

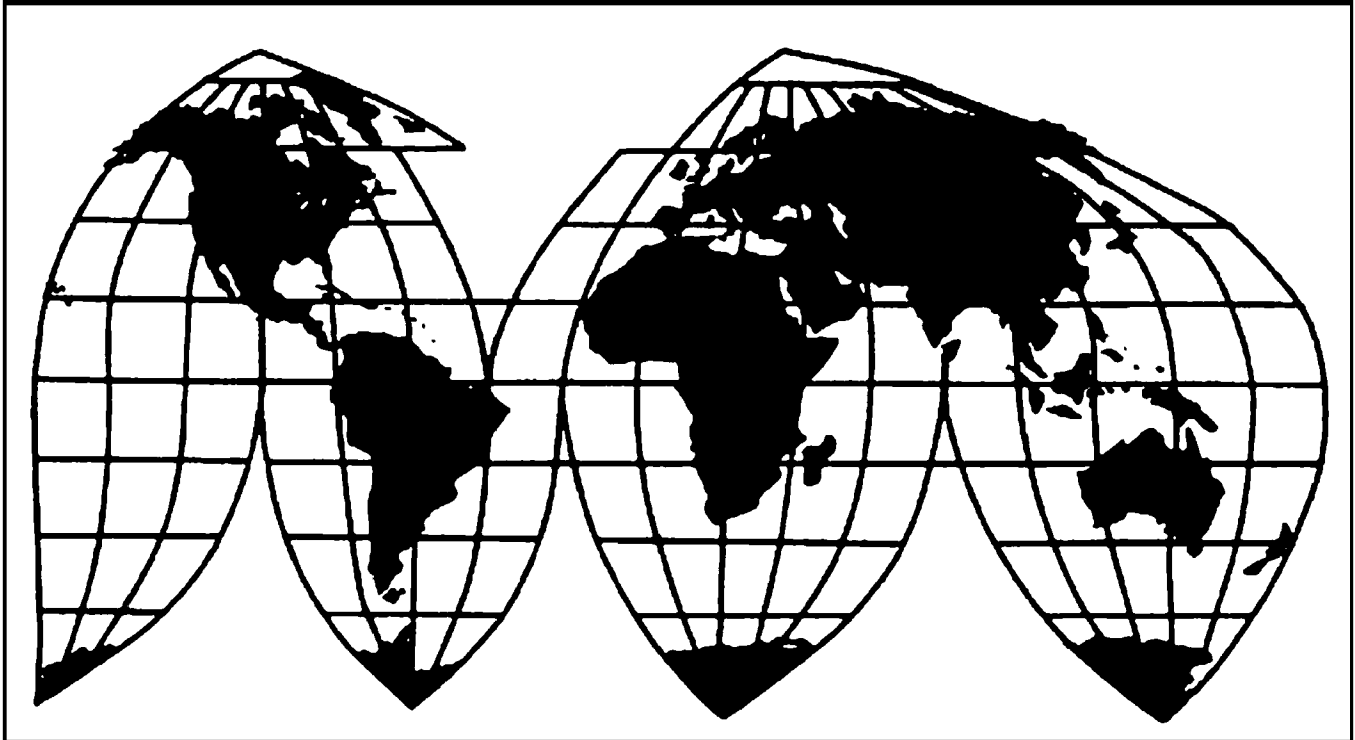
4th Tier Cigarettes from Korea

Investigation No. 731-TA-1465 (Final)

Publication 5151

January 2021

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published. Such information is identified by brackets in confidential reports and is deleted and replaced with asterisks (***) in public reports.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1465 (Final)

4th Tier Cigarettes from Korea

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports of 4th tier cigarettes from Korea, provided for in subheading 2402.20.80 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).^{2 3}

BACKGROUND

The Commission instituted this investigation effective December 18, 2019, following receipt of a petition filed with the Commission and Commerce by the Coalition Against Korean Cigarettes. The coalition members are Xcaliber International, Pryor, Oklahoma and Cheyenne International, Grover, North Carolina. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of 4th tier cigarettes from Korea 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 investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 3, 2020 (85 FR 46718). In light of the restrictions on access to the Commission building due to the COVID–19

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

² 85 FR 79994 (December 11, 2020).

³ Vice Chair Randolph J. Stayin and Commissioner Rhonda K. Schmidlein dissenting.

pandemic, the Commission conducted its hearing through written testimony and video conference on December 3, 2020. All persons who requested the opportunity were permitted to participate.

Views of the Commission

Based on the record in the final phase of this investigation, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of subject merchandise (“4th tier cigarettes”) from Korea found by the U.S. Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).¹

I. Background

The petitioner, the Coalition Against Korean Cigarettes, consisting of Xcaliber International (“Xcaliber”) and Cheyenne International (“Cheyenne”), domestic producers of cigarettes that they characterized as 4th tier cigarettes, filed the petition in this investigation on December 18, 2019.² The Commission reached an affirmative preliminary determination in the investigation effective on February 3, 2020.³

In the final phase of this investigation, witnesses for petitioner appeared at the hearing with counsel, and petitioner submitted written witness testimony, a prehearing and posthearing brief, and final comments.⁴ KT&G Corporation, a producer and exporter of subject

¹ Material retardation is not an issue in the investigation. Vice Chair Stayin determines that a domestic industry, that he defined as producers of 4th tier cigarettes, is materially injured by reason of subject imports from Korea. *See Separate and Dissenting Views of Vice Chair Randolph J. Stayin*. Commissioner Rhonda K. Schmidlein defines the domestic industry as producers of all cigarettes and determines that such domestic industry is threatened with material injury by reason of subject imports from Korea. She joins sections I-IV.B. of these views. *See Separate and Dissenting Views of Commissioner Rhonda K. Schmidlein*.

² *See* Petition, Vol. I at 1.

³ 85 Fed. Reg. 7330 (Feb. 7, 2020).

⁴ In light of the restrictions on access to the Commission building due to the COVID-19 pandemic, the Commission conducted its hearing by videoconference and written witness testimony as set forth in procedures provided to the parties.

merchandise in Korea, and KT&G USA Corporation, an importer of the subject merchandise, (collectively, “KT&G”) participated in the final phase of this investigation. Representatives from KT&G Corporation and KT&G USA Corporation submitted written witness testimony, appeared at the hearing with counsel, and submitted prehearing and posthearing briefs and final comments.

U.S. industry data for the portion of the cigarette industry that self-identified as producing 4th tier cigarettes (“certain cigarettes”)⁵ are based on the questionnaire responses of five firms, which accounted for all known U.S. production of certain cigarettes in 2019.⁶ Data concerning the broader cigarette industry are based on the additional questionnaire responses of three firms which, when combined with the certain cigarette producers, account for the great majority of all domestic cigarette production in 2019.⁷ U.S. import data are based on the questionnaire responses of four firms that submitted U.S. import data representing *** U.S. imports of certain cigarettes from Korea, *** percent of U.S. imports of certain cigarettes from nonsubject sources, and *** percent of total U.S. imports of certain cigarettes, based on

⁵ As discussed in the domestic like product section below, the record indicates that there is no clear definition of “4th tier” cigarettes. In these Views, we characterize cigarettes identified by Petitioner as “4th tier” cigarettes as either “4th tier cigarettes” or “certain cigarettes” and “non-4th tier cigarettes” as “other cigarettes.”

⁶ Confidential Report, INV-SS-147 (Dec. 21, 2020) (“CR”) at I-5; Public Report (“PR”) at I-5.

⁷ CR/PR at VI-1 n.2 (reflecting information of ***). These firms, when combined with ITG Brands, who did not provide a questionnaire response, accounted for roughly *** percent of domestic sales of cigarettes in 2017. CR/PR at I-8. Staff estimated coverage for the broader domestic industry producing all cigarettes from monthly tobacco products data from the U.S. Treasury Department, Alcohol and Tobacco Tax and Trade Bureau. CR/PR at I-8 and Tables F-9 and F-10. U.S. producer questionnaire data indicate domestic producer U.S. shipments of *** cartons in 2019. CR/PR at Table F-9. Alternate U.S. shipment data from the U.S. Treasury Department, Alcohol and Tobacco Tax and Trade Bureau indicate U.S. shipments of *** cartons in 2019. CR/PR at Table F-10. Thus, questionnaire coverage of the broader domestic cigarette industry is estimated to be *** percent in 2019.

quantity in 2019.⁸ Import data concerning the broader cigarette industry are based on official U.S. import statistics for 2402.20.8000.⁹ Foreign producer data are based on the questionnaire response of one firm that accounted for *** production of certain cigarettes in Korea during 2019.¹⁰

II. Domestic Like Product

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 subject merchandise, the Commission first defines the “domestic like product” and the “industry.”¹¹ Section 771(4)(A) of the Tariff Act of 1930, as amended (“The Tariff Act”), defines the relevant domestic industry as the “producers as a whole 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.”¹² In turn, the Tariff 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.”¹³

By statute, the Commission’s “domestic like product” analysis begins with the “article subject to an investigation,” *i.e.*, the subject merchandise as determined by Commerce.¹⁴

⁸ CR/PR at I-5, Table IV-1. Data for nonsubject sources are derived from differences between questionnaire data and official U.S. import statistics. CR/PR at Tables C-2 and F-9.

⁹ CR/PR at I-7.

¹⁰ CR/PR at I-5.

¹¹ 19 U.S.C. § 1677(4)(A).

¹² 19 U.S.C. § 1677(4)(A).

¹³ 19 U.S.C. § 1677(10).

¹⁴ 19 U.S.C. § 1677(10). The Commission must accept Commerce’s determination as to the

Therefore, Commerce’s determination as to the scope of the imported merchandise that is subsidized and/or sold at less than fair value is “necessarily the starting point of the Commission’s like product analysis.”¹⁵ The Commission then defines the domestic like product in light of the imported articles Commerce has identified.¹⁶ 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.¹⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁸ The

scope of the imported merchandise that is subsidized and/or sold at less than fair value. *See, e.g., USEC, Inc. v. United States*, 34 Fed. App’x 725, 730 (Fed. Cir. 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), *aff’d*, 865 F.3d 240 (Fed. Cir.), *cert. denied*, 492 U.S. 919 (1989).

¹⁵ *Cleo Inc. v. United States*, 501 F.3d 1291, 1298 (Fed. Cir. 2007); *see also Hitachi Metals, Ltd. v. United States*, Case No. 19-1289, slip op. at 8-9 (Fed. Circ. Feb. 7, 2020) (the statute requires the Commission to start with Commerce’s subject merchandise in reaching its own like product determination).

¹⁶ *Cleo*, 501 F.3d at 1298 n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Torrington Co. v. United States*, 747 F. Supp. 744, 748–52 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (affirming the Commission’s determination defining six like products in investigations where Commerce found five classes or kinds).

¹⁷ *See, e.g., Cleo Inc. v. United States*, 501 F.3d 1291, 1299 (Fed. Cir. 2007); *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.* 747 F. Supp. at 749 n.3 (“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 the following: (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).

¹⁸ *See, e.g., S. Rep. No. 96-249 at 90-91 (1979).*

Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁹

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of the investigation as:

certain tobacco cigarettes, commonly referred to as “4th tier cigarettes.” The subject cigarettes are composed of a tobacco blend rolled in paper, have a nominal minimum total length of 7.0 cm but do not exceed 12.0 cm in total nominal length, and have a nominal diameter of less than 1.3 cm. These sizes of cigarettes are frequently referred to as “Kings” and “100’s,” but subject merchandise that meets the physical description of the scope is included regardless of the marketing description of the size of the cigarettes. Subject merchandise typically has a tobacco blend that consists of 10% or more tobacco stems.

Subject merchandise is typically sold in packs of 20 cigarettes per pack which generally includes the marking “20 Class A Cigarettes” but are included regardless of packaging. 4th tier cigarette packages are typically sold in boxes without a rounded internal corner and without embossed aluminum foil inside the pack.

Both menthol and non-menthol cigarettes and cigarettes with or without a filter attached are covered by the scope of this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2402.20.8000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive.²⁰

¹⁹ *Nippon*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (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.”).

²⁰ 4th Tier Cigarettes from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances, 85 Fed Reg. 79994, 79996 (Dec. 11, 2020).

Cigarettes are tobacco products designed for smoking and delivery of nicotine to consumers. They consist of tobacco rolled in paper, may or may not have a filter, and are sold in packs of 20 cigarettes in either 100's (100mm) or Kings (85mm) lengths. Cigarettes, including their packaging and lengths, are regulated by the U.S. Food and Drug Administration ("FDA").²¹ The scope indicates that the subject merchandise consists of certain cigarettes that are commonly referred to as "4th tier cigarettes." It elaborates that a 4th tier cigarette "typically has a tobacco blend that consists of 10% or more tobacco stems" and is "typically sold in boxes without a rounded internal corner and without embossed aluminum foil inside the pack."²²

C. Arguments of the Parties

Petitioner. Petitioner argues that the Commission should define a single domestic like product coextensive with the scope as it did in the preliminary phase of the investigation.²³ It argues that the record shows that, with respect to each of the factors traditionally examined by the Commission, there is a "bright line" differentiating "4th tier" and all other cigarettes, including differences in stem content and filters, limited interchangeability, and distinct channels of distribution, such as unique wholesalers, non-stamping warehouses, and "subjobbers" that do not exist for all other cigarettes. It also points out that no production facilities or employees in the United States manufacture both "4th tier" and other cigarettes and argues that there are substantial price differences between "4th tier" and all other cigarettes.²⁴

²¹ CR/PR at I-8.

²² CR/PR at I-7.

²³ Petitioner's Prehearing Brief at 3-4.

²⁴ Petitioner's Posthearing Brief at 4-5. See CR/PR at Table E-6.

With respect to disagreement over whether certain cigarettes are “commonly referred to as 4th tier cigarettes,” as indicated in the scope, Petitioner claims that KT&G itself uses the term “4th tier” and that the term is well known to industry participants, trade associations, and academics. It disputes allegations that industry organizations do not recognize petitioning domestic producers’ products as brands of “4th tier” cigarettes.²⁵

Petitioner also argues that a bright line or clear dividing line can mean general distinctions between products and that the domestic like product should not be interpreted so narrowly as to prevent consideration of an industry adversely affected by the subject imports.²⁶

Respondent. KT&G asserts that the scope is broad enough to cover most cigarettes sold in the United States and that the Commission could reasonably conclude that all cigarette producers in the United States are producing “4th tier” cigarettes, as defined in the scope. It argues that stem count should not be used as a dividing line because it is just one component of a tobacco blend, not a distinguishing feature of any subset of cigarettes,²⁷ and that the 10 percent stem content qualification does not constitute a bright line as there are domestic “4th tier” cigarette brands with less than 10 percent stem content and many other brands with more than 10 percent stem content.²⁸ With respect to other characteristics, KT&G argues virtually all

²⁵ Petitioner’s Posthearing Brief at 3, n.5.

²⁶ Petitioner’s Prehearing Brief at 9 (citing S. Rep. No. 96-249, at 90-91 (1979)); Petitioner’s Posthearing Brief at 13-14.

²⁷ See KT&G’s Prehearing Brief at 14.

²⁸ KT&G’s Posthearing Brief at 5, and n.19; KT&G’s Prehearing Brief at 17-19. KT&G conducted stem content testing in its own accredited R&D laboratory because it claims that there are no known commercial U.S. labs that offer testing for stem content, which it argues is further evidence that stem content is not an important feature of cigarettes. KT&G Prehearing Brief at 17 and Att. C. KT&G also argues, and cites a survey as support, that consumers have no knowledge of stem content in cigarette tobacco. KT&G’s Prehearing Brief at 20-22. Further, the affidavit of a former ***, indicates that the methodology used by KT&G’s R&D laboratory is “sound and has long been accepted in the cigarette industry.” See KT&G’s Posthearing Brief at Attachment C (***) Statement) at para. 8.

other cigarettes use a single component filter as do “4th tier” cigarettes. It further argues that the type of paper used (flax paper versus wood pulp) does not provide a clear dividing line.²⁹

KT&G argues that all cigarettes are interchangeable because all types of cigarettes can be used in the same applications, regardless of consumer preferences,³⁰ and contends that the production process for manufacturing cigarettes is identical for “4th tier” cigarettes and other cigarettes.³¹ As to channels of distribution, KT&G argues that producers of “4th tier” and other cigarettes sell cigarettes through the same channel: to wholesalers/distributors, which in turn sell to retailers. KT&G argues that almost all distributors carry a wide range of cigarette brands so that retailers may purchase selected products at various price points. Likewise, it contends that almost all retailers, including national retail stores such as Circle K and Quick Trip, carry a wide range of brands across all price points.³²

With respect to producer and consumer perceptions, KT&G contends that industry information shows that the categorization of brands into price tiers is inconsistent and that there is no consensus as to what “4th tier” means.³³ With respect to price, KT&G argues that cigarette prices fall along a continuum with no clear price break between “4th tier” cigarettes and other cigarettes.³⁴ Finally, KT&G argues that in their totality, the questionnaire responses

²⁹ KT&G’s Prehearing Brief at 10-12.

³⁰ KT&G’s Prehearing Brief at 24-27. In particular it notes that domestic producers *** reported interchangeability among “4th tier” and other cigarettes. *Id.*

³¹ KT&G’s Prehearing Brief at 29-31.

³² KT&G’s Prehearing Brief at 33-36.

³³ KT&G relies on information it obtained from reporting services National Association of Convenience Stores (“NACS”), Euromonitor, and Management Science Associates (“MSAi”). This information is discussed below.

³⁴ KT&G’s Prehearing Brief at 42-46, Fig 2.

do not support a clear dividing line between “4th tier” cigarettes and other domestic cigarettes, and weigh in favor of defining the domestic like product to include all cigarettes.³⁵

D. Analysis

In its preliminary determination, the Commission defined a single domestic like product as 4th tier cigarettes, coextensive with the scope of the investigation.³⁶ It indicated its intent to revisit whether there is a clear dividing line between different tiers of cigarettes in any final phase of the investigation. In the final phase, the Commission collected information concerning the stem count of tobacco in cigarettes, and asked domestic producers, importers, and purchasers responding to the questionnaires to comment on the comparability of “4th tier” and other cigarettes with respect to the six domestic like product factors.³⁷

As explained above, in defining the domestic like product, the Commission’s starting point is the scope definition provided by Commerce. In this investigation, the scope definition indicates that subject merchandise consists of certain cigarettes “commonly referred to as ‘4th tier cigarettes.’” While the scope describes various features of the subject merchandise, petitioners focus on language in the scope that “subject merchandise typically has a tobacco blend that consists of 10% or more tobacco stems” as a feature that in its view distinguishes “4th tier” cigarettes from other cigarettes. The Commission’s record shows, however, that there is no standard definition of a “4th tier” cigarette in the marketplace, which reduces the

³⁵ KT&G’s Prehearing Brief at 12-13.

³⁶ 4th Tier Cigarettes from Korea, Inv. No. 731-TA-1465 (Preliminary), USITC Pub. 5016 (Feb. 2020) (“*Preliminary Determination*”) at 11.

³⁷ See CR/PR at Appendix E.

significance and utility of one of the main qualifications in the scope language.³⁸ Moreover, producers and purchasers do not appear to identify cigarettes as “4th tier” products based on the stem content of the cigarette’s tobacco, which generally consists of proprietary blends that are not known in the market.³⁹ Nor is there agreement among market participants as to which products should be considered as “4th tier.”⁴⁰

Nonetheless, the Commission uses the scope language as the starting point in its analysis and therefore, regardless of the apparent ambiguities in relation to this phrase, we use the term “4th tier” cigarettes at points in this opinion as the scope uses this term. Our use of

³⁸ See CR/PR at I-8. (“While there is no single definition for a 4th tier cigarette, there is a consensus that 4th tier cigarettes are deeply discounted products. Originally, the NACS loosely defined 4th tier cigarettes as belonging to the bottom quartile of prices. Currently, firms self-identify which tier their cigarettes brands are contained in.”) *Id.* In responses to Commission questionnaires, purchasers frequently identified brands of *** as suppliers of “4th tier” cigarettes in addition to brands of the producers identified by Petitioner as “4th tier” producers. See purchaser questionnaires at II-4 for ***. As recently as 2004, NACS had three categories (“Premium,” “Branded Discount,” and “Sub-Generic/Private Label”) and in 2005 and 2006, the term “fourth tier” confusingly appeared in two distinct NACS retail categories: “Sub-Generic/Private Label/4th Tier” and “Fourth Tier.” KT&G’s Postconference Brief at 5 and Exhibit 49. NACS currently places 33 brands into its four subcategories: Premium, Branded Discount, Sub-Generic/Private Label, and Fourth Tier. The Commission’s questionnaires asked for information based on these NACS categories (*i.e.*, premium, branded, sub-generic/private label, and 4th tier cigarettes). NACS relies on categorizations made by the reporting retailers. MSAi industry data include three price tiers: Super Premium, Premium, and Branded Discount, while Euromonitor classifies cigarette brands based on Chicago-area retail prices, placing them into Economy, Mid-Price, and Premium categories. KT&G also claims that the NACS categorizations do not align at all with Petitioner’s identification of brands that are “4th tier” and includes two Liggett brands not identified by Petitioner as “4th tier” cigarette brands. KT&G’s Prehearing Brief at 37.

³⁹ Twenty-two of 23 purchasers reported being unaware of the stem content of the cigarettes they purchase and five of seven purchasers indicated that 10 percent stem content does not differentiate between types of cigarettes. Purchaser Questionnaires at V-2(a) and V-2(b) (only *** indicated that it was aware of the stem content). The record also indicates that stem content of non-4th tier cigarettes can range up to 15 percent. See CR/PR at Table E-2.

⁴⁰ See KT&G’s Prehearing Brief at 40. Indeed, purchasers were asked to identify their top-five suppliers of 4th tier cigarettes and frequently reported *** as such suppliers, yet Petitioner did not identify these producers as 4th tier producers and *** reported in its U.S. producer questionnaire response that it did not produce 4th tier cigarettes. See U.S. Purchasers Questionnaires at II-4; KT&G’s Posthearing Brief, Answers to Questions at 40-41 and Attachment B-4.

the term “4th tier” in this section therefore should not be interpreted as an endorsement of the contention that there are a group of cigarettes commonly referred to as “4th tier.”

Physical Characteristics and Uses. Focusing on the features identified in the scope definition, “4th tier” and other cigarettes are both tobacco products that consist of tobacco rolled in paper and may include a filter.⁴¹ “4th tier” and other cigarettes both range in nominal length with most cigarettes having a nominal minimum total length of 7.0 cm not exceeding 12.0 cm and a nominal diameter of less than 1.3 cm.⁴² “4th tier” and other cigarettes are sold in packs of 20 cigarettes per pack and may be menthol or non-menthol cigarettes.⁴³ Parties do not appear to dispute these similarities in physical characteristics. Petitioner and KT&G disagree, however, on whether stem content in cigarette tobacco, as well as certain other features,⁴⁴ differentiate “4th tier” cigarettes from other cigarettes.⁴⁵

The U.S. producer questionnaire responses indicate that “4th tier” cigarettes have a stem content that ranges from *** to *** percent of tobacco with an average of *** percent.⁴⁶ By contrast, other cigarettes’ stem content ranges from *** to *** percent with an average of *** percent.⁴⁷ Within the other cigarettes category, “premium” cigarettes were reported to have a stem content that ranges from *** to *** percent of tobacco with an average of *** percent and “branded” cigarettes were reported to have a stem content that ranges from ***

⁴¹ CR/PR at I-8.

⁴² See CR/PR at E-13. *** See CR/PR at I-4; KT&G’s Prehearing Brief at 12; KT&G’s Posthearing Brief, Answers to Questions at 25.

⁴³ CR/PR at I-7 to I-8; KT&G’s Posthearing Brief, Answers to Questions at 25.

⁴⁴ In addition to stem content, Petitioner cites filter type, and packaging as differentiating “4th tier” and other cigarettes. Petitioner’s Prehearing Brief at 16-17.

⁴⁵ Petitioner’s Prehearing Brief at 10-12; KT&G’s Prehearing Brief at 13-18.

⁴⁶ CR/PR at Table E-2.

⁴⁷ CR/PR at Table E-2. As noted above, the Commission collected data according to the NACS categories of premium, branded, sub-generic/private label, and 4th tier cigarettes.

to *** percent of tobacco with an average of *** percent.⁴⁸ Although U.S. producers report that premium and branded cigarettes have tobacco with lower average stem content than “4th tier” cigarettes, there is not a clear dividing line at 10 percent, given that the stem content for other cigarettes ranges above 10.0 percent and up to *** percent, exceeding the 10 percent threshold set out in the scope.⁴⁹ ⁵⁰ Moreover, most consumers are unaware of the stem content in their cigarette tobacco and do not perceive cigarettes to be different products based on whether they have a tobacco blend that contains a stem content of 10 percent or more.⁵¹ All except one of the responding U.S. purchasers indicated that they *** cigarettes with less than 10 percent stem content as distinct from those with more than 10 percent stem content.⁵²

⁴⁸ CR/PR at Table E-2. ***. Similarly, ***. U.S. Producer Questionnaires at V-7b.

⁴⁹ KT&G submitted testing that showed a wide range of average stem counts. KT&G’s Prehearing Brief at 18, Attachment C, C-8. Its testing showed that nearly *** percent cigarettes of non-4th tier brands, *** have more than 10 percent stem content. KT&G’s Prehearing Brief at 18. Petitioner argues that the test used in KT&G’s analysis is unreliable. Petitioner’s Posthearing Brief at 5-7. The Commission does not rely on this evidence in its determination.

⁵⁰ There is conflicting evidence on the record regarding the impact of stem content, including the relationship between stem content and the quality of a cigarette. While tobacco is graded on quality and certain attributes affect tobacco quality grading (such as leaf size, color and texture), cigarettes contain brand-specific blends of tobacco and there is limited information on the record as to how the blends used in “4th tier” cigarettes and other cigarettes differ and how any difference affects quality of cigarettes. See CR/PR at I-13 to I-14 (discussing tobacco quality and blends). To support its assertions regarding quality, Petitioner relies on an affidavit from an agent with the *** to demonstrate that higher stem content is associated with lower tobacco quality. However, this affidavit also explains that the quality of tobacco is impacted by other qualities of the tobacco leaf, including its level of maturity and position on the plant. Petitioner’s Prehearing Brief at 10-11 and Exhibit 3. The affidavit of a former *** indicates that the relationship between the quality and taste of tobacco is complex and is dependent on many factors other than stem content. In addition, the affidavit states that stem content enters a finished tobacco blend through multiple blend components and will vary over time and from the recipe reported to the FDA. See KT&G’s Posthearing Brief at Attachment C (*** Statement) at paras. 5-9.

⁵¹ See Purchaser Questionnaires at V-2(a) and V-2(b) (22 of 23 responding purchasers reporting that they were unaware of the stem content in the tobacco they purchase).

⁵² See Purchaser Questionnaires at V-2(b).

The record also does not appear to support Petitioner's claim that the use of a single component filter distinguishes "4th tier" cigarettes from other cigarettes as almost all other cigarettes use single component filters.⁵³ Petitioner has also asserted that there are differences in the paper used for the cigarette, the foil used in the packaging, and corners of the cigarette packs; however, these are either unsupported or are minor distinctions rather than a meaningful distinction between products.⁵⁴

With respect to uses for "4th tier" cigarettes and other cigarettes, there is no dispute that all cigarettes share a common use: for smoking and delivery of nicotine to the consumer.⁵⁵

Questionnaire responses by domestic producers, importers, and purchasers with respect to market participants' perceptions of the comparability of "4th tier" cigarettes and other cigarettes with respect to physical characteristics are mixed. Half (three of six) of the U.S. producers indicated that "4th tier" and other cigarettes are fully or mostly comparable and half indicated that they are sometimes or never comparable with respect to physical

⁵³ KT&G's Prehearing Brief at 22 and Attachment C-9. See KT&G's Posthearing Brief, Answers to Questions at 27 and Attachment C at 4.

⁵⁴ With regard to paper, Petitioner argued in the preliminary phase that 4th tier cigarettes typically use wood paper; in the final it argued that they use flax paper. Compare Petitioner's Postconference Brief at 7 with Petitioner's Prehearing Brief at 16-17. Petitioner provided no support that would indicate a contrast with non-4th tier cigarettes concerning paper, and KT&G submitted evidence that 42 percent of the "4th tier" cigarettes analyzed use flax or a mix of flax and wood, as opposed to plain wood pulp and 10 percent of non-4th tier cigarette SKUs tested use paper that is entirely wood pulp. KT&G's Prehearing Brief at 22 and Attachment C-9. Though some market participants noted differences in packaging, the record does not show that these are differences in an important characteristic of the product. See CR/PR at Tables II-7, E-16, E-17, E-18. In addition, evidence submitted by KT&G show that *** do not have boxes with rounded corners and the majority of "4th tier" cigarettes use aluminum foil with embossing. KT&G Prehearing Brief at Attachment C-8; KT&G's Witness Testimony and Presentation Slides for Hearing (Dec. 2, 2020) at 12-15. Further, the scope provides that cigarettes are included "regardless of packaging," suggesting that the packaging is less important and does not provide a distinction for in-scope (4th tier) merchandise.

⁵⁵ CR/PR at E-8.

characteristics;⁵⁶ all four importers indicated they are fully or mostly comparable.⁵⁷ Half of the purchasers (13 of 26) reported that “4th tier” and other cigarettes are at least somewhat comparable with respect to physical characteristics,⁵⁸ while the remaining half indicated that “4th tier” and other cigarettes are not at all comparable with respect to physical characteristics and uses.⁵⁹

Interchangeability. As noted above, both “4th tier” cigarettes and other cigarettes are broadly interchangeable in that they are both used only for smoking. There are no different applications for “4th tier” cigarettes and other cigarettes.⁶⁰ The majority of responding U.S.

⁵⁶ CR/PR at Table E-1. Some responding U.S. producers also provided narrative responses. For example, Philip Morris indicated that the ***. R.J. Reynolds noted that ***. Cheyenne reported *** Xcaliber stated that the ***. CR/PR at Table E-16. With respect to Xcaliber’s statement, we note that Farmers self-identifies as “4th tier” and is a ***. CR at VI-9.

⁵⁷ CR/PR at Table E-1.

⁵⁸ CR/PR at Table E-1.

⁵⁹ CR/PR at Table E-1. Only one of the purchasers responding that “4th tier” and other cigarettes are not comparable with respect to physical characteristics identified in their narrative response any particular physical characteristic where “4th tier” and other cigarettes differed. *Id.* at Table E-18. That one purchaser was *** *Compare id.* at Table E-16 *with id.* at Table E-18. ***. *See* KT&G’s Prehearing Brief at 11 n.26; Petitioners Posthearing Brief, Exhibit 1 at 20. Respondents raise concerns regarding *** of the 13 purchaser questionnaire responses indicating a lack of comparability, which were submitted by *** retail *** located in ***. *See* KT&G’s Prehearing Brief, Attachment A-1. These purchasers’ purchases of *** cartons of “4th tier” cigarettes accounted for *** percent of all reported purchases of “4th tier” cigarettes during the POI. *Derived* from Purchaser Questionnaire Responses at II-1. *See also* KT&G’s Prehearing Brief, Attachment A-2. Petitioner asserts that the responses ***. Petitioner’s Posthearing Brief, Exhibit 1 at 42-43. The Commission considers all evidence on the record in reaching our conclusions and determines the appropriate weight to accord varying information in the evidentiary record. While we consider these questionnaire responses in our analysis, we also consider the questionnaire responses of other industry participants that showed a much broader range of opinion regarding these domestic like product factors.

⁶⁰ *See* Purchaser Questionnaire at IV-1, V-1 (“can they physically be used in the same applications”). The Commission generally views interchangeability as whether the products can be used in the same applications, and typically does not consider consumer preferences or perceived differences in quality as negating product interchangeability. *See, e.g., Wood Mouldings and Millwork Products from Brazil and China*, Inv. Nos. 701-TA-636, 731-TA-1469-1470 (Prelim.), USITC Pub. 5030 at 13-14 (Mar. 2020) (finding products are interchangeable in some of the same applications, despite the fact that some customers prefer certain mouldings and millwork products in structural applications because of their superior performance characteristics).

producers (3 of 5), all responding importers (4 of 4), and the majority of responding purchasers (30 of 31) reported that consumers of “4th tier” cigarettes also smoke other cigarettes.⁶¹

We disagree with Petitioner’s contention that differences in tobacco, pricing, and brand loyalty mean that non-4th tier cigarettes cannot be used interchangeably with “4th tier” cigarettes.⁶² As discussed elsewhere in these views, “4th tier” cigarettes and other cigarettes overlap in terms of stem content as well as with respect to price. In terms of brand loyalty, while consumers may exhibit some brand loyalty, the record indicates consumers of “4th tier” cigarettes also smoke other cigarettes.⁶³

While the responses to the questionnaires concerning interchangeability are mixed,⁶⁴ a market survey by Nielsen in July 2019 suggests that a significant share of smokers *** have “backup” brands that they will smoke as a substitute when their primary brand is unavailable. The most frequently purchased “backup” brands as a replacement for “4th tier” brands were ***, which are popular non-4th tier brands of the major cigarette manufacturers.⁶⁵

Manufacturing Facilities, Production Processes, and Employees. The production processes are essentially the same for “4th tier” and other cigarettes.⁶⁶ Tobacco blends are rolled in paper, filters are added, and cigarettes are packaged and packed.⁶⁷ “4th tier” cigarette producers purchase tobacco blends for the production of 4th tier cigarettes while producers of

⁶¹ CR/PR at II-8.

⁶² Petitioner’s Prehearing Brief at 17-20.

⁶³ See CR/PR at II-8.

⁶⁴ CR/PR at Tables E-1, E-16, E-17, and E-18.

⁶⁵ KT&G Prehearing Brief at 83, Exhibit 33 at 43-44.

⁶⁶ Philip Morris stated that the ***. CR/PR at Table E-7. Self-identified 4th tier producer Dosal indicated that ***. CR/PR at Table E-7. Importers did not note ***, while purchasers were generally unfamiliar with cigarette production processes. CR/PR at Table E-17. *** indicated that ***. *Id.*

⁶⁷ See KT&G’s Prehearing Brief at 29.

other cigarettes usually are vertically integrated, growing and blending their own tobacco.⁶⁸

However, regardless of whether a producer purchases blends or produces its own tobacco, the production of cigarettes appears to be the same.⁶⁹

While the record shows that no domestic producer reported manufacturing both “4th tier” cigarettes and other cigarettes at the same facility during the POI,⁷⁰ the record also indicates that this factor may be affected by the ambiguity surrounding the term “4th tier.” Several purchasers identified *** as a ***.⁷¹ As noted above, most major purchasers identified brands of producers such as *** as among their top suppliers of “4th tier” cigarettes in addition to brands of the producers identified by Petitioner as “4th tier” producers.⁷² Thus, to the extent that there are U.S. producers making a range of brands, some of which are considered to be 4th tier cigarettes and others that are not, this distinction in manufacturing facilities and employees may not be as clear cut as petitioner suggests.⁷³

We note that responses to the questionnaire are mixed with respect to manufacturing facilities, production processes, and employees.⁷⁴ However, responses noting differences center on the point that “4th tier” and other cigarettes are produced in different manufacturing

⁶⁸ CR/PR at I-14.

⁶⁹ CR/PR at I-14.

⁷⁰ Petitioners Prehearing Brief, at 31.

⁷¹ CR/PR at Table E-5; KT&G’s Posthearing Brief, Answers to Questions at 15 n.132.

⁷² KT&G’s Posthearing Brief, Answers to Questions at 11. See Purchaser Questionnaires of *** at II-4.

⁷³ See Petitioner’s Posthearing Brief at 4 (emphasizing this factor as demonstrating a bright line distinction between “4th tier” and non-4th tier cigarettes). We also note that while it is true that an employee would not ordinarily work for more than one cigarette producers at a given time, the record includes evidence that employees may move employment from one producer to another reflecting that the skills used in the production of cigarettes are generally transferable from one production facility to another. See CR/PR at E-17 (***); KT&G’s Posthearing Brief, Attachment C, paras. 15 and 16 *** statement.

⁷⁴ CR/PR at Tables E-1, E-16, E-17, and E-18.

facilities. As discussed above, while self-identified producers of “4th tier” cigarettes may not also produce other cigarettes, producers other than self-identified “4th tier” producers manufacture cigarettes that market participants consider “4th tier” cigarettes.

Channels of Distribution. The questionnaire data indicate that there is substantial overlap in channels of distribution for “4th tier” cigarettes and other cigarettes. While one self-identified “4th tier” producer reported selling some of its cigarettes directly to retailers, nearly all cigarettes are sold only through distributors.⁷⁵ Petitioners argue that some portion of “4th tier” cigarettes may be sold through distinct distributors and wholesalers and that “4th tier” cigarettes may be sold through sub-jobbers, which do not distribute other cigarettes.⁷⁶ The record shows, however, that “4th tier” cigarettes substantially overlap in terms of the distributors and retailers at which they are sold,⁷⁷ and even Petitioner acknowledges major wholesalers sell both “4th tier” and other cigarettes.⁷⁸

Petitioner argues that 4th tier cigarettes are effectively shut out of many retailers through incentive programs of “non-4th tier” cigarette producers which prevent (or severely limit) retailers from selling cigarettes below the prices of major manufacturers’ cigarettes.⁷⁹ KT&G disputes this, characterizing the incentive programs as a means for major cigarette

⁷⁵ CR/PR at Table E-4. ***. CR/PR at II-2, II-2 n.4.

⁷⁶ See Petitioner’s Prehearing Brief at 21; Petitioner’s Posthearing Brief at 4 and Exhibit 1 at 19-21.

⁷⁷ KT&G’s Prehearing Brief at 33-34, Attachment B-2 (List of Wholesalers by Number of Tiers Sold); KT&G’s Posthearing Brief at 6; Hearing Tr. at 202-03 (Smith, Anderson).

⁷⁸ Petitioners Prehearing Brief, Exhibit 1 at 21 (quoting the ***).

⁷⁹ Petitioner’s Prehearing Brief at 23-24. Petitioners describe the EDLP Program as a program whereby “retailers that sell cigarettes contract with R.J. Reynolds to sell one of its brands as the lowest-priced product in the store in exchange for promotional allowances.” *Id.* at 23; *see also* Hearing Tr. at 192 and 229 (Gomes). Phillip Morris has an incentive program called Marlboro Leadership Price. Hearing Tr. at 192-93 (Gomes).

producers to defend their market share at retail outlets and evidence in themselves that “4th tier” and other cigarettes compete.⁸⁰ Although these incentive programs may affect the price or market share of cigarettes sold at retail outlets, they do not demonstrate that “4th tier” and other cigarettes are sold through distinct channels of distribution and instead tend to support KT&G’s position that “4th tier” and other cigarettes compete in the same channels of distribution.

Producer and Customer Perceptions. As discussed above, there is no common understanding of the term “4th tier” cigarettes in the market, nor is there a common understanding of the specific domestic producers or cigarette brands that participate in the “4th tier.” This is illustrated by the fact that purchasers frequently identified *** in their lists of top-five suppliers of 4th tier cigarettes, yet Petitioner did not identify these producers as 4th tier producers, and *** reported that it did not produce 4th tier cigarettes.⁸¹ Further, KT&G offered numerous examples of the term 4th tier being used as a synonym for discount cigarettes covering a wide range of brands beyond just those produced by the companies identified by Petitioner as “4th tier” producers, suggesting the term does not have a clear definition in the market.⁸²

The questionnaire responses indicate that other cigarettes generally are perceived to be higher quality than “4th tier” cigarettes, with more brand equity achieved through marketing

⁸⁰ Hearing Tr. at 192-193, 229-230 (Gomes); KT&G Prehearing Br. at 35.

⁸¹ See Petition, Exhibit I-1; U.S. Purchasers Questionnaires at II-4; KT&G’s Posthearing Brief, Answers to Questions at 40-41 and Attachment B-4; *** U.S. Producer Questionnaire. The Commission sent a questionnaire to *** but did not receive a response.

⁸² See KT&G’s Posthearing Brief, Answers to Questions at 9-14.

and the length of time non-4th tier brands have been on the market.⁸³ As a result, other cigarette brands, unlike “4th tier” brands, appear to have significant brand loyalty.⁸⁴ Dosal commented that perceptions are *** but premium cigarettes are perceived to be ***.⁸⁵ Purchasers commented that perceptions vary by customer.⁸⁶

In responding to the questionnaires concerning perceptions in the marketplace, three U.S. producers indicated that “4th tier” cigarettes are not perceived to be at all comparable to other cigarettes; one U.S. producer reported that “4th tier” cigarettes are somewhat comparable to other cigarettes; and one U.S. producer indicated they are mostly comparable.⁸⁷ Three of four U.S. importers indicated they are mostly comparable in terms of perceptions.⁸⁸ Thirteen purchasers indicated that perceptions of “4th tier” cigarettes are not at all comparable to other cigarettes while twelve purchasers indicated that they are somewhat or mostly comparable.⁸⁹

Price. While the parties agree that “4th tier” cigarettes are generally priced lower than other cigarettes, there does not appear to be a clear dividing line with respect to price. Based on questionnaire responses, average unit shipment values for “4th tier” cigarettes ranged from *** to *** per carton during the January 2017 – June 2020 period of investigation (“POI”), whereas average unit shipment values for other cigarettes ranged from \$*** per carton to \$***

⁸³ CR/PR at Tables E-7 and E-18.

⁸⁴ See CR/PR at Table E-7 (comments of R.J. Reynolds and Philip Morris).

⁸⁵ CR/PR at Tables E-7, E-16.

⁸⁶ See CR/PR at Table E-18.

⁸⁷ CR/PR at Table E-1.

⁸⁸ CR/PR at Table E-1.

⁸⁹ CR/PR at Table E-1.

per carton, suggesting a range of prices for other cigarettes.⁹⁰ We observe, however, that producers identified by some market participants as “4th tier” producers did not submit pricing data and therefore pricing for their cigarettes are not reflected in the data for 4th tier cigarettes cited above. Questionnaire responses regarding the comparability of prices between “4th tier” cigarettes and all other cigarettes were mixed.⁹¹

Additional pricing information on the record regarding cigarette sales in specific states show that there is overlap in prices between brands of self-identified producers of “4th tier” cigarettes and brands of producers of other cigarettes suggesting that there is substantial overlap in prices as between cigarettes of producers that self-identify as “4th tier” producers and other cigarette producers.⁹²

Conclusion. When considering whether to include out-of-scope merchandise in the definition of the domestic like product, the starting point is the domestically produced merchandise corresponding to the scope definition provided by Commerce. The Commission begins with the in-scope merchandise and considers if there is a clear dividing line between in-

⁹⁰ See CR/PR at Table E-6.

⁹¹ In their questionnaire responses, three U.S. producers indicated that “4th tier” cigarettes and other cigarettes are not comparably priced, one indicated they are somewhat comparably priced and one indicated they are mostly comparably priced. Two U.S. importers indicated “4th tier” cigarettes and other cigarettes are not at all comparably priced and two reported they are somewhat comparably priced. Fifteen of 28 purchasers indicated that “4th tier” cigarettes and other cigarettes are not comparably priced; twelve purchasers indicated that they are somewhat comparably priced. CR/PR at Table E-1. See CR/PR at Table E-1.

⁹² Minimum pricing data for Nebraska and Massachusetts shows cigarette prices for certain cigarettes and all other cigarettes overlap. KT&G’s Posthearing Brief at Exhibit B-2; KT&G’s Prehearing Brief at 46 and Attachment B-12.

scope and out-of-scope merchandise based on the Commission's six-factor domestic like product test.⁹³

In this investigation, the scope definition indicates that the subject merchandise is cigarettes "commonly referred to as '4th tier cigarettes.'" The record shows that there is no standard industry definition or common understanding of "4th tier" cigarettes.⁹⁴ Further, purchasers and producers do not agree regarding which cigarettes are "4th tier" cigarettes or which producers make this product.⁹⁵

According to the scope language, the defining characteristic of "4th tier" cigarettes, aside from minor distinctions in packaging,⁹⁶ is a tobacco blend "typically" with 10 percent or more tobacco stems.⁹⁷ Because stem content of tobacco is not easily measured and generally not known, it is difficult if not impossible for market participants to know whether particular cigarettes fall within the scope's definition of "4th tier" cigarettes. Purchasers are usually unaware of the stem content of cigarettes, and producers and purchasers do not view stem content as a defining or important characteristic of cigarettes.⁹⁸ The absence of a standard

⁹³ See, e.g., *100- to 150-Seat Large Civil Aircraft from Canada*, Inv. Nos. 701-TA-578 and 731-TA-1368 (Final), USITC Pub. 4759 (Feb. 2018) at 14; *Large Residential Washers from China*, Inv. No. 731-TA-1306, USITC Pub. 4591 (Feb. 2016) at 9-10 & n.48; *Large Residential Washers from Korea and Mexico*, Inv. Nos. 701-TA-488 and 731-TA-1199-1200 (Final), USITC Pub. 4378 (Feb. 2013) at 6 and 8. See also, *Small Diameter Graphite Electrodes from China*, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 (February 2009) at 10, n.50.

⁹⁴ See, e.g., CR/PR at I-8.

⁹⁵ See U.S. Purchasers Questionnaires at II-4; KT&G's Posthearing Brief, Answers to Questions at 40-41 and Attachment B-4.

⁹⁶ The scope definition describes cigarette packs "without a rounded internal corner and without embossed aluminum foil inside the pack."

⁹⁷ See CR/PR at I-7.

⁹⁸ See Purchaser Questionnaire Responses at V-2(a) and V-2(b).

definition or identifiable characteristic of “4th tier” cigarettes suggests that there is no clear dividing line between “4th tier” cigarettes and other cigarettes.⁹⁹

In addition, the record indicates significant overlap for all cigarettes in terms of the physical characteristics and channels of distribution, and all cigarettes have the same end use. The record also indicates interchangeability between “4th tier” and other cigarettes as all cigarettes are used in the same application and many smokers of “4th tier” cigarettes also smoke other cigarettes. With respect to manufacturing, the production process, equipment, and employees required for producing cigarettes are essentially the same for all cigarettes. Moreover, “4th tier” cigarettes pricing is part of a continuum of prices, with evidence showing that some cigarettes produced by the self-identified non-4th tier producers are priced lower than cigarettes produced by the self-identified “4th tier” producers.

We recognize that the questionnaire responses from producers, purchasers, and importers are mostly mixed. Where market participants note differences, their comments generally identify differences in quality and pricing. The Commission, however, has considered the record as a whole, and on balance does not consider these identified differences,

⁹⁹ Petitioner has also argued that the majority of “4th tier” cigarette producers are not parties to the MSA. Petitioner’s Prehearing Brief at 34-35. Petitioner has not explained, however, why a cigarette producer’s legal status should have any bearing on the analysis of the domestic like product. One of the self-identified “4th tier” cigarette producers, ***, is a party to the MSA. KT&G’s Prehearing Brief at 122.

particularly in light of other record evidence, to constitute a sufficient basis for finding a clear dividing line among products.^{100 101}

Thus, we define the domestic like product to include all cigarettes (both “4th tier” cigarettes and other cigarettes) in the definition of the domestic like product for purposes of our determination in the final phase of the investigation.

III. Domestic Industry

The statute defines the relevant 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.”¹⁰² In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

No related party or other domestic industry issues have arisen in this investigation. Accordingly, we define the domestic industry to include all U.S. producers of cigarettes.¹⁰³

¹⁰⁰ With respect to quality, while the Commission has considered record evidence – in particular questionnaire responses and other information Petitioner cites in support – we do not normally consider differences in quality as a sufficient basis for finding a clear dividing line between products. *See, e.g., Greenhouse Tomatoes from Canada*, Inv. No. 731-TA-925 (Final), USITC Pub. 3499 at 4, 9 (Apr. 2002) (“In our examination of the six traditional like product factors, we find that differences between greenhouse and field tomatoes generally represent variations in the quality of the tomato rather than distinctions that represent clear dividing lines.”).

¹⁰¹ We also do not find a clear dividing line between the different tiers of other cigarettes in a way that would warrant defining an expanded domestic like product that included only some of the other cigarettes. Nor has any party suggested such a definition would be appropriate.

¹⁰² 19 U.S.C. § 1677(4)(A).

¹⁰³ This includes the smaller “4th tier” producers as well as the three major cigarette producers for which the Commission obtained data: Liggett, Phillip Morris, and R.J. Reynolds.

IV. Material Injury by Reason of Subject Imports¹⁰⁴

A. Legal Standards

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.¹⁰⁵ 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. production operations.¹⁰⁶ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁰⁷ 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.¹⁰⁸ No single factor is dispositive, and all relevant factors are considered “within the

¹⁰⁴ Pursuant to Section 771(24) of the Tariff Act, imports from a subject country of merchandise corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall generally be deemed negligible. 19 U.S.C. §§ 1671b(a), 1673b(a), 1677(24)(A)(i), 1677(24)(B). The exceptions to this general rule are not pertinent here. Based on U.S. importer questionnaire responses, subject imports from Korea accounted for *** percent of total imports of certain cigarettes by quantity for the twelve months preceding the filing of the petition, December 2018 through November 2019. CR/PR at Table IV-3. Because this exceeds the statutory negligibility threshold, we find that subject imports from Korea are not negligible.

¹⁰⁵ 19 U.S.C. §§ 1671d(b), 1673d(b). The Trade Preferences Extension Act of 2015, Pub. L. 114-27, amended the provision of the Tariff Act pertaining to Commission determinations of material injury and threat of material injury by reason of subject imports in certain respects. We have applied these amendments in this investigation.

¹⁰⁶ 19 U.S.C. § 1677(7)(B). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

¹⁰⁷ 19 U.S.C. § 1677(7)(A).

¹⁰⁸ 19 U.S.C. § 1677(7)(C)(iii).

context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁰⁹

Although the statute requires the Commission to determine whether the domestic industry is “materially injured or threatened with material injury by reason of” unfairly traded imports,¹¹⁰ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.¹¹¹ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.¹¹²

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition

¹⁰⁹ 19 U.S.C. § 1677(7)(C)(iii).

¹¹⁰ 19 U.S.C. §§ 1671d(a), 1673d(a).

¹¹¹ *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), *aff’g*, 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

¹¹² The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” *Nippon Steel Corp. v. USITC*, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” *See also Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1357 (Fed. Cir. 2006); *Taiwan Semiconductor Industry Ass’n v. USITC*, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.¹¹³ In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.¹¹⁴ Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.¹¹⁵ It is

¹¹³ SAA at 851-52 (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the Petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); *accord Mittal Steel*, 542 F.3d at 877.

¹¹⁴ SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); *Taiwan Semiconductor Industry Ass’n*, 266 F.3d at 1345 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); *see also Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, *i.e.*, it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), *citing Gerald Metals*, 132 F.3d at 722 (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

¹¹⁵ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

clear that the existence of injury caused by other factors does not compel a negative determination.¹¹⁶

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports.”¹¹⁷ The Commission ensures that it has “evidence in the record” to “show that the harm occurred ‘by reason of’ the LTFV imports,” and that it is “not attributing injury from other sources to the subject imports.”¹¹⁸ The Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”¹¹⁹

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial

¹¹⁶ See *Nippon Steel Corp.*, 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

¹¹⁷ *Mittal Steel*, 542 F.3d at 876 &78; see also *id.* at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination ... {and has} broad discretion with respect to its choice of methodology.”) (citing *United States Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.). In its decision in *Swift-Train v. United States*, 793 F.3d 1355 (Fed. Cir. 2015), the Federal Circuit affirmed the Commission’s causation analysis as comporting with the Court’s guidance in *Mittal*.

¹¹⁸ *Mittal Steel*, 542 F.3d at 873 (quoting from *Gerald Metals*, 132 F.3d at 722), 877-79. We note that one relevant “other factor” may involve the presence of significant volumes of price-competitive nonsubject imports in the U.S. market, particularly when a commodity product is at issue. In appropriate cases, the Commission collects information regarding nonsubject imports and producers in nonsubject countries in order to conduct its analysis.

¹¹⁹ *Nucor Corp. v. United States*, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also *Mittal Steel*, 542 F.3d at 879 (“*Bratsk* did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

evidence standard.¹²⁰ Congress has delegated this factual finding to the Commission because of the agency’s institutional expertise in resolving injury issues.¹²¹

B. Conditions of Competition

The following conditions of competition inform our analysis of whether there is material injury or threat of material injury by reason of subject imports.

1. Demand Conditions

Overall demand for cigarettes has been declining for many years due to the health risks of smoking.¹²² Increasing regulation and the availability of smoking alternatives have also contributed to lower demand.¹²³ The federal government and state governments impose excise taxes on cigarettes to reduce their consumption. The federal excise tax is \$1.01 per pack and there are also state taxes which vary widely.¹²⁴

Although demand for cigarettes, including economy brand cigarettes, is reportedly declining over the long term, apparent U.S. consumption of certain cigarettes¹²⁵ increased during the January 2017 – June 2020 period of investigation (“POI”).¹²⁶ This is reportedly a result of smokers switching to less expensive cigarettes as prices increase.¹²⁷ By contrast, our

¹²⁰ We provide in our discussion below a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

¹²¹ *Mittal Steel*, 542 F.3d at 873; *Nippon Steel Corp.*, 458 F.3d at 1350, citing *U.S. Steel Group*, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

¹²² See CR/PR at II-6 to II-7.

¹²³ See CR/PR at II-6 to II-7.

¹²⁴ See CR/PR at Fig. I-1. For instance, the state cigarette tax is 17 cents per pack in Missouri while it is \$4.98 per pack in the District of Columbia. *Id.*

¹²⁵ As noted above, we use the term “certain cigarettes” to refer to cigarettes produced by the portion of the cigarette industry that self-identified as producing “4th tier” cigarettes.

¹²⁶ See CR/PR, Table IV-4.

¹²⁷ CR/PR at II-7.

data for all cigarettes show a decline in consumption during the POI consistent with the long-term trend. Apparent U.S. consumption of all cigarettes based on quantity decreased overall by *** percent during 2017-19 but was *** percent higher during January-June 2020 (“interim 2020”) compared to interim 2019.¹²⁸ Apparent U.S. consumption of cigarettes totaled *** cartons in 2017, *** cartons in 2018, and *** cartons in 2019; it was *** cartons in interim 2019 and *** cartons in interim 2020.¹²⁹ The uptick in demand in the interim period has been attributed to the pandemic leading to increased stress and people working from home.¹³⁰

2. Supply Conditions

The domestic industry was by far the largest source of supply over the POI.¹³¹ Its share of apparent U.S. consumption decreased from *** percent in 2017 to *** percent in 2018 and to *** percent in 2019;¹³² it was *** percentage points lower in interim 2020, at *** percent, than in interim 2019, at *** percent.¹³³

¹²⁸ CR/PR at Table C-2.

¹²⁹ CR/PR at C-2. A carton of cigarettes contains 10 packs of cigarettes and each pack contains 20 cigarettes.

¹³⁰ KT&G’s Prehearing Brief at 79-80.

¹³¹ CR/PR at Tables F-9, C-2. The Commission received usable questionnaire responses from five domestic producers of “4th tier” cigarettes. CR/PR at III-1. Staff additionally received U.S. producer questionnaires Philip Morris Global Services, Inc., R.J. Reynolds Tobacco Company, and Liggett Group who produce cigarettes other than “4th tier” cigarettes. See CR/PR at Appendix D. Staff sent a producer questionnaire to U.S. producer ITG but did not receive a response, despite follow-up efforts.

¹³² CR/PR at Tables IV-4, C-2.

¹³³ CR/PR at Tables IV-4, C-2.

The domestic industry's capacity decreased from *** cartons in 2017 to *** cartons in 2019; capacity was *** cartons in interim 2019 and *** cartons in interim 2020.¹³⁴ One domestic producer exited the industry during the POI.¹³⁵

Subject imports were the smallest source of supply to the U.S. market during the POI. Their share of apparent U.S. consumption increased from *** percent in 2017 to *** percent in 2018, and then grew to *** percent in 2019; their share was higher in interim 2020, at *** percent, than in interim 2019, at *** percent.¹³⁶

The majority of the subject imports are shipped to the South and Central Southwest.¹³⁷ Petitioner argues that KT&G's sales expanded from the central United States to more areas of the country during the POI.¹³⁸ The record does not indicate that the domestic industry's shipments are concentrated in any particular region of the country.

Nonsubject imports were the second largest source of supply during the POI. Their share of apparent U.S. consumption increased from *** percent in 2017 to *** percent in 2018 and *** percent in 2019;¹³⁹ their share was higher interim 2020, at *** percent, than in interim

¹³⁴ CR/PR at Table C-2.

¹³⁵ "4th tier" cigarette producer S&M Brands was sold to an undisclosed buyer, shutting down operations in March 2019 and laying off 50 employees. CR/PR at Table III-3. The parties dispute the reason for its shutdown. Petitioner's Prehearing Brief at 62-63; KT&G's Prehearing Brief at 133-34 and Exhibit 40.

¹³⁶ CR/PR at Tables C-2 and F-9.

¹³⁷ See CR/PR at Table II-2.

¹³⁸ Petitioner's Prehearing Brief at 80-81. Importers' shipments of subject imports to the South and Central Southwest accounted for *** percent of shipment in 2017 and *** percent of all importers' shipments in interim 2020. CR/PR at Table D-2.

¹³⁹ CR/PR at Tables C-2 and F-9.

2019, at *** percent.¹⁴⁰ According to official U.S. import statistics, Canada is the leading source of U.S. imports of all cigarettes.¹⁴¹

3. Regulatory Environment

In 1998, the four largest U.S. cigarette producers at the time, Philip Morris, R.J. Reynolds, Brown & Williamson, and Lorillard (collectively, “the Original Participating Members (“OPMs”)”) settled litigation with 46 states (all states excluding Florida, Minnesota, Mississippi, and Texas), the District of Columbia, and five U.S. territories (collectively referred to as the “Settling States”).¹⁴² Tobacco producers that become signatories after the Master Settlement Agreement (“MSA”) date are referred to as Subsequent Participating Members (“SPMs”). Under the MSA, OPMs and SPMs are released from past and future legal claims for costs incurred by the Settling States for tobacco-related illnesses. In exchange, OPMs and SPMs agreed to make annual payments in perpetuity to the Settling States and to substantially restrict tobacco-related marketing.¹⁴³

Subsequent to the MSA, Settling States required cigarette manufacturers to either become a signatory to the MSA or remain Non-Participating Manufacturers (“NPMs”) and fund escrow accounts.¹⁴⁴ The NPM escrow payments were designed to create parity in the market by eliminating the advantage that the NPMs have relative to the OPMs and SPMs because NPMs do not have to make the MSA payments to the Settling States.¹⁴⁵

¹⁴⁰ CR/PR at Tables C-2 and F-9.

¹⁴¹ CR/PR at VII-12.

¹⁴² CR/PR at I-12.

¹⁴³ CR/PR at I-12.

¹⁴⁴ CR/PR at I-12 to I-13.

¹⁴⁵ CR/PR at VI-14, VI-15 n.22.

The major cigarette manufacturers are OPMs and make MSA payments.¹⁴⁶ Most domestic “4th tier” cigarette producers and KT&G are NPMs. Thus, they are required to make payments into escrow accounts, with amounts based on the number of cigarettes sold in each state.¹⁴⁷ NPM escrow account funds are expected to be used to satisfy future tobacco-related judgments and/or settlements in the Settling States.¹⁴⁸ NPM escrow payments vary by state with Missouri notably having a smaller net escrow obligation.¹⁴⁹

The Tobacco Control Act (“TCA”) enacted in 2009 authorizes the FDA to regulate the manufacture, distribution, and marketing of current and new tobacco products in the United States. It substantially limits the sale and marketing of tobacco products, including significant restrictions on the introduction of new tobacco products.¹⁵⁰ States and other localities have additional restrictions on the marketing, sale, and consumption of tobacco products.¹⁵¹ On December 20, 2019, federal legislation was enacted raising the minimum age of the sale of tobacco products to 21.¹⁵²

4. Substitutability and Other Conditions

Domestic producers, U.S. importers, and importers generally reported that the domestically produced certain cigarettes and subject imports are either “always” or

¹⁴⁶ CR/PR at VI-14 n.17.

¹⁴⁷ See CR/PR at I-10 to I-11; KT&G’s Brief at 34.

¹⁴⁸ Unutilized NPM escrow funds are to be returned to NPMs for unrestricted use 25 years after the date the funds were placed into the escrow. As no escrow payments have reached the 25-year mark, it is unclear what percentage of deposited escrow funds (if any) will be returned to NPMs. CR/PR at I-13 and VI-14 n.18.

¹⁴⁹ CR/PR at VI-16.

¹⁵⁰ CR/PR at I-10 to I-11.

¹⁵¹ KT&G’s Prehearing Brief at 69-70.

¹⁵² CR/PR at I-11.

“frequently” interchangeable and that they are comparable with respect to 16 factors.¹⁵³

Accordingly, the record indicates that there is a high degree of substitutability between the subject imports and domestically produced certain cigarettes.¹⁵⁴

In considering substitutability between subject imports and the broader category of all domestically produced cigarettes, the majority of responding U.S. producers (3 of 5), all responding importers (4 of 4), and the majority of responding purchasers (30 of 31) reported that consumers of “4th tier” cigarettes also smoke other cigarettes.¹⁵⁵ On the other hand, the majority of purchasers report that other cigarettes are not substituted for “4th tier” cigarettes.¹⁵⁶

The record indicates that the degree of substitutability between subject imports and domestically produced “4th tier” cigarettes is high.¹⁵⁷ The record also indicates that brand loyalty among U.S. consumers is generally stronger for cigarettes other than certain cigarettes.¹⁵⁸ We thus find that the degree of substitutability between subject imports and all domestically produced cigarettes is more limited than when comparing the subject imports with only domestically produced certain cigarettes. However, as discussed above all cigarettes are used in the same application and evidence indicates that smokers of certain cigarettes also smoke other cigarettes particularly as prices change. We therefore find the degree of

¹⁵³ CR/PR at Tables II-9 and II-10.

¹⁵⁴ CR/PR at II-10.

¹⁵⁵ CR/PR at II-8.

¹⁵⁶ CR/PR at II-9.

¹⁵⁷ CR/PR at II-10.

¹⁵⁸ CR/PR at I-9; Table E-7 (***).

substitutability between the subject imports and all domestically produced cigarettes to be moderate to high.¹⁵⁹

The record also indicates that price is an important factor in purchasing decisions though the questionnaire responses pertain only to certain cigarettes. Twenty-one of 24 purchasers reported that price or low cost was a very important factor in their purchasing decisions.¹⁶⁰ Purchasers of certain cigarettes also most often ranked lowest price as their most important purchasing factor.¹⁶¹ Over half of responding purchasers also reported that the following factors are very important: availability, discounts offered, reliability of supply, product consistency, quality meets industry standards, payment terms, quality exceeds industry standards, and delivery terms.¹⁶² As noted above, brand loyalty is higher for non-“4th tier” cigarettes, and thus brand is an additional important purchase factor in the market of all cigarettes.

Tobacco is the primary raw material used to produce cigarettes.¹⁶³ Raw material costs accounted for roughly *** percent of the cost of goods sold (“COGS”) during the POI while other factory costs were the largest component of COGS followed by MSA or escrow payments.¹⁶⁴

¹⁵⁹ Chair Kearns finds the degree of substitutability between the subject imports and all domestically produced cigarettes to be moderate.

¹⁶⁰ CR/PR at Table II-7.

¹⁶¹ CR/PR at Table II-6.

¹⁶² CR/PR at Table II-7.

¹⁶³ CR/PR at V-1.

¹⁶⁴ See CR/PR at Table G-1.

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Tariff 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.”¹⁶⁵

The quantity of subject imports increased from *** cartons in 2017 to *** cartons in 2018, and *** cartons in 2019. The quantity of subject imports was higher in interim 2020, at *** cartons, than in interim 2019, at *** cartons.¹⁶⁶

By quantity, U.S. shipments of subject imports’ share of apparent U.S. consumption was less than *** percent during the POI.¹⁶⁷ It increased from *** percent in 2017 to *** percent in 2018, and *** percent in 2019.¹⁶⁸ By quantity, subject imports’ share of apparent U.S. consumption was higher in interim 2020, at *** percent, than in interim 2019, at *** percent.¹⁶⁹

As a ratio to domestic industry production, subject imports were *** percent in 2017, *** percent in 2018, and *** percent in 2019.¹⁷⁰ This ratio was *** percent in interim 2019 and *** percent in interim 2020.¹⁷¹

¹⁶⁵ 19 U.S.C. § 1677(7)(C)(i).

¹⁶⁶ CR/PR at Table IV-2. Importers’ shipments of subject imports increased from *** cartons in 2017 to *** cartons in 2018, and *** cartons in 2019. The quantity of subject imports was higher in interim 2020, at *** cartons, than in interim 2019, at *** cartons. CR/PR at Tables F-9 and C-2.

¹⁶⁷ Apparent U.S. consumption and market shares are based on U.S. shipments of producers and importers. We note that subject import market share is likely overstated somewhat by the absence of data from U.S. producer ITG.

¹⁶⁸ CR/PR at Tables F-9 and C-2.

¹⁶⁹ CR/PR at Tables F-9 and C-2. By value, subject imports’ share of apparent U.S. consumption was even smaller during the POI. Subject imports’ share of apparent U.S. consumption by value rose from *** percent in 2017 and 2018 to *** percent in 2019. It was *** percent in interim 2019 and higher, at *** percent, in interim 2020. *Id.*

¹⁷⁰ CR/PR at Tables F-9 and C-2.

¹⁷¹ CR/PR at Tables F-9 and C-2.

We find the volume of subject imports present in the market, at all times during the POI, in absolute terms or relative to apparent U.S. consumption and domestic production, was not significant, particularly in the context of this industry including that domestic producers control over 90 percent of the market, the ratio of subject imports to domestic production barely exceeded *** percent during any part of the POI, and other domestic cigarettes command greater brand loyalty than subject imports.

We also find that the increase in subject imports, either absolutely or relative to consumption or production, was not significant. We acknowledge that subject imports increased between 2017 and 2019 and had a larger presence in interim 2020 than interim 2019. But this increase cannot be viewed in isolation and reflects the minimal level of subject imports at the beginning of the POI. In terms of the overall U.S. market, these increases were relatively modest. Subject import market share increased *** percentage points by quantity and *** percentage points by value from 2017 to 2019 and was higher in interim 2019 than in interim 2018 by *** percentage points in terms of quantity and *** percentage points in terms of value.¹⁷² In terms of a ratio to domestic production, subject imports increased *** percentage points from 2017 to 2019 and *** percentage points from interim 2019 to interim 2020. In the context of this industry, we do not find these increases to be significant. Moreover, for the reasons discussed below, we find that the subject imports had neither significant price effects nor a significant impact on the domestic industry.

¹⁷² CR/PR at Tables F-9 and C-2.

D. Price Effects of Subject Imports

Section 771(7)(C)(ii) of the Tariff 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.¹⁷³

As addressed in section IV.B.4. above, the record indicates that there is a moderate to high degree of substitutability between domestically produced cigarettes and the subject imports and that price is an important factor in purchases.

In the final phase of the investigation, four domestic producers of certain cigarettes and one importer of subject merchandise provided usable pricing data for three different types of cigarettes in Missouri, Oklahoma, and Florida,¹⁷⁴ although not all firms reported pricing for all

¹⁷³ 19 U.S.C. § 1677(7)(C)(ii).

¹⁷⁴ CR/PR at V-5. The nine pricing products are as follows:

Product 1.— Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (*i.e.* Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Missouri.

Product 2.— Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (*i.e.* Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Missouri.

Product 3.— Menthol, Length 100, Menthol 4th tier cigarette (*i.e.* Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol Box, or equivalent offerings) for sale to consumers in Missouri.

Product 4.— Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (*i.e.* Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Oklahoma.

Product 5.— Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (*i.e.* Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Oklahoma.

Product 6.— Menthol, Length 100, Menthol 4th tier cigarette (*i.e.* Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol Box, or equivalent offerings) for sale to consumers in Oklahoma.

Product 7.— Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (*i.e.* Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Florida.

products for all quarters.¹⁷⁵ Pricing data reported by these firms accounted for approximately 1.6 percent of U.S. producers' U.S. commercial shipments of cigarettes and *** percent of commercial U.S. shipments of subject imports from Korea in 2019.¹⁷⁶ Pricing data were collected for three individual states because of the different state taxes in each state.¹⁷⁷

The pricing data show that subject imports undersold domestic cigarettes in 73 of 126 quarterly price comparisons, or 58 percent of such comparisons, by margins ranging from *** percent to *** percent and averaging *** percent.¹⁷⁸ Subject imports oversold the domestic cigarettes in 53 of 126 quarterly price comparisons, or 42 percent of such comparisons, by margins ranging from *** percent to *** percent and averaging *** percent.¹⁷⁹ We acknowledge that these price comparisons of subject imports to this subset of domestic cigarettes, when viewed in isolation, show predominant underselling by the subject imports during the POI.¹⁸⁰

Product 8. – Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (*i.e.* Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Florida.

Product 9. – Menthol, Length 100, Menthol 4th tier cigarette (*i.e.* Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol, Box or equivalent offerings) for sale to consumers in Florida to consumers in Florida.

¹⁷⁵ CR/PR at V-5. No party requested that the Commission collect pricing data for other or non-4th tier cigarettes. Petitioner argued that other or non-4th tier cigarettes are not comparable products to the subject imports.

¹⁷⁶ CR/PR at V-5.

¹⁷⁷ Federal and state taxes are included in the pricing data. CR/PR at V-4 n.2.

¹⁷⁸ CR/PR at Table V-13. On a volume basis, underselling by subject imports accounted for *** cartons or *** percent of subject import volumes reported for the pricing products. *Id.*

¹⁷⁹ CR/PR at Table V-13. On a volume basis, overselling by subject imports accounted for *** cartons or *** percent of subject import volumes reported for the pricing products. *Id.*

¹⁸⁰ Seven of 32 responding purchasers indicated that price was a primary reason for purchasing a total of *** cartons of subject imports rather than domestically produced “4th tier” certain cigarettes. This volume was equal to only *** percent of the *** cartons of “4th tier” cigarettes imported from Korea reported by purchasers during the POI. See CR/PR at Tables V-14 and V-15. Six of 32 purchasers

We have also examined price trends for cigarettes in the domestic market. The record shows that prices increased for all nine domestically produced pricing products during the POI.¹⁸¹ As an indication of prices for other cigarettes, we also have considered unit net sales values for the broader all cigarette industry. The unit net sales values for the domestic industry increased throughout the POI even as apparent U.S. consumption declined. Net sales values were *** percent higher in 2019 than 2017 and *** percent higher in interim 2020 than interim 2019.¹⁸² Thus, neither the pricing data nor industry's sales values indicate depressed prices during the POI. Given these considerations, we find that subject imports did not have the effect of depressing domestic prices to a significant degree.

The domestic industry's raw material and other costs increased during the POI, but the industry was able to increase prices to cover the cost increases despite declining apparent U.S. consumption.¹⁸³ Raw material costs and cost of goods sold ("COGS")¹⁸⁴ increased over most of

also indicated that U.S. producers had reduced prices of "4th tier" cigarettes in order to compete with lower-priced imports from Korea (average price reduction was 19.8 percent). CR/PR at Table V-16 to V-28.

¹⁸¹ CR/PR at Tables V-12. Prices for domestically produced "4th tier" cigarettes sold in Missouri (products 1-3) increased by *** to *** percent. CR/PR at Table V-12. Prices for domestically produced "4th tier" cigarettes sold in Oklahoma (products 4-6) increased by *** to *** percent. *Id.* Domestic price increases ranged from *** to *** percent in Florida (products 7-9). *Id.* Petitioner argues that domestic prices in Oklahoma increased by less than the 2018 tax increase. Petitioner's Posthearing Brief, Exhibit 1, at 32. While prices of pricing products in Oklahoma increased by less than the tax increase, the record shows that domestic prices for products 4, 5, and 6 continued to increase after the tax increase in 2018 as shipments of subject imports increased in 2019 and 2020. *See* CR/PR at Figs. V-5, V-6, V-7, V-11. Thus, the record does not indicate that domestic cigarette prices in Oklahoma were significantly depressed by the increasing presence of subject imports.

¹⁸² CR/PR at Table C-2. Net sales values for the industry increased from \$*** in 2017 to \$*** in 2018 and \$*** in 2019. They were \$*** in interim 2019 and \$*** interim 2020. *Id.*

¹⁸³ *See* CR/PR at Table C-2.

¹⁸⁴ The parties disagreed concerning the accounting treatment of NPM escrow payments of the "4th tier" domestic producers. KT&G claims that under basic accounting principles, escrow funds must be treated as assets. KT&G's Prehearing Brief at 123-32. Petitioner contends that these payments

the POI.¹⁸⁵ The domestic industry's net sales values increased to a greater extent than did the industry's expenses, however.¹⁸⁶ As a result, the domestic industry's COGS to net sales ratio declined over the POI.¹⁸⁷ Accordingly, we find that the subject imports did not have the effect of preventing price increases that would otherwise have occurred to a significant degree.

In view of the foregoing, we find that the relatively modest (albeit increasing) volume of subject imports and the relatively lower prices of these imports did not have the effect of depressing prices or preventing price increases that would otherwise have occurred to a significant degree. Moreover, the relatively lower prices of subject imports did not result in a significant market share shift from domestic product producers to subject imports. As reviewed above, subject import market share relative to domestic consumption and U.S. production remained low despite some increase during the POI. Accordingly, we find that the subject imports did not have significant price effects.

should be treated as operating expenses more akin to the payment under the MSA. The "4th tier" producers treated the escrow payments differently. ***. *** approach is the most conservative approach though other treatments are not necessarily incorrect. We have considered these escrow payments to be operating expenses for purposes of our determination. In any case, when considering the financial performance of the broader all cigarette industry, the accounting treatment of these escrow payments has little effect because of the small share held by the "4th tier" certain cigarette producers compared to the rest of the domestic cigarette industry. *Compare* CR/PR Table G-1 with CR/PR at Table G-3 and Table G-5.

¹⁸⁵ The domestic industry's cost of raw materials per carton increased from \$*** in 2017 to \$*** in 2018 and \$*** in 2019. *See* CR/PR at Table G-1. Raw materials per carton were \$*** in interim 2019 and \$*** in interim 2020. *Id.* The industry's unit COGS increased from \$*** in 2017 to \$*** in 2018 and \$*** in 2019. Unit COGS were \$*** in interim 2019 and \$*** in interim 2020. *See* CR/PR at Tables C-2 and G-1.

¹⁸⁶ The domestic industry's net sales values increased from \$*** in 2017 to \$*** in 2018 and \$*** in 2019. They were \$*** in interim 2019 and \$*** interim 2020. *Id.*

¹⁸⁷ The domestic industry's COGS to net sales ratio declined from *** in 2017 to *** in 2018 to *** in 2019. It was *** in interim 2019 and *** in interim 2020. *See* CR/PR at Tables C-2 and G-1.

E. Impact of the Subject Imports¹⁸⁸

Section 771(7)(C)(iii) of the Tariff Act provides that examining the impact of subject imports, the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”¹⁸⁹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, gross profits, net profits, operating profits, cash flow, return on investment, return on capital, ability to raise capital, ability to service debts, research and development, and factors affecting domestic prices. 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.”¹⁹⁰

Following the long-term downward trend in apparent U.S. consumption, the domestic industry’s indicators of output declined from 2017 to 2019 and were lower in interim 2020 than in interim 2019. Production declined from *** cartons in 2017 to *** cartons in 2018 and *** million cartons in 2019.¹⁹¹ Capacity declined from *** cartons in 2017 to *** cartons in 2018

¹⁸⁸ 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 determination of sales at less value, Commerce found a dumping margin of 5.48 percent for KT&G Corporation and all other Korean producers/exporters of 4th tier cigarettes. *4th Tier Cigarettes from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances*, 85 Fed Reg. 79994, 79995 (Dec. 11, 2020). We take into account in our analysis the fact that Commerce has made final findings that all subject merchandise from Korea is dumped. In addition to this consideration, our analysis takes into account our prior findings that the subject imports undersold the domestic pricing products but did not cause significant price effects to the prices of the domestic industry.

¹⁸⁹ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 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.”).

¹⁹⁰ 19 U.S.C. § 1677(7)(C)(iii). This provision was amended by the Trade Preferences Extension Act of 2015, Pub. L. 114-27.

¹⁹¹ CR/PR at Tables F-9 and C-2. Production was *** cartons in interim 2020 and *** cartons in interim 2019. *Id.*

and 2019.¹⁹² Capacity utilization declined from *** percent in 2017 to *** percent in 2018 and *** percent in 2019.¹⁹³ U.S. shipments fell from *** cartons in 2017 to *** cartons in 2018 and *** cartons in 2019.¹⁹⁴ Inventories and inventories as a share of total shipments fluctuated but ended the POI higher.¹⁹⁵

As previously discussed, the domestic industry supplied the vast majority of U.S. demand throughout the POI. The domestic industry's share of the quantity of apparent U.S. consumption remained very high throughout the POI, decreasing from *** percent in 2017 to *** percent in 2018 and *** percent in 2019.¹⁹⁶

The domestic industry's employment indicators generally worsened. The number of production and related workers ("PRWs"), hours worked per PRW, total hours worked, total

¹⁹² CR/PR at F-9 and C-2. Capacity was *** cartons in interim 2019 and *** cartons in interim 2020. *Id.*

¹⁹³ CR/PR at Tables F-9 and C-2. Capacity utilization was *** percent in interim 2020 and *** percent in interim 2019. *Id.*

¹⁹⁴ CR/PR at Tables F-9 and C-2. U.S. shipments were *** cartons in interim 2019 and *** cartons in interim 2018. *Id.*

¹⁹⁵ The domestic industry's end-of-period inventories decreased from *** cartons in 2017 to *** cartons in 2018 and *** cartons in 2019; they were *** cartons in interim 2019 and *** cartons in interim 2020. CR/PR at Table C-2. The domestic industry's end-of-period inventories as a share of total shipments decreased from *** percent in 2017 to *** percent in 2018 and then increased to *** percent in 2018; they were higher in interim 2019 and interim 2020, at *** percent. *Id.*

¹⁹⁶ CR/PR at Table F-9. The domestic industry's share of the quantity of apparent U.S. consumption was slightly lower in interim 2020, at *** percent, than in interim 2019, at *** percent. Its share of the value of apparent U.S. consumption declined from *** percent in 2017 to *** percent in 2018 and *** percent in 2018. This share was lower in interim 2020, at *** percent, than in interim 2019, when it was *** percent. *Id.*

wages paid, and productivity declined overall between 2017 and 2019.¹⁹⁷ However, hourly wages and unit labor costs increased overall from 2017 to 2019.¹⁹⁸

Most measures of domestic industry financial performance improved during the POI despite the decline in output and apparent U.S. consumption; therefore, the domestic industry became increasingly profitable. Net sales revenue declined from \$*** in 2017 to \$*** in 2018 and 2019.¹⁹⁹ Gross profits increased from \$*** in 2017 to \$*** in 2018 and \$*** in 2019.²⁰⁰ Operating income decreased from \$*** in 2017 to \$*** in 2018 and then increased to \$*** in 2019.²⁰¹ The industry's operating income margin increased from *** percent in 2017 and 2018 to *** percent in 2019; it was *** in interim 2020.²⁰² The domestic industry increased its net income from \$*** in 2017 and 2018 to \$*** in 2019.²⁰³ The domestic industry's capital expenditures increased from \$*** in 2017 to \$*** in 2018 and then decreased to \$*** in 2019,

¹⁹⁷ The number of PRWs were *** in 2017, *** in 2018, *** in 2019, *** in interim 2019, and *** in interim 2020. CR/PR at Tables C-2 and F-8. Hours worked per PRW were *** hours in 2017, *** hours in 2018, *** hours in 2019, *** hours in interim 2019, and *** hours in interim 2020. *Id.* Total hours worked were *** hours in 2017, *** hours in 2018, *** hours in 2019, *** hours in interim 2019, and *** hours in interim 2020. *Id.* Total wages paid were \$*** in 2017, \$*** in 2018 and \$*** 2019, \$*** in interim 2019, and \$*** in interim 2020. *Id.* Productivity was *** cartons per hour in 2017, *** cartons per hour in 2018, *** cartons per hour in 2019, *** cartons per hour in interim 2019, and *** cartons per hour in interim 2020. *Id.*

¹⁹⁸ Hourly wages were \$*** per hour in 2017, \$*** per hour in 2018, \$*** per hour in 2019, \$*** per hour in interim 2019, and \$*** per hour in interim 2020. CR/PR at Tables C-2 and F-8. Unit labor costs were \$*** per carton in 2017, \$*** per carton in 2018, \$*** per carton in 2019, \$*** per carton in interim 2019 and in interim 2020. *Id.*

¹⁹⁹ CR/PR at Table C-2. Net sales revenue was higher in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

²⁰⁰ CR/PR at Table C-2. Gross profits were higher in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

²⁰¹ CR/PR at Table VI-3. Operating income was higher in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

²⁰² CR/PR at Table VI-3. The operating income margin was higher at *** percent in interim 2020 and *** percent in interim 2019. *Id.*

²⁰³ CR/PR at Table VI-3. Net income was higher in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

still well above the 2017 level.²⁰⁴ From 2017 to 2019, the domestic industry's total assets decreased while its average operating return on assets increased.²⁰⁵

The record in this final phase investigation does not indicate that subject imports caused significant adverse effects to the domestic cigarette industry during the POI. As discussed above, subject imports did not enter the U.S. cigarette market in significant quantities, and they did not take significant market share from the domestic cigarette industry,²⁰⁶ which supplied *** of U.S. demand throughout the POI. Although subject imports were generally priced lower than certain domestic cigarettes, they did not cause significant price effects. Moreover, the record shows that although the domestic industry faced reduced sales due to the long term decline in apparent U.S. consumption,²⁰⁷ the industry's sales values increased²⁰⁸ and an already ***. The fact that the financial performance of the industry was particularly strong in the latter portion of the POI (2019 and interim 2020) when the volume of subject imports was greatest is

²⁰⁴ CR/PR at Table VI-6. Capital expenditures were lower in interim 2020, at \$***, than in interim 2019, at \$***. *Id.* Research and development expenses decreased from \$*** in 2017 to \$*** in 2018, and \$*** in 2019; they were lower in interim 2020, at \$***, than in interim 2019, at \$***. The "4th tier" producers reported negative effects due to the subject imports, yet the larger other cigarette producers generally did not. CR/PR at Table VI-8 and VI-9. Liggett, however, stated it "****" CR/PR at Table VI-9.

²⁰⁵ The domestic industry's total assets increased from \$*** in 2017 to \$*** in 2018, but then declined to \$*** in 2019. CR/PR at Table G-9. The domestic industry's average operating return on assets decreased from *** percent in 2016 to *** percent in 2018 and then increased to *** percent in 2019. *Id.*

²⁰⁶ Subject imports gained only *** percentage points of market share from 2017 to 2019. CR/PR at Table C-2.

²⁰⁷ Apparent U.S. consumption declined by roughly *** cartons from 2017 to 2019. Over the same period, subject import shipments increased by a relatively modest *** cartons. See CR/PR at Table C-2. Thus, the industry's lower sales resulted from reduced apparent U.S. consumption as opposed to lost sales to the subject imports.

²⁰⁸ CR/PR at Table C-2. Net sales values for the domestic industry increased from \$*** in 2017 to \$*** in 2018 and \$*** in 2019. They were \$*** in interim 2019 and \$*** interim 2020. *Id.*

further indication of the lack of a negative impact of those imports on the domestic industry.²⁰⁹

Petitioner emphasizes that the domestic certain cigarette producers suffered the effects of the subject imports from Korea. Because we evaluate injury to the industry as a whole,²¹⁰ and certain cigarette products constitute a very small share of the overall cigarette market, we do not consider market share losses in this sector as an indication of significant impact to the overall domestic industry producing cigarettes.²¹¹

For the foregoing reasons, we find that subject imports did not have a significant impact on the domestic industry. Accordingly, we find that the domestic industry is not materially injured by reason of dumped subject imports from Korea.

V. No Threat of Material Injury by Reason of Subject Imports

A. Legal Standard

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is

²⁰⁹ Petitioner argues that the Commission should give less weight to the post-petition period pursuant to 19 U.S.C. § 1677(7)(I). See Petitioner’s Final Comments at 11-12. Because subject imports were higher in interim 2020 than interim 2019 and the industry increased its profitability, prices, and sales values before and after the filing of the petition, we do not apply the statutory provision on post-petition data. See CR/PR at Fig. V-11, Table C-2. We also note that pursuant to Commission Rule 207.30(b), final comments are only to address information disclosed to the parties after the filing of the posthearing briefs. Petitioner’s post-petition argument relies upon hearing testimony and other information available at the time it filed its posthearing brief and should have been raised in its posthearing brief.

²¹⁰ 19 U.S.C. § 1677(4)(A); see *Celanese Chemicals Ltd. v. United States*, 31 CIT 279, 296-98 (2007); *Committee for Fair Coke Trade v. United States*, Slip Op. 04-68 at 42-43 (Ct. Int’l Trade June 10, 2004).

²¹¹ See CR/PR at Table F-6 (“4th tier” cigarettes were always less than *** percent of domestic cigarette industry’s U.S. shipments).

accepted.”²¹² The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.²¹³ In making our determination, we consider all statutory threat factors that are relevant to these investigations.²¹⁴

²¹² 19 U.S.C. § 1677(7)(F)(ii).

²¹³ 19 U.S.C. § 1677(7)(F)(ii).

²¹⁴ These factors are as follows:

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,
- (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
- (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
- (V) inventories of the subject merchandise,
- (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
- (VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and
- (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(i). To organize our analysis, we discuss the applicable statutory threat factors using the same volume/price/impact framework that applies to our material injury analysis. Statutory threat factors (I), (II), (III), (V), and (VI) are discussed in the analysis of subject import volume. Statutory threat factor (IV) is discussed in the analysis of subject import price effects. Statutory factors (VIII) and (IX) are discussed in the analysis of impact. Statutory factor (VII) concerning agricultural products is inapplicable to this investigation.

B. Analysis

1. Likely Volume

As discussed above, subject imports from Korea held only a small presence in the U.S. market throughout the POI. Measured by quantity, subject imports supplied less than *** percent of the U.S. market during the POI, having peaked at *** percent of the U.S. market in interim 2020. Measured by value, subject imports never supplied more than *** percent of the U.S. market, a level achieved in interim 2020. The record consequently does not indicate that there was a large increase in subject imports' presence in the U.S. market during the latter portion of the POI, or during any portion of the POI in light of the consistently small volumes of subject imports, as measured both by quantity and by value.²¹⁵

KT&G projects continued growth in its exports of 4th tier cigarettes to the United States in 2020 and 2021. Although the growth in projected exports is substantial in percentage terms, it would not likely result in a significant increase in market share.²¹⁶ Moreover, U.S. importers' inventories of subject merchandise fell during the POI and were at very small levels relative to

²¹⁵ See CR/PR at Tables C-2 and F-9.

²¹⁶ See CR/PR at Table VII-3. KT&G projects exports of *** cartons to the United States in 2020 and *** million cartons in 2021. *Id.* Projected exports in 2020 would be a *** percent increase over actual 2019 exports, and projected exports in 2021 would be *** percent above the 2020 projection. Its projection of *** cartons for 2021 is equivalent to *** percent of apparent U.S. consumption in 2019. See CR/PR at Table C-2 and VII-3. As noted above, subject import market share is likely overstated somewhat by the absence of data from a significant U.S. producer, ITG. We find that KT&G's projections are the most reliable indicator of subject import quantities in the imminent future. While KT&G possesses a relatively large production capacity and excess capacity, a degree of export orientation, and inventories of subject merchandise, its *** declined from 2017 to 2019 and were lower in interim 2020 than interim 2019. See CR/PR at Table VII-3. See CR/PR at Table VII-3.

apparent U.S. consumption.²¹⁷ These conditions existed throughout the POI and did not result in a significant volume of subject imports or a significant increase in the volume of subject imports. The record does not indicate any likely changes in conditions of competition which would support a conclusion that the subject industry is likely to increase its exports to the U.S. market to significant levels in the imminent future.²¹⁸

The record also indicates that KT&G is likely to remain focused on the many other markets to which it exports.²¹⁹ It sells cigarettes in approximately *** countries, plans to enter *** additional markets in the next year, and typically ***.²²⁰ The record also indicates that there are no antidumping or countervailing duty orders or investigations concerning 4th tier cigarettes from Korea in any other market.²²¹

KT&G explains that it is unable to easily introduce new cigarette products in the United States because of FDA regulations that limit firms to products already in the market unless they are approved in a time-consuming regulatory process.²²² More specifically, it reports that it required *** brand of cigarettes in the United States and that it currently has ***.²²³

²¹⁷ U.S. importers' inventories of subject merchandise were *** cartons in 2017, *** cartons in 2018, *** cartons in 2019, *** cartons in interim 2019, and *** cartons in interim 2020. CR/PR at Table VII-7. These inventories were equivalent to *** percent of apparent U.S. consumption in 2019 and *** percent of apparent U.S. consumption in interim 2020. Derived from CR/PR at Tables C-2 and VII-5.

²¹⁸ Indeed, the record indicates no arranged U.S. imports of subject merchandise after September 2020. CR/PR at Table VII-6. Arranged imports were *** cartons for July to September 2020. *Id.*

²¹⁹ KT&G identified *** as its primary export markets, which combined accounted for at least *** percent of total exports during 2019. CR/PR at VII-4 n.5.

²²⁰ KT&G's Posthearing Brief at 15.

²²¹ CR/PR at VII-11. The subject producer also did not produce any other products with the same equipment and employees producing 4th tier cigarettes during the POI so there is no potential for it to shift more capacity to production of 4th tier cigarettes. CR/PR at VII-7.

²²² See CR/PR at I-9 to I-10 (describing FDA's strict regulation of tobacco).

²²³ See Prehearing Brief at Attachment I (Statement of *** at 1-3); Hearing Tr. at 172-73 (Song).

The structure of the U.S. market also limits the potential for additional subject imports. Because many of the domestic industry's brands have strong loyalty, there are limited opportunities for discount brands such as the subject imports to gain a foothold and capture market share from the domestic cigarette industry.²²⁴

In light of the foregoing, subject imports from Korea will likely maintain a small, albeit growing, presence in the U.S. market in the imminent future. We consequently find that there is not likely to be a significant rate of increase in the volume or market share of subject imports from Korea into the United States in the imminent future.

2. Likely Price Effects

We found above that while subject imports undersold certain domestically produced cigarettes, they did not depress prices to a significant degree, or prevent price increases that would otherwise have occurred to a significant degree during the POI. As discussed in section IV.D. above, the underselling of certain cigarettes observed during the POI did not have significant price effects. Instead, the domestic industry's prices and sales values ***. The record provides no indication that the effects of subject imports from Korea are likely to be different during the imminent future than during the POI.²²⁵ Given our finding that subject import volumes are not likely to increase significantly in the imminent future, the likely quantity

²²⁴ CR/PR at I-9, II-8 to II-9. Petitioner maintains that there is "extraordinarily high brand loyalty" for non-4th tier brands. Petitioner's Prehearing Brief at 17-19. The domestic industry reported that over *** percent of its U.S. shipments consisted of "premium" brands of cigarettes. See CR/PR at Table F-6.

²²⁵ Petitioner argues that low-priced subject imports have the potential to affect the prices for higher quality cigarette products. Petitioner's Posthearing Brief Answers to Questions at 54-55. While we recognize that this is a possibility in certain investigations, smokers' loyalty to higher-priced premium cigarettes (as Petitioner acknowledges) and the price increases that occurred during the POI indicate that it is unlikely to occur in the imminent future.

of subject imports, which we acknowledge may continue to undersell certain domestic cigarettes, will not likely have significant price effects on domestic prices for all cigarettes. We consequently find that imports of subject merchandise from Korea are not likely to enter at prices that are likely to have significant depressing or suppressing effects on domestic prices for all cigarettes, or that are likely to increase demand for further imports in the imminent future.²²⁶

3. Likely Impact

The performance of the domestic industry improved over the POI, particularly with respect to its financial performance. Its ***. We found above that subject import volumes are not likely to increase significantly in the imminent future from the small levels observed during the POI and that subject imports are not likely to have significant price effects. In light of these findings, the record does not indicate that subject imports will likely be the cause of any material adverse trends the domestic industry may experience in the imminent future, nor that subject imports will likely have any significant actual or potential negative effects on the industry's development and production efforts.²²⁷ In the period of the largest volume and market share of subject imports (2019 and interim 2020), the industry sold its product at the highest unit sales value and enjoyed its greatest profits. We find nothing to indicate that the lack of an impact by subject imports on the domestic industry will change in the imminent

²²⁶ While major producer Phillip Morris indicated a general concern over the possible need to respond to low subject import prices by increasing its discounts, we do not find this to be a likely outcome. The industry was able to increase its unit sales values and profits during the POI, most notably late in the period (2019 and interim 2020) when subject import volume and market share was highest. See CR/PR at Table VI-9.

²²⁷ While producers *** note certain potential effects of the subject imports: ***. See CR/PR at Table VI-9.

future. We consequently find that subject imports will not likely have a significant impact on the domestic industry in the imminent future.

Accordingly, we conclude that the domestic cigarette industry is not threatened with material injury by reason of subject imports from Korea.

VI. Conclusion

For the reasons stated above, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of subject imports of 4th tier cigarettes from Korea that are sold in the United States at LTFV.

Separate and Dissenting Views of Vice Chair Randolph J. Stayin

Based on the record in the final phase of this investigation, I find that an industry in the United States is materially injured by reason of imports of 4th tier cigarettes from Korea that the U.S. Department of Commerce (“Commerce”) has determined are sold in the United States at less than fair value. My finding that there is material injury by reason of subject imports reflects that: 1) the domestic like product constitutes 4th tier cigarettes coextensive with the scope of the investigation rather than a broader definition that includes all cigarettes, 2) the subject import volume was significant both in absolute and relative terms, 3) the subject imports gained market share at the expense of the domestic industry, 4) the subject imports undersold the domestic like product in the majority of instances, and 5) the domestic industry was adversely impacted by reason of subject imports.

I join the Views of the Commission in its discussion of the procedural background and legal standards relevant to the definitions of the domestic like product, domestic industry, and material injury. My dissenting views are set forth below.

I. Domestic Like Product

I disagree with the Views of the Commission that the definition of the domestic like product should be expanded to include all cigarettes. Rather, I define the domestic like product to include only 4th tier cigarettes coextensive with the scope of the investigation.¹

¹ In the preliminary phase of this investigation, the Commission defined the domestic like product to include only 4th tier cigarettes coextensive with the scope. Preliminary Views of the Commission at 14. In my view, a departure from the Commission’s approach in the preliminary phase is not warranted in the final phase of this investigation.

I first discuss the U.S. Department of Commerce's definition of the scope and its relevancy to this investigation. Next, I apply the Commission's traditional factors for defining the domestic like product.

Commerce's Scope. In its final determination, Commerce defined the imported merchandise within the scope of the investigation as:

certain tobacco cigarettes, commonly referred to as "4th tier cigarettes." The subject cigarettes are composed of a tobacco blend rolled in paper, have a nominal minimum total length of 7.0 cm but do not exceed 12.0 cm in total nominal length, and have a nominal diameter of less than 1.3 cm. These sizes of cigarettes are frequently referred to as "Kings" and "100's," but subject merchandise that meets the physical description of the scope is included regardless of the marketing description of the size of the cigarettes. Subject merchandise typically has a tobacco blend that consists of 10% or more tobacco stems.

Subject merchandise is typically sold in packs of 20 cigarettes per pack which generally includes the marking "20 Class A Cigarettes" but are included regardless of packaging. 4th tier cigarette packages are typically sold in boxes without a rounded internal corner and without embossed aluminum foil inside the pack.

Both menthol and non-menthol cigarettes and cigarettes with or without a filter attached are covered by the scope of this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2402.20.8000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive.²

Korean producer KT&G contends that Commerce determined that the scope covers all cigarettes.³ This assertion is erroneous. In its final determination Commerce explicitly rejected

² *4th Tier Cigarettes from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances*, 85 Fed Reg. 79994, 79996 (Dec. 11, 2020).

³ KT&G Posthearing Brief at 2 n.1.

KT&G's position that the scope covers all cigarettes.⁴ Commerce explained its rationale for rejecting KT&G's position:

As we outlined in the Preliminary Scope Memorandum, there are several defining physical characteristics in the scope, *i.e.*, length; diameter; physical description (a tobacco blend rolled in paper); tobacco stem content; and packaging. We also noted other limiting aspects of the scope, such as that the products are "commonly referred to as '4th tier cigarettes.'" KT&G asserts that the length, diameter, and physical description of merchandise in the scope cover "virtually all" cigarettes. Further, KT&G argues that qualifying language, *e.g.*, that the merchandise "typically" has a tobacco blend that consists of 10% or more tobacco stems, and the fact that products are in-scope "regardless of the marketing description of the size of the cigarettes" and "regardless of packaging," renders many characteristics in the scope ineffective for distinguishing in-scope merchandise from out-of-scope merchandise.

The physical characteristics in the scope, examined together, provide a clear picture of the products under investigation. Investigation scopes frequently are written in general terms, and the scope of this investigation is no exception. We acknowledge that, to some extent, all cigarettes function as cigarettes. However, each characteristic in this scope, *e.g.*, stem content and packaging, further narrows the subject merchandise, 4th tier cigarettes, by noting the merchandise's characteristics. Qualifying language is not uncommon in scopes of investigations or antidumping duty or countervailing duty orders and is necessary because scopes must be written in terms which are understandable. Importantly, the scope notes that subject merchandise is "commonly referred to as '4th tier cigarettes.'" The record reflects that both the petitioner and KT&G identify their products as 4th tier cigarettes. Industry reports identify 4th tier cigarettes as distinct from other cigarettes. Academic reports cited by the Petitioner divide cigarettes into separate tiers, including 4th tier cigarettes.⁵

Notably, Commerce further explained that "KT&G's arguments regarding the lack of clarity in the scope are unconvincing considering the weight of the record and given that KT&G

⁴ U.S. Department of Commerce Issues and Decision Memorandum ("IDM"), comment 3, at 16-17 accompanying *4th Tier Cigarettes from the Republic of Korea*, 85 Fed. Reg. 79994 (Dep't Commerce Dec. 11, 2020) (final affirmative determination of sales at less than fair value, and final negative determination of critical circumstances).

⁵ IDM, comment 3, at 16-17.

advertises its U.S. market products as 4th tier cigarettes.”⁶ Thus, Commerce has determined that the scope does not cover all cigarettes. The same considerations are relevant here. In my view, for the reasons discussed below, the weight of the record in this investigation supports defining the domestic like product as coextensive with the scope – which Commerce explicitly limited to 4th tier cigarettes.

I apply the Commission’s traditional six factor domestic like factor analysis and look for clear dividing lines between 4th tier cigarettes and other cigarettes.⁷

A. Physical Characteristics and Uses.

4th tier and other cigarettes are both tobacco products that consist of tobacco rolled in paper.⁸ Petitioner argues that tobacco with stem content over 10 percent, as measured by the tobacco blend recipes provided by the U.S. Food and Drug Administration (“FDA”), is a clear dividing line between 4th tier cigarettes and other cigarettes.⁹

Stem Content. 4th tier cigarettes are distinguished from other types of cigarettes by the stem content of the tobacco,¹⁰ among other factors. As described in Commerce’s definition of the scope, in general, 4th tier cigarettes have tobacco with stem content over 10 percent, while other cigarettes have a stem content less than 10 percent.¹¹

⁶ IDM, comment 3, at 17.

⁷ The Views of the Commission summarize the parties’ like product arguments and are therefore not fully repeated here. For the sake of brevity, I discuss record evidence that in my view was overlooked, not fully addressed, or not viewed in proper context.

⁸ CR/PR at I-4.

⁹ Petitioner’s Posthearing Brief at 7.

¹⁰ CR/PR at II-10; *id.* at I-8 to I-9 (“4th tier cigarettes may contain a higher percentage of tobacco stems, containing over 10 percent tobacco stems compared with non-4th tier cigarettes which typically contain less than 10 percent stems”); Petitioner’s Prehearing Brief at 1, 9-12; Petitioner’s Posthearing Brief at 1.

¹¹ CR/PR at II-10; *id.* at I-8 to I-9; *see also* Petitioner’s Posthearing Brief at 1.

Notably, U.S. producer's responses indicate the "minimum share of stem content" in 4th tier cigarettes was *** (at *** percent) than the "maximum share of stem content" reported for 1st tier (at *** percent) and 2nd tier cigarettes (at *** percent).¹² Thus, the "minimum share of the stem content" for 4th tier cigarettes *** the "maximum share of stem content" for the other tiers."¹³ Further, the U.S. producer's questionnaire responses indicate that the stem content of 4th tier cigarettes is *** percent on average, while on average the stem content of other cigarettes is *** percent.¹⁴ Thus, on average the stem content of 4th tier cigarettes is *** that of other cigarettes.¹⁵ In my view, this shows a *** in terms of stem content between 4th tier and other cigarettes.

I have also considered KT&G's contrary arguments and evidence – including assertions of stem content overlap between the 4th tier and the other tiers.

Tobacco Flotation Stem Content Test. KT&G submitted the results of an independent lab which conducted a tobacco flotation test to assess the blend stem content. It asserts that the results show there is significant overlap in the stem content between 4th tier cigarettes and the other tiers. However, I do not find KT&G's arguments to be persuasive. The weight of the record indicates the unreliability of such "semi-destructive testing which cannot be repeated in

¹² CR/PR at Table E-2 (at E-6) ("All cigarettes: US producer' reported stem content": compiled from data submitted in response to the Commission's questionnaires - "Staff estimated premium and branded minimum based on reported average and max contents"); *see also id.* at Table E-3 (at E-7) ("U.S. producer's stem content measurement narratives"). Stem content data was ***. *Id.* at Table E-2 (at E-6). Further, I note that ***. Nevertheless, I base my analysis on the record compiled in this investigation.

¹³ CR/PR at Table E-2 (at E-6) ("U.S. producer' reported stem content").

¹⁴ CR/PR at Table E-2 (at E-6); Petitioner's Final Comments at 14. Further, on average, the stem content of 4th tier cigarettes is *** percent, while on average the stem content of 1st tier cigarettes was *** percent and 2nd tier cigarettes was *** percent. CR/PR at Table E-2 (at E-6).

¹⁵ However, I give somewhat less weight to the data based on averages.

subsequent runs with consistent accuracy.”¹⁶ In my view, KT&G fails to show there is significant overlap in the stem content of 4th tier cigarettes and other cigarettes. KT&G’s analysis is *** by the U.S. producers questionnaire responses.¹⁷

LWR Survey. KT&G commissioned a survey of market participants conducted by LRW.¹⁸ I do not find KT&G’s survey to be persuasive. As noted by the petitioner, KT&G’s ***.¹⁹

Purchaser’s Views: Stem Content ***. KT&G argues that purchasers are *** of the stem count in the cigarette products and purchasing decisions are not made on this basis.²⁰

However, I do not find this assertion to be persuasive. Even assuming *arguendo* that purchasers are *** stem content nevertheless constitutes an important physical attribute which distinguishes 4th tier from other cigarettes.²¹ Notably, stem content is a key physical characteristic that directly impacts the quality of the tobacco blend including qualities such as taste, smoothness, consistency, burn, and draw.²² In my view, the weight of the record shows

¹⁶ Hearing Transcript (“Tr.”) at 48 (testimony of Dr. Jesse Phillips, Assistant Director of Research and Development, Xcaliber International); *id.* (“This process although useful to achieve the separation of the layers, has innate amount of unpredictability yielding standard deviations that can be quite high and outside the range of what would be acceptable within the analytical technique.”).

¹⁷ KT&G’s data purporting to show an overlap in stem count between 4th tier cigarettes and the other tiers is *** by the U.S. producer’s questionnaire responses which show that the “minimum share of stem content” for 4th tier cigarettes *** the “minimum share of stem content” for the other tiers. CR/PR at Table E-2 (at E-6) (***).

¹⁸ KT&G’s Prehearing Brief at 21, Attachment D.

¹⁹ Petitioner’s Posthearing Brief at 10, *citing* KT&G’s Prehearing Brief at 44-45.

²⁰ KT&G Prehearing Brief at 21-22, Attachment D, Table 2; *see also* Views of the Commission at 12 n.39, *citing* Purchasers Questionnaires at V-2(a) and V-2(b). As shown by the U.S. producer’s questionnaire response there are *** in terms of stem content for 4th tier versus other cigarettes. CR/PR at Table E-2 (at E-6). In turn, stem content affects the quality of the cigarettes.

²¹ *See* discussion below.

²² Petitioner’s Prehearing Brief at 11-12; at 18, *id.* at Attachment 3 (Declaration of ***); *see also* Petitioner’s Posthearing Brief at 10; Tr. at 77-78 (Mr. Dan Pickard, counsel for the petitioner testified that: “it’s part of the record already that talks about the fact that the flavor is smoother in non-4th tier product, that it burns more regularly, that the flavors are more pleasurable, that even the amount of

there is a very strong nexus between stem content and quality.²³ Further, purchasers may *** the associated physical attributes including smoothness and taste, as well as the significant price disparity between 4th tier and other cigarettes. In other words, purchasers make buying decisions based on the factors directly impacted by the stem content – particularly quality and price.²⁴ In my view, the *** stem content differences between 4th tier cigarettes and other tiers are not irrelevant or somehow a minor distinguishing feature. Rather, stem content is integrally related to quality, customer perceptions and price. Therefore, I find that stem content distinctions are an important factor.²⁵

In sum, the weight of the record indicates there are *** distinctions with respect to stem content. Notably, the U.S. producer’s responses show there is a *** between 4th tier and

puffs taken from a cigarette are more in non-4th tier than 4th tier, which is part a function of the stem ...”). Further, I am not persuaded by KT&G’s contrary evidence. KT&G Posthearing Brief at Attachment C (*** Statement) at paras. 5-9. The declaration ***. Nor does the weight of the record support such a finding. *E.g.*, Petitioner’s Prehearing Brief at 1 (“4th tier producers sell products that generally consist of lower quality tobacco, that is distinguished (among many other factors) by a high tobacco stem in their content.”), 9 (“distinct physical characteristics, including ... the quality of the tobacco used in the product, including the stem content of the tobacco blend ...”), 10-12 (tobacco quality is lower and stem content is higher in 4th tier cigarettes); Petitioner’s Posthearing Brief at 10 (“stem content is an important physical characteristic because of the effect that it has on the quality of the tobacco blend and, accordingly, qualities like taste, consistency, burn and draw.”).

²³ See *id.*; see also Petitioner’s Posthearing Brief at 10 (“stem content is an important physical characteristic because of the effect that it has on the quality of the tobacco blend and, accordingly qualities like taste, consistency, burn, and draw.”), Question and Answers, Section IX (relationship between stem content and price), at 61 (“Cigarettes that use a tobacco blend with a higher percentage of stems have a less consistent flavor and burn and a different draw ... the higher the stem content in a tobacco blend, the lower the quality.”).

²⁴ CR/PR at II-10 (“The most often cited top three factors firms consider in their purchasing decisions for 4th tier cigarettes were price (21 firms), quality (7 firms), and availability/supply (7 firms) ...”), *citing id.* at Table II-6 (at II-11). Thus, the purchasers are very much aware of these factors and they influence purchasing decisions. 4th tier cigarettes provide smokers a lower quality cigarette product at low prices. As discussed below, 4th tier producers purchase low-quality (and hence less expensive) tobacco to produce their cigarettes.

²⁵ I am not persuaded by KT&G’s argument that stem count should not be used a dividing line because it is just one component of a tobacco blend. See KT&G Prehearing Brief at 14.

the other tiers in terms of stem content. I also find that higher stem content negatively affects “quality” factors such as taste, smoothness, and consistency.²⁶

Smoothness and Taste. Even if stem content distinctions are not taken into account, there are nevertheless quality and taste differences between 4th tier and other cigarettes. Other cigarettes, including premium brands, have a richer smoother taste compared to 4th tier cigarettes, that is described by smokers as more satisfying.²⁷ In turn, these attributes directly affect customer perceptions.²⁸

Extraction of Tobacco from Tobacco Plants: Leaf Location Impacts Quality. The harvesting differences and leaf selection process directly impacts product quality features including smoothness and taste.²⁹ Tobacco used in non-4th tier cigarettes is generally from the higher leafier part of the tobacco plant, while 4th tier cigarettes generally contain more tobacco from the lower leaves of the tobacco plant.³⁰ Further, the selection of lower leaves are

²⁶ In my view, the weight of the record indicates that stem content is a key physical feature that has a direct bearing on the quality of the tobacco blend, and in turn on the quality of the cigarette. *E.g.*, CR/PR at Table E-16 (at E-35) (***) ; *see also* Petitioner’s Prehearing Brief at 11 (“The more tobacco stems there are in a blend, the lower the quality of the blend.”), *citing id.* at Exhibit 3 (Declaration of ***), *id.* at 11 (“Another measurement of the lower quality of 4th tier cigarettes is the percentage of stems in their tobacco blends when compared to non-4th tier cigarettes.”); Tr. at 77-78 (testimony of Mr. Dan Pickard, petitioner’s counsel).

²⁷ CR/PR at Table E-16 (at E-35) (***) , Table E-18 (at E-44) (***) ; *see also* Petitioner’s Prehearing Brief at 14-15.

²⁸ *See* Section I.E. (purchaser and customer perceptions), below; *see also* CR/PR at Table E-16 (at E-35) (***) , Table E-7 (at E-17) (***) ; Table E-18 (at E-47) (***) .

²⁹ CR/PR at Table E-7 (E-13) (U.S. producers’ comparisons of 4th tier and premium cigarettes by the like product factors) (U.S. producer questionnaire response for ***: ***); *see also* Petitioner’s Posthearing Brief at Exhibit 7 (Declaration of ***); Tr. at 120 (testimony of Jesse Phillips, Xcaliber: “There’s more nicotine in some parts of the plant than others and more premium leaf would typically ... {have} more nicotine in it”). In turn, quality attributes impact customer perceptions. *See* Section I.E. (customer perceptions), below.

³⁰ CR/PR at Table E-7 (at E-13) (***) ; *see also id.* at I-13 (“Upper stalk leaves are generally higher in quality than those lower down the stalk, which can contain more sand and debris.”). Further, “tobacco

associated with lower grade tobacco that results in lower quality cigarettes –including smoothness and taste.³¹

Burn Rates. 4th tier cigarettes also have a ***.³²

Filters: Single Component vs. Complex; Patents. Petitioner argues that all 4th tier cigarettes contain a single component filter while other cigarettes can have more complex filters.³³ In contrast, KT&G asserts that almost all cigarettes use single filters and there are no significant differences between 4th tier and other cigarettes in terms of filters.³⁴ Petitioner’s witness testified that filters used in other cigarettes “can be more complex products which can consist of multiple components with additions such as activated carbon.”³⁵ Further, there are no 4th tier cigarettes that contain multiple or complex filters.³⁶ Notably, 4th tier cigarette producers do not hold patents for filters while other cigarette producers may hold patents.³⁷

blends used in 4th tier cigarettes typically include immature and overmature tobacco leaves.” Petitioner’s Prehearing Brief at 10. Tobacco blends used in 4th tier cigarettes include higher volumes of filler grade tobacco which is cheaper. *Id.* at 11 (“Since filler grade tobacco is cheaper, tobacco blends used in 4th tier cigarettes include higher volumes of filler grade tobacco.”). “The highest leaves on the plant are referred to as ‘flavored grades’ and are the most expensive.” *Id.* They are generally used in non-4th tier cigarettes.

³¹ CR/PR at I-13; Petitioner’s Prehearing Brief at 10 (“{T}obacco blends used in 4th tier cigarettes typically include immature and overmature tobacco leaves.”), 11 (The location of the leaves harvested from the tobacco plant results in quality and taste differences between 4th tier and other cigarettes.).

³² CR/PR at Table E-7 (at E-14) (***); Petitioner’s Prehearing Brief at 19-20; *see also id.* at 18, Exhibit 2 (statement of ***, at 1, para. 5; Petitioner’s Posthearing Brief at 61 (“{Cigarettes that use a tobacco blend with a higher percentage of stems have a less consistent flavor and burn and a different draw.”).

³³ Petitioner’s Prehearing Brief at 1; Petitioner’s Final Comments at 14 (noting that other cigarettes use a variety of single and multi-element filters).

³⁴ KT&G Posthearing Brief, Questions and Answers at 27 (“the vast majority of cigarettes – including cigarettes produced by the Majors – use single element filters”).

³⁵ Tr. at 50 (testimony of Dr. Jesse Phillips).

³⁶ Petitioner’s Prehearing Brief at 1, Petitioner’s Posthearing Brief at 4 n.6 (“4th tier cigarettes use single element filters *** ...”).

³⁷ Petitioner provided a number of examples of complex filters used in non-4th tier cigarettes. Petitioner’s Posthearing Brief, Questions and Answers at 15 (response to inquiry regarding patents on filters: “{C}ommon industry knowledge indicates that non-4th tier producers both frequently use multi-

Petitioner provided evidence showing that other cigarettes at least sometimes use complex filters – including those containing activated carbon, charcoal or “crush” filters that release menthol.³⁸ The weight of the record show that there are differences between 4th tier (which exclusively use single element filters) and other cigarettes which may use patented filters and use a variety of single and multi-element filters.³⁹ In my view, the record indicates there are some distinctions between filters used in 4th tier cigarettes and other cigarettes.

Trademarks; Brand Names. 4th tier products do not contain the trademarks or brands of a signatory to the Master Settlement Agreement (MSA).⁴⁰ In contrast, MSA signatory companies, which include the Majors (the largest firms), have trademarks.⁴¹

End Use; End Users. KT&G argues that all cigarettes have the same end use – in essence, any smoker can smoke any cigarette.⁴² However, this observation overlooks that in

component filters and use the patents they hold on their filters in the production of non-4th tier cigarettes”, 15 (“{O}ne example of major non-4th tier product that uses a patented filter is the very popular Camel Crush {t}hese cigarettes contain a small, menthol-filled capsule located in the filter that breaks upon squeezing the capsule and releases menthol into the cigarette”), 16 (color photograph of the Camel Crush showing the inside filter component containing menthol that is released when crushed (squeezed)), 14 (“Parliament, Kent, and Lark have been known for using charcoal filter (i.e., a non-single element filter”), 15-16 (“American Spirit (not to be confused with Native Trading) – also a very popular non-4th tier cigarette – uses a multi-element filter), 16 (color photograph of American Spirit cigarette package). Further, petitioner states it “is not aware of any information that would support the proposition that the Majors typically hold patents on filters but elect not to incorporate the patented filters into their cigarette products due to cost considerations.” *Id.*, Q&A at 16.

³⁸ Petitioner’s Posthearing Brief at 4 n.6 (“4th tier cigarettes use a variety of different filters (dual element, flavor, crush, activated carbon, etc.”). Crush filters also enhance the cigarette’s flavor. *Id.*

³⁹ Petitioner’s Posthearing Brief, Questions and Answers at 14-16 (answers to inquiry concerning filters including patents).

⁴⁰ Petitioner’s Prehearing Brief at 13; CR/PR at Table E-16 (at E-35) (**), Table E-18 (at E-44) (**).

⁴¹ *Id.*; see also Petitioner’s Prehearing Brief at 9-10. The Majors include RJ Reynolds, Philip Morris and ITG. CR/PR at I-8.

⁴² KT&G Prehearing Brief at 24 (domestic cigarettes have “exactly the same end use” “regardless of their ‘tier’ or ‘price band.’”), *id.* at 25-27. See also Views of the Commission at 16 (“With respect to uses for ‘4th tier’ cigarettes, there is no dispute that all cigarettes share a common use: for smoking and delivery of nicotine to the consumer.”).

the cigarette industry there are significant differences with respect to end users. Petitioner argues and the record supports that 4th tier cigarette end users (smokers) buy 4th tier cigarettes because of the low price of these lower quality products compared to other cigarettes.⁴³ Further, the 4th tier cigarette smokers are in a different stratum. They can't afford the higher quality more expensive cigarettes.⁴⁴ Notably, 4th tier smokers would very likely switch to other tiers with higher quality cigarettes if they could afford to do so.⁴⁵

In sum, I find that there are clear dividing lines between 4th tier cigarettes and other cigarettes in terms of physical characteristics.⁴⁶ I also find that there are distinctions in terms of end users.

⁴³ As noted above, non-4th tier cigarettes are higher quality products – they are smoother and taste better. As discussed below, 4th tier cigarettes sell for *** the price of other cigarettes. See Section I.F. (price), below. See also CR/PR at II-6 (“{P}rice increases of 4th tier cigarettes relative to the price of other cigarettes, may cause consumers of 4th tier cigarettes to purchase higher quality non-4th tier cigarettes.”), II-7 (“The majority of purchasers reported that the price difference between premium brand cigarettes and 4th tier cigarettes had increased the demand for 4th tier cigarettes as consumers smoke 4th tier cigarettes to save money”); Petitioner’s Posthearing Brief, Question and Answers, at 2 & n.2 (response to questions on product continuum: summarizing Table E-1 results).

⁴⁴ See *id.*

⁴⁵ If 4th tier cigarette smokers were able to afford the other tiers, they would switch to the higher quality cigarettes that are associated with greater smoothness and better taste. See *id.*; see also CR/PR at II-8, II-9; Tr. at 77 (Pickard) (In response to an inquiry as to whether 4th tier cigarette customers cannot afford to buy the cigarettes that are in the top tier, counsel for the petitioner Mr. Dan Pickard stated: “Yes, you’re absolutely correct, Commissioner”). Further, the pricing differences have practical real-world implications. CR/PR at II-6 (“U.S. producer *** reported that good economic conditions cause smokers to buy more premium brand products and fewer 4th tier cigarettes.”), II-7 (“The majority of purchasers reported that the price difference between premium brand cigarettes and 4th tier cigarettes had increased the demand for 4th tier cigarettes as consumers smoke 4th tier cigarettes to save money.”); II-8 (“U.S. producer *** reported that consumers of 4th tier cigarettes will purchase non-4th tier cigarettes if they have disposable income ...”).

⁴⁶ I find that there is a *** between 4th tier and other tiers concerning stem content. CR/PR at Table E-2 (at E-6) (“U.S. producer’ reported stem content”). In my view, the weight of the record indicates that stem content and quality are intertwined. See, e.g., CR/PR at Table E-7 (at E-13). Further, there is strong nexus between stem content and quality. 4th tier cigarette products, which have a higher stem content, are consistently lower quality than the other tiers. See, e.g., CR/PR at Table E-16 (at E-35) (***).

B. Interchangeability.

The weight of the record indicates there are limitations on interchangeability with respect to 4th tier cigarettes and other cigarettes.⁴⁷

U.S. Purchaser's Views. The majority of U.S. purchasers confirm the lack of interchangeability of 4th tier cigarettes and other cigarettes.⁴⁸ Notably, the majority of U.S. purchasers indicated that 4th tier cigarettes are “{n}ever or not-at-all comparable” to: 1) 1st tier, 2) 2nd tier, 3) 3rd tier, and 4) “all other cigarettes” (aggregated tiers 1-3).⁴⁹ In my view, the lack of interchangeability, as confirmed by U.S. purchasers, shows there are significant differences between 4th tier cigarettes and other cigarettes.

KT&G's Assertion of ***. KT&G asserts that *** purchasers should be excluded from Table E-1 of the report because they ***.⁵⁰ I do not find KT&G's arguments to be persuasive. I note that even if the *** purchasers in question are excluded from Table E-1, the ***⁵¹

Brand Loyalty; Quality. Brand loyalty and quality have a direct impact on interchangeability in the cigarette industry. 4th tier cigarettes are purchased on the basis of price and there is little brand loyalty.⁵² In contrast, other cigarettes have a much higher degree

⁴⁷ CR/PR at Table E-1 (at E-4) (“U.S. producers’, U.S. importers’ and U.S. purchasers of in-scope 4th tier cigarettes vs 1st, 2nd, 3rd and all other tier cigarettes”).

⁴⁸ CR/PR at Table E-1 (at E-4); Petitioner’s Final Comments at 14. In my view, more weight should be given to the views of U.S. purchasers on interchangeability as compared to U.S. producers and U.S. importers. U.S. purchasers are in the best position to assess how end users (smokers) view interchangeability. Their purchasing decisions are based on their knowledge of the market.

⁴⁹ See *id.*

⁵⁰ KT&G Prehearing Brief at 11-12, Exhibit A, *citing* CR/PR at Table E-1 (E-4).

⁵¹ See CR/PR at Table E-1 (at E-4) (***). The *** *Id.*

⁵² CR/PR at I-9 (“Brand loyalty is generally strong in non-4th tier cigarettes while 4th tier cigarettes see lower levels of brand loyalty.”), *id.* (“U.S. producers ***, ***, and *** reported that consumers of 4th tier cigarettes typically smoke the lowest-priced cigarettes available.”); Petitioner’s Prehearing Brief at 17.

of brand loyalty.⁵³ Quality differences between 4th tier and other cigarettes are another component of interchangeability.⁵⁴ The weight of the record indicates that 4th tier cigarettes and other cigarettes are generally not viewed as interchangeable by end users due to brand loyalty and quality.⁵⁵ I find that brand loyalty and quality are factors that limit interchangeability between 4th tier and other cigarettes.

In my view, the weight of the record, including the U.S. purchasers' questionnaire responses, and other factors including brand loyalty and quality, indicates there is limited interchangeability between 4th tier and other cigarettes.

C. Manufacturing Facilities, Production Processes, and Employees.

Petitioner argues there is no overlap with respect to manufacturing and production employees between 4th tier and other cigarette producers.^{56 57} In contrast, KT&G asserts the

⁵³ CR/PR at I-9, Table E-7 (at E-17) (**); Petitioner's Prehearing Brief at 17. 1st tier cigarettes have the highest brand loyalty followed by 2nd tier cigarettes. See CR/PR at I-9 & n.16, II-8.

⁵⁴ CR/PR at I-9 (brand loyalty), II-6 ("price increases of 4th tier cigarettes relative to the price of other cigarettes, may cause consumers of 4th tier cigarettes to purchase higher quality non-4th tier cigarettes"), II-8 (brand loyalty), II-9; Petitioner's Posthearing Brief at 2, 28. See also Section I.A. (physical characteristics), above, Section I.F. (pricing), below.

⁵⁵ CR/PR at I-9 (non-4th tier cigarettes: "{b}rand loyalty is generally strong"; 4th tier cigarettes: "see lower levels of brand loyalty"), II-8 (same), II-10 (top factors affecting purchasing decisions include price, quality and availability/supply), at Table E-7 (E-14) (**); See also Sections I.A. (physical characteristics), I.F. (pricing), below; Petitioner's Posthearing Brief at 2, 28.

⁵⁶ Petitioner's Prehearing Brief at 31-32; see also CR/PR at I-8 (identifying five firms as constituting U.S. producers of 4th tier cigarettes).

⁵⁷ In the cigarette industry there are three major cigarette companies: R.J. Reynolds, Philip Morris and ITG Brands. CR/PR at I-8. These companies are known as the "Majors." *Id.* Further, Liggett is a middle-tier producer. These four firms "accounted for roughly 92 percent of domestic sales of all cigarettes." *Id.* "{T}hese firms produce cigarettes in tiers 1-3." *Id.* In contrast, "{f}ive firms, Xcaliber, Cheyenne, Native Trading, Farmers {Tobacco}, and Dosal, produce 4th tier cigarettes in the United States." *Id.* In terms of the number of cartons sold the 4th tier segment accounts for *** percent of overall cigarette sales in 2019. *Cf.* CR/PR at Table C-1 (4th tier) *with* Table C-2 (all tiers) (number of cartons sold in 2019). However, this estimate ***. See, e.g., CR/PR at III-1 ("Staff additionally sent U.S. producers questionnaires to Philip Morris Global Services, Inc., R.J. Reynolds Tobacco Company and Liggett Group" and these companies provided "useable questionnaire data for parts 1 and 5"), VI-1

production process for manufacturing cigarettes is identical for 4th tier cigarettes and other cigarette firms – they both use the same type of machinery and production processes, and employees are interchangeable.⁵⁸

I do not find KT&G’s arguments to be persuasive.⁵⁹ As petitioner notes, there was no overlap in U.S. manufacturers between 4th tier and other cigarettes; firms either produced 4th tier or other cigarettes.⁶⁰ KT&G also asserts there is some confusion as to whether *** are suppliers of 4th tier cigarettes.⁶¹

Further, there are significant distinctions between the 4th tier and the other tiers in terms of integrated versus non-integrated production.⁶² None of the small 4th tier producers are integrated (they purchase tobacco rather than grow their own) while the other cigarette

(financial results on non-4th tier cigarettes for ***). As such, the 4th tier segment of the market *** portion of the overall cigarette industry.

⁵⁸ KT&G’s Prehearing Brief at 28-33.

⁵⁹ For purposes of my like product analysis I focus on the five U.S. producers of 4th tier cigarettes identified by the Commission staff – and the data compiled for those firms in the report. See CR/PR at I-8, II-1 (“Information ... is based on the questionnaire responses of five {firms} that accounted for ... nearly all of U.S. production of 4th tier cigarettes during 2019”; “As of March 2019, S&M Brands was no longer producing 4th tier cigarettes”), VI-1; see also Sections II. (definition of the domestic industry), III.C. (material injury (impact of the subject imports): another U.S. firm (***) that produced 4th tier cigarettes also exited the market during the period of investigation (POI)), below.

⁶⁰ CR/PR at Table E-5 (at E-11) (“Produced both 4th tier and other types of cigarettes – Using the same machinery”: “0”). Table E-5 shows that U.S. cigarette producers do not produce both 4th tier and other types of cigarettes using the same machinery. *Id.*; see also *id.* at E-10 (“In its post hearing {brief}, the petitioner indicated that there are no common{} manufacturing facilities and zero employees in the United States who both manufacture 4th tier and non-4th tier cigarettes”); Tr. at 54 (testimony of petitioner’s counsel Dan Pickard); Petitioner’s Final Comments at 15.

⁶¹ However, ***. See CR/PR at III-1 n.2 (the “Liggett Group ... indicated that they do not produce cigarettes that would be classified in the 4th tier”). In contrast, ***. CR/PR at I-8. In my view, the record shows that no U.S. firms produce both 4th tier and non-4th tier cigarettes using the same machinery. CR/PR at Table E-5 (at E-11).

⁶² CR/PR at Table E-7 (at E-15) (***) ; Petitioner’s Final Comments at 14 15. In my view, it is overly simplistic to dismiss integrated versus non-integrated production differences as a raw material sourcing distinction. The Majors commence cigarette production by growing tobacco, while the smaller 4th tier producers purchase lower quality tobacco from unrelated growers.

producers generally have integrated production (they both grow tobacco and produce cigarettes using that tobacco).⁶³ In my view, this is another distinction that should be taken into account.⁶⁴

KT&G also alleges that former employees have been known to switch between 4th tier firms and other cigarette firms.⁶⁵ However, KT&G has not shown that that employees simultaneously manufacture 4th tier and other cigarette tiers. No U.S. firms reporting manufacturing both 4th tier and other cigarettes.⁶⁶

In my view, for the reasons discussed above, the weight of the record shows clear dividing lines between 4th tier producers and other cigarette producers in terms of manufacturing facilities, production processes, and employees.

D. Channels of Distribution.

There are significant differences in channels of distribution between 4th tier and other cigarettes.⁶⁷ The Staff Report states that “4th tier cigarette producers utilize a unique

⁶³ Production for the Majors commences with growing production, while production for the smaller 4th tier producers commences with processing tobacco purchases from growers. The Majors have integrated production which directly impacts the quality of the tobacco used in the final cigarette product. In the cigarette industry, integration (or non-integration) is an important feature. Further, the raw material (tobacco) is not uniform in terms of quality. The Majors directly benefit from vertical integration – they are ensured a supply of high-quality tobacco blends.

⁶⁴ See Section I..A. (physical characteristics), above. CR/PR at I-8 (identifying five firms as constituting U.S. producers of 4th tier cigarettes). Further, the 4th tier producers account for a small portion of the overall cigarettes – *** percent. Cf. Table C-1 with Table C-2 (comparison of the number of cartons sold in 2019: 4th tier producers versus all cigarette producers). I find that there are clear dividing lines in the production processes. The Majors plus Liggett “produce cigarettes in tiers 1-3.” CR/PR at I-8. These four firms are collectively known as the “Big Four.” See Petitioner’s Prehearing Brief, Exhibit 23. The scale of their operations is significantly greater than the small 4th tier producers.

⁶⁵ KT&G Final Comments at 6 (“former employees of the Major are often hired by” 4th tier producers); cf. CR/PR at Table E-5 (at E-11) (U.S. producers manufacturing facilities).

⁶⁶ CR/PR at Table E-5 (at E-11) (U.S. producers manufacturing facilities).

⁶⁷ See CR/PR at I-8.

distribution network who focus primarily on their brands” while “{n}on-4th tier cigarette producers also maintain unique distribution networks.”⁶⁸

Newly Created Channels of Distribution for 4th Tier Products. The petitioner presented evidence showing that: 1) The Majors exercise considerable control in the cigarette industry, 2) the Majors *** 4th tier producers from entering at least part of the market, 3) the 4th tier producers were forced to create new channels of distribution to mostly independent retailers, 4) there are distinct 4th tier only wholesalers, and 5) there are newly created sub-jobbers and a new “cash-and-carries” business.⁶⁹ In contrast, non-4th tier producers use established channels of distribution through distributors and retailers.⁷⁰ Further, the Majors used arrangements such as the Every Day Low Price (EDLP) program to ***.⁷¹

4th Tier Producers Mainly Sell to Distributors; Limited Direct Sales to Retailers. The Staff Report notes that “U.S. producer *** is the sole U.S. producer that reported selling a portion of

⁶⁸ See CR/PR at I-8.

⁶⁹ CR/PR at Table E-7 (at E-16) (***); Petitioner’s Prehearing Brief at 20-25; Petitioner’s Posthearing Brief at 4, Questions and Answers at 19-22 (channels of distribution); Petitioner’s Final Comments at 14; CR/PR at Table E-7 (at E-16) (***). “Sub-jobbers are entities that buy 4th tier cigarettes from wholesalers and sell then to retailers”. Petitioner’s Posthearing Brief, Exhibit 6 (Declaration of ***). This channel of trade does not exist for non-4th tier cigarettes. Petitioner’s Prehearing Brief at 21-22. Petitioner estimates ***. Petitioner’s Posthearing Brief, Exhibit 6. “Cash and carries” are independent retail operations that buy quantities of 4th tier products and then re-sell that product in their own retail operation. Petitioner’s Posthearing Brief, Exhibit 1 at 23.

⁷⁰ Petitioner’s Prehearing Brief at 20-25; Petitioner’s Posthearing Brief at 4, Questions and Answers at 19-22 (channels of distribution).

⁷¹ See CR/PR at I-9 (EDLP contracts). 4th tier firms are effectively shut out of such retailers since they can no longer offer the lowest-price product when the programs are in effect. *Id.*; Petitioner’s Prehearing Brief at 20 (“Many of these incentive programs essentially preclude 4th tier products from being sold in the same channels as the non-4th tier product, which has led to the creation of distinct channels for 4th tier products.”), 23 (“the EDLP program effectively eliminates a meaningful market for 4th tier producers at participating retailers” – “4th tier cigarettes would effectively be shut out of that location”), Exhibit 2 (Declaration of ***).

its 4th tier cigarette shipments directly to retailers or end users.”⁷² The other four U.S. producers of 4th tier cigarettes only sell only to distributors. Further, the channels of distribution for 4th tier producers include 4th tier-only wholesalers such as TRW, non-stamping warehouses, and newly created subjobbers.⁷³ These channels do not exist for non-4th tier cigarettes.⁷⁴ This further shows there are distinctions in the channels of trade between 4th tier versus other cigarettes.

I find that there are clear dividing lines between the channels of distribution of 4th tier cigarettes and other cigarettes.⁷⁵

E. Producer and Customer Perceptions.

Advertising. The record indicates there are differences in how 4th tier producers are advertised. The 4th tier producers are advertised as 4th tier products to consumers and 4th

⁷² CR/PR at II-2 n.4 (channels of distribution for ***), II. Further, I note that Table E-4 of the report indicates ***. CR/PR at Table E-4 (at E-9). However, the weight of the record shows that non 4th tier producers have “{e}stablished major channels of distribution to national retailers.” See also Petitioner’s Prehearing Brief at 20 (“Non-4th tier cigarette producers shape the distribution market through their contracts with wholesalers and retailers.”), *id.* (“the distribution of 4th tier cigarettes is heavily affected by the incentive programs non-4th tier cigarette producers have with wholesalers and retailers.”); Petitioner’s Final Comments at 14. I find that the non-4th tier producers generally have access to all retailers while 4th tier producers ***. See Section I.F. (price), below.

⁷³ Petitioner’s Posthearing Brief at 4; Petitioner’s Posthearing Brief at 21-22.

⁷⁴ Petitioner’s Posthearing Brief at 4; Petitioner’s Posthearing Brief at 21-22.

⁷⁵ CR/PR at I-8. Further, I give particular weight to the channels of distribution factor. In my view, an expansion of the domestic industry to include all cigarettes is inconsistent with the record which indicates there are clear dividing lines in the channels of distribution for 4th tier cigarettes versus other cigarettes. In my view, appropriate weight should be given to the new and different channels of distribution.

tier producers identify themselves as such.⁷⁶ In contrast, other cigarette producers do not advertise, market, or hold themselves or their products out as 4th tier products.⁷⁷

In addition, the subject Korean imports of 4th tier cigarettes are directly competing against the U.S. produced 4th tier cigarettes.⁷⁸ As noted, KT&G's advertising refers to its products as 4th tier cigarettes.⁷⁹ Notably, KT&G's own advertising confirms that it is directly competing with U.S. produced 4th tier cigarettes.⁸⁰ KT&G advertised its brand "Timeless Time" as "one of the best-selling 4th tier brands in the U.S."⁸¹ Thus, KT&G's advertising is aimed at smokers of 4th tier cigarettes.

⁷⁶ See Commerce's IDM, comment 3, at 17 (In its final determination of 4th tier cigarettes from Korea, Commerce stated that "{t}he record reflects that both the petitioner and KT&G identify their products as 4th tier cigarettes."); CR/PR at I-8 ("firms self-identify which tier their cigarettes brands are contained in."); see also Petitioner's Posthearing Brief at 2 n.3, *citing* Petitioner's Hearing Presentation at 5-8; Petitioner's Prehearing Brief at 3-4, Exhibits 1-2; Petitioner's Final Comments at 15; Petitioner's Prehearing Brief at 37 (at trade shows KT&G advertised its product as "one of the best-selling 4th tier brands in the U.S.").

⁷⁷ *E.g.*, CR/PR at Table E-7 (at E-17) (***).

⁷⁸ This is confirmed by KT&G's own advertising. See Petitioner's Prehearing Brief at 37 (at trade shows KT&G advertised its product as "one of the best-selling 4th tier brands in the U.S."); Petitioner's Posthearing Brief at 2 n.3 ("KT&G include{ed} 'e}xperience in sales/marketing in 4th tier cigarette industry' as a requirement in a job posting for a 'Marketing Strategy Manager'; KT&G ***; and KT&G ***), *citing* Petitioner's Hearing Presentation at 5-8 and Petitioner's Prehearing Brief at 4, Exhibits 1-2.

⁷⁹ As noted, KT&G advertising its product as "one of the best-selling 4th tier brands in the U.S."; KT&G being identified as having "one of the best-selling 4th tier brand in the U.S." at trade shows; Petitioner's Posthearing Brief at 2 n.3, *citing* Petitioner's Hearing Presentation at 5-8; see also Petitioner's Prehearing Brief at 3-4, Exhibits 1-2; Tr. at 224-25 (KT&G's response to inquiry); Petitioner's Final Comments at 4.

⁸⁰ Petitioner's Prehearing Brief at 37 ("In the trade show report from Tobacco Plus Expo 2019, KT&G advertised its brand Timeless Time as 'one of the best-selling 4th tier brands in the U.S.'").

⁸¹ Petitioner's Prehearing Brief at 3, Exhibit 1 (*TPE 2019 Las Vegas Merchandise Roundup, Smokeshop* (Aug. 2019)).

With respect to customer perceptions, the majority of U.S. producers (3 of 5)⁸² and U.S. purchasers (13 of 25)⁸³ responded that 4th tier cigarettes are “{n}ever or not-at-all comparable” to “all other cigarettes.”⁸⁴

Further, petitioner submitted evidence showing that customer perceptions differ with respect to 4th tier versus other tier cigarettes.⁸⁵ I find this evidence to be persuasive.

Brand Loyalty. The staff report notes that “{b}rand loyalty is generally strong in non-4th tier cigarettes while 4th tier cigarettes see lower levels of brand loyalty.”⁸⁶ As 4th tier cigarette smokers are primarily buying because of price, brand loyalty is less important to them.⁸⁷ In my view, significant differences in brand loyalty further show differences between 4th tier and other cigarettes.

⁸² CR/PR at Table E-1 (at E-4) (comparison of 4th tier cigarettes to 1st, 2nd, 3rd and all other tiers). Three out of five U.S. producers indicated that 4th tier cigarettes were “{n}ever or not-at-all comparable” to tiers 1 or 2. *Id.* Two out of four (or half) of the U.S. producers indicated that 4th tier producers were “{n}ever or not-at-all comparable” to the 3rd tier. *Id.* Three of five U.S. producers indicated that 4th tier cigarettes were “{n}ever or not-at-all comparable” to “all other cigarettes.” *Id.*

⁸³ CR/PR at Table E-1 (at E-4). The majority of U.S. purchasers indicated that 4th tier cigarettes were “{n}ever or not-at-all comparable” to tiers 1-3 and “all other cigarettes.” *Id.*

⁸⁴ CR/PR at Table E-1 (at E-4). I further note that even excluding the *** U.S. purchasers identified by KT&G, *** See CR/PR at Table E-1 (at E-4) (***).

⁸⁵ Petitioner’s Prehearing Brief at Attachment 3 (Declaration of ***). As noted, I disagree with KT&G that the *** should not be given weight. See KT&G’s Final Comments at 5 (“Petitioner offers no objective evidence that higher stem content leads to measurable quality differences for consumers.”).

⁸⁶ CR/PR at I-9. The record indicates there is a high degree of brand loyalty for 1st tier (Premium) products, and somewhat lesser brand loyalty for 2nd tier products (Branded Discount) and 3rd tier products (Sub-Generic/Private Label). See *id.*, *id.* at II-8, II-9, Table E-7 (at E-17 (***)); Petitioner’s Prehearing Brief at 17. In contrast, the weight of the record indicates there is very little or no brand loyalty for 4th tier products. *Id.* at I-9; Table E-7 (at E-17 (***)).

⁸⁷ CR/PR at II-8 (“U.S. producer *** reported that consumers of 4th tier cigarettes smoke multiple brands and are price sensitive when making purchasing decisions, and U.S. producer *** reported that 4th tier cigarette smokers typically purchase the lowest-priced product.”); see also *id.* at II-6 to II-7; Petitioner’s Prehearing Brief at 38; Petitioner’s Final Comments at 15 (price differential).

In sum, I find that U.S. producer and U.S. purchaser perceptions show a clear dividing line between 4th tier and other cigarettes.

F. Price.

Petitioner argues there are significant pricing differences between 4th tier and other cigarettes.⁸⁸ In contrast, KT&G argues that prices are arrayed along a continuum, with substantial overlap between 4th tier cigarettes and discount brands.⁸⁹

The four cigarette product tiers consist of: 1st tier (Premium), 2nd tier (Branded Discount), 3rd tier (Sub-Generic/Private Label) and 4th tier (heavily discounted).⁹⁰ As discussed below, there are significant differences in the prices for 4th tier cigarettes compared to the other cigarettes.

Price is a very important factor in the cigarette industry. This is illustrated by the divergent U.S. consumption trends for the low-priced 4th tier cigarettes compared to other cigarettes. U.S. consumption for all cigarettes (tiers 1-4) decreased *** percent from 2017 to 2019.⁹¹ In contrast, U.S. consumption for 4th tier cigarettes increased *** percent from 2017 to 2019.⁹² In my view, the divergent U.S. consumption trends indicate, and the pricing data

⁸⁸ CR/PR at I-8 (“there is a consensus that 4th tier cigarettes are deeply discounted products.”); Petitioner’s Prehearing Brief at 33; Petitioner’s Posthearing Brief at 5, Petitioner’s Final Comments at 15.

⁸⁹ KT&G’s Prehearing Brief at 44 (“this is not a market where there are clearly delineated breaks in pricing for different types of product.”), *id.* at 42-46, Figure 2 (at 46) (no clear price break between 4th tier and other cigarettes); KT&G Posthearing Brief at 6.

⁹⁰ CR/PR at I-8.

⁹¹ CR/PR at Table C-2 (all cigarettes, expanded DLP: U.S. consumption quantity).

⁹² CR/PR at Table C-1 (4th tier cigarettes coextensive with the scope: U.S. consumption quantity); *see also* Tr. at 79 (testimony of Dan Pickard, counsel for petitioner).

confirm, that there are separate markets for 4th tier and other cigarettes which supports finding a clear dividing line.⁹³

In my view, the weight of the record indicates there are significant price distinctions between 4th tier and other cigarettes. 4th tier producers sell low quality products at low prices.⁹⁴ As petitioner notes, there are significant price differences between 4th tier and other cigarettes throughout the POI.⁹⁵ The average unit value (AUV) of 4th tier cigarettes in 2020 was \$*** per carton, while the average unit value of other cigarettes was *** at \$*** per carton.⁹⁶ Thus, 4th tier cigarettes were on average *** percent less expensive (or ***) compared to other cigarettes.⁹⁷

⁹³ See Sections I.A. to I.E, above (reviewing distinctions between 4th tier and other cigarettes in terms of: 1) physical differences, which impact as quality, smoothness, taste, 2) limited interchangeability, 3) separate manufacturing facilities and employees, 4) new channels of distribution, and 5) producer and customer perceptions.).

⁹⁴ See Section I.A. (physical characteristics), above; *see also* CR/PR at E-10 (“{P}etitioner contends that customers perceive 4th tier cigarettes to be cheaper, of lower quality, and have customers that are not typically brand loyal.”); Petitioner’s Posthearing Brief, Exhibit 7; *id.* at 61 (“It simply makes no sense that, if 4th tier products were of equal or similar quality to non-4th tier products that 4th tier products would continue to be sold at such a significant discount.”).

⁹⁵ CR/PR at Table E-1 (at E-4); *id.* at Table E-6 (at E-12).

⁹⁶ CR/PR at Table E-1 (at E-4); *see also* Petitioner’s Posthearing Brief at 5 (asserting the staff report confirms there was a significant price difference between 4th tier and other cigarettes throughout the POI), *citing* CR/PR at Table E-1 (at E-4), Table E-6 (at E-12); Petitioner’s Prehearing Brief at 33-34 (prices differ significantly between 4th tier and other cigarettes); Petitioner’s Final Comments at 15.

⁹⁷ *See id.*

Further, the majority of U.S. producers (3 of 5)⁹⁸ and U.S. purchasers (15 of 28)⁹⁹ indicated that 4th tier and “all other cigarettes” are “{n}ever or not-at-all comparabl{y}” priced.¹⁰⁰ The views of the U.S. producers and US. purchasers confirm there are significant price differences.¹⁰¹

I do not find KT&G’s arguments concerning the overlap in prices between 4th tier cigarettes and discount brands to be persuasive. The Majors offer various programs, including Every Day Low Price (EDLP) contracts, ***.¹⁰² Where such programs are in effect, ***.¹⁰³ Notably, petitioner submitted a sworn *** declaration that confirms where 4th tier products are ***.¹⁰⁴ In my view, such *** in assessing price comparisons between 4th tier cigarettes and other tiers. I find that these programs ***. Therefore, I find that *** between 4th tier and other tiers should be given less weight.¹⁰⁵

⁹⁸ CR/PR at Table E-1 (at E-4) (4th tier cigarettes versus 1st, 2nd, 3rd and all other tiers). Four out of five U.S. producers indicated that 4th tier cigarettes were “{n}ever or not-at-all comparable” to the 1st tier. *Id.* Three out of five U.S. producer indicated that 4th tier cigarettes were “{n}ever or not-at-all comparable” to the 2nd tier. *Id.* Two out of four (or half) of the U.S. producers indicated that 4th tier producers were “{n}ever or not-at-all comparable” to the 3rd tier. *Id.* Three out of five U.S. producers indicated that 4th tier cigarettes were “{n}ever or not-at-all comparable” to “all other cigarettes.” *Id.*

⁹⁹ CR/PR at Table E-1 (at E-4) (4th tier cigarettes versus 1st, 2nd, 3rd and all other tiers). The majority of U.S. purchasers indicated that 4th tier cigarettes were “{n}ever or not-at-all comparable” to tiers 1-3 and “all other cigarettes.” *Id.*

¹⁰⁰ CR/PR at Table E-1 (at E-4).

¹⁰¹ CR/PR at Table E-1 (at E-4).

¹⁰² Petitioner’s Prehearing Brief at Exhibit 2 (***), at 1, para. 14; *id.* at Exhibit 14 (***, at 1, para. 6. *See also* CR/PR at I-9 (the Majors offer “Every Day Low Price” (EDL) price contracts to retailers).

¹⁰³ *See id.* Under such arrangements, ***. *See id.* Thus, the 4th tier firms ***. *Id.* Therefore, the 4th tier producers ***. *See id.*

¹⁰⁴ *See* Petitioner’s Prehearing Brief at Exhibit 14 (***), at 1, para. 6.

¹⁰⁵ The weight of the record indicates that in the cigarette industry price and quality are closely related. *See* CR/PR at E-10 (“{P}etitioner contends that customers perceive 4th tier cigarettes to be cheaper, of lower quality, and have customers that are not typically brand loyal.”).

In my view, the *** price differences further confirm that 4th tier cigarettes are distinct products.^{106 107} I find that pricing differences between 4th tier and other cigarettes support finding a clear dividing line between these products.

G. Conclusion.

In my view, the weight of the record shows that there are clear dividing lines between 4th tier cigarettes and other cigarettes. Consequently, I define a single domestic like product coextensive with the scope of this investigation.¹⁰⁸

II. Domestic Industry

I agree with the View of the Commission that in defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.¹⁰⁹ However, I define the domestic like product as 4th tier cigarettes rather than all cigarettes.¹¹⁰ Therefore, I define the domestic industry to include all U.S. producers of 4th tier cigarettes.

¹⁰⁶ 4th tier cigarettes are lower in quality (as reflected by the higher stem content, the location of the leaf selection on the tobacco plant, the tobacco grade, and customer perceptions) – as compared to other cigarettes. The low quality of 4th tier cigarettes is an integral component and directly correlates to low prices. See CR/PR at E-10; Petitioner's Posthearing Brief, Exhibit 7 (customers perceive 4th tier cigarettes to be cheaper, of lower quality, and have customers that are not typically brand loyal). As discussed above, the 4th tier cigarettes are manufactured by non-integrated producers that purchase lower quality tobacco. See Sections I.A. (physical characteristics), I.C. (manufacturing), above. As noted, 4th tier cigarettes are lower in quality and are sold *** of other cigarettes.

¹⁰⁷ E.g., CR/PR at I-9 (the Majors offer "Every Day Low Price" (EDL) price contracts to retailers); Petitioner's Prehearing Brief at Exhibit 2 (***), at 1, para. 14, Exhibit 14 (***), at 1, para. 6.

¹⁰⁸ In my view, there is a distinct segment of the overall cigarette industry. This segment is comprised of 4th tier cigarette producers that purchase rather than grow less expensive tobacco and offer smokers a lower quality *albeit* more affordable product.

¹⁰⁹ Views of the Commission at 26.

¹¹⁰ See Section I. (domestic like product), above.

4th Tier Firms. The parties disagree as to which U.S. companies manufacture 4th tier cigarettes - and the brands/products sold as 4th tier products. The petitioner initially identified four producers of 4th tier products.¹¹¹ In contrast, KT&G argues that at least two other U.S. cigarette companies (*i.e.*, Liggett and ITG, formerly known as Commonwealth) also produce 4th tier cigarettes— or that certain brands/products sold by these firms are 4th tier.¹¹² The Commission’s staff compiled data for U.S. producers of 4th tier cigarettes. The staff included the four firms the petitioner identified, but added one *** company.¹¹³ Notably, the report identifies five U.S. firms as producers of 4th tier cigarettes – and data was collected for those entities.¹¹⁴ In my view, there are significant distinctions between the five U.S. producers listed

¹¹¹ Petition, Exhibit I-1 (U.S. producers of 4th tier cigarettes: Cheyenne, Dosal, Native Trade and Xcaliber). However, the Commission staff identified a fifth U.S. producer of 4th tier cigarettes, *i.e.*, Farmers Tobacco. CR/PR at I-8, III-2, Table III-5 (at III-5), Table VI-4 (at VI-6), Table F-3 (at F-7). Farmer’s tobacco accounts for *** U.S. production of 4th tier cigarettes, *i.e.*, ***. *Id.* at Table III-1 (at III-2).

¹¹² *E.g.*, KT&G Prehearing Brief at 30 (“Liggett which *** produces ‘4th Tier’ cigarettes, also has primarily production facilities.”), at 37 (“Liggett Select and USA Gold – neither of which is produced by a company identified as ‘4th tier’ by Petitioner.”), at 54 n.180, *citing Smith Wholesale Co. v. R.J. Reynold Tobacco Co.*, 477 Fed. 854, 857 (6th Cir. 2007) (stating that “fourth-tier” brands are produced by Liggett and Commonwealth.”) (“*Smith Wholesale*”). ITG was formerly known as Commonwealth. Petitioner Posthearing Brief at 4 n.5. Petitioner argues that the language quoted in the 6th Circuit decision in *Smith Wholesale* is *dicta* and the court mistakenly confused Liggett and Commonwealth (now ITG) for smaller manufacturers. *Id.*, Exhibit 12 (Affidavit of ***), paragraph 14; Petitioner Final Comments at 14 n.38 (“{As KT&G is well aware, there is *dicta* in a 6th Circuit decision that incorrectly indicated that Liggett and Commonwealth sold 4th tier brands in 2007.”). Another firm identified by KT&G (***) does not produce 4th tier cigarettes. *Cf.* KT&G Final Comments at 5 *with* CR/PR at I-8 (listing *** five firms that produce 4th tier cigarettes), *id.* at I-4 (“Currently, five firms are known to produce 4th tier cigarettes in the {U.S.}”).

¹¹³ CR/PR at I-8 (also identifying *** as a 4th tier producer), III-2, Table III-5 (at III-5), Table VI-4 (at VI-6), Table F-3 (at F-7). Petitioner does not contest the inclusion of ***. *See* Petitioner’s Prehearing Brief at 44 n.194 (citing *** U.S. producers questionnaire response).

¹¹⁴ CR/PR at I-8 (“Five firms, Xcaliber, Cheyenne, Native Trading, Farmers {Tobacco} and Dosal, produce 4th tier cigarettes in the United States.”), Table III-1 (at III-2); *cf. id.* at I-4 (identifying the leading U.S. producers of 4th tier cigarettes as ***). The petitioner’s members include two of the five U.S. producers of 4th tier cigarettes - Xcaliber and Cheyenne. Petition at 1. All five U.S. producers of 4th tier cigarettes submitted questionnaire responses. CR/PR at III-1, III-10, V-28. The staff report presents aggregated data for the 4th tier producers based on this group. In my view, an expansion of the U.S.

in the report and Liggett and ITG. The five 4th tier companies are not integrated producers.¹¹⁵

Rather, these smaller companies purchase tobacco from unrelated companies – rather than grow tobacco themselves.¹¹⁶ In contrast, Liggett and ITG are larger vertically integrated producers (both are part of the “Big 4”) – they grow tobacco and produce higher quality products *albeit* such products may in certain instances be sold at more competitive discounted rates than 1st tier cigarettes.¹¹⁷ The five small U.S. companies purchase lower quality tobacco – and sell lower quality cigarette products.¹¹⁸ Notably, they self-identify as 4th tier producers of cigarettes.¹¹⁹ In contrast, Liggett and ITG do not self-identify as 4th tier producers – and they do not sell or market their brands/products as such.¹²⁰ Thus, there are significant distinctions.

producers of 4th tier cigarettes (or brands) as advocated by KT&G is not warranted. There are distinct differences between the small 4th tier producers and the two larger producers.

¹¹⁵ CR/PR at I-14 (“Smaller cigarette manufacturers, such as tier four manufacturers, typically purchase blended tobacco from primary processors”), E-10 (“In its postconference brief, the petitioner indicated that non-4th tier cigarette producers are vertically integrated, while 4th tier cigarette manufacturers buy their tobacco blends for further processing”); Petitioner’s Prehearing Brief at 1, 31, Petitioner’s Final Comments at 14 (4th tier producers have non-integrated production).

¹¹⁶ CR/PR at E-10, I-14; Petitioner’s Prehearing Brief at 1; 31; Petitioner’s Final Comments at 14.

¹¹⁷ CR/PR at I-8 (“middle-tier producer, Liggett”), at II-1 (staff sent a U.S. producer questionnaire to the Liggett Group which indicated that “they do not produce cigarettes that would be classified in the 4th tier.”). ITG (formerly Commonwealth) is a Major cigarette producer. *See id.*; *see also* Petitioner’s Prehearing Brief at 32 (non-4th tier producers are frequently vertically integrated).

¹¹⁸ The 4th tier cigarette producers use lower quality tobacco blends with higher stem counts. *See* Section I.A., below (physical characteristics); *see also* CR/PR at I-4, I-8-9, II-1, Table E-2 (at E-6) (***) ; Petitioner’s Prehearing Brief at 1; Petitioner’s Final Comments at 14. In contrast, Liggett and ITG are large integrated producers, part of the “Big 4,” that produce cigarettes with higher quality tobacco. *See* Petitioner’s Prehearing Brief, Exhibit 23 (Declaration of Ric DeLeon, State of the Cigarette Department of GHRA, Greater Houston Retailers Cooperative Association (Feb. 2020) (“GHRA is now a direct buying customer of the Big 4! We now buy directly from Philip Morris USA (PM USA), RJ Reynolds Tobacco Company (RAI), Imperial Tobacco Group (ITG), and Liggett Vector Brands (LVB)”). Further, these lower quality products are sold at lower prices. *See* Section I.F. (price), below.

¹¹⁹ CR/PR at III-1 n.2 (The “Liggett Group” itself indicated it does “not produce cigarettes that would be classified in the 4th tier”). The “Liggett Group did provide usable questionnaire data for parts 1 and 5” *Id.* at III-1 n.2. The Commission’s ***.

¹²⁰ CR/PR at I-8 (indicating that ITG (formerly known as Commonwealth” is one of the Majors, while Liggett is a “middle-tier producer.”), *id.* (“These firms {the Majors and Liggett} produce cigarettes in tiers

In my view, the additional companies KT&G identifies (including Liggett and ITG) are not U.S. producers of 4th tier cigarettes, as defined by the scope of this investigation.

There are no related parties in this investigation.

III. Material Injury by Reason of Subject Imports

I Join the Views of the Commission in its discussion of the legal standards relevant to material injury. My dissenting views on material injury are set forth below.¹²¹ I first note the following conditions of competition.

Demand. Demand for 4th tier cigarettes was strong over the POI. Apparent U.S. consumption of 4th tier cigarettes increased *** percent from 2017 to 2019, and was *** percent higher in interim 2020 than in interim 2019.¹²²

Substitutability. There is a high degree of substitutability between domestically produced 4th tier cigarettes and 4th tier cigarettes from Korea.¹²³ Further, price is a very important factor in purchasing decisions for 4th tier cigarettes.¹²⁴

1-3.”) (bracketed material added); *see also* Petitioner’s Prehearing Brief at 27 (Liggett Vector is as a non-4th tier producer), 32 (same).

¹²¹ Having defined the domestic like product as 4th tier cigarettes I limit my analysis to the data collected with respect to the 4th tier rather than the limited data collected by the Commission pertaining to the overall cigarette industry. Therefore, I rely upon the data presented in Table C-1 (4th tier industry) and the other pertinent sections of the report, as well as other relevant information on the record. *See* CR/PR at Table C-1 (“Co-extensive domestic like product”).

¹²² CR/PR at Table C-1 (“Co-extensive domestic like product”). As previously noted, there were divergent U.S. consumption trends for the overall cigarettes (including all four tiers). *Id.* at Table C-2 (expanded domestic like product: all cigarettes). As noted, having defined the domestic like product as 4th tier cigarettes my analysis is based on the 4th tier data. *See* Section I., above.

¹²³ CR/PR at II-10 (staff’s views on substitutability).

¹²⁴ CR/PR at II-10 (“The most often cited top three factors firms consider in their purchasing decisions for 4th tier cigarettes were price (21 firms), quality (7 firms), and availability/supply (7 firms).”).

Exiting 4th Tier Firms. During the POI, *** U.S. firms producing 4th tier cigarettes exited the industry.¹²⁵ There are only five remaining U.S. producers of 4th tier cigarettes.¹²⁶

A. Volume of Subject Imports

Subject import volume continuously increased during the first three full years of the POI and was higher during interim 2020 than in interim 2019. The volume of subject imports increased from *** cartons in 2017 to *** cartons in 2018 to *** cartons in 2019; subject imports were higher in interim 2020, at *** cartons, than in interim 2019, at *** cartons.¹²⁷ Subject import volume was *** percent higher in 2018 than in 2017 and *** percent higher in 2019 than in 2018, and *** percent higher in 2019 than in 2017, and *** percent higher in interim 2020 than in interim 2019.¹²⁸ Thus, subject import volume increased *** during the latter portion of the POI and in interim 2020, at *** rates than the increase in apparent U.S. consumption, enabling subject imports to increase their share of the U.S. market.

Market Share Shifts. Subject imports' share of U.S. apparent consumption continuously increased during the first three full years of the POI and was higher during interim 2020 than in interim 2019. Subject imports' market share (by quantity) increased *** from *** percent in 2017 to *** percent in 2018 before *** increasing to *** percent in 2019, for an overall increase of *** percentage points.¹²⁹ Further, their market share was higher in interim 2020 (*** percent) than in interim 2019 (*** percent). Subject imports' share of apparent U.S.

¹²⁵ CR/PR at VI-1; *see also* Section III.C. (discussing the *** exiting 4th tier firms), below.

¹²⁶ CR/PR at I-8 (listing five U.S. producers of 4th tier cigarettes). Thus, *** percent), of the U.S. producers of 4th tier cigarettes exited the market during the POI.

¹²⁷ CR/PR at Table IV-2.

¹²⁸ CR/PR at Table IV-2 (at IV-4); Table C-1.

¹²⁹ CR/PR at Table IV-2 (at IV-5); Table C-1.

consumption was highest in interim 2020. Thus, subject imports' share of U.S. consumption (by quantity) increased by *** percent from 2017 to 2018 and by *** percent from 2018 to 2019, and was *** percent higher in interim 2020 than in interim 2019.¹³⁰ In contrast, the U.S. producer's share of U.S. apparent consumption continuously decreased during the first three full years of the POI and was lower during interim 2020 than in interim 2019. The U.S. producer's share of U.S. apparent consumption (by quantity) decreased by *** percent from 2017 to 2018 and by *** percent from 2018 to 2019, for an overall decrease of *** percent from 2017 to 2019.¹³¹ The domestic industry's market share was *** percent lower in interim 2020 than in interim 2019.¹³² I find that the increase in the subject imports market share came at the expense of the U.S. producer's market share.¹³³

Additionally, the ratio of subject imports to U.S. production continuously increased during the full years of the POI and was higher during interim 2020 than in interim 2019.¹³⁴ The ratio of subject imports to U.S. production increased from *** percent in 2017 to *** percent in 2018, and *** percent in 2019, for an overall increase of *** percentage points from 2017 to 2019.¹³⁵

I find that the volume of subject imports, and increase in that volume, are significant absolutely and relative to U.S. consumption.

¹³⁰ CR/PR at Table IV-2 (at IV-5); Table C-1.

¹³¹ CR/PR at Table IV-2 (at IV-4); Table C-1.

¹³² CR/PR at Table IV-2 (at IV-4); Table C-1.

¹³³ CR/PR at Table C-1 (co-extensive domestic like product: share of U.S. consumption quality).

¹³⁴ CR/PR at Table IV-2 (at IV-4).

¹³⁵ See CR/PR at Table IV-2 (at IV-4).

B. Price Effect of the Subject Imports

As discussed above, I find that subject imports and the domestic like product are highly substitutable and that price is a very important purchasing factor for 4th tier cigarettes.¹³⁶

Underselling/Overselling. The Commission collected pricing information for nine products, comprised of products 1-3 for sales in Missouri, products 4-6 for sales in Oklahoma, and products 7-9 for sales in Florida.¹³⁷ These pricing data show that subject import undersold the domestic like product in the majority of instances. Subject imports undersold the domestic like product in 73 out of 126 (or 57.9 percent) of instances at margins ranging between 0.4 to 19.9 percent.¹³⁸ Subject imports oversold the domestic like product in the remaining 53 instances (or 42.0 percent) of instances at margins ranging between 0.5 to 34.1 percent.¹³⁹ The quantity of subject imports in the underselling comparisons was *** cartons (**% percent), compared to *** cartons (**% percent) in the overselling comparisons.¹⁴⁰

¹³⁶ CR/PR at II-10 (substitutability), *id.* (“factors affecting purchasing decisions”: “{p}rice as the most frequently cited first-most important factor”); Table II-6 (at II-11) (“Ranking of factors used in purchasing decisions as reported by U.S. purchasers, by factor”: the majority listed price/cost in the first rank).

¹³⁷ CR/PR at Table V-13 (at V-27).

¹³⁸ CR/PR at Table V-13 (at V-27). Thus, the pricing data show underselling in the majority of the instances.

¹³⁹ CR/PR at Table V-13 (at V-27). Instances of underselling were for: ***. In contrast, instances of overselling were limited to: ***. CR/PR at Table V-13 (at V-27).

¹⁴⁰ CR/PR at Table V-13 (at V-27). The record suggests that price comparisons for the products sold in *** state taxes. See CR/PR at Table V-13 (at V-27). With respect to the *** pricing data, petitioner suggests that the U.S. prices ***. See CR/PR at V-5 (*** CR/PR at V-5 n.4; see also *id.* at Figure I-1, I-12 (showing state tax variations per pack of cigarette; the *** state tax is ***), I-11 (“the federal excise tax rate is \$1.01 per pack while other taxes vary by location.”). In contrast, KT&G suggests that the price comparisons for ***. KT&G’s Prehearing Brief at 48 (“After removing state taxes from the average unit values, there is still significant variation in prices.”). In my view, the record provides sufficient data to reach a conclusion on price effects notwithstanding the conflicting positions of the parties with respect to the Florida pricing data. I find that the subject imports undersold the domestic products during the POI.

Lost Sales and Lost Revenue. I have also considered the lost sales and lost revenue data. Petitioner reported lost sales and lost revenue.¹⁴¹ In the final phase of the investigation, the Commission requested U.S. producers of 4th tier cigarettes to report purchases with which they experienced instances of lost sales or revenue due to competition from imports of 4th tier cigarettes from Korea during the POI.¹⁴² In particular, the Commission contacted 74 purchasers and received responses from 32 purchasers.¹⁴³ Of the responding purchasers, eight reported that, since 2017, they had purchased imported 4th tier cigarettes from Korea instead of U.S.-produced product.¹⁴⁴ All eight of these purchasers reported that subject import prices were lower than U.S.-produced product, and seven of these purchasers reported that price was a primary reason for purchasing imported product rather than U.S.-produced product. Four purchasers estimated the quantity of 4th tier cigarettes from Korea purchased instead of domestic product at *** cartons.¹⁴⁵

In sum, I find that subject imports significantly undersold the domestic like product. Given the high degree of substitutability of the products and the importance of price in purchasing decisions, I also find that the underselling led to a shift in market share from the domestic products to subject imports during the POI, particularly from 2018 to 2019 and during interim 2020.¹⁴⁶

¹⁴¹ CR/PR at V-28; Petitioner’s Prehearing Brief at 48. 64 (“at least *** in confirmed lost sales to Korean imports over the POI”); Petitioner’s Posthearing Brief at 45.

¹⁴² CR/PR at V-28.

¹⁴³ CR/PR at V-28.

¹⁴⁴ CR/PR at V-28.

¹⁴⁵ CR/PR at V-28 (lost sales and lost revenue), Table V-15 (at V-30).

¹⁴⁶ CR/PR at Table C-1 (“Co-extensive domestic like product”).

Conclusion. As I have found that subject imports significantly undersold the domestic like product and took sales and market share from the domestic industry, I find that subject imports had significant price effects.

C. Impact of the Subject Imports

Exiting 4th Tier Firms. During the POI *** U.S. producers of 4th tier firms went out of business.¹⁴⁷ Notably, *** of the firms exited the market ***.¹⁴⁸

Market Share and Shipment Indicators. As discussed above, from 2017-2019, subject imports increased their share of the U.S. market by *** percentage points.¹⁴⁹ At the same time, U.S. producers lost *** percentage points of market share. Notably, from 2018 to 2019, subject imports increased their market share by *** percentage points while the domestic industry lost *** percentage points.¹⁵⁰ Subject imports' market share in interim 2020 was *** percentage points higher than in interim 2019, while the domestic industry's market share was *** percent lower in interim 2020 than in interim 2019.¹⁵¹ This shift in market share was facilitated by significant underselling and is confirmed by lost sales data.¹⁵²

From 2017-2019, apparent U.S. consumption of 4th tier cigarettes increased by *** percent.¹⁵³ Meanwhile, the domestic industry only increased U.S. shipments by *** percent.¹⁵⁴ From 2018-2019 when subject imports increased their market share significantly, apparent U.S.

¹⁴⁷ CR/PR at V-28; Petitioner's Prehearing Brief at 48 (“{S}ubject imports have significantly contributed to the closure of two U.S. producers and the loss of American jobs at those facilities.”).

¹⁴⁸ CR/PR at V-28. Thus, *** out of seven (or *** percent) of the 4th tier firms exited the market during the POI.

¹⁴⁹ CR/PR at Table C-1.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² See Section III.B., above.

¹⁵³ CR/PR at Table C-1.

¹⁵⁴ CR/PR at Table C-1.

consumption of 4th tier cigarettes increased by *** percent while the domestic industry only increased U.S. shipments by *** percent. Apparent U.S. consumption was *** percent higher in interim 2020 than in interim 2019, while U.S. producers only increased their U.S. shipments by *** percent as subject imports further increased their market share at the expense of the domestic industry.¹⁵⁵

I find that the significant volume of subject imports, which significantly undersold the domestic like product, took sales and market share from the domestic industry, particularly from 2018 to 2019 and in interim 2020. As a result, the subject imports caused the shipments and revenues for the domestic industry to be significantly lower than they otherwise would have been, especially in light of increasing U.S. consumption of 4th tier cigarettes over the POI. Consequently, I find that subject imports had a significant impact on the domestic industry.

Escrow Payments: Adjusted Indicators. The parties strenuously disagree on how escrow payments should be viewed in terms of the U.S. producers' financial results – and both sides presented lengthy arguments and voluminous supporting documentation.¹⁵⁶ KT&G argues that under basic accounting principles, escrow funds should be treated as assets rather than expenses.¹⁵⁷ In contrast, petitioner asserts that these payments should be treated as operating

¹⁵⁵ *Id.*

¹⁵⁶ I incorporate the Views of the Commission regarding the parties' positions on escrow payments. Views of the Commission at 43 n.184. Subsequent to the Master Settlement Agreement (MSA), state statutes require a cigarette manufacturer to either become a signatory to the MSA or remain a Non-Participating Manufacturer ("NPM") and fund escrow accounts. CR/PR at I-12 to I-13. *** 4th tier cigarette producers are NPMs and are required to make quarterly or annual payments into qualified banks' escrow funds, with amounts based on the number of cigarettes or cigarette equivalents sold in each state. 4th tier U.S. producers ***. CR/PR at Table VI-4 (at VI-9), "Note 1." However, ***. *Id.* *** accounts for *** percent of overall U.S. production of 4th tier cigarettes. *Id.* at Table III-1, III-2.

¹⁵⁷ KT&G Prehearing Brief at 123-32.

expenses more akin to the payment under the MSA.¹⁵⁸ Further, petitioner acknowledges that there is some variation in how U.S. 4th tier producers reported escrow payments in their accounting records.¹⁵⁹

With respect to the financial results on 4th tier cigarettes, Section VI of the report classifies “MSA and NPM escrow payments as a separate component COGS.”¹⁶⁰ In contrast, Appendix H of the report presents an “alternative treatment of NPM escrow payments” with respect to the “U.S. producers’ financial results on 4th tier cigarettes.”¹⁶¹

I have considered the parties arguments and the various “alternative” treatments of the financial results presented in the report. To the extent an “alternative treatment of NPM escrow payments” is warranted to account for differences in how the U.S. producers treat such payments, I view the “company-specific accounting treatment” (Table H-4) of the 4th tier cigarette producers to be appropriate.¹⁶² However, even based on the alternative data, because significant underselling caused subject imports to capture sales and market share from the domestic industry, especially from 2018 to 2019 and during the interim period, I again find that subject imports caused the domestic industry to have significantly lower shipments and revenues that they could have achieved, given the increasing U.S. consumption over the POI.

¹⁵⁸ Petitioner Posthearing Brief at 12-14 (The Commission should examine the health of the domestic industry post-escrow deposits).

¹⁵⁹ CR/PR at VI-14 (“*** is the *** 4th tier cigarette producer reporting financial results to the Commission that incurs MSA obligations, which the company classified as a component of COGS.”).

¹⁶⁰ CR/PR at Table VI-4 (at VI-9), “Note 1.”; *id.* at VI-13 to VI-16 (MSA and NPM escrow payments).

¹⁶¹ CR/PR at Appendix H (“U.S. producers’ financial results on 4th tier cigarettes (alternative treatment of escrow payment”), at H-1 to H-17.

¹⁶² CR/PR at Table H-4 (“4th tier cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020.”), H-10 to H-11 (“4th tier cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020.”).

In sum, I find that the subject imports had a significant impact on the domestic industry.

IV. Conclusion

For the reasons stated above, I find that an industry in the United States is materially injured by reason of imports of 4th tier cigarettes from Korea that Commerce has determined are sold in the United States at less than fair value.

Separate and Dissenting Views of Commissioner Rhonda K. Schmidlein

Based on the record in the final phase of this investigation, I determine that an industry in the United States is threatened with material injury by reason of imports of 4th tier cigarettes from Korea found by the U.S. Department of Commerce (“Commerce”) to be sold in the United States at less than fair value.¹

I join my colleagues in determining that the domestic like product includes all cigarettes, and therefore join the majority opinion with respect to the sections I-IV.B regarding background, domestic like product, domestic industry, legal standards for present material injury, and conditions of competition.² In these dissenting views, I first discuss the legal standards, including the standard for finding threat of material injury, and thereafter provide my findings regarding the volume, price, and impact of the subject imports.

I. Threat of Material Injury by Reason of Subject Imports from Korea

A. Legal Standards

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.³ In making this determination, the Commission must consider the volume of subject imports, their effect on

¹ As explained in the majority views, there is no common definition or understanding of 4th tier cigarettes. I use this term in my analysis to refer to the in-scope merchandise, which was defined by petitioner as 4th tier cigarettes.

² As noted in the majority views, the petitioner in this case is the Coalition Against Korean Cigarettes. The respondents are KT&G Corporation, a producer and exporter of subject merchandise in Korea, and KT&G USA Corporation, an importer of the subject merchandise (collectively, “KT&G”).

³ 19 U.S.C. §§ 1671d(b), 1673d(b).

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.⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵ 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.⁶ 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.”⁷

Although the statute requires the Commission to determine whether the domestic industry is “materially injured or threatened with material injury by reason of” unfairly traded imports,⁸ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.⁹ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports

⁴ 19 U.S.C. § 1677(7)(B). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁵ 19 U.S.C. § 1677(7)(A).

⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁸ 19 U.S.C. §§ 1671d(b), 1673d(b).

⁹ *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), *aff’g*, 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.¹⁰

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.¹¹ In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.¹² Nor does the

¹⁰ The Federal Circuit, in addressing the causation standard of the statute, observed that “[a]s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” *Nippon Steel Corp. v. USITC*, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1357 (Fed. Cir. 2006); *Taiwan Semiconductor Industry Ass’n v. USITC*, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

¹¹ SAA at 851-52 (“[T]he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord *Mittal Steel*, 542 F.3d at 877.

¹² SAA at 851-52 (“[T]he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); *Taiwan Semiconductor Industry Ass’n*, 266 F.3d at 1345 (“[T]he (Continued...)”).

“by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.¹³ It is clear that the existence of injury caused by other factors does not compel a negative determination.¹⁴

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports.”¹⁵ The Commission ensures that it has “evidence in the record” to “show that the harm occurred ‘by reason of’ the LTFV imports,” and that it is “not attributing injury from other

Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); *see also Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, *i.e.*, it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), *citing Gerald Metals*, 132 F.3d at 722 (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

¹³ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

¹⁴ *See Nippon Steel Corp.*, 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

¹⁵ *Mittal Steel*, 542 F.3d at 876 &78; *see also id.* at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination ... {and has} broad discretion with respect to its choice of methodology.”) *citing United States Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75. In its decision in *Swift-Train v. United States*, 793 F.3d 1355 (Fed. Cir. 2015), the Federal Circuit affirmed the Commission’s causation analysis as comporting with the Court’s guidance in *Mittal*.

sources to the subject imports.”¹⁶ The Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”¹⁷

The question of whether the material injury or threat thereof threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency’s institutional expertise in resolving injury issues.¹⁸

The statute explicitly sets forth the relevant volume, price, and impact factors to be considered in the Commission’s analysis. Section 771(7)(C)(i) of the Tariff 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.”¹⁹

Section 771(7)(C)(ii) of the Tariff 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

¹⁶ *Mittal Steel*, 542 F.3d at 873 (quoting from *Gerald Metals*, 132 F.3d at 722), 877-79. We note that one relevant “other factor” may involve the presence of significant volumes of price-competitive nonsubject imports in the U.S. market, particularly when a commodity product is at issue. In appropriate cases, the Commission collects information regarding nonsubject imports and producers in nonsubject countries in order to conduct its analysis.

¹⁷ *Nucor Corp. v. United States*, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); *see also Mittal Steel*, 542 F.3d at 879 (“*Bratsk* did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

¹⁸ *Mittal Steel*, 542 F.3d at 873; *Nippon Steel Corp.*, 458 F.3d at 1350, *citing U.S. Steel Group*, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

¹⁹ 19 U.S.C. § 1677(7)(C)(i).

(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.²⁰

Section 771(7)(C)(iii) of the Tariff Act provides that examining the impact of subject imports, the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”²¹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, gross profits, net profits, operating profits, cash flow, return on investment, return on capital, ability to raise capital, ability to service debts, research and development, and factors affecting domestic prices. 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.”²²

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”²³ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material

²⁰ 19 U.S.C. § 1677(7)(C)(ii).

²¹ 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 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.”).

²² 19 U.S.C. § 1677(7)(C)(iii). This provision was amended by the Trade Preferences Extension Act of 2015, Pub. L. 114-27.

²³ 19 U.S.C. § 1677(7)(F)(ii).

injury by reason of subject imports would occur unless an order is issued.²⁴ In making my determination, I consider all statutory threat factors that are relevant to this investigation.²⁵

B. Likely Volume of Subject Imports

The volume of subject imports grew at increasing rates during the period of investigation (“POI”).²⁶ The volume of subject imports was *** cartons in 2017, *** cartons in 2018, and *** cartons in 2019; the volume was *** cartons in interim 2019 and *** cartons in interim 2020.²⁷ Thus, subject import volume increased by *** percent from 2017 to 2018 and

²⁴ 19 U.S.C. § 1677(7)(F)(ii).

²⁵ These factors are as follows:

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

...

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

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(i). Statutory factor (VII) concerning agricultural products is inapplicable to this investigation.

²⁶ The period of investigation includes full years 2017, 2018, 2019, and January-June (“interim”) 2020.

²⁷ CR/PR at Table IV-2.

then increased by *** percent from 2018 to 2019. In interim 2020, the volume of subject imports was *** percent higher than it was in interim 2019.

Shipments of subject imports grew at similarly increasing rates. Importers' U.S. shipments of subject imports were *** cartons in 2017, *** cartons in 2018, *** cartons in 2019, *** cartons in interim 2019, and *** cartons in interim 2020.²⁸ Shipments of subject imports therefore initially increased by *** percent from 2017 to 2018 and then increased by *** percent from 2018 to 2019 and were *** percent higher in interim 2020 than in interim 2019.

These increases occurred despite the fact that apparent U.S. consumption declined by *** percent during the full years of the POI and was *** percent higher in interim 2020 than in interim 2019.²⁹ As the volume of subject imports increased, their share of the market also increased, from *** percent in 2017 to *** percent in 2018 and *** percent in 2019.³⁰ The subject imports continued to gain market share in the interim period, accounting for *** percent of apparent U.S. consumption in interim 2019 and *** percent in interim 2020.³¹

The record indicates the volume of subject imports will continue to grow and gain market share in the imminent future. KT&G Corporation, the leading producer and exporter of subject merchandise in Korea and the fifth-largest cigarette producer in the world, has announced its intention of improving its global standing and becoming the world's fourth-largest producer, and increasing sales in the U.S. market appears to be an integral part of that

²⁸ CR/PR at Table IV-4.

²⁹ CR/PR at Table C-2.

³⁰ CR/PR at Table C-2.

³¹ CR/PR at Table C-2.

plan.³² KT&G has touted the “exceptional sales growth” of its U.S. affiliate and plans to expand its distribution network in the United States to ensure continued growth moving forward.³³ Indeed, in 2019 KT&G’s U.S. affiliate established a new headquarters and its first distribution center in Texas, further demonstrating its commitment to the U.S. market.³⁴

The Korean industry’s production capacity declined from *** cartons in 2017 to *** cartons in 2019 but was expected to increase to *** cartons in 2020 and 2021.³⁵ The industry’s production declined from *** cartons in 2017 to *** cartons in 2019 and was projected to increase to *** cartons in 2021.³⁶ Its end-of-period inventories grew from *** cartons in 2017 to *** cartons in 2019 and were *** cartons in June 2020; they were projected to be *** cartons in 2020 and *** cartons at the end of 2021.³⁷ The available end-of-year inventories in 2019 and those projected in 2020 and 2021 thus *** the *** cartons of U.S. imports of subject merchandise from Korea in 2019.³⁸

KT&G’s shipments to its home market declined during the POI and were projected to decline further in 2020 and 2021, while its shipments to the U.S. market increased and are projected to increase further.³⁹ The Korean industry’s shipments to the U.S. market increased

³² Petitioner’s Prehearing Brief at Exhibit 35.

³³ Petitioner’s Prehearing Brief at Exhibit 35.

³⁴ Petitioner’s Prehearing Brief at 73-74, Exhibit 37. The distribution center is more than 70,000 square feet and KT&G reportedly signed a ten-year lease. *Id.*

³⁵ CR/PR at Table VII-3. Data for the Korean industry consist solely of information from KT&G, which estimates that it accounts for about *** percent of total production of 4th tier cigarettes in Korea and its exports to the United States accounted for *** percent of all U.S. imports of 4th tier cigarettes from Korea in 2019. CR/PR at VII-3.

³⁶ CR/PR at Table VII-3. The Korean industry’s capacity utilization rate declined from *** percent in 2017 to *** percent in 2018 and *** percent in 2019. It was projected to be *** percent in 2020 and *** percent in 2021. CR/PR at Table VII-3.

³⁷ CR/PR at Table VII-3.

³⁸ See CR/PR at Table IV-2.

³⁹ See CR/PR at Table VII-3.

from *** cartons in 2017 to *** cartons in 2019 and were nearly the same volume in just the first half of 2020, at *** cartons.⁴⁰ These shipments to the United States are projected to continue to increase, with the volume reaching *** cartons in full-year 2020⁴¹ and *** cartons in 2021, which would be an increase of more than *** percent over the industry's reported U.S. shipments in 2019.⁴²

Thus, the record shows that the Korean industry has significant available capacity and inventories with which it can increase shipments to the U.S. market, and by its own admission its exports to the U.S. market in 2021 will far exceed the volumes shipped during the POI. Based on the foregoing, including KT&G's focus on future growth, the Korean industry's available capacity and inventories, the projected shipments to the U.S. market, and the growing importance of the U.S. market to KT&G, I find that the significant rate of increase in the volume of subject imports during the POI indicates a likelihood of substantially increased imports of subject merchandise into the United States in the imminent future.

C. Likely Price Effects of the Subject Imports

In assessing the likely price effects of subject imports, I consider the evidence showing that subject imports and the domestic like product are moderately to highly substitutable and that purchasers are price sensitive, as well as the evidence showing consistent declines in U.S. consumption throughout the POI.

⁴⁰ CR/PR at Table VII-3.

⁴¹ The record shows that importers already had arranged to import *** cartons of subject merchandise from Korea in the third quarter of 2020, which brings the total volume of subject imports and arranged subject imports in partial-year 2020 to *** cartons. CR/PR at Tables IV-2 and VII-6.

⁴² See CR/PR at Table VII-3. KT&G did not report producing other products on the same machinery it uses to produce 4th tier cigarettes and therefore there is no potential for product shifting. CR/PR at VII-7.

The Commission collected pricing data for three pricing products and requested data for each of these products based on sales in three different states for a total of nine product comparisons. Four U.S. producers and one importer provided usable pricing data for sales of the pricing products.⁴³ The pricing data show that subject imports undersold the domestic product in 73 of 126 quarterly comparisons, with *** cartons of subject imports in the quarters with underselling and *** cartons of subject imports in the quarters with overselling.⁴⁴ The margins of underselling ranged from 0.4 to 19.9 percent and averaged 7.0 percent, while the margins of overselling ranged from 0.5 to 34.1 percent and averaged 20.6 percent.⁴⁵ The vast majority of subject import overselling occurred on sales in ***, while subject imports undersold on all sales in *** and in the vast majority of sales in ***.⁴⁶ Particularly with respect to the pricing products sold in *** the record shows increasing underselling margins corresponding to larger volumes of subject import shipments.⁴⁷

⁴³ CR/PR at V-5. The pricing product definitions refer specifically to 4th tier cigarettes and pricing data were collected only from producers that reported sales of 4th tier cigarettes. See CR/PR at V-4-5. The importer's pricing data account for *** percent of commercial U.S. shipments of subject imports in 2019. CR/PR at V-5. While these data account for a relatively small share of the domestic industry's shipments (accounting for approximately *** percent of U.S. producers' commercial shipments of 4th tier cigarettes in 2019), these are the best pricing data on the record for comparing domestic prices and subject import prices. Moreover, any sales of non-4th tier cigarettes would likely be higher priced than the reported U.S. producers' prices given the differences in average unit values (AUVs) between 4th tier cigarettes and other cigarettes. See CR/PR at V-5 and Table E-6. As explained below, the subject imports significantly undersold the domestic producers' prices of the reported pricing products of 4th tier cigarettes; this underselling would likely be even more significant if other domestic cigarettes were included in the analysis and compared against subject import prices.

⁴⁴ CR/PR at Table V-13.

⁴⁵ CR/PR at Table V-13.

⁴⁶ CR/PR at Table V-13. The record shows that *** CR/PR at V-5 n.4. Xcaliber also reports that it is fighting to hold on to sales in *** in Xcaliber's reported prices for ***. Petitioner's Prehearing Brief at 54.

⁴⁷ See CR/PR at Tables V-3-5. The domestic industry's shipments in *** accounted for a substantial share of their total shipments in the pricing data. See CR/PR at Tables V-3-11.

Information from purchasers regarding lost sales confirms that subject imports are priced lower than the domestic product. The Commission received responses from 32 purchasers and eight reported buying subject imports instead of the domestic product during the POI.⁴⁸ All eight of these purchasers reported that subject imports were lower priced than the domestic product, with seven purchasers confirming that the lower price was a primary reason for their purchase of the subject imports.⁴⁹

The domestic industry's prices generally increased from the first quarter of 2017 through the second quarter of 2020, though some of the trends in the pricing data, particularly with respect to sales in *** were affected by changes in taxes during the POI.⁵⁰ Although the data generally show price increases, six purchasers reported that U.S. producers had reduced prices in order to compete with lower-priced subject imports from Korea, with reported price reductions ranging between 2.0 and 29.0 percent.⁵¹

As explained above, the volume of subject imports has grown at increasingly large rates over the POI and is expected to continue to grow in the imminent future. The record also shows that subject imports have been underselling the domestic like product and gaining sales at the domestic industry's expense.⁵² Indeed, KT&G refers to its products as low-price leaders,

⁴⁸ CR/PR at V-28.

⁴⁹ CR/PR at V-28. Six of these purchasers estimated their quantity of subject imports purchased instead of the domestic product at *** cartons. CR/PR at Table V-15.

⁵⁰ See CR/PR at V-24 (noting that ***).

⁵¹ CR/PR at V-28. The record also shows that the domestic industry generally experienced declining costs during the POI and its ratio of cost of goods sold (COGS) to net sales declined. CR/PR at Table G-5. The domestic industry's ratio of COGS to net sales was *** percent in 2017, *** percent in 2018, *** percent in 2019, *** percent in interim 2019, and *** percent in interim 2020. *Id.* Thus, the record does not indicate that domestic producers should have been able to achieve additional price increases.

⁵² See CR/PR at V-28 and Table C-2.

and reportedly ***.⁵³ Given KT&G's goal of increasing sales in the U.S. market and the prevalence of underselling during the POI, subject imports will likely undersell the domestic product in the imminent future in order gain additional sales. Demand for cigarettes is not expected to grow in the United States and these low-priced imports will increase pricing pressure on domestic producers, forcing them to lower prices to compete with the subject imports or risk losing sales in an already-shrinking market.⁵⁴ Consequently, I find that subject imports are likely to have significant price effects on the domestic industry in the imminent future.

D. Likely Impact of the Subject Imports⁵⁵

During the POI, most of the industry's output indicators declined and were lower in interim 2020 than in interim 2019. Production declined from *** cartons in 2017 to *** cartons in 2018 and *** cartons in 2019.⁵⁶ Capacity declined from *** cartons in 2017 to *** cartons in 2018 and 2019.⁵⁷ Capacity utilization declined from *** percent in 2017 to ***

⁵³ Petitioner's Prehearing Brief at 5, 57; Petitioner's Postconference Brief at Exhibit 4; Petitioner's Posthearing Brief at Exhibit 11 (affidavit of ***).

⁵⁴ See CR/PR at II-7-8.

⁵⁵ 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 determination of sales at less value, Commerce found a dumping margin of 5.48 percent for KT&G Corporation and all other Korean producers/exporters of 4th tier cigarettes. *4th Tier Cigarettes from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances*, 85 Fed Reg. 79994, 79995 (Dec. 11, 2020). In my analysis of the subject imports, I take into account the fact that Commerce has made final findings that all subject merchandise from Korea is dumped. In addition to this consideration, I have also considered other factors affecting domestic prices. My analysis of the significant underselling of subject imports, described in both the price effects discussion and below, is particularly probative to an assessment of the likely impact of the subject imports.

⁵⁶ CR/PR at Table C-2. The industry's production was *** cartons in interim 2019 and *** cartons in interim 2020. *Id.*

⁵⁷ CR/PR at Table C-2. The domestic industry's capacity was *** cartons in interim 2019 and *** cartons in interim 2020. *Id.*

percent in 2018 and *** percent in 2019.⁵⁸ U.S. shipments fell from *** cartons in 2017 to *** cartons in 2018 and *** cartons in 2019.⁵⁹ Inventories and inventories as a share of total shipments fluctuated during the POI.⁶⁰

As previously discussed, the domestic industry supplied the vast majority of U.S. demand throughout the POI. The domestic industry's share of the quantity of apparent U.S. consumption decreased from *** percent in 2017 to *** percent in 2018 and *** percent in 2019.⁶¹

Most of the domestic industry's employment indicators declined over the POI. The number of production and related workers ("PRWs") declined by 269 workers between 2017 and the 2020 interim period. The industry's reported hours worked per PRW, total hours

⁵⁸ CR/PR at Table C-2. The industry's capacity utilization was *** percent in interim 2019 and *** percent in interim 2020. *Id.*

⁵⁹ CR/PR at Table C-2. U.S. shipments were *** cartons in interim 2019 and *** cartons in interim 2020. *Id.*

⁶⁰ The domestic industry's end-of-period inventories decreased from *** cartons in 2017 to *** cartons in 2018 and *** cartons in 2019; they were *** cartons in interim 2019 and *** cartons in interim 2020. CR/PR at Table C-2. The domestic industry's end-of-period inventories as a share of total shipments decreased from *** percent in 2017 to *** percent in 2018 and then increased to *** percent in 2018; the ratio was *** percent in both interim 2019 and interim 2020. *Id.*

⁶¹ CR/PR at Table F-9. The domestic industry's share of the quantity of apparent U.S. consumption was lower in interim 2020, at *** percent, than in interim 2019, at *** percent. Its share of the value of apparent U.S. consumption declined from *** percent in 2017 to *** percent in 2018 and *** percent in 2018. This share was lower in interim 2020, at *** percent, than in interim 2019, when it was *** percent. *Id.*

worked, total wages paid, and productivity all declined overall during the full years of the POI.⁶² However, hourly wages and unit labor costs increased overall from 2017 to 2019.⁶³

The domestic industry's financial performance generally improved during the POI.⁶⁴ Gross profits increased from \$*** in 2017 to \$*** in 2018 and \$*** in 2019.⁶⁵ Net sales revenue declined from \$*** in 2017 to \$*** in 2018 and 2019.⁶⁶ The domestic industry's operating income initially decreased from \$*** in 2017 to \$*** in 2018 and then increased to \$*** in 2019.⁶⁷ The industry's operating income margin increased from *** percent in 2017 and 2018 to *** percent in 2019.⁶⁸ The domestic industry's net income was \$*** in 2017 and

⁶² The number of PRWs were *** in 2017, *** in 2018, *** in 2019, *** in interim 2019, and *** in interim 2020. CR/PR at Table C-2. Hours worked per PRW were *** hours in 2017, *** hours in 2018, *** hours in 2019, *** hours in interim 2019, and *** hours in interim 2020. *Id.* Total hours worked were *** hours in 2017, *** hours in 2018, *** hours in 2019, *** hours in interim 2019, and *** hours in interim 2020. *Id.* Total wages paid were \$*** in 2017, \$*** in 2018, \$*** 2019, \$*** in interim 2019, and \$*** in interim 2020. *Id.* Productivity was *** cartons per hour in 2017, *** cartons per hour in 2018, *** cartons per hour in 2019, *** cartons per hour in interim 2019, and *** cartons per hour in interim 2020. *Id.*

⁶³ Hourly wages were \$*** per hour in 2017, \$*** per hour in 2018, \$*** per hour in 2019, \$*** per hour in interim 2019, and \$*** per hour in interim 2020. CR/PR at Table C-2. Unit labor costs were \$*** per carton in 2017, \$*** per carton in 2018, \$*** per carton in 2019, and \$*** per carton in interim 2019 and in interim 2020. *Id.*

⁶⁴ The parties disagreed regarding the proper accounting of certain producers' escrow payments as non-participating members of the Master Settlement Agreement ("MSA"). *See, e.g.,* Petitioner's Posthearing Brief, Exhibit 1 at 36-39; Respondent's Prehearing Brief at 122-132; Respondent's Posthearing Brief at 12-13. For purposes of my analysis of the domestic industry's financial performance, I have used the financial results that accounted for these payments in the same manner as the individual firms that made the payments. *See* CR/PR at Table G-5.

⁶⁵ CR/PR at Table G-5. Gross profits were higher in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

⁶⁶ CR/PR at Table G-5. Net sales revenue was higher in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

⁶⁷ CR/PR at Table G-5. Operating income was higher in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

⁶⁸ CR/PR at Table G-5. The industry's operating income margin was higher in interim 2020, at *** percent, than it was in interim 2019, at *** percent. *Id.*

\$*** in 2018 and increased to \$*** in 2019.⁶⁹ The domestic industry's capital expenditures increased from \$*** in 2017 to \$*** in 2018 and then decreased to \$*** in 2019.⁷⁰ From 2017 to 2019, the domestic industry's total assets decreased while its average operating return on assets increased.⁷¹

Although many of these domestic industry's declines during the POI were affected by declines in U.S. consumption, it is undisputed that the volume of subject imports increased significantly in a declining market and gained sales and market share the domestic industry's expense.⁷² As explained above, the volume of subject imports is expected to continue to increase in the imminent future, likely gaining additional sales and market share at the industry's expense and increasing pricing pressure in a shrinking market. The increasing volume of low-priced subject imports, therefore, will deprive the domestic industry of sales and revenue and negatively affect the domestic industry's production, capacity utilization, shipments, and employment, as well as the industry's revenues, profits, and ability to make capital improvements. Importantly, this negative impact is not likely to be restricted to a

⁶⁹ CR/PR at Table G-5. Net income was higher in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

⁷⁰ CR/PR at Table G-7. Capital expenditures were lower in interim 2020, at \$***, than in interim 2019, at \$***. *Id.* Research and development expenses decreased from \$*** in 2017 to \$*** in 2018 and \$*** in 2019; they were lower in interim 2020, at \$***, than in interim 2019, at \$***. *Id.*

⁷¹ The domestic industry's total assets increased from \$*** in 2017 to \$*** in 2018, but then declined to \$*** in 2019. CR/PR at Table G-9. The domestic industry's average operating return on assets decreased from *** percent in 2016 to *** percent in 2018 and then increased to *** percent in 2019. *Id.*

⁷² The domestic industry lost *** percentage points of market share during the full years of the POI and its share was *** percentage points lower in interim 2020 than in interim 2019, while subject imports gained *** percentage points of market share in the full years of the POI and their share was *** percentage points higher in the interim period. CR/PR at Table C-2.

particular subgroup of domestic producers; all responding producers, including *** reported that they anticipate negative effects of subject imports.⁷³

Consequently, I find that the likely increase in low-priced subject imports will likely have a material adverse impact on the domestic industry in the imminent future.

II. Conclusion

For the reasons stated above, I determine that an industry in the United States is threatened with material injury by reason of subject imports of 4th tier cigarettes from Korea that are sold in the United States at less than fair value.

⁷³ CR/PR at Tables VI-8 and VI-9. KT&G also reports that it considers its products to compete with all cigarette brands, regardless of whether they are at the premium or discount ends of the market. See Respondent's Posthearing Brief, Attachment A at page 3.

Part I: Introduction

Background

This investigation results from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by the Coalition Against Korea Cigarettes (“CAKC”). The coalition members are Xcaliber International (“Xcaliber”), Pryor, Oklahoma and Cheyenne International (“Cheyenne”), Grover, North Carolina, on December 18, 2019 and the petition alleges that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (“LTFV”) imports of 4th tier cigarettes¹ from Korea. The following tabulation provides information relating to the background of this investigation.^{2 3}

¹ See the section entitled “The subject merchandise” in Part I of this report for a complete description of the merchandise subject in this proceeding.

² Pertinent *Federal Register* notices are referenced in appendix A, and may be found at the Commission’s website (www.usitc.gov).

³ A list of witnesses that appeared at the hearing is presented in appendix B of this report.

Effective date	Action
December 18, 2019	Petition filed with Commerce and the Commission; institution of Commission investigations (84 FR 70997, December 26, 2019)
January 7, 2020	Commerce's notice of initiation (85 FR 2390, January 15, 2020)
February 3, 2020	Commission's preliminary determination (85 FR 7330, February 3, 2020)
July 22, 2020	Commerce's preliminary determination (85 FR 44281, July 22, 2020)
August 3, 2020	Scheduling of final phase of Commission investigation (85 FR 46718) August 3, 2020
August 19, 2020	Commerce's Postponement of final determination (85 FR 51011, August 19, 2020)
August 19, 2020	Revised scheduling of final phase of Commission investigation (85 FR 59543, August 19, 2020)
December 3, 2020	Commission's hearing
December 11, 2020	Commerce's Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances (85 FR 79994, December 11, 2020)
January 5, 2021	Commission's vote
January 19, 2021	Commission's views

Statutory criteria

Section 771(7)(B) of the Tariff Act of 1930 (the "Act") (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--⁴

In evaluating the volume of imports of merchandise, 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. . . In evaluating the effect of imports of such merchandise on prices, 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. . . In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to. . . (I) actual and potential decline in output, sales, market share, gross profits, operating profits, net profits, ability to service debt, productivity, return on investments, return on assets, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

In addition, Section 771(7)(J) of the Act (19 U.S.C. § 1677(7)(J)) provides that—⁵

(J) EFFECT OF PROFITABILITY.—The Commission may not determine that there is no material injury or threat of material injury to an industry in the United States merely because that industry is profitable or because the performance of that industry has recently improved.

⁴ Amended by PL 114-27 (as signed, June 29, 2015), Trade Preferences Extension Act of 2015.

⁵ Amended by PL 114-27 (as signed, June 29, 2015), Trade Preferences Extension Act of 2015.

Organization of report

Part I of this report presents information on the subject merchandise, dumping margins, and domestic like product. Part II of this report presents information on conditions of competition and other relevant economic factors. Part III presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. Parts IV and V present the volume of subject imports and pricing of domestic and imported products, respectively. Part VI presents information on the financial experience of U.S. producers. Part VII presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.

Market summary

4th tier cigarettes are tobacco cigarettes rolled in paper ranging in from 7.0 cm and 12.0 cm in length. Like other types of cigarettes, 4th tier cigarettes are generally sold in packs of 20 cigarettes or in cartons consisting of 10 packs of cigarettes. 4th tier cigarettes are distinguished from other types of cigarettes by the stem content of the tobacco. 4th tier cigarette tobacco consists of over 10percent tobacco stems while non-4th tier cigarette tobacco consists of less than 10 percent tobacco stems.

The leading U.S. producers of 4th tier cigarettes are *** while the leading producer of 4th tier cigarettes outside the United States includes KT&G of Korea. The leading U.S. importer of 4th tier cigarettes from Korea is KT&G USA, while the leading importer of product from nonsubject countries (primarily Canada) includes Native Wholesale Supply ("Native") and Lake Erie Tobacco ("Lake Erie"). U.S. purchasers of 4th tier cigarettes are firms that purchase 4th tier cigarettes from domestic producers and U.S. importers; leading purchasers include ***.

Apparent U.S. consumption of 4th tier cigarettes totaled approximately *** in 2019. Currently, five firms are known to produce 4th tier cigarettes in the United States. U.S. producers' U.S. shipments of 4th tier cigarettes totaled *** in 2019, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. importers' U.S. shipments from subject sources totaled *** in 2019, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. importers' U.S. shipments from nonsubject sources totaled *** in 2019, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

Summary data and data sources

A summary of data collected in this investigation is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of the five firms that accounted for *** of U.S. production of 4th tier cigarettes during 2019. U.S. imports are based on the questionnaire responses of four firms that submitted useable U.S. import data representing *** U.S. imports from Korea, *** percent of U.S. imports from nonsubject sources, and *** percent of total U.S. imports, based on quantity in 2019 under HTS statistical reporting number 2402.20.8000. Korean industry data are based on the questionnaire response from the one firm (KT&G) that accounted for *** Korean production of 4th tier cigarettes.

Previous and related investigations

4th tier cigarettes have not been the subject of any prior countervailing or antidumping duty investigations in the United States.

Nature and extent of sales at LTFV

Sales at LTFV

On December 11, 2020, Commerce published a notice in the *Federal Register* of its Final determination of sales at LTFV with respect to imports from Korea.⁶ Table I-1 present Commerce's dumping margins with respect to imports of 4th tier cigarettes from Korea.

Table I-1
4th tier cigarettes: Commerce's final weighted-average LTFV margins with respect to imports from Korea

Exporter / Producer	Final weighted-average dumping margin (percent)	Cash deposit rate (percent)
KT&G Corporation	5.48	5.48
All Others	5.48	5.48

Source: 85 FR 79994, December 11, 2020.

⁶ *4th Tier Cigarettes From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances; 85 FR 79994, December 11, 2020.*

The subject merchandise

Commerce's scope

In the current proceeding, Commerce has defined the scope as follows:⁷

The merchandise covered by this investigation is certain tobacco cigarettes, commonly referred to as "4th tier cigarettes." The subject cigarettes are composed of a tobacco blend rolled in paper, have a nominal minimum total length of 7.0 cm but do not exceed 12.0 cm in total nominal length, and have a nominal diameter of less than 1.3 cm. These sizes of cigarettes are frequently referred to as "Kings" and "100's," but subject merchandise that meets the physical description of the scope is included regardless of the marketing description of the size of the cigarettes. Subject merchandise typically has a tobacco blend that consists of 10% or more tobacco stems.

Subject merchandise is typically sold in packs of 20 cigarettes per pack which generally includes the marking "20 Class A Cigarettes" but are included regardless of packaging. 4th tier cigarette packages are typically sold in boxes without a rounded internal corner and without embossed aluminum foil inside the pack.

Both menthol and non-menthol cigarettes and cigarettes with or without a filter attached are covered by the scope of this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2402.20.8000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive

Tariff treatment

Based upon the scope set forth by Commerce, information available to the Commission indicates that the merchandise subject to this investigation are imported under statistical reporting number 2402.20.8000, "Cigarettes containing tobacco: Paper-wrapped," in the following provisions of the Harmonized Tariff Schedule of the United States ("HTS"). The 2019 general rate of duty is \$1.05/kg and 2.3 percent *ad valorem* for HTS subheading 2402.20.80 and

⁷ 85 FR 44281, July 22, 2020.

may be subject to Federal Excise Tax (26 U.S.C. 5701). Decisions on the tariff classification and treatment of imported goods are within the authority of U.S. Customs and Border Protection.

The product

Description and applications

Cigarettes are combustible tobacco products rolled in paper that deliver nicotine. They may or may not have a filter and are sold in packs of 20 cigarettes in either 100's (100mm) or King's (85mm) lengths.⁸ The packaging and lengths are regulated by the U.S. Food and Drug Administration ("FDA").

Cigarettes are sold at a wide range of price levels in the U.S. and can be grouped into four tiers: Premium, Branded Discount, Sub-Generic/Private Label, and 4th Tier.⁹ In 2017, four firms, Altria (parent company of Philip Morris USA), Reynolds American Inc. (parent company of R.J. Reynolds and Lorillard Tobacco), ITG Brands ("the majors") and middle-tier producer, Liggett, accounted for roughly 92 percent of domestic sales of all cigarettes.¹⁰ These firms produce cigarettes in tiers 1-3.¹¹ Five firms, Xcaliber, Cheyenne, Native Trading, Farmers Tabaco and Dosal, produce 4th tier cigarettes in the United States.¹²

While there is no single definition for a 4th tier cigarette, there is a consensus that 4th tier cigarettes are deeply discounted products. Originally, the National Association of Convenience Stores loosely defined 4th tier cigarettes as belonging to the bottom quartile of prices. Currently, firms self-identify which tier their cigarettes brands are contained in.¹³

4th tier cigarettes may contain a higher percentage of tobacco stems, containing over 10 percent tobacco stems compared with non-4th tier cigarettes which typically contain less

⁸ Petition, p. 3; Questionnaire response of ***.

⁹ "NACS Category Definitions." Research Documents, National Association of Convenience Stores, 2018, www.convenience.org/Research/Documents/NACSCategoryDefinitions.pdf. Two other organizations, Management Science Associates, Inc. and Euromonitor, group cigarettes into three price tiers.

¹⁰ "Economic Trends in Tobacco." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, 23 July 2019, www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm.

¹¹ Conference transcript, p. 14, (Aranoff).

¹² Conference transcript, p. 77, (Pickard).

¹³ Phone call with NACS representative, January 13, 2020. Research firms reportedly have completed SKU to NACS tier mapping. Commission staff was unable to obtain this data.

than 10 percent stems.¹⁴ Additionally, 4th tier cigarettes typically use a single-component filter while non-4th tier cigarettes may use multi-segmented filters.¹⁵

Brand loyalty is generally strong in non-4th tier cigarettes while 4th tier cigarettes see lower levels of brand loyalty.¹⁶ All cigarettes are sold through distributors and wholesalers. Historically, 4th tier cigarette producers utilize a unique distribution network who focus primarily on their brands. Non-4th tier cigarette producers also maintain unique distribution networks. While producers of cigarettes typically offer rebate programs to distributors and wholesalers, the Majors also offer sales to share programs and Every Day Low Price contracts to retailers.¹⁷

Regulatory environment

The manufacture and sale of tobacco products, including cigarettes, in the U.S. is highly regulated. According to the FDA, any firm that makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels, repacks, relabels, or imports any tobacco product is considered a manufacturer. The FDA requires firms to report and pay user fees¹⁸ and register and re-register their establishments and submit product lists, including labeling and advertisements. Manufacturers are also required to submit tobacco health documents and ingredient listings, including quantities of harmful and potentially harmful constituents, on any new products entering the market since June 22, 2009. Furthermore, all packaging and advertisements must include required warning statements.¹⁹ Importers of tobacco products who do not also manufacture or process tobacco products are not required to register their establishment or products but must comply with all other regulations.²⁰

¹⁴ Petition, p. 3.

¹⁵ Petitioner's post conference brief pp. 5-7

¹⁶ Dawes, John. "Cigarette Brand Loyalty and Purchase Patterns: An Examination Using US Consumer Panel Data." *Journal of Business Research*, vol. 67, no. 9, 2014, pp. 1933–1943; Questionnaire response of ***.

¹⁷ Petitioner brief pp. 8-9; Conference transcript p. 25 (Nicholas).

¹⁸ Tobacco user fees are taxes paid to the Alcohol and Tobacco Tax and Trace Bureau at the U.S. Department of the Treasury. In 2018, approximately 86.5 percent of fees were paid by cigarette manufacturers, regardless of tier. Center for Tobacco Products. "Tobacco User Fee Assessment Formulation by Product Class." U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/manufacturing/tobacco-user-fee-assessment-formulation-product-class. See also: Bugher, Tim. "TTB: Tobacco Statistics." TTGov - Tobacco, www.ttb.gov/resources/data-statistics/tobacco.

¹⁹ Center for Tobacco Products. "Manufacturing Tobacco Products." U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/compliance-enforcement-training/manufacturing.

²⁰ Center for Tobacco Products. "Importing and Exporting." U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/products-guidance-regulations/importing-and-exporting.

All tobacco products commercially marketed prior to February 15, 2007 are considered “grandfathered tobacco products” and though they are regulated under the Federal Food, Drug, and Cosmetic Act (“FD&C”), they are not considered new tobacco products and therefore not required to obtain premarket authorization.²¹ Any product not commercially marketed in the U.S. as of February 15, 2017 is considered a new tobacco product and may only be legally marketed in the U.S. with a marketing order from the FDA. For manufacturers wishing to market a new tobacco product they have three potential pathways. First, producers may submit a Substantial Equivalence (“SE”) report. SE reports may be used by firms to market a new tobacco product that the FDA has determined is substantially equivalent to a predicate product or the SE report shows the new tobacco product does not raise different public health questions.²² Grandfathered products may serve as predicate tobacco product for use in SE reports.²³ Second, producers may request an exemption from demonstrating substantial equivalence. This pathway is appropriate when the new tobacco product is modifying a previous product by adding or removing a tobacco additive, or by altering the quantity of an existing additive.²⁴

If filing an SE report or SE exemption does not apply to a new tobacco product, manufacturers may submit a Premarket Tobacco Product Application (“PMTA”). The FDA will only approve a PMTA if the product is appropriate for the protection of the public health; manufacturing methods, facilities, and controls confirm to regulations issued under section 906(e) (21 U.S.C. 387f(e)) of the FD&C Act; the labeling is not false or misleading; and the product complies with tobacco product standards in effect under section 907 (21 U.S.C. 387g) of the FD&C Act.²⁵

²¹ Center for Tobacco Products. “Grandfathered Tobacco Products.” U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/grandfathered-tobacco-products.

²² Center for Tobacco Products. “Substantial Equivalence.” U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/substantial-equivalence.

²³ Center for Tobacco Products. “Grandfathered Tobacco Products.” U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/grandfathered-tobacco-products.

²⁴ Center for Tobacco Products. “Market and Distribute a Tobacco Product.” U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product.

²⁵ Center for Tobacco Products. “Applications for Premarket Review of New Tobacco Products.” U.S. Food and Drug Administration, FDA, www.fda.gov/regulatory-information/search-fda-guidance-documents/applications-premarket-review-new-tobacco-products, p. 2.

The sale of cigarettes is also regulated under the Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”).²⁶ Retailers are required to check the photo ID of everyone under the age of 27 and only sell cigarettes and other tobacco products to customers over the legal age limit.²⁷ Historically, sales of cigarettes have been limited to adults aged 18 years or older. On December 20, 2019, legislation was enacted raising the minimum age of the sale of tobacco products to 21.²⁸ Retailers also cannot sell cigarettes in vending machines, give away samples or sell products in amounts smaller than packs of 20 cigarettes. Additionally, retailers cannot sell flavored cigarettes (except menthol). Tobacco products must contain a warning statement on the package, and retailers must display a warning statement on all advertisements for cigarettes or other tobacco products.²⁹

Taxation

In addition to a highly regulated market, cigarette manufacturers are subject to a variety of state and local taxes, as well as state and federal excise taxes. The federal excise tax rate is \$1.01 per pack while other taxes vary by location. Figure I-1 illustrates excise tax rates by state.

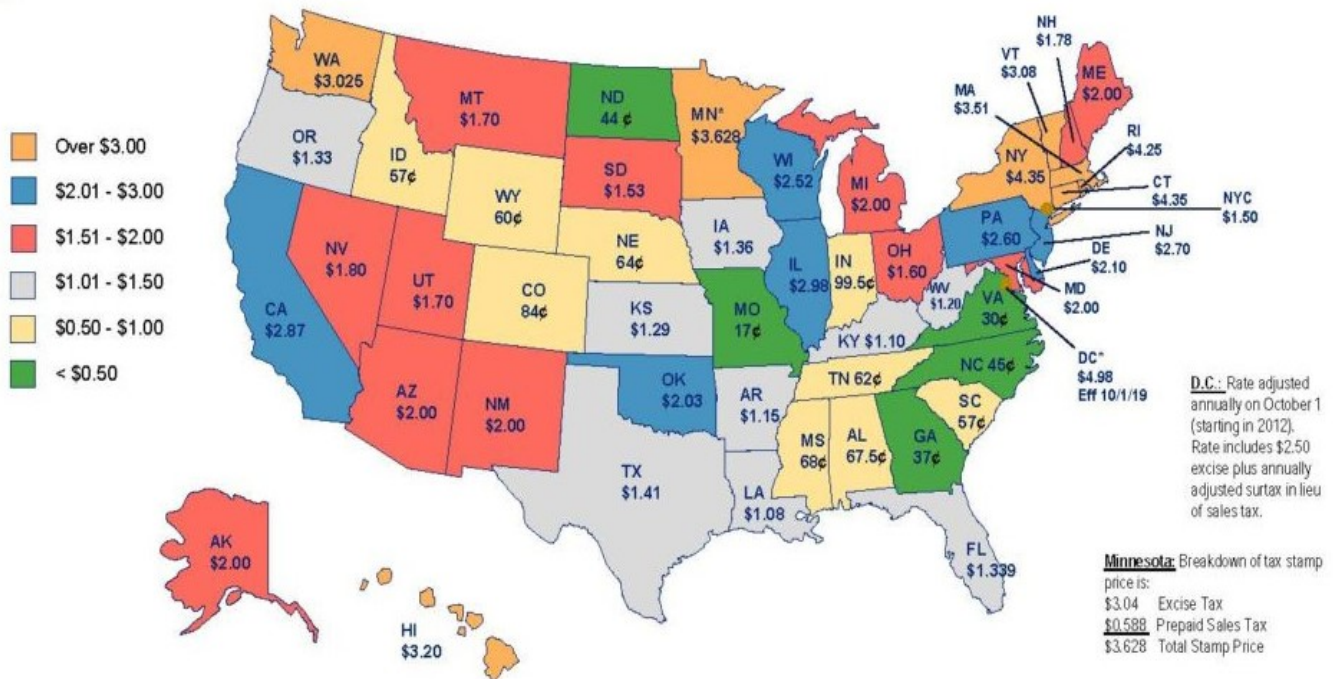
²⁶ Center for Tobacco Products. “Retailer Regulations and Guidance.” U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/retailer-regulations-and-guidance.

²⁷ Center for Tobacco Products. “Selling Tobacco Products in Retail Stores.” U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/retail-sales-tobacco-products/selling-tobacco-products-retail-stores.

²⁸ Center for Tobacco Products. “Legislation Raises Minimum Age of Sale of Tobacco Products to 21.” U.S. Food and Drug Administration, FDA, 2019, www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21.

²⁹ Center for Tobacco Products. “Selling Tobacco Products in Retail Stores.” U.S. Food and Drug Administration, FDA, www.fda.gov/tobacco-products/retail-sales-tobacco-products/selling-tobacco-products-retail-stores.

Figure I-1
4th tier cigarettes: State cigarette excise tax rates per 20-pack, as of August 2019.



Source: Cigar Association of America, Inc, <https://www.cigarassociation.org/state-tax-maps/> (accessed October 20, 2020).

Master Settlement Agreement

In 1998, the tobacco Master Settlement Agreement (“MSA”) settled state litigation against the four (now three) major tobacco companies, as well as 45 smaller tobacco companies, for health care costs and other damages related to cigarette smoking.³⁰ Forty-six states along with the District of Columbia, Puerto Rico, and four territories are state signatories.³¹ The major tobacco companies are considered Original Participating Members (“OPMs”) and the 45 smaller companies are considered Subsequent Participating Members (“SPMs”). OPMs and SPMS agreed to restrict marketing efforts, contribute \$1.5 billion to establish the American Legacy Foundation, and pay billions of dollars to states annually and in

³⁰ The three major tobacco companies that were the original participating manufacturers are Lorillard, Philip Morris and R.J. Reynolds. Lorillard and R.J. Reynolds are currently both owned by Reynolds American.

³¹ Mississippi, Minnesota, Florida, and Texas settled separately with the major tobacco companies.

perpetuity.³² Non-Participating Members (“NPMs”) make payments to each state of \$0.0188482 per unit sold and held in escrow.³³ After 25 years, provided the funds were not used by states to cover cigarette-related costs, the payments would be returned to the NPMs.³⁴ However, if an NPM’s escrow payments are larger than if they had joined the MSA as an SPM, they receive a refund for the excess amount paid. Historically, this has led to NPMs concentrating sales in a few states.³⁵

Manufacturing processes

The primary ingredient in cigarettes is tobacco, grown in the United States primarily in North Carolina, Kentucky, and Virginia due to these states’ soil conditions, and mild and sunny climate.³⁶ Domestic tobacco production primarily consists of the bright leaf (often referred to as flue-cured) and burley varieties. Cigarettes produced in the U.S. are proprietary blends of these types of tobacco along with imported oriental, also known as Turkish, tobacco. Once harvested, the tobacco is cured (dried) and leaf stems and veins are separated from the lamina (leaf blade). The lamina will then be aged for up to two years, mellowing and concentrating the tobacco flavor. Following the aging process, lamina is further processed and blended for cigarette production.

Tobacco is graded based on quality factors. These include the leaf position on the stalk, which are categorized in three main groups identified, as leaf, cutters, and lugs, which correspond to upper, middle, and lower portions of a stalk. Upper stalk leaves are generally higher in quality than those lower down the stalk, which can contain more sand and debris. For Virginia flue-cured tobacco, the main tobacco leaf input in cigarettes, the tobacco is carefully

³² National Association of Attorneys General. “The ABCs of the Tobacco Master Settlement Agreement”. NAAG, www.naag.org/publications/naagazette/volume_1_number_2/the_abcs_of_the_tobacco_master_settlement_agreement.php.

³³ Kan. Stat. § 50-6a03(b)(1); see also Okla. Stat. tit. 37, § 600.23(A)(2).

³⁴ Conference transcript, p. 90 (Estes); Master Settlement Agreement, pp. 30-39.

³⁵ Miller, Validity, Construction, Application, and Effect of Master Settlement Agreement (MSA) Between Tobacco Companies and Various States, and State Statutes Implementing Agreement; Use and Distribution of MSA Proceeds, 25 A.L.R. 6th 435, 461n.13 (2007), pp. 464, 469.

³⁶ Shahbandeh, M. “Leading U.S. States in Tobacco Production, 2018.” Statista, 13 Feb. 2019, www.statista.com/statistics/192022/top-10-tobacco-producing-us-states/; “Tobacco.” USDA, United States Department of Agriculture, www.nass.usda.gov/Charts_and_Maps/A_to_Z/in-tobacco.php.

graded on quality factors including by leaf size, color and texture.³⁷ Other quality factors include, where the tobacco is cultivated, Curing (drying) methods also factor into quality differences, which can determine the sugar content and color qualities for flue-cured tobacco.³⁸

Cigarettes contain a brand-specific blend of the lamina along with reconstituted leaf (“RL”), blended leaf (“BL”), improved stem (“IS”), expanded stem (“ES”), and expanded tobacco (“ET”). RL is stems, small lamina, and other small particles of tobacco recovered from manufacturing processes. The RL is processed into sheets to resemble lamina. Nicotine levels in RL are 20 to 25 percent lower than nicotine levels in raw tobacco. BL is burley stems and small tobacco particles recovered from tobacco processing. It is ground to a uniform size and then processed into sheets to resemble lamina. IS, ES, and ET are made from tobacco components that have been puffed up to increase volume without increasing weight, resulting in lower costs of production and lower total amounts of tobacco used per cigarette. These expanded products also contain less tar and nicotine than lamina. Following the processing of the lamina, RL, BL, ES, ES, and ET, the components are blended and transported to cigarette manufacturing facilities.³⁹ The tobacco blend is a major contributor to tobacco flavor. Manufacturers also add flavoring extracts to tobacco blends called casings, a syrup which can include humectants, sugars, cocoa, licorice and fruit extracts. Mentholated cigarettes are made with menthol casings.⁴⁰ All such casings are proprietary.

Large international cigarette manufacturers (e.g., Altria, Philip Morris International, British American Tobacco, and Japan Tobacco) are typically vertically integrated and process, cut, and blend their own tobacco blends. Smaller cigarette manufacturers, such as tier four manufacturers, typically purchase blended tobacco from primary processors.⁴¹ The blended tobacco is fed into a cigarette making machines where it is rolled in paper to form a continuous

³⁷ Zhang, Fan, “Classification and Quality Evaluation of Tobacco Leaves Based on Image Processing and Fuzzy Comprehensive Evaluation,” February 25, 2011.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3231645/>.

³⁸ Statista, “Major U.S. states in tobacco production 2015-2019” February 18, 2020.

<https://www.statista.com/statistics/192022/top-10-tobacco-producing-us-states/>.

European Union, “Tobacco Additives, How They Are Made,” 2010.

https://ec.europa.eu/health/scientific_committees/opinions_layman/tobacco/en/l-3/2.htm.

³⁹ Philip Morris. How Cigarettes Are Made. YouTube, 2013, youtu.be/8vBtq8-Snm8.

⁴⁰ European Union, “Tobacco Additives, How They Are Made,” 2010.

https://ec.europa.eu/health/scientific_committees/opinions_layman/tobacco/en/l-3/2.htm.

⁴¹ Conference transcript, pp. 19-20, (Phillips). Respondent firm, KT&G is a vertically integrated 4th tier producer.

cigarette rod. The rod is cut to brand-specific lengths and delivered to tipping machines where filters are applied.⁴²

Inputs for filters are basically the same for all filtered cigarettes. One source indicates that 95 percent of cigarette filters are made out of cellulose acetate (a plastic), and the balance are made from papers and rayon. The cellulose acetate fibers are very small and tightly wrapped together forming the filter plug which looks like cotton. The plug is wrapped by an inner layer of paper (plug wrap) and an outer layer (tipping paper), which may contain small vent holes, then glued onto the cigarette.⁴³ Filters can either be single component or multicomponent. A single component filter is made of cellulose acetate whereas a multicomponent filter consists of additions such as activated carbon.⁴⁴ Filters can also be used to enhance flavor with polymer-based flavor fibers and micro pellets inserts,⁴⁵ as well as larger flavor capsules inserted into filters in a small number of brands.⁴⁶ The finished cigarettes are then packaged and shipped to customers.⁴⁷

In the United States, 4th tier cigarettes are produced in Florida, New York, North Carolina, and New York.⁴⁸ U.S. Majors maintain production facilities near their primary processing operations in North Carolina and Virginia.⁴⁹

⁴² Conference transcript, pp. 20-22 (Phillips); Philip Morris. How Cigarettes Are Made. YouTube, 2013, youtu.be/8vBtq8-Snm8. While the basic production process is the same, tier four producers in the U.S. tend to manufacture cigarettes on older, less efficient machinery and run fewer machines at a time. Post conference brief.

⁴³ Longwood University, "What are Cigarette Filters Made Of?" (accessed December 8, 2020), <http://www.longwood.edu/cleanva/cigbuttfilters.htm>.

⁴⁴ Conference transcript, pp. 18-19 (Phillips).

⁴⁵ European Union, "Tobacco Additives, How They Are Made," 2010. https://ec.europa.eu/health/scientific_committees/opinions_layman/tobacco/en/l-3/2.htm.

⁴⁶ Thrasher, James et al, Tobacco Control, "Cigarette brands with flavor capsules in the filter: trends in use and brand perceptions among smokers in the USA, Mexico and Australia, 2012–2014," 2016. <https://tobaccocontrol.bmj.com/content/25/3/275>.

⁴⁷ Conference transcript, p. 22 (Phillips).

⁴⁸ Conference transcript, p. 121 (Pickard).

⁴⁹ "Who We Are." PMI, www.pmi.com/who-we-are/overview; "About Us." R.J. Reynolds Tobacco Company, www.rjrt.com/transforming-tobacco/; "ITG Brands to Close NC Cigarette Plant, Eliminating 110 Jobs." Industrial Equipment News (IEN) , 22 Oct. 2019, www.ien.com/operations/news/21093391/itg-brands-to-close-nc-cigarette-plant-eliminating-110-jobs.

Domestic like product issues

The Commission's decision regarding the appropriate domestic product(s) that are "like" the subject imported product is based on a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer and producer perceptions; and (6) price. The petitioner proposes a single like product, co-extensive with the scope.⁵⁰ Respondents argued in their post conference brief that the domestic like product should be defined to include all cigarettes.⁵¹ Appendix E presents a summary of U.S. producers', U.S. importers' and U.S. purchasers' responses on the comparability of 4th tier cigarettes versus all other cigarettes and full narrative responses to the questions on the comparability of these products. Appendix F, G, and H present U.S. producers trade and financial data, respectively.

⁵⁰ Conference transcript, p. 25.

⁵¹ Respondents' postconference brief, p. 7.

Part II: Conditions of competition in the U.S. market

U.S. market characteristics

Fourth tier cigarettes are tobacco cigarettes rolled in paper ranging from 7.0 cm to 12.0 cm in length. Like other types of cigarettes, 4th tier cigarettes are generally sold in packs of 20 cigarettes or in cartons consisting of 10 packs of cigarettes, totaling 200 cigarettes. Fourth tier cigarettes are distinguished from other types of cigarettes by the stem content of the tobacco. Fourth tier cigarette tobacco typically consists of 10-40 percent tobacco stems while non-4th tier cigarette tobacco consists of less than 10 percent tobacco stems.

Apparent U.S. consumption of 4th tier cigarettes increased from January 2017 to December 2019. Overall, apparent U.S. consumption quantity in 2019 was *** percent higher than in 2017.

U.S. purchasers

The Commission received 32 usable questionnaire responses from firms that had purchased 4th tier cigarettes from January 2017 to June 2020.^{1 2} Seventeen responding purchasers are distributors, 13 are retailers and one (***) is both a distributor and a retailer. In general, responding U.S. purchasers are in the Southern, Central Southwest, and Plains regions of the United States.³ The responding purchasers are primarily in the consumer retail industry. The largest responding purchasers of 4th tier cigarettes in 2019 descending order include were ***.

¹ Staff sent purchaser questionnaires to 74 firms identified in the preliminary phase in lost sales and lost revenues allegations and as top 10 customers in producers' and importers' questionnaire responses. Staff received responses from 17 of these firms (***). In addition, 15 other firms submitted questionnaire responses (***).

One purchaser (***) is related to *** and one (***) is related to ***.

² Of the 32 responding purchasers, 29 purchased domestic 4th tier cigarettes, 24 purchased imports from Korea, and 8 purchased imports from other sources.

³ Fourteen of the purchasers are in Oklahoma and four are in Missouri.

Channels of distribution

Responding U.S. producers reported selling the majority of 4th tier cigarettes to branded distributors and the remainder to retailers. U.S. producer *** is the sole U.S. producer that reported selling a portion of its 4th tier cigarette shipments directly to retailers or end users.⁴ All other responding U.S. producers reported selling 4th tier cigarettes exclusively to branded distributors. Responding importers reported selling solely to branded distributors as shown in table II-1.

Table II-1

4th tier cigarettes: U.S. producers' and importers' U.S. shipments, by sources and channels of distribution, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Share of U.S. shipments (percent)				
U.S. producers:					
to Distributors: Branded	***	***	***	***	***
to Distributors: Private label	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: Korea					
to Distributors: Branded	***	***	***	***	***
to Distributors: Private label	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: Canada					
to Distributors: Branded	***	***	***	***	***
to Distributors: Private label	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: All other sources:					
to Distributors: Branded	***	***	***	***	***
to Distributors: Private label	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: Nonsubject sources:					
to Distributors: Branded	***	***	***	***	***
to Distributors: Private label	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: All sources:					
to Distributors: Branded	***	***	***	***	***
to Distributors: Private label	***	***	***	***	***
to Retailers or end users	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

⁴ ***.

Geographic distribution

U.S. producers and importers reported selling 4th tier cigarettes to all regions of the United States from January 2017 to June 2020 (table II-2). In 2019, the South was the largest market for U.S. producers, subject importers, and importers from nonsubject countries other than Canada. In 2019, over half of U.S. producers' sales were to the South and over a quarter were to the Plains region. Thirty-seven percent of subject imports were shipped to the South in 2019 and 21 percent went to the Central Southwest. Nearly all imports from Canada were shipped to the Mid-Atlantic in 2019.

While U.S. producers' sales overlap, some regions of the United States have dominant U.S. producers that supply the majority of sales to the regional market. U.S. producers *** and *** supply over *** percent of 4th tier cigarettes to New England, while U.S. producers *** and *** supply over *** percent of 4th tier cigarettes to the Great Lakes region. U.S. producer *** supplied *** percent of 4th tier cigarettes to the Plains region in 2019 and *** provided *** percent. *** supplied over *** percent of 4th tier cigarettes to the Mountains region from 2017 to 2019. U.S. producer *** reported supplying over *** percent of 4th tier cigarettes to the South from 2017 to 2019.

For U.S. producers, 18.3 percent of sales were within 100 miles of their production facility, 76.9 percent were between 101 and 1,000 miles, and 4.8 percent were over 1,000 miles. Importers sold 6.1 percent within 100 miles of their U.S. point of shipment, 63.2 percent between 101 and 1,000 miles, and 30.7 percent over 1,000 miles.

Table II-2

4th tier cigarettes: Share of shipments by geographic market areas in the United States served by U.S. producers and U.S. importers, 2019

Region	U.S. producers	Subject U.S. importers (Korea)	U.S. importers (Canada)	U.S. importers (All other sources)
New England	***	***	***	***
Mid-Atlantic	***	***	***	***
Plains	***	***	***	***
Great Lakes	***	***	***	***
South	***	***	***	***
Central Southwest	***	***	***	***
Mountains	***	***	***	***
Pacific Coast	***	***	***	***
Other	***	***	***	***
Total	***	***	***	***

Note: Other is all other U.S. markets, including AK, HI, PR, and VI.

Note: Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Supply and demand considerations

U.S. supply

Table II-3 provides a summary of the supply factors regarding 4th tier cigarettes from United States and Korea.

Table II-3
4th tier cigarettes: U.S. and foreign industry factors that affect ability to increase shipments to the United States

Item	2017	2019	2017	2019	2017	2019	Shipments by market in 2019 (percent)		Able to shift to alternate products
	Capacity (1,000 cartons)		Capacity utilization (percent)		Inventories as a ratio to total shipments (percent)		Home market shipments	Exports to non-U.S. markets	No. of firms reporting "yes"
United States	***	***	***	***	***	***	***	***	5 of 5
Korea	***	***	***	***	***	***	***	***	0 of 1

Note: Responding U.S. producers accounted for more than *** percent of U.S. production of 4th tier cigarettes in 2019. Responding foreign producer/exporter firms accounted for more than *** percent of U.S. imports of 4th tier cigarettes from Korea during 2019. For additional data on the number of responding firms and their share of U.S. production and of U.S. imports from each subject country, please refer to Part I, "Summary Data and Data Sources."

Source: Compiled from data submitted in response to Commission questionnaires.

Domestic production

Based on available information, U.S. producers of 4th tier cigarettes have the ability to respond to changes in demand with large changes in the quantity of shipments of U.S.-produced 4th tier cigarettes to the U.S. market. The main contributing factors to this degree of responsiveness of supply are the availability of unused capacity, low-to-moderate inventory levels, and the ability to shift production from producing other products to 4th tier cigarettes. The main limiting factor to this degree of responsiveness is an extremely limited ability to divert shipments from other markets.

Domestic capacity to produce 4th tier cigarettes remained relatively consistent from 2017 to 2019 while capacity utilization increased slightly. The share of U.S. producers' inventories to shipments decreased slightly from 2017 to 2019. Exports of U.S.-produced 4th tier cigarettes remained below 1 percent of shipments throughout the period. All responding U.S. producers stated that they could switch production from other products to 4th tier cigarettes. U.S. producers reportedly can produce filtered cigars and non-4th tier cigarettes on

the same high-speed cigarette makers used to produce 4th tier cigarettes. U.S. producers reported that the factors affecting their ability to shift products to or from alternate products include adjusting and reconfiguring machinery, the cost of leaving machinery idle while changes to production were made, and the labor cost to clean and reconfigure equipment. One U.S. producer, ***, reported that each time the machines were changed over resulted in *** of labor and lost production.

Subject imports from Korea

Based on available information, producers of 4th tier cigarettes from Korea have the ability to respond to changes in demand with moderate-to-large changes in the quantity of shipments of 4th tier cigarettes to the U.S. market. The main contributing factors to this degree of responsiveness of supply are a considerable ability to divert shipments from other markets some available capacity, and low-to-moderate inventories. The sole responding Korean producer, KT&G, reported that it *** shift production from other products to 4th tier cigarettes, which restricts the responsiveness of supply.

***'s total reported capacity to produce 4th tier cigarettes was more than *** times the total production capacity reported by U.S. producers in 2019. KT&G's reported capacity and capacity utilization decreased from 2017 to 2019. ***'s inventories increased over the period. The Korean producer reported that *** percent of its shipments of 4th tier cigarettes were to export markets other than the United States in 2019.

Imports from nonsubject sources

In terms of quantity and value, imports of 4th tier cigarettes from nonsubject sources increased from 2017 to 2019. Imports from nonsubject sources were *** percent of total imports in terms of quantity and *** percent in terms of value in 2019. Over half of nonsubject imports to the United States came from Canada throughout the period.

Supply constraints

All responding U.S. producers (5 of 5) reported no supply constraints. The majority of responding importers (3 of 4) did not report any supply constraints. Importer *** reported supply constraints caused by logistical difficulties such as shipping delays and port strikes. The majority of responding purchasers (15 of 26) reported that there were no supply constraints. Purchasers ***, ***, ***, and *** reported that KT&G had difficulties supplying the U.S. market because of disruptions caused by COVID-19.

New suppliers

The majority of purchasers (17 of 21) indicated that no new suppliers entered the U.S. market since January 1, 2017. Purchaser *** reported that although new suppliers had not entered the market, new brands had. Purchasers *** reported that KT&G and Xcaliber entered its regional market (the South) during the period of investigation.

U.S. demand

Based on available information, the overall demand for 4th tier cigarettes is likely to experience small-to-moderate changes in response to changes in price. Price increases across all types of cigarettes decrease cigarette consumption. Furthermore, price increases of 4th tier cigarettes relative to the price of other cigarettes, may cause consumers of 4th tier cigarettes to purchase higher quality non-4th tier cigarettes. However, cigarettes are addictive and changes in price have limited impact on demand.

Business cycles

The majority of U.S. producers (3 of 5), importers (3 of 4), and purchasers (13 of 18) indicated that the market was not subject to business cycles or distinct conditions of competition. Several firms, including U.S. producer *** and importer ***, reported that there are lower sales of 4th tier cigarettes in winter months. Importer *** reported the lower sales in the winter months were caused by attempts to quit smoking as a result of New Year's resolutions and less outdoor smoking as result of colder temperatures. Purchasers ***, ***, and *** reported that low temperature and adverse weather conditions decreased the sales of 4th tier cigarettes. Purchaser *** reported that back to school and Christmas shopping decrease 4th tier cigarette sales as consumers limited disposable income is used for other priorities. In addition, U.S. producer *** reported that good economic conditions cause smokers to buy more premium brand products and fewer 4th tier cigarettes. It also reported that introduction of electronic nicotine delivery systems ("ENDS"), which are commonly known as vapes or E-cigs, changed the conditions of competition since 2017.

Demand trends

Most U.S. producers and purchasers reported that U.S. demand for 4th tier cigarettes increased since January 1, 2017 while most importers reported that demand had decreased (table II-4). U.S. producers *** and *** reported that demand for 4th tier cigarettes increased as it is an alternative for increasingly expensive name brand cigarettes. U.S.

producer *** reported that the volume of all cigarettes sales, including 4th tier cigarettes, has decreased by 3 to 6 percent over the last three to four years. Importer *** reported that marketing studies by Euromonitor and studies conducted by the Center for Disease Control indicate that U.S. demand for all cigarettes is decreasing and demand for “economy brand” cigarettes is also decreasing. It also reported that the size of the U.S. tobacco market will continue to decrease in the future. Importers *** and *** reported the overall size of the U.S. cigarette market had decreased. Importer *** reported that aggressive price listing and consumers downgrading to lower price tiers caused U.S. demand for 4th tier cigarettes to increase. The majority of purchasers reported that the price difference between premium brand cigarettes and 4th tier cigarettes had increased the demand for 4th tier cigarettes as consumers smoke 4th tier cigarettes to save money. Purchaser *** reported that its customers were less brand loyal and more value seeking which has increased its demand for 4th tier cigarettes.

**Table II-4
4th tier cigarettes: Firms' responses regarding demand in the United States and outside of the United States**

Item	Increase	No change	Decrease	Fluctuate
Demand in the United States:				
U.S. producers	3	---	1	1
Importers	1	---	3	---
Purchasers	16	1	1	2
Demand outside the United States:				
U.S. producers	---	1	---	---
Importers	---	---	2	---
Purchasers	---	---	---	---
Demand for end use product(s):				
Purchasers	18	1	---	1

Source: Compiled from data submitted in response to Commission questionnaires.

The majority of responding U.S. producers (3 of 5), half of responding importers (2 of 4), and the majority of responding purchasers (17 of 26) reported that differences in state and local regulations or taxes had not caused a divergence in the regional demand for 4th tier cigarettes in the United States. Importer *** reported that sales of 4th tier cigarettes are higher in states with lower taxes than in states with higher taxes. Purchaser *** reported consumers of cigarettes migrate to lower tax states to purchase cigarettes and purchaser *** reported that high state taxes encourage consumers near the border of states with lower taxes to cross the border and purchase cigarettes. This increases demand for cigarettes in lower tax states. Of the nine responding purchasers that reported that differences in state and local taxes caused divergence in regional demand for 4th tier cigarettes, all nine

reported that there was increased demand for 4th tier cigarettes in states with high taxes as premium brands were out of the price range of some lower-income smokers.

Regulations

The majority of responding U.S. producers (3 of 5), responding purchasers (17 of 22), and half of responding importers (2 of 4) reported that U.S. regulation of tobacco products had not changed their firms' desire or ability to sell 4th tier cigarettes in the United States. U.S. producer *** reported that increased FDA oversight, increased taxes, Master Settlement Agreement ("MSA") charges, and Nonparticipating manufacturer fees had negatively impacted its sales. Importer *** reported that state tax increases lead to a price increase and decreased demand. Purchasers *** and *** reported that increased regulations limit the number of cigarettes available in the U.S. market and increase the demand for 4th tier cigarettes. Purchaser *** reported that the state of Tennessee reviews of non-MSA brands increase the difficulty of ensuring that brands remain legal to sell. U.S. producer *** reported barriers to entry to markets outside of the United States in the form of duties, taxes, and other regulatory issues.

Brand loyalty

All responding U.S. producers (5 of 5) and importers (4 of 4) reported that consumers smoke multiple brands of 4th tier cigarettes. However, the majority of purchasers (19 of 31) reported that consumers smoke only one brand of 4th tier cigarettes. U.S. producer *** reported that consumers of 4th tier cigarettes smoke multiple brands and are price sensitive when making purchasing decisions, and U.S. producer *** reported that 4th tier cigarette smokers typically purchase the lowest-priced product. Importers *** and *** reported that there is a price point where a loyal 4th tier cigarette customer will try another brand. Importer *** reported that brand loyalty is not as strong in the 4th tier cigarette market as the premium market and that the 4th tier market is driven primarily by price. Purchasers *** and *** reported that most customers have brand loyalty but a small percentage of customers buy the cheapest 4th tier cigarette on offer. Purchasers ***, ***, and *** reported that branding, packaging, and marketing influence consumers purchasing decisions.

The majority of responding U.S. producers (3 of 5), all responding importers (4 of 4), and the majority of responding purchasers (30 of 31) reported that consumers of 4th tier cigarettes also smoke non-4th tier cigarettes. U.S. producer *** reported that consumers of 4th tier cigarettes will purchase non-4th tier cigarettes if they have disposable income, and U.S.

producer *** reported that consumers will purchase non-4th tier cigarettes depending on the price and special discounts. Importer *** reported that according to a Nielsen 2019 survey, 77.4 percent of participating consumers reported that they have smoked secondary cigarette brands that are at different price points. Importer *** reported that consumers' cigarette purchasing decisions are based on their level of disposable income but that aggressive promotions may cause consumers to switch tiers of cigarettes. Purchasers *** and *** reported that consumers of 4th tier cigarettes are often looking for best value regardless of brand.

All responding U.S. producers (5 of 5), the majority of responding importers (4 of 5), and the majority of responding purchasers (23 of 29) reported that consumers of 4th tier cigarettes change brands based on price. U.S. producer *** reported that brand loyalty to 4th tier cigarettes is not as strong as to higher-priced premium brands. U.S. producers ***, ***, and *** reported that consumers of 4th tier cigarettes typically smoke the lowest-priced cigarettes available. Importers *** and *** reported that there is a price difference that causes loyal customers to try other brands.

Substitute products

The majority of responding U.S. producers (3 of 5) and the majority of purchasers (13 of 21) reported that there were no substitutes for 4th tier cigarettes, while the majority of responding importers (3 of 4) reported that there were substitutes for 4th tier cigarettes. The two U.S. producers, *** and *** and three importers that reported that there were substitutes for 4th tier cigarettes reported that premium cigarettes, branded cigarettes, and private label cigarettes/sub generic cigarettes were substitutes for 4th tier cigarettes. U.S. producer *** reported that changes in the price of these substitutes affected the price of 4th tier cigarettes. Of the 8 purchasers which reported that there were substitutes for 4th tier cigarettes, two reported that premium cigarettes were substitutes for 4th tier cigarettes, four reported that branded cigarettes were substitutes, and seven reported that private label cigarettes/sub-generic cigarettes were substitutes. Purchaser *** reported that private label cigarettes/sub-generic cigarettes are somewhat competitive substitutes for 4th tier cigarettes.

Substitutability issues

The degree of substitution between domestic and imported 4th tier cigarettes depends upon such factors as relative prices, quality (e.g., grade standards, defect rates, etc.), and

conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, reliability of supply, product services, etc.). Based on available data, staff believes that there is a high degree of substitutability between domestically produced 4th tier cigarettes and 4th tier cigarettes imported from Korea.

Lead times

U.S. producers reported that *** percent of their commercial shipments came from U.S. inventories, with lead times averaging *** days. Importer *** percent of sales from U.S. inventories with lead times averaging *** days.

Knowledge of country sources

Twenty-six purchasers indicated they had marketing/pricing knowledge of domestic product, 18 of Korean product, and 5 of nonsubject countries (including Canada, Japan, and Turkey).

As shown in table II-5, the majority of purchasers and their customers never make purchasing decisions based on the producer or country of origin. Two purchasers reported that they always make decisions based on the manufacturer, of which *** reported that it reviews all non-MSA members to ensure that it is in compliance with Tennessee state regulations.

Table II-5
4th tier cigarettes: Purchasing decisions based on producer and country of origin

Purchaser/customer decision	Always	Usually	Sometimes	Never
Purchaser makes decision based on producer	2	2	4	12
Purchaser's customers make decision based on producer	1	1	4	12
Purchaser makes decision based on country	1	2	5	12
Purchaser's customers make decision based on country	---	---	6	12

Source: Compiled from data submitted in response to Commission questionnaires.

Factors affecting purchasing decisions

The most often cited top three factors firms consider in their purchasing decisions for 4th tier cigarettes were price (21 firms), quality (7 firms), and availability/supply (7 firms), as shown in table II-6. Price was the most frequently cited first-most important factor (10 firms). Price also the most frequently cited second-most important factor (6 firms) and third-most important factor (5 firms).

Table II-6

4th tier cigarettes: Ranking of factors used in purchasing decisions as reported by U.S. purchasers, by factor

Factor	First	Second	Third	Total
Price / cost	10	6	5	21
Quality	2	3	2	7
Availability / supply	2	2	3	7
Customer demand / request	5	1	---	6
Legal / policy / terms	1	1	2	2
All other factors	3	4	5	NA

Note: Other factors include profitability to the retailer, manufacturer support, contract terms, made in the United States, shipping costs, and returns policy.

Source: Compiled from data submitted in response to Commission questionnaires.

A plurality of responding purchasers (10 of 23) reported that they usually purchase the lowest-priced product. Eight purchasers reported that that sometimes purchase the lowest-priced product. Four purchasers reported that they always purchase the lowest-priced product and one reported that it never purchased the lowest-priced product.

Importance of specified purchase factors

Purchasers were asked to rate the importance of 16 factors in their purchasing decisions (table II-7). The factors rated as very important by more than half of responding purchasers were price (21 firms); availability (18 firms); discounts offered (17 firms); reliability of supply (16 firms); product consistency and quality meets industry standards (15 firms each); payment terms (14 firms), and quality exceeds industry standards and delivery terms (12 firms each).

Supplier certification

Five of 25 responding purchasers require their suppliers to become certified or qualified to sell 4th tier cigarettes to their firm. Purchasers reported that the time to qualify a new supplier ranged from 4 to 15 days. Purchaser *** reported that a 4th tier cigarette manufacturer must be on the Texas or Oklahoma Tax Commission’s authorized list in order to be a certified supplier. None of the responding purchasers reported that a domestic or foreign supplier had failed in its attempt to qualify 4th tier cigarettes or had lost its approved status since 2017.

Table II-7**4th tier cigarettes: Importance of purchase factors, as reported by U.S. purchasers, by factor**

Factor	Number of firms reporting		
	Very important	Somewhat important	Not important
Availability	18	5	---
Branding	8	10	5
Delivery terms	12	9	2
Delivery time	9	10	4
Discounts offered	17	5	1
Minimum quantity requirements	6	12	5
Packaging	6	12	3
Payment terms	14	7	2
Price	21	3	---
Product consistency	15	6	1
Product range	6	14	2
Quality meets industry standards	15	6	1
Quality exceeds industry standards	12	8	2
Reliability of supply	16	4	1
Technical support/service	7	13	2
U.S. transportation costs	8	6	7

Source: Compiled from data submitted in response to Commission questionnaires.

Changes in purchasing patterns

Purchasers were asked about changes in their purchasing patterns from different sources since January 2017 (table II-8). A plurality of purchasers reported that they had increased purchases of 4th tier cigarettes from both the United States, Korea, and other known sources. Four purchasers *** reported decreasing purchases of U.S.-produced 4th tier cigarettes because of decreases in the prices of Korean cigarettes. Purchaser *** reported that it had decreased purchases of Korean 4th tier cigarettes and increased purchases of U.S.-produced cigarettes because it had been unhappy with the introduction of new low-price brands.

Table II-8**4th tier cigarettes: Changes in purchase patterns from U.S., subject, and nonsubject countries**

Source of purchases	Did not purchase	Decreased	Increased	Constant	Fluctuated
United States	---	9	12	3	2
Korea	3	6	13	1	2
All other sources	6	3	6	---	---
Sources unknown	9	---	---	---	---

Source: Compiled from data submitted in response to Commission questionnaires.

Importance of purchasing domestic product

Twenty seven of 32 responding purchasers reported that most or all of their purchases did not require purchasing U.S.-produced product. Four reported it was required by their customers (for 14.0 to 99.9 percent of their purchases), and two reported other preferences for domestic product. Other reasons cited for preferring domestic product included consumer preferences.

Comparisons of domestic products, subject imports, and nonsubject imports

Purchasers were asked a number of questions comparing 4th tier cigarettes produced in the United States, Korea, and nonsubject countries. First, purchasers were asked for a country-by-country comparison on the same 16 factors (table II-7) for which they were asked to rate the importance.

Most responding purchasers reported that U.S. and Korean 4th tier cigarettes were comparable on all factors. The majority of responding purchasers reported that 4th tier cigarettes from nonsubject countries were comparable to 4th tier cigarettes from the United States and Korea on all factors (table II-9).

Table II-9**4th tier cigarettes: Purchasers' comparisons between U.S.-produced and imported product**

Factor	Number of firms reporting								
	United States vs. Korea			United States vs. nonsubject sources			Korea vs. nonsubject sources		
	S	C	I	S	C	I	S	C	I
Availability	8	9	---	2	7	---	---	5	2
Branding	4	12	1	2	7	---	---	6	1
Delivery terms	5	10	1	2	7	---	---	6	1
Delivery time	5	10	1	3	6	---	---	5	2
Discounts offered	5	10	2	1	6	2	1	4	1
Minimum quantity requirements	2	14	---	1	8	---	---	6	---
Packaging	2	15	---	1	8	---	---	7	---
Payment terms	3	13	1	1	8	---	---	7	---
Price	---	10	6	1	5	2	2	4	1
Product consistency	4	11	1	2	6	1	---	6	1
Product range	2	14	1	1	7	---	---	7	---
Quality meets industry standards	3	12	---	1	8	---	---	6	1
Quality exceeds industry standards	4	12	1	1	7	1	---	6	---
Reliability of supply	8	9	---	2	7	---	---	4	3
Technical support/service	3	12	1	3	5	1	---	5	1
U.S. transportation costs	1	13	1	1	6	1	---	5	---

Note: A rating of superior means that price/U.S. transportation cost is generally lower. For example, if a firm reported "U.S. superior," it meant that the U.S. product was generally priced lower than the imported product.

Note: S=first listed country's product is superior; C=both countries' products are comparable; I=first list country's product is inferior.

Source: Compiled from data submitted in response to Commission questionnaires.

Comparison of U.S.-produced and imported 4th tier cigarettes

In order to determine whether U.S.-produced 4th tier cigarettes can generally be used in the same applications as imports from Korea and nonsubject countries; U.S. producers, importers, and purchasers were asked whether the products can always, frequently, sometimes, or never be used interchangeably. As shown in table II-10, the majority of responding U.S. producers reported that U.S.-produced 4th tier cigarettes were always interchangeable with Korean and nonsubject 4th tier cigarettes. All responding importers reported that U.S.-produced 4th tier cigarettes were always or frequently interchangeable with Korean and nonsubject 4th tier cigarettes. The majority of purchasers reported that 4th tier cigarettes from the United States, Korea, and nonsubject countries were always or frequently interchangeable.

Table II-10
4th tier cigarettes: Interchangeability between 4th tier cigarettes produced in the United States and in other countries, by country pair

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting				Number of purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
United States vs. Korea	4	---	---	1	2	2	---	---	15	2	4	1
United States vs. Other	4	---	---	1	2	2	---	---	5	1	3	---
Korea vs. Other	3	---	---	---	2	2	---	---	5	1	3	1

Note: A=Always, F=Frequently, S=Sometimes, N=Never.

Source: Compiled from data submitted in response to Commission questionnaires.

As can be seen from table II-11, the majority of responding purchasers reported that domestically produced 4th tier cigarettes and Korean 4th tier cigarettes always met minimum quality specifications and the remaining purchasers reported that U.S.-produced product usually met minimum quality specifications.

Table II-11
4th tier cigarettes: Ability to meet minimum quality specifications, by source

Source	Always	Usually	Sometimes	Rarely or never
United States	12	3	---	---
Korea	8	3	2	---
All other sources	3	1	1	---

Note: Purchasers were asked how often domestically produced or imported 4th tier cigarettes meets minimum quality specifications for their own or their customers' uses.

Source: Compiled from data submitted in response to Commission questionnaires.

In addition, U.S. producers, importers, and purchasers were asked to assess how often differences other than price were significant in sales of 4th tier cigarettes from the United States, Korea, or nonsubject countries. As seen in table II-12, the majority of responding U.S. producers reported that there are sometimes or never differences other than price between U.S.-produced, Korean, and nonsubject 4th tier cigarettes. All responding importers reported that there are always or frequently differences between 4th tier cigarettes produced in the United States, Korea, and nonsubject countries. Purchasers responses were mixed, with the majority of purchasers reporting that there were sometimes or never differences other than price between U.S.-produced and Korean 4th tier cigarettes; approximately half reported that there was always or frequently a difference between nonsubject countries and U.S. and Korean 4th tier cigarettes and approximately half reporting that there are sometimes or never differences.

Table II-12
4th tier cigarettes: Significance of differences other than price between 4th tier cigarettes produced in the United States and in other countries, by country pair

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting				Number of purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
United States vs. Korea	1	---	2	2	2	2	---	---	6	1	6	10
United States vs. Other	1	---	2	2	2	2	---	---	4	---	4	2
Korea vs. Other	---	---	2	1	2	2	---	---	5	---	3	2

Note: A = Always, F = Frequently, S = Sometimes, N = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Elasticity estimates

This section discusses elasticity estimates. Petitioners did not comment on these estimates. Respondent commented on the substitution elasticity as noted below.

U.S. supply elasticity

The domestic supply elasticity for 4th tier cigarettes measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of 4th tier cigarettes. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced 4th tier cigarettes. Analysis of these factors above indicates that the U.S. industry has the ability to greatly increase or decrease shipments to the U.S. market; an estimate in the range of 6 to 10 is suggested.

U.S. demand elasticity

The U.S. demand elasticity for 4th tier cigarettes measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of 4th tier cigarettes. This estimate depends on factors discussed above such as the existence, availability, and commercial viability of substitute products, as well as the component share of the 4th tier cigarettes in the production of any downstream products. While there are no academic estimates of the elasticity of 4th tier cigarettes, academic research estimates the elasticity of all cigarettes in a

range of -0.1 to -1.48.^{5 6} Based on the available information, the aggregate demand for 4th tier cigarettes is likely to be moderately inelastic, a range of -0.5 to -1.0 is suggested.

Substitution elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.⁷ Product differentiation, in turn, depends upon such factors as quality (e.g., chemistry, appearance, etc.) and conditions of sale (e.g., availability, sales terms/discounts/promotions, etc.). Based on available information, the elasticity of substitution between U.S.-produced 4th tier cigarettes and imported 4th tier cigarettes is likely to be in the range of 4 to 7.

Respondent stated that staff's estimate is too high given the limited availability of domestic 4th tier cigarettes in many state markets.⁸

⁵ Herbert L. Lyon, Julian L. Simon, Price Elasticity of the Demand for Cigarettes in the United States, *American Journal of Agricultural Economics*, Volume 50, Issue 4, November 1968, pp. 888–895, <https://doi.org/10.2307/1237626>.

⁶ Bishwa B. Adhikari, Chen Zhen, Jennifer W. Kehende, Joshua Goetz, Price Responsiveness of Cigarette demand in the U.S, *Economics Research International*, Volume 2012, June 2012, <https://www.hindawi.com/journals/ecri/2012/148702/>.

⁷ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

⁸ Respondent's prehearing brief, p. 82.

Part III: U.S. producers' production, shipments, and employment

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the dumping margins was presented in *Part I* of this report and information on the volume and pricing of imports of the subject merchandise is presented in *Part IV* and *Part V*. Information on the other factors specified is presented in this section and/or *Part VI* and (except as noted) is based on the questionnaire responses of five that accounted for the nearly all of U.S. production of 4th tier cigarettes during 2019.

U.S. producers

The Commission issued a U.S. producer questionnaire to four firms based on information contained in the petition, and three additional firms found through staff research. Five firms provided usable data on their operations.^{1 2} Staff believes that these responses represent most of the U.S. production of 4th tier cigarettes.

Table III-1 lists U.S. producers of 4th tier cigarettes, their production locations, positions on the petition, and shares of total production.

¹ Staff emailed S&M Brands, Inc. As of March 2019, S&M Brands was no longer producing 4th tier cigarettes. S&M Brands, Inc. stated they did not have the ability to fill out the questionnaire.

² Staff additionally sent U.S. producer questionnaires to Philip Morris Global Services, Inc., R.J. Reynolds Tobacco Company and Liggett Group. All firms indicated that they do not produce cigarettes that would be classified in the 4th tier. Phillip Morris Global Services, Inc., R.J. Reynolds Tobacco Company and Liggett Group did provide useable questionnaire data for parts 1 and 5 that are located in appendix D.

Table III-1

4th tier cigarettes: U.S. producers of 4th tier cigarettes, their positions on the petition, production locations, and shares of reported production, 2019

Firm	Position on petition	Production location(s)	Share of production (percent)
Cheyenne	Petitioner	Grover, NC Grover, NC	***
Dosal Tobacco	***	Opa Locka, FL	***
Farmers Tobacco	***	Cynthiana, KY	***
Native Trading	***	Hogansburg, NY	***
Xcaliber	Petitioner	Pryor, OK	***
Total			***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Table III-2 presents information on U.S. producers' ownership, related and/or affiliated firms of 4th tier cigarettes

Table III-2

4th tier cigarettes: U.S. producers' ownership, related and/or affiliated firms, 2019

Item / Firm	Firm Name	Affiliated/Ownership
Ownership:		
***	***	***
***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table III-3 presents important industry events for 4th tier cigarettes, since January 1, 2016.

Table III-3
4th tier cigarettes: important industry events, since January 1, 2017

Date		Company / Item	Action
Year	Month		
2016	May	Xcaliber	Xcaliber announced plans to acquire 4 th tier cigarette manufacturer Tantus Brands. ¹
2016	June	S&M Brands	S&M brands filed a lawsuit against the Attorney General of the State of North Carolina, claiming it had made payments into its escrow account in excess of its obligations, and requesting a refund. An amended complaint was filed on September 26, 2017. ²
2016	September	Sandia	Sandia Tobacco of New Mexico filed a voluntary petition under Chapter 11 of the Bankruptcy Code in September 2016. ³
2017	May	Xcaliber	Announced purchase of a new cigarette manufacturing line with a rated speed of 10,000 cigarettes per minutes. Xcaliber expected to have line operational by November 2017. ⁴
2018		Dosal Tobacco	Dosal Tobacco opened an Export & International Sales division in 2018 in an effort to expand internationally. ⁵
2019	March	S&M Brands	S&M Brands was sold to an undisclosed buyer, shutting down operations in March 2019 and laying off 50 employees. ⁶

¹ "Xcaliber to acquire Tantus Brands" The Tobacco Wire, May 6, 2016. Accessed January 17, 2020. <https://www.tobaccoreporter.com/2016/05/xcaliber-to-acquire-tantus-predicate-brands/>

² S&M Brands, Inc. V. Stein, 2018 NBC 26. Accessed January 17, 2020. <https://www.nccourts.gov/documents/business-court-opinions/sm-brands-inc-v-stein-2018-ncbc-26>

³ Mem. Op.; *In re Sandia Tobacco Mfrs., Inc.*, No. 16-12335-jl 1 (D.N.M. July 26, 2019), ECF No. 485, https://www.govinfo.gov/app/details/USCOURTS-nmb-1_16-bk-12335/USCOURTS-nmb-1_16-bk-12335-2

⁴ Xcaliber International "Xcaliber International Announces Purchase of New Cigarette Manufacturing Line" Cision PR Newswire. May 24, 2017. Accessed January 17, 2020. <https://www.abqjournal.com/874125/feds-sue-sandia-tobacco-for-4-7m.html>

⁵ Dosal Tobacco, Company profile. Accessed January 17, 2020, <http://www.dosal.com/company-profile>

⁶ "S&M Brands Sells Three Lines - Cigarette Manufacturing Ceases at Keysville Facility", Southside Messenger. (Mar. 14, 2019), <http://southsidemessenger.com/sm-brands-sells-three-lines-cigarette-manufacturing-ceases-at-keysville-facility/>; "S&M Brands sold, operation shuttered", South Boston News & Record and Mecklenburg Sun (Mar. 13, 2019), http://www.sovanow.com/index.php?/news/article/sm_brands_sold_operation_shuttered/.

Table III-4 presents U.S. producers' reported changes in operations since January 1, 2017.

**Table III-4
4th tier cigarettes: U.S. producers' reported changes in operations, since January 1, 2017**

Item / Firm	Reported changed in operations
Expansions:	
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. production, capacity, and capacity utilization

Table III-5 and figure III-1 present U.S. producers' production, capacity, and capacity utilization for 2017-19, and the January-June (interim) periods in 2019 and 2020. U.S. producers' capacity increased by *** percent from 2017 to 2019 and was *** percent higher in January-June 2020 compared to January-June 2019.³ ***. ***.⁴ Domestic producers' 4th tier cigarettes production increased by *** percent from 2017 to 2019 and was *** percent higher in January-June 2020 compared to January-June 2019.⁵ Three of the five producers increased production ***. Capacity utilization increased by *** percentage points from 2017 to 2019, ***. Capacity utilization was *** percentage points lower in January-June 2020 compared to January-June 2019.

³ At the Commission's conference, an Xcaliber employee indicated that the U.S. domestic manufacturers have the capacity to produce all 4th tier cigarettes in the United States from a capacity standpoint. Conference transcript, p. 71 (Smith).

⁴ ***.

⁵ Prior to its shutdown in March 2019, S&M Brands indicated ***. Email message from ***, January 8, 2020.

Table III-5
4th tier cigarettes: U.S. producers' production, capacity, and capacity utilization, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Capacity (cartons)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Native Trading	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Production (cartons)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Native Trading	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Capacity utilization (percent)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Native Trading	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Share of production (percent)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Native Trading	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Figure III-1
4th tier cigarettes: U.S. producers' production, capacity, and capacity utilization, 2017-19, January to June 2019, and January to June 2020

* * * * *

Source: Compiled from data submitted in response to Commission questionnaires.

Alternative products

As shown in table III-6, approximately *** percent of the product produced during 2017-19 by U.S. producers was 4th tier cigarettes. U.S. producers of 4th tier cigarettes are able to produce products other than 4th tier cigarettes on their production lines. Two firms (***) reported producing cigars. Total production on the same machinery increased by *** percent from 2017 to 2019 and was *** percent higher in January-June 2020 compared to January-June 2019. U.S. producers' aggregate out-of-scope production decreased by *** percent from 2017 to 2019 and was *** percent lower in January to June 2020 compared to January to June 2019. Overall capacity utilization increased by *** percentage points from 2017 to 2019 and was *** percentage points lower in January to June 2020 compared to January to June 2019. Overall capacity remained the same from 2017 to 2019 and was *** percent higher in January to June 2020 compared to January to June 2019.

Table III-6**4th tier cigarettes: U.S. producers' overall plant capacity and production on the same equipment as subject production, 2017-19, January to June 2019, and January to June 2020**

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
Overall capacity	***	***	***	***	***
Production:					
4th tier cigarettes	***	***	***	***	***
All other cigarettes	***	***	***	***	***
Other products	***	***	***	***	***
Out-of-scope production	***	***	***	***	***
Total production on same machinery	***	***	***	***	***
	Ratios and shares (percent)				
Overall capacity utilization	***	***	***	***	***
Share of production:					
4th tier cigarettes	***	***	***	***	***
All other cigarettes	***	***	***	***	***
Other products	***	***	***	***	***
Out-of-scope production	***	***	***	***	***
Total production on same machinery	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. producers' U.S. shipments and exports

Table III-7 presents U.S. producers' U.S. shipments, export shipments, and total shipments for 2017-19, January to June 2019, and January to June 2020. From 2017 to 2019, the quantity of U.S. shipments increased by *** percent and were higher by *** percent in January-June 2020 compared to January-June 2019. During 2017-19, the value of U.S. shipments increased by *** percent and were higher by *** percent in January-June 2020 compared to January-June 2019. The unit values for total shipments decreased by *** percent during 2017-19 but were higher by *** percent in January-June 2020 compared to January-June 2019. From 2017 to 2019, the quantity of export shipments decreased by *** percent and were lower by *** percent in January-June 2020 compared to January-June 2019. During 2017-19, the value of export shipments increased by *** percent and were lower by *** percent in January-June 2020 compared to January-June 2019. The unit values for export shipments increased by *** percent during 2017-19 but were lower by *** in January-June 2020 compared to January-June 2019. The difference in unit values of U.S. shipments and export shipments is ***. This can be largely attributed to the U.S. regulatory framework.

Table III-7

4th tier cigarettes: U.S. producers' U.S. shipments, exports shipments, and total shipments, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Value (1,000 dollars)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Unit value (dollars per carton)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Share of quantity (percent)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Share of value (percent)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***

Note: *** did not provide usable financial data for shipments. Staff is working with the firm to obtain this data and confirm trade related value data. Staff removed trade related value data. Only production-based numbers that did not have values associated with them are included in this report.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure III-2 presents 4th tier U.S. producers' U.S. shipments by geographic location in 2019. The extended regional analysis is located in appendix D.

Figure III-2
4th tier cigarettes: U.S. producers' U.S. shipments by geographic location, 2019

* * * * *

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. producers' inventories

Table III-8 presents U.S. producers' end-of-period inventories and the ratio of these inventories to U.S. producers' production, U.S. shipments, and total shipments for 2017-19, January to June 2019, and January to June 2020. These data show that U.S. producers' inventories increased by *** percent during 2017-19 and were higher by *** percent in January-June 2020 compared to January-June 2019.⁶ The ratios of inventories to production, U.S. shipments, and total shipments all decreased irregularly during 2017-19, and were higher in January-June 2020 compared to January-June 2019.

Table III-8
4th tier cigarettes: U.S. producers' inventories, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. producers' end-of-period inventories	***	***	***	***	***
	Ratio (percent)				
Ratio of inventories to.-- U.S. production	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Total shipments	***	***	***	***	***

Note: *** did not provide usable financial data for its shipments. Staff is working with the firm to obtain these data and confirm trade related value data. Staff removed trade related value data. Only production-based numbers that did not have values associated with them are included in this report.

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

⁶ Based on the five U.S. producers' combined questionnaire responses, ***. Cheyenne, Dosal, Farmers, Native Trading and Xcaliber's questionnaire responses, section II-7.

U.S. producers' imports and purchases

U.S. producers indicated that they did not import or purchase 4th tier cigarettes since January 1, 2017.

U.S. employment, wages, and productivity

Table III-10 shows U.S. producers' employment-related data.⁷ The number of production and related workers ("PRWs") for U.S. producers decreased by *** percent from 2017 to 2019. The number of PRWs during January-June 2020 was *** percent higher than January-March 2019. Hourly wages increased by *** percent between 2017 and 2019 and were *** percent higher in January-June 2020 compared to January-June 2019. Productivity decreased by *** percent from 2017 to 2019 and was *** percent higher in January-June 2020 compared to January-June 2019. Unit labor costs increased from 2017 to 2019 by *** percent and remained the same in January-June 2020 compared to January-June 2019.

Table III-10

4th tier cigarettes: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, January to September 2019, and January to September 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Production and related workers (PRWs) (number)	***	***	***	***	***
Total hours worked (1,000 hours)	***	***	***	***	***
Hours worked per PRW (hours)	***	***	***	***	***
Wages paid (\$1,000)	***	***	***	***	***
Hourly wages (dollars per hour)	***	***	***	***	***
Productivity (cartons per hour)	***	***	***	***	***
Unit labor costs (dollars per pound)	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

⁷ S&M Brands Inc. closed in early 2019 and the majority of its 87 employees have been laid off. Petition, exhibit 21.

Part IV: U.S. imports, apparent U.S. consumption, and market shares

U.S. importers

The Commission issued importer questionnaires to 35 firms believed to be importers of subject 4th tier cigarettes, as well as to all U.S. producers of 4th tier cigarettes.¹ Usable questionnaire responses were received from four companies. As discussed in Part I, U.S. import data are based on the questionnaire responses of the five firms that submitted useable U.S. importers questionnaires representing *** U.S. imports from Korea, *** percent of U.S. imports from nonsubject sources, and *** percent of total U.S. imports, based on quantity in 2019 under HTS statistical reporting number 2402.20.8000, and as a ratio of U.S. importer questionnaire data to official U.S. import statistics.² Table IV-1 lists all responding U.S. importers of 4th tier cigarettes from Korea and other sources, their locations, and their shares of U.S. imports, in 2019.³

¹ The Commission issued questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”), may have accounted for more than one percent of total imports under HTS statistical reporting number 2402.20.8000 in 2018. Two firms *** indicated they did not import 4th tier cigarettes.

² The Commission received U.S. importer questionnaire responses from three nonsubject importers, which included Native Wholesale Supply, Lake Erie Tobacco, and Tabacosusa. ***. These two firms combined imports of 4th tier cigarettes represented approximately *** percent of all U.S. imports from Canada in 2018. Tabacosusa is a U.S. importer that imported 4th tier cigarettes *** U.S. imports of 4th tier cigarettes from *** in 2018. Nonsubject importer coverage may include a sizeable amount of imports of out-of-scope cigarettes under HTS statistical reporting number 2402.20.8000, and therefore the *** percent coverage of nonsubject imports during 2018 is likely understated.

³ *** did not provide an importers’ questionnaire response but reported that it imported *** of 4th tier cigarettes in 2018. *** indicated that *** further indicated the cigarettes that his company imports are from ***. Email message from ***, January 15, 2020.

Table IV-1
4th tier cigarettes: U.S. importers, their headquarters, and share of total imports by source, 2019

Firm	Headquarters	Share of imports by source (percent)				
		Korea	Canada	All other sources	Nonsubject sources	All import sources
Japan Tobacco	Teaneck, NJ	***	***	***	***	***
KT&G	Plano, TX	***	***	***	***	***
Lake Erie Tobacco	Kill Buck, NY	***	***	***	***	***
Native Wholesale	Perrysburg, NY	***	***	***	***	***
Total		***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. imports

Table IV-2 and figure IV-1 present data for U.S. imports of 4th tier cigarettes from Korea and all other sources for 2017-19, January to June 2019, and January to June 2020. From 2017 to 2019, U.S. imports of 4th tier cigarettes from subject sources increased by *** percent, and were *** percent higher during interim 2019 compared to interim 2018. The average unit value of U.S. imports of 4th tier cigarettes from Korea fell by *** during 2017-19, and was lower by *** in January-June 2020 compared to January-June 2019.

As a share of both quantity and value, U.S. imports from Korea accounted for *** percent and *** percent of total imports, respectively during 2019. As a share of the quantity of all imports of 4th tier cigarettes, imports from Korea increased by *** percentage points during 2017-19, and were *** percentage points higher in January-June 2020 compared to January-June 2019. As a share of value of all imports of 4th tier cigarettes, imports from Korea decreased by *** percentage points during 2017-19, but were *** percentage points higher in January-June 2020 compared to January-June 2019.

From 2017 to 2019, U.S. imports of 4th tier cigarettes from nonsubject sources increased by approximately *** percent based on quantity and increased by *** percent based on value, and were *** percent and *** percent, respectively higher in January-June 2020 compared to January-June 2019. The average unit value for nonsubject imports of 4th tier cigarettes decreased by *** during 2017-19, and were *** in January-June 2020 compared to January-June 2019.

During 2017-19, U.S. imports of 4th tier cigarettes from all sources increased by *** percent based on quantity and were *** percent higher in January-June 2020 compared to January-June 2019. The average unit value for all sources of imports of 4th tier cigarettes

decreased by *** during 2017-19 and was lower by *** in January-June 2020 compared to January-June 2019.

As a ratio to U.S. production, imports from all import sources, nonsubject sources, and Korea increased during 2017-19, but Korean imports and all import sources were higher in January-June 2020 compared to January-June 2019 (Canada imports were lower).

Table IV-2
4th tier cigarettes: U.S. imports by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. imports from.-- Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
	Value (1,000 dollars)				
U.S. imports from.-- Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
	Unit value (dollars per carton)				
U.S. imports from.-- Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
	Share of quantity (percent)				
U.S. imports from.-- Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
	Share of value (percent)				
U.S. imports from.-- Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
	Ratio to U.S. production				
U.S. imports from.-- Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.
Source: Compiled from data submitted in response to Commission questionnaires.

Figure IV-1
4th tier cigarettes: U.S. import volumes and AUVs, 2017-19, January to June 2019, and January to June 2020

* * * * *

Source: Compiled from data submitted in response to Commission questionnaires.

Figure IV-2 presents 4th tier U.S. importers' U.S. shipments by geographic location in 2019. The extended regional analysis is located in appendix D.

Figure IV-2
4th tier cigarettes: U.S. importer U.S. shipments by geographic location, 2019

* * * * *

Source: Compiled from data submitted in response to Commission questionnaires.

Negligibility

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.⁴ Negligible imports are generally defined in the Act, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.⁵ Based on U.S. importer questionnaire responses, imports from Korea accounted for *** percent of total imports of 4th tier cigarettes by quantity. Table IV-3 presents U.S imports in the twelve months preceding the filing of the petition, December 2018 through November 2019.

⁴ Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

⁵ Section 771 (24) of the Act (19 U.S.C § 1677(24)).

Table IV-3
4th tier cigarettes: U.S. imports in the twelve-month period preceding the filing of the petition, December 2018 through November 2019

Item	December 2018 through November 2019	
	Quantity (cartons)	Share quantity (percent)
U.S. imports from.--		
Korea	***	***
Canada	***	***
All other sources	***	***
Nonsubject sources	***	***
All import sources	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Apparent U.S. consumption

Table IV-4 and figure IV-3 presents data on apparent U.S. consumption 4th tier cigarettes. Apparent U.S. consumption based on quantity increased overall by *** percent during 2017-19, and was *** percent higher in January-June 2020 compared to January-June 2019. Apparent consumption based on value was *** percent higher during 2017-19, and was *** percent higher in January-June 2020 compared to January-June 2019. U.S. producers' U.S. shipments based on quantity and value increased by *** percent and *** percent during 2017-19, respectively, and were higher by *** percent and *** percent respectively in January-June 2020 compared to January-June 2019.

During 2017-19, U.S. importers' U.S. shipments of subject imports by quantity and value increased by *** percent and *** percent, respectively, but were higher in January-June 2020 compared to January-June 2019 by *** percent based on quantity and *** percent based on value.

During 2017-19, U.S. importers' U.S. shipments from nonsubject sources in quantity and value increased by *** percent and by *** percent, respectively, but were higher in January-June 2020 compared to January-June 2019 by *** percent based on quantity and *** percent based on value.

During 2017-19, U.S. importers' U.S. shipments from all import sources increased in quantity and value decreased by *** percent and *** percent, respectively, but were higher in January-June 2020 compared to January-June 2019 by *** percent based on quantity and *** percent based on value.

Table IV-4

4th tier cigarettes: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. importers' U.S. shipments from.--					
Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
	Value (1,000 dollars)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. importers' U.S. shipments from.--					
Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Figure IV-3
4th tier cigarettes: Apparent consumption, 2017-19, January to June 2019, and January to June 2020

* * * * *

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. market shares

U.S. market share data for 4th tier cigarettes are presented in table IV-5. U.S. producers' share of apparent U.S. consumption by quantity, decreased from *** percent in 2017 to *** percent in 2018 and continued to decrease to *** percent in 2019. During January to June 2020 apparent U.S. consumption by quantity was *** percentage points lower than the comparable period in 2019. U.S. producers' share of apparent U.S. consumption by value, decreased from *** percent in 2017 to *** percent in 2018, and kept decreasing to *** percent in 2019. During January to June 2020 apparent U.S. consumption by value was *** percentage points lower than the comparable period in 2019.

Subject imports' share of the U.S. market by quantity increased *** percentage points from 2017 to 2019, increasing from *** percent in 2017 to *** percent in 2018 and to *** percent in 2019. During January to June 2020 subject imports' share of the U.S. market by quantity was *** percentage points higher than same period in 2019. Their share of the U.S. market by value, increased *** percentage points from 2017 to 2019, from *** percent in 2017 to *** percent in 2018 and *** percent in 2019. During January to June 2020 subject imports' share of the U.S. market by value was *** percentage point higher than same period in 2019. The share of nonsubject imports increased from *** percent in 2017 to *** percent in 2018 and decreased to *** percent in 2019, by quantity, increased from *** percent in 2017 to *** percent in 2018 and *** percent in 2019, by value.

Table IV-5

4th tier cigarettes: Market shares, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
Apparent U.S. consumption	***	***	***	***	***
	Share of quantity (percent)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. importers' U.S. shipments from.--					
Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
	Value (1,000 dollars)				
Apparent U.S. consumption	***	***	***	***	***
	Share of value (percent)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. importers' U.S. shipments from.--					
Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Part V: Pricing data

Factors affecting prices

Raw material costs

Fourth tier cigarettes are primarily made of blended tobacco that is wrapped in cigarette paper and joined with a filter tip. Factory costs are the largest component of the total cost of goods sold (“COGS”) for 4th tier cigarettes (see part VI). Raw materials made up less than *** percent of the total COGS throughout the period of investigation. U.S. producers reported that the composition of COGS remained roughly the same throughout the period.

All responding U.S. producers (5 of 5) indicated that raw material costs had increased since January 1, 2017. U.S. producers ***, ***, and *** reported annual price increases. Both U.S. producers *** and *** reported that raw materials costs increase approximately 5 percent per year. *** reported that it makes periodic price adjustments to absorb raw material cost increases. Both responding importers reported that raw material costs fluctuated over the period.

Transportation costs to the U.S. market

Transportation costs for 4th tier cigarettes shipped from Korea to the United States averaged 2.8 percent during 2019. These estimates were derived from official import data and represent the transportation and other charges on imports.¹

U.S. inland transportation costs

All responding U.S. producers reported that they typically arrange transportation to their customers, while the majority of importers reported that the purchaser typically arrange transportation. U.S. producers reported that their U.S. inland transportation costs ranged from 1.0 to 18.0 percent. The only responding subject importer, *** reported that it typically arranges transportation, with estimated U.S. inland transportation costs of just over *** percent.

¹ The estimated transportation costs were obtained by subtracting the customs value from the c.i.f. value of the imports for 2019 and then dividing by the customs value based on the HTS subheading 2402.20.8000.

Exchange rates

The value of the Korean won, relative to the U.S. dollar, fluctuated throughout the period of investigation. While the value of the Korean won increased relative to the U.S. dollar from January 2017 to January 2018, it began to decrease in value in January 2018 and was approximately the same value in June 2020 as it was in January 2017.

Figure V-1
Exchange rates: Korean won to U.S. dollar exchange rate, weekly, January 2017 to June 2020



Source: Federal Reserve Economic Data (FRED), Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org>, retrieved October 13, 2020.

Pricing practices

Pricing methods

All responding U.S. producers and 3 of 4 responding importers reported using price lists to set prices for 4th tier cigarettes (table V-1).

Table V-1
4th tier cigarettes: U.S. producers' and importers' reported price setting methods, by number of responding firms

Method	U.S. producers	Importers
Transaction-by-transaction	---	---
Contract	---	---
Set price list	5	3
Other	---	2
Responding firms	5	4

Note: The sum of responses down may not add up to the total number of responding firms as each firm was instructed to check all applicable price setting methods employed.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. producers and importers reported selling all of their 4th tier cigarettes in the spot market (table V-2).

Table V-2
4th tier cigarettes: U.S. producers' and importers' shares of U.S. commercial shipments by type of sale, 2019

Type of sale	U.S. producers	Importers
Long-term contracts	***	***
Annual contracts	***	***
Short-term contracts	***	***
Spot sales	***	***

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

Source: Compiled from data submitted in response to Commission questionnaires.

Three purchasers reported that they purchase product daily, one biweekly, and 17 purchase weekly. Fourteen of 18 responding purchasers reported that their purchasing frequency had not changed since 2017. Purchaser *** reported that it had increased its purchasing frequency because KT&G had fluctuating inventory levels. Most (13 of 14) responding purchasers contact 1 to 6 suppliers before making a purchase.

Sales terms and discounts

The majority of responding U.S. producers and all responding importers typically quote prices on a delivered basis. Three U.S. producers reported having discount policies. One U.S. producer *** reported that it had quantity discounts. All three responding U.S. producers reported other discounts. U.S. producer *** reported promotional and trade show discounts. U.S. producer *** reported payment term discounts. One responding importer reported that it had quantity discounts. Importer *** reported offering quantity discounts and offering discounts to retailers or distributors for meeting or exceeding sales quotas. Importer *** reported offering buydowns.

Price leadership

Purchasers reported that KT&G (4 firms), Liggett Vector (3 firms), Altria (2 firms), Philip Morris (1 firm), Cheyenne (1 firm), and Xcaliber (1 firm) were price leaders. Purchaser *** reported that Altria was a price leader in the cigarette industry regardless of the tier. Purchaser *** reported that if Liggett Vector raised prices, 4th tier cigarette producers would also increase prices. Purchasers *** and *** reported that KT&G was a price leader because it had the lowest prices in the market. Purchaser *** reported that KT&G was a price leader because it had not raised prices when other 4th tier cigarette producers had.

Price data

The Commission requested U.S. producers and importers to provide quarterly data for the total quantity and f.o.b. value of the following 4th tier cigarettes products shipped to unrelated U.S. customers from January 2017 to June 2020.²

Product 1.-- Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Missouri

Product 2.-- Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Missouri

Product 3.-- Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol Box, or equivalent offerings) for sale to consumers in Missouri

Product 4.— Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Oklahoma

Product 5.— Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Oklahoma

Product 6.-- Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol Box, or equivalent offerings) for sale to consumers in Oklahoma

Product 7.-- Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Florida

Product 8.-- Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Florida

² Firms were instructed to include all federal and state taxes in their pricing data.

Product 9.-- Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol, Box or equivalent offerings) for sale to consumers in Florida

Four U.S. producers and one importer provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.^{3 4} Pricing data reported by these firms accounted for approximately *** percent of U.S. producers' commercial U.S. shipments of 4th tier cigarettes and *** percent of commercial U.S. shipments of subject imports from Korea in 2019.

Price data for products 1-9 are presented in tables V-3 to V-11 and figures V-2 to V-10.

³ Per-unit pricing data are calculated from total quantity and total value data provided by U.S. producers and importers. The precision and variation of these figures may be affected by rounding, limited quantities, and producer or importer estimates.

⁴ ***.

***.

Table V-3

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 1: Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Missouri.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-4

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 2: Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Missouri.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-5

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 3: Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Methol Box, or equivalent offerings) for sale to consumers in Missouri.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-6

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 4 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 4: Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Oklahoma.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-7

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 5: Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Oklahoma Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol Box, or equivalent offerings) for sale to consumers in Missouri.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-8

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 6 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 6: Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol Box, or equivalent offerings) for sale to consumers in Oklahoma.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-9

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 7 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 7: Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Florida.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-10

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 8 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 8: Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Florida.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-11

4th tier cigarettes: Weighted-average f.o.b. prices and quantities of domestic and imported product 9 and margins of underselling/(overselling), by quarter, January 2017 through June 2020

Period	United States		Korea		
	Price (dollars per carton)	Quantity (cartons)	Price (dollars per carton)	Quantity (cartons)	Margin (percent)
2017:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2018:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2019:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***
Jul.-Sep.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2020:					
Jan.-Mar.	***	***	***	***	***
Apr.-Jun.	***	***	***	***	***

Note: Product 9: Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol, Box or equivalent offerings) for sale to consumers in Florida.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-2
4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 1, by quarter, January 2017 through June 2020

* * * * *

Product 1: Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Missouri.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-3
4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 2, by quarter, January 2017 through June 2020

* * * * *

Product 2: Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Missouri.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-4
4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 3, by quarter, January 2017 through June 2020

* * * * *

Product 3: Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Methol Box, or equivalent offerings) for sale to consumers in Missouri.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-5
4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 4, by quarter, January 2017 through June 2020

* * * * *

Product 4: Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Oklahoma.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-6
4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 5, by quarter, January 2017 through June 2020

* * * * *

Product 5: Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Oklahoma Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Methol Box, or equivalent offerings) for sale to consumers in Missouri.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-7
4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 6, by quarter, January 2017 through June 2020

* * * * *

Product 6: Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol Box, or equivalent offerings) for sale to consumers in Oklahoma.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-8
4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 7, by quarter, January 2017 through June 2020

* * * * *

Product 7: Non-menthol, Full Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Red Box, Cheyenne Red Box, Edgefield Red Box, or equivalent offerings) for sale to consumers in Florida.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-9
4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 8, by quarter, January 2017 through June 2020

* * * * *

Product 8: Non-menthol, Ultralight Flavor, Length 100, Non-Menthol 4th tier cigarette (i.e. Berley Gold Box, Cheyenne Gold Box, Edgefield Gold Box, or equivalent offerings) for sale to consumers in Florida

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-10

4th tier cigarettes: Weighted-average prices and quantities of domestic and imported product 9, by quarter, January 2017 through June 2020

* * * * *

Product 9: Menthol, Length 100, Menthol 4th tier cigarette (i.e. Berley Menthol Box, Cheyenne Menthol Box, Edgefield Menthol, Box or equivalent offerings) for sale to consumers in Florida.

Source: Compiled from data submitted in response to Commission questionnaires.

Price trends

In general, prices increased from January 2017 to June 2020. Price trends of 4th tier cigarettes varied by state because of state level taxes. U.S.-produced 4th tier cigarette prices in Missouri (products 1-3) increased by *** to *** percent while Korean prices decreased by *** to *** percent.

Prices for domestic and Korean 4th tier cigarettes increased in Oklahoma (products 4-6) due to an increase in the state's taxes on cigarettes on July 1, 2018 from \$1.03 per pack to \$2.03 per pack (approximately \$10.00 per carton).⁵ Domestic price increases ranged from *** to *** percent in Oklahoma while Korean price increases ranged from *** to *** percent. Domestic and Korean prices in Oklahoma for products 4 to 6 increased by less than \$10 per carton over the period of investigation.

Prices generally increased for U.S.-produced and Korean 4th tier cigarettes in Florida (products 7-9). Domestic price increases ranged from *** to *** percent in Florida while Korean price increases ranged from *** to *** percent and Korean price decreases were *** percent.

⁵ The Tax Foundation, <https://taxfoundation.org/state-tax-changes-july-1-2018/#:~:text=Eleven%20states%20have%20tax%20changes,effect%20on%20July%201%2C%202018.&text=Oklahoma%20and%20Kentucky%20are%20increasing,Kentucky%20from%20%240.60%20to%20%241.10>, retrieved October 21, 2020.

Table V-12

4th tier cigarettes: Summary of weighted-average f.o.b. prices for products 1-9 from the United States and Korea

Item	Number of quarters	Low price (dollars per carton)	High price (dollars per carton)	Change in price over period (percent)
Product 1: United States	14	***	***	***
Korea	14	***	***	***
Product 2: United States	14	***	***	***
Korea	14	***	***	***
Product 3: United States	14	***	***	***
Korea	14	***	***	***
Product 4: United States	14	***	***	***
Korea	14	***	***	***
Product 5: United States	14	***	***	***
Korea	14	***	***	***
Product 6: United States	14	***	***	***
Korea	14	***	***	***
Product 7: United States	14	***	***	***
Korea	14	***	***	***
Product 8: United States	14	***	***	***
Korea	14	***	***	***
Product 9: United States	14	***	***	***
Korea	14	***	***	***

Note: Change in price is percentage change from the first quarter in which data were available to the last quarter in which price data were available.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-11

4th tier cigarettes: Indexed U.S. producer prices, January 2017 through June 2020

* * * * *

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-12

4th tier cigarettes: Indexed subject U.S. importer prices, January 2017 through June 2020

* * * * *

Source: Compiled from data submitted in response to Commission questionnaires.

Price comparisons

As shown in table V-13, prices for product imported from Korea were below those for U.S.-produced product in 73 of 126 instances (***) cartons); margins of underselling ranged from 0.4 to 19.9 percent. In the remaining 53 instances (***) cartons), prices for product from Korea were between 0.5 and 34.1 percent above prices for the domestic product.

Table V-13

4th tier cigarettes: Instances of underselling/overselling and the range and average of margins, by product and by country, January 2017 through June 2020

Source	Underselling				
	Number of quarters	Quantity (cartons)	Average margin (percent)	Margin range (percent)	
				Min	Max
Product 1	***	***	***	***	***
Product 2	***	***	***	***	***
Product 3	***	***	***	***	***
Product 4	***	***	***	***	***
Product 5	***	***	***	***	***
Product 6	***	***	***	***	***
Product 7	***	***	***	***	***
Product 8	***	***	***	***	***
Product 9	***	***	***	***	***
Products 1-3 (Missouri)	***	***	***	***	***
Products 4-6 (Oklahoma)	***	***	***	***	***
Products 7-9 (Florida)	***	***	***	---	---
Total, underselling	73	***	7.0	0.4	19.9
Source	(Overselling)				
	Number of quarters	Quantity (cartons)	Average margin (percent)	Margin range (percent)	
				Min	Max
Product 1	***	***	***	***	***
Product 2	***	***	***	***	***
Product 3	***	***	***	***	***
Product 4	***	***	***	***	***
Product 5	***	***	***	***	***
Product 6	***	***	***	***	***
Product 7	***	***	***	***	***
Product 8	***	***	***	***	***
Product 9	***	***	***	***	***
Products 1-3 (Missouri)	***	***	***	***	***
Products 4-6 (Oklahoma)	***	***	***	---	---
Products 7-9 (Florida)	***	***	***	***	***
Total, overselling	53	***	(20.6)	(0.5)	(34.1)

Note: These data include only quarters in which there is a comparison between the U.S. and subject product.

Source: Compiled from data submitted in response to Commission questionnaires.

Lost sales and lost revenue

In the preliminary phase of the investigation, the Commission requested that U.S. producers of 4th tier cigarettes report purchasers with which they experienced instances of lost sales or revenue due to competition from imports of 4th tier cigarettes from Korea during January 2016 through September 2019. Petitioners submitted lost sales and lost revenue allegations and identified 36 firms with which they lost sales or revenue.

In the final phase of the investigation, of the five responding U.S. producers, two reported that they had to reduce prices and three rolled back announced price increases. Four firms reported that they had lost sales.

Staff contacted 74 purchasers and received responses from 32 purchasers. Responding purchasers reported purchasing approximately *** cartons of 4th tier cigarettes during January 2017 to June 2020 (table V-14).

Of the responding purchasers, eight reported that, since 2017, they had purchased imported 4th tier cigarettes from Korea instead of U.S.-produced product. All eight of these purchasers reported that subject import prices were lower than U.S.-produced product, and seven of these purchasers reported that price was a primary reason for purchasing imported product rather than U.S.-produced product. Four purchasers estimated the quantity of 4th tier cigarettes from Korea purchased instead of domestic product at *** cartons (table V-15). *** reported importing 4th tier cigarettes from Korea to test demand of multiple brands of 4th tier cigarettes with their customers.

Of the 32 responding purchasers, six reported that U.S. producers had reduced prices in order to compete with lower-priced imports from Korea; eight reported that they did not know (table V-16;). The reported estimated price reduction ranged from 2.0 to 29.0 percent. In describing the price reductions, purchaser *** reported that U.S. producers have reduced prices since KT&G entered the market.

Part VI: Financial experience of U.S. producers

Background

Four U.S. producers, ***, reported usable financial results on their 4th tier cigarette operations.^{1 2} While varying to some extent by company, 4th tier cigarette sales represent the *** of each company's overall sales. For the period as a whole, *** accounted for the largest share of total 4th tier cigarette sales quantity (**% percent), followed by *** (**% percent), *** (**% percent), and *** (**% percent).

As noted in Part III, the operations of 4th tier cigarette producers reflect (directly and/or indirectly) various events/activities that took place during the period such as Xcaliber's termination of its initial public offering (IPO) of common stock,³ ***,⁴ and the market exit of two U.S. producers (**%).⁵

Operations on 4th tier cigarettes

Table VI-1 and table VI-2, respectively, present financial results on 4th tier cigarettes and corresponding changes in average per carton values. Table VI-3 presents a variance analysis of these financial results.⁶ Table VI-4 presents selected financial results information by firm.

¹ ***. USITC auditor notes (posthearing).

² The financial results on non-4th tier cigarettes, ***, are included in Appendix G (financial results on all cigarettes). Appendix G presents the following financial results: financial results on all cigarette with NPM escrow payments classified as a cost (table G-1), financial results on all cigarettes excluding NPM escrow payments as a cost (table G-3), and financial results on all cigarettes reflecting company-specific accounting treatment of NPM escrow payments (table G-5) (see *MSA and NPM escrow payments* section). 4th tier and non-4th tier cigarette producers reported their financial results on a U.S. GAAP basis and for calendar-year periods.

³ Conference transcript, p. 30 (Smith). Email from *** on behalf of ***, September 15, 2020.

⁴ *** U.S. producer questionnaire, responses to II-2, III-13b.

⁵ *** did not report financial results for the part of the period they had operations. While the sales of remaining U.S. producers were presumably impacted to some extent, *** market exit is not directly reflected in the U.S. industry's financial results.

⁶ The Commission's traditional variance analysis is calculated in three parts: sales variance, cost of goods sold (COGS) variance, and selling, general, and administrative (SG&A) expenses variance. Each part consists of a price variance (in the case of the sales variance) or a cost or expense variance (in the case of the COGS and SG&A expense variances), and a volume variance. The sales or cost/expense variance is calculated as the change in unit price or per-unit cost/expense times the new volume, while the volume variance is calculated as the change in volume times the old unit price or per-unit cost/expense. As summarized at the bottom of the table, the price variance is from sales, the cost/expense variance is the sum of those items from COG and SG&A variances, respectively, and the

(continued...)

Table VI-1

4th tier cigarettes: Results of operations of U.S. producers (including effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
Total net sales	***	***	***	***	***
	Value (1,000 dollars)				
Total net sales	***	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Total COGS	***	***	***	***	***
Gross profit	***	***	***	***	***
SG&A expense	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Interest expense	***	***	***	***	***
All other expenses	***	***	***	***	***
All other income	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Depreciation/amortization	***	***	***	***	***
Est. cash flow from operations	***	***	***	***	***

Table continued on next page.

volume variance is the sum of the volume components of the net sales, COGS, and SG&A expenses variances. The Commission’s variance analysis is generally more meaningful when product mix remains the same throughout the period. While noting that there are no 4th tier cigarette sub-products, Petitioners’ postconference brief stated ***. Petitioners’ postconference brief (Exhibit 1), p. 5. ***. *** indicated that there were no significant changes in its product mix during the period. Email with attachment from *** to USITC staff, September 15, 2020. In general and while there were some variations in product mix during the period, these variations appear to have been minor.

Table VI-1—Continued

4th tier cigarettes: Results of operations of U.S. producers (including effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Ratio to net sales (percent)				
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit	***	***	***	***	***
SG&A expense	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
	Ratio to total COGS (percent)				
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
	Unit value (dollars per carton)				
Total net sales	***	***	***	***	***
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit	***	***	***	***	***
SG&A expense	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
	Number of firms reporting				
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Data	4	4	4	4	4

Note.—The financial results on 4th tier cigarettes presented in this section of the report classify MSA and NPM escrow payments as a separate component COGS (see *MSA and NPM escrow payments* section).

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-2

4th tier cigarettes: Changes in AUV's (including effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Between calendar years			Between partial year period
	2017-19	2017-18	2018-19	2019-20
	Change in AUVs (percent)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA and NPM accruals	***	***	***	***
Average COGS	***	***	***	***
	Change in AUVs (dollars per carton)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA and NPM accruals	***	***	***	***
Average COGS	***	***	***	***
Gross profit	***	***	***	***
SG&A expense	***	***	***	***
Operating income or (loss)	***	***	***	***
Net income or (loss)	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-3

4th tier cigarettes: Variance analysis on operations of U.S. producers (including effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Between calendar years			Between partial year period
	2017-19	2017-18	2018-19	2019-20
	Value (1,000 dollars)			
Net sales:				
Price variance	***	***	***	***
Volume variance	***	***	***	***
Net sales variance	***	***	***	***
COGS:				
Cost variance	***	***	***	***
Volume variance	***	***	***	***
COGS variance	***	***	***	***
Gross profit variance	***	***	***	***
SG&A expenses:				
Cost/expense variance	***	***	***	***
Volume variance	***	***	***	***
Total SG&A expense variance	***	***	***	***
Operating income variance	***	***	***	***
Summarized as:				
Price variance	***	***	***	***
Net cost/expense variance	***	***	***	***
Net volume variance	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-4

4th tier cigarettes: Results of operations of U.S. producers (including effective expense of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Total net sales (cartons)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Total net sales (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Cost of goods sold (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Gross profit or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	SG&A expenses (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Operating income or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Table continued on next page.

Table VI-4—Continued

4th tier cigarettes: Results of operations of U.S. producers (including effective expense of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Net income or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	COGS to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Gross profit or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	SG&A expenses to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Operating income or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Net income or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Table continued on next page.

Table VI-4—Continued

4th tier cigarettes: Results of operations of U.S. producers (including effective expense of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Unit net sales value (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit raw materials (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit direct labor (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit other factory costs (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit MSA and NPM accruals (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit COGS (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Table continued on next page.

Table VI-4—Continued

4th tier cigarettes: Results of operations of U.S. producers (including effective expense of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Unit gross profit or (loss) (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit SG&A expenses (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit operating income or (loss) (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit net income or (loss) (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Note 1.—The financial results on 4th tier cigarettes presented in this section of the report classify MSA and NPM escrow payments as a separate component COGS (see *MSA and NPM escrow payments* section). ***.

Note 2.—Average per carton MSA and NPM escrow payments reflect weighted averages. Average per carton amounts for NPM escrow payments, relevant to (***), reflect variations in the quantity of sales being made to specific states (see *MSA and NPM escrow payments* section).

Source: Compiled from data submitted in response to Commission questionnaires.

Revenue

Commercial sales of 4th tier cigarettes represent the primary category of revenue reported by U.S. producers.⁷ Accordingly, a single revenue line item is presented in the relevant tables above.

Quantity

The U.S. industry's total sales quantity increased throughout the full-year period and was higher in January-June 2020 compared to January-June 2019. The increases in 2018 and 2019 sales quantity, as well as higher sales quantity in January-June 2020 compared to January-June 2019, were primarily attributable to *** and to a lesser extent ***. In contrast, *** reported a mixed pattern of increases (2017-18) and declines (2018-19, January-June 2020 compared to January-June 2019) while *** was the *** U.S. producer that reported declining sales quantity throughout the period.

Value

Sales values are net of relevant rebates, which reportedly increased during the period.⁸ In addition to traditional manufacturing costs, sales value attempts to recover various other costs such as FDA fees, excise taxes, and MSA and NPM escrow payments and/or fees.⁹ It should be noted that federal excise taxes are the obligation of the manufacturer, while state excise taxes are the responsibility of the stamping entity. The extent to which state excise taxes

⁷ ***. Email with attachments from *** on behalf of ***, October 1, 2020.

⁸ Conference transcript, p 105 (Pickard); pp. 31-32 (Smith).

⁹ ***. Email from *** with attachment to USITC staff, September 15, 2020. ***. Email from *** with attachment to USITC staff, September 15, 2020. ***. Email with attachment from *** to USITC staff, September 15, 2020.

are paid by the manufacturer and indirectly reflected in reported sales values varies by U.S. producer.¹⁰

While the U.S. industry's average per carton sales value declined during the full-year period, U.S. producers were mixed in terms of directional pattern: *** reported a decline in 2018 and an increase in 2019, *** reported increases during the full-year period, *** reported an increase in 2018 and no change in 2019, and *** reported declines during the full-year period. The U.S. industry's average per carton sales value was somewhat higher in January-June 2020 compared to January-June 2019 with *** U.S. producers, ***, reporting higher average per carton sales values.

Notwithstanding the overall decline in average sales value during the full-year period, the U.S. industry's total sales value increased between 2017 and 2019 due to higher sales quantity. This is reflected in the revenue section of the variance analysis (table VI-3), which shows that larger positive sales volume variances more than offset the impact of smaller negative price variances. In contrast, the increase in total sales value in January-June 2020 compared to January-June 2019 reflects the impact of positive price and volume variances, the effect of the positive volume variance predominating.

Cost of goods sold and gross profit or loss

As noted in the *MSA and NPM escrow payments* section below and specifically with respect to the financial results presented in this report (Part VI and Appendix G) NPM and MSA payments are classified as part of COGS.

Raw materials

Total raw material cost was the second largest component of COGS, ranging from *** percent of total COGS (2017) to *** percent (January-June 2020). On a company-specific basis, tobacco as a share of total raw material cost (2019) ranged from *** percent (***)

¹⁰ The stamping entity could be the manufacturer or the wholesaler. ***. USITC auditor preliminary phase notes. In contrast, Xcaliber indicated that all stamping of its cigarettes is done by wholesalers. Conference transcript, p. 137 (Smith). ***. Email with attachment from *** on behalf of *** to USITC staff, September 15, 2020.

)) to *** percent ().¹¹ The remaining items that make up raw material cost include ***.¹²

Between 2017 and 2018, all U.S. producers reported increases in average per carton raw material costs. The company-specific directional pattern was then mixed between 2018 and 2019 with *** reporting an increase, *** reporting declines, and *** reporting no change. Between the interim periods the pattern was more uniform with *** U.S. producers, ***, reporting higher average per carton raw material costs in January-June 2020 compared to January-June 2019.¹³

Direct labor and Other factory costs

At *** percent of total COGS (throughout the period), direct labor was the smallest component of COGS. Notwithstanding some company-specific variations, the U.S. industry's overall average per carton direct labor cost remained within a narrow range.¹⁴

Other factory costs is the largest component of COGS, ranging from *** percent of total COGS (January-June 2020) to *** percent (2017). While including traditional manufacturing overhead, other factory costs largely represent costs such as FDA user fees, federal excise taxes, and, when applicable, state excise taxes.¹⁵ For routine financial reporting purposes

¹¹ *** 4th tier cigarette producers reported that they purchased material inputs from unrelated suppliers. *** U.S. producer questionnaires, responses to III-6 and III-9f.

¹² *** U.S. producer questionnaire, III-9f (note 1). ***. E-mail with attachment from ***, January 13, 2020. *** provided a similar description of its other raw material costs. Email with attachment from *** to USITC staff, September 15, 2020.

¹³ As generally indicated during testimony at the staff conference, tobacco cost varies to some extent based on the underlying tobacco blends used. Company-specific average raw material costs can also reflect variations in product mix; e.g., ***. Petitioners' postconference brief (Exhibit 1), p. 2.

¹⁴ On a company-specific basis, table VI-4 shows that *** reported the highest average per carton direct labor cost. *** average direct labor cost was in the middle of the range. While *** average direct labor costs were both in a similar range, *** was the lowest on a company-specific basis throughout the period.

¹⁵ ***. Petitioners' postconference brief (Exhibit 1), p. 7. ***. Email with attachment from *** to USITC staff, January 13, 2020. ***. Email with attachment from *** to USITC staff, September 15, 2020.

U.S. producers usually classify these items as costs in determining gross results. As such and given the underlying cost categories available in the Commission’s income statement format (i.e., raw material, direct labor, other factory costs), U.S. producers reported FDA user fees, excise taxes, and related items in “other factory costs.”

Table VI-4 shows that *** reported average other factory costs that were in a roughly similar range, while *** reported higher average per carton other factory costs.¹⁶ On a company-specific basis, the pattern of directional change in average other factory costs was mixed and generally modest in terms of magnitude. On an overall basis and like average direct labor, average per carton other factory costs remained within a relatively narrow range throughout the period.

MSA and NPM escrow payments

As presented in this section of the report, MSA and NPM escrow payments account for the third largest component of COGS, ranging from *** percent of total COGS (2017) to *** percent (January-June 2020). Responding 4th tier cigarette producers are subject to NPM escrow payments on cigarette sales made in MSA settling states as non-participating manufacturers (NPM) (***) or non-escrow MSA payments as a

¹⁶ One source of this difference may be the extent to which manufacturers are also acting as their own stamping agent. ***. USITC auditor preliminary-phase notes. In contrast, Xcaliber indicated that stamping and the state excise tax on the sale of its cigarettes is incurred entirely by the wholesaler. Conference transcript, p. 97, p. 137 (Smith). ***. Email with attachment from *** on behalf of *** to USITC staff, September 15, 2020. Email from *** with attachment to USITC staff, September 15, 2020.

subsequent participating manufacturer (SPM) (***).¹⁷ Cigarette sales in Mississippi, Florida, Texas, and Minnesota, states that are not part of the MSA, impose state-specific settlement payments. In general, NPM escrow payments were instituted pursuant to the MSA to create parity between NPMs and cigarette producers directly subject to MSA payments (original participating manufacturers (OPMs) and SPMs).¹⁸

*** is the *** 4th tier cigarette producer reporting financial results to the Commission that incurs MSA obligations, which the company classified as a component of COGS. In contrast and with respect to routine financial reporting, U.S. producers that incur NPM escrow obligations vary in terms of whether NPM escrow payments are included in their financial results: *** includes NPM escrow payments as part of COGS and therefore as a component of its income statement while *** exclude NPM escrow payments from their respective income statements.¹⁹ ²⁰ While different cost classifications for NPM

¹⁷ ***. Email with attachment from *** to USITC staff, September 15, 2020.

***. *** U.S. producer questionnaires, response to V-16b.

¹⁸ Conference transcript, p. 109 (Estes). NPM escrow payments, which are to be held for 25 years, were established so that NPMs would have funds available to settle any future tobacco-related lawsuits brought by MSA states. How these funds will ultimately be disposed of is unknown. Ibid. Conference transcript, p. 32 (Smith). Petitioners' postconference brief, p. 20.

¹⁹ ***. *** U.S. producer questionnaire, responses to III-9c-d. ***. *** U.S. producer questionnaire, response to III-9c. ***. *** U.S. producer questionnaire, response to III-9c. ***. Petitioners' postconference brief (Exhibit 1). USITC auditor preliminary-phase notes.

²⁰ Some non-MSA states reportedly impose NPM fees, which, according to one U.S. producer, are unambiguously an expense for financial reporting purposes. USITC auditor preliminary-phase notes.

escrow payments have been chosen by U.S. producers and sanctioned by external auditors,²¹ a consistent format enhances the evaluation of the U.S. industry's financial results. Accordingly, in this section of the report, all NPM escrow payments are classified, along with MSA payments, as a separate COGS item.²² Alternatively, Appendix H separately presents both the financial results of 4th tier cigarette producers excluding NPM escrow payments as a cost (table H-1) and financial results reflecting company-specific accounting treatment of NPM escrow payments (table H-4).²³

²¹ While the notes to the audited financial statements of Cheyenne and Xcaliber describe the NPM escrow obligation (Email with attachment from Wiley Rein (Counsel for Petitioners) to USITC staff, January 17, 2020), neither appear to describe specifically why *** were adopted. ***.

***. *** U.S. producer questionnaire, response to III-9c.

²² In the preliminary phase of this investigation NPM escrow payments were classified by staff as a separate cost item below SG&A expenses. Reclassification to COGS for the final phase of this investigation is generally supported by the following: *** 4th tier cigarette producer includes NPM escrow accruals in its financial results (***); MSA payments, which appear to be a close analogue to NPM escrow payments inasmuch as the NPM escrow obligations were instituted to create parity between MSA cigarette producers and NPMs, are routinely classified by *** as part of COGS; other non-manufacturing cost items (e.g., FDA fees, federal excise taxes, and state excise taxes, when applicable) are routinely classified as a cost of sales (see footnote 15).

²³ Respondent's prehearing brief observed, as noted in footnotes 19 and 21, that effectively expensing NPM escrow payments is not universally adopted among U.S. producers. According to Respondent, its analysis of the KT&G's accounting treatment of NPM escrow payments, in conjunction with a legal opinion that all of KT&G's escrow payments will likely be recovered, supports the assertion that excluding NPM escrow payments as a cost in the income statement and considering them an unreserved asset is the only accounting treatment consistent with U.S. GAAP. The financial results information in Appendix G (all cigarettes) and Appendix H (4th tier cigarettes), specifically table G-3 and table H-1, have been added to present financial results in the manner advocated by Respondents; i.e., all NPM escrow payments are excluded as a cost in financial results. Table G-5 and table H-4 financial results have also been added and reflect company-specific accounting treatment of NPM escrow payments.

NPM escrow payment obligations are triggered when an excise stamp is affixed to the cigarette pack.²⁴ Since manufacturers can act as their own stamping agents, in addition to selling to wholesaler stamping agents,²⁵ when the NPM escrow obligation is incurred can vary. Notwithstanding differences in routine accounting treatment, U.S. producers all generally indicated that NPM escrow obligations have a direct impact on pricing, cash flow, and available working capital.²⁶

As shown in table VI-4, average per carton MSA and NPM payments amounts differ on a company-specific basis. As noted previously, *** was the *** 4th tier cigarette producer that reported MSA payments, while the other 4th tier cigarette producers (***) reported NPM escrow payments. In general, differences in average per carton NPM payments reflect variations in the mix of states in which cigarettes are being sold. For example, *** in Florida, a separately-settling (non-MSA) state that does not require NPM escrow payments. In contrast and while *** reported a larger level of NPM escrow payments compared to ***, its NPM escrow payments are *** compared to *** because it has a *** share of sales in Missouri, an MSA state with a lower effective NPM escrow payment obligation.²⁷

²⁴ Conference transcript, p. 136 (Estes).

²⁵ USITC auditor preliminary-phase notes.

²⁶ ***, *** U.S. producer questionnaire, response to III-9d. ***, *** U.S. producer questionnaire, response to III-9d. ***, *** U.S. producer questionnaire, responses to III-9c-d.

²⁷ ***. E-mail with attachment from Wiley Rein (Counsel for Petitioners) to USITC staff, January 17, 2020. ***. Email with attachment from *** on behalf of *** to USITC staff, September 15, 2020.

COGS

The U.S. industry's average per carton COGS increased in 2018 and 2019 and then was lower in January-June 2020 compared to January-June 2019. On a company-specific basis, directional changes in average COGS were generally mixed and therefore partially offsetting.

Gross profit or loss

Total gross profit declined between 2017 and 2018, marginally increased in 2019, and was higher in January-June 2020 compared to January-June 2019. In 2018, the decline in total gross profit reflects a contraction in gross profit ratio (total gross profit divided by total revenue) as total sales value increased by a smaller percentage compared to total COGS. In 2019, the marginal increase in total gross profit reflects the combination of a less pronounced but continued contraction gross profit ratio and a relatively large increase in sales quantity, which reached its highest full-year level in that year. Higher total gross profit in January-June 2020 compared to January-June 2019 reflects the positive effect of an expansion of gross profit ratio and higher total sales (quantity and value).

On a company-specific basis, *** generated the highest gross profit ratios throughout the period and *** generated the lowest. While *** began the period at about the same level in terms of gross profit ratio, *** gross profit ratio

deteriorated notably throughout most of the period with the only improvement occurring at the end of the period when its gross profit ratio increased somewhat in January-June 2020 compared to January-June 2019. In contrast, *** gross profit ratio increased modestly throughout the period, reaching its highest level in January-June 2020. The contraction of *** gross profit ratio during the full-year period reflects the combination of declining average per carton sales value and increasing average per carton COGS, which increased most notably between 2017 and 2018 due principally to ***.²⁸ The modest expansion of *** gross profit ratio in January-June 2020 compared to January-June 2019 reflects a somewhat higher average sales value that more than offset the modest corresponding increase in average COGS.

Operating expenses and operating income or loss

SG&A expenses

Total SG&A expenses increased to their highest full-year level in 2018 and then declined marginally in 2019. Fluctuations in the level of total SG&A expenses, in part, reflect non-recurring items reported by ***.²⁹

On a company-specific basis, *** SG&A expense ratios (total SG&A expenses divided by total revenue) were about the same during part of the period, diverging somewhat in 2019 and the interim period as *** SG&A expense ratio declined and *** remained about the same. *** SG&A expense ratio declined to its lowest level in January-June 2020, which reflects, in part, the absence of non-recurring items included in previous-period SG&A expenses (see footnote 28). *** reported the lowest and second lowest SG&A expense ratios, respectively throughout the period. On an overall basis, the U.S. industry's SG&A expense ratio remained within a relatively narrow range throughout the full-year period and was at its lowest level in January-June 2020.

²⁸ ***. Email with attachments from *** on behalf of ***, October 1, 2020.

²⁹ ***. *** U.S. producer questionnaire, response to III-10.

Operating income or loss

On a company-specific basis, *** generated the highest operating income ratios throughout the period. While *** reported similar operating income ratios in 2017, *** operating income ratio declined in 2018 and 2019 and then increased somewhat in January-June 2020 compared to January-June 2019. In contrast, *** operating income ratio increased throughout the period. As compared to ***, the *** financial performance of *** at the operating income level generally reflects higher and more stable gross profit ratios. In 2017 and January-June 2020, *** reported the lowest company-specific operating income ratios. For the rest of the period, *** reported the lowest operating income ratios.

Interest expense, other expenses and income, and net income or loss

While *** reported interest expense, *** reported the largest company-specific amounts. *** reported *** interest expense during the period and *** was the *** U.S. producer to report other expenses.³⁰ *** U.S. producers reported other income throughout the period.³¹

The U.S. industry's overall net income and operating income followed the same directional pattern throughout the period with total net income higher, by varying magnitudes, due to the presence of other income.

Capital expenditures and research and development expenses

Table VI-5 presents the U.S. producers' capital expenditures and research and development (R&D) expenses related to 4th tier cigarettes and table VI-6 presents firm-specific narrative descriptions.

³⁰ ***. *** U.S. producer questionnaire, response to III-10. ***. Petitioners' postconference brief (Exhibit 1), p. 7.

³¹ ***. E-mail with attachment from *** to USITC staff, January 13, 2020. ***, which also reported its *** level of other income in 2019, stated that other income ***. Petitioners' postconference brief (Exhibit 1), p. 8.

Table VI-5

4th tier cigarettes: Capital expenditures and research and development (R&D) expenses of U.S. producers, 2017-19, January-March 2019, and January-March 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Value (1,000 dollars)				
Total capital expenditures	***	***	***	***	***
	Research and development expenses (1,000 dollars)				
Total R&D expenses	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-6

4th tier cigarettes: Narrative descriptions of U.S. producers' capital expenditures and R&D expenses since January 1, 2017

Capital expenditures	
Firm	Narrative
***	***
***	***
***	***
***	***
R&D expenses	
Firm	Narrative
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Assets and return on assets

Table VI-7 presents data on the U.S. producers' total net assets and operating return on net assets related to operations on 4th tier cigarettes.³²

Table VI-7
4th tier cigarettes: U.S. producers' total net assets and operating return on net assets, 2017-19

Firm	Calendar years		
	2017	2018	2019
	Total net assets (1,000 dollars)		
Total assets—assuming all NPM escrow payments are effectively expensed	***	***	***
	Operating return on assets (percent)		
Average return on net assets—assuming all NPM escrow payments are effectively expensed	***	***	***

Note.—Total assets of 4th tier cigarette producers included in this table reflect the noted assumptions regarding effective expense of NPM escrow payments in table VI-1.

Source: Compiled from data submitted in response to Commission questionnaires.

As reported in their U.S. producer questionnaires and consistent with their treatment of NPM escrow payments, the total assets of *** included restricted balances related to NPM escrow payments. In contrast and also consistent with its treatment of NPM escrow payments, *** reported total asset amounts that effectively excluded NPM escrow balances.³³ Because financial results presented in this section of the report classify NPM escrow payments as a component of COGS (see *MSA and NPM escrow payments* section), total assets and the calculation of operating return on net assets exclude restricted NPM escrow balances.

³² With respect to a company's overall operations, staff notes that a total asset value (i.e., the bottom-line value on the asset side of a company's balance sheet) reflects an aggregation of a number of current and non-current assets, which, in many instances, are not product specific. In most cases, allocation factors are necessary in order to report total asset values on a product-specific basis. The ability of U.S. producers to assign total asset values to a discrete product, in this case 4th tier cigarettes, affects the meaningfulness of operating return on net assets.

³³ ***. As presented in Appendix G and Appendix H, the asset information and corresponding return on net assets are modified to reflect the different relevant assumptions regarding NPM escrow payments and the extent to which they are or are not included in financial results.

Capital and investment

The Commission requested the U.S. producers of 4th tier cigarettes and non-4th tier cigarettes to describe any actual or potential negative effects on their return on investment or its growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of 4th tier cigarettes from Korea. Table VI-8 tabulates the responses regarding actual negative effects on investment, growth, and development, as well as anticipated negative effects. Table VI-9 presents the narrative responses of the U.S. producers regarding actual and anticipated negative effects on investment, growth, and development.³⁴

Table VI-8
4th tier cigarettes: Negative effects of imports from subject sources on investment, growth, and development since January 1, 2017

Item	No	Yes
Negative effects on investment	***	***
Cancellation, postponement, or rejection of expansion projects		***
Denial or rejection of investment proposal		***
Reduction in the size of capital investments		***
Return on specific investments negatively impacted		***
Other		***
Negative effects on growth and development	***	***
Rejection of bank loans		***
Lowering of credit rating		***
Problem related to the issue of stocks or bonds		***
Ability to service debt		***
Other		***
Anticipated negative effects of imports	***	***

Note.—*** reported “no” regarding actual negative effects of subject imports on investment. *** reported “no” regarding actual negative effects of subject imports on growth and development.

Source: Compiled from data submitted in response to Commission questionnaires.

³⁴ ***

Table VI-9

4th tier cigarettes: Narrative responses of U.S. producers regarding actual and anticipated negative effects of imports from Korea on investment, growth, and development since January 1, 2017

Effects/Firm	Narrative
Negative impact on investment	
Cancellation, postponement, or rejection of expansion projects:	
***	***
Reduction in the size of capital investments:	
***	***
Return on specific investments negatively impacted:	
***	***
Other:	
***	***
***	***
***	***
Negative impact on growth and development	
Rejection of bank loans:	
***	***
Lowering of credit rating:	
***	***
Problem related to the issue of stocks or bonds:	
***	***

Table continued on next page.

Table VI-9—Continued

4th tier cigarettes: Narrative responses of U.S. producers regarding actual and anticipated negative effects of imports from Korea on investment, growth, and development since January 1, 2017

Effects/Firm	Narrative
Negative impact on growth and development—continued	
Other:	
***	***
***	***
***	***
***	***
***	***
***	***
Anticipated effects of imports	
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table VI-9—Continued

4th tier cigarettes: Narrative responses of U.S. producers regarding actual and anticipated negative effects of imports from Korea on investment, growth, and development since January 1, 2017

Effects/Firm	Narrative
Anticipated effects of imports—continued	
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Part VII: Threat considerations and information on nonsubject countries

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,*
- (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,*
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,*
- (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,*
- (V) inventories of the subject merchandise,*

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

- (VI) *the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,*
- (VII) *in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),*
- (VIII) *the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and*
- (IX) *any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²*

Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries.

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

The industry in Korea

The Commission issued foreign producers' or exporters' questionnaires to one firm believed to produce and/or export 4th tier cigarettes from Korea, KT&G Corporation ("KT&G").³ A usable response to the Commission's questionnaire was received from KT&G. Its exports to the United States accounted for approximately *** percent of U.S. imports of 4th tier cigarettes from Korea in 2019. According to estimates requested of the responding Korean producer, its production of 4th tier cigarettes in Korea accounts for approximately *** percent of overall production of 4th tier cigarettes in Korea.⁴ Table VII-1 presents information on the 4th tier cigarettes operations of the responding producer and exporter in Korea.

Table VII-1
4th tier cigarettes: Summary data on firms in Korea, 2019

Firm	Production (cartons)	Share of reported production (percent)	Exports to the United States (cartons)	Share of reported exports to the United States (percent)	Total shipments (cartons)	Share of firm's total shipments exported to the United States (percent)
KT&G	***	***	***	***	***	***
All firms	***	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

³ This firm were identified through a review of information submitted in the petition and contained in *** records.

⁴ KT&G foreign producer questionnaire, section II-6a.

Changes in operations

As presented in table VII-2, KT&G reported several operational and organizational changes since January 1, 2017.

Table VII-2
4th tier cigarettes: Reported changes in operations by producers in Korea, since January 1, 2017

Item / Firm	Reported changed in operations
Plant closings:	
***	***
Relocations:	
***	***
Expansions:	
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Operations on 4th tier cigarettes

Table VII-3 presents information on the 4th tier cigarettes operations of producer KT&G in Korea. During 2017-19, Korean capacity to produce 4th tier cigarettes fluctuated, but decreased overall by *** percent, and capacity was lower by *** percent in January-June 2020 compared to January-June 2019. During 2017-19, Korean production decreased by *** percent, and production was lower by *** percent in January-June 2020 compared to January-June 2019. Capacity utilization decreased by *** percentage points from 2017-19, and it was lower by *** percentage points in January-June 2020 compared to January-June 2019.

Exports to the United States increased by *** percent during 2017-19 but were *** percent higher in January-June 2020 compared to January-June 2019. Export shipments to all other markets fluctuated but decreased by *** percent during 2017-19 and were lower by *** percent in January-June 2020 compared to January-June 2019.⁵ Commercial home market shipments decreased by *** percent during 2017-19, and were higher by *** percent in January-June 2020 compared to January-June 2019.⁶ In 2019, home market shipments

⁵ KT&G identified *** as its principal export markets, which combined accounted for *** of total exports during 2019. The United States is projected to account for approximately *** of its total exports of 4th tier cigarettes from Korea in 2020. KT&G foreign producer questionnaire, section II-8.

⁶ In its questionnaire response, KT&G indicated ***. Staff amended the *** Email message from ***, January 14, 2020.

accounted for *** percent of KT&G's total shipments, while exports accounted for *** percent of total shipments, based on quantity.

Table VII-3

4th tier cigarettes: Data on industry in Korea, 2017-19, January to June 2019, January to September 2020, and projections for calendar years 2020 and 2021

Item	Actual experience					Projections	
	Calendar year			January to June		Calendar year	
	2017	2018	2019	2019	2020	2020	2021
	Quantity (cartons)						
Capacity	***	***	***	***	***	***	***
Production	***	***	***	***	***	***	***
End-of-period inventories	***	***	***	***	***	***	***
Shipments: Home market shipments: Internal consumption/transfers	***	***	***	***	***	***	***
Commercial home market shipments	***	***	***	***	***	***	***
Total home market shipments	***	***	***	***	***	***	***
Export shipments to: United States	***	***	***	***	***	***	***
All other markets	***	***	***	***	***	***	***
Total exports	***	***	***	***	***	***	***
Total shipments	***	***	***	***	***	***	***

Table continued on next page.

Table VII-3—Continued

4th tier cigarettes: Data on industry in Korea, 2017-19, January to June 2019, January to September 2020, and projections for calendar years 2020 and 2021

Item	Actual experience					Projections	
	Calendar year			January to June		Calendar year	
	2017	2018	2019	2019	2020	2020	2021
	Ratios and shares (percent)						
Capacity utilization	***	***	***	***	***	***	***
Inventories/production	***	***	***	***	***	***	***
Inventories/total shipments	***	***	***	***	***	***	***
Share of shipments: Home market shipments: Internal consumption/ transfers	***	***	***	***	***	***	***
Commercial home market shipments	***	***	***	***	***	***	***
Total home market shipments	***	***	***	***	***	***	***
Export shipments to: United States	***	***	***	***	***	***	***
All other markets	***	***	***	***	***	***	***
Total exports	***	***	***	***	***	***	***
Total shipments	***	***	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Alternative products

There were no other products produced on the same equipment as 4th tier cigarettes from January 1, 2017 through June 30, 2020.

Exports

According to GTA, the leading export markets for all cigarettes from Korea are Japan, United Arab Emirates (“UAE”), and Hong Kong (table VII-4). During 2019, the United States was the fifth export market for all cigarettes from Korea, accounting for 6.9 percent.

Table VII-4
All cigarettes: Korea exports by destination, 2017-19

Destination market	Calendar year		
	2017	2018	2019
	Quantity (Numbers)		
United States	134,121,024	125,325,120	180,663,936
Japan	891,828,492	890,502,220	900,486,070
United Arab Emirates	1,216,252,831	544,627,367	339,198,157
Thailand	216,567,000	204,250,000	219,423,500
Hong Kong	97,686,901	229,750,412	195,503,257
Libya	60,828,500	156,715,500	169,061,500
Panama	7,839,500	36,653,500	130,306,500
Vietnam	247,708,620	127,092,500	111,711,500
Taiwan	90,591,418	104,540,993	95,949,460
All other destination markets	677,075,663	344,315,053	287,691,266
Total exports	3,640,499,949	2,763,772,665	2,629,995,146
	Value (1,000 dollars)		
United States	94,860	60,380	65,406
Japan	209,783	212,979	218,566
United Arab Emirates	409,326	164,955	98,944
Thailand	74,445	71,212	82,023
Hong Kong	30,385	73,014	67,715
Libya	8,670	21,905	25,786
Panama	1,116	7,229	17,182
Vietnam	88,312	43,112	42,560
Taiwan	27,711	30,305	27,453
All other destination markets	180,953	107,082	71,773
Total exports	1,125,560	792,173	717,409

Table continued on next page.

Table VII-4—Continued
All cigarettes: Korea exports by destination, 2017-19

Destination market	Calendar year		
	2017	2018	2019
	Unit value (dollars per number)		
United States	0.71	0.48	0.36
Japan	0.24	0.24	0.24
United Arab Emirates	0.34	0.30	0.29
Thailand	0.34	0.35	0.37
Hong Kong	0.31	0.32	0.35
Libya	0.14	0.14	0.15
Panama	0.14	0.20	0.13
Vietnam	0.36	0.34	0.38
Taiwan	0.31	0.29	0.29
All other destination markets	0.27	0.31	0.25
Total exports	0.31	0.29	0.27
	Share of quantity (percent)		
United States	3.7	4.5	6.9
Japan	24.5	32.2	34.2
United Arab Emirates	33.4	19.7	12.9
Thailand	5.9	7.4	8.3
Hong Kong	2.7	8.3	7.4
Libya	1.7	5.7	6.4
Panama	0.2	1.3	5.0
Vietnam	6.8	4.6	4.2
Taiwan	2.5	3.8	3.6
All other destination markets	18.6	12.5	10.9
Total exports	100.0	100.0	100.0

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent. United States is shown at the top, all remaining top export destinations shown in descending order of 2018 data.

Source: Official exports statistics under HS subheading 2402.20 as reported by Korea Customs and Trade Development Institution in the Global Trade Atlas database, accessed August 31, 2020.

U.S. inventories of imported merchandise

Table VII-5 presents data on U.S. importers' reported inventories of 4th tier cigarettes. During 2017-19, U.S. importers' end-of-period inventories of imports from Korea decreased by *** percent and were *** percent lower in January-June 2020 compared to January-June 2019. KT&G USA was account for all U.S. importers' inventories from Korea. U.S. importers' end-of-period inventories from nonsubject sources increased by *** percent from 2017-19, and were lower by *** percent in January-June 2020 compared to January-June 2019.

Table VII-5

4th tier cigarettes: U.S. importers' inventories, 2017-19, January to September 2019, and January to September 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Inventories (cartons); Ratios (percent)				
Imports from Korea Inventories	***	***	***	***	***
Ratio to U.S. imports	***	***	***	***	***
Ratio to U.S. shipments of imports	***	***	***	***	***
Ratio to total shipments of imports	***	***	***	***	***
Imports from nonsubject sources: Inventories	***	***	***	***	***
Ratio to U.S. imports	***	***	***	***	***
Ratio to U.S. shipments of imports	***	***	***	***	***
Ratio to total shipments of imports	***	***	***	***	***
Imports from all import sources: Inventories	***	***	***	***	***
Ratio to U.S. imports	***	***	***	***	***
Ratio to U.S. shipments of imports	***	***	***	***	***
Ratio to total shipments of imports	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. importers' outstanding orders

The Commission requested importers to indicate whether they imported or arranged for the importation of 4th tier cigarettes from Korea after September 30, 2019 (table VII-6). During July 2020 through September 2020, responding subject U.S. importers reported *** of arranged imports of 4th tier cigarettes from Korea. Imports from Korea accounted for approximately *** percent of 4th tier cigarettes from July 1, 2020 through September 30, 2020. There were no arranged imports from Korea after September 30, 2020.

Table VII-6

4th tier cigarettes: Arranged imports, July 2020 through April 2021

Item	Period				
	Jul-Sep 2020	Oct-Dec 2020	Jan-Mar 2021	Apr-Jun 2021	Total
	Quantity (cartons)				
Arranged U.S. imports from.-- Korea	***	***	***	***	***
Canada	***	***	***	***	***
All other sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Antidumping or countervailing duty orders in third-country markets

There are no known trade remedy actions on 4th tier cigarettes in third-country markets.

Information on nonsubject countries

The industry in Canada

Canada is a relatively small global exporter of cigarettes, ranking 29th among all world exporters in 2019.⁷ Canada primarily exports to the United States, which accounted for 83.3 percent of total cigarette exports in 2019.⁸ However, Canada is a net importer of cigarettes, importing nearly ten times of value (\$1.3 billion) of exports (\$140 million) in 2019.⁹ According to official U.S. import statistics, Canada is the leading source of U.S. imports of all cigarettes; in 2019, the U.S. imports from Canada were 19 million cartons.¹⁰

Canada's cigarette manufacturing revenues were \$2.4 billion in 2019, while production was 15.4 billion units in 2016 (latest available data).¹¹ The tobacco industry in Canada is divided into premium cigarette brands, mainstream cigarette brands, deep discount cigarette brands, other tobacco products, and tobacco stemming and redrying. The market is dominated by two firms: Rothmans, Benson & Hedges Inc. ("RBH"), a subsidiary of Phillip Morris International, and JTI-Macdonald Corp. RBH is the largest fully integrated Canadian cigarette manufacturer.¹² Cigarette sales in Canada have declined from 2001 to 2017 in both absolute and per capita terms.¹³ The Government of Canada ("GOC") has found that discount and premium cigarettes have the same physical characteristics and that discount cigarettes have gained "considerable market share" from premium and other tier cigarettes. GOC has also cited evidence that

⁷ "Tobacco Cigarettes Exports by Country," World's Top Exports, May 1, 2020, <http://www.worldstopexports.com/tobacco-cigarettes-exports-country/>.

⁸ Official Statistics of Canada, <https://www.ic.gc.ca/app/scr/tdst/tdo/crtr.html;jsessionid=00017SGCBobiPuCCbgkLtY33bAV:-1004GGF?lang=eng&hSelectedCodes=3122&searchType=BL&productType=NAICS¤cy=CDN&runReport=true&grouped=GROUPED&toFromCountry=CDN&naArea=9999&timePeriod=CustomYears&reportType=TE&countryList=TOP&customYears=2019> (accessed October 20, 2020).

⁹ "Cigarette & Tobacco Manufacturing in Canada," Ibisworld, November 2019, <https://www.ibisworld.com/canada/market-research-reports/cigarette-tobacco-manufacturing-industry/>.

¹⁰ USITC Dataweb, accessed January 17, 2020.

¹¹ "Cigarette & Tobacco Manufacturing in Canada," Ibisworld, November 2019, <https://www.ibisworld.com/canada/market-research-reports/cigarette-tobacco-manufacturing-industry/>; Tobacco Atlas, <https://tobaccoatlas.org/country/canada/>.

¹² Ibisworld, <https://www.ibisworld.com/canada/market-research-reports/cigarette-tobacco-manufacturing-industry/>.

¹³ "Tobacco Use in Canada," University of Waterloo, <https://uwaterloo.ca/tobacco-use-canada/adult-tobacco-use/cigarette-sales-and-sources> (accessed October 21, 2010).

individuals will switch from premium to discount brands in lieu of quitting or reducing the number of cigarettes.¹⁴

Table VII-7 presents exports of all cigarettes from Canada, based on value, by destination market during 2017-19. From 2017-2019, the United States was the largest destination market for all of Canada's cigarettes' exports with at least 97.9 percent share of value in each year.

Table VII-7
All cigarettes: Canada exports by destination market, 2017-19

Destination market	Calendar year		
	2017	2018	2019
	Value (1,000 dollars)		
United States	103,130	103,145	101,711
Singapore	1,553	209	1,201
Vietnam	1,082	665	432
France	112	485	302
Netherlands	---	116	137
Bahamas	---	---	42
Brazil	17	32	28
Switzerland	---	---	2
St. Pierre & Miquelon	375	---	---
All other destination markets	767	62	0
Total exports	107,036	104,716	103,855
	Share of value (percent)		
United States	96.4	98.5	97.9
Singapore	1.5	0.2	1.2
Vietnam	1.0	0.6	0.4
France	0.1	0.5	0.3
Netherlands	---	0.1	0.1
Bahamas	---	---	0.0
Brazil	0.0	0.0	0.0
Switzerland	---	---	0.0
St. Pierre & Miquelon	0.4	---	---
All other destination markets	0.7	0.1	0.0
Total exports	100.0	100.0	100.0

Source: Official exports statistics under HS subheading 2402.20 as reported by Statistics Canada in the Global Trade Atlas database, accessed October 4, 2020.

¹⁴ Canada Health Services, <https://www.canada.ca/en/health-canada/services/publications/healthy-living/discount-cigarettes.html> (accessed October 21, 2010).

The industry in Turkey

Turkey was the second-largest source of nonsubject imports of all cigarettes and the third-largest source of all cigarettes. According to official import statistics, the United States imported 8 million cartons from Turkey in 2019.¹⁵ Turkey is the world's 16th largest global supplier of cigarettes, accounting for \$470 million of exports in 2019.¹⁶ Turkey is also a leading exporter of tobacco globally and the world's largest supplier of Oriental (Turkish) tobacco. In 2016, Turkey produced 76,000 mt of tobacco valued at \$233 million.¹⁷

Turkey produced roughly 160 billion cigarettes in 2016. Economy-priced cigarettes (likely equivalent to 4th tier cigarettes) are the leading cigarette category in Turkey by market share.¹⁸ Cigarette manufacturing in Turkey is dominated by transnational tobacco companies ("TTCs") who invested heavily in the industry over recent decades and now control over 99 percent of the market.¹⁹ Until 2008, the government-owned Monopoly, Tekel was the only domestic manufacturer, but was acquired by British American Tobacco (BAT) that year. Turkey is an important regional manufacturing base for TTCs. BAT, the largest Turkish exporter uses Turkey as a manufacturing hub to supply the Middle East, North Africa and other world markets.²⁰

¹⁵ USITC Dataweb, accessed January 17, 2020.

¹⁶ "Tobacco Cigarettes Exports by Country," World's Top Exports, May 1, 2020, <http://www.worldstopexports.com/tobacco-cigarettes-exports-country/>.

¹⁷ Latest available data. Statista, <https://www.statista.com/statistics/261186/leading-countries-worldwide-based-on-tobacco-production-value/> Tobacco Asia, May 2, 2019, <https://www.tobaccoasia.com/news/balkans-and-turkey-oriental-tobacco-crop-report/>; "Tobacco Production in Turkey," "Tobacco Production in Turkey," Cooperation Center for Scientific Research Relative to Tobacco, 2015, <https://www.coresta.org/abstracts/tobacco-production-turkey-28070.html>.

¹⁸ "Anti-tobacco control industry strategies in Turkey," BMC Public Health, February 26, 2018, <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-018-5071-z>.

¹⁹ "Anti-tobacco control industry strategies in Turkey," BMC Health, 2018, <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-018-5071-z>.

²⁰ "BAT Turkey sector leader in tobacco exports," Hurriyet Daily News, April 18, 2019, <https://www.hurriyetdailynews.com/bat-turkey-sector-leader-in-tobacco-exports-142763>.

The industry in Paraguay

Paraguay is the sixth-largest source of nonsubject imports of all cigarettes and the seventh-largest source of all cigarettes, according to official import statistics.²¹ In 2019, the United States imported 148 thousand cartons.²² Cigarette manufacturing is dominated by Tabacalera del Este (“Tabesa”). Tabesa is one of two Latin American tobacco companies that actively exports to the United States, selling its brand Palermo in seven U.S. states: Delaware, Georgia, Illinois, Kansas, Utah, Virginia, and West Virginia.²³

Cigarette production in Paraguay has grown exponentially from virtually zero in 1989 to over 45 billion units in 2017.²⁴ Paraguay is a small producer of tobacco, and imports most of the tobacco inputs for cigarette manufacturing from Brazil, a leading global producer.²⁵ Paraguay’s domestic consumption represents a small fraction annual production and reportedly a large share of output is destined for the black market and sold illicitly in Latin America and other world markets.²⁶ According to academic tobacco control researchers, the dominant Paraguayan producer, Tabesa “expanded its markets worldwide, largely through the illegal trade and export of billions of low-priced brands, while expanding legally to the United States to fend off smuggling allegations.”²⁷

²¹ According to questionnaire data, Paraguay was a major nonsubject source of 4th tier cigarettes.

²² USITC Dataweb, accessed January 17, 2020.

²³ “We think globally”: the rise of Paraguay’s Tabacalera del Este as a threat to global tobacco control, BMC, 2018, <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-018-0412-3#Sec4>.

²⁴ “How Paraguay dumps billions of illicit cigarettes on the global market,” The Conversation December 16, 2018, <https://theconversation.com/how-paraguay-dumps-billions-of-illicit-cigarettes-on-the-global-market-107679>; “We think globally”: the rise of Paraguay’s Tabacalera del Este as a threat to global tobacco control, BMC, 2018, <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-018-0412-3#Sec4>.

²⁵ “Discrepancies in the Brazilian tobacco production chain: raw inputs, international trade and legal cigarette production,” BMJ Journals, October 28, 2019, <https://tobaccocontrol.bmj.com/content/early/2020/08/24/tobaccocontrol-2019-055265>.

²⁶ “Sneaking a Smoke,” Foreign Affairs, February 5, 2016, <https://www.foreignaffairs.com/articles/paraguay/2016-02-05/sneaking-smoke>.

²⁷ “How Paraguay dumps billions of illicit cigarettes on the global market,” The Conversation December 16, 2018, <https://theconversation.com/how-paraguay-dumps-billions-of-illicit-cigarettes-on-the-global-market-107679>; “We think globally”: the rise of Paraguay’s Tabacalera del Este as a threat to global tobacco control, BMC, 2018

Table VII-8 presents global exports data (based on value) for all cigarettes by exporter for 2017-19.

Table VII-8
All cigarettes: Global exports by exporter, 2017-19

Exporter	Calendar year		
	2017	2018	2019
	Value (1,000 dollars)		
United States	900,326	1,071,936	836,027
Korea	1,125,560	792,173	717,409
United Arab Emirates	212,915	4,204,090	4,257,731
Poland	2,927,165	3,356,135	3,491,945
Germany	3,025,840	2,790,071	2,300,847
Hong Kong	1,000,385	1,137,721	1,098,441
Singapore	1,047,359	1,054,441	1,061,593
Netherlands	1,631,499	1,281,554	943,631
Indonesia	821,768	856,559	822,733
Czech Republic	881,259	726,165	785,165
Romania	744,427	684,950	741,274
Lithuania	540,143	850,398	731,362
All other exporters	6,744,533	7,195,584	6,086,568
All reporting exporters	21,603,178	26,001,778	23,874,726
	Share of value (percent)		
United States	4.2	4.1	3.5
Korea	5.2	3.0	3.0
United Arab Emirates	1.0	16.2	17.8
Poland	13.5	12.9	14.6
Germany	14.0	10.7	9.6
Hong Kong	4.6	4.4	4.6
Singapore	4.8	4.1	4.4
Netherlands	7.6	4.9	4.0
Indonesia	3.8	3.3	3.4
Czech Republic	4.1	2.8	3.3
Romania	3.4	2.6	3.1
Lithuania	2.5	3.3	3.1
All other exporters	31.2	27.7	25.5
All reporting exporters	100.0	100.0	100.0

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent. United Arab Emirates 2019 data unavailable.

Source: Official exports statistics under HS subheading 2402.20 reported by various national statistical authorities in the Global Trade Atlas database, accessed August 31, 2020.

APPENDIX A

FEDERAL REGISTER NOTICES

The Commission makes available notices relevant to its investigations and reviews on its website, www.usitc.gov. In addition, the following tabulation presents, in chronological order, *Federal Register* notices issued by the Commission and Commerce during the current proceeding.

Citation	Title	Link
84 FR 70797, December 26, 2019	<i>4th Tier Cigarettes From Korea; Institution of Antidumping Duty Investigation and Scheduling of Preliminary Phase Investigation</i>	https://www.govinfo.gov/content/pkg/FR-2019-12-26/pdf/2019-27722.pdf
85 FR 2390, January 15, 2020	<i>4th Tier Cigarettes From the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation</i>	https://www.govinfo.gov/content/pkg/FR-2020-01-15/pdf/2020-00452.pdf
85 FR 7330, February 7, 2020	<i>4th Tier Cigarettes From Korea</i>	https://www.govinfo.gov/content/pkg/FR-2020-02-07/pdf/2020-02451.pdf
85 FR 46718, July 15, 2020	<i>4th Tier Cigarettes From Korea; Scheduling of the Final Phase of an Anti-Dumping Duty Investigation</i>	https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16817.pdf
85 FR 44281, July 22, 2020	<i>4th Tier Cigarettes From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances</i>	https://www.govinfo.gov/content/pkg/FR-2020-07-22/pdf/2020-15841.pdf
85 FR 59543, September 22, 2020	<i>4th Tier Cigarettes From Korea; Revised Schedule of the Final Phase of Antidumping Duty Investigation</i>	https://www.govinfo.gov/content/pkg/FR-2020-09-22/pdf/2020-20833.pdf

Citation	Title	Link
85 FR 79994, December 11, 2020	<i>4th Tier Cigarettes From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances</i>	https://www.govinfo.gov/content/pkg/FR-2020-12-11/pdf/2020-27308.pdf

APPENDIX B

LIST OF HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below participated in the United States International Trade Commission's hearing via video conference:

Subject: 4th Tier Cigarettes from Korea

Inv. No.: 731-TA-1465 (Final)

Date and Time: December 3, 2020 - 9:30 a.m.

OPENING REMARKS:

In Support of Imposition (**Daniel B. Pickard**, Wiley Rein LLP)

In Opposition to Imposition (**Shara L. Aranoff**, Covington & Burling LLP)

In Support of the Imposition of Antidumping Duty Order:

Wiley Rein LLP
Washington, DC
on behalf of

Coalition Against Korean Cigarettes ("CAKC")

David Scott, Chief Executive Officer, Cheyenne International

Derrick Taylor, Chief Executive Officer, Xcaliber International

Jay Smith, Chief Financial Officer, Xcaliber International

Eric Estes, General Counsel, Xcaliber International

Joe Nicolaus, National Sales Manager, Xcaliber International

Jesse Phillips, Assistant Director of Research and Development,
Xcaliber International

Amy E. Sherman, International Trade Analyst, Wiley Rein LLP

Daniel B. Pickard)
Stephanie M. Bell) – OF COUNSEL
Claire M. Webster)

In Opposition to the Imposition of Antidumping Duty Order:

Covington & Burling LLP
Washington, DC
on behalf of

KT&G Corporation
KT&G USA Corporation

Taik Jin (TJ) Song, Senior Manager, KT&G Corporation

Luis Charles Gomes, Quality Control Sales Manager, KT&G
USA Corporation

Aviv Nevo, University Professor, University of Pennsylvania

Thomas A. Guglielmi, Partner, Ernst & Young LLP

Leonard Violi, Law Offices of Leonard Violi, LLC

Charles Anderson, Principal, Capital Trade Inc.

Andrew Szamosszegi, Principal, Capital Trade Inc.

Travis Pope, Project Manager, Capital Trade Inc.

Shara L. Aranoff)

) – OF COUNSEL

James M. Smith)

REBUTTAL/CLOSING REMARKS:

In Support of Imposition (**Daniel B. Pickard**, Wiley Rein LLP)

In Opposition to Imposition (**Shara L. Aranoff**, Covington & Burling LLP)

-END-

APPENDIX C
SUMMARY DATA

Table C-1:	4th Tier Cigarettes Summary data.....	C-1
Table C-2:	All Cigarettes Summary data.....	C-3

Co-extensive domestic like product

Table C-1

4th tier cigarettes: Summary data concerning the U.S. market, 2017-19, January to June 2019, and January to June 2020

(Quantity=cartons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per carton; Period changes=percent--exceptions noted)

	Reported data					Period changes			
	2017	Calendar year		January to June		Comparison years			Jan-Jun
		2018	2019	2019	2020	2017-19	2017-18	2018-19	2019-20
U.S. consumption quantity:									
Amount.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Producers' share (fn1).....	***	***	***	***	***	▼***	▼***	▼***	▼***
Importers' share (fn1):									
Korea.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Canada.....	***	***	***	***	***	▼***	▼***	▼***	▼***
All other sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Nonsubject sources.....	***	***	***	***	***	▲***	▲***	▼***	▼***
All import sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
U.S. consumption value:									
Amount.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Producers' share (fn1).....	***	***	***	***	***	▼***	▼***	▼***	▼***
Importers' share (fn1):									
Korea.....	***	***	***	***	***	▲***	▼***	▲***	▲***
Canada.....	***	***	***	***	***	▼***	▼***	▼***	▼***
All other sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Nonsubject sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
All import sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
U.S. importers' U.S. shipments of imports from:									
Korea:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▼***	▼***	▼***	▼***
Ending inventory quantity.....	***	***	***	***	***	▼***	▼***	▼***	▼***
Canada:									
Quantity.....	***	***	***	***	***	▲***	▼***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Ending inventory quantity.....	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Ending inventory quantity.....	***	***	***	***	***	▲***	▲***	▲***	▼***
Nonsubject sources:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Ending inventory quantity.....	***	***	***	***	***	▲***	▲***	▲***	▼***
All import sources:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▼***	▲***	▼***	▲***
Ending inventory quantity.....	***	***	***	***	***	▼***	▼***	▼***	▼***
U.S. producers':									
Average capacity quantity.....	***	***	***	***	***	▲***	▲***	▼***	▲***
Production quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Capacity utilization (fn1).....	***	***	***	***	***	▲***	▲***	▲***	▼***
U.S. shipments:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▼***	▼***	▼***	▲***
Export shipments:									
Quantity.....	***	***	***	***	***	▼***	▲***	▼***	▼***
Value.....	***	***	***	***	***	▲***	▲***	▼***	▼***
Unit value.....	***	***	***	***	***	▲***	▲***	▼***	▼***
Ending inventory quantity.....	***	***	***	***	***	▲***	▼***	▲***	▲***
Inventories/total shipments (fn1).....	***	***	***	***	***	▼***	▼***	▲***	▲***
Production workers.....	***	***	***	***	***	▼***	▼***	▼***	▲***
Hours worked (1,000s).....	***	***	***	***	***	▲***	▲***	▲***	▲***
Wages paid (\$1,000).....	***	***	***	***	***	▲***	▲***	▲***	▲***
Hourly wages (dollars per hour).....	***	***	***	***	***	▲***	▲***	▼***	▲***
Productivity (cartons per hour).....	***	***	***	***	***	▼***	▼***	▲***	▲***
Unit labor costs.....	***	***	***	***	***	▲***	▲***	▼***	▼***

Table continued on next page.

Table C-1--Continued

4th tier cigarettes: Summary data concerning the U.S. market, 2017-19, January to June 2019, and January to June 2020

(Quantity=cartons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per carton; Period changes=percent--exceptions noted)

	Reported data					Period changes			
	2017	Calendar year		January to June		Comparison years			Jan-Jun
		2018	2019	2019	2020	2017-19	2017-18	2018-19	2019-20
U.S. producers--Continued									
Net sales:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▼***	▼***	▼***	▲***
Cost of goods sold (COGS).....	***	***	***	***	***	▲***	▲***	▲***	▲***
Gross profit or (loss) (fn2).....	***	***	***	***	***	▼***	▼***	▲***	▲***
SG&A expenses.....	***	***	***	***	***	▲***	▲***	▼***	▲***
Operating income or (loss) (fn2).....	***	***	***	***	***	▼***	▼***	▲***	▲***
Net income or (loss) (fn2).....	***	***	***	***	***	▼***	▼***	▲***	▲***
Capital expenditures.....	***	***	***	***	***	▲***	▼***	▲***	▼***
Research and development expenses....	***	***	***	***	***	▼***	▼***	▲***	▼***
Net assets.....	***	***	***	***	***	▲***	▲***	▲***	***
Unit COGS.....	***	***	***	***	***	▲***	▲***	▲***	▼***
Unit SG&A expenses.....	***	***	***	***	***	▼***	▲***	▼***	▼***
Unit operating income or (loss) (fn2).....	***	***	***	***	***	▼***	▼***	▼***	▲***
Unit net income or (loss) (fn2).....	***	***	***	***	***	▼***	▼***	▲***	▲***
COGS/sales (fn1).....	***	***	***	***	***	▲***	▲***	▲***	▼***
Operating income or (loss)/sales (fn1)....	***	***	***	***	***	▼***	▼***	▼***	▲***
Net income or (loss)/sales (fn1).....	***	***	***	***	***	▼***	▼***	▲***	▲***

Note.--Shares and ratios shown as "0.0" percent represent non-zero values less than "0.05" percent (if positive) and greater than "(0.05)" percent (if negative). Zeroes, null values, and undefined calculations are suppressed and shown as "--". Period changes preceded by a "▲" represent an increase, while period changes preceded by a "▼" represent a decrease.

fn1.--Reported data are in percent and period changes are in percentage points.

fn2.--Percent changes only calculated when both comparison values represent profits; The directional change in profitability provided when one or both comparison values represent a loss.

Source: Compiled from data submitted in response to Commission questionnaires.

Expanded domestic like product

Table C-2

All cigarettes: Summary data concerning the U.S. market, 2017-19, January to June 2019, and January to June 2020

(Quantity=cartons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per carton; Period changes=percent--exceptions noted)

	Reported data					Period changes			
	2017	Calendar year		January to June		Comparison years			Jan-Jun
		2018	2019	2019	2020	2017-19	2017-18	2018-19	2019-20
U.S. consumption quantity:									
Amount.....	***	***	***	***	***	▼***	▼***	▼***	▲***
Producers' share (fn1).....	***	***	***	***	***	▼***	▼***	▼***	▼***
Importers' share (fn1):									
Subject sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Nonsubject sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
All import sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
U.S. consumption value:									
Amount.....	***	***	***	***	***	▲***	▼***	▲***	▲***
Producers' share (fn1).....	***	***	***	***	***	▼***	▼***	▼***	▼***
Importers' share (fn1):									
Subject sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Nonsubject sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
All import sources.....	***	***	***	***	***	▲***	▲***	▲***	▲***
U.S. importers' U.S. shipments of imports from (fn2):									
Subject sources:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▼***	▼***	▼***	▼***
Nonsubject sources:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
All import sources:									
Quantity.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
U.S. producers':									
Average capacity quantity.....	***	***	***	***	***	▼***	▼***	▼***	▲***
Production quantity.....	***	***	***	***	***	▼***	▼***	▼***	▼***
Capacity utilization (fn1).....	***	***	***	***	***	▼***	▼***	▼***	▼***
U.S. shipments:									
Quantity.....	***	***	***	***	***	▼***	▼***	▼***	▼***
Value.....	***	***	***	***	***	▼***	▼***	▲***	▲***
Unit value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Export shipments:									
Quantity.....	***	***	***	***	***	▼***	▲***	▼***	▼***
Value.....	***	***	***	***	***	▲***	▲***	▼***	▼***
Unit value.....	***	***	***	***	***	▲***	▲***	▲***	▼***
Ending inventory quantity.....	***	***	***	***	***	▼***	▼***	▼***	▼***
Inventories/total shipments (fn1).....	***	***	***	***	***	▲***	▼***	▲***	▲***
Production workers.....	***	***	***	***	***	▼***	▼***	▼***	▼***
Hours worked (1,000s).....	***	***	***	***	***	▼***	▼***	▼***	▼***
Wages paid (\$1,000).....	***	***	***	***	***	▼***	▼***	▼***	▼***
Hourly wages (dollars per hour).....	***	***	***	***	***	▲***	▲***	▲***	▲***
Productivity (cartons per hour).....	***	***	***	***	***	▼***	▼***	▼***	▲***
Unit labor costs.....	***	***	***	***	***	▲***	▲***	▲***	▼***

Table continued on next page.

Table C-2--Continued

All cigarettes: Summary data concerning the U.S. market, 2017-19, January to June 2019, and January to June 2020

(Quantity=cartons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per carton; Period changes=percent--exceptions noted)

	Reported data					Period changes			
	2017	Calendar year		January to June		Comparison years			Jan-Jun
		2018	2019	2019	2020	2017-19	2017-18	2018-19	2019-20
U.S. producers--Continued									
Net sales:									
Quantity.....	***	***	***	***	***	▼***	▼***	▼***	▼***
Value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit value.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Cost of goods sold (COGS).....	***	***	***	***	***	▼***	▼***	▼***	▼***
Gross profit or (loss) (fn3).....	***	***	***	***	***	▲***	▲***	▲***	▲***
SG&A expenses.....	***	***	***	***	***	▼***	▲***	▼***	▼***
Operating income or (loss) (fn3).....	***	***	***	***	***	▲***	▼***	▲***	▲***
Net income or (loss) (fn3).....	***	***	***	***	***	▲***	▼***	▲***	▲***
Capital expenditures.....	***	***	***	***	***	▲***	▲***	▼***	▼***
Research and development expenses....	***	***	***	***	***	▼***	▼***	▼***	▼***
Net assets.....	***	***	***	***	***	▼***	▲***	▼***	***
Unit COGS.....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit SG&A expenses.....	***	***	***	***	***	▲***	▲***	▼***	▼***
Unit operating income or (loss) (fn3).....	***	***	***	***	***	▲***	▲***	▲***	▲***
Unit net income or (loss) (fn3).....	***	***	***	***	***	▲***	▲***	▲***	▲***
COGS/sales (fn1).....	***	***	***	***	***	▼***	▼***	▼***	▼***
Operating income or (loss)/sales (fn1)....	***	***	***	***	***	▲***	▼***	▲***	▲***
Net income or (loss)/sales (fn1).....	***	***	***	***	***	▲***	▲***	▲***	▲***

Note.--Shares and ratios shown as "0.0" percent represent non-zero values less than "0.05" percent (if positive) and greater than "(0.05)" percent (if negative). Zeroes, null values, and undefined calculations are suppressed and shown as "--". Period changes preceded by a "▲" represent an increase, while period changes preceded by a "▼" represent a decrease.

fn1.--Reported data are in percent and period changes are in percentage points.

fn2.--Subject sources data are U.S. importers' U.S. shipments of 4th tier cigarettes from Korea as reported within questionnaire submissions. Data for nonsubject sources are derived from differences between questionnaire data and official U.S. import statistics using quantity, while the value data are derived from the AUVs reported for nonsubject sources in submitted questionnaires.

fn3.--Percent changes only calculated when both comparison values represent profits; The directional change in profitability provided when one or both comparison values represent a loss.

Source: Compiled from data submitted in response to Commission questionnaires and official U.S. import statistics using statistical reporting numbers 2402.20.1000, 2402.20.8000, and 2402.20.9000, accessed October 16, 2020.

APPENDIX D

DETAILED GEOGRAPHIC SHIPMENT DATA

Tables D-1 and D-2 present geographic shipment data by region and by source for 2017 to 2019, January to June 2019 and January to June 2020.

Table D-1
4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by region, 2017-19, January to June 2019, and January to June 2020

Destination market	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. producers' U.S. shipments:					
New England	***	***	***	***	***
Mid-Atlantic	***	***	***	***	***
Plains	***	***	***	***	***
Great lakes	***	***	***	***	***
South	***	***	***	***	***
Central southwest	***	***	***	***	***
Mountains	***	***	***	***	***
Pacific coast	***	***	***	***	***
Other ¹	***	***	***	***	***
All regions	***	***	***	***	***
	Share of quantity by region within source of supply (percent)				
U.S. producers' U.S. shipments:					
New England	***	***	***	***	***
Mid-Atlantic	***	***	***	***	***
Plains	***	***	***	***	***
Great lakes	***	***	***	***	***
South	***	***	***	***	***
Central southwest	***	***	***	***	***
Mountains	***	***	***	***	***
Pacific coast	***	***	***	***	***
Other ¹	***	***	***	***	***
All regions	***	***	***	***	***

Table continued on next page.

Table D-1—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by region, 2017-19, January to June 2019, and January to June 2020

Destination market	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. importers' U.S. shipments: Korea.--					
New England	***	***	***	***	***
Mid-Atlantic	***	***	***	***	***
Plains	***	***	***	***	***
Great lakes	***	***	***	***	***
South	***	***	***	***	***
Central southwest	***	***	***	***	***
Mountains	***	***	***	***	***
Pacific coast	***	***	***	***	***
Other ¹	***	***	***	***	***
All regions	***	***	***	***	***
	Share of quantity by region within source of supply (percent)				
U.S. importers' U.S. shipments: Korea.--					
New England	***	***	***	***	***
Mid-Atlantic	***	***	***	***	***
Plains	***	***	***	***	***
Great lakes	***	***	***	***	***
South	***	***	***	***	***
Central southwest	***	***	***	***	***
Mountains	***	***	***	***	***
Pacific coast	***	***	***	***	***
Other ¹	***	***	***	***	***
All regions	***	***	***	***	***

Table continued on next page.

Table D-1—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by region, 2017-19, January to June 2019, and January to June 2020

Destination market	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. importers' U.S. shipments: Nonsubject.-- New England	***	***	***	***	***
Mid-Atlantic	***	***	***	***	***
Plains	***	***	***	***	***
Great lakes	***	***	***	***	***
South	***	***	***	***	***
Central southwest	***	***	***	***	***
Mountains	***	***	***	***	***
Pacific coast	***	***	***	***	***
Other ¹	***	***	***	***	***
All regions	***	***	***	***	***
	Share of quantity by region within source of supply (percent)				
U.S. importers' U.S. shipments: Nonsubject.-- New England	***	***	***	***	***
Mid-Atlantic	***	***	***	***	***
Plains	***	***	***	***	***
Great lakes	***	***	***	***	***
South	***	***	***	***	***
Central southwest	***	***	***	***	***
Mountains	***	***	***	***	***
Pacific coast	***	***	***	***	***
Other ¹	***	***	***	***	***
All regions	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

¹ All other U.S. markets, including AK, HI, PR, and VI.

Source: Compiled from data submitted in response to Commission questionnaires.

Table D-2
4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
US shipments to New England by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	48,566	81,742	337,831	120,812	278,005
	Share of quantity (percent)				
US shipments to New England by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
	Ratio to overall apparent consumption (percent)				
US shipments to New England by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

Table continued on next page.

Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Quantity (cartons)					
US shipments to Mid-Atlantic by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	12,596,876	13,085,368	14,155,036	6,994,188	7,696,057
Share of quantity (percent)					
US shipments to Mid-Atlantic by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
Ratio to overall apparent consumption (percent)					
US shipments to Mid-Atlantic by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

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Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Quantity (cartons)					
US shipments to the Plains by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	13,320,627	13,194,894	13,470,121	6,447,206	7,352,807
Share of quantity (percent)					
US shipments to the Plains by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
Ratio to overall apparent consumption (percent)					
US shipments to the Plains by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

Table continued on next page.

Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
US shipments to Great Lakes by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	2,338,091	2,921,946	4,727,496	2,008,914	3,150,627
	Share of quantity (percent)				
US shipments to Great Lakes by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
	Ratio to overall apparent consumption (percent)				
US shipments to Great Lakes by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

Table continued on next page.

Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Quantity (cartons)					
US shipments to South by-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	23,478,419	25,793,204	31,565,699	14,537,462	19,218,746
Share of quantity (percent)					
US shipments to South by-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
Ratio to overall apparent consumption (percent)					
US shipments to South by-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

Table continued on next page.

Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Quantity (cartons)					
US shipments to Central southwest by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	5,774,453	6,514,108	8,105,330	3,644,784	4,748,376
Share of quantity (percent)					
US shipments to Central southwest by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
Ratio to overall apparent consumption (percent)					
US shipments to Central southwest by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

Table continued on next page.

Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
US shipments to Mountains by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	3,232,167	3,644,918	4,450,552	2,113,544	2,507,023
	Share of quantity (percent)				
US shipments to Mountains by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
	Ratio to overall apparent consumption (percent)				
US shipments to Mountains by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

Table continued on next page.

Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Quantity (cartons)					
US shipments to Pacific coast by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	1,675,185	2,029,626	2,403,562	1,071,549	1,532,194
Share of quantity (percent)					
US shipments to Pacific coast by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
Ratio to overall apparent consumption (percent)					
US shipments to Pacific coast by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

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Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
US shipments to Other ¹ by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	810	4,200	19,806	8,142	10,698
	Share of quantity (percent)				
US shipments to Other ¹ by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
	Ratio to overall apparent consumption (percent)				
US shipments to Other ¹ by.-- U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

Table continued on next page.

Table D-2—Continued

4th tier cigarettes: Geographic location of U.S. producers' and U.S. importers' U.S. shipments, by source, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
US shipments to All regions by.--					
U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	62,465,194	67,270,006	79,235,433	36,946,601	46,494,533
	Share of quantity (percent)				
US shipments to All regions by.--					
U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***
	Ratio to overall apparent consumption (percent)				
US shipments to All regions by.--					
U.S. producers	***	***	***	***	***
Subject U.S. importers	***	***	***	***	***
Nonsubject U.S. importers	***	***	***	***	***
All U.S. importers	***	***	***	***	***
All market participants	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.
 1 All other U.S. markets, including AK, HI, PR, and VI.

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX E

**U.S. PRODUCERS', U.S. IMPORTERS', U.S. PUCHASERS' COMPARISONS OF
PRODUCTS BY THE LIKE PRODUCT FACTORS**

Tables E-1 through E-6 presents information collected concerning the definition of the domestic like product. E-7 through E-18 contain the narratives from U.S. producers, importers and purchasers, the tables include the six like product factors and the narratives provided by U.S. producers, importers and purchasers.

Table E-1
4th tier cigarettes: U.S. producers', U.S. importers' and U.S. purchasers of in-scope 4th tier cigarettes vs 1st, 2nd, 3rd and all other tier cigarettes

Factor	U.S. producers				U.S. importers				U.S. purchasers			
	F	M	S	N	F	M	S	N	F	M	S	N
	Count of firms											
In-scope 4th tier vs 1st tier (premium).-- Physical characteristics	2	1	1	2	1	2	---	1	2	5	5	15
Interchangeability	2	---	---	3	1	2	---	1	3	1	4	19
Manufacturing	---	2	---	2	---	3	1	---	---	---	3	9
Channels	2	---	1	2	2	2	---	---	3	4	7	10
Perceptions	---	1	1	3	---	3	---	1	---	1	9	14
Price	---	---	1	4	---	---	1	3	---	---	4	23
In-scope 4th tier vs 2nd tier (branded).-- Physical characteristics	2	1	1	2	1	2	1	---	2	5	6	14
Interchangeability	2	---	---	3	1	2	1	---	4	---	6	18
Manufacturing	---	2	---	2	---	3	1	---	---	1	3	9
Channels	2	---	1	2	2	2	---	---	2	5	10	8
Perceptions	---	1	1	3	---	3	---	1	1	1	7	16
Price	---	1	1	3	---	---	1	3	---	---	6	22
In-scope 4th tier vs 3rd tier (sub-generic/private label).-- Physical characteristics	2	1	---	2	1	3	---	---	3	5	6	12
Interchangeability	2	---	---	2	1	3	---	---	3	4	5	14
Manufacturing	1	1	---	2	---	3	1	---	---	---	3	8
Channels	2	---	---	2	2	2	---	---	2	4	10	8
Perceptions	1	1	---	2	---	3	1	---	1	4	6	13
Price	1	1	---	2	---	---	2	2	2	3	8	14
In-scope 4th tier vs all other cigarettes.-- Physical characteristics	2	1	1	2	1	3	---	---	1	5	7	13
Interchangeability	2	---	---	3	1	3	---	---	2	2	7	15
Manufacturing	---	2	---	2	---	3	1	---	---	---	4	9
Channels	2	---	1	2	2	2	---	---	2	4	9	10
Perceptions	---	1	1	3	---	3	1	---	---	4	8	13
Price	---	1	1	3	---	---	2	2	---	1	12	15

Note.-- F=Fully comparable, M=Mostly comparable, S=Somewhat comparable, N=Never or not-at-all comparable

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-1 presents U.S. producers' and U.S. importers and U.S. purchasers' comparisons of in-scope 4th tier cigarettes versus 1st, 2nd, 3rd and all other cigarettes. For the analysis of each of the following six factors the responses are categorized as follows:

F: fully comparable or the same, *i.e.*, have no differentiation between them;

M: mostly comparable or similar;

S: somewhat comparable or similar;

N: never or not-at-all comparable or similar; or

O: no familiarity with products.

Physical characteristics and uses

Six U.S. producers, four U.S. importers, and 26 U.S. purchases addressed the physical characteristics of 4th tier cigarettes compared to all other cigarettes. Two U.S. producers indicated that they were never or not-at-all comparable, two producers indicated that they were fully comparable, while the remaining two producers each indicated (one) mostly comparable, and (one) somewhat comparable. Three U.S. importers indicated that they were mostly comparable, while one importer indicated that they were fully comparable. Thirteen U.S. purchasers indicated that they were never or not at all comparable, seven indicated that they were somewhat comparable, five indicated that they were mostly comparable and one indicated that they were fully comparable.

At the Commission's conference, the petitioner indicated that there were additional differences in physical characteristics that include; filters, cigarette papers, and two differences regarding packaging (particularly the rounded corner inside the package). The rounded corner differs from the non-4th tier cigarettes stamped or embossed in aluminum foil.¹ The petitioner further indicated that these differences are regulated by the Food and Drug Administration.

In its post hearing brief, the petitioner contended that the ten percent stem content in the tobacco blend is a bright line that separates 4th tier cigarettes from non-4th tier products.²

In its post hearing brief, the respondents asserted there is no clear difference with respect to any physical characteristics, uses are identical.³

¹ Conference transcript, pp. 78-79 (Pickard).

² Petitioners post hearing brief, p. 4.

³ Respondents post hearing brief, p. 5.

Tables E-2 and E-3 presents U.S. producers reported stem content and their stem count narrative responses.

Table E-2
All cigarettes: U.S. producer' reported stem content

	Average share of stem content (percent)	Minimum share of stem content (percent)	Maximum share of stem content (percent)
4th tier cigarettes	***	***	***
1st tier cigarettes (premium)	***	***	***
2nd tier cigarettes (branded)	***	***	***
3rd tier cigarettes (sub-generic/private label)	***	***	***
All other cigarettes	***	***	***

Note.--Staff estimated premium and branded minimum based on reported average and max contents.

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-3

All cigarettes; U.S. producers' stem content measurement narratives, 2017-19, January to June 2019, and January to June 2020

Item/Firm	Narrative
***	***
***	***
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Interchangeability

Six U.S. producers, four U.S. importers, and 26 U.S. purchasers addressed the question of the ability to substitute products with the same products in the same application of 4th tier cigarettes compared to all other cigarettes. Three U.S. producers indicated that they were never or not-at-all comparable with respect to interchangeability, while two producers indicated that they were fully comparable. Three U.S. importers indicated that they were mostly comparable, while one importer indicated that they were fully comparable. Fifteen U.S. purchasers indicated that they were never or not at all comparable, seven indicated that they were somewhat comparable, two indicated that they were mostly comparable and two indicated that they were fully comparable.

In its postconference brief, the respondents indicated that because all cigarettes are interchangeable in their end use of smoking, smokers with certain brand preferences will still smoke other cigarettes based on availability, location, weather, exposure to advertising, or simply because they prefer a different flavor profile on any given day.⁴ In the Commissions hearing, respondents stated the obvious fact that all domestic cigarettes are interchangeable for the intended end use of smoking. Any smoker can smoke any cigarette.⁵

Channels of distribution

Five U.S. producers, four U.S. importers, and 25 U.S. purchases addressed the basis through which the channels of distribution of 4th tier cigarettes are sold compared to all other cigarettes. Two U.S. producers indicated that they were never or not-at-all comparable, while two producers indicated that they were fully comparable and one producer indicated that they

⁴ Respondents postconference brief, p. 15.

⁵ Hearing transcript, p. 187 (Smith).

were somewhat comparable. Two U.S. importers indicated that they were mostly comparable, while two importers indicated that they were fully comparable. Ten U.S. purchasers indicated that they were never or not at all comparable, nine indicated that they were somewhat comparable, four indicated that they were mostly comparable and two indicated that they were fully comparable.

In its post hearing brief, the petitioner contends that 4th tier cigarettes not only participate differently in the existing channels of distribution, but there are clear distinctions in the actual channels of distribution themselves for 4th tier products.⁶

In its postconference brief, the respondents stated 4th tier and all other cigarettes are overwhelmingly sold through the same channels of distribution in the U.S. market. Whether a single producer sells directly to retailers does not establish a clear dividing line.⁷ Table E-4 presents U.S. producers channels of distribution.

⁶ Petitioners post hearing brief, p. 22.

⁷ Respondents post hearing brief, p. 31.

Table E-4
All cigarettes; U.S. producers' channels of distribution by product type

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Share of U.S. shipments (percent)				
U.S. producers' U.S. shipments of 4th tier cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***
U.S. producers' U.S. shipments of all other cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Customer and producer perceptions

Five U.S. producers and four U.S. importers and 25 U.S. purchasers addressed the question of whether for 4th tier cigarettes compared to all other cigarettes regarding market perceptions. Three U.S. producers indicated that they were never or not-at-all comparable, while one producer indicated that they were somewhat comparable, and one producer indicated that they were mostly comparable. Three U.S. importers indicated that they were mostly comparable, while one importer indicated that they were somewhat comparable. Thirteen U.S. purchasers indicated that they were never or not at all comparable, eight indicated that they were somewhat comparable and four indicated that they were mostly comparable.

In its postconference brief, the respondents indicated that neither customers nor producers perceive there to be a separate category of 4th tier cigarettes in the market made up of only cigarettes produced by the four producers the petitioner identifies as the domestic industry.⁸ In the Commissions hearing, respondents stated regarding consumers and producer perceptions it is both incorrect and misleading that every level of the tobacco industry recognizes 4th tier and non 4th tier cigarettes as sperate products.⁹

In petitioner post hearing brief, the petitioner contends that customers perceive 4th tier cigarettes to be cheaper, of lower quality, and have customers that are not typically brand loyal.¹⁰

⁸ Respondents postconference brief, p. 17.

⁹ Hearing transcript, p. 187 (Smith).

¹⁰ Petitioners post hearing brief, Exhibit 7.

Manufacturing facilities and production employees

Four U.S. producers and four U.S. importers and thirteen U.S. purchasers addressed whether 4th tier cigarettes and all other cigarettes are manufactured in the same facilities, from the same inputs, on the same/shared machinery and equipment, and using the same employees. Two U.S. producers indicated that they were never or not-at-all comparable, while two producers indicated that they were mostly comparable. Three U.S. importers indicated that they were mostly comparable, while one importer indicated that they were somewhat comparable. Nine U.S. purchasers indicated that they were never or not at all comparable, four indicated that they were somewhat comparable.

In its postconference brief, the petitioner indicated that non-4th tier cigarette producers are vertically integrated, while 4th tier cigarette manufacturers buy their tobacco blends for further processing.¹¹ In its post hearing brief, the petitioner indicated that there are no common manufacturing facilities and zero employees in the United States who both manufacture 4th tier and non-4th tier cigarettes.¹²

In its post hearing brief, the respondents indicated there is no clear dividing line between 4th tier and non-4th tier cigarettes based on raw materials, manufacturing facilities, production processes, and production employees.¹³ Table E-5 present U.S. producers manufacturing facilities.

¹¹ Petition, p. 13.

¹² Petitioners post hearing brief, p. 4.

¹³ Respondents post hearing brief, p. 31.

Table E-5
All cigarettes: U.S. producers manufacturing facilities

	Number of firms (count)
Only produced 4th tier cigarettes (i.e., firm does not produce other types of cigarettes)	5
Only produced other types of cigarettes (i.e., firm does not produce 4th tier cigarettes)	3
Produced both 4th tier and other types of cigarettes.-- Using the same machinery	0
Using different machinery	0

Source: Compiled from data submitted in response to Commission questionnaires.

Price

Five U.S. producers and four U.S. importers and 28 U.S. purchases addressed the price of 4th tier cigarettes compared to all other cigarettes. Three U.S. producers indicated that they were never or not-at-all comparable, while one producer indicated that they were somewhat comparable, and one producer indicated that they were mostly comparable. Two U.S. importers indicated that they were never or not at all comparable, while two importers indicated that they were somewhat comparable. Fifteen U.S. purchasers indicated that they were never or not at all comparable, twelve indicated that they were somewhat comparable, and one indicated that they were mostly comparable. At the Commission’s conference, the respondents indicated that the tier that the cigarettes are categorized by is determined by whether they are higher or lower priced.¹⁴

At the Commission’s conference, the petitioners indicated that 4th tier cigarettes consumers are extremely are price sensitive and are willing to switch brands to save money on a cheaper of cigarette.¹⁵ Table E-6 present U.S. producers’ average unit values by product type.

¹⁴ Conference transcript, p. 214 (Nicolaus).

¹⁵ Conference transcript, p. 37 (Nicolaus).

Tables E-6

All cigarettes: U.S. producers' average unit values by product type

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Unit values (dollars per carton)				
U.S. producers' U.S. shipments.-- 4th tier cigarettes	***	***	***	***	***
1st tier cigarettes (premium)	***	***	***	***	***
2nd tier cigarettes (branded)	***	***	***	***	***
3rd tier cigarettes (sub-generic/private label)	***	***	***	***	***
All other cigarettes	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-7

All cigarettes: U.S. producers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. producers: Physical characteristics	
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-7—Continued

All cigarettes: U.S. producers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. producers: Interchangeability	
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-7—Continued

All cigarettes: U.S. producers' comparisons of 4th tier and premium cigarettes by the like product factors

U.S. producers: Manufacturing	
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-7—Continued

All cigarettes: U.S. producers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. producers: Channels	
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-7—Continued

All cigarettes: U.S. producers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. producers: Perceptions	
***	***
***	***
***	***
***	***
***	***
U.S. producers: Price	
***	***
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-8

All cigarettes: U.S. importers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. importers: Physical characteristics	
***	***
***	***
***	***
***	***
U.S. importers: Interchangeability	
***	***
***	***
***	***
***	***
U.S. importers: Manufacturing	
***	***
***	***
***	***
***	***
U.S. importers: Channels	
***	***
***	***
***	***
***	***
U.S. importers: Perceptions	
***	***
***	***
***	***
***	***
U.S. importers: Price	
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-9

All cigarettes: U.S. purchasers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Physical characteristics	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Interchangeability	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-9--Continued

All cigarettes: U.S. purchasers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Manufacturing	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Channels	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-9--Continued

All cigarettes: U.S. purchasers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Manufacturing	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Channels	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-9--Continued

All cigarettes: U.S. purchasers' comparisons of 4th tier and premium cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Perceptions	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Price	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-10

All cigarettes: U.S. producers' comparisons of 4th tier and branded cigarettes by the like product factors

Item / Firm	Narrative
U.S. producers: Physical characteristics	
***	***
***	***
***	***
***	***
***	***
U.S. producers: Interchangeability	
***	***
***	***
***	***
***	***
***	***
U.S. producers: Manufacturing	
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-10--Continued

All cigarettes: U.S. producers' comparisons of 4th tier and branded cigarettes by the like product factors

Item / Firm	Narrative
U.S. producers: Channels	
***	***
***	***
***	***
***	***
U.S. producers: Perceptions	
***	***
***	***
***	***
***	***
U.S. producers: Price	
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-11

All cigarettes: U.S. importers' comparisons of 4th tier and branded cigarettes by the like product factors

Item / Firm	Narrative
U.S. importers: Physical characteristics	
***	***
***	***
***	***
***	***
U.S. importers: Interchangeability	
***	***
***	***
***	***
***	***
U.S. importers: Manufacturing	
***	***
***	***
***	***
***	***
U.S. importers: Channels	
***	***
***	***
***	***
***	***
U.S. importers: Perceptions	
***	***
***	***
***	***
***	***
U.S. importers: Price	
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-12

All cigarettes: U.S. purchasers' comparisons of 4th tier and branded cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Physical characteristics	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Interchangeability	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-12—Continued
All cigarettes: U.S. purchasers' comparisons of 4th tier and branded cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Manufacturing	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Channels	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-12—Continued
All cigarettes: U.S. purchasers' comparisons of 4th tier and branded cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Perceptions	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Price	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-13

All cigarettes: U.S. producers' comparisons of 4th tier and sub-generic/private label cigarettes by the like product factors

Item / Firm	Narrative
U.S. producers: Physical characteristics	
***	***
***	***
***	***
***	***
***	***
U.S. producers: Interchangeability	
***	***
***	***
***	***
***	***
***	***
U.S. producers: Manufacturing	
***	***
***	***
***	***
***	***
U.S. producers: Channels	
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-13--Continued

All cigarettes: U.S. producers' comparisons of 4th tier and sub-generic/private label cigarettes by the like product factors

Item / Firm	Narrative
U.S. producers: Perceptions	
***	***
***	***
***	***
***	***
U.S. producers: Price	
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-14

All cigarettes: U.S. importers' comparisons of 4th tier and sub-generic/private label cigarettes by the like product factors

Item / Firm	Narrative
U.S. importers: Physical characteristics	
***	***
***	***
***	***
***	***
U.S. importers: Interchangeability	
***	***
***	***
***	***
***	***
U.S. importers: Manufacturing	
***	***
***	***
***	***
***	***
U.S. importers: Channels	
***	***
***	***
***	***
***	***
U.S. importers: Perceptions	
***	***
***	***
***	***
***	***
U.S. importers: Price	
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-15
4th tier cigarettes: U.S. purchasers' comparisons of 4th tier and sub-generic/private label cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Physical characteristics	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Interchangeability	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-15--Continued
4th tier cigarettes: U.S. purchasers' comparisons of 4th tier and sub-generic/private label cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Manufacturing	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Channels	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-15--Continued
4th tier cigarettes: U.S. purchasers' comparisons of 4th tier and sub-generic/private label cigarettes by the like product factors

Item / Firm	Narrative
U.S. purchasers: Perceptions	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Price	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-16

All cigarettes: U.S. producers' comparisons of 4th tier and all other tier products by like product factors

Item / Firm	Narrative
U.S. producers: Physical characteristics	
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-16--Continued

All cigarettes: U.S. producers' comparisons of 4th tier and all other tier products by like product factors

Item / Firm	Narrative
U.S. producers: Interchangeability	
***	***
***	***
***	***
***	***
***	***
U.S. producers: Manufacturing	
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-16—Continued
All cigarettes: U.S. producers' comparisons of 4th tier and all other tier products by like product factors

Item / Firm	Narrative
U.S. producers: Channels	
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-16--Continued

All cigarettes: U.S. producers' comparisons of 4th tier and all other tier products by like product factors

Item / Firm	Narrative
U.S. producers: Perceptions	
***	***
***	***
***	***
***	***
U.S. producers: Price	
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-17
All cigarettes: U.S. importers' comparisons of 4th tier and all other products by like product factors

Item / Firm	Narrative
U.S. importers: Physical characteristics	
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-17--Continued

All cigarettes: U.S. importers' comparisons of 4th tier and all other products by like product factors

Item / Firm	Narrative
U.S. importers: Interchangeability	
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-17--Continued

All cigarettes: U.S. importers' comparisons of 4th tier and all other products by like product factors

Item / Firm	Narrative
U.S. importers: Manufacturing	
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-17--Continued
All cigarettes: U.S. importers' comparisons of 4th tier and all other products by like product factors

Item / Firm	Narrative
U.S. importers: Channels	
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-17--Continued
All cigarettes: U.S. importers' comparisons of 4th tier and all other products by like product factors

Item / Firm	Narrative
U.S. importers: Perceptions	
***	***
***	***
***	***
***	***
U.S. importers: Price	
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table E-18

All cigarettes: U.S. purchasers' comparisons of 4th tier and all other products by the like product factors

Item / Firm	Narrative
U.S. purchasers: Physical characteristics	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-18—Continued

All cigarettes: U.S. purchasers' comparisons of 4th tier and all other products by the like product factors

Item / Firm	Narrative
U.S. purchasers: Interchangeability	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-18—Continued

All cigarettes: U.S. purchasers' comparisons of 4th tier and all other products by the like product factors

Item / Firm	Narrative
U.S. purchasers: Manufacturing	
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-18--Continued

All cigarettes: U.S. purchasers' comparisons of 4th tier and all other products by the like product factors

Item / Firm	Narrative
U.S. purchasers: Channels	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
U.S. purchasers: Perceptions	
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Table continued on next page.

Table E-18—Continued

All cigarettes: U.S. purchasers' comparisons of 4th tier and all other products by the like product factors

Item / Firm	Narrative
U.S. purchasers: Price	
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX F

U.S. INDUSTRY FOR ALL CIGARETTES FOR 2017-2019

Table F-1 through F-10 and Figure F-1 presents data on U.S. industry on all cigarettes from all tiers and their market shares during 2017-19, January to June 2019, and January to June 2020.

Table F-1

All cigarettes: U.S. producers' U.S. shipments of in-scope 4th Tier cigarettes and all other cigarettes, by channel of distribution, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. producers' U.S. shipments of 4th tier cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***
U.S. producers' U.S. shipments of all other cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***
	Value (1,000 dollars)				
U.S. producers' U.S. shipments of 4th tier cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***
U.S. producers' U.S. shipments of all other cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***

Table continued on next page.

Table F-1—Continued

All cigarettes: U.S. producers' U.S. shipments of in-scope 4th Tier cigarettes and all other cigarettes, by channel of distribution, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Unit Value (dollars per carton)				
U.S. producers' U.S. shipments of 4th tier cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***
U.S. producers' U.S. shipments of all other cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***
	Share of U.S. shipments (percent)				
U.S. producers' U.S. shipments of 4th tier cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***
U.S. producers' U.S. shipments of all other cigarettes.-- to Distributors	***	***	***	***	***
to Retailers or end-users	***	***	***	***	***

Note.-- No U.S. producers reported shipments of private label products to distributors. All shipments reported to distributors are of branded cigarettes.

Source: Compiled from data submitted in response to Commission questionnaires.

Table F-2

All cigarettes: U.S. producers' and U.S. importers' U.S. shipments by channel of distribution, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Share of U.S. shipments (percent)				
U.S. producers: to Distributors	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: Korea to Distributors	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: Canada to Distributors	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: All other sources: to Distributors	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: Nonsubject sources: to Distributors	***	***	***	***	***
to Retailers or end users	***	***	***	***	***
U.S. importers: All sources: to Distributors	***	***	***	***	***
to Retailers or end users	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Table F-3

All cigarettes: U.S. producers' capacity, producer, and capacity utilization, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Capacity (cartons)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Liggett	***	***	***	***	***
Native Trading	***	***	***	***	***
Philip Morris	***	***	***	***	***
RJ Reynolds	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Production (cartons)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Liggett	***	***	***	***	***
Native Trading	***	***	***	***	***
Philip Morris	***	***	***	***	***
RJ Reynolds	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Table Continued on next page.

Table F-3—Continued

All cigarettes: U.S. producers' capacity, producer, and capacity utilization, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Capacity utilization (percent)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Liggett	***	***	***	***	***
Native Trading	***	***	***	***	***
Philip Morris	***	***	***	***	***
RJ Reynolds	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Share of production (percent)				
Cheyenne	***	***	***	***	***
Dosal Tobacco	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Liggett	***	***	***	***	***
Native Trading	***	***	***	***	***
Philip Morris	***	***	***	***	***
RJ Reynolds	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Table F-4

All cigarettes: U.S. producers' U.S. shipments, exports shipments, and total shipments, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Value (1,000 dollars)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Unit value (dollars per carton)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Share of quantity (percent)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Share of value (percent)				
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Table F-5

All cigarettes: U.S. producers' U.S. shipments average value of in-scope 4th Tier cigarettes and all other cigarettes, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Unit Value (dollars per carton)				
U.S. producers U.S. shipments.-- In-scope 4th tier cigarettes	***	***	***	***	***
All other cigarettes	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table F-6

All cigarettes: U.S. producers' U.S. shipments by grade, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. shipments, by grade.-					
- Premium	***	***	***	***	***
Branded discount	***	***	***	***	***
Sub-generic/private label	***	***	***	***	***
4th tier	***	***	***	***	***
Total shipments	***	***	***	***	***
	Value (1,000 dollars)				
U.S. shipments, by grade.-					
- Premium	***	***	***	***	***
Branded discount	***	***	***	***	***
Sub-generic/private label	***	***	***	***	***
4th tier	***	***	***	***	***
Total shipments	***	***	***	***	***

Table continued on next page.

Table F-6—Continued

All cigarettes: U.S. producers' U.S. shipments by grade, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Unit value (dollars per carton)				
U.S. shipments, by grade.-- Premium	***	***	***	***	***
Branded discount	***	***	***	***	***
Sub-generic/private label	***	***	***	***	***
4th tier	***	***	***	***	***
Total shipments	***	***	***	***	***
	Share of quantity (percent)				
U.S. shipments, by grade.-- Premium	***	***	***	***	***
Branded discount	***	***	***	***	***
Sub-generic/private label	***	***	***	***	***
4th tier	***	***	***	***	***
Total shipments	***	***	***	***	***
	Share of value (percent)				
U.S. shipments, by grade.-- Premium	***	***	***	***	***
Branded discount	***	***	***	***	***
Sub-generic/private label	***	***	***	***	***
4th tier	***	***	***	***	***
Total shipments	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table F-7

All cigarettes: U.S. producers' inventories, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. producers' end-of-period inventories	***	***	***	***	***
	Ratio (percent)				
Ratio of inventories to.-- U.S. production	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Total shipments	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Table F-8**All cigarettes: U.S. producers' employment related data, 2017-19, January to June 2019, and January to June 2020**

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Production and related workers (PRWs) (number)	***	***	***	***	***
Total hours worked (1,000 hours)	***	***	***	***	***
Hours worked per PRW (hours)	***	***	***	***	***
Wages paid (\$1,000)	***	***	***	***	***
Hourly wages (dollars per hour)	***	***	***	***	***
Productivity (cartons per hour)	***	***	***	***	***
Unit labor costs (dollars per pound)	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table F-9

All cigarettes: Apparent U.S. consumption, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--					
Subject sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
	Value (1,000 dollars)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--					
Subject sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
	Share of quantity (percent)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--					
Subject sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
	Share of value (percent)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--					
Subject sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***

Note.-- U.S. producers' U.S. shipments data are all cigarettes quantities submitted in response to Commission questionnaires. Subject sources data are U.S. importers' U.S. shipments of 4th tier cigarettes from Korea as reported within questionnaire submissions. Data for nonsubject sources are derived from differences between questionnaire data and official U.S. import statistics using quantity, while the value data are derived from the AUVs reported for nonsubject sources in submitted questionnaires.

Source: Compiled from data submitted in response to Commission questionnaires and official U.S. import statistics using statistical reporting numbers 2402.20.1000, 2402.20.8000, and 2402.20.9000, accessed October 16, 2020.

Table F-10

All cigarettes: Alternate apparent U.S. consumption, 2017-19, January to June 2019, and January to June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. imports.-- Subject sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
	Share of quantity (percent)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. imports.-- Subject sources	***	***	***	***	***
Nonsubject sources	***	***	***	***	***
All import sources	***	***	***	***	***

Source: Compiled from monthly tobacco products data from the U.S. Treasury Department, Alcohol and Tobacco Tax and Trade Bureau, (for producer data) and compiled from data submitted in response to Commission questionnaires, official U.S. import and export statistics using statistical reporting numbers 2402.20.1000, 2402.20.8000, and 2402.20.9000, accessed December 8, 2020.

Figure F-1

All cigarettes: Apparent U.S. consumption, 2017-19, January to June 2019, and January to June 2020

* * * * *

Source: Compiled from data submitted in response to Commission questionnaires and official U.S. import statistics using statistical reporting numbers 2402.20.1000, 2402.20.8000, and 2402.20.9000, accessed October 16, 2020.

APPENDIX G

**U.S. PRODUCERS' FINANCIAL RESULTS AND RELATED
INFORMATION ON ALL CIGARETTES**

Table G-1

All cigarettes: Results of operations of U.S. producers (including effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
Total net sales	***	***	***	***	***
	Value (1,000 dollars)				
Total net sales	***	***	***	***	***
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Total COGS	***	***	***	***	***
Gross profit	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Interest expenses	***	***	***	***	***
All other expenses	***	***	***	***	***
All other income	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Depreciation/amortization	***	***	***	***	***
Est. cash flow from operations	***	***	***	***	***
	Ratio to net sales (percent)				
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***

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Table G-1—Continued

All cigarettes: Results of operations of U.S. producers (including effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Ratio to total COGS (percent)					
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Unit value (dollars per carton)					
Total net sales	***	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Number of firms reporting					
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Data	7	7	7	7	7

Note.—The financial results included in this table classify MSA and NPM escrow payments as a separate component of COGS (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table G-2

All cigarettes: Changes in AUV's (including effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Between calendar years			Between partial year period
	2017-19	2017-18	2018-19	2019-20
	Change in AUVs (percent)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA and NPM accruals	***	***	***	***
Average COGS	***	***	***	***
	Change in AUVs (dollars per carton)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA and NPM accruals	***	***	***	***
Average COGS	***	***	***	***
Gross profit	***	***	***	***
SG&A expenses	***	***	***	***
Operating income or (loss)	***	***	***	***
Net income or (loss)	***	***	***	***

Note.—The financial results included in this table classify MSA and NPM escrow payments as a separate component of COGS (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table G-3

All cigarettes: Results of operations of U.S. producers (excluding effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
Total net sales	***	***	***	***	***
	Value (1,000 dollars)				
Total net sales	***	***	***	***	***
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA accruals	***	***	***	***	***
Total COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Interest expense	***	***	***	***	***
All other expenses	***	***	***	***	***
All other income	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Depreciation/amortization	***	***	***	***	***
Est. cash flow from operations	***	***	***	***	***
	Ratio to net sales (percent)				
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***

Table continued on next page.

Table G-3—Continued

All cigarettes: Results of operations of U.S. producers (excluding effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Ratio to total COGS (percent)					
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Unit value (dollars per carton)					
Total net sales	***	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Number of firms reporting					
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Data	7	7	7	7	7

Note.—The financial results included in this table classify MSA payments as a separate component of COGS and exclude NPM escrow payments (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table G-4

All cigarettes: Changes in AUV's (excluding effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Between calendar years			Between partial period, January-June
	2017-19	2017-18	2018-19	2019-20
	Change in AUVs (percent)			
Total average sales value	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA accruals	***	***	***	***
Total cost of goods sold	***	***	***	***
	Change in AUVs (dollars per carton)			
Total average sales value	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA accruals	***	***	***	***
Total cost of goods sold	***	***	***	***
Gross profit or (loss)	***	***	***	***
SG&A expenses	***	***	***	***
Operating income or (loss)	***	***	***	***
Net income or (loss)	***	***	***	***

Note.—The financial results included in this table classify MSA payments as a separate component of COGS and exclude NPM escrow payments (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted

Table G-5

All cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
Total net sales	***	***	***	***	***
	Value (1,000 dollars)				
Total net sales	***	***	***	***	***
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Total COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Interest expense	***	***	***	***	***
All other expenses	***	***	***	***	***
All other income	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Depreciation/amort.	***	***	***	***	***
Est. cash flow from operations	***	***	***	***	***
	Ratio to net sales (percent)				
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***

Table continued on next page.

Table G-5—Continued

All cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Ratio to total COGS (percent)				
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
	Unit value (dollars per carton)				
Total net sales	***	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
	Number of firms reporting				
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Data	7	7	7	7	7

Note.—The financial results included in this table classify MSA payments as a separate component of COGS. For those U.S. producers that do not formally expense NPM escrow payments (***) , NPM escrow payments are excluded from this table. The NPM escrow payments of the U.S. producer that does expense NPM escrow payments (***) are included in this table as a separate component of COGS (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table G-6

All cigarettes: Changes in AUV's (reflecting company-specific accounting treatment of NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Between calendar years			Between partial year period
	2017-19	2017-18	2018-19	2019-20
	Change in AUVs (percent)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA and NPM accruals	***	***	***	***
Average COGS	***	***	***	***
	Change in AUVs (dollars per carton)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA and NPM accruals	***	***	***	***
Average COGS	***	***	***	***
Gross profit or (loss)	***	***	***	***
SG&A expenses	***	***	***	***
Operating income or (loss)	***	***	***	***
Net income or (loss)	***	***	***	***

Note.—The financial results included in this table classify MSA payments as a separate component of COGS. For those U.S. producers that do not formally expense NPM escrow payments (***) , NPM escrow payments are excluded from this table. The NPM escrow payments of the U.S. producer that does expense NPM escrow payments (***) are included in this table as a separate component of COGS (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted

Table G-7

All cigarettes: Capital expenditures and research and development (R&D) expenses of U.S. producers, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Capital expenditures (1,000 dollars)				
Total capital expenditures	***	***	***	***	***
	Research and development expenses (1,000 dollars)				
Total R&D expenses	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table G-8

All cigarettes: Narrative descriptions of U.S. producers' capital expenditures and R&D expenses since January 1, 2017

Capital expenditures	
Firm	Narrative
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
R&D expenses:	
Firm	Narrative
***	***
***	***
***	***
Firm	Narrative
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table G-9

All cigarettes: U.S. producers' total net assets and operating return on net assets, 2017-19

Firm	Calendar year		
	2017	2018	2019
	Total net assets (1,000 dollars)		
Total assets—assuming all NPM escrow payments are effectively expensed (G-1)	***	***	***
	Operating return on assets (percent)		
Average return on net assets—assuming all NPM escrow payments are effectively expensed (G-1)	***	***	***
	Total net assets (1,000 dollars)		
Total assets—assuming no NPM escrow payments are effectively expensed (G-3)	***	***	***
	Operating return on assets (percent)		
Average return on net assets—assuming no NPM escrow payments are effectively expensed (G-3)	***	***	***
	Total net assets (1,000 dollars)		
Total assets—based on company-specific accounting treatment of NPM escrow payments and balances (G-5)	***	***	***
	Operating return on assets (percent)		
Average return on net assets—based on company-specific accounting treatment of NPM escrow payments and balances (G-5)	***	***	***

Note.—***. USITC auditor notes (prehearing). Total assets of 4th tier cigarette producers included in this table reflect the noted assumptions regarding effective expense of NPM escrow payments and reserve of NPM escrow balances or non-effective expense of NPM escrow payments and non-reserve of NPM escrow balances. Total assets based on company-specific accounting treatment reflect the unadjusted asset values reported in the U.S. producer questionnaire. USITC auditor notes (posthearing).

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX H

**U.S. PRODUCERS' FINANCIAL RESULTS ON 4TH TIER CIGARETTES
(ALTERNATIVE TREATMENT OF NPM ESCROW PAYMENTS)**

Table H-1

4th tier cigarettes: Results of operations of U.S. producers (excluding effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
Total net sales	***	***	***	***	***
	Value (1,000 dollars)				
Total net sales	***	***	***	***	***
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA accruals	***	***	***	***	***
Total COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Interest expense	***	***	***	***	***
All other expenses	***	***	***	***	***
All other income	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Depreciation/amortization	***	***	***	***	***
Est. cash from operations	***	***	***	***	***
	Ratio to net sales (percent)				
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***

Table continued on next page.

Table H-1—Continued

All cigarettes: Results of operations of U.S. producers (excluding effective expense of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
Ratio to total COGS (percent)					
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Unit value (dollars per carton)					
Total net sales	***	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Number of firms reporting					
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Data	4	4	4	4	4

Note.—The financial results included in this table classify MSA payments as a separate component of COGS and exclude NPM escrow payments (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table H-2
4th tier cigarettes: Changes in AUV's (excluding effective expense of all NPM escrow payments),
2017-19, January-June 2019, and January-June 2020

Item	Between calendar years			Between partial year period
	2017-19	2017-18	2018-19	2019-20
	Change in AUVs (percent)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA accruals	***	***	***	***
Average COGS	***	***	***	***
	Change in AUVs (dollars per carton)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA accruals	***	***	***	***
Average COGS	***	***	***	***
Gross profit or (loss)	***	***	***	***
SG&A expenses	***	***	***	***
Operating income or (loss)	***	***	***	***
Net income or (loss)	***	***	***	***

Note.—The financial results included in this table classify MSA payments as a separate component of COGS and exclude NPM escrow payments (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table H-3
4th tier cigarettes: Results of operations of U.S. producers (excluding effective expense of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January-June	
	2017	2018	2019	2019	2020
	Total net sales (cartons)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Total net sales (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Cost of goods sold (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Gross profit or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	SG&A expenses (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Operating income or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

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Table H-3—Continued

4th tier cigarettes: Results of operations of U.S. producers (excluding effective expense of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January-June	
	2017	2018	2019	2019	2020
	Net income or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Cost of goods sold to net sales ratio (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Gross profit or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	SG&A expenses to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Operating income or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Net income or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

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Table H-3—Continued

4th tier cigarettes: Results of operations of U.S. producers (excluding effective expense of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January-June	
	2017	2018	2019	2019	2020
	Unit net sales value (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit raw materials (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit direct labor cost (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit other factory costs (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit MSA accruals (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit cost of goods sold (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

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Table H-3—Continued

4th tier cigarettes: Results of operations of U.S. producers (excluding effective expense of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January-June	
	2017	2018	2019	2019	2020
	Unit gross profit of (loss) (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit SG&A expenses (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit operating income or (loss) (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit net income or (loss) (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Note.—The financial results included in this table classify MSA payments as a separate component of COGS and exclude NPM escrow payments (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table H-4
4th tier cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Quantity (cartons)				
Total net sales	***	***	***	***	***
	Value (1,000 dollars)				
Total net sales	***	***	***	***	***
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Total COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Interest expense	***	***	***	***	***
All other expenses	***	***	***	***	***
All other income	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
Depreciation/amortization	***	***	***	***	***
Est. cash flow from operations	***	***	***	***	***
	Ratio to net sales (percent)				
Cost of goods sold.--					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***

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Table H-4—Continued

4th tier cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January to June	
	2017	2018	2019	2019	2020
	Ratio to total COGS (percent)				
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
	Unit value (dollars per carton)				
Total net sales	***	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
MSA and NPM accruals	***	***	***	***	***
Average COGS	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
SG&A expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss)	***	***	***	***	***
	Number of firms reporting				
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Data	4	4	4	4	4

Note.— The financial results included in this table classify MSA payments as a separate component of COGS. For those U.S. producers that do not formally expense NPM escrow payments (***) , NPM escrow payments are excluded from this table. The NPM escrow payments of the U.S. producer that does expense NPM escrow payments (***) are included in this table as a separate component of COGS (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table H-5
4th tier cigarettes: Changes in AUV's (reflecting company-specific accounting treatment of all NPM escrow payments), 2017-19, January-June 2019, and January-June 2020

Item	Between calendar years			Between partial year period
	2017-19	2017-18	2018-19	2019-20
	Change in AUVs (percent)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA and NPM accruals	***	***	***	***
Average COGS	***	***	***	***
	Change in AUVs (dollars per carton)			
Total net sales	***	***	***	***
Cost of goods sold.-- Raw materials	***	***	***	***
Direct labor	***	***	***	***
Other factory costs	***	***	***	***
MSA and NPM accruals	***	***	***	***
Average COGS	***	***	***	***
Gross profit or (loss)	***	***	***	***
SG&A expense	***	***	***	***
Operating income or (loss)	***	***	***	***
Net income or (loss)	***	***	***	***

Note.—The financial results included in this table classify MSA payments as a separate component of COGS. For those U.S. producers that do not formally expense NPM escrow payments (***) , NPM escrow payments are excluded from this table. The NPM escrow payments of the U.S. producer that does expense NPM escrow payments (***) are included in this table as a separate component of COGS (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted

Table H-6
4th tier cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January-June	
	2017	2018	2019	2019	2020
	Total net sales (cartons)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Total net sales (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Cost of goods sold (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Gross profit or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	SG&A expenses (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Operating income or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

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Table H-6—Continued

4th tier cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January-June	
	2017	2018	2019	2019	2020
	Net income or (loss) (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Cost of goods sold to net sales ratio (1,000 dollars)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Gross profit or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	SG&A expenses to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Operating income or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Net income or (loss) to net sales ratio (percent)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

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Table H-6—Continued

4th tier cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January-June	
	2017	2018	2019	2019	2020
	Unit net sales value (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit raw materials (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit direct labor cost (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit other factory costs (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit MSA and NPM accruals (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
	Unit cost of goods sold (dollars per carton)				
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

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Table H-6—Continued

4th tier cigarettes: Results of operations of U.S. producers (reflecting company-specific accounting treatment of all NPM escrow payments), by firm, 2017-19, January-June 2019, and January-June 2020

Item	Calendar year			January-June	
	2017	2018	2019	2019	2020
Unit gross profit of (loss) (dollars per carton)					
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
Unit SG&A expenses (dollars per carton)					
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
Unit operating income or (loss) (dollars per carton)					
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***
Unit net income or (loss) (dollars per carton)					
Cheyenne	***	***	***	***	***
Dosal	***	***	***	***	***
Farmers Tobacco	***	***	***	***	***
Xcaliber	***	***	***	***	***
All firms	***	***	***	***	***

Note.—The financial results included in this table classify MSA payments as a separate component of COGS. For those U.S. producers that do not formally expense NPM escrow payments (***) , NPM escrow payments are excluded from this table. The NPM escrow payments of the U.S. producer that does expense NPM escrow payments (***) are included in this table as a separate component of COGS (see *MSA and NPM escrow payments* section of Part VI).

Source: Compiled from data submitted in response to Commission questionnaires.

Table H-7**4th tier cigarettes: U.S. producers' total net assets and operating return on net assets, 2017-19**

Item	Calendar year		
	2017	2018	2019
	Total net assets (1,000 dollars)		
Total assets— assuming no NPM escrow payments are effectively expensed (H-1)	***	***	***
	Operating return on assets (percent)		
Average return on net assets— assuming no NPM escrow payments are effectively expensed (H-1)	***	***	***
	Total net assets (1,000 dollars)		
Total assets—based on company-specific accounting treatment of NPM escrow payments and balances (H-4)	***	***	***
	Operating return on assets (percent)		
Average return on net assets— based on company-specific accounting treatment of NPM escrow payments and balances (H-4)	***	***	***

Note.—Total assets of 4th tier cigarette producers included in this table reflect the noted assumptions regarding effective expense of NPM escrow payments and reserve of NPM escrow balances or non-effective expense of NPM escrow payments and non-reserve of NPM escrow balances. Total assets based on company-specific accounting treatment reflect the unadjusted total asset values reported in the U.S. producer questionnaire. USITC auditor notes (posthearing).

Source: Compiled from data submitted in response to Commission questionnaires.

