

UNITED STATES INTERNATIONAL TRADE COMMISSION

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

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

DETERMINATIONS AND VIEWS OF THE COMMISSION
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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 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 19 U.S.C. § 1673d(b)) (the Act), respectively, 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 have been found by the Department of Commerce to be subsidized by the Government of India and by reason of imports from India and Taiwan of PET film 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 these investigations effective May 17, 2001, following receipt of a petition 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. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of PET film from India were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports of PET film from India and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations 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 February 1, 2002 (67 FR 4995). The hearing was held in Washington, DC, on May 9, 2002, 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)).

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine 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 sold in the United States at less than fair value (“LTFV”) and imports of PET film from India that are subsidized.

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether 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.”² 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.”³ 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”⁴

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.⁵ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁶ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁷ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁸

² 19 U.S.C. §1677(4)(A).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(10).

⁵ 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 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).

⁶ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁷ 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.”).

⁸ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single
(continued...)

B. Product Description

Commerce's final determinations define the imported merchandise within the scope of these investigations as:

all gauges of raw, pretreated, or primed PET film, 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 3920.62.00.⁹

PET film is a high-performance, flexible, transparent or translucent material produced from PET polymer, a linear thermoplastic resin. The desirable qualities of PET film include its high tensile strength, good flexibility and retention of physical properties over a wide temperature range, excellent electrical properties, durability, heat resistance, good gas-barrier properties, excellent dimensional stability, chemical inertness, good optical clarity, and low moisture absorption. PET film is typically sold to downstream converters who apply various substrates to the film, depending on end-use requirements.¹⁰ The main end-uses for PET film can be grouped into five broad segments: packaging, industrial, magnetics, electrical, and imaging. Each of these market segments can be further divided into numerous subsegments.¹¹

C. Domestic Like Product

General. We define the domestic like product as the domestically produced articles coextensive with the scope of these investigations. We considered whether to include "equivalent" PET film (that is, PET film with a coating of more than 0.00001 inch thick) in the definition of the domestic like product. We recognize that the Commission used a broader definition of the domestic like product in previous antidumping duty investigations involving the same scope as these investigations,¹² and in an expedited sunset review of an order arising from those earlier investigations.¹³ In those earlier proceedings, the Commission's definition of the domestic like product included PET films that are thickly coated during the production process, such as Cronar®, Estar®, and other PET film equivalent to Cronar® and Estar®.¹⁴ However, as discussed below, based on the record information in these investigations, we find that it is

⁸ (...continued)

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).

⁹ E.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India, 67 Fed. Reg. 34899 (May 16, 2002).

¹⁰ Confidential Staff Report, as revised by Memorandum INV-Z-079 ("CR") at I-5, Public Report ("PR") at I-4.

¹¹ CR at I-5-6, PR at I-4-5.

¹² Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383 (May 1991).

¹³ Polyethylene Terephthalate (PET) Film from Korea, Inv. No. 731-TA-459 (Review), USITC Pub. 3278 (Feb. 2000).

¹⁴ USITC Pub. 2383 at 6-7 and 15-16; USITC Pub. 3278 at 5.

most appropriate to define the like product as coextensive with the scope of these investigations, and not to include equivalent PET film in this definition.

Physical Characteristics and Uses. PET film may or may not be coated with a performance enhancing resinous or inorganic layer. Viewed in one way, the only difference in physical characteristics between PET film that has been coated and equivalent PET film is the thickness of the film's coating -- film with a coating more than 0.00001 inch ("one gauge") thick is considered to be equivalent PET film.¹⁵ However, testimony at the hearing in these investigations indicated that there is a bright line between films that are coated with a thickness of less than one gauge and those that receive a thicker coating. The thicker coatings on equivalent PET film give the film distinct physical characteristics.¹⁶

The uses for PET film and equivalent PET film are different. PET film tends to be a more general purpose product, while the addition of coatings on equivalent PET film means that it is sold to more specific end-use markets.¹⁷

Interchangeability. There appears to be little interchangeability between PET film and equivalent PET film. However, limited interchangeability for specific end uses is common to most other PET film.¹⁸

Channels of Distribution. PET film and equivalent PET film have different channels of distribution. During the period of investigation, most PET film (***) was sold to processors, whereas most equivalent PET film (***) was sold to end-users.¹⁹

Common Manufacturing Facilities, Production Processes and Employees. Some of the basic production processes and equipment used to make PET film and equivalent PET film are substantially the same.²⁰ However, PET film that is coated to less than one gauge thickness is almost always made in a single in-line production process; whereas equivalent PET film is made either by applying the thicker coating in a separate offline process (as occurs at Dupont-Teijin Films, for example), or it is made in dedicated facilities in which the line moves very slowly to allow for the thicker coating (as occurs at Agfa, for example).²¹

Customer and Producer Perceptions. The evidence in the record of these investigations indicates that producers and purchasers of PET film perceive film with thicker and thinner coatings (with one gauge as the dividing line) as separate products. As noted above, the witnesses at the hearing in these investigations characterized PET film and equivalent PET film as "distinctly different" products.²² Also,

¹⁵ In the 1991 antidumping duty investigations of PET film from Japan and Korea, the Commission described equivalent PET film as "a particularized type of PET film destined for the graphics market that contains the essential characteristics . . . common to all PET film, in addition to its specialized adhesive characteristics." USITC Pub. 2383 at 15.

¹⁶ Witnesses for the Indian respondents explained that the thinner coatings "are functional coatings that allow you to do something else to the surface of the film," while the thicker coatings "are for specific properties such as increased barrier properties, improvement where those in-line properties [i.e., thinner coated films] are not going to do that." Hearing Transcript at 150-151 (Woody, J2 Enterprises). The witnesses characterized film with thinner and thicker coatings as "distinctly different." Id.

¹⁷ CR at I-11, PR at I-8.

¹⁸ CR at I-11, PR at I-8-9; and Hearing Transcript at 116 (Gazard, Dupont Teijin Films).

¹⁹ CR at I-12, PR at I-9.

²⁰ CR at I-11-12, PR at I-9.

²¹ Hearing Transcript at 45-46 (Gazard, Dupont Teijin Films), and 89, 100, 272 and 281 (Greenwald).

²² Hearing Transcript at 151 (Woody, J2 Enterprises).

some purchasers and producers confirmed this perception of different products in their questionnaire responses.²³

Pricing. The record indicates a very large price differential between PET film and equivalent PET film.²⁴ The unit values of commercial shipments of PET film and equivalent PET film were \$*** and \$***, respectively, in 1999, and \$*** and \$***, respectively, in 2001.²⁵ A large price differential remains even if equivalent PET film is compared only with PET film imaging products – weighted-average annual prices for individual imaging products ranged from \$*** to \$*** over the period of investigation.²⁶

We conclude that the definition of the domestic like product is all PET film, not including equivalent PET film. We find that the record in these investigations, including the evidence on physical characteristics and uses, channels of distribution, manufacturing facilities, customer and producer perceptions, and pricing, considered together, weighs in favor of not including equivalent PET film in the definition of the domestic like product.

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.²⁷ Based on our definition of the domestic like product, we define the domestic industry to include all domestic producers of PET film.

III. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination 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.²⁸ In assessing whether subject imports compete with each other and with the domestic like product,²⁹ the Commission has generally considered four factors, including:

²³ See Questionnaire Responses cited in Petitioners’ Posthearing Brief, Part II at 5-6.

²⁴ In the 1991 antidumping duty investigations of PET film from Japan and Korea the Commission did not compare the pricing of PET film and equivalent PET film. Because all equivalent PET film was then captively consumed (*i.e.*, transferred to related parties), there was no market-based price data for equivalent PET film. USITC Pub. 2383 at 16 and n.54 (May 1991).

²⁵ CR at I-12, PR at I-9.

²⁶ Indian Respondents’ Posthearing Brief, Exh. 1 at 22.

²⁷ 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).

²⁸ 19 U.S.C. § 1677(7)(G)(i).

²⁹ 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).

- (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.³⁰

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.³¹ Only a “reasonable overlap” of competition is required.³²

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 record in the final phase of these investigations, we find that there is a reasonable overlap of competition among the subject imports, and between the subject imports and the domestic like product.

First, there is at least a moderate level of fungibility between domestic PET film and the subject imports, and among imports from India and from Taiwan. Nineteen purchasers reported that domestically produced PET film and Indian PET film are used in the same applications, 13 reported that U.S. and Taiwan PET film are used in the same applications, and two reported that Indian and Taiwan film are used in the same applications.³³ Fifteen importers reported that U.S. and Indian PET film are used interchangeably.³⁴ Five U.S. producers reported that domestically produced PET film and the subject imports are used interchangeably.³⁵ Moreover, there also is a reasonable overlap between domestic PET

³⁰ 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).

³¹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

³² 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.”).

³³ CR at II-20, PR at II-13. These purchasers are virtually the only ones who addressed these comparisons in their questionnaire responses.

³⁴ CR at II-19, PR at II-13. These importers are the only ones that addressed these comparisons in their questionnaire responses.

³⁵ CR at II-19, PR at II-13. These producers are the only ones that addressed these comparisons in their questionnaire responses.

film and the subject imports, and among subject imports from India and Taiwan, in terms of the market segments into which the products are sold.³⁶

Second, the record indicates that subject imports from India and Taiwan, and PET film produced in the United States, are sold in the same geographic markets throughout the United States. Of the 15 importers of subject merchandise who provided information on the geographic area in which they sell, eight stated that they sell to the entire U.S. market, and seven stated that they sell in more specific areas.³⁷ The five U.S. producers selling to the merchant market reported that they generally sell throughout the United States.³⁸

Third, most sales of domestically produced PET film and of the subject imports from Taiwan are made to processors who specialize in coating PET film for a particular end use. Some sales also are made through distributors, and some are made directly to end-users. It appears that subject imports from India are sold to end users to a greater extent than subject imports from Taiwan or the domestic product.³⁹

Finally, the record shows that there were significant volumes of imports of the subject merchandise from both India and Taiwan throughout the period of investigation.⁴⁰ Consideration of the four factors discussed above shows that there is a reasonable overlap of competition among the subject imports, and between the subject imports and the domestic like product.

We therefore find that a reasonable overlap of competition exists among 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 the domestic industry is materially injured by reason of the subject imports.

IV. MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE AND SUBSIDIZED IMPORTS

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁴¹ In making this determination, the Commission must consider the volume of 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. production operations.⁴² The statute defines “material injury” as

³⁶ The record shows that over the period of investigation, shipments to the packaging segment accounted for *** percent of U.S. merchant market shipments, *** percent of Indian imports, and *** percent of Taiwan imports; shipments to the industrial segment accounted for *** percent of U.S. merchant market shipments, *** percent of Indian imports, and *** percent of Taiwan imports; shipments to the electrical segment accounted for *** percent of U.S. merchant market shipments, *** percent of Indian imports, and *** percent of Taiwan imports; shipments to the magnetic media segment accounted for *** percent of U.S. merchant market shipments, *** percent of Indian imports, and *** percent of Taiwan imports; and shipments to the imaging segment accounted for *** percent of U.S. merchant market shipments, *** percent of Indian imports, and *** percent of Taiwan imports. See CR & PR at Tables D-7, -8, and -9.

³⁷ CR at II-1, PR at II-1.

³⁸ Id.

³⁹ CR at II-2 n.5, PR at II-1 n.5.

⁴⁰ CR & PR at Table IV-2.

⁴¹ 19 U.S.C. §§ 1671d(b) and 1673d(b).

⁴² 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.”

(continued...)

“harm which is not inconsequential, immaterial, or unimportant.”⁴³ In assessing whether 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.⁴⁴ 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.”⁴⁵

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of cumulated subject imports from India and Taiwan found to be sold in the United States at LTFV and subject imports from India found to be subsidized.

A. Captive Production

The domestic industry captively consumes part of its production of the domestic like product in the manufacture of downstream articles.⁴⁶ 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.^{47 48}

⁴² (...continued)

19 U.S.C. § 1677(7)(B). See also, Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁴³ 19 U.S.C. § 1677(7)(A).

⁴⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁵ Id.

⁴⁶ U.S. producers’ internal consumption and transfers to related firms accounted for *** percent of total U.S. shipments in 1999, *** percent of total U.S. shipments in 2000, and *** percent of total U.S. shipments in 2001. See CR & PR at Table III-4.

⁴⁷ 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.

⁴⁸ Commissioner Bragg does not join the remainder of section IV.A. Consistent with her previous interpretation (continued...)

Significant production of the domestic like product is both internally transferred and sold in the merchant market. In 2001, for instance, the domestic industry's captive consumption accounted for *** percent of the industry's total U.S. shipments, and shipments to the merchant market accounted for *** percent.⁴⁹ Accordingly, we find that the threshold criterion is satisfied.

We interpret the first statutory criterion of the captive production provision to ask whether the actual domestic like product that is transferred internally for further processing enters the merchant market.⁵⁰ Under this interpretation, the first criterion is satisfied because the domestic industry's captive consumption of the like product is used to produce downstream products and does not enter the merchant market.⁵¹

The second statutory criterion asks whether the domestic like product is the predominant material input in the production of the downstream article(s). We analyze this criterion in terms of relative cost of the material inputs used in producing the downstream products.⁵² PET film is used to make a variety of

⁴⁸ (...continued)

of the captive production provision, Commissioner Bragg finds that the three statutory criteria are not met; therefore, Commissioner Bragg does not apply the captive production provision in these investigations. She does, however, join the majority in recognizing the domestic industry's captive production as a condition of competition.

In particular, Commissioner Bragg finds that the threshold criterion is satisfied given that *** percent of U.S. shipments of domestic production in 2001 is devoted to the merchant market and *** percent is devoted to captive production. CR/PR at Table III-4. The first statutory criterion is not satisfied because the same kind of PET film that is being captively consumed is being sold in the merchant market. CR/PR at Tables D-7, 11-14. The second statutory criterion is not satisfied; although there is some debate regarding the data to be analyzed (i.e., whether based upon relative costs, volume, or weight), PET film nonetheless does not account for a predominant share of the value of the downstream products on a percentage basis using any of the data. Memorandum from *** (May 30, 2002). Nor is the third statutory criterion satisfied based on the fact that the domestic like product is sold in three principal captive downstream segments (industrial, imaging, and magnetic), and these segments accounted for *** percent of merchant market sales of PET film (two domestic producers, ***, also reported that they internally consumed PET film in the production of equivalent PET film that was then used to produce downstream products in the packaging, imaging, and industrial segments – consideration of such internal consumption under the captive production provision indicates that merchant market purchasers of PET film used *** percent of their purchases in 2001 to produce downstream articles in the industrial, imaging, magnetic, and packaging segments); therefore, the domestic like product sold in the merchant market is generally used in the production of the same downstream articles resulting from captive production. CR/PR at Tables D-7 and 11-14, and Producer Questionnaire Responses of ***. For these reasons, Commissioner Bragg determines that the captive production provision does not apply; nevertheless, Commissioner Bragg considers the domestic industry's captive production as a condition of competition.

⁴⁹ See CR & PR at Table III-4.

⁵⁰ See, e.g., Certain Hot-Rolled Steel Products From Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 32-33 (June 1999).

⁵¹ Domestic Producer Questionnaire Responses of ***.

⁵² Neither the statute nor the legislative history specify whether this criterion should be analyzed in terms of the relative cost, weight or volume of the material inputs used in producing the downstream products. However, we traditionally have conducted this analysis in terms of costs. See, e.g., Beryllium Metal and High-Beryllium Alloys from Kazakstan, Inv. No. 731-TA-746 (Final), USITC Pub. 3019 at 8-9 (Feb. 1997); and Pure Magnesium from China, Israel and Russia, Inv. Nos. 701-TA-403 and 731-TA-895-897 (Final), USITC Pub. 3467 at 16 (Nov. 2001). In certain circumstances it may be appropriate to analyze this criterion using relative weight or volume, but we do not find convincing reasons to depart from our traditional analysis in these investigations. We also note that Petitioners did not suggest this interpretation until the hearing, and consequently

(continued...)

downstream products (for example, ***).⁵³ For some of these, PET film is clearly the predominant material input in terms of cost, and for others it is not.⁵⁴ In short, because the evidence gathered in these final phase investigations concerning the second statutory criterion is inconclusive, we cannot conclude that the second statutory criterion is met and we do not apply the provision. However, even though we have determined not to apply the captive production provision, we have recognized that captive consumption is an important condition of competition in this market.⁵⁵

B. Other Conditions of Competition

The following other conditions of competition are included in our analysis.

The market for PET film in the United States can be divided into five broad segments -- packaging, industrial, magnetics, electrical, and imaging. Domestic product has a substantial presence in all five segments.⁵⁶ The packaging and industrial segments of the PET film market together accounted for over 60 percent of domestic consumption in 2001 (packaging accounting for about 28-29 percent and industrial for about 35-40 percent).⁵⁷ Overall demand for PET film appears to have been growing until 2000 or 2001, when it experienced a slowdown.⁵⁸ Demand in the packaging and industrial segments has remained strong and has grown over the period of investigation, while demand in magnetic media applications has declined given the increasing popularity of CDs and DVDs, which substitute for audio and video tapes.⁵⁹

PET film production is capital intensive; in order to recover the high fixed costs involved, producers must achieve and sustain high rates of capacity utilization.⁶⁰ It is important for PET film producers to obtain orders for large volumes of commodity grade product, as it is costly to temporarily shut down production lines to reconfigure them for product changes.⁶¹

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.⁶² There was one significant new entrant into the U.S. industry during the period of investigation. SKCA, which is owned by the Korean producer SKC, opened a new plant with substantial capacity in Georgia in 1999.⁶³

Nonsubject imports were a substantial source of supply to the U.S. market throughout the period of investigation, albeit at declining levels. Nonsubject imports accounted for *** percent of apparent U.S.

⁵² (...continued)
the record on this issue is limited.

⁵³ Domestic Producer Questionnaire Responses.

⁵⁴ Note of telephone conversations of Commission staff with *** (May 30, 2002).

⁵⁵ See, e.g., Nonfrozen Concentrated Apple Juice from China, Inv. No. 731-TA-841 (Final), USITC Pub. 3303 at 10 (May 2000); Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Inv. Nos. 731-TA-794-796 (Final), USITC Pub. 3190 at 14 (May 1999).

⁵⁶ CR & PR at Table D-7.

⁵⁷ CR & PR at Table II-1, CR at I-5 n.18, PR at I-4 n.18.

⁵⁸ CR at II-11-13, PR at II-7-9

⁵⁹ CR at I-6 and II-13, PR at I-5 and II-9.

⁶⁰ CR at I-6, PR at I-5.

⁶¹ Hearing transcript at 18 (Cook, Mitsubishi Polyester Films).

⁶² CR at III-5-6, PR at III-3-4.

⁶³ CR & PR at Tables III-1-2.

consumption in 1999, *** percent in 2000, and *** percent in 2001.⁶⁴ U.S. producers imported the majority of these nonsubject imports throughout the period of investigation.⁶⁵ Korea was the largest supplier of nonsubject imports during the period of investigation. The record indicates that Korean producer SKC had substantial exports to the United States prior to bringing the new U.S. (SKCA) plant in Georgia on-line in 1999, and that the production of the (SKCA) U.S. plant gradually replaced imports from Korea as the plant became fully operational.⁶⁶

The record indicates that there is at least a moderate degree of substitutability between domestically produced PET film and the subject imports.⁶⁷ The subject imports compete primarily in the industrial and packaging segments of the market, which together accounted for over 60 percent of 2001 consumption.⁶⁸ However, subject imports were present in the electrical and imaging segments as well.

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 1991.⁶⁹ The order on PET film from Japan was revoked in 1995, after the domestic industry informed the Department of Commerce that it was no longer interested in the maintenance of that order.⁷⁰ 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.⁷¹ That order, therefore, remains in effect.

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.”⁷²

The quantity of subject imports rose from 43.2 million pounds in 1999 to 60.5 million pounds in 2000, and then declined to 49.3 million pounds in 2001, for an overall increase of 14.1 percent over the

⁶⁴ CR & PR at Table IV-4.

⁶⁵ In 1999, U.S. producers imported 119.487 million pounds out of a total of 202.289 million pounds of nonsubject imports; in 2000, U.S. producers imported 114.869 million pounds out of a total of 185.884 million pounds of nonsubject imports; and in 2001, U.S. producers imported 79.589 million pounds out of a total of 134.487 million pounds of nonsubject imports. CR & PR at Tables IV-1 and IV-2.

⁶⁶ Hearing Transcript at 35 and 60-62 (Gazard, Dupont Teijin Films) and 70-71 and 77 (Greenwald, counsel to Petitioners); see also CR at IV-1 n.1 and Table IV-1, PR at IV-1 n. 1 and Table IV-1.

⁶⁷ CR at II-19-23, PR at II-13-16.

⁶⁸ CR & PR at Table II-1.

⁶⁹ 56 Fed. Reg. 25669 (June 5, 1991). In the preliminary investigations, the Commission made a negative determination with respect to imports of PET film from Taiwan. Polyethylene Terephthalate Film, Sheet, and Strip from Japan, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-458-460 (Preliminary), USITC Pub. 2292 at 1 (June 1990).

⁷⁰ 60 Fed. Reg. 52366 (Oct. 6, 1995).

⁷¹ Polyethylene Terephthalate (PET) Film from Korea, Inv. No. 731-TA-459 (Review), USITC Pub. 3278 (Feb. 2000).

⁷² 19 U.S.C. § 1677(7)(C)(i).

period of investigation.⁷³ The market share of subject imports, measured by total domestic consumption, rose from *** percent in 1999 to *** percent in 2000, before declining *** to *** percent in 2001.⁷⁴ Measured against only domestic open market consumption, the market share of subject imports was 7.1 percent in 1999, 9.7 percent in 2000, and 9.1 percent in 2001.⁷⁵ We note also that the market share of subject imports was generally higher in the commodity-grade packaging and industrial segments of the U.S. merchant market.⁷⁶

Data on the record indicate that subject imports from India and Taiwan declined in the second half of 2001, after the filing of the petition and consistent with a decline in demand.⁷⁷ Despite declines from 2000 to 2001, the absolute volume and market share held by subject imports remained at levels that were significant and higher than those at the beginning of the period examined.

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 degree.⁷⁸

The record in these investigations indicates that domestically produced PET film and the subject imports are at least moderately substitutable, and that price is a significant factor in purchasing decisions.⁷⁹

The Commission collected pricing data on 15 PET film products, and collected separate data for each product with respect to plain film, corona-treated film, and other treated film. These data indicate that prices for domestically produced PET film generally were either stable or had increased somewhat over the period of investigation.⁸⁰ The prices of subject imports followed a similar trend, but for the most part were

⁷³ CR & PR at Table IV-2.

⁷⁴ CR & PR at Table IV-4.

⁷⁵ CR & PR at Table IV-5.

⁷⁶ The market share of subject imports in the packaging segment of the U.S. merchant market was estimated to be *** percent in 1999, *** percent in 2000, and *** percent in 2001. The market share of subject imports in the industrial segment of the market was estimated to be *** percent in 1999, *** percent in 2000, and *** percent in 2001. Staff Estimates of Market Share from Appendix D (with adjustments for underreporting of imported product).

⁷⁷ Petitioners' Posthearing Brief, Part II at 23 (May 16, 2002) (a graph reflecting official quarterly import statistics), and Respondents' Posthearing Brief at Exhibits 13 and 15 (May 16, 2002).

⁷⁸ 19 U.S.C. § 1677(7)(C)(ii).

⁷⁹ CR at II-17-23, PR at II-11-16.

⁸⁰ CR & PR at Table V-2 and Appendix E.

at lower levels.⁸¹ Subject imports undersold domestically produced PET film in 183 of the 239 quarterly sales comparisons, for a 76.6 percent incidence of underselling.⁸² The margins of underselling by subject imports were in many cases substantial and remained substantial throughout the period of investigation.⁸³ We find this underselling to be significant.⁸⁴

We are not persuaded by the Indian respondents' argument that these substantial but varying *** prices for subject imports were due to quality factors and longer lead times for delivery.⁸⁵ The record indicates that 28 of 33 purchasers require certification or qualification for all or most of their purchases and the remaining purchasers require it for some of their purchases. Certification depends on several factors, including quality and delivery.⁸⁶ Thus, once a supplier has been qualified or certified, the importance of quality or delivery terms is substantially reduced or eliminated. Finally, there is no evidence that any quality or delivery issues would account for the large price differences seen between subject imports and domestic product in these investigations.

Even though prices of domestic PET film producers remained steady or rose slightly, the record shows that the domestic industry experienced a substantial cost-price squeeze, particularly towards the end of the period of investigation. In particular, the ratio of the cost of goods sold to net sales increased steadily throughout the period investigated.⁸⁷ Over the period of investigation, the industry's costs were driven up by increases in energy and raw material prices,⁸⁸ and by the fact that fixed costs were being spread over a shrinking level of domestic sales.⁸⁹ The industry's unit cost of goods sold rose from 1999 to 2001, and it also rose for each individual producer except ***.⁹⁰ During this same time, the domestic industry was unable to raise prices sufficiently to cover these increases in costs.⁹¹ Several domestic producers attempted to raise prices over the period of investigation and indicated to their customers that these price increases were needed to counteract rising costs.⁹² However, the record indicates that their attempts were unsuccessful.⁹³ In light of the significant volume of subject imports, the substitutability of subject imports and domestic product, the significant underselling by subject imports, and the failure of

⁸¹ CR & PR at Table V-2 and Appendix E.

⁸² CR at V-6, PR at V-5.

⁸³ CR & PR at Table V-2 and Appendix E.

⁸⁴ We note that nonsubject imports were generally priced higher than subject imports, and underselling by nonsubject imports was less pronounced than that by subject imports. CR & PR at Table V-2 and Appendix E.

⁸⁵ Indian Respondents' Prehearing Brief at 29.

⁸⁶ CR at II-18, PR at II-12.

⁸⁷ This ratio was *** percent in 1999, *** percent in 2000, and *** percent in 2001. CR & PR at Table VI-1.

⁸⁸ The industry's unit raw material cost rose from \$*** per pound in 1999 to \$*** per pound in 2001. Staff Worksheet entitled "Operations on PET film, Unit Value (per pound)" (June 7, 2002) (data from Producers' Questionnaire Responses).

⁸⁹ The industry's unit other factory costs rose from \$*** per pound to \$*** per pound in 2001. Staff Worksheet entitled "Operations on PET film, Unit Value (per pound)" (June 7, 2002).

⁹⁰ CR & PR at Table VI-3. *** provided, as an example of rising costs, a contract for a basic product under which prices based on a cost index formula rose \$*** per pound from 1999 to 2001. Petitioners' Posthearing Brief, Pt. II at 30.

⁹¹ CR & PR at Table VI-1, Hearing transcript at 82 (Cook, Mitsubishi Polyester Films of America), 107 and 122 (Gazard, Dupont Teijin Films).

⁹² Petitioners' Posthearing Brief, Pt. II at 36-38.

⁹³ CR & PR at Appendix E.

domestic prices to rise in the face of significant increased cost, we conclude that subject imports had a significant price suppressing effect.⁹⁴

Based on this evidence, we find there has been significant price underselling by imports of the subject merchandise, and that subject imports suppressed prices to a significant degree.⁹⁵

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.⁹⁶ 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.”^{97 98 99}

The domestic industry’s capacity increased between 1999 and 2000 (mainly due to SKCA’s entry into the market), and then declined in 2001.¹⁰⁰ However, the domestic industry’s production declined in each year of the period of investigation,¹⁰¹ and capacity utilization declined throughout the period of

⁹⁴ We examined whether the entry of SKCA, rather than subject imports, explains the negative price effects in this market, as argued by Respondents. The record indicates ***. See Pricing Data Worksheets (released June 3, 2002).

⁹⁵ We recognize that many of petitioners’ allegations of lost sales and lost revenues could not be substantiated. This fact, however, does not outweigh the other evidence, noted above, of significant adverse price effects by the subject imports.

⁹⁶ 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.).

⁹⁷ 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.

⁹⁸ 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 final determinations, Commerce found the following dumping margins: for India, 24.11 percent for Ester Industries, Ltd., zero percent for Polyplex Corp., Ltd. (down from 10.34 percent, after adjusting for export subsidies for which it determined to impose countervailing duties), and 24.11 percent for all others; and for Taiwan, 2.70 percent for NanYa Plastics Corporation, Ltd., 2.05 percent for Shinkong Synthetic Fibers Corporation, and 2.56 percent for all others. Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India, 67 Fed. Reg. 34899, 34901 (May 16, 2002), and Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan, 67 Fed. Reg. 35474, 35475 (May 20, 2002).

⁹⁹ 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).

¹⁰⁰ The industry’s capacity was *** million pounds in 1999, *** million pounds in 2000, and *** million pounds in 2001. CR & PR at Table III-3.

¹⁰¹ The industry’s production was *** million pounds in 1999, *** million pounds in 2000, and *** million

(continued...)

investigation.¹⁰² The industry's U.S. shipments and sales increased between 1999 and 2000, but then declined in 2001, to levels below those of 1999.¹⁰³ Although the domestic industry gained market share over the period of investigation, this increase largely reflected SKC's shift in production from Korea, a nonsubject country, to the United States. Inventories as a ratio to U.S. shipments declined from 1999 to 2000, before increasing *** in 2001.¹⁰⁴ Most employment related indicators in the PET film industry declined over the period of investigation.¹⁰⁵

The financial position of the industry deteriorated throughout the period of investigation, with operating income declining *** in 2001,¹⁰⁶ and the industry's ratio of operating income to net sales also fell.¹⁰⁷ The number of domestic producers reporting operating losses (with seven firms reporting) rose from two to five firms.¹⁰⁸ As discussed above, this decline in financial position was due to a cost-price squeeze, as unit cost of goods increased and net sales value fell. While the drop in unit net sales value was partly due to a change in product mix, the record indicates price suppression by subject imports and the margin between unit sales value and unit cost of goods narrowed significantly over the period of investigation.

Respondents have argued that the domestic industry's injury was due to the decline in demand in the imaging and magnetic segments, and the shift of some domestic producers to lower-valued industrial and packaging products. However, while this shift may have had some negative impact on certain producers, it does not change the fact that subject imports were a material cause of injury. Even those producers that did not experience such a shift in their product mix experienced a significant deterioration in their financial condition. The record shows that the producers that focused their production on industrial and packaging films (e.g., ***) experienced similar financial problems as the other domestic producers.¹⁰⁹ *** experienced sharp drops in their operating income to net sales ratios over the period of investigation.

¹⁰¹ (...continued)
pounds in 2001. CR & PR at Table III-3.

¹⁰² Capacity utilization fell from *** percent in 1999 to *** percent in 2000, and to *** percent in 2001. CR & PR at Table III-3.

¹⁰³ U.S. shipments were *** million pounds in 1999, *** million pounds in 2000, and *** million pounds in 2001. CR & PR at Table III-4. U.S. shipments to the merchant market were 364.789 million pounds in 1999, 370.143 million pounds in 2000, and 366.840 million pounds in 2001. Id. The domestic industry's net sales were *** million pounds in 1999, *** million pounds in 2000, and *** million pounds in 2000. CR & PR at Table VI-1.

¹⁰⁴ The ratio was *** percent in 1999, *** percent in 2000, and *** percent in 2001. CR & PR at Table III-5.

¹⁰⁵ The number of production and related workers fell from *** in 1999 to *** in 2000 and to *** in 2001. Hours worked fell from *** million hours in 1999 to *** million hours in 2000 and to *** million hours in 2001. Wages paid fell from \$*** million in 1999 to \$*** million in 2000 and \$*** million in 2001. Hourly wages and productivity rose, however. Hourly wages increased from \$*** in 1999 to \$*** in 2000 and to \$*** in 2001. Productivity increased from *** pounds per hour in 1999 to *** pounds per hour in 2000 and to *** pounds per hour in 2001. CR & PR at Table III-6.

¹⁰⁶ Operating income was \$*** million in 1999, \$*** million in 2000, and a loss of \$*** million in 2001. CR & PR at Table VI-1. Operating income on commercial sales was \$*** million in 1999, a loss of \$*** million in 2000, and a loss of \$*** million in 2001. CR & PR at Table VI-4.

¹⁰⁷ This ratio was *** percent in 1999, *** percent in 2000, and negative *** percent in 2001. CR & PR at Table VI-1. The ratio of operating income to commercial sales was *** percent in 1999, negative *** percent in 2000, and negative *** percent in 2001. CR & PR at Table VI-4.

¹⁰⁸ CR & PR at Table VI-1. The number of domestic producers reporting operating losses on commercial sales (with six firms reporting) rose from two to four firms. CR & PR at Table VI-4.

¹⁰⁹ CR & PR at Table VI-3.

***.¹¹⁰ ***.¹¹¹ Moreover, as the packaging and industrial segments grew in importance to domestic producers, the effect of subject imports, which were heavily concentrated in these segments, was magnified. Finally, there is no reason to expect that the shift to increased production of packaging and industrial films alone should lead to operating losses as large as those experienced by the domestic industry; ***.¹¹²

In sum, the record shows there have been significant increases in the volume and market share of the subject imports, that there was widespread underselling of the domestic product by subject imports and that subject imports had a significant suppressing effect on domestic prices. Suppressed prices in the U.S. market led to severe financial declines and a deterioration in the overall condition of the domestic industry during the period of investigation. Accordingly, we find that the subject imports are having a significant adverse impact on the domestic industry.

CONCLUSION

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

¹¹⁰ We do not find that the industry's poor financial performance is substantially due to any extraordinary start-up costs incurred by SKCA in bringing its new plant on line. By 2001, when the domestic industry's financial performance deteriorated ***, SKCA's plant had been in production for three years. We also do not find that the new production by SKCA was a material cause of injury to the domestic industry. First, we must consider the domestic industry as a whole. 19 U.S.C. §1677(4)(A). Second, as discussed earlier, much of SKCA's domestic production replaced its nonsubject imports. Finally, as also discussed earlier, SKCA was ***.

¹¹¹ CR & PR at Table VI-3.

¹¹² Id.