

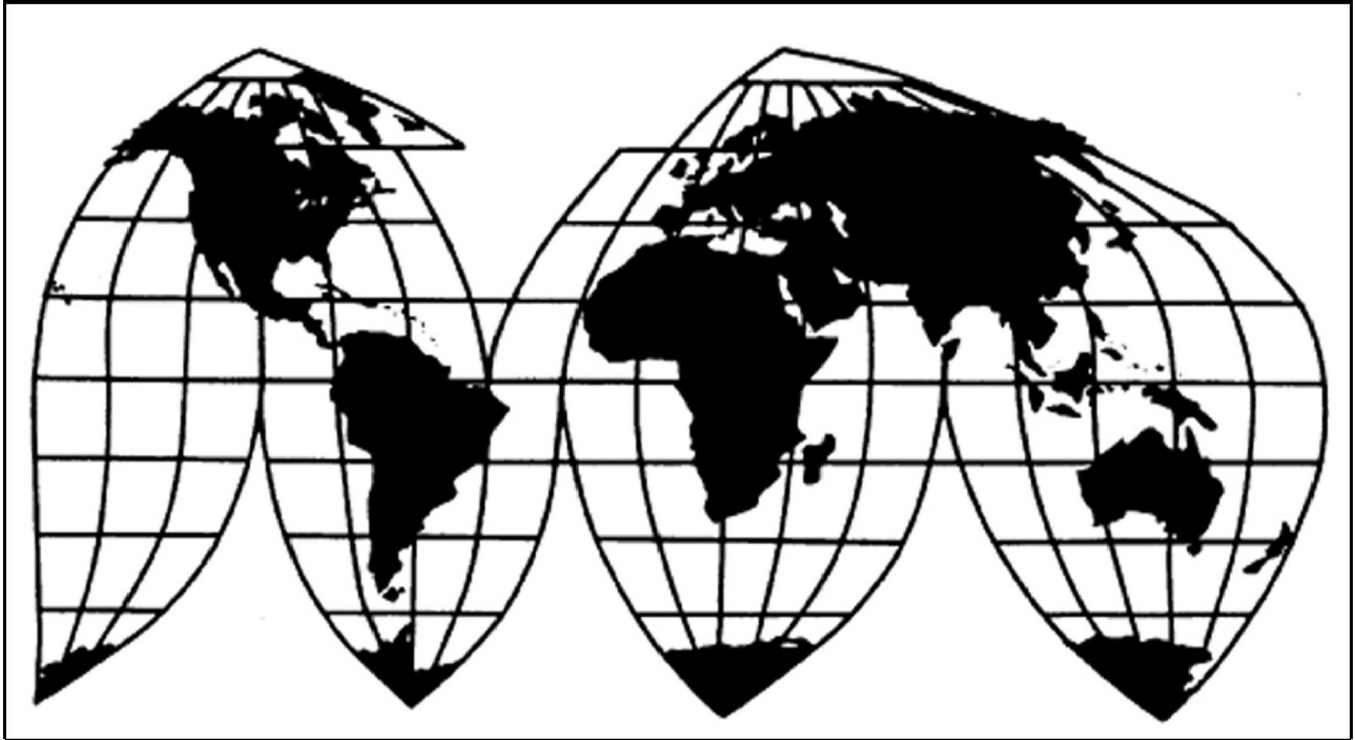
Laminated Woven Sacks from China

Investigation Nos. 701-TA-450 and 731-TA-1122 (Final)

Publication 4025

July 2008

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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CONTENTS

	<i>Page</i>
Determinations	1
Views of the Commission	3
Part I: Introduction	I-1
Background	I-1
Statutory criteria and organization of the report	I-2
Statutory criteria	I-2
Organization of the report	I-3
U.S. market summary	I-3
Summary data and data sources	I-3
Previous and related investigations	I-4
Nature and extent of sales at LTFV	I-4
Nature of countervailable subsidies	I-5
The subject merchandise	I-7
Commerce's scope	I-7
Tariff treatment	I-7
The product	I-9
Description and applications	I-9
Manufacturing facilities and manufacturing process	I-10
Domestic like product issues	I-14
Part II: Conditions of competition in the U.S. market	II-1
U.S. market segments/channels of distribution	II-1
Supply and demand considerations	II-2
U.S. supply	II-2
U.S. demand	II-3
Substitutability issues	II-5
Factors affecting purchasing decisions	II-5
Comparisons of domestic product and subject imports	II-8
Comparisons of domestic product and nonsubject imports	II-10
Comparisons of subject imports and nonsubject imports	II-10
Elasticity estimates	II-12
U.S. supply elasticity	II-12
U.S. demand elasticity	II-12
Substitution elasticity	II-12
Part III: U.S. producers' production, shipments, and employment	III-1
U.S. producers	III-1
U.S. capacity, production, and capacity utilization	III-2
U.S. producers' U.S. shipments and export shipments	III-4
U.S. producers' imports and purchases of imports	III-6
U.S. producers' inventories	III-6
U.S. employment, wages, and productivity	III-6

CONTENTS

	<i>Page</i>
Part IV: U.S. imports, apparent consumption, and market shares	IV-1
U.S. importers	IV-1
U.S. imports	IV-2
U.S.-China Textile Agreement	IV-4
Negligibility	IV-5
Apparent U.S. consumption	IV-5
U.S. market shares	IV-6
Ratios of imports to U.S. production	IV-7
Critical circumstances	IV-7
 Part V: Pricing and related information	 V-1
Factors affecting prices	V-1
Raw materials	V-1
Transportation costs to the U.S. market	V-1
U.S. inland transportation costs	V-2
Exchange rates	V-2
Pricing practices	V-2
Pricing methods	V-2
Price data	V-3
Price trends	V-4
Price comparisons	V-4
Lost sales and lost revenues	V-7
 Part VI: Financial condition of U.S. producers	 VI-1
Background	VI-1
Operations on LW sacks	VI-1
Value added	VI-4
Assets and return on investment	VI-5
Capital expenditures and research and development expenses	VI-6
Capital and investment	VI-6
 Part VII: Threat considerations	 VII-1
The industry in China	VII-2
U.S. importers' inventories	VII-3
U.S. importers' current orders	VII-3
Antidumping and countervailing duty orders in third-country markets	VII-4
Information on nonsubject sources	VII-4
"Bratsk" considerations	VII-4

CONTENTS

	<i>Page</i>
Appendixes	
A. <i>Federal Register</i> notices	A-1
B. List of hearing witnesses	B-1
C. Summary data	C-1
D. Price data for nonsubject countries	D-1
E. Alleged effects of subject imports on U.S. producers' existing development and production efforts, growth, investment, and ability to raise capital	E-1

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-450 and 731-TA-1122 (Final)

LAMINATED WOVEN SACKS FROM CHINA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. §§ 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of laminated woven sacks, provided for in subheading 6305.33.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).²

BACKGROUND

The Commission instituted these investigations effective June 28, 2007, following receipt of a petition filed with the Commission and Commerce by the Laminated Woven Sacks Committee, an ad hoc committee composed of five U.S. producers of laminated woven sacks. Members of the Laminated Woven Sacks Committee are: (1) Bancroft Bag, Inc. of West Monroe, LA; (2) Coating Excellence International, LLC of Wrightstown, WI; (3) Hood Packaging Corp. of Madison, MS; (4) Mid-America Packaging, LLC of Twinsburg, OH; and (5) Polytex Fibers Corp. of Houston, TX. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of laminated woven sacks from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 15, 2008 (73 FR 8902). The hearing was held in Washington, DC, on June 17, 2008, 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)).

² The Commission also determined unanimously that critical circumstances do not exist with respect to those imports of the subject merchandise from China that were subject to affirmative critical circumstances determinations by Commerce.

VIEWS OF THE COMMISSION

Based on the record in the final phase of these investigations, we find that a domestic laminated woven sacks industry is established, and that this U.S. industry is materially injured by reason of imports of certain laminated woven sacks from the People's Republic of China ("China") that have been found by the U.S. Department of Commerce ("Commerce") to be subsidized and sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to the subject imports from China covered by Commerce's affirmative critical circumstances determinations.

I. BACKGROUND

The petitions in these investigations were filed on June 28, 2007. The petitions were brought on behalf of the Laminated Woven Sacks Committee, an ad hoc group of five producers of laminated woven sacks and its individual members (Bancroft Bag, Inc. ("Bancroft") of West Monroe, LA; Coating Excellence International, LLC ("Coating Excellence") of Wrightstown, WI; Hood Packaging Corp. ("Hood") of Madison, MS; Mid-America Packaging, LLC ("Mid-America") of Twinsburg, OH; and Polytex Fibers Corp. ("Polytex") of Houston, TX).¹ Domestic producers SeaTac Packaging Manufacturing Corp. ("SeaTac") of Puyallup, WA and La Pac Manufacturing, Inc. ("LaPac") of Crowley, LA are not petitioners ***.² LaPac did not submit a domestic producer questionnaire response in the final phase of these investigations, although it did submit a response in the preliminary phase.³

Three respondents participated in the preliminary staff conference and filed a joint postconference brief: Shapiro Packaging ("Shapiro"), a U.S. importer of subject laminated woven sacks from China; Excel Packaging ("Excel"); and Solaris Manufacturing ("Solaris").⁴ None of these respondents filed a prehearing brief or participated in the hearing during these final phase investigations. AMS Associates, Inc., which does business as Shapiro, did file a posthearing brief limited to the issue of critical circumstances.

Wenzhou Hotsun Plastics Co., Ltd. ("Hotsun"), a producer in China and exporter of subject merchandise from China, filed a postconference brief, although it did not participate in the preliminary staff conference. Hotsun did not submit a foreign producer questionnaire response or otherwise participate in these final phase investigations.

American Bag & Burlap, a broker/distributor of multi-wall paper bags, woven polypropylene bags, extrusion-coated woven propylene bags, polyethylene bags, and laminated sacks,⁵ also participated in the preliminary staff conference on behalf of respondents, but did not participate in the hearing or submit any briefs in the final phase of these investigations.

¹ See, e.g., Petitions at 2, Exh. 1.

² See, e.g., Petitions at 2, Exh. 2; Confidential Staff Report, Mem. INV-FF-075 (July 2, 2008) ("CR"), Laminated Woven Sacks from China, Invs. Nos. 701-TA-450 and 731-TA-1122 (Final), USITC Pub. 4025 (Jul. 2008) ("PR") at Table III-1.

³ See, e.g., CR at III-1 n.1; PR at III-1 n.1.

⁴ Their joint postconference brief is referred to hereinafter as "Shapiro's Postconf. Br." Shapiro, Solaris, and Excel are partners in a venture in China called Zibo Aifudi Plastic Packaging Co. that is engaged in the production of laminated woven sacks. Shapiro imports laminated woven sacks produced by Zibo Aifudi Plastic Packaging Co. into the United States. See, e.g., Confer. Tr. at 189-90, 213-14.

⁵ See, e.g., Confer. Tr. at 124.

II. DOMESTIC LIKE PRODUCT

A. In General

In determining whether the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise or 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.”⁶ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a {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.”⁷ In turn, the Tariff Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁸

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.⁹ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁰ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹¹ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise subsidized or sold at less than fair value,¹² the Commission determines what domestic product is like the imported articles Commerce has identified.¹³

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(10).

⁹ See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. 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).

¹⁰ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹¹ Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹² See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 at 9 (Fed. Cir. Apr. 25, 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

¹³ 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); Cleo, 501 F.3d at 1298, n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

B. Product Description

In its final determinations, Commerce defined the imported merchandise subject to these investigations as:

bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics; printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.¹⁴

Laminated woven sacks are primarily made from polypropylene woven fabric.¹⁵ The fabric is made when polypropylene pellets are melted, extruded into sheets, cut into thin flat strips, stretched, spooled, and then woven.¹⁶ Some laminated woven sacks are made from a tubular woven form, and some are made from a flat woven sheet, but both forms are made from the same weaving process that initially produces a tubular woven form.¹⁷ The tubular woven form is used directly to produce seamless laminated woven sacks, or the tubular woven form may be slit to produce a flat sheet form (which will require a heat-sealing step at a later stage of production) to produce back-seam laminated woven sacks.¹⁸ The woven fabric then is laminated with one or several layers of polypropylene or polypropylene-polyethylene mix either to a reverse-printed plastic such as BOPP film or to paper that is suitable for high-quality print

¹⁴ Laminated Woven Sacks from the People’s Republic of China, 73 Fed. Reg. 35639, 35640 (June 24, 2008) (final affirmative countervailing duty and final affirmative critical circumstances determinations); 73 Fed. Reg. 35646, 35646-47 (June 24, 2008) (final affirmative antidumping duty and final affirmative critical circumstances determinations). As Commerce explained, “‘paper suitable for high quality print graphics,’ means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.” As Commerce also explained, effective July 1, 2007, laminated woven sacks are reported under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously reported under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be reported under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be reported under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be reported under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Commerce provided the HTSUS subheadings for convenience and customs purposes, but stated that the written description of the scope of these investigations is dispositive. Id.

¹⁵ See, e.g., CR at I-10; PR at I-9. Sometimes polyethylene woven fabric is used instead of polypropylene woven fabric. See, e.g., Petitions at 4 n.2.

¹⁶ See, e.g., CR at I-11 to I-13; PR at I-10 to I-12; CR/PR at Figure I-1.

¹⁷ See, e.g., CR at I-12 to I-13; PR at I-11.

¹⁸ See, e.g., CR at I-12 to I-13; PR at I-11.

graphics.¹⁹ This outer ply is printed with high-quality multi-colored images on one or both sides to serve as point-of-sale advertising.²⁰ After lamination, in the case of the flat-sheet laminated material, the rolls are sent to a tuber, where the fabric is formed into a continuous tube, gusseted, and cut into individual pieces before being transferred to a sewing line where the pieces are sewn and formed into individual sacks of the required dimensions.²¹ In the case of the already tubular-formed laminate, there is no tubing or gusseting; instead the laminated tubular form is cut and sewn into the individual sacks.²² In both cases, the bags are finished by sewing the bottom and applying closure tape and a pull tape for easy opening.²³

Laminated woven sacks have improved physical properties compared with multi-wall paper sacks because they weigh less, occupy less storage space, are more tear-resistant, and have greater tensile strength leading to less breakage. Compared to multi-wall paper sacks, laminated woven sacks are resistant to water, oil, and grease, resulting in less material breakdown and leakage and leading to cost savings for the consuming industry.²⁴ The pet supply industry values the high-quality print graphics on the laminated woven sacks, particularly those laminated with BOPP film, because the lamination helps to maintain the integrity of the graphics.²⁵ Laminated woven sacks are generally used by pet food, bird seed, grass seed, fertilizer, and other manufacturers as flexible packaging for their consumer goods that typically weigh between 17 and 55 pounds.²⁶

C. Analysis

In the preliminary phase of these investigations, the Commission found that the evidence supported finding that laminated woven sacks, regardless of their dimension, strength, closure, or design, are part of a continuum with no clear dividing lines. The Commission declined to define a broader domestic like product that included either multi-wall paper sacks or non-laminated woven sacks.²⁷ In the final phase of these investigations, no respondent made any domestic like product arguments, let alone advocated defining the domestic like product differently.²⁸ Petitioners, the only party to address the issue in the final phase of these investigations, urge the Commission to define the domestic like product as it did in its preliminary determinations.²⁹ No new information has been developed since the preliminary determinations to suggest that a different definition would be warranted. Accordingly, we define a single domestic like product consisting of laminated woven sacks, coextensive with the scope of these investigations, for the reasons stated in the preliminary determinations.

¹⁹ See, e.g., CR at I-14 to I-15; PR at I-13; CR/PR at Figure I-3; Petitions at 4 n.3.

²⁰ See, e.g., CR at I-11; PR at I-9.

²¹ See, e.g., CR at I-15; PR at I-13 to I-14.

²² See, e.g., CR at I-15; PR at I-14.

²³ See, e.g., CR at I-15 to I-16; PR at I-14.

²⁴ See, e.g., CR at I-10 to I-11; PR at I-9.

²⁵ See, e.g., CR at I-11; I-9.

²⁶ See, e.g., CR at I-4, I-11; PR at I-3, PR at I-9.

²⁷ See, e.g., Laminated Woven Sacks from China, Invs. Nos. 701-TA-450, 731-TA-1122 (Prelim.), USITC Pub. 3942 at 4-10 (Aug. 2007).

²⁸ See, e.g., Petitioners' Prehearing Br. at 5. In its preliminary determinations, the Commission asked the parties to identify any domestic like product issues at the time that the draft final phase questionnaires were circulated for comments, see, e.g., USITC Pub. 3942 at 9 n.59, and no party did so.

²⁹ See, e.g., Petitioners' Prehearing Br. at 5.

III. ACTUAL OR POTENTIAL DOMESTIC INDUSTRY³⁰

The domestic industry is defined as the domestic “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”³¹ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

There are seven known producers of laminated woven sacks in the United States: Bancroft, Coating Excellence, Hood, LaPac, Mid-America, Polytex, and SeaTac.³² As indicated earlier, LaPac did not respond to the Commission’s questionnaire, so our analysis in the final phase of these investigations is limited to data on the operations of the other six domestic producers. These six firms are believed to account for virtually all U.S. production of laminated woven sacks in 2007.³³ Two domestic industry issues are presented in the final phase of these investigations: (1) whether individual domestic producers engage in sufficient production-related activities to be members of the actual or potential domestic industry; and (2) whether appropriate circumstances exist to exclude any producers as related parties.

A. Whether Individual Producers Engage in Sufficient Production-Related Activities to be Members of the Actual or Potential Domestic Industry

Petitioners argue that each of the domestic producers engages in sufficient production-related activities.³⁴ Respondents neither raised this issue nor argued that any of the domestic producers are not engaged in sufficient production-related activities. There was only limited information about this issue on the record at the time of the preliminary determinations, so the Commission indicated its intent to explore in any final phase investigations whether individual producers are engaged in sufficient production-related activities to be members of the actual or potential domestic industry.³⁵

We have analyzed this issue using the factors the Commission generally considers when examining whether a firm’s production-related activities are sufficient to be considered domestic production of the domestic like product.³⁶ Each of the six domestic producers ***.³⁷ Their capital

³⁰ We use the term “potential” because one of the issues in these investigations is whether the domestic industry is in fact established.

³¹ 19 U.S.C. § 1677(4)(A).

³² See, e.g., CR at III-1; PR at III-1.

³³ See, e.g., CR at I-4 & n.3, III-1 & n.1; PR at I-3 & n.3, III-1 & n.1; CR/PR at Table III-1.

³⁴ See, e.g., Petitioners’ Posthearing Br. at Exh. A at 18-20, 25.

³⁵ See, e.g., USITC Pub. 3942 at n.63.

³⁶ In evaluating whether domestic producers are engaging in sufficient production-related activities to be considered members of the domestic industry, the Commission has considered the following factors: (1) the source and extent of the firm’s capital investment; (2) technical expertise involved in U.S. production activities; (3) the quantity and type of parts sourced in the United States; (4) value added to the product in the United States; (5) employment levels; and (6) any other costs and activities in the United States directly leading to production. See, e.g., DRAMs and DRAM Modules from Korea, Inv. No. 701-TA-431 (Final), USITC Pub. 3616 at 7-11 (Aug. 2003).

³⁷ See, e.g., Petitioners’ Posthearing Br. at Exh. A at 18-20, 25; CR/PR at Table III-1 & n.3.

expenditures between January 2005 and December 2007 (“the period of investigation”) ranged from a high of \$*** for *** to a low of \$*** for ***.³⁸

There are also some differences among domestic producers in terms of the production processes that each performs. Whereas Polytex makes its own polypropylene woven fabric from polypropylene pellets, the other domestic producers purchase polypropylene or polyethylene woven fabric from outside sources.³⁹ None of the domestic producers of laminated woven sacks produces BOPP film or paper laminate, although *** prints the requested design on the BOPP film or paper laminate. Each of the domestic producers laminates the BOPP film or the paper laminate to the woven fabric.⁴⁰ The parties generally agreed that laminating BOPP film to the woven sacks is the most technologically challenging step in producing laminated woven sacks.⁴¹ Each of the domestic producers also performs finishing operations on the laminated woven sacks in-house.⁴²

Petitioners argue that each producer has ***.⁴³ Polytex was traditionally a U.S. producer of non-laminated sacks and had to learn how to print the design and to laminate the woven sack to the BOPP film.⁴⁴ Before beginning production of laminated woven sacks, Coating Excellence had never produced any type of bag or sack, but the company had a variety of existing flexible packaging and labeling operations, so it had some expertise in printing and laminating film.⁴⁵ Bancroft, Hood, Mid-America, and SeaTac were traditionally U.S. producers of multi-wall paper sacks and had to learn new printing and laminating production processes necessary to manufacture laminated woven sacks.⁴⁶

In terms of the resulting products, *** produced only BOPP-film laminated woven sacks, *** produced only paper-laminated woven sacks, and *** produced *** during the period of investigation.⁴⁷ *** only produced vertical back-seam laminated woven sacks whereas *** produced tubular laminated woven sacks ***.⁴⁸

³⁸ Polytex began its production operations ***. See, e.g., CR/PR at Tables III-2, VI-7. Bancroft, which began production operations in ***, invested \$***. See, e.g., CR/PR at Table VI-7. Coating Excellence, which began production operations in ***, invested approximately \$***. See, e.g., CR/PR at Table VI-7. In fiscal years 2005 to 2007, Hood incurred ***. See, e.g., CR/PR at Table VI-7. Mid-America, which began its production operations in ***, invested \$***. See, e.g., CR/PR at Table VI-7. SeaTac, which began production in ***, invested \$***. See, e.g., CR/PR at Table VI-7.

³⁹ See, e.g., CR at III-5; PR at III-4; CR/PR at Table III-5.

⁴⁰ See, e.g., CR/PR at Table III-5.

⁴¹ See, e.g., Shapiro’s Postconf. Br. at Exh. 7; Petitioners’ Postconf. Br. at Exh. 1 at 1-2; Confer. Tr. at 20 (Bazbaz) (indicating it took Polytex, a producer of non-laminated woven sacks, over six months of research and development and numerous trials to come up with a successful lamination process); 54-57 (Nicolai, Bazbaz, Dorn); 70-73 (Bazbaz, Nicolai); 156 (Wisla for Lang); Hearing Tr. at 38-39. At least one domestic producer, Mid-America, reported that it was unable to master the technology of laminating reverse-printed BOPP film to woven polypropylene. See, e.g., Petitions at 13; Petitioners’ Postconf. Br. at 31; Confer. Tr. at 38-39 (Nicolai), 53-55 (Nicolai), 73 (Nicolai); CR at III-2 at n.3; PR at III-2 at n.3.

⁴² See, e.g., CR/PR at Table III-5.

⁴³ See, e.g., Petitioners’ Posthearing Br. at Exh. A at 18-20, 25.

⁴⁴ See, e.g., CR at III-2; PR at III-2.

⁴⁵ See, e.g., Confer. Tr. at 28-30 (Nowak); CR at III-2; PR at III-2.

⁴⁶ See, e.g., CR at III-2; PR at III-2.

⁴⁷ See, e.g., CR/PR at Table III-8.

⁴⁸ See, e.g., CR/PR at Table III-7.

Domestic producers purchased some of their raw materials domestically and some from foreign sources,⁴⁹ but each of them added at least 40 percent value to the product in the United States, at least according to the data reported in the financial portion of their domestic producer questionnaire responses.⁵⁰ There are not many production and related workers (“PRWs”) engaged in producing laminated woven sacks in the United States, and the number of PRWs employed by each of the producers ranged, with, for example, *** employing *** and *** employing ***.⁵¹ Regardless, each domestic producer created new U.S. jobs when commencing U.S. production operations.⁵²

On balance, and in the absence of contrary arguments, we conclude that each of these domestic producers is engaged in sufficient production-related activities to be included as a member of the domestic industry, actual or potential.

B. Related Parties

We also considered whether any producer of the domestic like product should be excluded from the actual or potential domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁵³ *** of the domestic producers (***) reported that they imported the subject merchandise from China during the period of investigation.⁵⁴ Thus, they qualify as “related parties” under 19 U.S.C. § 1677(4)(B). We find, as noted below, that appropriate circumstances do not exist to exclude any producer as a related party.⁵⁵ As we discuss further below, an important condition of competition in these investigations is the fact that domestic producers have been attempting to make inroads into a market previously exclusively supplied by imports. In such circumstances, it is not unexpected that domestic producers would supply their

⁴⁹ During the period of investigation, *** purchased polypropylene woven fabric from ***, and *** purchased the majority of its *** from ***, but purchased BOPP film from domestic sources. *** purchased its polypropylene woven fabric from *** whereas *** purchases *** and *** purchases its ***. See, e.g., CR/PR at Table III-5 at n.1. Domestic producers reported the following total production costs, U.S. production costs, and domestic raw material costs per sack, respectively for 2007: Polytex (\$***, \$***, \$***); Bancroft (\$***, \$***, \$***); Coating Excellence (\$***, \$***, \$***); Hood (\$***, \$***, \$***); Mid-America (\$***, \$***, \$***); and SeaTac (\$***, \$***, \$***). See, e.g., CR/PR at Table III-5.

⁵⁰ The value-added (i.e., the conversion costs other than imported raw material costs such as labor, overhead, and raw materials such as BOPP film, inks, paper, and resins as a percentage of the company’s total processing costs) in 2007 by each domestic producer, respectively, was as follows: Polytex (*** percent not including SG&A, *** percent including SG&A); Bancroft (*** percent not including SG&A, *** percent including SG&A); Coating Excellence (*** percent not including SG&A, *** percent including SG&A); Hood (*** percent not including SG&A, *** percent including SG&A); Mid-America (*** percent not including SG&A and *** percent including SG&A); and SeaTac (*** percent not including SG&A and *** percent including SG&A). See, e.g., CR/PR at Table VI-4. We note that the value that *** reported in response to this question was *** than the value reflected in CR/PR at Table III-5, but determine to rely on the data reported in the financial portion of *** questionnaire response for consistency.

⁵¹ *** employed *** PRWs while operating, *** employed *** PRWs in ***, *** employed ***, and *** employed ***. See, e.g., CR/PR at Table III-11; domestic producer questionnaire response.

⁵² See, e.g., Petitioners’ Posthearing Br. at Exh. A at 18-20, 25.

⁵³ 19 U.S.C. § 1677(4)(B).

⁵⁴ See, e.g., CR/PR at Table III-9.

⁵⁵ Chairman Shara L. Aranoff and Commissioner Dean A. Pinkert find appropriate circumstances exist to exclude domestic producer *** as a related party, as explained below.

customers not only with domestic production but also with imports, perhaps including subject imports. We consider whether appropriate circumstances exist to exclude any producers as related parties in light of these circumstances.

For purposes of the preliminary phase of these investigations, the Commission found that the record contained insufficient data on which to decide whether appropriate circumstances exist to exclude any producers from the actual or potential domestic industry. The Commission indicated its intention to explore this issue further in any final phase investigations (particularly with respect to ***).⁵⁶ In the final phase of these investigations, petitioners argue that appropriate circumstances do not exist to exclude any of the domestic producers as related parties.⁵⁷ No respondent argued otherwise.

*** imported *** laminated woven sacks from China in 2006 and *** laminated woven sacks from China in 2007.⁵⁸ The company's ratio of subject imports from China to domestic production was *** percent in 2006 and *** percent in 2007.⁵⁹ The company reported that it ***.⁶⁰ The company's operating income as a share of net sales was *** percent in 2006 and *** percent in 2007.⁶¹ *** began producing laminated woven sacks in *** and in 2007 accounted for *** percent of total domestic production;⁶² before then, ***.⁶³ ***.⁶⁴ It has ***.⁶⁵ The company ***.⁶⁶

On balance, we do not find appropriate circumstances to exclude *** from the actual or potential domestic industry because its imports are not that large compared to its U.S. production,⁶⁷ the company

⁵⁶ See, e.g., USITC Pub. 3942 at 11-14.

⁵⁷ See, e.g., Petitioners' Posthearing Br. at Exh. A at 10-13, 26; Hearing Tr. at 44 (Dorn).

⁵⁸ See, e.g., CR/PR at Table III-9.

⁵⁹ See, e.g., CR/PR at Table III-9.

⁶⁰ See, e.g., CR/PR at Table III-9 n.1.

⁶¹ See, e.g., CR/PR at Table VI-2.

⁶² See, e.g., CR/PR at Tables III-1, III-2.

⁶³ See, e.g., CR at III-2; PR at III-2.

⁶⁴ See, e.g., CR at III-3; PR at III-2.

⁶⁵ See, e.g., CR/PR at Table III-2.

⁶⁶ See, e.g., CR/PR at Table III-1.

⁶⁷ See, e.g., CR/PR at Table III-9.

does not appear to have benefitted from its imports given that its financial performance is ***,^{68 69 70} ***,⁷¹ and, because of its ***, excluding *** may skew the data for the domestic producers as a whole.

*** imported *** laminated woven sacks from China in 2005, *** laminated woven sacks from China in 2006, and *** laminated woven sacks from China in 2007.⁷² ***. In ***, its imports were equivalent to *** percent of its domestic production, and in 2007, its imports were equivalent to *** percent of its domestic production.⁷³ The company ***.⁷⁴ However, ***.⁷⁵ *** imported from ***.⁷⁶ *** operating income as a share of net sales was *** percent in 2007, or ***.⁷⁷ The company accounted for *** percent of total domestic production in 2007;⁷⁸ before then, ***.⁷⁹ The company ***.⁸⁰

On balance, we do not find appropriate circumstances to exclude *** from the actual or potential domestic industry as a related party. ***.⁸¹ We discount ***. Whereas *** produced during ***, its imports were reported on a full-year basis. As a result, the ratios reported for the full-year periods are necessarily higher than they were during the time that the company was in production. Moreover, *** produced more laminated woven sacks than it imported during ***, its first year of domestic production. We consider also that, while *** produced laminated woven sacks during ***, its rate of production during ***.

⁶⁸ See, e.g., CR/PR at Table VI-2.

⁶⁹ Consistent with her practice in past investigations and reviews, Chairman Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, her general practice is to determine whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation. In the present investigations, she takes into account that the domestic industry is attempting to supply a market previously served only by imports, particularly when evaluating the ratio of subject imports to domestic production.

⁷⁰ In the preliminary phase of these investigations and in other investigations, Commissioner Pinkert has not relied upon related parties' financial performance on their U.S. manufacturing operations as a factor in determining whether there are appropriate circumstances to exclude them from the actual or potential domestic industry and has instead relied on other information relevant to the issue. See USITC Pub. 3942 at 13 n.103. Typically, the record available in an investigation is not sufficient to link a related party's profitability on U.S. operations to any specific benefit it derives from importing. The record in the final phase of these investigations does not reflect a link between the profitability of the domestic producers who are related parties and any specific benefit they derive from their imports. Thus, in these investigations, Commissioner Pinkert has relied on information unrelated to company profitability in determining whether appropriate circumstances exist to exclude a producer from the actual or potential domestic industry pursuant to the related parties provision.

⁷¹ See, e.g., CR at III-3; PR at III-2; CR/PR at Table III-1.

⁷² See, e.g., CR/PR at Table III-9.

⁷³ See, e.g., CR/PR at Table III-9.

⁷⁴ See, e.g., CR/PR at Table III-2; CR/PR at Table III-9 n. 4; Petitioners' Postconf. Br. at Exh. 1 at 1-2; Petitioners' Prehearing Br. at 36; Petitioners' Posthearing Br. at Exh. 1 at 3.

⁷⁵ See, e.g., Petitioners' Posthearing Br. at Exh. A at 3.

⁷⁶ See, e.g., CR/PR at Table III-9 n.4.

⁷⁷ See, e.g., CR/PR at Table VI-2.

⁷⁸ See, e.g., CR/PR at Table III-1.

⁷⁹ See, e.g., CR at III-2; PR at III-2.

⁸⁰ See, e.g., CR/PR at Table III-1.

⁸¹ See, e.g., CR/PR at Table III-9.

Moreover, it is not clear that *** benefitted from its importing activities because its operating income as a share of net sales was ***.⁸² Furthermore, the company ***, and it is ***.⁸³ *** accounts for only *** percent of domestic production; thus, it is not large enough to skew the data.⁸⁴ ⁸⁵ Finally, *** is ***.⁸⁶ Therefore, we do not find appropriate circumstances to exclude *** as a related party.

*** imported *** laminated woven sacks from China in 2006 and *** laminated woven sacks from China in 2007; its imports of subject merchandise were equivalent to *** percent of its domestic production in 2006 and *** percent of its domestic production in 2007.⁸⁷ The company began production in ***, but only imported subject merchandise in 2006 and 2007.⁸⁸ It reported that ***.⁸⁹ The company's operating income as a share of net sales was *** percent in 2007.⁹⁰ *** accounted for *** percent of total domestic production in 2007.⁹¹ Before commencing domestic laminated woven sacks production, ***.⁹² The company ***.⁹³

On balance, we do not find appropriate circumstances to exclude *** from the actual or potential domestic industry. Its imports were very small compared to its domestic production, and it imported ***.⁹⁴ The company does not appear to have benefitted from its imports, it ***, and it ***.⁹⁵

*** imported *** laminated woven sacks from China in 2006 and *** laminated woven sacks from China in 2007; the company ***.⁹⁶ ***.⁹⁷ The company's ratio of subject imports *** from China to domestic production was *** percent in 2006 and *** percent in 2007.⁹⁸ The company reported that it ***.⁹⁹ Rather than importing from ***¹⁰⁰ ***.¹⁰¹ The company's operating income as a share of net sales

⁸² See, e.g., CR/PR at Table VI-2.

⁸³ See, e.g., CR/PR at Table III-3; CR/PR at Table III-9 n. 4; Petitioners' Postconf. Br. at Exh. 1 at 1-2; Petitioners' Prehearing Br. at 36; Petitioners' Posthearing Br. at Exh. 1 at 3.

⁸⁴ See, e.g., CR/PR at Table III-1.

⁸⁵ In his analysis, Commissioner Pinkert included *** in the domestic industry primarily due to its small share of reported domestic production. *** accounted for only *** percent of domestic production in 2007. See, e.g., CR/PR at Table III-1. Consequently, his injury analysis would not be materially different even if he excluded ***.

⁸⁶ See, e.g., CR/PR at Table II-1.

⁸⁷ See, e.g., CR/PR at Table III-9.

⁸⁸ See, e.g., CR/PR at Table III-9.

⁸⁹ See, e.g., CR/PR at Table III-9 ***.

⁹⁰ See, e.g., CR/PR at Table VI-2.

⁹¹ See, e.g., CR/PR at Table III-1.

⁹² See, e.g., CR at III-2; PR at III-2

⁹³ See, e.g., CR/PR at Table III-1.

⁹⁴ See, e.g., CR/PR at Table III-9; CR/PR at Table III-9 ***.

⁹⁵ See, e.g., CR/PR at Tables III-1, VI-2.

⁹⁶ See, e.g., CR/PR at Table III-9.

⁹⁷ See, e.g., CR/PR at Table III-9.

⁹⁸ See, e.g., CR/PR at Table III-9.

⁹⁹ See, e.g., CR/PR at Table III-9 n.3.

¹⁰⁰ See, e.g., CR/PR at Table III-9 n.3.

¹⁰¹ See, e.g., ***.

was *** percent in 2007.¹⁰² *** began producing *** laminated woven sacks in ***, and in 2007 accounted for *** percent of total domestic production.¹⁰³ Before then, ***,¹⁰⁴ The company ***.¹⁰⁵

On balance, we do not find appropriate circumstances exist to exclude *** from the actual or potential domestic industry. *** interests are in domestic production, as evidenced by *** and the fact that it ***.¹⁰⁶ ***, but this may be because the U.S. market was transitioning from being supplied by importers to one that is also supplied by the domestic industry.¹⁰⁷ ***. The company's operating income as a share of net sales was *** percent in 2007, so *** financial performance ***. In addition, *** accounts for only *** percent of total domestic production. Therefore, we do not exclude *** as a related party.¹⁰⁸

C. Conclusion

In conclusion, we define a single domestic industry, actual or potential, that includes all six responding domestic producers of the domestic like product (Bancroft, Coating Excellence, Polytex, Hood, Mid-America, and SeaTac).¹⁰⁹

IV. SELECTION OF METHODOLOGY TO MEASURE IMPORTS

Due to some difficulties with obtaining certain data (as discussed below), we must first determine which data sets to use to measure subject and non-subject imports into the U.S. market during the relevant time period. We measured domestic shipments using data reported by six domestic producers that accounted for substantially all domestic production during the period of investigation.

The statute authorizes the Commission to “use the facts otherwise available” when (1) necessary information is not available on the record or (2) an interested party or other person withholds information requested by the agency, fails to provide such information in the time, form, or manner requested, or

¹⁰² See, e.g., CR/PR at Table VI-2.

¹⁰³ See, e.g., CR/PR at Tables III-1, III-2.

¹⁰⁴ See, e.g., CR at III-2; PR at III-2.

¹⁰⁵ See, e.g., CR/PR at Table III-1.

¹⁰⁶ See, e.g., CR/PR at Table III-9 n.3; CR/PR at Table III-1.

¹⁰⁷ See, e.g., CR/PR at Table III-9.

¹⁰⁸ Chairman Aranoff and Commissioner Pinkert find appropriate circumstances exist to exclude *** from the actual or potential domestic industry pursuant to the related parties provision. *** domestic production of laminated woven sacks fell from *** in 2005 to *** in 2006 and further to *** in 2007. In contrast, the number of subject laminated woven sacks from China imported by *** was *** in 2005, *** in 2006, and *** in 2007. The company ***. See, e.g., CR/PR at Table III-9. As a result, the company's ratio of subject imports *** from China to domestic production increased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007. Id. Given the rise in the import-to-production ratio, the company's *** decline in domestic production, and its *** increase in subject imports, Chairman Aranoff and Commissioner Pinkert find that *** principal interest has shifted to importation rather than domestic production.

¹⁰⁹ For the reasons discussed above, Chairman Aranoff and Commissioner Pinkert define a single domestic industry, actual or potential, that includes the following producers of the domestic like product: ***. Because *** accounted for only *** percent of domestic production in 2007, see, e.g., CR/PR at Table III-1, its exclusion from the domestic industry has little effect on data pertaining to the domestic industry and does not materially affect the analysis or conclusions of Chairman Aranoff or Commissioner Pinkert on any of the issues that follow.

significantly impedes a proceeding.¹¹⁰ As explained below, because necessary information is not available on this record and/or was not provided by questionnaire respondents, we use facts otherwise available in the final phase of these investigations to measure imports of subject merchandise from China and to measure imports from non-subject countries.^{111 112}

A. Subject Imports from China for 2005 and 2006

A witness for respondents testified at the preliminary staff conference that there are currently 300 to 400 laminated woven sacks producers in China, although the vast majority of them are privately owned small businesses that employ 100 to 200 people.¹¹³ In the final phase of these investigations, in addition to sending importers' questionnaires to all seven domestic producers, Commission staff sent questionnaires to 46 firms believed to be U.S. importers of laminated woven sacks; these sources were identified as importers in the petitions or in data provided by U.S. Customs and Border Protection ("Customs") on imports into the U.S. market since 2005.¹¹⁴ *** of these firms reported that they did not import laminated woven sacks during the period of investigation, and of the remaining firms, 21 provided useable importer questionnaire responses.¹¹⁵

¹¹⁰ 19 U.S.C. § 1677e(a). The verification requirements in 19 U.S.C. § 1677m(i) are applicable only to Commerce. See Titanium Metals Corp. v. United States, 155 F. Supp. 2d 750, 765 (Ct. Int'l Trade 2002) ("the ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of Commission investigations.") The "facts available" may take the form of an adverse inference when "an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information" from the Commission. 19 U.S.C. § 1677e(b). The three conditions precedent for taking an adverse inference are: (1) there is an outstanding request for information; (2) the information request was directed to an interested party; and (3) the interested party failed to cooperate by not acting to the best of its ability to comply with the information request. Id. The statute indicates that such adverse inference may include reliance on information derived from: "(1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record." Id.

¹¹¹ Commissioner Deanna Tanner Okun notes that the statute authorizes the Commission to take adverse inferences, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. See 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties' suggested interpretations 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." SAA at 869.

¹¹² Commissioner Charlotte R. Lane notes that the statute authorizes the Commission to take adverse inferences, and even though she has not done so in these investigations, she is troubled by the almost complete lack of questionnaire responses from the producers of laminated woven sacks in China (only 1 out of what respondents allege are hundreds of producers) and by the relatively low coverage of questionnaire responses from importers of subject merchandise, as detailed below. This lack of participation hampered the Commission's investigations, particularly with regard to measuring subject import volume.

¹¹³ See, e.g., Confer. Tr. at 173-74 (Zhu).

¹¹⁴ See, e.g., CR at IV-1 & n.1; PR at IV-1 & n.1.

¹¹⁵ See, e.g., CR at IV-1 & n.2; PR at IV-1 & n.2.

In the final phase of these investigations, only one producer of subject merchandise in China, Shandong Shouguang Jianyunchun Co., Ltd., submitted a foreign producer questionnaire response, and Shandong estimated that it only accounted for about *** percent of production of laminated woven sacks in China and *** percent of exports of subject merchandise from China to the United States in 2007.¹¹⁶

As Commerce explained in its final determinations, the HTSUS statistical subheadings in which imports of laminated woven sacks are reported changed over the course of the period of investigation. Imports of laminated woven sacks into the United States between January 1, 2005 and June 30, 2007 were reported under HTSUS statistical subheading 6305.33.0020,¹¹⁷ which is a “basket” category that also includes non-subject merchandise such as non-laminated woven sacks.¹¹⁸ In the preliminary phase of these investigations, petitioners estimated which portion of the goods entering under this statistical reporting number were laminated woven sacks as opposed to other non-subject products because reportedly, there is no known narrower source of information on the level of imports of laminated woven sacks into the U.S. market.¹¹⁹ Respondents argued that petitioners’ methodology overstated the volume of subject imports and understated the volume of non-subject imports,¹²⁰ but respondents did not propose any alternate methodology. Petitioners asserted that the methodology used in the petitions may have understated the magnitude of the increase of subject import volume when compared to importer questionnaire data.¹²¹

After rejecting the arguments raised by respondents to petitioners’ methodology,¹²² the Commission accepted petitioners’ methodology for purposes of the preliminary phase of these investigations given the low response rate to importer questionnaires, and because only one Chinese

¹¹⁶ See, e.g., CR at VII-2 to VII-3; PR at VII-2 to VII-3.

¹¹⁷ See, e.g., CR at I-8; PR at I-7. If entered prior to July 1, 2007, with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polypropylene strip, laminated woven sacks may have been reported under HTSUS statistical reporting numbers 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered prior to July 1, 2007, not closed on one end or in roll form, laminated woven sacks may have been reported under HTSUS statistical reporting numbers 5903.90.2500 and 3921.19.0000. See, e.g., CR at I-8 at n.9; PR at I-7 at n.9. During the preliminary phase of these investigations, however, petitioners reported that they did not believe that laminated woven sacks entered the United States during the period of investigation under these reporting numbers but instead entered under reporting number 6305.33.0020. See, e.g., CR at I-8 at n.9; PR at I-7 at n.9.

¹¹⁸ See, e.g., CR at IV-1 to IV-2; PR at IV-1 to IV-2.

¹¹⁹ See, e.g., Petitions at 6, 16, Exh. 6, 7. Specifically, data on U.S. imports of subject merchandise from China were based on the official Commerce statistics for statistical reporting number 6305.33.0020, as adjusted by petitioners using the following assumptions: (1) there were no U.S. imports of laminated woven sacks prior to 2003; (2) non-subject non-laminated woven sacks included in the statistical reporting number experienced a steady 5-percent growth rate in U.S. imports between 2002 and 2006; (3) the difference in the Commerce statistics between U.S. imports in 2002 and 2003 (after accounting for the 5-percent growth rate) is entirely laminated woven sacks; and (4) the weight-to-number of sacks conversion rate is 8,000 sacks to 1 short ton to 907 kilograms. See, e.g., id.; Confer. Tr. at 57-60 (Bazbaz); CR at IV-1 n.3; PR at IV-1 n.3. Respondents generally accepted this conversion rate. See, e.g., CR at IV-1 at n.3; PR at IV-1 at n.3.

¹²⁰ See, e.g., Shapiro’s Postconf. Br. at 28-30, Exh. 4; Hotsun’s Postconf. Br. at 4.

¹²¹ See, e.g., Petitioners’ Postconf. Br. at 18-20, Exh. 1 at 15-16, Exhs. 12, 13; Confer. Tr. at 57-60 (Bazbaz).

¹²² Specifically, the Commission rejected respondents’ assertion that the volume of at least some of the non-subject merchandise would have increased after the WTO Agreement on Textiles and Clothing became effective for certain textile products from China into the United States. As the Commission explained, any related changes in import volumes from China would have taken place prior to the period of investigation at issue here. See, e.g., USITC Pub. 3942 at n.131; CR at IV-8 to IV-9; PR at IV-4 to IV-5.

producer submitted a foreign producer questionnaire response.¹²³ In the final phase of these investigations, respondents did not make any arguments about how to measure subject imports from China. Because questionnaire responses from importers and foreign producers of the subject merchandise continue to provide low coverage, and in the absence of any contrary arguments by respondents, we again rely on petitioners' methodology from the petitions to adjust Commerce's official import statistics for imports from China for 2005 and 2006 for the basket category HTSUS subheading 6305.33.0020, consistent with petitioners' request.¹²⁴

B. Subject Imports from China for 2007

According to Commerce, effective July 1, 2007, a revision to the HTSUS places laminated woven sacks in statistical subheadings 6305.33.0050 and 6305.33.0080.¹²⁵ In the prehearing staff report, subject imports from China for the first half of 2007 were measured by applying the methodology used in the petitions to adjust imports from China reported under HTSUS statistical subheading 6305.33.0020, while subject imports from China for the second half of 2007 were measured using imports from China reported under the new HTSUS statistical subheading 6305.33.0050.¹²⁶ Petitioners argue that the methodology employed in the prehearing staff report, particularly that used to measure imports for the second half of 2007, erroneously indicated that the volume of subject imports from China into the United States declined between 2006 and 2007. They assert that this apparent decline is inconsistent with other record data on imports of subject merchandise from China, such as that reported in response to ***, that indicate a continued increase in the volume of subject imports from China.¹²⁷ According to petitioners, there are two apparent explanations for the data shortcomings.¹²⁸ First, new statistical reporting number 6305.33.0050 includes laminated woven sacks laminated with BOPP film but not those laminated with paper, which are also included in the scope of these investigations.¹²⁹ Second, petitioners assert that imports of laminated woven sacks have been frequently misclassified since the advent of the new statistical reporting numbers, as evidenced by the fact that there have been multiple requests to Customs for classification rulings in the past several months.¹³⁰

Because of these concerns, petitioners compared the level of U.S. imports of subject merchandise from China in 2006 and in 2007, as reported in Commission importer questionnaire responses, and they applied this factor to the data computed in the petitions for subject imports from China in 2006 to arrive at

¹²³ See, e.g., USITC Pub. 3942 at 16.

¹²⁴ See, e.g., CR at IV-1 to IV-2; PR at IV-1 to IV-2; Petitioners' Prehearing Br. at 17-23.

¹²⁵ See, e.g., CR at I-8 to I-9; PR at I-7 to I-8; CR/PR at Table I-1.

¹²⁶ See, e.g., Prehearing Staff Report, Mem. INV-FF-064 at Tables IV-2, IV-5, C-1 (Jun. 2, 2008).

¹²⁷ See, e.g., Petitioners' Prehearing Br. at 19-23.

¹²⁸ Petitioners do not contend that the filing of the petitions in these investigations explains the sharp drop-off shown in the official statistics. See, e.g., Hearing Tr. at 101-02 (Woodings).

¹²⁹ See, e.g., CR at I-9 n.10; PR at I-8 n.10; Petitioners' Prehearing Br. at 20 n.68. The other statistical reporting number identified in Commerce's scope of these investigations, subheading 6305.33.0080, corresponds to a basket category. Imports from China reported under that basket category are larger than imports reported under statistical reporting number 6305.33.0050, see, e.g., Petitioners' Posthearing Br. at Exh. C at Att. 3 (suggesting that BOPP-laminated woven sack imports under 6305.33.0050 were greater than imports under the residual basket subheading 6305.33.0080), even though imports from China are believed to be primarily comprised of BOPP-laminated woven sacks rather than paper-laminated woven sacks. See, e.g., CR/PR at Table IV-4.

¹³⁰ See, e.g., Petitioners' Prehearing Br. at 20-23, Exh. 7; Petitioners' Posthearing Br. at Exh. A at 8-10.

an estimate of the level of subject imports from China into the United States in 2007.¹³¹ Respondents did not comment on this issue. Because importer and foreign producer questionnaire responses provide incomplete coverage of subject merchandise from China and in light of the concerns raised by petitioners about the methodology used to measure subject imports from China in 2007 in the prehearing staff report, we have adopted the methodology used in Table C-1 of the post-hearing staff report to measure subject imports from China in 2007.¹³² That is, to obtain the level of subject imports from China in 2007, we used the change in the level of subject imports from China between 2006 and 2007 according to importer questionnaire responses to adjust the volume of subject imports from China for 2006 that was estimated in the petitions.¹³³

C. Non-Subject Imports for 2005, 2006, and 2007

In the preliminary phase of these investigations, to measure non-subject imports, the Commission relied on adjusted Commerce statistics on imports of laminated woven sacks from Thailand, because petitioners believed that, as of 2005, Thailand was the only non-subject source of imports into the U.S. market.¹³⁴ In the final phase of these investigations, other evidence suggests that in addition to Thailand, there were also imports of laminated woven sacks from other non-subject countries into the United States during the period of investigation.¹³⁵ In light of this evidence, because relying on petitioners' methodology from the petitions to measure non-subject imports would likely understate their volume, we measured non-subject imports using data reported on imports from non-subject countries in response to importer and purchaser questionnaires.^{136 137}

¹³¹ See, e.g., Petitioners' Posthearing Br. at Exh. B.

¹³² Commissioner Lane does not join this methodology. To measure subject imports from China for 2007, she applies petitioners' suggested adjustment to imports from China reported under HTSUS statistical subheading 6305.33.0020 to determine the level of subject imports from China through June 30, 2007, and for the remainder of the year, she applies the same formula to imports from China reported under both of the new HTSUS statistical subheadings (6305.33.0050 and 6305.33.0080).

¹³³ See, e.g., CR at IV-1 to IV-2; PR at IV-1 to IV-2. We found it reasonable to calculate the change in the level of subject imports from China into the United States using importer questionnaire responses rather than foreign producer questionnaire responses (of which there was only one) or data reported regarding critical circumstances issues because these other sources were less representative of subject imports as a whole.

¹³⁴ See, e.g., CR at IV-4 n.7; PR at IV-2 n.7.

¹³⁵ See, e.g., CR at IV-4 n.7; PR at IV-2 n.7.

¹³⁶ See, e.g., Petitioners' Prehearing Br. at Exh. 10; Petitioners' Posthearing Br. at Exh. A at 22-24.

¹³⁷ Pursuant to Section 771(24) of the Tariff Act, imports from a subject country of merchandise corresponding to a domestic like product that account for less than 3 percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible. 19 U.S.C. §§ 1671b(a), 1673b(a), 1677(24)(A)(i)(I). No party submitted any argument on the issue of negligible imports. Subject imports from China were well above three percent of total imports for the most recent 12-month period preceding the filing of the petitions for which data are available. For the most recent 12-month period preceding the filing of the petition for which data is available (January to December 2006), subject imports from China were *** percent of all imports of laminated woven sacks, well above the 3 percent statutory negligibility threshold. See, e.g., CR at IV-9; PR at IV-5. Consequently, we find that subject imports from China are not negligible.

V. MATERIAL RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY BY REASON OF SUBJECT IMPORTS FROM CHINA

A. Historical Overview

Petitioners alleged in the petitions that the establishment of a domestic industry is materially retarded by reason of subject imports from China. The issue of material retardation of the establishment of a domestic industry has not been posed in a Commission antidumping or countervailing duty investigation since 1998,¹³⁸ and the issue has been discussed in only approximately fifteen cases, mostly in the mid- to late 1980s and early 1990s, since the Trade Agreements Act of 1979¹³⁹ went into effect.¹⁴⁰

Under the statute, the Commission shall determine whether “the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise.”¹⁴¹ The statute and the legislative history provide little guidance for material retardation investigations. Historically, the Commission has not limited the applicability of the material retardation provisions of the statute to domestic producers that had not yet engaged in production in the United States. If there was or had been at least some domestic production,¹⁴² which is the case in these investigations, then the Commission

¹³⁸ In Butter Cookies in Tins from Denmark, Invs. Nos. 701-TA-374 and 731-TA-780 (Prelim.), USITC Pub. 3092 (Mar. 1998), two longstanding U.S. producers of cookies first began production of butter cookies in tins in 1994. The petitioners did not raise the material retardation issue. It was not an issue for either of the two Commissioners reaching negative preliminary determinations, given how they defined the relevant domestic like product and thus the corresponding domestic industry. Commissioner Miller defined the domestic like product as all cookies in tins, USITC Pub. 3092 at 5, and Commissioner Crawford defined the domestic like product as all cookies. Id. at 32. Commissioner Bragg, who made an affirmative preliminary threat determination, defined the domestic like product as butter cookies in tins. Id. at 32. She did not discuss the material retardation issue, but she did take into consideration as a condition of competition the recent entry of the two domestic cookie producers into high-volume commercial production of butter cookies in tins. Id. at 34.

¹³⁹ P.L. 96-39, approved July 26, 1979.

¹⁴⁰ There were also three changed circumstances reviews (in which the Commission examined whether to modify or revoke the existing antidumping duty orders to exclude specific products) that also raised the material retardation issue. See, e.g., Liquid Crystal Display Television Receivers from Japan, Inv. No. 751-TA-14 (Changed Circumstances Review), USITC Pub. 2042 (Dec. 1987); Salmon Gill Fish Netting of Man-Made Fibers from Japan, Inv. No. 731-TA-5 (Changed Circumstances Review), USITC Pub. 1234 (Mar. 1982); and Synthetic L-Methionine from Japan, Inv. No. 751-TA-4 (Changed Circumstances Review), USITC Pub. 1167 (Jul. 1981).

¹⁴¹ 19 U.S.C. §§ 1671b(a), 1673b(a).

¹⁴² In instances where domestic firms had not yet undertaken production, the Commission looked for an indication that the producers had made a “substantial commitment” to commence production before examining whether the establishment of a domestic industry was materially retarded by reason of the subject imports. See, e.g., Certain Commuter Airplanes from France and Italy, Invs. Nos. 701-TA-174 & 175 (Prelim.), USITC Pub. 1269 at 8 (Jul. 1982) (domestic producers had not yet commenced production but the Commission found they had made a substantial commitment to do so); Motorcycle Batteries from Taiwan, Inv. No. 731-TA-42 (Final), USITC Pub. 1228 (Oct. 1981) (finding that U.S. companies did not take substantial steps or make an affirmative commitment to produce 6-volt motorcycle batteries); and Thin Sheet Glass from Switzerland, Belgium, and the Federal Republic of Germany, Invs. Nos. 731-TA-127 & 129 (Prelim.), USITC Pub. 1376 (May 1983) (finding that Jeanette Sheet Glass’s efforts to date did not demonstrate a substantial commitment to commence production of high-quality thin sheet glass because Jeanette’s marketing efforts were not very intensive, Jeanette had not purchased testing equipment that would have allowed it to differentiate between regular and high-quality glass, and Jeanette had problems qualifying its product), aff’d, Jeannette Sheet Glass Corp. v. United States, 607 F. Supp. 123, 131-32 (Ct.

(continued...)

applied a two-step framework in which it first determined whether the domestic industry was established. If the domestic industry was not yet established, then the Commission determined in the second step of the framework whether the establishment of a domestic industry was materially retarded by reason of subject imports. If the industry was established, then the Commission instead proceeded to examine whether the domestic industry was materially injured or threatened with material injury by reason of the subject imports. As the Commission has previously recognized, under the statute,¹⁴³ material retardation and material injury/threat thereof are mutually exclusive standards. In previous Commission determinations, if a domestic industry is established, then it no longer qualifies as a “nascent” industry, and instead, the analysis turns on the issues of material injury or threat thereof.¹⁴⁴

B. Examination of Whether a Domestic Industry is Established¹⁴⁵

We first examine the question of whether a domestic industry is established. Petitioners assert that a domestic laminated woven sacks industry is not established because its production operations have not stabilized.¹⁴⁶ As indicated below, however, petitioners express no preference whether the Commission conducts a material retardation, material injury, or threat of material injury analysis in these investigations.¹⁴⁷ In the preliminary phase of these investigations, respondents Shapiro, Excel, and Solaris agreed that the domestic laminated woven sacks industry was not established.¹⁴⁸ Respondent Hotsun asserted that the domestic industry was established because laminated woven sacks are merely another product line in the pet food flexible packaging market.¹⁴⁹ In the final phase of these investigations, no respondent presented any arguments on whether the domestic industry is established or about what factors to consider when analyzing this issue.

In the preliminary phase of these investigations, the Commission analyzed whether a domestic industry was established based on the five factors considered in previous cases. Based on these factors and the facts on the preliminary record, the Commission found this to be a very close decision, but concluded that the analysis leaned toward the position advanced by most of the parties to the proceeding. Therefore, for purposes of the preliminary phase of these investigations, the Commission found, on

¹⁴² (...continued)

Int’l Trade 1985) (affirming the Commission’s “substantial commitment” test where domestic producers had not yet engaged in production of high-quality thin sheet glass).

¹⁴³ 19 U.S.C. §§ 1671b, 1673b.

¹⁴⁴ See, e.g., Fresh Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Prelim.), USITC Pub. 2272 at 15 n.39 (Apr. 1990); and Pressure Sensitive Battery PVC Covers from West Germany, Inv. No. 731-TA-452 (Prelim.), USITC Pub. 2265 at 12 (Mar. 1990).

¹⁴⁵ Having decided to exclude domestic producer *** from their analysis as a related party, Chairman Aranoff and Commissioner Pinkert join this analysis of whether a domestic laminated woven sacks industry is established, except for the discussions of ***. They reach the same ultimate conclusion as their colleagues.

¹⁴⁶ See, e.g., Petitioners’ Postconf. Br. at 27-35; Petitioners’ Prehearing Br. at 34-50; Petitioners’ Posthearing Br. at 4-5; Hearing Tr. at 35-40.

¹⁴⁷ See, e.g., Hearing Tr. at 115-16 (Dorn), 134 (Dorn), 139 (Dorn).

¹⁴⁸ See, e.g., Shapiro’s Postconf. Br. at 3 & n.2, 4-6. Respondents Shapiro, Excel, and Solaris did not make any arguments at that time concerning the appropriateness of the factors that the Commission examines to determine if a domestic industry is established.

¹⁴⁹ See, e.g., Hotsun’s Postconf. Br. at 3.

balance, that the domestic industry was not established. The Commission indicated its intention to revisit all aspects of this issue (factual and legal) in any final phase investigations.¹⁵⁰

In applying the first step of the framework, to determine if a domestic industry is established,¹⁵¹ the Commission in previous investigations has examined several or all of the following criteria:¹⁵² (1) the length of domestic production operations; (2) the characteristics of domestic production; (3) the size of domestic operations; (4) whether the proposed domestic industry has reached a reasonable financial “break-even” point; and (5) whether the start-up is more in the nature of the introduction of a new product line by an already established business.¹⁵³ For purposes of the final phase of these investigations, we have again used these factors to structure our analysis, although we recognize that these factors are not mandated by the statute. We also note that the Commission has applied these factors on a case-by-case basis based on the record of each investigation.

In our preliminary determinations, we expressed concern about domestic producers’ failure to submit more detailed information concerning their plans, assumptions, and expectations when they decided to undertake their laminated woven sacks operations, and we encouraged them to provide this information in the final phase of these investigations. Our inquiry has been facilitated by domestic producers’ submission of these business plans in the final phase of these investigations, and we appreciate their cooperation in this regard.

1. The Length of Domestic Production Operations

The Commission has regularly focused on when domestic producers began their U.S. production of the domestic like product. Petitioners assert that this factor is relevant to the question of whether a domestic industry is established.¹⁵⁴ In general, where domestic producers had engaged in production operations for fewer than two to three years, the Commission found that they were part of a nascent domestic industry.¹⁵⁵ Where some or all of the domestic producers had engaged in production operations

¹⁵⁰ See, e.g., USITC Pub. 3942 at 19-31.

¹⁵¹ The Commission has also referred to this inquiry as whether a domestic industry that has at least begun some production operations has “stabilized its operations.”

¹⁵² Petitioners propose that the Commission consider two additional factors (whether the domestic producers have been able to utilize at least a majority of their production capacity on a consistent basis and whether the domestic producers have succeeded in making sales to a significant share of the customer base for laminated woven sacks), see, e.g., Petitioners’ Prehearing Br. at 48-50; Petitioners’ Posthearing Br. at Exh. A at 27-28; Hearing Tr. at 70-71, but we have addressed these arguments in our discussion of the factors that the Commission has historically considered (factors 2 and 3, respectively).

¹⁵³ In one opinion, the Commission examined whether domestic producers had “substantial productive assets,” although it did not single this out as a separate factor. See, e.g., Fresh Chilled Atlantic Salmon from Norway, USITC Pub. 2272 at 16-18 (finding the domestic industry to be established because, *inter alia*, there were “substantial total productive assets”).

¹⁵⁴ See, e.g., Petitioners’ Postconf. Br. at 29; Petitioners’ Prehearing Br. at 32.

¹⁵⁵ See, e.g., Benzyl Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 (Feb. 1991) (domestic producer produced for fifteen months, shut down, began again but shut down less than a year later and was then supplying customers out of inventory); Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 6 (July 1985), *aff’d*, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), *aff’d*, 852 F.2d 1285 (Fed. Cir.), *cert denied*, 1009 U.S. 1120 (1988) (production of salted codfish was suspended after two years with the intent to resume production); and Certain Copier Toner from Japan, Inv. 731-TA-373 (Prelim.), USITC Pub. 1960 at 9-10 (Mar. 1987) (domestic production began about three years earlier). *But see* (continued...)

for longer periods of time, then the Commission found the domestic industry was established.¹⁵⁶ The Commission has also examined the duration of production operations in the context of the next factor (whether the production can be characterized as continuous or start and stop).

Of the six responding producers of laminated woven sacks in the United States, *** began production in 2003, while *** began production operations in mid-2004, or slightly more than three years prior to the end of the time period captured in these investigations. Domestic producers *** began production operations in March 2006, May 2006, and November 2006, respectively.¹⁵⁷ Petitioners assert that ***.¹⁵⁸ Although petitioners concede that ***, they argue that other factors (such as ***) counsel against finding the domestic industry is established, if *** data are examined in isolation.¹⁵⁹

Although respondents asserted in the preliminary phase of these investigations that some domestic producers produce only tubular products, since *** at least some of the domestic producers have been making laminated woven sacks with vertical back seams; indeed, vertical back-seam laminated woven sacks accounted for *** percent of domestic producers' reported U.S. shipments in 2005 and *** percent of domestic producers' reported U.S. shipments in 2007.¹⁶⁰ Of the six responding domestic producers, *** reported producing vertical back-seam laminated woven sacks in 2007, and *** reported producing laminated woven sacks in tubular form.¹⁶¹

The parties have emphasized that, in this industry, mastering the technology of laminating reverse-printed BOPP film to woven polypropylene takes some time and effort,¹⁶² and at least one

¹⁵⁵ (...continued)

Lime Oil from Peru, Inv. No. 303-TA-16 (Prelim.), USITC Pub. 1723 at 8 n.19 (Jul. 1985) (The Commission found the domestic industry was established based on how it defined the domestic like product and domestic industry, as producers of both cold-pressed and distilled lime oil and not just distilled lime oil. The Commission added, however, that if it had defined the domestic industry as producers of distilled lime oil, it would have found the domestic industry established, even though, inter alia, domestic production of distilled lime oil began over two years earlier.).

¹⁵⁶ See, e.g., Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Prelim.), USITC Pub. 2824 (Oct. 1994) (steady production throughout the period of investigation by at least three producers and since the late 1980s by at least two U.S. producers); Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, Inv. No. 731-TA-485 (Final), USITC Pub. 2412 (Aug. 1991) (domestic production for more than three years); Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, USITC Pub. 2413 at 18-19 (domestic production began before the period of investigation); Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Prelim.), USITC Pub. 2367 at 18 n.49 (Mar. 1991) (continuous production over a long period of time); Fresh Chilled Atlantic Salmon from Norway, USITC Pub. 2272 at 16-18 (domestic producers had been engaging in activities leading to production for a number of years, and some had recently produced the product); Pressure Sensitive Battery PVC Covers from West Germany, USITC Pub. 2265 at 12 (production began three to four years prior to Commission's investigation); and Fabric and Expanded Neoprene Laminate from Japan, Inv. No. 731-TA-206 (Prelim.), USITC Pub. 1608 at 8 n.24 (Nov. 1984) (producing for several years).

¹⁵⁷ See, e.g., CR/PR at Table III-2.

¹⁵⁸ See, e.g., Petitioners' Prehearing Br. at 34-35; Hearing Tr. at 107-09.

¹⁵⁹ See, e.g., Petitioners' Prehearing Br. at 34-35.

¹⁶⁰ See, e.g., CR/PR at Tables III-2, III-7.

¹⁶¹ These tubular shipments, however, accounted for *** percent of the domestic industry's total U.S. shipments in 2007. See, e.g., CR/PR at Tables III-1, III-7.

¹⁶² One of the witnesses testifying on behalf of the respondents indicated that a Chinese producer would need about six months and under \$1 million to start up production operations, given the large number of production

(continued...)

domestic producer, Mid-America, reported an inability to do so.¹⁶³ When the *** domestic producers (***) began their production operations in *** produced paper-laminated woven sacks.¹⁶⁴ The *** to make BOPP-laminated woven sacks *** began *** in mid-2004 ***.¹⁶⁵ ***, of the six responding domestic producers, *** reported at least some U.S. shipments of BOPP-film laminated woven sacks,¹⁶⁶ and *** reported only U.S. shipments of paper-laminated woven sacks in 2007.¹⁶⁷ *** began producing BOPP film-laminated woven sacks in ***.¹⁶⁸ By 2007, *** percent of the U.S. shipments by the domestic producers as a whole consisted of BOPP-film laminated woven sacks.¹⁶⁹

In our preliminary determinations, we found at least some of the domestic producers had been engaging in production operations long enough to suggest that this factor weighed in favor of finding the domestic industry to be established. We find that the additional information collected since the preliminary determinations reinforces our earlier conclusion. Although the most recent entrants to domestic production began operations in 2006, ***, one or more domestic producers has supplied vertical back-seam laminated woven sacks to the U.S. market ***, and one or more domestic producers has supplied BOPP-film laminated woven sacks since ***. One or more domestic producers has supplied paper-laminated woven sacks to the U.S. market since ***, and there was also a *** supply of tubular laminated woven sacks available ***. On balance, we thus find that this factor weighs in favor of finding the domestic industry is established.

2. The Characteristics of Domestic Production

In examining the characteristics of domestic production, the Commission has asked whether domestic production has been “modest,” continuous, or more akin to start and stop. Petitioners argue that this factor is relevant to the determination of whether a domestic industry is established, and they suggest that the Commission examine this factor on a producer-by-producer basis.¹⁷⁰ In previous investigations, when the Commission found that domestic production was “modest,” or that domestic production began but halted and domestic producers were not producing at the time of the Commission’s vote, the Commission found the domestic industry was not established.¹⁷¹ Where domestic producers’ production

¹⁶² (...continued)

operations already in existence in China and the availability of knowledgeable workers there. See, e.g., Shapiro’s Postconf. Br. at Exh. 7 at ¶ 3. In contrast, the same witness emphasized that the absence of almost any historical experience in the United States means that additional time for trial and error is needed. See, e.g., Shapiro’s Postconf. Br. at Exh. 7 at ¶ 3.

¹⁶³ See, e.g., CR at III-2 n.3; PR at III-2 n.3; Shapiro’s Postconf. Br. at Exh. 7; Petitioners’ Postconf. Br. at Exh. 1 at 1-2; Confer. Tr. at 20 (indicating that Polytex, a producer of non-laminated woven sacks, needed over six months of research and development and numerous trials to develop a successful lamination process), 54-57, 70-73, 100.

¹⁶⁴ See, e.g., CR/PR at III-2, III-8.

¹⁶⁵ See, e.g., CR/PR at Tables III-2, III-8.

¹⁶⁶ *** reported that 100 percent of their U.S. shipments in 2007 consisted of BOPP-film laminated woven sacks. See, e.g., CR/PR at Table III-8.

¹⁶⁷ See, e.g., CR/PR at Table III-8.

¹⁶⁸ See, e.g., CR/PR at Table III-2.

¹⁶⁹ See, e.g., CR/PR at Table III-8.

¹⁷⁰ See, e.g., Petitioners’ Postconf. Br. at 29; Petitioners’ Prehearing Br. at 32; Hearing Tr. at 108-09 (Dorn).

¹⁷¹ See, e.g., Benzyl Paraben from Japan, USITC Pub. 2355 at 9-10 (petitioner produced for fifteen months, shut down production, began again but shut down less than a year later and was then supplying the U.S. market out of

(continued...)

was continuous or even continuous and growing, the Commission has found the domestic industry was established.¹⁷² Petitioners suggest that the Commission also examine whether the domestic industry has been able to utilize at least a majority of its production capacity on a consistent basis.¹⁷³ As discussed during the hearing, however, there are many established industries that have low rates of capacity utilization.¹⁷⁴ Thus, we do not adopt this suggestion.

With respect to the evidence on this record, one domestic producer, Mid-America, stopped producing laminated woven sacks in March 2007 after *** because it was unable to master the technology of reverse-printing BOPP film to woven polypropylene and because low-priced imports from China ostensibly did not justify the additional investment needed to rectify its production problems.¹⁷⁵ ***.¹⁷⁶ Another domestic producer, ***, which began production in ***,¹⁷⁷ ***,¹⁷⁸ ***,¹⁷⁹ Likewise, *** experienced a number of production outages in ***.¹⁸⁰

Finally, *** were operating at low levels of capacity utilization.¹⁸¹ Domestic producers *** reported increasing levels of capacity utilization over the period of investigation for the periods in which they were operating whereas *** reported operating at lower levels of capacity utilization in 2007 than earlier in the period of investigation.¹⁸² Whereas *** reported capacity utilization of *** percent in 2007, *** level of capacity utilization was ever higher than *** percent between 2005 and 2007, although the

¹⁷¹ (...continued)

inventory); Certain Copier Toner from Japan, USITC Pub. 1960 at 9 n.24 (domestic production was “modest”); and Certain Dried Salted Codfish from Canada, USITC Pub. 1711 at 4-5 & n.8, aff’d, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), aff’d, 852 F.2d 1285 (Fed. Cir. 1988), cert denied, 1009 U.S. 1120 (1989) (domestic producer began production in late 1982 but suspended operations in November 1984 with the intent to reopen the plant in summer 1985 pending conclusion of negotiations with the FDIC concerning certain loans from a bank that was bankrupt when the Commission made its determination and the receipt of additional capital financing from another source).

¹⁷² See, e.g., Wheel Inserts from Taiwan, USITC Pub. 2824 (Oct. 1994) (steady production throughout the period of investigation by at least three producers and since the late 1980s by at least two U.S. producers); Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, USITC Pub. 2412 (Aug. 1991) (steady and substantial increases in domestic production capacity and domestic production); Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, USITC Pub. 2413 at 18-19 (Aug. 1991) (steady rather than start-up production); Fresh Chilled Atlantic Salmon from Norway, USITC Pub. 2272 at 16-18 (substantial U.S. shipments); and Pressure Sensitive PVC Battery Covers from West Germany, USITC Pub. 2265 at 12 (production was increasing).

¹⁷³ See, e.g., Petitioners’ Prehearing Br. at 33.

¹⁷⁴ See, e.g., Hearing Tr. at 105-106.

¹⁷⁵ See, e.g., Confer. Tr. at 38-39 (Nicolai); CR/PR at Table III-2.

¹⁷⁶ See, e.g., CR at III-2 at n.3; PR at III-2 at n.3; Petitioners’ Posthearing Br. at Exh. A at 2-4, 14-15.

¹⁷⁷ See, e.g., CR/PR at Table III-2.

¹⁷⁸ See, e.g., CR at III-2 ***; PR at III-2 ***; Petitioners’ Posthearing Br. at Exh. A at 14.

¹⁷⁹ See, e.g., CR/PR at Table III-2; Petitions at 13; Petitioners’ Postconf. Br. at 31-32, Exh. 1 at 8-9, Exh. 19; Petitioners’ Prehearing Br. at 36-37; Hearing Tr. at 27-28.

¹⁸⁰ See, e.g., CR/PR at Table III-2; Petitions at 13; Petitioners’ Postconf. Br. at 31-32, Exh. 1 at 8-9, Exh. 19.

¹⁸¹ See, e.g., CR/PR at Table III-3; Petitions at 13; Petitioners’ Postconf. Br. at 30, 31-32, Exh. 1 at 8-9, Exh. 19.

¹⁸² See, e.g., CR/PR at Table III-3.

average level for the reporting domestic producers as a whole increased from 13.7 percent in 2005 to 16.4 percent in 2006 and to 22.4 percent in 2007.^{183 184}

In the preliminary phase of these investigations, based on the record at the time, the Commission found that this factor provided some, but not conclusive, support for finding the domestic industry was not established. In our analysis of this factor in the final phase of these investigations, we have considered the specific circumstances of individual producers as well as the circumstances of domestic producers as a whole. Although *** responding domestic producers reported intermittent production operations during the period of investigation and *** reported suspending production operations during the period of investigation, domestic producers as a whole have been continuously supplying the U.S. market throughout the period of investigation and since mid-2003. On the whole, and based on the current record, we find that this factor provides some support for finding the domestic industry is established, although we recognize that resolution of this factor is a close decision.

3. The Size of Domestic Operations

The Commission has sometimes considered the size of domestic operations compared to the U.S. market as a whole, with higher levels of production for domestic producers generally leading to a finding that the domestic industry was established,¹⁸⁵ and lower market shares sometimes leading to a finding that the domestic industry was not established.¹⁸⁶ In one instance, the Commission found the domestic industry was established where the domestic producers' market share was "relatively stable."¹⁸⁷ Petitioners assert that this factor is relevant to the determination of whether a domestic industry is established.¹⁸⁸ They also propose that the Commission consider whether the domestic industry has succeeded in making sales to a significant share of the customer base for the domestic like product.¹⁸⁹ Depending on the facts, the domestic producers' production as a share of the total market, shipments as a

¹⁸³ See, e.g., CR/PR at Table III-3.

¹⁸⁴ Based on their definition of the domestic industry that does not include ***, Chairman Aranoff and Commissioner Pinkert note that the average level for domestic producers as a whole increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. See, e.g., CR/PR at Table C-1b.

¹⁸⁵ See, e.g., Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, USITC Pub. 2412 (Aug. 1991) (finding domestic industry was established where, among other factors, the vast majority of the U.S. market was supplied by the domestic industry); and Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Prelim.), USITC Pub. 2071 at A-15 (Mar. 1988) (domestic industry established because, inter alia, domestic producers had achieved a significant and increasing share of the U.S. market). But see Benzyl Paraben from Japan, USITC Pub. 2355 at 10 (did not find the domestic industry was established even though the company had been increasing its market share; the Commission did not find the company's market share particularly indicative of whether the industry was established given the small number of purchasers involved and the Commission's findings on other factors).

¹⁸⁶ See, e.g., Certain Copier Toner from Japan, USITC Pub. 1960 at 9 n.24 (did not find the domestic industry to be established where, inter alia, domestic production was small compared to the market as a whole). But see Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, USITC Pub. 2413 at 18-19 (found domestic industry was established despite finding that domestic production accounted for "at least some" if only a "small" share of the total U.S. market); and Fresh and Chilled Atlantic Salmon from Norway, USITC Pub. 2272 at 17 (finding domestic industry established despite low market share of domestic producers).

¹⁸⁷ See, e.g., Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Prelim.), USITC Pub. 2824 (Oct. 1994) (finding domestic industry established where, inter alia, domestic producers' share of the U.S. market was relatively stable).

¹⁸⁸ See, e.g., Petitioners' Postconf. Br. at 29; Petitioners' Prehearing Br. at 32.

¹⁸⁹ See, e.g., Petitioners' Postconf. Br. at 30; Petitioners' Prehearing Br. at 33.

share of the total market, capacity compared to the total market, or even the share of the customer base to which the domestic producers made sales, may yield different results. For example, domestic producers might be producing large quantities (but shipping little), shipping relatively little compared to the total market but shipping at least some volume to each of the major customers, or possessing large capacity relative to the total market (but using little of it).

Petitioners assert that the size of domestic laminated woven sack production operations is extremely small in relation to the U.S. market as a whole and that domestic shipments are even smaller.¹⁹⁰ In the preliminary phase of these investigations, respondents Shapiro, Excel, and Solaris attributed domestic producers' relatively small market share to domestic producers' recent decision to compete in this new market and their lack of expertise. As a result, respondents asserted that the vast majority of U.S. consumption is necessarily served by subject and non-subject merchandise imported into the U.S. market rather than domestically produced laminated woven sacks.¹⁹¹ Petitioners assert that the domestic industry's capacity is of little consequence in cases like this where ***, so they believe that domestic production and domestic shipment levels relative to the total market are a more appropriate comparison.¹⁹²

The record indicates that domestic production increased from 15.2 million sacks in 2005 to 28.3 million sacks in 2006 and 52.2 million sacks in 2007, whereas domestic shipments increased from 14.2 million sacks in 2005 to 26.1 million sacks in 2006 and 51.4 million sacks in 2007. Domestic producers' share of apparent U.S. consumption increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. Domestic producers' total average capacity increased from 111.3 million laminated woven sacks in 2005 to 172.8 million laminated woven sacks in 2006 and 233.0 million laminated woven sacks in 2007. In 2007, total average U.S. capacity to produce laminated woven sacks was equivalent to approximately *** percent of apparent U.S. consumption.^{193 194 195} While we find a comparison of the domestic producers' capacity to the total market to be a relevant consideration, we do not consider capacity to be determinative, although we note that the domestic producers in these investigations have clearly increased their production capacity over the period of investigation. Based on the facts on this

¹⁹⁰ See, e.g., Petitions at 14; Petitioners' Postconf. Br. at 33; Petitioners' Prehearing Br. at 38-39.

¹⁹¹ See, e.g., Shapiro's Postconf. Br. at 4-5.

¹⁹² See, e.g., Petitioners' Prehearing Br. at 38-39; Petitioners' Posthearing Br. at Exh. A at 29.

¹⁹³ See, e.g., CR/PR at Table C-1.

¹⁹⁴ Based on their definition of the domestic industry that does not include ***, Chairman Aranoff and Commissioner Pinkert note that domestic production, domestic shipments, and total average U.S. capacity increased relative to apparent U.S. consumption throughout the period of investigation. Domestic production increased from *** sacks in 2005 to *** sacks in 2006 and *** sacks in 2007, whereas domestic shipments increased from *** sacks in 2005 to *** sacks in 2006 and *** sacks in 2007. Domestic producers' share of apparent U.S. consumption has increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. In 2007, total average U.S. capacity to produce laminated woven sacks was equivalent to approximately *** percent of apparent U.S. consumption that year. Domestic producers' total average capacity increased from *** laminated woven sacks in 2005 to *** laminated woven sacks in 2006 and to *** laminated woven sacks in 2007. Apparent U.S. consumption of laminated woven sacks increased from 137.2 million laminated woven sacks in 2005 to 209.2 million laminated woven sacks in 2006 and to 334.6 million laminated woven sacks in 2007. See, e.g., CR/PR at Table C-1b.

¹⁹⁵ Based on her measurement of subject imports from China and consequently different measurement of apparent U.S. consumption, Commissioner Lane notes that domestic production, domestic shipments, and total average U.S. capacity increased relative to apparent U.S. consumption throughout the period of investigation. Domestic producers' share of apparent U.S. consumption increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. In 2007, total average U.S. capacity to produce laminated woven sacks was equivalent to approximately *** percent of apparent U.S. consumption that year. (Derived from CR/PR at Table C-1; Petitioners' Posthearing Br. at Exh. C).

record and particularly the increasing trends for domestic producers' production, U.S. shipments, and capacity, especially in the latter part of the period of investigation, we find that this factor weighs in favor of finding the domestic industry established, notwithstanding petitioners' arguments to the contrary.

4. Whether the Proposed Domestic Industry Has Reached a Reasonable Financial "Break-even" Point

In deciding whether the proposed domestic industry is already established, the Commission has also examined whether the proposed domestic industry has reached a reasonable financial "break-even" point. In some previous cases, the Commission has examined whether total revenues and total expenses are equal. Where possible, the Commission has calculated a break-even point by dividing total fixed costs and expenses by the unit contribution margin (which is equal to the unit sales price minus the unit variable cost).¹⁹⁶ In cases where domestic producers as a whole have not reached a reasonable break-even point, the Commission generally found the domestic industry was not established.¹⁹⁷ But, where it found that domestic producers as a whole had reached a reasonable break-even point, the Commission found the domestic industry was established.¹⁹⁸

Petitioners asserted that this consideration is relevant, but that it should be measured in a different way. They assert that to "become stabilized, a new industry must attain operating income sufficient to earn the risk-adjusted required rate of return on the capital invested" because no industry can or will sustain operations by merely breaking even. If an industry, facing dumped or subsidized foreign competition, is able to achieve a break-even level of operations, its equity and debt providers of capital still must be paid, and if the subsidized or dumped competition prevents the industry from moving beyond break-even levels to cover its cost of capital, they contend that there is a clear economic and financial basis for concluding that the industry has not achieved the status of being established.¹⁹⁹ We examined information provided by domestic producers about their plans, assumptions, and expectations when they decided to undertake their laminated woven sacks operations. As these business plans showed, domestic producers conducted market research, talked to prospective customers, set goals, and developed strategies

¹⁹⁶ See, e.g., Benzyl Paraben from Japan, USITC Pub. 2355 at 10.

¹⁹⁷ See, e.g., Benzyl Paraben from Japan, USITC Pub. 2355 at 10 (domestic industry not established, where, inter alia, company did not reach reasonable break-even point during the latest period for which the Commission had data (interim 1990)); and Certain Dried Salted Codfish from Canada, USITC Pub. 1711 at 5, aff'd, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int'l Trade 1987), aff'd, 852 F.2d 1285 (Fed. Cir. 1988), cert denied, 1009 U.S. 1120 (1989) (domestic industry not established, company did not reach break-even point).

¹⁹⁸ See, e.g., Wheel Inserts from Taiwan, USITC Pub. 2824 (Oct. 1994) (found domestic industry was established where, inter alia, the domestic producers as a whole had passed the break-even point and reached profitability during the period of investigation; they were able to cover their fixed and variable costs); Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, USITC Pub. 2412 (Aug. 1991) (found domestic industry was established where, inter alia, an overwhelming majority of the domestic producers already had reached a break-even point); and Salmon, USITC Pub. 2272 at 16-18 (finding domestic industry to be established where, inter alia, by 1988 a portion of the domestic producers had achieved profitability and another company showed improvement from 1987 to 1988 and even though the Commission recognized that there were no sustained profits for domestic producers as a whole). But see, e.g., Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, USITC Pub. 2413 at 18-19 (finding domestic industry was established but not making any explicit break-even analysis); and Pressure Sensitive PVC Battery Covers from West Germany, USITC Pub. 2265 at 12 (finding the domestic industry established but not making any explicit break-even analysis).

¹⁹⁹ See, e.g., Petitioners' Postconf. Br. at 30; Petitioners' Prehearing Br. at 32-33, 39-46; Petitioners' Posthearing Br. at Exh. A at 16-17; Hearing Tr. at 56-59.

for entering the market. They anticipated competition but also projected a need for domestic suppliers in this market. We also conducted a break-even analysis on a retrospective basis. Based on a standard break-even formula (total fixed cost divided by per-unit sales price minus per-unit variable cost), break-even volumes on responding domestic producers' aggregate reported financial data would be 17.5 million sacks in 2005, 65.1 million sacks in 2006, and 64.2 million sacks in 2007.²⁰⁰ As noted above, domestic production increased from 15.2 million sacks in 2005 to 28.3 million sacks in 2006 and 52.2 million sacks in 2007, whereas domestic shipments increased from 14.2 million sacks in 2005 to 26.1 million sacks in 2006 and 51.4 million sacks in 2007.²⁰¹ Consistent with these data, domestic producers as a whole experienced operating losses throughout the period of investigation, with operating losses as a share of net sales of negative 3.9 percent in 2005, negative 18.6 percent in 2006, and negative 5.1 percent in 2007.^{202 203}

At the time of our preliminary determinations, the record indicated that domestic producers were falling further behind in their efforts to achieve a break-even point. In the final phase of these investigations, however, we have full-year data for 2007 that now show that the domestic producers as a whole were much closer to a break-even point by the end of 2007. This retrospective analysis is also consistent with some of the prospective analyses that domestic producers prepared. Based on the current record, we find that evidence on this factor still supports a finding that the domestic industry is not established, although we recognize that the domestic producers are more favorably situated with respect to this factor than at the time of our preliminary determinations, making this a closer question on this record.

5. Whether the Start-Up Is More in the Nature of the Introduction of a New Product Line by an Already Established Business

In assessing whether a proposed domestic industry is already established, the Commission also has examined whether the start-up of production is more in the nature of the introduction of a new product line by an already established business. In examining this factor, the Commission's underlying question was whether the introduction of this product was aided by the domestic producers' other existing products. Where the Commission found the start-up of production was in the nature of the introduction of a new product line by an already established business, then it generally found the domestic industry was established.²⁰⁴ In some cases where, *inter alia*, the start-up of production was entirely by new companies

²⁰⁰ See, e.g., CR at VI-8; PR at VI-3.

²⁰¹ See, e.g., CR/PR at Table C-1.

²⁰² See, e.g., CR/PR at Table C-1.

²⁰³ Based on their definition of the domestic industry that does not include ***, Chairman Aranoff and Commissioner Pinkert find that break-even volumes were *** sacks in 2005, *** sacks in 2006, and *** sacks in 2007. (Derived from data in domestic producer questionnaire responses). Domestic production increased from *** sacks in 2005 to *** sacks in 2006, and to *** sacks in 2007. Domestic shipments were *** sacks in 2005, *** sacks in 2006, and *** sacks in 2007. Domestic producers as a whole experienced operating losses throughout the period of investigation, with operating losses as a share of net sales of negative *** percent in 2005, negative *** percent in 2006, and negative *** percent in 2007. See, e.g., CR/PR at Table C-1b.

²⁰⁴ See, e.g., Wheel Inserts from Taiwan, USITC Pub. 2824 (Oct. 1994) (found domestic industry was established where, *inter alia*, wheel inserts were produced as just one of several product lines of established firms); Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, USITC Pub. 2412 (Aug. 1991) (found domestic industry was established and noted that this was a new product for some established companies but a new product made by some newly established firms); Pressure Sensitive Battery PVC Covers from West Germany, (continued...)

that did not already produce other products, the Commission still found that the domestic industry was established.²⁰⁵

Petitioners contend that this factor contravenes the statute. They state that once the domestic like product and the corresponding domestic industry are defined, then whatever other products the domestic producers make are irrelevant to the question of whether an industry is established, if such products are not part of the domestic like product definition. Petitioners note that neither the statute nor the Commission's previous investigations require that domestic producers make no products other than the domestic like product. Petitioners argue that there is no reason to believe that Congress intended to apply the material retardation provision only to entrepreneurs that have no prior experience relating to the business that they are operating. In any event, petitioners assert that U.S. laminated woven sack producers are not significantly aided by their existing operations.²⁰⁶ For purposes of the preliminary phase of these investigations, Shapiro, Excel, and Solaris did not challenge petitioners' definition of the domestic like product. Despite noting that there is some overlap in equipment between laminated woven sacks and paper sacks, these respondents expressed the view that laminated woven sacks are a separate product and not a new line of domestic producers' existing businesses.²⁰⁷ Respondent Hotsun, however, asserted in the preliminary phase of these investigations that a domestic industry was established because laminated woven sacks are merely another product line in the pet food flexible packaging market.²⁰⁸

While this factor is unlikely to be dispositive on the issue of whether a domestic industry is established, it does raise considerations that at least help to put the inquiry into context. For example, to the extent domestic producers already possess some of the equipment, employees, expertise, distribution systems, customer bases, and/or other components needed to produce and distribute the laminated woven

²⁰⁴ (...continued)

USITC Pub. 2265 at 13 (finding that pressure sensitive battery covers were merely a new product line of an established firm that had been producing labels for 76 years); Lime Oil from Peru, USITC Pub. 1723 at 8 n.19 (noting in dicta that it would have found distilled lime oil to be an established industry because, inter alia, "unlike a new entrant, petitioner has been in the business of selling lime oil for years and could use existing customer contacts and distribution infrastructure in introducing distilled lime oil. Rather than establishing an industry, petitioner was introducing a new product line which has established a stable presence in the market"); and Fabric and Expanded Neoprene Laminate from Japan, USITC Pub. 1608 at 8 nn.24-26 (The Commission majority found that R-131 neoprene was merely a change in the product line of the established fabric and expanded neoprene laminate industry, but Commissioner Stern disagreed, stating that "{w}hether or not the company embarking upon production of the new product is new or well-established, the statute requires the Commission to define the industry according to specific like products, not in the general business sense.") But see, e.g., Benzyl Paraben from Japan, USITC Pub. 2355 at 11 (even though petitioner was an established company, its benzyl paraben operations did not appear to have derived a significant benefit from its other arguably 'established' operations); Certain Copier Toner from Japan, USITC Pub. 1960 at 9 n.24 (not discussing this factor but determining that the electrically resistive monocomponent toner ("ERMT") industry was "nascent" even though the ERMT producers manufactured other toners as well); and Certain Dried Salted Codfish from Canada, USITC Pub. 1711 (Jul. 1985), aff'd, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int'l Trade 1987), aff'd, 852 F.2d 1285 (Fed. Cir. 1988), cert denied, 1009 U.S. 1120 (1989) (even though petitioner was also producing other dried salted fish such as pollock or hake, that did not prevent the Commission from finding the domestic industry was not established).

²⁰⁵ See, e.g., Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, USITC Pub. 2413 at 18-19 (finding the domestic industry was established even though most of the domestic producers were dedicated from the start to production of this product).

²⁰⁶ See, e.g., Petitions at 15; Petitioners' Postconf. Br. at 30, 35; Confer. Tr. at 44-45 (Dorn), 64-65 (Dorn); Petitioners' Prehearing Br. at 33, 46-48; Hearing Tr. at 98-99.

²⁰⁷ See, e.g., Shapiro's Postconf. Br. at 5.

²⁰⁸ See, e.g., Hotsun's Postconf. Br. at 3.

sacks, and are able to leverage these assets for purposes of their laminated woven sacks operations, then this factor would lend support to a finding that the domestic industry is established. As noted above, domestic producers began their laminated woven sacks operations from varying vantage points. Several domestic producers were originally producers of multi-wall paper bags, and as such, had the equipment and know-how to take a tubular form, split it, and produce a vertical back seam. Not knowing how to produce laminated woven sacks, these paper-bag producers needed to learn how to make the woven sack and BOPP film (or purchase them from third parties), learn how to print the design on the paper or BOPP laminate, and then acquire the know-how and equipment needed to laminate the woven sack to BOPP film or paper.²⁰⁹ ***.²¹⁰ Although all of these paper-sack producers are able to print designs on the paper or BOPP-film laminate, some mastered how to laminate the woven sack to BOPP film, and some mastered how to laminate the woven sack to paper, *** did not master the technique of laminating the woven sack to BOPP film, and ***.²¹¹ These producers, however, appear to have benefitted at least to some degree from existing customer lists and existing distribution networks for the sale of their new laminated woven sacks products.²¹²

In contrast to this group of domestic producers, domestic producer Polytex had the equipment and know-how to make woven sacks but needed to acquire the equipment and know-how to print the design and to laminate the woven sack to BOPP film or paper as well as the equipment and know-how to produce a vertical back seam.²¹³ Between 2005 and 2007, ***.²¹⁴ Domestic producer Coating Excellence had the know-how to make film, but had to acquire the know-how and equipment to laminate a woven sack to BOPP film. The company ***.²¹⁵ The current record still reflects agreement that the most difficult aspect of laminated woven sack production is learning how to laminate the woven sack to BOPP film, as also noted above.

In terms of overlapping production equipment, *** of the reporting domestic producers (***) reported that they produced other products using some of the same manufacturing equipment and/or production employees that are used to produce laminated woven sacks.²¹⁶ The overlapping manufacturing equipment is generally that which is used for printing on coated paper and finishing operations and not equipment used in the printing and lamination of BOPP film. ***.²¹⁷

The data concerning this factor on the record appear to weigh in favor of finding that the domestic industry is established to the extent that, for at least some of the domestic producers, there is

²⁰⁹ See, e.g., CR/PR at Tables III-4, III-5; Confer. Tr. at 36 (Mid-America produces paper sacks and the craft paper that is the basic raw material for those sacks).

²¹⁰ See, e.g., Petitioners' Posthearing Br. at Exh. A at 14.

²¹¹ See, e.g., CR/PR at Tables III-5, III-8.

²¹² See, e.g., Petitions at 9-10; Petitioners' Postconf. Br. at 8-9; Confer. Tr. at 24-25 (Bazbaz), 152 (Wisla for Lang); Petitioners' Prehearing Br. at 6; Hearing Tr. at 11-12 (Bazbaz); Petitioners' Posthearing Br. at Exh. A at 34-36. But see Hearing Tr. at 66, 97-98 (regarding Polytex and Coating Excellence).

²¹³ See, e.g., CR/PR at Table III-5; Confer. Tr. at 19 (Polytex was the first integrated producer of circular woven polypropylene bags for export shipments of commodities like rice and sugar and became the largest bag producer of woven bags in the United States by 1985).

²¹⁴ See, e.g., CR/PR at Tables III-7, III-8; Hearing Tr. at 96-97.

²¹⁵ See, e.g., CR/PR at Tables III-2, III-5, III-7, III-8; Confer. Tr. at 28 (Coating Excellence's President testified that the company's "particular expertise is in printing and laminating film, as demonstrated by our leading position as packager of ream wrap."); 36 (Mid-America produces paper sacks and the craft paper that is the basic raw material for those sacks); Hearing Tr. at 97-98.

²¹⁶ See, e.g., CR/PR at Table III-4.

²¹⁷ See, e.g., CR/PR at Table III-4.

some overlap in the production equipment and employees used to produce laminated woven sacks and other existing products. Moreover, at least some domestic producers were able to leverage, at least to some degree, their existing customer lists and distribution systems. On balance, we find that this factor weighs in favor of finding the domestic industry is established.

6. Conclusion

In the preliminary phase of these investigations, petitioners and all but one respondent argued that, if the Commission were to apply the same criteria as it has in past investigations, it should find the domestic industry not established. At the same time, we note petitioners' counsel's statements at the hearing that it does not matter whether the Commission applies a material retardation or material injury/threat of material injury analysis in these investigations because he believes that the facts are strongly in his clients' favor either way.²¹⁸

Having accepted for purposes of the final phase of these investigations the framework and factors that the Commission has applied in previous cases, based on these factors and the facts on the current record discussed above, we conclude that the analysis leans in favor of finding that the domestic industry is established, although we continue to find this to be a very close decision. Because we find that a domestic laminated woven sacks industry is established, we next analyze whether the domestic industry is materially injured or threatened with material injury by reason of subject imports.²¹⁹ Notwithstanding, we take the relatively "young" age of this "established" domestic industry into account as a relevant condition of competition.²²⁰

VI. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.²²¹ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the

²¹⁸ See, e.g., Hearing Tr. at 115-16 (Dorn), 134 (Dorn), 139 (Dorn).

²¹⁹ See, e.g., Fresh Chilled Atlantic Salmon from Norway, USITC Pub. 2272 at 15 n.39; Pressure Sensitive Battery PVC Covers from West Germany, USITC Pub. 2265 at 12. But see Certain High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan, Inv. No. 731-TA-469 (Prelim.), USITC Pub. 2311 at 3 n.2 (Sept. 1990) (noting that because the Commission found a reasonable indication of material injury, the Commission did not reach the issue of material retardation).

²²⁰ See, e.g., Butter Cookies in Tins from Denmark, USITC Pub. 3092 at 34 (Commissioner Bragg took into consideration as a condition of competition the recent entry of the two domestic cookie producers into high-volume commercial production of butter cookies in tins); Fresh Chilled Atlantic Salmon from Norway, USITC Pub. 2272 at 20-21 (As a condition of competition, the Commission noted that the domestic industry was "established" but "young" and it therefore looked at some of the variables differently, discounting what otherwise might be improvements in some of the domestic industry's performance factors).

²²¹ 19 U.S.C. §§ 1671d(a) and 1673d(a).

domestic like product, but only in the context of U.S. production operations.²²² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²²³

For the reasons stated below, we determine that the domestic industry producing laminated woven sacks is materially injured by reason of subject imports from China.

A. Conditions of Competition and the Business Cycle

In conducting our analysis in these investigations, in addition to the relatively young age of the domestic industry, we have taken a number of other conditions of competition into consideration.

1. Product Considerations

Laminated woven sacks are produced in various dimensions and strengths, and these and other criteria (such as closure, color, design, and handles) are specified by manufacturers of the consumer goods as needed to serve their retail customers.²²⁴ Some laminated woven sacks are made in tubular form, and some are made with a vertical back seam.²²⁵ Some are laminated with paper, and some are laminated with BOPP film.²²⁶ Twenty-seven of 41 responding purchasers reported purchasing laminated woven sacks with a vertical back seam, 21 reported purchasing laminated woven sacks in tubular form, and 13 reported purchasing both.²²⁷ They reported a variety of perceived differences between the two forms, with several indicating that bags with a vertical back seam are easier to fill and have better construction quality, some indicating that the tubular bag is stronger because it has no seam to fail, and others reporting no differences or no differences that they were aware of between the two forms.²²⁸ Sixteen of 43 responding purchasers reported purchasing paper-laminated woven sacks, 35 purchase BOPP-laminated woven sacks, and 12 purchase both.²²⁹ Most purchasers preferred BOPP-laminated woven sacks because of better appearance, print quality, and durability. A few purchasers preferred paper-laminated woven sacks because they work better with machinery,²³⁰ and one reported that paper-laminated woven sacks are preferred for feed applications whereas BOPP-laminated woven sacks are more geared to high-end retail sales.²³¹

All *** responding domestic producers reported that there are no substitutes for laminated woven sacks because no other type of sack combines the high tensile-strength, high puncture-resistance, high tear-resistance, and low weight of laminated woven sacks, but 14 of 17 responding importers and 34 of 38

²²² 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).

²²³ 19 U.S.C. § 1677(7)(A).

²²⁴ See, e.g., Petitions at 3, 7-11; Petitioners’ Postconf. Br. at 5-11.

²²⁵ See, e.g., CR at I-13; PR at I-12.

²²⁶ See, e.g., CR at I-13; PR at I-12.

²²⁷ See, e.g., CR at II-12; PR at II-8.

²²⁸ See, e.g., CR at II-12; PR at II-8.

²²⁹ See, e.g., CR at II-12; PR at II-8.

²³⁰ See, e.g., CR at II-12; PR at II-8.

²³¹ See, e.g., CR at II-12; PR at II-8.

responding purchasers reported that there are substitutes for laminated woven sacks.²³² Reported substitute products include multi-wall paper sacks, clay-coated paper sacks, and polyethylene sacks.²³³ Four of 13 responding importers and 4 of 32 responding purchasers reported that the price of substitutes can affect prices of laminated woven sacks.²³⁴

2. Demand Considerations

The parties agree that production of laminated woven sacks originally began in Thailand, Korea, and China.²³⁵ Respondents claim that over the past five years, producers in Thailand and China educated prospective packagers/purchasers in the United States about the advantages of laminated woven sacks over multi-wall paper sacks, and introduced the product to the United States.²³⁶ Respondents assert that domestic producers did not anticipate the demand for this new product or the growing shift from paper packaging to laminated woven sack packaging.²³⁷ Petitioners and respondents agree that in the last several years, customers have begun to switch from multi-wall paper sacks to laminated woven sacks for at least some of the same uses,²³⁸ and that several domestic producers were approached by their customers or distributors about beginning to produce laminated woven sacks.²³⁹ Mass-merchant retailers such as Wal-Mart, Dollar General, Family Dollar, Petco, and PetSmart are increasingly insisting on poly-bag packaging in order to minimize product damage in the distribution chain.²⁴⁰

Although the petitioners emphasize the use of laminated woven sacks as flexible packaging for consumer goods such as pet food and bird seed,²⁴¹ the record indicates that laminated woven sacks are also used by other manufacturers of consumer goods such as litter, other animal feed products, grass seed and fertilizer.²⁴² Petitioners report getting inquiries from the sugar, rice, and charcoal industries as well.²⁴³ At present, petitioners report that the pet food market segment is the largest section of the U.S. market.²⁴⁴

Available data indicate that apparent U.S. consumption of laminated woven sacks increased from *** sacks in 2005 to *** sacks in 2006 and *** sacks in 2007.^{245 246} All responding producers and all but

²³² See, e.g., CR at II-7; PR at II-4.

²³³ See, e.g., CR at II-7; PR at II-4.

²³⁴ See, e.g., CR at II-7; PR at II-5.

²³⁵ See, e.g., Confer. Tr. at 19-20 (Bazbaz), 120 (Abel), 137 (Shapiro); Hearing Tr. at 11 (Bazbaz).

²³⁶ See, e.g., Shapiro's Postconf. Br. at 1, 6; Confer. Tr. at 120-22 (Abel), 137 (Shapiro).

²³⁷ See, e.g., Shapiro's Postconf. Br. at 6.

²³⁸ See, e.g., Confer. Tr. at 82-83 (Nowak), 83-84 (Bazbaz), 121-22 (Abel); Hearing Tr. at 11, 16 (Bazbaz), 46-50 (Bazbaz, Nowak).

²³⁹ See, e.g., Shapiro's Postconf. Br. at 7; Confer. Tr. at 20 (Bazbaz), 51-52 (Nowak), 68-69 (Bazbaz); Hearing Tr. at 11-12 (Bazbaz), 25 (Nowak), 63; Petitioners' Prehearing Br. at 6.

²⁴⁰ See, e.g., Confer. Tr. at 152 (Lang); Hearing Tr. at 63-64 (Bazbaz).

²⁴¹ See, e.g., Petitions at 1, 3, 5.

²⁴² See, e.g., CR at I-10; PR at I-9.

²⁴³ See, e.g., Hearing Tr. at 59-60, 62 (Bazbaz).

²⁴⁴ See, e.g., Hearing Tr. at 61-62 (Bazbaz, Nowak).

²⁴⁵ See, e.g., CR/PR at Table C-1.

²⁴⁶ Based on her measurement of subject imports from China, Commissioner Lane finds that apparent U.S. consumption of laminated woven sacks increased by *** percent over the period of investigation from *** laminated
(continued...)

one responding importers reported that demand for laminated woven sacks had increased since January 2005, with the remaining importer reporting no change in demand.²⁴⁷ The most commonly cited reasons for the increase are the greater durability, improved print graphics, and price competitiveness of laminated woven sacks compared to products such as multi-walled paper sacks that had been the preferred sack of the U.S. pet food, bird seed, animal feed, and grass seed industries.²⁴⁸ Twenty-three of 38 responding purchasers reported that demand for their firm's final products incorporating laminated woven sacks has increased since 2005. Eight responding purchasers indicated that demand had remained unchanged for their final products incorporating laminated woven sacks, and the remaining seven reported that demand for these products had decreased.²⁴⁹ All parties expect continued demand growth for laminated woven sacks.²⁵⁰ For example, respondents estimated in the preliminary phase of these investigations that 90 percent of the bags for packaging pet food and bird seed are still being supplied by multi-walled paper sacks, although laminated woven sacks have begun to make inroads into this area.²⁵¹ Petitioners assert that demand for laminated woven sacks is price inelastic; that is, demand growth has been driven by consumer preferences and not by low prices.²⁵²

Petitioners argue that the domestic industry is too new to assess whether there is a business cycle for laminated woven sacks,²⁵³ and we do not find evidence on the current record that this industry is characterized by a regular business cycle, just that its demand is derived from the demand for the consumer products for which it is used as flexible packaging.

3. Supply Considerations

There are three sources of supply in the U.S. market: imports of subject merchandise from China, imports from non-subject countries, and domestic shipments.

a. Imports

We discuss the measurement of imports of laminated woven sacks from China and non-subject countries above. Throughout the period of investigation, there were imports of laminated woven sacks from non-subject countries Thailand and Vietnam,²⁵⁴ and, based on data on the new HTSUS statistical subheadings that went into effect on July 1, 2007, there were also imports of laminated woven sacks into

²⁴⁶ (...continued)

woven sacks in 2005 to *** laminated woven sacks in 2006 and to *** million laminated woven sacks in 2007.

²⁴⁷ See, e.g., CR at II-5; PR at II-3.

²⁴⁸ See, e.g., CR at II-5 to II-6; PR at II-3.

²⁴⁹ See, e.g., CR at II-6; PR at II-4.

²⁵⁰ See, e.g., Confer. Tr. at 70 (Bazbaz), 83-84 (Bazbaz), 90 (Bazbaz), 91 (Nowak), 91 (Nicolai), 142 (Boltuck), 203-04 (Boltuck); Hearing Tr. at 46-50, 82-88.

²⁵¹ See, e.g., Hotsun's Postconf. Br. at 2; Confer. Tr. at 118 (Abel); Hearing Tr. at 46-50 (Bazbaz, Nowak), 82-88 (Bazbaz, Nowak).

²⁵² See, e.g., Petitioners' Postconf. Br. at 16; Petitioners' Prehearing Br. at 13.

²⁵³ See, e.g., Petitioners' Posthearing Br. at Exh. A at 27. Polytex indicates that it does not believe that there is a business cycle for the laminated woven sacks industry, or if there is a cycle, it is not aware of one. Coating Excellence reports that there are some minimal variations in demand during the year, with some minimal increase in the winter because more people feed birds then. See, e.g., Hearing Tr. at 45-46 (Bazbaz, Nowak).

²⁵⁴ See, e.g., CR at IV-4; PR at IV-2.

the U.S. market from Korea, Canada, and Indonesia (in descending volume order).²⁵⁵ Non-subject imports increased over the period examined, both in absolute terms and relative to U.S. consumption, but were *** smaller than subject imports throughout the period of investigation. Non-subject imports were *** sacks in 2005, *** sacks in 2006, and *** sacks in 2007. The U.S. market share held by non-subject imports was *** percent in 2005, *** percent in 2006, and *** percent in 2007.^{256 257}

b. Domestic Shipments

As we indicated in more detail above, there were seven producers that manufactured laminated woven sacks in the United States during at least some part of the period of investigation, of which six submitted questionnaire responses in the final phase of these investigations.²⁵⁸ These producers began their laminated woven sacks production operations with differing production experiences, and in some respects are differently situated as a result. As also discussed above, there are some differences among domestic producers in terms of the production steps that each performs internally and those performed by outside sources, as well as the relative costs and value added associated with each stage.

Petitioners argue that the production of laminated woven sacks in the United States involves high variable costs, with these costs accounting for *** of total operating costs during the period of investigation. Faced with this cost structure, they argue that domestic producers have far less incentive than in other industries to price below their average total costs but will instead reduce (or refrain from increasing) capacity, production, and employment rather than chase the market price down.²⁵⁹

4. Substitutability

Laminated woven sacks are generally sold on a spot basis.²⁶⁰ Petitioners testified that they would prefer to sell on a contract basis, but purchasers reportedly have been reluctant to commit to buying particular volumes when they might be able to get what they need from producers in China at much lower prices and do not know what their emergency needs will be.²⁶¹ Most responding domestic producers and importers reported that prices are determined on a transaction-by-transaction basis, and are not based on

²⁵⁵ See, e.g., CR at IV-4 n.7; PR at IV-2 n.7. Petitioners attached an affidavit from a U.S. importer of subject merchandise from Mexico attesting that any U.S. imports from Mexico are non-laminated bulk packaging woven sacks and not laminated woven sacks. See, e.g., CR at IV-4 n.7; PR at IV-4 n.7.

²⁵⁶ See, e.g., CR/PR at Table C-1.

²⁵⁷ Based on her measurement of the level of subject imports from China for 2007, Commissioner Lane finds that the U.S. market share held by non-subject imports was *** percent in 2005, *** percent in 2006, and *** percent in 2007. (Derived from Petitioners' Posthearing Br. at Exh. C).

²⁵⁸ Domestic producer LaPac did not submit a domestic producer questionnaire response in the final phase of these investigations. See, e.g., CR at III-1; PR at III-1.

²⁵⁹ See, e.g., Petitioners' Prehearing Br. at 14-15.

²⁶⁰ See, e.g., CR at V-3; PR at V-2. *** of six responding domestic producers and *** of 18 responding importers reported making all of their sales on a spot basis. An additional *** importers reported making at least 75 percent of their sales on a spot basis. *** of 18 responding importers reported making at least 75 percent of their sales on a short-term contract basis. The *** reported making 80 percent of its sales on a long-term contract basis. See, e.g., CR at V-3; PR at V-2 to V-3.

²⁶¹ See, e.g., Hearing Tr. at 118-119.

price lists. Many domestic producers and importers specifically reported pricing on a cost-plus-profit-margin basis.²⁶²

Domestic producers and U.S. importers of laminated woven sacks sell primarily to end users, with domestic producers making at least *** percent of their sales to end users and U.S. importers making between *** and *** percent of their sales to end users between 2005 and 2007.²⁶³

Quality, certification or pre-qualification, price, and reliability of supply are important considerations to purchasers when deciding from whom to purchase laminated woven sacks.²⁶⁴ Six of 38 responding purchasers reported that there are certain grades, types, or sizes of laminated woven sacks available only from a single source.²⁶⁵ Many purchasers reported purchasing laminated woven sacks from one source although a comparable product was available from another source at a lower price for reasons such as quality, lead times, minimum quantities, relationship with suppliers, and print quality. Twenty-three of 32 responding purchasers indicated that domestically produced laminated woven sacks either always or usually meet minimum quality specifications for their firms' or their customers' uses, with 8 indicating "always," 15 "usually," 3 "sometimes," and 6 "never." Twenty-seven of 34 responding purchasers indicated that laminated woven sacks imported from China either always or usually meet minimum quality specifications for their firms' or customers' uses, with 14 indicating "always," 13 "usually," 6 "sometimes," and one purchaser "never."²⁶⁶

Petitioners argue that laminated woven sacks are not commodity products but that purchasing decisions are made largely on the basis of price because all laminated woven sacks are made to customer order.²⁶⁷ Laminated woven sacks are produced in various dimensions and strengths, and these and other criteria (such as closure, color, design, and handles) are specified by the customer.²⁶⁸ The competing suppliers quote on dimensions and features of the bag using a graphic design that is also provided by the customer.²⁶⁹ Respondents Shapiro, Excel, and Solaris agree that laminated woven sacks are not commodity products.²⁷⁰

In the preliminary phase of these investigations, respondents argued that domestic producers were slow to produce, or in some instances were unable to produce, the laminated woven sack products preferred by purchasers, which they argued were BOPP film-laminated woven sacks rather than paper-laminated sacks, and laminated woven sacks with vertical back seams rather than tubular sacks.²⁷¹

²⁶² See, e.g., CR at V-3; PR at V-3.

²⁶³ See, e.g., CR at II-1; PR at II-1; CR/PR at Table II-1.

²⁶⁴ See, e.g., CR at II-8 to II-13; PR at II-5 to II-8; CR/PR at Table II-1 to II-2.

²⁶⁵ Two of these six purchasers reported that back-seam bags are only available from China, one reported that the best quality back-seam bags are available only from China, one reported that back-seam bags are not available in the United States, one reported that BOPP-film laminated woven sacks from China have superior quality, and the remaining purchaser reported that the United States mainly supplies paper-laminated woven sacks and that China supplies either BOPP- or paper-laminated woven sacks. See, e.g., CR at II-12 to II-13; PR at II-8.

²⁶⁶ See, e.g., CR at II-13; PR at II-8.

²⁶⁷ See, e.g., Confer. Tr. at 8 (Dorn), 74 (Dorn), 86-87 (Nowak), 87-88 (Bazbaz); Petitioners' Prehearing Br. at 2; Hearing Tr. at 32, 120.

²⁶⁸ See, e.g., Petitions at 3, 7-11; Petitioners' Postconf. Br. at 5-11.

²⁶⁹ See, e.g., Petitioners' Postconf. Br. at 2, 14-15; Confer. Tr. at 8 (Dorn); Petitioners' Prehearing Br. at 2, 8.

²⁷⁰ See, e.g., Shapiro's Postconf. Br. at 24.; Confer. Tr. at 192 (Levinson).

²⁷¹ See, e.g., Confer. Tr. at 119-23 (Abel), 126-29 (Corman), 160-61 (Shapiro); 161 (Levinson); 161-66 (Abel). According to respondents, paper-laminated woven sacks are subject to some of the same problems as multi-wall paper sacks (such as deteriorating or wrinkling of the design) and laminated woven sacks in a tubular form have

(continued...)

Petitioners argue that the data show otherwise.²⁷² Data collected in the final phase of these investigations indicate that in 2007, five of the six responding domestic producers of laminated woven sacks produced only vertical back-seam sacks, and only one produced tubular sacks. In 2007, two domestic producers laminated their sacks exclusively with paper, three domestic producers laminated exclusively with BOPP film, and one domestic producer reported producing both paper-laminated woven sacks and BOPP-film laminated woven sacks.²⁷³ Likewise, in 2007, responding importers of subject merchandise from China reported selling mostly vertical back-seam laminated woven sacks but also some tubular-style laminated woven sacks, and they reported selling almost entirely BOPP-film laminated woven sacks and limited shipments of paper-laminated woven sacks.²⁷⁴ Of the 41 purchasers responding to the question, 27 reported purchasing vertical back-seam laminated woven sacks, 21 reported purchasing tubular laminated woven sacks, and 13 purchasers reported purchasing both. Likewise, while 35 of 43 responding purchasers purchased BOPP-film laminated woven sacks, 16 reported purchasing paper-laminated woven sacks, and 12 responding purchasers reported buying both types of bags.²⁷⁵

Petitioners and the respondents that participated in the preliminary staff conference agreed that laminated woven sacks from China and from the United States are highly substitutable for one another.²⁷⁶ Questionnaire respondents generally agreed.²⁷⁷ We find that the domestically produced laminated woven sacks and subject imports from China are highly substitutable for one another when they are made with the same print design and made to the same dimensions, strength, and other such specifications.

In order to obtain data on head-to-head competition, both domestic producers and importers of subject merchandise from China were asked to supply a list of their top ten purchasers. Domestic producers collectively reported 30 purchasers for the period 2005 to 2007 compared to 85 purchasers

²⁷¹ (...continued)

unsightly “fins” that interfere with automatic filling equipment. See, e.g., Confer. Tr. at 119-23 (Abel), 126-29 (Corman), 160-61 (Shapiro).

²⁷² See, e.g., Petitioners’ Prehearing Br. at 10-13.

²⁷³ See, e.g., CR at I-13; PR at I-12; CR/PR at Tables III-7 and III-8.

²⁷⁴ See, e.g., CR/PR at Tables IV-3, IV-4.

²⁷⁵ See, e.g., CR at II-12; PR at II-8.

²⁷⁶ See, e.g., Confer. Tr. at 8 (Dorn), 74 (Dorn), 86-87 (Nowak), 87-8 (Bazbaz), 192 (Levinson); Petitioners’ Postconf. Br. at 2, 14-15; Shapiro’s Postconf. Br. at 24; Petitioners’ Prehearing Br. at 8; Hearing Tr. at 113-14.

²⁷⁷ All responding domestic producers, four of 13 responding importers and 17 of 28 responding purchasers reported that laminated woven sacks produced in the United States and imported from China are always interchangeable. Three importers and 6 purchasers reported that laminated woven sacks produced in the United States and imported from China are frequently interchangeable, 5 importers and 4 purchasers reported that they are sometimes interchangeable, and 2 importers and 1 purchaser reported that they are never interchangeable. See, e.g., CR at II-13; PR at II-8; CR/PR at Table II-3. All responding producers indicated that differences other than price between laminated woven sacks produced in the United States and imported from China were at most “sometimes” a significant factor in their firm’s sales of the products. Seven of 12 responding importers indicated that differences other than price between laminated woven sacks produced in the United States and imported from China were either “frequently” or “sometimes” a significant factor in their firm’s sales of the products. Importers cited such factors as the logistical advantage of purchasing all types of sack products from one supplier, printing graphics (rotogravure in China versus flexographic in the United States), COF rates, Chinese vertical back-seam versus U.S. tubular construction, and product availability and lead times. The majority or a plurality of responding purchasers indicated that laminated woven sacks produced in the United States and imported from China were comparable for all of the different purchasing factors except for lower price. For lower price, a majority of purchasers indicated that the domestically produced product was higher-priced than the product from China. See, e.g., CR at II-15 to II-16; PR at II-10; CR/PR at Table II-5.

collectively reported by importers of subject merchandise from China. According to the top-ten customer data reported by domestic producers and importers of subject merchandise for the year 2007, there were overlapping sales of the domestic like product and subject imports from China to six purchasers (***). These six purchasers accounted for *** sacks of domestic producers' U.S. shipments in 2007 and *** sacks of importers' reported U.S. shipments that year.²⁷⁸

Likewise, 11 of 39 responding purchasers (***) reported purchasing both domestic laminated woven sacks and laminated woven sacks of Chinese origin in 2007. These purchasers accounted for *** sacks of domestic producers' U.S. shipments in 2007 and *** sacks of importers' U.S. shipments of subject merchandise from China in 2007.²⁷⁹

B. Volume of the Subject Imports from China

Section 771(7)(C) of the Tariff Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."²⁸⁰

Based on the data compiled in these investigations discussed above, we find the volume of subject imports from China is significant in both absolute terms and relative to consumption and production in the United States. In absolute terms, the volume of subject imports increased significantly from 2005 to 2007. The volume of subject imports measured by quantity increased from 112.3 million sacks in 2005 to 153.2 million sacks in 2006 and 234.4 million sacks in 2007, for an increase of 108.8 percent from 2005 to 2007. The rate of increase in subject imports was almost as large as the strong increase in apparent U.S. consumption from 2005 to 2007. Apparent U.S. consumption increased from *** sacks in 2005 to *** sacks in 2006 and to *** sacks in 2007, for an increase of *** percent from 2005 to 2007.^{281 282}

Subject imports accounted for a significant share of U.S. consumption, although they lost market share from 2005 to 2007. The market share held by subject imports decreased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007, while the domestic industry's market share increased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007.²⁸³ The ratio of the quantity of subject imports to U.S. production, while remaining substantial, declined from 736.6 percent in 2005 to 541.5 percent in 2006 and to 448.7 percent in 2007.^{284 285 286} We do not place great weight on the declines

²⁷⁸ See, e.g., CR at II-1 to II-2; PR at II-1.

²⁷⁹ See, e.g., CR at II-2; PR at II-1.

²⁸⁰ 19 U.S.C. § 1677(7)(C)(i).

²⁸¹ See, e.g., CR/PR at Table C-1.

²⁸² Based on her measurement of subject imports from China, Commissioner Lane finds that in absolute terms, the volume of subject imports increased significantly from 2005 to 2007. The volume of subject imports measured by quantity increased from 112.3 million sacks in 2005, to 153.2 million sacks in 2006, and 181.9 million sacks in 2007, for an increase of 62.0 percent from 2005 to 2007. (Derived from Petitioners' Posthearing Br. at Exh. C).

²⁸³ U.S. shipments of domestically produced laminated woven sacks increased each year, and rose overall by 262.3 percent from 2005 to 2007.

²⁸⁴ See, e.g., CR/PR at Tables IV-7, C-1.

²⁸⁵ Based on their definition of the domestic industry, Chairman Aranoff and Commissioner Pinkert find that subject imports accounted for a significant share of U.S. consumption, although they lost market share from 2005 to 2007. The market share held by subject imports decreased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007, while the domestic industry's market share increased from *** percent in 2005, to *** percent (continued...)

in market share by subject imports or ratio of subject imports to domestic production in these investigations or the corresponding increases in the domestic industry's market share. The relatively young age of the domestic industry and the relatively low baseline of its operations at the beginning of the period of investigation make these otherwise positive trends far less meaningful. In this respect, we further note that the domestic industry had large and growing capacity at the end of the period of investigation relative to apparent U.S. consumption, much of which remained unutilized.^{287 288}

For the foregoing reasons, we find that the volume of subject imports from China is significant, both in absolute terms and relative to consumption and production in the United States, and we find that the increase in the level of subject imports from China between 2005 and 2007 is also significant.

C. Price Effects of the Subject Imports from China²⁸⁹

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.²⁹⁰

²⁸⁵ (...continued)

in 2006, and to *** percent in 2007. The ratio of the quantity of subject imports to U.S. production, while remaining substantial, declined from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007. See, e.g., CR/PR at Table C-1b.

²⁸⁶ Commissioner Lane finds that subject imports accounted for a significant share of U.S. consumption, although they lost market share from 2005 to 2007. The market share held by subject imports decreased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007, while the domestic industry's market share increased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007. The ratio of the quantity of subject imports to U.S. production, while remaining substantial, declined from 736.6 percent in 2005 to 541.5 percent in 2006 and to 348.3 percent in 2007. (Derived from CR/PR at Table C-1; Petitioners' Posthearing Br. at Exh. C).

²⁸⁷ Average production capacity for the domestic industry as a whole increased from 111.3 million sacks in 2005 to 172.8 million sacks in 2006 and to 233.0 million sacks in 2007. See, e.g., CR/PR at Table C-1. Although capacity utilization levels increased over the period of investigation from 13.7 percent in 2005 to 16.4 percent in 2006 and to 22.4 percent in 2007, these levels continued to be low throughout the period of investigation. See, e.g., CR/PR at Table C-1.

²⁸⁸ Based on their definition of the domestic industry, Chairman Aranoff and Commissioner Pinkert find that average production capacity for the domestic industry as a whole increased from *** sacks in 2005 to *** sacks in 2006 and to *** sacks in 2007. Although capacity utilization levels increased over the period of investigation from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007, these levels continued to be low throughout the period of investigation. See, e.g., CR/PR at Table C-1b.

²⁸⁹ Although Chairman Aranoff and Commissioner Pinkert did not include domestic producer *** in their analysis, they arrive at the same conclusion as their colleagues about the price effects of subject imports from China. They note that the pricing data they analyzed ***.

²⁹⁰ 19 U.S.C. § 1677(7)(C)(ii).

As we discussed above, laminated woven sacks are made to order and are not commodity products. Nonetheless, subject imports from China are highly substitutable for domestically produced laminated woven sacks when they are made with the same design and to the same dimensions and specifications.²⁹¹ The domestic industry and importers of subject merchandise from China supplied both paper-laminated and BOPP film-laminated woven sacks as well as both tubular and vertical back-seam laminated woven sacks to the U.S. market during the period of investigation. Overall, the domestic industry, importers, and purchasers did not report much that differentiated subject imports from China and the domestic like product, beyond price.²⁹² Importers of subject merchandise from China and the domestic industry both overwhelmingly sold their laminated woven sacks to end users, including a number of the same end users, for many of the same applications. Most laminated woven sacks are sold on a spot basis, and prices are determined on a transaction-by-transaction basis. We, therefore, find that prices are important in purchasing decisions.

In these investigations, U.S. producers and importers provided quarterly pricing data for three types of laminated woven sacks.²⁹³ These pricing data represented *** percent of the quantity of U.S.-produced laminated woven sacks during 2007 and *** percent of laminated woven sacks imported from China.²⁹⁴ The pricing data show a pattern of consistent and significant underselling by subject imports in every product and for every comparison. Subject imports undersold the domestic like product for all three pricing products and in each of the 31 possible quarterly comparisons, with margins of underselling ranging from *** to *** percent for product 1, from *** to *** percent for product 2, and from *** to *** percent for product 3.²⁹⁵ Although we might have expected some price premiums for the domestic industry,²⁹⁶ we find the size of these underselling margins to be especially significant given the highly substitutable nature of subject imports from China and the domestic like product. Accordingly, we find that there has been consistent and significant price underselling of the domestic like product by subject imports.

We have also considered movements in laminated woven sack prices over the period of investigation. The Commission's pricing data show that average domestic prices for all pricing products

²⁹¹ See, e.g., CR at II-13; PR at II-8; CR at Table II-3. All responding U.S. producers, 4 of 13 responding importers and 17 of 28 responding purchasers reported that laminated woven sacks produced in the United States and imported from China are always interchangeable. Id.

²⁹² See, e.g., CR at II-13, II-15 to II-16; PR at II-8 to II-10; CR/PR at Tables II-4 and II-5.

²⁹³ The three types of laminated woven sacks for which pricing data were requested are: Product 1 (woven polypropylene fabric laminated to BOPP reverse-printed film, ink coverage 200 percent, measuring 15" x 3.5" x 27" (plus or minus 1 inch in any or all directions), fabric 70 g/m² (plus or minus 6 g/m²), coating 20 g/m² (plus or minus 5 g/m²), film 22 g/m² (plus or minus 6 g/m²); Product 2 (woven polypropylene fabric laminated to BOPP reverse-printed film, ink coverage 200 percent, measuring 16" x 6" x 39" (plus or minus 1 inch in any or all directions), fabric 80 g/m² (plus or minus 8 g/m²), coating 20 g/m² (plus or minus 5 g/m²), film 22 g/m² (plus or minus 6 g/m²); and Product 3 (woven polypropylene fabric laminated to BOPP reverse-printed film, ink coverage 200 percent, measuring 13" x 2" x 24" (plus or minus 1 inch in any or all directions), fabric 75 g/m² (plus or minus 6 g/m²), coating 20 g/m² (plus or minus 5 g/m²), film 25 g/m² (plus or minus 6 g/m²). See, e.g., CR at V-4 to V-5; PR at V-3 to V-4.

²⁹⁴ See, e.g., CR at V-5; PR at V-4.

²⁹⁵ See, e.g., CR/PR at Tables V-1 to V-3.

²⁹⁶ Petitioners asserted that ***. See, e.g., Petitioners' Posthearing Br. at Exh. A at 6-7; Hearing Tr. at 64-65 (Nowak). Petitioners also explained that their higher prices often relegated them to the status of a backup or emergency supplier. See, e.g., Hearing Tr. at 117-19 (Nowak).

fluctuated between the first quarter of 2005 and the fourth quarter of 2007.²⁹⁷ The domestic industry was able to increase its price for product 1 in mid-2005, but received lower prices in the fourth quarter of 2005 and the second and third quarters of 2006. The domestic industry tried to raise prices on product 1 in the fourth quarter of 2006 but realized progressively lower prices in the subsequent four quarters for that product.²⁹⁸ For pricing product 2, ***, the domestic industry was able to obtain progressively higher prices between the first quarter of 2005 and the first quarter of 2006, but faced progressively lower prices for the next four quarters. The domestic industry had limited success in raising prices for product 2 in the second and third quarters of 2007, before prices fell again in the fourth quarter of 2007.²⁹⁹ For both of these pricing products, prices declined overall between the first quarter of 2005 and the fourth quarter of 2007.³⁰⁰ The price for U.S. product 3 generally declined throughout the period.³⁰¹ These price declines occurred despite increased demand for laminated woven sacks, as discussed above.

We find that subject imports suppressed domestic prices to a significant degree. Polypropylene is one of the primary raw materials used in the production of laminated woven sacks and accounts for an important share of total production costs.³⁰² The price of polypropylene has risen substantially over the period of investigation. By one measure, polypropylene prices in November 2007 were 38 percent higher than they were in January 2005,³⁰³ while by another measure prices in December 2007 were 26 percent higher than prices in January 2005.³⁰⁴ The domestic industry's raw material costs per laminated woven sack increased from \$0.27 in 2005 to \$0.32 in 2006 and \$0.35 in 2007.³⁰⁵ Even though the domestic industry was able to progressively increase its output over the period of investigation as it ramped up its production operations, the cost of goods sold ("COGS") for the domestic industry as a share of its net sales increased from 89.7 percent in 2005 to 102.1 percent in 2006 before declining to 94.4 percent in 2007, a level that was higher than in 2005.³⁰⁶ Although unit net sales values also increased, these increases were not sufficient to completely offset the increases in unit COGS.³⁰⁷ These data indicate that, as the domestic industry's costs increased and significant volumes of low-priced subject imports blanketed the U.S. market, the domestic industry was unable to raise prices sufficiently to cover

²⁹⁷ See, e.g., CR/PR at Tables V-1 to V-3.

²⁹⁸ See, e.g., CR/PR at Table V-1.

²⁹⁹ See, e.g., CR/PR at Table V-2.

³⁰⁰ See, e.g., CR/PR at Tables V-1 and V-2.

³⁰¹ See, e.g., CR/PR at Table V-3.

³⁰² See, e.g., CR at V-1; PR at V-1.

³⁰³ See, e.g., CR at V-1; PR at V-1; CR/PR at Figure V-1.

³⁰⁴ See, e.g., CR at V-1; PR at V-1; CR/PR at Figure V-2.

³⁰⁵ See, e.g., CR/PR at Table VI-1.

³⁰⁶ See, e.g., CR/PR at Table C-1. Based on their definition of the domestic industry, Chairman Aranoff and Commissioner Pinkert note that even though the domestic industry was able to progressively increase its output over the period of investigation as it ramped up its production operations, the COGS for the domestic industry as a share of its net sales increased from *** percent in 2005 to *** percent in 2006 before declining to *** percent in 2007, a level that was higher than in 2005. See, e.g., CR/PR at Table C-1b.

³⁰⁷ See, e.g., CR/PR at Table C-1. The domestic industry's unit net sales value increased from \$0.54 in 2005 to \$0.60 in 2006 and remained at that level in 2007. Based on their definition of the domestic industry, Chairman Aranoff and Commissioner Pinkert find that the domestic industry's unit net sales value increased from *** in 2007. See, e.g., CR/PR at Table C-1b.

increasing costs even though apparent U.S. consumption also increased significantly over this time.³⁰⁸ We therefore find that U.S. producers' prices were significantly suppressed because of persistent and significant underselling by the large volume of subject imports, which subjected the domestic industry to a cost-price squeeze.³⁰⁹

For the foregoing reasons, we find that there has been significant underselling by large and increasing volumes of subject imports from China and that such imports have suppressed prices of the domestic like product to a significant degree by preventing price increases, which otherwise would have occurred, to a significant degree. We also find some evidence of price depression by the lower-priced subject imports, in that prices for Products 1 and 2 fluctuated but declined overall during the period of investigation, and prices for Product 3 declined as well. Thus, we find that subject imports from China have had significant adverse effects on domestic prices.

³⁰⁸ See, e.g., CR/PR at Table C-1.

³⁰⁹ Limited evidence of confirmed lost sales provides additional support for our finding that subject imports of laminated woven sacks from China have suppressed prices to a significant degree. See, e.g., CR at V-11 to V-20; PR at V-7 to V-9; CR/PR at Table V-5.

D. Impact of the Subject Imports from China on the Domestic Industry³¹⁰

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a

³¹⁰ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determination, Commerce calculated weighted-average final dumping margins (in percent ad valorem) for imports of laminated woven sacks from China from the following Chinese producer/exporter combinations: 64.28 percent for Cangnan Color Make the Bag Co., Ltd.; Changle Baodu Plastic Co. Ltd.; Jiangsu Hotson Plastics Co. Ltd.; Polywell Industrial Co. (also known as First Way (H.K.) Ltd.)/Polywell Plastic Product Factory; Shandong Qikai Plastics Product Co., Ltd.; Shandong Youlian Co. Ltd.; Wenzhou Hotson Plastics Co. Ltd.; Zibo Aifudi Plastic Packaging Co., Ltd.; Zibo Linzi Luitong Plastic Fabric Co. Ltd.; Zibo Linzi Qitianli Plastic Fabric Co. Ltd.; Zibo Linzi Shuaiqiang Plastics Co. Ltd.; Zibo Linzi Worun Packing Product Co., Ltd.; Zibo Qigao Plastic Cement Co. Ltd.; and 91.73 percent for all others (China-wide). See, e.g., 73 Fed. Reg. at 35648.

In its final determination, Commerce also found that the following programs provided countervailable subsidies to producers of laminated woven sacks in China: (1) Government provision of land for less than adequate remuneration; (2) Government provision of inputs (BOPP film) for less than adequate remuneration; and (3) Government policy lending. Commerce found that twenty-eight additional programs were not used by Zibo Aifudi Plastic Packaging Co., Ltd., but were countervailable for those firms as to which Commerce applied adverse inferences: (4) value-added tax (“VAT”) rebate for foreign-invested enterprises’ (“FIE”) purchases of domestically produced equipment; (5) VAT and tariff exemptions for FIEs using imported technology and equipment in encouraged industries; (6) VAT and tariff exemptions on imported equipment (domestic enterprises); (7) preferential tax policies for enterprises with foreign investment (two free, three half); (8) preferential tax policies for export-oriented FIEs; (9) corporate income tax refund program for reinvestment of FIE profits in export-oriented enterprises; (10) tax benefits for FIEs in encouraged industries that purchase domestic-origin machinery; (11) tax program for FIEs recognized as high or new technology enterprises; (12) preferential tax policies for research and development; (13) tax subsidies to FIEs in specially designated geographic areas; (14) preferential tax policies for township enterprises by FIEs; (15) local income tax exemption and reduction programs for “productive” FIEs; (16) the State Key Technologies Renovation Project; (17) grants and other funding for high technology equipment for the textile industry; (18) grants to loss-making, state-owned enterprises; (19) export interest subsidy funds for enterprises located in Zhejiang and Guangdong provinces; (20) technology innovation funds provided by Zhejiang Province; (21) programs to rebate antidumping legal fees; (22) loan forgiveness for laminated woven sacks producers by the Government of China; (23) grants for market exploration (Shandong Province); (24) grants for attending international trade fairs (Shandong Province); (25) interest discount to export enterprises (Shandong Province); (26) grants covering export credit insurance fees (Shandong Province); (27) grants to enterprises exporting key products (Shandong Province); (28) interest discounts for export enterprises (Shouguang Municipality); (29) grants for attending international trade fairs (Shouguang Municipality); (30) preferential treatment for key exporting enterprises (Shouguang Municipality); (31) grants for exporting key enterprises (Shouguang Municipality). Commerce found that one program, the Government provision of electricity, was not countervailable and that another program, exemption from payment of staff and worker benefits for export-oriented industries, had been terminated. Commerce, therefore, assigned the following countervailable subsidy rates (in percent ad valorem): Zibo Aifudi Plastic Packaging Co., Ltd (29.54); Han Shing Chemical Co., Ltd. (also known as Han Shing Bulk Bag Co., Ltd.) (223.74); Ningbo Yong Feng Packaging Co., Ltd. (223.74); Shangdong Qilu Plastic Fabric Group Co., Ltd. (304.40); Shangdong Shouguang Jianyuan Chun Co., Ltd. (352.82); all others (China-wide) (226.85). See, e.g., 73 Fed. Reg. at 35641; CR at I-5 to I-7; PR at I-5 to I-6. Petitioners argue that these subsidies give Chinese producers of subject merchandise an unfair competitive advantage over the domestic producers. See, e.g., Petitioners’ Prehearing Br. at 14-16; Hearing Tr. at 29-30 (Nowak).

bearing on the state of the industry.”³¹¹ These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³¹²

The domestic industry’s production, shipments to the U.S. market, market share, and net sales quantity and value all increased each year between 2005 and 2007. U.S. production of laminated woven sacks increased from 15.2 million sacks in 2005 to 28.3 million sacks in 2006 and to 52.2 million sacks in 2007. Domestic producers’ U.S. shipments of laminated woven sacks also increased each year from 14.2 million sacks in 2005 to 26.1 million sacks in 2006 and to 51.4 million sacks in 2007. The domestic industry’s share of apparent U.S. consumption increased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007.³¹³ Net sales volumes were similar to U.S. shipment levels.^{314 315} We do not, however, view the apparent improvements in these indicia in the same light as we might in other investigations, given the relatively young age of the domestic industry and the relatively low baseline of its operations at the beginning of the period of investigation.

We also discount the apparent improvements in the domestic industry’s production, U.S. shipments, market share, and net sales volumes and values in light of the very low levels of capacity utilization reported by the domestic industry. The domestic industry’s average production capacity increased from 111.3 million sacks in 2005 to 172.8 million sacks in 2006 and to 233.0 million sacks in 2007. By 2007, total domestic capacity to produce laminated woven sacks was equivalent to approximately *** percent of apparent U.S. consumption that year.³¹⁶ Although capacity utilization levels increased over the period of investigation from 13.7 percent in 2005 to 16.4 percent in 2006 and to 22.4 percent in 2007, these levels continued to be very low throughout the entire period notwithstanding

³¹¹ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”). SAA at 885.

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

³¹³ Based on her measurement of subject imports from China for 2007, Commissioner Lane finds that the domestic industry’s share of apparent U.S. consumption increased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007. (Derived from Petitioners’ Posthearing Br. at Exh. C).

³¹⁴ See, e.g., CR/PR at Tables IV-4, C-1. Net sales increased from \$7.7 million in 2005 to \$15.6 million in 2006 and to \$31.3 million in 2007. See, e.g., CR/PR at Table C-1.

³¹⁵ Based on their definition of the domestic industry, Chairman Aranoff and Commissioner Pinkert find that the domestic industry’s production, shipments to the U.S. market, market share, and net sales quantity and value all increased each year between 2005 and 2007. U.S. production of laminated woven sacks increased from *** sacks in 2005 to *** sacks in 2006 and to *** sacks in 2007. Domestic producers’ U.S. shipments of laminated woven sacks also increased each year from *** sacks in 2005 to *** sacks in 2006 and to *** sacks in 2007. The domestic industry’s share of apparent U.S. consumption increased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007. See, e.g., CR/PR at Table C-1b.

³¹⁶ Based on her measurement of subject imports from China for 2007, Commissioner Lane finds that by 2007, total domestic capacity to produce laminated woven sacks was equivalent to approximately *** percent of apparent U.S. consumption that year. (Derived from CR/PR at Table C-1; Petitioners’ Posthearing Br. at Exh. C).

significant increases in demand.^{317 318} The high variable costs characteristic of this industry may help explain these low capacity utilization levels, to the extent that domestic producers are more constrained to limit production rather than reduce sales prices in the face of competition from imports. At the same time, as we note below, the domestic industry also suffered financially even at the low levels of capacity utilization at which it operated.

Both petitioners and respondents agree that laminated woven sacks are produced to order, and yet, the domestic industry's inventories increased over the period of investigation, as did the end-of-period inventories of subject merchandise from China reported by importers.³¹⁹

The average number of production-related workers, hours worked, wages paid, and hourly wages were all higher in 2007 than in 2005.³²⁰ Unit labor costs increased between 2005 and 2006 but fell in 2007.³²¹ Productivity in terms of sacks per 1,000 hours declined between 2005 and 2006 but then increased in 2007.³²² Several of these trends are unsurprising given the additional domestic producers that began production operations over the course of the period of investigation.

Although net sales measured by quantity increased over the period of investigation, and net sales values also increased over this period, as discussed above, net sales unit values were unable to keep pace with increasing costs. As discussed previously, COGS was 89.7 percent of sales in 2005, increased to 102.1 percent of sales in 2006, and declined somewhat to 94.4 percent of sales in 2007, a level that was still higher than at the beginning of the period of investigation.³²³ As the result of this cost/price squeeze, the domestic industry reported operating losses in each year of the period of investigation.

Two important financial indicators – operating income and operating margins – were negative throughout the period of investigation. Operating losses increased between 2005 and 2006 but improved somewhat in 2007.³²⁴ The domestic industry's ratio of operating losses to net sales followed a similar trend, growing from negative 3.9 percent in 2005 to negative 18.6 percent in 2006 but then improving to negative 5.1 percent in 2007, a level below that in 2005.³²⁵

³¹⁷ See, e.g., CR at III-3; PR at III-2; CR/PR at Table C-1.

³¹⁸ Chairman Aranoff and Commissioner Pinkert find that, although capacity utilization levels increased over the period of investigation from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007, these levels continued to be very low throughout the entire period notwithstanding significant increases in demand. See, e.g., CR/PR at Table C-1b.

³¹⁹ See, e.g., CR/PR at Table C-1.

³²⁰ See, e.g., CR/PR at Table C-1.

³²¹ See, e.g., CR/PR at Table C-1.

³²² See, e.g., CR/PR at Table C-1.

³²³ See, e.g., CR/PR at Table C-1. Chairman Aranoff and Commissioner Pinkert find that COGS was *** percent of sales in 2005, increased to *** percent of sales in 2006, and declined somewhat to *** percent of sales in 2007, a level that was still higher than at the beginning of the period of investigation. See, e.g., CR/PR at Table C-1b.

³²⁴ See, e.g., CR/PR at Table C-1. Operating losses increased from negative \$301,000 in 2005 to negative \$2.9 million in 2006 before improving somewhat to negative \$1.6 million in 2007. *Id.* Based on their definition of the domestic industry, Chairman Aranoff and Commissioner Pinkert find that operating losses increased from negative \$*** in 2005 to negative \$*** in 2006 before improving somewhat to negative \$*** in 2007. See, e.g., CR/PR at Table C-1b.

³²⁵ See, e.g., CR/PR at Table C-1. Chairman Aranoff and Commissioner Pinkert find that the domestic industry's ratio of operating losses to net sales followed a similar trend, growing from negative *** percent in 2005 to negative *** percent in 2006 but then improving to negative *** percent in 2007, a level below that in 2005. See, e.g., CR/PR at Table C-1b.

Capital expenditures for the domestic industry increased from *** in 2005 to *** in 2006 but declined to *** in 2007.³²⁶ The relatively young domestic industry’s capital expenditures were consistently lower than annual depreciation expenses.³²⁷ Research and development expenditures, which accounted for an even smaller level of expenditures, increased each year of the period of investigation.³²⁸

Based on the record in the final phase of these investigations, we conclude that subject imports from China had an adverse impact on the condition of the domestic industry during the period of investigation. The large and increasing volume of subject imports from China dominated the U.S. market throughout the period of investigation, had significant price suppressing effects, depressed prices of the domestic like product, and had a material adverse impact on the U.S. industry. This relatively young domestic industry operated at very low levels of capacity utilization notwithstanding significant increases in apparent U.S. consumption throughout the period of investigation. While the domestic industry’s performance improved to some extent in 2007, it still was unable to cover costs/expenses and continued to experience losses.

VII. APPLICATION OF BRATSK ALUMINUM SMELTER v. UNITED STATES ANALYSIS

A. Background

Having reached an affirmative determination by application of the statutorily mandated factors, the Federal Circuit’s decision in Bratsk Aluminum Smelter v. United States requires that we turn to an additional analysis which can, in some circumstances, negate an affirmative determination.³²⁹ The Federal Circuit directed the Commission to undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.”³³⁰ The additional inquiry required by Bratsk, which we refer to as the Bratsk replacement/benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.”³³¹

As noted in our other determinations, we respectfully disagree with Bratsk that the statute requires any analysis beyond that already included in our discussion of volume, price, and impact above, and do not reiterate the Commission’s interpretation of the statutory scheme here.^{332 333} The Commission

³²⁶ See, e.g., CR/PR at Table VI-6. Chairman Aranoff and Commissioner Pinkert find that capital expenditures for the domestic industry increased from *** in 2005 to *** in 2006 but declined to *** in 2007. See, e.g., CR/PR at Table C-1b.

³²⁷ Compare, e.g., CR/PR at Table VI-5 with, e.g., CR/PR at Table C-1.

³²⁸ See, e.g., CR/PR at Table VI-6.

³²⁹ 444 F.3d 1369 (Fed. Cir. 2006); see also Caribbean Ispat, Ltd. v. United States, 450 F.3d 1346 (Fed. Cir. 2006).

³³⁰ Bratsk, 444 F.3d at 1375.

³³¹ Bratsk, 444 F.3d at 1375.

³³² For a full discussion of our views on the applicability of Bratsk, see our Views in the Remand Determination for Silicon Metal from Russia, Inv. No. 731-TA-991 (Final) (Second Remand), USITC Pub. 3910 (Mar. 2007) and Views of the Commission in Certain Polyester Staple Fiber from China, Inv. No. 731-TA-1104 (Final), USITC Pub. 3922 at 24-26 (Jun. 2007). For a full discussion of Chairman Aranoff’s views on the applicability of Bratsk, see the Views of the Commission in Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, Inv. No. 731-TA-961 (Final) (Remand), USITC Pub. 3903 (Jan. 2007). For a full discussion of Vice Chairman Daniel R. Pearson’s
(continued...)

has a well-established approach to addressing causation.³³⁴ We conduct a Bratsk analysis because the Federal Circuit has directed us to do so, notwithstanding that, in our considered view, this test is not required by, or consistent with, the statute.

The Bratsk analysis “is triggered” whenever the antidumping or countervailing duty investigation “is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.”³³⁵ If both Bratsk triggering factors are satisfied, we apply the “replacement/benefit” test required under Bratsk.

B. Parties’ Arguments

Petitioners argue that laminated woven sacks are not a commodity product, so a Bratsk-type analysis is neither necessary nor appropriate, because all laminated woven sacks are made to customer order, with the customer specifying the dimensions and features of the bag and providing the design of the graphics and the competing suppliers quoting on the basis of these specifications. Petitioners argue that the Federal Circuit was not entirely clear about the definition of a commodity product, but in common parlance, a commodity means something made to industry standards, rather than products made to order. They assert that a dictionary that defines “Wall Street Words” states that a commodity is “[a] generic, largely unprocessed, good that can be processed and resold. Commodities traded in the financial markets for immediate or future delivery are grains, metals, and minerals.” Whereas they agree that the product at issue in Bratsk, silicon metal, falls within that definition, petitioners contend that laminated woven sacks do not.³³⁶

³³² (...continued)

views on the applicability of Bratsk, see his Separate and Additional Views in Silicon Metal from Russia. For a full discussion of Commissioner Okun’s views of the applicability of Bratsk, see her Separate and Dissenting Views in Certain Lined Paper School Supplies from China, India, and Indonesia, Invs. Nos. 701-TA-442-443, 731-TA-1095-1097 (Final), USITC Pub. 3884 (Sept. 2006).

³³³ Vice Chairman Pearson and Commissioner Okun discern two possible interpretations of the Bratsk opinion, which differ substantially. The so-called “replacement/benefit test” is noted above. The second one is that Bratsk is a further restatement of the causation approach prescribed by Gerald Metals. Under this interpretation, the Bratsk decision stands to remind the Commission of its obligation under Gerald Metals that the Commission may not satisfy the “by reason of” causation requirement by showing that subject imports contributed only “minimally or tangentially to the material harm.” In other words, the Bratsk Court’s relatively short discussion of the underlying determination may not have established a new and rigid replacement/benefit test. Rather, the Court may have discussed the triggering factors as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports. See Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States in Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Prelim.), USITC Pub. 3912 (Apr. 2007). Vice Chairman Pearson and Commissioner Okun have included this analysis in the Commission’s affirmative causation analysis.

³³⁴ See Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand), USITC Pub. 3910 at 3-8 (Mar. 2007) (articulating in detail the Commission’s long-standing interpretation of the “by reason of” causation standard).

³³⁵ Bratsk, 444 F.3d at 1375.

³³⁶ See, e.g., Petitioners’ Prehearing Br. at 2, 8 n.18; Petitioners’ Posthearing Br. at Exh. A at 21-22, 33-34; Hearing Tr. at 120-30.

Petitioners point out that non-subject imports are ***, so the domestic industry would still benefit from imposition of the orders even if non-subject imports somehow were to replace subject imports.³³⁷ With respect to the C.P. Group’s combined capacity in its Thai and Vietnamese plants, petitioners assert that some unknown portion of the capacity may be for laminated woven sacks as defined in these investigations, but some portion is also for products that are not covered in these investigations. Petitioners have not seen an influx of laminated woven sacks from Vietnam since the Vietnamese facility opened in 2001, and they argue that the market for non-laminated woven sacks used for packaging cement and other industrial products is growing rapidly in Asia, so they believe that the Vietnamese facility is focused on those applications. Petitioners doubt that the Vietnamese facility has any significant capability to print BOPP film with three or more colors in register, and ***.³³⁸

In the preliminary phase of these investigations, Shapiro, Excel, and Solaris agreed with petitioners that laminated woven sacks are not commodity products.³³⁹

C. Analysis and Conclusion

As discussed below, we conclude that the first Bratsk triggering factor is not satisfied. We, therefore, do not need to reach the remainder of the Bratsk test in these investigations.

Noting that the parties are in agreement, based on this record we do not find, for purposes of these investigations, that laminated woven sacks are a commodity within the Federal Circuit’s definition of a product that it “is generally interchangeable regardless of its source.”³⁴⁰ Laminated woven sacks are made to order.³⁴¹ The competing suppliers quote on dimensions and features of the bag using a graphic design that is provided by the customer.³⁴² Each bag is thus tailored to the requirements of a particular customer for packaging a particular product, labeled with a specific design, and is made to specific dimensions and specifications.

Because we find that the first Bratsk triggering factor is not met, we are not required to consider whether the second triggering factor (whether price-competitive non-subject imports are a significant factor in the U.S. market) is met or to address “whether non-subject imports would have replaced subject imports without any beneficial effect on domestic producers.”³⁴³ Our affirmative material injury determination, therefore, is consistent with the Court’s holding in Bratsk.

³³⁷ See, e.g., Petitioners’ Prehearing Br. at 2, 8 n.18; Petitioners’ Posthearing Br. at Exh. A at 21-22; Hearing Tr. at 120-30, 135.

³³⁸ See, e.g., Petitioners’ Posthearing Br. at Exh. A at 4-5; Hearing Tr. at 120-30.

³³⁹ See, e.g., Shapiro’s Postconf. Br. at 1-2, 23-27, Exhs. 2, 3.

³⁴⁰ We note that it is improper to assume that simply because goods are generally interchangeable for purposes of the “reasonable overlap of competition” analysis for cumulation, or are interchangeable for purposes of defining the domestic like product, that they are necessarily “commodities” for purposes of assessing causation, which is the function of the Bratsk “test.” See Silicon Metal from Russia, USITC Pub. 3910 at 10-11 (footnotes omitted), citing BIC Corp. v. United States, 964 F. Supp. 391, 397, 399 (Ct. Int’l Trade 1997) (“[L]ike product, cumulation and causation are functionally different inquiries because they serve different statutory purposes As a result, each inquiry requires a different level of fungibility. Hence the record may contain substantial evidence that two products are fungible enough to support a finding in one context (e.g., one like product), but not in another (e.g., cumulation or causation.”).

³⁴¹ See, e.g., Confer. Tr. at 8 (Dorn), 74 (Dorn), 86-87 (Nowak), 87-88 (Bazbaz); Petitioners’ Prehearing Br. at 2; Hearing Tr. at 32, 120.

³⁴² See, e.g., Petitioners’ Postconf. Br. at 2, 14-15; Confer. Tr. at 8 (Dorn); Petitioners’ Prehearing Br. at 2, 8.

³⁴³ Bratsk, 444 F.3d 1375.

VIII. CRITICAL CIRCUMSTANCES

In its final affirmative countervailing duty determinations, Commerce made an affirmative finding of critical circumstances with respect to U.S. imports from Chinese producers Han Shing Chemical Co., Ltd.; Ningbo Yong Feng Packaging Co., Ltd.; and Shandong Qilu Plastic Fabric Group, Ltd. and with respect to U.S. imports from Shandong Shouguang Jianyuan Chun Co., Ltd./Shandong Longxing Plastic Products Company, Ltd.³⁴⁴ In its final antidumping duty determination, Commerce made an affirmative finding of critical circumstances with respect to U.S. imports from the following exporter/producer combinations: Cangnan Color Make the Bag Co., Ltd.; Changle Baodu Plastic Co. Ltd.; Jiangsu Hotson Plastics Co. Ltd.; Polywell Industrial Co. (also known as First Way (H.K.) Limited)/Polywell Plastic Product Factory; Shandong Qikai Plastics Product Co., Ltd.; Shandong Youlian Co. Ltd.; Wenzhou Hotson Plastics Co. Ltd.; Zibo Aifudi Plastic Packaging Co., Ltd.; Zibo Linzi Luitong Plastic Fabric Co. Ltd.; Zibo Linzi Qitianli Plastic Fabric Co. Ltd.; Zibo Linzi Shuaiqiang Plastics Co. Ltd.; Zibo Linzi Worun Packing Product Co., Ltd.; and Zibo Qigao Plastic Cement Co. Ltd.³⁴⁵

In their prehearing brief and again during the hearing, petitioners confirmed that they are abandoning their critical circumstances allegations.³⁴⁶ In response to questions about other issues, petitioners noted that they began to see a noticeable increase in business by the time that Commerce made its countervailing duty preliminary determination, evidence that, in response to the filing of the petitions, foreign producers changed their behavior prior to the date on which liability for duties actually attached.³⁴⁷

Because we have determined that the domestic industry is materially injured by reason of subject imports from China, we must further determine “whether the imports subject to the affirmative {Commerce critical circumstances} determination ... are likely to undermine seriously the remedial effect” of the antidumping and countervailing duty orders to be issued.³⁴⁸ The URAA Statement of Administrative Action indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”³⁴⁹

Based on the record, we determine that the imports subject to Commerce’s affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping and countervailing duty orders to be issued on laminated woven sacks from China.

The statute does not specify any time frames to be considered or compared by the Commission in assessing whether the subject imports are likely to undermine seriously the remedial effect of the order.

³⁴⁴ See, e.g., 73 Fed. Reg. at 35641.

³⁴⁵ See, e.g., 73 Fed. Reg. at 35648.

³⁴⁶ See, e.g., Petitioners’ Pre-hearing Br. at 21 n.70; Hearing Tr. at 134 (Dorn).

³⁴⁷ See, e.g., Petitioners’ Post-hearing Br. at Exh. A at 20-21; Hearing Tr. at 19 (Bazbaz), 33-34 (Nowak).

³⁴⁸ 19 U.S.C. §§ 1671d(b)(4)(A)(i), 1673d(b)(4)(A)(i). The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant –

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. §§ 1671d(b)(4)(A)(ii), 1673d(b)(4)(A)(ii).

³⁴⁹ SAA at 877.

The Commission generally compares data for the six months prior to the filing of the petition with data for the six months following the filing of the petition, but it also may consider shorter or longer periods, either in conjunction with, or instead of, those six-month periods.

The petitions in these investigations were filed on June 28, 2007. The Commission compiled monthly import data for the six months preceding the filing of the petitions (January 2007 to June 2007) and for the six months after the filing of the petitions (July 2007 to December 2007).³⁵⁰ Imports of subject merchandise subject to affirmative critical circumstances findings were approximately *** in the six months following the filing of the petitions, only approximately *** percent greater than the approximately *** of such imports in the six months prior to the filing of the petitions.³⁵¹ We also note that reporting U.S. importers' end-of-period inventories of subject merchandise from Chinese producers/exporters subject to Commerce's affirmative critical circumstances determinations *** decreased by *** percent in the six months following the filing of the petitions, as compared to the six months prior to the filing of the petitions in these investigations.³⁵²

Based on the foregoing data, we determine that imports subject to Commerce's affirmative critical circumstances determinations did not increase sufficiently to undermine seriously the remedial effect of the antidumping and countervailing duty orders to be issued on laminated woven sacks from China.

CONCLUSION

For the reasons stated above, we find that the domestic industry producing laminated woven sacks is materially injured by reason of subject imports of laminated woven sacks from China that are subsidized and sold in the United States at less than fair value.

³⁵⁰ See, e.g., CR/PR at Table IV-8.

³⁵¹ See, e.g., CR/PR at Table IV-8. These data do not reflect U.S. imports from Chinese producer Shandong Qilu Plastic Fabric Group, Ltd. ("Qilu") or U.S. imports from Shandong Shouguang Jianyuan Chun Co., Ltd./Shandong Longxing Plastic Products Company, Ltd., because these companies were not subject to preliminary affirmative critical circumstances determinations, just final affirmative critical circumstances determinations by Commerce. Compare, e.g., 72 Fed. Reg. 67893, 67898 (Dec. 3, 2007) (preliminary determination) with, e.g., 73 Fed. Reg. at 35641 (final determination). For Qilu, we considered ***. For Shandong, we considered ***. Inclusion of this available information on Qilu and Shandong Shouguang Jianyuan Chun Co., Ltd./Shandong Longxing Plastic Products Company, Ltd. in our analysis does not lead to a different result.

³⁵² See, e.g., CR/PR at Table IV-9 (indicating that end-of-period inventories decreased from *** laminated sacks in the six months before the filing of the petitions to *** laminated woven sacks in the six months after the filing of the petitions).

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on June 28, 2007, by the Laminated Woven Sacks Committee, which members include: (1) Bancroft Bag, Inc. of West Monroe, LA (“Bancroft”); (2) Coating Excellence International, LLC of Wrightstown, WI (“Coating Excellence”); (3) Hood Packaging Corp. of Madison, MS (“Hood”); (4) Mid-America Packaging, LLC of Twinsburg, OH (Mid-America”); and (5) Polytex Fibers Corp. of Houston, TX (“Polytex”), alleging that the establishment of an industry in the United States is materially retarded, or alternatively, that an industry in the United States is materially injured and is threatened with material injury by reason of imports from China of laminated woven sacks (“LW sacks”)¹ that are allegedly subsidized by the government of China and sold in the United States at less than fair value (“LTFV”). Information relating to the background of these investigations is provided below.²

Effective date	Action
June 28, 2007	Petition filed with Commerce and the Commission; Commission institutes investigations (72 FR 36720, July 5, 2007)
July 25, 2007	Initiation of antidumping duty investigation by Commerce (72 FR 40833)
July 25, 2007	Initiation of countervailing duty investigation by Commerce (72 FR 40839)
August 14, 2007	Commission’s preliminary determinations (72 FR 46246, August 17, 2007)
December 3, 2007	Commerce’s preliminary countervailing duty determination (72 FR 67893)
January 31, 2008	Commerce’s preliminary antidumping duty determination (73 FR 5801)
January 31, 2008	Commission’s scheduling of its final phase investigations (73 FR 8902, February 15, 2008)
June 16, 2008	Commerce’s final antidumping (73 FR 35646, June 24, 2008) and countervailing duty determinations (73 FR 35639, June 24, 2008)
June 17, 2008	Commission’s hearing ¹
July 18, 2008	Commission’s vote
July 30, 2008	Commission’s determinations and views transmitted to Commerce

¹ A list of witnesses that appeared at the hearing is presented in app. B.

¹ A complete description of the imported product subject to these investigations is presented in the section entitled *The Subject Merchandise* located in Part I of this report.

² *Federal Register* notices since January 31, 2008 cited in the tabulation are presented in app. A.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

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

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

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

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

. . .

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

. . .

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

. . . (I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced

version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of the Report

Information on the subject merchandise, final margins of dumping and subsidies, and domestic like product is presented in *Part I*. Information on conditions of competition and other relevant economic factors is presented in *Part II*. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Parts IV and V*, respectively. *Part VI* presents information on the financial experience of U.S. producers. Information obtained for use in the Commission's consideration of the question of threat of material injury, including information obtained for use in the Commission's consideration pursuant to *Bratsk* rulings, is presented in *Part VII*.

U.S. MARKET SUMMARY

The U.S. market for LW sacks totaled approximately *** sacks and \$*** in 2007. During the period of investigation, seven firms produced LW sacks in the United States. These firms are: (1) Bancroft; (2) Coating Excellence; (3) Hood; (4) La Pac Manufacturing, Inc. ("La Pac"); (5) Mid-America; (6) Polytex; and (7) SeaTac Packaging Mfg. Corp. ("SeaTac"). The two largest producers, *** and ***, accounted for *** of reported U.S. production in 2007. At least 20 firms have imported LW sacks from China since 2005, including ***.

U.S. producers' U.S. shipments of LW sacks totaled 51.4 million sacks valued at \$30.7 million in 2007, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from China totaled 234 million sacks in 2007, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value, while U.S. imports from all other sources combined totaled *** sacks valued at \$*** in 2007, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. LW sacks are generally used by pet food, bird seed, grass seed, fertilizer, and other manufacturers as flexible packaging for their consumer goods.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in these investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of six firms that accounted for what is believed to be virtually all U.S. production of LW sacks in 2007.³ Data for U.S. imports from China are compiled from official import statistics of Commerce, adjusted by a methodology provided by petitioners to remove product not within the scope of these investigations.⁴ Data regarding U.S. imports from nonsubject countries are compiled using data reported in response to the Commission's questionnaires. Data regarding the Chinese industry are based on one foreign producer questionnaire, which is believed to

³ After multiple requests by staff, the Commission did not receive a questionnaire response from U.S. producer La Pac. In the preliminary phase of these investigations, La Pac reluctantly submitted a partial response to the Commission and reported that it accounted for *** percent of 2006 U.S. production of LW sacks.

⁴ Petitioners' adjustment methodology for 2005 and 2006 U.S. imports from China is found in exh. 6 of the petition. *See also* p. IV-1, fn. 3 of this report. Petitioners' adjustment methodology for 2007 U.S. imports from China is found in exh. B of petitioners' posthearing brief.

Data for U.S. imports from China as compiled by the Commission in response to U.S. importer questionnaires are provided in app. C, table C-2.

account for *** percent of 2007 LW sack production in China and *** percent of Chinese export shipments to the United States.

PREVIOUS AND RELATED INVESTIGATIONS

LW sacks have not been the subject of any prior antidumping or countervailing duty investigations in the United States.

NATURE AND EXTENT OF SALES AT LTFV

On June 24, 2008, Commerce published a notice in the *Federal Register* setting forth its final determination with regard to its antidumping investigation on LW sacks from China.⁵ Commerce determined that imports from China are being sold, or are likely to be sold, in the United States at less than fair value. The weighted-average dumping margins (in percent *ad valorem*), as reported by Commerce, are presented in the following tabulation.

Foreign producer/exporter	Margin (percent <i>ad valorem</i>)
Zibo Aifudi Plastic Packaging Co., Ltd.	64.28
Polywell Industrial Co. (also known as First Way (H.K.) Limited)	64.28
Zibo Linzi Worun Packing Product Co., Ltd.	64.28
Shandong Qikai Plastics Product Co., Ltd.	64.28
Changle Baodu Plastic Co. Ltd.	64.28
Zibo Linzi Shuaiqiang Plastics Co. Ltd.	64.28
Zibo Linzi Qitianli Plastic Fabric Co. Ltd.	64.28
Shandong Youlian Co. Ltd.	64.28
Zibo Linzi Luitong Plastic Fabric Co. Ltd.	64.28
Wenzhou Hotson Plastics Co. Ltd.	64.28
Jiangsu Hotson Plastics Co. Ltd.	64.28
Cangnan Color Make the Bag Co., Ltd.	64.28
Zibo Qigao Plastic Cement Co. Ltd.	64.28
All other (PRC-Wide)	91.73
Source: <i>Laminated Woven Sacks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances</i> , 73 FR 35646, June 24, 2008.	

⁵ *Laminated Woven Sacks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances*, 73 FR 35646, June 24, 2008.

NATURE OF COUNTERAVAILABLE SUBSIDIES

On June 24, 2008, Commerce published a notice in the *Federal Register* setting forth its final determination with regard to its countervailing duty investigation on LW sacks from China.⁶ Commerce determined that the government of China is providing countervailable subsidies to Chinese producers of LW sacks. The countervailable subsidy rates (in percent *ad valorem*), as reported by Commerce, are presented in the following tabulation.

Foreign producer/exporter	Net subsidy rate (<i>percent ad valorem</i>)
Shangdong Shouguang Jianyuan Chun Co., Ltd.	352.82
Zibo Aifudi Plastic Packaging Co., Ltd.	29.54
Han Shing Chemical Co., Ltd. (also known as Han Shing Bulk Bag Co., Ltd.)	223.74
Ningbo Yong Feng Packaging Co., Ltd.	223.74
Shangdong Qilu Plastic Fabric Group Co., Ltd.	304.40
All other (PRC-Wide)	226.85
Source: <i>Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances</i> , 73 FR 35639, June 24, 2008.	

In its final determination, Commerce analyzed the following specific programs of the government of China alleged in the petition to have provided countervailable subsidies to producers of LW sacks in China:⁷

I. Programs Determined To Be Countervailable

- A. Government Provision of Land for Less Than Adequate Remuneration
- B. Government Provision of Inputs (BOPP film) for Less Than Adequate Remuneration
- C. Government Policy Lending

II. Programs Determined To Be Not Countervailable

- A. Government Provision of Electricity

III. Programs Determined To Be Not Used by Aifudi, But Countervailable For Those Firms As To Which the Department Applied Adverse Inferences

- A. VAT Rebate for FIE Purchases of Domestically Produced Equipment

⁶ Commerce has determined that the current nature of the economy in China does not create obstacles to apply the necessary criteria in the countervailing duty law and conducted a countervailing duty investigation against China. See *Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17486 (April 9, 2007).

⁷ *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639, June 24, 2008.

- B. VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries
- C. VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises)
- D. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half)
- E. Preferential Tax Policies for Export-Oriented FIEs
- F. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
- G. Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery
- H. Tax Program for FIEs Recognized as High or New Technology Enterprises
- I. Preferential Tax Policies for Research & Development
- J. Tax Subsidies to FIEs in Specially Designated Geographic Areas
- K. Preferential Tax Policies for Township Enterprises by FIEs
- L. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
- M. The State Key Technologies Renovation Project
- N. Grants and Other Funding for High Technology Equipment for the Textile Industry
- O. Grants to Loss-Making, State-Owned Enterprises
- P. Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Guangdong Provinces
- Q. Technology Innovation Funds Provided by Zhejiang Province
- R. Programs to Rebate Antidumping Legal Fees
- S. Loan Forgiveness for LWS Producers by the GOC
- T. Grants for Market Exploration (Shandong Province)
- U. Grants for Attending International Trade Fairs (Shandong Province)
- V. Grants Key Export Enterprises (Shandong Province)
- W. Interest Discount to Export Enterprises (Shandong Province)
- X. Grants Covering Export Credit Insurance Fees (Shandong Province)
- Y. Grants to Enterprises Exporting Key Products (Shandong Province)
- Z. Interest Discounts for Export Enterprises (Shouguang Municipality)
- AA. Grants for Attending International Trade Fairs (Shouguang Municipality)
- BB. Preferential Treatment for Key Exporting Enterprises (Shouguang Municipality)
- CC. Grants for Exporting Key Enterprises (Shouguang Municipality)

IV. Programs Determined To Be Terminated

- A. Exemption From Payment of Staff and Worker Benefits for Export Oriented Industries

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the scope of these investigations as follows:

Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;⁸ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Tariff Treatment

During the period of investigation, LW sacks were provided for in the HTS under statistical reporting number 6305.33.0020.⁹ Effective July 1, 2007, a revision to the HTS places LW sacks in

⁸ "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

⁹ Petitioners have noted that if LW sacks entered the United States prior to July 1, 2007, with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, they may have been imported under HTS statistical reporting numbers 3923.21.0080, 3923.21.0095, or 3923.29.0000 ("Articles for the conveyance or packaging of goods, of plastics; stoppers, lids, caps, and other closures"). Petitioners have also noted that if LW sacks entered the United States prior to July 1, 2007, not closed on one end or in roll form, they may have been imported under HTS statistical reporting number 5903.90.2500 ("Textile fabrics impregnated, coated, covered, or laminated with plastics") and 3921.19.0000 (*see* HTS 3921 description above). During the preliminary phase of these investigations, petitioners stated that they did not believe LW sacks entered the United States during the period of investigation imported under these statistical reporting numbers and that all subject product entered

(continued...)

statistical reporting numbers 6305.33.0050¹⁰ and 6305.33.0080.¹¹ Table I-1 depicts the subheadings in the HTS under which LW sacks are classified and their tariff treatment.

**Table I-1
LW sacks: Tariff treatment, 2008**

HTS provision	Article description	General ¹	Special	Column 2 ²
		Rates (<i>percent ad valorem</i>)		
6305	Sacks and bags, of a kind used for the packing of goods:			
6305.10.00	Of jute or of other textile bast fibers of heading 5303 . . .			
6305.20.00	Of cotton (369)			
6305.32.00	Of man-made textile materials:			
10	Flexible intermediate bulk containers			
20	Weighing one kg or more (669)			
	Other (669)			
6305.33.00	Other, of polyethylene or polypropylene strip or the like	8.4%	(³)	103%
10	Weighing one kg or more (669)			
50	Weighing less than 1 kg, with an outer laminated ply of plastics sheeting (669)			
80	Other (669)			
¹ Normal trade relations, formerly known as the most-favored-nation duty rate. ² Applies to imports from a small number of countries that do not enjoy normal trade relations duty status. ³ Certain nonsubject countries qualify for duty-free rates either within the U.S. Generalized System of Preferences ("GSP") program or as negotiated in a free trade agreement with the United States. Source: Harmonized Tariff Schedule of the United States (2008).				

⁹ (...continued)
under HTS 6305.33.0020.

¹⁰ This HTS statistical reporting number would include LW sacks laminated with BOPP film, but not LW sacks laminated with paper, and therefore, would not contain all the types of products within the scope of these investigations.

¹¹ Revision 2 of the HTS (2007). Petitioners have stated that they believe that since the advent of this new HTS statistical reporting number, misclassification of U.S. imports of LW sacks has been prevalent as evidenced by the multiple requests to Customs for classification rulings in the past six months and the difference between the volume of U.S. imports reported by official statistics and responses to the Commission's questionnaires. Petitioners' prehearing brief, pp. 20-23; Petitioners' posthearing brief, app. A, pp. 8-10.

THE PRODUCT

Description and Applications

LW sacks are made primarily from polypropylene ("PP") fabric,^{12 13} which provides strength, and a laminated exterior ply of plastic film, typically biaxially oriented polypropylene ("BOPP") or a laminated exterior ply of paper.¹⁴ LW sacks have improved physical properties compared with multi-wall paper sacks,¹⁵ the previous standard packaging material for marketers of pet foods, litter, and other animal feed products, the primary consumers of LW sacks. Specifically, LW sacks weigh less than alternative packaging materials and occupy less storage space, resulting in lower expenses for shipment and storage. Also, LW sacks are more tear-resistant and have greater tensile strength, resulting in less breakage; and are resistant to water, oil, and grease, resulting in less material breakdown and leakage, resulting in a cost saving for the consuming industry.¹⁶ Another feature that is reported to be attractive to the pet supply industry, particularly in the case of the reverse-printed BOPP laminated product, is the maintenance of the integrity of the high quality graphics which serve as a point-of-sale advertising for the packaged consumer goods.¹⁷

LW sacks are generally used to package products weighing between 17 and 55 pounds.¹⁸

¹² In some cases, woven polyethylene ("PE") fabric can be substituted for PP, specifically, high-density polyethylene ("HDPE"). However, HDPE tends to "elongate(s) more and it's not as stiff or rigid as polypropylene." Conference transcript, pp. 99-100 (Bazbaz).

¹³ Society of the Plastics Industry, *About the Industry: Definitions of Plastics Resins*, retrieved from <http://www.plasticsindustry.org/industry/defs.htm> on May 14, 2008.

"Polypropylene belongs to the "olefins" family, which also includes the polyethylenes, but it is quite different in its properties. It has a low density, is fairly rigid, has a heat distortion temperature of 150 to 200 degrees F (making it suitable for "hot-fill" packaging applications), and excellent chemical resistance and electrical properties. Polypropylenes are also very easy to process in all conventional systems. Major applications of commercial polypropylenes are packaging, automotive, appliances and carpeting. Polypropylene is made by polymerizing propylene monomers, with suitable catalysts, generally aluminum alkyl and titanium tetrachloride mixed with solvents."

"Polyethylenes are thermoplastic resins obtained by polymerizing the gas ethylene. Low molecular weight polymers of ethylene are fluids used as lubricants; medium weight polymers are waxes miscible with paraffin; and the high molecular weight polymers (i.e., over 6,000) are the materials used in the plastics industry."

¹⁴ Petition, p. 7.

¹⁵ Paper multi-wall sacks are still used in some of the packaging of the same consumer goods (i.e., pet food and bird seed) as the LW sacks, but are reported to result in additional costs to the pet food and seed suppliers through returns of product owing to packaging breakage. Conference transcript, p. 11 (Levinson); respondent Hotsun's postconference brief, pp. 1-2.

Paper sacks were initially produced in the United States in 1859. In 1919, the idea of producing multi-wall sacks was brought from Norway and "gusseted wall" sacks were developed. In the early 1920s, three-, four-, and five-wall bags made of 100 percent kraft paper were introduced. In 1925, the Bates Valve Sack Company opened and produced 40 million sacks; by 1927 131 million bags were produced.

Currently, multi-wall paper sacks are still used by many of the same customers that purchase LW sacks. Innovations in multi-wall sacks that have helped them maintain a share of the packaging industry include films, foils, special coatings, laminations, and surface and other treatments. Paper Shipping Sack Manufacturers' Association, Inc., retrieved from <http://www.pssma.com> on May 14, 2008.

¹⁶ Petition, pp. 7-8.

¹⁷ Conference transcript, p. 127 (Corman).

¹⁸ Conference transcript, p. 61 (Bazbaz).

Manufacturing Facilities and Manufacturing Process

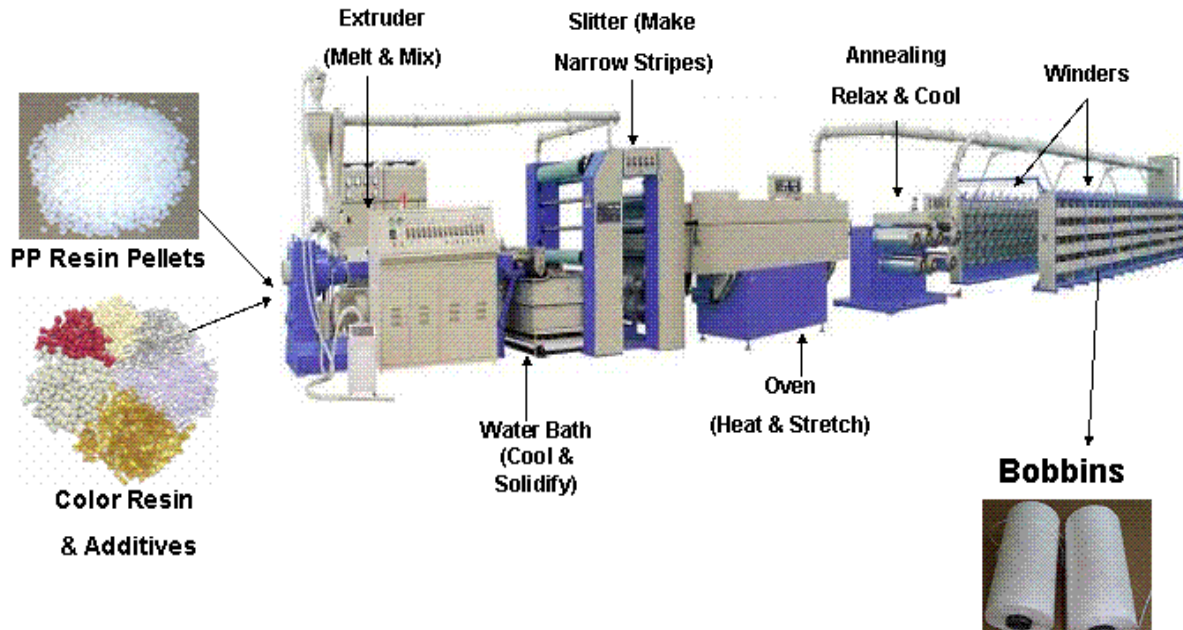
The production of LW sacks involves several separate staged operations, which allows for a producer to enter into the production scheme at a number of different steps, resulting in a variation of starting materials. The initial step for the most vertically integrated of the domestic producers (i.e., Polytex) involves the melting of PP (or PE) pellets and extrusion¹⁹ into a sheet of a specific thickness. The sheets are then cut into thin flat strips that are spooled onto a bobbin for weaving into the necessary fabric. Figure I-1 shows a schematic of the extrusion equipment used to produce the required polyethylene or polypropylene sheet for the LW sacks. The dry PP pellets are loaded into a receptacle (hopper), and then fed into a grating chamber through the action of a revolving screw. At the end of the heating chamber, the molten plastic material is forced through a small opening, shaped in the form of the desired product, and is subsequently fed onto a conveyor belt on which it is cooled either by air blowers or by water.²⁰ Once the sheets have been cut into strips (or tapes), the strips are fed through a hot air stretching oven and to a stretching unit to add strength and stability before being wound onto the bobbins.²¹

¹⁹ Society of the Plastics Industry, *About the Industry: Processing Methods*, (retrieved from <http://www.plasticsindustry.org/industry/process.htm> on May 14, 2008): “Extrusion is the method employed to form thermoplastic materials into continuous products, such as blown and cast film, sheet, pipe and tubing, a large variety of profiles, coated paper/foil/wire/cable/textiles, monofilaments and most all synthetic fibers, hollow sections for blow molding, and for the compounding and reclaim of plastic pellets. Extrusion machinery includes twin-screw systems, which are mainly used for polyvinylchloride pipe and/or profiles and compounding, and single-screw systems, which are used for these and other extruded products.” Also see *Plastics Engineering Handbook of the Society of Plastics Industries*, “Chapter 4: Extrusion Processes,” 1991, pp. 79-132.

²⁰ *Society of the Plastics Industry: Processing Methods*, (retrieved from <http://www.plasticsindustry.org/industry/process.htm> on July 18, 2007).

²¹ Petitioners’ postconference brief, exh. 5, p. 9.

Figure I-1
LW sacks: Extrusion line and slitter for producing polypropylene strips



Source: Conference transcript, petitioners' presentation attachment.

The second discrete step in LW sacks production involves the weaving of the spooled PP strip into fabric (*see figure I-2*).²² Although eventually the LW sacks can be made using either a tubular woven form or from a flat woven sheet, both are made from the same weaving process that initially produces the tubular woven form.²³ The tubular woven material is used directly to produce the seamless LW sacks;²⁴ however, the tubular woven material is slit to produce the flat sheet form (which requires a heat-sealing step at a later stage of production) to produce “back seam LW sacks.”²⁵ The equipment used in the

²² Petition, p. 10.

²³ Respondent Shapiro Packaging's postconference brief, pp. 31-35.

²⁴ Conference transcript, pp. 119-120 (Abel); respondent Shapiro Packaging's postconference brief, pp. 31-35.

²⁵ The back seam LW sacks are produced using the second method and are reported by respondents to be considered (by their customers) better for use on the automated filling equipment currently in operation in customers' plants. Respondents maintain that their customers reported a preference for the back seam LW sacks (which are reported to be more expensive to produce) owing to the additional expense required for the consumer to purchase different automated filling equipment for the less-expensive seamless LW sacks. The overlapping material in the back seam LW sacks provides enough stiffness, according to respondents, that these sacks work with the same filling equipment formerly (and possibly still) used for multiwall paper sacks. Seamless LW sacks reportedly do not have the same degree of stiffness, and often have extra laminate material (which respondents refer to as “fins”) that may affect the automated filling of these sacks on automated filling equipment used for other packaging materials. Conference transcript, pp. 120-122 (Abel) and 164-165 (Abel); respondent Shapiro Packaging's postconference brief, p. 33.

Figure I-2
LW sacks: Weaving process



Source: Conference transcript, petitioners' presentation attachment.

weaving process can produce various widths of fabric for different size LW sacks, by variation of the weaving ring.²⁶

The differences between the LW sacks produced from the tubular woven material (“tubular sacks”) and that produced from a flat material (“vertical back seam sacks”), both in terms of the costs involved in the slightly different processes and the differences in functionality, were cited repeatedly by parties testifying at the conference during the preliminary phase of the investigations.²⁷ Consequently, the domestic producers indicated in their responses to the questionnaire²⁸ that in 2007, five of the six responding domestic producers of LW sacks produced only vertical back seam sacks and only one producer produced the tubular sacks. Also, the domestic producers responded to a question on the material that was being used to laminate the LW sacks, indicating that in 2007 two producers laminated sacks exclusively with paper, three producers laminated exclusively with BOPP-film, and one U.S. producer reported that it produced sacks with both paper and BOPP-film.²⁹

Printing onto the laminate prior to the lamination process provides another of the features that gives LW sacks an advantage over previous packaging alternatives. Producers of LW sacks reverse print onto the laminate material, a plastic film such as BOPP (or directly print onto an exterior ply of laminating paper). Both of these laminates are suitable for high quality print graphics, allowing for the application of high quality print graphics in multiple colors that serve as point-of-sale advertising for packaged consumer goods.³⁰

²⁶ Petitioners' postconference brief, exh. 5, p. 12.

²⁷ Conference transcript, pp. 119-121 (Abel).

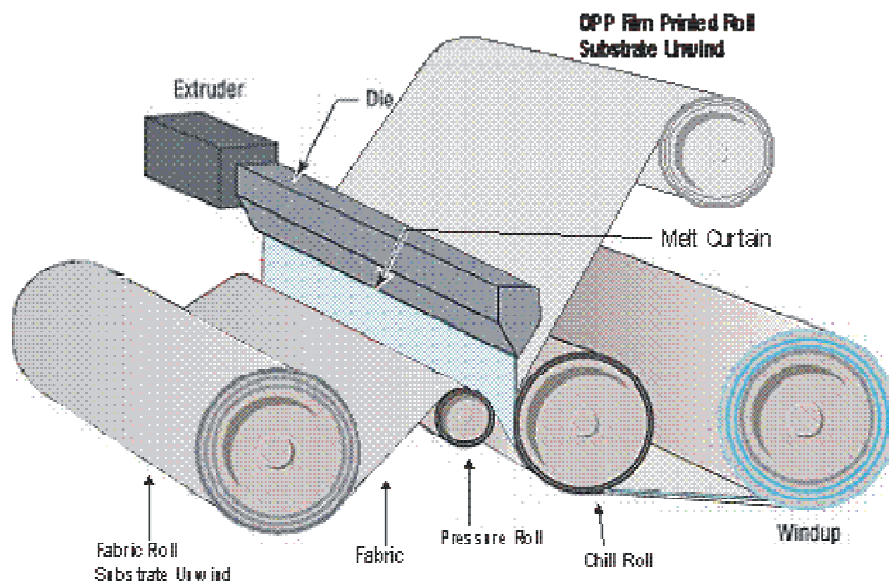
²⁸ Responses to questions II-3, II-15, and II-19 in the producer's questionnaire; *see* table III-7.

²⁹ Responses to questions II-3 and II-19 in the producer's questionnaire; *see* table III-8.

³⁰ Petition, p. 3.

Once printed, the lamination step (*see* figure I-3) bonds the laminate material directly to the woven sack material. The process involves a “curtain of liquid PP” that is allowed to “flow between the film and the fabric, immediately forming a bonding center layer.”³¹ When bonding the laminate to the flat woven sheet format, only one side of the material is laminated.³² However, when bonding the laminate to the woven tube formatted material, the laminate is bonded to two sides (at the same time). This dual-sided lamination process often results in the extra laminate extending along two sides of the resulting LW sacks, referred to by the respondents as “fins.”³³

Figure I-3
LW sacks: Lamination process



Source: Conference transcript, petitioners’ presentation attachment.

After lamination, in the case of the flat sheet laminated material, the rolls are sent to a tuber, where the fabric is formed into a continuous tube, gusseted,³⁴ and cut into individual pieces. The individual tubes are then transferred to a sewing line where they are sewn and formed into individual sacks of the required

³¹ Petitioners’ postconference brief, exh. 5, p. 16.

³² After this lamination step the sheet is sealed back onto itself to form the shape of the sack and to provide the extra stiffness inherent in having a back seam on the LW sacks.

³³ Conference transcript, pp. 164-165 (Abel). These fins are reported by the respondents to interfere with tight tolerances of certain automated filling machines. Conference transcript, pp. 128-129 (Corman).

³⁴ Gusseting involves the addition of a stiffening material (the gusset) to add a support mechanism within the layers of overlapping material that is sealed (hot melt glued) to form the vertical back seam of the sack. Respondent Shapiro Packaging’s postconference brief, p. 35. The back seam can also be formed without the addition of the gusset. Petitioners’ postconference brief, exh. 5, p. 21.

dimensions.³⁵ In the case of the already tubular formed laminate, there is no tubing or gusseting; the laminated tubular form is cut and sewn into the individual sacks. In both cases, the bags are finished by sewing the bottom and applying closure tape and the pull tape for easy opening. The bags are then inspected and packaged for shipment.³⁶

DOMESTIC LIKE PRODUCT ISSUES

In the preliminary phase of these investigations,³⁷ the Commission examined two issues with regard to the domestic like product, which included (1) whether multi-wall paper sacks should be included in the domestic like product and (2) whether non-laminated woven sacks should be included in the domestic like product. Concerning the first issue, the Commission determined that multi-wall paper sacks should not be included in the domestic like product, finding that “differences in the physical characteristics between the two products associated with differences in raw material inputs . . . are important to a growing number of purchasers . . . {as are} . . . the ability to display higher-quality, multi-color print graphics on laminated woven sacks or {preferences} based on the type of closing equipment at their filling stations, further limiting the interchangeability of the products. Although there is some overlap in producers, production equipment, and employees, the current record suggests that there are also some differences in production equipment and processes between laminated woven sacks and paper sacks as well as differences in manufacturing costs and prices.”³⁸

With regard to the second issue, the Commission observed that none of the parties had requested that it include non-laminated woven sacks in the definition of the domestic like product. The Commission, nonetheless, determined that the domestic like product should not include non-laminated woven sacks, finding that “the different physical characteristics associated with lamination permit laminated woven sacks to be used differently than non-laminated woven sacks . . . {and} some purchasers value their ability to have multi-colored, high-quality graphics that are not susceptible to degradation as well as the rigidity and dimensional stability of laminated woven sacks for use in automatic filling machines. Although there is some overlap of production processes, equipment, and employees in the common early steps of production, laminated woven sacks appear to be perceived as different products by producers and customers, especially given the higher price that laminated woven sacks command over non-laminated woven sacks.”³⁹

In the final phase of these investigations, no party has raised any issue with regard to the definition of the domestic like product.⁴⁰

³⁵ Petitioners’ postconference brief, exh. 5, p. 24.

³⁶ Conference transcript, p. 22 (Bazbaz); petitioners’ postconference brief, exh. 5, p. 24.

³⁷ In the preliminary phase of these investigations, petitioners argued that the Commission should find one domestic like product that is co-extensive with the scope of merchandise subject to the investigations as identified by Commerce. Petitioners’ postconference brief, p. 4. Respondent Hotsun Plastics argued that paper multi-wall sacks are merely part of a continuum of packaging products for consumer retail use and are easily substitutable with LW sacks and thus should be included in the domestic like product. Respondent Hotsun’s postconference brief, pp. 1-2. Respondent Shapiro Packaging did not raise any domestic like product issues. Respondent Shapiro Packaging’s postconference brief, p. 3.

³⁸ *Laminated Woven Sacks From China, Inv. nos. 701-1-TA-450 and 731-TA-1122 (Preliminary)*, USITC Publication 3942, August 2007, p. 8.

³⁹ *Laminated Woven Sacks From China, Inv. Nos. 701-1-TA-450 and 731-TA-1122 (Preliminary)*, USITC Publication 3942, August 2007, p. 9.

⁴⁰ Petitioners’ prehearing brief, p. 5.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET SEGMENTS/CHANNELS OF DISTRIBUTION

U.S. producers and U.S. importers of LW sacks sell primarily to end users. U.S. producers reported making at least *** percent of their sales to end users and U.S. importers reported making between *** and *** percent of their sales to end users between 2005 and 2007. Typical end users include manufacturers of consumer goods—products that are sold and displayed in retail stores such as pet foods, grass seed, and some feed products.¹

Two producers (***) reported nationwide sales, whereas the other five responding U.S. producers sold in a variety of regions, with three producers (***) selling to the Midwest, two producers (***) selling to the Rocky Mountains, one producer (***) selling to the Southeast, and one producer (***) selling to the Southwest, West Coast, and the Northwest.² Seven of 19 responding importers reported nationwide sales, with 9 of the remaining 12 responding importers reporting sales to the Midwest, and none of the remaining responding importers reporting sales to the Mid-Atlantic region.

Collectively, domestic producers reported 30 purchasers as their top ten purchasers during 2005 to 2007, and importers of subject merchandise from China collectively reported 85 purchasers among their top ten purchasers during 2005 to 2007. Both domestic producers and importers of subject merchandise from China reported making sales in 2007 to six of these purchasers (***). The overlapping purchasers for which shared data were reported accounted for *** sacks of domestic producers' U.S. shipments in 2007 and *** sacks of importers' U.S. shipments in 2007, or *** percent of domestic producers' U.S. shipments in 2007 and *** percent of importers' reported U.S. shipments in 2007.³ *** purchasers (***) accounted for most the purchases by these purchasers. In addition, although they were included in both producers' and importers' (from China) customer lists for the period 2005 to 2007, subject importers reported no sales in 2007 to purchasers *** and ***, and domestic producers reported no sales in 2007 to purchasers ***, ***, and ***.

Eleven of 39 responding purchasers (***) reported purchasing both LW sacks produced in the United States and imported from China in 2007.⁴ These purchasers accounted for *** sacks of domestic producers' U.S. shipments in 2007 and *** sacks of importers' U.S. shipments of Chinese product in 2007. *** were the largest of these purchasers.

All U.S. producers of LW sacks reported shipping at least 25 percent of their shipments over 100 miles from their storage or production facilities. Six of 17 responding U.S. importers of LW sacks reported selling at least one-half of their shipments within 100 miles of their storage facilities, five responding U.S. importers reported making at least one-half of their shipments between 101 and 1,000 miles of their storage facilities, and the remaining six responding importers reported making at least one-half of their shipments over 1,000 miles from their storage facilities.

¹ Conference transcript, p. 25 (Bazbaz).

² In addition, one producer (***) reported that it had “a few national accounts.”

³ Not all domestic producers and importers of subject merchandise from China reported what share of their U.S. shipments in 2007 was attributable to each purchaser. *** reported its top ten purchasers from 2005 to 2007, but did not report the shares of the quantity of its firm's total imports that each of these customers accounted for in 2007. Of the purchasers reported by *** also reported by domestic producers. *** reported shipments of *** sacks in 2007. In addition, *** did not report their top ten customers from 2005 to 2007. They combined for *** sacks in shipments, or *** of importers' U.S. shipments in 2007.

⁴ In addition, ***.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. producers are likely to have an ability to respond to changes in demand with relatively large increases in shipments of LW sacks to the U.S. market. Supply responsiveness is enhanced by the availability of unused capacity and availability of some inventories and constrained by a limited ability to use alternative markets and an inability to shift production to other products.

Industry capacity

U.S. producers' reported capacity utilization for LW sacks increased from 13.7 percent in 2005 to 22.4 percent in 2007. This level of capacity utilization indicates that U.S. producers have unused capacity with which they could increase production of LW sacks in the event of a price change.

Alternative markets

U.S. exports, as a share of total shipments, increased from *** percent in 2005 to *** percent in 2007. These data indicate that U.S. producers have a very limited ability to divert shipments to or from alternative markets in response to changes in the price of LW sacks.

Inventory levels

U.S. producers' inventory/total shipments ratios decreased from *** percent in 2005 to *** percent in 2007. These data indicate that U.S. producers have some ability to use inventories as a means of increasing shipments of LW sacks to the U.S. market.

Production alternatives

Three of six responding U.S. producers, ***, reported that they did produce other products using the same manufacturing and/or production employees that were used to produce LW sacks. The manufacturing equipment used to produce multiple products is generally equipment used for printing on coated paper and finishing operations and not equipment used in the printing and lamination of BOPP film.

Subject Imports

Based on limited available information, Chinese producers of LW sacks are likely to have an ability to respond to changes in demand with moderate to large changes in the quantity of LW sacks shipped to the U.S. market. Supply responsiveness is enhanced by the possible availability of unused capacity and the ability to use alternative markets and constrained by unavailability of inventories and an inability to shift production to other products.

Industry capacity

The sole responding Chinese producer's reported capacity utilization for LW sacks remained unchanged at *** percent between 2005 and 2007. David Zhu of Solaris Manufacturing Group in China reported that the Chinese LW sacks industry is already very crowded with existing manufacturers. He

estimated that there are currently 300 to 400 LW sacks manufacturers in China. However, he stated that the vast majority of these manufacturers were privately owned small businesses that employ 100 to 200 people.⁵ This information indicates that ***, Chinese producers may have some unused capacity with which they could increase production of LW sacks in the event of a price change.

Alternative markets

Shipments of LW sacks from China by the sole responding Chinese producer to markets other than the United States decreased from *** percent of its total shipments in 2005 to *** percent in 2007. Mr. Zhu reported that the majority of Chinese-produced LW sacks are consumed within China because the domestic Chinese market is relatively larger and easier to sell to than export markets. He also agreed that the Chinese home market was more developed, at least in terms of woven sacks, although not necessarily the newer LW sacks. He reported that Chinese producers export to Europe, Australia, New Zealand, Canada, and Brazil.⁶ This information indicates that subject producers in China have an ability to divert shipments to or from alternative markets in response to changes in the price of LW sacks.

Inventory levels

The sole responding producer in China *** inventories between 2005 and 2007. These data indicate that the producer *** have an ability to use inventories as a means of increasing shipments of LW sacks to the U.S. market.

Production alternatives

The sole responding Chinese producer reported that *** produce other products on the same manufacturing equipment as it uses to produce LW sacks.

U.S. Demand

Based on available information, LW sack consumers are likely to respond to changes in the price of LW sacks with relatively small changes in their purchases of LW sacks. The main contributing factor to the lack of responsiveness of demand is the emergence of LW sacks as a preferred alternative to possible substitute products, such as multi-wall paper sacks. LW sacks also account for a relatively small share of the total cost of their end-use products.

Demand Characteristics

All responding producers and all but one responding importer reported that demand had increased since 2005. The remaining responding importer reported that demand was unchanged since 2005.⁷ The most commonly cited reasons for the increase are the greater durability, improved print graphics, and price competitiveness of the LW sacks compared to products such as multi-wall paper sacks that had been the preferred sack of the U.S. pet food, bird seed, animal feed, and grass seed industries. Many importers reported that demand for LW sacks has increased due to their durability and high quality graphics. Petitioners also testified that they believe U.S. demand will continue to grow for a number of years at a

⁵ Conference transcript, pp. 173-174 and 207-208 (Zhu).

⁶ Conference transcript, pp. 175-177 (Zhu).

⁷ Another importer responded that demand had “decreased,” but indicated that it was due to an “internal operation problem” which is a supply issue, not a demand issue.

high rate.⁸ Polytex indicates that the demand for pet food in the United States is increasing by more than GDP.⁹

Respondents maintained that importers of Thai and Chinese LW sacks with vertical-back seams are responsible for successfully introducing that product to pet food packagers over the past five years. Respondents contend that it is that product, a variant of LW sacks, that accounts for the bulk of the U.S. LW sacks market today, and for the continued strong growth in that market.¹⁰ Respondents also maintained that the move towards poly-woven packaging is primarily driven by mass-merchant retailers such as Wal-Mart, Dollar General, Family Dollar, Petco, and PetSmart, which are increasingly insisting upon poly-bag packaging in order to minimize product damage in the chain of distribution.¹¹

Twenty-three of 38 responding purchasers indicated that demand for their firm's final products incorporating LW sacks has increased since 2005. Eight responding purchasers indicated that demand had remained unchanged for their final products incorporating LW sacks and the remaining seven responding purchasers indicated that demand for these products had decreased.

Polytex indicates that it does not believe that there is a business cycle for the LW sack industry or that it cannot tell.¹² Coating Excellence indicates that there are some minimal variations in demand during the year because people tend to feed birds more in the wintertime.¹³

Substitute Products

Fourteen of 17 responding importers and 34 of 38 responding purchasers reported that there are substitutes for LW sacks. Reported substitute products include multi-wall paper sacks, clay-coated paper sacks, and polyethylene sacks. Respondents testified that, currently, about 90 percent of the 800 to 900 million bags used annually in the pet food industry are the pinch-bottom-open-mouth-style paper bag.¹⁴

However, all *** responding producers reported that there are no direct substitutes for LW sacks. Producers reported that purchasers have indicated that they prefer LW sacks to other types of sacks, primarily because of their greater durability. Producers maintain that the greater durability of the LW sacks reduces product waste from breakage of bags. Producers also cite LW sacks' improved print graphics, and reduced landfill waste because of their lighter weight. One producer (***) reported that demand for woven PP bags has been growing at double digits since 2004 and that the increase has been driven by the desire of major retailers (led by Wal-Mart) to move exclusively to LW sacks because LW sacks reduce waste from breakage of bags, reduce landfill waste due to the light weight of LW sacks, and have excellent graphics resulting in enhanced shelf appeal.

Petitioners indicate that no other type of sack combines the high tensile strength, high puncture resistance, high tear resistance, and low weight of the polypropylene fabric and the high quality print graphics of BOPP film or coated free sheet paper and that in practice, when customers specify a LW sack they will not accept an alternative bag as a replacement.¹⁵

Four of 13 responding importers and 4 of 32 responding purchasers reported that the price of substitutes can affect prices of LW sacks.

⁸ Conference transcript, pp. 91-92 (Nowak, Nicolai, and Bazbaz).

⁹ Hearing transcript, p. 45 (Babaz).

¹⁰ Conference transcript, p. 142 (Boltuck).

¹¹ Conference transcript, p. 152 (Lang).

¹² Hearing transcript, p. 45 (Babaz).

¹³ Hearing transcript, pp. 45-46 (Nowak).

¹⁴ Conference transcript, p. 118 (Abel)

¹⁵ Conference transcript, p. 7 (Dorn).

Cost Share

U.S. producers and importers reported that LW sacks were used primarily as packaging in the pet food, bird seed, animal feed, and grass seed industries. Most estimates of the share of the total cost of the end-use product accounted for by the cost of LW sacks ranged from 1 to 10 percent.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported LW sacks depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, leadtimes between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there is a high degree of substitutability between domestically produced LW sacks and subject LW sacks.

Factors Affecting Purchasing Decisions

Purchasers were asked a variety of questions to determine what factors influence their decisions when buying LW sacks. Information obtained from their responses indicates that both quality and price are important factors.

As indicated in table II-1, quality was named by 18 of the 43 responding purchasers as the number one factor generally considered in deciding from whom to purchase LW sacks, as the number two factor by 11 purchasers, and the number three factor by six other responding purchasers. All but four responding purchasers (***) indicated that quality meeting industry standards was a “very important” factor in its purchasing decisions for LW sacks (table II-2). Twenty-three of 42 responding purchasers indicated that quality exceeding industry standards was a “very important” factor.

Twenty-three of 42 responding purchasers reported that they require their suppliers to become certified or pre-qualified for all of their purchases. Factors that several purchasers indicated they consider when qualifying a new supplier included price, quality, reliability of the supplier, print quality, delivery, and service. Purchasers estimated that the amount of time it takes to certify or qualify a new supplier ranges from less than one hour to one year. Nine of 42 responding purchasers indicated that, since 2005, some domestic or foreign producers failed in their attempts to certify or qualify their LW sacks or have lost their approved status.¹⁶ *** named Chinese imports from *** due to product quality; *** named Chinese imports from ***; *** named ***, U.S. imports from ***, and Chinese-produced samples; *** named *** due to price; *** named *** and *** because its cost was too high and *** because of “no technology;” *** named *** because of inconsistent sizing and improper denier; *** named *** because of shipping problems, although there was no problem with the product itself; *** named *** because the bags were not usable due to poor quality.

As indicated in table II-1, price was named by 10 of 43 responding purchasers as the number one factor generally considered in deciding from whom to purchase LW sacks, and as the number two factor by 10 purchasers and the number three factor by 10 responding purchasers. Also, as indicated in table II-2, all but five of the responding purchasers (***) indicated that price was a “very important” factor in their purchase decisions for LW sacks.

Twenty-nine of 40 responding purchasers indicated that the lowest-priced LW sacks at most “sometimes” will win a sale, with 21 purchasers reporting “sometimes” and eight reporting “never.” In addition, eight reported “usually” and three reported “always.”¹⁷

¹⁶ Only one of these nine purchasers, ***, provided an example of a firm that failed to qualify due to price.

¹⁷ In addition, one purchaser reported “sometimes and usually.”

Table II-1**LW sacks: Ranking of factors used in purchasing decisions, as reported by U.S. purchasers**

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Quality	18	11	6
Price	10	10	10
Traditional supplier	6	0	0
Availability	4	4	2
Backseam	2	1	0
Minimum quantity	2	1	0
Product line	1	0	0
Delivery time	0	5	4
Print quality	0	2	2
Product consistency	0	2	2
Service	0	2	2
Lead time	0	1	2
Customer preference	0	1	0
Product range	0	1	0
Reliability of supply	0	1	2
Credit terms and discounts	0	0	1
Durability/strength	0	0	1
Payment terms	0	0	1
Storage	0	0	1
Supplier integrity	0	0	1

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

Table II-2**LW sacks: Importance of factors used in purchasing decisions, as reported by U.S. purchasers**

Factor	Number of firms reporting		
	Very important	Somewhat important	Not important
Product consistency	41	2	0
Reliability of supply	40	3	0
Availability	39	4	0
Quality meets industry standards	39	3	1
Price	38	5	0
Delivery time	35	8	0
Minimum quantity requirements	30	11	2
Delivery terms	24	18	1
Quality exceeds industry standards	23	16	3
Packaging	19	16	7
Discounts offered	17	19	7
Technical support/service	18	16	9
US transportation costs	17	21	5
Product range	11	21	10
Extension of credit	9	19	14

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

Although petitioners acknowledged that LW sacks are not a commodity product, they maintained that purchasing decisions are made largely on the basis of price because all LW sacks are made to customer order.¹⁸ Petitioners indicate that U.S. and Chinese bags are virtually perfect substitutes because the customer specifies the dimensions and features of the bag and provides the design and the graphics, while the competing suppliers quote on the specifications provided by the customer.¹⁹ Respondent Shapiro indicated that LW sacks used for the same purposes are virtually interchangeable regardless of where they are produced.²⁰

Reliability of supply was named as a “very important” factor by all but three responding purchasers and was named as the number two factor used in purchasing decisions by one purchaser and the number three factor used in purchasing decisions by two purchasers. All but two responding purchasers indicated that product consistency was a “very important” factor in their purchasing decisions on LW sacks; it was named by two purchasers as the number two factor, and two purchasers reported it as the number three factor. All but four responding purchasers indicated that availability was a “very important” factor in their purchasing decisions of LW sacks. Four of 43 responding purchasers reported

¹⁸ Conference transcript, p. 8 (Dorn).

¹⁹ Conference transcript, p. 8 (Dorn).

²⁰ Shapiro’s postconference brief, p. 25.

that availability was the highest factor in their purchasing decisions, four purchasers reported it as the number two factor, and two purchasers reported it as the number three factor.

Twenty-seven of 41 responding purchasers reported purchasing LW sacks with a vertical back seam, while 21 of 41 responding purchasers reported purchasing LW sacks in tubular form. Thirteen of these purchasers reported purchasing both types of sacks. Purchasers provided a variety of responses as to the perceived differences between LW sacks with a vertical back seam and those in tubular form. Several purchasers indicated that the bags with a vertical back seam are easier to fill and have better construction quality. However, some purchasers indicated that the tubular bag is stronger because it has no seam to fail. Other purchasers indicated that there was no difference between the types of bags or that they were not aware of any differences.

Sixteen of 43 responding purchasers reported purchasing paper LW sacks, while 35 of 43 responding purchasers reported purchasing BOPP-LW sacks. Twelve of these purchasers reported purchasing both types of bags. Most purchasers preferred BOPP-LW sacks to the paper laminated ones because of better appearance, print quality, and durability. However a few purchasers indicated that they preferred paper LW sacks because they work better with machinery. One purchaser indicated that paper LW sacks are preferred in the feed industry, while BOPP-LW sacks are more geared to high end retail sales.

Six of 38 responding purchasers indicated that there are certain grades, types, or sizes of LW sacks available from only a single source. Two of these six purchasers indicated that back seam bags are only available from China, one purchaser indicated that the best quality back seam bags are available only from China, one purchaser indicated that the back seam bags are not available in the United States, one purchaser indicated that BOPP-film LW sacks from China have superior quality, and the remaining responding purchaser indicated that the United States mainly supplies paper-laminated LW sacks and that China supplies either BOPP or paper-laminated LW sacks.

Many purchasers reported purchasing LW sacks from one source although a comparable product was available from another source at a lower price for reasons such as quality, lead times, minimum quantities, relationship with suppliers, and print quality.

Twenty-three of 32 responding purchasers indicated that domestically produced LW sacks either always or usually meet minimum quality specifications for their firms' uses or their customers' uses, with eight purchasers indicating "always," 15 purchasers indicating "usually," three purchasers indicating "sometimes," and six purchasers indicating "never." Twenty-seven of 34 responding purchasers indicated that LW sacks imported from China either always or usually meet minimum quality specifications for its firms' uses or its customer's uses, with 14 purchasers indicating "always," 13 purchasers indicating "usually," six purchasers indicating "sometimes," and one purchaser indicating "never."

Comparisons of Domestic Product and Subject Imports

All responding U.S. producers, four of 13 responding importers, and 17 of 28 responding purchasers reported that LW sacks produced in the United States and imported from China are always interchangeable (table II-3). Three importers and six purchasers reported that LW sacks produced in the United States and imported from China are frequently interchangeable, five importers and four purchasers reported that they are sometimes interchangeable, and two importers and one purchaser reported that they are never interchangeable.

*** reported that it imports a variety of sacks from China, not just LW sacks. *** stated that having Chinese LW sack producers make all of the products that it imports is a distinct logistical advantage to it, and a significant reason why it limits importing from other countries. *** reported that using the particular Chinese producers and exporters with whom it has a relationship allows it to satisfy less-than-container-load requests for individual sales or other goods. *** reported that when comparing LW sacks from China and the United States, there are frequently differences in the product from China that are significant to its sales of the product. *** maintained that the Chinese producers have improved

Table II-3

LW sacks: Perceived degree of interchangeability of products produced in the United States and other countries¹

Country comparison	Number of U.S. producers reporting				Number of U.S. importers reporting				Number of U.S. purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. China	5	0	0	0	4	3	5	1	17	6	4	1
U.S. vs. Nonsubject	4	0	0	0	2	2	4	1	4	3	2	0
China vs. Nonsubject	3	0	1	0	3	2	3	1	5	2	3	0

¹ Producers, importers, and purchasers were asked if LW sacks produced in the United States and in other countries is used interchangeably.

Note.--“A” = Always, “F” = Frequently, “S” = Sometimes, “N” = Never.

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

printing graphics, because rotogravure printing is used in China versus flexographic printing in the United States. *** reported that Chinese LW sacks have higher COF (a measure of bag slickness) rates, which will affect the performance at the packer level. *** maintains that purchasers have preferences for the rigid vertical-back seam style of Chinese LW sacks; vertical-back seam LW sacks stand on their own, whereas U.S.-produced tubular bags tend to collapse. *** maintains that the capacity of the U.S. manufacturers is not capable of handling the demand for LW sacks in the United States. *** states that the U.S. industry has limited capacity and has made weak or futile efforts to promote the newly revised product that is superior to the old package. *** stated that U.S. manufacturers have the advantage when it comes to availability and transportation. *** maintains that most U.S. producers lack the quality standards that U.S. purchasers are used to getting from overseas. *** maintains that rotogravure printing is superior to flexographic printing, and that *** uses only rotogravure plates.

Respondents testified that tubular LW sacks failed to secure commercial acceptance due to their lack of rigidity and stiffness (dimensional integrity) needed to perform well in existing automated bag filling equipment and that for this reason, purchasers of vertical back seam LW sacks (which have better dimensional integrity) did not need to make changes to their filling equipment or to purchase new filling equipment to run the LW sacks. Respondents maintained that most of U.S. LW sack production is tubular,²¹ but questionnaire data indicate that the majority of U.S. producers' U.S. shipments of LW sacks in 2007 consisted of vertical back seam sacks.

In their postconference brief, petitioners reported that domestic producers manufacture LW sacks in tubular form and LW sacks with a back seam and that Nestle Purina, one of the largest U.S. producers of pet food, has purchased a tubular bag from China and a back seam bag from the United States. Petitioners maintained that tubular style bags are readily used in automatic filling equipment and are interchangeable with back seam bags in that regard and that the maker of a tubular bag can vary the stiffness of the bag to accommodate any automatic filling equipment. Petitioners also noted that domestic producers charge the same price for tubular bags and back seam bags.²²

²¹ Conference transcript, pp. 119-121(Abel), 127-130 (Corman), 137-138 (Shapiro), 142-143 (Boltuck), and 160-165 (Shapiro, Boltuck, Abel).

²² Petitioners' postconference brief, pp. 15-16.

As indicated in table II-4, all responding producers indicated that differences other than price between LW sacks produced in the United States and imported from China were at most “sometimes” a significant factor in their firm’s sales of the products. Seven of 12 responding importers indicated that differences other than price between LW sacks produced in the United States and imported from China were either “frequently” or “sometimes” a significant factor in their firm’s sales of the products.

Importers cited factors such as the logistical advantage of purchasing all types of sack products from one supplier, printing graphics (rotogravure printing in China versus flexographic printing in the United States), COF rates, Chinese vertical-back seam versus U.S. tubular construction, and product availability and delivery lead times.²³

Purchasers were also asked to compare LW sacks produced in the United States and imported subject countries on the basis of different purchasing factors (see table II-5). The majority or a plurality of responding purchasers indicated that LW sacks produced in the United States and imported from China were comparable for all of the different purchasing factors except for lower price. For lower price, a majority of purchasers indicated that the domestically produced product was inferior (i.e., higher in price) to the Chinese product.

Comparisons of Domestic Product and Nonsubject Imports

All responding U.S. producers, two of nine responding importers, and four of nine responding purchasers reported that LW sacks produced in the United States and imported from nonsubject sources were always interchangeable (table II-3). In addition, two importers and three purchasers reported that LW sacks produced in the United States and imported from nonsubject sources were frequently interchangeable, four importers and two purchasers reported that they were sometimes interchangeable, and one importer reported that they were never interchangeable.

As indicated in table II-4, all responding producers indicated that differences other than price between LW sacks produced in the United States and imported from nonsubject sources were at most “sometimes” a significant factor in their firm’s sales of the products. Six of eight responding importers indicated that differences other than price between LW sacks produced in the United States and imported from nonsubject sources were either “frequently” or “sometimes” a significant factor in their firm’s sales of the products.

Comparisons of Subject Imports and Nonsubject Imports

Three of four responding U.S. producers, three of nine responding importers, and five of ten responding purchasers reported that LW sacks imported from China and from nonsubject sources were always interchangeable (table II-3). In addition, two importers and two purchasers reported that LW sacks imported from China and from nonsubject sources were frequently interchangeable; one producer, three importers, and three purchasers reported that they were sometimes interchangeable; and one importer reported that they were never interchangeable.

As indicated in table II-4, all responding producers indicated that differences other than price between LW sacks imported from China and nonsubject sources were at most “sometimes” a significant factor in their firm’s sales of the products. Six of nine responding importers indicated that differences other than price between LW sacks imported from China and nonsubject sources were at least “frequently” a significant factor in their firm’s sales of the products.

²³ Respondents reported that, typically, the type of LW sack construction (vertical back seam or tubular) is included in the specifications requested by the purchaser. Conference transcript, pp. 199-200 (Abel).

Table II-4**LW sacks: Differences other than price between products from different sources¹**

Country comparison	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. China	0	0	2	3	3	4	3	2
U.S. vs. Nonsubject	0	0	1	3	1	3	3	1
China vs. Nonsubject	0	0	2	1	1	5	2	1

¹ Producers and importers were asked if differences other than price between LW sacks produced in the United States and in other countries are a significant factor in their firms' sales of LW sacks.

Note.--"A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never.

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

Table II-5**LW sacks: Purchasers' comparisons of domestic and imported products**

Factor	U.S. vs. China			U.S. vs. Korea			U.S. vs. Thailand		
	S	C	I	S	C	I	S	C	I
Availability	5	18	1	1	0	0	1	0	0
Delivery terms	5	19	0	1	0	0	0	1	0
Delivery time	11	12	1	1	0	0	1	0	0
Discounts offered	3	16	5	0	0	1	0	1	0
Extension of credit	3	19	2	0	1	0	0	1	0
Lower price	2	10	12	0	1	0	0	0	1
Lower transport costs	5	14	4	0	0	1	0	1	0
Minimum quantity requirements	4	12	8	0	1	0	0	0	1
Packaging	4	18	2	0	1	0	0	1	0
Product consistency	6	15	3	0	1	0	0	1	0
Product range	1	18	5	0	1	0	0	1	0
Quality exceeds industry standards	5	14	5	0	1	0	0	1	0
Quality meets industry standards	5	15	4	0	1	0	0	1	0
Reliability of supply	5	19	0	0	1	0	0	1	0
Technical support/service	8	11	5	0	1	0	0	0	1

Note.--S = domestic product superior, C = domestic product comparable, I = domestic product inferior.

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

ELASTICITY ESTIMATES

This section discusses the elasticity estimates. Parties were encouraged to comment on these estimates; comments were addressed where appropriate.

U.S. Supply Elasticity²⁴

The domestic supply elasticity for LW sacks measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of LW sacks. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced LW sacks. Analysis of these factors earlier indicates that the U.S. industry is likely to be able to greatly increase or decrease shipments to the U.S. market; an estimate in the range of 5 to 10 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for LW sacks measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of LW sacks. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of the LW sacks in the production of any downstream products. Based on the available information, the aggregate demand for LW sacks is likely to be inelastic; a range of -0.25 to -0.50 is suggested.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.²⁵ Product differentiation, in turn, depends upon such factors as quality (e.g., chemistry, appearance, etc.) and conditions of sale (availability, sales terms/discounts/promotions, etc.).

Petitioners indicate that LW sacks made in the United States and LW sack made in China are highly substitutable for one another.²⁶ Respondent Shapiro indicated that LW sacks used for the same purposes are virtually interchangeable regardless of where they are produced.²⁷ Based on available information, the elasticity of substitution between U.S.-produced LW sacks and imported LW sacks is likely to be in the range of 4 to 6.

²⁴ A supply function is not defined in the case of a non-competitive market.

²⁵ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like product(s) to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

²⁶ Petitioners' prehearing brief, p. 8.

²⁷ Shapiro's postconference brief, p. 25.

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

Information presented in this section of the report is based on (except as noted) the questionnaire responses of six firms which are believed to account for the virtually all U.S. production of LW sacks in 2007.

U.S. PRODUCERS

The Commission sent producers' questionnaires to seven firms identified as U.S. producers of LW sacks in the petition. Six of the seven U.S. producers submitted responses.¹ Table III-1 presents the list of U.S. producers with each company's U.S. production location, share of reported U.S. production in 2007, and position on the petition.

**Table III-1
LW sacks: U.S. producers, U.S. production locations, shares of reported U.S. production in 2007, and positions on the petition**

Firm	Production location	Share of reported production (percent)	Position on the petition
Bancroft	West Monroe, LA	***	Petitioner
Coating Excellence	Wrightstown, WI	***	Petitioner
Hood ¹	Madison, MS	***	Petitioner
La Pac	Crowley, LA	(2)	***
Mid-America	Twinsburg, OH	***	Petitioner
Polytex ³	Houston, TX	***	Petitioner
SeaTac	Puyallup, WA	***	Support
<p>¹ *** ² La Pac did not submit a questionnaire in the final phase of these investigations. ³ ***</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>			

¹ After multiple requests by staff, the Commission did not receive a questionnaire response from U.S. producer La Pac. In the preliminary phase of these investigations, La Pac reluctantly submitted a partial response to the Commission and reported that it accounted for *** percent of 2006 U.S. production of LW sacks.

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Four of the seven U.S. producers began production of LW sacks during the period of investigation. Coating Excellence had never produced any type of bag or sack prior to its production of LW sacks. Bancroft,² Hood, and Mid-America³ traditionally produced paper sacks and had to learn new printing and laminating production processes necessary to manufacture LW sacks. Polytex, traditionally a U.S. producer of non-laminated sacks, also had to learn the lamination processes. Two of those producers reported that they experienced cessation of production at some point during the period. Table III-2 shows the date on which each U.S. producer commenced production of LW sacks and whether they experienced any production stoppages during the period of investigation.

Table III-2

LW sacks: Date of the commencement of U.S. production of LW sacks, by firm

* * * * *

Data on U.S. producers' capacity, production, and capacity utilization are presented in table III-3. Total U.S. capacity increased from 2005 to 2007 by 109 percent, as a number of U.S. producers brought capacity on line in 2006 and *** (see table III-2). Capacity was below apparent U.S. consumption for LW sacks in each of the years 2005-07. Total U.S. production of LW sacks increased by 243 percent from 2005 to 2007, again as new firms entered the U.S. market.⁴ Capacity utilization ranged from 13.7 percent in 2005 to 22.4 percent in 2007.

² ***. Petitioners' posthearing brief, app. A, p. 14.

³ During the preliminary phase of these investigations, Mid-America acknowledged at the staff conference that it was "not able to master the technology of laminating reverse printed BOPP film to woven polypropylene," and therefore ceased production of LW sacks in March 2007 because low-priced imports from China did not justify the additional investment needed to rectify its production problems. Conference transcript, pp. 39, 55 (Nicolai); petitioners' postconference brief, exh. 1, p. 1. ***. Petitioners' posthearing brief, exh. A, p. 14.

⁴ The domestic producers reported *** toll agreements *** U.S. production of LW sacks in U.S. foreign trade zones.

Table III-3
LW sacks: U.S. producers' capacity, production, and capacity utilization, 2005-07

Firm	Calendar year		
	2005	2006	2007
Capacity (1,000 sacks)			
Bancroft	***	***	***
Coating Excellence	***	***	***
Hood	***	***	***
Mid-America	***	***	***
Polytex	***	***	***
SeaTac	***	***	***
Total	111,301	172,783	232,953
Production (1,000 sacks)			
Bancroft	***	***	***
Coating Excellence	***	***	***
Hood	***	***	***
Mid-America	***	***	***
Polytex	***	***	***
SeaTac	***	***	***
Total	15,240	28,287	52,231
Capacity utilization (percent)			
Bancroft	***	***	***
Coating Excellence	***	***	***
Hood	***	***	***
Mid-America	***	***	***
Polytex	***	***	***
SeaTac	***	***	***
Average	13.7	16.4	22.4
¹ Not applicable.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Three of the U.S. producers, ***, reported that they produced other products using the same manufacturing equipment and/or production employees that were used to produce LW sacks.⁵ Table III-4 shows overall U.S. capacity for these producers as well as the other products for which they have allocated capacity.⁶

Table III-4
Sacks: Overall capacity of U.S. producers, and production by firms and products, 2007

* * * * *

Of the seven U.S. producers, only Polytex is an integrated producer of LW sacks, and therefore produces its own polypropylene woven fabric. All other U.S. producers purchase or import woven polypropylene fabric from third-party sources.⁷ All U.S. producers either purchase or import their laminate substrate, whether BOPP-film or paper. All U.S. producers engage in printing, laminating, and finishing operations.⁸ Table III-5 shows the production activities in which each U.S. producer engaged in 2007 and the per-sack cost of those production activities.⁹

Table III-5
LW sacks: Production activities of U.S. producers, by firm and production cost, 2007

* * * * *

U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORT SHIPMENTS

As detailed in table III-6, the volume of U.S. producers' U.S. shipments of LW sacks increased by 262 percent from 2005 to 2007 as new players entered the market. The value of U.S. shipments increased by 299 percent during the same time period. None of the U.S. producers reported internal consumption or transfers to related firms of LW sacks. *** reported export shipments in ***.

⁵ *** U.S. producers of multi-wall paper packaging products. *** produces an array of flexible packaging products in food and industrial packaging markets, using a range of substrates, including paper, foil, films, and non-wovens.

⁶ Petitioners argued that there is “virtually no overlap in the production equipment used to produce LW sacks and other existing products” and that only printing equipment may be shared among product types. Petitioners’ prehearing brief, p. 47.

⁷ Petition, p. 4 fn. 2.

⁸ Petition, p. 4. fn. 3.

⁹ In the final phase of these investigations, *** and Mid-America did not submit this information to the Commission, stating that they had ceased production in 2007. In the preliminary phase of these investigations, these firms supplied to the Commission similar information regarding their production processes and costs. The data from the preliminary phase are provided in table III-5.

**Table III-6
LW sacks: U.S. producers' shipments, by types, 2005-07**

Item	Calendar year		
	2005	2006	2007
Quantity (1,000 sacks)			
U.S. shipments ¹	14,190	26,075	51,411
Export shipments	***	***	***
Total	***	***	***
Value (\$1,000)²			
U.S. shipments ¹	7,682	15,692	30,656
Export shipments	***	***	***
Total	***	***	***
Unit value (per sack)			
U.S. shipments ¹	\$0.54	\$0.60	\$0.60
Export shipments	***	***	***
Average	***	***	***
¹ U.S. producers reported no internal consumption or transfers to related firms. All U.S. shipments are commercial sales. ² F.o.b. U.S. point of shipment.			
Source: Compiled from data submitted in response to Commission questionnaires.			

In the preliminary phase of these investigations, respondent Shapiro Packaging argued that LW sacks produced in the United States differed from those produced in China and that U.S. customers preferred the BOPP-laminated, vertical back seamed LW sack produced in China to the paper-laminated, tubular LW sacks predominately produced in the United States.¹⁰ Petitioners disputed these claims and stated that U.S. producers do produce BOPP-laminated, vertical back seamed LW sacks.¹¹

Table III-7 presents information on U.S. producers' U.S. shipments by type of LW sack (tubular or vertical back seam). In 2007, *** percent of the quantity of U.S. producers' U.S. shipments consisted of tubular LW sacks and *** percent consisted of vertical back seam LW sacks.

Table III-8 presents information of U.S. producers' U.S. shipments of LW sacks laminated using BOPP-film and laminated using paper. In 2007, *** percent of the quantity of U.S. producers' U.S. shipments consisted of BOPP-film laminated LW sacks and *** percent consisted of paper-laminated LW sacks.

**Table III-7
LW sacks: U.S. producers' U.S. shipments, by type (tubular vs. vertical back seam), 2005 and 2007**

* * * * *

¹⁰ Respondent Shapiro Packaging, postconference brief, pp. 18-23.

¹¹ Petitioners' prehearing brief, p. 10.

Table III-8
LW sacks: U.S. producers' U.S. shipments, by type (BOPP-film laminated vs. paper laminated), 2005 and 2007

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES OF IMPORTS

*** of the seven U.S. producers reported that they directly imported or purchased from U.S. importers LW sacks from China during the period of investigation. Table III-9 presents those firms' direct imports and purchases of LW sacks from China, their U.S. production, and the ratio of their U.S. imports and purchases to their U.S. production.

Table III-9
LW sacks: U.S. producers' subject imports and purchases of subject imports, 2005-07

* * * * *

U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of LW sacks for the period of investigation are presented in table III-10.¹²

Table III-10
LW sacks: U.S. producers' end-of-period inventories, 2005-07

* * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers ("PRWs") engaged in the production of LW sacks, the total hours worked by such workers, and wages paid to such PRWs during the period for which data were collected in these investigations are presented in table III-11. From 2005 to 2007, the number of PRWs increased by *** percent, hours worked increased by *** percent, hours worked per worker were relatively constant, wages paid increased by *** percent, hourly wages increased by *** percent, productivity increased by *** percent, and unit labor costs increased by *** percent.

Table III-11
LW sacks: Average number of production and related workers producing LW sacks, hours worked, hours worked per worker, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2005-07

* * * * *

¹² Given the custom graphics required, LW sacks are made to order, therefore U.S. producers generally do not carry large inventories. U.S. producers, however, are sometimes asked to hold inventory of finished LW sacks (complete with printing that depicts company and brand) for their customers and deliver them as their customers' needs arise. Hearing transcript, pp. 131-132 (Bazbaz & Nowak).

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent importer questionnaires to 46 firms believed to be U.S. importers of LW sacks, as well as to all seven U.S. producers.¹ Usable questionnaire responses were received from 21 firms.² For the period 2005 to 2006, data for U.S. imports from China are compiled using official Commerce statistics, adjusted using the methodology set forth in the petition to account for product not within the scope of these investigations included in the relevant HTS statistical reporting number.³ Data for U.S. imports from China for 2007 are compiled using petitioners' methodology set forth in exhibit B of their posthearing brief.⁴ The Commission staff elected to compile U.S. import data using these methods in order to alleviate what petitioners have alleged is a low import data coverage given the apparent low response rate to the Commission's questionnaire among U.S. importers. Data regarding U.S. imports from nonsubject countries are compiled using data reported in responses to the Commission's questionnaires.⁵ The data received from responding U.S. importers from China are presented in table C-2, appendix C.

¹ The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by the U.S. Customs and Border Protection ("Customs"), may have imported LW sacks since 2005.

² In addition to the 21 usable responses (those respondents are shown in table IV-1), the Commission received responses from *** indicating that they did not import LW sacks during the period of investigation.

³ For the period from 2005 to 2006, the methodology used to compile the volume and value of U.S. imports from China is that used in the Commission's staff report in the preliminary phase of these investigations and is taken from exhibit 6 of the petition. Specifically, U.S. import data were based on the official Commerce statistics under HTS 6305.33.0020 incorporating a number of adjustments based on the following assumptions made by petitioners:

(1) There were no U.S. imports of LW sacks prior to 2003.

(2) Nonsubject non-laminated woven sacks included in the category experienced a steady 5-percent growth rate in U.S. imports from 2002 through 2006.

(3) The difference in the Commerce statistics between U.S. imports in 2002 and 2003 (after accounting for the 5-percent growth rate) is entirely LW sacks.

(4) All U.S. imports from nonsubject countries are from Thailand which commenced in 2005. No other country exports this product to the United States.

(5) A weight-to-"number of sacks" conversion rate of 8,000 sacks = 1 short ton = 907 kilograms. This conversion rate is generally accepted by respondents. (Conference transcript, p. 133 (Corman)), Petition, exh. 6; *see also* conference transcript, pp. 57-60 (Bazbaz).

⁴ Petitioners' methodology for compiling 2007 U.S. imports from China computes a growth rate for volume and value by comparing 2006 and 2007 U.S. imports as reported in the Commission questionnaires. The 2006-07 growth rate is then applied to 2006 U.S. imports from China (as computed by petitioners' methodology found in the petition, exh. 6) to compute 2007 U.S. imports from China. Petitioners' posthearing brief, app. B.

Although effective July 1, 2007, a revision to the HTS placed LW sacks in the less broad statistical reporting numbers 6305.33.0050 and 6305.33.0080, petitioners have stated that they believe that misclassification of U.S. imports of LW sacks has been prevalent as evidenced by the multiple requests to Customs for classification rulings in the past six months and the difference between the volume of U.S. imports reported by official statistics and responses to the Commission's questionnaires. Petitioners' prehearing brief, pp. 20-23; Petitioners' posthearing brief, app. A, pp. 8-10. Therefore, Commission staff has computed 2007 U.S. imports from China using petitioners' methodology rather than relying on official statistics.

⁵ U.S. imports from nonsubject countries include the reported U.S. imports of ***.

During the preliminary phase, respondents agreed that the HTS statistical reporting number contained products not within the scope of these investigations, but provided no alternative methodology to adjust the Commerce statistics.⁶ In these final phase investigations, no respondent has objected to the petitioners' methodologies for determining the volume and value of subject imports during the period of investigation nor presented the Commission with an alternative methodology.

Table IV-1 lists all responding U.S. importers of LW sacks from China, their U.S. locations, and their quantities of imports, by source, in 2007.

Table IV-1
LW sacks: Reported U.S. imports, by importers and by sources of imports, 2007

* * * * *

U.S. IMPORTS

Table IV-2 shows that the volume of U.S. imports of LW sacks from China increased by 108.8 percent from 2005 to 2007 while the value of U.S. imports from China increased by 117.4 percent. U.S. imports from nonsubject countries were reported from Thailand and Vietnam.⁷ U.S. imports from nonsubject countries increased by *** percent by volume and by *** percent by value from 2005 to 2007.

⁶ During the preliminary phase of these investigations, respondent Shapiro Packaging did disagree with petitioners' methodology, especially the assumed 5-percent annual growth rate in the non-laminated woven sacks market segment (computed in order to subtract these imports from the Commerce data). Respondent Shapiro Packaging argued that the 5-percent growth rate potentially understates U.S. imports of non-laminated sacks by a substantial margin for the following reasons:

(1) Non-laminated sacks were largely or entirely covered by the Agreement on Textiles and Clothing, which expired during the period examined in the preliminary phase of these investigations (2004) and those U.S. imports of textiles covered by the agreement generally increased after expiration. (*see* p. IV-8). Staff notes that quotas for the category under which LW sacks fall expired on January 1, 2002, before the period of investigation.

(2) Demand for sandbags, a product included in the non-laminated sacks category, most likely increased during the period of investigation with events occurring such as Hurricane Katrina (2005) and the war in Iraq (2003 to present). Respondent Shapiro Packaging's postconference brief, pp. 28-30.

⁷ In the preliminary phase of these investigations, petitioners contended that U.S. imports from nonsubject countries were solely from Thailand, which petitioners believed started entering the United States in 2005. There appears to be evidence on the record that may contravene petitioners' original contention regarding the exclusivity of Thailand as a source of nonsubject imports. U.S. importer *** reported that it imported *** LW sacks from Vietnam in 2007. In recent years, a producer of LW sacks in Thailand, C.P. Poly Industry Co., Ltd., has greatly expanded its capacity to produce LW sacks through its subsidiary in Vietnam, C.P. Packaging Industry Co., Ltd. *See* Part VII, *Information on Nonsubject Sources*. Petitioners believe that C.P. Packaging's Vietnam manufacturing plant is focused on non-laminated sacks used for industrial purposes. Petitioners' posthearing brief, app. A, pp. 4-5.

Also, it may be noted that the July 1, 2007 modification of the HTS created a statistical reporting number with a less broad product definition, which was more similar to the product described in the scope of these investigations than the product definition of the HTS statistical reporting number used in the preliminary phase of the investigations. Data compiled for July 2007 to December 2007 under this new statistical reporting number show U.S. imports from Mexico, Korea, Canada, and Indonesia (listed in order of descending volume).

In their prehearing brief, petitioners attached an affidavit of a U.S. importer of product from Mexico, who attested that U.S. imports from Mexico are solely non-laminated bulk packaging woven sacks and not LW woven sacks. Petitioners' prehearing brief, app. 17, p. 1.

Table IV-2
LW sacks: U.S. imports, by sources, 2005-07

Source	Calendar year		
	2005	2006	2007
Quantity (1,000 sacks)			
China	112,262	153,182	234,368
All others	***	***	***
Total	***	***	***
Value (\$1,000)¹			
China	26,746	39,025	58,147
All others	***	***	***
Total	***	***	***
Unit value (per sack)			
China	\$0.24	\$0.25	\$0.25
All others	***	***	***
Average	***	***	***
Share of quantity (percent)			
China	***	***	***
All others	***	***	***
Total	100.0	100.0	100.0
Share of value (percent)			
China	***	***	***
All others	***	***	***
Total	100.0	100.0	100.0
¹ Landed, duty-paid. Source: Compiled from adjusted Commerce statistics.			

In the preliminary phase of these investigations, respondent Shapiro Packaging argued that LW sacks produced in the United States differed from those imported from China and that U.S. customers preferred the BOPP-laminated, vertical back seamed LW sack produced in China to the paper-laminated, tubular LW sacks predominately produced in the United States.⁸ Petitioners disputed these claims and stated that U.S. producers do produce BOPP-laminated, vertical back seamed LW sacks.⁹

⁸ Respondent Shapiro Packaging, postconference brief, pp. 18-23.

⁹ Petitioners' prehearing brief, pp. 10-13.

Table IV-3 presents reported U.S. imports from China and all other countries, by style of the LW sacks, vertical back seam or tubular. Table IV-4 presents reported U.S. imports by the substrate that was used to laminate the woven sack, BOPP-film or paper.

**Table IV-3
LW sacks: U.S. imports, by type (tubular or vertical seam), and by sources, 2005 and 2007**

* * * * * * *

**Table IV-4
LW sacks: U.S. imports, by type (paper or BOPP-film laminated), and by sources, 2005 and 2007**

* * * * * * *

U.S.-China Textile Agreement

In the preliminary phase of these investigations, respondent Shapiro Packaging argued that the 5-percent growth rate that petitioners used in their methodology to adjust official statistics potentially understated U.S. imports of non-laminated sacks because non-laminated sacks were largely or entirely covered by the WTO Agreement on Textiles and Clothing (“ATC”), which expired during the period of investigation (2004), and those U.S. imports of textiles covered by the agreement generally increased after expiration.

On January 1, 2005, the United States eliminated quotas on imports of textiles and apparel from World Trade Organization (“WTO”) countries, as obligated under the ATC. The ATC, which came into effect with the WTO Uruguay Round Agreements in 1995, required that WTO countries eliminate quantitative restrictions on textile and apparel articles in four stages over 10 years.¹⁰ Category 669,¹¹ covering other man-made manufactures including “sacks & bags for packaging goods, of man-made material (polyethylene), weighing less than 1 kg.”¹² was liberalized in stage three of the integration, effective January 1, 2002. Therefore, quotas on imports of materials included in category 669 expired before the period of investigation and the data from HTS statistical reporting number 6305.33.0020 from China would not show any changes related to the ATC.

China became eligible for quota liberalization for all categories integrated in phases one and two of the integration, as well as items scheduled for future integration, upon its accession to the WTO in 2001. Under the provisions of China’s accession agreement, the United States and other WTO countries may invoke temporary “safeguards” (or quotas) on imports of Chinese textiles and apparel that are, owing

¹⁰ The ATC superseded the Multifiber Arrangement (“MFA”), an arrangement negotiated under the auspices of the General Agreement on Tariffs and Trade (“GATT” 1947) that governed world trade in textiles and apparel and permitted importing countries to establish quotas on such goods outside normal GATT rules during 1974-94. The United States continues to maintain quotas on non-WTO countries.

¹¹ To administer the U.S. textile and apparel quota program, articles are grouped under 3-digit category numbers, which cover many 10-digit statistical reporting numbers under which goods are classified in the HTS. The category system was designed to simplify monitoring of textile and apparel imports by aggregating several thousand statistical reporting numbers into larger, more manageable categories.

¹² Category 669 covers other man-made manufactures classified in 21 separate 10-digit statistical reporting numbers in the HTS. Only one of these statistical reporting numbers, 6305.33.0020, includes imports of any subject product. However, the primary subject import from China is made from PP, not PE, and falls outside of the range of products included in category 669. Both petitioners and respondents agreed that there are only minimal, if any, PE LW sacks in the domestic market. Conference transcript (Bazbaz), pp. 99-100 and (Corman), pp. 209-210.

to market disruption, threatening to impede the orderly development of trade in such goods.¹³ The China textile safeguard provision is available until December 31, 2008. While the United States has initiated a number of safeguard cases against imports of textile and apparel products from China, a case has never been initiated nor requested for goods under category 669.¹⁴

NEGLIGENCE

The Tariff Act of 1930 provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports during the most recent 12 months for which data are available preceding the filing of the petition.¹⁵ The share (in *percent*) of the total quantity of U.S. imports from China for the period of January to December 2006, the most recent 12-month period preceding the filing of the petition for which data are available, using petitioners' methodology for the computation of U.S. imports from China, was *** percent, well above the 3 percent negligibility threshold.

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of LW sacks are presented in table IV-5. From 2005 to 2007, the quantity of apparent U.S. consumption of LW sacks increased by *** percent. The value of apparent U.S. consumption from 2005 to 2007 increased by *** percent. Questionnaire respondents indicated that reasons for the substantial increase in demand include LW sacks' greater durability, improved print graphics, and price competitiveness compared with products such as multi-wall paper sacks.

¹³ The safeguard provision covers all products subject to the ATC as of January 1, 1995.

¹⁴ U.S. Department of Commerce, International Trade Administration, Office of Textiles and Apparel.

¹⁵ 19 U.S.C. § 1677(24)(A)(ii).

Table IV-5
LW sacks: U.S. shipments of domestic product, U.S. imports by sources, and apparent U.S. consumption, 2005-07

Item	Calendar year		
	2005	2006	2007
Quantity (1,000 sacks)			
U.S. producers' U.S. shipments	14,190	26,075	51,411
U.S. imports from--			
China	112,262	153,182	234,368
All other countries	***	***	***
Total imports	***	***	***
Apparent U.S. consumption	***	***	***
Value (\$1,000)			
U.S. producers' U.S. shipments	7,682	15,692	30,656
U.S. imports from--			
China	26,746	39,025	58,147
All other countries	***	***	***
Total imports	***	***	***
Apparent U.S. consumption	***	***	***
Source: Compiled from data submitted in response to Commission questionnaires and adjusted Commerce statistics.			

U.S. MARKET SHARES

Data on U.S. market shares for LW sacks are presented in table IV-6. From 2005 to 2007, U.S. producers gained *** percentage points of market share based on quantity and *** percentage points based on value. U.S. imports from China lost *** percentage points of U.S. market share during 2005-07 based on quantity and *** percentage points based on value. From 2005 to 2007, the market share of U.S. imports from nonsubject countries increased by *** percentage points based on quantity and by *** percentage points based on value.

Table IV-6
LW sacks: Apparent U.S. consumption and market shares, 2005-07

* * * * *

RATIOS OF IMPORTS TO U.S. PRODUCTION

Data on the ratios of imports to U.S. production of LW sacks are presented in table IV-7.

Table IV-7

LW sacks: U.S. production, U.S. imports, and ratios of imports to production, 2005-07

Item	Calendar year		
	2005	2006	2007
Quantity (1,000 sacks)			
U.S. production	15,240	28,287	52,231
U.S. imports from--			
China	112,262	153,182	234,368
All other countries	***	***	***
Total imports	***	***	***
Ratio of imports to U.S. production (percent)			
U.S. imports from--			
China	736.6	541.5	448.7
All other countries	***	***	***
Total imports	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires and adjusted Commerce statistics.

CRITICAL CIRCUMSTANCES¹⁶

In its final determinations, Commerce made affirmative critical circumstances determinations with regard to U.S. imports from the “separate rate” Chinese producers, citing massive increases (increasing 15 percent or more in a “relatively short period”). Commerce made negative critical circumstances determinations with regard to U.S. imports from “all other” Chinese producers (those under the PRC-wide rate).¹⁷ Therefore, Commerce determined that critical circumstances existed for U.S. imports from the following Chinese producers:

- (1) Han Shing Chemical Co., Ltd. (also known as Han Shing Bulk Bag Co., Ltd.)
- (2) Ningbo Yong Feng Packaging Co., Ltd.
- (3) Zibo Aifudi Plastic Packaging Co., Ltd.

¹⁶ Petitioners have stated to the Commission that they “do not believe that a finding of critical circumstances is appropriate in this case.” Petitioners’ prehearing brief, p. 21 n. 70; Hearing transcript, p. 134 (Dorn). Respondent Shapiro Packaging did submit a posthearing brief, solely arguing that the Commission not make an affirmative critical circumstances determination.

¹⁷ *Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639, June 24, 2008; *Laminated Woven Sacks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances*, 73 FR 35646, June 24, 2008.

- (4) Polywell Industrial Co. (also known as First Way (H.K.) Limited)
- (5) Zibo Linzi Worun Packing Product Co., Ltd.
- (6) Shandong Qikai Plastics Product Co., Ltd.
- (7) Changle Baodu Plastic Co., Ltd.
- (8) Zibo Linzi Shuaiqiang Plastics Co., Ltd.
- (9) Zibo Linzi Qitianli Plastic Fabric Co., Ltd.
- (10) Shandong Youlian Co., Ltd.
- (11) Zibo Linzi Luitong Plastic Fabric Co., Ltd.
- (12) Wenzhou Hotson Plastics Co., Ltd.
- (13) Jiangsu Hotson Plastics Co., Ltd.
- (14) Cangnan Color Make the Bag Co., Ltd.
- (15) Zibo Qigao Plastic Cement Co., Ltd.
- (16) Shandong Qilu Plastic Fabric Group., Ltd.
- (17) Shangdong Shouguang Jianyuan Chun Co., Ltd/ Shangdong Longxing Plastic Products, Co., Ltd.

If the Commission determines that an industry in the United States is materially injured by reason of imports of LW sacks from China, it must further determine “whether the imports subject to the affirmative {Commerce critical circumstances} determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.”¹⁸ The statute further provides that in making this determination, the Commission shall consider:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.¹⁹

Monthly import data and end-of-period inventories of imports from reporting U.S. importers for the period before and after the filing of the petition (January 2007-June 2007 and July 2007-December 2007), are presented in tables IV-8 and IV-9.

Table IV-8
LW sacks: U.S. imports from reporting Chinese producers subject to Commerce’s preliminary affirmative critical circumstances determination, January 2007-December 2007

* * * * *

Table IV-9
LW sacks: End-of-period inventories from reporting Chinese producers subject to Commerce’s preliminary affirmative critical circumstances determination

* * * * *

¹⁸ Section 735(b)(4)(A)(i) of the Act (19 U.S.C. § 1673d(b)(4)(A)(i)).

¹⁹ Section 735(b)(4)(A)(ii) of the Act (19 U.S.C. § 1673d(b)(4)(A)(ii)).

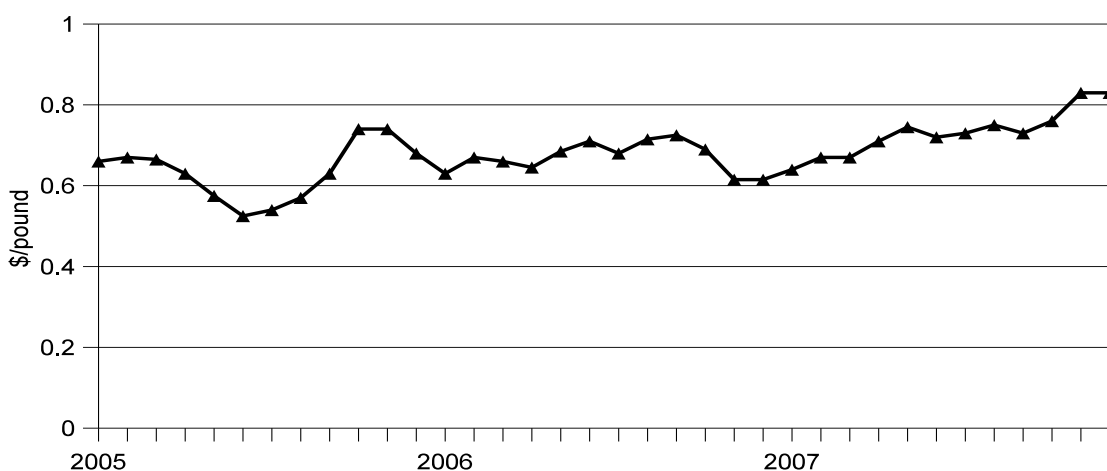
PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Materials

Raw material costs as a share of total COGS increased from 55.2 percent in 2005 to 62.0 percent in 2007. Polypropylene (or polypropylene resin) is one of the primary raw materials used in the production of LW sacks, making up about 60 to 70 percent of the cost of production according to respondents.¹ As shown in figure V-1, the CMAI (Chemical Markets Associates, Inc.) polypropylene price index fluctuated over the period January 2005-December 2007, increasing overall by about 26 percent. As shown in figure V-2, the Plastic News' reported price of polypropylene increased by about 38 percent between January 10, 2005 and November 19, 2007. U.S. producers' raw materials cost per LW sack increased from \$0.27 in 2005 to \$0.35 in 2007.

Figure V-1
Polypropylene prices: CMAI price index of U.S. polypropylene, Raffia Grade Bulk, by month, January 2005-December 2007



Source: CMAI price index (from petitioners' prehearing brief, exhibit 13).

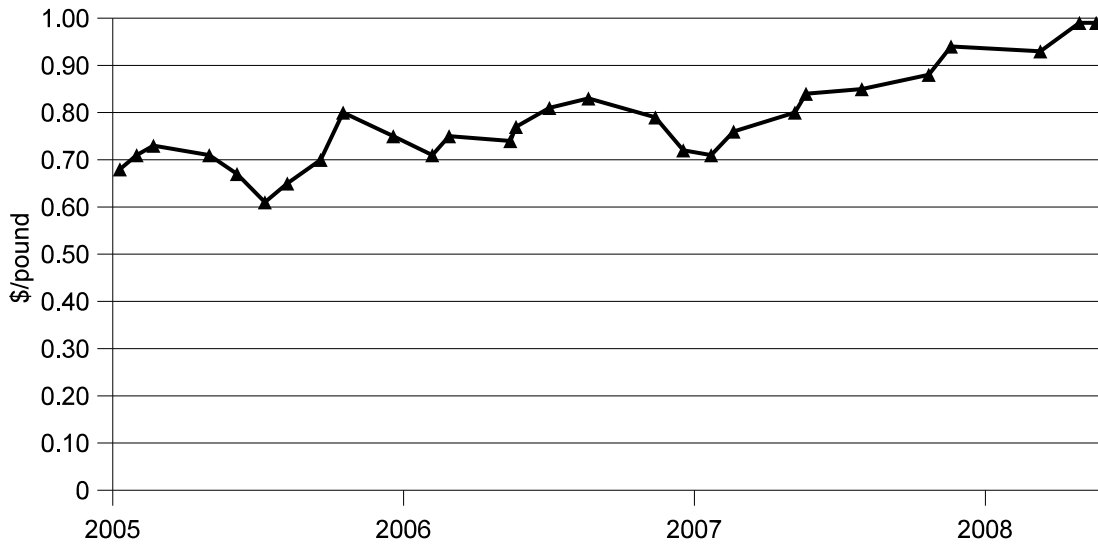
Transportation Costs to the U.S. Market

Transportation costs for LW sacks from China to the United States (excluding U.S. inland costs) in 2007 are estimated to be equivalent to between 9.0 and 9.5 percent of the customs value for subject product from China. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.²

¹ Conference transcript, p. 142 (Zhu).

² These estimates are based on HTS statistical reporting numbers 6305.33.0020 for the first half of 2007 and 6305.33.0050 and 6305.33.0080 for the second half of 2007.

Figure V-2
Polypropylene prices: Homopolymer Injection GP, by change date, January 2005-May 2008



Source: Plastics News.

U.S. Inland Transportation Costs

The five responding U.S. producers reported that U.S. inland transportation costs generally ranged from 1 to 6 percent of the total delivered cost of LW sacks.³ Reported U.S. inland transportation costs ranged from 0.67 to 33.5 percent for the responding importers, with all but three importers reporting transportation costs of 10.8 percent or less. *** of six responding U.S. producers and *** of 18 responding importers reported that their firm arranged for transportation.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese currency appreciated by 15.6 percent relative to the U.S. dollar from the first quarter of 2005 to the first quarter of 2008 (figure V-3).

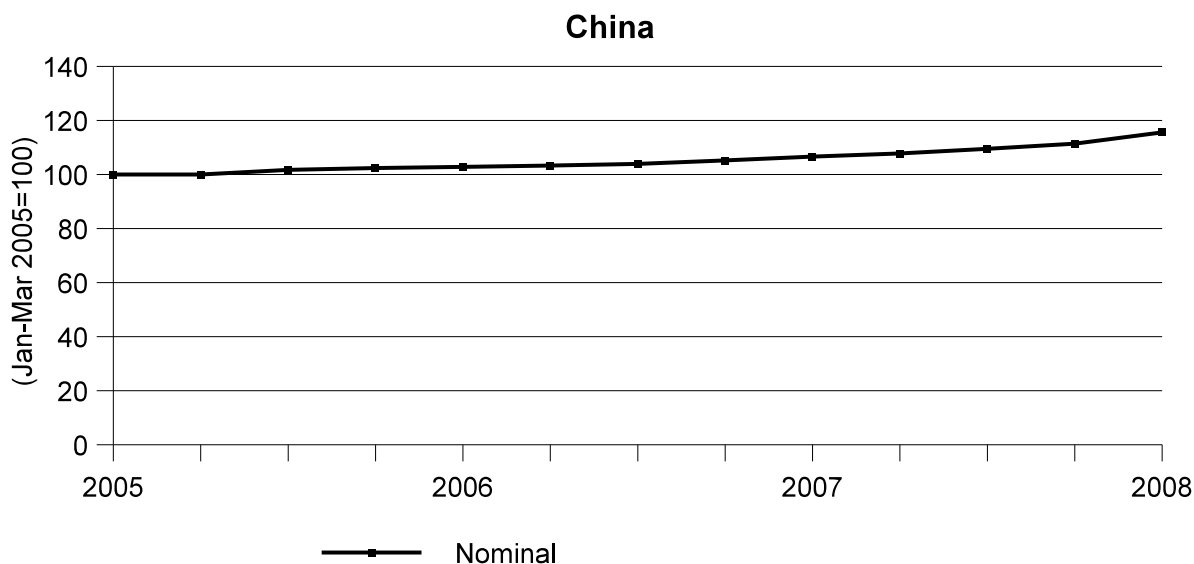
PRICING PRACTICES

Pricing Methods

Most producers and importers sold LW sacks on a spot basis. *** of six responding producers and *** of 18 responding importers reported making all of their sales on spot basis. An additional *** importers reported making at least 75 percent of their sales on a spot basis. *** of 18 responding importers reported making at least 75 percent of their sales on a short-term contract basis. The ***

³ One U.S. producer, ***, reported that U.S. inland transportation costs accounted for 100 percent of the delivered price of LW sacks.

Figure V-3
Exchange rates: Index of the nominal exchange rate of the currency of China relative to the U.S. dollar, by quarters, January-March 2005-January-March 2008



Source: International Monetary Fund, *International Financial Statistics* online, <http://imfstatistics.org/imf>, retrieved May 12, 2008.

reported making 80 percent of its sales on a long-term contract basis. *** that reported selling on a short-term contract basis, reported that the average duration of its contracts was ***. Most responding importers reported short-term contract durations ranging from three to six months, with one importer reporting contracts of 30 to 60 days; prices could not be renegotiated during the contract period, and contracts fixed price and quantity.

Most responding U.S. producers and importers reported that prices are determined on a transaction-by-transaction basis. Many producers and importers specifically reported pricing on a cost-plus-profit-margin basis. Most U.S. producers and importers reported typical sales terms of net 30 days and usually quote prices on a delivered basis. *** of the six responding U.S. producers (***) and *** of 17 responding importers (***) reported offering quantity discounts. *** responding purchasers indicated that there are price leaders in the U.S. market for LW sacks.⁴ No company was named by more than three purchasers as a price leader.

PRICE DATA

The Commission requested U.S. producers and importers of LW sacks to provide quarterly data for the total quantity and net f.o.b. (U.S. point of shipment) value of certain LW sacks that were shipped to unrelated customers in the U.S. market during 2005-07. The products for which pricing data were requested are defined as follows:

Product 1.—Woven polypropylene fabric laminated to biaxially-oriented polypropylene (“BOPP”) reverse-printed film, ink coverage 200 percent, measuring 15" x 3.5" x 27" (plus or

⁴ In addition, seven purchasers responded that there were no price leaders.

in any or all directions), fabric 70 g/m² (plus or minus 6 g/m²), coating 20 g/m² (plus or minus 5 g/m²), film 22 g/m² (plus or minus 6 g/m²).

Product 2.—Woven polypropylene fabric laminated to biaxially-oriented polypropylene (“BOPP”) reverse-printed film, ink coverage 200 percent, measuring 16" x 6" x 39" (plus or minus 1 inch in any or all directions), fabric 80 g/m² (plus or minus 8 g/m²), coating 20 g/m² (plus or minus 5 g/m²), film 22 g/m² (plus or minus 6 g/m²).

Product 3.—Woven polypropylene fabric laminated to biaxially-oriented polypropylene (“BOPP”) reverse-printed film, ink coverage 200 percent, measuring 13" x 2" x 24" (plus or minus 1 inch in any or all directions), fabric 75 g/m² (plus or minus 6 g/m²), coating 20 g/m² (plus or minus 5 g/m²), film 25 g/m² (plus or minus 6 g/m²).

Four U.S. producers and 12 importers of LW sacks from China provided usable pricing data for sales of the requested products, although not all firms reported pricing for all quarters.⁵ Pricing data are presented in tables V-1 to V-3 and figure V-4. Reported pricing data accounted for *** percent of the quantity of U.S.-produced LW sacks during 2007 and *** percent of LW sacks imported from China. Pricing data reported for imports of LW sacks from nonsubject countries are shown in appendix D.

Price Trends

With the exception of Chinese product 2, average prices for all price products decreased overall between the first quarter of 2005 and the fourth quarter of 2007. The weighted-average prices for U.S. and Chinese product 1 fell by *** percent and *** percent, respectively, and the weighted-average prices for U.S. and Chinese product 3 fell by *** percent and *** percent, respectively. The price for U.S. product 2 decreased by *** percent while the price of Chinese product 2 increased by *** percent. Figure V-5 compares quarterly price indices of prices for the main raw material, polypropylene, and the U.S. producers’ price products.

Price Comparisons

Prices of imported Chinese products 1-3 were lower than prices of U.S. products 1-3 in all 31 quarters for which price comparisons were available. Margins of underselling were relatively high for all comparisons, ranging from 18.9 percent to 57.9 percent. Prices of imported Chinese product 1 were lower than prices of U.S. product 1 in 11 quarters by margins ranging from 27.5 percent to 48.3 percent. Prices of imported Chinese product 2 were lower than prices of U.S. product 2 in 11 quarters by margins ranging from 18.9 percent to 53.8 percent. Prices of imported Chinese product 3 were lower than prices of U.S. product 3 in nine quarters by margins ranging from 40.0 percent to 57.9 percent.

Respondents claim that comparisons of prices for U.S.-produced and Chinese products 1 through 3 are not evidence of price differences because U.S. producers earn a premium for their lead time advantage and that U.S. producers sell a significantly greater share of tubular sacks than Chinese importers’ vertical back seam LW sacks which packagers do not regard as fully interchangeable with

⁵ In addition, U.S. producer *** submitted price data for product 1 which it indicated was “paper print substrate rather than BOPP film but otherwise the same and fully competitive.” These data were not included since it was not BOPP film as specified in the price product definition. Also, U.S. producer *** submitted price data for product 1 which it indicate “does not exactly meet the product specifications but is competitive with the specified product.” These data were not included since its height is *** inches *** than specified in the product definition.

Table V-1

LW sacks: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, 2005-07

Period	United States		China		
	Price (per 1,000 sacks)	Quantity (1,000 sacks)	Price (per 1,000 sacks)	Quantity (1,000 sacks)	Margin (percent)
2005:					
Jan.-Mar.	\$***	***	\$***	***	***
Apr.-June	***	***	***	***	***
July-Sept.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2006:					
Jan.-Mar.	-	-	315	1,193	-
Apr.-June	***	***	***	***	***
July-Sept.	***	***	304	1,769	***
Oct.-Dec.	***	***	***	***	***
2007:					
Jan.-Mar.	***	***	***	***	***
Apr.-June	***	***	280	2,263	***
July-Sept.	***	***	***	***	***
Oct.-Dec.	***	***	279	3,933	***

Product 1: Woven polypropylene fabric laminated to biaxially-oriented polypropylene ("BOPP") reverse-printed film, ink coverage 200 percent, measuring 15" x 3.5" x 27" (plus or minus 1 inch in any or all directions), fabric 70 g/m2 (plus or minus 6 g/m2), coating 20 g/m2 (plus or minus 5 g/m2), film 22 g/m2 (plus or minus 6 g/m2).

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

Table V-2

LW sacks: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, 2005-07

Period	United States		China		
	Price (per 1,000 sacks)	Quantity (1,000 sacks)	Price (per 1,000 sacks)	Quantity (1,000 sacks)	Margin (percent)
2005:					
Jan.-Mar.	\$***	***	\$***	***	***
Apr.-June	***	***	***	***	***
July-Sept.	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***
2006:					
Jan.-Mar.	***	***	458	292	***
Apr.-June	***	***	***	***	***
July-Sept.	***	***	397	98	***
Oct.-Dec.	***	***	542	123	***
2007:					
Jan.-Mar.	***	***	470	70	***
Apr.-June	***	***	329	163	***
July-Sept.	***	***	-	-	-
Oct.-Dec.	***	***	***	***	***

Product 2: Woven polypropylene fabric laminated to biaxially-oriented polypropylene ("BOPP") reverse-printed film, ink coverage 200 percent, measuring 16" x 6" x 39" (plus or minus 1 inch in any or all directions), fabric 80 g/m2 (plus or minus 8 g/m2), coating 20 g/m2 (plus or minus 5 g/m2), film 22 g/m2 (plus or minus 6 g/m2).

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

Table V-3

LW sacks: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, 2005-07

* * * * *

Figure V-4

LW sacks: Weighted-average prices of products 1-3, by quarters, 2005-07

* * * * *

Figure V-5

LW sacks: Price indices of polypropylene and U.S. products 1-3, by quarters, 2005-07

* * * * *

vertical back seam LW sacks on their equipment.⁶ Respondents also indicate that the tubular LW sacks are sold to a different segment of customers than vertical-back seam LW sacks.⁷

LOST SALES AND LOST REVENUES

Petitioners provided a list of *** alleged lost sales to Chinese competitors totaling \$*** since January 2004.⁸ In addition, petitioners alleged another *** of lost revenue attributable to lower prices on retained contracts due to competition from Chinese producers.⁹ Staff contacted the *** purchasers cited in the allegations; *** responded. The results are summarized in tables V-4 and V-5 and are discussed below.

*** disagreed with *** lost sales allegations involving ***. *** stated that “I have no recollection of our taking product like this out for bid, and it appears that all aspects of this allegation are incorrect. The described product does not represent a bag that the *** would have purchased. ***. The alleged Chinese price is also incorrect, since, as far as I have been able to determine, *** Chinese laminated woven sacks at prices this low.” *** further reported that “*** began to move business from domestic paper sacks to poly bags several years ago when approached by importers representing Chinese manufacturers. These importers were successful in promoting the benefits of using poly bags. At that time, we were not aware of any domestic manufacturers of poly bags. The increase in imports of poly bags from China during the past several years reflects this shift in product type.”

*** also stated that “If this case is successful, the domestic producers that are likely to benefit the most are producers of paper bags rather than producers of poly bags. Given the interchangeability of paper and poly bags, *** would need to consider changing back to using paper for most applications if the price of poly bags significantly increases relative to paper bags. Also, domestic producers of poly bags are unable to supply all of ***’s needs so shifting all of our purchases to domestic poly bags is not an option.”

⁶ Conference transcript, pp. 144-145 (Boltuck).

⁷ Conference transcript, pp. 224-225 (Boltuck). However, despite specific queries from staff, respondents did not provide suggestions for additional price products or customer segments to the Commission for the final phase questionnaires.

⁸ ***.

⁹ ***.

Table V-4
LW sacks: U.S. producers' lost revenue allegation

* * * * *

Table V-5
LW sacks: U.S. producers' lost sales allegations

* * * * *

*** lost sales allegations involving ***. He indicated that \$*** per 1,000 bags is much too high for this market and that he has received quotes from domestic producers other than *** in the \$*** to \$*** range for the same quality, same print, and same construction. He feels that *** is using the case to justify inflated (unrealistic) margins in a very competitive industry and that as more domestic production becomes available prices will drop even closer to import prices and are already within ten percent. *** also indicates that ***'s customers are not willing to pay 20 to 30 percent for the bag cost component of their finished products. He indicated that although *** was the only option for few months, any sales they lose will be to domestic or non-China producers.

*** was named by *** in *** lost sales allegations valued at \$***. *** reported that *** declined its offers, citing the availability of lower-priced imports from China. *** reported that, ***, *** stated that "All our purchases of said sacks have been made using ***."

*** indicated that *** is unable to either agree or disagree with the allegation because the information provided is too vague to enable *** to determine the transaction being referred to. He indicated that in general, *** decisions regarding purchases of LW sacks are based on a number of factors in addition to price including, but not limited to print quality, position of seams, bag rigidity to process through *** production equipment, sewing processes used, delivery lead time, order minimums, and graphic assistance.

*** disagreed with *** involving his company. Regarding the *** LW sack allegation, *** reported that "***. Until a manufacturer has a proven record (several years of significant volume of similar product of quality and service level) I cannot entrust my package requirements to them. The economic consequences of poor quality and/or service level are severe. In addition, I was not convinced that ***." Regarding the *** allegation, *** indicated that while the quantities and price are not accurate they represent directionally the pricing status of the packaging options that he was looking at and that the gap portrayed is wider than it really was. He indicated the project started with their largest customer requesting his company to change packaging from conventional multiwall bags to poly-woven bags. *** indicated that the supplier chosen (***) had good, but not the lowest, pricing and had proven track record of supplying the same type of package for a couple of years and that the other companies either did not make a comparable bag, had not been making poly-woven bags for a long enough time, or were planning on importing the bags themselves.

*** disagreed with *** lost sales allegations involving his company. *** reported that *** sources LW sacks from both domestic and foreign sources, but does not procure from China. *** reported that, since January 1, 2004, *** did not switch purchases of LW sacks from U.S. producers to suppliers of LW sacks imported from China. *** further stated, since *** does not purchase LW sacks from China, he cannot say whether domestic suppliers reduced their prices in order to compete with China. However, *** stated that he believes that global competition has resulted in price pressures on all producers.

*** disagreed with the lost sales allegation involving his company. He indicated that he was only requesting a quote for a second source and did not purchase any bags based on their quote from *** or another vendor.

*** did not address ***. However, *** reported that *** had switched purchases of LW sacks from U.S. producers to suppliers of LW sacks imported from China due to price. *** also reported that "In addition to price, *** were absorbed by the Chinese printer."

*** did not respond to the allegation involving his company, but indicated that his company is buying product from ***, characterizing it as an “American company.” However, according to their importer questionnaire, *** only imports LW sacks from China and *** was its ***.

*** disagreed with the *** allegations involving his company. He indicated that his company started purchasing imported LW sacks to help meet demand (he also indicated that his company’s purchases of U.S. produced LW sacks increased between 2005 and 2007) and because these LW sacks were produced with a printed polyethylene outer ply and in the past U.S. suppliers could only use paper for the printed outerply. *** indicated that the print quality is much better for the printed polyethylene LW sacks from China than for the printed paper LW sacks produced in the United States. He also indicated that pricing of the LW sacks imported from China was normally attractive, but not the only reason why they were chosen.

*** disagreed with *** lost sales allegations involving his company. He indicated that since his company received quotes from a dozen different sources since 2004, it is extremely difficult to surmise which piece of business the allegations refer to. For the allegation dated ***, he indicated that the alleged rejected quote is greater than the U.S. source that *** uses and therefore if the sale was lost, it was lost to a supplier of U.S. product. For the allegation dated ***, he indicated that to *** never “specs” the *** product and therefore cannot determine which item the allegation is referring to. For the allegation dated the ***, he indicated that while the product specified does not match any item that his company uses, it is similar to some ***. He indicated that *** only purchased *** of these bags in total from China in 2006, much less than the *** LW sacks in the allegation.

*** agreed with *** allegations involving his company. *** did not know whether U.S. producers reduced their prices of LW sacks in order to compete with prices of LW sacks imported from China, but reported that its U.S. supplier was resistant to reducing its specifications to match the quality of the Chinese product (i.e., ***). However, *** the lost sales allegation involving ***. He indicated that he met with *** to determine its viability as a backup supplier to his domestic supplier, ***. *** indicated that also he allowed them to make some quotations out of due diligence, he never got any further and never gave them a purchase order.

*** disagreed with the lost sales allegation involving ***. *** indicated that the sale was lost to a production quality issue and that production workers complained about the stiffness of the material, making it harder and slower to handle and to sew shut and thus wasting costly production time.

*** disagreed with the lost sales allegation involving his company. He indicated that he can find no record for this type of offer being made and that while the \$*** per 1,000 sack price was in line with what was being offered in the marketplace at the time, the volume was much too large.¹⁰

*** disagreed with the *** lost sales allegations involving ***. *** indicated that *** received domestic quotes of \$*** per 1,000 sacks which were much lower than the prices provided in the allegations (\$*** and \$*** per 1,000 sacks). *** provided an email from ***, a few weeks before the allegation. *** also indicated that it can be costly to switch manufacturers due to the cost of new printing plates and that even if domestic pricing was equal to the import price, *** may not have switched because of the plate charges.

*** indicated that sales cited in the lost sales allegation involving his company was lost due to both competitive pricing and better quality of Chinese imports of laminated sacks purchased by his company. He stated that the Chinese product was a stronger bag and also had high level of print quality.¹¹

*** disagreed with the *** lost sales allegations involving his company. He indicated that the sales decision is not based solely on price and that service, quality, and origin are considered as well. He stated that pricing this year went up drastically in the U.S. and it appears that U.S. companies are raising prices because of this investigation because import sources are limited.

¹⁰ Phone conversation with ***, May 20, 2008.

¹¹ Phone conversation with ***, June 5, 2008.

PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

BACKGROUND

Six U.S. producers (Bancroft, Coating Excellence, Hood, Mid-America, Polytex, and SeaTac) provided usable financial data on their operations on LW sacks.^{1 2} These data are believed to account for the large majority of U.S. production of LW sacks in 2007. No firms reported internal consumption or transfers to related firms. All firms *** reported a fiscal year end of December 31, and all firms except *** reported GAAP as their accounting basis.³

OPERATIONS ON LW SACKS

Income-and-loss data for U.S. producers on their LW sacks operations are presented in table VI-1. Selected company-specific financial data are presented in table VI-2. Operating losses occurred in each period for which data were collected despite increases in both net sales quantity and value during this period. The reported net sales quantity more than tripled from 2005 to 2007, while the net sales values quadrupled during this timeframe. The industry experienced an increase in the overall operating loss from 2005 to 2006 followed by a decline in the operating loss from 2006 to 2007; however, the aggregate operating loss in 2007 was still higher than in 2005.

On a per-unit basis, net sales values increased by \$0.06 from 2005 to 2007, while the per-unit cost of goods sold (“COGS”) irregularly increased by \$0.08 and selling, general, and administrative (“SG&A”) expenses irregularly decreased by less than \$0.02 during this timeframe.⁴ Taken together, the slightly larger increase in per-unit costs and expenses as compared to revenue resulted in a slight increase in the per-unit operating loss in 2007 as compared to 2005, and a 1.2-percentage point increase in the operating loss as a percentage of sales.

During the period for which data were collected, raw material costs showed the greatest increase within COGS on a per-unit basis and as a percentage of sales, and were the primary factor behind the increase in COGS during this time frame. As previously stated, per-unit SG&A expenses declined slightly from 2005 to 2007; however, such expenses represented 11.8 percent of total operating costs and expenses during this timeframe, and contributed substantially to the reported operating loss in all periods.⁵

From 2006 to 2007, *** of the five reporting U.S. producers operating in both years reported a decreased operating loss or increased operating income, while *** (***) reported an increased operating loss or decline from an operating profit to a loss. ***. ***.⁶

¹ U.S. producer La Pac did not provide a questionnaire response.

² Commission staff verified the U.S. producers’ questionnaire response of ***, and the results of the verification are incorporated in this report.

³ ***.

⁴ From 2005 to 2006, per-unit COGS increased by \$0.13 and per-unit SG&A expenses increased by \$0.02. From 2006 to 2007, per-unit COGS decreased by \$0.05 and per-unit SG&A expenses decreased by nearly \$0.04.

⁵ ***. At the conference, Polytex provided a similar explanation for its *** SG&A expenses (conference transcript, pp. 94-96).

⁶ ***.

Table VI-1
LW sacks: Results of operations of U.S. producers, fiscal years 2005-07

Item	Fiscal year		
	2005	2006	2007
	Quantity (1,000 sacks)		
Total net sales	14,190	25,838	52,319
	Value (\$1,000)		
Total net sales	7,681	15,581	31,312
Cost of goods sold	6,889	15,915	29,559
Gross profit	792	(333)	1,753
SG&A expense	1,093	2,560	3,357
Operating income or (loss)	(301)	(2,893)	(1,604)
Other income or (expense), net	(75)	(1,114)	(2,992)
Net income or (loss)	(376)	(4,007)	(4,595)
Depreciation	260	897	1,593
Cash flow	(116)	(3,110)	(3,002)
	Ratio to net sales (percent)		
Cost of goods sold:			
Raw materials	49.5	53.3	58.5
Direct labor	24.9	25.8	17.0
Other factory costs	15.3	23.1	18.9
Average COGS	89.7	102.1	94.4
Gross profit	10.3	(2.1)	5.6
SG&A expenses	14.2	16.4	10.7
Operating income or (loss)	(3.9)	(18.6)	(5.1)
Net income or (loss)	(4.9)	(25.7)	(14.7)
	Unit value (per sack)		
Total net sales	\$0.54	\$0.60	\$0.60
Cost of goods sold:			
Raw materials	0.27	0.32	0.35
Direct labor	0.13	0.16	0.10
Other factory costs	0.08	0.14	0.11
Average COGS	0.49	0.62	0.57
Gross profit	0.06	(0.01)	0.03
SG&A expenses	0.08	0.10	0.06
Operating income or (loss)	(0.02)	(0.11)	(0.03)
Net income or (loss)	(0.03)	(0.16)	(0.09)
	Number of companies reporting		
Operating losses	***	***	***
Data	3	5	6
Source: Compiled from data submitted in response to Commission questionnaires.			

Table VI-2
LW sacks: Selected results of operations of U.S. producers, by firm, fiscal years 2005-07

* * * * *

In contrast to other reporting firms, ***.⁷

U.S. producers were asked to provide the percentages of variable costs and fixed costs for their reported COGS and SG&A expenses in each period for which data were requested. This information, along with the reporting firms' profit-and-loss data, was used to calculate the breakeven point (the sales quantity necessary to achieve a zero operating profit for LW sacks operations) for each period for which data were requested.

Aggregate data reveal that variable costs accounted for 73.7 to 80.2 percent of total operating costs during the period of investigation, and in all periods for which data were requested, U.S. producers as a whole were able to cover all of their reported variable costs and a portion of their reported fixed costs. From 2005 to 2007, the coverage of fixed costs irregularly increased from 80.9 percent in 2005 to 81.5 percent in 2007 after declining to 39.7 percent in 2006. For example, in 2007, variable operating costs were \$24.2 million and fixed operating costs were \$8.7 million. Since revenues were \$31.3 million, \$7.1 million (revenues of \$31.3 million minus variable costs of \$24.2 million) were available to cover the fixed portion of operating costs.

Based on a standard breakeven formula (total fixed cost divided by per-unit sales price minus per-unit variable cost),⁸ breakeven volumes based on U.S. producers' aggregate reported financial data would be 17.5 million sacks in 2005, 65.1 million sacks in 2006, and 64.2 million sacks in 2007.

A variance analysis for LW sacks is presented in table VI-3. The information for this variance analysis is derived from table VI-1. The analysis shows that the decline in operating income from 2005 to 2007 is primarily attributable to the unfavorable net cost/expense variance, which was greater than the favorable price variance. The anomalous unfavorable volume variance reflects the fact that the starting point for the variance analysis - 2005 - is a year in which the industry incurred an operating loss.

⁷ ***.

⁸ *Cost Accounting, A Managerial Emphasis*, Charles T. Horngren, Srikant M. Datar, George Foster, Prentice Hall, 2003, p. 65.

Table VI-3**LW sacks: Variance analysis on the operations of U.S. producers, fiscal years 2005-07**

Item	Fiscal year		
	2005-07	2005-06	2006-07
Value (\$1,000)			
Total net sales:			
Price variance	2,990	1,594	(238)
Volume variance	20,641	6,306	15,969
Total net sales variance	23,631	7,900	15,731
Cost of sales:			
Cost variance	(4,157)	(3,370)	2,667
Volume variance	(18,513)	(5,656)	(16,311)
Total cost variance	(22,670)	(9,025)	(13,644)
Gross profit variance	961	(1,125)	2,087
SG&A expenses:			
Expense variance	673	(570)	1,826
Volume variance	(2,937)	(897)	(2,623)
Total SG&A variance	(2,264)	(1,467)	(797)
Operating income variance	(1,303)	(2,592)	1,290
Summarized as:			
Price variance	2,990	1,594	(238)
Net cost/expense variance	(3,484)	(3,939)	4,493
Net volume variance	(809)	(247)	(2,965)
Note.--Unfavorable variances are shown in parenthesis; all others are favorable.			
Source: Compiled from data submitted in response to Commission questionnaires.			

VALUE ADDED

The domestic value added by U.S. producers as a percentage of total processing costs is presented in table VI-4. The analysis of value added shows two ratios: (A) a ratio of reported domestic conversion costs (costs other than imported raw material costs, which are primarily labor, overhead, and raw materials other than woven fabric (e.g., BOPP film, inks, paper, and resins)) to reported total costs excluding SG&A expenses; and (B) a ratio of reported domestic conversion costs to reported total costs including SG&A expenses.⁹

⁹ *** reporting U.S. producers indicated some foreign content (primarily woven fabric from China, Colombia, and/or India) as part of their raw material costs. In the aggregate, foreign content represented 16 percent of total production costs (excluding SG&A expenses) in 2007. A separate examination of 2007 domestic production costs (excluding foreign content and SG&A expenses) reveals the following: U.S.-produced woven fabric represented 13 percent of 2007 domestic production costs, U.S.-produced raw materials other than woven fabric represented 42 percent of such costs, direct labor represented 21 percent of such costs, and other factory costs represented 24 percent of such costs.

Table VI-4
LW sacks: Value added by U.S. producers, by firms, fiscal year 2007

* * * * *

ASSETS AND RETURN ON INVESTMENT

The Commission’s questionnaire requested data on assets used in the production, warehousing, and sale of LW sacks to compute return on investment (“ROI”). Although ROI can be computed in many different ways, a commonly used method is income divided by total assets. Therefore, ROI is calculated as operating income divided by total assets used in the production, warehousing, and sale of LW sacks.

Data on the U.S. producers’ total assets and their ROI are presented in table VI-5. The total assets utilized in the production, warehousing, and sale of LW sacks increased from \$9.0 million in 2005 to \$31.8 million in 2007. The ROI was negative throughout the period of investigation, declining from negative 3.3 percent in 2005 to negative 11.0 percent in 2006 before improving by 6.0 percentage points to negative 5.0 percent in 2007.

Table VI-5
LW sacks: U.S. producers’ total assets and return on investment, fiscal years 2005-07

Item	Fiscal year		
	2005	2006	2007
Value of assets:	Value (\$1,000)		
Current assets:			
Cash and equivalents	94	277	1,149
Accounts receivable, net	1,945	3,820	6,414
Inventories	2,143	7,799	8,321
Other	403	603	670
Total current assets	4,585	12,499	16,555
Property, plant and equipment:			
Original cost	13,787	24,701	26,307
Less: accumulated depreciation	9,399	10,827	11,109
Equals: book value	4,389	13,874	15,199
Other non-current assets	23	16	32
Total assets	8,997	26,389	31,785
Operating income or (loss)	(301)	(2,893)	(1,604)
Share (percent)			
Return on investment	(3.3)	(11.0)	(5.0)
Source: Compiled from data submitted in response to Commission questionnaires.			

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Capital expenditures and research and development (“R&D”) expenses are shown in table VI-6. Firm-by-firm net sales values and capital expenditures for the period for which data were requested are presented in table VI-7.¹⁰ Five firms reported capital expenditures and R&D expenses during the period for which data were requested. ***. ***.

Table VI-6

LW sacks: Capital expenditures and research and development expenses of U.S. producers, fiscal years 2005-07

* * * * *

Table VI-7

LW sacks: Net sales values and capital expenditures of U.S. producers, by firm, combined fiscal years 2005-07

* * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of LW sacks from China on their firms’ growth, investment, ability to raise capital, development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments. Their responses are shown in appendix E.

¹⁰ In footnote 141 of the Commission’s opinion in the preliminary phase of these investigations, the Commission stated that in any final phase investigations, it would explore in more detail “some of the divergences between domestic producers in terms of their total capital expenditures for the period of investigation as compared to their total net sales value.”

PART VII: THREAT CONSIDERATIONS

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

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

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

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

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

(V) inventories of the subject merchandise,

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

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

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

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²

Information on the nature of the subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN CHINA

The Commission requested data from 40 firms which were listed in the petition and believed to produce LW sacks in China during the period of investigation.³ The Commission received a response from one firm, Shandong Shouguang Jianyuanchun Co., Ltd. ("Shandong"), which claims to account for approximately *** percent of Chinese production of LW sacks and *** percent of exports to the United States in 2007.⁴ Shandong began production of tubular LW sacks in *** and vertical seam LW sacks in ***. It began the production of LW sacks laminated with BOPP film in *** and with paper in ***.⁵

Shandong reported that *** percent of its total sales in the most recent fiscal year were sales of LW sacks. In 2007, *** percent of Shandong's total shipments of LW sacks were exported to the United States,⁶ *** percent of its shipments were to its home market, and *** percent of its shipments were to other export markets. From 2005 to 2007, its shipments to the United States increased by *** percent while shipments to its home market and to other markets decreased by *** percent and *** percent,

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

³ Petition, exh. 4. During the preliminary phase of these investigations, a witness testified at the staff conference that there may exist 300 to 400 producers of LW sacks in China, 95 percent of which he believed to be small private-owned businesses concentrated on the Chinese home market and not export-oriented. Conference transcript, pp. 207-208 (Zhu); respondent Shapiro Packaging's postconference brief, exh. 7. He also stated that barriers to entry in China are small, whereby with under \$1 million in investment capital and six months time, a new producer can begin production.

⁴ Wenzhou Hotsun Plastics Co., Ltd. ("Hotsun") provided a questionnaire response to the Commission during the preliminary phase of these investigations, submitted a postconference brief, and is currently represented by counsel who appears on the Commission's APO service list. Hotsun, however, has refused to submit a foreign producer questionnaire in the final phase of these investigations.

⁵ Shandong's foreign producer questionnaire response, pp. 5-6.

⁶ Shandong reported that in 2007, ***. Ibid., p. 6.

respectively. Shandong reported an increase in capacity from 2005 to 2006 of *** percent, but then a decrease of *** percent from 2006 to 2007. Shandong's reported capacity is projected to *** in 2008 and 2009 from its reported 2007 level by *** percent. It has stated that it ***. Its production fluctuated ***, thereby resulting in its *** percent capacity utilization rate throughout the period of investigation.⁷ Shandong reported that its five largest U.S. importers of LW sacks during the period of investigation were: ***.⁸ Table VII-1 presents data for reported production and shipments of LW sacks for Shandong.

Table VII-1
LW sacks: Shandong's reported production capacity, production, shipments, and inventories, 2005-07 and projections for 2008 and 2009

* * * * *

U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of subject merchandise from China and nonsubject countries are shown in table VII-2.⁹

Table VII-2
LW sacks: U.S. importers' end-of-period inventories of subject and nonsubject imports, by sources, 2005-07

* * * * *

U.S. IMPORTERS' CURRENT ORDERS

The Commission requested U.S. importers to indicate whether they imported or arranged for the importation of LW sacks after December 31, 2007. *** of the reporting U.S. importers stated that they had imported or arranged for importation since December 31, 2007. Table VII-3 presents the *** U.S. importers which indicated that they had imported or arranged for the importation of the subject product from China and the quantity of those U.S. imports.

Table VII-3
LW sacks: U.S. importers' orders of subject imports from China subsequent to December 31, 2007, by firm

* * * * *

⁷ Ibid., p. 5.

⁸ Ibid., p. 2.

⁹ Given the custom graphics required, LW sacks are made to order; therefore, U.S. importers generally do not carry large inventories.

ANTIDUMPING AND COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

Imports of LW sacks from China are subject to an antidumping duty order imposed by Mexico in 1994. The duty, in effect until at least 2009, is 397 percent *ad valorem*.¹⁰ There is no indication that LW sacks from China have been the subject of any import relief investigations in any other countries.

INFORMATION ON NONSUBJECT SOURCES

“Bratsk” Considerations

As a result of the Court of Appeals for the Federal Circuit (“CAFC”) decision in *Bratsk Aluminum Smelter v. United States* (“Bratsk”), the Commission is directed to:¹¹

undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.” The additional inquiry required by the Court, which we refer to as the Bratsk replacement / benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.

Petitioners argued that Bratsk is inapplicable to these investigations because LW sacks are not a commodity product as they are made to individual customer and not industry specifications.¹² Petitioners further argued that U.S. imports from nonsubject countries are minimal and *** priced, with only a nominal volume of imports coming from Thailand and Vietnam, and China accounting for the vast majority of U.S. imports.¹³

In the preliminary phase of these investigations, respondent Shapiro Packaging agreed that LW sacks are not a commodity product, but argued that *Bratsk* should nonetheless be applied because LW sacks produced in the United States are virtually perfect substitutes with imported product.¹⁴ Respondent Shapiro Packaging further argued that if an antidumping or countervailing duty order were placed on imports from China, foreign producers in many nonsubject countries including Colombia, Brazil, Thailand, South Korea, Turkey, India, Romania, and Indonesia would have the incentive to export LW sacks to the United States.¹⁵ Respondent contended that due to the U.S. industry’s lack of experience in production of LW sacks and its inability to supply U.S. consumption, purchasers would be required to source LW sacks from nonsubject countries.¹⁶

Of the reporting U.S. importers, *** reported U.S. imports from Thailand and Vietnam. These U.S. imports were sourced from the same company, the Charoen Pokphand Group (“C.P. Group”), a

¹⁰ Petitioners’ postconference brief, exh. 1, p. 15.

¹¹ *Silicon Metal From Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

¹² Petitioners’ posthearing brief, app. A, pp. 32-34; Petitioners’ prehearing brief, p. 8 n. 18; Petitioners have also observed that the Commission has never conducted a *Bratsk* analysis in the context of an investigation in which material retardation of a U.S. industry is being alleged. Petitioners’ postconference brief, exh. 1, p. 5.

¹³ *Ibid.*, p. 33.

¹⁴ Respondent Shapiro Packaging’s postconference brief, p. 24.

¹⁵ *Ibid.*, exh. 2 (various website pages depicting foreign producers of LW sacks in India, South Korea, and Indonesia).

¹⁶ *Ibid.*, p. 26.

Thailand-based multinational that produces LW sacks in Thailand and Vietnam. The C.P. Group's Plastics Business Group includes a LW sack manufacturer in Thailand, C.P. Poly Industry Co., Ltd. ("C.P. Poly"), which was established in 1974, and a LW sack manufacturer in Vietnam, C.P. Packaging Industry Co., Ltd. ("C.P. Packaging"), which opened in 1989. The firm states that both facilities produce "plastic woven bags and plastic laminated bags, with a total production capacity of 96 million units per year (78 million plastic woven bags, and 18 million plastic laminated bags) and services for both domestic and export markets including Europe, America, Japan, and Taiwan."¹⁷ In 2001, C.P. Packaging expanded its production of woven sacks by opening a new factory in Dongnai Province, Vietnam. The company's website claims that its newly expanded factory has the capacity to manufacture 300 million woven sacks annually. Earlier this year, C.P. Packaging entered into a joint venture, named P.T. Poly Packaging Industry, with P.T. Charoen Pokphand Indonesia, a manufacturer of woven sacks in Indonesia, in order to expand further its production of woven sacks in Indonesia.¹⁸

¹⁷ See C.P. Group's website at http://www.cppcnet.com/iso4/exec/jsp/content.jsp?s_action=View&pageobjid=65, retrieved on May 20, 2008. The share of the C.P. Group's capacity that is for LW sacks as defined in these investigations is not known.

¹⁸ See C.P. Packaging's website at <http://www.cppolybag.com/cpcomp.htm>, retrieved on May 20, 2008.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731-TA-1122 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of laminated woven sacks, provided for in subheading 6305.33.00 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 31, 2008.

FOR FURTHER INFORMATION CONTACT:

Christopher J. Cassise (202-708-5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics (paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less, e.g., coated free sheet paper); printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are imported under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously imported under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be imported under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be imported under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measures more than 5 millimeters in width, laminated woven sacks may be imported under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of laminated woven sacks, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 28, 2007, by the Laminated Woven Sacks Committee, an ad hoc committee composed of five U.S. producers of laminated woven sacks. Members of the Laminated Woven Sacks Committee include: (1) Bancroft Bag, Inc. of West Monroe, LA; (2) Coating Excellence International, LLC of Wrightstown, WI; (3) Hood Packaging Corp. of Madison, MS; (4) Mid-America Packaging, LLC of Twinsburg, OH; and (5) Polytex Fibers Corp. of Houston, TX.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO)

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-450 and 731-TA-1122 (Final)]

Laminated Woven Sacks From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701-TA-450 (Final) under section 705(b) of the Tariff Act of

and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on June 2, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 17, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 11, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 13, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 10, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 24,

2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 24, 2008. On July 11, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 15, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 11, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-2843 Filed 2-14-08; 8:45 am]

BILLING CODE 7020-02-P

subsidies are being provided to producers/exporters of laminated woven sacks (LWS) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the "Final Determination" section of this notice.

EFFECTIVE DATE: June 24, 2008.

FOR FURTHER INFORMATION CONTACT:

Sean Carey, Gene Calvert, or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3964, (202) 482-3586, or (202) 482-4146, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the preliminary determination in the **Federal Register** on December 3, 2007. *See Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893 (December 3, 2007) (*Preliminary Determination*). On December 13, 2007, the Department issued supplemental questionnaires to Zibo Aifudi Plastic Packaging Co., Ltd. (Aifudi) and Shandong Shouguang Jianyuanchun Co., Ltd. and its cross-owned affiliate Shandong Longxing Plastic Products Co., Ltd. (SSJ/SLP).¹ We issued a supplemental questionnaire to the Government of the People's Republic of China (GOC) on December 14, 2007. We received responses to these questionnaires from SSJ/SLP on January 2, 2008, and from the GOC and Aifudi on January 3, 2008. We issued an

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-917]

Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has reached a final determination that countervailable

¹ SSJ was one of the four mandatory company respondents selected by the Department. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Respondent Selection" (July 31, 2007). This memorandum is on file in the Central Records Unit (CRU), Room 1117 of the main Commerce building. Subsequently, we determined that SSJ was cross-owned with SLP (*see Preliminary Determination*, 72 FR at 67900) (December 3, 2007), and for purposes of this final determination, we are referring to these mandatory respondents as SSJ/SLP. The other three mandatory company respondents are: Han Shing Chemical Co., Ltd. (Han Shing Chemical), Ningbo Yong Feng Packaging Co., Ltd. (Ningbo), Shandong Qilu Plastic Fabric Group, Ltd. (Qilu). On October 24, 2007, the Department accepted Aifudi as a voluntary respondent for the investigation pursuant to 19 CFR 351.204(d)(2). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Voluntary Respondent Selection" (October 24, 2007). This memorandum is on file in the Department's CRU.

additional supplemental questionnaire to SSJ/SLP on January 11, 2008, and received a response on January 17, 2008. On December 27, 2007, the Department received requests for a hearing from the Laminated Woven Sacks Committee and its individual members, Bancroft Bag, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytex Fibers Corporation (collectively, petitioners), and from the GOC.

Parties submitted timely comments on the Department's analysis of land-use rights as requested in the *Preliminary Determination*. Subsequent to the *Preliminary Determination*, parties also submitted factual information, comments, or clarifying information at several points prior to this final determination based on deadlines for submissions of factual information and/or arguments established by the Department or in accordance with 19 CFR 351.301(a)(1).

On January 22, 2008, the Department decided not to verify SSJ/SLP. See Letter to SSJ/SLP, *Countervailing Duty Investigation: Laminated Woven Sacks from the People's Republic of China* (January 22, 2008) (on file in the Department's CRU). From January 16 through January 25, 2008, we conducted verification of the questionnaire responses submitted by the GOC, including the national, provincial, and local governments, and Aifudi. The Department issued verification reports on February 28, 2008 and March 4, 2008. See Memoranda to the File, *Countervailing Duty Investigation: Laminated Woven Sacks (LWS) from the People's Republic of China: Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China (GOC) – Central Government; Countervailing Duty Investigation: Laminated Woven Sacks (LWS) from the People's Republic of China: Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China (GOC) – Provincial and Local Government; and Countervailing Duty Investigation: Laminated Woven Sacks (LWS) from the People's Republic of China: Verification of the Questionnaire Responses Submitted by Zibo Aifudi Plastic Packaging Co., Ltd.*

On April 22, 2008, we issued our post-preliminary determination regarding the new subsidy allegations, which we had decided to investigate on November 2, 2007. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, *Countervailing Duty Investigation of Laminated Woven Sacks from the People's Republic of China; Post-*

Preliminary Analysis of New Subsidy Allegations (April 22, 2008) (*Post-Preliminary Analysis*), on file in the Department's CRU.

We received case briefs from the GOC, Aifudi, and petitioners on May 2, 2008. The same parties submitted rebuttal briefs on May 7, 2008. On May 8, 2008, the GOC's case brief was returned because the Department determined that it contained untimely new factual information, as well as timely filed new factual information related to the Department's *Post-Preliminary Analysis*. The GOC resubmitted its case brief on May 12, 2008 without the untimely filed new factual information. On May 8, 2008 we informed all parties that they had an opportunity to rebut the new factual information submitted by the GOC pertaining to the Department's *Post-Preliminary Analysis*. On May 12, 2008, petitioners submitted factual information to rebut information provided by the GOC. We held a public hearing for this investigation on May 14, 2008.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2006.

Scope of the Investigation

In the Preliminary Determination, we stated that we had received scope comments from petitioners, and that such comments would be addressed in the preliminary determination of the companion antidumping investigation. See Preliminary Determination, 72 FR at 67894. Based on those comments, the Department determined to amend the scope of the investigation and afforded interested parties the opportunity to comment on those changes. See *Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 5801 (January 31, 2008). No parties provided comments, and as such, we are making no changes to the scope as set forth in the preliminary determination in the companion antidumping investigation. See *id.*

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method

either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;² printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500.

If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the International Trade Commission (ITC) must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry, or whether such imports materially retard the

² "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

establishment of an industry in the United States. On August 14, 2007, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially retarded by reason of imports from the PRC of Laminated Woven Sacks. See *Laminated Woven Sacks from China*, USITC Pub. 3942, Inv. Nos. 701-TA-450 and 731-TA-1122 (Preliminary) (August 2007).

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised by interested parties in their case briefs and rebuttal briefs on the *Preliminary Determination* and the *Post-Preliminary Analysis*, are discussed in the *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Determination of Laminated Woven Sacks from the People's Republic of China (Decision Memorandum)*. A list of the subsidy programs and of the issues that parties have raised is attached to this notice as Appendix I. Parties can find a complete discussion of all of the subsidy programs and issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's CRU. A complete version of the *Decision Memorandum* is available at <http://www.trade.gov/ia> under the heading "Federal Register Notices." The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Application of Facts Available, Including the Application of Adverse Inferences

For purposes of this final determination, we have relied on facts available and have used adverse inferences to determine the countervailable subsidy rates for the four mandatory company respondents: Han Shing Chemical, Ningbo, Qilu, and SSJ/SLP, in accordance with sections 776(a) and (b) of the Act. In addition, we are also applying facts available with an adverse inference, in part, with respect to our determination of the countervailability of two programs: Government Policy Lending and Government Provision of Inputs for Less Than Adequate Remuneration. A full discussion of our decision to apply adverse facts available is presented in the *Decision Memorandum* in the sections "Application of Facts Available and Use of Adverse Inferences" and in "Analysis of Comments" (Comments 3, 4, 5, 13 and 19).

Critical Circumstances

Pursuant to section 705(a)(2) of the Act, in order to find critical circumstances, the Department must find that there are countervailable subsidies that are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), and that there have been massive imports over a relatively short period (*i.e.*, whether there was a surge in imports). For purposes of this final determination, we are making an affirmative determination of critical circumstances with respect to all four mandatory respondents (Han Shing Chemical, Ningbo, Qilu, and SSJ/SLP). For the voluntary respondent, Aifudi, we are making a negative final determination of critical circumstances because we verified that it has not received any subsidies that are inconsistent with the Subsidies Agreement. For "all others," we have made a negative determination of critical circumstances in accordance with section 705(a)(2) of the Act. For a complete discussion of our critical circumstances determination, see the "Critical Circumstances" section in the *Decision Memorandum*.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we determine the total countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy Rate
Han Shing Chemical Co., Ltd. (Han Shing Chemical)	223.74%
Ningbo Yong Feng packaging Co., Ltd. (Ningbo)	223.74%
Shandong Qilu Plastic Fabric Group, Ltd. (Qilu)	304.40%
Shandong Shouguang Jianyuan Chun Co., Ltd. (SSJ) / Shandong Longxing Plastic Products Company Ltd. (SLP)	352.82%
Zibo Aifudi Plastic Packaging Co., Ltd. (Aifudi)	29.54%
All Others	226.85%

In accordance with section 705(c)(5)(A)(ii) of the Act, we have determined that the most reasonable method for determining the all others rate is a simple average of the four mandatory respondents' AFA rates and the calculated rate for Aifudi. See *Decision Memorandum* at Comment 21 for a more detailed discussion of the all others rate determination.

Suspension of Liquidation

Because we preliminarily determined that critical circumstances existed for

entries of LWS produced/exported by Han Shing Chemical and Ningbo, we instructed U.S. Customs and Border Protection (CBP), in accordance with sections 703(d)(1)(B) and (2) and 703(e)(2)(A) of the Act, to suspend liquidation of entries of LWS produced/exported by Han Shing Chemical and Ningbo which were entered, or withdrawn from warehouse, for consumption on or after December 3, 2007, and to apply the suspension of liquidation to any unliquidated entries entered, or withdrawn from warehouse, for consumption on or after September 4, 2007 (90 days before the date of publication of the *Preliminary Determination*). For all other producers/exporters, we ordered CBP to suspend liquidation for all entries entered, or withdrawn from warehouse, on or after December 3, 2007.

In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after April 1, 2008, but to continue the suspension of liquidation of entries made from Han Shing Chemical and Ningbo from September 4, 2007 through April 1, 2008 and, for all other entries, to continue the suspension of liquidation from December 3, 2007 through April 1, 2008. Now that the Department has reached a final affirmative determination of critical circumstances for Qilu and SSJ/SLP, pursuant to section 705(c)(4)(B) of the Act, we will instruct CBP to apply the previously ordered suspension of liquidation for Qilu and SSJ/SLP retroactively to any unliquidated entries entered, or withdrawn from warehouse, for consumption on or after September 4, 2007 (90 days before the date of publication of the *Preliminary Determination*) and on or before April 1, 2008.

If the ITC issues a final affirmative determination of injury, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act for all entries, and require a cash deposit of estimated countervailing duties for such entries of merchandise at the rates indicated above. If the ITC determines that material injury, threat of material injury to, or material retardation of, the domestic industry does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 16, 2008.

Stephen J. Claey's,

Acting Assistant Secretary for Import Administration.

Appendix I: Decision Memorandum**I. Summary****II. Background****III. Application of Facts Available and Use of Adverse Inferences**

- A. Application of Facts Available, Including the Application of Adverse Inferences
- B. Selection of the Adverse Facts Available

IV. Critical Circumstances**V. Subsidies Valuation Information**

- A. Attribution of Subsidies and Cross-Ownership
- B. Loan Benchmarks and Discount Rate

VI. Analysis of Programs

- A. Programs Determined to Be Countervailable
- B. Program Determined to Be Not Countervailable
- C. Programs Determined to Be Not Used by Aifudi
- D. Programs Determined to Be Terminated

VII. Analysis of Comments

Comment 1: Application of the Countervailing Duty Law to Non-Market Economy Countries

Comment 2: Whether the Department Can Measure Subsidies that have been Alleged to Occur Prior to the Department's Determination to Apply CVD Law to China

Comment 3: Whether the Department Should Apply Adverse Facts Available to All Mandatory Respondents

Comment 4: Whether the Department Can Find that a Program Has Been Used and Is Countervailable for Non-Cooperating Respondents

Comment 5: Whether the Calculated Rates for Aifudi Should be Applied as Adverse Facts Available to the Mandatory Respondents

Comment 6: Whether the Department Should Apply Partial Adverse Facts Available to Aifudi

Comment 7: Whether the Provision of Electricity for Less Than Adequate Remuneration Is Countervailable

Comment 8: Whether the GOC Provision of Land Can Be Countervailed

Comment 9: Whether the GOC's Sale of Land-Use Rights is Specific

Comment 10: Whether the Department Should Select Either a First-Tier or Third-Tier Benchmark for the Provision of Land-Use Rights for Less Than Adequate Remuneration

Comment 11: Whether the Department Can Lawfully Apply an External Benchmark for the Provision of Land-Use Rights for Less than Adequate Remuneration

Comment 12: Whether the Provision of Petrochemical Inputs for Less Than Adequate Remuneration by SOEs is Countervailable

Comment 13: Whether SOEs Distort the Market in the PRC

Comment 14: Alternative Benchmark for the Provision of Petrochemical Inputs for Less Than Adequate Remuneration

Comment 15: Whether the Department Can Use Data from the World Trade Atlas to Determine a Benchmark for Petrochemical Inputs

Comment 16: Whether the Sale of Petrochemical Inputs is Consistent with Market Principles

Comment 17: Whether the Department Should Make an Adjustment for Freight in the Benchmark for Petrochemical Inputs

Comment 18: Whether the GOC Provides Government Policy Lending to the LWS Industry

Comment 19: Whether the Department May Countervail the Policy Lending Program as Adverse Facts Available

Comment 20: The Appropriate Benchmark to Use for the Policy Lending Program

Comment 21: The Determination of the All Others Rate

VIII. Recommendation

[FR Doc. E8-14256 Filed 6-23-08; 8:45 am]

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DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-916]

Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 24, 2008.

SUMMARY: On January 31, 2008, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of laminated woven sacks ("LWS") from the People's Republic of China ("PRC"). The period of investigation ("POI") is October 1, 2006, to March 31, 2007. We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the mandatory respondents. We determine that LWS from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:**Case History**

The Department published its preliminary determination of sales at LTFV on January 31, 2008. See *Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 5801 (January 31, 2008) ("Preliminary Determination").

We issued Aifudi¹ and SSJ² additional supplemental questionnaires on January 28, 2008, and January 31, 2008,

respectively. We received Aifudi's response on February 29, 2008. On February 15, 2008, SSJ submitted a letter stating that it was not responding to the questionnaire.

Between March 31 and April 11, 2008, the Department conducted verifications of Aifudi and its constructed export price (CEP) entities. See the "Verification" section below for additional information.

We invited parties to comment on the *Preliminary Determination*. On May 14, 2008, Petitioners and Aifudi filed case briefs. On May 19, 2008, Petitioners³ and Aifudi submitted rebuttal briefs.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Laminated Woven Sacks from the People's Republic of China: Issues and Decision Memorandum," dated June 16, 2008 ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 1217, and is accessible on the Web at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination and Amended Preliminary Determination

Based on our analysis of information on the record of this investigation, and comments received from the interested parties, we have made changes to the margin calculations for Aifudi. For SSJ, see Use of Facts Available section below. For Aifudi, we have determined that printing cylinders are not a factor of production, and should be treated as factory overhead. For further details, see Issues and Decision Memorandum at Comment 1. We have also revalued several of the surrogate values used in the *Preliminary Determination*. The values that were modified for this final determination are the surrogate financial ratios and the wage rate. For further details, see Issues and Decision Memorandum at Comments 2 and 4, and Memorandum to the File from Javier Barrientos, through Alex

Villanueva, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9: Laminated Woven Sacks from the People's Republic of China: Surrogate Values for the Final Determination, dated June 16, 2008 ("Final Surrogate Value Memo").

In addition, we have incorporated, where applicable, post-preliminary clarifications based on verification and made certain clerical error corrections for Aifudi. For further details on these company-specific changes, see Issues and Decision Memorandum at Comments 8 and 9; see also Memorandum to the File from Javier Barrientos, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9: Laminated Woven Sacks from the People's Republic of China: Analysis of Zibo Aifudi Plastic packaging Co., Ltd., for the Final Determination, dated June 16, 2008 ("Aifudi Final Analysis Memo").

Scope of Investigation

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;⁴ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric

¹ Zibo Aifudi Plastic Packaging Co., Ltd. ("Aifudi").

² Shouguang Jianyuanchun Co., Ltd. ("SSJ").

³ The Laminated Woven Sacks Committee and its individual members, Bancroft Bags, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid America Packaging, LLC, and Polytex Fibers Corporation.

⁴ "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (“the Act”), provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time

limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” See also *Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA)*, H.R. Rep. No. 103-316, Vol. 1 at 870 (1994).

For this final determination, in accordance with sections 776(a)(2)(A) through (D) of the Act, we have determined that the use of adverse facts available (“AFA”) is warranted for SSJ because of its refusal to answer the Department’s supplemental questionnaire. See Issues and Decision Memorandum at Comment 7. As total AFA, we are applying the petition rate to SSJ.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Aifudi for use in our final determination. See Aifudi Verification Report. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3)

we have reliable data from India that we can use to value the factors of production. See *Preliminary Determination*. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non-market-economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“Sparklers”), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”), and Section 351.107(d) of the Department’s regulations. In the *Preliminary Determination*, we found that Aifudi, SSJ, and the separate rate applicants who received a separate rate (“Separate Rate Applicants”) demonstrated their eligibility for separate-rate status. For all the same reasons, in the final determination, we continue to find that the evidence placed on the record of this investigation by Aifudi and the Separate Rate Applicants demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status. With respect to SSJ, because SSJ refused to answer our supplemental questionnaires and stopped participating in the investigation, its responses, including its eligibility for separate status, were incomplete and could not be verified. Accordingly, we now consider SSJ part of the PRC-wide entity. Moreover, the Department’s application of facts available to SSJ contributes to the application of facts available applied against the PRC-wide entity, as described herein.

The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that certain companies and the PRC-wide entity did not respond to our requests information. In the *Preliminary Determination*, we

treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC-wide entity, including SSJ for this final determination, has not provided the Department with the requested information; therefore, pursuant to sections 776(a)(2)(A) through (D) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also, SAA at 870. We determined that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within

a NME country are subject to government control and because only the companies listed under the “Final Determination Margins” section below have overcome that presumption, we are applying a single antidumping rate - the PRC-wide rate - to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for Aifudi and the Separate Rate Applicants which are listed in the “Final Determination Margins” section below.

Critical Circumstances

In the *Preliminary Determination*, we found that there had been massive imports of the subject merchandise over a relatively short period for Aifudi and the Separate Rate Applicants. In addition, we found that there had not been massive imports of the subject merchandise over a relatively short period for SSJ and the PRC-wide entity. In the *Preliminary Determination*, we relied on a comparison period of four months, which was the maximum duration for the information we had available at that time, for determining whether imports of the subject merchandise were massive.

For the final determination, however, we collected an additional three months of data from Aifudi. After analyzing the

additional data, we continue to find that Aifudi and the Separate Rate Applicants had massive imports of LWS over a relatively short period of time. See Memorandum to the File from Javier Barrientos, Senior Case Analyst: Critical Circumstances Data for the Final Determination of Antidumping Duty Investigation of Laminated Woven Sacks from the People’s Republic of China, dated June 16, 2008, at Attachment I (“CC MTF”). In reviewing the data, we find no reason to believe that the HTS categories used in this case are overly broad for this purpose. Additionally, we find that the PRC-wide entity (including SSJ) did not have massive imports of LWS over a relatively short period of time. *Id.*

Corroboration

Pursuant to section 776(c) of the Act, we corroborated the petition rate of 91.73 percent by comparing the petition margin to the individual CONNUM margins for Aifudi. See Aifudi Final Analysis Memorandum at Attachment I. We found that since the petition margin of 91.73 percent was within the range of CONNUM margins, we find that the margin of 91.73 percent has probative value. Accordingly, we find that the rate of 91.73 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Exporter	Producer	Weight Average Margin
ZIBO AIFUDI PLASTIC PACKAGING CO., LTD.	ZIBO AIFUDI PLASTIC PACKAGING CO., LTD.	64.28%
POLYWELL INDUSTRIAL CO., a.k.a. FIRST WAY (H.K.) LIMITED	POLYWELL PLASTIC PRODUCT FACTORY	64.28%
ZIBO LINZI WORUN PACKING PRODUCT CO., LTD.	ZIBO LINZI WORUN PACKING PRODUCT CO., LTD.	64.28%
SHANDONG QIKAI PLASTICS PRODUCT CO., LTD.	SHANDONG QIKAI PLASTICS PRODUCT CO., LTD.	64.28%
CHANGLE BAODU PLASTIC CO. LTD.	CHANGLE BAODU PLASTIC CO. LTD.	64.28%
ZIBO LINZI SHUAIQIANG PLASTICS CO. LTD.	ZIBO LINZI SHUAIQIANG PLASTICS CO. LTD.	64.28%
ZIBO LINZI QITIANLI PLASTIC FABRIC CO. LTD.	ZIBO LINZI QITIANLI PLASTIC FABRIC CO. LTD.	64.28%
SHANDONG YOULIAN CO. LTD	SHANDONG YOULIAN CO. LTD	64.28%
ZIBO LINZI LUITONG PLASTIC FABRIC CO. LTD.	ZIBO LINZI LUITONG PLASTIC FABRIC CO. LTD.	64.28%
WENZHOU HOTSON PLASTICS CO. LTD	WENZHOU HOTSON PLASTICS CO. LTD	64.28%
JIANGSU HOTSON PLASTICS CO. LTD.	JIANGSU HOTSON PLASTICS CO. LTD.	64.28%
CANGNAN COLOR MAKE THE BAG	CANGNAN COLOR MAKE THE BAG	64.28%
ZIBO QIGAO PLASTIC CEMENT CO. LTD	ZIBO QIGAO PLASTIC CEMENT CO. LTD	64.28%
PRC-WIDE RATE	91.73%

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border

Protection (“CBP”) to continue to suspend liquidation of all entries of subject merchandise from the PRC-wide

entity entered, or withdrawn from warehouse, for consumption on or after January 31, 2008, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

The Department continues to find that critical circumstances exist for Aifudi and the Separate Rate Applicants and therefore we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from Aifudi and the Separate Rate Applicants entered, or withdrawn from warehouse, for consumption on or after November 2, 2007, which is 90 days prior to the date of publication of the preliminary determination. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

In accordance with the preliminary affirmative determination of critical circumstances, we instructed CBP to suspend liquidation of all entries of the subject merchandise for Aifudi, which were entered or withdrawn from warehouse, on or after November 2, 2007, which is 90 days prior to January 31, 2008, the date of publication of the Preliminary Determination in the **Federal Register**. Because we do not find critical circumstances for the PRC-wide entity, including SSJ, for this final determination, we will instruct CBP to terminate suspension of liquidation, and release any cash deposits or bonds, on imports with respect to SSJ during the 90 day period prior to the date of publication of the *Preliminary Determination*.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 16, 2008.

Stephen Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I

Comment 1: Printing Cylinders
Comment 2: Ink Surrogate Value
Comment 3: BOPP Surrogate Value
Comment 4: Labor Surrogate Value
Comment 5: Boxes Surrogate Value
Comment 6: Surrogate Financial Ratios
Comment 7: Total AFA for SSJ
Comment 8: Billing Adjustments
Comment 9: Conversion Factor for Certain Inputs

[FR Doc. E8-14266 Filed 6-23-08; 8:45 am]

BILLING CODE 3510-DS-S

APPENDIX B
LIST OF HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Laminated Woven Sacks from China
Inv. Nos.: 701-TA-450 and 731-TA-1122 (Final)
Date and Time: June 17, 2008 - 9:30 a.m.

A session was held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, DC.

OPENING REMARKS:

Petitioners (**Joseph W. Dorn**, King & Spalding LLP)

In Support of the Imposition of Antidumping and Countervailing Duties:

King & Spalding LLP
Washington, DC
on behalf of

Laminated Woven Sacks Committee (members include: Bancroft Bag, Inc.; Coating Excellence International, LLC; Hood Packaging Corp.; Mid-America Packaging, LLC; and Polytex Fibers Corp.)

Isaac Bazbaz, President, Polytex Fibers Corp.

Michael Nowak, President, Coating Excellence International, LLC

Rebecca L. Woodings, Consultant, King & Spalding LLP

Joseph W. Dorn – OF COUNSEL

CLOSING REMARKS:

Petitioners (**Joseph W. Dorn**, King & Spalding LLP)

APPENDIX C
SUMMARY DATA

Table C-1
Laminated woven sacks: Summary data concerning the U.S. market (using petitioners' methodology for subject imports and questionnaire data for nonsubject imports), 2005-07

(Quantity=1,000 sacks, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per sack;
period changes=percent, except where noted)

Item	Reported data			Period changes		
	2005	2006	2007	2005-07	2005-06	2006-07
U.S. consumption quantity:						
Amount	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***
Importers' share (1):						
China	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total imports	***	***	***	***	***	***
U.S. consumption value:						
Amount	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***
Importers' share (1):						
China	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total imports	***	***	***	***	***	***
U.S. imports from:						
China:						
Quantity	112,262	153,182	234,368	108.8	36.5	53.0
Value	26,746	39,025	58,147	117.4	45.9	49.0
Unit value	\$0.24	\$0.25	\$0.25	4.1	6.9	-2.6
Ending inventory quantity	***	***	***	***	***	***
All other sources:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
All sources:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
U.S. producers':						
Average capacity quantity	111,301	172,783	232,953	109.3	55.2	34.8
Production quantity	15,239	28,286	52,231	242.7	85.6	84.7
Capacity utilization (1)	13.7	16.4	22.4	8.7	2.7	6.1
U.S. shipments:						
Quantity	14,190	26,075	51,411	262.3	83.8	97.2
Value	7,682	15,692	30,656	299.0	104.3	95.4
Unit value	\$0.54	\$0.60	\$0.60	10.1	11.2	-0.9
Export shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***
Production workers	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***
Wages paid (\$1,000s)	***	***	***	***	***	***
Hourly wages	***	***	***	***	***	***
Productivity (sacks/hour)	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***
Net sales:						
Quantity	14,190	25,838	52,319	268.7	82.1	102.5
Value	7,681	15,581	31,312	307.6	102.8	101.0
Unit value	\$0.54	\$0.60	\$0.60	10.6	11.4	-0.8
Cost of goods sold (COGS)	6,889	15,915	29,559	329.1	131.0	85.7
Gross profit or (loss)	792	(333)	1,753	121.4	-142.1	625.7
SG&A expenses	1,093	2,560	3,357	207.1	134.2	31.1
Operating income or (loss)	(301)	(2,893)	(1,604)	-432.7	-861.0	44.6
Capital expenditures	***	***	***	***	***	***
Unit COGS	\$0.49	\$0.62	\$0.56	16.4	26.9	-8.3
Unit SG&A expenses	\$0.08	\$0.10	\$0.06	-16.7	28.6	-35.2
Unit operating income or (loss)	(\$0.02)	(\$0.11)	(\$0.03)	-44.5	-427.8	72.6
COGS/sales (1)	89.7	102.1	94.4	4.7	12.4	-7.7
Operating income or (loss)/ sales (1)	(3.9)	(18.6)	(5.1)	-1.2	-14.6	13.4

(1) "Reported data" are in percent and "period changes" are in percentage points.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires and from adjusted official Commerce statistics.

Table C-2
Laminated woven sacks: U.S. imports from China (as reported in U.S. importer's questionnaires),
2005-07

* * * * *

APPENDIX D
PRICE DATA FOR NONSUBJECT COUNTRIES

Table D-1

LW sacks: Weighted-average f.o.b. prices and quantities of product 1 imported from nonsubject countries, by quarters, 2005-07

* * * * *

Table D-2

LW sacks: Weighted-average f.o.b. prices and quantities of product 2 imported from nonsubject countries, by quarters, 2005-07

* * * * *

Table D-3

LW sacks: Weighted-average f.o.b. prices and quantities of product 3 imported from nonsubject countries, by quarters, 2005-07

* * * * *

APPENDIX E

**ALLEGED EFFECTS OF SUBJECT IMPORTS ON U.S. PRODUCERS'
EXISTING DEVELOPMENT AND PRODUCTION EFFORTS,
GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL**

The Commission requested U.S. producers to describe any actual or potential negative effects since January 1, 2005, on their return on investment, growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of LW sacks from China. Their responses are as follows:

Actual Negative Effects

* * * * *

Anticipated Negative Effects

* * * * *

