

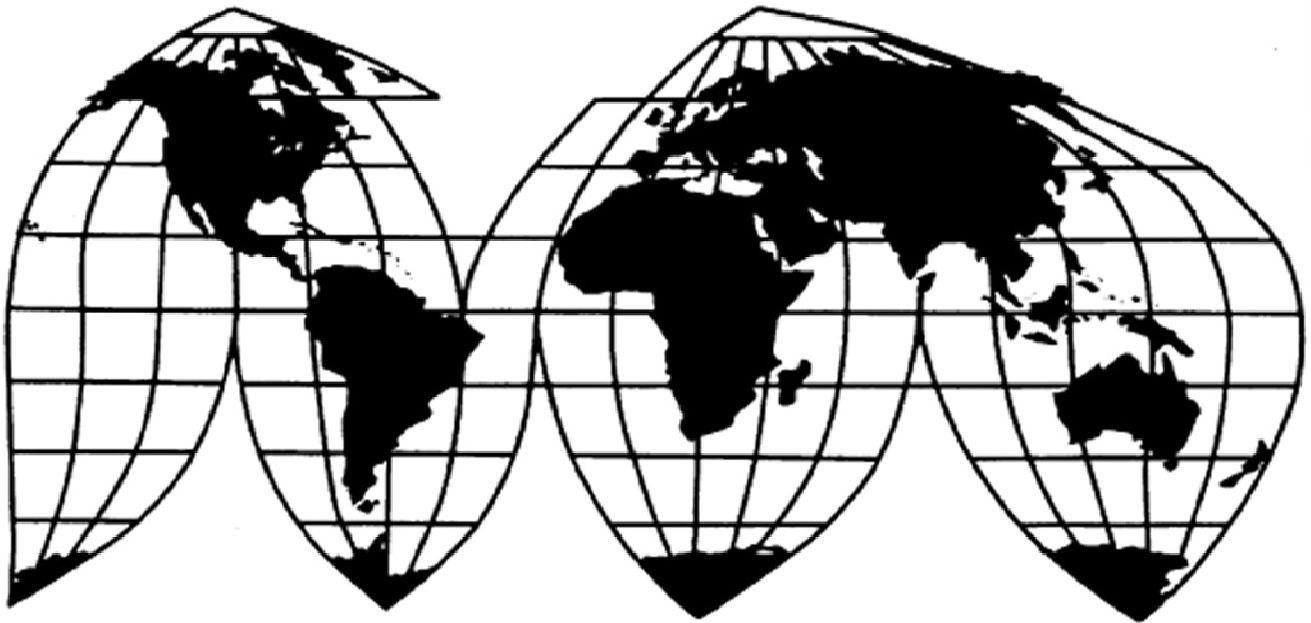
Polyvinyl Alcohol From Taiwan

Investigation No. 731-TA-1088 (Preliminary) (Remand)

Publication 3920

April 2007

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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In October 2004, the United States International Trade Commission (“Commission”) determined that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of subject imports of certain polyvinyl alcohol from Taiwan that were allegedly sold in the United States at less than fair value.¹

The U.S. Court of International Trade subsequently issued an opinion in an action challenging the Commission’s determination.² The Court’s decision affirmed the Commission’s negative preliminary determination in part and remanded it in part.

Upon consideration of the Court’s remand instructions and the parties’ comments on the Court’s opinion, and based on the information available at the time of the original preliminary determination,³ the Commission determines that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of certain polyvinyl alcohol from Taiwan that are allegedly sold in the United States at less than fair value.^{4 5} The Commission submitted the attached Views to the Court in response to the remand.

¹ Polyvinyl Alcohol from Taiwan, Inv. No. 731-TA-1088 (Prelim.), USITC Pub. 3732 (Oct. 2004). The Commission’s opinion reflected the views of then-Vice Chairman Deanna Tanner Okun, Commissioner Charlotte R. Lane, and then-Commissioner Daniel R. Pearson. Then-Chairman Stephen Koplun and then-Commissioner Marcia E. Miller reached an affirmative determination and filed dissenting views. Then-Commissioner Jennifer A. Hillman did not participate in the investigation.

² Celanese Chemicals, Ltd. v. United States, Confidential Slip Op. 07-16 (Ct. Int’l Trade Jan. 29, 2007).

³ Vice Chairman Shara L. Aranoff, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert, who make an affirmative preliminary remand determination, were not members of the Commission at the time of the original determination. They made their determination in this remand proceeding de novo, by weighing all of the evidence and reaching their own independent conclusions.

⁴ As discussed in their Separate and Dissenting Views, Chairman Pearson, Commissioner Okun, and Commissioner Lane reach a negative determination on remand.

⁵ In these remand proceedings, three Commissioners have reached affirmative determinations, and three have reached negative determinations. If the voting Commissioners “are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.” 19 U.S.C. § 1677(11).

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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.

VIEWS OF THE COMMISSION

By opinion and order dated January 29, 2007,¹ the U.S. Court of International Trade affirmed in part and remanded in part the negative preliminary injury determination of the U.S. International Trade Commission (“Commission”) in Polyvinyl Alcohol from Taiwan, Inv. No. 731-TA-1088 (Prelim.), USITC Pub. 3732 (Oct. 2004).² Upon consideration of the Court’s remand instructions and the parties’ comments on the Court’s opinion, and based on the information available at the time of the original preliminary determination,³ we find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of certain polyvinyl alcohol from Taiwan that are allegedly sold in the United States at less than fair value.^{4 5}

¹ Celanese Chemicals, Ltd. v. United States, Confidential Slip Op. 07-16 (Ct. Int’l Trade Jan. 29, 2007).

² In the underlying preliminary investigation, the Commission found, by a vote of three to two, with one Commissioner not participating, that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of subject imports of certain polyvinyl alcohol from Taiwan that were allegedly sold at less than fair value. The Commission majority’s opinion reflected the views of then-Vice Chairman Deanna Tanner Okun, Commissioner Charlotte R. Lane, and then-Commissioner Daniel R. Pearson. Then-Chairman Stephen Koplman and then-Commissioner Marcia E. Miller reached an affirmative determination, and then-Commissioner Jennifer A. Hillman did not participate in the investigation. The confidential version of the Commission majority’s Views are referred to as the “Original Views” and the Separate and Dissenting Views of Chairman Koplman and Commissioner Miller are referred to as the “Dissenting Views.” The public versions of the Original Views and Dissenting Views were published in USITC Pub. 3732.

³ Vice Chairman Shara L. Aranoff, Commissioner Irving A. Williamson, Commissioner Dean A. Pinkert, who make an affirmative preliminary remand determination, were not members of the Commission at the time of the original determination. They made their determination in this remand proceeding de novo, by weighing all of the evidence and reaching their own independent conclusions.

⁴ Chairman Pearson, Commissioner Okun, and Commissioner Lane dissenting. Except as otherwise noted, Chairman Pearson, Commissioner Okun, and Commissioner Lane join only sections I, II, and III of this opinion. See Separate and Dissenting Views of Chairman Daniel R. Pearson, Commissioner Deanna Tanner Okun, and Commissioner Charlotte R. Lane.

⁵ In these remand proceedings, three Commissioners have reached affirmative determinations, and three have reached negative determinations. If the voting Commissioners “are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.” 19 U.S.C. § 1677(11).

I. BACKGROUND

A. Previous Investigations of Polyvinyl Alcohol⁶

There have been two previous investigations involving polyvinyl alcohol. On March 9, 1995, Air Products and Chemicals, Inc. (“Air Products”), the predecessor of the petitioner in this investigation Celanese Chemicals, Ltd. (“Celanese”),⁷ filed antidumping duty petitions regarding imports from the People’s Republic of China (“China”), Japan, and Taiwan. In May 1996, the Commission determined that an industry in the United States was threatened with material injury by reason of less than fair value imports from China, Japan, and Taiwan.⁸ The U.S. Department of Commerce (“Commerce”) imposed antidumping duty orders on those imports on March 29, 1996.⁹ On April 2, 2001, Commerce initiated five-year reviews of those orders. Commerce revoked the orders on May 14, 2001, because of a lack of participation by domestic producers in the five-year reviews.¹⁰

On September 5, 2002, Celanese and E.I. du Pont de Nemours & Co. (“DuPont”) jointly filed a second set of antidumping duty petitions with Commerce and the Commission alleging that the domestic industry was materially injured and threatened with material injury by reason of less-than-fair-value imports of certain polyvinyl alcohol from China, Germany, Japan, and Korea.¹¹ Commerce issued affirmative preliminary and final antidumping duty determinations for Germany and Japan in February and April 2003, respectively.¹² In June 2003, the Commission issued a final negative injury

⁶ Polyvinyl alcohol is a water-soluble synthetic polymer, often sold as a white granular solid or in powdered form. The single largest use of polyvinyl alcohol is as an intermediate product in the production of polyvinyl butyral (“PVB”), which is an adhesive used in the manufacture of automotive safety glass and load-resistant architectural glass. Polyvinyl alcohol is also used in the textile and paper industries in sizing formulations; as a binder in adhesive and soil-binding formulations; and as an emulsion or polymerization aid in colloidal suspensions, water-soluble films, cosmetics, and joint compounds. See, e.g., Confidential Staff Report, Mem. INV-BB-126 (Oct. 15, 2004), as amended by Mem. INV-BB-127 (Oct. 18, 2004), Mem. INV-BB-129 (Oct. 20, 2004), and Mem. INV-BB-130 (Oct. 21, 2004) (“CR”) at I-6; Public Staff Report, USITC Pub. 3732 (“PR”) at I-4.

⁷ Celanese acquired the polyvinyl alcohol business of Air Products on September 29, 2000. See, e.g., CR at III-2; PR at I-1.

⁸ See Polyvinyl Alcohol from China, Japan, and Taiwan, Invs. Nos. 731-TA-726, 727, and 729 (Final), USITC Pub. 2960 (May 1996). In the preliminary phase of the case, the Commission found that subject imports from Korea were negligible, so the investigation regarding Korea was terminated.

⁹ See, e.g., CR at I-3; PR at I-2.

¹⁰ See, e.g., CR at I-2 to I-3 PR at I-2.

¹¹ See, e.g., CR at I-3; PR at I-3. The petitions also included certain polyvinyl alcohol imports from Singapore, but the Commission made a negative preliminary determination concerning those imports after finding them to be negligible. Moreover, although polyvinyl alcohol from Taiwan was being imported into the U.S. market at that time, imports from Taiwan were not included in those antidumping duty petitions.

¹² See, e.g., 68 Fed. Reg. 8203 (Feb. 20, 2003) (Japan prelim.); 68 Fed. Reg. 7980 (Feb. 19, 2003) (Germany prelim.); 68 Fed. Reg. 19510 (Apr. 21, 2003) (Japan final); 68 Fed. Reg. 19509 (Apr. 29, 2003) (Japan amended final); 68 Fed. Reg. 19509 (Apr. 21, 2003) (Germany final); 68 Fed. Reg. 22680 (Apr. 29, 2003) (Germany amended final). In March 2003, Commerce issued a negative preliminary antidumping duty determination regarding product exported by Chinese producer Sinopec Sichuan Vinylon Works (“SSVW”) after finding only a de minimis dumping margin for this company that accounted for virtually all of China’s reported subject exports to the United States during that investigation. See, e.g., Polyvinyl Alcohol from Germany and Japan, Invs. Nos. 731-TA-1015 to 1016 (Final), USITC Pub. 3604 (June 2003). At that time, Commerce issued affirmative preliminary antidumping duty

(continued...)

determination for imported polyvinyl alcohol from Germany and a final affirmative threat determination for imports from Japan.¹³ In July 2003, Commerce issued an antidumping duty order regarding imports from Japan.¹⁴ After Commerce issued in August 2003 final affirmative antidumping duty determinations concerning imports from China and Korea, including those produced in China by SSVW,¹⁵ the Commission issued affirmative injury determinations in which it found that the domestic industry was materially injured by reason of subject imports from China and Korea.¹⁶ Commerce issued antidumping duty orders regarding polyvinyl alcohol imported from China and Korea in October 2003.¹⁷

As noted in the Original Views, certain public factual findings and analysis from those previous investigations concerning all aspects of this industry, including information about the product, purchasing behavior, the domestic and foreign producers, and other conditions of competition in this industry were incorporated into the record of this investigation.¹⁸

B. The Commission's Preliminary Investigation of Polyvinyl Alcohol from Taiwan

The Commission began this preliminary investigation of polyvinyl alcohol from Taiwan on September 7, 2004, when Celanese filed an antidumping duty petition simultaneously with Commerce and the Commission. The petition alleged that an industry in the United States was materially injured or threatened with material injury by reason of certain polyvinyl alcohol from Taiwan sold in the U.S. market at less than fair value.¹⁹ Two days later, on September 9, 2004, the Commission issued questionnaires soliciting pertinent information from domestic producers, foreign producers, and importers of the subject merchandise.²⁰ On September 28, 2004, the Commission staff held a conference to obtain additional information. Several interested parties participated, including Celanese, domestic producer DuPont, as well as the only company known to have produced polyvinyl alcohol in Taiwan during the period of investigation, Chang Chun PetroChemical Co., Ltd. ("CCPC"). These same parties filed post-conference briefs on October 1, 2004. A staff report compiling the information submitted and gathered in

¹² (...continued)

determinations regarding all other Chinese producers and for imports from Korea. See, e.g., 68 Fed. Reg. 13674 (Mar. 20, 2003) (China); 68 Fed. Reg. 13681 (Mar. 20, 2003) (Korea).

¹³ See, e.g., USITC Pub. 3604 (June 2003). In addition to a negative injury determination concerning Germany, then-Commissioner Hillman made a negative determination concerning imported product from Japan.

¹⁴ See, e.g., 68 Fed. Reg. 39518 (Jul. 2, 2003).

¹⁵ See, e.g., 68 Fed. Reg. 47540 (Aug. 11, 2003) (Korea); 68 Fed. Reg. 47538 (Aug. 11, 2003) (China); 68 Fed. Reg. 52183 (Sept. 2, 2003) (China amended final). Commerce assigned a dumping margin of 6.91 percent to SSVW.

¹⁶ See, e.g., Polyvinyl Alcohol from China and Korea, Invs. Nos. 731-TA-1014 and 1017 (Final), USITC Pub. 3634 (Sept. 2003).

¹⁷ See, e.g., 68 Fed. Reg. 56621 (Oct. 1, 2003) (Korea); 68 Fed. Reg. 56620 (Oct. 1, 2003) (China); 68 Fed. Reg. 58169 (Oct. 8, 2003) (China amended).

¹⁸ See, e.g., Original Views at 10; USITC Pub. 3732 at 7; Acciai Speciali v. United States, 118 F. Supp.2d 1298 (Ct. Int'l Trade 2000) (incorporating information from another investigation).

¹⁹ No party argued that the establishment of an industry in the United States was materially retarded by reason of the allegedly unfairly traded subject imports.

²⁰ The questionnaires correspond to EDIS doc. 214142.

the investigation was issued on October 15, 2004.²¹ On October 21, 2004, the Commission found, by a vote of three to two, with one Commissioner not participating, that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of subject imports of certain polyvinyl alcohol from Taiwan that were allegedly sold at less than fair value.²²

On November 24, 2004, Celanese appealed the Commission's determination to the U.S. Court of International Trade. On January 29, 2007, the Court issued a decision affirming the Commission's negative preliminary determination in part and remanding it in part. The Court remanded the case for the Commission to explain why it relied on importer questionnaire responses to measure the volume of subject imports rather than import statistics collected by the U.S. Census Bureau ("Census"); to explain why it relied on unadjusted Census import statistics to measure the volume of non-subject imports; to explain its finding of "attenuated competition" in its underselling analysis; and to reconsider its price depression, price suppression, impact, and threat findings. The Court directed the Commission to file its remand determination on March 30, 2007.²³ At the request of the Commission, the Court extended the due date for the remand determination to April 30, 2007.

On March 2, 2007, the Commission notified persons who were interested parties to the original investigation (i.e., persons listed on the Commission Secretary's service list) and parties to the appeal of the agency's intention to seek written comments on the Court's remand instructions.²⁴ On March 15, 2007, Celanese filed comments, and DuPont and CCPC filed joint comments. The Commission then voted on this matter by action jacket.²⁵

II. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.²⁶ As the Court recognized,²⁷ in a preliminary injury determination, the Commission weighs the evidence before it, resolves conflicts in the evidence, and determines whether "(1) the record

²¹ See, e.g., Mem. INV-BB-126 (Oct. 15, 2004), as amended by Mem. INV-BB-127 (Oct. 18, 2004), Mem. INV-BB-129 (Oct. 20, 2004), and Mem. INV-BB-130 (Oct. 21, 2004); USITC Pub. 3732.

²² The Commission's opinion reflected the views of then-Vice Chairman Okun, Commissioner Lane, and then-Commissioner Pearson. Then-Chairman Stephen Koplun and then-Commissioner Marcia E. Miller reached an affirmative determination, and filed dissenting views. Then-Commissioner Jennifer A. Hillman did not participate in the investigation.

²³ Celanese, Confidential Slip Op. 07-16.

²⁴ The Commission determined that there was no need to reopen the record for the submission of new factual information nor did the Court direct the Commission to do so. A copy of the Commission's related notice was published in the Federal Register. See 72 Fed. Reg. 10556 (Mar. 8, 2007).

²⁵ See, e.g., Action Jacket GC-07-055 (Mar. 22, 2007). An action jacket is a means of sequential written voting by Commissioners.

²⁶ 19 U.S.C. § 1673b(a); see also, e.g., Co-Steel Raritan v. United States, 357 F.3d 1294 (Fed. Cir. 2004); Sensient Technologies Corp. v. United States, Slip Op. 04-11 (Ct. Int'l Trade Sept. 10, 2004); Committee for Fair Coke Trade v. United States, Slip Op. 04-68 (Ct. Int'l Trade June 10, 2004); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int'l Trade 1999); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996); American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986).

²⁷ See, e.g., Celanese, Confidential Slip Op. 07-16 at 11-12.

as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”²⁸

While we recognize that one purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the standard requires more than a finding that there is a “possibility” of material injury,²⁹ we find that the “reasonable indication” standard is met in this case. In our view, the record does not contain clear and convincing evidence that there was no material injury or threat thereof by the subject imports.³⁰

III. CHOICE OF DATA SETS TO MEASURE SUBJECT AND NON-SUBJECT IMPORTS

The Court’s instructions on remand are primarily directed to the substance of the Commission majority’s Original Views in support of a preliminary negative determination. As a result of our affirmative preliminary remand determination, we do not need to address a number of the Court’s remand instructions.³¹ Nevertheless, the Court did remand two issues that have more generalized application. Specifically, the Court instructed the Commission (1) to explain why it relied on importer questionnaire responses to measure the volume of subject imports rather than import statistics collected by Census “in light of the apparent corrections to the errors cited as reasons for not using Census data in the first instance;”³² and (2) to explain why it relied on unadjusted import statistics collected by Census to measure non-subject imports.³³ In the preliminary investigation, all participating Commissioners relied on the same data sets to measure subject and non-subject imports, and in these remand proceedings, all Commissioners agreed about which data sets to use.

²⁸ American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994); Ranchers-Cattlemen, 74 F. Supp.2d 1368.

²⁹ See, e.g., American Lamb, 785 F.2d at 1004; see also, e.g., Texas Crushed Stone, 35 F.3d at 1543.

³⁰ Chairman Pearson, Commissioner Okun, and Commissioner Lane do not join the preceding paragraph because they find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of certain polyvinyl alcohol from Taiwan that are allegedly sold in the United States at less than fair value.

³¹ Chairman Pearson, Commissioner Okun, and Commissioner Lane continue to reach a negative preliminary determination, and they respond to the Court’s remand instructions in their separate and dissenting views.

³² See, e.g., Celanese, Confidential Slip Op. at 14-21.

³³ See, e.g., Celanese, Confidential Slip Op. at 21-24.

A. Data Source to Measure Subject Imports

The Court instructed the Commission to explain why it relied on importer questionnaire responses to measure the volume of subject imports.³⁴ For these Remand Views, we again rely on importer questionnaire data to measure the volume of subject imports from Taiwan rather than Census data or data reported in CCPC's foreign producer questionnaire response. As the Court recognized, the Commission has broad discretion to choose the data on which it bases its determination.³⁵

Importer questionnaire data are based on certified questionnaire responses from seven companies and are comprehensive in their coverage.³⁶ In contrast, during the preliminary investigation, both Celanese and DuPont questioned the validity and utility of Census data on imports of polyvinyl alcohol from Taiwan.³⁷ Celanese questioned the reliability of the value information in the Census data and the average unit values derived from these data.³⁸ Furthermore, DuPont reported problems with the volume information in the Census data.³⁹

The Court recognized that "there is no presumption favoring the use of official government statistics such as Census data, or – for that matter – any other set of data," and it further agreed that the "use of importer questionnaire data to calculate subject import volumes is a well-established and accepted practice."⁴⁰ The Court expressed concern, however, about the possibility that there were revised Census

³⁴ See, e.g., Celanese, Confidential Slip Op. at 14-21.

³⁵ See, e.g., Celanese, Confidential Slip Op. at 19-20.

³⁶ As the Court agreed, Celanese exaggerated when it claimed that the importer questionnaire data understated subject imports by about 10 percent, noting that the staff report clearly stated that the importer questionnaire data actually "account[ed] for *well over* 90 percent" of the imports from Taiwan. See, e.g., Celanese, Confidential Slip Op. at 17 (emphasis added). Imports of subject merchandise from Taiwan into the United States reported in importer questionnaire responses in fact accounted for *** percent of the volume reported in unadjusted Census data in 2001, *** percent in 2002, *** percent in 2003, *** percent in the first six months of 2003 ("interim 2003"), and *** percent in the first six months of 2004 ("interim 2004"). (Derived from Supplemental Table 1).

³⁷ We did not use data from CCPC's foreign producer questionnaire response in part because this source does not account for volume in terms of value. Moreover, exports reported in foreign producer questionnaire responses are further removed in time from the imports that are reflected in Census data and the data that are reflected in importer questionnaire responses, due to e.g., transit time. As between imports into the United States of subject merchandise from Taiwan and U.S. shipments of subject merchandise from Taiwan, both of which were reported in the importers' questionnaire responses, we used U.S. shipments of subject merchandise from Taiwan into the U.S. market to measure apparent U.S. consumption and in turn market share, consistent with our use of the domestic producers' U.S. shipments in this calculation.

We thus concur with the Court that Celanese wisely abandoned its argument part way through the appeal that the Commission should have used data from CCPC's foreign producer questionnaire response. See, e.g., Celanese, Confidential Slip Op. at 18-19.

³⁸ See, e.g., Petition at 27, 37, n.104.

³⁹ DuPont reported that it was taking steps to correct clerical errors made by its Customs broker; according to DuPont, the errors it reported to U.S. Customs and Border Protection ("Customs") were based on the mistaken application of metric-English conversion factors to certain line items in the entries. See, e.g., DuPont's Postconference Brief at 18-19, n.13, Exh. 4.

⁴⁰ Celanese, Confidential Slip Op. at 16; see also, e.g., Celanese, Confidential Slip Op. at 19 citing CR at I-2 n.5 ("Official import statistics compiled by Commerce were not used for imports from Taiwan due to concerns about volume and value accuracy. DuPont reports that it made clerical errors in import documentation to Customs which, if corrected, would lower the total volume of polyvinyl alcohol imports from Taiwan and raise the average unit value. DuPont's postconference brief, pp. 18-20. DuPont also presented in its postconference brief (exh. 4)

(continued...)

statistics on the Commission's record that the Commission not only did not use but did not discuss. The Court referred to revised import statistics from Census that it understood might have been available after the parties' postconference briefs had been filed with the Commission and that would have addressed the errors previously identified by the parties.⁴¹ As the Court explained, the "Commission has not denied it had the corrected Census data at the time of its decision."⁴²

Our review of the investigative record indicates that the Commission did *not* have available revised Census data on the record at the time of the Commission's preliminary determination.⁴³ Moreover, during the preliminary investigation and in their comments on the Court's opinion, the parties – including Celanese – gave no indication that revised Census statistics were forthcoming prior to the Commission's October 21, 2004, vote. There is no indication on this record *when* or even *if* Census concurred with any revision and amended the data in response to DuPont's September 22, 2004, correspondence, which was dated only weeks before the Commission's October 21, 2004, vote.⁴⁴ As the Federal Circuit has recognized, the time frame in a preliminary investigation is extremely limited,⁴⁵ and the statute thus directs the Commission to base its decision on the "information available to it at the time of the {preliminary} determination."⁴⁶

⁴⁰ (...continued)

supplemental information letters to Customs regarding the errors.") and citing CR at IV-1 n.2 ("Questionnaire responses were used in lieu of official Commerce statistics data due to concerns about reporting accuracy of the official Commerce statistics on imports from Taiwan. (Petition, pp. 27 and 37, footnote 104, and DuPont's postconference brief, pp. 18-20)").

⁴¹ Celanese, Confidential Slip Op. at 19 (citing Pl.'s Brief at 19 n.45; Pl.'s Reply Brief at 10).

⁴² Celanese, Confidential Slip Op. at 21.

⁴³ The only Census data that we have located are dated September 1, 2004, or six days before the petition was filed. (EDIS document 214685).

⁴⁴ For the same reasons, we also deemed it inappropriate to adjust the Census data using the information reported to Customs by DuPont and instead used the importer questionnaire data. In any event, amending the Census data using information reported by DuPont would have affected only the second quarter of 2004, and the adjustment would have *lowered* the volume of subject imports from Taiwan for that period to a level that was also lower than the data reported as U.S. shipments of subject merchandise from Taiwan in the importer questionnaires (counter to Celanese's interests). See, e.g., DuPont's Postconference Brief at 18-19, n.13, Exh. 4; Supplemental Table 1.

⁴⁵ See, e.g., Co-Steel, 357 F.3d at 1312-14 (the Commission is to make its decision on information gathered within the 45-day period for conducting a preliminary investigation), 1317 (recognizing the need for finality is not served by allowing parties to make arguments on appeal based on new developments); 19 U.S.C. § 1673b(a)(1); see also, e.g., American Lamb, 785 F.2d at 1001.

⁴⁶ We note that, in its opinion, the Court indicated that it believed the Commission needs to establish that the databases it used to calculate import volumes reflect the "best information available" for this purpose. See, e.g., Celanese, Confidential Slip Op. at 21. We are concerned that the Court's statements on this issue are based on a misunderstanding of the Court of International Trade's decision in Calabrian Corp. v. United States, 16 CIT 342, 351, 794 F. Supp. 377, 386 (1992), the Federal Circuit's decision in American Lamb, 785 F.2d 994, and the statute (19 U.S.C. § 1673b(a)(1)), since they appear to require a level of precision in the data sources, and an explanation of the choices among data sources, neither of which is required by the statute nor feasible in the tight confines of a preliminary investigation. See, e.g., Celanese, Confidential Slip Op. at 18, 20, 21, 30, 36 (referring to "best information available"); see also, e.g., Celanese's March 15, 2007 Comments at 4 & n.11; Celanese's September 5, 2005, Reply Br. at 11, n.33; Celanese's April 21, 2005, Brief at 23. But see Celanese, Confidential Slip Op. 07-16 at 12, 55.

At the time of the American Lamb and Calabrian decisions, the statute provided with respect to preliminary
(continued...)

For all of these reasons, we decided to use data from importer questionnaire responses to measure subject imports from Taiwan. Because each of the data sources available to measure subject imports from Taiwan is quite similar,⁴⁷ the choice had no effect on our respective decisions.

B. Data Source for Non-Subject Imports

In the preliminary investigation, the Commission used unadjusted Census data to measure non-subject imports. The Census data correspond to a “basket” U.S. Harmonized Tariff Schedule (“HTSUS”) category that also includes polyvinyl alcohol with a hydrolysis level of 80 percent or lower (“low-hydrolysis polyvinyl alcohol”), a product excluded from the scope of this case. Celanese asserts that some of the imports from two of the nineteen non-subject countries supplying the U.S. market (Italy and the United Kingdom) consist of out-of-scope low-hydrolysis polyvinyl alcohol. It argues that the Census data include these out-of-scope products and therefore unfairly overstate the volume of non-subject imports. Celanese further claims that this over inclusion distorts the market-share trends relevant to the Commission’s causation analysis.⁴⁸

The Court instructed the Commission to explain why it relied on unadjusted Census data to measure non-subject imports.⁴⁹ As explained below, in this remand determination we have revised the data to subtract what we estimate to be the volume of out-of-scope polyvinyl alcohol from Italy and the United Kingdom.

We first note that, in our view, it was reasonable for the Commission to rely upon the unadjusted Census figures in measuring the non-subject imports in this preliminary investigation. The amount of out-of-scope product was fairly small, equivalent to less than *** percent of domestic consumption in 2001 and 2002.⁵⁰ In the preliminary phase of the 2002/2003 investigations, when the scope of merchandise tracked the instant scope, the Commission relied upon unadjusted import statistics

⁴⁶ (...continued)

injury determinations that the Commission “shall make a determination, based upon the *best information available* to it at the time of the determination” 19 U.S.C. § 1673b(a) (1993) (emphasis added). After the 1994 amendments to the statute associated with the Uruguay Round Agreements, the term “best” no longer appeared in this portion of the statute. Thus, the statute requires only that the Commission base its determination on the “information available to it at the time of the {preliminary} determination.” See 19 U.S.C. § 1673b(a)(1)

As the Courts recognized in American Lamb and Calabrian, in a preliminary investigation where the Commission generally has only 45 days from the filing of the petition in which to make its determination, see, e.g., 19 U.S.C. § 1673b(a)(2), the Commission is to rely on the information available to it “at the time of” its preliminary determination. 19 U.S.C. § 1673b(a)(1). The Commission is not required to establish that its analytical or methodological choices are the best ones possible, as the Court implies; the Courts have consistently stated that the Commission’s analytical and methodological choices need only be reasonable ones. See, e.g., U.S. Steel Group v. United States, 96 F.3d 1352, 1357-58 & 1361-62 (Fed. Cir. 1996).

⁴⁷ See, e.g., Supplemental Table 1.

⁴⁸ See, e.g., Celanese’s April 21, 2005 Br. at 16-18, Exh. 1; Celanese’s September 5, 2005 Reply Br. at 7-9.

⁴⁹ See, e.g., Celanese, Confidential Slip Op. at 21-24.

⁵⁰ In the 2002/2003 investigations, the Commission estimated that, of the total polyvinyl alcohol imports from Italy and the United Kingdom, out-of-scope imports were equivalent to 4.1 million pounds in 2001 and 3.5 million pounds in 2002. See Supplemental Table 3 at line 5. These figures are relatively small as compared to a total U.S. market of more than *** million pounds in those years (or equivalent to approximately *** to *** percent of the U.S. market). At that time, total polyvinyl alcohol imports (including the out-of-scope products) from all non-subject countries as reflected in Census data were equivalent to approximately *** percent of the U.S. market. (Derived from EDIS doc. 214565; USITC Pub. 3604 at Table IV-2 n.1; CR/PR at Tables C-2, C-1; Supplemental Tables 2-B, 2-A, 3).

notwithstanding the fact that, as now, certain product that was excluded from the scope of those investigations was captured by the HTSUS subheading.⁵¹ The decision not to attempt to adjust the data follows from the short time-frames in which preliminary investigations are conducted. As described above, the statute does not require the Commission to use “perfect” information, just the “information available to it at the time of the {preliminary} determination.”⁵²

Nevertheless, because of the additional time available in this remand proceeding and the discussion of this issue in the Court’s opinion, we have calculated the volume of non-subject imports by adjusting the Census data for non-subject imports to account for out-of-scope polyvinyl alcohol from Italy and the United Kingdom. We have done so using a slightly different and, in our view, more accurate methodology than the one proposed by Celanese.

For 2001 and 2002, we used the same adjusted Census data that the Commission used in the final phase of the 2002/2003 investigations. In those investigations the Commission reduced the figures for non-subject import quantities for 2001 and 2002 by an estimate of the amount of out-of-scope polyvinyl alcohol from Italy and the United Kingdom based on discussions with the largest importers of polyvinyl alcohol from those countries.⁵³

Because the prior data did not include 2003, interim 2003, or interim 2004, we have estimated the amount of the adjustment for those periods. We first calculated the average ratio of within-scope polyvinyl alcohol imports to total polyvinyl alcohol imports from Italy and the United Kingdom for 2001 and 2002 (34.2 percent). We then applied that ratio to the total Census volume of imports from Italy and the United Kingdom for 2003, interim 2003, and interim 2004, to arrive at the estimated volume of within-scope polyvinyl alcohol imports from those two countries for those periods. We then added this estimate of within-scope polyvinyl alcohol imports from Italy and United Kingdom to the Census data for non-subject imports from all other countries for 2003, interim 2003, and interim 2004 to arrive at the total estimated volume of the within-scope non-subject imports from all non-subject countries for each of those periods. Our revised figures for non-subject imports are contained in Supplemental Table 2-A and Supplemental Table 2-B appended to these views. Our methodology is further described in Supplemental Table 3.

Celanese proposes calculating the amount of within-scope polyvinyl alcohol for 2003 and the interim periods by using the average *absolute* amount of within-scope product from Italy and the United Kingdom found by the Commission in 2001 and 2002.⁵⁴ We believe that using the average *ratio* of within-scope product to total imports from Italy and the United Kingdom is preferable because it takes into account the decline in the absolute amount of imports from those countries in 2003 as compared to 2001 and 2002, as well as the decline between 2001 and 2002 in the portion of imports from Italy and the United Kingdom that were out-of-scope products. Importantly, applying our adjustment in these remand proceedings yields data that are not significantly different than the data used in the preliminary

⁵¹ See, e.g., Polyvinyl Alcohol from China, Germany, Japan, Korea, and Singapore, Invs. Nos. 731-TA-1014 to 1018 (Prelim.), USITC Pub. 3553 at 11 n.71, IV-1 nn.3, 5 (Oct. 2002) (scope of 2002 prelim.); CR at I-4 (scope of 2004 prelim.).

⁵² See 19 U.S.C. § 1673b(a)(1); see also, e.g., Co-Steel, 357 F.3d at 1312-14 (the Commission is to make its decision on information available within the 45-day period for conducting a preliminary investigation); American Lamb, 785 F.2d at 1001.

⁵³ See, e.g., USITC Pub. 3604 at Table IV-2 n.1.

⁵⁴ See, e.g., Celanese’s 04/21/05 Brief at 16-18, Exh. 1; Celanese’s 09/05/05 Reply Brief at 7-9.

investigation. Our respective decisions would not have changed had we relied on the data sets we used in the preliminary investigation (i.e., CR/PR at Table C-1 and Table C-2).⁵⁵

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS OF SUBJECT MERCHANDISE FROM TAIWAN⁵⁶

The Court did not remand nor did Celanese challenge the Commission’s legal framework, findings, analysis, or conclusions with respect to the definition of the domestic like product, the definition of the domestic industry, or negligibility. Having reviewed the record *de novo*,⁵⁷ we adopt and incorporate those sections of the Original Views.⁵⁸

In the preliminary phase of an antidumping duty investigation, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by

⁵⁵ Compare Supplemental Tables 2-B, 2-A with CR/PR at Tables C-2, C-1.

Share of U.S. Commercial Market

Source	2001		2002		2003		Interim 2003		Interim 2004	
	Table C-2	Supp. Table 2-B	Table C-2	Supp. Table 2-B	Table C-2	Supp. Table 2-B	Table C-2	Supp. Table 2-B	Table C-2	Supp. Table 2-B
U.S.	***	***	***	***	***	***	***	***	***	***
Subject imports	***	***	***	***	***	***	***	***	***	***
Non-subject imports	***	***	***	***	***	***	***	***	***	***

Share of the Total U.S. Market

Source	2001		2002		2003		Interim 2003		Interim 2004	
	Table C-1	Supp. Table 2-A	Table C-1	Supp. Table 2-A	Table C-1	Supp. Table 2-A	Table C-1	Supp. Table 2-A	Table C-1	Supp. Table 2-A
U.S.	***	***	***	***	***	***	***	***	***	***
Subject imports	***	***	***	***	***	***	***	***	***	***
Non-subject imports	***	***	***	***	***	***	***	***	***	***

⁵⁶ Chairman Pearson, Commissioner Okun, and Commissioner Lane do not join the remainder of this opinion. See Separate and Dissenting Views of Chairman Daniel R. Pearson, Commissioner Deanna Tanner Okun, and Commissioner Charlotte R. Lane.

⁵⁷ As the Courts have recognized, we have the prerogative to adopt findings made in the original determination as our own, as we deem appropriate. See, e.g., *USX Corp. v. United States*, 698 F. Supp. 234 (Ct. Int’l Trade 1988).

⁵⁸ In any final phase investigation, we intend to explore the extent, if any, to which DuPont may have benefited from its imports of polyvinyl alcohol from Taiwan.

reason of the imports under investigation.⁵⁹ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁶⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶¹ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶² 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.”⁶³

A. Conditions of Competition and Business Cycle

We adopt the legal framework, findings, analysis, and conclusions found in the Original Views with respect to the captive production provision (19 U.S.C. § 1677(7)(C)(iv)). We thus apply the captive production provision, and in determining market share and the factors affecting the financial performance of the domestic industry, we focus primarily on the commercial market for our analysis, although we analyze these factors with respect to the whole market as well.⁶⁴ In addition, we find the following conditions of competition pertinent to our analysis.

1. Demand

Market participants commonly perceive the polyvinyl alcohol market by reference to the applications for which it is sold, including PVB, textiles, adhesives/emulsifiers, building materials, and paper products. The highest-volume application in the United States has been as an intermediate product in the production of PVB, an adhesive used in the manufacture of automotive and architectural safety glass.⁶⁵ This application has been supplied *** by captive consumption and *** by domestic production.⁶⁶ The next largest applications in the United States in 2003, which were supplied *** by sales in the commercial market, were for sizing in the textiles industry, in adhesives, and in emulsion polymerization.⁶⁷ Celanese, DuPont, and Perry Chemical, the three largest suppliers of domestic and imported polyvinyl alcohol to the U.S. commercial market, *** sell their polyvinyl alcohol directly to U.S. end users and generally in the same end-use applications, ***.⁶⁸

⁵⁹ 19 U.S.C. § 1673b(a).

⁶⁰ 19 U.S.C. § 1677(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).

⁶¹ 19 U.S.C. § 1677(7)(A).

⁶² 19 U.S.C. § 1677(7)(C)(iii).

⁶³ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁴ See, e.g., Original Views at 21-24. We also considered data regarding the domestic industry’s production for internal consumption.

⁶⁵ See, e.g., CR at I-6; PR at I-5.

⁶⁶ See, e.g., CR at I-6; PR at I-5; CR/PR at Figure I-1, Table II-1, Table VI-1 n.1, Table VI-2.

⁶⁷ See, e.g., CR at I-6, II-2 to II-3; PR at I-5, II-2.

⁶⁸ See, e.g., CR at II-13; PR at II-8 to II-9.

Demand for polyvinyl alcohol is derived from demand for the downstream products that use it as an input.⁶⁹ Apparent U.S. consumption in the United States (the sum of subject and non-subject imports as well as the U.S. industry's U.S. shipments) of polyvinyl alcohol increased irregularly between 2001 and 2003, and increased from the first half of 2003 to the first half of 2004.⁷⁰ Demand for polyvinyl alcohol for textile uses has reportedly decreased, while demand for PVB-grade polyvinyl alcohol in all end-use sectors has remained strong.⁷¹

Respondent CCPC argues that polyvinyl alcohol customers increasingly strive to secure multiple sources of polyvinyl alcohol in order to protect themselves from disruptions in supply.⁷² DuPont makes the same argument.⁷³ Celanese disputes this contention.⁷⁴ The record contains some evidence supporting each argument. In any final phase investigation, we intend to seek information from purchasers on this issue, including whether this is a new condition of competition in particular end-use sectors or across all purchasers.

2. Supply

The U.S. polyvinyl alcohol market is supplied principally by the domestic industry. In 2003, domestic producers accounted for *** percent of U.S. commercial market consumption and *** percent of total apparent U.S. consumption, measured by quantity.⁷⁵ The next largest source of supply in 2003, accounting for *** percent of apparent U.S. commercial market consumption and *** percent of total apparent U.S. consumption, was non-subject imports.⁷⁶ Subject imports accounted for *** percent of the commercial market in 2003 and *** percent of total consumption.⁷⁷

Domestic industry: The domestic industry consists of three polyvinyl alcohol producers: DuPont, Celanese, and Solutia Inc. ("Solutia"). *** DuPont and Celanese produce polyvinyl alcohol for the commercial market.⁷⁸ The Petitioner, Celanese, acquired the polyvinyl alcohol business, including U.S. production facilities, of former producer Air Products in late September 2000.⁷⁹ DuPont is only able to produce fully hydrolyzed polyvinyl alcohol on its existing equipment, as it employs a unique manufacturing process, a "reactor process." Both Celanese and Solutia utilize a "belt process," which, unlike DuPont's reactor process, allows the manufacturer to control the amount of hydrolysis. Thus,

⁶⁹ See, e.g., CR at II-1; PR at II-1.

⁷⁰ See, e.g., Supplemental Tables 2-B and 2-A. Apparent U.S. consumption by quantity in the commercial market increased by *** percent, from *** pounds in 2001 to *** pounds in 2003. It increased a further *** percent between interim 2003 and interim 2004. Apparent U.S. consumption by quantity in the total U.S. market increased by *** percent, from *** pounds in 2001 to *** pounds in 2003. It further increased by *** percent between interim 2003 and interim 2004. See, e.g., Supplemental Tables 2-B and 2-A.

⁷¹ See, e.g., CR at II-10; PR at II-6.

⁷² See, e.g., CCPC's Postconference Brief at 5.

⁷³ See, e.g., CR at II-13 to II-14; PR at II-9.

⁷⁴ See, e.g., Celanese's Postconference Brief at 24, 26; Conference Tr. at 118 (Bruno).

⁷⁵ See, e.g., Supplemental Tables 2-B and 2-A.

⁷⁶ See, e.g., Supplemental Tables 2-B and 2-A.

⁷⁷ See, e.g., Supplemental Tables 2-B and 2-A.

⁷⁸ See, e.g., CR/PR at Table III-4.

⁷⁹ See, e.g., CR at III-2, VI-1; PR at III-1, VI-1.

Celanese and Solutia are able to produce partially hydrolyzed polyvinyl alcohol as well as fully hydrolyzed polyvinyl alcohol.⁸⁰

Subject imports: There is only one known producer of polyvinyl alcohol in Taiwan, CCPC. CCPC utilizes the “belt process,” so it is also able to control the amount of hydrolysis in its polyvinyl alcohol production and produce a full range of polyvinyl alcohol.⁸¹ *** importers of subject imports from Taiwan over the period of investigation, Perry Chemicals and DuPont, accounted for *** subject imports.⁸² DuPont and Perry Chemical’s imports of subject merchandise from Taiwan were ***. Their imports ***, and in the case of ***.⁸³

Non-subject imports: During the period of investigation, there were imports from 19 non-subject countries.⁸⁴ The top two non-subject country sources were China and Japan.⁸⁵ Imports from some of the non-subject countries were subject to antidumping duty orders during portions of the period of investigation. Between March 29, 1995 and May 14, 2001, there were antidumping duty orders on certain imports of polyvinyl alcohol from China and Japan (as well as Taiwan).⁸⁶ New antidumping duty orders were imposed on certain polyvinyl alcohol imports from Japan on July 2, 2003, and on certain polyvinyl alcohol imports from China and Korea on October 1, 2003, as noted above.⁸⁷ As the Commission found in its previous determinations, no party contended that the filing of the antidumping duty petitions in September 2002 served to reduce cumulated import volumes from China, Korea, and Japan. To the contrary, DuPont and Celanese emphasized in those investigations that the collective volume of imports from China, Korea, and Japan generally increased notwithstanding the filing of the petition.⁸⁸ Although the volume of non-subject imports from China, Korea, and Japan increased between 2001 and 2002, the volume of imports from those countries declined thereafter, once those imports became subject to antidumping duty orders.⁸⁹

Other supply considerations: The principal raw material input used to produce polyvinyl alcohol in the United States is vinyl acetate monomer (“VAM”). Natural gas or its derivative ethane are the principal feedstocks used by U.S. polyvinyl alcohol producers to produce VAM and the principal energy source used to produce polyvinyl alcohol.⁹⁰ Beginning in mid-2002, prices of natural gas increased significantly and were expected to continue to be high into the future.⁹¹ For commercial polyvinyl alcohol operations, raw material costs (adjusted for byproduct revenue) accounted for *** percent of cost of goods sold in 2003. For total polyvinyl alcohol operations, raw material costs (adjusted for byproduct revenue) accounted for *** percent of cost of goods sold in 2003.⁹²

⁸⁰ See, e.g., CR at I-8; PR at I-5; CR/PR at Table III-3.

⁸¹ See, e.g., CR at I-8, VII-1; PR at I-5, VII-1; CR/PR at Table IV-3.

⁸² See, e.g., CR at I-1; PR at I-1.

⁸³ See, e.g., CR/PR at Table IV-3.

⁸⁴ See, e.g., CR at II-9; PR at II-5.

⁸⁵ See, e.g., CR at II-9; PR at II-5.

⁸⁶ See, e.g., CR at I-2 to I-3 PR at I-2.

⁸⁷ See, e.g., CR at I-3 to I-4; PR at I-3.

⁸⁸ See, e.g., USITC Pub. 3604 at 27 n.150.

⁸⁹ See, e.g., Supplemental Table 2-B, 2-A; USITC Pub. 3604 at Tables IV-2, IV-3.

⁹⁰ See, e.g., CR at V-2; PR at V-1.

⁹¹ See, e.g., CR at V-2, V-3; PR at V-2.

⁹² (Derived from domestic producers’ questionnaire responses); see also, e.g., CR at V-2; PR at V-1.

Petitioner characterizes polyvinyl alcohol production as highly capital-intensive. Petitioner contends that this industry can only remain healthy if it achieves high levels of capacity utilization because of the high levels of fixed costs.⁹³ The record shows that variable costs for the three domestic producers averaged about *** percent of their total costs to produce polyvinyl alcohol in 2003, while fixed costs were about *** percent.⁹⁴ The significant fixed costs suggest that low output levels could lead to increased unit costs, although equally significant variable costs likely moderate such an increase in unit costs.⁹⁵ DuPont faced a *** share of *** costs than Celanese.⁹⁶ Record data indicate that Celanese's reported *** was *** than that reported by DuPont.⁹⁷ The record also reflects differences among the domestic producers in terms of their reported rates of capacity utilization.⁹⁸ In any final phase investigation, we intend to explore the extent to which the domestic industry is capital intensive.

3. Substitutability

Based on record information, subject imports of polyvinyl alcohol from Taiwan and domestically produced polyvinyl alcohol appear to be substitutable, but there may be some limitations due to product differentiation and other differences.⁹⁹ We intend to explore this issue further in any final phase investigation.

⁹³ See, e.g., Conference Transcript at 12 (Massa).

⁹⁴ According to their reported financial information on their commercial operations, variable costs (direct labor and raw material costs (adjusted for by-product revenue)) accounted for *** percent, and fixed costs (other factory costs) accounted for *** percent, of the domestic industry's total cost of goods sold. For their total polyvinyl alcohol operations, variable costs (direct labor and raw material costs (adjusted for by-product revenue)) accounted for *** percent, and fixed costs (other factory costs) accounted for *** percent, of the domestic industry's cost of goods sold. (Derived from domestic producers' questionnaire responses); see also, e.g., CR at V-2; PR at V-1.

⁹⁵ See, e.g., CR at II-6; PR at II-4.

⁹⁶ See, e.g., CR/PR at Table VI-3.

⁹⁷ ***. Natural gas, which is the primary cost component in the polyvinyl alcohol production chain as well as the ***, accounts for approximately *** percent of Celanese's other factory costs, and Celanese also reported *** than its domestic counterpart. See, e.g., CR at VI-4 to VI-6; CR/PR at Tables VI-2 to VI-5 (indicating that Celanese's *** whereas ***).

⁹⁸ See, e.g., CR/PR at Table III-2; CR at II-5; PR at II-4.

⁹⁹ See, e.g., CR at II-13; PR at II-7.

4. Business Cycle

Consistent with our finding that demand for polyvinyl alcohol is derived from demand for various end-use applications, we do not find that the polyvinyl alcohol market is characterized by its own business cycle.¹⁰⁰

5. Exports by the Domestic Industry

The domestic industry exported a large quantity of polyvinyl alcohol during the period of investigation. In 2003, *** of the exports, *** percent.¹⁰¹ In 2003, U.S. commercial shipments accounted for *** percent of the volume of U.S. producers' total shipments of polyvinyl alcohol, captive shipments accounted for *** percent, and exports accounted for *** percent.¹⁰² The quantity of export shipments made by the domestic industry increased from *** pounds in 2001 to *** pounds in 2002 before declining to *** pounds in 2003.¹⁰³ While recognizing the limitations of average unit values in this industry, we note that the average unit value of the domestic industry's export shipments was ***.¹⁰⁴

B. Volume of the Subject Imports

Section 771(7)(C)(I) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."¹⁰⁵

The volume of subject imports increased both absolutely and relative to apparent U.S. consumption over the period of investigation. The increases were sharpest from 2002 to 2003 and into 2004, after polyvinyl alcohol from other major foreign sources became subject to antidumping duties and began to leave the U.S. market.¹⁰⁶ U.S. shipments of polyvinyl alcohol imports from Taiwan increased overall from 2001 to 2003 by *** percent, and from 2002 to 2003, by *** percent.¹⁰⁷ U.S. shipments of subject imports in interim 2004 were *** percent higher than during the same period in 2003.¹⁰⁸ The volume of subject imports was *** pounds in 2001, *** pounds in 2002, *** pounds in 2003, and *** pounds in the first half of 2004 (as compared to *** pounds in the first half of 2003).¹⁰⁹

As a portion of the commercial U.S. market, subject imports increased, most notably from 2002 to 2003, when their market share by quantity grew from *** percent to *** percent.¹¹⁰ Subject imports' share of the commercial market was even higher in interim 2004, at *** percent, as compared to ***

¹⁰⁰ See, e.g., CR at II-9 to II-10.

¹⁰¹ See, e.g., CR/PR at Table III-4.

¹⁰² See, e.g., CR at III-5; CR/PR at Table C-1.

¹⁰³ See, e.g., CR/PR at Table III-4.

¹⁰⁴ See, e.g., CR/PR at Table III-4.

¹⁰⁵ 19 U.S.C. § 1677(7)(C)(I).

¹⁰⁶ Antidumping duties were imposed on imports of polyvinyl alcohol from Japan in July 2003, and on imports of polyvinyl alcohol from China and Korea in October 2003. The petition in that case was filed in September 2002, and the Commission's final phase period of investigation was calendar years 2000 through 2002.

¹⁰⁷ See, e.g., Supplemental Tables 2-B, 2-A.

¹⁰⁸ See, e.g., Supplemental Tables 2-B, 2-A.

¹⁰⁹ See, e.g., CR/PR at Table IV-1.

¹¹⁰ See, e.g., Supplemental Table 2-B.

percent in interim 2003.¹¹¹ Subject imports' share of the total market increased as well over the period of investigation.¹¹²

U.S. producers' production, U.S. shipments, and market share also increased over the period of investigation.¹¹³ The volume of non-subject imports declined by *** percent from 2001 to 2003, and by *** percent from 2002 to 2003. Their share of U.S. commercial market consumption dropped from *** percent in 2002 to *** percent in 2003 and was lower, *** percent in interim 2004, as compared to interim 2003 (*** percent).¹¹⁴ The gain in market share by subject imports was therefore at the expense of non-subject imports,¹¹⁵ a large portion of which had been found in 2003 to be causing material injury or threat thereof to the same domestic industry.¹¹⁶

In sum, the volume of subject imports increased both absolutely and relative to consumption over the period of investigation, and most notably as imports previously found by the Commission to be injurious began to leave the market. Accordingly, we find the volume and the increase in volume of the subject imports to be significant.

C. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹¹⁷

The Commission requested U.S. producers and importers of polyvinyl alcohol to provide quarterly net U.S. f.o.b. selling value and quantity data for sales to unrelated U.S. customers for five non-specialty polyvinyl alcohol products suggested by petitioner that are produced in the United States and

¹¹¹ See, e.g., Supplemental Table 2-B.

¹¹² See, e.g., Supplemental Table 2-A (indicating that subject imports' share of the total U.S. market decreased from *** percent in 2001 to *** percent in 2002 and then increased to *** percent in 2003 and was *** in interim 2003 compared to *** percent in interim 2004).

¹¹³ See, e.g., Supplemental Tables 2-B, 2-A; CR/PR at Tables C-2, C-1.

¹¹⁴ See, e.g., Supplemental Table 2-B. In terms of the total U.S. market, non-subject imports' market share declined from *** percent in 2002 to *** percent in 2003 and was lower (*** percent) in interim 2004 than in interim 2003 when it was *** percent of the total U.S. polyvinyl alcohol market. See, e.g., Supplemental Table 2-A.

¹¹⁵ See, e.g., Supplemental Tables 2-B, 2-A. There is also evidence suggesting that subject imports from Taiwan gained market share at the expense of the domestic industry between interim 2003 and interim 2004, at least in the total U.S. market. See, e.g., Supplemental Table 2-A.

¹¹⁶ In any final phase investigation, we will seek information on the role of non-subject imports in the U.S. market. We invite parties to comment in any final phase investigation on whether the recent decision by the U.S. Court of Appeals for the Federal Circuit, Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), is applicable to the facts of this investigation. We also invite parties to comment on what additional information the Commission should collect to address the issues raised by the Court, how that information should be collected, and which of the various non-subject sources should be the focus of additional information-gathering by the Commission in any final phase investigation.

¹¹⁷ 19 U.S.C. § 1677(7)(C)(ii).

imported from Taiwan.¹¹⁸ The reported quarterly selling prices of the specified products produced domestically and imported from Taiwan fluctuated during the period of investigation, but trended downward overall.¹¹⁹ Although fluctuating, selling prices of products 1 to 4 sold by the domestic producers declined during the period of investigation, with prices lower at the end of the period than at the beginning of the period.¹²⁰ Domestic selling prices for products 1 to 3 (used in various adhesive applications) fell during the period of investigation by *** percent for product 1, *** percent for product 2, and *** percent for product 3.¹²¹ Domestic selling prices for product 4 (used in paper applications) fell during the period of investigation by *** percent.¹²² Domestic selling prices of product 5 (used in textile applications) remained relatively stable and ended the period of investigation *** percent above the price at the beginning of the period.¹²³

Selling prices of products 1 to 5 from Taiwan fluctuated during the period of investigation and were lower at the end of the period of investigation than at the beginning.¹²⁴ Prices of imports from Taiwan for product 2, which generally remained at or above the initial-period price, fell at the end of the period of investigation.¹²⁵ Prices of imports from Taiwan for products 1 to 3 (used in adhesive applications) ended the period below their initial period prices by *** percent for product 1, by *** percent for product 2, and by *** percent for product 3.¹²⁶ Prices of imports from Taiwan for product 4 (used in paper applications) ended the period *** percent lower than at the beginning of the period of the investigation.¹²⁷ Prices of imports from Taiwan for product 5 (used in textile applications) ended *** percent lower than at the beginning of the period of investigation.¹²⁸

*** the pricing data for subject imports were supplied by importers Perry Chemical and DuPont,¹²⁹ which accounted for *** percent and *** percent of imports from Taiwan, respectively, in 2003.¹³⁰ Perry Chemical accounted for *** of the import pricing data. ***.¹³¹ The pricing data collected show *** instances of underselling and *** instances of overselling.¹³² Pricing data by company show that, for Perry as an importer, there were *** out of *** instances of underselling ***, while for DuPont

¹¹⁸ Regarding domestic products, ***. Both Celanese, who recommended these pricing products, and DuPont, agreed that these products were representative of both the domestic and subject imported polyvinyl alcohol products. Pricing data accounted for *** percent of total reported U.S. commercial shipments of the domestic industry and *** percent of total U.S. commercial shipments of polyvinyl alcohol imported from Taiwan during the period of investigation.

¹¹⁹ See, e.g., CR at V-27; PR at V-12.

¹²⁰ See, e.g., CR at V-27; PR at V-12; CR/PR at Tables V-1 to V-4.

¹²¹ See, e.g., CR at V-27; PR at V-12; CR/PR at Tables V-1 to V-3.

¹²² See, e.g., CR at V-27 to V-28; PR at V-12 to V-13; CR/PR at Tables V-4.

¹²³ See, e.g., CR at V-27 to V-28; PR at V-12 to V-13; CR/PR at Table V-5.

¹²⁴ See, e.g., CR at V-28; PR at V-13; CR/PR at Tables V-1 to V-5.

¹²⁵ See, e.g., CR at V-28; PR at V-13; CR/PR at Table V-2.

¹²⁶ See, e.g., CR at V-28; PR at V-13; CR/PR at Tables V-1 to V-3.

¹²⁷ See, e.g., CR at V-28; PR at V-13; CR/PR at Table V-4.

¹²⁸ See, e.g., CR at V-28; PR at V-13; CR/PR at Table V-5.

¹²⁹ See, e.g., CR at V-15, n.51; PR at V-10 n.51.

¹³⁰ See, e.g., CR at IV-3; PR at IV-1.

¹³¹ See, e.g., CR at V-15, n.52; PR at V-10, n.52.

¹³² See, e.g., CR/PR at Table V-6.

as an importer, the *** of comparisons show ***.¹³³ For all companies combined, the margins of underselling ranged from *** percent to *** percent.¹³⁴ The margins of overselling were generally ***.¹³⁵

We place more weight on the pricing data for the most recent periods (i.e., beginning with the first quarter of 2003) when the volume of non-subject imports was receding and the volume of subject imports from Taiwan was increasing. In this period, subject imports from Taiwan undersold the domestic like product in 13 of 30 instances.¹³⁶ Based on the record in this preliminary investigation, we find that subject imports from Taiwan undersold the domestic like product significantly in the U.S. market.

We further find that U.S. prices for polyvinyl alcohol were depressed and suppressed during the period of investigation. As noted above, prices for all U.S. products, except product 5, were lower at the end of the period than at the beginning while prices for all of the Taiwan products, including product 5, were lower at the end of the period than at the beginning.¹³⁷ Within the period of investigation, prices for U.S. and Taiwan products 1 and 4 were lower at the end of the period than at the beginning of 2003, when the volume of non-subject imports was receding and the volume of subject imports from Taiwan was increasing. Prices for U.S. products 2, 3, and 5 were higher and the prices for Taiwan products 2, 3, and 5 were lower, unchanged, and higher, respectively, during this time frame. Beginning October 1, 2003, and during the last three quarters of the period of investigation, however, when dumped imports from China, Japan, and Korea, which the Commission found in the previous investigations were having adverse price effects and materially injuring the domestic industry, had fully come under the discipline of antidumping duty orders, prices for all five U.S. pricing products and four of five Taiwan products declined.¹³⁸

From 2001 to mid-2003, the downward pressure on U.S. prices was caused in part by dumped imports from China, Japan, and Korea, which the Commission found in the previous investigations were having adverse price effects and injuring the U.S. industry.¹³⁹ After duties were imposed on these imports in July and October 2003, and their volumes declined, the volumes of polyvinyl alcohol from Taiwan continued to increase and U.S. prices did not recover.¹⁴⁰

Although the pricing data reflect that subject imports from Taiwan often oversold the domestic like product over the period of investigation, the record contains multiple examples that directly link the pricing of subject imports to the observed downward price pressure in the U.S. market. Seven of 17 purchasers responding to Commission questionnaires stated that they had shifted purchases of polyvinyl alcohol from U.S. sources to Taiwan, four for price reasons, and 10 of 17 purchasers stated that their U.S.

¹³³ See, e.g., CR/PR at E-3, n.2; CR/PR at Tables E-1 to E-5.

¹³⁴ See, e.g., CR/PR at Tables V-1 to V-5.

¹³⁵ In any final phase investigation, we would more closely examine whether ***. See, e.g., CR/PR at Appendix E. We would also more closely examine the price effects related to the recent surge ***. See, e.g., CR/PR at Tables E-1 to E-5, Appendix E.

¹³⁶ See, e.g., CR/PR at Tables V-1 to V-5. In particular, there was underselling by subject imports from Taiwan for product 4 for five of the six most recent quarters at margins that ranged from *** to *** percent. In that same period, there was also underselling by subject imports from Taiwan for product 2 for the second quarter of 2004 at *** percent, for product 3 for the fourth quarter of 2003 at *** percent, and for the second quarter of 2004 at *** percent. There was underselling for product 5 for five of the six most recent quarters at margins that ranged from *** to *** percent. See, e.g., CR/PR at Tables V-1 to V-5.

¹³⁷ See, e.g., CR/PR at Tables V-1 to V-5.

¹³⁸ See, e.g., CR/PR at Tables V-1 to V-5.

¹³⁹ See, e.g., CR at V-27; PR at V-12.

¹⁴⁰ See, e.g., CR/PR at Tables V-1 to V-5.

source had reduced its prices to compete with the prices of subject imports from Taiwan.¹⁴¹ The Commission staff confirmed about ***, or ***, of the total lost revenue allegations of ***, and over one-third, or ***, of the total lost sales allegations in the amount of ***.¹⁴² Thus, it is reasonable to conclude from this record that domestic producers lowered prices to hold on to market share as a response to pricing pressure from the subject imports.¹⁴³

Accordingly, for purposes of our preliminary determination, we find that subject imports depressed prices for the domestic like product, especially after the non-subject imports now under order left the market. In any final phase investigation, we intend to explore the significance of any price depression by subject imports from Taiwan.

During the period of investigation, raw material costs rose, particularly in 2003,¹⁴⁴ and apparent consumption increased somewhat or remained steady.¹⁴⁵ All things being equal, we would expect prices to rise in these circumstances. In fact, however, ***, and U.S. producers (***) were not able to raise their prices ***.¹⁴⁶ We therefore find that subject imports prevented price increases which otherwise would have occurred to a significant degree.

Based on the record in this preliminary phase, we conclude that U.S. producers could not raise their prices sufficiently to recover increasing costs despite steady or rising demand, and the duties placed on non-subject imports toward the end of the period of investigation. These negative price effects occurred as low-priced imports from Taiwan increased over the period of investigation, especially beginning in 2003, and replaced imports from other countries previously found to be injurious. The record, therefore, indicates that the subject imports had significant negative price effects.

Based on the foregoing, we find, for purposes of this preliminary investigation, significant underselling of the domestic like product by subject imports, that subject imports depressed domestic prices, and that subject imports suppressed domestic prices to a significant degree.¹⁴⁷

¹⁴¹ See, e.g., CR at V-36; PR at V-14.

¹⁴² See, e.g., CR/PR at Tables V-7 to V-8. Staff received no responses to many of the allegations and would have continued efforts to verify them in any final phase investigation.

¹⁴³ DuPont claims that, rather than subject imports, Celanese's flawed pricing strategy, including negotiating long-term fixed-price contracts that did not allow for recovery of raw material costs, caused ***. See, e.g., CR at V-13; PR at V-8. Celanese, however, counters that, ***. See, e.g., CR at V-8; PR at V-6. We view the record as inconclusive on this matter, and in any final phase investigation we intend to explore more fully domestic producers' ***.

¹⁴⁴ Total raw material costs accounted for almost *** percent of U.S. producers' total costs to produce polyvinyl alcohol during January 2001 through June 2004, with the price of natural gas being a significant factor in U.S. polyvinyl alcohol production costs. Quarterly prices of natural gas fell from a period-high of \$7.45 per thousand cubic feet (Mcf) in January to March 2001 to a period-low of \$3.58 per Mcf by October to December 2003 and then rose to \$6.30 per Mcf for January to June 2004. See, e.g., CR at V-2 to V-3; PR at V-1 to V-2.

¹⁴⁵ See, e.g., CR/PR at Table C-2.

¹⁴⁶ Unit commercial sales values declined from *** per pound in 2001 to *** per pound in 2002 before increasing somewhat to *** per pound in 2003, and they were *** per pound in interim 2004 compared to *** per pound in interim 2003. See, e.g., CR/PR at Table C-2. Unit cost of goods sold declined from *** per pound in 2001 to *** per pound in 2002 before increasing to *** per pound in 2003, and it was *** per pound in interim 2004 compared to *** per pound in interim 2003. See, e.g., CR/PR at Table C-2. The ratio of unit cost of goods sold to unit sales value was *** percent in 2001, 2003, and both interim periods. See, e.g., CR/PR at Table C-2.

¹⁴⁷ In any final phase investigation, we intend to explore several important issues more fully, including: the extent to which domestic producers compete with each other and with subject imports for sales of polyvinyl alcohol; the extent to which the various types of polyvinyl alcohol are interchangeable; why purchasers may have shifted to
(continued...)

D. Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”¹⁴⁸ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the industry.”¹⁴⁹

We find that the subject imports have had a significant adverse impact on the domestic industry, whether in terms of the commercial or total U.S. market. As noted above, in the face of rising costs, particularly natural gas costs, domestic producers were not able to raise prices significantly. As a result, the industry as a whole ***. Although industry production and shipment volumes and market shares increased as the volume of non-subject imports from China, Japan, and Korea declined late in the period of investigation, the value of U.S. shipments declined. The industry’s cost of goods sold increased by *** percent from 2001 to 2003, and its SG&A expenses rose by *** percent, while at the same time the value of U.S. shipments decreased by *** percent.¹⁵⁰

The *** recorded by the domestic industry in 2001 and 2002, when imports from the countries previously found to be injurious were still a major presence in the U.S. market, *** in 2003 and the first half of 2004, when imports from Taiwan increased as the other imports receded. The industry’s *** in 2001, *** in 2002, and *** in 2003. The *** in interim 2004 as compared to *** in interim 2003. The domestic industry’s operating ratio was *** percent in 2001, *** percent in 2002, *** percent in 2003, and *** percent in interim 2004, as compared to *** percent in interim 2003.¹⁵¹

The number of production-related workers also declined.¹⁵² Capital expenditures increased from 2001 to 2003 but declined in interim 2004 as compared to interim 2003. Some capital spending was reportedly restricted to ***.¹⁵³

¹⁴⁷ (...continued)

subject imports from the domestic like product and whether purchasers seek multiple supply sources; differences among the U.S. producers with respect to production methods and cost structure; and factors other than imports that may have affected U.S. producers’ ability to raise prices and recover costs.

¹⁴⁸ 19 U.S.C. § 1677(7)(C)(iii).

¹⁴⁹ 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 notice of initiation, Commerce estimated the dumping margin to be 39.83 percent for polyvinyl alcohol from Taiwan.

¹⁵⁰ See, e.g., CR/PR at Table C-2. The results for the market as a whole show that costs rose by *** percent from 2001 to 2003, SG&A expenses rose by *** percent, and the values of U.S. shipments rose by only *** percent. See, e.g., CR/PR at Table C-1.

¹⁵¹ See, e.g., CR/PR at Table C-2. Industry data based on the total U.S. market show similar results. Operating *** were *** in 2001, *** in 2002, *** in 2003, and *** in interim 2004, as compared to *** in interim 2003. Operating margins were *** throughout the period, at *** percent in 2001, *** percent in 2002, *** percent in 2003, and *** percent in interim 2004, as compared to *** percent in interim 2003. See, e.g., CR/PR at Table C-1.

¹⁵² For commercial market shipments, the number of production workers dropped by *** percent from 2001 to 2003. See, e.g., CR/PR at Table C-2. For the total market, the number of workers dropped by *** percent over the same period. See, e.g., CR/PR at Table C-1.

¹⁵³ See, e.g., CR/PR at Table VI-7, F-3.

In terms of both the commercial and total U.S. market, the industry's productivity, capacity utilization, production quantities and shipment volumes did increase.¹⁵⁴ However, U.S. prices, as discussed in the previous section, as well as the unit values of U.S. shipments and net sales, showed an overall decline from 2001 to 2003, and in interim 2004 remained below levels at the beginning of the period of investigation.¹⁵⁵ These factors indicate that, given the apparent capital-intensive nature of polyvinyl alcohol production, domestic producers strove to increase output to retain market share but these efforts did not *** because raw material and other costs rose and prices eroded during the period. In 2001 and 2002, low-priced imports from other countries, as well as imports from Taiwan, caused U.S. prices to fall. Although some price increases reportedly did take effect,¹⁵⁶ prices continued at suppressed levels, even after the other imports became subject to antidumping duties, because the imports from China, Korea, and Japan were largely replaced by increased volumes of low-priced imports from Taiwan. We thus find that the subject imports from Taiwan continued and even exacerbated the injury caused by the previous unfairly traded imports and prevented the industry from raising its prices sufficiently to recover rising costs and expenses and improve its performance.¹⁵⁷

In any final phase investigation, we will explore more fully the role that other factors such as sharply rising energy costs may play in the industry's performance. While we are directed by statute to analyze the industry as a whole, we will also examine ***, such as production methods and pricing strategies, to gain a better understanding of the role of subject imports in the industry's ***.

In sum, the increasing volume of subject imports, at prices which undersold the domestic like product, depressed and suppressed domestic prices, and caused a weakened domestic industry to experience *** financial performance. We therefore find that the subject imports have had a significant adverse impact on the domestic industry producing polyvinyl alcohol.

CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of imports of polyvinyl alcohol from Taiwan that allegedly are sold in the United States at less than fair value.

¹⁵⁴ See, e.g., CR/PR at Tables C-2, C-1.

¹⁵⁵ See, e.g., CR/PR at Tables C-2, C-1, V-1 to V-5.

¹⁵⁶ See, e.g., CR at V-10 to V-12; PR at V-6 to V-7.

¹⁵⁷ See, e.g., Ammonium Nitrate from Ukraine, Inv. No. 731-TA-894 (Final), USITC Pub. 3448 at 14 (Aug. 2001) ("We find that unfairly traded imports of ammonium nitrate from Ukraine prevented the domestic industry from recovering from its already injured condition").

**SEPARATE AND DISSENTING REMAND VIEWS OF
CHAIRMAN DANIEL R. PEARSON,
COMMISSIONER DEANNA TANNER OKUN,
AND COMMISSIONER CHARLOTTE R. LANE**

By opinion and order dated January 29, 2007,¹ the U.S. Court of International Trade affirmed in part and remanded in part our negative preliminary injury determination in Polyvinyl Alcohol from Taiwan, Inv. No. 731-TA-1088 (Prelim.), USITC Pub. 3732 (Oct. 2004).² Upon consideration of the Court's remand instructions and the parties' comments on the Court's opinion, and based on the information available at the time of the original preliminary determination, we again find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of certain polyvinyl alcohol from Taiwan that are allegedly sold at less than fair value.

I. STANDARD FOR PRELIMINARY DETERMINATIONS

In a preliminary determination, the statute "calls for a reasonable indication of injury, not a reasonable indication of a need for further inquiry."³ We note that staff has collected extensive information with respect to domestic production, Taiwan production, and imports of subject merchandise. Staff also collected extensive pricing data on the U.S. market. In addition, the record and the parties' submissions in this investigation have benefitted from the factual findings and analysis from previous investigations on polyvinyl alcohol (particularly the investigation of imports of polyvinyl alcohol from China, Germany, Korea, and Japan ("the 2002/2003 investigations")).⁴

Although we recognize that we might obtain additional evidence in any final phase investigation, we see no likelihood that any evidence we obtain would change our findings that the domestic industry is not materially injured or threatened with material injury by reason of subject imports from Taiwan. For example, the pricing data are already comprehensive, accounting for a significant portion of U.S. commercial shipments by the domestic industry and U.S. imports of subject polyvinyl alcohol from

¹ Celanese Chemicals, Ltd. v. United States, Confidential Slip Op. 07-16 (Ct. Int'l Trade Jan. 29, 2007).

² In the underlying preliminary determination, the Commission found, by a vote of three to two, with one Commissioner not participating, that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of subject imports of certain polyvinyl alcohol from Taiwan that were allegedly sold at less than fair value. The Commission majority's opinion reflected the views of then-Vice Chairman Deanna Tanner Okun, Commissioner Charlotte R. Lane, and then-Commissioner Daniel R. Pearson. Then-Chairman Stephen Koplán and then-Commissioner Marcia E. Miller reached an affirmative determination, and then-Commissioner Jennifer A. Hillman did not participate in the investigation. The confidential version of the Commission majority's Views is referred to as the "Original Views," and the Separate and Dissenting Views of then-Chairman Koplán and then-Commissioner Miller is referred to as the "Dissenting Views." The public versions of the Original Views and the Dissenting Views were published in USITC Pub. 3732.

³ Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994); see also, e.g., 19 U.S.C. § 1673b(a).

⁴ See, e.g., Polyvinyl Alcohol from Germany and Japan, Invs. Nos. 731-TA-1015 to 1016 (Final), USITC Pub. 3604 (June 2003); Polyvinyl Alcohol from China and Korea, Invs. Nos. 731-TA-1014 and 1017 (Final), USITC Pub. 3634 (Sept. 2003).

Taiwan.⁵ Although we could increase the coverage by collecting data on additional pricing products in any final phase investigation, the parties already agree that the pricing data before us are representative.⁶ Likewise, although we could try to collect further information about the financial data reported by petitioner Celanese Chemicals Ltd. (“Celanese”), including more detailed documentation about its cost structure and ***, such information was not provided during the preliminary phase of this investigation despite multiple requests.⁷ This is not a basis to continue this investigation to a final phase. Instead, we have accepted Celanese’s reported information at face value, but we find that factors other than subject imports from Taiwan explain *** the domestic industry as a whole.

Importantly, notwithstanding an increasing volume of subject imports from Taiwan, the record indicates that there is no significant price underselling. The pricing data generally show greater subject import overselling during the relevant time period when subject imports were increasing most rapidly. Moreover, the record also does not support a finding of significant price depression in part because ***. Although we do find evidence that the domestic industry experienced a cost-price squeeze, we do not find significant price suppression because of the *** cost structures *** and the aforementioned evidence on price trends.

Finally, we do not find that subject imports from Taiwan are adversely affecting the domestic industry. Many of the declines in the domestic industry’s performance factors (such as declines in U.S. shipment value and unit value, production-related workers, hours worked, and net sales unit value) occurred between 2001 and 2002, as the volume of subject imports was declining and during a time when the Commission found material injury by reason of cumulated subject imports from China, Korea, and Japan. After polyvinyl alcohol imports from China, Korea, and Japan became subject to antidumping duty orders in mid- to late 2003, the domestic industry’s performance for January to June 2004 (“interim 2004”) improved somewhat with increased production, increased capacity utilization, and increased domestic unit sales values, notwithstanding the increasing presence of subject imports from Taiwan. In addition to the factors on price and performance noted above, we cannot ignore the effects of ***, and the fact that the domestic industry consistently exported large volumes of polyvinyl alcohol at average unit values ***.

II. NO REASONABLE INDICATION OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS OF SUBJECT MERCHANDISE FROM TAIWAN SOLD IN THE U.S. MARKET

In remanding this investigation to the Commission, the Court instructed the Commission to revisit several issues. Specifically, the Court instructed the Commission (1) to explain why it relied on importer questionnaire responses to measure the volume of subject imports rather than import statistics collected by Census “in light of the apparent corrections to the errors cited as reasons for not using Census data in the first instance;”⁸ and (2) to explain why it relied on unadjusted import statistics collected by Census to measure non-subject imports.⁹ In the preliminary investigation, all participating Commissioners relied on the same data sets to measure subject and non-subject imports, and in these remand proceedings, all

⁵ See, e.g., Confidential Staff Report, Mem. INV-BB-126 (Oct. 15, 2004), as amended by Mem. INV-BB-127 (Oct. 18, 2004), Mem. INV-BB-129 (Oct. 20, 2004), and Mem. INV-BB-130 (Oct. 21, 2004) (“CR”) at V-15 to V-16; Public Staff Report, USITC Pub. 3732 (“PR”) at V-10.

⁶ See, e.g., CR at V-14 n.47; PR at V-9 n.47.

⁷ See, e.g., CR at VI-5; PR at VI-2.

⁸ See, e.g., Celanese, Confidential Slip Op. at 14-21.

⁹ See, e.g., Celanese, Confidential Slip Op. at 21-24.

Commissioners agreed about which data sets to use, as further explained in section III of the Commission majority's Remand Views. The Court also remanded certain aspects of our volume, price effects, impact, and threat analysis. We address each of those issues below. The Court did not remand nor did Celanese challenge our legal framework, findings, analysis, or conclusions with respect to the definition of the domestic like product, the definition of the domestic industry, or negligibility.¹⁰ We therefore adopt and incorporate those sections of our Original Views in their entirety.¹¹

Upon consideration of the Court's remand instructions and the parties' comments on the Court's opinion, and based on the information available at the time of the original preliminary determination, for the reasons discussed below, we again find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of certain polyvinyl alcohol from Taiwan that are allegedly sold at less than fair value.

A. Conditions of Competition and Business Cycle

We adopt the legal framework, findings, analysis, and conclusions found in the Original Views with respect to the captive production provision of the statute (19 U.S.C. § 1677(7)(C)(iv)). We thus apply the captive production provision and in determining market share and the factors affecting the financial performance of the domestic industry, we focus primarily on the commercial market for our analysis, although we analyze these factors with respect to the whole market as well.¹² Moreover, we continue to find the following additional conditions of competition pertinent to our analysis.

1. Supply Conditions

The U.S. polyvinyl alcohol market is supplied by three sources: domestic producers, non-subject imports, and imports from Taiwan. The domestic industry consists of three polyvinyl alcohol producers (Celanese; E.I. du Pont de Nemours and Co. ("DuPont"); and Solutia Inc. ("Solutia")), two of which ***. One of these two producers, Celanese, is the petitioner, and DuPont opposes the petition and imports subject merchandise ***.¹³ Domestic producers are the principal suppliers of the U.S. market, accounting in 2003 for *** percent of U.S. commercial market consumption and *** percent of total apparent U.S. consumption, measured by quantity according to questionnaire responses.¹⁴

The next largest source of supply in 2003, accounting for *** percent of apparent U.S. commercial market consumption and *** percent of total apparent U.S. consumption, was non-subject

¹⁰ Celanese also did not challenge our legal framework, findings, analysis or conclusions with respect to the conditions of competition and business cycle relevant to this industry and investigation.

¹¹ See, e.g., Original Views at 3-5, 11-21. As also stated therein, we adopt sections I, II, and III of the Commission majority's Remand Views, except as otherwise noted.

¹² See, e.g., Original Views at 21-24. We also considered data regarding the domestic industry's production for internal consumption.

¹³ See, e.g., CR/PR at Table III-4.

¹⁴ The domestic industry accounted for *** percent of U.S. commercial market consumption in January to June 2003 ("interim 2003") and *** percent of U.S. commercial market consumption in interim 2004. Its share of the total U.S. polyvinyl alcohol market was *** percent in interim 2003 and *** percent in interim 2004. See, e.g., Supplemental Tables 2-B, 2-A.

imports.¹⁵ There were a total of nineteen non-subject countries exporting to the U.S. market during the period of investigation, and according to Census statistics, the top two non-subject countries were Japan and China.¹⁶ In the 2002-2003 investigations, no party had contended that the filing of the antidumping duty petitions in September 2002 served to reduce cumulated import volumes from China, Korea, and Japan.¹⁷ To the contrary, DuPont and Celanese emphasized in those investigations that cumulated subject import volumes from China, Korea, and Japan generally increased notwithstanding the filing of the petition.¹⁸ Cumulative imports into the United States of polyvinyl alcohol from China, Korea, and Japan have declined since those imports became subject to antidumping duty orders (as of July 2, 2003 (Japan) and October 1, 2003 (China and Korea)).¹⁹ Subject imports of polyvinyl alcohol from Taiwan accounted for the remaining *** percent of U.S. commercial market consumption and *** percent of total apparent U.S. consumption, measured by quantity, in 2003.²⁰

While we consider the U.S. industry as a whole, we also have taken into consideration several differences among the domestic producers that affect their ability and willingness to supply the U.S. commercial market. Whereas Celanese and Solutia employ a continuous “belt process” to produce polyvinyl alcohol,²¹ DuPont uses a reactor process. In the reactor process, hydrolysis goes to completion after the raw material and inputs are combined. Whereas producers using a continuous belt process can control the level of hydrolysis of the resulting polyvinyl alcohol, DuPont is only able to produce fully hydrolyzed polyvinyl alcohol on its reactor equipment.²² Solutia internally consumes *** of its polyvinyl alcohol production to produce polyvinyl butyral (“PVB”).²³ Although ***, DuPont internally consumes some polyvinyl alcohol to produce PVB but Celanese does not internally consume any polyvinyl alcohol.²⁴

¹⁵ Non-subject imports accounted for *** percent of U.S. commercial market consumption in interim 2003 and *** percent of U.S. commercial market consumption in interim 2004. Their share of the total U.S. polyvinyl alcohol market was *** percent in interim 2003 and *** percent in interim 2004. See, e.g., Supplemental Tables 2-B, 2-A.

¹⁶ See, e.g., CR at II-9; PR at II-6.

¹⁷ When asked during those investigations why Taiwan was not included in the petitions, Celanese and DuPont insisted that they had no evidence that polyvinyl alcohol from Taiwan was being dumped into the U.S. market. See, e.g., 2002 Conf. Tr. at 38-39.

¹⁸ See, e.g., USITC Pub. 3604 at 27 n.150.

¹⁹ See, e.g., CR at I-4, II-9; PR at I-3, II-6.

²⁰ Subject imports from Taiwan accounted for *** percent of U.S. commercial market consumption in interim 2003 and *** percent of U.S. commercial market consumption in interim 2004. Their share of the total polyvinyl alcohol market was *** percent in interim 2003 and *** percent in interim 2004. See, e.g., Supplemental Tables 2-B and 2-A.

²¹ The only known producer of polyvinyl alcohol in Taiwan, Chang Chung PetroChemical Co., Ltd (“CCPC”) also employs a continuous belt process in which the acetate groups of vinyl acetate monomer (“VAM”) are hydrolyzed with methanol in the presence of anhydrous sodium methylate or aqueous sodium hydroxide at moderate temperatures and pressures. Fully hydrolyzed polyvinyl alcohol is produced by running the saponification process to completion, whereas partially hydrolyzed polyvinyl alcohol is produced by interrupting the saponification process with a neutralizer. The degree of hydrolyzation is controlled by regulating how much time elapses between the start of the saponification process and the addition of the neutralizer. At the end of the saponification process, polyvinyl alcohol is a hard solid, suitable for grinding into granular or powder form. See, e.g., CR at I-7 to I-8; PR at I-5.

²² See, e.g., CR at I-8; PR at I-5.

²³ See, e.g., CR at III-9 n.4; PR at III-4 n.4.

²⁴ See, e.g., CR at II-12, III-5, III-9 to III-10; PR at II-7, III-2, III-4.

The reported principal raw material inputs used to produce polyvinyl alcohol in the United States are VAM and ethanol/methanol/sodium methylate.²⁵ Natural gas or its derivative ethane are the principal feedstocks used by U.S. polyvinyl alcohol producers to produce VAM and the principal energy source to produce polyvinyl alcohol.²⁶ For commercial polyvinyl alcohol operations, raw material costs (adjusted for byproduct revenue) accounted for *** percent of cost of goods sold in 2003. For total polyvinyl alcohol operations, raw material costs (adjusted for byproduct revenue) accounted for *** percent of cost of goods sold in 2003.²⁷

*** domestic producers in terms of their cost structures. The record shows that variable costs for the three domestic producers averaged about *** percent of their total costs to produce polyvinyl alcohol in 2003, while fixed costs were about *** percent.²⁸ The significant fixed costs suggest that low output levels could lead to increased unit costs, although equally significant variable costs likely moderate such an increase in unit costs.²⁹ Record data indicate that ***. Natural gas, which is the primary cost component in the polyvinyl alcohol production chain as well as the ***, accounts for approximately *** percent of Celanese's other factory costs, and Celanese also reported *** than its domestic counterpart.³⁰

In addition, *** domestic producers in terms of their reported rates of capacity utilization. Polyvinyl alcohol production is reported to be highly capital intensive.³¹ *** capacity utilization rate that *** the three domestic polyvinyl alcohol producers.³² Celanese reported that it must achieve at least a ***-percent capacity utilization rate in a 12-month period to achieve acceptable economies of scale, whereas DuPont reported requiring a minimum capacity utilization rate of *** percent. Based on each firm's reported actual capacity utilization rates during January 2001 to June 2004, Celanese operated ***

²⁵ The record indicates that Celanese sold VAM to *** during the period of investigation, ***. Celanese reports that ***. See, e.g., Celanese's Postconference Brief at Answers to Questions from the Commission Staff at 1.

²⁶ See, e.g., CR at V-2; PR at V-1. Quarterly prices of natural gas first fell from a period high of \$7.45 per thousand cubic feet ("Mcf") in the first quarter of 2001 to a period low of \$3.58 per Mcf by the fourth quarter of 2001 and then increased to \$6.61 per Mcf by the first quarter of 2003. Natural gas prices then moderated somewhat to \$5.24 per Mcf by the fourth quarter of 2003 before increasing to \$6.30 per Mcf in the first quarter of 2004, where they remained in the second quarter of 2004. High prices of natural gas are expected to continue into the future. See, e.g., CR at V-3; PR at V-2.

²⁷ (Derived from domestic producers' questionnaire responses); see also, e.g., CR at V-2; PR at V-1.

²⁸ According to their reported financial information on their commercial operations, variable costs (direct labor and raw material costs (adjusted for byproduct revenue)) accounted for *** percent and fixed costs (other factory costs) accounted for *** percent of the domestic industry's total cost of goods sold, and for their total polyvinyl alcohol operations, variable costs (direct labor and raw material costs (adjusted for byproduct revenue)) accounted for *** percent and fixed costs (other factory costs) accounted for *** percent of the domestic industry's cost of goods sold. (Derived from domestic producers' questionnaire responses); see also, e.g., CR at V-2; PR at V-1.

²⁹ See, e.g., CR at II-6; PR at II-4.

³⁰ See, e.g., CR at VI-4 to VI-6; CR/PR at Tables VI-2 to VI-5.

³¹ See, e.g., Conf. Tr. at 12.

³² See, e.g., CR at II-6; PR at II-4. *** reported a period-low capacity utilization rate of *** percent in *** and a period-high rate of *** percent ***. In contrast, *** reported capacity utilization rates that remained at or near *** percent ***. *** reported capacity utilization rates that ranged from a period low of *** percent during *** to a period high of *** percent during ***. See, e.g., CR at II-5 n.12; PR at II-3 n.12.

its minimum required capacity utilization rate, *** DuPont operated *** its minimum required capacity utilization rate.³³ In 2003, for example, Celanese's ***.³⁴

Another consideration is that the domestic industry exported a large quantity of polyvinyl alcohol during the period of investigation. *** of the exports in 2003, *** percent.³⁵ To put the volume of the domestic industry's exports in perspective, in 2003, U.S. commercial shipments accounted for *** percent of the volume of U.S. producers' total shipments of polyvinyl alcohol, captive shipments accounted for *** percent, and exports accounted for *** percent.³⁶ The quantity of export shipments made by the domestic industry increased from *** pounds in 2001 to *** pounds in 2002 before declining somewhat to *** pounds in 2003.³⁷ The average unit value of the domestic industry's export shipments was ***.³⁸

2. Demand Conditions

Overall U.S. demand for polyvinyl alcohol is primarily affected by sectoral economic activity as well as by overall U.S. economic activity.³⁹ Rather than exhibiting its own business cycle, demand for polyvinyl alcohol is derived from demand for the downstream products that use this product as one of their inputs.⁴⁰ These include PVB, textiles, emulsion polymerization, adhesives, building materials, and paper products.⁴¹ The highest-volume application in the United States has been for the production of PVB, an application that has been supplied *** by captive consumption ***.⁴² The next largest applications in the United States in 2003, which were supplied exclusively by sales in the commercial market, were textiles, adhesives, and emulsion polymerization.⁴³

Apparent U.S. commercial market consumption of polyvinyl alcohol increased from 2001 to 2002 and declined from 2002 to 2003, although the 2003 level was above that of 2001; apparent U.S. commercial market consumption increased between interim 2003 and interim 2004.⁴⁴ Overall U.S. demand was adversely affected by continuing retrenchment in U.S. textile operations during January 2001 through June 2004, while demand was augmented by increased PVB use.⁴⁵

³³ See, e.g., CR at II-5; PR at II-4; CR/PR at Table III-2. Moreover, the domestic industry's capacity throughout the period of investigation was *** greater than the corresponding apparent U.S. consumption observed in each such year or interim period. Compare, e.g., CR/PR at Table III-2 with, e.g., CR/PR at Table IV-4.

³⁴ See, e.g., CR at VI-5; PR at VI-1 to VI-2.

³⁵ See, e.g., CR/PR at Table III-4.

³⁶ See, e.g., CR at III-5; PR at III-2; CR/PR at Table C-1.

³⁷ See, e.g., CR/PR at Table III-4.

³⁸ See, e.g., CR/PR at Table III-4. Although we recognize the limitations of average unit values in this industry due to product mix considerations, other evidence also indicates that the domestic industry's exports ***. See, e.g., ***.

³⁹ See, e.g., CR at II-9; PR at II-6.

⁴⁰ See, e.g., CR at II-1; PR at II-1.

⁴¹ See, e.g., CR at I-6, II-2 to II-4; PR at I-5, II-1 to II-2.

⁴² See, e.g., CR at I-6, II-2 to II-4; PR at I-5, II-1 to II-2.

⁴³ See, e.g., CR at I-6, II-2 to II-4; PR at I-5, II-1 to II-2; CR/PR at Figures I-1, II-1.

⁴⁴ See, e.g., Supplemental Table 2-B. The trends were similar for total U.S. apparent domestic consumption over the period of investigation. See, e.g., Supplemental Table 2-A.

⁴⁵ See, e.g., CR at II-9; PR at II-6.

3. Substitutability Considerations

The degree of substitutability between polyvinyl alcohol produced in the United States and that imported from Taiwan depends upon such factors as relative prices, types of customers, conditions of sales, purchaser supply requirements, and product differentiation. Product differentiation depends on factors such as the range of products, quality, availability, reliability of supply, and the market perception of these latter three factors. Based on record information, subject imports of polyvinyl alcohol from Taiwan and domestically produced polyvinyl alcohol are substitutable, but there may be some limitations due to product differentiation and other differences.⁴⁶

Because it is a synthetic water soluble polymer with unique characteristics, polyvinyl alcohol has few substitutes for most end-use applications.⁴⁷ Although all grades of polyvinyl alcohol are not interchangeable with each other, more than one grade may be sold to specific end-use markets. For example, fully hydrolyzed polyvinyl alcohol can be used in many of the same end-use categories in which intermediate or partially hydrolyzed polyvinyl alcohol can be used, such as textiles, paper, and adhesives. On the other hand, ***.⁴⁸ The same grade of polyvinyl alcohol is frequently sold for different commercial uses, and many end users are able to use a wide range of grades. Many applications have evolved using particular grades, however, and although substitution of grades is possible, it requires cost and time to reformulate. Thus, end users tend to avoid changing the grade of polyvinyl alcohol they use in their applications.⁴⁹

Based on questionnaire responses regarding U.S. polyvinyl alcohol production and imports of polyvinyl alcohol from Taiwan and all other sources, during 2003, PVB use accounted for *** percent of the total reported quantity, textile uses accounted for *** percent, adhesive uses accounted for *** percent, emulsion-polymerization uses accounted for *** percent, paper uses accounted for *** percent, and other uses, including pharmaceuticals and building materials, accounted for the remaining *** percent. Shipments of domestically produced polyvinyl alcohol by end-use application in 2003 ***.⁵⁰

In 2003, there *** imported polyvinyl alcohol from Taiwan in the largest end-use category, that is, for use in PVB production, and there were *** differences in the relative presence of subject imports from Taiwan and domestically produced polyvinyl alcohol. The relative presence of the imported Taiwan polyvinyl alcohol was *** percent in four end-use categories (textiles, emulsion polymerization, paper, and all other end uses), and was *** percent in the remaining category (adhesives). ***, the relative presence of domestically produced polyvinyl alcohol was *** percent for PVB, above *** percent for the four other end-use categories, and *** percent in the remaining category (adhesives).⁵¹

The Commission collected data on the production of U.S. producers and CCPC in terms of hydrolysis level. Throughout the period of investigation, Celanese produced ***. In its U.S. facility,

⁴⁶ See, e.g., CR at II-13; PR at II-8 to II-9.

⁴⁷ See, e.g., CR at II-10 to II-12; PR at II-6 to II-7.

⁴⁸ See, e.g., CR at II-12; PR at II-17. According to DuPont, ***. See, e.g., CR at I-9 n.22; PR at I-6 n.22.

⁴⁹ See, e.g., CR at I-9; PR at I-6.

⁵⁰ See, e.g., CR at II-2 to II-3; PR at II-1 to II-2; CR/PR at Figure II-1. In quantity terms, *** percent of domestic producers' production of polyvinyl alcohol in 2003 was used for the production of PVB, *** percent was used in textile end-use applications, and *** percent was used for emulsion polymerization. See, e.g., CR at I-6; PR at I-5; Figure I-1.

⁵¹ See, e.g., CR at II-2 to II-3; PR at II-1 to II-2; CR/PR at Table II-1. Information on the relative presence of non-subject imports for these end uses may be underestimated.

DuPont produced ***, Solutia produced ***,⁵² *** of the subject imports from Taiwan consisted of polyvinyl alcohol ***,⁵³

U.S. producers tended to sell polyvinyl alcohol subject to *** whereas U.S. importers of the subject merchandise sold mainly ***. According to record information, *** percent of the total U.S. sales quantity of domestically produced polyvinyl alcohol of Celanese and DuPont was on a long-term basis during the period of investigation, *** was on a spot basis, and *** percent was on a short-term basis. *** percent of total U.S. sales quantity of polyvinyl alcohol imported from Taiwan as reported by subject importers DuPont, ***, ***, and Perry Chemical was on a long-term basis, *** percent was on a spot basis, and *** percent was on a short-term basis.⁵⁴

*** asserted that polyvinyl alcohol produced in the United States, imported from Taiwan, and imported from third countries were always or frequently interchangeable with one another. On the other hand, *** asserted that polyvinyl alcohol produced domestically and imported from Taiwan was sometimes interchangeable, and *** asserted that the domestic and imported Taiwan polyvinyl alcohol were never interchangeable with each other. Domestic producers and importers agreed that factors other than price among polyvinyl alcohol produced in the United States, imported from Taiwan, and imported from third countries were relevant.⁵⁵

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁵⁶

The Court remanded two aspects of our volume analysis: (1) for us to explain why we relied on importer questionnaire responses to measure the volume of subject imports rather than import statistics collected by Census “in light of the apparent corrections to the errors cited as reasons for not using Census data in the first instance;”⁵⁷ and (2) for us to explain why we relied on unadjusted import statistics collected by Census to measure non-subject imports.⁵⁸ We join the discussion in section III of the Commission majority’s Remand Views regarding the choice of which data sets to use to measure the volume of subject and non-subject imports during the period of investigation and the rationale for those choices. Because the differences among the data sets are so minor, we find that the choice of data sets has no effect on our decision. Thus, as indicated in more detail therein, for purposes of these Separate and Dissenting Remand Views we have used the same methodology as in our Original Views to measure subject imports and applied a different methodology to calculate the volume of non-subject imports, but continue to reach the same result as in our Original Views.

⁵² See, e.g., CR/PR at Table III-3.

⁵³ See, e.g., CR/PR at Table IV-3.

⁵⁴ See, e.g., CR at V-7 to V-8; PR at V-5 to V-6.

⁵⁵ See, e.g., CR at II-14 to II-16; CR/PR at Tables II-2, II-3.

⁵⁶ 19 U.S.C. § 1677(7)(C)(i).

⁵⁷ See, e.g., Celanese, Confidential Slip Op. at 14-21.

⁵⁸ See, e.g., Celanese, Confidential Slip Op. at 21-24.

As measured by quantity, the absolute volume of subject imports from Taiwan decreased from *** pounds in 2001 to *** pounds in 2002, and then increased to *** pounds in 2003, an overall increase of *** percent between 2001 and 2003.⁵⁹

Measured by quantity, the share of apparent U.S. commercial market consumption attributed to subject imports from Taiwan declined from *** percent in 2001 to *** percent in 2002, and then increased to *** percent in 2003.⁶⁰ Taiwan's share of total apparent U.S. consumption declined from *** percent in 2001 to *** percent in 2002, and then increased to *** percent in 2003.⁶¹

As a ratio to U.S. commercial market production, subject imports from Taiwan declined from *** percent in 2001 to *** percent in 2002 and then increased to *** percent in 2003.⁶²

Viewed in isolation, the empirical data could support a finding that the volume of subject imports and the increase in that volume, both in absolute terms and relative to domestic production and consumption, is significant. We conclude, however, that this increase in volume did not have a significant effect on the market for several reasons. Apparent U.S. commercial market consumption, total apparent U.S. market consumption, and domestic production of polyvinyl alcohol increased over the period of investigation.⁶³ The domestic industry's share of the commercial and total U.S. polyvinyl alcohol markets also increased over the period of investigation.⁶⁴ Non-subject imports, which accounted for a larger market share than subject imports from Taiwan throughout almost the entire period of investigation, gained market share during the earlier portion of the period of investigation but then ultimately lost market share in both the commercial and total U.S. polyvinyl alcohol market, as they became subject to antidumping duty orders.⁶⁵

⁵⁹ See, e.g., CR/PR at Table IV-1. Subject imports from Taiwan were *** pounds in interim 2004 compared to *** pounds in interim 2003. See, e.g., CR/PR at Table IV-1.

⁶⁰ See, e.g., Supplemental Table 2-B. Their share of apparent U.S. commercial market consumption was *** percent in interim 2004 compared to *** percent in interim 2003. See, e.g., Supplemental Table 2-B.

⁶¹ See, e.g., Supplemental Table 2-A. Their share of total U.S. consumption was *** percent in interim 2004 compared to *** percent in interim 2003. See, e.g., Supplemental Table 2-A.

⁶² (Derived from Supplemental Table 1 (imports) and CR/PR at Table C-2 (domestic commercial market production)). As a ratio to U.S. commercial market production, subject imports from Taiwan were *** percent in interim 2003 and *** percent in interim 2004. (Derived from Supplemental Table 1 and CR/PR at Table C-2).

⁶³ See, e.g., Supplemental Tables 2-B and 2-A; CR/PR at Tables C-2, C-1. Apparent U.S. commercial market consumption increased from *** pounds in 2001 to *** pounds in 2002 before declining to *** pounds in 2003, for an overall increase of *** percent between 2001 and 2003. Apparent U.S. commercial market consumption was *** pounds in interim 2004 compared to *** pounds in interim 2003. See, e.g., Supplemental Table 2-B. Total apparent U.S. consumption increased from *** pounds in 2001 to *** pounds in 2002 before declining to *** pounds in 2003, for an overall increase of *** percent between 2001 and 2003. Total apparent U.S. consumption was *** pounds in interim 2004 compared to *** pounds in interim 2003. See, e.g., Supplemental Table 2-A; CR/PR at Tables C-2, C-1.

⁶⁴ See, e.g., Supplemental Tables 2-B and 2-A. The domestic industry's share of apparent U.S. commercial market consumption increased from *** percent in 2001 to *** percent in 2002 and *** percent in 2003 and was *** percent in interim 2004 compared to *** percent in interim 2003. See, e.g., Supplemental Table 2-B. The domestic industry's share of total apparent U.S. consumption increased from *** percent in 2001 to *** percent in 2002 and *** percent in 2003, and was *** percent in interim 2004 compared to *** percent in interim 2003. See, e.g., Supplemental Table 2-A.

⁶⁵ See, e.g., Supplemental Tables 2-B and 2-A. Non-subject imports' share of apparent U.S. commercial market consumption increased from *** percent in 2001 to *** percent in 2002 but then declined to *** percent in 2003, and their market share in interim 2004 was *** percent compared to *** percent in interim 2003. See, e.g.,

(continued...)

Notwithstanding the removal of the first set of antidumping duty orders on imports from China, Taiwan, and Japan in May 2001, the volume of subject imports from Taiwan did not increase in 2002.⁶⁶ Instead, as the Commission observed in the final determinations in the 2002/2003 investigations, the volume of imports from now non-subject sources (*i.e.*, the cumulated volume from China, Korea, and Japan) increased in 2002, whether measured in terms of their share of the U.S. commercial market or the total U.S. market. The data indicate that there was an increase in subject import volume from Taiwan, but this increase did not occur until the first six months of 2003. As explained below, however, we do not find that increased subject imports from Taiwan were responsible for significant price effects or significant impact on the domestic industry. There was a large decline in non-subject import volume toward the end of the period of investigation, as imports from China, Japan, and Korea became subject to antidumping duty orders in July 2003 (Japan) and in October 2003 (China and Korea). Subject imports from Taiwan, however, did not fully replace non-subject imports; the domestic industry also increased its market share as non-subject imports retreated from the U.S. market. The market share of subject imports from Taiwan in interim 2004 was similar to the level in interim 2003, and *** than the market share held by subject imports from Taiwan in 2001, when they were covered by an antidumping duty order for the first five months of that year. Furthermore, there was no significant decrease in the domestic industry's market share over the interim periods.⁶⁷

Thus, whereas, viewed in isolation, the empirical data could support a finding that the volume of subject imports both absolutely and relative to production and consumption in the United States is significant, the effect of this volume is muted in light of the conditions of competition. Importantly, apparent U.S. merchant market and total apparent U.S. polyvinyl alcohol market consumption increased over the period of investigation. Moreover, the domestic industry's production and capacity utilization levels also increased between 2001 and 2003 and between interim 2003 and interim 2004.⁶⁸ Additionally, as explained below, we do not find increased subject imports from Taiwan were responsible for significant price effects or significant impact on the domestic industry.

Finally, we are compelled to respond to another argument raised by Celanese. Throughout the litigation and in its comments on the Court's opinion, Celanese has misconstrued the significance of a single sentence in our Original Views. In our discussion of supply conditions in the U.S. market, we observed that in 2003, the largest source of supply to the U.S. market was the domestic industry, followed by non-subject imports, and then subject imports from Taiwan. We make the same observation in these Separate and Dissenting Remand Views.⁶⁹ Pointing to this sentence, Celanese asserts that we failed to take into consideration in our causation analysis that subject imports from Taiwan were overtaking non-subject imports toward the end of the period of investigation. Our decisions indicate otherwise.⁷⁰ Indeed,

⁶⁵ (...continued)

Supplemental Table 2-B. Non-subject imports' share of total apparent U.S. consumption increased from *** percent in 2001 to *** percent in 2002 and then declined to *** percent in 2003, and their market share in interim 2004 was *** percent compared to *** percent in interim 2003. *See, e.g.*, Supplemental Table 2-A.

⁶⁶ *See, e.g.*, CR/PR at Table IV-1 (subject imports); Supplemental Tables 2-B and 2-A (U.S. shipments of subject imports).

⁶⁷ *See, e.g.*, Supplemental Tables 2-B and 2-A.

⁶⁸ *See, e.g.*, CR/PR at Tables C-2, C-1.

⁶⁹ Our colleagues, who reached affirmative determinations, made the same observation in their Remand Views and in their Separate and Dissenting Original Views.

⁷⁰ In addition to identifying explicitly the market-share data for subject and non-subject imports for each period (including 2003, interim 2003, and interim 2004) for both the commercial and total U.S. markets, we found that non-
(continued...)

the basic thrust of our causation analysis now and in our Original Views is that prices stabilized and even increased and domestic industry performance factors stabilized and even improved *after* subject imports from Taiwan began to increase in the first six months of 2003, non-subject imports became subject to antidumping duty orders in mid- to late-2003, and subject imports from Taiwan were overtaking non-subject imports toward the end of the period of investigation and continued to increase, but not to levels that we might otherwise have expected.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of 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.⁷¹

The Commission requested U.S. producers and importers of polyvinyl alcohol to provide quarterly net U.S. f.o.b. selling value and quantity data for sales to unrelated U.S. customers for five non-specialty polyvinyl alcohol products suggested by petitioner that are produced in the United States and imported from Taiwan.⁷² Both petitioner Celanese, who recommended these pricing products, and DuPont agreed that these products were representative of both the domestic and subject imported polyvinyl alcohol.⁷³ These data accounted for *** percent of total reported U.S. commercial shipments of the domestic industry and *** percent of total U.S. commercial shipments of polyvinyl alcohol imported from Taiwan during the period of investigation.⁷⁴

In our Original Views, we concluded that subject imports from Taiwan did not significantly undersell the domestic like product in the U.S. market, and that subject imports from Taiwan did not significantly depress or suppress prices of the domestic like product. We make the same conclusions in these Remand Views.

⁷⁰ (...continued)

subject imports “accounted for a larger market share than subject imports from Taiwan throughout *almost the entire* period of investigation,” and that there “was *an increase* in subject import volume from Taiwan, but *it did not occur until the first six months of 2003.*”

⁷¹ 19 U.S.C. § 1677(7)(C)(ii).

⁷² These products were as follows: (1) polyvinyl alcohol for use in adhesive applications with a range of hydrolysis between 80-89 percent, a viscosity between 3-6 (centipois), standard granular particle size, and non-tackified; (2) polyvinyl alcohol for use in adhesive applications with a range of hydrolysis between 80-89 percent, a viscosity between 20-39 (centipois), standard granular particle size, and non-tackified; (3) polyvinyl alcohol for use in adhesive applications with a range of hydrolysis between 80-89 percent, a viscosity between 40-70 (centipois), standard granular particle size, and non-tackified; (4) polyvinyl alcohol for use in paper applications with a range of hydrolysis between 98-99 percent, a viscosity between 3-12 (centipois), standard granular particle size, and non-tackified; (5) polyvinyl alcohol for use in textile applications with a range of hydrolysis between 87-97 percent, a viscosity between 12-39 (centipois), standard granular particle size, and non-tackified. See, e.g., CR at V-14 to V-15; PR at V-9.

⁷³ See, e.g., CR at V-14 n.47; PR at V-9 n.47.

⁷⁴ See, e.g., CR at V-15 to V-16; PR at V-9 to V-10.

1. No Significant Underselling

In our Original Views concerning polyvinyl alcohol from Taiwan, we found a mixed pattern of underselling and overselling by subject imports, but did not find that subject imports from Taiwan significantly undersold the domestic like product in the U.S. market. Our underselling analysis was based on three points: (1) our examination of the pricing data for five products; (2) our examination of the extent to which non-price factors mattered; and (3) our examination of the extent of competition between subject imports from Taiwan and the domestic like product.⁷⁵ As explained below, the Court affirmed our analysis with respect to the first two points and remanded with respect to the third for additional explanation.

a. Examination of the Pricing Data

While the pricing data show generally declining prices, there are an even number of instances of under- and overselling.⁷⁶ In isolation, this underselling could be viewed as significant; the pattern in the earlier portion of the period examined, however, generally has given way to overselling. We do not find that this pattern of underselling by subject imports from Taiwan is significant.⁷⁷

For several of the pricing products, there was fairly widespread overselling. For sales to purchasers of product 1 (an adhesive product), pricing comparisons show underselling by subject polyvinyl alcohol from Taiwan, but only *** overselling throughout the remainder of the period of investigation when the volume of subject imports from Taiwan was increasing.⁷⁸ Pricing comparisons for product 2 (another adhesive product) also show mostly overselling during the period of investigation, with underselling limited to ***.⁷⁹ Pricing comparisons for product 3 (a third adhesive product) also showed mostly overselling during the period of investigation, with the *** instances of underselling occurring in ***.⁸⁰ In other words, for the market segment where we would expect there to be the greatest price competition between subject imports from Taiwan and the domestic industry (to the extent that *** percent of the shipments to the adhesives sector were of subject imports from Taiwan compared to *** percent supplied by the domestic industry and *** from non-subject imports), there was actually widespread overselling.⁸¹

⁷⁵ See, e.g., Original Views at 35-40.

⁷⁶ See, e.g., CR/PR at Tables V-1 to V-5.

⁷⁷ As is our normal approach, for our assessment of whether there have been significant price effects by subject imports from Taiwan, we have given more weight to the pricing data in this investigation than average unit value data. Indeed, as Celanese testified at the preliminary staff conference, selling prices of polyvinyl alcohol, not average unit values, are the proper level of polyvinyl alcohol distribution to measure prices in this market. See, e.g., CR at V-15; PR at V-9.

⁷⁸ See, e.g., CR/PR at Table V-1.

⁷⁹ See, e.g., CR/PR at Table V-2.

⁸⁰ See, e.g., CR/PR at Table V-3.

⁸¹ See, e.g., CR at II-3; PR at II-3; CR/PR at Table II-1. In 2003, *** of all U.S. imports of subject merchandise from Taiwan were for the adhesives sector, *** percent of all U.S. production of the domestic like product was for the adhesives sector, and *** of U.S. non-subject imports were for the adhesives sector. (Derived from questionnaire data).

Although pricing comparisons for product 4 (a paper product) showed widespread underselling by subject imports from Taiwan during the period of investigation (in *** possible quarters), the ***.⁸²

There was also fairly consistent underselling for product 5 (a textile product) by subject imports from Taiwan during the period of investigation (in *** of the *** possible quarters). This was ***.⁸³ Textile applications *** DuPont's U.S. commercial sales, accounting for *** percent of DuPont's U.S. polyvinyl alcohol production in 2003, *** Celanese's U.S. commercial sales.⁸⁴ DuPont, of course, opposed the petition and did not identify any adverse effects from subject imports from Taiwan.⁸⁵ In addition, we note that in the recent period, domestic prices for product 5 generally have been rising.⁸⁶

With respect to our examination of the pricing data in support of our finding of no significant underselling by subject imports, Celanese made a series of allegations, all of which the Court rejected. Echoing a number of other court decisions, the Court endorsed our discretion in selecting a methodology to analyze underselling, our consideration of underselling with respect to the domestic industry as a whole, and the use of our normal and court-sanctioned weighted-average price comparison methodology in this investigation.⁸⁷

Celanese argued that importer data for products 1, 2, and 3 were inconsistent with our finding that polyvinyl alcohol was a fungible product and a statement by an importer that prices generally do not vary significantly. The Court disagreed, noting that the credibility of evidence is within our purview. The Court explained that our finding that polyvinyl alcohol is a fungible commodity was not inherently inconsistent with data showing some price differentiation, to the extent that the inquiries are not for the same purpose.⁸⁸ The Court also rejected Celanese's argument that the data were unreliable, noting the extensive checks done by the Commission's staff.⁸⁹

Celanese also challenged our discounting of evidence of underselling for products 4 and 5, and Celanese disputed our reliance on the absence of any complaint by DuPont of any price effects to determine that underselling for product 5 was not significant. The Court rejected both arguments, affirming our discretion to weigh evidence, resolve contradictory evidence, and analyze prior findings in light of new circumstances.⁹⁰ While also affirming our ability to consider industry views as an economic factor, the Court found that we were well within our discretion to consider DuPont's view.⁹¹ But, the Court also noted that DuPont's view was not the only factor we considered in its analysis of pricing product 5, citing the fact that we also found that prices were rising at the end of the period for that product.⁹²

⁸² See, e.g., CR/PR at Table V-4 n.52; questionnaire responses.

⁸³ See, e.g., CR/PR at Tables V-5, E-5; CR at II-3; PR at II-3.

⁸⁴ See, e.g., CR at II-3; PR at II-3.

⁸⁵ See, e.g., CR/PR at Table III-1, Apps. D, F.

⁸⁶ See, e.g., CR/PR at Table V-5. Although we have examined price effects on the domestic industry as a whole, we also examined the prices of subject imports from Taiwan compared to the prices of Celanese's commercial U.S. shipments. *** See, e.g., CR/PR at Tables V-5, E-5.

⁸⁷ Celanese, Confidential Slip Op. at 27-29.

⁸⁸ Celanese, Confidential Slip Op. at 29-31.

⁸⁹ Celanese, Confidential Slip Op. at 30.

⁹⁰ Celanese, Confidential Slip Op. at 31-32.

⁹¹ Celanese, Confidential Slip Op. at 32-33.

⁹² Celanese, Confidential Slip Op. at 32.

The Court having affirmed this aspect of our analysis,⁹³ we again rely on our examination of the pricing data in support of our finding of no significant underselling by subject imports from Taiwan.

b. Examination of the Extent to Which Non-Price Factors Matter

As we explained in our Original Views, we also examined the extent to which non-price factors mattered in this industry.⁹⁴ Follow-up conversations with purchasers named by petitioner Celanese in its lost sales/lost revenue allegations revealed that while price is an important factor, other factors are important to purchasers such as: (1) the need to source from more than one supplier (***) (2) the quality of the domestic product (***) (3) *** in the market where the purchaser competed (***) (4) *** requirements (***) and (5) *** than the purchaser was comfortable negotiating (***)⁹⁵ These statements are consistent with other evidence offered by DuPont as well as with data reported by purchasers in the 2002/2003 investigations regarding the importance of quality, the need for multiple and reliable suppliers, and the importance of pre-qualification.⁹⁶

With respect to our finding that non-price factors also matter in this market, Celanese argued that our finding on the importance of price in the context of analyzing substitutability contradicted our analysis of the importance of non-price factors. The Court disagreed, noting that we never said substitutability was complete and finding that it was within our discretion to weigh evidence.⁹⁷ Celanese further argued that certain evidence submitted by DuPont (*** and testimony by the same DuPont witness in the 2003 about the importance of price) undermined our finding that non-price factors were also important. The Court disagreed, concluding that we have the discretion to weigh evidence, resolve contradictory evidence, and analyze prior findings in light of new circumstances.⁹⁸

The Court having affirmed this aspect of our analysis, we again rely on our finding that non-price factors also mattered in this industry in support of our finding of no significant underselling by subject imports from Taiwan.

c. The Extent of Competition between Subject Imports from Taiwan and the Domestic Like Product in the U.S. Market

In our Original Views, we also examined the extent to which imported polyvinyl alcohol from Taiwan was sold to the same customers as the domestic industry, and we found attenuated competition between the relevant domestically produced products and subject imports from Taiwan. We found that this evidence further supported our finding of an absence of significant underselling.⁹⁹

⁹³ Celanese, Confidential Slip Op. at 27-34.

⁹⁴ See, e.g., Original Views at 39-40.

⁹⁵ See, e.g., CR at V-7 to V-9, V-30 to V-39; PR at V-5 to V-6, V-13 to V-14; CR/PR at Table V-9.

⁹⁶ For example, DuPont asserted that U.S. end users of polyvinyl alcohol have been shifting to multiple-sourcing of their polyvinyl alcohol, and in its questionnaire responses, DuPont asserted that some of its polyvinyl alcohol customers such as *** have made ***. DuPont also asserted that other behavior by Celanese has contributed to any problems that it may be suffering. See, e.g., CR at II-13 to II-14, V-12 to V-14; PR at II-8 to II-9, V-7 to V-8; see also, e.g., USITC Pub. 3604 at Tables II-3, II-5; DuPont's Postconference Brief at 25-26, Exhs. 5-7.

⁹⁷ Celanese, Confidential Slip Op. at 38-39.

⁹⁸ Celanese, Confidential Slip Op. at 39-40.

⁹⁹ See, e.g., Original Views at 38-39.

In its remand instructions, the Court asked us to clarify what we meant by “attenuated competition.”¹⁰⁰ “Attenuated competition” is not a statutory term of art. When we use the term in this investigation, we do not refer to a lack of direct competition between subject imports from Taiwan and the domestic like product but rather to competition that has reduced force or effect (i.e., limited competition).¹⁰¹

The Court questioned whether our conclusion that competition between subject imports from Taiwan and the domestic like product is attenuated is based on a review of data concerning all shipments or just those involving the “top ten” customers.¹⁰² We base this conclusion on a review of data concerning all of the domestic industry’s shipments and not just those involving the “top ten” customers.

There is a large quantity of the domestic industry’s shipments of polyvinyl alcohol that does not compete with subject imports in the U.S. market. First, as we found above in our discussion of the relevant conditions of competition in this market, the domestic industry exported a large amount of its production ***.¹⁰³ Exports accounted for *** percent of the domestic industry’s total shipments in 2003, and *** percent.¹⁰⁴

Second, *** of the domestic industry’s shipments were captively consumed. Captive shipments accounted for *** percent of the domestic industry’s shipments in 2003, leaving only *** percent of the domestic industry’s shipments that were neither exported nor captively consumed.¹⁰⁵

¹⁰⁰ Celanese, Confidential Slip. Op. at 38.

¹⁰¹ See, e.g., Committee for Fair Coke Trade v. United States, Slip Op. 04-68, 2004 Ct. Int’l Trade LEXIS 87 (Ct. Int’l Trade, June 10, 2004) (affirming Blast Furnace Coke from China and Japan, Invs. Nos. 731-TA-951 to 952 (Prelim.) (Remand), USITC Pub. 3619 (Aug. 2003) in which the Commission also made a finding of attenuated competition).

¹⁰² Celanese, Confidential Slip. Op. at 38 (Pursuing an argument raised by Celanese during the litigation, the Court instructs the Commission to explain why “it is reasonable to discount the significant competition overlap in the almost 50% of the purchasers outside the top 10 customers, when 14 of 17 purchasers surveyed cited price competition as important.”)

¹⁰³ The quantity of export shipments made by the domestic industry increased from *** pounds in 2001 to *** pounds in 2002 before declining somewhat to *** pounds in 2003. See, e.g., CR/PR at Table III-4; see, e.g., CR at II-16 n.41; PR at II-8, n.41; see, e.g., DuPont’s Postconference Brief at Exh. 8 at 10; ***. The average unit value of the domestic industry’s export shipments was ***.

¹⁰⁴ See, e.g., CR at II-7; PR at II-4. In 2003, *** percent of Celanese’s shipments of polyvinyl alcohol were exported. See, e.g., CR/PR at Table III-4.

¹⁰⁵ See, e.g., CR at III-5; PR at III-2; CR/PR at Table C-1.

Third, of the domestic industry's commercial U.S. shipments, there was an additional portion that did not compete with subject imports from Taiwan, those sold ***, ***,¹⁰⁶ ***,¹⁰⁷ These sales also did not compete with subject imports into the U.S. market from Taiwan.¹⁰⁸

In other words, approximately *** percent of the domestic industry's total U.S. shipments did not compete against subject imports from Taiwan.¹⁰⁹

As discussed above, the Court also affirmed our review of pricing data that covered an important portion of the shipments of the domestic like product and subject merchandise from Taiwan during the period of investigation. We examined these pricing data not only by pricing product but also by market segment and by specific firm reporting the data, as appropriate. Even looking at these data from multiple angles supports our finding that competition between subject imports and the domestic like product was attenuated, factors other than price were also important, and there was not significant underselling by subject imports from Taiwan.¹¹⁰

Finally, we also compared the top ten customers in the U.S. market reported by domestic producers DuPont and Celanese and for imported polyvinyl alcohol from Taiwan as reported by subject importers DuPont, ***, Perry Chemical, ***. The Court asked us to address on remand whether our examination of "top ten" customers is a departure from previous investigations.¹¹¹ The Commission routinely solicits information on "top ten" customers in its standard questionnaires.¹¹² We collected this information in the 2002/2003 investigations of polyvinyl alcohol,¹¹³ and just as we did here, in that case we weighed evidence about "top ten" customers alongside evidence about lost sales and lost revenues in our underselling analysis.¹¹⁴

¹⁰⁶ In 2003, DuPont internally transferred *** percent of its shipments of polyvinyl alcohol for the production of PVB, and Solutia internally transferred *** percent for the production of PVB. See, e.g., CR at III-9 n.4; PR at III-4 n.4.

¹⁰⁷ *** of Celanese's production of PVB-grade polyvinyl alcohol was sold in the commercial market, see, e.g., CR at II-3; PR at II-2; CR/PR at Table III-4, and *** percent of DuPont's volume of commercial U.S. shipments of polyvinyl alcohol was used for the production of PVB by customers. See, e.g., CR at III-10; PR at III-4. Approximately *** percent of U.S. producers' commercial U.S. shipments in 2003 was used for the production of PVB. See, e.g., CR at III-10; PR at III-4. In other words, approximately *** percent of the domestic industry's total shipments were to commercial customers for use in the production of PVB. (***) percent of the domestic industry's commercial U.S. shipments in 2003 (***) pounds) is approximately *** pounds or equivalent to approximately *** percent of the total U.S. shipments in 2003 (***) pounds) (***) \div (***) = (***) percent)). (Derived from CR at III-10; PR at III-4; CR/PR at Table III-4).

¹⁰⁸ See, e.g., CR at III-5; PR at III-2; CR/PR at Table C-1.

¹⁰⁹ (***) percent (exports) + (***) percent (captive consumption) + (***) percent (***) = (***) percent).

¹¹⁰ The record also indicates that there are ***. See, e.g., CR at V-7; PR at V-5.

¹¹¹ Celanese, Confidential Slip Op. 07-16 at 34-36.

¹¹² See, e.g., http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/question/producer.pdf (standard domestic producer questionnaire at 18); http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/question/importer.pdf (standard importer questionnaire at 13); EDIS doc. 214142 (questionnaires issued in this investigation).

¹¹³ See, e.g., USITC Pub. 3604 at App. D.

¹¹⁴ See, e.g., USITC Pub. 3604 at 22 n.115 (affirmative determination) (discussing in its analysis of underselling lost sales/lost revenue allegations including whether individual customers were among the "top ten" customers); see also, e.g., Prestressed Concrete Wire Strand from Brazil, India, Korea, Mexico, and Thailand, Invs. Nos. 701-TA-432, 731-TA-1024 to 1028 (Final), USITC Pub. 3663 at 14, 22 (affirmative determination); Citric Acid and Sodium Citrate from China, Inv. 731-TA-863 (Prelim), USITC Pub. 3277 at 13, 17, n.118 (Feb. 2000) (negative

(continued...)

Although there was overlap in terms of *** sales to ***.¹¹⁵ *** reported *** for its imported polyvinyl alcohol from Taiwan during the period of investigation, ***.¹¹⁶

The only reported overlap between ***.¹¹⁷ ***,¹¹⁸ ***.¹¹⁹

In the case of ***.¹²⁰ Likewise, in the case of ***.¹²¹ Other confirmed lost sales/lost revenue allegations concerned relatively small transaction volumes and/or involved products for which there were only limited volumes of subject imports from Taiwan (such as ***) imported into the United States during the period of investigation.¹²²

Thus, even for sales to “top ten” customers, we do not find that there was significant underselling by subject imports from Taiwan. There were *** to “top ten” customers, most of these losses of sales or revenues did not occur during the latter portion of the period of investigation when subject imports from Taiwan were increasing their market presence, and even in those instances where there were confirmed losses, price alone was not the explanation.

d. Conclusion

In sum, the record shows that factors in addition to price are also important factors in the purchasing decisions, that underselling by subject imports from Taiwan was not at times nor for products that were significant, and that there was not a meaningful overlap in the larger customers served by both the domestic industry and subject imports from Taiwan, nor evidence of significant underselling where there was overlap. Based on these considerations, we do not find significant underselling by subject imports from Taiwan.

¹¹⁴ (...continued)
determination) (also examining “top ten” customers in price effects analysis).

¹¹⁵ See, e.g., Memorandum INV-BB-130 (Oct. 21, 2004); CR at V-6 to V-7; PR at V-4 to V-5; questionnaire responses.

¹¹⁶ See, e.g., CR at V-6 to V-7; PR at V-4 to V-5; Memo. INV-BB-130 (Oct. 21, 2004); questionnaire responses.

¹¹⁷ Celanese’s top ten customers accounted for *** percent of the quantity of its total U.S. commercial shipments of its U.S.-produced polyvinyl alcohol during 2003, and DuPont’s top ten customers accounted for *** percent and *** percent of its respective total U.S. commercial shipments of domestic and imported Taiwan polyvinyl alcohol during 2003. See, e.g., CR at V-6 n.15; PR at V-4 n.15. More specifically, the record indicates that Celanese’s tenth-largest customer represented *** percent of its sales, so any of Celanese’s customers beyond its top ten list by definition purchase less. See, e.g., Celanese’s questionnaire response.

¹¹⁸ ***.

¹¹⁹ See, e.g., CR at V-6 to V-7; PR at V-4 to V-5; Memo. INV-BB-130 (Oct. 21, 2004); questionnaire responses.

¹²⁰ See, e.g., CR/PR at Table V-8, V-9; CR at V-34. The Court asked us to explain how we reconciled this finding with *** affirmative response when asked whether price was the reason why it switched certain purchases from Celanese product to subject imports from Taiwan. Celanese, Confidential Slip Op. 07-16 at 37. We do not disagree that *** switched, and our analysis reflects that fact. We went a step further and examined the additional information that *** provided in its response (the facts that ***, and gave more weight to the latter. See, e.g., Questionnaire Responses.

¹²¹ The Court asked us to address Celanese’s assertion that the volume of subject imports from Taiwan was not declining at this time. Celanese, Confidential Slip Op. 07-16 at 37. As we discussed in our volume analysis above, the volume of subject imports from Taiwan declined between 2001 and 2002 and began to increase in the first six months of 2003. See also, e.g., Supplemental Tables 2-B, 2-A.

¹²² See, e.g., CR/PR at Tables V-8 to V-9; CR at V-35.

2. No Significant Price Depression

Although there were declines in prices over the period of investigation, in our Original Views, we found that subject imports did not significantly depress prices of the domestic like product because of the timing of domestic and subject price declines, the fact that prices generally began to stabilize or increase toward the end of the period, the role of other factors, and the fact that domestic producers ***.¹²³ The Court remanded this finding so that we could: (1) reconsider the analysis in light of the Court's remand on our volume finding; (2) elaborate on our view of the trends in prices toward the end of the investigation, which we characterized as generally stabilizing or increasing but which the Court characterizes as "flat or even decreasing;" and (3) explain what weight was given to our finding that domestic industry was able to raise prices at the end of the period of investigation ***.¹²⁴

As to the first point, we reconsidered our analysis in light of the Court's remand on our volume finding. Having arrived at the same conclusion regarding volume in these Remand Views as in our Original Views, our analysis does not change in that respect.

With respect to the Court's second remand instruction, we emphasize that our discussion of the pricing data contrasted the earlier portion of the period of investigation (between 2001 and 2002) with the latter portion of the period of investigation (2003 and interim 2004), rather than quarter-by-quarter fluctuations. While there were declines in polyvinyl alcohol prices in the U.S. market over the period of investigation, these declines largely occurred in the earlier portion of the period (between 2001 and 2002) when we found in our volume discussion that the volume of subject imports from Taiwan was declining.¹²⁵ Generally, prices began to increase or stabilized within a narrower pricing band during the latter part of the period of investigation (from 2002 through interim 2004), notwithstanding an increase in the volume of subject imports.¹²⁶ Furthermore, over the entire period of investigation, there were ***.¹²⁷

¹²³ Original Views at 42-43.

¹²⁴ Celanese, Confidential Slip Op. at 40-42, 44.

¹²⁵ See, e.g., CR/PR at Tables V-1 to V-5. For product 1 (an adhesive product), per-pound domestic prices declined from \$*** in the first quarter of 2001 to \$*** in the fourth quarter of 2002 (or by \$*** per pound). For product 2 (an adhesive product), per-pound domestic prices declined from \$*** in the first quarter of 2001 to \$*** in the fourth quarter of 2002 (or by \$*** per pound). For product 3 (an adhesive product), per-pound domestic prices declined from \$*** in the first quarter of 2001 to \$*** in the fourth quarter of 2002 (or by \$*** per pound). For product 4 (a paper product), per-pound domestic prices declined from \$*** in first quarter of 2001 to \$*** in the fourth quarter of 2002 (or by \$*** per pound). For product 5 (a textile product), per-pound domestic prices declined from \$*** in the first quarter of 2001 to \$*** in the fourth quarter of 2002 (or by \$*** per pound).

¹²⁶ See, e.g., CR/PR at Tables V-1 to V-5. For product 1 (an adhesive product), per-pound domestic prices declined from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or by \$*** per pound). For product 2 (an adhesive product), per-pound domestic prices *increased* from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or *increased* by \$*** per pound). For product 3 (an adhesive product), per-pound domestic prices *increased* from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or *increased* by \$*** per pound). For product 4 (a paper product), per-pound domestic prices declined from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or by \$*** per pound). For product 5 (a textile product), per-pound domestic prices *increased* from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or *increased* by \$*** per pound).

¹²⁷ Compare, e.g., CR/PR at Tables V-1 to V-3 (showing over the entire period of investigation per-pound price declines of \$*** for product 1, \$*** for product 2, and \$*** for product 3) with, e.g., CR/PR at Tables V-4 to V-5 (showing over the entire period of investigation a per-pound decline of \$*** for product 4 and a per-pound increase of \$*** for product 5).

.¹²⁸ ***.¹²⁹ We also find ***.¹³⁰ Indeed, to the extent that the data for some of the pricing products show slight declines in the quarter-to-quarter comparisons at the very end of the period of investigation, the overall data for the domestic industry () show *** unit net sales values, and even for unit commercial sales values, in that same period.¹³¹

The data indicate that other factors explain price declines in this market during the period of investigation, including demand factors. Although prices of polyvinyl alcohol for use in the *** used to be ***, prices for these products began to *** in the second half of 2001, following revocation of the 1996 antidumping duty orders on polyvinyl alcohol from China, Japan, and Taiwan.¹³² There is also some evidence that indicates that the polyvinyl alcohol industry has become increasingly global in nature and that polyvinyl alcohol prices have converged across different regions and applications as large multinational firms have greater access to price information and are able to secure global contracts for their polyvinyl alcohol needs.¹³³ Finally, the price declines that took place earlier in the period of investigation can be explained by the low-priced unfairly traded imports from China, Korea, and Japan that were competing in the U.S. market at least until the imposition of antidumping duty orders in mid- and late 2003. The Commission found significant and widespread underselling by these cumulated imports including for each of the three main end-use applications for which the Commission collected data in those investigations. It also found other evidence of direct head-to-head price competition between those imports and the domestically produced polyvinyl alcohol.¹³⁴

¹²⁸ See, e.g., CR/PR at Tables V-1 to V-5.

¹²⁹ See, e.g., CR/PR at Tables V-1 to V-3. For product 1, per-pound domestic prices declined from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or by \$*** per pound). For product 2, per-pound domestic prices *increased* from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or *increased* by \$*** per pound). For product 3, per-pound domestic prices *increased* from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or *increased* by \$*** per pound).

¹³⁰ See, e.g., CR/PR at Tables V-5, E-5; CR at II-3. For product 5 (a textile product), per-pound domestic prices declined from \$*** in the first quarter of 2001 to \$*** in the second quarter of 2002 (or by \$*** per pound) and *increased* from \$*** in the first quarter of 2003 to \$*** in the second quarter of 2004 (or *increased* by \$*** per pound).

¹³¹ See, e.g., CR/PR at Table VI-3 (showing that the domestic industry's average unit net sales values declined from \$*** per pound in 2001 to \$*** per pound in 2002 and then increased to \$*** per pound in 2003, and increased from \$*** per pound in interim 2003 to \$*** per pound in interim 2004 and that average commercial sales unit values declined from \$*** per pound in 2001 to \$*** per pound in 2002 and then increased to \$*** per pound in 2003, and increased from \$*** per pound in interim 2003 to \$*** per pound in interim 2004 and showing ***).

¹³² See, e.g., CR at V-1; PR at V-1. The decline in U.S. production of textiles since at least 2001 affected polyvinyl alcohol pricing in that demand sector. The U.S. paper industry reportedly has undergone consolidation, which led to at least some increase in buying power by U.S. paper companies for their inputs, including polyvinyl alcohol. See, e.g., CR at V-1 n.3; PR at V-1 n.3. Two market segments that reportedly *** are the *** and *** sectors. According to DuPont, ***. See, e.g., CR at V-2; PR at V-2; see also, e.g., USITC Pub. 3604 at II-5.

¹³³ See, e.g., CCPC's Postconference Brief at 6. The record also indicates that another reason for price declines during the period of investigation was competition between domestic suppliers Celanese and DuPont. See, e.g., DuPont's Postconference Brief at 20-24, Exh. 5.

¹³⁴ As the Commission explained in those investigations, "although there were instances where non-subject imports from Germany and Taiwan undersold the domestic like product, such instances were less frequent and generally involved smaller margins of underselling than with respect to subject imports. Moreover, in 2002 when domestic prices were declining, cumulated subject import volume was increasing both absolutely and relative to commercial market consumption and total U.S. consumption, but the volume of non-subject imports was declining." (citations omitted) See USITC Pub. 3634 at 16. For the final phase of those investigations, the Commission's

(continued...)

We also obtained extensive information during this investigation concerning the domestic industry's ability to increase prices. While ***. Based on information submitted by both DuPont and Celanese, it appears that Celanese's announced price increases in the earlier part of the period of investigation (of \$0.05 per pound effective February 1, 2001 and of \$0.05 per pound effective June 15, 2002), when subject imports from Taiwan were declining but polyvinyl alcohol imports from China, Korea, and Japan were increasing, were ***.¹³⁵

The third announced price increase for polyvinyl alcohol (of \$0.05 per pound effective March 1, 2003) was initiated by DuPont, and this increase was ***. Celanese attempted a fourth announced price increase shortly thereafter (of \$0.20 per pound effective April 1, 2003). According to DuPont, U.S. polyvinyl alcohol customers ***. Celanese asserted that after initially obtaining a \$*** per pound increase, it reduced prices by \$*** per pound and thus obtained *** percent of the attempted price increase, which, according to Celanese did not even cover the increased cost of VAM.¹³⁶ DuPont initiated the fifth announced price increase for polyvinyl alcohol (of \$0.07 per pound effective June 1, 2004), an increase that was reportedly ***. Celanese, however, asserted that it was only able to obtain \$*** of the proposed price increase.¹³⁷

For all of these reasons, although there were declines in prices over the period of investigation, due to the timing of the price declines, the fact that prices generally began to increase toward the end of the period, the role of other factors, and based on evidence that domestic producers have been able to increase prices in the recent period, we do not find significant price depression by subject imports from Taiwan.

¹³⁴ (...continued)

period of investigation was calendar years 2000 through 2002. See, e.g., USITC Pub. 3604; USITC Pub. 3634.

¹³⁵ See, e.g., CR at V-10 to V-12; PR at V-6 to V-7.

¹³⁶ The Court has asked to explain what weight we gave to the finding that domestic industry was able to raise prices at the end of the POI ***. Celanese, Confidential Slip Op. 07-16 at 41 n.18. Our focus here is on whether prices were significantly depressed by subject imports. Although we acknowledge here and in our Original Views ***,

¹³⁷ See, e.g., CR at V-10 to V-12; PR at V-6 to V-7. DuPont ***. Id.

3. No Significant Price Suppression

In our Original Views, we found that the domestic industry experienced a cost-price squeeze,¹³⁸ but we did not find significant price suppression by subject imports from Taiwan. Given important cost differences between domestic producers, evidence that there was more overselling occurring at the end of the period of investigation when subject import volume was rising, and evidence that factors other than subject imports explained price declines during the period of investigation, we did not find that subject imports from Taiwan significantly suppressed prices in the U.S. market.¹³⁹ The Court remanded our price suppression analysis to allow us to further explain the connection between cost structure factors (and in particular Celanese's ***) and our finding of no significant price suppression by subject imports from Taiwan.¹⁴⁰

In our analysis of whether subject imports from Taiwan significantly suppressed prices of the domestic like product in the U.S. market, we have analyzed both aspects of the cost-price squeeze: (1) prices in the U.S. market; and (2) costs faced by domestic producers.

In terms of prices, as we indicated in more detail above, domestic prices did decline for four of the five pricing prices over the period of investigation. But, the larger price declines were at the beginning of the period of investigation (between 2001 and 2002) when the volume of non-subject imports (including from countries such as China, Japan, and Korea that the Commission found in the 2002/2003 investigations were materially injuring the domestic industry) was increasing and the volume of subject imports from Taiwan was decreasing.¹⁴¹ At the end of the period of investigation (between the first quarter of 2003 and the second quarter of 2004) when the volume of non-subject imports was declining and the volume of subject imports was increasing, prices were more stable and even increased.¹⁴² During a period of increasing subject import volume at the end of the period of investigation, there was widespread overselling by subject imports from Taiwan for the products for which there was the most competition with the domestic industry, and prices were fluctuating in a narrower band at the end of the period of investigation than between 2001 and 2002.¹⁴³ Consistent with

¹³⁸ As the Court noted, a cost-price squeeze may occur “when the cost of goods sold exceeds price and the producer is unable to raise the price – that is, when the producer is unable to sell the good for more than it costs to produce it.” Celanese, Confidential Slip Op. at 42 n.20 (citing Nippon, 458 F.3d at 1354).

¹³⁹ Views at 43-44.

¹⁴⁰ Celanese, Confidential Slip Op. at 42-44. As instructed by the Court, Celanese, Confidential Slip Op. at 44, we have also considered our findings on price suppression in light of our volume findings. Having arrived at the same conclusion regarding volume in these Remand Views as in our Original Views, our analysis does not change in that respect.

¹⁴¹ Other factors that negatively affected prices during the period of investigation included demand factors, the globalization of the polyvinyl alcohol market, and intra-industry competition, as we discussed above.

¹⁴² See, e.g., CR/PR at Tables V-1 to V-5.

¹⁴³ See, e.g., CR/PR at Tables V-1 to V-5.

these data, domestic producers' ***. Moreover, at the end of the period of investigation, the domestic industry's unit net sales values and unit commercial sales values increased.¹⁴⁴ And, ***.¹⁴⁵

In terms of costs, individual firm data revealed that ***.¹⁴⁶ The record indicates that the domestic industry's capacity utilization levels increased over the period of investigation. And, although petitioner Celanese operated at ***, Celanese's capacity utilization levels, ***, increased from *** percent in 2001 to *** percent in 2002 and to *** percent in 2003 and from *** percent in interim 2003 to *** percent in interim 2004. Celanese's improvements in capacity utilization ***.¹⁴⁷ These improvements occurred notwithstanding increases in the volume of subject imports at the end of the period of investigation.

Notwithstanding the improvements in Celanese's capacity utilization levels, however, there ***. The Court found that we have broad discretion to select the appropriate methodology to account for Celanese's production costs, and that Celanese did not contend that the selected methodology was arbitrary. The Court also found that we fully considered the relevant issues of fact.¹⁴⁸

There were significant differences in terms of ***, with *** unit cost of goods sold ***.¹⁴⁹ Although Celanese's ***, Celanese's unit other factory costs ***.¹⁵⁰ Two large components of Celanese's other factory costs are depreciation and natural gas as an energy source in the production of polyvinyl alcohol. Depreciation accounted for *** to *** percent and natural gas accounted for approximately *** percent of Celanese's other factory costs during the period of investigation.¹⁵¹ Because of its more recent purchase of the Air Products facilities (September 2000) at a value that parties alleged in both the current and previous investigations was over-priced,¹⁵² Celanese ***.¹⁵³ ***.¹⁵⁴ In terms of the natural gas component of other factory costs, the Court has agreed with our finding that the unit cost of goods sold and the ratio of cost of goods sold to net sales declined relatively significantly between 2001 and 2002 before increasing between 2002 and 2003 and continuing to increase between interim 2003 and interim 2004, consistent with quarterly trends of natural gas prices.¹⁵⁵ Celanese's unit

¹⁴⁴ See, e.g., CR/PR at Table VI-3 (showing that the domestic industry's average unit net sales values declined from *** per pound in 2001 to *** in 2002 and then increased to *** per pound in 2003, and increased from *** per pound in interim 2003 to *** per pound in interim 2004 and that average unit commercial sales values declined from *** per pound in 2001 to *** per pound in 2002 and then increased to *** per pound in 2003, and increased from *** per pound in interim 2003 to *** per pound in interim 2004 and showing ***).

¹⁴⁵ See, e.g., CR/PR at Table VI-3.

¹⁴⁶ See, e.g., CR at VI-4; PR at VI-1.

¹⁴⁷ See, e.g., CR/PR at Table III-2.

¹⁴⁸ Celanese, Confidential Slip Op. at 42 n.21.

¹⁴⁹ See, e.g., CR/PR at Table VI-3.

¹⁵⁰ See, e.g., CR/PR at Table VI-3.

¹⁵¹ See, e.g., CR at VI-4; PR at VI-1.

¹⁵² See, e.g., Conf. Tr. at 68-69.

¹⁵³ See, e.g., CR at III-2, VI-1, VI-19; PR at III-1, VI-1-4; Producer Questionnaire Responses of *** at Question III-8.

¹⁵⁴ See, e.g., Producer Questionnaire Responses of *** at Answers to Question III-6 and Question III-7.

¹⁵⁵ See, e.g., Celanese, Confidential Slip Op. at 43. Cost of goods sold as a ratio to sales declined between 2001 and 2002 as natural gas prices fell during a time of declining PVA prices, but the ratio of cost of goods sold to sales increased between 2002 and 2003 and continued to increase between interim 2003 and interim 2004. See, e.g., CR/PR at Table VI-2. Record evidence also suggested that the effects of higher natural gas prices were exacerbated for Celanese due to the fact that the company entered into long-term contracts without price escalator clauses. See,

(continued...)

labor costs, another component of the unit cost of goods sold, ***.¹⁵⁶ The *** byproduct revenue; Celanese's byproduct revenues ***.¹⁵⁷ Celanese disagrees with how the Commission valued its byproduct revenue (at fair market value rather than cost), but the Court upholds our methodology and consideration of this factor.¹⁵⁸ ***.¹⁵⁹ As the Court recognized in the context of reviewing our analysis of the impact of subject imports from Taiwan on the domestic industry, these differences in cost structures between the domestic producers are important.¹⁶⁰

In terms of the cost-price squeeze, Celanese complains that ***. We do not find, however, that subject imports were responsible for significant price declines but that factors other than subject imports explain the price declines during the period of investigation. The increasing volume of subject imports at the end of the period of investigation was associated with more stable prices, increased net unit sales values, increased unit commercial sales values, and coincided with increased capacity utilization levels, including for Celanese. Fluctuations in cost of goods sold corresponded with fluctuations in natural gas prices, and factors such as natural gas prices and *** and other expenses fully explain any cost-price squeeze during the latter portion of the period of investigation. The *** that led to this cost-price squeeze cannot be explained by or blamed on subject imports, particularly, for example, when ***.¹⁶¹ For all of these reasons, we do not find that subject imports suppressed domestic prices to a significant degree during the period of investigation.

4. Conclusion: No Significant Price Effects

Accordingly, we do not find that there has been significant price underselling of the domestic like product by subject imports, that subject imports have depressed domestic prices to a significant degree, or that there has been significant price suppression by subject imports from Taiwan.

D. Impact of the Subject Imports¹⁶²

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹⁶³ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital,

¹⁵⁵ (...continued)

e.g., DuPont's Postconference Br. at 24, Exh. 6.

¹⁵⁶ See, e.g., CR/PR at Table VI-3.

¹⁵⁷ See, e.g., CR/PR at Table VI-3.

¹⁵⁸ See, e.g., Celanese, Confidential Slip Op. at 42 n.21.

¹⁵⁹ See, e.g., CR at VI-7; PR at VI-2.

¹⁶⁰ See, e.g., Celanese, Confidential Slip Op. at 50 ("To the extent that the Commission's impact analysis was based on cost structure differences, it is sustained.").

¹⁶¹ See, e.g., CR/PR at Table VI-2.

¹⁶² In its notice of initiation, Commerce estimated, based on a comparison of export price derived from U.S. average unit values to adjusted constructed value, a dumping margin of 39.83 percent for polyvinyl alcohol from Taiwan. See 69 Fed. Reg. 59204, 59206 (Oct. 4, 2004).

¹⁶³ 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.

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.”¹⁶⁴

In our Original Views, we did not find that subject imports had an adverse impact on the domestic industry during the period of investigation. The Court upheld our impact analysis insofar as it relied on cost structure differences *** as well as differences in the factual records between this investigation and the 2002/2003 investigations.¹⁶⁵ The Court remanded two aspects of our impact analysis: (1) to explain why we did not find significant the *** trend of DuPont, which declined late in the period of investigation; and (2) to explain the significance of the fact that the domestic industry exported large volumes of polyvinyl alcohol ***.¹⁶⁶

While there were declines in some of the domestic industry’s performance factors, there were improvements in several others. Many of the declines in the domestic industry’s performance factors (such as declines in U.S. shipment unit values, production-related workers, hours worked, net sales unit value) occurred between 2001 and 2002,¹⁶⁷ a time when the volume of subject imports from Taiwan was declining and a time when the Commission found material injury by reason of cumulated subject imports from China, Korea, and Japan. Between 2002 and 2003, when subject imports from Taiwan experienced their largest relative volume increases during the period of investigation, domestic producers gained some market share, increased their capacity utilization level from the period low in 2001, continued to experience declining inventories, did not lose as many production and related workers, and experienced increased net unit sales values.¹⁶⁸ After polyvinyl alcohol imports from China, Korea, and Japan became

¹⁶⁴ 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 to 813 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

¹⁶⁵ Celanese, Confidential Slip Op. 07-16 at 44-50.

¹⁶⁶ Celanese, Confidential Slip Op. 07-16 at 44-50. The Court also remanded our impact analysis for consideration of any new conclusions we reach regarding volume and price effects. Celanese, Confidential Slip Op. 07-16 at 50. Having arrived at the same conclusion regarding volume and price effects in these Remand Views as in our Original Views, our analysis does not change in that respect.

¹⁶⁷ In terms of the U.S. commercial market, the domestic industry’s U.S. shipment values declined from \$*** in 2001 to \$*** in 2002 and \$*** in 2003. The unit value of the domestic industry’s U.S. commercial market shipments declined from \$*** per pound in 2001 to \$*** per pound in 2002 and \$*** per pound in 2003. The number of production-related workers declined from *** in 2001 to *** in 2002 and *** in 2003. Hours worked declined from *** in 2001 to *** in 2002 and *** in 2003, and from *** in interim 2003 to *** in interim 2004. The domestic industry’s unit net sales values declined from \$*** per pound in 2001 to \$*** per pound in 2002. See, e.g., CR/PR at Table C-2. In terms of the total U.S. polyvinyl alcohol market, the domestic industry’s U.S. shipment values increased from \$*** in 2001 to \$*** in 2002 and declined *** to \$*** in 2003. The unit value of the domestic industry’s U.S. shipments to the total market declined from \$*** per pound in 2001 to \$*** per pound in 2002 before increasing to \$*** per pound in 2003. The number of production-related workers declined from *** in 2001 to *** in 2002 and *** in 2003. Hours worked declined from *** in 2001 to *** in 2002 and *** in 2003, and from *** in interim 2003 to *** in interim 2004. The domestic industry’s net sales unit values declined from \$*** per pound in 2001 to \$*** per pound in 2002. See, e.g., CR/PR at Table C-1.

¹⁶⁸ The domestic industry’s share of the U.S. commercial market for polyvinyl alcohol increased from *** percent in 2002 to *** percent in 2003. See, e.g., Supplemental Table 2-B. The domestic industry’s net unit sales values increased from \$*** per pound in 2002 to \$*** per pound in 2003. The domestic industry’s capacity utilization increased from *** percent in 2002 to *** percent in 2003 after recording a period low in 2001 of *** percent. The domestic industry’s end-of-period inventories declined from *** pounds in 2001 to *** pounds in 2002 and continued to decline to *** pounds in 2003. Although the number of production and related workers in the domestic industry declined from *** in 2002 to *** in 2003, the magnitude of the decline was not as great (***)

(continued...)

subject to antidumping duty orders in July 2003 (Japan) and October 2003 (China and Korea), the domestic industry's performance for interim 2004 was at levels that were better than or similar to levels in interim 2003 for many of these same factors, notwithstanding the continued presence of subject imports from Taiwan in the market.¹⁶⁹

We acknowledge that the domestic industry's commercial-market operating margin declined *** between 2002 and 2003 from *** percent in 2002 to *** percent in 2003, but then largely stabilized between interim 2003 (*** percent) and interim 2004 (*** percent).¹⁷⁰ We find that these declines were explained by factors other than subject imports from Taiwan. In addition to our findings concerning subject import volume and the absence of significant price effects by subject imports from Taiwan, discussed above, we could not ignore the effects of ***, and the fact that the domestic industry ***.¹⁷¹ Exports accounted for *** percent of the domestic industry's total shipments in 2003 (and *** percent of

¹⁶⁸ (...continued)

percent from 2002 to 2003 as opposed to *** percent from 2001 to 2002). The domestic industry's hourly wages continued to climb, from \$*** in 2001 to \$*** in 2002 and \$*** in 2003. See, e.g., CR/PR at Table C-2. The domestic industry's share of the total U.S. polyvinyl market increased from *** percent in 2002 to *** percent in 2003. See, e.g., Supplemental Table 2-A. The domestic industry's unit net sales values increased from \$*** per pound in 2002 to \$*** per pound in 2003. The domestic industry's capacity utilization declined from *** percent in 2002 to *** percent after recording a period low in 2001 of *** percent. The domestic industry's end-of-period inventories declined from *** pounds in 2001 to *** pounds in 2002 and continued to decline to *** pounds in 2003. Although the number of production-related workers in the domestic industry declined from *** in 2002 to *** in 2003, the magnitude of the decline was not as great (*** percent from 2002 to 2003 as opposed to *** percent from 2001 to 2002). The domestic industry's hourly wages continued to climb, from \$*** in 2001 to \$*** in 2002 and \$*** in 2003. See, e.g., CR/PR at Table C-1.

¹⁶⁹ The domestic industry's share of the U.S. polyvinyl alcohol commercial market was relatively stable between interim 2003 (*** percent) and interim 2004 (*** percent). See, e.g., Supplemental Table 2-B. The domestic industry's production quantity increased from *** pounds in interim 2003 to *** pounds in interim 2004. The domestic industry's capacity utilization levels jumped from *** percent in interim 2003 to *** percent in interim 2004. The domestic industry's U.S. shipments to the commercial market increased from *** pounds in interim 2003 to *** pounds in interim 2004, and unit values increased from \$*** per pound in interim 2003 to \$*** per pound in interim 2004. End-of-period inventories continued to decline, from *** pounds in interim 2003 to *** pounds in interim 2004. Productivity levels also climbed to near record levels, increasing from *** pounds per hour in interim 2003 to *** pounds per hour in interim 2004. See, e.g., CR/PR at Table C-2. The domestic industry's share of the total U.S. polyvinyl alcohol market was relatively stable between interim 2003 (*** percent) and interim 2004 (*** percent). See, e.g., Supplemental Table 2-A. The domestic industry's production quantity increased from *** pounds in interim 2003 to *** pounds in interim 2004. The domestic industry's capacity utilization levels jumped from *** percent in interim 2003 to *** percent in interim 2004. The domestic industry's U.S. shipments to the total U.S. polyvinyl alcohol market increased from *** pounds in interim 2003 to *** pounds in interim 2004, and unit values increased from \$*** per pound in interim 2003 to \$*** per pound in interim 2004. End-of-period inventories continued to decline, from *** pounds in interim 2003 to *** pounds in interim 2004. Productivity levels increased from *** pounds per hour in interim 2003 to *** pounds per hour in interim 2004. See, e.g., CR/PR at Table C-1.

¹⁷⁰ In terms of the total U.S. market, the domestic industry's operating margin declined between 2002 and 2003 from *** percent in 2002 to *** percent in 2003, but then largely stabilized between interim 2003 (*** percent) and interim 2004 (*** percent).

¹⁷¹ See, e.g., CR/PR at Tables C-2, C-1. The quantity of export shipments made by the domestic industry increased from *** pounds in 2001 to *** pounds in 2002 before declining somewhat to *** pounds in 2003. See, e.g., CR/PR at Table III-4; see, e.g., DuPont's Postconference Brief at Exh. 8 at 10; ***. The average unit value of the domestic industry's export shipments was ***.

Celanese's total shipments in 2003, and *** percent.¹⁷² In our view, these other factors also explain the operating margins during the period of investigation.

The domestic industry's ***. A close comparison of the cost structures of *** and *** shows ***. In 2003, the year of greatest subject import penetration, in terms of commercial market sales, Celanese's unit cost of goods sold was ***. Celanese's unit raw material cost of ***. However, Celanese's unit labor cost of ***. Celanese's unit other factory cost, ***.¹⁷³ Finally, Celanese's unit byproduct revenue of ***.¹⁷⁴

DuPont's *** and Celanese's *** are largely explained by the ***. The *** are entirely unrelated to imports of subject polyvinyl alcohol from Taiwan.¹⁷⁵ ***, DuPont opposed the petition in this investigation.

We also take into account the continuing presence of significant volumes of then unfairly traded cumulated imports from China, Korea, and Japan in the U.S. market throughout a significant portion of 2002 and 2003. Although we recognize that in the second of two sequential investigations involving imports of the same product from different countries, the Commission may base its injury determination with respect to the second country on sales at less than fair value that continue injury due to subject imports from the first country or countries,¹⁷⁶ we also have an obligation to ensure that there is a reasonable indication of "material injury" that is "by reason of" the subject imports at issue in this investigation,¹⁷⁷ namely subject imports from Taiwan. Because of differences in terms of the volume, price effects, and impact of subject imports from Taiwan and the volume, price effects, and impact of the imports that were cumulated in the last investigations (i.e., polyvinyl alcohol imports from China, Korea, and Japan), including timing, as well as our examination of other economic factors that are relevant to this investigation discussed above, we reach a different result in this investigation.¹⁷⁸ Based on the facts on this record, we are unable to conclude that there is a reasonable indication of material injury by reason of subject imports from Taiwan.

¹⁷² See, e.g., CR at II-7; PR at II-4. In 2003, *** percent of Celanese's shipments of polyvinyl alcohol were exported. See, e.g., CR/PR at Table III-4. We also examined the domestic industry's exports in the 2002/2003 investigations in our causation analysis. See, e.g., USITC Pub. 3604 at 24-25 n.130, 26-27; USITC Pub. 3634 at 20.

¹⁷³ As discussed above, ***.

¹⁷⁴ ***.

¹⁷⁵ We note that ***.

¹⁷⁶ See, e.g., City Lumber Co. v. United States, 311 F. Supp. 340, 347-48 (Cust. Ct. 1970), aff'd, 457 F.2d 991 (C.C.P.A 1972).

¹⁷⁷ See generally Nippon Steel Corp. v. USITC, 345 F.3d 1379 (Fed. Cir. 2003); Taiwan Semiconductor Industry Ass'n v. United States, 266 F.3d 1339 (Fed. Cir. 2001); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997); Committee for Fair Beam Imports v. United States, 2003 WL 21555105, 25 ITRD 1699 (Ct. Int'l Trade); R-M Industries, Inc. v. United States, 848 F. Supp. 204 (Ct. Int'l Trade 1994); General Motors, Corp. v. United States, 827 F. Supp. 774 (Ct. Int'l Trade 1993); Trent Tube Div. v. United States, 741 F. Supp. 921 (Ct. Int'l Trade 1990).

¹⁷⁸ Thus, this case is distinguishable from the factual scenario at issue in City Lumber, where subject imports from Portugal were apparently competing on identical terms as imports from Sweden and Belgium, imports for which there were already affirmative injury determinations.

For all of the reasons discussed above, including our findings concerning subject import volume from Taiwan and the lack of significant price effects, we are unable to conclude that subject imports are having an adverse impact on the domestic industry. We find that the record as a whole contains clear and convincing evidence that there is no reasonable indication of material injury by reason of subject imports of polyvinyl alcohol from Taiwan and no likelihood exists that contrary evidence will arise in a final investigation.

III. NO REASONABLE INDICATION OF A THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TAIWAN

Section 771(F) of the Act directs the Commission to determine whether there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁷⁹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹⁸⁰ In making our determination, we have considered all factors that are relevant to this investigation.¹⁸¹ Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of polyvinyl alcohol from Taiwan that are allegedly sold in the United States at less than fair value.

Although Celanese made several challenges to our negative threat determination, the Court affirmed us on each of the statutory threat factors, except those pertaining to volume and price effects.¹⁸² On these two factors, the Court noted that, because they were dependent in part on our volume and price conclusions from our present material injury determination, they may be subject to change on remand.¹⁸³ We arrive at the same conclusions on those factors in these Remand Views, and thus reiterate below the basis for our finding of no reasonable indication of a threat of material injury by reason of subject imports of polyvinyl alcohol from Taiwan that are allegedly sold in the U.S. market at less than fair value.

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

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

¹⁸¹ 19 U.S.C. § 1677(7)(F). These factors include: 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; a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports; whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on the domestic prices and are likely to increase demand for further imports; inventories of the subject merchandise; and the actual and potential negative effects on the existing development and production efforts of the domestic industry. 19 U.S.C. § 1677(7)(F)(I). Statutory threat factor I is inapplicable, as no countervailable subsidies are involved, statutory threat factor VI is inapplicable, as there is no evidence of production facilities in Taiwan that are currently being used to produce other products that can be used to produce the subject merchandise, and statutory threat factor VII is inapplicable, as no imports of agricultural products are involved. Id.

¹⁸² Celanese, Confidential Slip Op. 07-16 at 50-55.

¹⁸³ Celanese, Confidential Slip Op. 07-16 at 52-53.

As an initial matter, we find that the domestic industry is ***. As discussed above, however, many important performance factors have shown improvements. These include the fact that domestic industry gained some market share on an annual basis, increased its capacity utilization from period lows in 2001, continued to experience declining inventories, and experienced increased net unit sales values for its commercial shipments. Moreover, in the most recent period, the domestic industry has increased commercial market production (**% percent), U.S. shipments (**% percent), and U.S. shipment unit sales values between interim 2003 and interim 2004.¹⁸⁴

Taking into consideration our findings concerning the volume of subject imports from Taiwan discussed supra,¹⁸⁵ and the fact that we do not find that increased subject imports from Taiwan were responsible for significant price effects or a significant impact on the domestic industry and based on our findings below, we do not find a significant rate of increase of the volume or market penetration of subject imports from Taiwan in the imminent future indicating the likelihood of substantially increased imports.

CCPC, the only known producer of polyvinyl alcohol in Taiwan, has had **% production capacity **%. While CCPC **% the period of investigation, and while the volume of subject imports did increase during the period of investigation, we do not find that **% would lead to significant volumes of imports into the U.S. market in the imminent future. CCPC's exports to the United States accounted for **% of its total shipments during the period of investigation (ranging from **% percent) while its shipments to the home market coupled with its internal consumption (ranging from **% percent) as well as its exports to all other markets were **% throughout the period of investigation (ranging from **% percent to **% percent). These patterns are projected to remain the same. Likewise, end-of-period inventories in Taiwan of subject polyvinyl alcohol have declined throughout the period of investigation and are projected to continue declining in 2004 and 2005. Importers' end-of-period inventories of subject polyvinyl alcohol in the United States have been relatively stable throughout the period of investigation and are projected to remain stable in 2004 and 2005.¹⁸⁶ Furthermore, there are no known dumping findings or investigations on polyvinyl alcohol from Taiwan in other markets that might impede exports from Taiwan to those markets.¹⁸⁷

While we found that subject imports from Taiwan increased absolutely and relative to apparent domestic consumption and production during the period of investigation, we noted that the conditions of competition in the U.S. market muted the impact that this increase in volume had on the domestic industry. There is no evidence that conditions of competition in the U.S. market would change in such a way that any increases in the imminent future would have an adverse impact on the domestic industry. We reach this conclusion in particular based on the fact that subject imports generally have oversold domestically produced polyvinyl alcohol in the recent period and in light of our findings below about the likely price effects in the future. Accordingly, we do not find a likelihood of substantially increased imports of the subject merchandise into the United States in the imminent future.

¹⁸⁴ See, e.g., CR/PR at Table C-2.

¹⁸⁵ We note in particular the fact that subject imports from Taiwan did not increase significantly during the period of investigation and in the most recent period when they had opportunities to do so, such as shortly after the termination of the antidumping duty order on polyvinyl alcohol from Taiwan in May 2001 or after the imposition of the antidumping duty orders on polyvinyl alcohol imports from Japan in July 2003 and on imports from China and Korea in October 2003.

¹⁸⁶ See, e.g., CR/PR at Tables VII-1, VII-2.

¹⁸⁷ See, e.g., CR at VII-4; PR at VII-1.

Based on the standard for preliminary determinations, we also find it unlikely that subject imports will enter the U.S. market at prices that are likely to have a significant depressing or suppressing effect on domestic prices or that are likely to increase demand for further imports. Coupled with our findings on the lack of likely substantially increased subject imports, the record evidence indicates that subject import prices had no significant adverse effects on domestic prices during the period of investigation. Prices began to rise toward the end of the period of investigation notwithstanding the continued presence of subject imports from Taiwan in the U.S. market, and evidence showed that much of the underselling by subject imports from Taiwan occurred during the earlier portion of the period of investigation.¹⁸⁸

We have also taken into account U.S. importers' reporting of imports subsequent to June 30, 2004. Four of the responding importers indicated that they imported or arranged for importation of polyvinyl alcohol from Taiwan for delivery after June 30, 2004. Through December 2004, the imports and projected imports of polyvinyl alcohol from Taiwan ***.¹⁸⁹ Therefore, the composition of these imports and projected imports by the two firms that accounted for a majority of the subject imports during the period of investigation is ***. This fact reinforces our findings of a lack of likely significant price effects in the imminent future. Based on these considerations, we find it unlikely that subject imports will enter the U.S. market at prices that are likely to have a significant depressing or suppressing effect on domestic prices or that are likely to increase demand for further imports.

We also do not find that subject imports are likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. The domestic industry ***.¹⁹⁰

Accordingly, we find that the record as a whole contains clear and convincing evidence that there is no reasonable indication of a threat of material injury by reason of subject imports of polyvinyl alcohol from Taiwan, and no likelihood exists that contrary evidence will arise in a final investigation.

CONCLUSION

For the reasons stated above, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of polyvinyl alcohol from Taiwan that are allegedly sold in the United States at less than fair value.

¹⁸⁸ As we noted previously, DuPont ***. See, e.g., CR at V-10 to V-12; PR at V-6 to V-7.

¹⁸⁹ See, e.g., CR/PR at Tables E-1 through E-5.

¹⁹⁰ See, e.g., CR at Table VI-7, Appendix F.

APPENDIX A
FEDERAL REGISTER NOTICE

operations, and the socioeconomic environment.

DATES: The Draft GMP/EIS will be available for public review for 60 days from the date of publication of the EPA notice of availability in the **Federal Register**. The National Park Service will hold a public meeting during the public review period to solicit comments. Meeting date, time, and location will be announced in local media in advance of the meeting date. Comments on the Draft GMP/EIS must be received at one of the addresses below no later than 60 days from the date of publication of the EPA notice of availability in the **Federal Register**.

ADDRESSES: Comments on the Draft GMP/EIS should be mailed to: Superintendent, Sagamore Hill National Historic Site, 20 Sagamore Hill Road, Oyster Bay, NY 11771-1809, or sent by e-mail to: ellen_carlson@nps.gov. Comments may also be submitted at the park's Web site: <http://www.nps.gov/sahi>.

FOR FURTHER INFORMATION CONTACT: Copies of the Draft GMP/EIS are available upon request by writing to: Ellen Carlson, Project Planner, National Park Service, Northeast Region, 15 State Street, Boston, MA 02109; e-mailing ellen_carlson@nps.gov, or calling (617) 223-5048. The Draft GMP/EIS also is available for pick up in person at Sagamore Hill National Historic Site at 20 Sagamore Hill Road, Oyster Bay, New York, at the park's administrative offices in the Old Orchard Museum during regular business hours. It is also available on the park's Web site at <http://www.nps.gov/sahi>.

SUPPLEMENTARY INFORMATION: NPS planning staff, staff at Sagamore Hill, and key park partners collaborated in the development of the Draft GMP/EIS. A previous master plan was prepared for the park in 1963 but was not approved. Project scoping for the GMP began in May 2003. Formal public scoping sessions were held in Oyster Bay and NYC in April 2004. A preliminary alternatives newsletter was prepared and distributed in April 2005 followed by two community meetings.

The Draft GMP/EIS addresses the following issues—improving the visitor experience, broadening and diversifying the park audience, improving operational efficiency, and enhancing resource protection. Key park partners closely involved in the development of planning alternatives include the Theodore Roosevelt Association, the Friends of Sagamore Hill, and the park's Volunteer Advisory Board.

In addition to *Alternative 1—Status Quo*, which describes the continuation of current management practices, the plan includes two action alternatives. *Alternative 2—Building Capacity* emphasizes building the park's capacity to address its basic visitor services and operational needs. Alternative 3 is the National Park Service's preferred alternative. *Alternative 3—Past Meets Present* emphasizes rehabilitation of the park's cultural resources and improvements to its visitor services and facilities to offer expanded opportunities for visitors to explore the site's contemporary relevance in the same context in which they explore its history.

After public review of the Draft GMP/EIS, the National Park Service will consider public comments, and a Final GMP/EIS will be prepared. The Final GMP/EIS is scheduled for completion in 2007. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 26, 2007.

Dennis Reidenbach,

Acting Regional Director, Northeast Region.
[FR Doc. E7-4134 Filed 3-7-07; 8:45 am]

BILLING CODE 4310-D9-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-739 (Second Review)]

Clad Steel Plate From Japan; Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (Commission) determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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 Commissioners Jennifer A. Hillman and Irving A. Williamson not participating.

Background

The Commission instituted this review on October 2, 2006 (71 FR 57996), and determined on January 5, 2007, that it would conduct an expedited review (72 FR 2554, January 19, 2007).

The Commission's public report Clad Steel Plate from Japan (Inv. No. 731-TA-739) (Second Review), USITC Publication 3907, March 2007) will contain the views of the Commission developed during the review.

By order of the Commission.

Issued: March 5, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-4144 Filed 3-7-07; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1088 (Preliminary) (Remand)]

Polyvinyl Alcohol From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission ("Commission") hereby gives notice of the court-ordered remand of its preliminary determination in the antidumping Investigation No. 731-TA-1088 concerning polyvinyl alcohol from Taiwan. For further information concerning the conduct of this proceeding 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, subpart A (19 CFR part 207).

DATES: *Effective Date:* March 2, 2007.

FOR FURTHER INFORMATION CONTACT: George Deyman, Office of Investigations, telephone 202-205-3197, or Mary Jane Alves, Office of General Counsel, telephone 202-708-2969, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. 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 of Investigation No. 731-TA-1088 may be

viewed on the Commission's electronic docket ("EDIS") at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—In October 2004, the Commission determined that there was no reasonable indication that a U.S. industry was materially injured or threatened with material injury by reason of imports of certain polyvinyl alcohol from Taiwan that were allegedly sold in the United States at less than fair value. The Commission's determination was appealed to the CIT. The CIT issued an opinion in the matter on January 29, 2007. *Celanese Chemicals, Ltd. v. United States*, Slip Op. 07–16 (Ct. Int'l Trade Jan. 29, 2007). In its opinion, the CIT remanded the matter to the Commission for further proceedings not inconsistent with that opinion.

Participation in the proceeding.—Only those persons who were interested parties to the original investigation (*i.e.*, persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding. Business proprietary information ("BPI") referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

Written submissions.—The Commission is not reopening the record in this proceeding for submission of new factual information. The Commission will, however, permit the parties to file comments solely pertaining to the inquiries that are the subject of the CIT's remand instructions. Comments should be limited to no more than twenty (20) double-spaced and single-sided pages of textual material. The parties may not submit any new factual information and may not address any issue other than the inquiries that are the subject of the CIT's remand instructions. Any such comments must be filed with the Commission no later than March 12, 2007.

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 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules,

each document filed by a party to the investigation must be served on all other parties to the investigation (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.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: March 2, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–4145 Filed 3–7–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 28, 2007, a proposed Consent Judgment in *United States v. AGI-VR Wesson Co. et al.*, Civil Action No. CV–07–825, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment will settle the United States' claims on behalf of the U.S. Environmental Protection Agency ("EPA") brought against defendants AGI-VR/Wesson Co., Alloy Carbide Company, Chi Mei Corporation, Climax Molybdenum Company, Climax Molybdenum Marketing Corporation, County of Nassau, New York, Cyprus Amax Minerals Company, General Electric Company, GTE Corporation, H.C. Starck, Inc., Kennametal Inc., M&R Industries, Inc., Minmetals Inc., Osram Sylvania Inc., Philips Electronics North America Corporation, Sandvik, AB, TDY Holding, LLC; and TDY Industries, Inc., (along with Adamas Carbide Corporation and Kulite Tungsten Corp.) pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, with respect to the Li Tungsten Superfund Site in Glen Cove, New York.

Pursuant to the Consent Judgment, a total of \$5.11 million will be paid by settling defendants. Of this amount, \$1.5 million will be denominated as a civil penalty for failure to comply with an

administrative order. In addition, TDY will perform the remaining work at the Site (other than that which EPA has reserved to perform itself), which is estimated by EPA at \$10.7 million. The Consent Decree also resolves claims against four agencies of the United States, the Department of Commerce, the Department of Defense, the Department of the Treasury, and the General Services Administration ("Settling Federal Agencies"). Pursuant to the Consent Judgment, the Settling Federal Agencies shall pay \$25 million to EPA and \$1 million to TDY, and also receive contribution protection.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States v. AGI-VR Wesson Co., et al.*, Civil Action No. CV–07–835, D.J. Ref. 90–11–3–09093.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decree.html. A copy of the proposed Consent Judgment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy by mail from the Consent Decree Library, please enclose a check in the amount of \$208.00 (\$0.25 per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward the check in that amount to the Consent Decree Library at the stated address. If requesting a copy exclusive of exhibits, please enclose a check in the amount of \$32.25 (\$0.25

APPENDIX B
SUPPLEMENTAL TABLES

Supplemental table 1
Polyvinyl alcohol: Comparison of import data sources

Source	Calendar year			January-June	
	2001	2002	2003	2003	2004
Quantity (1,000 pounds)					
Imports from Taiwan:					
Importers' questionnaire data (U.S. imports)	***	***	***	***	***
Unadjusted Commerce data	15,640	14,076	23,539	10,956	13,837
Commerce data adjusted for DuPont over-reporting in interim 2004	***	***	***	***	***
Foreign producers' questionnaire data (export shipments to U.S. market)	***	***	***	***	***
Importers' questionnaire data (shipments of U.S. imports)	***	***	***	***	***
Ratio to importers' questionnaire data (shipments) (percent)					
Importers' questionnaire data (U.S. imports)	***	***	***	***	***
Unadjusted Commerce data	***	***	***	***	***
Commerce data adjusted for DuPont over-reporting in interim 2004	***	***	***	***	***
Foreign producers' questionnaire data (export shipments to U.S. market)	***	***	***	***	***
Note.—Official Commerce statistics may also be referred to as “Census data.”					
Source: Data submitted in response to Commission questionnaires; EDIS document 214685 (official Commerce statistics); DuPont's postconference brief at 19.					

Supplemental tables-1

Supplemental table 2-A
Polyvinyl alcohol: Summary data concerning total U.S. market – based on staff-adjusted “all other sources” import data

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Supplemental table 2-B
Polyvinyl alcohol: Summary data concerning commercial U.S. market – based on staff-adjusted “all other sources” import data

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Supplemental table 3
Polyvinyl alcohol: Alternative “all other sources” imports calculation

Data source/calculation	Calendar year			January-June	
	2001	2002	2003	2003	2004
Quantity (1,000 pounds)					
1. Commerce data for imports from “all other sources” ¹	8,436	7,324	7,594	3,510	4,350
2. Commerce data for combined imports from Italy and the United Kingdom	6,353	5,168	4,879	2,442	2,965
3. Commerce data for imports from “remaining countries” ² (<i>lines 1 - 2</i>)	2,083	2,156	2,715	1,068	1,385
Percent					
4. Data for imports from “all other sources” ¹ as adjusted during the 2002/2003 investigation ³	4,347	3,829	(4)	(4)	(4)
5. Adjustment difference for “all other sources” ¹ (amount subtracted from Commerce data as out-of-scope during the 2002/2003 investigation) (<i>lines 1 - 4</i>)	4,089	3,495	(4)	(4)	(4)
6. Combined imports from Italy and the United Kingdom that were measured as within-scope during the 2002/2003 investigation) ⁵ (<i>lines 2 - 5</i>)	2,264	1,673	(4)	(4)	(4)
Quantity (1,000 pounds)					
7. Ratio of adjusted combined Italy/United Kingdom within-scope imports to Commerce data	34.2 ⁶	34.2 ⁶	34.2 ⁷	34.2 ⁷	34.2 ⁷
Quantity (1,000 pounds)					
8. Adjustment ratio applied to unadjusted Italy/United Kingdom Commerce data (<i>lines 7 x 2</i>)	(4)	(4)	1,667	834	1,013
9. Adjusted data for combined Italy/U.K. imports (= <i>line 6 (for 2001-02) and line 8 (for 2003, interim 2003, and interim 2004)</i>)	2,264	1,673	1,667	834	1,013
10. Commerce data for imports for “remaining countries” ² (= <i>line 3</i>)	2,083	2,156	2,715	1,068	1,385
11. Newly adjusted data for “all other sources” ¹ (<i>lines 9 + 10</i>)	4,347	3,829	4,382	1,903	2,399
<p>¹ “All other sources” imports refers to imports from sources other than (1) Taiwan, (2) Germany, and (3) China, Japan, and Korea.</p> <p>² Imports from “remaining countries” refers to imports from sources other than (1) Taiwan, (2) Germany, (3) China, Japan, and Korea, and (4) Italy and the United Kingdom.</p> <p>³ From June 2003 Commission investigation (USITC Pub. 3604 at table IV-2).</p> <p>⁴ Not applicable.</p> <p>⁵ According to public record information from the Commission’s June 2003 investigation, staff adjusted Commerce data to account for imports of out-of-scope merchandise from Italy and the United Kingdom.</p> <p>⁶ Derived by dividing the combined adjusted Italy/U.K. import quantity for 2001-02 (2,264 + 1,673 = 3,937 pounds) by the combined unadjusted, Commerce quantity for 2001-02 (6,353 + 5,168 = 11,521 pounds).</p> <p>⁷ Estimated.</p>					
Source: Official Commerce statistics (EDIS document 214685); USITC Pub. 3604 at table IV-2.					