

UNITED STATES INTERNATIONAL TRADE COMMISSION

PET FILM FROM INDIA AND TAIWAN

Investigations Nos. 701-TA-415 and 731-TA-933-934 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3437, July 2001)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-415 and 731-TA-933-934 (Preliminary)

POLYETHYLENE TEREPHTHALATE FILM, SHEET, AND STRIP FROM INDIA AND TAIWAN

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671(a) and 19 U.S.C. § 1673b(a)) (the Act), respectively, that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India of polyethylene terephthalate film, sheet, and strip (PET film), provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and by reason of imports from India and Taiwan of PET film that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 703(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On May 17, 2001, a petition was filed with the Commission and Commerce by DuPont Teijin Films, Wilmington, DE, Mitsubishi Polyester Film of America, Greer, SC, and Toray Plastics (America), Inc., North Kensington, RI, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of PET film from India and Taiwan that are alleged to be sold in the United States at LTFV and that are alleged to be subsidized by the Government of India. Accordingly, effective May 17, 2001, the Commission instituted countervailing duty investigation 701-TA-415 (Preliminary) and antidumping duty investigations Nos. 731-TA-933-934 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 29, 2001 (66 FR 29174). The conference was held in Washington, DC, on June 7, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

IEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of polyethylene terephthalate film, sheet, and strip (“PET film”) from India and Taiwan that are allegedly sold in the United States at less than fair value (“LTFV”) and imports of PET film from India that are allegedly subsidized.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁵ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁶

The decision regarding the appropriate domestic like product(s) in an investigation is 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

² 19 U.S.C. §1671b(a), 19 U.S.C. §1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (CIT 1999).

³ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁴ 19 U.S.C. §1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

⁷ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); 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) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and
(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

Commerce’s notices of initiation define the imported merchandise within the scope of these investigations as:

all gauges of raw, pretreated, or primed [polyethylene terephthalate film, sheet and strip], whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.¹¹

C. Domestic Like Product

We define the domestic like product as the domestically produced articles coextensive with the scope of these investigations.¹² We recognize that the domestic like product was defined somewhat more

⁷ (...continued)

production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁸ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ 66 Fed. Reg. 31888 (June 13, 2001) and 66 Fed. Reg. 31892 (June 13, 2001).

¹² Treating these articles as a single domestic like product is warranted pursuant to the Commission’s traditional six factor test. In terms of physical characteristics, all PET film is made from the same polyethylene terephthalate polymer, and share the same basic chemical properties. Petitioners’ Postconference Brief at 8; CR at I-4, PR at I-3. It appears that most PET films have distinct, mutually exclusive end uses based on purchaser requirements, and are not generally substitutable for one another for specific end uses. Polyethylene Terephthalate (PET) Film, Sheet and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458-459 (Final), USITC Pub. 2383 (May 1991) at 11. All PET film shares the same basic channels of distribution. PET film is generally sold to processors, who add additional coatings to the film before selling it to end users. Some PET film is also sold to distributors and some is sold directly to end users. CR at II-2, PR at II-1. All PET film is subject to the same “sequential draw” production process. CR at I-5, PR at I-4. Consumers apparently based their perceptions of PET film on a wide variety of specific end uses. Producers, however, perceive the various grades and thicknesses of PET film as a continuum of the same product. Petitioners’ Postconference Brief at 9. There is insufficient information in the record to evaluate the last of the six factors, price.

broadly in previous antidumping duty investigations involving the same scope as these investigations,¹³ and in an expedited sunset review of an order arising from those earlier investigations.¹⁴ In those earlier investigations and in the sunset review, the domestic like product was defined to include PET films that are thickly coated during the production process, such as Cronar®, Estar®, and other PET film equivalent to Cronar® and Estar®.¹⁵ There is, however, not enough information on the record of these investigations to determine whether it would be appropriate to define the domestic like product to include types of PET film that are outside the scope of the investigations.¹⁶ In any final phase investigations, we will examine whether it would be appropriate to include in the domestic like product any types of PET film that are not within the scope of the investigations.

D. Domestic Industry

In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.¹⁷ Based on our definition of the domestic like product, we define the domestic industry to include all producers of PET film.¹⁸

III. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.¹⁹ In

¹³ Polyethylene Terephthalate (PET) Film, Sheet and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458-459 (Final), USITC Pub. 2383 (May 1991).

¹⁴ Polyethylene Terephthalate (PET) Film from Korea, Inv. Nos. 731-TA-459 (Review), USITC Pub. 3278 (Feb. 2000).

¹⁵ USITC Pub. 2383 at 6-7 and 15-16; USITC Pub. 3278 at 5.

¹⁶ In their petition, petitioners stated that the domestic like product should be defined in the same way as it had been in the previous investigations. Petition at 10. At the staff conference, petitioners' counsel indicated that petitioners' position on this issue was under review. Transcript of June 7, 2001, Staff Conference at 48-50 (Greenwald). In their postconference brief, petitioners, for the first time, took the position that the domestic like product should be defined to exclude the coated PET film that had been included in previous investigations. Petitioners' Postconference Brief at 7 and 11. Other than asserting that the channels of distribution for certain coated PET film had changed since the 1990-91 investigations, Petitioners did not explain their position in terms of the six-factor test that the Commission traditionally uses to analyze like product questions.

¹⁷ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

¹⁸ In the event the Commission broadens the definition of the domestic like product in any final phase investigations, it may also need to consider whether those entities that only "coat" PET film should be included in the domestic industry.

¹⁹ 19 U.S.C. § 1677(7)(G)(i).

assessing whether subject imports compete with each other and with the domestic like product,²⁰ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject 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 geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.²¹

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.²² Only a “reasonable overlap” of competition is required.²³

²⁰ The SAA expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848, citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

²¹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

²² See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

²³ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”)

B. Analysis

The conditions for cumulating the subject imports have been satisfied. The petition was filed with respect to all subject imports on the same day, and based on the four factors which the Commission considers in analyzing cumulation, there is a reasonable overlap of competition.

First, there is at least a moderate degree of fungibility among the subject imports and the domestic product. We recognize that imports from Taiwan may meet a more exacting quality standard with higher-end applications than the product from India. Nonetheless, virtually all importers providing information on this issue reported that domestic and Indian, domestic and Taiwanese, and Indian and Taiwanese PET film are at least “sometimes” used interchangeably.²⁴ All six domestic merchant market producers reported that domestic PET film is “always” used interchangeably with imports from both subject countries.²⁵ Moreover, there appears to be a reasonable overlap between domestic PET film and the subject imports, and between imports from India and from Taiwan, in terms of the market segments into which the products are sold. For example, the proportion of domestic shipments going to the packaging and industrial market segments is 57.5 percent for domestic producers, 86.2 percent for subject imports from India, and 67.4 percent for subject imports from Taiwan.²⁶

Second, the record indicates that imports from India and Taiwan, and domestically produced PET film, are sold in the same geographic markets throughout the United States.²⁷

Third, the subject imports and the domestic product have similar channels of distribution. Most sales of domestically produced PET film and of the subject imports are made to processors who specialize in coating the film for a particular end use.²⁸ Some sales also are made through distributors, and some are made directly to end-users. Although a greater proportion of Indian imports are sold through distributors than Taiwanese imports, the majority of imports from both countries are sold to processors or end-users.²⁹

Finally, the record shows that there were substantial volumes of imports into the United States of the subject merchandise from both India and Taiwan in each year of the period of investigation.³⁰

We therefore find that a reasonable overlap of competition exists between the subject imports and between subject imports and the domestic like product. Consequently, we cumulate subject imports from India and Taiwan for the purpose of analyzing whether there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV AND/OR SUBSIDIZED IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.³¹ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S.

²⁴ CR at II-17-19, PR at II-9-10.

²⁵ Id.

²⁶ CR & PR at Table II-1.

²⁷ CR at II-1, PR at II-1.

²⁸ CR at II-2, PR at II-1.

²⁹ CR at II-2, PR at II-1-2.

³⁰ CR & PR at Table IV-1.

³¹ 19 U.S.C. §§ 1671b(a) and 1673b(a).

production operations.³² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³³ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.³⁴ 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

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

A. Captive Production

The domestic industry captively consumes part of its production of the domestic like product in the manufacture of downstream articles.³⁶ Accordingly, we have considered whether the statutory captive production provision requires us to focus our analysis primarily on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.³⁷

The record in these preliminary investigations does not indicate that the criteria for applying the captive production provision have been met. In particular, there is evidence suggesting that the second

³² 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 . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

³³ 19 U.S.C. § 1677(7)(A).

³⁴ 19 U.S.C. § 1677(7)(C)(iii).

³⁵ 19 U.S.C. § 1677(7)(C)(iii).

³⁶ U.S. producers’ internal consumption of PET film accounted for 16.59 percent of total U.S. shipments in 1998, 14.81 percent of total U.S. shipments in 1999, and 15.11 percent of total U.S. shipments in 2000. See CR & PR at Table III-3.

³⁷ The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

(iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

statutory criterion is not met.³⁸ The same is true for the third statutory criterion,³⁹ regardless of how that provision is interpreted.⁴⁰ Accordingly, we have not applied the captive production provision for purposes of these preliminary determinations, but we intend to seek further information on this issue in any final phase investigations.

B. Conditions of Competition

The following conditions of competition are pertinent to our analysis.

The market for PET film in the United States can be divided into five broad segments -- packaging, industrial, magnetics, electrical, and imaging -- each with different demand characteristics. Overall growth in consumption for PET film masks differences among trends in the various end uses. For example, demand in the packaging and industrial segments has continued to be strong and to grow, while demand in magnetic media applications has been falling for years, because of the substitution of CDs and DVDs for audio and video tapes.⁴¹

PET film production is highly capital intensive, with a new plant costing as much as \$375 million.⁴² In order to recover the high fixed costs involved, producers must achieve and sustain high rates of capacity utilization.⁴³

The domestic PET film industry underwent restructuring during the period of investigation. Many of the firms in the domestic industry have changed ownership, or have entered into joint ventures with other (often foreign) producers.⁴⁴ There was one significant new entrant into the U.S. industry during the period of investigation, as the Korean producer SKC opened a new plant in Georgia in 1999.⁴⁵ This plant reportedly has the capacity to serve more than *** percent of the total U.S. market for PET film.⁴⁶

The record indicates that there is a moderate to high degree of substitutability between domestically produced PET film and the subject imports.⁴⁷ The subject imports compete primarily in the industrial and packaging segments of the market.⁴⁸

The domestic industry has obtained relief from unfairly traded imports in the past. Domestic producers filed an antidumping duty petition on imports from Korea, Japan, and Taiwan in 1990, and antidumping duty orders affecting imports from Japan and Korea were issued in 1991.⁴⁹ The order on PET film from Japan was revoked in 1995, after the domestic industry informed the Department of

³⁸ For example, U.S. producers estimated that PET film accounts for only 15 percent of the final cost of imaging end products. CR at II-10, PR at II-6.

³⁹ See CR & PR at Table II-1.

⁴⁰ See Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (June 1999) at 28-29 and 33 for the two ways in which the third statutory criterion has been interpreted by current Commissioners.

⁴¹ CR at II-11-13, PR at II-6-8.

⁴² Petitioners' Postconference Brief at 18.

⁴³ CR at I-5, PR at I-4.

⁴⁴ CR at III-4, PR at III-3.

⁴⁵ CR at III-7, PR at III-4.

⁴⁶ Indian Respondents' Postconference Brief at 23. We intend to closely examine the impact of capacity increases in any final phase investigations.

⁴⁷ CR at II-17-19, PR at II-9-10.

⁴⁸ CR & PR at Table II-1.

⁴⁹ 56 Fed. Reg. 25669 (June 5, 1991). Imports from Taiwan were found to be *de minimis* and the investigation of those imports was terminated.

Commerce that it was no longer interested in the maintenance of that order.⁵⁰ The antidumping duty order on PET film from Korea was subject to an expedited sunset review in 2000, in which the Commission found that revocation of that order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.⁵¹ That order, therefore, remains in effect.

Nonsubject imports were a significant source of supply to the U.S. market throughout the period of investigation, accounting for 24 percent of apparent U.S. consumption in 1998, 29 percent in 1999, and 26.6 percent in 2000.⁵² Korea was the largest supplier of non-subject imports during the period of investigation. There is some evidence in the record that the Korean producer SKC may have increased its exports to the United States prior to bringing its new U.S. plant on-line in 1999.⁵³

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁵⁴

The quantity of subject imports rose from 34,439,000 pounds in 1998 to 38,385,000 pounds in 1999 and 53,453,000 pounds in 2000. Subject imports also increased between the interim periods, rising from 12,291,000 pounds in the first three months of 2000 to 12,677,000 pounds in the first three months of 2001.⁵⁵ The share of domestic consumption supplied by subject imports declined slightly, from 5.6 percent in 1998 to 5.5 percent in 1999, before increasing to 7.6 percent in 2000. The market share of subject imports also increased between the interim periods, rising from 6.9 percent in the first three months of 2000 to 7.7 percent in the first three months of 2001.⁵⁶

For purposes of these preliminary determinations, we find the volume and increase in volume of cumulated subject imports, both in absolute terms and relative to apparent consumption in the United States, to be significant.

D. Price Effects of the Subject Imports

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

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant

⁵⁰ 65 Fed. Reg. 52366 (Oct. 6, 1995).

⁵¹ Polyethylene Terephthalate (PET) Film from Korea, Inv. Nos. 731-TA-459 (Review), USITC Pub. 3278 (Feb. 2000).

⁵² CR & PR at Table IV-3.

⁵³ Taiwanese Respondents’ Postconference Brief at 30-36. We intend to closely examine the role and impact of nonsubject imports in any final phase investigations.

⁵⁴ 19 U.S.C. § 1677(7)(C)(i).

⁵⁵ CR & PR at Table IV-1.

⁵⁶ CR & PR at Table IV-3.

degree.⁵⁷

The record in these preliminary investigations indicates that domestically produced PET film and the subject imports are generally substitutable, and that price is a significant factor in purchasing decisions.⁵⁸

The Commission collected pricing data on two PET film products.⁵⁹ The limited pricing data obtained by the Commission indicate that prices for domestically produced PET film declined from the first quarter of 1998 through the first quarter of 1999, before recovering (partially in the case of one product, and fully in the case of the other) by the first quarter of 2001. The prices of subject imports of one pricing product (product 1) followed a similar trend. The prices of imports of the other pricing product (product 2) from India also followed a similar trend, except that prices began to decline again in the third quarter of 2000.⁶⁰

Subject imports undersold domestically produced PET film in 41 of the 42 quarterly sales comparisons, or in 98 percent of all observations. Margins of underselling ranged from 3.3 percent to 33.7 percent.⁶¹ This pervasive pattern of underselling is supported to some degree by lost sales allegations made by domestic producers and confirmed by the Commission.⁶²

The ratio of the cost of goods sold to net sales also increased steadily throughout the period investigated.⁶³ However, record evidence shows that domestic producers were unsuccessful in their attempts to raise prices in the face of these apparent rising costs.⁶⁴

Based on the record in these preliminary investigations, we find there has been significant price underselling by imports of the subject merchandise, and that subject imports suppressed prices to a significant degree.⁶⁵

E. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁶ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits,

⁵⁷ 19 U.S.C. § 1677(7)(C)(ii).

⁵⁸ CR at II-15-17, PR at II-9-10.

⁵⁹ Petitioners have alleged that U.S. customers for PET film sold in the packaging and industrial markets – the market segments in which most of the subject imports are sold – focus primarily on price in their purchasing decisions. Petitioners' Postconference Brief at 21. We intend to examine this issue more closely in any final phase investigations.

⁶⁰ CR & PR at Tables V-1 and V-2. For Product 2 there were too few quarters with imports from Taiwan to discern meaningful trends.

⁶¹ CR & PR at Tables V-1 and V-2.

⁶² CR & PR at Table V-3.

⁶³ This ratio was 76.1 percent in 1998, 82.9 percent in 1999, and 89.0 percent in 2000. There was also an increase over the interim periods, from 85.8 percent in the first three months of 2000, to 96.4 percent in the first three months of 2001. CR & PR at Table VI-1.

⁶⁴ Petitioners' Postconference Brief at Exhibit E (providing examples of unsuccessful attempts by U.S. producers to raise prices).

⁶⁵ We recognize that the pricing data collected in these preliminary phase investigations were limited, and we intend to seek more extensive information in any final phase investigations.

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

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.”^{67 68 69}

The domestic industry’s production, shipments, and sales increased modestly between 1998 and 2000, but declined in interim 2001 as compared with interim 2000.⁷⁰ The domestic industry’s capacity also increased modestly between 1998 and 2000, and declined in interim 2001 as compared with interim 2000.⁷¹ Inventories as a ratio to U.S. shipments increased during the period of investigation.⁷² The domestic industry lost market share over the period of investigation.⁷³

The financial position of the industry deteriorated sharply throughout the period of investigation, with net sales values and operating income steadily declining.⁷⁴ The industry’s ratio of operating income

⁶⁷ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

⁶⁸ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce identified estimated dumping margins of 128.33 percent and 142.21 for imports from India, and 15.62 percent for imports from Taiwan. 66 Fed. Reg. 31888, 31890-91 (June 13, 2001).

Commerce initiated investigations of 19 subsidy programs in the countervailing duty case with respect to imports from India. 66 Fed. Reg. 31892 (June 13, 2001).

⁶⁹ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁷⁰ The industry’s production was 494.950 million pounds in 1998, 530.248 million pounds in 1999, and 531.261 million pounds in 2000. CR & PR at Table III-2. In the first three months of 2000 and 2001, production was 137.810 million pounds and 129.033 million, respectively. Id. Similarly, the domestic producers’ shipments were 488.870 million pounds in 1998, 510.722 million pounds in 1999, and 520.887 million pounds in 2000. CR & PR at Table III-3. In the first three months of 2000 and 2001, the industry’s shipments were 133.964 million pounds and 120.970 million pounds, respectively. Id. The domestic industry’s net sales were 488.870 million pounds in 1998, 510.722 million pounds in 1999, and 520.887 million pounds in 2000. CR & PR at Table VI-1. The industry recorded sales of 133.964 million pounds in the first three months of 2000 and 120.970 million pounds in the first three months of 2001. Id.

⁷¹ The industry’s capacity was 594.385 million pounds in 1998, 587.585 million pounds in 1999, and 628.435 million pounds in 2000. Capacity fell from 159.224 million pounds in interim 2000 to 156.986 million pounds in interim 2001. CR & PR at Table III-2. Capacity utilization increased from 83.3 percent in 1998 to 90.2 percent in 1999, but then declined to 84.5 percent in 2000. This decline continued over the interim periods; in the first three months of 2001, capacity utilization was 82.2 percent, as compared with 86.6 percent in the first three months of 2000. Id.

⁷² The ratio was 11.3 percent in 1998, 13.1 percent in 1999, and 14.3 percent in 2000. This ratio also increased in the first three months of 2001 to 15.4 percent as compared with 13.2 percent in the first three months of 2000. CR & PR at Table III-4.

⁷³ The industry’s market share was 70.5 percent in 1998, 65.5 percent in 1999, and 65.8 percent in 2000. The domestic industry’s market share increased over the interim periods, rising from 65.7 percent in the first three months of 2000 to 68.9 percent in the first three months of 2001. CR & PR at Table IV-3.

⁷⁴ Net sales values were \$920.523 million in 1998, \$865.390 million in 1999, and \$832.070 million in 2000. Net sales values fell from \$212.218 million in the first three months of 2000 to \$189.222 million in the first three months of 2001. CR & PR at Table VI-1. Operating income was \$109.188 million in 1998, \$26.079 million in 1999, and a loss of \$13.870 million in 2000. Operating income fell from \$3.196 million in the first three months of 2000 to a loss of \$19.435 million in the first three months of 2001. Id.

to net sales also fell.⁷⁵ The number of domestic producers reporting operating losses on commercial sales rose from one in 1998 to four in 2000.⁷⁶

Based on the record in the preliminary phase of these investigations, we find that the significant and increasing volume of low priced cumulated subject imports had a significant negative impact on the U.S. industry producing PET film. Accordingly, we determine that there is a reasonable indication of material injury by reason of the subject imports.

⁷⁵ This ratio was 11.9 percent in 1998, 3.0 percent in 1999, and negative 1.7 percent in 2000. The ratio also fell from 1.5 percent in the first three months of 2000 to negative 10.3 percent in the first three months of 2001. CR & PR at Table VI-1.

⁷⁶ CR & PR at Table VI-3. The Commission had financial data for six firms. Id.

CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PET film from India and Taiwan that are allegedly sold in the United States at less than fair value and by imports of PET film from India that are allegedly subsidized.