

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN POLYESTER STAPLE FIBER FROM KOREA AND TAIWAN

Investigations Nos. 731-TA-825-826 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea and Taiwan of certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

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

BACKGROUND

On April 2, 1999, a petition was filed with the Commission and the Department of Commerce by E.I. DuPont de Nemours, Wilmington, DE; Arteva Specialities, S.a.r.l. d/b/a KoSa, Spartanburg, SC; NanYa Plastics Corp., America, Lake City, SC; Wellman, Inc., Shrewsbury, NJ; and Intercontinental Polymers, Inc., Charlotte, NC alleging that an industry in the United States is materially injured by reason of LTFV imports of polyester staple fiber from Korea and Taiwan.² Accordingly, effective April 2, 1999, the Commission instituted antidumping investigations Nos. 731-TA-825-826 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S.

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

² NanYa Plastics was not a petitioner in the investigation involving Taiwan. In a letter dated May 4, 1999, NanYa Plastics also withdrew as a petitioner in the investigation involving Korea. In the same letter, DuPont withdrew as a petitioner in the investigation involving Taiwan.

International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register*

of April 9, 1999 (64 F.R. 17414). The conference was held in Washington, DC, on April 22, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of certain polyester staple fiber from Korea and Taiwan that allegedly are sold in the United States at less than fair value (“LTFV”).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly LTFV imports.³ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁴

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), 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.”⁶ In turn, the Act defines “domestic like product” as: “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁷

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.⁸ No single factor is dispositive, and the Commission

³ 19 U.S.C. §§ 1671b(a) and 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT __, Slip Op. 96-51 at 4-6 (March 11, 1996).

⁴ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities,

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹⁰ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as:

[T]he product covered is certain polyester staple fiber. Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed, or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut-to-lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these investigations may be coated, usually with a silicon or other finish, or not coated. Certain polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 5503.20.00.20 is specifically excluded from these investigations. Also specifically excluded from these investigations are polyester staple fibers of 10 to 18 denier that are cut-to-lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to these investigations is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.¹²

⁸ (...continued)

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).

⁹ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁰ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹¹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹² 64 Fed. Reg. 23053 (April 29, 1999).

Certain polyester staple fiber is created to act as fill for pillows, comforters, and mattresses; it also has insulating qualities and is used in products such as sleeping bags and jackets.¹³ Polyester staple fiber may be produced from “virgin” material, whereby two petroleum derivatives are polymerized into a compound called polyethylene terephthalate (“PET”).¹⁴ Alternatively, PET may come from recycled materials such as soda bottles.¹⁵ PET may be allowed to solidify, and these resulting chips or pellets can be remelted and extruded at a later time.¹⁶ PET is spun into filaments by forcing molten PET through a number of spinnerets.¹⁷ The filaments are then stretched to the appropriate diameter.¹⁸ The fibers are then crimped, whereby a two- or three-dimensional shape is given to the fiber to add resilience.¹⁹ Finishes, such as silicon, are applied and the fibers are sent through a hot-air oven to set the crimp and dry. The fibers then are cut to the appropriate length.²⁰ Typically, only fibers between one and five inches will work on the machinery of the end users who will actually use polyester staple fiber in various fill capacities.²¹

B. Domestic Like Product Issues

Petitioners assert that the domestic like product should consist of all certain polyester staple fiber as defined by Commerce.²² Respondents argue that there are in fact several like products contained within this product group.²³ As discussed below, we determine for the limited purpose of this preliminary phase of these investigations that there is one domestic like product consisting of all certain polyester staple fiber. However, we intend to further examine these like product distinctions in any final phase of these investigations.

1. Low melt polyester staple fiber

Respondents claim that low melt polyester staple fiber is a separate like product²⁴ and that there is no comparable product produced in the United States.²⁵ Petitioners claim that low melt is made domestically, and that in any case low melt competes directly with other types of polyester staple fiber.²⁶

¹³ Transcript of Certain Polyester Staple Fiber Conference of April 22, 1999 (hereinafter “Transcript”) at 11.

¹⁴ Transcript at 11.

¹⁵ Transcript at 11.

¹⁶ Transcript at 12.

¹⁷ CR at I-5; PR at I-3.

¹⁸ Transcript at 14.

¹⁹ CR at I-5; PR at I-4.

²⁰ CR at I-5; PR at I-4.

²¹ Transcript at 16.

²² Petitioners’ Postconference Brief at 6-9, 22-25.

²³ Respondents’ Joint Postconference Brief at 9, 20-21; Korean Respondents’ Postconference Brief at 12; Taiwanese Respondents’ Postconference Brief at 2.

²⁴ Korean Respondents’ Postconference Brief at 12; Taiwanese Respondents’ Postconference Brief at 2.

²⁵ Respondents’ Joint Postconference Brief at 24-25.

²⁶ Petitioners’ Postconference Brief at 17-20.

The record indicates that there is in fact domestic production of low melt fiber.²⁷ We include low melt polyester staple fiber in the single like product certain polyester staple fiber for the limited purpose of this preliminary determination and would do so even in the absence of domestic production.²⁸ However, we intend to collect additional information in any final phase of these investigations and may revisit this decision.

Physical Characteristics and Uses. Low melt polyester staple fiber is a bicomponent fiber comprised of a polyester core and a sheath of copolymer polyester.²⁹ Low melt is used to bind conventional polyester staple fibers together to form a nonwoven batt suitable for bulk uses such as furniture stuffing.³⁰ When heated, the outer copolymer sheath melts at a lower temperature than its core or conventional polyester staple fibers, and the melted sheath acts as a glue, holding the polyester staple fibers together.³¹ Low melt fibers are replacing an older method of binding, whereby conventional polyester staple fibers were sold to end users who then would apply a latex or resin coat to make the fibers stick together.³²

Interchangeability. Low melt is not interchangeable with conventional polyester staple fiber, although it must be mixed with conventional polyester staple fiber to be used. Until heated, low melt lacks the loft or fill characteristics of conventional polyester staple fiber.³³

Channels of Distribution. There are no meaningful differences in the channels of distribution between imported low melt, domestically produced low melt, and conventional polyester staple fiber.³⁴ All products are sold both to distributors and to end users.³⁵

Common Manufacturing Facilities, Employees, and Methods. Low melt requires a double spinning process whereas conventional polyester staple fiber requires only one.³⁶ After spinning, however, low melt may be stretched, cut, and baled on the same machinery as conventional polyester staple fiber.³⁷

Producer and Customer Perceptions. Domestic producers regard low melt as just another type of polyester staple fiber product. Customers, however, perceive low melt as a special form of polyester staple

²⁷ There is one domestic producer of low melt polyester staple fiber. CR at I-10; PR at I-6.

²⁸ See generally, Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia, Invs. Nos. 701-TA-384 (Preliminary) and 731-TA-806-808 (Preliminary), USITC Pub. No. 3142 (Nov. 1998) at 5, n. 14 (The Commission must adhere to “the statutory requirement that if there is no product ‘like’ the subject imports, the Commission must find the domestic product that is ‘most similar in characteristics and uses with’ the imports. 19 U.S.C. § 1677(10).”).

²⁹ CR at I-8, I-9; PR at I-6.

³⁰ CR at I-9; PR at I-6.

³¹ CR at I-9; PR at I-6.

³² CR at I-9; PR at I-6.

³³ CR at I-9; PR at I-6.

³⁴ CR at I-9; PR at I-6.

³⁵ CR at I-9; PR at I-6.

³⁶ CR at I-9; PR at I-6.

³⁷ CR at I-9; PR at I-6.

fiber,³⁸ offering a newer, safer, less expensive alternative to the older method of treating conventional polyester staple fiber with resins for use primarily in furniture.³⁹

Price. According to respondents, low melt commands a price premium over conventional polyester staple fiber.⁴⁰ Direct price comparisons between cumulated subject imports of low melt and the domestic like product, however, were not available in this preliminary phase of these investigations.

Conclusion. For the limited purpose of these preliminary phase investigations, we have included domestically produced low melt in the same like product as conventional polyester staple fiber. However, information on the existing record raises questions regarding physical characteristics, interchangeability, perception, and price. We will collect additional information on low melt in any final phase of these investigations and will reexamine this like product determination at that time.

2. Conjugate polyester staple fiber

According to respondents, conjugate polyester staple fiber is a separate like product.⁴¹ Respondents also claim that there is no comparable product produced in the United States.⁴² Petitioners claim that there is in fact domestic production of conjugate fiber and, even if there were no domestic production, conjugate is not truly a separate product but rather one type of polyester staple fiber that competes with a variety of other polyester staple fibers.⁴³ The record indicates that there is in fact domestic production of conjugate fiber.⁴⁴ We include conjugate polyester staple fiber in the single like product certain polyester staple fiber for the limited purpose of this preliminary determination and would do so even in the absence of domestic production.⁴⁵ However, we intend to collect additional information in any final phase of these investigations and may revisit this decision.

Physical Characteristics and Uses. Conjugate fiber is also a bicomponent fiber, with two polyesters used to create a curled, or spiraled fiber.⁴⁶ This spiral shape provides characteristics to the conjugate fiber similar to those that mechanical crimping gives to conventional polyester staple fiber.⁴⁷

³⁸ CR at I-9, II-4-II-6; PR at I-6, II-3-II-4; see also Transcript at 117, 124.

³⁹ CR at I-9; PR at I-6.

⁴⁰ CR at I-9; PR at I-6.

⁴¹ Respondents' Joint Postconference Brief at 9.

⁴² Respondents' Joint Postconference Brief at 24-25.

⁴³ ***, Transcript at 165; Petitioners' Postconference Brief at 19.

⁴⁴ There is one domestic producer of conjugate polyester staple fiber. CR at I-8; PR at I-6.

⁴⁵ See generally, Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia, Invs. Nos. 701-TA-384 (Preliminary) and 731-TA-806-808 (Preliminary), USITC Pub. No. 3142 (Nov. 1998) at 5, n. 14 (The Commission must adhere to "the statutory requirement that if there is no product 'like' the subject imports, the Commission must find the domestic product that is 'most similar in characteristics and uses with' the imports. 19 U.S.C. § 1677(10).").

⁴⁶ CR at I-8, I-9; PR at I-5.

⁴⁷ CR at I-8; PR at I-5.

Conjugate fiber is produced in the same sizes and finishes as conventional polyester staple fiber.⁴⁸ It is used in the same applications as conventional polyester staple fiber, especially in mattresses and pillows.⁴⁹

Interchangeability. Although respondents assert that conjugate fiber is sufficiently superior that it does not compete with domestic polyester staple fiber, the record indicates that both conjugate and conventional polyester staple fiber serve the same function of imparting loft and fluffiness.⁵⁰

Common Manufacturing Facilities, Employees and Methods. Conjugate polyester staple fiber requires a different extrusion process than does conventional polyester staple fiber.⁵¹ After the extrusion process, however, conjugate may be stretched, cut, and baled on the same machinery as conventional polyester staple fiber.⁵²

Channels of Distribution. The record shows no meaningful differences in the channels of distribution for imported conjugate, domestic conjugate, or conventional polyester staple fiber.⁵³

Producer and Customer Perceptions. Domestic producers see conjugate and conventional polyester staple fiber as interchangeable and comparable products competing for the same end uses.⁵⁴ Some customers perceive conjugate to be a superior product, while others prefer the conventional product.⁵⁵ Even those who prefer conjugate agree there are applications where the differences between conjugate and conventional polyester staple fiber are not important.⁵⁶

Price. According to respondents, conjugate fiber commands a price premium over conventional polyester staple fiber.⁵⁷ Direct price comparisons between cumulated subject imports of conjugate and the domestic like product, however, were not available in this preliminary phase of these investigations.

Conclusion. For purposes of these preliminary determinations, and in light of similarities in end uses, interchangeability, and perceptions, we have determined that conjugate is sufficiently like conventional polyester staple fiber to treat the two as a single like product. However, we will collect additional information on conjugate fiber in any final phase of these investigations and will reexamine our like product determination at that time.

3. Polyester staple fiber made from recycled materials

⁴⁸ Petitioners' Postconference Brief at 23.

⁴⁹ CR at I-7; PR at I-5.

⁵⁰ CR at I-7; PR at I-5.

⁵¹ CR at I-7-I-8; PR at I-5.

⁵² CR at I-8; PR at I-5.

⁵³ CR at I-8; PR at I-5.

⁵⁴ CR at II-4; PR at II-3.

⁵⁵ Transcript at 137; Transcript at 145.

⁵⁶ Transcript at 142.

⁵⁷ CR at I-8; PR at I-6.

As noted above, polyester staple fiber can be made from either virgin raw materials or from various recycled materials. Petitioners claim there are no meaningful differences between domestically produced polyester staple fiber made from virgin inputs and that made from recycled materials.⁵⁸ Respondents claim that domestic virgin polyester staple fiber still commands a significant price difference.⁵⁹

Physical Characteristics and Uses. There are few, if any, physical differences between domestic polyester staple fiber manufactured from virgin materials and that created from recycled materials.⁶⁰ Most domestic manufacturers use both inputs, and some manufacturers may mix virgin and recycled product even at the earliest production stage.⁶¹ Polyester staple fiber made domestically from recycled materials has the same physical characteristics—loft, coating, color—as that produced from virgin inputs.⁶²

Interchangeability. Polyester staple fiber made domestically from virgin and recycled materials are used interchangeably.⁶³

Channels of Distribution. There are no differences in the channels of distribution.⁶⁴

Common Manufacturing Facilities, Employees and Methods. Aside from the differences in inputs, the subsequent processing of virgin and recycled polyester staple fiber is the same.⁶⁵ The two are frequently processed (spun, crimped, and cut) in a mixture at the same time on the same machinery.⁶⁶

Producer and Customer Perceptions. There are no requirements that polyester staple fiber be labeled according to its raw materials.⁶⁷ There appears to be little or no difference among producers or customers' perceptions of the two products.⁶⁸ We are not aware of any purchaser that requests polyester staple fiber based on its raw material.

Price. Petitioners claim that the price premium once commanded by polyester staple fiber made from virgin inputs has disappeared,⁶⁹ while respondents argue that a price premium still exists.⁷⁰ Data

⁵⁸ Petitioners' Postconference Brief at 2, 6-9.

⁵⁹ Respondents' Joint Postconference Brief at 30-31.

⁶⁰ CR at I-6; PR at I-4.

⁶¹ CR at I-3; PR at I-2.

⁶² CR at I-6; PR at I-4.

⁶³ CR at I-6; PR at I-4.

⁶⁴ CR at I-6; PR at I-4.

⁶⁵ CR at I-5; PR at I-4.

⁶⁶ CR at I-5; PR at I-3.

⁶⁷ Petitioners' Postconference Brief at 9.

⁶⁸ CR at I-6, II-5; PR at I-4, II-3.

⁶⁹ CR at II-6; PR at II-4; see also Petitioners' Postconference Brief at 9.

⁷⁰ Respondents' Postconference Brief at 31.

collected in these preliminary investigations indicate that domestic polyester staple fiber from recycled materials had *** average unit value than did domestic polyester staple fiber from virgin materials.⁷¹

Conclusion. We determine that polyester staple fiber created from virgin raw materials and polyester staple fiber from recycled materials constitute one like product. We will reconsider our determination if warranted by information collected in any final phase of these investigations.

4. **“Regen” polyester staple fiber**

Respondents claim there is another grade of polyester staple fiber that is unlike anything produced domestically and for which conventional polyester staple fiber is not the appropriate domestic like product.⁷² Respondents refer to this grade of polyester staple fiber as “regen.” Petitioners claim that regen and conventional polyester staple fiber are in fact the same product, save for some quality and price variations, or, alternatively, that domestically produced conventional polyester staple fiber is the domestic product most similar to regen.⁷³

Physical Characteristics and End Uses. Regen is made exclusively from recycled or regenerated materials, but is chemically identical to conventional polyester staple fiber.⁷⁴ Asian producers of regen tend to be small firms, generally using inferior quality equipment.⁷⁵ The resulting regen polyester staple fiber tends to be of a lower quality than conventional polyester staple fiber; regen has uneven coloration and inconsistent sizing and may contain large chips of unprocessed polyester.⁷⁶ Petitioners and respondents disagree as to whether regen and conventional polyester staple fiber compete for the same end uses, but both agree that end users frequently blend regen with conventional polyester staple fiber.⁷⁷

Interchangeability. Regen’s inferior quality may make it somewhat more difficult to process than conventional polyester staple fiber.⁷⁸ The extent to which regen is blended with conventional polyester staple fiber, however, indicates that both products are largely interchangeable and suitable for the same end uses.⁷⁹

Channels of Distribution. There are no meaningful differences in the channels of distribution.⁸⁰

⁷¹ CR at Tables C-2 and C-3.

⁷² Respondents’ Joint Postconference Brief at 20-21.

⁷³ Petitioners’ Postconference Brief at 24-26.

⁷⁴ Respondents’ Joint Postconference Brief at 15.

⁷⁵ Respondents’ Joint Postconference Brief at 15.

⁷⁶ CR at I-5; PR at I-4.

⁷⁷ CR at I-6; PR at I-4; see also Petitioners’ Postconference Brief at 26; Respondents’ Joint Postconference Brief at 22; Transcript at 131, 134.

⁷⁸ Transcript at 106, 108.

⁷⁹ CR at I-6; PR at I-4; see also Petitioners’ Postconference Brief at 26.

⁸⁰ Petitioners’ Postconference Brief at 16.

Common Manufacturing Facilities, Employees and Methods. Regen is produced in the same way as conventional polyester staple fiber from recycled materials, using the same methods.⁸¹ Regen and conventional polyester staple fiber are made from the same materials.⁸² Differences in quality do not reflect any meaningful differences in technology or materials.⁸³

Producer and Customer Perceptions. Domestic producers consider regen as a conventional polyester staple fiber product, suitable for many of the same uses and competing with their own products for many of the same customers and applications.⁸⁴ Many customers consider regen as a product that has opened new markets to polyester staple fiber.⁸⁵ For those customers, however, it is clearly price, rather than any qualitative or technical difference, that makes regen attractive.⁸⁶

Price. The limited pricing information on the record indicates that regen apparently has a significantly lower price than conventional polyester staple fiber.⁸⁷ However, direct price comparisons were not available in these preliminary investigations.

Conclusion. We determine that regen polyester staple fiber and conventional polyester staple fiber constitute one like product. However, we will collect additional information regarding any possible like product distinction in any final phase of these investigations and will reexamine our like product determination at that time.

5. Conclusion

We have determined to treat all polyester staple fiber as one like product for the limited purpose of the preliminary phase of these investigations. However, as previously indicated, in light of the information available on the current record with respect to possible like product distinctions, the Commission will collect additional information in any final phase investigations and will reexamine our like product determinations at that time.

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product”⁸⁸ In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁸⁹ Based on our finding that the domestic like product consists of certain

⁸¹ Respondents' Joint Postconference Brief at 15.

⁸² Respondents' Joint Postconference Brief at 15.

⁸³ See, e.g., CR at I-5-I-6; PR at I-4.

⁸⁴ Petitioners' Postconference Brief at 24-26.

⁸⁵ Transcript at 132.

⁸⁶ Transcript at 108.

⁸⁷ Respondents' Joint Postconference Brief at 19-20.

⁸⁸ 19 U.S.C. § 1677(4)(A).

⁸⁹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int'l Trade 1994), aff'd, 96 F. 3d 1352 (Fed. Cir. 1996).

polyester staple fiber, for purposes of the preliminary phase of these investigations we find that the domestic industry consists of all domestic producers of certain polyester staple fiber.

In these investigations, two domestic producers are potentially subject to exclusion under section 771(4)(B) of the Act as related parties.⁹⁰ Nan Ya America is a wholly-owned and operated subsidiary of Nan Ya Plastics Corporation, a Taiwanese manufacturer and exporter of the subject merchandise. In addition, *** imported subject merchandise from both Korea and Taiwan. No party has urged the Commission to exclude either producer from the domestic industry. We find that appropriate circumstances do not exist to exclude either producer from the domestic industry.

Nan Ya operates one plant in Lake City, South Carolina, producing the like product as well as other polyester for carpets and spinning.⁹¹ It has doubled its production capacity since 1996,⁹² and in 1998 accounted for *** percent of total domestic production.⁹³ Despite its Taiwanese ownership, Nan Ya America has perhaps suffered the most among domestic producers. Its new production capacity came online in July 1997.⁹⁴ Within a year Nan Ya shut down half of its polyester staple fiber capacity, including part of the new production lines.⁹⁵ Presently, one production line is still down, and Nan Ya claims to be operating well below capacity on the lines that are open,⁹⁶ although its performance showed a strong rebound in the first quarter of 1999.⁹⁷

Nan Ya does not appear to have derived any benefits, or to have operated in a manner that is different from other domestic producers, as a result of its relationship with its parent, a foreign producer. Based on the facts available on the record at this time, we do not exclude this producer under the related parties provision of the statute for the investigation regarding imports from Taiwan.

*** imported approximately ***.⁹⁸ In contrast, the firm accounted for *** of domestic production. It is the *** largest producer of polyester staple fiber in the United States.

*** imports represent a *** of its domestic production and it does not appear to have gained any significant financial benefit from its importation activities relative to its domestic activities. Its primary interests appear to be in domestic production, not importation. ***. Accordingly, we do not exclude *** as a related party in either investigation.

III. CUMULATION

⁹⁰ 19 U.S.C. § 1677(4)(B).

⁹¹ CR at III-1, III-2; PR at III-1.

⁹² CR at III-2; PR at III-1.

⁹³ CR at III-1; PR at III-1.

⁹⁴ Transcript at 28.

⁹⁵ Transcript at 28.

⁹⁶ Transcript at 28.

⁹⁷ CR at Table VI-2; PR at Table VI-2.

⁹⁸ Petitioners' Postconference Brief at Exhibit 1, p. 10.

A. In General

For purposes of evaluating the volume and price effects for a material injury determination, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.⁹⁹ In assessing whether subject imports compete with each other and with the domestic like product,¹⁰⁰ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;¹⁰¹
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.¹⁰²

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.¹⁰³ Only a “reasonable overlap” of competition is required.¹⁰⁴

⁹⁹ 19 U.S.C. § 1677(7)(G)(I). There are four exceptions to the cumulation provision, none of which applies to these investigations. See id. at § 1677(7)(G)(ii).

¹⁰⁰ The SAA expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition[.]” citing Fundicao Tupy, S.A. v. United States, 678 F.Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988). SAA at 848.

¹⁰¹ Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. Based on the record in these preliminary investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with her colleagues that subject imports from Korea and Taiwan should be cumulatively assessed. See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

¹⁰² See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F.Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

¹⁰³ See, e.g., Wieland Werke, AG v. United States, 718 F.Supp. 50 (Ct. Int’l Trade 1989).

¹⁰⁴ See Goss Graphic System, Inc. v. United States, ___ CIT ___, slip op. 98-147 at 8 (Oct. 16, 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

B. Analysis

Petitioners assert that imports from both countries should be cumulated, claiming that both the domestic like product and subject imports compete head-to-head for the same customers and accounts.¹⁰⁵ Petitioners also claim that the other factors are satisfied as well, noting that both the imported and domestic product flow through similar channels of distribution to purchasers throughout the country, and that subject imports from both Korea and Taiwan have been continuously present in the U.S. market throughout the period of investigation.¹⁰⁶ Respondents argue that the products are not truly fungible, as different fibers are suitable for different uses and are perceived as different by customers.¹⁰⁷

1. Fungibility

While we note that questions exist regarding the fungibility of low melt and conjugate fibers with each other and with conventional polyester staple fiber, the current record indicates significant fungibility between other subject imports and domestically produced polyester staple fiber. All domestic producers believe domestically produced polyester staple fiber to be interchangeable with subject imports¹⁰⁸ as do half of importers.¹⁰⁹ Those importers who did not describe domestic polyester staple fiber as interchangeable with subject imports based their objections on the lack of domestic production of low melt, conjugate, and regen, rather than on differences between other subject imports and domestic polyester staple fiber.¹¹⁰ Available data indicate that most domestic production is of conventional polyester staple fiber, rather than low melt or conjugate.¹¹¹ In 1998, most imports from Korea were also of conventional polyester staple fiber, as opposed to low melt or conjugate.¹¹² The data are less clear concerning the composition of imports from Taiwan, given that conflicting data were provided by respondents, but conventional polyester staple fiber still accounted for *** of Taiwanese shipments to the United States in 1998.¹¹³ All producers and most importers surveyed agree that Korean and Taiwanese subject imports are interchangeable.¹¹⁴ The apparently common practice of blending polyester staple fiber from various sources, including imported and domestic polyester staple fiber, is further evidence that significant fungibility exists between subject imports and domestically produced polyester staple fiber.¹¹⁵

¹⁰⁵ Petitioners' Postconference Brief at 14.

¹⁰⁶ Petitioners' Postconference Brief at 16.

¹⁰⁷ See, e.g., Korean Respondents' Postconference Brief at 11, 13-14, 16.

¹⁰⁸ CR at II-4; PR at II-3.

¹⁰⁹ CR at II-4; PR at II-3.

¹¹⁰ CR at II-5; PR at II-3.

¹¹¹ CR at III-5, PR at III-2. In 1998, conjugate fiber accounted for *** of domestic production, while low melt fibers accounted for ***. CR at III-5, PR at III-2.

¹¹² Korean Respondents' Postconference Brief at 7; Respondents' Joint Postconference Brief at 12, 25-26. Depending on which set of figures is used, low melt and conjugate combined accounted for between *** and *** of Korean shipments to the United States in 1998. Korean Respondents' Postconference Brief at 7; Respondents' Joint Postconference Brief at 12, 25-26.

¹¹³ Respondents' Joint Postconference Brief at 12, 25-26.

¹¹⁴ CR at II-6; PR at II-4.

¹¹⁵ Petitioners' Postconference Brief at 26; Transcript at 131, 134.

2. Other Factors

The record contains evidence supporting a reasonable overlap of competition with respect to the other factors we considered. Both subject imports and domestically produced polyester staple fiber are sold to customers throughout the country¹¹⁶ and move through similar channels of distribution, with sales to both end users and distributors.¹¹⁷ Both domestically produced polyester staple fiber and subject imports were present in U.S. markets throughout the period of investigation.¹¹⁸

3. Conclusion

Based on the record in these preliminary investigations, we find that there is a reasonable overlap of competition between the subject imports and between the subject imports and the domestic like product. With respect to fungibility, as discussed previously, there are questions regarding the degree of fungibility among low melt, conjugate, and conventional polyester staple fiber. Nonetheless, we find that this preliminary record reveals that, during the period for which data were collected, both of the subject countries exported to the United States subject merchandise that was broadly interchangeable with each other and with the domestic like product. We therefore cumulate subject imports from Korea and Taiwan for purposes of our injury analysis. We will reexamine the issue of fungibility in any final phase of these investigations.

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.^{119 120} In making this determination, the Commission

¹¹⁶ CR at I-10; PR at I-7.

¹¹⁷ CR at I-10; PR at I-7.

¹¹⁸ Petitioners' Postconference Brief at 16. Official import statistics are not useful in these investigations because the official statistics contain both subject and nonsubject imports. CR at IV-2; PR at IV-1.

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

¹²⁰ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must

(continued...)

must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹²¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial or unimportant.”¹²² In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹²³ 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.”¹²⁴

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing polyester staple fiber is materially injured by reason of subject imports from Korea and Taiwan.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations. First, the record in this preliminary phase of these investigations indicates that polyester staple fiber is a commodity-type product and sold largely on the basis of price.¹²⁵ However, we will continue to collect information in any final phase of these investigations and will reexamine this issue at that time.

Second, in the United States, the production of certain polyester staple fiber requires significant capital investment with relatively high fixed costs.¹²⁶ Further, quality and consistency concerns dictate that production lines must run at a certain speed, with the result that production on a given line can be slowed to about 75 percent of maximum, but no lower.¹²⁷ Start-ups and shut-downs of production lines are time-consuming and expensive, especially for producers using virgin inputs and the continuous process

¹²⁰ (...continued)

consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), aff’g 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

¹²¹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

¹²² 19 U.S.C. § 1677(7)(A).

¹²³ 19 U.S.C. § 1677(7)(C)(iii).

¹²⁴ 19 U.S.C. § 1677(7)(C)(iii).

¹²⁵ See, e.g., Petitioners’ Postconference Brief at 14, 18.

¹²⁶ Petitioners’ Postconference Brief at 28.

¹²⁷ Transcript at 17.

method.¹²⁸ Given the rigidity of these production concerns, it is in a manufacturer's interest to run production lines at or near maximum capacity at all times.¹²⁹ Domestic manufacturers thus face a difficult choice in times of slack or declining demand: either run the lines and build up inventory, or incur the heavy costs of a complete shut-down and the future costs of an eventual restart.¹³⁰

Third, both foreign and domestic producers can switch production between subject or domestic polyester staple fiber and other polyester products, such as fibers for spinning or carpet fibers.¹³¹ The costs of switching a production line are small relative to the costs of assembling a new line.¹³²

Fourth, raw materials account for approximately one-half of the cost of finished polyester staple fiber.¹³³ The cost of virgin raw materials has declined significantly as prices for most petrochemicals fell during the period of investigation.¹³⁴ The cost of the two primary raw materials for virgin polyester staple fiber production fell 64 and 54 percent, respectively, between 1996 and 1998.¹³⁵ The prices of recycled materials have tended to follow roughly the prices of virgin raw materials,¹³⁶ although current prices of virgin raw materials are running below those of recycled inputs.¹³⁷

Fifth, there are virtually no non-subject imports of certain polyester staple fiber.¹³⁸ Throughout the period of investigation, the domestic market has been dominated by the domestic producers and subject imports from Korea and Taiwan.¹³⁹ Total nonsubject imports accounted for only one percent of total apparent domestic consumption in 1998.¹⁴⁰

Finally, demand for the product has grown robustly during the period, with total apparent domestic consumption rising 26 percent between 1996 and 1998, from 650.8 million pounds in 1996 to a total of 822.7 million pounds in 1998.¹⁴¹ Demand in the first quarter of 1999 increased an additional 11 percent over the same period in 1998.¹⁴² A significant portion of polyester staple fiber is consumed in the production of various home-related products, such as bedding and furniture, and a strong new housing market has helped swell demand for polyester staple fiber.¹⁴³ According to the available data,

¹²⁸ Transcript at 17.

¹²⁹ Petitioners' Postconference Brief at 28.

¹³⁰ Petitioners' Postconference Brief at 28.

¹³¹ Transcript at 60; Korean Respondents' Postconference Brief at 3.

¹³² Transcript at 60.

¹³³ CR at Table VI-3; PR at Table VI-3.

¹³⁴ CR at V-1; PR at V-1.

¹³⁵ CR at V-1; PR at V-1.

¹³⁶ Transcript at 152.

¹³⁷ Transcript at 57.

¹³⁸ CR at Table IV-2; PR at Table IV-2.

¹³⁹ CR at Table IV-2; PR at Table IV-2.

¹⁴⁰ CR at Table IV-3; PR at Table IV-3.

¹⁴¹ CR at Table IV-2; PR at Table IV-2.

¹⁴² CR at Table IV-2; PR at Table IV-2.

¹⁴³ CR at IV-7; PR at IV-5.

the cost share of polyester staple fiber in downstream products is quite high but varies widely, ranging from 20 to 55 percent of the total per unit cost.¹⁴⁴

B. Volume of the Subject Imports

Section 771(7)(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁴⁵

Subject imports rose more than 75 percent between 1996 and 1998, with total subject imports in 1998 nearing 389.6 million pounds, compared to only 222.0 million in 1996.¹⁴⁶ Subject imports have continued to rise in 1999, with first quarter imports registering a 21 percent gain over the same time period in 1998. Subject imports accounted for 34 percent of total apparent domestic consumption in 1996; by 1998 that figure had risen to 47 percent.¹⁴⁷ In the first quarter of 1999, total subject imports accounted for 48 percent of total apparent domestic consumption, up from 44 percent in the same quarter of 1998.¹⁴⁸

At the same time, the domestic producers’ share of the market fell from 65 percent to 52 percent.¹⁴⁹ During the period of rapidly expanding domestic demand noted above, subject imports captured virtually all of that growth, while domestic shipments remained essentially stagnant.¹⁵⁰

Based on the foregoing, we find that the volume of imports of the subject merchandise, and the increase in that volume, are significant both in absolute terms and relative to consumption.¹⁵¹

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports,

the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁵²

Pricing data gathered in these investigations show persistent price declines for both the domestic like product and subject imports. Average unit values for all products also fell, with the average unit value

¹⁴⁴ CR at II-3, PR at II-2.

¹⁴⁵ 19 U.S.C. § 1677(7)(C)(I).

¹⁴⁶ CR at Table IV-2; PR at Table IV-2.

¹⁴⁷ CR at Table IV-3; PR at Table IV-3.

¹⁴⁸ CR at Table IV-3; PR at Table IV-3.

¹⁴⁹ CR at Table IV-3; PR at Table IV-3.

¹⁵⁰ CR at Tables IV-2, IV-3; PR at Tables IV-2, IV-3.

¹⁵¹ Commissioner Crawford joins only in the factual discussion of the volume of imports. She does not rely on any analysis of trends in the market share of subject imports and other factors in her determination of material injury by reason of allegedly dumped imports. She makes her finding of the significance of volume in the context of the price effects and impact of these imports, given the conditions of competition. For reasons discussed below, she finds that the volume of subject imports is significant in these preliminary investigations.

¹⁵² 19 U.S.C. § 1677(7)(C)(ii).

for domestic shipments dropping 15 percent from 1996 to 1998, compared to an 18 percent drop for subject imports.¹⁵³

Import prices have been consistently below domestic prices throughout the period of investigation. A comparison of quarterly prices by specific types of fiber show pronounced and consistent underselling by subject imports.¹⁵⁴ Of the 168 quarterly comparisons available, subject imports undersold the domestic like product in 135 quarters, or 80 percent of the time.¹⁵⁵ The margins of underselling increased in 1998 for several polyester staple fiber products.^{156 157}

In considering price changes over the period of investigation, we note that raw material input prices declined sharply during the period of investigation, with drops between 54 and 64 percent for major inputs between 1996 and 1998.¹⁵⁸ We also recognize that price competition among domestic producers may have increased downward pressure on domestic prices to some extent.^{159 160}

While these factors provide some explanation for the decrease in domestic prices, we conclude, for the purposes of these preliminary determinations, that import prices, combined with the increased volume of imports, have depressed prices for domestically produced polyester staple fiber to a significant degree.

D. Impact of the Subject Imports on the Domestic Industry

¹⁵³ CR at Table C-1; PR at Table C-1.

¹⁵⁴ CR at V-24; PR at V-7.

¹⁵⁵ CR at V-24; PR at V-7.

¹⁵⁶ See, e.g., CR at Tables V-1, V-2, V-5, V-7, V-10; PR at Table V-1, V-2, V-5, V-7, V-10.

¹⁵⁷ Commissioner Crawford rarely gives much weight to evidence of underselling since it usually reflects some combination of differences in quality, other nonprice factors, or fluctuations in the market during the period in which price comparisons were sought.

¹⁵⁸ CR at V-1; PR at V-1.

¹⁵⁹ We note that the prices of one domestic producer, ***, generally were *** both domestic and import prices. CR at V-5; PR at V-4. We also note, however, that the prices were only for *** of the eight surveyed products, and that *** share of total domestic production was only *** in 1998. While even a *** producer may affect prices in a commodity market, based on the current record *** do not affect our conclusions regarding the price effects of subject imports in these preliminary phase investigations. We intend to examine this issue more closely in any final phase of these investigations. We invite parties in any final phase of these investigations to provide information on price leadership in the U.S. market.

¹⁶⁰ To evaluate the effects of the alleged dumping on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports were dumped with what domestic prices would have been if the subject imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In these preliminary investigations, the alleged dumping margins for subject imports vary widely but on the whole are fairly high. Thus, subject imports likely would have been priced significantly higher had they been fairly traded. Subject imports and domestic polyester staple fiber appear to be good substitutes. Given the record in the preliminary phase of these investigations, she finds that the shift in demand away from subject imports and toward the domestic like product likely would have been significant, had subject imports been fairly traded. The domestic industry has ample excess capacity with which it could have increased production, and it could have supplied additional polyester staple fiber from inventories. Because of the domestic industry's ability to increase supply in response to higher demand, she finds in the preliminary phase of these investigations that the domestic industry would have been able to increase its prices significantly, had subject imports been fairly traded. However, she intends to reexamine the nature of competition in the domestic market in any final phase investigations. Consequently, Commissioner Crawford finds that in the preliminary phase of these investigations, the subject imports are having significant effects on prices for domestic polyester staple fiber.

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.” These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁶¹ ¹⁶²

Consistent with our finding that the volume, and increase in volume, of the subject imports between 1996 and 1998 were significant, and that the decline in prices for domestically produced polyester staple fiber from 1996 to 1998 was due to the subject imports to a significant degree, we find that the subject imports are having a significant adverse impact on domestic producers.¹⁶³

As noted earlier, demand for polyester staple fiber grew sharply between 1996 and 1998, but domestic production has been essentially flat.¹⁶⁴ Total apparent domestic consumption rose 26 percent between 1996 and 1998, from 650.8 million pounds to 822.7 million. After a small increase of four percent in 1997, domestic shipments fell nearly four percent to 425.1 million pounds in 1998.¹⁶⁵ Domestic shipments in 1998 were less than one percent above shipments in 1996, despite the significant rise in overall consumption.¹⁶⁶ While domestic shipments increased by two percent in the first quarter of 1999

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

¹⁶² As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce identified estimated dumping margins for China ranging from 120.9 to 153.7 percent. 64 Fed. Reg. 11834, 11835 (March 10, 1999).

¹⁶³ Commissioner Crawford does not base her determination on an analysis of the trends in the statutory impact factors, and thus does not join the remainder of this discussion. However, she concurs in her colleagues’ conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of allegedly dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry’s prices, sales and overall revenues is critical, because the impact on the other industry indicators (e.g., employment, wages, etc.) is derived from this impact. As noted above, there is a reasonable indication that the domestic industry would have been able to increase its prices significantly if subject imports had been sold at fairly traded prices. Had subject imports been fairly priced, the domestic industry would have been able to increase its supply in response to a shift in demand away from subject imports to the domestic product. Accordingly, she finds that the combination of the domestic industry’s price and output increases, and therefore its revenues, would have been significant, had subject imports been fairly priced. Consequently, the domestic industry likely would have been materially better off if subject imports had been fairly traded.

¹⁶⁴ CR at Table IV-2; PR at Table IV-2.

¹⁶⁵ CR at Table IV-2; PR at Table IV-2.

¹⁶⁶ CR at Table IV-2; PR at Table IV-2.

over the same period in 1998, the domestic rate of increase was well below that of subject imports in the same time period.¹⁶⁷

The sluggish growth in domestic production, along with some growth in capacity, have resulted in declining capacity utilization rates, falling from 84.8 percent in 1996 to 75.8 percent for 1998.¹⁶⁸ Capacity utilization for the first quarter of 1999 is down from the same time period in 1998, from 78.8 percent to 78.2 percent.¹⁶⁹ Furthermore, one producer has had to shut down its newest, most technologically advanced production lines during the period of investigation.¹⁷⁰ Inventories rose 13.2 percent from 1996 to 1998, i.e., to 42.6 million pounds, and rose another 23.7 percent in the first quarter of 1999 compared to that period in 1998.¹⁷¹ The number of production workers dropped one percent between 1996 and 1998.¹⁷² The number of hours worked held steady between 1996 and 1998, but showed significant erosion in the first quarter of 1999, falling six percent from first quarter 1998 levels.¹⁷³

Financial indicators also declined. After increasing from 6.2 percent of net sales in 1996 to 7.5 percent in 1997, operating income slipped to 2.5 percent in 1998.¹⁷⁴ Operating income in the first quarter of 1999 was down more than 60 percent from the first quarter of 1998, dropping from 8.9 percent of net sales to 3.8 percent.¹⁷⁵ Net income followed a similar pattern, rising from 6.0 percent of net sales in 1996 to 7.7 percent in 1997, then dropping to 2.8 percent in 1998.¹⁷⁶ Net income also showed a drop in the first quarter of 1999 compared to the same time period in 1998, falling from 9.4 percent of net sales in 1998 to 3.5 percent in 1999.¹⁷⁷ Three of the five domestic producers experienced operating losses in 1998 and in the first quarter of 1999.¹⁷⁸ Capital expenditures in 1998 were \$15.3 million, above the 1996 level of \$10.6 million but well below 1997 expenditures of \$23.4 million.¹⁷⁹ Further erosion in capital expenditures appeared in the first quarter of 1999, with a drop of more than 50 percent from first quarter 1998 levels.¹⁸⁰

Based on all the foregoing, we find that the subject imports are having an adverse impact on the domestic industry.

E. Conclusion

For the reasons stated above, we find that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from Korea and Taiwan.

¹⁶⁷ CR at Table IV-2; PR at Table IV-2.

¹⁶⁸ CR at Table C-1; PR at Table C-1.

¹⁶⁹ CR at Table C-1; PR at Table C-1.

¹⁷⁰ Petitioners' Postconference Brief at 31; Transcript at 167.

¹⁷¹ CR at Table C-1; PR at Table C-1.

¹⁷² CR at Table C-1; PR at Table C-1.

¹⁷³ CR at Table C-1; PR at Table C-1.

¹⁷⁴ CR at Table VI-1; PR at Table VI-1.

¹⁷⁵ CR at Table VI-1; PR at Table VI-1.

¹⁷⁶ CR at Table VI-1, PR at Table VI-1.

¹⁷⁷ CR at Table VI-1; PR at Table VI-1.

¹⁷⁸ CR at Table VI-1; PR at Table VI-1.

¹⁷⁹ CR at Table VI-5; PR at Table VI-5.

¹⁸⁰ CR at Table VI-5; PR at Table VI-5.

