

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN EXPANDABLE POLYSTYRENE RESINS FROM INDONESIA
Investigation No. 731-TA-861 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3377, December 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury and the establishment of an industry in the United States is not materially retarded, by reason of imports from Indonesia of certain expandable polystyrene resins, provided for in subheading 3903.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective November 22, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by BASF Corp., Mount Olive, NJ; Huntsman Expandable Polymers Co. LC, Salt Lake City, UT; NOVA Chemicals, Inc., Moon Township, PA; and StyroChem U.S., Ltd., Radnor, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain expandable polystyrene resins from Indonesia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 9, 2000 (65 FR 48731, August 9, 2000). The hearing was held in Washington, DC, on November 7, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of expandable polystyrene resins (“EPS resins”) from Indonesia that have been found by the U.S. Department of Commerce (“Commerce”) to be sold at less than fair value (“LTFV”).¹

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”² Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”³ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁴

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁵ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁶ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁷

¹ On November 22, 1999, a petition was filed regarding EPS resins from Korea and Indonesia. On November 16, 2000, Commerce published its final determination that certain EPS resins produced by the only two manufacturers/exporters in the Republic of Korea are not being, or are not likely to be, sold in the United States at less than fair value. Commerce found the weighted-average dumping margins for the Korean respondents, Shinho Petrochemical Co., Ltd. (“Shinho”) and Cheil Industries Inc. (“Cheil”), to be *de minimis*. 65 Fed. Reg. 69284 (Nov. 16, 2000). Effective November 16, 2000, the Commission terminated the antidumping investigation of EPS resins from Korea due to Commerce’s negative final determination. See 65 Fed. Reg. 76664 (Dec. 7, 2000), 19 U.S.C. § 1673d(c)(2).

² 19 U.S.C. § 1677(4)(A).

³ Id.

⁴ 19 U.S.C. § 1677(10).

⁵ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 & n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct Int’l Trade 1996).

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

⁷ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are (continued...)

Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁸

B. Product Description

In its final determination regarding subject imports from Indonesia, Commerce defined the merchandise within the scope of this investigation as:

certain expandable polystyrene resins in primary forms; namely, raw material or resin manufactured in the form of polystyrene beads, whether of regular (shape) type or modified (block) type, regardless of specification, having a weighted-average molecular weight of between 160,000 and 260,000, containing from 3 to 7 percent blowing agents, and having bead sizes ranging from 0.4 mm to 3 mm. Specifically excluded from the scope of this investigation are off-grade, off-specification expandable polystyrene resins.⁹

EPS resins are polystyrene-based products made by polymerization of styrene monomer with the addition of expanding or blowing agents. Polystyrene beads resulting from the polymerization process are screened into various sizes for further processing by molders into various packaging and insulation products. The beads are either shape type (also known as shape or regular grade) or block type (also known as block or modified grade).¹⁰

C. Domestic Like Product Issues

In the preliminary phase of this investigation, the Commission found a single domestic like product coextensive with the scope, consisting of all block and shape grade EPS resins but not including “cup grade” EPS resins.¹¹ Petitioners¹² argue that the Commission should again find one domestic like product defined in the same manner as Commerce’s scope. Although the Indonesian respondent¹³ disputes whether block and shape grade EPS resins are interchangeable in all applications, it does not disagree with the

⁷ (...continued)

not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”)

⁸ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁹ The covered merchandise is found in the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3903.11.00.00. Although this HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive. 65 Fed. Reg. 69284 (Nov. 16, 2000).

¹⁰ Confidential Staff Report (“CR”) at I-2-3, Public Report (“PR”) at I-2.

¹¹ Certain Expandable Polystyrene Resins From Indonesia and Korea, Inv. Nos. 731-TA-861 & 862 (Preliminary), USITC Pub. 3266 (January 2000) (“Preliminary Determination”) at 5.

¹² The petitioners are BASF Corporation; Huntsman Expandable Polymers Company LC; Nova Chemicals, Inc.; and StyroChem U.S., Ltd.

¹³ PT Risjad Brasali Styrimdo (hereinafter “Risjad”).

petitioners' suggested definition of the domestic like product and has not proposed any definition of the domestic like product that differs from the one supported by petitioners.¹⁴

Evidence in the record of this final phase investigation confirms that block and shape grade EPS resins share similar physical characteristics, although block grade contains flame retardants¹⁵ and has larger beads.¹⁶ In addition, both block and shape grade EPS resins are perceived similarly by customers and are generally used in similar applications (*i.e.*, both block and shape products are molded into end products for insulation, packaging, and refrigeration components).¹⁷ Both grades are produced domestically in the same production facilities on the same equipment, and are sold in the same channels of distribution.¹⁸ Finally, prices for both block and shape grade EPS resins are described as "roughly equivalent."¹⁹

In contrast, cup grade EPS resins are physically distinct from block and shape grade EPS resins. Cup grade EPS resins have smaller particle sizes, higher molecular weight, lower residual styrene monomer content, lower yield, and less expansion capability.²⁰ Neither block nor shape grade is interchangeable with cup grade.²¹ Block and shape grade EPS resins are sold directly to end-users, while cup grade EPS resins are captively consumed.²² Block and shape grade EPS resins are produced using production processes distinct from those used to produce cup grade EPS resins,²³ and cup grade EPS resins are valued at a price higher than either block or shape grade EPS resins.²⁴

On the whole, the record evidence in this final phase investigation thus indicates many similarities between block and shape grade EPS resins. Although shape grade EPS resins are not interchangeable with flame retardant block grade products in construction applications, block grade EPS resins are generally interchangeable in most shape grade applications.²⁵ However, cup grade EPS resins have substantial differences with respect to end-uses, interchangeability, channels of distribution, perceptions by customers and producers, manufacturing processes, and price.²⁶ Accordingly, we find a single domestic like product consisting of block and shape grade EPS resins, not including cup grade EPS resins, coextensive with Commerce's definition of the scope of the investigation.

D. Domestic Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product."²⁷ In defining the domestic industry, the Commission's general practice has been to include in the industry all of

¹⁴ Respondent's Prehearing Brief at 4-9.

¹⁵ Petitioners' Postconference Brief at 25; Petitioners' Prehearing Brief at 3; Transcript of Hearing of November 7, 2000, ("Hearing Tr.") at 206; CR at I-4-5, PR at I-3, I-5.

¹⁶ CR at I-3-5, PR at I-2.

¹⁷ Petitioners' Postconference Brief at 8; Petitioners' Prehearing Brief at 4; CR at I-5, PR at I-3.

¹⁸ CR at I-6-8, PR at I-4-6.

¹⁹ CR at I-8, PR at I-6.

²⁰ Petitioners' Prehearing Brief at 3; CR at I-4-7, PR at I-3-5.

²¹ Petitioners' Postconference Brief at 28, 29; Petitioners' Prehearing Brief at 4; CR at I-5-7, PR at I-3-5.

²² CR at I-8, PR at I-5-6.

²³ Petitioners' Prehearing Brief at 5; CR at I-6, PR at I-4-5.

²⁴ CR at I-8, PR at I-6.

²⁵ CR at I-5-7, PR at I-3-5.

²⁶ CR at I-6-8, PR at I-4-6.

²⁷ 19 U.S.C. § 1677(4)(A).

the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²⁸ Based on our finding that the domestic like product consists of block and shape grade EPS resins, we conclude that the domestic industry consists of all domestic producers of that merchandise.

II. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.²⁹ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.³⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³¹ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.³² 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.”³³

For the reasons discussed below, we determine that the domestic industry producing EPS resins is not materially injured, or threatened with material injury, by reason of subject imports of EPS resins from Indonesia.

A. Conditions of Competition

We find several conditions of competition relevant to our analysis of the subject imports from Indonesia.

First, demand for EPS resins depends on the demand for its downstream applications.³⁴ The primary end-users of EPS resins employ it in the manufacture of molded shapes for packaging and molded blocks used in the construction industry.³⁵ Generally, demand for EPS resins has grown significantly during the period of investigation. Apparent U.S. consumption of EPS resins increased by 6.6 percent

²⁸ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

²⁹ 19 U.S.C. § 1673d(b).

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

³¹ 19 U.S.C. § 1677(7)(A).

³² 19 U.S.C. § 1677(7)(C)(iii).

³³ 19 U.S.C. § 1677(7)(C)(iii).

³⁴ CR at II-5, PR at II-4.

³⁵ CR at II-5, PR at II-4.

from 1997 to 1998, and by 12.6 percent from 1998 to 1999.³⁶ Apparent consumption increased by 5.8 percent from interim 1999 to interim 2000.³⁷

Second, EPS resins are characterized as being either “high-pentane” or “low-pentane,” depending on whether the product’s pentane content is above or below 5.5 percent.³⁸ Low-pentane products were developed in response to environmental concerns about pentane emissions, and certain applications require low-pentane EPS resins to meet environmental standards (although high- and low-pentane may be mixed to reduce pentane levels in the combined product).³⁹ Since U.S. environmental restrictions on pentane emissions are expected to become more stringent in the future, the U.S. market for low-pentane EPS resins can be expected to grow.⁴⁰

Third, the record indicates there is, at best, only a moderate degree of substitutability between domestically-produced EPS resins and the subject imports.⁴¹ The substitutability of the subject and domestic merchandise is limited by certain characteristics of the Indonesian product. Subject merchandise from Indonesia is limited to non-flame retardant, shape grade EPS resins, and it cannot be used in construction applications that require block grade EPS resins containing flame retardants.⁴² Moreover, while domestically-produced EPS resins may be either high- or low-pentane,⁴³ all EPS resins from Indonesia are high-pentane, with a pentane content of at least 6.5 percent.⁴⁴ Finally, substitutability between domestic EPS resins and subject imports is also limited somewhat by other factors such as

³⁶ CR at II-5, PR at II-4. Apparent U.S. consumption, by quantity, increased from 621.2 million pounds in 1997 to 662.4 million pounds in 1998 and 745.7 million pounds in 1999, and was 366.1 million pounds in interim 1999 compared to 387.2 million pounds in interim 2000. Table IV-3, CR and PR at IV-4.

³⁷ Table IV-3, CR and PR at IV-4.

³⁸ Petitioners’ Prehearing Brief at 10; Hearing Tr. at 79-80; CR at IV-2, PR at IV-1.

³⁹ Some molders are subject to permits restricting the quantity of pentane that can be released into the atmosphere. Molders reportedly can comply with these permits in a variety of ways. They can install emission abatement equipment that captures and destroys the pentane rather than permitting it to be emitted directly into the environment, or they can purchase and mix EPS resins of different pentane levels to control pentane emissions. Respondent’s Posthearing Brief at 7; Hearing Tr. at 17-18, 80.

⁴⁰ Respondent’s Posthearing Brief at 7.

⁴¹ CR at II-7, PR at II-4. Evidence in the record of this investigation indicates that, unlike subject imports, the majority of nonsubject imports are more substitutable for the domestic like product than the subject imports. In this regard, domestic producers have affiliates or subsidiaries in Canada and Mexico, in particular, that produce a range of products that are very similar to domestically-produced products. CR at II-7, PR at II-4-5.

⁴² CR at II-11, PR at II-8.

⁴³ Petitioners argue that most EPS resins used in the United States are high-pentane and “over 70 percent of the EPS resins consumed in the United States are high-pentane (5.5% or higher).” Petitioners’ Prehearing Brief at 9-10.

⁴⁴ Respondent’s Posthearing Brief at 7.

degradation by trans-Pacific shipment,⁴⁵ qualification for use by U.S. molders,⁴⁶ certification to meet U.S. building codes,⁴⁷ and shelf life.⁴⁸

Fourth, the most important factors affecting purchasing decisions for EPS resins are quality, price, and traditional supplier relationships.⁴⁹ Although purchasers report that price is an important factor in their purchase decisions, most purchasers report that quality is a more important factor in their decisions.⁵⁰ Nonetheless, all parties agree that price information in the U.S. EPS resins market is transmitted quickly because a majority of domestic EPS resins sales are negotiated individually on the spot market.⁵¹ Molders are particularly sensitive to price changes in the market for either block or shape grade⁵² because EPS resins account for a significant share of the cost of their products.⁵³

Fifth, the prices of both the subject imports and the domestic like product are affected by the cost of raw materials, including styrene monomer, which is a principal input in the production of EPS resins. The record indicates that unit styrene monomer raw material prices and the unit selling prices of EPS resins both declined until interim 2000, when both rose sharply.⁵⁴

Sixth, the domestic market is supplied by multiple sources, both foreign and domestic. These sources include at least four domestic producers of the domestic like product, subject imports from Indonesia, and nonsubject imports from Korea, Canada, Mexico, and Colombia.⁵⁵ In fact, nonsubject imports have maintained a much larger share of the U.S. market than subject imports during the period of

⁴⁵ Respondent asserts that time in transit results in a degradation of the resins' pentane levels, diminishing the quality of the product. Indonesian Respondent's Prehearing Brief at 1-2, 5, 8; Posthearing Brief at 8; CR at II-2-3, II-7, n.22, II-11, PR at II-2, II-5, n.22, II-8.

⁴⁶ To date, only one U.S. molder, Tuscarora, has qualified subject EPS resins, and the qualification process was lengthy. CR at II-4, PR at II-3.

⁴⁷ Unlike most domestically-produced EPS resins, Indonesian EPS resins are not certified to meet relatively common U.S. building codes. CR at II-11, PR at II-8.

⁴⁸ The parties disagree as to whether all EPS resins enjoy the same shelf life. Petitioners allege that the shelf life of EPS resins of different grades or pentane levels does not limit its fungibility, since all EPS resins have a shelf life of approximately 12 months. CR at II-3, PR at II-2; Hearing Tr. at 41-42. Respondent argues that, unlike domestically-produced EPS resins that enjoy a longer shelf life due to better packaging, EPS resins from Indonesia enjoy a shelf life of only four to six months. CR at II-3, PR at II-2; Hearing Tr. at 212-213; Indonesian Respondent's Posthearing Brief at 8. *** Respondent's Posthearing Brief at 8 and Exhibit 3.

⁴⁹ Unlike domestically-produced EPS resins, Indonesian EPS resins are imported by *** for sale primarily to only one U.S. shape molder, Tuscarora. CR and PR at II-1; Table II-1, CR at II-8, PR at II-5.

⁵⁰ In this regard, seven of thirteen purchasers responding reported that quality was the most important factor in the purchase decision, while only two reported that price was the most important factor. Three purchasers also reported that their traditional supplier relationships were more important than price in the purchase decision. Table II-1, CR at II-8, PR at II-5.

⁵¹ Petitioners' Prehearing Brief at 16-17; Posthearing Brief, Response to Question by Commissioner Bragg at Q-12. However, 100 percent of sales by *** of the Indonesian product, ***, are made on a contract basis. The contracts are short-term, ranging from one to three months, and are reportedly continuously renegotiated based on market conditions. CR and PR at V-3.

⁵² Petitioners' Posthearing Brief, Response to Question by Commissioner Bragg at Q-2; Hearing Tr. at 24, 206.

⁵³ CR at II-7, PR at II-4. Petitioners' Prehearing Brief at 15 and Posthearing Brief at 2; Hearing Tr. at 114. Petitioners assert that EPS resins account for approximately 50 percent of the finished cost of block products and 30 percent of the cost of shape products. Petitioners' Prehearing Brief at 15.

⁵⁴ CR and PR at VI-3.

⁵⁵ Imports from these four nonsubject countries accounted for 62.6 percent of U.S. imports in 1999. CR and PR at IV-1, n.2.

investigation.⁵⁶ Nonsubject imports' U.S. market share increased steadily from 14.0 percent in 1997 to 20.4 percent in 1999.⁵⁷

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."⁵⁸

The volume of the subject imports from Indonesia was very small throughout the period of investigation, whether viewed in absolute or relative terms. In a market in which apparent consumption ranged between 621 million and 746 million pounds during the period of investigation, the quantity of subject imports was 1.0 million pounds in 1997, 11.9 million pounds in 1998, 9.9 million pounds in 1999, 2.9 million pounds in interim (January to June) 1999, and 5.1 million pounds in interim 2000.⁵⁹ Although the volume of subject imports in interim 2000 was higher than in interim 1999, the volume of subject imports in interim 2000, if annualized, would still be lower than the total volume in 1998. Similarly, subject imports held an extremely small share of the U.S. market over the period of investigation, never rising above 1.8 percent.⁶⁰ Specifically, the subject imports' share of the U.S. market rose from 0.2 percent in 1997 to 1.8 percent in 1998, falling thereafter to 1.3 percent in 1999. Subject imports' market share was 1.3 percent in interim 2000, compared to 0.8 percent in interim 1999.⁶¹

On the whole, we find that the subject import volume is not significant, both in absolute terms and relative to consumption in the United States.

C. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁶²

⁵⁶ Table IV-3, CR and PR at IV-4.

⁵⁷ Table IV-3, CR and PR at IV-4.

⁵⁸ 19 U.S.C. § 1677(7)(C)(i).

⁵⁹ Table IV-1, CR and PR at IV-2. Petitioners in their Prehearing Brief at 21-22 requested that the Commission recognize and give proper weight to the fact that a reduction in subject imports occurred after the petition was filed on November 22, 1999. We recognize that, based on the official statistics provided by petitioners in Exh. 26 of their prehearing brief, imports appear to have declined in the month of December 1999. However, we also note that, based on official import statistics, subject imports totaled 5.1 million pounds during January-June 2000 (also after the petition was filed), compared to 2.9 million pounds during the same period in 1999. See Table IV-1, CR and PR at IV-2.

⁶⁰ Table IV-3, CR and PR at IV-4.

⁶¹ Table IV-3, CR and PR at IV-4.

⁶² 19 U.S.C. § 1677(7)(C)(ii).

We find that the subject imports from Indonesia have not had a significant adverse effect on domestic prices during the period of investigation. We first note that there is a limited degree of substitutability between the imports from Indonesia and the domestic merchandise. The subject imports consist of only a narrow range of product (high-pentane shape grade EPS resins), *** percent of which was imported by *** for sale to only one U.S. purchaser. Moreover, the Indonesian product was qualified for use in *** of the purchaser's 20 plants nationwide.⁶³ The substitutability of the Indonesian and domestic product is further limited by the fact that the subject imports do not contain flame retardants and cannot be used in block grade applications for construction purposes, contain high-pentane levels subject to environmental restrictions in some regions of the United States, cannot be used alone in low-pentane applications, do not meet relatively common U.S. building codes, and, according to respondents, have a shorter shelf life of only four to six months, as compared to the domestic product.⁶⁴ Moreover, as noted previously, most purchasers report that quality is a more important factor in their purchase decisions than price. In this context, we find that the limited level of substitutability between the Indonesian and domestic products has reduced the impact of imports from Indonesia on domestic prices.

Second, the record contains little evidence of actual adverse effects on domestic prices by the subject imports from Indonesia. In this investigation, the Commission obtained pricing data for four domestically-produced EPS resin products in order to assess whether the subject imports from Indonesia had adversely affected domestic prices. The Indonesian products were found to be competing with the domestic merchandise with respect to only one of the four comparison products.⁶⁵ This limited competition between the imports from Indonesia and the domestic merchandise for three of the four comparison products suggests there is little price competition between the Indonesian and domestic merchandise in the U.S. market. The price comparison data also indicate that price trends for the four products were nearly identical during the period of investigation, with prices for the four products declining from 1997 to 1999 and then increasing in interim 2000.⁶⁶ The similarity of the price trends for the four products -- whether or not the Indonesian merchandise was competing with the domestic merchandise -- suggests that the imports from Indonesia are not causing significant price movements in this market.

As noted previously, price movements for EPS resins are more closely linked to trends in the price of styrene monomer, the major raw material input in EPS resins. The decline in the average unit value of domestic EPS resins sales paralleled the decline in the producers' cost of goods sold;⁶⁷ as raw material costs rose in interim 2000, so did the EPS resins selling price. We do recognize that, while monomer prices therefore appear to have affected the price for EPS resins, the spread between monomer costs and EPS resins prices did narrow over the period examined.⁶⁸ We note, however, that the EPS resins-styrene margin or spread was near its highest level in 1998, when the volume of subject imports from Indonesia peaked.⁶⁹ Likewise, as the margin narrowed, subject imports declined, indicating a lack of correlation between the subject imports from Indonesia and the narrowing of the EPS resins-styrene margin.

⁶³ CR at II-4, PR at II-3.

⁶⁴ CR at II-3, PR at II-2-3.

⁶⁵ Subject imports generally undersold the domestic product in 1997 through 1999, except for the most recent periods. Subject imports *** the domestic product in the first quarter of 2000, and were at the same price level in the second quarter of 2000. Figure V-4, CR at V-12-13, PR at V-5.

⁶⁶ Tables V-1-4, CR at V-7-10, PR at V-5.

⁶⁷ Table VI-1, CR at VI-2-6, PR at VI-2.

⁶⁸ CR and PR at V-1; CR and PR at VI-3; Table VI-1, CR at VI-2, PR at VI-2-3; Table VI-2, CR at VI-4-7, PR at VI-3.

⁶⁹ Table VI-1, CR at VI-2, PR at VI-2-3; Table VI-2, CR at VI-4-7, PR at VI-3.

Finally, we note that, due to their small volume, the subject imports from Indonesia have not had a significant impact on domestic prices, particularly given the larger volumes of more substitutable non-subject imports currently in the market.

While the Indonesian product sold to Tuscarora undersold the domestic product, we find that such underselling did not have significant price effects, particularly given the small volume of subject merchandise, both absolutely and relative to U.S. consumption,⁷⁰ and the limited competition between subject imports and the domestic product. We therefore conclude that subject imports have not had a significant price suppressing or depressing effect on domestic prices of EPS resins during the period of investigation.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷¹ 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.”^{72 73 74}

As we have previously discussed, the record indicates that the volume of the subject imports was not significant and that the subject imports have not had a significant negative impact on domestic prices during the period of investigation. Accordingly, we find that the small volume of the subject imports from Indonesia has not had a significant adverse impact on the industry during the period.

In making this finding, we note that the domestic industry has experienced declines in several significant indicators over the period of investigation. In particular, the U.S. industry experienced declining capacity utilization, depressed prices, and deteriorating operating performance during the period of investigation.⁷⁵ The domestic industry’s operating income declined from a profit of \$23.7 million in 1997 to losses of \$8.9 million in 1998, \$21.4 million in 1999, \$9.4 million in interim 1999, and \$8.7 million in

⁷⁰ In addition, petitioners allege no lost sales or revenues as a result of subject imports from Indonesia. CR at V-14, PR at V-6.

⁷¹ 19 U.S.C. § 1677(7)(C)(iii). See also Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”), H.R. Rep. 316, 103d Cong., 2d Sess., vol. I, at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”).

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

⁷³ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V); 1677(35)(C)(ii). In its final determination, Commerce identified dumping margins for Indonesia ranging from 95.79 to 96.65 percent. 65 Fed. Reg. 69284 (Nov. 16, 2000).

⁷⁴ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

⁷⁵ Table VI-1, CR and PR at VI-2; Table VI-2, CR at VI-7, PR at VI-3; Table C-1, CR and PR at C-3-4.

interim 2000.⁷⁶ Other indicators of the domestic industry's performance including employment,⁷⁷ capital expenditures,⁷⁸ inventories,⁷⁹ and wages,⁸⁰ also declined during the period examined.⁸¹ Nonetheless, the industry's condition improved in several other respects. The industry experienced increases in production, capacity, productivity, and shipments during the period of investigation.⁸²

The record also indicates that, although the domestic industry's market share declined by 7.5 percentage points from 1997 to 1999,⁸³ the industry's market share declines cannot be attributed in significant respect to the subject imports, whose market share never exceeded 1.8 percent, (and declined to 1.3 percent in 1999).⁸⁴ Nonsubject imports' market share, on the other hand, rose steadily, from 14.0 percent in 1997 to 20.4 percent in 1999.⁸⁵ Indeed, the share of apparent U.S. consumption held by nonsubject imports was significantly higher than that of subject imports, which in 1998, at its highest level, was only 1.8 percent.⁸⁶

Although the industry reached its lowest profitability in 1999,⁸⁷ the volume of subject imports reached its highest level in 1998, and declined thereafter.⁸⁸ Also, although the U.S. industry continued to experience ***,⁸⁹ subject imports *** the domestic product during that period.⁹⁰

In sum, the record indicates that the volume and market share of the subject imports have not had a significant depressing or suppressing effect on overall prices for EPS resins in the domestic market and were not responsible to any significant degree for the domestic industry's declining financial performance.

⁷⁶ Table VI-1, CR and PR at VI-2.

⁷⁷ Employment of production workers decreased from 428 in 1997 to 376 in 1999, but was higher in interim 2000, at 378, than in interim 1999, at 376 workers. Table III-1, CR at III-3, PR at III-2, Table C-1, CR and PR at C-4.

⁷⁸ Capital expenditures declined from \$21.3 million in 1997 to \$14.2 million in 1998, then increased to \$19.7 million in 1999. Such expenditures were higher in interim 1999 at \$7.3 million than in interim 2000, when they fell to \$6.9 million. Table VI-4, CR at VI-9, PR at VI-5; Table C-1, CR and PR at C-4.

⁷⁹ U.S. producers' inventories decreased from 11.1 percent of shipments in 1997 to 6.8 percent in 1999, though they were higher in the first half of 2000 at 7.2 percent, than in the first half of 1999 at 4.5 percent. Table III-1, CR at III-3, PR at III-2; Table C-1, CR and PR at C-4.

⁸⁰ Wages paid to workers in the industry were \$21.9 million in 1997, \$21.8 million in 1998, \$19.9 million in 1999, \$9.9 million in interim 1999, and \$11.0 million in interim 2000. Table III-1, CR at III-3, PR at III-2; Table C-1, CR and PR at C-4.

⁸¹ Table III-1, CR at III-3, PR at III-2; Table C-1, CR and PR at C-4.

⁸² Table III-1, CR at III-3, PR at III-2; Table C-1, CR and PR at C-3-4.

⁸³ Table IV-3, CR and PR at IV-4. U.S. producers' market share was 80.3 percent in interim 1999, and 82.3 percent in interim 2000.

⁸⁴ Table IV-3, CR and PR at IV-4.

⁸⁵ Table IV-3, CR and PR at IV-4.

⁸⁶ Specifically, nonsubject imports' share of the volume of apparent U.S. consumption increased from 14.0 percent in 1997 to 16.3 percent in 1998 and 20.4 percent in 1999, while subject imports' share was only 0.2 percent in 1997, rising to only 1.8 percent in 1998, and dropping to 1.3 percent in 1999. Table IV-3, CR and PR at IV-4.

⁸⁷ Table VI-1, CR and PR at VI-2.

⁸⁸ Table IV-1, CR and PR at IV-2.

⁸⁹ Table VI-1, CR and PR at VI-2.

⁹⁰ CR at V-13, PR at V-5.

Accordingly, for all of the foregoing reasons, we find that the domestic industry is not experiencing material injury by reason of the subject imports.

III. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Statutory Factors⁹¹

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”⁹² The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”⁹³ In making our determination, we have considered all factors that are relevant to this investigation.

B. Analysis

Based on an evaluation of the relevant statutory factors, we find that an industry in the United States is not threatened with material injury by reason of imports of EPS resins from Indonesia that are sold in the United States at less than fair value.

First, we note that there is only a limited amount of production capacity in Indonesia that is likely to be available to produce EPS resins for shipment to the United States. EPS resins production by the Indonesian respondent, Risjad, accounted for *** of all Indonesian EPS resins exported to the United States, and accounted for *** of all Indonesian production of EPS resins during the period of investigation.⁹⁴ The production capacity of this producer was *** in each year from 1997 through 1999, and its capacity is projected to ***.⁹⁵ Accordingly, Risjad’s entire EPS resins production capacity is equivalent to only *** percent of apparent U.S. consumption.⁹⁶ Moreover, the sole Indonesian exporter to the United States has little available excess capacity and is projected to operate at reasonably high capacity utilization rates.⁹⁷ In fact, if the Indonesian producer were to use all of its unused capacity in 1999 to ship merchandise to the United States, the amount shipped would be equivalent to less than *** percent of domestic consumption in 1999. Accordingly, we find that the Indonesian producer’s limited capacity and

⁹¹ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies is inapplicable to this antidumping investigation, as is Factor VII regarding raw and processed agriculture products since this investigation does not involve a processed agricultural product.

⁹² 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

⁹³ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

⁹⁴ CR and PR at VII-1. There is no evidence that any other EPS resins producer in Indonesia is imminently likely to sell significant quantities in the U.S. market. It took Tuscarora one year to qualify Risjad, and Tuscarora is still limited in its use of the Indonesian product. Hearing Tr. at 138; CR at II-4, PR at II-3.

⁹⁵ Table VII-1, CR at VII-2, PR at VII-1.

⁹⁶ Table VII-1, CR at VII-3, PR at VII-1.

⁹⁷ Capacity utilization was *** percent in 1997, *** percent in 1998, *** percent in 1999, *** percent in interim 1999, and *** percent in interim 2000. It is projected to increase to *** percent in 2000, and to *** percent in 2001. Table VII-1, CR at VII-3, PR at VII-1.

projected high capacity utilization rates do not indicate a likelihood of substantially increased imports in the imminent future.

The volume trends of the subject imports also do not indicate a likelihood of substantially increased subject imports from Indonesia in the imminent future. Even at their highest levels during the period of investigation, subject imports from Indonesia accounted for only 1.8 percent of apparent U.S. consumption.⁹⁸ Moreover, between 1998 and 1999 in particular, subject imports from Indonesia decreased both in absolute terms and as a share of apparent U.S. consumption.⁹⁹ Although subject imports from Indonesia were slightly higher in absolute terms and as a share of apparent U.S. consumption in interim 2000 than in interim 1999,¹⁰⁰ the increased volume of subject imports from Indonesia in interim 2000 coincided with a period of increasing U.S. demand.¹⁰¹ Unlike exports to the United States, home market shipments of Indonesian EPS resins were *** higher in interim 2000 than in interim 1999.¹⁰²

The record also does not indicate a likelihood that the subject imports from Indonesia will enter the U.S. market at prices that will have a significant depressing or suppressing effect on prices for the domestic like product or increase demand for further imports. As discussed above, current levels of subject imports have not had significant effects on domestic prices and there is nothing in the record of this investigation indicating that this will change in the imminent future.

Further, there does not appear to be a significant correlation between the level of Indonesian end-of-period inventories and the volume (by quantity) of Indonesian EPS resins exported to the United States.¹⁰³ The *** U.S. importer of Indonesian product reported *** inventories during the period of

⁹⁸ Table IV-3, CR and PR at IV-4.

⁹⁹ Table IV-1, CR and PR at IV-2; Table IV-3, CR and PR at IV-4.

¹⁰⁰ Table IV-1, CR and PR at IV-2; Table IV-3, CR and PR at IV-4.

¹⁰¹ Table IV-3, CR and PR at IV-4.

¹⁰² Table VII-1, CR at VII-2-3, PR at VII-1.

¹⁰³ Table VII-1, CR at VII-2-3, PR at VII-1. In other words, when Indonesian inventories were low, so were Indonesian EPS resins exports to the United States, indicating respondent was not drawing from inventories to increase its exports to the United States.

investigation,¹⁰⁴ and no U.S. firm reported imports or arrangements for imports from Indonesia after June 30, 2000.¹⁰⁵

The small volume of subject EPS resins from Indonesia has not had negative effects on the existing development and production efforts of the domestic industry, and is unlikely to have such effects in the future.¹⁰⁶ Moreover, there is no evidence that Indonesian producers can shift production from other products to EPS resins. In addition, there is no evidence that EPS resins exported from Indonesia are subject to import relief measures or investigations in any other country.¹⁰⁷ Finally, there are no other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports of the subject merchandise.

Consequently, based on an evaluation of all of the relevant statutory factors, we do not find the domestic industry is threatened with material injury by reason of subject imports from Indonesia.

CONCLUSION

For the reasons stated above, we determine that the domestic industry producing EPS resins is not materially injured, or threatened with material injury, by reason of subject imports from Indonesia.

¹⁰⁴ CR at VII-3, PR at VII-1.

¹⁰⁵ CR at VII-4, PR at VII-1.

¹⁰⁶ While U.S. producers indicated that they have had to ***, U.S. production capacity increased throughout the period of investigation. Appendix F, CR and PR at F-3; Table III-1, CR at III-3, PR at III-2. Capital expenditures fluctuated, but were nearly as high in 1999 as in 1997, before decreasing in the first half of 2000. Table VI-4, CR at VI-9, PR at VI-5. Such expenditures totaled \$21.3 million in 1997, \$14.2 million in 1998, \$19.7 million in 1999, \$7.3 million in interim 1999, and \$6.9 million in interim 2000. Table VI-4, CR at VI-9, PR at VI-5. The domestic industry's limited research and development expenditures were higher in 1999 than in 1997 or 1998, but lower in the first half of 1999, than in the same period in 2000. Table VI-4, CR at VI-9, PR at VI-5.

¹⁰⁷ CR at VII-4, PR at VII-2.