Corp., "Disposable Lighters from the People's Republic of China and Thailand," (petition before the U.S. International Trade Commission), exhibit 1, May 9, 1994.

Substitute Products

Several substitute products perform the same flame-producing function as the disposable pocket lighters under investigation. Nondisposable pocket lighters[21] and certain electrical lighters provide some substitution, as do table lighters to a lesser degree.[22] These items are generally more expensive than disposable pocket lighters. Matches, however, are the most direct substitutes. A large percentage of matches are given away as promotional items and are readily available.[23] Even if matches are purchased, they provide a relatively inexpensive substitute for disposable lighters.[24]

Comparison of the Domestic and Imported Product

In its petition, at the conference, and at the hearing, petitioner argued that there is little or no functional difference between the domestic disposable lighters and their imported counterparts. All disposable lighters have the same general physical characteristics and provide the same use as a flame-producing product. Petitioner also argued that there is one like product that includes standard disposable lighters and child resistant disposable lighters.[25] The CPSC standard requires that, beginning July 12, 1994, all disposable lighters produced in or imported into the United States must be child resistant.[26]

Counsel for the Chinese and Thai respondents, on the other hand, argued that the imported disposable lighters are low-end, low-cost products that do not compete with the higher quality

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[21] For purposes of these investigations, nondisposable lighters include LPG-fueled refillable lighters valued at $2.00 or more and liquid-fuel lighters. Liquid-fuel lighters, such as those produced by Zippo, are of an older and significantly different design than LPG-fueled lighters. For example, in a liquid-fuel lighter, a flint and spark wheel ignites liquid fuel (typically naphtha) drawn through a wick. Liquid-fuel lighters usually have a cap for shutting off the oxygen supply to the lighter to extinguish the flame. According to the CPSC, liquid-fuel lighters are not particularly close substitutes for LPG disposables because the liquid fuel refilling procedure is relatively inconvenient and messy, and the liquid fuel is unpressurized and tends to evaporate. Thus, unlike LPG disposables, liquid-fuel lighters are shipped and sold to the consumers without fuel, and consumers must purchase fuel and fill the lighters before initial use (58 F.R. 37566, July 12, 1993).

Nondisposable pocket lighters serve the same function as disposable pocket lighters. The major advantage of nondisposable liquid-fuel lighters is that they last much longer than disposable lighters. Nondisposable pocket lighters are not usually sold as "impulse items" or in multipacks, like disposable pocket lighters, but rather at specialty stores (e.g., jewelry stores and tobacco shops) as single items.

[22] The most common electrical lighters are those found in automobiles. Electrical lighters operate from the automobile's electrical system, are not disposable, are not pocket lighters, and are classified in *HTS* subheading 9613.80.20. Table lighters are designed to be placed on tables and desks. These lighters are generally larger and more expensive than pocket lighters, are refillable with fuel, and are classified under *HTS* subheading 9613.30.00.

[23] Conference TR, pp. 84 and 92.

[24] Mr. McDonough, Area Manager for Product Engineering and Quality Control, BIC, argued that disposable lighters are considered by the consumer to be a safer, more convenient product than matches or refillable lighters; conference TR, p. 47.

[25] Petition, pp. 8-10; conference TR, pp. 49-50; petitioner's postconference brief, pp. 4-20; hearing TR, pp. 13 and 75.

[26] The Commission's questionnaires asked firms to describe the effect that the CPSC standard had on their firm. Several importers stated that, because of the CPSC standard, they are not presently importing disposable lighters ***, whereas other importers reported little or no effect on their business ***. ***.

domestically produced product.[27] Counsel also argued that child resistant disposable lighters and all other standard disposable lighters are separate like products.[28]

THE U.S. MARKET

Apparent U.S. Consumption

Data on apparent U.S. consumption of disposable lighters are based on BIC's U.S. shipments, U.S. shipments of disposable lighters imported from Thailand as reported in questionnaire responses, and on official U.S. import statistics for countries other than Thailand because questionnaire coverage was incomplete for China and "other sources." These data are presented in table 1 and figure 3. Apparent consumption based on quantity increased steadily during 1992-94 but dropped between the half-year periods January-June 1994 and July-December 1994. Consumption based on value, however, fell irregularly during January 1992-December 1994. The trends were, no doubt, affected by the change to child resistant lighters in July 1994 and by stockpiling of standard disposable lighters prior to the change.

The market for disposable lighters has grown during the past 5 years as disposable lighters have increasingly displaced matches.[29] Petitioner explains the increase in consumption as the result of growth in cigarette sales at convenience stores where disposable lighters are frequently sold in packs.[30] Counsel for Thai Merry argued that the increase in demand for disposable lighters is the result of the creation of a new market for a low-end, no-brand lighter that consumers are increasingly buying instead of matches.[31]

Table 1
Disposable pocket lighters: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, by products, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Figure 3
Disposable pocket lighters: Apparent U.S. consumption, by sources, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

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[27] A principal difference between the imported item and the domestic item is the type of plastic used in the body of the lighter. Imported disposable lighters are generally made of transparent plastic versus the solid colored polyacetal plastic used in the production of the domestic disposable lighters. In addition, the domestic disposable lighters have a fixed flame, whereas some imported lighters have an adjustable flame. According to a BIC advertisement, the domestic lighters have about 2,500 lights per lighter, whereas the imported lighters have significantly fewer lights per lighter, Willkie Farr & Gallagher prehearing brief and hearing TR, pp. 117-118. Also, see section of this report entitled "Product Comparisons Between U.S. and Chinese/Thai Disposable Lighters."

[28] Conference TR, pp. 65-66, 69, 80-83, 89-90, 95, and 101-104; Willkie Farr & Gallagher's postconference brief, pp. 2-10. Aitken Irvin & Lewin's postconference brief adds the argument that refillable lighters should be a third like product, pp. 2-12.

[29] Conference TR, pp. 47 and 92; Pepper Hamilton & Scheetz postconference brief, p. 23.

[30] Conference TR, pp. 44 and 63. Petitioner believes that apparent consumption was distorted in 1993-94 by stockpiling of standard disposable lighters prior to the effective date of the CPSC standard, hearing TR, pp. 63-66.

[31] Willkie Farr & Gallagher's postconference brief, pp. 15-16.

U.S. Producer[32]

BIC, a subsidiary of Societe BIC, S.A., Clichy, France, is the only remaining U.S. producer of disposable lighters, which it produces at its plant in Milford, CT.[33] Societe BIC has a *** ownership of BIC. Societe BIC has disposable lighter plants in France, Spain, Brazil, and New Zealand and has *** interest in a plant in Greece. BIC purchases from Societe BIC and other affiliated companies products that it does not presently manufacture in the United States (such as the Mini BIC lighters and adjustable flame lighters), certain component parts, and machinery and equipment.

Scripto, Fontana, CA, a wholly-owned subsidiary of Tokai Corp., Japan, produced disposable lighters in the United States until mid-1989, when it began moving its disposable lighter operations to *** Mexico. Scripto continued to produce some lighter parts at its plant in Fontana, CA, and shipped them to Mexico for assembly. By 1992, Scripto eliminated its U.S. disposable lighter parts operations, and in ***.[34] Scripto imported disposable lighters from *** during 1992-94.

U.S. Importers

Questionnaires were sent to approximately 140 firms believed to have imported disposable lighters during 1992-94.[35] The Commission received responses with usable data from 29 importers. It was not possible to contact a number of importers of lighters from China listed in Customs documents because some of the firms had gone out of business or moved, and a number of firms that received the Commission's questionnaires did not have listed phone numbers, thus precluding direct communication. There is a concentration of importers of disposable lighters from China in California, but importers are located throughout the United States and sell the imported product nationwide.[36] The Commission's importer questionnaire coverage, based on units of disposable pocket lighters imported in 1993, was 54.6 percent for China and virtually complete for Thailand when compared with official import statistics of the U.S. Department of Commerce.

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[32] The Commission also collected data from Zippo Manufacturing Co. on its production of nondisposable lighters. These data are presented in app. A and app. D, tables A-8 and D-8.

[33] BIC is a diversified company that also produces stationery products (e.g., Wite-Out, ball pen writing instruments, highlighting markers, mechanical pencils, etc.), disposable single-blade and twin-blade shavers, and the BIC Sailboard at three plants in South Carolina and one in Clearwater, FL. BIC also owns and operates manufacturing plants in Canada, Mexico, and Guatemala.

[34] Petition, p. 38, and ***. See also testimony of Mr. Tucker at the conference, conference TR, p. 105.

[35] The petition identified 66 firms believed to be importing disposable lighters from China or Thailand, and additional firms were identified through Customs documents.

[36] Effective July 12, 1994, only disposable lighters meeting the CPSC standard can be imported into the United States. On Jan. 25, 1995, a call was placed to *** of the CPSC to inquire if the CPSC would make available to the Commission a list of the firms that have met the CPSC standard for disposable lighters. *** stated that under CPSC rules the identity of the firms is proprietary information that cannot be released without the firms' consent. ***. According to respondents, the CPSC ultimately released the list, Exhibit 13 of Willkie Farr & Gallagher's prehearing brief and hearing TR, p. 111. The CPSC list identifies the U.S. manufacturer and importers of complying lighters but does not identify the country of origin for importers.

New York Lighter was the largest importers of Chinese disposable lighters during 1992-94,[37] and ***.[38] Calico Brands, Inc. (Calico) was the largest importer of Thai lighters.[39] Calico's disposable lighters are produced by Thai Merry.

Other than China and Thailand, the principal sources of imported disposable lighters (based on quantity reported in Commerce official statistics) were Mexico,[40] France, the Netherlands, the Philippines,[41] Spain, and Hong Kong in 1994.[42]

Channels of Distribution

Disposable lighters produced in the United States are mainly sold to distributors (such as tobacco wholesalers, candy wholesalers, food wholesalers, general merchandise wholesalers, and convenience store wholesalers) whose main distribution base is convenience stores such as 7-Eleven and independently owned food stores,[43] and retail chains from food stores such as Giant and Safeway to drug stores like CVS and mass merchandisers such as K-Mart and WalMart.[44] A high impulse-purchase item, marketing surveys show that 80 percent of disposable lighter purchases by consumers are not pre-determined. BIC reported that its U.S. shipments of disposable lighters in 1993 went to the following *** channels of distribution: ***.

Some distributors and retail outlets sell both U.S. and imported disposable lighters.[45] Disposable lighters from China and Thailand reach the market essentially through the same channels of distribution.[46] Counsel for respondents argue that BIC dominates the brand-name market characterized by sales of disposable lighters to large, national retail chains, whereas the generic market is characterized by sales of no-frills, no-name disposable lighters in smaller volumes to regional independent wholesalers.[47] Mr. Nordstrom, President of New York Lighter, testified at the conference that the disposable lighters imported from China and Thailand are no-name, low-end

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[37] Hearing TR, p. 102. ***.

[38] ***.

[39] Calico included data for ***, in its questionnaire response. Calico is the exclusive U.S. importer of disposable lighters produced by Thai Merry, conference TR, p. 99. Thai Merry's exports to the United States represent the "vast majority" of imports from Thailand, letter of Mar. 6, 1995, to Commission Secretary from Thai Merry's counsel.

[40] ***.

[41] ***.

[42] ***.

[43] A trend emerging in the convenience store business in the last 5 years is the "Wagon Jobber" selling high-volume, fast-selling items to chain convenience stores and independently owned convenience and food stores; conference TR, pp. 30 and 44, Willkie Farr & Gallagher's postconference brief, pp. 19-21, and postconference brief submitted by Pepper Hamilton & Scheetz, pp. 24-26; hearing TR, pp. 20, 38, and 123.

[44] Testimony of M. Gray, National Sales Manager, BIC, at the Commission's conference, conference TR, pp. 28-30; hearing TR, pp. 34-41.

[45] *** and conference TR, p. 101. See also affidavit of ***, ex. 5 of Willkie Farr & Gallagher's postconference brief.

[46] Conference TR, p. 56.

[47] Willkie Farr & Gallagher postconference brief, pp. 17-23, and Pepper Hamilton & Scheetz postconference brief, pp. 24-27.

lighters that sell at Mom and Pop convenience stores, neighborhood liquor stores, and street vendor and cigarette stands, places where BIC lighters are not generally sold.[48]

* * * * * * *

U.S. importers of disposable lighters from China reported that shipments of the imported product in 1993 went to the following channels of distribution: ***.

CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The information presented in this section of the report is based on the questionnaire response of BIC, the only U.S. producer of disposable lighters during 1992-94.[49]

U.S. Capacity, Production, and Capacity Utilization

Table 2 presents BIC's data on capacity, production, and capacity utilization. BIC's capacity to produce standard disposable lighters ***. ***. BIC's production of standard nonrefillable disposable lighters *** from 1992 to 1993 and *** from 1993 to 1994. BIC's production of child resistant nonrefillable disposable lighters began in 1992 and *** in 1993 and 1994. BIC does not produce refillable lighters.

Capacity utilization for standard disposable lighters *** from 1992 to 1994. BIC's capacity utilization for child resistant disposable lighters ***.

Table 2
Disposable pocket lighters: U.S. capacity, production, and capacity utilization, by products, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

U.S. Producer's Shipments

Table 3 and figures 4 and 5 present data on BIC's shipments of disposable lighters during 1992-94.[50] U.S. shipments of all (standard and child resistant) disposable lighters, based on quantity, *** between 1992 and 1993, and *** between 1993 and 1994. BIC's export shipments of disposable lighters *** between 1992 and 1994.[51] The unit values of BIC's shipments ***. BIC's U.S. shipments of child resistant lighters ***. Shipments based on value followed *** trends.

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[48] Conference TR, pp. 95-97. Sales of imported disposable lighters to distributors often involve a multiple chain of companies that distribute and disperse the products to convenience type stores; conference TR, p. 121. See also Willkie Farr & Gallagher's postconference brief, pp. 18-20; Pepper Hamilton & Scheetz postconference brief, p. 32; and hearing TR, pp. 113-116 and 118-123.

[49] Data for Zippo, the U.S. producer of nondisposable lighters, are presented in app. A and app. D, tables A-8 and D-8.

[50] ***.

[51] ***.

Table 3
Disposable pocket lighters: Shipments by U.S. producer, by products and by types, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Figure 4
Standard disposable lighters: Shipments by U.S. producer, by types, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Figure 5
Child resistant disposable lighters: Shipments by U.S. producer, by types, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

U.S. Producer's Inventories

Table 4 presents data on BIC's end-of-period inventories of disposable lighters during 1992-94. Such inventories *** from 1992 to 1993 and *** from 1993 to 1994.

Subpart C of the CPSC rules on disposable lighters relates to "anti-stockpiling." The rules contain anti-stockpiling provisions that limit the production or importation of noncomplying lighters between the promulgation of the rule (July 12, 1993) and its effective date (July 12, 1994) to 120 percent of each firm's rate during a base period; this base period could be any 1-year period of a firm's choosing during the 5 years prior to the publication date of the final rule (58 F.R. 37562, July 12, 1993).

* * * * * * *

Table 4
Disposable pocket lighters: End-of-period inventories of U.S. producer, by products, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Employment, Wages, and Productivity

BIC's employment and productivity data are presented in table 5. The number of production and related workers (PRWs) producing disposable lighters ***. ***. BIC's PRWs are represented by the United Rubber, Cork, Linoleum, and Plastic Workers of America, Local 134.

Table 5
Average number of U.S. production and related workers producing disposable pocket lighters, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by products, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Financial Experience of the U.S. Producer

BIC,[52] the only U.S. producer of disposable pocket lighters, provided financial data on its operations separately on trade sales and company transfers of (1) all disposable pocket lighters, (2) standard nonrefillable disposable pocket lighters, and (3) child resistant nonrefillable disposable pocket lighters (BIC does not produce refillable lighters). Zippo does not produce any disposable pocket lighters, but furnished data on all other pocket lighters, which are presented in table A-8 in appendix A and in table D-8 in appendix D.

Overall Corporate Operations

BIC, a U.S. subsidiary (publicly held) of a French company (Societe BIC, S.A.), is a diversified manufacturer of disposable consumer items such as stationery products, lighters, and shavers. BIC (through its parent company) is affiliated with companies that produce lighters in Brazil, France, Greece, Spain, and New Zealand. In 1994, BIC's total corporate sales were $475.1 million, and worldwide lighter sales were $108.9 million, 22.9 percent of total sales. A summary of BIC's worldwide lighter sales and income for 1991 to 1994 is shown below (in millions of dollars, except as noted):[53]

Year	Net sales	Income before taxes[54]	Income before taxes as a share of net sales (*Percent*)
1991	96.1	3.3	3.4
1992	101.0	8.5	8.4
1993	102.3	11.4	11.1
1994	108.9	11.4	10.5

The increase in profitability for lighter operations was primarily due to decreases in legal costs, as stated in BIC's 1993 Annual Report:

> "Our policy of mounting strong defenses against product liability claims and lawsuits involving lighters continued to prove successful in 1993. As a result of this longstanding policy, we continue to experience a decrease in the number of claims and lawsuits filed, while achieving increases in lighter profits as a result of decreased legal expenses."[55]

Additional comments relating to lighters from BIC's 1993 Annual Report and from its 1994 Quarterly and Annual Reports are shown below:

> 1993 Annual Report
>
> "A mandatory standard for child-resistant lighters was adopted by the U.S. Consumer Product Safety Commission in July 1993. BIC supports the new standard and actively worked with the CPSC for several years to make the mandatory standard a reality. BIC, as

[52] BIC's questionnaire data were verified. Revised data as per the verification are presented in this final report.

[53] BIC's 1993 and 1994 Annual Report, p. 12.

[54] Also before extraordinary credit and cumulative effect of change in accounting principle.

[55] BIC's 1993 Annual Report, p. 2.

the category expert and leader, introduced its first BIC lighter with Child Guard into the market in June 1992 and is positioned to provide its accounts with a full line of patented, enhanced child-resistant lighters.

However, we do not expect to feel the full impact of the new regulations, which go into effect in July 1994, until 1995 when the industry has worked off its inventories. The current market continues to feel the impact of low-price, low-quality imports, primarily from the Far East. While we expect continued intense competition from both domestic and foreign sources, the higher standards required for child-resistant lighters should force higher prices at the lower end of the market.

We continue to introduce new series of our Limited Edition design lighters. They offer retailers and consumers fashion, quality and long-lasting performance.

Despite the changing environment for lighters, we continue to hold our high market share in North America, outselling all other brands. Last year saw growth in sales, units and profit margins for this product."[56]

First Quarter 1994 Report

"In the United States, all three major product groups achieved modest sales gains. Profits in the United States increased at a higher rate than sales, however, these improvements were partially offset by declines in foreign operations, primarily Mexico."

Second Quarter 1994 Report

"In the United States, each of our core businesses - Stationery Products, Lighters, and Shavers - had increases in unit and dollar sales, as well as profits."

Third Quarter 1994 Report

"In the United States, each of our core businesses - Stationery Products, Lighters, and Shavers - had increases in dollar sales. Unit sales increased in lighters and shavers. Profits were up strongly in stationery products and shavers while lighter profits were off slightly, primarily as a result of costs incurred in modifying equipment required for the manufacture of child resistant lighters."

1994 Annual Report

"July 12, 1994, was the date set by the U.S. Consumer Product Safety Commission for all disposable lighters manufactured or imported into the United States to meet the new child-resistant standard. Due to inventories in place on that date, the full effect of this mandate will not be felt until 1995 when the supply of noncomplying lighters is exhausted. As the industry leader, BIC actively supported the new standard and in 1992 introduced its patented BIC lighter with Child Guard--which exceeds the standard set for child resistancy.

[56] Ibid., p. 6.

Competitors have introduced their own versions of child-resistant lighters. Since each company's lighter requires a different motion to generate a flame, consumers will be more likely to stay with the one brand with whose operation they are most comfortable. The result may be that brand loyalty will become more of a factor than it has in the past. As the largest selling lighter manufacturer in the world, BIC should benefit from this trend.

We continue to design, develop and test new child-resistant versions with the objective of maximizing consumer friendliness, while still exceeding the child resistancy standard.

BIC had been actively involved and has underwritten a new program to fill the need for fire safety and prevention education among young children. The program, *Play Safe! Be Safe!*, is a unique multimedia fire safety education presentation created for children ages three to five.

Children who took part in the *Play Safe! Be Safe!* program showed a significantly greater understanding of fire safety concepts and of what to do in case of fire. Through a video program, a firefighter is brought into the classroom to teach young children the basics of fire prevention and show them how to respond to specific situations in case of fire. BIC's goal is to help make safety education a vital and enjoyable part of preschool programs and is providing kits for this purpose to communities throughout the U.S.[57]

The Corporation is the leading manufacturer and distributor of disposable lighters in North America. Based on market research studies and other public information, BIC lighters continue to maintain their market leadership position despite the importation of low-quality, inexpensive lighters from the Far East.

During 1992, the Corporation introduced to the market its BIC Lighter with Child Guard. This model, now in its second version, makes it even more difficult for children to light and exceeds the United States Consumer Product Safety Commission standard that went into effect on July 12, 1994."[58]

"During the year, we embarked on a new advertising program that is predicated on a different concept of how we present our products to the public. It represents a new direction and advertising philosophy for BIC. Under the general theme, *BIC. Worth Every Penny.*, it gives us a platform on which to position all our products, not just one individual product at a time.

We continue to aggressively defend ourselves against product liability claims and lawsuits involving lighters. In November 1992, a state court jury in Creek County, Oklahoma, in a 9 to 3 verdict, awarded $11 million in actual damages and $11 million in punitive damages against the Corporation in connection with a case involving a cigarette lighter. On May 3, 1994, the Court of Appeals of Oklahoma reduced the amount of punitive damages by $8 million. Later in 1994, the Oklahoma Supreme Court declined to hear our appeal seeking to have the entire verdict overturned. We view this decision as totally inconsistent with the facts presented, especially when at the close of the evidence, the trial judge expressly determined that BIC was not negligent. Despite this decision, the more than 70 decisions

[57] BIC's 1994 Annual Report, p. 7.

[58] Ibid., p. 13.

now rendered in BIC's favor by judges and juries throughout the country reaffirm the belief that our policy of pursuing a vigorous defense is the right approach.

The Corporation has significant contingent liabilities with respect to pending litigation, claims and disputes, principally relating to its lighters, which arise in the ordinary course of its business."[59]

"In 1994, the improvement in lighters primarily represents an increase in units sold and higher average selling price for the BIC fixed flame lighter in the United States. In the United States, higher average selling price in each of the Corporation's core operations (stationery products, lighters, and shavers) contributed to the gross profit increase. Lower unit costs in stationery products and shavers also contributed to this increase. These improvements were partially offset by slightly higher unit costs in lighters. Higher unit costs in lighters were due to the conversion to BIC Lighter with Child Guard."[60]

Operations on All Disposable Pocket Lighters

Income-and-loss data for all disposable pocket lighters for BIC's trade-only operations and trade-and-transfers-combined operations are presented in tables 6 and 7, respectively.

The data in table 6 show that ***.

* * * * * * *

Income-and-loss data in table 7 for trade and transfers combined indicate that the trends of sales and profits are very similar to those of the data on trade-only operations discussed above, although profits were *** on transfers during 1992-94. BIC's company transfers of all disposable pocket lighters to its foreign affiliates *** from *** percent of the total volume sold in 1992 to *** percent in 1994. During the same periods, ***.[61] The amount of SG&A expenses allocated to these transfers ***.

* * * * * * *

The major components of cost of goods sold and SG&A expenses on trade-only operations on all disposable pocket lighters are presented in table 8.

* * * * * * *

Table 6
Income-and-loss experience of BIC on its trade-only operations producing disposable pocket lighters, calendar years 1992-94

* * * * * * *

[59] Ibid., pp. 1-2 and 15-16.

[60] Ibid., pp. 19-20.

[61] ***.

Table 7
Income-and-loss experience of BIC on its operations producing disposable pocket lighters, calendar years 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Table 8
Cost of goods sold and selling, general, and administrative expenses of BIC on its trade-only operations producing disposable pocket lighters, calendar years 1992-94

* * * * * * *

Operations on Standard Nonrefillable Disposable Pocket Lighters

Income-and-loss data for standard nonrefillable disposable pocket lighters on trade-only operations and trade-and-transfers-combined operations are presented in tables 9 and 10, respectively. The major components of cost of goods sold and SG&A expenses on trade-only operations on standard nonrefillable disposable pocket lighters are presented in table 11.

* * * * * * *

Table 9
Income-and-loss experience of BIC on its trade-only operations producing standard nonrefillable disposable pocket lighters, calendar years 1992-94

* * * * * * *

Table 10
Income-and-loss experience of BIC on its operations producing standard nonrefillable disposable pocket lighters, calendar years 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Table 11
Cost of goods sold and selling, general, and administrative expenses of BIC on its trade-only operations producing standard nonrefillable disposable pocket lighters, calendar years 1992-94

* * * * * * *

Operations on Child Resistant Nonrefillable Disposable Pocket Lighters

Income-and-loss data for child resistant nonrefillable disposable pocket lighters on trade-only operations and trade-and-transfers-combined operations are presented in tables 12 and 13, respectively. The major components of cost of goods sold and SG&A expenses on trade-only operations on child resistant nonrefillable disposal pocket lighters are presented in table 14. BIC started the production of child resistant lighters in 1992.

* * * * * * *

Table 12
Income-and-loss experience of BIC on its trade-only operations producing child resistant nonrefillable disposable pocket lighters, calendar years 1992-94

* * * * * * *

Table 13
Income-and-loss experience of BIC on its operations producing child resistant nonrefillable disposable pocket lighters, calendar years 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Income-and-loss data in table 13 for trade and transfers combined indicate that ***.[62]

* * * * * * *

Table 14
Cost of goods sold and selling, general, and administrative expenses of BIC on its trade-only operations producing child resistant nonrefillable disposable pocket lighters, calendar years 1992-94

* * * * * * *

Investment in Productive Facilities

BIC's investment in property, plant, and equipment and its return on investment are shown in table 15.

Table 15
Value of assets and return on assets of BIC establishments wherein disposable pocket lighters are produced, calendar years 1992-94

* * * * * * *

Capital Expenditures

BIC's capital expenditures are shown in table 16.

Table 16
Capital expenditures by BIC in establishments wherein disposable pocket lighters are produced, by products, calendar years 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Research and Development

Research and development expenses for BIC are shown in table 17.

[62] From a letter dated Feb. 7, 1995, sent by BIC's counsel.

Table 17
Research and development expenses of BIC in establishments wherein disposable pocket lighters are produced, by products, calendar years 1992-94

* * * * * * *

Capital and Investment

The Commission requested U.S. producers to describe and explain the actual and potential negative effects of imports of disposable lighters from China and/or Thailand on their growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of disposable lighters). Zippo reported *** to this question. BIC's response is as follows:

Actual negative effects

* * * * * * *

Anticipated negative effects

* * * * * * *

Influence of imports on capital investment

* * * * * * *

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

Section 771(7)(F)(i) of the Act (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 the merchandise, the Commission shall consider, among other relevant economic factors[63]--

(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,

[63] Section 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."

(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,
(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 706 or 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.[64]

Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) and any dumping in third-country markets is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury" and 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 to an Industry in the United States." Presented below is the 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); and any other threat indicators, if applicable (item (VII) above).

[64] Section 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. Importers' Inventories

Table 18 presents U.S. importers' end-of-period inventories of disposable lighters from China, Thailand, and other sources.[65] It is important to note that data for importers' inventories are from responses to the Commission's importers' questionnaire and are understated, particularly for China, because not all importers responded to the questionnaires.

Petitioner testified at the hearing that it is threatened by high inventories and that the inventory overhang created by the volume of imports from China and Thailand is still in the market; however, importers from nonsubject countries (including BIC) also built inventories of standard disposable lighters during January-June 1994.[66] Respondents disputed petitioner's statements about the size and significance of inventories. For example, New York Lighter and Calico stated at the Commission's hearing that their inventories of standard lighters have been exhausted and that their inventories of child resistant lighters are not excessive.[67]

Table 18
Disposable pocket lighters: End-of-period inventories of U.S. importers, by products and by sources, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other Than the United States[68]

The Industry in China

The Commission requested information from the U.S. Embassy in Beijing but no information was received. Also, the Commission requested foreign industry data from all parties to these investigations that are representatives of Chinese producers.

[65] ***.

[66] Hearing TR, pp. 15, 35, 40, 59-61, and 73-75.

[67] Ibid., pp. 116-117, 124-125, 138, and 170-172.

[68] Petitioner argued that U.S. imports of disposable lighters from China and Thailand are likely to continue increasing since the European Union (EU) in November 1991 found that China and Thailand were dumping their lighters. The EU imposed antidumping duties of 16.9 percent for Gao Yao Co. (China), and 14.1 percent and 5.8 percent for Thai Merry and Politop Co. Ltd. (Thailand), respectively. According to petitioner, the antidumping duty margin for China was increased to 80.3 percent, Barnes, Richardson & Colburn prehearing brief, p. 55. According to a news clipping, the EU is to reexamine existing duties on imports of Thai-produced lighters, which the Federation of European Lighters Manufacturers has said are not high enough to counter alleged dumping, *Journal of Commerce*, Mar. 22, 1995. The *Journal of Commerce* reported that the EU has begun antidumping inquiries into exports of disposable lighters from Mexico and the Philippines.

In addition, the Government of Argentina imposed antidumping duties against Chinese disposable lighters at the rate of 30 percent *ad valorem*, plus an additional duty of 51.94 percent for imports with an f.o.b. value of under $0.206 per lighter. Such duties raise the likelihood, petitioner argued, that disposable lighters originally targeted for the EU and Argentine markets will be deflected into the United States at LTFV prices; petition, pp. 52-53, and exhibit 30; postconference brief, p. 32. Counsel for Thai Merry argued that shipments of Thai and Chinese disposable lighters to the EU have remained stable and substantial during the past 3 years and since such exports are predominantly standard, not child resistant lighters, there will be no diversion of the lighters to the U.S. market; postconference brief, pp. 44-45.

Petitioner identified over 50 firms in China that produced and/or exported disposable lighters to the United States.[69] The Commission received data submitted by counsel for China National Overseas Trading Corp. (China National); Cli-Claque Co., Ltd. (Cli-Claque);[70] Gao Yao (HK) Hua Fa Industrial Co., Ltd. (Gao Yao);[71] ***;[72] Guangdong Light Industrial Products Import and Export Corp. (Guangdong); and PolyCity Industrial, Ltd. (PolyCity)[73] (tables 19-23).

Table 19
Standard nonrefillable disposable pocket lighters: China's capacity, production, inventories, capacity utilization, and shipments, 1992-94, July-Dec. 1993, July-Dec. 1994, and projected 1995-96

* * * * * * *

Table 20
Child resistant nonrefillable disposable pocket lighters: China's capacity, production, inventories, capacity utilization, and shipments, 1992-94, July-Dec. 1993, July-Dec. 1994, and projected 1995-96

* * * * * * *

Table 21
Standard refillable disposable pocket lighters: China's capacity, production, inventories, capacity utilization, and shipments, 1992-94, July-Dec. 1993, July-Dec. 1994, and projected 1995-96

* * * * * * *

Table 22
Child resistant refillable disposable pocket lighters: China's capacity, production, inventories, capacity utilization, and shipments, 1992-94, July-Dec. 1993, July-Dec. 1994, and projected 1995-96

* * * * * * *

Table 23
Disposable pocket lighters: China's capacity, production, inventories, capacity utilization, and shipments, 1992-94, July-Dec. 1993, July-Dec. 1994, and projected 1995-96

* * * * * * *

The Industry in Thailand

The Commission received data submitted by counsel for Thai Merry, a Thai producer of disposable lighters that is Thailand's major exporter of the subject merchandise to the United States

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[69] Exhibit 6 to the petition.

[70] ***.

[71] Commerce's preliminary LTFV margin for Gao Yao is 0.10 percent (de minimus). Gao Yao reported ***. ***.

[72] ***.

[73] PolyCity is a large Chinese producer of disposable lighters that sells primarily to *** in the United States. Exports to the United States by PolyCity accounted for approximately *** percent of imports of disposable lighters from China in 1993.

(tables 24-26).[74] In addition, the U.S. Embassy in Bangkok provided the quantity and value of Thai exports of disposable lighters to the United States during 1992-93. Such exports were as follows: 115.8 million units valued at $13.4 million in 1992, and 145.7 million units valued at $15.4 million in 1993.

Table 24
Standard nonrefillable disposable pocket lighters: Thai Merry's capacity, production, inventories, capacity utilization, and shipments, 1992-94, July-Dec. 1993, July-Dec. 1994, and projected 1995-96

* * * * * * *

Table 25
Child resistant nonrefillable disposable pocket lighters: Thai Merry's capacity, production, inventories, capacity utilization, and shipments, 1992-94, July-Dec. 1993, July-Dec. 1994, and projected 1995-96

* * * * * * *

Table 26
Disposable pocket lighters: Thai Merry's capacity, production, inventories, capacity utilization, and shipments, 1992-94, July-Dec. 1993, July-Dec. 1994, and projected 1995-96

* * * * * * *

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports[75]

U.S. imports of disposable lighters are presented in table 27 and figure 6. As previously noted, the Commission sent importers' questionnaires to approximately 140 firms believed to be importing disposable lighters from China or Thailand. The Commission's importer questionnaire coverage for China, based on units of disposable pocket lighters imported, was 57.6 percent in 1992 and 54.6 percent in 1993, but dropped to 43.4 percent in 1994. Questionnaire coverage was virtually complete for Thailand when compared with official import statistics of the U.S. Department of Commerce. Therefore, imports for Thailand as reported in response to the Commission's questionnaires are used in table 27, whereas official Commerce data are used for China and all other sources. In using the Commerce data, imports under subheadings 9613.10.00 and 9612.20.00 were allocated to standard and child resistant disposable lighters based on ratios of standard to child resistant lighters as reported in response to the Commission's questionnaires for the periods in which questionnaire imports were reported. In the absence of questionnaire imports during a period, all

[74] Thai Merry accounted for *** of total Thai production and *** of total Thai exports of disposable lighters to the United States in 1993. The U.S. Embassy identified three Thai firms that manufacture disposable lighters for export: Thai Merry Company, Ltd.; Politop Company, Ltd.; and Hirota International (Thailand) Company, Ltd. Politop has not exported disposable lighters to the United States for several years and has no immediate plans to resume such exports.

[75] Official U.S. Department of Commerce monthly data on imports of nonrefillable and refillable LPG-fueled pocket lighters are presented cumulatively, by source, in figure E-1 and separately, by source, in figure E-2, app. E.

imports were assigned to standard for 1992-June 1994 and to child-resistant for July-December 1994. The assumption for subheading 9613.20.00 overstates imports of refillable disposable lighters because there are known imports of expensive butane lighters that do not meet the definition of disposable; however, the quantity of such imports is believed to be small for China.

Table 27
Disposable pocket lighters: U.S. imports, by products and by sources, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Figure 6
Disposable pocket lighters: U.S. imports, by sources, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

The quantity and value of U.S. imports of disposable lighters from China rose rapidly from 1992 to 1994. Average unit values declined from 1992 to 1994.

The quantity of imports of disposable lighters from Thailand *** from 1992 to 1993 and *** from 1993 to 1994. Average unit values *** from 1992 to 1993 but *** during 1993 to 1994. Cumulative imports of disposable lighters from China and Thailand *** from 1992 to 1994.

Based on units (and Commerce data), the largest sources of imports of disposable pocket lighters in 1994 were China and Thailand, followed by Mexico (117 million units), France (76 million units), the Netherlands (36 million units), the Philippines (27 million units), Spain (24 million units), and Hong Kong (14 million units). Unit values for China and Thailand are reported in table 27 and, based on Commerce data, the unit value of imports from Mexico in 1994 was $0.17, from France $0.26, from the Netherlands $0.18, from the Philippines $0.20, from Spain $0.15, and from Hong Kong $0.10. There were 14 other much smaller sources of imports in 1994.

Market Penetration by the Subject Imports

BIC's market share and the market shares of imports from China, Thailand, and all other sources, based on apparent U.S. consumption of disposable lighters, are presented in table 28 and figure 7. Apparent consumption is calculated from U.S. shipment data provided by BIC, from shipments of imports from Thailand as reported in the Commission's questionnaires, and from imports provided in official statistics for China and other sources.

Table 28
Disposable pocket lighters: Apparent U.S. consumption and market penetration, by products, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Figure 7
Disposable pocket lighters: Share of the quantity of U.S. consumption, by sources, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

BIC's market share, based on the quantity of U.S. consumption, *** from *** percent in 1992 to *** percent in 1994. BIC's market share *** in July-December 1994 compared with market share in January-June 1994. BIC's market share, based on the value of U.S. consumption, *** from 1992 to 1993 and *** from 1993 to 1994. However, BIC's market share, based on value, *** in July-December 1994 compared with market share in January-June 1994.

The market share of imports from China, based on quantity, *** from *** percent in 1992 to *** percent in 1994 and *** in July-December 1994 when compared with market share in January-June 1994. China's market share, based on value, followed the same trend, but at much lower absolute levels because of lower unit values.

The market share of shipments of imports from Thailand, based on the quantity of U.S. consumption, *** from *** percent in 1992 to *** percent in 1993, and *** to *** percent in 1994. Market share *** in July-December 1994 when compared with market share in January-June 1994.[76] Thailand's market share, based on value, ***, also at lower absolute levels because of lower unit values.

The aggregated market share of imports from China and Thailand, based on quantity, *** from *** percent in 1992 to *** percent in 1994. Such market share, based on value, *** from *** percent in 1992 to *** percent in 1994.

Prices

Market Characteristics

Since disposable lighters are consumer goods, demand for these products directly depends upon their price, and such factors as the prices and relative appeal of substitute products, and consumer tastes and incomes. Despite recent trends away from smoking, the overall consumption of these lighters increased in quantity terms between 1991 and 1994.

As stated earlier in this report, the CPSC enacted new regulations in July 1994 requiring that only child resistant disposable lighters be produced or imported into the United States.[77] Child resistant disposable lighters are more difficult to produce than standard disposable lighters, must be approved by the CPSC before being imported or produced, and are priced higher than standard disposable lighters. Although overall consumption of disposable lighters continued to increase in 1994, this was due primarily to an increase in the supply of standard disposable lighters prior to the July deadline rather than an increase in the supply of child resistant disposable lighters. BIC, U.S. importers, and purchasers reported that demand for standard disposable lighters (and not child resistant disposable lighters) continued to be strong through the end of 1994 and that they do not expect the demand for child resistant disposable lighters to significantly increase until after the stockpile of standard disposable lighters is depleted.

Substitutes for disposable lighters include both matches and nondisposable pocket lighters, although parties disagree on how close a substitute these products are for disposable lighters. Matches are generally considered to be a closer substitute than nondisposable pocket lighters because they are priced more closely to disposable lighters. Nondisposable lighters are typically priced between $6.00 and $8.00 per lighter to distributors and retailers with the lowest-priced brand selling at approximately $5.00 per lighter. Disposable lighters sold to distributors and retailers are typically priced between 10 and 50 cents per lighter for standard disposable lighters and 15 and 60 cents per

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[76] Inventories of disposable lighters from Thailand at the end of 1994 *** percent *** inventories at the end 1993. Witnesses at the Commission's hearing gave their views on the reasons for the *** in inventories, hearing TR, pp. 124-125.

[77] See section of this report entitled "The Product" for further information concerning the new CPSC regulations.

lighter for child resistant disposable lighters.[78] Matches are typically priced between 2 and 3 cents per book.[79]

Some of the larger U.S. importers of Thai and Chinese disposable lighters have argued that matches are a close substitute for disposable lighters, and that disposable lighters have been rapidly replacing matches.[80] These importers reported that the low-priced imports created a low-end market for disposable lighters that did not previously exist and that their major purchasers are the smaller convenience stores, the so-called Mom and Pop stores, that used to give away matches. Furthermore, some importers have argued that, with the new child safety regulations, price-conscious consumers may return to using matches because of the difficult-to-use, less convenient child resistant disposable lighters. They believe that this will occur once the stockpile of standard disposable lighters is depleted.

* * * * * * *

Most of the purchasers that responded to the Commission's questionnaire cited substitute products such as matches or nondisposable lighters for disposable lighters. Although most of these purchasers cited matches as a substitute product, some of them reported that matches, though less expensive, are a very poor substitute for disposable lighters because of the greater convenience of disposable lighters. Purchasers also stated that nondisposable lighters are not a very good substitute for disposable lighters because of their greater cost and the inconvenience of refilling the fuel.

Substitutability between standard and child resistant disposable lighters

The Commission requested BIC, U.S. importers, and purchasers of disposable lighters to comment on the substitutability of standard disposable lighters with child resistant disposable lighters. BIC reported that standard disposable lighters are directly substitutable for child resistant disposable lighters. ***. However, at the hearing, BIC commented that consumers considered the child resistant disposable lighters more difficult to use than the standard disposable lighters.

U.S. importers and purchasers reported mixed responses on the substitutability between the two types of disposable lighters. They stated that although these products were functionally substitutable, standard disposable lighters were preferred over child resistant lighters because child resistant lighters were more expensive and more difficult to operate. Some firms also reported that this question was irrelevant because of the new regulations requiring child resistant disposable lighters.

Market segments

There is both a high-end and low-end market segment for disposable lighters. The high-end consists of higher-priced, higher-quality, brand name disposable lighters such as BIC, Scripto, and

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[78] During 1991-94, a less expensive refillable lighter was also sold in the United States. This product was imported from China and was priced between *** per lighter. It was categorized as a disposable lighter and thereby was also affected by the new CPSC regulations.

[79] Unlike disposable and nondisposable lighters, matches are sometimes provided free of charge by some retailers to the end-user consumer.

[80] *** also reported that matches competed more closely with disposable lighters than nondisposable lighters. It reported that the significant price difference between nondisposable and disposable lighters limited their competition. Telephone interview with ***, Feb. 15, 1995. ***.

Cricket,[81] whereas the low-end consists of the lower-priced, lower-quality, imported Chinese and Thai disposable lighters, private label brands, and cost-fighting brands from Scripto and Cricket.[82] Standard disposable lighter prices in the high-end segment typically range between 30 cents and 40 cents per lighter, whereas prices in the low-end segment typically range between 10 cents and 20 cents per lighter. Purchasers may buy either the high-end product(s), the low-end product(s), or a combination of disposable lighters from both segments to provide various price points for their end-user consumers.[83]

Calico, New York Lighter, and some other importers of disposable lighters have argued that BIC does not compete at the low end of the market.[84] They reported that BIC does not sell a cost-fighting brand or a private label disposable lighter to this market segment. Instead BIC utilizes its brand name recognition and thereby prices its product at the high-end segment of the market. These importers reported that disposable lighters at the low-end range are essentially a commodity product and do not have the brand name recognition or reputation for quality and safety that disposable lighters selling at the high-end segment of the market do. They argue that competition in the low-end segment is between the various low-priced imported disposable lighters.[85]

Some suppliers of disposable lighters from third countries, such as Scripto and Cricket, sell their disposable lighters to both market segments to maximize sales. Although *** that there is a high-end and a low-end segment, they added that pricing in the low-end segment has affected the profitability of products in the high-end segment.[86] *** that more consumers are becoming more price conscious and the low-end segment is growing at the expense of the high-end segment.[87] Therefore, suppliers of disposable lighters in the high-end segment, in attempting to maintain their price structure, have increased sales promotions such as advertising and free goods to provide additional enticements for purchasers to buy their disposable lighters. BIC reported that the free goods that they offer are called "pack-in sales" and are typically candy or other items.[88]

Pricing practices

Disposable lighters are priced differently according to the type of disposable lighter (e.g., standard, child resistant, refillable, specialty, etc.) and the required packaging (i.e., blister-wrapped packages for retail sales or boxed in bulk for wholesaler/distributor sales). Although *** reported that the size of the order also affected the price of disposable lighters, *** that its pricing is not based on the size of the order. Rather, it reported that price variations depend on the marketing

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[81] Scripto is the brand name for disposable lighters from Scripto-Tokai, an importer of disposable lighters from Mexico. Cricket is the brand name for some disposable lighters imported from the Netherlands, France, and the Philippines.

[82] Scripto markets the Vesta brand as its cost fighter to compete against the Chinese and Thai disposable lighters. The Cricket cost-fighting brand is called Gold Flame.

[83] ***.

[84] Calico is the largest importer of Thai disposable lighters. New York Lighter is the largest importer of Chinese disposable lighters.

[85] ***.

[86] However, *** acknowledged that if the Chinese or Thai products were no longer in the market, it would be likely that those purchasers that buy solely on price would probably buy the next cheapest disposable lighter, i.e. Cricket's or Scripto's low-end product, and not BIC's branded product. Telephone conversation with ***.

[87] *** that approximately 30 percent of the end-user consumers of disposable lighters prefer the lower-priced disposable lighter. *** that approximately 20 percent of the purchasers buy disposable lighters purely on price.

[88] ***.

programs available to the account at the time of purchase. *** stated that it has price lists established for all of its accounts and does not discount from the lists. Although ***, they do not use price lists, ***, reported that it uses price lists only when making sales to retail chains and not to distributors.

Disposable lighters are generally sold on a spot basis to both distributors and retail chains.[89] BIC and nearly all of the other importers of lighters from China and Thailand sell exclusively on a spot basis, regardless of the size of the customer. BIC's distributor customers range in size from firms purchasing approximately *** units per year to those purchasing over *** units per year. BIC's retail customers range in size from small retail chains purchasing about *** units per year to larger chains that buy over *** lighters annually.[90] While BIC and the importers sell to the same broad categories of customers, the importers focus their sales efforts on the lower end of the wholesale and retail markets. Their purchasers tend to be less interested in brand names than the typical customers for the BIC product.

BIC and Calico reported that they generally quote prices on a delivered basis, whereas the Chinese importers generally quote prices on either an f.o.b. or delivered basis. BIC and some of the responding importers reported that they did not consider transportation costs to be an important factor in purchasing decisions. Inland transportation costs generally account for a relatively small share of the total cost to purchasers of disposable lighters. BIC estimated that transportation costs accounted for about *** percent of the average delivered prices of its disposable lighters. Importers' estimates generally ranged from 1 percent to 5 percent, although two importers reported transportation costs of 10 percent. *** also reported that they generally arrange for transportation for their customers and that inland shipments of disposable lighters are mainly by truck. BIC reported that over *** percent of its shipments are for distances of over 500 miles. The majority of importers' shipments are for shorter distances.

BIC reported that its average lead time is *** working days, whereas importers of disposable lighters from Thailand reported lead times ranging from *** days, and importers of disposable lighters from China reported lead times ranging between next day delivery from inventory and 90 days. *** sales terms of 2 percent discount net 40 days, whereas *** sales terms of 2 percent discount if paid within 10 days, net 30 days for retail customers and net 7 to 10 days for distributor customers. *** reported sales terms ranging between cash on delivery to net 30 days.

While some purchasers have qualification requirements that must be met before they will buy disposable lighters, these requirements vary greatly. ***, although its lighters do meet ASTM standards for safety. Some importers of disposable lighters from China and Thailand reported that they have had to submit samples to customers for testing in order to become qualified as suppliers. The reported testing periods ranged from 1 week to 3 months. In other cases where formal qualification procedures have not been in effect, suppliers were required to provide evidence of product liability coverage on the lighters.

Product comparisons between U.S. and Chinese/Thai disposable lighters

BIC and the larger importers of Chinese and Thai disposable lighters generally agreed that there are differences in quality between the U.S.-produced disposable lighters and those imported from China and Thailand. BIC believes that the quality and safety of its lighters are superior to the

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[89] Only one importer, ***, reported contract sales of disposable lighters. *** reported a 3-year contract with ***. Prices are typically negotiated annually.

[90] Distributors will typically purchase disposable lighters in bulk, whereas retailers will purchase pre-packaged disposable lighters.

imports even though it considers the products to be interchangeable in use.[91] In fact, BIC stated that some of its customers continue to purchase exclusively from BIC because of BIC's safety and reliability features, despite being priced *** higher than the imports.

*** stated that the Chinese product is made of lower-quality parts than the domestic product. It reported that Chinese lighters are made with cheaper plastic, and occasionally leak. *** reported that imported lighters from Thailand are superior to the BIC product in certain respects, but inferior in others. *** stated that the imported lighters have advantages such as a transparent fuel tank, a superior shape, and an adjustable flame feature.[92] On the other hand, BIC has the advantage of a greater fuel capacity resulting in a greater number of lights.[93] Other importers also reported other advantages of BIC lighters, including their recognition for consistent quality and their reputation for safety.

Importers also commented that BIC did not supply a private label product or an electronic ignition disposable lighter. *** further reported that BIC did not sell directly to smaller jobbers that supply the smaller convenience stores.

Purchasers were somewhat divided on the issue of product comparability between U.S. and imported disposable lighters. Although two-thirds of the responding purchasers (i.e., 24 of 36) reported that there were no significant differences between domestic and imported Chinese and Thai disposable lighters, nearly one-half of the responding purchasers (i.e., 16 of 35) reported that the imported products were of lower quality than the U.S. product. Purchasers reported that the primary advantages of the U.S. product were its quality, brand name recognition, and its advertising/ promotional support, whereas the primary disadvantage was its higher price. Purchasers reported that the primary advantage of the imported disposable lighters from China and Thailand was their lower price, whereas the primary disadvantage was their lower quality.

Product comparisons between the Chinese and Thai disposable lighters

U.S. importers and purchasers were requested to compare the Chinese and Thai disposable lighters in terms of interchangeability, quality, price, and certain factors. Most of the importers of the Chinese lighters reported that both Chinese and Thai disposable lighters were interchangeable and that any quality differences between the two were not a significant factor in sales of Chinese disposable lighters. These importers reported that both products were similar in appearance, color, and structure. However, the *** disagreed, commenting that the Thai lighter was superior to the Chinese lighter. *** reported that the Thai disposable lighter was more reliable and was of better quality than the Chinese lighter. Moreover, it could control the flame better, had better quality fuel, and had a better child resistant mechanism than the Chinese lighter.

Purchasers responding to the Commission's questionnaire reported that the Thai disposable lighter was comparable to or slightly better than the Chinese disposable lighter. Some of the factors cited were the quality of the Thai lighter, the supplier's product liability insurance, and its service. Purchasers reported that the Thai product was priced the same or slightly higher than the Chinese product.

[91] The safety features of BIC's lighters are discussed in the conference TR, pp. 15-20.

[92] However, *** pointed out that the transparent fuel tank can also be a sales disadvantage. It commented that an end-user consumer is unlikely to buy a half-filled disposable lighter.

[93] ***. BIC letter to the Commission, March 10, 1995, App. A. In terms of the number of lights, BIC has advertised that its lighters average approximately 2,500 lights per lighter, whereas the imported products reportedly average approximately 800 lights per lighter. Wilkie Farr & Gallagher prehearing brief, exhibit 21.

Questionnaire Price Data

U.S. producers and importers were asked to provide price data on three categories of commonly marketed disposable lighters and one category of nondisposable lighters. For each of the four products, producers and importers were asked to provide prices on their largest sales in each quarter and total quantities and total values shipped in all quarters during January 1991-September 1994.[94] Requests for data were further broken down between sales to distributors and sales to retail chains. Purchaser price data were also requested from firms that import disposable lighters for direct sales to final consumers rather than to distributors or to retail chains. The product categories were:

PRODUCT 1: Your best selling standard disposable pocket lighter with either roll and press or push button ignition, flint ignition only, which is normally nonrefillable.

PRODUCT 2: Your best selling disposable pocket lighter that meets the requirements of the U.S. Consumer Product Safety Commission as described in its Child Resistant Lighter Safety Standard (16 C.F.R. Part 1210).

PRODUCT 3: Your best selling standard disposable pocket lighter that has a graphic design feature either wrapped onto the body of the lighter by the addition of a sleeve film, or imprinted directly on the body of the lighter, whether or not the design is proprietary.

PRODUCT 4: Your best selling nondisposable (refillable) pocket lighter.

BIC and 20 importers provided varying amounts of usable price information. BIC accounted for *** domestic sales of U.S.-produced disposable lighters during 1993. Calico represented *** of the imports of disposable lighters from Thailand during 1993, and the responding importers of disposable lighters from China accounted for nearly *** percent of the imports from China during 1993. Product 1 accounted for most of the disposable lighter sales during January 1991-September 1994.[95]

Price trends

BIC provided pricing for its sales of products 1-3 to distributors and retail chains during January 1991-September 1994 (figures 8-10, tables 29-31).[96] Overall, BIC's prices for product 1 to distributors *** through the period, while prices for product 1 to retail chains and product 2 to distributors and retail chains *** through most of the period, before *** through 1994.[97] BIC's prices for product 3 *** during the time period. In general, there was *** between the average price for disposable lighters for product 1 sold to distributors and to retail chains.

U.S. importers of the Chinese product provided pricing for their sales of products 1, 2, and 4 to distributors, but only product 1 to retail chains (figures 8, 9, and 11, tables 29, 30, and 32).

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[94] Price data presented reflect average prices for each of the four products.

[95] Five importers reported pricing for product 4 from China. However, the product for which pricing was reported is considered to be a disposable refillable lighter.

[96] ***.

[97] ***.

Figure 8
Net delivered average prices for BIC and imported disposable lighter product 1 from China and Thailand, by distribution channel and by quarters, Jan. 1991-Sept. 1994

*   *   *   *   *   *   *

Figure 9
Net delivered average prices for BIC and imported disposable lighter product 2 from China and Thailand, by distribution channel and by quarters, Jan. 1991-Sept. 1994

*   *   *   *   *   *   *

Figure 10
Net delivered average prices for BIC and imported disposable lighter product 3 from Thailand, by distribution channel and by quarters, Jan. 1991-Sept. 1994

*   *   *   *   *   *   *

Table 29
Net delivered average prices for BIC and imported disposable lighter product 1 from China and Thailand, by distribution channel and by quarters, Jan. 1991-Sept. 1994

*   *   *   *   *   *   *

Table 30
Net delivered average prices for BIC and imported disposable lighter product 2 from China and Thailand, by distribution channel and by quarters, Jan. 1991-Sept. 1994

*   *   *   *   *   *   *

Table 31
Net delivered average prices for BIC and imported disposable lighter product 3 from Thailand, by distribution channel and by quarters, Jan. 1991-Sept. 1994

*   *   *   *   *   *   *

Figure 11
Net delivered average prices for sales of imported nondisposable lighter product 4 from China to distributors, by quarters, Jan. 1991-Sept. 1994

*   *   *   *   *   *   *

Table 32
Net delivered average prices for imported nondisposable lighter product 4 from China to distributors, by quarters, Jan. 1991-Sept. 1994

*   *   *   *   *   *   *

Nearly all of the imports from China were sold to distributors. Overall, prices *** for sales of product 1 to distributors whereas prices *** for sales of product 4 to distributors. Prices for sales of product 1 to retail chains *** during 1991-93, before *** during 1994.

Calico also provided pricing for its sales of products 1-3 imported from Thailand and sold to distributors and retail chains (figures 8-10, tables 29-31). However, significant price series were developed only for imported products 1 and 3 sold to distributors and retail chains. Overall, Calico's prices for product 1 sold to distributors *** during 1991-93, before *** during 1994. Its prices for product 1 sold to retail chains *** during 1991-94. Calico's prices for product 3 sold to distributors and retail chains mostly ***.[98]

Price comparisons

Price comparisons were made between the average price for BIC's total shipments and the U.S. importers' average price for their total shipments of disposable lighters from Thailand and China for each of the products for which prices were requested (table 33). Overall, there were 28 instances in which comparisons between BIC's U.S.-produced disposable lighter and the Chinese product were possible. In all of these instances, the imported product from China was priced between 44.9 and 76.6 percent below the U.S. product.[99] There were also 58 instances in which comparisons between BIC's U.S.-produced disposable lighter and the Thai product were possible. In all of these instances, the imported product from Thailand was priced between 25.3 and 75.6 percent below the U.S. product.[100]

Table 33
Margins of underselling on sales of disposable lighters to distributors and retail chains, by product, by source, and by quarters, Jan. 1991-Sept. 1994

* * * * * * *

Purchaser Responses

The Commission sent questionnaires to 75 firms believed to be purchasers of disposable lighters. Responses were received from 41 firms representing at least 30 percent, 25 percent, and 45 percent of BIC's, Chinese, and Thai domestic shipments of disposable lighters during 1993, respectively. The responding firms included 29 wholesalers/distributors and 12 retailers. Information obtained from these purchasers is summarized below.

More than one-half of the purchasers reported that they typically make weekly or monthly purchases of disposable lighters and that this purchasing pattern had not changed over the previous three years. They also reported that they rarely change suppliers; those that did reported making the switch for price, quality, or availability reasons. Although 30 of the 41 responding purchasers knew the country of origin of the disposable lighter, only 20 purchasers were aware of the foreign manufacturer. Most of the purchasers also reported that their customers were generally not aware of the country of origin.

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[98] ***.

[99] The average margin of underselling between BIC's U.S.-produced disposable lighter and the Chinese product was *** percent.

[100] The average margin of underselling between BIC's U.S.-produced disposable lighter and the Thai product was ***.

Purchasers were requested to rank, in order of importance, the three major factors considered in deciding from whom to purchase disposable lighters. More than one-half of the purchasers cited price and quality as major factors, while slightly less than one-half also cited brand name recognition. Other important factors cited by nearly one-fourth of the purchasers included traditional suppliers, safety factors, product availability, and meeting delivery schedules. Of the nine factors cited as the most important, the brand name recognition of the disposable lighter was cited by nine purchasers, the price and the product quality were cited by eight purchasers, traditional suppliers was cited by five purchasers, the safety concern was cited by four purchasers, cooperative advertising money was cited by two purchasers, and being an approved supplier and meeting the product's legal requirements were each cited by one purchaser.

Although price is considered an important factor in purchasers' disposable lighter buying decisions, purchasers reported overwhelmingly (over 80 percent of the responding purchasers) that the lowest price will not necessarily get the sale. Rather, other factors are also important along with price. These include primarily product quality, supplier liability insurance, brand name recognition, the credibility/reliability of the supplier, customer preference, availability, incentives (including advertising and free goods), packaging, and supplier service and support.

Thirty purchasers reported buying disposable lighters from importers from either China or Thailand. These purchasers were asked why they purchased the imported product in lieu of purchasing the U.S.-produced BIC disposable lighter. A majority of these purchasers rated price, safety concerns, product quality, service, and meeting delivery schedules as very important factors in their buying decision. A majority of purchasers also reported that they considered other factors at least somewhat important in their decision to buy the imported product. These include credit terms, being a traditional supplier, and brand name recognition.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during 1991-94, the nominal value of the Chinese yuan depreciated by 38.6 percent relative to the U.S. dollar,[101] whereas the Thai baht fluctuated, appreciating overall by 1.0 percent relative to the U.S. dollar (figure 12). Adjusted for movements in producer price indexes in the United States and Thailand, the real value of the Thai currency showed an overall appreciation of 1.3 percent relative to the dollar through the second quarter of 1994, the latest period for which data were available. The real value of the Chinese currency is not shown because producer price information for China is not known.

Lost Sales[102]

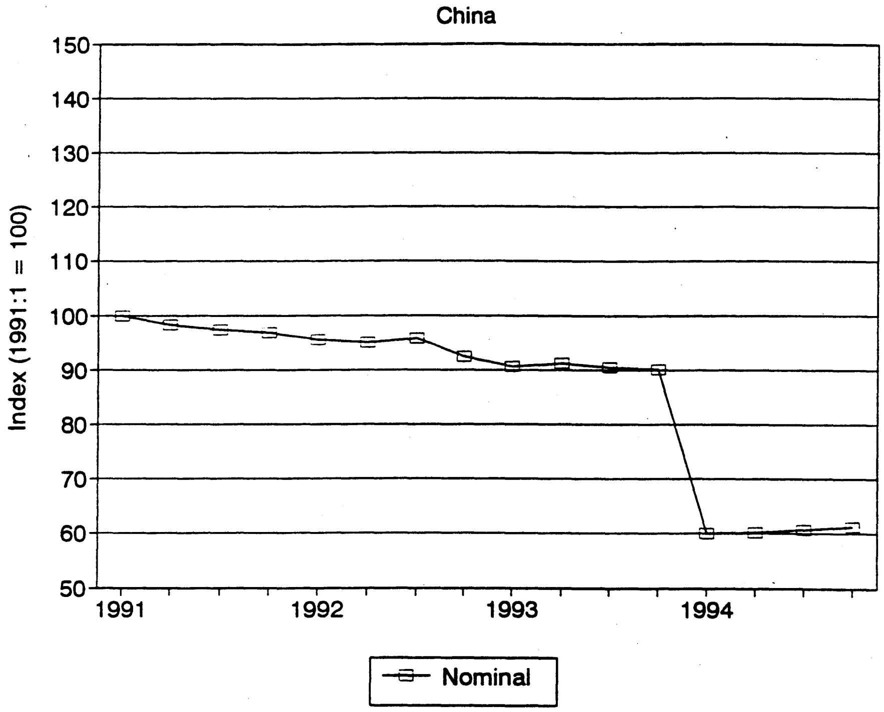
The Commission received *** allegations of lost sales by the U.S. producer, BIC. The *** lost sales allegations all concerned transactions of standard disposable lighters that occurred during 1993. These allegations accounted for less than *** percent of BIC's total sales of its U.S. product during 1993 and approximately *** percent of BIC's total sales of its U.S. product during January 1991-September 1994. *** of the lost sales allegations concerned imports from China and *** of the allegations concerned imports from Thailand (table 34).[103] The lost sales allegations involving China totalled *** and involved *** disposable lighters, while the allegations involving Thailand

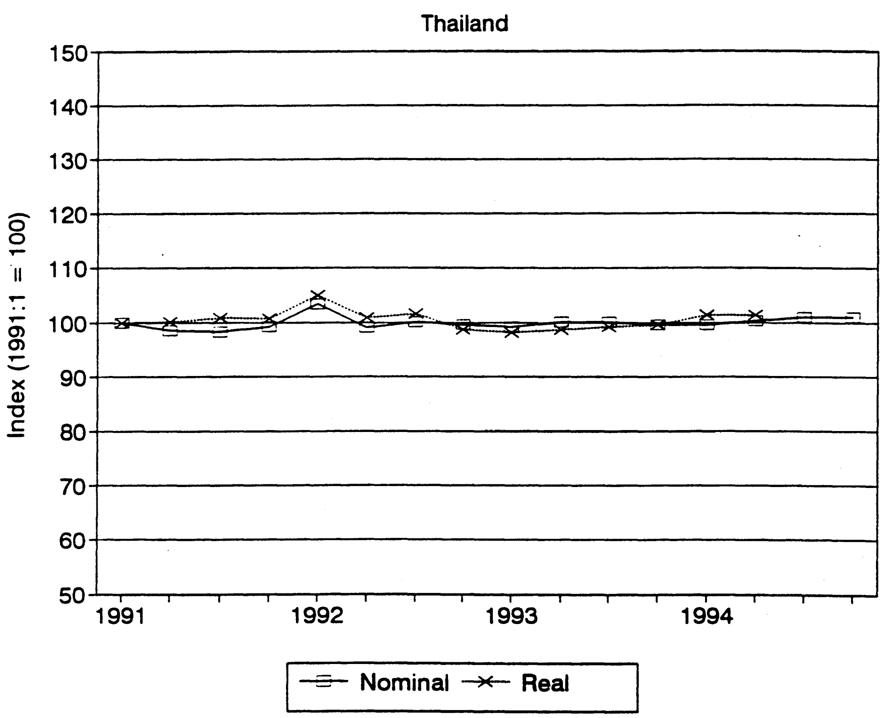
[101] Beginning Jan. 1, 1994, the People's Bank of China changed the manner in which the official exchange rate was determined.

[102] ***.

[103] ***.

Figure 12
Indexes of the nominal and real exchange rates between the U.S. dollar and the currencies of China and Thailand, by quarters, Jan. 1991-Dec. 1994





Source: International Monetary Fund, *International Financial Statistics*, Mar. 1995.

Table 34
Lost sales allegations to China and Thailand reported by BIC

*   *   *   *   *   *   *

totalled *** and involved *** disposable lighters. Staff contacted *** firms representing *** of the lost sale allegations concerning China and *** of the allegations concerning Thailand. This represented nearly *** percent of the China allegations and approximately *** percent of the Thailand allegations on the basis of quantity.

Allegations Involving China

*** reported that it has purchased imported disposable lighters from China and Taiwan. *** stated that *** purchases approximately *** disposable lighters per year: *** percent from BIC, *** percent from China and Taiwan, and the remainder from Scripto. *** purchases the imported product as a special one-time buy each year for its convenience store customers to increase their retail traffic. *** stated that the imported product, unlike BIC's disposable lighters, was not a core/everyday item.

*** reported that the price for the imported child resistant disposable lighters ranged between *** cents and *** cents per lighter, while the price for BIC's disposable lighter ranged between *** cents and *** cents per lighter. The price for the low-end Scripto child resistant lighter (Vesta) was approximately *** cents per lighter. *** also commented that the power of BIC's brand name recognition is a major factor for *** continuing to purchase BIC's disposable lighters.

*** did not recall the allegation. *** is mainly a cigarette distributor and lighters are a minor accessory in its business. *** reported that it purchases imported disposable lighters from China, Mexico, and Thailand and that these purchases are due to the low price of the imports. *** commented that the quality between the U.S. and imported product is very similar.

*** was not able to directly address the allegation, but reported that *** had shifted some of its business away from BIC because of the lower price of the imports from China. In its questionnaire response, *** reported that it only purchased these lighters due to specific customer requests. However, *** reported that it purchased only *** disposable lighters from China during 1993 and only *** lighters from China during January-September 1994. This accounted for less than *** percent of total purchases during January 1993-September 1994.

*** reported that it purchased approximately *** disposable lighters during 1993 and approximately *** disposable lighters (*** child resistant) during January-September 1994. During January-September 1994, *** purchased more than *** percent of its lighters from BIC, with the remainder from ***.

*** reported that the low price was the only advantage of the Chinese product. The disadvantages were its poor quality, delivery delays, and the lack of liability insurance. Conversely, BIC's advantages were its quality, delivery systems, sales support, selection/design, and guaranteed sale of the lighters. Its only disadvantage was its higher price.

*** reported that it did not purchase any Chinese product during 1992-94. Rather, it purchased all of its requirements from BIC and *** (roughly *** percent from each supplier). It currently purchases about *** disposable lighters per year. The advantages of the U.S.-produced lighter include its quality, colors, design, and liability insurance.

*** was not willing to address the allegation. *** reported that imports from China were less expensive than the domestic product, but would not provide any other information.

*** denied the allegation. *** acknowledged that *** purchases imports from China as well as the domestic product. However, he said that *** regards the BIC lighters as a higher-quality product than the imports, and does not consider them to be competing with each other. *** views the BIC lighters and the imported lighters as different product lines. *** markets both the BIC lighters and the imported lighters through independent jobbers for ultimate sale to convenience stores.

*** could not respond to the allegation. ***, the contact person named by BIC, had been *** at the time the lost sale had allegedly occurred. However, she is no longer affiliated with ***, and had no information available to address the lost sale allegation.

*** reported that it has not purchased any disposable lighters from China. It reported that it purchased lighters from the United States, ***. However, *** admitted that it does not always know the manufacturer of the pocket lighters, and is not always aware whether the pocket lighters are U.S.-produced or imported. *** reported that the Chinese and Thai products are less expensive than the U.S. product but are of lesser quality.

*** did not comment on the allegation but reported that it did purchase Chinese disposable lighters during 1993. *** reported that it purchases approximately *** disposable lighters per year. During 1992, it purchased over *** percent of its requirements from BIC and *** percent and *** percent of its requirements from Thailand and China, respectively. However, during 1993, *** purchased only *** percent of its requirements from BIC and *** and *** percent of its requirements from China and Thailand, respectively.

*** reported that although the quality of the imported product from China and Thailand was inferior to the U.S. product, the price was an important determinant. *** also reported that there is a definite market share for "BIC" brand lighters. Prices for the Chinese lighters ranged between *** and *** cents per unit, prices for the Thai lighters ranged between *** and *** cents per unit, and prices for the BIC disposable lighters ranged between *** and *** cents per unit.

*** reported that it did not have any information available to address the allegation.

*** acknowledged that it purchased disposable lighters but was unwilling to address the specific allegation.

*** denied the allegation. *** stated that his company purchases imported disposable lighters from *** rather than China. *** also purchases some BIC lighters, though they are much more expensive than the imported lighters. *** believes that imports are rapidly taking over the U.S. market, and that BIC's brand name does not offset the price advantage of the lower-priced imports. He said that the lighters from China are the least expensive imports. *** said that he buys the imports from *** because they are higher in quality than those from China.

Allegations Involving Thailand

*** was contacted by the Commission but did not comment on the allegation.

*** did not directly address the allegation, but did discuss the market for disposable lighters. ***, the spokesman for ***, stated that domestically produced lighters and imported lighters from Thailand are generally sold through the same channels of distribution, but that the imports are lower-priced and somewhat lower in quality than the domestic lighters. He does not believe that the products compete directly with each other, since they are aimed at different price points. *** said that *** buys both the BIC product and the imports.

*** denied the allegation. ***, a buyer for ***, reported that the volume, value, and date of the transaction were accurate, and he acknowledged that BIC did lose the bid. However, he said that in this case *** purchased BIC lighters from another distributor instead of purchasing directly from BIC. No purchases of imports from Thailand were involved.

*** said that purchases from BIC account for the largest share of its total purchases of disposable lighters, although it does purchase imported lighters from China and Thailand. He said that the quality of the imported lighters is inferior to the BIC products, but they are much lower-priced.

*** was not able to address the specific allegation. However, *** commented that her company has shifted purchases from BIC to imports from Thailand because of the lower price. She believes that retail customers view the BIC products and the imports as close substitutes, and that the lower price of the imports gives them a distinct advantage in the competition. However, *** still purchases lighters from BIC in addition to the imports.

APPENDIX A

SUMMARY TABLES

Table A-1
Standard nonrefillable disposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

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Table A-2
Child resistant nonrefillable disposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

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Table A-3
Standard refillable disposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Table A-4
Child resistant refillable disposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

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Table A-5
Standard disposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

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Table A-6
Child resistant disposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

Table A-7
Disposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

(Quantity=*1,000 units*; value=*1,000 dollars*; period changes=*percent, except where noted*)

Item	Reported data					Period changes			
	1992	1993	1994	Jan.-June 1994	July-Dec. 1994	1992-94	1992-93	1993-94	Jan.-June to July-Dec. 1994
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share[1]	***	***	***	***	***	***	***	***	***
Importers' share:[1]									
China	***	***	***	***	***	***	***	***	***
Thailand	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share[1]	***	***	***	***	***	***	***	***	***
Importers' share:[1]									
China	***	***	***	***	***	***	***	***	***
Thailand	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
U.S. importers' imports from--									
China:									
Imports quantity	85,350	158,486	238,292	151,090	87,202	+179.2	+85.7	+50.4	-42.3
Imports value	14,398	17,050	27,092	16,321	10,771	+88.2	+18.4	+58.9	-34.0
Unit value	$0.17	$0.11	$0.11	$0.11	$0.12	-32.6	-36.2	+5.7	+14.4
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Thailand:									
Imports quantity	***	***	***	***	***	***	***	***	***
Imports value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subject sources:									
Imports quantity	***	***	***	***	***	***	***	***	***
Imports value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Other sources:									
Imports quantity	345,266	308,617	305,121	191,327	113,794	-11.6	-10.6	-1.1	-40.5
Imports value	86,429	75,491	68,758	39,237	29,521	-20.4	-12.7	-8.9	-24.8
Unit value	$0.25	$0.24	$0.23	$0.21	$0.26	-10.0	-2.3	-7.9	+26.5
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All sources:									
Imports quantity	***	***	***	***	***	***	***	***	***
Imports value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
U.S. producers'--									
Average capacity quantity	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization[1]	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Exports/shipments[1]	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventory/production[1]	***	***	***	***	***	***	***	***	***

See footnote at end of table.

Table A-7--Continued
Disposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

(Quantity=*1,000 units*; value=*1,000 dollars*; period changes=*percent, except where noted*)

Item	Reported data 1992	1993	1994	Jan.-June 1994	July-Dec. 1994	Period changes 1992-94	1992-93	1993-94	Jan.-June to July-Dec. 1994
U.S. producer's--									
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (*1,000s*)	***	***	***	***	***	***	***	***	***
Total compensation (*$1,000*)	***	***	***	***	***	***	***	***	***
Hourly total compensation	$***	$***	$***	$***	$***	***	***	***	***
Productivity (*units/hour*)	***	***	***	***	***	***	***	***	***
Unit labor costs	$***	$***	$***	$***	$***	***	***	***	***
Net sales--									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit sales value	$***	$***	$***	$***	$***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	$***	$***	$***	$***	$***	***	***	***	***
Unit SG&A expenses	$***	$***	$***	$***	$***	***	***	***	***
Unit operating income (loss)	$***	$***	$***	$***	$***	***	***	***	***
COGS/sales[1]	***	***	***	***	***	***	***	***	***
Operating income (loss)/sales[1]	***	***	***	***	***	***	***	***	***

[1] "Reported data" are in percent and "period changes" are in percentage points.

Note.--Period changes are derived from the unrounded data. Period changes involving negative period data are positive if the amount of the negativity decreases and negative if the amount of the negativity increases. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information. Part-year inventory ratios are annualized.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce. "Import" data for Thailand are shipments data from questionnaires.

Table A-8
Nondisposable pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

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Table A-9
Pocket lighters: Summary data concerning the U.S. market, 1992-94, Jan.-June 1994, and July-Dec. 1994

* * * * * * *

APPENDIX B

FEDERAL REGISTER NOTICES

Investigation No. 731–TA–701 (Final)

Disposable Lighters From Thailand

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–701 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether 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 Thailand of disposable pocket lighters, provided for in subheadings 9613.10.00 and 9613.20.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of disposable pocket lighters from Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on May 9, 1994, by the BIC Corporation, Milford, CT.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) 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 BPI under the APO.

Staff Report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 22, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 10, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 27, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 4, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and

207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is January 4, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 19, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 19, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: November 2, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27770 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

International Trade Administration

[A-570-834]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China

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

EFFECTIVE DATE: December 13, 1994.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0167 or 482-1276, respectively.

Preliminary Determination

We preliminarily determine that disposable pocket lighters from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the "Act"), as amended. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 31, 1994 (59 FR 29412, June 7, 1994), the following events have occurred:

On June 23, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (see ITC Investigation No. 303-TA-25).

On June 13, 1994, we sent a letter to the China Chamber of Commerce for Machinery and Electronic Products Import and Export ("CCCME") requesting names and addresses of PRC producers and exporters of disposable pocket lighters ("lighters") sold in the United States. On June 22, 1994, we received a list of producers and exporters of lighters from the CCCME. A questionnaire was presented on July 1, 1994, to the CCCME and to the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") for distribution to PRC producers and exporters of lighters.

On September 20, 1994, we postponed the preliminary determination until December 5, 1994 (59 FR 48284).

On September 9, 1994, responses to the Department's questionnaire were received from the following exporters of lighters: China National Overseas Trading Corporation (Ningbo) ("COTCO"), Guangdong Light Industrial Products Import and Export ("GLIP"), Gao Yao (Hong Kong) Hua Fa Industrial Company, Ltd. ("Gao Yao"), PolyCity Industrial, Ltd. ("PolyCity"), and Cli-Claque Company Limited ("Cli-Claque"). On October 12 and 18, 1994, we sent supplemental/deficiency questionnaires to the respondents. Responses to the supplemental questionnaires were received on November 14, 1994. On November 23, 1994, petitioner alleged critical circumstances.

Scope of the Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Windproof refillable lighters, as described in a memorandum to Barbara R. Stafford, dated December 5, 1994, are excluded from the scope of this investigation.

Period of Investigation

The period of investigation ("POI") is December 1, 1993 through May 31, 1994.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country ("NME") in all past antidumping investigations (see, e.g., Notice of Final Determination of Sales at Less than Fair Value: Saccharin from the PRC (59 FR 58818, November 15, 1994). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with section 771(18)(c) of the Act, we have treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base foreign market value ("FMV") on the NME producers' factors of production, valued in a market economy that is at a level of economic development comparable to that of the NME under investigation and that is a significant producer of comparable merchandise. Section 773(c)(2) of the Act alternatively provides that where available information is inadequate for using the factors of production methodology, FMV may be based on the export prices for comparable merchandise from market economy countries at a comparable level of economic development.

For purposes of the preliminary determination, we have relied on the methodology provided by section 773(c)(1) of the Act to determine FMV. The sources of individual factor prices are discussed in the FMV section below.

Separate Rates

All five respondents have requested separate antidumping duty rates. In cases involving non-market economies, the Department's policy is to assign a separate rate only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is manipulation of export prices, and we examine PRC government control of the exporter. In this case, two of the five respondents are Hong Kong exporters that are involved in joint ventures in the PRC that manufacture lighters. Since PolyCity and Cli-Claque are located outside the PRC, the PRC government does not have jurisdiction over them. Moreover, the PRC government does not have any ownership interest in these exporters and, therefore, it cannot exercise control through ownership of these companies. Further, we have no evidence on the record indicating that the PRC government exerts control over these exporters. (See, business proprietary memorandum to the file dated December 5, 1994.) On this basis, we preliminarily determine that there is no need to apply our separate rates analysis and that PolyCity and Cli-Claque are entitled to individual rates.

In contrast to PolyCity and Cli-Claque, Gao Yao is a 50/50 joint venture between a Chinese company and Hong Kong company. The joint venture owns both the production and export facilities used to manufacture and export the lighters it sells to the United States. Given the direct PRC ownership in Gao Yao's export facilities, we have preliminarily determined that it is appropriate to apply our separate rates analysis to this company.

COTCO's and GLIP's business licenses indicate that they are owned "by all the people." As stated in the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the PRC (59 FR 22585, May 2, 1994) ("Silicon Carbide"), "ownership of a company by all the people does not require the application of a single rate." Accordingly, these companies are eligible for consideration for a separate rate under our criteria.

To establish whether a firm is entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the PRC (56 FR 20588, May 6, 1991) ("Sparklers") and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents submitted a number of documents to demonstrate absence of *de jure* control, including two PRC laws indicating that the responsibility for managing enterprises owned by "all the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("1988 Law"); and the "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 ("1992 Regulations"). Respondents' submission also included the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 ("Export Provisions").

The 1988 Law and 1992 Regulations shifted control from the government to the enterprises themselves. The 1988 Law provides that enterprises owned by "all the people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers and purchase their own goods and materials. The 1988 Law contains other provisions which indicate that enterprises have management independence from the government. The 1992 Regulations provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire employees without government approval (Article XVII).

The Export Provisions indicate those products subject to direct government control. Lighters do not appear on the Export Provisions list and are not, therefore, subject to export constraints.

Consistent with Silicon Carbide, we determine that the existence of these laws demonstrates that COTCO, GLIP, and Gao Yao are not subject to *de jure* central government control with respect to export sales and pricing decisions. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (see "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93–133 (July 14, 1993)). Therefore, the Department has determined that a *de facto* analysis is critical to determine whether COTCO, Gao Yao and GLIP are subject to governmental control over export sales and pricing decisions.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide).

In response to our questionnaire, COTCO, GLIP, and Gao Yao have each asserted that they:

- Are able to borrow at market rates from commercial banks;
- Maintain their own bank accounts, including foreign exchange earnings;
- Are not restricted in their access to their bank accounts;
- Operate at a profit,
- Make independent business decisions, including what to export;
- Set their own prices independently and that the prices are not subject to review by trading companies or government authorities;
- Base their relationships with suppliers and customers on arm's length negotiations without governmental interference;
- Are not subject to foreign exchange targets set by either the central or provincial governments;
- Have the ability to sell, transfer, or acquire assets; Exporter-Specific Information:

The following is a summary of additional information provided by the exporters:

Gao Yao has stated that.

- It is a Sino-Hong Kong 50–50 joint venture;
- It has no legal relationship with either the local, regional and/or national government;
- It maintains a bank account in Hong Kong where all monies received from Gao Yao's foreign sales are deposited and that the allocation of foreign currency is not subject to governmental review or approval;
- Chinese joint venture and other laws confirm Gao Yao's independence (Gao Yao submitted an exhibit consisting of laws pertaining to Sino-Foreign joint ventures in its response);
- Management is selected by the board of directors, without any governmental interference;
- Profits are divided evenly between the joint venture partners according to the shares invested;
- The managing director of Gao Yao is a Hong Kong resident; and
- All contracts are negotiated and signed by the officials of Gao Yao's Hong Kong sales office.

GLIP has stated that:

- Management is selected by its board of directors;
- Current ownership of the company is by "all the people." The company received authorization to privatize on March 5, 1993, and "is in the process of totally privatizing;" and
- It is independently managed and operated (a statement to this effect from CCCME was included in the response as an exhibit).

COTCO has stated that:

- It is a limited liability company, owned by COTCO Beijing, which, in turn, is an "all the people" company;
- It is independently managed and operated (a statement to this effect from CCCME was included in the response as an exhibit);
- Its manager is hired following a public notice of vacancy, screening, and hiring negotiations; the manager then selects the company's management committee; the decisions regarding the selection and promotion of management are not subject to any entity's review or approval.

The information submitted on behalf of each of the three companies supports a preliminary finding that there is a *de facto* absence of governmental control of export functions of each of the three companies.

Consequently, COTCO, Gao Yao and GLIP have preliminarily met the criteria for the application of separate rates. We will examine this issue in detail at verification and determine whether the questionnaire responses are supported by verifiable documentation.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economies that (1) are at a level of economic development comparable to that of the NME country and (2) are significant producers of comparable merchandise. The Department has determined that Indonesia is the most suitable surrogate for purposes of this investigation. Based on available statistical information, Indonesia is at a level of economic development comparable to that of the PRC, and Indonesian export statistics indicate that the country is a significant producer of lighters. Based on available information, Indonesia is the only surrogate country, of those identified by our Office of Policy, that meet both of these criteria. (See, memorandum to the file from Todd Hansen to Carole Showers, dated December 5, 1994, Surrogate Country Selection and memorandum from David Mueller, Director, Office of Policy to Susan Kuhbach, Director, Office of Countervailing Investigations, dated September 8, 1994, Lighters from the People's Republic of China, Non-Market Economy Status and Surrogate Country Selection.)

Fair Value Comparisons

To determine whether sales of lighters from the PRC by COTCO, Gao Yao, GLIP, PolyCity and Cli-Claque were made at less than fair value, we compared the United States price ("USP") to FMV, as specified in the "United States Price" and "Foreign Market Value" sections of the notice.

United States Price

For all respondents, we based USP on purchase price, in accordance with section 772(b) of the Act, because lighters were sold directly to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

We calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States, and packed, CIF prices, where appropriate. We made deductions for foreign inland freight, containerization, loading, port handling expenses, and marine insurance, as indicated. Generally, costs for these items were valued in the surrogate country However, where inland freight was purchased from market economy suppliers and paid for in a market economy currency, we used the cost actually incurred by the exporter

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the five responding exporters. The factors used to produce lighters include materials, labor and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values from Indonesia for those inputs purchased domestically from PRC suppliers. Where inputs were imported from market economy countries and paid for in a market economy currency, we used the actual costs incurred by the producers to value those factors (see, *e.g.*, Final Determination of Sales at Less Than Fair Value: Oscillating Ceiling Fans From the People's Republic of China, 56 FR 55271, October 25, 1991). Where a respondent failed to provide certain factor information in a usable form, we have used publicly available information from the petition and other respondents as best information available in valuing these factors.

Cli-Claque has argued that since it purchases certain input parts produced in the PRC from a Hong Kong reseller, the Department should accept these prices as market-determined and use them when calculating FMV. We disagree with this argument and have not used the prices for these inputs in calculating FMV. For purposes of valuing factors of production, it is the Department's practice not to use prices from one PRC producer to an unrelated PRC producer because those prices are distorted. In the present case, the two Hong Kong companies negotiated prices for inputs produced in the PRC on behalf of their related production facilities located in the PRC. Therefore, we have determined that these input prices should not be used to value the factors of production in this case. We have only used prices for imported inputs which were produced in market-based economies to value those factors.

In determining which surrogate value to use for each factor of production which was not sourced from a market-economy country, we selected, where possible, from publicly available, published information ("PAPI") which was: (1) an average non-export value; (2) representative of a range of prices within the POI if submitted by an interested party, or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive.

With the exception of butane, we used the Indonesian import price taken from the Indonesian Foreign Trade Statistical Bulletin—Imports, November 1993. For butane, however, the amount imported into Indonesia was negligible compared to the amount exported from that country. Therefore, for those PRC producers that did not import butane from market economy sources, we relied on Indonesian export statistics, as reported in the Indonesian Foreign Trade Statistical Bulletin—Exports, November 1993.

We used Indonesian transportation rates taken from a September 18, 1991, U.S. State Department cable from the U.S. Embassy in Indonesia to value inland freight between the source of the production factor and the disposable lighter factories.

To value electricity, we used public information from the Electric Utilities Data Book for the Asian and Pacific Region (January 1993) published by the Asian Development Bank. To value labor amounts, we used labor rates published by the Bureau of International Labor Affairs, U.S. Department of Labor, in Foreign Labor Trends-Indonesia.

We adjusted the factor values, when necessary, to the POI using wholesale price indices ("WPIs") published by the International Monetary Fund ("IMF").

To value factory overhead, we calculated percentages based on a December 2, 1994 U.S. State Department cable from the U.S. Embassy in Jakarta giving elements of industry group income statements.

For general expense percentages, we used the statutory minimum of 10 percent of materials, labor, and overhead costs calculated for each factory. For profit we used the statutory minimum of eight percent of materials, labor, factory overhead, and general expenses. We did not have Indonesian values for either general expenses or profit.

We added packing based on Indonesian values obtained from the Indonesian Foreign Trade Statistical Bulletin—Imports, November 1993.

Cli-Claque argues that since it makes all of its sales/exports from Hong Kong, has all of its management, administrative and selling operations in Hong Kong, and is wholly-owned and operated as a market-economy producer, we should treat Cli-Claque as a market-economy producer and base FMV on Hong Kong home market prices. Failing this, Cli-Claque maintains that since the PRC production facility does not know Cli-Claque's customers or the ultimate destination of the merchandise and since the products enter the commerce of Hong Kong, we should, at a minimum, consider Cli-Claque as a third country reseller and consider Hong Kong a viable home market on which to base FMV.

We disagree with Cli-Claque on both accounts. First, its related production facility is located in a non-market economy country and, therefore, the FMV of the subject merchandise must be determined using the factors of production methodology. Second, given the relationship between Cli-Claque and the PRC production facility, we do not consider that there is a "purchase" from the PRC production facility by Cli-Claque within the meaning of section 773(f) of the Act. Therefore, Cli-Claque is not considered a "reseller" within the meaning of that provision.

Best Information Available

Potential exporters identified by MOFTEC failed to respond to our questionnaire. In the absence of responses from these and other PRC exporters during the POI, we are basing the PRC country-wide rate on best information available (BIA). When a company refuses to provide information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to the company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation (see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium, 58 FR 37083, July 9, 1993) ("Belgium Steel"). Since some PRC exporters failed to respond to our questionnaire, we are assigning to all other PRC exporters the highest margin in the May 27, 1994, amendment to the petition.

Critical Circumstances

On November 23, 1994, petitioner alleged that "critical circumstances" exist with respect to imports of disposable pocket lighters from the PRC. We did not receive the allegation in time to make a critical circumstance determination in this preliminary determination. However, we will make a preliminary determination with respect to critical circumstances no later than December 23, 1994, pursuant to 19 CFR 353.16(b)(2)(ii).

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

For Gao Yao, we calculated a zero margin. Consistent with Notice of Final Determination of Sales at Less Than Fair

Value: Certain Cased Pencils from the People's Republic of China (59 FR 55625, November 8, 1994), merchandise that is sold by Gao Yao but manufactured by other producers will not receive the zero margin. Instead, such entries will be subject to the "All Others" margin.

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of disposable pocket lighters from the PRC, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacture/producer/exporter	Margin (Percent)
China National Overseas Trading Corp	37.48
Cli-Claque Company Ltd	7.03
Gao Yao (HK) Hua Fa Industrial Co., Ltd	[1] 0.10
Guangdong Light Industrial Products Import and Export Corp	35.08
PolyCity Industrial, Ltd	63.09
All others	197.85

[1] *De minimus.*

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than January 20, 1995, and rebuttal briefs no later than January 27, 1995. A hearing, if requested, will be held on Friday, February 3, 1995, at 10:00 am at the U.S. Department of Commerce in Room 1412. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated; December 5, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-30581 Filed 12-12-94; 8:45 am]

BILLING CODE 3510-DS-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–701 (Final)]

Disposable Lighters From Thailand

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: December 16, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On October 24, 1994, the Commission instituted the subject investigation and established a schedule for its conduct (59 F.R. 55853, November 9, 1994). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 3, 1995, to March 8, 1995 (59 F.R. 59210, November 16, 1994). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 3, 1995; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 8, 1995; the prehearing staff report will be placed in the nonpublic record on March 1, 1995; the deadline for filing prehearing briefs is March 8, 1995; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 14, 1995; and the deadline for filing posthearing briefs is March 22, 1995.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: December 20, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–31908 Filed 12–27–94; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-700 (Final)]

Disposable Lighters from the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-700 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether 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 the People's Republic of China (China) of disposable pocket lighters, provided for in subheadings 9613.10.00 and 9613.20.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 13, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-205-3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of disposable pocket lighters from China are being sold in the United States at less than fair value (LTFV) within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 9, 1994, by the BIC Corporation, Milford, CT.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) 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 BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 1, 1995, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 14, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 3, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 8, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is March 8, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is March 22, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 22, 1995. Parties may also file a supplemental brief on or before May 5, 1995, relating to the Department of Commerce's final LTFV determination on China. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Donna R. Koehnke,

Secretary.

Issued: January 25, 1995.

[FR Doc. 95–2438 Filed 1–31–95; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–700 and 701 (Final)]

Disposable Lighters From the People's Republic of China and Thailand

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On October 24, 1994, the Commission instituted investigation No. 731–TA–701 (Final), Disposable Lighters from Thailand, and established a schedule for its conduct (59 FR 55853, November 9, 1994). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 3, 1995, to March 8, 1995 (59 FR 59210, November 16, 1994). The Commission, therefore, revised its schedule in the investigation to conform with Commerce's new schedule (59 FR 66973, December 28, 1994). On December 13, 1994, the Commission instituted investigation No. 731–TA–700 (Final), Disposable Lighters from the People's Republic of China and established a schedule for its conduct (60 FR 6289, February 1, 1995).

On February 1 and February 2, 1995, the Commission received requests from counsel for Chinese respondents to postpone the date of its scheduled hearing in the subject investigations. No objections to these requests were received from the petitioner or other parties to these investigations. The 2 Commission, therefore, is granting the postponement requests and is revising its schedule in the investigations.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 10, 1995; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 15, 1995; the prehearing staff report will be placed in the nonpublic record on March 8, 1995; the deadline for filing prehearing briefs is March 15, 1995; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 21, 1995; and the deadline for filing posthearing briefs is March 29, 1995.

For further information concerning these investigations see the Commission's notices of investigations cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: February 9, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-3758 Filed 2-14-95; 8:45 am]

BILLING CODE 7020-02-P

[A-570-834]

Amendment to Preliminary Determination of Sales at Less Than Fair Value: Disposable Lighters From the People's Republic of China

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

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0167 and 482-1276, respectively.

Scope of Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (24 degrees Celsius) exceeds a gauge pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Case History

On December 5, 1994 (59 FR 64191, December 13, 1994), the Department of Commerce ("the Department") made its affirmative preliminary determination of sales at less than fair value in the above-referenced investigation. On December 8, 1994, we disclosed our calculations for the preliminary determination to counsel for PolyCity Industrial Ltd. ("PolyCity"), a respondent in this investigation.

On December 13, 1994, counsel for PolyCity alleged that ministerial errors had occurred in the calculations and requested that these errors be corrected and an amended preliminary determination be issued reflecting these corrections. On December 16, 1994, petitioners submitted comments regarding PolyCity's ministerial error allegations. On January 10, 1995, counsel for PolyCity again requested that the Department amend the preliminary determination to correct for ministerial errors.

PolyCity alleged that for a particular U.S. sale, the Department made its first ministerial error when it used an incorrect value for ocean freight in the calculation of U.S. price. Rather than use the figure reported in its supplemental response, PolyCity argues that the Department erred when it used the figure provided on the computer diskette accompanying the response. According to PolyCity, the narrative portion of the response rather than the spreadsheet provided on diskette contained the correct value for ocean freight. We disagree that this constitutes a ministerial error. Rather, we believe that this issue should be addressed at verification where the correct value for ocean freight can be established.

The second ministerial error alleged by counsel for PolyCity involved the calculation of transportation costs for the various components used in the production of disposable lighters. According to PolyCity, the Department used the inland freight figures reported in PolyCity's supplemental response incorrectly. Rather than using the reported inland freight as transportation costs per unit of measure (i.e., cost per kilogram), the Department erred in treating the inland freight costs as transportation costs per component. PolyCity maintains that in order to obtain the transportation cost per lighter associated with each item, the Department should have multiplied the reported freight price for that item by the quantity of the item used in producing a lighter. Based on these comments and the Department's own analysis, we found that a significant ministerial error had been made.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Proposed Regulations, are provided solely for further explanation of the Department's AD practice with respect to amended preliminary determinations. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (January 3, 1995).

Amendment of Preliminary Determination

It is not our normal practice to amend preliminary determinations since these determinations only establish estimated margins, which are subject to verification, and which may change in the final determination. However, the Department has stated that it will amend a preliminary determination to correct for significant ministerial errors. (See Proposed Rules and Notice of Amended Preliminary Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia, 59 FR 51554 (October 12, 1994) and Amendment to Preliminary Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 FR 19289 (May 9, 1990).) Given the facts of this investigation, as noted above, the Department hereby amends its preliminary determination to correct for the ministerial error involved. The revised estimated margin for PolyCity is 39.37%.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require a cash deposit or posting of a bond for all entries of subject merchandise from the PRC for all respondents, as set forth in the original preliminary determination, and for PolyCity, at the newly calculated rate, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the amended preliminary determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 45 days after our final determination.

This notice is published pursuant to section 733(f) of the Act and 19 CFR 353.13(a)(4).

Dated: February 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–3961 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–DS–P

[C-549-811]

Final Negative Countervailing Duty Determination: Disposable Pocket Lighters From Thailand

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

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4105.

Final Determination. The Department of Commerce ("the Department") determines that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Thailand of disposable pocket lighters.

Case History

Since the publication of the preliminary determination in the **Federal Register**, 59 FR 40525 (August 9, 1994), the following events have occurred.

On September 13, 1994, at petitioner's request, we extended the final determination in this investigation to coincide with the final determination in the companion antidumping investigation (59 FR 46961).

On November 3, 1994, respondents requested that the Department postpone the final antidumping and countervailing duty determinations. Therefore, on November 16, 1994, the Department published in the **Federal Register** a notice postponing the final antidumping and countervailing duty determinations until no later than March 8, 1995 (59 FR 59211).

We conducted verification of the responses submitted on behalf of the Government of Thailand (GOT) and Thai Merry Co., Ltd. (Thai Merry) from October 17-18, and on October 28, 1994, respectively. We received case briefs on February 23, 1995, from petitioner and respondent, and received a rebuttal brief from respondent on March 1, 1995.

Scope of Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees Celsius) exceeds a gauge pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.220.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), which were withdrawn on January 3, 1995 (60 FR 80), are provided solely for further explanation of the Department's CVD practice. The subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act.

Injury Test

Although Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff

Act of 1930, as amended ("the Act"), the merchandise being investigated is non-dutiable under the Generalized System of Preferences and Thailand is a contracting party to the General Agreement on Tariffs and Trade. Thailand, therefore, is entitled to an injury test on imports of the subject merchandise pursuant to section 303(a)(2) of the Act. On June 20, 1994, the ITC preliminarily determined that imports of the subject merchandise from Thailand materially injure, or threaten material injury to, a U.S. industry.

Period of Investigation

For purposes of this final determination, the period for which we are measuring bounties or grants (the period of investigation ("POI")) is calendar year 1993.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verification and comments made by interested parties, we determine the following:

A. Programs Determined to be Countervailable

1. Section 31 of the Investment Promotion Act

The Investment Promotion Act of 1977 ("IPA") provides incentives for investment to promote the development of the Thai economy. The IPA authorizes an array of tax exemptions and exclusions. The IPA is administered by the Board of Investment (BOI) through promotion certificates. These certificates list the various sections of the IPA under which a company is eligible to receive benefits.

Under section 31, companies may obtain a three-to-eight year exemption from payment of corporate income tax on profits derived from promoted activities, as well as deductions from net profits for losses incurred during the tax exemption period. The 1977 IPA Act has been amended several times and, in 1991, the GOT passed the Investment Promotion Act No. 2 of 1991. This 1991 Act was the law in effect during the POI. Section 16 of this law states that eligible activities for this exemption include " * * * activities which involve production for export."

We verified that Thai Merry applied for and received section 31 income tax exemptions during the POI. The approval certificate received by Thai Merry for participation in this program states that "the company has received a promoted status in the business for production of gas lighters for export."

Because Thai Merry received these benefits for exported lighters, we determine that this program confers an export bounty or grant. To calculate the benefit for the POI, we divided the tax savings by the total value of export sales, pursuant to 355.47(c)(1)(ii) of the *Proposed Regulations (Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989)). On this basis, we calculated a net bounty or grant of 0.23 percent *ad valorem.*

Because this is the only countervailable program and the rate is *de minimis,* pursuant to 19 CFR 355.7 (1994), we determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of disposable pocket lighters in Thailand.

B. Programs Determined to be Not Used

We established at verification that the following programs were not used during the POI.

A. *Industrial Estates/Export Processing Zones*
B. *Preferential Short-term Loans Under the Export Packing Credit Program*
C. *Tax and Duty Exemptions Under the Investment Promotion Act (sections 28, 33, 34, 36(1), 36(2), 36(3) and 36(4)*
D. *Tax Certificates for Exporters*
E. *Rediscount of Industrial Bills*
F. *International Trade Promotion Fund*

Interested Party Comments

Comment 1: Petitioner asserts that the Department should countervail government subsidies provided to two plants which provide assembly services under subcontract to Thai Merry. These assembly plants are not owned by Thai Merry, although the materials processed in these facilities are the property of Thai Merry. These assembly plants were discussed in the course of the antidumping (AD) verification, not in the CVD verification. Petitioner believes that because one of these plants assembles safety-lock lighters, which are only sold in the United States, the facility may be benefitting from being located in an export processing zone. Petitioner asserts that unless respondent can provide proof that these facilities are not located in an export processing zone, the Department should presume that these plants receive subsidies and that Thai Merry benefits from such subsidies, and should apply a countervailing duty rate to Thai Merry based on BIA.

Respondent contends that petitioner's brief should be rejected due to the inclusion of arguments based on information not on the record of the CVD investigation. (The fact that Thai Merry subcontracted some assembly operations to unrelated firms was only raised in the AD investigation.)

Respondent emphasizes that the Department verified that Thai Merry is not located in an export processing zone and that the company did not benefit from this program during the POI. Additionally, respondent asserts that since the Department chose not to verify the location of the subcontractor's assembly plants in connection with the CVD verification, it would be unfair to assign a margin to Thai Merry based on BIA.

DOC Position: We consider petitioner's allegation untimely and, therefore, have not considered its allegation in this investigation. Pursuant to § 353.31(c)(i) of the *Proposed Regulations,* "the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of section 355.2, later than: (i) In an investigation, 40 days prior to the scheduled date of the Secretary's preliminary determination." Petitioner first alleged that subsidies could have been provided to Thai Merry's unrelated assembly plants in its case briefs, 13 days prior to the final determination.

We further note that section 355.39 of the *Proposed Regulations* does not apply in this case. Section 355.39 provides that if "the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review." In the context of the companion AD investigation, the Department verified that Thai Merry subcontracts certain of its assembly operations. The Department then verified the location and function of these plants, and the fact that Thai Merry did not own these assembly plants. However, in the context of this proceeding, we did not discover "a practice which appears to provide a subsidy." Therefore, the Department would not have been obligated to conduct an examination of the situation, even had there been "sufficient time" to do so.

We agree with respondents that it is inappropriate to apply BIA to Thai Merry based on an unsupported allegation that subsidies may have been granted to the assembly plants owned by its unrelated subcontractor(s). Petitioner has not made a sufficiently detailed allegation either that the assembly plants received countervailable benefits, or how such countervailable benefits might be accruing to Thai Merry through either of these plants.

Petitioner has acknowledged that these assembly plants are not owned by Thai Merry. Petitioner has provided no argument as to why the Department should countervail alleged subsidies provided to an unrelated subcontractor of a company under investigation. Therefore, we conclude that Thai Merry did not benefit from this program.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since we have determined that no bounties or grants are being provided to manufacturers, producers or exporters of disposable pocket lighters in Thailand, the investigation will be terminated upon publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination with respect to this countervailing duty proceeding.

Return of Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: March 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6400 Filed 3–14–95; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-810]

Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination: Disposable Pocket Lighters From Thailand

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

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Susan Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–4198 and 482–1442, respectively.

Final Determination

We determine that disposable pocket lighters from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the "Act"), as amended. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the October 24, 1994 preliminary determination (59 FR 53414 (October 24, 1994)), the following events have occurred:

Between October 24 and October 28, 1994, we conducted verification of the questionnaire responses. On October 31, 1994, petitioner requested a public hearing. Respondent requested that the Department postpone its final determination in this investigation on November 2, 1994. On November 16, 1994, the Department published its notice of postponement of the final determination (59 FR 59211).

On February 1, 1995, petitioner filed a critical circumstances allegation. The Department issued a preliminary negative critical circumstances determination on March 3, 1994.

On February 13 and February 21, 1995, petitioner and respondent filed case and rebuttal briefs, respectively. On February 28, 1995, the Department held a public hearing.

Scope of the Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (24 degrees Celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Period of Investigation

The period of investigation ("POI") is December 1, 1993 through May 31, 1994.

Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of disposable lighters from Thailand. In our determination on March 3, 1995, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegations using the Department's standard methodology.

On March 6, 1995, both petitioner and respondent submitted comments with regard to the Department's preliminary negative critical circumstances determination. In addition to submitting general comments, petitioner also provided Port Import and Export Reporting Services ("P.I.E.R.S.") data (see, Exhibit C of petitioner's March 6, 1995 submission) in order to show that Thai Merry's shipments have dropped off dramatically since the Department's preliminary affirmative determination of sales at less than fair value ("LTFV"). According to petitioner, the decline in imports of subject merchandise from Thailand subsequent to the post-petition period indicates that critical circumstances exist.

With respect to the additional information supplied by petitioner, we note that the Department's analysis of critical circumstances compared data covering December 1, 1993 through April 30, 1994 (the "pre-petition period") with data covering May 1, 1994 through September 30, 1994 (the "post-petition period"). As noted in the preliminary negative critical circumstances determination, the Department considered the post-petition period to be the first day of the month of initiation through the period immediately prior to the preliminary determination of sales at LTFV. While the data submitted by petitioner show that shipments have declined subsequent to the Department's preliminary LTFV determination, our analysis, and the critical circumstances allegation itself, is based on respondent's actions prior to the preliminary LTFV determination. Accordingly, while we have examined the additional information provided by petitioner, it does not alter our original analysis (see, February 27, 1995 Memorandum to Susan H. Kuhbach, Director, Office of Countervailing Investigations from David R. Boyland, Case Analyst, Office of Countervailing Investigations). In the absence of information that would alter our original analysis, we determine that critical circumstances do not exist.

Class or Kind of Merchandise

The Department considers standard and child-resistant lighters to be one class or kind of merchandise (see, Interested Party Comments, Comment 1).

Product Comparisons

We have continued to treat standard lighters sold in the home market as similar to child-resistant lighters, and identical to standard lighters sold in the United States (see, Interested Party Comments, Comment 2). For the U.S. sales compared to home market sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise.

Level of Trade

For the preliminary determination, respondent argued that, since Thai Merry sells to large national distributors in the United States, the home market sales used for comparison purposes should be limited to those sales made to the single national distributor in the home market. The Department, in its preliminary determination, stated that the information submitted by the respondent did not justify distinguishing between the national distributor in the home market and other distributors.

Although the Department gave respondent the opportunity to provide additional information to substantiate its claim that there is a distinct national distributor level of trade in the home market, respondent declined to do so. Moreover, at verification, we learned that respondent's division of customers into either the retail level of trade or the distributor level of trade was based solely on the volume of lighters purchased by home market customers.

The Department analyzes levels of trade based on the differences in functions performed by the seller or differences in the category of customer. In this case, however, respondent based its level of trade claim solely on differences in quantities purchased. Therefore, we have not performed a level of trade analysis.

We note, however, that there are substantial differences in quantities ordered by U.S. and home market customers. Moreover, within the home market, sales are made in a wide range of quantities and with larger quantities being sold at lower prices. In accordance with 19 CFR 353.55, we have identified the largest home market transactions and have compared those with sales to the United States.

Fair Value Comparisons

To determine whether Thai Merry's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We made revisions to Thai Merry's reported data, where appropriate, based on verification findings.

United States Price

Because Thai Merry's U.S. sales of disposable pocket lighters were made to unrelated purchasers prior to importation into the United States, and the exporter's sales price methodology was not indicated by other circumstances, in accordance with section 772(b) of the Act, we based USP on the purchase price ("PP") sales methodology. We calculated Thai Merry's PP sales based on packed, CIF prices to unrelated customers in the United States.

We made deductions to the U.S. price, where appropriate, for foreign inland freight, foreign brokerage/handling expenses, marine insurance, and ocean freight. In calculating the imputed U.S. credit expense, we used the borrowing rate in the United States on short-term dollar-denominated loans (see, Interested Party Comments, Comment 11). For a further discussion of the Department's treatment of U.S. credit expense, please see Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Investigations from Susan H. Kuhbach, Director, Office of Countervailing Investigations, (September 26, 1994) on file in room B-099 of the U.S. Department of Commerce.

In accordance with Section 772(d)(1)(B) of the Act, we made an addition to the U.S. price for the amount of import duties imposed but not collected on inputs. We also made an adjustment to U.S. price for VAT taxes paid on the comparison sales in Thailand, in accordance with our practice, pursuant to the Court of International Trade ("CIT") decision in *Federal-Mogul, et al* versus *United States*, 834 F. Sup. 1993. See, Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan, 59 FR 16177, 16179 (April 6, 1994), for an explanation of this tax methodology.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As a result, we determined that the home market was viable.

We calculated FMV based on delivered prices, inclusive of packing, to customers in the home market. From the delivered price, we deducted home market packing and added U.S. packing costs.

Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale-adjustments for differences in movement charges between shipments to the United States and shipments in the home market. We also made circumstance-of-sale-adjustments for differences in advertising expenses, and direct selling expenses, including payments made by Thai Merry to a third party. With respect to the home market credit expense, we have attributed this expense to only those home market sales identified as "credit sales." Additionally, we note that respondent provided a value-based allocation for advertising expense in its home market sales listing. We have substituted respondent's value-based allocation with a per unit advertising expense for the final determination.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation used in making our final determination.

Interested Party Comments

Comment 1: Respondent argues that since standard lighters can no longer be imported into the United States because of a Consumer Product Safety Commission ("CPSC") regulation which came into effect after the POI, standard lighters and child-resistant lighters should be considered two separate classes or kinds of merchandise. In support of its arguments, respondent has outlined differences between standard and child-resistant lighters relevant to the *Diversified Products* criteria (see, *Diversified Product Corporation* versus *United States*, 582 F. Supp. 887 CIT 1983). These differences are summarized as follows: (1) The differences in physical characteristics are minor. However, the fact that child-resistant lighters can be legally imported, while standard lighters cannot, makes these differences significant, according to respondent; (2) with respect to ultimate use, respondent notes that the types of lighters are in fact different since the child-resistant lighter is intended to be used only by persons mature enough to understand the danger associated with the lighter; (3) as regards, expectation of the ultimate purchaser, respondent argues that, while both types of lighters can produce flames with which to light something, the child-resistant lighter is expected to be safer; (4) with respect to channels of trade, respondent notes that once the inventories of standard lighters imported prior to July 12, 1994 have been sold, the channels of trade of the two types of lighters will be distinct because only one will exist legally (child-resistant) while the other will not (standard); (5) as regards advertising and display, respondent argues that child-resistant lighters are marketed as not only disposable lighters, but child-proof products which marketing officials promote as such. Additionally, according to respondent, the CPSC regulation requires that the two types of lighters be displayed differently and that once inventories of standard lighters are sold, they will not be displayed or advertised anywhere; (6) with respect to cost, respondent notes that the cost of producing the child-resistant lighters is legally significant because the additional cost allows the lighters to be exported to the United States. Also, with respect to cost, respondent argues that the price of standard and child-resistant lighters are sharply different.

Petitioner argues that both standard and child-resistant lighters will be sold in competition with one another until the large stockpiled supply of standard lighters imported prior to the CPSC ban is exhausted. Petitioner argues that both lighters are functionally equivalent, their physical characteristics are almost identical, the ultimate use and expectation of the consumer is the same, and that child-resistant and standard lighters are sold through the same channels of distribution, with the same advertising and display. Additionally, petitioner points out that the difference in price between the standard and child-resistant lighter is distorted because standard lighters are being dumped, as admitted in respondent's case brief. Finally, petitioner states that the cost differences between the two types of lighters is insufficient to support a class or kind distinction.

DOC Position: Regarding the class or kind issue, the Department has determined that there is only one class or kind of merchandise.

As regards physical characteristics, all parties agree, and the record supports, that there is no distinct difference between standard and child-resistant lighters. With respect to cost, the

Department has already determined that it can match child-resistant lighters sold in the United States to standard lighters sold in the home market with a difference in merchandise adjustment ("difmer") (*i.e.*, the difference in variable costs between the child-resistant lighter and the standard lighter does not exceed 20 percent of the total cost of manufacturing of the child-resistant lighter). Therefore, we find that the difference in cost is not significant enough to support a class or kind distinction. With respect to ultimate use, and expectations of the ultimate purchaser, we note that, while child-resistant lighters have a safety feature and the standard lighter does not, the primary function of standard and child-resistant lighters is the same. Additionally, the expectations of the consumer with regard to the utility of child-resistant lighters and standard lighters are the same. Also, regardless of the CPSC ban, standard and child-resistant lighters are sold through the same channels of trade. Finally, while we note that the advertising and display of standard and child-resistant lighters may be marginally different because of the child-safety feature, the differences in advertising and display are minor and do not outweigh the fact that no differences are evident in the other *Diversified Products* criteria, as noted above.

Respondent also argues that the import restriction distinction between the two types of lighters is a "clear dividing line," as that term is used by the Department in Final Affirmative Less Than Fair Value Determination: Sulfur Dyes, Including Vat Sulfur Dyes, from the U.K. ("Sulfur Dyes From the U.K.") 58 FR 3253 (January 8, 1993)). In Sulfur Dyes From the U.K., the Department stated that "when examining differences in physical characteristics in the context of class or kind analysis, the Department looks for 'clear dividing lines' between product groups, not merely the presence or absence of physical differences." (58 FR at 3254). According to respondent, because standard lighters may no longer be imported, the *Diversified Products* factors vis-a-vis child-resistant lighters are all diametrically different.

Except for the import restriction associated with standard lighters, respondent has provided no compelling reason to divide these products into separate classes or kinds of merchandise. While indicating that a "clear dividing line" is necessary to make a class or kind distinction, the Department went on to state in Sulfur Dyes from the U.K. that multiple classes or kinds did not exist because the Department did not find "clearly defined differences in any of the *Diversified Products* criteria." In the instant case, the differences presented by respondent to support its *Diversified Products* analysis, as discussed above, are not compelling. Therefore, we continue to find standard and child-resistant lighters to be one class or kind of merchandise.

With respect to using an average-to-average methodology, we note that, except in the most extraordinary circumstances, the Department's long-standing practice is to compare individual U.S. transactions with a weighted average FMV (see, 19 CFR 353.44(a)).

As to respondent's point that an average-to-average methodology will be required under the new antidumping law, we note that this final determination is being made pursuant to the previous law, which does not require an average-to-average comparison. Finally, with respect to applying a zero margin to child-resistant lighters, we note that the Department applies a dumping margin on the basis of a class or kind of merchandise, not on a product-specific basis (see, section 731 of the Tariff Act of 1930, as amended).

Comment 2: Petitioner objects to the Department's preliminary determination that child-resistant lighters can be compared to home market sales of standard lighters. Petitioner argues that, based on the differences in the cost of manufacture and commercial value, standard and child-resistant lighters should not be considered "similar." According to petitioner, information that it submitted shows that the two types of lighters are not "approximately equal in commercial value." Thus, petitioner argues that the requirements of 19 U.S.C. 1677(16)(B)(iii) have not been met. Instead, the Department improperly relied solely on the physical characteristics of the merchandise in making its preliminary determination. Furthermore, petitioner argues that the commercial value aspect of 19 U.S.C. 1677(16)(b)(iii) is designed for cases such as the instant one in which the differences in overall cost and commercial value result from the mandatory child-safety requirements. Such differences are attributable to capital expenditures for research and development. Petitioner argues that the Department should at least factor in the high cost of developing the safety mechanism when making its such or similar analysis.

Respondent argues that there is no support for using cost in determining whether the two lighters can be considered similar, except to the extent that the Department will generally not compare products where the difmer exceeds 20 percent of the cost of manufacturing of the U.S. product. Moreover, respondent argues that the Department's preliminary determination was consistent with past cases and the CIT's ruling in *United Engineering and Forging* versus *United States*, 779 F. Sup. 1375, 1381 (1991)).

DOC Position: We agree with respondent. The Department places little weight on the commercial value criterion in determining what constitutes such or similar merchandise (see, Final Results of Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom, 56 FR 5975 (February 14, 1991)), and Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore, 58 FR 43334 (August 16, 1993)). Instead, the Department focuses on the similarity of the physical characteristics, as evidenced in the Department's such or similar determination in this investigation. The Department's position in this regard has been upheld by the CIT in *United Engineering*.

In this case, child-resistant and standard lighters closely resemble each other in terms of their physical characteristics. Moreover, while the commercial value of the two products (as reflected in their prices) differed, the difference was not large (in absolute terms) and decreased over time. Therefore, we have continued to find that child-resistant lighters are similar to standard lighters.

Except for our general practice of limiting difmers to those which do not exceed 20 percent of the cost of manufacturing the good sold in the United States, we do not consider cost in determining what constitutes similar merchandise. We note that the alleged research and development costs referred to by petitioner would not be included in the difmer, which includes only variable manufacturing costs.

Comment 3: Petitioner argues that Thai Merry gives quantity discounts, which eliminates the need for a level of trade adjustment. Petitioner also argues that Thai Merry has been unable to determine which home market customers are retailers and which home market customers are distributors, and instead has simply relied on volume sold to distinguish between these levels. Additionally, petitioner notes that Thai Merry has been unable to substantiate its claim that the distributor level of trade should be sub-divided into distinct levels of trade. Thus, according to petitioner, all of Thai Merry's home market sales should be found to be made at the same level of trade.

Respondent argues that petitioner is incorrect in stating that Thai Merry was unable to identify which customers were retailers or distributors. Respondent argues that the threshold it provided for dividing its customers into the two groups was conservative, *i.e.*, this threshold eliminates home market customers from the Department's LTFV comparison that are clearly not distributors. Additionally, some of those home market customers identified as distributors were in all likelihood retailers. Respondent argues that use of a threshold was necessary given the difficulty in identifying the exact level of trade of every home market customer. Finally, respondent argues that the Department is required to make comparisons at the same level of trade (see, 19 CFR 353.58) and there is a significant dividing line between the quantities purchased by the retail customers in the home market and the quantities purchased by the large national distributors in the United States. Therefore, the Department should rely on sales to home market distributors, as defined by respondent, in making its comparisons to U.S. sales.

DOC Position: While this issue has been framed in the context of level of trade, the Department finds that the appropriate approach is to identify home market sales that are in quantities comparable to U.S. sales. We note that there is no home market customer who orders in quantities approaching the average quantities ordered by U.S. customers. Nevertheless, we examined the data and found that average transaction prices varied with quantity. Therefore, we have selected for comparison purposes large quantity home market transactions (see, March 8, 1995 Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Investigations from David Boyland, Case Analyst, Office of Countervailing Investigations).

Comment 4: Petitioner argues that the Department's verification report indicates that the U.S. price changed between the purchase order date and the invoice date. As such, petitioner argues that the invoice date should be considered the date of sale.

Respondent argues that the Department's verification report is misleading because, while the invoice date is Thai Merry's first record of the sale price, previously submitted information shows that the price and quantity are recorded at the time of the purchase order. Additionally, respondent argues that the "revisions" referred to in the verification report were prospective changes in price, as opposed to price changes to orders already made.

DOC Position: The verification report states that "during our examination of U.S. sales completeness...the standard and child-safety lighter per-unit prices were applied consistently throughout the POI with several upward price revisions occurring in the latter half of the POI." "Revisions," in the context of the verification report, referred to assumed increases in the negotiated price, as opposed to a change in price between the purchase order date and the invoice date.

The verification report also states that the first "written" record generated by Thai Merry of the negotiated price is the invoice. While respondent has cited to a Purchasing and Payment Records spreadsheet maintained by U.S. customers, this information does not by itself prove when the purchase price was first recorded. The spreadsheet includes Thai Merry's invoice number and hence was generated sometime after Thai Merry's invoice information, including unit price, was available to the U.S. customer. Therefore, it is not correct to say, as respondent claims, that this information proves the price was recorded at the time of the purchase order.

Given the fact that respondent's price negotiations with its U.S. customers were unrecorded, it was not possible to "verify" that the purchase order date was the date on which both price and quantity were fixed. The information provided by respondent indicates that it is reasonable to assume that the price was established prior to the purchase order and that the purchase order established the quantity. However, as the Department noted in Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review, 59 FR 12240, 12241 (March 16, 1994)), the date of sale is evidenced by the "first document which systematically records agreement as to price and quantities * * * [m]oreover the invoice date represents an accurate, reasonable, consistent methodology to determine the date of sale." In this case, the appropriate date of sale is the invoice date because it is the first written record generated by Thai Merry of both price and quantity. Additionally, this date was subject to verification during our examination of the U.S. sales listing.

Comment 5: With respect to certain sales at the end of the POI, respondent argues that a fire at one of Thai Merry's facilities made it impossible to fill the entire May 15, 1994 purchase order. According to a May 26, 1994 letter from the U.S. customer to Thai Merry, the customer notified Thai Merry of a certain volume of lighters that would be accepted for shipment. Respondent argues that the amount of child-resistant lighters ultimately shipped pursuant to both the May 15, 1994 purchase orders and the June 15, 1994 purchase orders matched the volume accepted by the U.S. customer in the May 26, 1994 letter to Thai Merry. Accordingly, since these shipments were accepted during the POI (*i.e.*, May 26, 1994), the sales reflected in the June 15, 1994 purchase orders should be considered POI sales. In response to the Department's verification report, which indicates that the unfilled portion of the May 15, 1994 purchase order was not accounted for in the subsequent June 15, 1994 purchase orders, respondent argues that this is due to the fact that standard lighters ordered on May 15, 1994, could not be re-ordered because of the pending CPSC ban.

Petitioner argues that respondent's explanation should be rejected because (1) the terms of the purchase could be changed up to the invoice date, (2) there is no clearly established connection between the June 15 and May 15 purchase orders, and (3) the May 26, 1994 letter discusses a forthcoming purchase order which was not found to exist.

DOC Position: As noted in Comment 5, the Department is considering the invoice date to be the date of sale. Accordingly, only those sales invoiced during the POI will be considered POI sales for purposes of the final determination.

Comment 6: Petitioner argues that sales by Thai Merry Hong Kong ("TMHK") to the United States should be included in the Department's LTFV comparison. Petitioner notes that the factors the Department considers when determining if the sales of two parties should be collapsed include: (1) whether the companies are closely intertwined; (2) whether transactions take place between the companies; (3) whether the companies have similar types of production equipment, such that it would be unnecessary to retool either plant's facilities before implementing a decision to restructure either company's manufacturing facilities; and (4) whether the companies involved are capable, through their sales and production operations, of manipulating prices or affecting production decisions (see, Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy, 53 FR 27187 (July 19, 1988)). Petitioner argues that the longstanding business relationship and the continued use of the Thai Merry name indicate that the relationship between the two companies did not end subsequent to Thai Merry's gradual sale of its ownership interest in TMHK. Petitioner argues that the relatedness issue is only one prong in the test used by the Department in determining whether to collapse sales. When the preceding factors are combined with the fact that the two companies are capable of price manipulation, it is clear that TMHK's sales to the United States should be included in the calculation of FMV. Petitioner argues that this potential to manipulate prices is the primary factor in determining whether TMHK's sales should be included in FMV and that the facts in this case show that there was price manipulation.

Respondent argues that section 771(13) of the Tariff Act of 1930, 19 U.S.C. 1677(13), governs the determination of "related parties." Under this section of the statute, the Department has established a test under which parties will not be considered related unless ownership is greater than five percent. Respondent argues that since Thai Merry has no ownership interest in TMHK, as shown at verification, the two parties are not related. Respondent also argues that the evidence provided by petitioner for collapsing the two parties is unconvincing because: (1) The similarity in names between Thai Merry and TMHK is merely cosmetic, and in fact TMHK has changed its name, (2) buyers and sellers typically have frequent business transactions, and (3) the price TMHK charged Thai Merry's U.S. customer is not unusual because unrelated parties often sell similar products for similar prices.

DOC Position: We note that the Department only collapses sales under section 773(13) of the statute if the parties are related. Since Thai Merry has no ownership interest in TMHK, the Department has not considered TMHK's sales to the United States for purposes of calculating the margin.

Comment 7: Petitioner argues that because of the nature of payments by Thai Merry to Thai Merry America ("TMA") (*i.e.*, a specific amount based on each U.S. sale), and because of the type of assistance being provided by TMA (*i.e.*, production consulting, research and development), the payments to TMA should be treated as a direct selling expense. Petitioner argues that the payments to TMA were, in part, for research and development for the child safety lighter. Thus, the payments to TMA were tied to the sale of a specific product line. According to petitioner, the other assistance provided by TMA, for example, production management, can also be tied directly to the sale of child-resistant and standard lighters because, in the absence of this assistance and the costs associated with them, these products would not have been manufactured. Finally, petitioner argues that it is precisely because these payments are directly tied to U.S. sales that a circumstance-of-sale adjustment is necessary.

Respondent argues that the TMA payments, as characterized by petitioner, indicate that these payments were related to production, as opposed to sales. While these payments resemble commissions, they are actually G&A expenses that do not qualify for a circumstance of sale adjustment.

DOC Position: Before determining how to treat this payment, we examined the payment arrangement between Thai Merry and TMA. Under this arrangement Thai Merry's ultimate payment to TMA is based on total U.S. sales. The services provided by TMA consist of production consulting, research and development, and market research. Because the payments to TMA are not connected with sales activity in the United States, we do not view them as commissions. However, since the payments to TMA are based on each U.S. sale, and calculated as a percentage of each U.S. sale, we consider these payments to be a direct U.S. selling expense. As a consequence, for purposes of the final determination, we have added these payments to FMV.

Comment 8: Respondent argues that the incentive bonuses paid to home market salesmen were not commissions. According to respondent, this is because these payments are not tied to the number or value of sales. Respondent argues that this is evidenced by the fact that Chamber (the home market selling arm of Thai Merry) does not keep records of sales per salesperson. Additionally, respondent notes that there is no correlation between the amount of incentive bonus paid and the value of sales during the previous month; *i.e.*, if the bonus was in fact a commission based on the value of sales, one would expect that when the value of sales dropped the subsequent amount of incentive bonuses paid would also drop. This was not the case.

DOC Position: Based on our review of the information, we see no correlation between home market sales and the "incentive bonuses" paid to Chamber's salesmen. The absence of an observable correlation or relationship between sales and incentive bonuses supports respondent's claim that these payments are not commissions. Therefore, for the final determination, we have determined that these payments are not commissions.

Comment 9: Petitioner argues that for the final determination the Department should apply the credit expense to only those home market sales identified as "credit sales."

DOC Position: We agree and have made this correction.

Comment 10: Petitioner argues that the home market freight expense should have been allocated on a weight or per-unit basis, instead of using a value-based factor. Given customary freight rate structures, it is unreasonable, according to petitioner, to allocate freight expenses based on the value of subject merchandise. Finally, given respondent's refusal to cooperate in providing a non-value-based freight amount, as well the Department's preference for not including depreciation as part of the freight expense, the Department should use the per-unit freight cost incurred by Thai Merry on direct sales shipped in the home market, as best information available ("BIA").

Respondent argues that it was not possible to provide a weight-based or per-unit cost for home market inland freight because home market deliveries include subject and non-subject merchandise. Hence, there is no common denominator with which to perform an allocation of cost. Additionally, a weight-based calculation is not possible because records are not kept with respect to total weight shipped. Respondent also argues that there have been cases in which the Department has accepted a value-based allocation (see, Antifriction Bearing (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, 58 FR 39729 (July 26, 1993)).

DOC Position: We agree with respondent. The Department verified elements of respondent's value-based freight allocation. This allocation incorporated expenses, including depreciation, which were directly related to Chamber's transportation costs. The allocation involved the appropriate costs and therefore appeared to be reasonable. As such, we have continued to use a value-based factor for the final determination.

Comment 11: Petitioner argues that, in this case, the use of a U.S. interest rate to calculate the U.S. credit expense does not represent "commercial reality." According to petitioner, since Thai Merry has no loans in U.S. dollars and, therefore, finances all of its operations in Thai baht, the actual credit expense to Thai Merry is a home market borrowing expense. Petitioner argues that, if the Department must use a U.S. interest rate, it should at least impute a credit expense based on a Thai interest rate for the "time on the water" period between shipment date and payment date.

Respondent argues that, with respect to the U.S. credit expense calculated at the preliminary determination, the Department correctly interpreted *LMI–LA Metalli Industriale, S.p.A.* v. *United States*, 912 F. 2d. 455, 460 (Fed. Cir. 1990)) ("*LMI*"). Respondent argues that *LMI* was not a fact-specific decision in which the respondent company's dollar loans justified the use of a U.S. dollar interest rate. Rather, according to respondent, the Court focused on the availability of a lower borrowing rate. Respondent argues that the Department reasonably found the borrowing rate to be based on the currency of sale at the preliminary determination and should continue to use a dollar interest rate for the final determination.

DOC Position: While Thai Merry had liabilities denominated solely in baht, some of its assets (*e.g.*, receivables pursuant to U.S. sales) were denominated in dollars. As such, the cost to Thai Merry is the cost it would incur in discounting a dollar receivable which would be based on a dollar interest rate.

Because we believe that our original decision was correct and is supported by *LMI*, we have continued to use a U.S. dollar interest rate to calculate the U.S. credit expense.

Comment 12: Respondent argues that the methodology employed by the Department at the preliminary determination, while consistent with the decision in *Federal-Mogul, et. al.* v. *United States*, ("*Federal Mogul*") 834 F. Supp. 1391 (CIT)), is inconsistent with the expectation of tax neutrality under GATT and ignores the methodology sanctioned by a higher court, the U.S. Court of Appeals for the Federal Circuit (see, *Zenith Corp.* v. *United States*, ("*Zenith*") 988 F.2d 1573, 1583 n.4 (Fed. Cir. 1993) which stated that it was appropriate for the Department to adjust U.S. price by the amount of VAT actually paid on home market sales. Because the adjustments pursuant to *Federal Mogul* exaggerate existing margins, the use of this methodology is in violation of GATT. Respondent cites Article VI(1) and Article VI(4) of the GATT and Article 2(6) of the Agreement on Implementation of Article VI of the GATT, as unambiguously requiring that differences in the level of indirect taxes shall not create/inflate dumping margins. Petitioner argues that respondent's reliance on footnote 4 of *Zenith* is incorrect because the Court of International Trade found that "footnote 4 (*of Zenith*) is clearly at odds with Zenith and the language of the statute and is *dicta*." Petitioner states that in *Avesta Sheffield, Inc. et. al.* v. *United States*, Slip Op. 93–217 (CIT Nov. 18, 1993) the court also found footnote 4 of *Zenith* to be *dicta*. Additionally, with respect to respondent's argument that the Department's VAT methodology is in conflict with Article VI(4) of GATT, petitioner argues that under a proper interpretation of this article, in which a multiplier effect only occurs in the presence of a dumping margin, the Department's methodology fully comports with GATT.

DOC Position: We agree with petitioner. The VAT methodology used at the preliminary determination has been used by the Department for all recent antidumping determinations and is in accordance with both the statute and the GATT. Accordingly, for the final determination we have continued to use the VAT methodology used for the preliminary determination (see, Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan, 59 FR 16177, 16179, (April 6, 1994)).

Comment 13: Petitioner states that it is not clear whether the Department verified that all of Thai Merry's advertising expenses were related to lighter sales. Additionally, it is also not clear, according to petitioner, whether Thai Merry's general ledger distinguishes between advertising for lighters and advertising for scouring pads. Petitioner notes that only advertising expenses associated with the sale of disposable lighters should be used to adjust the FMV.

Respondent argues that the Department examined Thai Merry's advertising expense adjustment and found no indication that the company incurs advertising expense for anything other than the sale of lighters. Accordingly, the Department should utilize the verified figure for home market advertising expenses in the final determination.

DOC Position: We agree with respondent. During our verification of Thai Merry's advertising expenses, we noted no information indicating that Thai Merry paid for any advertising other than advertising for lighters. Accordingly, we have used the advertising expense, as verified, for the final determination.

Comment 15: Petitioner argues that sales of imprinted and non-imprinted Aladdin lighters, as well as wrapped lighters, should be used in the calculation of FMV without a difmer adjustment because the physical differences between these lighters and standard lighters are minor. According to petitioner, respondent's argument that wrapped and imprinted lighters should not be used in the FMV calculation because there are no U.S. sales of such lighters is dubious since respondent has already argued that standard and child-resistant lighters are one such or similar category.

Respondent argues that it is a basic tenet of the antidumping law that U.S. sales should be matched to identical sales in the home market or, if an identical product is unavailable, the most similar home market product should be compared to the U.S. sale. At verification, respondent was able to identify home market sales of imprinted and non-imprinted Aladdin lighters, as well as wrapped lighters. Since imprinted and wrapped lighters are neither identical nor most similar to U.S. sales, they should be excluded from the Department's LTFV comparison.

DOC Position: We agree with respondent. Petitioner seems to argue that imprinted and wrapped lighters sold in the home market should be matched to non-imprinted, non-wrapped lighters sold in the U.S. This is in spite of the fact that merchandise which is identical to the merchandise sold in the U.S. is being sold in the home market. While imprinted and wrapped lighters are within the same such or similar category, they are not identical or most similar to the merchandise sold in the United States. Therefore, we have excluded imprinted and wrapped lighters from the calculation of FMV for the final determination.

Comment 16: Petitioner argues that the Department should find critical circumstances to exist. According to petitioner, when May 1994 shipments are excluded (*i.e.*, the period which the Department referred to as a unique "spike"), Thai Merry's post-petition shipments increased by an amount that can still be considered massive under 19 CFR 353.16(f)(2). Petitioner argues that critical circumstance should be found to exist since the Department focused on the effect of the CPSC ban, and that removing this period for comparison purposes still yields a post-petition period increase which is "massive." Additionally, because it received notification of the Department's preliminary negative critical circumstances determination after close of business ("COB") on March 3, 1995 and the deadline for submitting comments to the determination was March 6, 1995, petitioner indicates that it was not allotted "sufficient time" to comment on the Department's analysis.

Respondent states that, while the Department could have based its negative preliminary critical circumstances determination on factors other than the CPSC ban and its effect on shipments, the Department correctly found that critical circumstances do not exist.

DOC Position: We first note that the Department's preliminary negative critical circumstance determination was not based solely on the effect of the CPSC ban on Thai Merry's shipments during the post-petition period. In making the negative preliminary critical circumstances determination, the Department stated that its decision was "[b]ased on (1) an evaluation of apparent domestic consumption during the pre- and post-petition period, as calculated by petitioner, (2) Thai Merry's share of domestic consumption during the pre- and post-petition periods, (3) the shipment data provided by respondent as compared to previous periods, and (4) consideration of the circumstances surrounding the large increase in shipment in May 1994 * * *" (see, page 7 of unpublished version of the Department's March 3, 1995 preliminary negative critical circumstances **Federal Register** notice). Because no additional information has been provided by petitioner that conflicts with our preliminary determination, we continue to find that critical circumstances do not exist.

With regard to petitioner's claim that it did not have sufficient time to analyze the Department's preliminary negative critical circumstances determination, we note that petitioner did not request additional information under administrative protective order ("APO") (*i.e.*, the Department's February 27, 1995 analysis memo) with which to make its analysis until late in the afternoon of March 6, 1995 (*i.e.*, the deadline date). Additionally, we note that on March 6, 1995, the Department offered petitioner an extension for filing comments on the preliminary negative critical circumstances determination if requested. Petitioner specifically declined to make an extension request (see, March 7, 1995 memo to case file from David R. Boyland, Case Analyst, Office of Countervailing Investigations).

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of disposable lighters, that are entered, or withdrawn from warehouse, for consumption on or after October 24, 1994, the date of publication of our affirmative determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the FMV of the merchandise of this investigation exceeds the USP, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Thai Merry	25.04
All Others	25.04

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6523 Filed 3–15–95; 8:45 am]

BILLING CODE 3510-DS-P

[Investigations Nos. 731–TA–700–701 (Final)]

Commission Determination To Conduct a Portion of the Hearing in Camera

In the Matter of: Disposable Lighters From the People's Republic of China and Thailand.

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondent Thai Merry Co., Ltd. (Thai Merry) in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for March 21, 1995, *in camera*. See Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.23(d), 201.13(m) and 201.35(b)(3), as amended, 59 FR 66719 (Dec. 28, 1994)). The remainder of the hearing will be open to the public. The Commission has unanimously determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1), as amended, 59 FR 66719 (Dec. 28, 1994)).

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3083. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Thai Merry has justified the need for a closed session. Because petitioner BIC Corporation is the sole domestic producer, a full discussion of petitioner's financial condition and of many of the indicators that the Commission examines in assessing material reason by reason of subject imports can only occur if at least part of the hearing is held *in camera*. In addition, because Thai Merry is the sole participating Thai respondent in these investigations and because the Commission's preliminary determination that there was a reasonable indication that imports from Thailand pose a threat of material injury to the domestic industry, any discussion of Thai producer and importer data as required by the Commission's analysis of the statutory factors pertaining to a finding of threat of material injury by reason of those imports will necessitate disclosure of business proprietary information (BPI). Thus, such a discussion can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a presentation including BPI by respondents and for questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except: those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in these investigations. See 19 CFR 201.35(b)(1), (2). In addition, if petitioner's BPI will be discussed in the *in camera* session, personnel of petitioner may also be granted access to the closed session. Similarly, if respondents' BPI will be discussed in the *in camera* session, personnel of respondents may also be granted access to the closed session. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Disposable Lighters from the People's Republic of China and Thailand*, Invs. Nos. 731–TA–700–701 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: March 15, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6863 Filed 3–20–95; 8:45 am]

BILLING CODE 7020–02–P

APPENDIX C

LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING

CALENDAR OF HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject	:	DISPOSABLE LIGHTERS FROM THE PEOPLE'S REPUBLIC OF CHINA AND THAILAND
Invs. Nos.	:	731-TA-700 and 701 (Final)
Date and Time	:	March 21, 1995 - 9:30 a.m.

Sessions were held in connection with the investigations in the Main Hearing Room, 500 E Street SW., Washington, DC

In Support of Imposition of Antidumping Duties:

Barnes, Richardson & Colburn
Washington, DC
on behalf of

BIC Corporation

Michael Gray, National Sales Manager, BIC Corporation

Jim McDonough, Area Manager for Product, BIC Corporation

Maria Iranpour, Accounting Manager, BIC Corporation

Edward Martin, Economist, Edward E. Martin and Associates Economic Services

Robert Mitola, Cost Analyst, BIC Corporation

Thomas M. Kelleher, General Counsel, BIC Corporation

Cheryl Dubois, Staff Attorney, BIC Corporation

Matthew T. McGrath)
Ronald A. Oleynik)--OF COUNSEL

In Opposition to the Imposition of Antidumping Duties:

Willkie Farr & Gallagher
Washington, DC
on behalf of

Thai Merry Company, Ltd.

John Tucker, Marketing Consultant, Calico Brands, Inc.

James Wilson, Vice President, Calico Brands, Inc.

Richard D. Boltuck, Consultant, Trade Resources Company

Kenneth J. Pierce)
Matthew R. Nicely)-OF COUNSEL
William B. Lindsey)

Pepper, Hamilton, & Scheetz
Washington, DC
on behalf of

New York Lighter Company, Inc.
PolyCity Industrial Ltd.

John Nordstrom, President, New York Lighter Company, Inc.

Elliot J. Feldman)--OF COUNSEL
John J. Burke)

Venable, Baetjer, Howard & Civiletti
Washington, DC
on behalf of

Gao Yao Hua Fa Industrial Company, Ltd.
Guangdong Light Industrial Products Import & Export Corporation
China National Overseas Trading Corporation

Lindsay B. Meyer)--OF COUNSEL
John M. Gurley)

APPENDIX D

SUPPLEMENTARY SUMMARY TABLES

Table D-1
Standard nonrefillable disposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

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Table D-2
Child resistant nonrefillable disposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

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Table D-3
Standard refillable disposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

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Table D-4
Child resistant refillable disposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

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Table D-5
Standard disposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

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Table D-6
Child resistant disposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

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Table D-7
Disposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

(Quantity=*1,000 units*; value=*1,000 dollars*; period changes=*percent, except where noted*)

Item	Reported data					Period changes			
				Jan.-Sept.--					Jan.-Sept.
	1991	1992	1993	1993	1994	1991-93	1991-92	1992-93	1993-94
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producer's share[1]	***	***	***	***	***	***	***	***	***
Importers' share:[1]									
China	***	***	***	***	***	***	***	***	***
Thailand	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producer's share[1]	***	***	***	***	***	***	***	***	***
Importers' share:[1]									
China	***	***	***	***	***	***	***	***	***
Thailand	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
U.S. importers' imports from--									
China:									
Imports quantity	85,980	85,350	158,486	115,959	219,506	+84.3	-0.7	+85.7	+89.3
Imports value	13,768	14,398	17,050	12,649	23,622	+23.8	+4.6	+18.4	+86.7
Unit value	$0.16	$0.17	$0.11	$0.11	$0.11	-32.8	+5.4	-36.2	-1.3
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Thailand:									
Imports quantity	***	***	***	***	***	***	***	***	***
Imports value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subject sources:									
Imports quantity	***	***	***	***	***	***	***	***	***
Imports value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Other sources:									
Imports quantity	334,847	345,266	308,617	227,100	265,439	-7.8	+3.1	-10.6	+16.9
Imports value	83,554	86,429	75,491	55,192	55,833	-9.7	+3.4	-12.7	+1.2
Unit value	$0.25	$0.25	$0.24	$0.24	$0.21	-2.0	+0.3	-2.3	-13.5
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All sources:									
Imports quantity	***	***	***	***	***	***	***	***	***
Imports value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
U.S. producer's--									
Average capacity quantity	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization[1]	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Exports/shipments[1]	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	$***	$***	$***	$***	$***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventory/production[1]	***	***	***	***	***	***	***	***	***

See footnote at end of table.

Table D-7--Continued
Disposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

(Quantity=*1,000 units*; value=*1,000 dollars*; period changes=*percent, except where noted*)

Item	Reported data					Period changes			
				Jan.-Sept.--					Jan.-Sept.
	1991	1992	1993	1993	1994	1991-93	1991-92	1992-93	1993-94
U.S. producer's--									
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (*1,000s*)	***	***	***	***	***	***	***	***	***
Total compensation (*$1,000*)	***	***	***	***	***	***	***	***	***
Hourly total compensation	$***	$***	$***	$***	$***	***	***	***	***
Productivity (*units/hour*)	***	***	***	***	***	***	***	***	***
Unit labor costs	$***	$***	$***	$***	$***	***	***	***	***
Net sales--									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit sales value	$***	$***	$***	$***	$***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	$***	$***	$***	$***	$***	***	***	***	***
Unit SG&A expenses	$***	$***	$***	$***	$***	***	***	***	***
Unit operating income (loss)	$***	$***	$***	$***	$***	***	***	***	***
COGS/sales[1]	***	***	***	***	***	***	***	***	***
Operating income (loss)/sales[1]	***	***	***	***	***	***	***	***	***

[1] "Reported data" are in percent and "period changes" are in percentage points.

Note.--Period changes are derived from the unrounded data. Period changes involving negative period data are positive if the amount of the negativity decreases and negative if the amount of the negativity increases. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information. Part-year inventory ratios are annualized.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce. "Import" data for Thailand are shipments data from questionnaires.

Table D-8
Nondisposable pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

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Table D-9
Pocket lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

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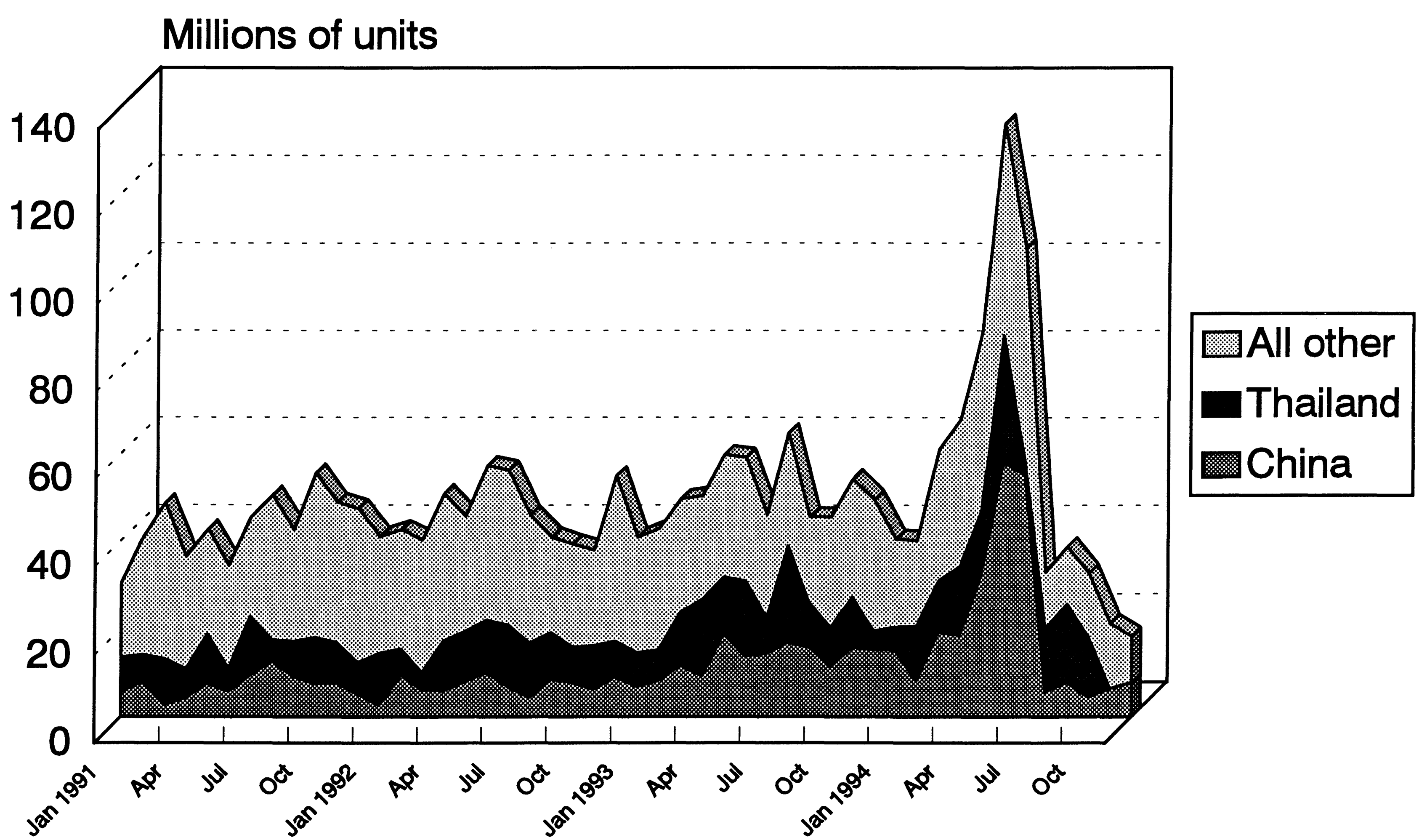
APPENDIX E

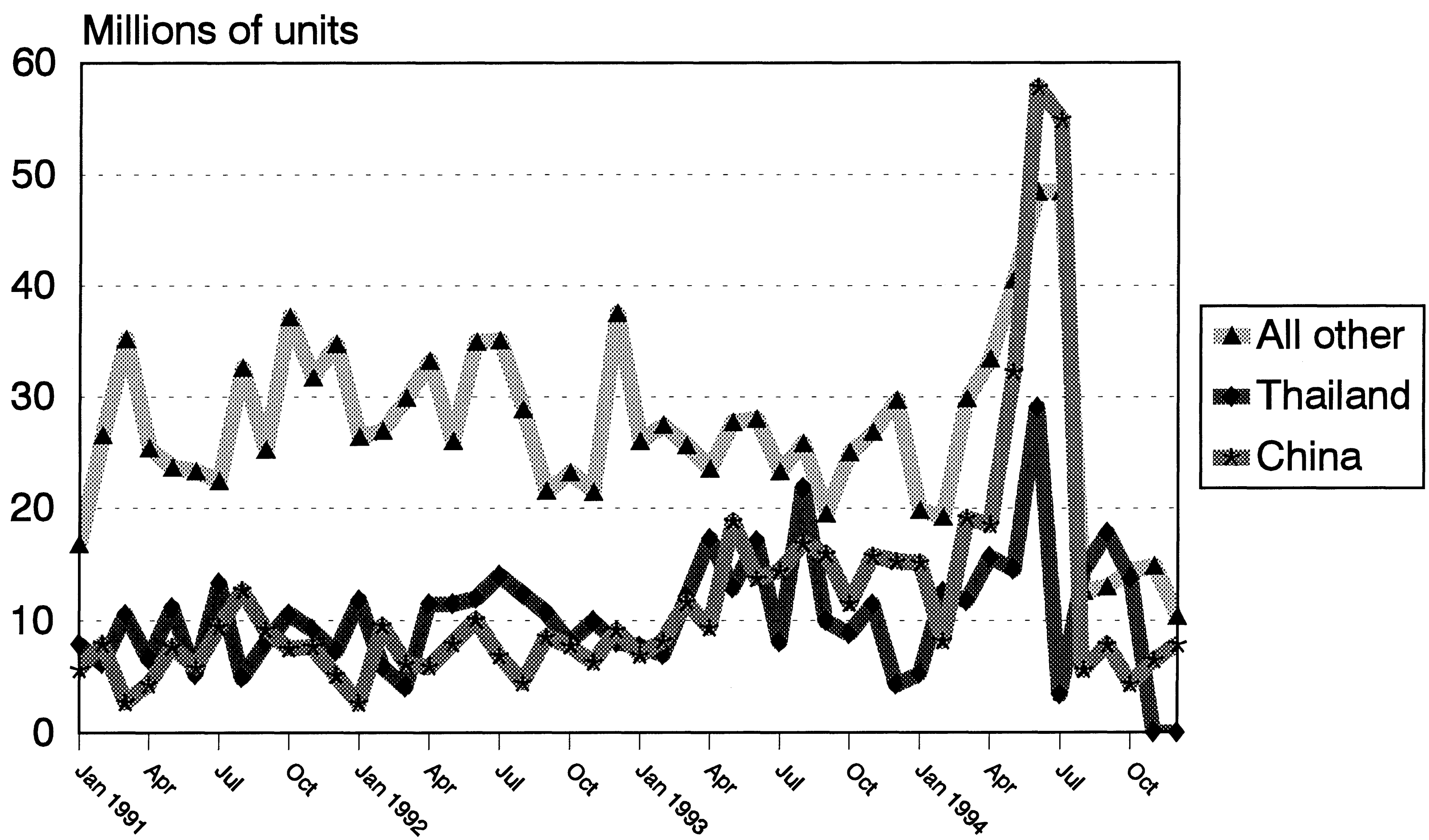
MONTHLY IMPORT DATA

Figure E-1
Disposable pocket lighters: Cumulative U.S. imports, by months and by sources, Jan. 1991-Dec. 1994



Source: Compiled from official statistics of the U.S. Department of Commerce.

Figure E-2
Disposable pocket lighters: U.S. imports, by months and by sources, Jan. 1991-Dec. 1994



Source: Compiled from official statistics of the U.S. Department of Commerce.