

UNITED STATES INTERNATIONAL TRADE COMMISSION

POLYETHYLENE TEREPHTHALATE (PET) FILM FROM KOREA

Investigation No. 731-TA-459 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3278, February 2000)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-459 (Review)

## POLYETHYLENE TEREPHTHALATE (PET) FILM FROM KOREA

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### BACKGROUND

The Commission instituted this review on July 1, 1999 (64 F.R. 35685) and determined on October 1, 1999, that it would conduct an expedited review (64 F.R. 55958, October 15, 1999). The Commission transmitted its determination in this review to the Secretary of Commerce on February 16, 2000. The views of the Commission are contained in USITC Publication 3278 (February 2000), entitled *Polyethylene Terephthalate (PET) Film from Korea: Investigation No. 459 (Review)*.

By order of the Commission.

Donna R. Koehnke  
Secretary

Issued:

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

<sup>2</sup> Commissioner Thelma J. Askey dissenting.

## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering polyethylene terephthalate (“PET”) film from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

In May 1991, the Commission determined that an industry in the United States was being materially injured by reason of imports of PET film from Korea that were being sold at less than fair value.<sup>2</sup> On June 5, 1991, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of PET film from Korea.<sup>3</sup> On July 1, 1999, the Commission instituted this review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on PET film would likely lead to continuation or recurrence of material injury.<sup>4</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties - domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) - demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>5</sup> If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, the Commission received a joint response to the notice of institution from domestic producers E.I. DuPont de Nemours & Company (“DuPont”) and Mitsubishi Polyester Film, LLC (“MFA”).<sup>6</sup> The joint response contained company-specific information. No foreign producer, exporter, or U.S. importer of PET film from Korea filed a response to the notice of institution.<sup>7</sup>

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<sup>1</sup> Commissioner Askey dissenting. Commissioner Askey determines that revocation of the antidumping duty order covering polyethylene terephthalate film from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Dissenting Views of Commissioner Thelma J. Askey. She joins in section I - III.B of these views.

<sup>2</sup> Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Invs. Nos. 731-TA-458-459 (Final) USITC Pub. 2383 at 1 (May 1991) (“Original Determination”). Commerce revoked the order on PET film from Japan in 1995 after concluding that requirements for revocation based on changed circumstances (*i.e.*, the order no longer was of interest to interested parties) were met. 60 Fed. Reg. 52366, 52367 (Oct. 6, 1995).

<sup>3</sup> 56 Fed. Reg. 25669 (June 5, 1991) (antidumping duty order, amended 62 Fed. Reg. 50557 (Sept. 26, 1997)). Amendment to Order only involved changes to dumping margins and not scope.

<sup>4</sup> 64 Fed. Reg. 35685 (July 1, 1999).

<sup>5</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

<sup>6</sup> DuPont and MFA’s predecessor firm, Hoechst -- as well as ICI -- were petitioners in the original investigation. ICI’s PET film operations were purchased by DuPont in 1997.

<sup>7</sup> Nor did any other person file a submission under Commission Rule 207.61(d).

On October 1, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate but that the respondent interested party group response was inadequate.<sup>8</sup> The Commission did not find any circumstances that would warrant conducting a full review. Pursuant to section 751(c)(3)(B) of the Act,<sup>9</sup> the Commission voted to conduct an expedited review of this antidumping duty order.

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”<sup>10</sup> 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 under this subtitle.”<sup>11</sup>

In its final five-year review determination, Commerce defined the subject merchandise as: all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this antidumping duty order are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order. PET film is currently classifiable under Harmonized Tariff Schedule (“HTS”) item number 3920.62.00. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.<sup>12</sup>

PET film is a high performance, clear, flexible, transparent, or translucent material produced from PET polymer, a linear, thermoplastic polyester resin.<sup>13</sup> It generally is more expensive than other plastic films and therefore is used only for applications that require its unique properties. These properties include high tensile strength, low moisture absorption, good retention of physical properties over a fairly wide temperature range, excellent electrical properties, durability, heat resistance, good gas barrier properties, excellent dimensional stability, chemical inertness, and good optical clarity. PET film is produced in a range of widths, thicknesses, and properties depending upon the needs of end users. The broad range of chemical, physical, and thermal properties available in PET film permits this product to be used in a wide

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<sup>8</sup> See Explanation of Commission Determination on Adequacy in Polyethylene Terephthalate Film from Korea (October 6, 1999). See also 64 Fed. Reg. 55958 (Oct. 15, 1999).

<sup>9</sup> 19 U.S.C. § 1675(c)(3)(B).

<sup>10</sup> 19 U.S.C. § 1677(4)(A).

<sup>11</sup> 19 U.S.C. § 1677(10). See 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). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

<sup>12</sup> 65 Fed. Reg. 5592 (Feb. 4, 2000). See also Commerce’s website ([http://www.ita.doc.gov/import\\_admin/records/sunset](http://www.ita.doc.gov/import_admin/records/sunset)) at Case History and Scope Information.

<sup>13</sup> See Confidential Report (“CR”) at I-5 - I-7; Public Report (“PR”) at I-4 - I-6.

range of applications. The highest volume PET film markets are the photographic applications market, the magnetic media market, and the packaging market.<sup>14</sup>

In the original investigation, the Commission defined the domestic like product as all PET film, including equivalent PET film.<sup>15</sup> DuPont and MFA state that they agree with the Commission's previous like product and industry definitions.<sup>16</sup> We find that there is no evidence on the record of this five-year review that would suggest a reason for revisiting the Commission's original determination of the domestic like product and domestic industry. Accordingly, we define the domestic like product as all PET film, including equivalent PET film.

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant industry as the "domestic 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."<sup>17</sup> In accordance with our domestic like product determination, we find one domestic industry, consisting of all domestic producers of PET film, including equivalent PET film.<sup>18</sup>

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<sup>14</sup> PET film also is used in numerous other applications including electrical/electronics, release films, reprographics, and labels/decals.

<sup>15</sup> Original Determination, USITC Pub. 2383 at 8. By defining the domestic like product to include equivalent PET film, or PET film with at least one surface coated with a resinous layer more than 0.00001 inches thick, the Commission expanded its definition beyond Commerce's scope of the subject merchandise. USITC Pub. 2383 at 15. Equivalent PET film, which is PET film that is thickly coated during the production process (e.g., Cronar® and Estar®), is used primarily for photographic applications. One Commissioner defined the domestic like product differently. Id. at 31 and 32.

<sup>16</sup> Response of DuPont and MFA to the Notice of Institution ("DuPont/MFA Response") at 13 (Aug. 20, 1999).

<sup>17</sup> 19 U.S.C. § 1677(4)(A).

<sup>18</sup> In this review, one domestic producer is related to a Korean producer. Korean PET film producer SKC Co., Ltd. has begun production of PET film at its U.S. subsidiary SKC America. CR at I-8; PR at I-7; DuPont/MFA Supplemental Response to Notice of Institution at 1 (Aug. 30, 1999). However, since no data regarding SKC America's domestic production were obtained in this review, the related party issue is moot.

### III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON POLYETHYLENE TEREPHTHALATE FILM WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

#### A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>19</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”<sup>20</sup> Thus, the likelihood standard is prospective in nature.<sup>21</sup> The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”<sup>22</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>23 24</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports

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<sup>19</sup> 19 U.S.C. § 1675a(a).

<sup>20</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

<sup>21</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>22</sup> 19 U.S.C. § 1675a(a)(5).

<sup>23</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

<sup>24</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

of the subject merchandise on the industry if the order is revoked.”<sup>25</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.<sup>26 27</sup>

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”<sup>28</sup> We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”<sup>29</sup> As noted above, no respondent interested party responded to the Commission’s notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the evidence in the record from the Commission’s original investigation on PET film, limited information collected by the Commission since the institution of this review, and information submitted by the domestic producers.<sup>30</sup>

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<sup>25</sup> 19 U.S.C. § 1675a(a)(1).

<sup>26</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>27</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce stated in its expedited five-year review determination that it has not issued any duty absorption finding in this case. 65 Fed. Reg. 5592 (Feb. 4, 2000).

<sup>28</sup> 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. *Id.*

<sup>29</sup> SAA at 869.

<sup>30</sup> In this review, the Commission also has some information on the domestic industry from the \*\*\*, which is in addition to that received from DuPont and MFA.

For the reasons stated below, we determine that revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury to the domestic injury within a reasonably foreseeable time.<sup>31</sup>

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>32</sup>

The current conditions of competition are similar in some respects to those existing at the time of the original investigation. First, overall demand for PET film is derived from demand for its primary end-use applications, which include photographic film, magnetic media, and packaging.<sup>33</sup> Apparent U.S. consumption of PET film, which has increased by \*\*\* since the time of the original investigation, is expected to increase by an average of \*\*\* in the merchant market during 1998-2002.<sup>34</sup> A substantial share (approximately \*\*\*) of total U.S. capacity to produce PET film remains devoted to the merchant market. PET film produced for captive consumption primarily is converted to photographic films and magnetic media.<sup>35</sup> \*\*\*.<sup>36</sup> \*\*\*.<sup>37</sup>

The domestic industry consisted of nine domestic producers during the original investigation, and today consists of ten domestic producers.<sup>38</sup> While the number of producers is similar, there have been some changes in the composition of the domestic industry since the original investigations, including acquisitions and new entries to the industry.<sup>39</sup> DuPont and MFA are the two largest domestic producers of PET film,

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<sup>31</sup> Commissioner Askey determines that revocation of the antidumping duty order covering polyethylene terephthalate film from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Dissenting Views of Commissioner Thelma J. Askey.

<sup>32</sup> 19 U.S.C. § 1675a(a)(4).

<sup>33</sup> In 1998, domestic consumption of PET film was distributed as follows: photographic applications accounted for \*\*\*, magnetic media applications accounted for \*\*\*, packaging applications accounted for \*\*\*, and other applications accounted for \*\*\*. CR at I-6; PR at I-5 and I-6.

<sup>34</sup> CR at I-11 and Table I-3; PR at I-9 and Table I-3. Domestic capacity to produce PET film increased by \*\*\* from 1990 to 1998, while domestic production increased by \*\*\* for the same period. Calculated from CR/PR at Table I-1.

<sup>35</sup> CR at I-8 and I-9; PR at I-7. Eastman Kodak and 3M are the largest captive producers of PET film, representing \*\*\* of total domestic capacity to produce PET film in 1998. Id.

<sup>36</sup> \*\*\*.

<sup>37</sup> \*\*\*.

<sup>38</sup> CR at I-7 and I-8; PR at I-6.

<sup>39</sup> For example, in 1997 DuPont purchased ICI’s PET film operations. In 1998, Mitsubishi Chemical Corporation purchased the remaining shares of Hoechst in the Diafoil Hoechst joint venture companies and currently operates as MFA; and Rhone-Poulenc was acquired and became Terephane. Sterling Diagnostic Imaging, which formerly was DuPont Diagnostic Imaging, was formed in April 1996 by a group of private investors. SKC America, whose parent corporation is Korean producer SKC, reportedly commenced U.S. production of PET film in 1999. CR at I-8; PR at I-7; and \*\*\*.

together accounting for \*\*\* of U.S. production in 1998 and \*\*\* of annual domestic capacity to produce PET film in 1998.<sup>40</sup>

The industry remains capital intensive.<sup>41</sup> The high fixed costs associated with operating and maintaining a PET film plant require manufacturers to sustain high capacity utilization rates to stay profitable.<sup>42</sup> Domestic producers indicate that capacity utilization rates of about \*\*\* are the global industry norm to ensure viable operations.<sup>43</sup> U.S. capacity utilization was \*\*\* in 1998, which is lower than the capacity utilization rates reported in the original investigation.<sup>44</sup>

There also have been changes to the Korean PET film industry since the original investigation. The Korean industry which consisted of four producers, today has expanded to six PET film producers.<sup>45</sup> Three of these subject producers, H.S. Industries, Hyosung Living Industry, and Kohap Ltd., initiated production of PET film in 1997. More importantly, Korean capacity to produce PET film has grown rapidly since the original investigation from 235 million pounds per year in 1990 to \*\*\* in 1998.<sup>46</sup> In addition to the new capacity brought on line by the three start-up firms, SKC, the largest and oldest Korean producer, expanded its capacity from \*\*\* in 1997.<sup>47</sup> In contrast, U.S. producers' production capacity was \*\*\* and total U.S. apparent consumption was \*\*\* in 1998.<sup>48</sup>

Finally, nonsubject imports have increased both in volume and market share terms since the original investigation. In 1990, nonsubject imports totaled \*\*\*, or \*\*\* of total apparent consumption.<sup>49</sup> By 1998, nonsubject imports had increased to \*\*\*, or \*\*\* of total apparent domestic consumption.<sup>50</sup>

Based on the record evidence, we find that these conditions of competition in the U.S. PET film market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. PET film market provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty order within a reasonably foreseeable future.

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<sup>40</sup> CR at I-9; PR at I-7. In the original investigation, DuPont, Hoechst (predecessor to MFA), and ICI (purchased by DuPont in 1997) accounted for \*\*\* of annual U.S. capacity to produce PET film. CR at I-7; PR at I-6.

<sup>41</sup> Original Determination at 30 and \*\*\*. The total greenfield investment for a PET film operation is likely to be in the range of \*\*\*. Moreover, it may take up to three years to achieve optimal running conditions on a new film line. \*\*\*.

<sup>42</sup> \*\*\*. In order to achieve adequate economies of scale, major manufacturers find it necessary to operate at least three PET film lines at one location. Id.

<sup>43</sup> DuPont/MFA Response at 4 and 5. Accord \*\*\*.

<sup>44</sup> CR/PR at Table I-1.

<sup>45</sup> We note that the antidumping duty order has been revoked with respect to two of these producers -- Saehan (formerly Cheil) and Kolon. Saehan was recently acquired by Toray Industries, a Japanese producer of PET film, that reportedly intends to commit Saehan's PET film production to the U.S. market. CR at I-15 and I-16; PR at I-13; and DuPont/MFA Response at Appendix A (article from The Daily Industry, dated Aug. 10, 1999).

<sup>46</sup> CR at I-16; PR at I-13.

<sup>47</sup> CR at I-15; PR at I-13.

<sup>48</sup> CR/PR at Table I-1 and I-3.

<sup>49</sup> CR/PR at Table I-3.

<sup>50</sup> CR/PR at Table I-3.

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.<sup>51</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) 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.<sup>52</sup>

During the period of the original investigation, U.S. imports of PET film from Korea more than doubled. Specifically, from 1987 to 1990, subject imports from Korea increased from 11.8 million pounds to 28.9 million pounds.<sup>53</sup> U.S. market penetration by subject imports from Korea increased from \*\*\* in 1987 to \*\*\* in 1990.<sup>54</sup> Since imposition of the antidumping duty order in 1991, imports from Korea of PET film have continued to increase.<sup>55</sup> By 1998, imports of PET film from Korea had increased to \*\*\*, or \*\*\* of total apparent domestic consumption.<sup>56</sup> In 1998, Korea was the largest exporter of PET film to the United States, accounting for 35 percent of total U.S. imports of the product.<sup>57</sup>

Several factors support the conclusion that subject import volume is likely to be significant if the order is revoked. First, overall Korean capacity to produce PET film has grown rapidly since the original investigation which has resulted in considerable excess capacity. There has been a substantial increase in Korean capacity even when only the current capacity of those Korean producers still subject to the order is considered. Subject Korean capacity to produce PET film has increased by \*\*\* from \*\*\* in 1990 to \*\*\* in 1998.<sup>58</sup> Moreover, since Korean production and shipments have not increased at a similar rate to that of capacity, overall Korean capacity utilization rates have declined substantially from \*\*\* in 1998.<sup>59</sup> The evidence further indicates an oversupply of PET film in the Korean home market.<sup>60</sup>

Given the high fixed costs associated with PET film production, there is an incentive to maximize utilization of available capacity. Thus, there is a significant incentive for the Korean producers with excess

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<sup>51</sup> 19 U.S.C. §1675a(a)(2).

<sup>52</sup> 19 U.S.C. § 1675(a)(2)(A)-(D).

<sup>53</sup> Original Determination -- Staff Report at A-60, Table 19; see also CR/PR at Table I-2.

<sup>54</sup> CR/PR at Table I-3, derived from Original Determination -- Staff Report at A-30, A-60, and B-45.

<sup>55</sup> CR at I-11; PR at I-9. The Commission’s import data for 1991 to 1998 are based on official import statistics, which include import data for two Korean PET film producers whose orders were revoked by Commerce in 1996. Therefore, official import statistics may include imports from these Korean producers not subject to the order and thus overstate the amount of subject merchandise imported. CR at I-11, n.28; PR at I-9, n.28..

<sup>56</sup> CR/PR at Table I-3. Conversely, the domestic industry’s U.S. market share declined from \*\*\* in 1998. Id.

<sup>57</sup> CR at I-11; PR at I-9.

<sup>58</sup> Calculated from CR at I-15 and Table I-4; PR at I-13 and Table I-4. Conversely, the U.S. capacity to produce PET film increased by \*\*\* from 1990 to 1998. Calculated from CR/PR at Table I-1.

<sup>59</sup> CR/PR at Table I-4. Because no information on capacity utilization rates for subject Korean producers was submitted or available, we have relied on capacity utilization rates for the Korean PET film industry as a whole as a proxy for those of subject producers.

<sup>60</sup> \*\*\*.

capacity to increase exports to the relatively large U.S. market if the order is revoked. The United States is the largest market for Korean exports accounting for \*\*\* of Korean PET film exports in 1998.<sup>61</sup> While Korean producers have shifted their emphasis from home market shipments to export shipments during the 1990-1998 period,<sup>62</sup> the imposition of the antidumping duty order appears to have limited their focus on the U.S. market. Korean export shipments to the United States as a share of total Korean shipments (including home market and export shipments) remained at the same level of about \*\*\* since imposition of the antidumping duty order, despite increases in absolute volume, while Korean export shipments to markets other than the U.S. market increased from 27.5 percent of total Korean shipments of PET film in 1990 to \*\*\* in 1998.<sup>63</sup> Further, there is evidence of oversupply in some of the Korean industry's other major export markets, in addition to that in its home market.<sup>64</sup>

Without the discipline of the antidumping duty order, Korean producers have an incentive to re-direct the large PET film oversupply in the Korean market, as well as its exports to oversupplied third countries, to the U.S. market. Moreover, there is evidence that three subject PET film producers in Korea, H.S. Industries, Hyosung Living Industry, and Kohap, all of which initiated production in 1997, have been facing severe economic conditions since 1998.<sup>65</sup> The strength of the U.S. market would be particularly attractive to these three subject producers and, thus, these companies would have a strong incentive to increase significantly their exports to the U.S. market if the order was revoked in order to raise their capacity utilization rates and improve their operating performance. Finally, while SKC commenced PET film operations in the United States in 1999, this operation is not expected to be fully operational until 2002.<sup>66 67</sup> Moreover, the substantial excess capacity in Korea indicates that exports from Korea are likely to increase, despite the start-up of this U.S. operation.

For the foregoing reasons, we find that subject imports would likely increase to a significant level if the discipline of the antidumping duty order is removed.

## **F. Likely Price Effects**

In evaluating the likely price effects of subject imports if the order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.<sup>68</sup>

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<sup>61</sup> CR at I-16; PR at I-14.

<sup>62</sup> Home market shipments as a share of total Korean shipments of PET film declined from \*\*\* in 1998. Conversely, total exports shipments of Korean PET film as a share of total Korean shipments increased from \*\*\* in 1998. Calculated from CR/PR at Table I-4.

<sup>63</sup> Calculated from CR/PR at Table I-4.

<sup>64</sup> \*\*\*.

<sup>65</sup> \*\*\*.

<sup>66</sup> Evidence in the record indicates that up to three years are needed to achieve optimal running conditions on a new PET film line and up to four years can be required after start-up before full capacity can be attained. \*\*\*.

<sup>67</sup> Chairman Bragg thus infers that SKC America will likely import subject merchandise to augment its U.S. PET film inventories prior to full production in 2002.

<sup>68</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.”

In the original determination, the Commission found that prices of subject imports had adversely affected prices of domestic PET film. The evidence showed that imports of PET film from Korea undersold the comparable domestic product in 81 quarters out of 94 quarters of price comparisons reported by producers and importers, and in 52 quarters out of 62 quarters of price comparisons reported by purchasers.<sup>69</sup> The Commission concluded that there was significant underselling by subject imports.<sup>70</sup> The Commission also found that subject imports had a price depressing effect on the prices of PET film in the United States based on evidence that domestic prices of PET film generally fell during the latter part of the investigation.<sup>71</sup>

The record indicates that U.S. prices already are at low levels. For example, U.S. prices for general-purpose PET film generally were lower in 1998, ranging from \*\*\* depending on the transparency and gauge of the material, compared with 1995, ranging from \*\*\*.<sup>72</sup> In addition, DuPont and MFA indicate that “PET film prices in the U.S. market are \*\*\*.”<sup>73</sup> They maintain that, “when PET film prices are compared on a grade-specific basis, such prices \*\*\*.”<sup>74</sup>

In 1998, world prices reportedly were significantly weakened as a result of excess capacity, which became evident in 1997, largely as a result of the Asian market turmoil.<sup>75</sup> Film prices in the Asia-Pacific region, where the largest (Japan) and third largest (Korea) PET film producing countries are located, are expected to be the lowest globally.<sup>76</sup> There is evidence that U.S. producers already have had to respond aggressively to imports from the Asia-Pacific region, and thus effectively eliminate margins and in some cases sell at a loss.<sup>77</sup>

There is relatively little information in the record regarding prices of subject imports. However, the available information supports the conclusion that subject imports would be likely to have significant price effects if the order is revoked.<sup>78</sup> In 1998, landed duty paid unit values for imports from Korea of PET film were significantly lower than the average unit values for other, nonsubject imports of PET film.<sup>79 80</sup>

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SAA at 886.

<sup>69</sup> Original Determination -- Report at A-77, A-84, and Tables 25, 27, and 28.

<sup>70</sup> Original Determination at 28.

<sup>71</sup> Original Determination at 28.

<sup>72</sup> CR at I-9; PR at I-8; and \*\*\*. PET film imported from Korea is believed to be general-purpose film. \*\*\*.

<sup>73</sup> DuPont/MFA Response at 9.

<sup>74</sup> DuPont/MFA Comments at 3.

<sup>75</sup> \*\*\*.

<sup>76</sup> \*\*\*. In 1998, producers in Asia accounted for approximately \*\*\* of film imported into the United States. Id. at \*\*\*.

<sup>77</sup> \*\*\*.

<sup>78</sup> CR at I-11; PR at I-9. As discussed above, official import statistics may include imports from Korean firms not subject to the order and, therefore, the import unit value data may be affected by the inclusion of imports from these firms.

<sup>79</sup> Average unit values from different sources may not be directly comparable due to variations in value resulting from different product mixes and the inclusion of the two Korean exporters not subject to the order. Also, import unit values are not directly comparable to domestic prices because they are at different levels of trade. Nevertheless, the import unit values provide some indication of likely prices trends.

<sup>80</sup> CR/PR at Table I-2. The landed duty-paid average unit value for other, nonsubject imports of PET film was \$1.83 per pound in 1998 compared to \$1.09 per pound for imports from Korea. Id. The primary sources of other, nonsubject imports were China, India, Japan, and the United Kingdom. Id. at Table I-2, n. 2.

Moreover, unit values for Korean imports of PET film were substantially lower in 1998 than in 1990.<sup>81</sup> Conversely, the average unit value of U.S. shipments by U.S. producers has risen since the original investigation.<sup>82 83</sup>

Given these conditions, without the discipline of the antidumping duty order, the subject Korean producers, including the three struggling new producers, would have an incentive to export their excess capacity of PET film to the United States at prices that would be likely to undersell their domestic competition in order to increase market share. With market prices already low, this additional supply of low-priced product would be likely to have significant adverse price effects.<sup>84</sup> In particular, Korean producers H.S. Industries, Hyosung Living Industry, and Kohap have an incentive to price their product aggressively if the order is revoked, in order to gain market share in the United States, increase capacity utilization, and thereby justify and preserve their recent investments. For the foregoing reasons, we find that revocation of the antidumping duty order would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

### **G. Likely Impact**

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>85</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>86</sup> As instructed by the statute, we have considered the

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<sup>81</sup> CR/PR at Table I-2. The landed duty-paid average unit value for imports from Korea of PET film was \$1.32 per pound in 1990 compared with \$1.09 per pound in 1998.

<sup>82</sup> CR/PR at Table I-1. The average unit value of U.S. shipments was \*\*\* in 1990 compared with \*\*\* in 1998.

<sup>83</sup> DuPont and MFA “submit that the increase in average unit values of the U.S. PET film shipments between 1990 and 1998 can be explained by changes in product mix. . . [and] may have increased as a result of the decreased need to match sales of Korean off-grade PET film.” DuPont/MFA Comments at 3.

<sup>84</sup> Accord \*\*\*.

<sup>85</sup> 19 U.S.C. § 1675a(a)(4).

<sup>86</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its expedited review, Commerce found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: SKC Limited and SKC America, Inc. at 13.92 percent; and All Others at 21.50 percent. 65 Fed. Reg. at 5594 (Feb. 4, 2000).

extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>87</sup>

In the original investigation, the Commission found that the increases in market share and declines in prices of subject imports depressed prices and caused the domestic industry to lose market share in the overall U.S. PET film market and, particularly, in the commercial shipments market.<sup>88</sup> The Commission found that subject imports had prevented the domestic industry from increasing prices to cover increases in its unit costs.<sup>89</sup> These conditions had an adverse impact on the domestic industry in the form of declining operating income and operating margins.<sup>90</sup> Specifically, the Commission found that “the PET film industry is capital intensive, and as such requires high operating margins in order to sustain its competitiveness. The record indicates that the decline in profitability, as a result of the subject imports, caused the domestic industry to significantly decrease its capital expenditures.”<sup>91</sup>

The limited information in this review does not permit a determination on whether the domestic industry is vulnerable to injury if the order is revoked.<sup>92</sup> However, as the Commission found in the original investigation, the PET film industry is capital intensive, and as such requires high capacity utilization levels and operating margins in order to sustain its competitiveness and profitability. Thus, it does not take large increases in the volume of imports to have an impact on the domestic industry’s profitability.

As discussed above, revocation of the antidumping duty order would likely lead to significant increases in the volume of subject imports at prices that likely would undersell the domestic product and significantly depress U.S. prices. In addition, the volume and price effects of subject imports would likely cause the domestic industry to lose further market share. This loss in market share and subsequent decrease in capacity utilization would be particularly harmful in this capital intensive industry.

The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry’s production, sales, and revenue levels would have a direct adverse impact on the industry’s profitability as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the limited record in this review, we conclude that, if the antidumping duty order was revoked, subject imports from Korea would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

## CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on imports of PET film from Korea would be likely to lead to continuation or recurrence of material injury to the U.S. PET film industry within a reasonably foreseeable time.

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<sup>87</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>88</sup> Original Determination at 29.

<sup>89</sup> Original Determination at 29.

<sup>90</sup> Original Determination at 29.

<sup>91</sup> Original Determination at 30.

<sup>92</sup> Based on the limited record in this review, Chairman Bragg does not find that the domestic industry is currently in a weakened state, as contemplated by the vulnerability criterion of the statute.

## DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) requires that the Department of Commerce (“Commerce”) revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.<sup>1</sup> In this review of the order on polyethylene terephthalate (“PET”) film from Korea, I find that material injury is not likely to continue or recur within a reasonably foreseeable time if the order is revoked.

I join my colleagues in their discussion regarding domestic like product and domestic industry and in their explanation of the relevant legal standard. I also join in their discussion of the relevant conditions of competition.

As a preliminary matter, I note that E.I. DuPont de Nemours & Company (“DuPont”) and Mitsubishi Polyester Film, LLC (“MFA”), which represent \*\*\* of the domestic industry, were the only interested parties who responded to the Commission’s notice of institution; no respondent interested parties chose to participate in the review. Therefore, the Commission has a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>2</sup> In a case such as this, where only domestic interested parties participate in an investigation or review, those parties have an advantage in terms of being able to present information to the Commission without rebuttal from the other side. However, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the data before it in terms of the statutory criteria.<sup>3</sup> The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information,<sup>4</sup> specifically information contained in the \*\*\*.

I am further constrained in this review by the fact that the data in this review covers all Korean PET film imports, and, thus, may include a substantial portion of nonsubject imports. Thus, because the data on Korean imports does not differentiate subject and nonsubject imports, the actual amount of imported product that is subject to the order is not readily apparent. However, the data gathered in the current investigation shows nonsubject Korean producers representing \*\*\* percent of Korean production capacity.

### A. General Considerations

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<sup>1</sup> 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1).

<sup>2</sup> Congress and the Administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission’s determination would be upheld unless it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int’l Trade Comm’n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission’s decision on sanctions).

<sup>3</sup> 19 U.S.C. § 1675a(a).

<sup>4</sup> See, e.g., Alberta Pork Producers’ Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int’l Trade 1987) (“Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.”).

The statute directs the Commission to take into account several general considerations.<sup>5</sup> I have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.<sup>6</sup> In examining the current marketplace for PET film, I note that several facts point to the existence of a different market than existed in 1990 at the end of the original period of investigation.

Since 1990, market shares have been redistributed. During the original 1987-1990 period of investigation, Korean imports increased more than 145 percent by volume, while Korean imports' share of the U.S. market increased from \*\*\* percent in 1987 to \*\*\* percent in 1990.<sup>7</sup> Subject imports from Korea were 11.7 million pounds in 1987, 22.3 million pounds in 1988, 21.0 million pounds in 1989 and 28.9 million pounds in 1990. Imports from nonsubject countries were 58.7 million pounds in 1987, 65.4 million pounds in 1988, 66.0 million pounds in 1989, and 73.4 million pounds in 1990.<sup>8</sup> By comparison, in 1998 Korean imports, which include both subject and nonsubject imports from Korea,<sup>9</sup> reached 64.4 million pounds and nonsubject imports from other countries reached 118.6 million pounds, while domestic producers' shipments were \*\*\* pounds. The market share of Korean imports in 1998 increased to approximately \*\*\* percent of the domestic market since 1990 while nonsubject imports from countries other than Korea have also increased to \*\*\* percent. Again, I note that \*\*\* percent of Korean production capacity is no longer subject to the antidumping duty order after Commerce found them to have three consecutive years of no less-than-fair-value sales. Therefore, subject import volumes would be substantially less than \*\*\* percent of the domestic market. Further, the largest Korean firm, SKC, which accounts for approximately \*\*\* percent of Korean production capacity, has maintained an antidumping duty margin of less than one percent since 1994, further mitigating any detrimental effects on the domestic industry from unfairly traded imports.

The domestic industry did not argue that it is in a vulnerable state, and I do not find that the record reflects vulnerability.

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<sup>5</sup> 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. *Id.* Commerce has not issued a duty absorption finding, so it is not an issue in this review. *See* 65 Fed. Reg. 5592 (February 4, 2000). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). Commerce has determined that "absent argument or evidence to the contrary," the margins from the original investigation are the ones most likely to prevail if the order were revoked. 65 Fed. Reg. at 5594. Thus, the margins of dumping that will occur if the order is revoked are 13.92 percent for SKC Limited and SKC America and an "all other" rate of 21.5 percent. The orders with respect to Saehan (61 F.R. 35177, July 5, 1996) and Kolon Industries (61 F.R. 58374, November 14, 1996) are revoked.

<sup>6</sup> 19 U.S.C. § 1675a(a)(1)(A). According to the Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Act, if pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury. H. R. Rep. No. 103-316, vol. I, at 884 (1994).

<sup>7</sup> CR and PR at Table I-3.

<sup>8</sup> CR and PR at Table I-3.

<sup>9</sup> CR and PR at Table I-3, fn1.

## B. Volume

The Commission is to consider whether the likely volume of subject imports if the order under review is revoked would be significant either in absolute terms or relative to production or consumption in the United States.<sup>10</sup> In so doing, the Commission shall consider “all relevant economic factors,” including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) 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.<sup>11</sup>

The focus in a sunset review is whether subject import volume is likely to be significant within a reasonably foreseeable time if the antidumping duty order is revoked. The available data suggest that the existing antidumping duty order in this review has not substantially affected the market penetration of subject and nonsubject imports, and, therefore, that current U.S. producer market share is not likely to be adversely affected if the order is revoked. The value of subject Korean imports reviewed by Customs has continually decreased from 1996 to 1998,<sup>12</sup> which corresponds with Commerce’s finding that two companies, Kolon and Saehan, no longer sell PET film at LTFV. The revocation of the orders on Kolon and Saehan and the fact that SKC, the largest Korean producer, has maintained a margin below one percent since 1994, minimizes any possible volume effects in the event of revocation given these three companies collectively represent \*\*\* percent of Korean capacity. Further, SKC’s low margin has allowed almost unfettered access into the domestic market thereby decreasing the likelihood that SKC will aggressively price its imports in order to build a sufficient U.S. customer base upon revocation. Additionally, \*\*\* percent of domestic production is captively consumed, which further insulates the domestic industry from any adverse effects of an increase in Korean imports.

In the spring of 1999, SKC opened up a greenfields facility in the United States with production capacity of \*\*\* pounds,<sup>13</sup> further lessening the likelihood of large volumes of subject imports upon revocation of the order. According to the Commission staff report, SKC America is expected to further increase capacity to \*\*\* pounds by \*\*\*.<sup>14</sup> Moreover, the three new producers in the Korean industry, H.S. Industries Co., Ltd., Hyosung Living Industry Co., Ltd., and Kohap Ltd., which represent \*\*\* percent of Korean production capacity, are reportedly considering exiting the PET film market.<sup>15</sup> Even if these three producers were to remain in business and ramp up production to increase their capacity utilization from the

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<sup>10</sup> 19 U.S.C. § 1675a(a)(2).

<sup>11</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D). The SAA indicates that the statutory factors specified for analysis of volume, price, and impact are a combination of those used to determine both material injury by reason of subject imports and threat of material injury in original antidumping and countervailing duty investigations. See SAA at 886.

<sup>12</sup> CR and PR at Table I-2.

<sup>13</sup> \*\*\*.

<sup>14</sup> CR at I-15.

<sup>15</sup> CR at I-16.

Korean average of \*\*\* percent to 100 percent, they could collectively export the equivalent of only \*\*\* percent of apparent U.S. consumption.<sup>16</sup>

In addition, the domestic producers rely heavily on statements by Toray that after acquisition of Saehan they intend to commit Saehan's PET film production to the U.S. market as part of a plan to "increase its share" of the domestic market. Although compelling at face value, the possibility that Saehan may in fact increase its presence in the domestic market is moot since Saehan has been found to no longer dump its PET film in the United States and is, therefore, no longer a subject producer.

Although total Korean exports increased between 1990 and 1998 (the latest years for which we have information), most of those exports were directed to markets other than the United States. Korean exports to the United States increased by 38.9 million pounds from 1990 to 1998, but by \*\*\* pounds to other countries.<sup>17</sup> Thus, although Korean suppliers have established distribution channels in the United States, that fact alone does not lead to the conclusion that Korean import volumes would rise significantly if the order is revoked given other outlets for Korean PET film. In fact, \*\*\* reports that due to SKC's new U.S. production facility, \*\*\*.<sup>18</sup> Further, although the European Communities were conducting an antidumping investigation involving subject imports from Korea during the original U.S. investigation, there currently are no outstanding orders on PET film produced in Korea other than in the United States.

### C. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the domestic like product, and (2) whether imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like product.<sup>19</sup>

The record in this review contains very limited pricing data and what pricing data the Commission has are not comparable. However, even if subject imports were to enter the United States at prices that undersold the domestic like product following revocation of the order, I conclude that the likely volume of those imports would be too minimal to have any discernable impact on prices in the U.S. market. Again, I note, the largest Korean producer opened a domestic production facility in 1999 and Japan is reportedly the target market for Korean exports, not the United States. Thus, given the finding that subject import volume is not likely to increase significantly, imports of PET film from Korea are not likely to have a price suppressing or depressing effect within a reasonable foreseeable time in the event of revocation.

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<sup>16</sup> This scenario would require the three new companies, who are considering exiting the market altogether, to compete with established Korean producers, which it appears they have been unable to do to date.

<sup>17</sup> CR and PR at Table I-4.

<sup>18</sup> \*\*\*.

<sup>19</sup> 19 U.S.C. § 1675a(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation or termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

#### **D. Impact**

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.<sup>20</sup>

Because I have found that imports of subject Korean PET film are unlikely to increase in significant quantity and that consequently subject Korean imports would be unlikely to suppress or depress U.S. prices, I therefore find that subject imports are unlikely to have a significant impact on the domestic market if the order is revoked. I also observe that nonsubject non-Korean imports hold a significant share of the market -- \*\*\* percent in 1998, compared to Korea's \*\*\* percent.<sup>21 22</sup> Thus, even assuming that subject Korean imports would increase in volume and capture a greater share of the United States market if the order is revoked, at least some portion of that increase is likely to come at the expense of the nonsubject imports, not at the expense of the U.S. industry.

Furthermore, although Korean producers have increased the amount of their exports in recent years, those increased exports have been predominantly directed at markets other than the United States, suggesting that Korean producers have existing markets to which they can send their merchandise. Thus, despite existing distribution channels that Korean exports could use to increase their penetration of the U.S. market, the record contains evidence that Korean producers intend to increase exports to Japan and would not necessarily target the U.S. market.

Consequently, I find that subject imports would not be likely to have a significant impact on the domestic PET film producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the even the order is revoked. In conjunction with my conclusion regarding likely volume and price effects, I find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

#### **E. Conclusion**

In conclusion, I determine that subject imports are not likely to have adverse volume or price effects in the event of revocation, and are, therefore, not likely to have a negative impact on the domestic industry. Accordingly, I determine that revocation of the order on PET film from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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<sup>20</sup> 19 U.S.C. § 1675a(a)(4).

<sup>21</sup> CR and PR at Table I-3.

<sup>22</sup> Again, Korea's market share includes both subject and nonsubject imports and, therefore, total nonsubject market share may be substantially higher than reported.