

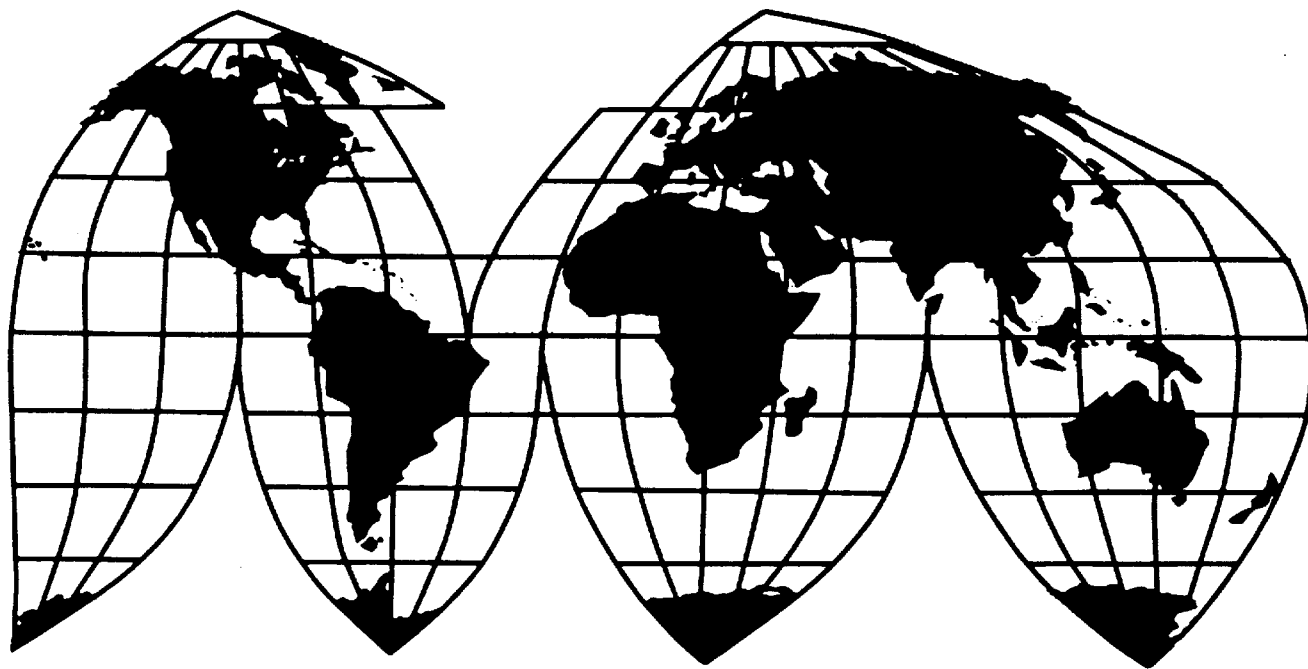
Polyethylene Terephthalate (PET) Resin From India, Indonesia, and Thailand

Investigations Nos. 701-TA-439 and 731-TA-1077, 1078
and 1080 (Final)

Publication 3769

May 2005

U.S. International Trade Commission



U.S. International Trade Commission

COMMISSIONERS

Stephen Koplan, Chairman
Deanna Tanner Okun, Vice Chairman
Marcia E. Miller
Jennifer A. Hillman
Charlotte R. Lane
Daniel R. Pearson

Robert A. Rogowsky
Director of Operations

Staff assigned:

Russell Duncan, *Investigator*
Raymond Cantrell, *Industry Analyst*
Nancy Bryan, *Economist*
David Boyland, *Accountant*
Irene Chen, *Attorney*
Lita David-Harris, *Statistician*

Diane Mazur, *Supervisory Investigator*

**Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436

www.usitc.gov

Polyethylene Terephthalate (PET) Resin From India, Indonesia, and Thailand

Investigations Nos. 701-TA-439 and 731-TA-1077, 1078
and 1080 (Final)



Publication 3769

May 2005

CONTENTS

	<i>Page</i>
Determinations	1
Views of the Commission	3
Dissenting views of Commissioner Marcia E. Miller	35
Part I: Introduction	I-1
Background	I-1
Organization of report	I-1
U.S. market summary	I-3
Summary data and data sources	I-4
Previous and related investigations	I-4
Nature and extent of subsidies and sales at LTFV	I-4
The subject product	I-6
Part II: Conditions of competition in the U.S. market	II-1
U.S. market segments/channels of distribution	II-1
Supply and demand considerations	II-2
Substitutability issues	II-5
Elasticity estimates	II-12
Part III: U.S. producers' production, shipments, and employment	III-1
U.S. producers	III-1
U.S. capacity, production, and capacity utilization	III-2
U.S. producers' shipments and exports	III-4
U.S. producers' imports and purchases	III-8
U.S. producers' inventories	III-8
U.S. employment, compensation, and productivity	III-9
Part IV: U.S. imports, apparent U.S. consumption, and market shares	IV-1
U.S. imports	IV-1
Negligibility	IV-6
Apparent U.S. consumption and market shares	IV-6
Ratio of subject imports to U.S. production	IV-9
Part V: Pricing and related information	V-1
Factors affecting prices	V-1
Pricing practices	V-4
Price data	V-5
Lost sales and lost revenues	V-9
Part VI: Financial experience of the U.S. producers	VI-1
Background	VI-1
Operations on PET resin	VI-1
Capital expenditures and R&D expenses	VI-7
Assets and return on investment	VI-7
Capital and investment	VI-8
Part VII: Threat considerations	VII-1
The industry in India	VII-2
The industry in Indonesia	VII-4
The industry in Taiwan	VII-5
The industry in Thailand	VII-5

CONTENTS – Continued

U.S. importers' inventories of PET resin from the subject countries	VII-8
U.S. importers' current orders	VII-8
Antidumping and countervailing duty orders in third-country markets	VII-8

Appendixes

A. <i>Federal Register</i> notices	A-1
B. Hearing witnesses	B-1
C. Summary data	C-1
D. Weighted-average prices of domestic products 1A, 2, 3A, and 4A and imported products 1A, 3A, and 4A as supplied by U.S. importers and reported by purchasers, and margins of underselling/(overselling)	D-1
E. Weighted-average prices and quantities of direct imports of products 1A and 4A as reported by importers that consume internally and purchasers	E-1
F. Weighted-average prices and quantities of product 3A *** and margins of underselling/(overselling); AND instances of underselling/(overselling) and the range and average of margins for products 1-4 ***; AND weighted-average prices and quantities of product 3A imported by ***	F-1
G. Alleged effects of imports of PET resin from India, Indonesia, Taiwan, and Thailand on U.S. producers' existing development and production effects, growth, investment, ability to raise capital, or the scale of capital investments	G-1

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

GLOSSARY OF FIRM NAMES

U.S. Producers

DAK	DAK Americas, LLC
Invista	Invista (KoSa), S.A.R.L. <i>formerly Arteva Specialities, S.A.R.L</i>
M&G	M&G Polymers, LLC
Nan Ya	Nan Ya Plastics Corporation
StarPet	StarPet, Inc.
Voridian	Voridian, a division of Eastman Chemical Company
Wellman	Wellman, Inc.

Foreign Producers

Bangkok Polyester (Thailand)	Bangkok Polyester Public Company Limited
Futura (India)	Futura Polyesters Limited
IndoPet (Thailand)	IndoPet, Ltd.
Indorama (Indonesia)	Pt. Indorama Synthetics, Tbk
Mitsubishi (Indonesia)	Pt. Mitsubishi Chemical Indonesia
Pearl (India)	Pearl Engineering Polyesters Limited
Polypet (Indonesia)	Pt. Polypet Karyapersada
Reliance (India)	Reliance Industries, Inc.
Skinkong (Taiwan)	Skinkong Synthetic Fibers Corporation
South Asian Pet (India)	South Asian Petrochemical Limited
Thai Pet (Thailand)	Thai Pet Resin Co. Ltd.
Thai Shinkong (Thailand)	Thai Shinkong Synthetic Fibers Corporation
Tuntex (Taiwan)	Tuntex Distinct Corporation

U.S. Importers

Ashland	Ashland, Inc.
Aurrizon	Aurrizon Corporation
Bamberger	Bamberger Polymers, Inc.
B&H	B&H Polymers, Inc.
BMT	BMT Commodity Corporation
Burcham	Burcham International Corporation
CL Smith	CL Smith Company
Connell	Connell Bros. Company
Consolidated	Consolidated Textiles, Inc.
Continental	Continental Industries Group, Inc.
DAK	DAK Americas, LLC
Duris	Duris Corporation
Excell	Excell Services, LLC
Gala	Gala Systems, Co.
Grafco	Grafco Industries, LLP
Graham	Graham Packaging

U.S. Importers continued on next page

GLOSSARY OF FIRM NAMES (continued)

U.S. Importers (continued)

H. Muehlstein	H. Muehlstein & Co., Inc.
InterDesign	InterDesign, Inc.
Lion	Lion Chemical Industries
M&G	M&G Polymers, LLC
Mitsui	Mitsui Plastics, Inc.
Pactiv	Pactiv Corporation
Pepsico	Pepsico
PWP	PWP Industries
Ricoh	Ricoh Electronics, Inc.
SK Global	SK Global America, Inc.
Tomen	Tomen America, Inc.
Vinmar	Vinmar International, LLD
Voridian	Voridian, a division of Eastman Chemical Company
World Wide Polymers	World Wide Polymers, Inc.

Purchasers

Alcoa	Alcoa Kama
Amcor	Amcor PET Packaging USA, Inc.
Ball	Ball Plastics Corporation
Connell	Connell Bros. Company
Constar	Constar International, Inc.
Grafco	Grafco Industries, LLP
Mullinix	Mullinix Packages, Inc.
Nestle	Nestle Waters North America
Pactiv	Pactiv Corporation
Premier	Premier Industries, Inc.
Structus	Structus Building Technologies, Inc. <i>formerly DryWall</i>
Yoshino	Yoshino America Corporation

UNITED STATES INTERNATIONAL TRADE COMMISSION
Investigations Nos. 701-TA-439 and 731-TA-1077, 1078, and 1080 (Final)

**POLYETHYLENE TEREPHTHALATE (PET) RESIN
FROM INDIA, INDONESIA, AND THAILAND**

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines,² pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from India of PET resin, provided for in subheading 3907.60.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of India.³

The Commission also determines,² pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from India, Indonesia, and Thailand of PET resin that have been found by Commerce to be sold in the United States at less than fair value (LTFV).⁴

BACKGROUND

The Commission instituted these investigations effective March 24, 2004, following receipt of a petition filed with the Commission and Commerce by the U.S. PET Resin Producers' Coalition, Washington, DC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of PET resin from India were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports of PET resin from India, Indonesia, and Thailand were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 17, 2004 (69 FR 67365). The hearing was held in Washington, DC, on March 15, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Commissioner Marcia E. Miller dissenting.

³ On March 21, 2005, the Commission terminated its countervailing duty investigation with regard to Thailand (Inv. No. 701-TA-440) (70 FR 15884, March 29, 2005) as a result of Commerce's negative final determination of subsidies regarding imports of PET resin from Thailand (70 FR 13462, March 21, 2005).

⁴ On March 21, 2005, the Commission terminated its antidumping investigation with regard to Taiwan (Inv. No. 731-TA-1079) (70 FR 15884, March 29, 2005) as a result of Commerce's final determination of sales at not LTFV regarding imports of PET resin from Taiwan (70 FR 13454, March 21, 2005).

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of bottle-grade polyethylene terephthalate resin (“PET resin”) from India that are subsidized or by reason of imports of bottle-grade PET resin from India, Indonesia, and Thailand that are sold in the United States at less than fair value.^{1 2 3}

I. SUMMARY

The petition in these investigations was filed on March 24, 2004, by the United States PET Resin Producers Coalition (“petitioner”), an association consisting of four of the seven U.S. producers of bottle-grade PET resin – Voridian Company (“Voridian”), Wellman, Inc. (“Wellman”), DAK Americas, LLC. (“DAK”), and Nan Ya Plastics Corporation (“Nan Ya”).^{4 5} Three other firms also produced PET resin in the United States during 2004.⁶ The product that is the subject of these investigations is bottle-grade PET resin, which is a petrochemical based plastic polymer that has an intrinsic viscosity (“IV”) between 0.68 and 0.86 deciliters per gram.⁷ Within this IV range, PET resin has the ideal qualities of strength, transparency, thermal stability, light-weight, impact resistance, and closure integrity for use in consumer container applications such as carbonated soft drink bottles, water bottles, and other containers such as for juices, peanut butter, jams, jellies, salad dressings, cooking oils, household cleaners, and cosmetics. Scrap and subprime bottle-grade PET resin also are used in strapping applications. The majority of domestic production and subject imports are sold to converters that then further process PET resin into containers or strapping.

U.S. shipments of domestically produced PET resin accounted for approximately 80 percent of apparent U.S. consumption over the period examined, with U.S. producers’ domestic shipments first losing and then gaining market share. The next largest source of PET resin in the United States was from nonsubject imports, notably from U.S. producers’ affiliated production in Canada and Mexico. Subject

¹ Commissioner Miller dissents from the majority’s determinations. She finds that a domestic industry is materially injured by reason of subject imports from India, Indonesia, and Thailand but joins the majority in its views on domestic like product, domestic industry, related parties, and cumulation. See Dissenting Views of Commissioner Marcia E. Miller.

² Whether the establishment of an industry is materially retarded was not at issue in these investigations.

³ The Department of Commerce (“Commerce”), in its final determinations, found that imports of bottle-grade PET resin from Taiwan have not been sold at less than fair value during the period of investigation. 70 Fed. Reg. 13454 (Mar. 21, 2005). Commerce also found that countervailable subsidies are not being provided by the government of Thailand to manufacturers, producers, and exporters of bottle-grade PET resin. 70 Fed. Reg. 13462 (Mar. 21, 2005). Consequently, the Commission terminated its antidumping investigation regarding Taiwan and its countervailable duty investigation regarding Thailand on March 21, 2005. See 70 Fed. Reg. 15884 (Mar. 29, 2005).

⁴ Confidential Staff Report (“CR”) at I-3; Public Report (“PR”) at I-3. References to “Staff Figures” are references to figures prepared by Commission staff on March 14, 2005.

⁵ The respondents in these final phase investigations are Reliance Industries, Ltd. (“Reliance”), an Indian producer and exporter of the subject merchandise, and the PET Users Coalition, an *ad hoc* group of U.S.-based trade associations and companies representing PET resin consumers.

⁶ All domestic producers are located in the South or Southeast of the United States. CR/PR at III-1 & Table III-1.

⁷ The subject product does not include amorphous (“AMPET”) resin, which has a viscosity of less than 0.68 deciliters per gram and is used for production of polyester carpet; fabric for textiles, athletic shoes, luggage, upholstery; and fiberfill. The subject product also excludes PET resin with a viscosity above 0.86, which is used for other products such as tire cord and certain microwaveable food trays. CR at I-9; PR at I-6; Petition at 10.

imports, the third largest supply of PET resin to the U.S. market, accounted for less than *** percent of the market at their peak in 2003, and approximately *** percent in 2004.

The primary raw materials of PET resin are oil and natural gas derivatives, and account for more than 75 percent of the cost of producing PET resin. Driven by high costs of crude oil and natural gas, prices for raw materials began to rise steeply at the end of 2002 and continued to increase substantially through 2004 to historically unprecedented levels. U.S. PET producers must compete with other industries in acquiring its raw materials, which also are used in products such as PET film, PET filament, and polyester staple fiber.

In 2003, domestic producers were caught in a cost-price squeeze as they were unable to increase prices sufficiently to recover increased raw material costs. This squeeze continued in 2004, as raw material costs continued their uncharacteristic rise. Subject imports, however, did not play a significant role in this cost-price squeeze. Rather, several other factors prevented the domestic industry from recouping all of their raw material cost increases in 2003 and 2004. These factors include the unprecedented and unexpectedly rapid and sustained increases in raw material costs; the lack of an adequately quick mechanism to pass through raw material cost increases; the increase of domestic industry capacity and production; the increase of domestic industry controlled nonsubject imports; and purchasers' willingness to substitute aluminum and glass for PET resins.⁸

In particular, the increase in raw material costs was unexpectedly sharp and sustained, leading to historically high costs. Domestic producers' pricing practices did not permit them to fully recoup these continued cost increases. The largest domestic producers did not use pricing formulas to take into account the cost of raw materials and no producer used pricing formulas for even half of their sales. The majority of domestic producers sold PET resin on either a long-term and short-term contract basis with quantities, but not prices, generally fixed during the contract period. While domestic producers' raw material costs shifted several years ago from quarterly to monthly changes, the industry is still shifting its PET resin from quarterly to monthly pricing. Thus, the domestic producers' contracts with their customers have constrained their ability to pass along all of their raw material cost increases in a timely manner. Additionally, as noted above, PET resin producers compete with other industries such as those producing PET film, PET filament, and polyester staple fiber for their primary raw materials.

In addition, the domestic industry added 581 million pounds of capacity between 2002 and 2003. This additional capacity contributed to the decrease in the industry's capacity utilization rate from 89.4 percent in 2002 to 85.2 percent in 2003. As demand incrementally increased in 2004, capacity utilization reached 89.1 percent. These fluctuations in capacity utilization reflect the cyclical nature of manufacturing PET resin – supply generally must be brought online through the construction of large solid-state polymerization (“SSP”) treatment facilities, which initially flood the market with additional capacity until demand, which increases more steadily and in smaller increments, catches up to the new supply levels. While the industry added 581 million pounds of capacity between 2002 and 2003, apparent consumption rose by only 470 million pounds. In addition to this increase in domestic capacity, combined nonsubject imports from Canada and Mexico, largely controlled by U.S. producers, increased substantially over the period of investigation. This increase in capacity (581 million pounds) and domestically controlled nonsubject imports (*** pounds) in 2003 was far greater than the increase in subject imports, *** pounds. This imbalance in 2003 was another factor preventing the domestic industry from raising prices sufficiently to fully recoup the rapid increase in raw material costs.

While the domestic industry's non-financial performance indicators improved, its operating income as a ratio to net sales declined from 7.4 percent in 2002 to 1.5 percent in 2003 and to 1.1 percent in 2004. Although the domestic industry's financial difficulties began in 2003, they worsened in 2004,

⁸ Most carbonated soft drink producers use both PET resin bottles and aluminum cans and can switch relatively easily from one to another, oftentimes depending on the price of the materials. CR at II-6; PR at II-4; Hearing Transcript (“Tr.”) at 253-54 (Mullock); CR at II-16, n.18; PR at II-12, n.18.

even as subject imports volume fell sharply. The domestic industry faced unprecedented financial pressures in 2003 and 2004 because of rising raw material costs. Compounding the domestic industry's problems was its inability to immediately pass along those raw material cost increases to its customers because of contractual constraints that allowed adjustments only on a quarterly basis. As a result, the domestic industry was not able to completely offset higher raw material costs and prevent erosion of profitability. However, the domestic industry's inability to pass through all of its rising costs is attributable to factors other than subject imports.

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."⁹ Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."¹⁰ In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."¹¹

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.¹² No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹³ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹⁴ Although the Commission must accept Commerce's determinations as to the scope of the imported merchandise sold at less than fair value, the Commission determines what domestic product is like the imported articles that Commerce has identified.¹⁵

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ Id.

¹¹ 19 U.S.C. § 1677(10).

¹² See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'").

¹³ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

¹⁴ See, e.g., Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also, e.g., S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

¹⁵ See, e.g., Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission's determination of six domestic like products in investigations where Commerce found five classes or kinds).

B. Product Description

In its final determination regarding subject imports from India, Indonesia, and Thailand, Commerce defined the imported merchandise within the scope of these investigations as follows:

...bottle-grade polyethylene terephthalate (PET) resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) bottle-grade PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET is outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigations.

The merchandise subject to this investigation is properly classified under subheading 3907.60.00.10 of the Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to this investigation. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.¹⁶

Firms manufacture bottle-grade PET resin by submitting amorphous (“AMPET”) resin to a solid-state polymerization (“SSP”) treatment. Firms manufacture AMPET resin from a controlled chemical reaction between the petro-based chemical terephthalic acid (“TPA”) and the natural gas-based chemical ethylene glycol (“EG”)¹⁷ in a melt-phase polymerization treatment. According to the scope of these investigations, a firm must operate an SSP treatment facility where it converts AMPET resin into bottle-grade PET resin to be considered a producer of subject merchandise. In both the domestic industry and the subject-country foreign industries, PET resin producers have both the melt-phase polymerization capability to produce AMPET and the solid-state polymerization capability to produce PET resin.¹⁸

C. Analysis

Petitioner argues that the Commission should continue to find one domestic like product coterminous with the scope of the investigations as it did in its preliminary determinations.¹⁹ Respondents do not contest this definition in their submissions.

In our preliminary determinations, we defined the domestic like product as bottle-grade PET resin coterminous with the scope of the investigations.²⁰ The evidence in these investigations again indicates that the domestic like product should not be expanded to include any other grades of PET resin outside

¹⁶ 70 Fed. Reg. 13452 (Mar. 21, 2005); 70 Fed. Reg. 13453 (Mar. 21, 2005); 70 Fed. Reg. 13456 (Mar. 21, 2005); 70 Fed. Reg. 13461 (Mar. 21, 2005).

¹⁷ Also referred to as “MEG,” or mono ethylene glycol.

¹⁸ CR at I-11 to I-12; PR at I-9.

¹⁹ Petitioner’s Prehearing Br. at 2.

²⁰ Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand, Inv. Nos. 701-TA-439-440 and 731-TA-1077-1080 (Preliminary), USITC Pub. 3694 at 5 (May 2004) (“Preliminary Determination”).

the scope of the investigations such as pure recycled, fiber-grade, or PET film.²¹ The record evidence also indicates no clear dividing lines among bottle-grade PET resin that would warrant our finding more than one domestic like product. Based on the record evidence, petitioner's arguments, and lack of argument to the contrary by respondents, we define the domestic like product coterminously with the scope of the investigations as bottle-grade PET resin.²²

III. DOMESTIC INDUSTRY AND RELATED PARTIES

Section 771(4) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."²³ In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²⁴

Section 771(4)(B) of the Act, the related parties provision, allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. Three domestic producers are related parties: *** was a subsidiary of a subject import producer during the period of investigation;²⁵ *** reported imports of bottle-grade PET resin from subject sources during the period of investigation.²⁶

Petitioner contends that there may be a related party issue with respect to domestic producer *** but did not argue for exclusion.²⁷ Respondents do not address this issue. No party has raised any related party issues with respect to any other domestic producer.

We find that appropriate circumstances do not exist to exclude *** from the domestic industry.²⁸ ***; however, it accounted for a minimal share of domestic production in 2004, *i.e.*, only *** percent.²⁹ The record does not indicate that *** imported or purchased any subject imports over the period of investigation. Furthermore, although *** operating income ratio improved from 2003 to 2004, in contrast to a decline for the industry as a whole, other domestic producers registered higher margins over that period.³⁰

We also find that appropriate circumstances do not exist to exclude either *** or *** from the domestic industry. ***. The ratios of *** imports to its U.S. production of PET resin in 2002, the only year during the period of investigation that it imported subject product, was a minimal ***, indicating that

²¹ PET film is used in entirely different applications, including industrial, magnetics, electrical, and imaging applications. Fiber grade PET is not substitutable for bottle-grade PET because it has an IV less than 0.68, below the threshold limit for PET bottle grade (0.68 to 0.86); it is used either as feedstock for the production of PET resin or is separately processed into polyester fiber for use in further downstream applications. Pure recycled PET resin generally is not used directly for the manufacture of bottle-grade PET resin due to impurities that are nearly impossible to remove in the recycling process. CR at I-9, I-11; PR at I-7 to I-8.

²² CR at I-9 to I-14, III-8; PR at I-7 to I-10; CR/PR at Table III-5.

²³ 19 U.S.C. § 1677(4)(A).

²⁴ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

²⁵ Prior to September 8, 2004, ***, a domestic producer located in ***, was owned ***, a subject producer of PET resin. ***. CR/PR at Table III-1.

²⁶ *** imported ***. *** imported ***. CR at III-9 to III-10; PR at III-8.

²⁷ Petitioner's Prehearing Br. at 3.

²⁸ See 19 U.S.C. §1677(4)(B).

²⁹ CR/PR at Table III-1.

³⁰ CR/PR at Table VI-2.

no significant benefit could be attributed to its importation.³¹ The ratio of *** imports to its U.S. production of PET resin in 2003 was minuscule, less than ***, indicating that no significant benefit could be attributed to its importation.³²

Accordingly, we define a single domestic industry consisting of all U.S. producers of bottle-grade PET resin.

IV. CUMULATION³³

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.³⁴ In assessing whether subject imports compete with each other and with the domestic like product,³⁵ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.³⁶

³¹ CR at III-9 to III-10; PR at III-8.

³² CR at III-9 to III-10; PR at III-8.

³³ There is no issue as to whether the subject imports are negligible. In the most recent 12-month period for which import data are available that precedes the filing of the petition, import quantities from India, Indonesia, and Thailand were *** percent, *** percent, and 25.1 percent, respectively, of all imports of bottle-grade PET resin into the United States, measured in quantity. CR/PR at Table IV-4. Subject imports from India, Indonesia and Thailand exceed the statutory negligibility threshold of three percent in antidumping investigations. Subject imports from India also exceed the four percent negligibility threshold applicable to certain least developing countries in countervailing duty investigations. Therefore, we do not find that subject imports from India, Indonesia, and Thailand are negligible. 19 U.S.C. § 1677 (24).

³⁴ 19 U.S.C. § 1677(7)(G)(i).

³⁵ The SAA expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848, citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

³⁶ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.³⁷ Only a “reasonable overlap” of competition is required.³⁸

B. Analysis

Petitioner argues that, just as the Commission found in the preliminary determinations, the record evidence continues to support cumulation of imports from all subject countries.³⁹ Reliance asserts that there is a reasonable basis for decumulating India in a present injury context because of disparate geographic markets compared to other subject imports.⁴⁰ India sends its exports of PET resin through East Coast ports while Thai and Indonesian exports mostly enter the United States via the West Coast.⁴¹

The threshold requirement for cumulation has been satisfied because the petitions with respect to India, Indonesia, and Thailand were filed on the same day. In our preliminary determinations we found that there was a reasonable overlap of competition between imports of PET resin from India, Indonesia, Thailand, and Taiwan and between these imports and the domestic like product.⁴² However, after the preliminary determinations, the Department of Commerce terminated its investigations regarding PET resin imports from Taiwan.⁴³ Therefore, the second statutory exception to mandatory cumulation applies to imports from Taiwan,⁴⁴ and we do not cumulatively assess the volume and effect of imports from Taiwan with the subject countries in these final determinations.

In this final phase, we determine to cumulate subject imports from India, Indonesia, and Thailand for purposes of our present material injury analysis. Consideration of the four factors traditionally addressed in cumulation analyses shows that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic product.

³⁷ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

³⁸ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

³⁹ Petitioner’s Prehearing Br. at 4.

⁴⁰ Hearing Tr. at 305-306 (Esserman).

⁴¹ Reliance Prehearing Br. at 82.

⁴² Preliminary Determination, USITC Pub. 3694 at 8.

⁴³ See infra footnote 3.

⁴⁴ 19 U.S.C. § 1677(7)(G)(ii)(II).

1. Fungibility

Although there are some differences, overall there appears to be at least a moderate degree of substitutability among subject imports from India, Indonesia, and Thailand, and between subject imports and domestic product. A majority of responding domestic producers (85 percent) and a majority of responding importers (75 percent) reported that the U.S.-produced PET resin and imports of PET resin from all subject countries are always or frequently interchangeable.^{45 46}

With respect to non-price differences between U.S.-produced PET resin and subject imports, six out of seven responding U.S. producers reported that such factors are either “sometimes” or “never” significant in purchasing decisions.⁴⁷ Roughly one-half of responding importers indicated that differences other than price between U.S.-produced PET resin and all subject countries were either “sometimes” or “never” a significant factor in their firms’ sales.⁴⁸

Purchasers also compared U.S.-produced PET resin to imports of PET resin from the three subject countries, based on 15 purchase factors, such as price, quality and availability. For the factors that nearly all responding purchasers identified as “very important” in their purchasing decisions (availability, price, product consistency, quality meets industry standards, and reliability of supply), purchaser comparisons of U.S.-produced PET resin and subject PET resin indicate that the domestic product is at least somewhat comparable to subject imports.⁴⁹ As for subject import comparisons, 100 percent of responding domestic producers and 86 percent of responding importers indicated that imports of PET resin from each subject country are either “always” or “frequently” used interchangeably with imports of PET resin from any other subject country.⁵⁰ For the factors that a majority of responding purchasers indicated were “very important” in their purchasing decisions, purchaser comparisons of PET resin produced in each of the subject countries indicate that subject imports are mostly comparable.⁵¹ However, there are some limits to fungibility between subject imports on the one hand and domestic product on the other. The record indicates that roughly 18 percent of the domestic industry’s shipments were of hot-fill resin⁵² and between 3.2 and 5.8 percent of domestic producers’ shipments were of blended PET resin;⁵³ no importing firm reported any subject imports of either type of resin.⁵⁴ The pricing data indicate that approximately 22 percent of domestic producers’ shipments are for sheet and strapping, and that there are only small volumes of subject imports for these applications.⁵⁵

⁴⁵ CR at II-10; PR at II-7; CR/PR at Table II-3.

⁴⁶ One producer reported that some PET resin products require additives that may not be available from all import sources. Another producer stated that PET resin used in some applications such as heat-set resins or barrier resins cannot always be interchanged with resins from some countries. One importer reported that some PET resins from India are not interchangeable with U.S. PET resins that have been approved for use by U.S. converters for specific brand holders. Another responding importer stated that the United States and India have different measurement systems and different color standards for certain products. Additionally, an importer reported that the quality of the resin and customer requirements may also limit the extent of substitutability. CR at II-11; PR at II-7.

⁴⁷ CR at II-12; PR at II-8; CR/PR at Table II-4.

⁴⁸ CR at II-12; PR at II-8; CR/PR at Table II-4.

⁴⁹ CR at II-12; PR at II-8; CR/PR at Table II-5.

⁵⁰ CR at II-13; PR at II-9; CR/PR at Table II-6.

⁵¹ CR at II-14; PR at II-10; CR/PR at Table II-7.

⁵² CR/PR at Table III-5.

⁵³ CR/PR at Table III-6.

⁵⁴ CR at III-6 to III-8; PR at III-5 to III-7.

⁵⁵ See CR/PR at Table V-2.

2. Geographic Overlap

As Reliance argued, the majority of resin from India enters the United States on the East Coast and Gulf Coast regions. Both Thai and Indonesian resin enter the United States mainly on the West Coast, but also to a lesser extent on the East and Gulf Coasts.⁵⁶

The data indicate, however, that both U.S.-produced PET resin and subject imports were marketed over relatively large areas. For U.S. producers, approximately *** percent of their U.S. sales occur within 100 miles of their storage or production facility, *** percent within distances of 101 to 1,000 miles, and *** percent at distances of over 1,000 miles from their facilities. For importers of subject product, *** percent of sales occurred within 100 miles of importers' storage facilities, *** percent within 101 to 1,000 miles, and *** percent at distances of over 1,000 miles.⁵⁷

This national geographic presence of U.S.-produced and subject PET resin is further confirmed by other data showing sales on a nationwide basis. Five of the seven U.S. producers reported that they sell nationally, while the other two reported that they sell in specific regions including the Northeast, the Mid-Atlantic region, the Southeast, the Midwest, the Northwest, and the West Coast. Sales by U.S. producers were more heavily concentrated east of the Rocky Mountains, with all of the U.S. producers making at least 70 percent of their sales in this eastern territory.⁵⁸ Among the importers of PET resin from the subject countries, five companies, two of which sell Indian product, reported that they sold nationally. The others listed specific regions including the Northeast, the Midwest, the Northwest, the Southeast, and the West Coast. However, *** stated that all of its sales were in the Northeast. *** and *** stated that all of their sales were on the West Coast.⁵⁹ Furthermore, some converters of PET resin have plant locations throughout the United States. Among the larger consumers of PET resin in the United States, *** is a converter that purchases imports from India and Thailand and has facilities in the Northeast, Midwest, and on the West Coast. Another large consumer, ***, a converter and end user that purchases imports from India and Thailand, has bottling facilities on both the East and West Coasts.⁶⁰

3. Channels of Distribution

Virtually all sales of PET resin in the U.S. market are to end users/converters rather than to distributors. Approximately 90 percent of the domestic industry's commercial U.S. shipments went to end users from 2002 to 2004. In the case of imports from India, Indonesia, and Thailand, nearly all U.S. shipments were to end users during the 2002-2004 period.⁶¹

⁵⁶ CR at IV-5 to IV-6; PR at IV-4; CR/PR at Table IV-3.

⁵⁷ CR at II-2; PR at II-1.

⁵⁸ CR at II-2; PR at II-1.

⁵⁹ CR at II-2; PR at II-1; See Indian Importer Questionnaires.

⁶⁰ CR at II-2; PR at II-1.

⁶¹ CR at II-1, IV-5; PR at II-1, IV-1 to IV-2.

4. Simultaneous Presence

The record data show that U.S.-produced PET resin and subject imports from India, Indonesia, and Thailand were simultaneously present in the U.S. market during each year of the period of investigation.⁶²

Based on the reasonable degree of fungibility among subject imports of PET resin and the domestic like product; the reasonable geographic overlap among subject imports and the domestic like product, particularly in terms of marketing and sales; similar channels of distribution; and the simultaneous presence of imports in the U.S. market, we cumulate subject imports of PET resin from India, Indonesia, and Thailand.

V. NO MATERIAL INJURY BY REASON OF SUBSIDIZED IMPORTS FROM INDIA AND LESS THAN FAIR VALUE IMPORTS FROM INDIA, INDONESIA, AND THAILAND

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁶³ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁶⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶⁵ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁶ 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.”⁶⁷

A. Conditions of Competition

1. Demand Conditions⁶⁸

Demand for PET resin is derived from demand for soft drink and other beverage bottles, sheets used for making clam shells for packaging, and strapping, which is used on bulk substances such as

⁶² CR/PR at Table IV-5.

⁶³ 19 U.S.C. § 1671d(b) and 1673d(b).

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

⁶⁵ 19 U.S.C. § 1677(7)(A).

⁶⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁷ Id.

⁶⁸ We have considered all of the parties’ arguments regarding the possible inclusion of 2001 data in the period of investigation. Petitioner’s Posthearing Br. at 37-38; Reliance Posthearing Br., Exhibit 1 at 29-33. We have determined to rely on the data that encompass our normal period of investigation, that is, the three most recent calendar years, 2002, 2003, and 2004. The 2001 data that we were able to gather in the preliminary phase of the investigations were incomplete and not entirely comparable to the data gathered for years 2002-2004 in the final phase of these investigations. In addition, as discussed below, we do not give reduced weight to 2004 data.

lumber.⁶⁹ Bottle-grade PET resin is divided into two major end-use classifications: “cold-fill” and “hot-fill.” Cold-fill refers to container applications, such as for soda or water, where the substance being filled into the container does not require excessive temperatures in the filling process. Hot-fill refers to container applications, such as for juices or sauces, where the substance being filled into the container requires high temperatures in the filling process, analogous to a canning process.⁷⁰ The demand for PET resin used in bottles tends to be seasonal, reaching a peak during the summer months as the demand for soft drinks is at peak levels.⁷¹

Demand for PET resin has grown substantially during the period of investigation, as consumers increasingly prefer PET resin bottles and as new applications are found for PET resin.⁷² The increase in demand was most commonly attributed by responding domestic producers and importers to a shift away from other packaging materials to PET resin.⁷³ This growth is expected to continue at a rapid pace in the foreseeable future.⁷⁴ Apparent U.S. consumption, by quantity, increased from 4.6 billion pounds in 2002 to 5.0 billion pounds in 2003 and then to 5.2 billion pounds in 2004, a total increase of 13.8 percent.⁷⁵ Apparent U.S. consumption, by value, increased by 40.6 percent over the same period.⁷⁶

Practically all sales of PET resin go to end users/converters rather than distributors. In the case of U.S. producers, approximately 90 percent of commercial U.S. shipments went to end users during 2002-04. In the case of imports from India, Indonesia, and Thailand, nearly all U.S. shipments went to end users during 2002-04.⁷⁷ By volume, the majority of imported PET resin is resold and commercially shipped to converters who then create either PET resin bottles or PET resin preforms.⁷⁸

2. Supply Conditions

There are seven U.S. firms that manufactured bottle-grade PET resin in the United States during the period of investigation.⁷⁹ In addition to the four U.S. producers that are members of the U.S. PET Resin Producers’ Coalition (Voridian, Wellman, DAK, and Nan Ya), the U.S. firms M&G, Invista, and Starpet, Inc. (“Starpet”),⁸⁰ also produce bottle-grade PET resin. Shipments of U.S.-produced PET resin accounted for the overwhelming share of PET resin consumed in the U.S. market during the period of

⁶⁹ CR at II-1, II-6; PR at II-1, II-4.

⁷⁰ CR at I-9 to I-10; PR at I-7 to I-8.

⁷¹ CR/PR at II-1.

⁷² Petitioner’s Prehearing Br. at 7; CR at I-10 to I-11, VI-17; PR at I-8, VI-7.

⁷³ CR at II-6; PR at II-4. Increased demand for bottled water also led to increased demand for PET resin. Hearing Tr. at 9 (Hertzberg) and 18 (Sherlock).

⁷⁴ Hearing Tr. at 229 (Mullock).

⁷⁵ CR/PR at Table IV-5.

⁷⁶ CR/PR at Tables IV-5 and C-1.

⁷⁷ CR/PR at II-1; CR at IV-5; PR at IV-1 to IV-2.

⁷⁸ CR at IV-5; PR at IV-1 to IV-2. Preforms are injection molded from subject product, the first step in making PET bottles. Preforms are clear, dense cylindrical tubes closed (rounded) at one end and threaded at the other end. Bottles are produced from preforms by a process known as stretch blow molding. CR at I-10 & n.20; PR at I-8 & n. 20.

⁷⁹ CR/PR at III-1.

⁸⁰ ***. CR/PR at VI-1, n.1.

investigation; such shipments totaled over 4.3 billion pounds in 2004, accounting for 82.7 percent of apparent consumption by volume.^{81 82}

During the period of investigation, the domestic industry expanded its PET resin production capacity. In particular, domestic producers *** debottlenecked or modified existing lines while DAK brought online a new SSP reactor unit.^{83 *** 84} Overall, the domestic industry added approximately 600 million pounds of additional capacity between 2002 and 2003 (reaching an annual capacity of 5.6 billion pounds), while domestic production increased by only 300 million pounds during that same period. This additional capacity contributed to the decrease in the industry's capacity utilization rate from 89.4 percent in 2002 to 85.2 percent in 2003. As demand incrementally increased in 2004, capacity utilization reached 89.1 percent.⁸⁵ These fluctuations in capacity utilization reflect the cyclical nature of manufacturing PET resin - - supply generally must be brought online through the construction of large SSP processing units, which initially flood the market with additional capacity until demand, which increases more steadily and in smaller increments, catches up to the new supply levels.^{86 87}

Although the statute requires us to focus on the domestic industry's domestic production for purposes of our injury analysis,⁸⁸ we note that the domestic industry essentially treats North America, including Canada and Mexico, as a single production region for its supply of bottle-grade PET resin for the U.S. market, and imports substantial volumes of nonsubject product from Canada and Mexico.⁸⁹ Both Invista and M&G operate business models in which they or a related firm produce bottle-grade PET resin in Canada or Mexico, import it, and resell it in the U.S. market. In 2004, Invista imported *** pounds of bottle-grade PET resin, equivalent to approximately *** percent of its U.S. production, from its Millhaven, Ontario plant. In 2004, M&G imported *** pounds of PET resin, equivalent to *** percent of its U.S. production, from its Altamira, Mexico, plant.^{90 91} M&G's Altamira plant had an annual

⁸¹ CR/PR at Table C-1.

⁸² CR/PR at Table IV-5. By quantity, U.S. producers' U.S. shipments accounted for 83.3 percent of apparent U.S. consumption in 2002, 79.9 percent in 2003, and 82.7 percent in 2004. By value, the shares were 84.1 percent in 2002, 80.9 percent in 2003, and 82.9 percent in 2004.

⁸³ CR at III-2; PR at III-2 to III-3.

⁸⁴ CR/PR at VI-1, n.1; Questionnaire responses of ***.

⁸⁵ CR at III-4 to III-5; PR at III-3; CR/PR at Table III-3.

⁸⁶ CR at III-5 to III-6; PR at III-3 to III-4.

⁸⁷ Voridian, Wellman and *** have announced plans to further increase domestic capacity within the next three years. Voridian announced the construction of a new PET resin facility for its Columbia, SC, plant using an in-house developed, single- or integrated-line approach to bottle-grade resin production. It estimates that this expansion will bring online an additional 771 million pounds of annual capacity. Wellman announced plans to bring online around 300 million pounds of annual capacity at its Pearl River facility in 2006. *** reported plans to bring online an additional *** pounds of annual SSP capacity at its *** site. CR at III-4; PR at III-3.

⁸⁸ See, e.g., General Motors Corp. v. United States, 827 F.Supp. 744, 780 (Ct. Int'l Trade 1993).

⁸⁹ Petitioner's Prehearing Br. at 76.

⁹⁰ CR at III-10; PR at III-8.

⁹¹ Petitioner argues that NAFTA imports served as a complement to domestic production. See Petitioner's Prehearing Br. at 77; Hearing Tr. at 85-86 (Kinner). We note that domestic producer M&G shut down some 200 million pounds of annual U.S. melt-phase polymerization processing capacity at its Apple Grove, WV plant in 2004, while increasing its imports of PET resin from its Altamira, Mexico plant from *** pounds in 2002 to *** pounds in 2003 and to *** pounds in 2004. CR at III-6; PR at III-3.

production rate of 685 million pounds in mid-2003 and a capacity of 965 million pounds by the second quarter of 2004.⁹² Petitioner acknowledges that there was overcapacity in North America in 2003.⁹³

The Commission sent importer questionnaires to over 100 firms identified in the petition and by a review of proprietary Customs information. Four importers, ***, accounted for roughly 84 percent of the imports of subject merchandise in 2004.⁹⁴ Subject imports of PET resin totaled almost *** million pounds in 2004, and accounted for *** percent of apparent U.S. consumption by volume.⁹⁵ Imports of PET resin from all sources totaled 900.4 million pounds in 2004, and accounted for 17.3 percent of apparent U.S. consumption by volume.⁹⁶ Nonsubject imports increased by *** percent from 2002 to 2003 and by *** percent from 2003 to 2004.⁹⁷ Their share of apparent U.S. consumption increased from *** percent in 2002 to *** percent in 2003 and *** percent in 2004.⁹⁸ NAFTA imports comprised a substantial portion of imports and accounted for virtually all of the increase in nonsubject import share in 2004.^{99 100} As a share of apparent U.S. consumption by quantity, NAFTA imports were *** percent in 2002, *** percent in 2003, and *** percent in 2004.¹⁰¹

Reliance argues that there is attenuated competition between subject imports and U.S.-produced PET resin because domestic producers and their NAFTA affiliates focus their sales in the Eastern region of the United States while cumulated subject imports are more concentrated on the West coast.¹⁰² Reliance contends that virtually no subject imports from Indonesia entered the United States from East Coast ports while most U.S. imports from Mexico and Canada entered through eastern ports.¹⁰³ However, even though subject imports are shipped through different U.S. ports, the record evidence indicates that the U.S. PET resin market is by and large a nationwide market, with domestically produced PET resin and subject imports marketed and sold throughout the United States.¹⁰⁴

3. Substitutability

As noted in the Cumulation section, U.S. producers, purchasers, and importers responding to questionnaires generally agreed that the U.S.-produced and imported product were interchangeable and

⁹² Reliance Prehearing Br. at 19 & Exhibit 3. Reliance testified that M&G's Altamira plant is the "largest in the world" with an ultimate capacity of one billion pounds. Hearing Tr. at 200-201 (Esserman). See also Reliance Prehearing Br., Exhibit 2 (***) stating that "M&G has built the largest single-stream production facility in Altamira, Mexico") and http://www/mgpolymer.com/mexico_debottleneck.htm.

⁹³ Hearing Tr. at 106 (Kinner).

⁹⁴ CR/PR at IV-1.

⁹⁵ Imports from Indonesian producer Indorama are not subject product; Commerce found a *de minimis* dumping margin from this producer in its final determinations. *Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate Resin from Indonesia*, 70 Fed. Reg. 13456, 13457 (March 21, 2005).

⁹⁶ CR at I-4; PR at I-3 to I-4; CR/PR at Table IV-5.

⁹⁷ Calculated from CR/PR at Table IV-2.

⁹⁸ CR/PR at Table IV-5.

⁹⁹ CR at IV-1 to IV-2; PR at IV-1.

¹⁰⁰ NAFTA imports accounted for *** percent of total imports in 2002, *** percent in 2003, and *** percent in 2004. Nonsubject imports overall accounted for *** percent of total imports in 2002, *** percent in 2003, and *** percent in 2004. CR/PR at Table IV-2.

¹⁰¹ CR/PR at Table IV-5.

¹⁰² Reliance Prehearing Br. at 7-9.

¹⁰³ Reliance Prehearing Br. at 10.

¹⁰⁴ CR at II-2; PR at II-1.

were viewed as such by customers as well. Domestic producers often described PET resin as a commodity product and as being more or less interchangeable with any other domestically produced or imported PET resin product.¹⁰⁵ Purchasers reported a slight preference for domestic product over subject imports in terms of availability, delivery times, product range, and technical support/services.¹⁰⁶ Given that most responding purchasers reported that U.S.-produced PET resin was “comparable” or “inferior” to subject imports in terms of lower price, this indicates that purchasers are willing to pay a slight premium for U.S. product.¹⁰⁷

When asked whether there are substitutes for PET resin, all U.S. producers and most responding importers cited one or more alternative materials. Aluminum and glass were the most frequently mentioned substitutes for PET resin. The evidence indicates that aluminum is the most common substitute for PET resin in the carbonated soft drink market, while glass is a common substitute for other beverages and food. Most carbonated soft drink producers use both PET resin bottles and aluminum cans and can switch relatively easily from one to another, oftentimes depending on the price of the materials.¹⁰⁸

As noted earlier, roughly 18 percent of the domestic industry’s shipments were of hot-filled resin¹⁰⁹ and between 3.2 and 5.8 percent of domestic producers’ shipments were of blended PET resin;¹¹⁰ no importing firm reported any subject imports of either type of resin,¹¹¹ although it is possible for foreign producers to manufacture all grades of PET resin.¹¹² The pricing data indicate that approximately 22 percent of domestic producers’ shipments are for sheet and strapping, and that there are only small volumes of subject imports for these applications.¹¹³

4. Raw Materials

The primary raw materials of PET resin (PTA, DMT, TPA and MEG) are oil and natural gas derivatives.¹¹⁴ MEG and PTA together account for more than 75 percent of the cost of producing PET resin.¹¹⁵ U.S. PET producers must buy these raw material inputs from integrated oil companies such as ExxonMobil, Chevron, and Shell, which hold tremendous market power because of their large size and because of restricted technology for producing PTA.¹¹⁶ U.S. producers must also compete with other

¹⁰⁵ CR at I-13; PR at I-10.

¹⁰⁶ CR/PR at Table II-5.

¹⁰⁷ CR/PR at II-12; CR/PR at Table II-5.

¹⁰⁸ CR at II-6, II-16, n.18; PR at II-4, II-12, n.18; Hearing Tr. at 253-54 (Mullock).

¹⁰⁹ CR/PR at Table III-5.

¹¹⁰ CR/PR at Table III-6.

¹¹¹ CR at III-8; PR at III-6.

¹¹² CR at I-13; PR at I-10.

¹¹³ See CR/PR at Table V-2. The pricing data accounted for approximately 96.1 percent of U.S. producers’ commercial shipments, virtually all U.S. commercial shipments of subject imports from India, 38.4 percent of U.S. commercial shipments of subject imports from Indonesia, and 89.3 percent of U.S. commercial shipments from Thailand. We also note that only four importers reported importing subject merchandise for sheeting applications, and that these four importers accounted for a very small share of total subject imports. See Importer Questionnaire Responses of *** and CR/PR at Table IV-1. No importers reported importing subject merchandise for strapping applications.

¹¹⁴ CR at VI-2; PR at VI-1.

¹¹⁵ CR/PR at V-1.

¹¹⁶ Hearing Tr. at 77-78 (Kinner); Petitioner’s Posthearing Br. at Exhibit 17 (August 13, 2004, Bernstein Research Call, p.1); Reliance Prehearing Br. at Exhibit 36.

industries in acquiring PTA and MEG, which also are used in products such as PET film, PET filament, and polyester staple fiber.¹¹⁷

During the period of investigation, there was extraordinary volatility in raw material prices, as crude oil prices rose sharply to \$50 a barrel in 2004.¹¹⁸ Driven by high costs of crude oil and natural gas, prices for raw materials began to rise steeply at the end of 2002 and continued to increase substantially through 2004.¹¹⁹ The parties, financial analysts, and the trade press all agree that prices of both MEG and PTA rose steadily from 2002 to 2004 to historically unprecedented levels.¹²⁰ This sharp increase was a significant market factor affecting producers and purchasers.

These raw materials are sold in global markets, and increasing costs affected producers worldwide.¹²¹ Earlier in the period of investigation, Asian raw material costs were generally lower than U.S. costs. During the latter half of the period of investigation, however, Asian raw material costs increased relative to U.S. raw material costs for PET resin and became generally higher.¹²² This shift in raw material costs has largely eliminated a relative cost advantage of subject producers versus domestic producers in terms of raw material inputs; this loss of advantage has been cited by domestic producers as a reason for reduced imports from Asia.¹²³

5. Pricing Considerations

Domestic producers and importers were asked to report the percentages of their U.S. shipments with pricing formulas that take into account the cost of raw materials. The *** reported that no formula is used;¹²⁴ the *** had cost-based pricing for only 15 percent and 20 percent of their shipments, respectively.¹²⁵

Among U.S. producers, one firm reported that it sells entirely on a spot basis. Among the other six producers, one firm had a relatively equal distribution between short-term and long-term contracts, while the rest had a majority of sales on either a short-term or long-term contract basis.¹²⁶

For U.S. producers selling on a contract basis, provisions varied from company to company. Long-term contracts are typically for periods of one to three years, while short-term contracts are for periods of one year or less. For both long-term and short-term contracts, quantities but not prices generally are fixed during the contract period. For long-term contracts, producers often negotiate a price annually, which serves as the base for a year, and then the price moves with the market on a quarterly basis.

¹¹⁷ Reliance Prehearing Br. at 14-15.

¹¹⁸ Hearing Tr. at 107 (Kinner).

¹¹⁹ CR/PR at Figure V-1.

¹²⁰ CR/PR at V-1; Reliance Prehearing Br. at 12-13 and Exhibit 12 (Tecnon OrbiChem, PET Packaging Resin, Jan. 31, 2005 at 1), Exhibit 13 (Chemical Week, November 3, 2004, Exhibit 14 (Chemical News and Intelligence, July 28, 2003), and Exhibit 15 (Chemical Market Reporter, May 19, 2003). Hearing Tr. at 109-110 (Taylor).

¹²¹ Petitioner's Prehearing Br. at 5.

¹²² See Reliance Prehearing Br., Exhibit 20 (Q4 Vordian Earnings Conference Call Final Transcript, July 30, 2004 at 9) and Exhibit 21 (Q3 2004 Wellman Inc. Earnings Conference Call Final Transcript, Oct. 28, 2004, at 4-5).

¹²³ Reliance Prehearing Br. at 16-17, Exhibit 20 (Q2 2004 Eastman Earnings Conference Call Final Transcript, July 30, 2004, at 9), Exhibit 21 (Q3 2004 Wellman Inc. Earnings Conference Call Final Transcript, Oct. 28, 2004, at 4-5) & Exhibit 57 ("News About Polyester Packaging from M&G"); Reliance Posthearing Br. at 13-14; Hearing Tr. at 148 (Dewsbury); CR/PR at Table IV-5; Petitioner's Posthearing Br., Exhibit 15.

¹²⁴ CR/PR at V-2; Producer Questionnaire responses of ***.

¹²⁵ CR/PR at V-2; Producer Questionnaire responses of ***.

¹²⁶ CR at V-5; PR at V-4.

U.S. producers' raw material costs shifted several years ago from quarterly to monthly changes. Due to this volatility in the prices of raw materials, domestic producers recently began to re-negotiate their prices on a monthly basis to mirror the increases in raw material costs. However, the industry is still shifting its PET resin from quarterly to monthly pricing.¹²⁷

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."¹²⁸

The quantity of subject imports increased by *** percent from 2002 to 2003 before declining by *** percent from 2003 to 2004.¹²⁹ The volume of subject imports of bottle-grade PET resin increased from *** pounds in 2002 to *** pounds in 2003 before decreasing to *** pounds in 2004.¹³⁰

Subject imports' market share by quantity followed a similar trend, increasing from *** percent in 2002 to *** percent in 2003 before declining to *** percent in 2004.¹³¹ Comparatively, the domestic industry's market share, by quantity, declined from *** percent in 2002 to *** percent in 2003 before rising to *** percent in 2004.¹³² The quantity of subject imports relative to domestic production increased from *** percent in 2002 to *** percent in 2003 before declining to *** percent in 2004.¹³³

Nonsubject imports accounted for a larger share of the U.S. market by both quantity and value than subject imports did in each year of the period of investigation. By quantity, total market share of nonsubject imports increased from *** percent in 2002 to *** percent in 2003 and *** percent in 2004.¹³⁴ Of those nonsubject imports, NAFTA imports comprised a significant share and domestic producers control most of the NAFTA imports.¹³⁵ As a share of total U.S. consumption, NAFTA nonsubject import market share was *** percent in 2002, *** percent in 2003, and *** percent in 2004.¹³⁶

For our analysis of the import volumes, we rely on importer questionnaire responses for India,¹³⁷ official Customs statistics for Thailand, and foreign producer questionnaire responses for Indonesia.¹³⁸ In its prehearing submissions, petitioner objected to the use of the subject import volume data presented in the Prehearing Staff Report, arguing that subject import volume has been underreported because of import misclassification and the incompleteness of foreign producers' questionnaire responses and importer questionnaire responses.¹³⁹ Petitioner claimed that there was a wide disparity in the subject

¹²⁷ Hearing Tr. at 68-70 (Dewsbury).

¹²⁸ 19 U.S.C. § 1677(7)(C)(i).

¹²⁹ CR/PR at Table C-1.

¹³⁰ CR/PR at Table IV-2.

¹³¹ CR/PR at Table C-1.

¹³² CR/PR at Table C-1.

¹³³ CR/PR at Table IV-6.

¹³⁴ CR/PR at Table IV-5.

¹³⁵ NAFTA nonsubject imports, as share of total nonsubject imports by quantity, were *** percent in 2002, *** percent in 2003, and *** percent in 2004. Calculated from CR/PR at Table IV-2.

¹³⁶ CR/PR at Table IV-5.

¹³⁷ Importer questionnaire data for subject imports from India are ***. Therefore we rely on the importer questionnaire data (including ***) for subject imports from India.

¹³⁸ CR/PR at IV-1.

¹³⁹ Petitioner's Prehearing Br. at 12, n.34; Hearing Tr. at 79-80 (Manning).

import volume as reported by Customs, foreign producers, and purchasers for the year 2003.¹⁴⁰ Misreporting of imports of bottle-grade PET resin under HTS numbers 3907.60.0050 and 3907.99.0050 explains most of the discrepancy between data the Commission collected in questionnaire responses and official Commerce statistics. In the final Staff Report, the staff made appropriate adjustments to the subject import volume data, which petitioner did not object to in its Final Comments. Both HTS statistical reporting numbers have been used for imports of PET resin from Thailand. For imports from Indonesia, proprietary Customs data concerning the two nonrespondent foreign producers, Keris and Resindo, were combined with questionnaire responses of the three respondent subject Indonesian foreign producers.

Petitioner argues that the decline in the volume of subject imports, which began at the end of 2003, is related to the pendency of these investigations as well as the U.S. PET Coalition's GSP petition, filed in June 2003. Petitioner contends that at the time that the GSP petition was publicly announced in November 2003, there were reports that a dumping petition would soon follow and urges the Commission to assign little weight to the import volumes in 2004 pursuant to 19 U.S.C. §1677(7)(I).¹⁴¹ We find that the record evidence does not support petitioner's arguments. The antidumping and countervailing duty petitions were filed on March 24, 2004, in the last year of the period of investigation. However, the record data show that subject import volume began declining in August 2003.¹⁴² The GSP petition was not announced publicly until November 2003. Moreover, although petitioner argues that, at the time of the announcement of the GSP petition, there were rumors regarding the filing of an antidumping petition, the record on this is limited to a single analyst's report dated November 6, 2003, which references the possibility that an antidumping petition may follow the GSP petition.¹⁴³ This report was issued well after subject import volume began its decline in August 2003 and, as the lead time on the typical delivery of Asian resin is two to three months,¹⁴⁴ the decline in orders for subject imports began well before the public announcement of the GSP petition. Thus, we do not find that the data regarding the impact of subject imports on the domestic industry have been materially affected by the pendency of the investigations. Therefore, we have not discounted postpetition data in conducting our injury analysis.¹⁴⁵ As for petitioner's claim that subject producers slowed exports to the U.S. market in anticipation of retroactive duties,¹⁴⁶ we note that any such duties would have been assessed on imports up to only 90 days prior to Commerce's preliminary determination, and since the petition was filed on March 24, 2004, and Commerce's preliminary determinations were made on August 30, 2004 and October 28, 2004, such duties could not have been assessed on imports entering the U.S. market in August 2003.

Thus, subject imports gained *** percentage points of market share from 2002 to 2003 before declining significantly in 2004. We find that this growth by subject imports occurred during a period of increasing domestic demand and a larger increase in nonsubject import volume (*** percentage point gain), a large portion of which was controlled by the U.S. industry.¹⁴⁷ The record evidence also shows that subject import volume reversed course and began declining in the latter half of the period of

¹⁴⁰ Petitioner's Posthearing Br. at 60.

¹⁴¹ Hearing Tr. at 330-331 (Cofrancesco); Petitioner's Posthearing Br. at 18.

¹⁴² See Staff Figures 1 and 2 (estimates derived from Proprietary Customs Data and Official Commerce Statistics).

¹⁴³ Reliance Prehearing Br. at Exhibit 28 (Pet Packaging International, p.2, Nov. 6, 2003).

¹⁴⁴ See Importers' Questionnaire Responses.

¹⁴⁵ 19 U.S.C. § 1677 (7)(I).

¹⁴⁶ Petitioner's Posthearing Br. at 4 and 18.

¹⁴⁷ CR at IV-2; PR at IV-1; CR/PR at Table IV-5.

investigation (*i.e.*, August 2003 through December 2004),¹⁴⁸ at least in part due to the relative shifts in raw material price levels in Asia and in the U.S. market.¹⁴⁹

While the volume of subject imports, and their increase, were significant in 2003, subject imports fell sharply in 2004 to a level well below that at the beginning of the period of investigation. Thus, in light of the record evidence for all three years of the period of investigation and the relevant conditions of competition discussed above, we do not find the absolute volumes of subject imports to be significant, and we do not find the absolute volume of subject imports to be significant in relation to consumption and production.

C. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁵⁰

The record in these investigations indicates that domestically produced bottle-grade PET resin and cumulated subject imports are generally substitutable. While price is an important factor in purchasing decisions, it is not the most important. No purchasers stated that lowest price will always win a sale (eight responded “usually” and six reported “sometimes”).¹⁵¹ For several factors rated as “very important” by purchasers, domestic product was rated slightly superior to subject imports.¹⁵² The four purchasers that ranked price as the number one factor in purchasing decisions were relatively small purchasers.¹⁵³ The record thus indicates that purchasers are willing to pay a slight premium for U.S.-produced PET resin because of greater availability, product mix, technical support, and faster delivery time.¹⁵⁴

Underselling - We requested quarterly sales pricing data for seven PET resin products: Product 1A (Virgin PET resin, with an intrinsic viscosity of 0.72 IV to 0.84 IV; typically used in water bottle applications); Product 1B (Blended PET resin with an intrinsic viscosity of 0.72 IV to 0.84 IV; typically used in water bottle applications); Product 2 (Virgin PET resin with an intrinsic viscosity of 0.72 IV to 0.84 IV; typically used in sheet and strapping); Product 3A (Virgin PET resin with an intrinsic viscosity of 0.78 IV to 0.86 IV; typically used in carbonated soft drink applications); Product 3B (Blended PET resin with an intrinsic viscosity of 0.78 to 0.86 IV; typically used in carbonated soft drink applications);

¹⁴⁸ Staff Figures 1 and 2.

¹⁴⁹ Reliance Prehearing Br. at 16-17, Exhibit 20 (Q2 2004 Eastman Earnings Conference Call Final Transcript, July 30, 2004, at 9), Exhibit 21 (Q3 2004 Wellman Inc. Earnings Conference Call Final Transcript, Oct. 28, 2004, at 4-5) & Exhibit 57 (“News About Polyester Packaging from M&G”); Reliance Posthearing Br. at 13-14; Hearing Tr. at 148, 166 (Dewsbury); CR/PR at Table IV-5; Petitioner’s Posthearing Br., Exhibit 15.

¹⁵⁰ 19 U.S.C. § 1677(7)(C)(ii).

¹⁵¹ CR at II-8; PR at II-5.

¹⁵² CR/PR at Tables II-2 and II-5.

¹⁵³ These purchasers were ***. See Purchaser Questionnaire Responses.

¹⁵⁴ CR at II-8 to II-15; PR at II-5 to II-11; CR/PR at Tables II-1 to II-7.

Product 4A (Virgin PET resin with an intrinsic viscosity of 0.75 IV to 0.86 IV; typically used in heat set or hot fill applications); and Product 4B (Blended PET resin with an intrinsic viscosity of 0.75 IV to 0.86 IV; typically used in heat set or hot fill applications). Seven domestic producers provided pricing data for products 1A, 2, 3A, 3B, and 4A while 15 subject importers provided pricing data on products 1A, 2, and 3A.^{155 156}

We find that subject imports undersold the domestic like product more often than not, with more of the underselling occurring earlier in the period of investigation.¹⁵⁷ We place the greatest weight on quarterly pricing comparisons for Product 3A,¹⁵⁸ which had significantly higher volumes of subject imports and domestic production than Products 1A and 2.¹⁵⁹ Of the 12 comparisons between domestic product and total subject imports for Product 3A, subject imports undersold the domestic product in seven quarters. Of the 24 country-specific comparisons, subject imports from India undersold domestic product in 7 of 12 quarters, and subject imports from Thailand undersold in 7 of 12 quarters. This underselling is nominally significant. However, subject imports generally oversold domestic product, or undersold by minimal margins, in the last half of 2003 and early 2004,¹⁶⁰ the period during which petitioners claim subject imports were having a significant impact.¹⁶¹ In particular, it was during this period that the domestic industry's materials margin (that is, the margin between raw material costs and prices) was narrowest.¹⁶²

¹⁵⁵ CR at V-7 to V-8 & n.6; PR at V-5 to V-6 & n.6.

¹⁵⁶ CR at V-7; PR at V-5. Pricing data reported by these firms accounted for approximately *** percent of U.S. producers' commercial shipments of PET resin from 2002 to 2004. They also account for *** U.S. commercial shipments of subject imports from India over the same period; *** percent of U.S. commercial shipments of subject imports from Indonesia over the same period; and *** percent of U.S. commercial shipments of subject imports from Thailand over the same period. CR at V-7; PR at V-5.

¹⁵⁷ CR/PR at Tables V-1 to V-3.

¹⁵⁸ Petitioner objects to the omission from Table V-3 of the Staff Report of the sales volume made by *** in product category 3A. According to petitioner, the Commission should use the information from *** as facts available, as the *** did not provide prices for these import volumes. Petitioner argues that ***, and that the Commission should use *** and include these data in section V of the Staff Report. Petitioner's Posthearing Br. at 7-9, 11. However, *** questionnaire does not list *** as a supplier. Furthermore, ***. See Staff Telephone Interview with ***. It would be improper to include *** in Table V-3 because those import prices are not at the same level of trade as domestic producer sales prices.

¹⁵⁹ CR/PR at Tables V-1 to V-3. We place less weight on the quarterly pricing data for Product 1A because the subject import quantities for this pricing category were greatly reduced after Commerce's *de minimis* final determination regarding Indorama, an Indonesian producer of Product 1A. CR/PR at Table V-1; See Indorama questionnaire response; *Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate Resin from Indonesia*, 70 Fed. Reg. 13456, 13457 (March 21, 2005). We also give little weight to the pricing data for Product 2 because there was minimal subject import volume in that category. CR/PR at Table V-2. There were no reported subject import pricing data for products 1B, 3B, 4A, and 4B, and no reported domestic product pricing data for products 1B and 4B.

¹⁶⁰ CR/PR at Tables V-3 and VI-1; CR/PR at Figure V-1.

¹⁶¹ Hearing Tr. at 8-9 (Hertzberg) and 330 (Cofrancesco); Petitioner's Posthearing Br. at 7.

¹⁶² Petitioner's Posthearing Br., Exhibit 1 and Exhibit 7 (Wellman PET Resin Market Review & L1/P3 CEFR, dated August 3, 2004, at 16). In filings with the Securities and Exchange Commission, Wellman reported lower PET resin margins in third quarter 2003 due to industry capacity additions, volatile raw material prices, slower demand, and poor weather conditions. It also predicted even lower margins in fourth quarter 2004 because of higher raw material costs and producers soliciting orders for 2004 production. Reliance Prehearing Br., Exhibit 1 (Wellman Q3 2003 10-Q at 33). See also Reliance Posthearing Br., Exhibit 11 (TecnonOrbiChem, PET Packaging Resin, Mar. 25, 2004 at 4) (describing Wellman's 2003 annual report as stating Q4 margins being at all time lows); Reliance

(continued...)

The Commission notes that, with regard to pricing Product 3A, petitioner argues that Part V of the Staff Report improperly presents *** as a commercial price comparable to domestic producer sales prices because ***. Petitioner argues that this reporting is improper and that it changes the outcome of the underselling analysis.¹⁶³ First, staff's inclusion of these data represent the best approximation of these transactions.¹⁶⁴ Second, even if *** data are excluded from the pricing table for Product 3A, as shown in Appendix F of the Staff Report, our conclusions would remain the same. As seen in table F-2 of Appendix F, when ***, there is one less instance of underselling and one less instance of overselling for India and one more instance of underselling and one less instance of overselling for total weighted subject imports.¹⁶⁵ However, these data continue to show overselling or underselling by minimal margins during the critical period of late 2003 and early 2004.

Petitioner argues that the Commission should substitute data for *** direct purchases of PET resin from an Indian producer, ***, in comparing subject import prices to domestic producer prices.²⁰⁷ While we have examined these data, we do not place significant weight on them. Direct import purchases generally contain no sales markup and no selling costs whereas domestic producers and U.S. importers typically have the sales markup and incur selling costs in their sales to unrelated customers. We rarely depart from our standard practice of comparing U.S. producer and import prices to unrelated customers of the same or similar products sold to unrelated purchasers at the same level of trade. Circumstances warranting a deviation from this practice are not present in this case.

Price depression/suppression - - We do not find that subject imports had price depressing effects, given the upward trends in U.S. prices for both domestic product and subject imports over the period of investigation.²⁰⁸ The weighted-average sales price of U.S.-produced product 1A increased *** percent from the first quarter of 2002 to the fourth quarter of 2004; for U.S.-produced product 2 the increase was *** percent; for U.S.-produced product 3A, *** percent; for U.S.-produced product 3B, *** percent; and for U.S.-produced product 4A, *** percent.²⁰⁹

We also do not find that subject import prices suppressed domestic prices to a significant degree during the period of investigation.²¹⁰ In 2003, domestic producers were caught in a cost-price squeeze as they were unable to increase prices sufficiently to recover increased raw material costs, which rapidly rose to high levels. This squeeze continued in 2004, as raw material costs continued their uncharacteristic

¹⁶² (...continued)

Prehearing Br., Exhibit 7 at 20 (August 2004 SEC 10-Q filing - Wellman reporting significantly lower gross profit in the second half of 2003 due in part to capacity additions, which resulted in reduced selling prices and margins as competitors tried to sell their capacity. Wellman also cited an unexpected drop in demand and seasonal weakness in the fourth quarter); Reliance Prehearing Br., Exhibit 9 at 14 (Q4 Wellman Earnings Conference Call, February 16, 2005, transcript: Wellman Chairman and CEO Thomas Duff stating that "...we were down to single digit [raw material] margins in fourth quarter '03, which was the lowest quarter I think we've ever had.")

¹⁶³ Petitioner's Prehearing Br. at 19-20; Petitioner's Posthearing Br. at 9-10, 26-27.

¹⁶⁴ See, e.g., Kern-Liebers USA, Inc. v. United States, 19 CIT 87, 93-94 (1995), *aff'd sub. nom., United States Steel Group v. United States*, 96 F.3d 1352, 1365-66 (Fed. Cir. 1996) (the Commission has broad discretion in choice of methodology in collecting data and making estimations).

¹⁶⁵ CR at V-9, n.8; PR at V-8, n.8; CR/PR at Appendix F, Table F-2.

²⁰⁷ Petitioner's Prehearing Br. at 19; Petitioner's Posthearing Br. at 9-10, 26-27.

²⁰⁸ CR/PR at Tables V-1 to V-3.

²⁰⁹ CR at V-8 to V-9; PR at V-6 to V-8; CR/PR at Table V-4.

²¹⁰ Petitioner argues that subject imports were sold in the U.S. market at levels below subject producers' variable costs and, as a result, significantly depressed, suppressed and undersold U.S. prices. Petitioner's Prehearing Br. at 17, 54. However, whether producers in the subject countries are selling PET resin below their variable costs is an issue for consideration by Commerce, not the Commission. We do not collect cost data from producers in subject countries.

rise.²¹¹ The domestic industry's ratio of cost of goods sold ("COGS") to sales increased over the period of investigation from 84.9 percent in 2002 to 91.6 percent in 2003, and further to 92.6 percent in 2004.²¹² This squeeze was due to increasing raw material costs (rather than other costs); the ratio of raw material costs to net sales rose from 63.5 percent in 2002 to 70.4 percent in 2003 and to 74.8 percent in 2004; the ratio of other factory costs to net sales fell from 21.5 percent in 2002 to 21.1 percent in 2003 and to 17.8 percent in 2004.²¹³

The record thus indicates that the industry's prices did not rise as quickly as raw material costs. However, the Commission finds, based on the record evidence, that subject imports did not play a significant role in this cost-price squeeze. Rather, several other factors prevented the domestic industry from recouping all of their raw material cost increases in 2003 and 2004.

The record does not show a strong correlation between subject imports and price suppression. Subject imports began to decline in volume in August 2003 and largely exited the U.S. market in 2004, while the domestic industry's costs continued to increase relative to net sales.²¹⁴ Subject import market share fell from *** percent in 2003 to a mere *** percent in 2004, while the industry's COGS/sales ratio worsened from 91.6 percent to 92.6 percent, and the ratio of raw material costs to net sales rose from 70.4 percent to 74.8 percent.²¹⁵ In addition, the pricing data show similar price increases for U.S.-produced PET resin regardless of the amount of subject import competition. Between first quarter 2002 and fourth quarter 2004, the weighted-average sales prices of U.S.-produced products 1A, 2, and 3A, for which both domestic and import prices were reported, rose ***, respectively. We note that prices for product 2, which the record indicates faced the least amount of subject import competition of these products, increased by the smallest amount. Over the same period, the weighted-average sales prices of U.S.-produced products 3B and 4A, for which only domestic prices were reported, rose a very similar ***, respectively.²¹⁶ The data for product 4A is particularly probative, as the record indicates no subject imports of hot-fill resin.

Instead, the record indicates that a number of factors, other than subject imports, were responsible for the domestic industry's inability to recoup their costs of goods sold in 2003 when raw material costs were rising. These factors include the unprecedented and unexpectedly rapid and sustained increases in raw material costs, which domestic producers could not pass through quickly enough;²¹⁷ the increase of domestic industry capacity and production;²¹⁸ the increase of domestic industry controlled nonsubject imports;²¹⁹ and purchasers' willingness to substitute aluminum and glass for PET resins.²²⁰

In particular, with respect to raw material costs, the increase over the period of investigation was unexpectedly sharp and sustained, leading to historically high costs.²²¹ Domestic producers' pricing practices did not permit them to fully recoup these continued cost increases. Indeed, three of the largest

²¹¹ Petitioner's Prehearing Br. at 17, 26, 31, 54; Hearing Tr. at 7-9 (Hertzberg) and 25 (Dewsbury).

²¹² CR/PR at Table VI-1.

²¹³ CR/PR at Table VI-1.

²¹⁴ Staff Figure 1 and CR/PR at Table VI-1.

²¹⁵ CR/PR at Tables IV-5 and VI-1.

²¹⁶ CR at V-8 to V-9; PR at V-7 to V-8; Calculated from CR/PR at Table V; CR/PR at Tables V-1 to V-4.

²¹⁷ CR/PR at Figure V-1; Hearing Tr. at 68-70 (Dewsbury).

²¹⁸ CR/PR at Table III-3.

²¹⁹ CR/PR at Table IV-2.

²²⁰ CR at II-6; PR at II-4; Hearing Tr. at 254 (Mullock).

²²¹ CR/PR at V-1; Reliance Prehearing Br. at 12-13 and Exhibit 12 (Tecnon OrbiChem, PET Packaging Resin, Jan. 31, 2005 at 1), Exhibit 13 (Chemical Week, November 3, 2004), Exhibit 14 (Chemical News and Intelligence, July 28, 2003), and Exhibit 15 (Chemical Market Reporter, May 19, 2003); Hearing Tr. at 109-110 (Taylor).

domestic producers, *** reported that their contracts contain no pricing formulas that take into account the cost of raw materials.²²² The majority of domestic producers sold PET resin on either a long-term and short-term contract basis with quantities, but not prices, generally fixed during the contract period. While domestic producers' raw material costs shifted several years ago from quarterly to monthly changes, the industry is still shifting its PET resin from quarterly to monthly pricing.²²³ Accordingly, the domestic producers' contracts with their customers have constrained their ability to pass along all of their raw material cost increases in a timely manner.²²⁴

Over the period of investigation, the domestic industry added substantial capacity, through debottlenecking and modification of existing facilities, and addition of production equipment. Overall, the industry added 581 million pounds of capacity between 2002 and 2003. In comparison, apparent consumption rose by only 470 million pounds in 2003. While the industry's total capacity increase from 2002 to 2004, 662 million pounds, was similar to the increase in apparent consumption of 631 million pounds over that two-year period, the imbalance in 2003 was a factor preventing the domestic industry from raising prices sufficiently to fully recoup the rapid increase in raw material costs.²²⁵ This increase in capacity from 2002 to 2003 was also far greater than the increase in subject imports, *** pounds.

In addition to this increase in domestic capacity, combined nonsubject imports from Canada and Mexico, largely controlled by U.S. producers, increased substantially over the period of investigation. These NAFTA imports rose from *** pounds in 2002 to *** pounds in 2003 and to *** pounds in 2004. Additional capacity in Mexico added to the capacity overhang in the North American market, as M&G's plant in Altamira, Mexico came online with an estimated capacity of about one billion pounds.²²⁶ Petitioner has recognized that there was overcapacity in North America in 2003, as have industry analysts. Both NAFTA imports and the additional North American capacity, exceeded the peak level of subject imports, *** pounds in 2003.²²⁷

²²² CR at V-2; PR at V-1 to V-2; See also domestic producer questionnaire responses. The next largest producers, ***, used pricing formulas for only 15 and 20 percent of their shipments, respectively. No producer used pricing formulas for even half of their sales.

²²³ Hearing Tr. at 68-70 (Dewsbury). Constar, a converter of PET resin, testified at the hearing that it strives to have "as perfect a pass through" of its material costs or otherwise "it would not survive." Hearing Tr. at 289 (Mullock).

²²⁴ See Reliance Prehearing Br., Exhibit 7 at 20 (Wellman 2004 SEC Form 10-Q filing - reporting that gross profit was significantly lower in second half of 2003, due to overcapacity, a decrease in demand, seasonal weakness in the fourth quarter, and pricing pressure associated with annual contract negotiations).

²²⁵ Such temporary imbalances between supply and demand are expected in this industry, as capacity is generally added in large increments, while demand rises more slowly. See Petitioner's Posthearing Br., Exhibit 17 (Banc of America Securities, Equity Research, Eastman Chemical Company, dated October 10, 2003 - noting that PET capacity growth was expected to outpace demand growth in 2003 and that capacity utilization levels proved insufficient to raise prices in September 2003). The Chairman and CEO of Eastman also cited overcapacity and oversupply as a primary factor in the industry's difficulties in passing through costs to customers at the end of 2003. Reliance Prehearing Br., Exhibit 25 (Q4 2004, Eastman Earnings Conference Call Final Transcript, Jan. 28, 2005, at 8). See also Reliance Prehearing Br., Exhibit 7 at 20 (In August 2004 SEC 10-Q filing, Wellman reporting significantly lower gross profit in the second half of 2003 due in part to capacity additions, which resulted in reduced selling prices and margins as competitors tried to sell their capacity. Wellman also cited an unexpected drop in demand and seasonal weakness in the fourth quarter).

²²⁶ Producer Questionnaire response of M&G. Reliance testified that M&G's Altamira plant is the "largest in the world" with an ultimate capacity of one billion pounds. Hearing Tr. at 200-201 (Esserman).

²²⁷ Hearing Tr. at 106 (Kinner); See also Reliance Posthearing Br., Exhibit 11 (TecnonOrbiChem, PET Packaging Resin, Mar. 25, 2004 at 4) ("The tough market conditions in 2003 are reflected in Wellman's Annual Report....Significant U.S. capacity additions mid-year and poor summer weather were blamed."); Reliance

(continued...)

We acknowledge that the increase in subject import volume from 2002 to 2003 may have suppressed domestic producer prices to some degree. We recognize that the domestic industry's unit operating income declined from 0.03 cents per pound in 2002 to 0.01 cents per pound in 2003, as subject imports increased. However, we find that the confluence of market conditions in 2003 and 2004 described above, as subject imports began declining, prevented the domestic industry from improving unit operating income, which stayed at 0.01 cent per pound in 2004.^{228 229} While the domestic industry was more successful at recouping its rising raw material costs in 2004 than in 2003 (per unit raw material costs increased by 6 cents in each year, while per unit sales value rose 3 cents in 2003 and 7 cents in 2004), we attribute much of this improvement to the fact that the domestic industry has been moving from quarterly price adjustments to monthly price adjustments in order to keep pace with rising raw material costs,²³⁰ and to demand catching up with increased capacity. For the aforementioned reasons, we find that the increase in subject import volumes in 2003 did not have a significant price suppressing effect on the industry.

Petitioner argues that the price-suppressive effects of subject imports caused the domestic industry to suffer lost sales and revenues.²³¹ However, none of the lost sales alleged by U.S. producers

²²⁷ (...continued)

Prehearing Brief, Exhibit 14 (Chemical News & Intelligence, July 28, 2003 - Standard & Poors had revised outlook on Wellman to "negative" from "stable" due to capacity addition at a time of higher raw material costs and slower demand), Exhibit 25 at 8 (Eastman Chemical Company Earnings Conference Call, January 28, 2005, Final Transcript: Chairman and CEO Brian Ferguson describing an overcapacity situation in the market in late 2003-early 2004), Exhibit 26 at 1 (Wellman Investor Relations, February 25, 2004: Chairman and CEO Thomas Duff reporting all-time lows in PET resin margins in fourth quarter 2004 due to mid-year capacity increases and a drop in demand because of poor summer weather), and Exhibit 28 (PET Packaging International, November 6, 2003: reporting that "North American producers have rescinded their October/November price increase, as oversupply seems to have won the battle over rising costs"); Petitioner's Posthearing Br. at Exhibit 17 (Banc of America Securities, Equity Research, Eastman Chemical Company, dated October 10, 2003 - noting that PET capacity growth was expected to outpace demand growth in 2003 and that capacity utilization levels proved insufficient to raise prices in September 2003).

²²⁸ CR/PR at Table VI-1. Petitioner argues that small amounts of PET resin imports have tremendous price influences in the market because U.S. purchasers use price quotes from importers to bring down the prices charged by the domestic industry. Hearing Tr. at 24-25 (Dewsbury) and 88 (Manning). As part of its posthearing brief submissions, petitioner provided a financial analyst's report, which stated that India and Thailand were now net exporters of PET resin to the U.S. market and that these changing trade patterns have forced U.S. producers to price their product based on Asian pricing in order to remain competitive. See Petitioner's Posthearing Br, Exhibit 17 (August 13, 2003 "U.S. Chemicals: PET - Could Disappoint For Years," Bernstein Research Call) ("Bernstein Report"). However, the Bernstein Report is based on unspecified data, and we must rely on data collected in these investigations to reach our determinations. Further, we note that the Bernstein Report is dated August 2003, at the half-way point of the period of investigation and in the same month that subject imports to the U.S. market began declining. Since that time, market conditions have changed dramatically and we give greater weight to the more recent periods of the period of investigation.

²²⁹ Petitioner argues that the ***. According to petitioner, this provision is evidence of the price suppressive effects of subject imports because it created substantial pressure for *** to buy PET resin at LTFV and subsidized import price levels. Petitioner's Final Comments at 2-3. Although we recognize that some price leveraging may occur among purchasers of PET resin, on the whole, we do not find that subject imports themselves significantly suppressed domestic producer prices. As explained above, there were other market conditions that significantly constrained domestic producers from raising their prices sufficiently to recoup all raw material costs.

²³⁰ Hearing Tr. at 69-70 (Dewsbury).

²³¹ Petitioner's Prehearing Br. at 41-42; Hearing Tr. at 10 (Hertzberg).

was confirmed by staff.²³² Staff also was unable to confirm six lost revenues allegations supplied by U.S. producers. As for the remaining *** lost sales allegations submitted by domestic producers, they all involved one customer, ***, and an ***. ***.²³³ In our view, these sales transactions did not constitute actual lost sales allegations because *** purchased *** nonsubject PET resin from nonsubject Taiwanese producers during the period of investigation and because “spot Asian pricing” is not a specific subject country import price. Moreover, “Asian” pricing likely includes nonsubject import prices.

We thus do not find that subject imports are having significant adverse price effects on domestic prices during the period of investigation.

D. Impact of the Subject Imports²³⁴

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.²³⁵ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²³⁶

We find that subject imports did not have a significant adverse impact on the domestic industry. The domestic industry’s non-financial performance indicators of production, shipment, and sales all registered gains during the period of investigation. The domestic industry’s production rose by 6.4 percent from 2002 to 2003 and again by 5.3 percent from 2003 to 2004.²³⁷ The increase in the domestic industry’s capacity from 2002 to 2003 caused the domestic industry’s capacity utilization to decline from 89.4 percent in 2002 to 85.2 percent in 2003.²³⁸ However, as demand incrementally increased by an additional 3.2 percent from 2003 to 2004, capacity utilization reached 89.1 percent in 2004.²³⁹ Similarly, the domestic industry’s U.S. shipments increased by 5.8 percent from 2002 to 2003 and again increased

²³² CR/PR at Table V-7.

²³³ CR at V-20 to V-21; PR at V-10.

²³⁴ The statute instructs the Commission to consider the “magnitude of the dumping margin” in antidumping duty proceedings as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determination for Thailand, Commerce determined dumping margins of 24.83 percent to 41.28 percent for two named Thai producers/exporters and an “all others” rate of 24.83 percent. 70 Fed. Reg. 13454 (Mar. 21, 2005). In its final determination for Indonesia, Commerce found dumping margins of 27.61 percent for two named Indonesian producers/exporters and an “all others” rate of 18.41. 70 Fed. Reg. 13457 (Mar. 21, 2005). In its final determination for India, Commerce found dumping margins of 21.05 percent to 52.54 percent for two named producers/exporters and an “all others” dumping rate of 21.05 percent. 70 Fed. Reg. 13451 (Mar. 21, 2005).

²³⁵ 19 U.S.C. § 1677(7)(C)(iii); *see also, e.g.*, SAA at 851, 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.”)

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

²³⁷ CR/PR at Table C-1.

²³⁸ CR/PR at Table C-1.

²³⁹ CR at III-5 to III-6; PR at III-3; CR/PR at Table C-1.

by 6.8 percent from 2003 to 2004.²⁴⁰ Net sales by the domestic industry of bottle-grade PET resin increased by 7.7 percent during 2002-03 and again by 6.9 percent during 2003-04.^{241 242}

The domestic industry did suffer financial declines during the period of investigation due to the cost-price squeeze discussed above. Its operating income fell from \$141.5 million in 2002 to \$32.6 million in 2003 and to \$29.2 million in 2004. Its operating income as a ratio of net sales declined from 7.4 percent in 2002 to 1.5 percent in 2003 and to 1.1 percent in 2004.^{243 244} Although the domestic industry's financial difficulties began in 2003, they worsened in 2004, even as subject imports volume fell sharply, a decline that began in August 2003.²⁴⁵ In particular, as discussed above, the domestic industry faced unprecedented financial pressures in 2003 and 2004 because of rising raw material costs, which further escalated during the latter half of the period of investigation. The importance of raw material costs is underscored by Wellman's public statements that profitability is driven by the "raw material margin," as well as sales volume. Similarly, Eastman Chemical Company (Voridian's parent company) states that "fluctuations in raw material and energy costs" are key determinants of profitability.²⁴⁶ Compounding the domestic industry's problems was its inability to immediately pass along those raw material cost increases to its customers because of contractual constraints that allowed adjustments only on a quarterly basis.²⁴⁷ As a result, the domestic industry was not able to completely

²⁴⁰ CR/PR at Table C-1.

²⁴¹ CR/PR at Table C-1.

²⁴² We note that the number of production workers rose slightly from 1,974 in 2002 to 1,998 in 2003, and fell to 1,781 in 2004, the year subject imports largely left the market. Hours worked and wages paid followed a similar pattern. Hourly wages and productivity rose in both 2002 and 2003, while unit labor costs fell in both years. CR/PR at Table III-8.

²⁴³ CR/PR at Table VI-1.

²⁴⁴ The domestic industry reduced its capital expenditures by *** percent from 2002 to 2003 and by *** percent from 2003 to 2004. CR/PR at Table C-1. This trend is not surprising given the domestic industry's large investment in 2002 to increase capacity to meet rising demand. The domestic industry's research and development costs climbed significantly from 2002 to 2003 (***) before leveling off at *** in 2004. CR/PR at Table VI-4. Moreover, both Voridian and Wellman have announced and broken ground on significant expansion plans that will come online in 2006.

²⁴⁵ Petitioner argues that after subject imports began declining in late 2003, domestic producers were able to achieve higher profitability margins by passing along more of their raw material costs to their customers. Petitioner's Posthearing Br. at 4. Petitioner provided quarterly operating income results for *** domestic producers showing upward profitability trends for some quarters of 2004. Petitioner's Posthearing Br. at 4-5 and Exhibits 3-5. However, we do not find this information probative because petitioner only provided one year of quarterly financial data and for only *** domestic producers. Moreover, these data also show declines later in the year for ***.

²⁴⁶ CR at VI-2; PR at VI-1.

²⁴⁷ Constar, a converter of PET resin, has pricing mechanisms in its contracts with customers to pass through all of its PET resin costs because the cost of that resin is the largest component of its total cost of goods sold. Hearing Tr. at 245-246, 289, 299 (Mullock). The lack of cost pass-through mechanisms has hindered domestic producers' ability to recover rising costs. Hearing Tr. at 318 (Mullock). The market conditions in which Constar operates differ substantially from those of the domestic producers, whose ability to pass along raw material cost increases via contractual mechanisms is more constrained. Moreover, domestic producers are competing with buyers in other industries for their raw material requirements and must source their requirements from a concentrated pool of oil and gas suppliers.

offset higher raw material costs and prevent erosion of profitability.²⁴⁸ The domestic industry's inability to pass through all of its rising costs is attributable to factors other than subject imports.²⁴⁹

In light of our finding of lack of significant adverse price effects and the lack of any significant correlation between the volume of subject imports and any financial performance declines, we do not find that subject imports have had a significant adverse impact on the domestic industry.²⁵⁰

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

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."²⁵¹ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."²⁵² In making our threat determination, we have considered all factors that are relevant to this investigation.²⁵³ Based on an evaluation of the entirety of the record, we determine that an

²⁴⁸ CR at VI-9 to VI-10; PR at VI-6.

²⁴⁹ CR/PR at Tables VI-1 & C-1. Voridian's parent company, Eastman Chemical, announced on January 5, 2005, that "despite continued strong sales volume and increased selling prices throughout the company, higher raw material and energy costs, including for paraxylene, ethylene glycol and propane, are expected to have increased by over \$100 million in the fourth quarter compared with third quarter 2004," substantially above previous forecasts. CR at VI-10, n.12; PR at VI-9, n.12; (Jan. 4, 2005 press release: Eastman updates fourth-quarter 2004 outlook). Voridian's polymer segment reported lower operating income in 2004 compared with 2003. CR at VI-10 to VI-11, n.12; PR at VI-9, n.12.

²⁵⁰ We note that the record contains several third party analyses of the industry or individual domestic producers. While we have considered these analyses, our decision must be based on the totality of the record, and on our own data. As discussed throughout this opinion, we find that the totality of the record indicates that subject imports were not having a significant price depressing or suppressing effect, and did not have a significant adverse impact on the industry's condition. Some of these analyses conclude that imports were a problem for the industry in 2003. See, e.g., Petitioner's Posthearing Brief, Exhibit 17 – Bernstein Report (August 13, 2003), Bank of America Report (October 10, 2003), SBA-CCI World PET Report (October 2003). However, others, including more recent ones, describe the industry's continued difficulties as caused by other factors in 2003 forward, including rising raw material costs and North American capacity increases, and do not mention imports as a problem for the industry. See, e.g., Reliance Prehearing Br., Exhibit 12 (Tecnon OrbiChem, PET Packaging Resin, Jan. 31, 2005 at 3) and Exhibit 15; Petitioner's Posthearing Brief, Exhibit 17, Bank of America Report (Eastman) (Jan. 5, 2005), UBS Investment Research Report (Eastman) (Jan. 4, 2005), Citigroup Smith Barney Report (Eastman) (Jan. 4, 2005), and Credit Suisse First Boston Report (Eastman) (Jan. 4, 2005). Given the industry's worsening financial condition in 2004, when subject imports largely exited the market, we cannot conclude that the earlier analyses were correct in attributing a significant part of the industry's difficulties in 2003 to subject imports, particularly in light of more recent analyses that attribute the industry's continued difficulties to other persistent factors.

²⁵¹ 19 U.S.C. § 1671d(b), 1673d(b) and 1677(7)(F)(ii).

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

²⁵³ 19 U.S.C. § 1677(7)(F). The Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy particularly as to whether the countervailable subsidy is a subsidy
(continued...)

industry in the United States is not threatened with material injury by reason of subject imports from India that are subsidized and by reason of subject imports from India, Indonesia, and Thailand are sold in the United States at less than fair value.

A. CUMULATION

For purposes of evaluating the volume and price effects for a present material injury determination, Section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.²⁵⁴

For purposes of determining if a threat of material injury exists, cumulation is discretionary. Under section 771(7)(H) of the Act, the Commission may “to the extent practicable” cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.²⁵⁵ In addition to

²⁵³ (...continued)

described in Article 3 or 6.1 of the Subsidies Agreement and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

Moreover, the Commission shall consider the threat factors “as a whole” in making its determination “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur” unless an order issues. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

Factor VII is inapplicable to this investigation.

²⁵⁴ 19 U.S.C. § 1677(7)(G)(I). There are four exceptions to the cumulation provision, one of which applies to imports from Taiwan, for which Commerce found *de minimis* margins. The Commission terminated its investigation with respect to Taiwan on March 21, 2005. See id. at 1677(7)(G)(ii).

²⁵⁵ 19 U.S.C. § 1677(7)(H).

considering the four cumulation factors described above, the Commission has considered other factors such as the similarity of trends in the volume and price of subject imports from the countries under investigation.²⁵⁶

As noted above, we find that there is a reasonable overlap of competition among subject imports and between the subject imports and the domestic like product. Based on an examination of all of the factors discussed above and other discretionary factors, we exercise our discretion to assess cumulatively the volume and price effects of the subject imports from India, Indonesia, and Thailand for purposes of our threat analysis in these final phase determinations.

B. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS^{257 258}

As we discussed in the conditions of competition section, U.S. apparent consumption of PET resin is strong and projected to continue increasing for the foreseeable future.²⁵⁹ PET resin demand growth in subject producers' home markets also is expected, as is increasing demand in third market regions, such as the Mideast and Africa.²⁶⁰

We find that volume and market share trends of subject imports during the period of investigation do not indicate a likelihood of substantially increased subject imports in the imminent future. Although subject import volume increased from 2002 to 2003, it began declining in August 2003 and generally

²⁵⁶ See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

²⁵⁷ Petitioner argues that we should take adverse inferences against those foreign producers that responded to questionnaires because the responses provided were not accurate or were incomplete. Petitioner's Prehearing Br. at 52-53 & Exhibit 1 at 4. Under the statute, however, we may not take adverse inferences against those interested parties that actually cooperated with our information request by submitting a response to the questionnaire. We do not find a sufficient basis to draw adverse inferences in these investigations. We are required by the statute to reach our determination with respect to the industry as a whole (see 19 U.S.C. § 1677(4)(A)). While some foreign producers did not respond to the Commission's producer questionnaires, we do not take adverse inferences against the producers that did respond. We also made adjustments to the data to account for those producers that did not respond to our questionnaires. In the final Staff Report, the preliminary phase data of Indopet and Thai Shinkong were incorporated in the Thai Industry data because of Indopet's failure to respond to the Commission's final phase questionnaire and Thai Shinkong's data irregularities in its final phase questionnaire response. CR at VII-8, n.10; PR at VII-5, n.10. The Staff Report also incorporated the petition's capacity allegations regarding non-responding Indonesian and Thai producers. CR/PR at Tables VII-4 and VII-6. Accordingly, we find no basis for drawing an adverse inference against individual foreign producers under these circumstances.

²⁵⁸ 19 U.S.C. § 1677(7)(F)(I) requires us to consider the nature of the countervailable subsidies for subject imports from India. On March 21, 2005, Commerce found that countervailable subsidies are being provided by the government of India to manufacturers, producers, and exporters of bottle-grade PET resin through several programs: Pre- and Post-Shipment Export Financing; Duty Entitlement Passbook Scheme (DEPS); Income Tax Exemption Scheme, 80 HHC; Export Promotion Capital Goods Scheme (EPCGS); Export Oriented Units (EOUs) Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies; Export Oriented Units (EOUs) Program: Duty-Free Import of Capital Goods and Raw Materials; Export Oriented Units (EOUs) Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically; and State of Gujarat (SOG) Program: Sales Tax Incentive Scheme. CR at I-5 to I-6; PR at I-4.

²⁵⁹ CR/PR at Table IV-5; Hearing Tr. at 43 (Kinner) and 55 (Manning)

²⁶⁰ Reliance Prehearing Br. at 70-74; CR at VII-5 to VII-8, VII-11; PR at VII-4 to VII-6.

continued to decline through 2004.²⁶¹ Subject import market share rose from *** percent in 2002 to *** percent in 2003, then fell sharply to *** percent in 2004.²⁶² The record evidence indicates that this reversal in subject import volumes was not due to these investigations (the petitions were filed on March 24, 2004) but rather to other market factors, in particular, a sudden tightening of the PET resin raw material supply in Asia, as demand by the Chinese fiber/resin industries for the same raw inputs increased.²⁶³

We also find that the record does not support a conclusion that unused production capacity or any imminent increases in production capacity in India, Indonesia, and Thailand will lead to substantially increased imports in the imminent future.²⁶⁴ Subject producers in India, Indonesia, and Thailand are operating near full capacity. In 2004, Indian producers utilized 95.7 percent of their production capacity, subject Indonesian producers *** percent, and Thai producers *** percent.²⁶⁵ Of the three subject countries, only Indian PET resin producers reported planning increases in capacity in 2005 and 2006,²⁶⁶ as demand for the same raw material inputs by the Chinese fiber/resin industry increases.

Although the subject producers export a majority of their PET resin production, they direct most of their exports to countries other than the United States, and have substantial home market sales.²⁶⁷ The share of the Indian industry's total shipments accounted for by home and non-U.S. markets rose from *** percent in 2002 to *** percent in 2004.²⁶⁸ For the Indonesian industry, shipments to home and non-U.S. markets rose from *** percent of total shipments in 2002 to *** percent in 2004.²⁶⁹ For the Thai industry, the ratio rose from *** percent in 2002 to *** percent in 2004.²⁷⁰

This pattern of shipments is likely to continue. The record indicates that the subject countries will experience continued rising demand in the home market and third country markets.²⁷¹ The subject producers' projections of increased shipments to the home market and third country markets, and no significant increase in shipments to the United States, are thus consistent with other information on the record.

²⁶¹ CR/PR at Table C-1.

²⁶² CR/PR at Table IV-5.

²⁶³ Petitioner's Posthearing Br. at 15; Reliance Prehearing Br., Exhibit 20 (Q2 2004 Eastman Earnings Conference Call Final Transcript, July 30, 2004, at 9), Exhibit 21 (Q3 2004 Wellman Inc. Earnings Conference Call Final Transcript, Oct. 28, 2004, at 4-5), Exhibit 56 at 7 (Q4 Wellman Earnings Conference Call, February 16, 2005 - Keith Phillips, CFO, VP, reporting that polyester raw material costs and availability continue to limit PET resin imports and increase their cost basis) & Exhibit 57 ("News About Polyester Packaging from M&G"); Reliance Posthearing Br. at 13-14; Hearing Tr. at 148, 166 (Dewsbury); CR/PR at Table IV-5.

²⁶⁴ CR/PR at Table VII-5.

²⁶⁵ CR/PR at Tables VII-2, VII-4, and VII-6.

²⁶⁶ CR at VII-3; PR at VII-2. We note that other evidence in the record confirms that there are no projected capacity increases in Indonesia and Thailand for 2005 and 2006, and relatively small increases in India. See Petitioner's Posthearing Br., Exhibit 17 (PCI "PET Market Prospects" Report, February 19, 2004); Exhibit 19 ("Asia Pacific Production Capacity" report).

²⁶⁷ CR/PR at Tables VII-2, VII-4, and VII-6.

²⁶⁸ CR/PR at Table VII-2. Other export destinations for Indian PET resin included countries in ***. CR at VII-5; PR at VII-4.

²⁶⁹ CR/PR at Table VII-4. Other export destinations for Indonesian PET resin include *** countries including ***. CR at VII-6; PR at VII-5.

²⁷⁰ CR/PR at Table VII-6. Other export destinations for Thai resin included countries in ***. CR at VII-11; PR at VII-6.

²⁷¹ See Reliance Prehearing Br. at 70-74, Exhibit 59A, 61, 63-65; Petitioner's Posthearing Brief at Exhibit 19.

Nor do we find that inventory levels indicate a likelihood of substantially increased imports in the imminent future. Indian producers' end of period inventories were only 45.6 million pounds in 2004, equivalent to a mere 0.8 percent of apparent U.S. consumption.²⁷² Indonesian producers' end of period inventories were only *** million pounds in 2004, equivalent to *** percent of U.S. apparent consumption.²⁷³ Thai producers' end of period inventories were only 44.7 million pounds in 2004, equivalent to only 0.9 percent of apparent U.S. consumption.²⁷⁴

U.S. importers' cumulated inventories of subject product were only *** million pounds in 2004. The largest inventory of total subject merchandise held by U.S. importers during the period of investigation was *** million pounds in 2003, equivalent to only *** percent of imports and *** percent of apparent U.S. consumption in that year.²⁷⁵ Importers reported orders for only about 9.41 million pounds of subject imports for delivery after December 31, 2004, a volume equivalent to less than 0.2 percent of apparent U.S. consumption in 2004.²⁷⁶

With respect to likely price effects, while subject imports undersold the domestic product to some extent during the period of investigation, we have found that subject imports were not depressing or suppressing U.S. prices to any significant degree. In light of the lack of correlation during the latter half of the period of investigation between subject import volume and the domestic industry's continued increase in COGS relative to sales, as well as the pricing trends for those domestic products that are not subject to import competition, we do not find likely adverse price effects by subject imports in the imminent future.

The EU's antidumping duty orders on imports of PET resin from India, Indonesia, and Thailand and countervailing duty orders on imports from India and Thailand have been in place since November 2000, before the period of investigation.²⁷⁷ Finally, we find no evidence of any other demonstrable adverse trends that indicate a probability that the subject imports will materially injure the domestic industry.²⁷⁸

Although we recognize that the domestic industry is experiencing financial difficulties, we find that the domestic industry is not vulnerable to a threat of material injury by reason of subject imports from India, Indonesia, and Thailand. The domestic industry is making additional investments in productive facilities, including Wellman's construction of a new SSP unit at its Mississippi facility to be built at a cost of approximately \$50 million. Voridian has recently started a 350 thousand metric ton plant expansion costing more than \$100 million that will utilize the company's proprietary IntegRex (TM) process. Both projects are scheduled to be completed in 2006.²⁷⁹ Industry sources and third party analysts have projected growing demand for PET resin in the United States and North America, and expect improving market conditions.²⁸⁰

²⁷² CR/PR at Tables VII-2 and IV-5.

²⁷³ CR/PR at Tables VII-4 and IV-5.

²⁷⁴ CR/PR at Table VII-6.

²⁷⁵ CR/PR at Tables VII-7 and IV-5.

²⁷⁶ CR at VII-12; PR at VII-8; CR/PR at Table IV-5.

²⁷⁷ CR at VII-12; PR at VII-8.

²⁷⁸ 19 U.S.C. § 1677(7)(F)(I)(IX).

²⁷⁹ CR at VI-12, n.18, VI-16 and VI-17; PR at VII-6, n.18, VI-6.

²⁸⁰ Reliance Prehearing Brief, Exhibit 7 at 22 (Wellman 10-Q), Exhibit 10 at 53 (Eastman 10-Q), Exhibit 12 at 3 (Tecnon OrbiChem, PET Packaging Resin, Jan. 31, 2005), Exhibit 21 at 4, Exhibit 36 at 4-5, Exhibit 39 at 1, Exhibit 41 at 1, Exhibit 42 at 18, Exhibit 49 at p. 12, Exhibit 56 at 7; Petitioner's Posthearing Brief, Exhibit 17, Banc of America Report (Eastman) (Jan. 5, 2005) and Exhibit 19.

Therefore, based on our consideration of the statutory factors, we find that the domestic industry producing bottle-grade PET resin is not threatened with material injury by reason of subject imports from India, Indonesia, and Thailand.

CONCLUSION

For the above-stated reasons, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of bottle-grade PET resin from India that are subsidized and by reason of imports of bottle-grade PET resin from India, Indonesia, and Thailand that are sold in the United States at less than fair value.

DISSENTING VIEWS OF COMMISSIONER MARCIA E. MILLER

Based on the record in these investigations, I find that an industry in the United States is materially injured by reason of imports of Polyethylene Terephthalate (“PET”) resin from India that have been found by the Department of Commerce (“Commerce”) to be subsidized by the Government of India, and by reason of imports of PET resin from India, Indonesia, and Thailand that have been found by the Department of Commerce to be sold in the United States at less than fair value. I join the majority’s views on the domestic like product, domestic industry, related parties, and cumulation.

I. MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE AND SUBSIDIZED IMPORTS

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.¹ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁴ 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.”⁵

For the reasons discussed below, I determine that the domestic industry is materially injured by reason of cumulated subject imports from India, Indonesia and Thailand found to be subsidized and/or sold at less than fair value.

A. Conditions of Competition

1. Demand Conditions

Demand for PET resin is derived from demand for soft drink and other beverage bottles, sheets, and strapping.⁶ Bottle-grade PET resin is divided into two major end-use classifications: “cold-fill” and “hot-fill.” Cold-fill refers to applications such as for soda or water, and hot-fill refers to applications, such as for juices or sauces, where the substance being filled into the container requires high temperatures in the filling process.⁷ The demand for PET resin used in bottles tends to be seasonal, reaching a peak during the summer months as the demand for soft drinks is at peak levels.⁸

¹ 19 U.S.C. § 1671d(b) and 19 U.S.C. § 1673d(b).

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

³ 19 U.S.C. § 1677(7)(A).

⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵ Id.

⁶ CR/PR at II-1, II-6. References to “Staff Figures” below are references to figures prepared by Staff on March 14, 2005.

⁷ CR at I-9 to I-10; PR at I-7 to I-8.

⁸ CR/PR at II-1.

Demand for PET resin has grown during the period of investigation, as consumers increasingly prefer PET resin bottles, and as new applications are found for PET resin.⁹ This growth is expected to continue at a healthy rate in the foreseeable future.¹⁰ Apparent U.S. consumption, by quantity, increased by 13.8 percent, from 4.6 billion pounds in 2002 to 5.0 billion pounds in 2003 and then to 5.2 billion pounds in 2004.¹¹ Apparent U.S. consumption, by value, increased by 40.6 percent over the same period.¹²

2. Supply Conditions

There are seven U.S. firms that manufactured bottle-grade PET resin in the United States during the period of investigation.¹³ In addition to the four U.S. producers that are members of the U.S. PET Resin Producers' Coalition (Voridian, Wellman, DAK, and Nan Ya), the U.S. firms M&G Polymers USA ("M&G"), Invista S.A.R.L. of Koch Industries ("Invista"), and Starpet, Inc. ("Starpet")¹⁴ also produce bottle-grade PET resin.

During the period of investigation, the domestic industry expanded its PET resin production capacity.¹⁵ The domestic industry added approximately 600 million pounds of additional capacity between 2002 and 2003 (reaching annual capacity of 5.6 billion pounds), in line with expected demand growth for the PET resin industry of 7-8 percent a year.¹⁶ Domestic production increased by 300 million pounds during that same period.¹⁷

The Commission sent importer questionnaires to over 100 firms identified in the petition and by a review of Customs information. Four importers, ***, accounted for roughly 84 percent of the imports of subject merchandise in 2004.¹⁸ Subject imports of PET resin totaled *** million pounds in 2002, *** million pounds in 2003, and then declined to *** million pounds in 2004.¹⁹ At their peak in 2003, subject imports accounted for *** percent of domestic consumption. Nonsubject imports' share of apparent U.S. consumption increased during the period of investigation, from *** percent in 2002 to *** percent in 2003 and *** percent in 2004.²⁰ NAFTA imports comprised a substantial portion of total nonsubject imports.²¹

Both in terms of value and quantity, cold-fill grade PET resin accounted for approximately 80 percent of the domestic industry's U.S. shipments during the period of investigation while hot-fill grade

⁹ Petitioner's Prehearing Br. at 7; CR at I-10 to I-11, VI-17; PR at I-8, VI-7. See also Pet User's Coalition Prehearing Br. at 5.

¹⁰ Hearing Tr. at 229 (Mullock).

¹¹ CR/PR at Table IV-5.

¹² CR/PR at Tables IV-5 and C-1.

¹³ CR at III-1; PR at III-1.

¹⁴ ***. CR at VI-1, n.1; PR at VI-1, n. 1.

¹⁵ In particular, domestic producers *** debottlenecked or modified existing lines while DAK brought online a new solid-state polymerization ("SSP") reactor unit. CR at III-2; PR at III-2 to III-3.

¹⁶ Petitioner's Posthearing Br. at 43-49, 45.

¹⁷ CR/PR at Table III-3.

¹⁸ CR at IV-1; PR at IV-1. Imports from Indonesian producer Indorama are not subject product; Commerce found a *de minimis* dumping margin for this producer in its final determinations. *Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate Resin from Indonesia*, 70 Fed. Reg. 13456, 13457 (March 21, 2005).

¹⁹ CR/PR at Table C-1.

²⁰ CR/PR at Table IV-5.

²¹ By quantity and as a share of total imports, NAFTA imports accounted for *** percent in 2002, *** percent in 2003, and *** percent in 2004 and total nonsubject imports accounted for *** percent in 2002, *** percent in 2003, and *** percent in 2004. CR/PR at Table IV-2.

PET resin comprised approximately 20 percent.²² No importing firm reported any subject imports of hot-fill PET resin during the period of investigation,²³ although it is physically possible for foreign producers to manufacture all grades of PET resin.²⁴ Domestic producers also shipped more virgin bottle-grade PET resin than blended PET resin over the period of investigation.²⁵ No importing firm reported any subject imports of blended PET resin during the period of investigation.²⁶

Respondent Reliance argues that there is attenuated competition between subject imports and U.S.-produced PET resin because domestic producers and their NAFTA affiliates focus their sales in the Eastern region of the United States while cumulated subject imports are more concentrated on the West coast.²⁷ Reliance contends that virtually no subject imports from Indonesia entered the United States from East Coast ports while most U.S. imports from Mexico and Canada entered through eastern ports.²⁸ However, even though subject imports are shipped through different U.S. ports, the record evidence indicates that the U.S. PET resin market is by and large a nationwide market, with domestically produced PET resin and subject imports marketed and sold throughout the United States.²⁹

3. Substitutability

As discussed in the Cumulation section, U.S. producers, purchasers, and importers responding to questionnaires generally agreed that the U.S.-produced and imported product were interchangeable. Domestic producers often described PET resin as a commodity product and as being more or less interchangeable with any other domestically produced or imported PET resin product.³⁰ Purchasers reported a slight preference for domestic product over subject imports in terms of availability, delivery times, product range, and technical support/services.³¹ Most responding purchasers reported that U.S.-produced PET resin was “comparable” but the remainder responded that subject imports are lower priced than domestic product.³²

When asked whether there are substitutes for PET resin, all U.S. producers and most responding importers cited one or more alternative materials. Aluminum and glass were the most frequently mentioned substitutes for PET resin.³³

4. Raw Materials

Primary raw materials of PET resin (purified terephthalic acid (“PTA”), dimethyl Terephthalate (“DMT”), terephthalic acid (“TPA”) and mono ethylene glycol (“MEG”) are oil and natural gas derivatives.³⁴ U.S. PET resin producers must buy these raw material inputs from integrated oil companies which hold considerable market power because of their large size and because of restricted technology for

²² CR/PR at Table III-5.

²³ CR at III-6; PR at III-5.

²⁴ CR at I-13; PR at I-10.

²⁵ CR/PR at Table III-6.

²⁶ CR at III-6-III-8; PR at III-6 to III-7.

²⁷ Reliance Prehearing Br. at 7-9.

²⁸ Reliance Prehearing Br. at 10.

²⁹ CR/PR at II-2.

³⁰ CR at I-13; PR at I-10.

³¹ CR/PR at Table II-5.

³² CR/PR at II-12; CR/PR at Table II-5.

³³ CR/PR at II-6.

³⁴ CR at VI-2; PR at VI-1.

PTA.³⁵ U.S. producers must also compete with other industries in acquiring raw materials PTA and MEG, which also are used in products such as PET film, PET filament, and polyester staple fiber.³⁶

During the period of investigation, there was extraordinary volatility in raw material prices due to the sharp increase in crude oil prices in 2004.³⁷ Driven by high costs of crude oil and natural gas, prices for the raw material inputs began to rise steeply at the end of 2002 and continued to increase substantially through 2004.³⁸ Two raw materials, MEG and PTA, together account for more than 75 percent of the cost of producing PET resin. The parties, financial analysts and the trade press all agree that prices of both MEG and PTA rose steadily from 2002 to 2004 to historically unprecedented levels.³⁹

5. Pricing Considerations

Among U.S. producers, one firm reported that it sells entirely on a spot basis. Among the other six producers, one firm had a relatively equal distribution between short-term and long-term contracts, while the rest had a majority of sales on either a short-term or long-term contract basis.⁴⁰ Long-term contracts are typically for periods of one to three years, while short-term contracts are for periods of one year or less. For both long-term and short-term contracts, quantities but not prices generally are fixed during the contract period. For long-term contracts, producers often negotiate a price annually, which serves as the base for a year, and then the price moves with the market on a quarterly basis.

B. Volume

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.”⁴¹

In this investigation, the Commission gathered data for the period 2002-2004. Between 2002 and 2003, the quantity of subject imports rose by *** percent from *** pounds in 2002, to a peak of *** pounds in 2003, and then declined in 2004 by over *** percent to *** pounds. The market share of subject imports, measured by total domestic consumption, rose from *** percent in 2002 to a peak of *** percent in 2003, and then declined to *** percent in 2004. As the market share of subject imports increased, between 2002-2003, the domestic industry’s market share declined, despite strong growth in domestic consumption of over ten percent. The domestic industry’s inability to capture any of this growth in demand is attributed at least in part to the presence of lower-priced subject imports.⁴²

³⁵ Hearing Tr. at 77-78 (Kinner); Petitioner’s Posthearing Br. at Ex. 17 (Bernstein Research Call, U.S. Chemicals: PET - Could Disappoint for Years, August 13, 2003 at 1); Reliance Prehearing Br. at Ex. 36.

³⁶ Reliance Prehearing Br. at 14-15.

³⁷ Hearing Tr. at 107 (Kinner).

³⁸ Reliance Prehearing Br. at Ex. 36.

³⁹ CR/PR at V-1; Reliance Prehearing Br. at 12-13 and Ex. 12 (Tecnon OrbiChem, PET Packaging Resin, Jan. 31, 2005 at 1); Ex. 13 (Chemical Week, November 3, 2004; Ex. 14 (Chemical News and Intelligence, July 28, 2003); Ex. 15 (Chemical Market Reporter, May 19, 2003). Hearing Tr. at 109-110 (Taylor).

⁴⁰ CR/PR at V-5.

⁴¹ 19 U.S.C. § 1677(7)(c)(i).

⁴² Between 2003-2004, the domestic industry’s market share increased 2.8 percent but still below the rate of increase in domestic consumption for that period and still below its 2002 level. Nonsubject imports also gained market share. Nonsubject imports captured *** percent of the market in 2002, *** percent in 2003, and *** percent in 2004. CR/PR at Table C-1. In 2004, nonsubject imports of NAFTA origin PET resin accounted for nearly all of the increase in import market share in 2004. U.S. producer Invista accounts for almost all of the imports from Canada, while U.S. producer M&G accounts for almost all of the imports from Mexico during the period of investigation. CR at III-10; PR at III-8.

The volume of subject imports sharply declined after the filing of the petition on March 24, 2004. Parties dispute the cause and timing of this decline. Respondents contend that imports began to drop prior to the petition filing and that increased raw material costs for PET resin in Asia, as well as the rising costs of ocean freight and energy, are the reason for the decline.⁴³ Petitioners concede that the decline preceded the filing of the petition, but argue that imports began to decline due to the rumored filing of the antidumping petition, around the time the industry petitioned to remove GSP treatment for PET resin imports.⁴⁴ The record indicates that the filing and the pendency of this investigation contributed to the decline in subject import volume and market share in 2004. Examining data from the preliminary investigation along with the record in this final investigation,⁴⁵ it is evident that the overall volume of subject imports increased consistently from 2001 through 2003, even as raw material costs increased sharply between 2002-2003. In 2004, the decline in subject import volume accelerated, particularly after the petition was filed.⁴⁶ I attribute this decline in 2004 to the filing and pendency of this investigation. Accordingly, I attribute less weight to the decline in subject import volume in 2004.⁴⁷

I therefore find that subject import volume, and the increase in that volume, in absolute terms and relative to consumption in the United States is significant.

C. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁴⁸

⁴³ Reliance Prehearing Br. at 16-17; Reliance Posthearing Br. at 12-13, n. 26, and Ex. 1 at 40; PET User's Coalition Prehearing Br. at 1; Hearing Tr. at 238 (Mullock).

⁴⁴ Petitioner's Posthearing Br. at 4 and 18; Hearing Tr. at 262 (Mullock); Staff Figures 1 and 2; See also Reliance Posthearing Br. at Ex. 11, (Tecnon OrbiChem, PET Packaging Resin Market Highlights, March 25, 2004, filing of a GSP petition in the past "tend to lead to full antidumping cases").

⁴⁵ I agree with the Respondents that it is not necessary or appropriate to extend the period of investigation to include 2001 data. Moreover, an exact comparison between the data gathered in the preliminary phase of the investigations with the data in these final investigations is not possible, because there are differences in the data sets. However, I reference 2001 data to understand trends.

⁴⁶ While other factors, along with rumors of this investigation may have contributed to some decline in subject import volume before the petition was filed, it is clear that the volume dropped sharply after, and as a result of, the petition.

⁴⁷ 19 U.S.C. § 1677(7)(I) states that the Commission "shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation . . . is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States." Further the SAA states that "[t]he imposition of provisional duties, in particular, can cause a reduction in import volumes and an increase in prices of both the subject imports and the domestic like product." SAA at 854.

⁴⁸ 19 U.S.C. § 1677(7)(C)(ii).

The record in these investigations indicates that domestically produced PET resin and imported PET resin are generally interchangeable.⁴⁹ All fourteen responding Purchasers report price as a very important factor in purchasing decisions. Price is named by four of fourteen responding purchasers as the number one factor, and the number two or three factor by the eight other responding purchasers.⁵⁰ With regard to whether the domestic product is lower priced than subject imports, a majority of responding purchasers indicate that U.S. produced PET resin is “comparable” but the remainder responded that the US product is higher priced than PET resin produced in the subject countries.⁵¹ This is particularly important where, as here, the domestic producers often describe PET resin as a commodity product.⁵²

The Commission gathered quarterly pricing information on five products, three of which were useful for price comparisons.⁵³ In the majority of quarters where pricing comparisons were possible, subject imports undersold the domestic like product by small but significant margins.⁵⁴ Product 3A represents the largest category by volume for both domestic product and subject imports. In this category, there is mostly underselling, and by margins ranging from *** to *** percent.⁵⁵

Overall, domestic prices increased throughout the period of investigation for all pricing products, and there is little evidence of price depression.⁵⁶ However, I do find price suppression due to the low priced subject imports. A combination of competition from low priced subject imports and rising production costs caused the domestic industry to experience a cost-price squeeze. While, the U.S. industry’s selling prices increased over the period examined, they did not increase adequately to cover rising raw material costs. Petitioners argue that they are unable to fully pass along their raw material costs in part, because in this industry, end users and their converters in the PET bottling industry form a concentrated purchasing block who have the power to keep domestic prices low by leveraging low subject import prices in price negotiations.⁵⁷ Indeed, the record shows that the industry’s end market is

⁴⁹ CR/PR Table II-3. Eighty-five percent of responding domestic producers and at least 72 percent of responding importers indicated that U.S. produced PET resin and imports of PET resin from all subject countries are either “always” or “frequently” interchangeable.

⁵⁰ CR/PR at Table II-1.

⁵¹ CR/PR at Table II-5.

⁵² CR/PR at I-13.

⁵³ Pricing data were received on products 1A, 2, 3A, 3B and 4A. Only domestic producers reported data on products 3B and 4A.

⁵⁴ As stated at the Conference, as would be expected with a commodity product like PET resin, “[c]ustomers are quite likely to switch suppliers for a small decrease in price, even for a penny a pound.” Conference Tr. at 19 (Peterson). So even small margins of underselling are significant.

Overall there are 69 instances where prices for domestic PET resin and imported PET resin could be compared. Imports from India were lower priced in 13 out of 18 quarterly price comparisons and by margins of *** to *** percent. Imports from Indonesia were lower priced in 12 out of 15 comparisons by margins of *** to *** percent. Imports from Thailand were lower priced in 24 out of 36 comparisons by margins of *** to *** percent. CR/PR at V-15 and Tables V-1 - V-4. Petitioners strenuously argue that direct imports by major purchasers of PET resin represent lost sales to the domestic industry. Petitioners argue that direct importer data from PepsiCo and Nestle Waters North America “Nestle” represent significant quantities of subject imports and should be included in pricing tables 3A and 1A, respectively. Because *** import the subject product directly, prices reported by these *** companies are at a different level of trade than purchases reported by importers in the questionnaires; thus, the prices are not comparable for the purpose of analyzing underselling. I note, however, that if ***

⁵⁵ CR/PR at Table V-3.

⁵⁶ Between 2002-2004, domestic prices for product 1A increased from \$*** to \$*** dollars per pound; domestic prices for product 2 increased from \$*** to \$*** dollars per pound; domestic prices for product 3A increased from \$*** to \$*** dollars per pound, domestic prices for product 3B increased from \$*** to \$*** dollars per pound; and domestic prices for product 4A increased from \$*** to \$*** dollars per pound.

⁵⁷ Hearing Tr. at 60-61 (Dewsbury) and CR at I-4; PR at I-3.

dominated by PepsiCo, Coca-Cola and Nestle through their relationship with various bottlers.⁵⁸ Hearing testimony affirmed that one reason why domestic producer M&G has not been able to pass through price increases is that one large purchaser, PepsiCo, is leveraging small quantities of imported subject resin to refuse price increases by M&G.⁵⁹

There are no confirmed lost sales or lost revenue allegations on the record in this final investigation, but there is evidence that purchasers are using subject import prices both to refuse price increases, as described above, and to negotiate lower domestic prices.⁶⁰ One purchaser used spot Asian pricing in negotiations with a domestic supplier, giving that domestic supplier the option to meet the price or pass on the order.⁶¹ A producer similarly testified that in 2003, when there was significant volatility in raw material prices, a customer asked him for a fixed price for the year based on a fixed price quote the customer received for Asian PET resin.⁶² In acknowledgment of this practice, one purchaser testified “it’s the buyer’s job to leverage price regardless of the source.”⁶³

Based on the record, I find there has been significant price underselling by imports of the subject merchandise and that subject imports have suppressed domestic prices to a significant degree.

D. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁴ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶⁵

Over the period of investigation, the overall condition of the U.S. PET resin industry deteriorated in terms of its financial performance, despite some improvements in volume-related indicators. While the industry increased production and shipments and reduced its inventories between 2002 and 2004, its financial picture worsened considerably as increases in unit sales value failed to keep pace with increased

⁵⁸ CR at I-4, n. 7; PR at I-3; See also Hearing Tr. at 124 (Kinner) and at 273-74 (Mullock).

⁵⁹ Hearing Tr. at 124-25 (Adlam).

⁶⁰ U.S. producers are being forced “to price their product based off Asian pricing.” Petitioner’s Posthearing Br., Ex. 17 citing Berstein Research Call at 2 (August 13, 2003).

⁶¹ *** purchaser questionnaire response. *** purchased from Taiwan during the period of investigation. Commerce, in its final determination, found that imports of bottle-grade PET resin from Taiwan have not been sold at less than fair value during the period of investigation. 70 Fed. Reg. 13454. Consequently, the Commission terminated its investigation concerning Taiwan on March 21, 2005. See 70 Fed. Reg. 15884 (Mar. 29, 2005). Respondents argue that as a matter of law the Commission may not give weight to the *** allegation. Respondent’s Final Comments at 6. However, ***’s comments are indicative of the nature of price competition in the industry. I agree that ***’s comment is not evidence of a lost sale or lost revenue, but it shows that imports are being used to push domestic prices down.

⁶² Hearing Tr. at 123 (Kinner).

⁶³ Hearing Tr. at 274 (Mullock).

⁶⁴ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 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.”).

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

raw material costs.⁶⁶ As noted in the discussion of pricing above, subject imports suppressed prices, contributing to the cost-price squeeze.

Consistent with what one would expect in a growing market for PET resin, certain indicators of the domestic industry's health were positive during the period examined. Between 2002 and 2004, industry capacity expanded by nearly 12 percent as U.S. producers brought new production facilities on line to serve the new demand.⁶⁷ U.S. production and shipments increased, although much of this increase did not occur until 2004 when subject imports declined,⁶⁸ and inventories declined considerably.⁶⁹ At the same time, the number of production workers over the period dropped as did capital expenditures.⁷⁰ The U.S. industry's market share decreased between 2002 and 2003 but recovered slightly in 2004 when subject imports fell.⁷¹

The effects of the cost-price squeeze suffered by the U.S. PET resin industry over the period examined are most clearly reflected in the financial performance of the industry. Despite healthy double-digit increases in net sales quantities, values, and unit values during the period, operating income for the industry dropped from \$141 million in 2002 to \$33 million in 2003 and \$29 million in 2004.⁷² Operating income as a percent of net sales dropped from 7.4 percent in 2002 to 1.5 percent in 2003 and 1.1 percent in 2004.⁷³

The decline in the operating results of the U.S. PET resin industry was clearly caused by the narrowing margin between its average sales values and its costs of goods sold.⁷⁴ Between 2002 and 2003, the industry's average cost of goods sold increased five cents per pound while its average commercial unit sales value increased only three cents per pound.⁷⁵ Price suppression due to subject imports, as discussed above, prevented the domestic industry from raising prices to cover these increased costs. I note that, in 2004, as subject imports declined, the increase in the average commercial unit sales value equaled that in the industry's cost of good sold.⁷⁶

⁶⁶ CR/PR at Table C-1 and VI-1.

⁶⁷ The domestic industry's capacity expansion appears consistent with projected demand growth. Petitioner's Posthearing Br. At 43-49, 45; Hearing Tr. at 229 (Mullock).

⁶⁸ CR/PR at Table C-1.

⁶⁹ Id.

⁷⁰ The number of production workers declined from 1,974 workers in 2002 to 1,781 workers in 2004. Id. Both Voridian and Wellman laid off employees during the period of investigation and reduced the pay for all remaining employees. Petitioners Posthearing Br. at 49.

Capital expenditures declined overall from \$*** in 2002 to \$*** in 2004. CR/PR at Table C-1. Domestic producers have canceled and delayed many capacity expansion projects within the U.S. required to meet growing demand. Petitioner's Prehearing Br. at 48; and Posthearing Br. at 5 and Ex. 6, 7 and 8.

⁷¹ Domestic industry market share was 83.3 percent in 2002, 79.9 percent in 2003, and 82.7 percent in 2004. CR/PR at Table C-1. Although the industry's market share increased from 2003 to 2004, as noted in the volume discussion above, I attribute the decline in subject import market share and the rise in the domestic industry's market share in 2004 to the filing of the petition and accordingly give it less weight.

⁷² CR/PR at Table C-1.

⁷³ Id.

⁷⁴ CR/PR at Table VI-1; see also Petitioner's Posthearing Br. at 3.

⁷⁵ CR/PR at Table VI-1.

⁷⁶ U.S. producers raised their commercial shipments average unit values from \$*** in 2002, to \$*** in 2003, and to \$*** in 2004. Unit cost of goods sold increased from \$0.37 in 2002, to \$0.42 in 2003, to \$0.49 in 2004. CR/PR at Table VI-1.

II. CONCLUSION

Based on significant declines in the condition of the domestic industry, which occurred during a period of healthy demand and at the same time that low-priced subject merchandise was being imported in increasing quantities and suppressing domestic prices, I determine that the domestic industry producing PET resin is materially injured by reason of unfairly traded subject imports from India, Indonesia and Thailand.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on March 24, 2004, by the U.S. PET Resin Producers' Coalition alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of polyethylene terephthalate ("PET") resin¹ from India and Thailand, and by less-than-fair-value ("LTFV") imports of PET resin from India, Indonesia, Taiwan, and Thailand. On March 24, 2005, the Commission terminated its countervailing duty investigation regarding Thailand (Inv. No. 701-TA-440 (Final)) as a result of Commerce's final negative determination of countervailable subsidies to producers of PET resin in Thailand. On the same date, the Commission also terminated its antidumping investigation (Inv. No. 731-TA-1079 (Final)) concerning Taiwan, following Commerce's final negative determination of LTFV sales of subject imports from Taiwan. Information relating to the background of the investigations is presented below.

Effective date	Action	Federal Register citation¹
March 24, 2004	Petition filed with Commerce and the Commission; Commission initiates its investigations	69 FR 16955; March 31, 2004
April 20, 2004	Commerce initiates its preliminary antidumping and countervailing duty investigations	69 FR 21082 and 21086
May 19, 2004	Commission's preliminary determinations and views	69 FR 28948
August 30, 2004	Commerce's preliminary subsidy determinations	69 FR 52862 and 52866
October 28, 2004	Commerce's preliminary LTFV determinations	69 FR 62850, 62856, 62861, and 62868
October 28, 2004	Commission schedules the final phase of the investigations	69 FR 67365; November 17, 2004
March 15, 2005	Commission's hearing ²	N.A.
March 21, 2005	Commerce's final LTFV and subsidy determinations	70 FR 13451, 13453, 13454, 13456, 13460, and 13462
March 21, 2005	Commission's termination of its countervailing duty investigation regarding Thailand and its antidumping investigation regarding Taiwan	70 FR 15884; March 29, 2005
April 18, 2005	Commission's vote	N.A.
May 3, 2005	Commission's determinations and views sent to Commerce	N.A.
¹ Selected <i>Federal Register</i> notices are presented in appendix A. ² A list of hearing witnesses is presented in appendix B.		

ORGANIZATION OF REPORT

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

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

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

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

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

. . .

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

. . .

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to . . . (I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

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

U.S. MARKET SUMMARY

Trade in the U.S. market for PET resin totaled more than \$2.7 billion in 2004. There are seven producers of PET resin in the United States, including the following four firms that formed the U.S. PET Resin Producers' Coalition ("Petitioner") for purposes of these investigations: Voridian, division of Eastman Chemical Company ("Voridian"); Wellman, Inc. ("Wellman"); DAK Americas, LLC, ("DAK"); and, Nan Ya Plastics Corporation ("Nan Ya"). Additionally, domestic producers M&G Polymers USA ("M&G") and Invista² S.A.R.L. of Koch Industries ("Invista") support the petition, while ***.

Shipments of U.S.-produced PET resin totaled almost \$2.3 billion in 2004, and accounted for 82.9 percent of apparent consumption by value. U.S. producers and importers sell primarily to both end users³ and "converters"⁴ of PET resin and secondarily to brokers, who in turn sell the subject merchandise to either end users or converters. Bottling is the primary application for bottle-grade PET resin; other applications of PET resin include sheet, strapping, and other food containers.⁵ End users and their converters in the PET bottling industry reportedly form a concentrated purchasing block.⁶ However, even within the PET resin bottling industry, no single converter accounts for a majority of any U.S. producer's business.⁷ Most converters source from several domestic producers and occasionally from importers of the subject merchandise. *** are some of the larger purchasers and converters of the subject merchandise.

Imports of PET resin from countries subject to these investigations totaled almost *** in 2004, and accounted for *** percent of apparent U.S. consumption by value.⁸ Imports of PET resin from all sources totaled \$473 million in 2004, and accounted for 17.1 percent of apparent U.S. consumption by value. *** importing firms accounted for roughly two-thirds of all subject PET resin imports from India, Indonesia, and Thailand in 2004 by quantity. Four U.S. producers also imported PET resin but mostly from nonsubject sources.⁹

² In the preliminary phase of these investigations, U.S. producer KoSa had not yet become Invista. In April of 2004, Koch Industries merged its KoSa operations with the newly acquired fiber assets Koch Industries had purchased from DuPont; this merger resulted in U.S. producer KoSa becoming Invista.

³ In the PET resin industry, end users are commonly understood to be companies that fill PET bottles with content. For example, Nestle-Waters is an end user because it takes PET resin bottles and fills them with water and then sells that water on the market.

⁴ In the PET resin industry, converters are end users that take the subject merchandise and convert it into either bottle preforms (intermediate manufacturing step to create bottles) or fully blown bottles. For example, Constar is a converter because it takes PET resin pellets and blow-molds the pellets into bottles, which it then sells on the merchant market.

⁵ It was testified that PET strap and sheet manufacturers are a separate industry apart from the PET bottle manufacturing industry. Bottle converters do not manufacture sheet and strap applications, while sheet and strap converters do not manufacture PET bottles. Additionally, it was testified that "{f}or the most part, strapping people use scrap" and that sheet converters use both "prime and sub-prime material and also some wide spec material." Hearing transcript, pp. 71-73 (Sherlock and Dewsbury).

⁶ Hearing transcript, p. 60-61 (Dewsbury).

⁷ According to U.S. producers' questionnaires ***. Additionally, it was testified that three major end users (Pepsico, Coca-Cola, and Nestle-Waters) currently leverage around 80 percent of the market for bottle-grade PET resin through the use of eight converters. Hearing transcript, pp. 34 and 60 (Peterson and Dewsbury).

⁸ In 2003, subject imports by value totaled a little more than ***, accounting for *** percent of apparent consumption.

⁹ ***.

SUMMARY DATA AND DATA SOURCES

Table C-1 of appendix C presents a summary of data collected in these investigations. Unless otherwise noted, this report presents data based on responses to the Commission's questionnaires from all seven U.S. manufacturers of PET resin during the period of investigation, January 1, 2002 through December 31, 2004. U.S. import data are based on official Commerce statistics for Thailand, importers' questionnaires for India, and foreign producers' questionnaires for Indonesia.¹⁰

PREVIOUS AND RELATED INVESTIGATIONS

Bottle-grade PET resin subject to these investigations has not been the subject of any prior antidumping or countervailing duty investigations in the United States. A similar product, PET film, was subject to antidumping duty investigations in the United States in 2000. Additionally, the PET Producers Coalition had filed for removal of the Generalized System of Preferences ("GSP") eligibility of India, Indonesia, and Thailand for bottle-grade PET resin imports prior to the initiation of these antidumping and countervailing duty investigations; that GSP petition was denied.¹¹

NATURE AND EXTENT OF SUBSIDIES AND SALES AT LTFV

Subsidies

On March 21, 2005, the Commission received notification of Commerce's final determinations concerning the subsidies that petitioners alleged that the governments of India and Thailand have been conferring to manufacturers, producers, and exporters of bottle-grade PET resin. Commerce found that countervailable subsidies are not being provided by the government of Thailand and that countervailable subsidies are being provided by the government of India through the following programs:

1. Pre- and Post-Shipment Export Financing
2. Duty Entitlement Passbook Scheme (DEPS)
3. Income Tax Exemption Scheme, 80 HHC
4. Export Promotion Capital Goods Scheme (EPCGS)
5. Export Oriented Units (EOUs) Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies
6. Export Oriented Units (EOUs) Program: Duty-Free Import of Capital Goods and Raw Materials
7. Export Oriented Units (EOUs) Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically.
8. State of Gujarat (SOG) Program: Sales Tax Incentive Scheme
9. State of Maharashtra (SOM) Program: Sales Tax Incentive Scheme
10. State of West Bengal (SWB) Sales Tax Incentive Scheme

Table I-1 summarizes the final net subsidy rates as calculated by Commerce for foreign producers/exporters in India and Thailand.

¹⁰ See Part IV of this report for a discussion of import misclassification and misreporting issues.

¹¹ See 69 FR 40704 (July 6, 2004). GSP 2003 Annual Product Review.

Table I-1
PET resin: Commerce's final net subsidy rates, by source and firm

Source	Producer/exporter	Net subsidy rate (percent ad valorem)
India	Reliance	20.26
	South Asia Petrochem	19.08
	Futura	6.15
	Elque	12.41
	All others	14.63
Thailand	Skinkong	0.31 (<i>de minimis</i>)
	Bangkok Polyester	0.73 (<i>de minimis</i>)
	Indopet	0.70 (<i>de minimis</i>)
	All others	0.47 (<i>de minimis</i>)

Source: Federal register notices in appendix A.

Sales at LTFV

On March 21, 2005, the Commission received notification of Commerce's final affirmative determinations of sales at LTFV of PET resin from India, Indonesia, and Thailand, and a final determination of sales at not LTFV of PET resin from Taiwan. Table I-2 summarizes the final dumping margins calculated by Commerce for foreign producers/exporters in India, Indonesia, Taiwan, and Thailand.

Table I-2
Commerce's final dumping margins, by source and firm

Source	Producer/exporter	Weighted-average dumping margin (percent ad valorem)
India	Reliance	52.54
	South Asia	21.05
	All others	21.05
Indonesia	Indorama	0.00 (<i>de minimis</i>)
	Polypet	27.61
	SK Keris	27.61
	All others	18.41
Taiwan	Far Eastern	0.10 (<i>de minimis</i>)
	All others	0.10 (<i>de minimis</i>)
Thailand	Bangkok Polyester	24.83
	Shinkong	41.28
	All others	24.83

Source: Federal register notices in appendix A.

THE SUBJECT PRODUCT

Commerce has defined the imported product subject to these investigations as follows:¹²

Bottle-Grade (BG) PET Resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes BG PET Resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any BG PET Resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET is outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigations.

The imported product subject to these investigations is primarily entered under statistical reporting number 3907.60.0010 of the Harmonized Tariff Schedule of the United States (“HTS”); however, merchandise covered by HTS statistical reporting number 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations.¹³ For subheading 3907.60.00, a normal trade relations (“NTR”) tariff rate of 6.5 percent *ad valorem* applies to imports from Taiwan. Products of India, Indonesia, and Thailand are eligible to enter free of duty under the GSP, and otherwise enter at the NTR rate.¹⁴ Table I-3 presents current tariff rates for PET resin.

Physical Characteristics and Uses

PET resin is a large-volume, commodity-grade thermoplastic polyester polymer. Bottle-grade PET resin is primarily sold in bulk form as chips or pellets to downstream end users/converters. Converters use PET resin to manufacture bottles and other sterile containers that house liquid and solid products for human consumption or contact. Major end-use applications for bottle-grade PET resin include carbonated soft drink (“CSD”) bottles, water bottles, and other containers such as for juices, peanut butter, jams and jellies, salad dressings, cooking oils, household cleaners, and cosmetics. Articles manufactured with PET resin are clear, transparent, sterile, lightweight, and thermally stable. End users also like PET resin for its impact resistance, closure integrity, gas barriers, and strength properties. While PET resin is known for its clarity in end-use applications, PET resin pellets themselves are slightly opaque and whitish in color when sold to converters.¹⁵

¹² See, e.g., 69 FR 62850.

¹³ Additionally, during the final phase of these investigations, U.S. importer *** reported that between 2002 and 2004 it had imported subject bottle-grade PET resin from *** under HTS statistical reporting number 3907.99.0050 “Other polyesters.” This firm also reported that it currently imports PET resin under the proper HTS statistical reporting number for its subject bottle-grade PET resin imports from ***. E-mail from ***, March 29, 2005.

¹⁴ The Petitioner in these investigations filed a petition in the 2003 GSP Annual Review requesting withdrawal of duty-free treatment for imports of PET resin from the subject countries; this separate GSP petition was denied following an inter-agency panel review of the domestic industry. See 69 FR 40704. (July 6, 2004)

¹⁵ This discoloration in pellet form is due to part of the manufacturing process. See “Manufacturing Process” section herein.

Table I-3
PET resin: Tariff rates, 2004

		General ¹	Special ²	Column 2 ³
HTS provision	Article description	Rates (<i>percent ad valorem</i>)		
3907	Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, poliallyl esters and other polyesters, in primary forms:			
3907.60.00	Poly(ethylene terephthalate):	6.5%	(²)	15.4cents/kg +45%
3907.60.0010	Bottle-grade resins			
3907.60.0050	Other			
3907.99.00	Other polyesters	6.5 %	(²)	15.4cents/kg +45%
3907.99.0050	Other, not otherwise specified			
¹ Normal trade relations, formerly known as the most-favored-nation duty rate. ² Special rates apply to imports of PET resin from certain trading partners to the United States. The notes to the HTS indicate that duty-free entry is available to eligible products under the GSP (except products of Argentina), CBERA, ATPA, the Uruguay Round agreement on pharmaceutical products, and U.S. free-trade agreements with Australia, Canada, Chile, Israel, Jordan, and Mexico; and that, in 2005, a reduced rate of 3 cents per kilogram plus 3.5 percent applies to eligible goods of Singapore under the FTA with that country. ³ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.				
Source: Harmonized Tariff Schedule of the United States (2004).				

The product scope defines bottle-grade PET resin having an intrinsic viscosity (“IV”) of at least 0.68 but not more than 0.86 deciliters per gram.¹⁶ Also included within this scope are all bottle-grade resins containing various additives, including recycled PET, which do not alter the fundamental properties of the subject product. The subject product does not include amorphous (“AMPET”) resin, which has an IV below 0.68 deciliters per gram, and is used either as feedstock for the production of PET resin or is separately processed (spun) into polyester fiber for use in further downstream applications such as carpet, fabric, or fiberfill. Additionally, the subject product excludes certain further-processed PET resins used in applications whose resulting resin have an IV greater than 0.86 deciliters per gram, such as PET resins destined for tire cord or certain microwaveable trays.¹⁷

The domestic industry subdivides bottle-grade PET resin into two major end-use classifications: “cold-fill” and “hot-fill.” Cold-fill refers to container applications, such as for soda or water, where the substance being filled into the container does not require excessive temperatures in the filling process, i.e., can be filled at an ambient room temperature. Hot-fill refers to container applications, such as for

¹⁶ Statistical note 1 to Chapter 39; Harmonized Tariff Schedule of the United States (2005). Viscosity, in general, refers to the resistance of a given material in liquid or molten form to shear or force under defined conditions. A deciliter is a unit of volume defined as one tenth of a liter.

¹⁷ Common PET resin applications with such high IVs include tire cord, certain strapping, and most microwaveable containers applications. Conference transcript, pp. 78-79 (Dewsbury and Taylor). Any converter purchasing PET resin within the IV bottle-grade range for strapping or microwaveable container applications would be covered by the scope of these investigations for bottle-grade PET resin purchases. However, it was noted that strapping and sheet converters often use scrap, subprime, and recycled resin in such applications. Hearing transcript, pp. 71-73 (Sherlock and Dewsbury).

juices or sauces, where the substance being filled into the container requires high temperatures¹⁸ in the filling process, analogous to a canning process.¹⁹ Cold-fill PET resin usually has a lower IV range than hot-fill PET resin, however, both fall within the IV range defining the product subject to these investigations. The same equipment and employees produce both hot-fill and cold-fill PET resins. Some additives are incorporated into the melt-phase polymerization stage of production for certain hot-fill resins.

Converters produce bottles and other specialty food containers predominately by an injection stretch blow-molding process. In this process, an intermediate “preform” product is produced by injection molding,²⁰ followed by a stretch blow-molding process to form finished PET containers. No U.S. PET resin producer has any significant amount of preform or stretch blow-molding equipment intended for commercial use, nor does any U.S. PET resin producer have ownership in downstream applications for its polymers. Most bottle converters manufacture both the bottle preforms and the final blow-molded bottles.²¹ PET resin can also be extruded into sheets of various thicknesses or thermoformed into clear cups, cupcake trays, strawberry clamshells, vegetable containers, *et cetera*. PET resin can also be directly extruded to produce high-strength strapping for industrial uses.

There exists a large recycling industry for PET resin applications. PET resin containers are ideal for recycling back into AMPET resin for polyester fibers applications such as garments, carpets, and fiberfill. Recycled PET resin cannot be directly used for the remanufacture of bottle-grade PET resin due to impurities that are nearly impossible to remove in the recycling process. However, several domestic producers do blend small amounts of recycled PET resin with virgin PET resin.²² The American Plastics Counsel has labeled bottle-grade PET resin with the “PETE 1” code for recycling purposes. This label is usually found on or near the bottom of the PET bottle or container.²³

PET resin must be protected from moisture and contamination during transport. Both imported and exported products are typically shipped offshore in sealed one metric ton poly bags (super sacks) within large metal shipping containers. Subject imported product may be removed from the containers and temporarily stored in order to have some local inventory and save on demurrage. Both imported and domestic product may be shipped bulk inland in specially lined railcars or truck beds in lots of 200,000 pounds and 50,000 pounds, respectively. Subject imported product can be the most competitive with the

¹⁸ “Hot-fill refers to the use of PET resin for products like juices that are filled hot by the bottler.” Hearing transcript, p. 17 (Sherlock).

¹⁹ Hot-fill is distinct from the term “heat-set” which is equivalent to “thermomolding.” A converter of PET resin may design a container to which the converter then applies additional heat and folding to the polymer in order to further modify the container’s physical properties. This process is commonly referred to as heat-set or thermomolding and is not directly analogous to hot-fill applications. E-mail correspondence from *** dated February 4, 2005.

²⁰ Creating preforms is an intermediate step for producing PET resin bottles. See hearing transcript, p. 17 (Sherlock). Most U.S. converters that produce the final bottles also produce these intermediate preforms directly from PET resin pellets. However, some converters produce bottle preforms for sale to other converters who then blow those preforms into bottles.

²¹ As bottle converters often create the finished bottle product, these must be physically located near their customers, the bottle fillers, because it would be uneconomical to ship empty bottles (mostly air weight) any great distance. Hearing transcript, p. 65 (Dewsbury).

²² *** indicated in their questionnaire responses that a portion of their domestic production involves blended PET resin.

²³ Petition, pp. 9-10; staff telephone interviews with ***, April 19-20, 2004.

U.S. producers in coastal regions, where the U.S. producers have the higher cost of inland freight, but where the importers have the lower cost of freight.²⁴

Manufacturing Process

Firms manufacture bottle-grade PET resin by submitting AMPET resin to a solid-state polymerization (“SSP”) treatment. In turn, firms manufacture AMPET resin from a controlled chemical reaction between the petro-based chemical terephthalic acid (“TPA”)²⁵ and the natural gas-based chemical ethylene glycol (“EG”)²⁶ in a melt-phase polymerization treatment. According to the scope of these investigations, a firm must operate an SSP treatment facility where it converts AMPET resin into bottle-grade PET resin to be considered a producer of subject merchandise.²⁷ In both the domestic industry and the subject-country foreign industries, PET resin producers have both the melt-phase polymerization capability to produce AMPET and the solid-state polymerization capability to produce PET resin.

Bottle-grade PET resin is produced by submitting AMPET resin to a solid-state polymerization treatment. This SSP treatment increases the IV of the polyester pellet to a level within the range of IVs as defined within the scope of these investigations. The amorphous chip’s raw material feedstocks, TPA and EG, are based on para-xylene and ethylene, respectively, from the petrochemical industry; thus, TPA and EG feedstock prices for the manufacture of AMPET resin are variably dependent upon prices in the larger petrochemical industry. TPA and EG account for approximately 98 percent of AMPET resin by weight²⁸ and an estimated 75 to 80 percent of PET resin by cost.²⁹ AMPET resin producers usually modify polymer properties by incorporating nominal amounts of copolymer chemical reactants such as isophthalic acid (IPA) at levels of 2 to 3 percent by weight.³⁰

An SSP treatment essentially bakes the AMPET resin chips in large cylindrical reaction towers. In these towers the AMPET chips flow through an oxygen-free, nitrogen gas atmosphere at temperatures above 200°C for a period of 18-24 hours. Once the baking is completed, the resin pellets exit the bottom of the reaction tower where air cooling takes place in a closed circuit heat exchanger prior to storage for transport by rail or truck.³¹

Some U.S. PET resin producers are partially vertically integrated between feedstocks and PET resin production, while others are not. *** are the only domestic producers to create TPA from para-xylene for the majority of their feedstock needs; of these two, *** also produces DMT captively. ***

²⁴ Conference transcript, pp. 78-79 (Dewsbury) and 152-153 (Mullock); and staff telephone interviews with ***, April 19-20, 2004.

²⁵ Older technologies use dimethyl terephthalate (DMT) in lieu of TPA in manufacturing of AMPET resin, but TPA has largely displaced DMT as the main raw material component in the industry. See, testimony of Hans Kinner, Voridian, conference transcript, pp. 81-82. Also, there are several grades of TPA. The best quality TPA is referred to as PTA, or purified terephthalic acid, and this is the quality of TPA that is sold on the merchant market to PET resin producers. PET resin lines can use other qualities of TPA other than PTA; however, if non-purified forms of TPA are used in PET resin manufacturing, the PET resin lines must compensate for the lower quality raw material input through further in-line chemical processing.

²⁶ Also referred to as MEG, or mono ethylene glycol.

²⁷ AMPET pellets have an IV outside of scope range prior to SSP treatment and cannot be used by converters to produce bottle applications.

²⁸ Staff field trip reports: Wellman, Nan Ya, Voridian, and Invista (KoSa), January 12-14, 2005.

²⁹ Conference transcript. p. 15 (Sherlock).

³⁰ Copolymer resin is usually demanded by consumers because of improved processing speed and physical properties. Homopolymers define unmodified forms of PET resin.

³¹ Nitrogen gas of high purity is typically produced onsite by air liquefaction and distillation.

source a portion of their EG requirements from captive sources. *** sources captive supplies of DMT and a small portion of its TPA needs internally.³² *** manufacture AMPET and PET resins using TPA and EG raw materials purchased solely on the merchant market.³³

Interchangeability and Customer and Producer Perceptions

Producers, purchasers, and importers responding to questionnaires generally agreed that the U.S.-produced and imported product were interchangeable and were viewed as such by customers as well.³⁴ Domestic producers often described PET resin as a commodity product and as being more or less interchangeable with any other domestically produced or imported PET resin product.³⁵ In terms of resin specifications, no foreign producer currently exports hot-fill resin to the United States; although, it is physically possible for foreign producers to manufacture all-grades of PET resin.³⁶ Although some customers might choose a supplier based on the supplier's ability to offer resin of a certain specification (with a specific IV, special additive, hot-fill proprieties, UV barrier protection, or so on), the bulk of bottle-grade PET resin is generally interchangeable. More detailed information on interchangeability can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

Channels of Distribution

During the period of investigation, U.S. producers reported selling more than 90 percent of their product to end users while importers reported selling all of their product to end users. In a number of instances, the importers consumed all of their imports internally in the production of bottles and packaging products. Additional information on channels of distribution can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

Price

Average unit values for U.S. shipments of U.S.-produced bottle-grade PET resin and imports from the subject countries are presented in table I-4. Pricing practices and prices reported for PET resin in response to Commission questionnaires are presented in Part V of this report, *Pricing and Related Information*.

³² Staff field trip reports: Wellman, Nan Ya, Voridian, and Invista (KoSa), January 12-14, 2005.

³³ Ibid. See also Conference transcript, pp. 46-48.

³⁴ The customer base for this product is rather limited. In response to staff questions, petitioner estimated that the ***. Petitioner's postconference brief, p. 41.

³⁵ Staff field trip reports: Wellman, Nan Ya, Voridian, and Invista (KoSa), January 12-14, 2005.

³⁶ Hearing transcript, pp. 17 and 314 (Sherlock and Mullock).

Table I-4

PET resin: Average unit values of U.S. shipments by U.S. producers and importers, 2002-04

Item	Calendar years		
	2002	2003	2004
	Unit value (<i>dollars per pound</i>)		
Shipments of U.S.-produced product	0.43	0.46	0.53
Shipments of imports from --			
India	0.45	0.45	0.52
Indonesia, subject	0.41	0.46	0.51
Thailand	0.41	0.46	0.54
Average	0.43	0.46	0.53

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

U.S. MARKET SEGMENTS/CHANNELS OF DISTRIBUTION

PET resin is used in three main applications: bottles for soft drinks and other beverages, sheets used for making clam shells by which items such as strawberry and other fruits are packaged, and strapping which is used on bulk substances such as lumber.¹ The demand for PET resin used in bottles tends to be seasonal, reaching a peak during the summer months as the demand for soft drinks is at peak levels.²

Practically all sales of PET resin go to end users/converters rather than distributors. In the case of U.S. producers, approximately 90 percent of commercial U.S. shipments went to end users during 2002-04. In the case of imports from India, Indonesia, and Thailand, nearly all U.S. shipments went to end users during 2002-04.

The customers for PET resin in the United States are increasingly becoming consolidated.³ There are eight major converters in the United States and three major end users in the United States.⁴ These three end users account for a majority of the PET resin consumption in the United States.⁵ End users either purchase PET resin bottles from converters or produce their own bottles in-house. Among the three largest end users in the United States, *** purchases *** its PET resin bottles from converters; *** purchases roughly *** of its bottles from converters and produces the remainder in-house; and *** uses converters for *** PET resin bottle supply.⁶

When firms were asked to list market areas in the United States where they sell PET resin, the responses showed that U.S. producers' market areas tended to be broader than those of importers from the subject countries. Among the seven producers, five reported that they sell nationally, while the other two reported that they sell in specific regions including the Northeast, the Mid-Atlantic region, the Southeast, the Midwest, the Northwest, and the West Coast. Moreover, sales by U.S. producers were more heavily concentrated east of the Rocky Mountains, with all of the U.S. producers making at least 70 percent of their sales in this eastern territory. Among the importers of PET resin from the subject countries, five companies reported that they sold nationally. The others listed specific regions including the Northeast, the Midwest, the Northwest, the Southeast, and the West Coast. However, *** stated that all its sales were in the Northeast. *** and *** stated that all their sales were on the West Coast.

Furthermore, some converters of PET resin have plant locations throughout the United States. Among the larger consumers of PET resin in the United States, *** is a converter that purchases imports from India and Thailand and has facilities in the northeast, midwest, and on the west coast. Another large consumer, ***, a converter and end user that purchases imports from India and Thailand, has bottling facilities on both the east and west coasts.

U.S.-inland shipping distances for U.S.-produced PET resin were compared with those for imports from the subject countries.⁷ For U.S. producers, approximately *** percent of their U.S. sales occur within 100 miles of their storage or production facility, *** percent were within distances of 101 to

¹ Conference transcript, p. 15 (Lane).

² Ibid., pp. 60-61 (Adlam).

³ Hearing transcript, p. 61 (Dewsbury).

⁴ Ibid., p. 60 (Dewsbury).

⁵ The three major end users Coca-Cola, PepsiCo, and Nestle account for approximately 50 percent of PET resin consumption in the United States. Hearing transcript, p. 127 (Taylor).

⁶ Ibid., p. 61 (Dewsbury).

⁷ Information was not available in a form where it was possible to break out shipping costs separately for imports from India, Indonesia, and Thailand.

1,000 miles, and *** percent were at distances of over 1,000 miles from their facilities. For imports from the subject countries, *** percent of sales occurred within 100 miles of importers' storage facilities, *** percent were within 101 to 1,000 miles, and *** percent were at distances of over 1,000 miles.

Lead times for delivery of PET resin ranged widely for both producers and importers. For producers, they ranged from two to three days to as much as 50 days. For importers, they ranged from one day to as much as four months. Questionnaire responses show that lead times for PET resin products held in inventories tend to be shorter than those for products that have to be specially ordered. However, the lead times vary from company to company.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. PET resin producers are likely to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced PET resin to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity and the existence of alternate markets or inventories.

Industry capacity

U.S. producers' capacity utilization rates ranged from a high of 89.4 percent in 2002 to a low of 85.2 percent in 2003. This level of capacity utilization indicates that U.S. producers have some unused capacity with which they could increase production of PET resin in the event of a price change.

Alternative markets

Total exports by U.S. producers are relatively large, accounting for 14.2 and 15.4 percent of total shipments annually during 2002-04. These data indicate that U.S. producers do have the ability to divert some shipments to or from alternative markets in response to changes in the price of PET resin.

Inventory levels

Inventory levels tend to be moderate in the PET resin industry, as most of the product is manufactured based on contractual agreements rather than on a spot basis. The ratio of end-of-period inventories to U.S. shipments was approximately 7.0 percent during 2002-03 and declined to 4.8 percent in 2004. These data indicate that U.S. producers have a moderate, yet somewhat limited, ability to use inventories as a means of increasing shipments of PET resin to the U.S. market.

Production alternatives

The machinery and equipment used in the melt-phase polymerization stage of PET resin production can also be used in the production of polyester fiber.⁸ The initial melt phase in the PET resin production process is very similar to the melt phase in the production of polyester fiber.⁹ Four firms (***) also produce polyester fiber and can divert their melt-phase capacity from PET resin production to

⁸ ***.

⁹ Hearing transcript, p. 187 (Taylor).

polyester fiber production.¹⁰ Firms often use the workers that produce PET resin in the production of other products at their facilities.

Subject Imports

The responsiveness of supply of imports from India, Indonesia, and Thailand to changes in price in the U.S. market is affected by such factors as capacity utilization rates and the availability of home markets and other export markets. Based on available information, producers in India, Indonesia, and Thailand are likely to respond to changes in demand with moderate changes in the quantity of shipments of PET resin to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity and alternate markets.

Industry capacity

During 2003, the capacity utilization rate for India was 87.8 percent; it increased to 95.7 percent in 2004 and is projected to reach 98.5 percent in 2005. The capacity utilization rate for Indonesia in 2003 was *** percent; it decreased to *** percent in 2004, and is projected to reach *** percent in 2005. For Thailand, the capacity utilization rate in 2003 was 93.8 percent; it decreased slightly to 93.2 percent in 2004, and is projected to reach 99.0 percent in 2005.

Alternative markets

Available data indicate that foreign producers in the subject countries can divert shipments to or from alternative markets in response to changes in the price of PET resin. Shipments of PET resin from India to the United States increased from *** percent of its total shipments in 2002 to *** percent in 2003, and fell to *** percent in 2004. The share of India's shipments to export markets other than the United States increased from *** percent in 2002 to *** percent in 2003, and rose to *** percent in 2004 with the remainder going to its home market, including internal consumption.

Indonesia's shipments to the United States fell from *** percent of its total shipments in 2002 to *** percent in 2003, and decreased further to *** percent in 2004. The share of Indonesia's shipments to export markets other than the United States increased slightly from *** percent in 2002 to *** percent in 2003, and fell to *** percent in 2004.

Thailand's shipments to the United States increased from *** percent of its total shipments in 2002 to *** percent in 2003, and then fell to *** percent in 2004. The share of Thailand's shipments to markets other than the United States decreased from *** percent of its total shipments in 2002 to *** percent in 2003, and then increased to *** percent in 2004.

Inventory levels

Foreign PET resin producers' inventories fluctuated between low and moderate levels during the period of investigation. Indian producers' inventories, as a share of total shipments, fluctuated between 2002 and 2004, declining from 6.0 percent in 2002 to 2.3 percent in 2003 and then rising to 6.7 percent in 2004. Indonesian producers' inventories, as a share of total shipments, also fluctuated over the period, decreasing from *** percent in 2002 to *** percent in 2003, and then rising to *** percent in 2004.

¹⁰ Once the melt phase is complete, the second step of PET resin production is solid-stating, which requires a separate line. It reportedly takes \$50 million to build a line for the solid-stating phase. *Ibid.*, p. 187 (Taylor). However, given the "shrinking market conditions in the fiber industry," PET resin producers are extremely reluctant to switch from PET resin production to polyester fiber production. *Ibid.*, pp. 188-189 (Sherlock and Petersen).

Thailand producers' inventories, as a share of total shipments, decreased from 5.7 percent in 2002 to 3.8 percent in 2003, and then rose to 5.9 percent in 2004. These data indicate that foreign producers have the ability to use inventories as a means of increasing shipments of PET resin to the U.S. market.

U.S. Demand

Demand Characteristics

The demand for PET resin is a derived demand that depends upon the demand for bottles and other containers that use PET resin as well as other products including strapping and sheet that are made of PET resin. The availability of substitutes for PET resin discussed below indicates that the demand for this product is likely to be price elastic.

When asked how the overall demand for PET resin has changed since January 2002, all the U.S. producers and all but one of the importers stated that the demand had increased. This increase in demand was most commonly attributed to a shift away from other packaging materials to PET resin. An increase in market growth, an improving economy, and new applications were also cited.

Substitute Products

When asked whether there are substitutes for PET resin, all U.S. producers and most responding importers cited one or more alternative materials. Aluminum and glass were the most frequently mentioned.¹¹ The evidence indicates that aluminum is the most common substitute for PET resin in the carbonated soft drink market, while glass is a common substitute for other beverages and food. Most carbonated soft drink producers use both PET resin bottles and aluminum cans and can switch relatively easily from one to another.¹² Polyethylene and polypropylene were also listed as substitutes.

When asked whether changes in the prices of these substitutes affect the price of PET resin, there was no consensus among questionnaire respondents. Some firms said that prices of substitutes would not influence the price of PET resin at all, while others reported that they could have an effect. Two U.S. producers stated that if the price of PET resin became too high some shifting to the substitute products might occur. Another firm stated that a reduction of the price of polypropylene and high density polyethylene relative to PET resin could drive some converters and brand companies to substitute where possible. However, this would require a 6 to 12 month time lag as the tooling required to make a substitution has long lead times. In the carbonated soft drink market, as packaging size diminishes, aluminum cans become more cost effective and sensitivity to relative price shifts in aluminum and PET resin may increase in this case.¹³

Cost Share

Questionnaire responses indicate that PET resin generally accounts for a large percentage of the total cost of the finished products in which it is used. For example, estimates by producers and importers show that it typically accounts for well over half of the cost of bottles made of this material. However, the cost of the bottle is normally a small share of the final cost of the beverages to consumers. Therefore, an increase in the price of PET resin would probably have little effect on consumer demand for beverages.

¹¹ Producers of carbonated soft drinks reportedly can easily shift between PET resin and aluminum, while switching between PET resin and glass as a container for other products is more difficult (conference transcript, pp. 146-147 (Mullock)).

¹² Hearing transcript, p. 254 (Mullock).

¹³ Ibid., p. 254 (Mullock).

SUBSTITUTABILITY ISSUES

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

Factors Affecting Purchasing Decisions

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

As indicated in table II-1, price was named by four of the 14 responding purchasers as the number one factor generally considered in deciding from whom to purchase PET resin and as the number two or three factor by eight other responding purchasers.¹⁴

Also, as indicated in table II-2, all of the responding purchasers indicated that price was a "very important" factor in their purchase decisions. None of the purchasers indicated that the lowest priced PET resin will "always" win a sale. Eight responding purchasers indicated that the lowest priced PET resin "usually" wins a sale and six reported "sometimes."

Quality was named by four of the 13 responding purchasers as the number one factor generally considered in deciding from whom to purchase PET resin, while six other purchasers indicated that it was the number two factor and three responded it was the number three factor. Nearly all the responding purchasers indicated that product consistency and quality meeting industry standards were "very important" factors in their purchasing decisions. Purchasers named a number of factors they consider in evaluating quality, including intrinsic viscosity levels, product consistency, processing capabilities on their machinery, and clarity or color.

Availability was named by two of the 14 responding purchasers as the number one factor generally considered in deciding from whom to purchase PET resin, while one purchaser indicated it was the number two factor, and four purchasers indicated that it was the number three factor. All responding purchasers indicated that availability was a "very important" factor in their purchasing decisions.

¹⁴ Fourteen purchasers returned questionnaires, but one purchaser did not respond to the question on ranking purchasing factors.

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

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Price	4	5	3
Quality	4	6	3
Availability	2	1	4
Other ¹	3	1	3

¹ Other factors include three instances of “pre-arranged contracts” for number one factor; one instance of “delivery lead times” for number two factor; one instance of “delivery terms” for number three factor; one instance of “traditional supplier/supply assurance” for number three factor; and one instance of “consistency” for number three factor.

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

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

Factor	Number of firms reporting		
	Very important	Somewhat Important	Not important
Availability	14	0	0
Delivery terms	9	3	2
Delivery time	7	6	1
Discounts and rebates	4	6	4
Extension of credit	7	4	3
Price	14	0	0
Minimum qty requirements	1	10	3
Packaging	6	8	0
Product Consistency	13	1	0
Quality meets industry standards	12	2	0
Quality exceeds industry standards	4	7	3
Product range	5	6	3
Reliability of supply	12	2	0
Technical support/service	4	8	2
U.S. transportation costs	9	5	0

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

All of the 14 responding purchasers reported that they require their suppliers to become certified. Six purchasers reported that since 2002 one or more suppliers have failed in their attempts to qualify PET resin. Three domestic sources (***) and two subject country sources (***) were named. ***.

Four purchasers indicated that either they or their customers specifically order PET resin from one country in particular over other possible sources of supply. Three of these purchasers reported ordering from one country for supply reliability and speed of delivery. Also, four purchasers indicated that certain grades/types of PET resin are available from only certain sources.¹⁵

Comparison of Domestic Products and Subject Imports

In order to determine whether U.S.-produced PET resin can generally be used in the same applications as imports from India, Indonesia, and Thailand, producers and importers were asked whether the product can "always," "frequently," "sometimes," or "never" be used interchangeably. As indicated in table II-3, 85 percent of responding domestic producers and at least 75 percent of responding importers indicated that U.S.-produced PET resin and imports of PET resin from all subject countries are either "always" or "frequently" used interchangeably.

Table II-3
PET resin: Perceived degree of interchangeability of PET resin produced in the United States and in other countries

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. India	4	2	1	0	5	4	3	0
U.S. vs. Indonesia	4	2	1	0	5	3	3	0
U.S. vs. Thailand	4	2	1	0	5	3	2	0
U.S. vs. Other	4	2	1	0	4	4	4	0

Note.--A=always; F=frequently; S=sometimes; N=never.
Source: Compiled from data submitted in response to Commission questionnaires.

Some producers and importers made general comments concerning the extent of interchangeability between products from the United States and other country sources. One producer reported that some PET resin products require additives that may not be available from all import sources. Another producer said that PET resin used in some applications such as heat-set resins or barrier resins cannot always be interchanged with resins from some countries. One importer said that some PET resins from India are not interchangeable with U.S. PET resins that have been approved for use by U.S. converters for specific brand holders. One importer said that the United States and India have different measurement systems and different color standards for certain products. This firm also stated that color differences, packaging concerns, and differences in fast reheat components and packaging concerns also limit the interchangeability between different country sources. Another importer stated that the quality of the resin and customer requirements may also limit the extent of substitutability.

As indicated in table II-4, one responding producer reported that differences other than price between PET resin produced in the United States and subject countries were "frequently" a significant

¹⁵ Responding purchasers indicated that not all sources have equivalent reheat additives required for blow-molding of PET resin. Also, three specialty grades of PET resin were named as being available from only one source. These include *** resin from Wellman, *** resin from Voridian, and *** resin from Wellman.

factor in their firm's sales of the product, while the six remaining producers indicated that such differences were either "sometimes" or "never" a significant factor. At least one-half of responding importers indicated that differences other than price between PET resin produced in the United States and all subject countries were either "sometimes" or "never" a significant factor in their firm's sales.

Table II-4
PET resin: Perceived significance of differences other than price between PET resin produced in the United States and in other countries

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. India	0	1	3	3	3	2	3	2
U.S. vs. Indonesia	0	1	3	3	1	2	3	3
U.S. vs. Thailand	0	1	3	3	1	3	2	3
U.S. vs. Other	0	1	3	3	3	3	3	2

Note.--A=always; F=frequently; S=sometimes; N=never.
Source: Compiled from data submitted in response to Commission questionnaires.

For the factors that almost all responding purchasers indicated were "very important" in their purchasing decisions (see table II-2), purchaser comparisons of U.S.-produced PET resin and PET resin produced in subject countries indicate that the domestic product is mostly comparable to subject imported product. As indicated in table II-5, all of the responding purchasers responded that with regards to availability, U.S.-produced PET resin was "superior" or "comparable" to PET resin produced in each of the subject countries. With regard to lower price, a majority of responding purchasers indicated that U.S.-produced PET resin was "comparable" and the remainder responded that it was "inferior" to PET resin produced in subject countries. With regard to quality meeting industry standards, product consistency, and reliability of supply, a majority of responding purchasers indicated that U.S.-produced PET resin was "comparable" to PET resin produced in subject countries.

Table II-5
PET resin: Comparisons between U.S.-produced and subject imported product as reported by U.S. purchasers

Factor	India			Indonesia			Thailand		
	S	C	I	S	C	I	S	C	I
Availability	2	2	0	2	1	0	1	3	0
Delivery terms	0	3	1	1	2	0	0	3	1
Delivery time	2	1	1	1	2	0	1	2	1
Discounts offered	0	3	1	1	1	0	0	3	1
Extension of credit	1	3	0	2	1	0	1	2	1
Lower price ¹	1	2	1	0	2	1	1	2	1
Minimum quantity requirements	1	3	0	0	3	0	1	3	0
Packaging	0	4	0	0	3	0	0	4	0
Product consistency	2	1	1	0	3	0	0	3	1
Quality meets industry standards	0	4	0	0	3	0	0	4	0
Quality exceeds industry standards	1	3	0	0	3	0	0	4	0
Product range	2	1	1	2	1	0	2	1	1
Reliability of supply	2	1	1	1	2	0	1	2	1
Technical support/service	2	1	1	2	1	0	2	1	1
Lower U.S. transportation costs	0	4	0	1	2	0	0	4	0
¹ A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," this means that it rates the U.S. price generally lower than the subject import price. Note.--S=U.S. product is superior, C=U.S. product is comparable, I=U.S. product is inferior. Source: Compiled from data submitted in response to Commission questionnaires.									

Comparisons among Subject Imports

In order to determine whether PET resin from each of the subject countries can generally be used in the same applications, producers and importers were asked whether the product can "always," "frequently," "sometimes," or "never" be used interchangeably. As indicated in table II-6, 100 percent of responding domestic producers and 86 percent of responding importers indicated that imports of PET resin from each subject country are either "always" or "frequently" used interchangeably with imports of PET resin from any other subject country.

Table II-6**PET resin: Perceived degree of interchangeability of PET resin produced in the subject countries**

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
India vs. Indonesia	4	1	0	0	4	2	1	0
India vs. Thailand	4	1	0	0	4	2	1	0
India vs. Other	4	1	0	0	4	2	1	0
Indonesia vs. Thailand	4	1	0	0	4	2	1	0
Indonesia vs. Other	4	1	0	0	4	2	1	0
Thailand vs. Other	4	1	0	0	4	2	1	0

Note.--A=always; F=frequently; S=sometimes; N=never.

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

For the factors that almost all responding purchasers indicated were "very important" in their purchasing decisions (see table II-2), purchaser comparisons of product produced across each of the subject countries indicate that subject imports are mostly comparable. As indicated in table II-7, all of the responding purchasers responded that in regard to availability, subject imports from each country source were always "comparable" to PET resin produced in any other subject country. With regard to lower price, all of responding purchasers indicated that imports from India were comparable to imports from Indonesia and Thailand. However, a majority of responding purchasers indicated that the product imported from Indonesia was inferior to the product imported from Thailand with regard to lower price.

Table II-7**PET resin: Comparisons among subject imported products as reported by U.S. purchasers**

Factor	India vs. Indonesia			India vs. Thailand			Indonesia vs. Thailand		
	S	C	I	S	C	I	S	C	I
Availability	0	2	0	0	2	0	0	3	0
Delivery terms	0	2	0	0	2	0	0	3	0
Delivery time	0	2	0	0	2	0	0	3	0
Discounts offered	0	2	0	0	2	0	0	2	1
Extension of credit	0	2	0	0	1	1	0	3	0
Lower price ¹	0	2	0	0	2	0	0	1	2
Minimum quantity requirements	0	2	0	0	2	0	0	3	0
Packaging	0	2	0	0	2	0	0	3	0
Product consistency	0	1	1	0	1	1	0	3	0
Quality meets industry standards	0	1	1	0	1	1	0	3	0
Quality exceeds industry standards	0	1	1	0	1	1	0	3	0
Product range	0	1	1	0	1	1	0	3	0
Reliability of supply	0	1	1	0	1	1	1	2	0
Technical support/service	0	2	0	0	2	0	0	3	0
Lower U.S. transportation costs	0	2	0	0	2	0	0	3	0

¹ A rating of superior means that the price is generally lower. For example, in the first comparison of India vs. Indonesia, if a firm reports "superior," this means that it rates the Indian price generally lower than the Indonesian price.

Note.--S=product from first subject country in comparison is superior, C=product from first subject country in comparison is comparable, I=product from first subject country in comparison is inferior.

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

Comparison of Domestic Products and Subject Imports to Nonsubject Imports

Four U.S. producers and eight responding importers and purchasers reported that U.S.-produced PET resin and imports from nonsubject sources are "always" used interchangeably. In nearly all cases, four U.S. producers and at least seven responding importers and purchasers reported that imports from subject and nonsubject sources are "always" used interchangeably.

ELASTICITY ESTIMATES

U.S. Supply Elasticity¹⁶

The domestic supply elasticity for PET resin measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of PET resin. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced PET resin. Analysis of these factors earlier indicates that the U.S. industry has a moderate ability to increase or decrease shipments to the U.S. market; an elasticity estimate in the range of 3 to 5 is suggested.¹⁷

U.S. Demand Elasticity

The U.S. demand elasticity for PET resin measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of PET resin. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products (especially in the carbonated soft drink market), as well as the component share of PET resin in the production of any downstream products. Based on the available information, the aggregate demand for PET resin is likely to be elastic; a range of 1.0 to 1.5 is suggested.¹⁸

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.¹⁹ Product differentiation, in turn, depends upon such factors as quality (e.g., IV, clarity, etc.) and conditions of sale (availability, sales terms/discounts/promotions, etc.). Based

¹⁶ A supply function is not defined in the case of a non-competitive market.

¹⁷ Petitioner contends that U.S. supply elasticity is higher than the estimate presented here. However, staff believes that U.S. supply elasticity is constrained by the following factors: inventory levels are moderate and only provide a limited ability to alter shipments; alternative markets are moderate but have been stagnant relative to the global PET resin market and are most likely somewhat limited; and while production alternatives exist, domestic producers are extremely reticent to switch production lines, as discussed in the section entitled "Supply and Demand Considerations."

¹⁸ Petitioner contends that U.S. demand elasticity is inelastic, stating that there is strong consumer preference for PET resin water and CSD bottles over aluminum and glass. However, staff believes that one of the major intermediate consumers of PET resin, CSD producers, have a strong sensitivity to relative price movements between PET resin and aluminum (especially as the container size diminishes) and can shift fairly easily between the two materials.

¹⁹ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

on available information, the elasticity of substitution between U.S.-produced PET resin and imported PET resin is likely to be in the range of 2 to 4.^{20 21}

²⁰ Additionally, the elasticities of substitutions between U.S.-produced commercial market PET resin and nonsubject imports, between subject imports and nonsubject imports, and between each pair of subject countries is likely to be in the same range.

²¹ Petitioner contends that substitution elasticity is higher than the estimate presented here. However, staff believes that substitution elasticity is constrained by the fact that purchasers indicated that domestic PET resin is often superior to subject imports in terms of availability and technical support/service.

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

U.S. PRODUCERS

There were seven U.S. firms manufacturing bottle-grade PET resin in the United States during the period of investigation.¹ As discussed in Part I of this report, each of the domestic producers had SSP processing capacity, as that is the element of production which produces the actual bottle-grade PET resin as defined in the scope of these investigations. No domestic producer has pursued further downstream integration into bottle making or other end-use applications.² All U.S. domestic producers are integrated upstream into AMPET production.³ Of the seven domestic producers of bottle-grade PET resin, DAK, Nan Ya, Invista, and Wellman produce a related PET-derived product, polyester fiber.⁴ Some domestic producers have integrated themselves even further upstream into TPA or EG production, which are the raw materials that account for approximately 98 percent of bottle-grade PET resin by weight. The investments and technology needed to produce PET resin are basically uniform across producers due to the chemistry involved in its production. Voridian has, however, recently announced a PET technology innovation to produce bottle-grade PET resin in a unified, one-line reactor called *IntegRex*. Voridian announced in December 2004 its plans to construct an *IntegRex* PET resin line at its Columbia, SC, plant by 2006. To date, however, no commercially viable, unified-line PET resin facility has begun production domestically, although domestic producer Invista owns the technology to build a unified-line based on the NG3 technology that DuPont developed prior to divesting itself of its PET resin production capabilities.⁵

¹ U.S. producer Tiepet changed its ownership and its name to StarPet during the period of investigation and as such it submitted separate U.S. producer questionnaire responses to the Commission for these two legal entities. However, for the purposes of this section of the report, these two firms are considered a single U.S. producer.

² Industry sources reported that PET resin producers have not integrated downstream due to the low technology aspect of that stage of the PET resin industry, i.e. bottle-blowing and sheet-forming. Additionally, the large-scale, capital-intensive business models required for the production of bottle-grade PET resin (continuous processing, super high-volume output, quick turnover, related economies of scale, and the actual chemistry component of plastics' production) are significantly different from the smaller-scale, labor-intensive business models required for converters such as bottle-makers (order-paced processing, medium to high-volume output, flexible scale of production, and low-tech nature). Staff field trip report, KoSa (Invista), January 12-14, 2005.

³ The history of PET resin production explains domestic producers' upstream integration into AMPET production. Originally, the U.S. industry produced uniquely fiber-grade AMPET resin which was used to make polyester fiber. As the industry evolved and the technology for creating bottle-grade PET resins was introduced, most firms with polyester fiber plants expanded these sites to include SSP reactors for the manufacture of bottle-grade PET resin. With this new technology usage for polyethylene terephthalate, former fiber-grade or AMPET lines could feed directly into the new bottle-grade lines by the inclusion of a chopping unit (to form the pellets) at end of the melt phase polymerization units. Even relatively new entrants to the PET resin industry such as Nan Ya have entered both the bottle-grade PET resin and the synthetic fiber businesses.

⁴ U.S. DAK, Nan Ya, Invista, and Wellman were all targets of a Department of Justice ("DOJ") price fixing probe during the period of investigation for alleged anti-competitive practices in their PET fiber businesses. KoSa, now Invista, agreed to pay a \$28.5 million criminal fine. The DOJ ended its probes of DAK, Nan Ya, and Wellman. See staff memo *U.S. PET resin producers subject to U.S. Department of Justice anti-trust probe*, February 22, 2005 and accompanying attachments.

⁵ In 2000, DuPont sold its remaining AMPET and polyester fiber assets to Koch Industries which formed the U.S. producer KoSa. Separately, DuPont sold its remaining bottle-grade PET resin SSP assets to DAK in 2001. ***. In 2004, Koch Industries merged the IPT business unit with its polyester business, KoSa, to form Invista. Invista replaces KoSa as a U.S. producer of PET resin in the final phase of these investigations. Staff telephone interview, (continued...)

Table III-1 presents U.S. producers, positions on the petition, parent companies, plant locations, and shares of total reported U.S. production in 2004.

Table III-1

PET resin: U.S. producers, positions on the petition, ownership, plant locations, and shares of total reported U.S. production, 2004

Firm	Position on petition	Firm ownership	U.S. plant location(s)	U.S. production	
				Quantity (1,000 pounds)	Share (percent)
DAK	Supports (petitioner)	Wholly owned subsidiary of Alpek S.A. de C.V., (Mexico) ¹	Fayetteville, NC Moncks Corner, SC	***	***
Invista	Supports	Wholly owned subsidiary of Koch Industries (Wichita, KS)	Spartanburg, SC Greer, SC	***	***
M&G	Supports	Privately owned U.S. corporation, M&G USA Corporation (DE) ²	Apple Grove, WV	***	***
Nan Ya	Supports (petitioner)	Wholly owned subsidiary of Nan Ya Plastics Corporation (Taiwan)	Lake City, SC	***	***
StarPet	***	*** ³	Asheboro, NC	***	***
Wellman	Supports (petitioner)	Publicly traded U.S. corporation, Wellman, Inc.	Florence, SC Pearl River, MS	***	***
Voridian	Supports (petitioner)	Division of Eastman Chemical Company, a publicly traded U.S. corporation (Kingsport, TN)	Kingsport, TN Columbia, SC	***	***
<p>¹ Alpek S.A. de C.V. is a member of the Alfa S.A. de C.V. petrochemical group (Mexico). ² Italian group, Gruppo Mossi & Ghisolfi, owns M&G USA Corp. ³ ***. E-mail from *** StarPet, March 11, 2005.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires and from publicly available material.</p>					

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

During the period of investigation, U.S. producers expanded PET resin production capacity. Only domestic producers *** did not either debottleneck a given PET resin line or build a new SSP reactor. *** expanded U.S. capacity by debottlenecking or modifying existing lines. Petitioner DAK was the only domestic producer to actually bring on line a new SSP reactor unit during the period of

⁵(...continued)
 ***, Invista, February 28, 2005.

investigation.⁶ Petitioner Wellman will divert from its Pearl River facility some AMPET resin capacity previously destined for polyester fiber production to bottle-grade PET resin.⁷ At the beginning of 2003, Wellman and Voridian began joint production of PET resin adherent to a 50/50 venture agreement whereby each party jointly marketed and sold the resulting bottle-grade PET resin. This joint venture took advantage of Wellman's excess AMPET resin capacity and some of Voridian's excess SSP reactor capacity. U.S. producer StarPet began operations in April 2003 with the purchase of Tiefert's PET resin production facility in Asheboro, NC. Tiefert's operations were mostly tolling arrangements with Voridian, and then DAK. During the period of investigation, two firms shut down existing PET resin capacity. Voridian shut down 100 million pounds of annual capacity in its Kingsport, TN, facility in early 2002. M&G shut down 200 million pounds of annual capacity in its Apple Grove, WV, facility in April 2004.⁸ Increases in capacity in the domestic PET industry, however, exceeded decreases during the period of investigation.

Three domestic firms have announced plans to increase domestic capacity within the next three years. Voridian announced the construction of a new PET resin facility for its Columbia, SC, plant using an in-house developed, single- or integrated-line approach to bottle-grade resin production. Voridian estimates this expansion will bring on line an additional 771 million pounds of annual capacity. Wellman announced plans to bring on line PET resin production at its Pearl River facility in 2006 at around 300 million pounds of annual capacity. *** indicated in its questionnaire response plans to bring on line an additional *** pounds of annual SSP capacity at its ***, site. Table III-2 summarizes the actual and planned changes in capacity cited above. Table III-3 presents U.S. producers' production capacity, production, and capacity utilization for the period of investigation.

Domestic producer DAK added some 300 million pounds annual capacity to the market in 2003 with the opening of its new SSP reactor in Moncks Corner, SC. Domestic producer Voridian began some additional 200 million pounds of PET resin production in 2003 using Wellman's excess AMPET capacity as feedstock to its existing SSP reactors in Columbia, SC. These industry developments explain the near 600 million pounds of additional capacity recorded in the domestic industry between 2002 and 2003, of which production only increased by 300 million pounds over the same two years. Thus, the domestic industry's capacity utilization rate dropped from 89.4 percent to 85.2 percent due mostly to the additional capacity at DAK's Moncks, SC, site. As demand incrementally increased over the period of investigation, capacity utilization once again reached around 89.1 percent in 2004. This down and then up fluctuation reflects the cyclical nature of manufacturing PET resin whereby supply must be brought on line through the construction of large SSP processing units, which initially flood the market with additional capacity until the demand for that additional capacity, which increases in smaller increments, catches up to the new supply levels. While domestic producer M&G shut down some 200 million pounds of annual U.S. melt-phase polymerization processing capacity at its Apple Grove, WV, plant in 2004, it increased its imports of PET resin from its Altamira, Mexico, plant from *** pounds in 2002 to *** pounds in 2003 and to *** pounds in 2004. Amidst these fluctuations in production

⁶ DAK built its new SSP reactor in Moncks Corner, SC. This new capacity and its associated production first came on line mid-year 2003. DAK converted a fiber-dedicated melt-phase reactor line to feed its new SSP unit.

⁷ Wellman originally built its Pearl River facility as a polyester fiber plant. Wellman operated this plant for only eight months in 2000 before shutting down these operations. In August 2004, Wellman announced plans to convert these idle fiber lines to PET resin production by constructing a new SSP reactor at the Pearl River site by 2006. Wellman Producers' Questionnaire. See also *Part VI* of this report for a more detailed discussion of the financial aspects of this choice.

⁸ This closure was to M&G's CP-2 reactor, a melt phase polymerization unit.

Table III-2
Summary of changes in PET resin (SSP) capacity among U.S. producers

Firm	Capacity shut-downs and closures	Capacity expansions through debottlenecking	Capacity expansions through SSP construction	Announced plans for SSP capacity expansion
DAK	none	***	300 mil. lbs. per year, Moncks Corner, SC	none
Invista	none	***	none	none
M&G	200 mil. lbs. per year, Apple Grove line	***	none	none
Nan Ya	none	***	none	none
StarPet	none	***	none	***
Wellman	none ¹	***	none	300 mil. lbs. per year scheduled for 2006
Voridian	100 mil. lbs. per year, Kingsport, TN line	***	none	771 mil. lbs. per year scheduled for 2006 ²
¹ Wellman had shut down a fiber line in Mississippi in 2000. Wellman has subsequently announced plans to convert this former fiber line into a PET resin line by 2006. ² Voridian ***.				
Source: Compiled from data submitted in response to Commission questionnaires.				

Table III-3
PET resin: U.S. capacity, production, and capacity utilization, 2002-04

Item	Calendar year		
	2002	2003	2004
Capacity (1,000 pounds)	5,016,061	5,597,045	5,638,199
Production (1,000 pounds)	4,482,353	4,771,434	5,022,306
Capacity utilization (percent)	89.4	85.2	89.1
Source: Compiled from data submitted in response to Commission questionnaires.			

capacity, the domestic industry increased its U.S. production of PET resin by 6.4 percent from 2002 to 2003, and 5.3 percent from 2003 to 2004.

U.S. PRODUCERS' SHIPMENTS AND EXPORTS

Table III-4 presents data on U.S. producers' U.S. and export shipments of bottle-grade PET resin from 2002 to 2004. U.S. producers' U.S. shipments of PET resin increased 5.8 percent from 2002 to 2003 and 6.8 percent from 2003 to 2004 by quantity, for a total of 4.3 billion pounds in 2004. Over the same period of time, U.S. producers' U.S. shipments of PET resin by value increased 13.3 percent from 2002 to 2003 and 22.3 percent from 2003 to 2004, to a total of almost \$2.3 billion in 2004. Average unit values increased from 43 cents per pound in 2002, to 46 cents per pound in 2003, and 53 cents per pound

Table III-4
PET resin: U.S. producers' U.S. and export shipments, 2002-04

Item	Calendar year		
	2002	2003	2004
Quantity (1,000 pounds)			
Commercial U.S. shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	3,814,182	4,034,731	4,310,705
Export shipments ¹	629,120	734,582	786,640
Total shipments	4,443,302	4,769,313	5,097,345
Value (\$1,000)			
Commercial U.S. shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	1,651,228	1,870,514	2,286,970
Export shipments	257,411	329,347	404,042
Total shipments	1,908,639	2,199,861	2,691,012
Unit value (dollars per pound)			
Commercial U.S. shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	0.43	0.46	0.53
Export shipments	0.41	0.45	0.51
Average	0.43	0.46	0.53
Share of quantity (percent)			
Commercial U.S. shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	85.8	84.6	84.6
Export shipments	14.2	15.4	15.4
Total	100.0	100.0	100.0
Share of value (percent)			
Commercial U.S. shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	86.5	85.0	85.0
Export shipments	13.5	15.0	15.0
Total	100.0	100.0	100.0
¹ ***			
Source: Compiled from data submitted in response to Commission questionnaires.			

in 2004. U.S. producers' exports of PET resin remained relatively stable at around 15 percent of total shipments during the period of investigation.

Over the period of investigation, domestic producers shipped more cold-fill bottle-grade PET resin than hot-fill PET resin. Hot-fill resins commanded a slight price premium on the market over cold-fill resins. No importing firm reported any subject imports of hot-fill PET resin during the period under investigation. Table III-5 presents data regarding U.S. shipments of hot-fill versus cold-fill PET resins.

Table III-5
PET resin: U.S. producers' shipments, by type, 2002-04

Type	Calendar year		
	2002	2003	2004
Quantity (1,000 pounds)			
Cold-filled	2,921,564	3,110,969	3,423,565
Hot-filled	700,806	763,473	798,410
Other ¹	190,670	175,709	180,489
Total	3,813,040	4,050,151	4,402,464
Value (\$1,000)			
Cold-filled	1,259,055	1,438,328	1,795,715
Hot-filled	306,652	360,784	431,122
Other ¹	86,355	78,805	98,175
Total	1,652,062	1,877,917	2,325,012
Unit value (dollars per pound)			
Cold-filled	0.43	0.46	0.52
Hot-filled	0.44	0.47	0.54
Other ¹	0.45	0.45	0.54
Average	0.43	0.46	0.53
Share of quantity (percent)			
Cold-filled	76.6	76.8	77.8
Hot-filled	18.4	18.9	18.1
Other ¹	5.0	4.3	4.1
Total	100.0	100.0	100.0
Share of value (percent)			
Cold-filled	76.2	76.6	77.2
Hot-filled	18.6	19.2	18.5
Other ¹	5.2	4.2	4.2
Total	100.0	100.0	100.0
¹ Other is mostly scrap or subprime PET resin not fit for bottle applications, most of this material is used in strapping and sheet applications.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Similarly, domestic producers shipped more virgin bottle-grade PET resin than blended PET resin over the period of investigation. Blended resins also commanded a slight price premium on the market over virgin resins. No importing firm reported any subject imports of blended PET resin during the

Table III-6
PET resin: U.S. producers' shipments, by composition, 2002-04

Type	Calendar year		
	2002	2003	2004
Quantity (1,000 pounds)			
Virgin	3,619,036	3,817,428	4,262,911
Blended	194,006	233,801	140,552
Total ¹	3,813,042	4,051,229	4,403,463
Value (\$1,000)			
Virgin	1,563,735	1,764,527	2,247,044
Blended	88,327	113,914	77,969
Total	1,652,062	1,878,441	2,325,013
Unit value (dollars per pound)			
Virgin	0.43	0.46	0.53
Blended	0.46	0.49	0.55
Average	0.43	0.46	0.53
Share of quantity (percent)			
Virgin	94.9	94.2	96.8
Blended	5.1	5.8	3.2
Total	100.0	100.0	100.0
Share of value (percent)			
Virgin	94.7	93.9	96.6
Blended	5.3	6.1	3.4
Total	100.0	100.0	100.0
¹ The totals in this table do not reconcile with total U.S. Shipments from Table III-4 due to the inability of certain respondent firms to properly categorize certain shipments.			
Source: Compiled from data submitted in response to Commission questionnaires.			

period under investigation. Table III-6 presents data on U.S. shipments of virgin resin versus blended⁹ resins from 2002 through 2004.

⁹ "Blended" denotes a resin subject to these investigations that includes some recycled PET resin mixed with virgin PET resin. In order to "blend" a resin, a domestic producer must put recycled PET resin chips through their melt phase polymerization reactors to remove impurities. This produces AMPET which must in turn undergo SSP treatment since the recycled material in this process will have lost its bottle-grade IV range. Pure recycled PET resin cannot be used for bottle-grade PET resin applications since the melt-phase reactions do not completely remove impurities from the recycled resin. It costs more to produce blended resins than virgin resins. Some converters, however, are willing to pay the higher cost of a blended resin because of political or public pressure to be environmentally mindful.

U.S. PRODUCERS' IMPORTS AND PURCHASES

During the period of investigation, *** U.S. producers reported small amounts of imports of PET resin from only one subject source, ***: ***. Over the period of investigation, five out of seven of the domestic producers of PET resin imported nonsubject merchandise. Both Invista and M&G operate business models in which they or a related firm produce bottle-grade PET resin abroad, import it, and resell it in the U.S. market. Invista imported the majority of its PET resin for resale from its Millhaven, Ontario plant. In 2004, Invista imported *** pounds of bottle-grade PET resin from Canada, or approximately *** percent of its U.S. production. M&G imports the majority of its PET resin for resale from its Altamira, Mexico, plant. In 2004, M&G imported *** pounds of PET resin from Mexico, or *** percent of its U.S. production. Other U.S. producers that imported PET resin from nonsubject sources during 2002 to 2004 either did so for research and development purposes, as with ***, or to meet specific sales targets, as with ***. *** imported some scrap or post-industrial recycle (“PIR”) bottle-grade resin, which it then converted into polyester fiber.

Within the domestic industry, there does not seem to be large levels of cross-firm purchases for resale (tolling arrangements excluded). There are only two instances of domestic firms’ purchasing PET resin from other domestic producers. *** reportedly accounted for *** percent of ***’s sales in 2004, which would amount to roughly *** pounds of subject merchandise. *** reportedly accounted for *** percent of ***’s sales in 2004, which would amount to *** pounds of PET resin. Tolling arrangements excluded, these figures accounted for *** percent of U.S. shipments of subject merchandise in 2004.

U.S. PRODUCERS' INVENTORIES

In the large economies of scale and continuous production business model of the PET resin industry, turnover is often and inventories kept low. Table III-7, which presents end-of-period inventories for PET resin during the period of investigation, shows that inventories are relatively low as a ratio to production. While having relatively stable inventory levels between 2002 and 2003, domestic producers’ inventories decreased 26 percent between 2003 and 2004. U.S. producers reduced the time inventory stood in warehouse from an average of 20 days in 2002 and 2003, to 17 days in 2004.¹⁰

Table III-7
PET resin: U.S. producers’ end-of-period inventories, 2002-04

Item	Calendar year		
	2002	2003	2004
Inventories (1,000 pounds)	272,854	284,045	209,367
Ratio to production (percent)	6.1	6.0	4.2
Ratio to U.S. shipments (percent)	7.2	7.0	4.9
Ratio to total shipments (percent)	6.1	6.0	4.1

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

¹⁰ Inventory turnover is calculated by taking the year’s production divided by average inventory levels over that year. Time in warehouse or idle inventory time is then calculated by dividing the number of days in a year by the inventory turnover rate.

U.S. EMPLOYMENT, COMPENSATION, AND PRODUCTIVITY

PET resin is a capital-intensive industry both in absolute terms and relative to the polyester fiber industry. During the period of investigation, four U.S. producers, ***, reduced their average number of production and related workers, while one U.S. producer, ***, increased this number.¹¹ In absolute terms, the unit labor cost for U.S.-produced PET resin was 1.77 cents per pound in 2004, and relative to the related polyester fiber industry, bottle-grade PET resin production has lower labor costs.¹² Labor productivity in the domestic industry increased by 23.6 percent over the period of investigation, while hourly wages increased by 4.6 percent. Despite these efforts by U.S. producers to cut costs by increasing labor productivity, the per-pound unit cost of labor decreased by less than half a penny from 2002 to 2004. In 2002, labor cost per pound of bottle-grade PET resin was 2.10 cents, while in 2004 the labor cost per pound of resin decreased by 15.4 percent to 1.77 cents. Table III-8 presents employment, compensation, and productivity-related data for PET resin during the period of investigation.

Table III-8
PET resin: U.S. producers' employment-related data, 2002-04

Item	Calendar year		
	2002	2003	2004
Production and related workers (PRWs)	1,974	1,998	1,781
Hours worked by PRWs (1,000 hours)	4,077	4,172	3,696
Wages paid to PRWs (1,000 dollars)	94,081	97,519	89,210
Hourly wages	\$23.07	\$23.37	\$24.14
Productivity (pounds per hour)	1,099.3	1,143.7	1,358.8
Unit labor costs (per pound)	\$0.021	\$0.020	\$0.018

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

¹¹ These decreases in PET resin personnel for most U.S. PET resin producers are in part reflected in anecdotal evidence of layoffs and workforce reductions. Hearing transcript, pp. 28 and 40 (Dewsbury and Kinner).

¹² PET resin production at domestic producer *** accounts for *** percent of the plant's annual output, employing *** percent of the site's personnel, while the remaining *** percent of the plant's annual output is in fiber-grade products, employing around *** percent of the site's personnel. Lower labor costs in the PET resin industry and overlapping manufacturing processes allowed polyester fiber producers to switch production from polyester fiber to PET resin as the United States became less competitive with foreign polyester producers. Faced with the high labor costs of operating fiber lines and increased foreign polyester competition, some U.S. producers like Voridian quit the fiber business entirely. Other U.S. producers of polyester fiber products have kept a portion of their fiber business while developing their PET resin production capabilities. Staff field trip reports: Wellman, Nan Ya, Voridian, and KoSa (Invista), January 12-14, 2005.

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

The Commission sent questionnaires to more than 100 firms identified in the petition and by a review of proprietary Customs information as having been importers of PET resin during the period of investigation. *** importers, ***, accounted for roughly 84 percent of the imports of subject merchandise in 2004. Table IV-1 presents data on imports in 2004 of bottle-grade PET resin collected from U.S. importers' questionnaires. Misreporting of imports of bottle-grade PET resin under HTS numbers 3907.60.0050 and 3907.99.0050 explains most of the discrepancy between data the Commission collected in questionnaire responses and official Commerce statistics.¹

Table IV-1
PET resin: U.S. importers and U.S. imports by source, 2004

* * * * *

U.S. import data are based on importer questionnaire responses for India, official Customs statistics for Thailand, and foreign producer questionnaire responses for Indonesia. Both HTS statistical reporting numbers² have been used for the imports of PET resin from Thailand. For imports from Indonesia, proprietary Customs data concerning the two nonrespondent foreign producers, Keris and Resindo, were included with questionnaire responses of the three respondent subject Indonesian foreign producers.

U.S. IMPORTS

Table IV-2 presents data regarding the quantity and value of U.S. imports of PET resin. During the period of investigation, imports by quantity from subject sources increased by *** percent from 2002 to 2003 and then decreased by *** percent from 2003 to 2004. As a share of total imports, subject imports gained *** percentage points from 2002 to 2003 and then lost *** percentage points of import share by 2004.³ Imports by quantity from nonsubject sources increased by *** percent from 2002 to 2003 and then again increased by *** percent from 2003 to 2004. As a share of total imports, nonsubject imports lost *** from 2002 to 2003 and then gained nearly *** of import share by 2004. Within this increase in nonsubject imports as a share of total imports, imports of NAFTA-origin PET resin accounted for virtually all of the increase in import share in 2004.⁴ No reporting U.S. importer imported subject hot-fill PET resin or subject blended resin during the period under investigation.

By volume, the majority of imported resin is resold and commercially shipped to converters who then create either PET resin bottles or PET resin preforms. According to U.S. importer questionnaire

¹ See staff worksheets for comparisons of alternative sources of import data.

² 3907.60.0010 and 3907.60.0050.

³ U.S. producers argued that the threat of the imposition of antidumping and countervailing duties in the United States explains this decrease in imports from subject sources during the period of investigation. Petitioner's prehearing brief, p. 13. Respondents argued that it was the loss by 2004 of a raw material cost advantage for Asian foreign producers that explains this decrease in imports from subject sources during the period of investigation. Respondents' prehearing brief, p. 16-18.

⁴ ***.

data, internal consumption accounted for 5.2 percent of U.S. consumption of imported product by quantity in 2002, 7.4 percent in 2003, and 4.0 percent in 2004.⁵

Table IV-2
PET resin: U.S. imports, by sources, 2002-04

Source	Calendar year		
	2002	2003	2004
Quantity (1,000 pounds)			
India ¹	***	***	***
Indonesia, subject ²	***	***	***
Thailand ³	133,266	233,943	117,271
Subtotal, subject	***	***	***
Canada ⁴	***	***	***
Mexico ⁵	30,996	145,152	296,605
Subtotal, NAFTA	***	***	***
Taiwan ⁶	10,545	64,467	47,923
Indonesia, nonsubject ⁷	***	***	***
Other sources ⁸	42,932	52,187	48,645
Subtotal, nonsubject	***	***	***
Total	765,825	1,014,843	900,411
Value (1,000 dollars)			
India ¹	***	***	***
Indonesia, subject ²	***	***	***
Thailand ³	53,200	98,532	63,424
Subtotal, subject	***	***	***
Canada ⁴	***	***	***
Mexico ⁵	14,193	63,240	154,262
Subtotal, NAFTA	***	***	***
Taiwan ⁶	4,406	30,054	25,982
Indonesia, nonsubject ⁷	***	***	***
Other sources ⁸	17,146	22,691	28,327
Subtotal, nonsubject	***	***	***
Total	312,132	442,741	473,027

Table continued on next page.

⁵ U.S. importer questionnaire data from all sources.

Table IV-2- Continued
PET resin: U.S. imports, by sources, 2002-04

Source	Calendar year		
	2002	2003	2004
Unit value (dollars per pound)			
India ¹	***	***	***
Indonesia, subject ²	***	***	***
Thailand ³	0.40	0.42	0.54
Subaverage, subject	***	***	***
Canada ⁴	***	***	***
Mexico ⁵	0.46	0.44	0.52
Subaverage, NAFTA	***	***	***
Taiwan ⁶	0.42	0.47	0.54
Indonesia, nonsubject ⁷	***	***	***
Other sources ⁸	0.40	0.43	0.58
Subaverage, nonsubject	***	***	***
Average	0.41	0.44	0.53
Share of quantity (percent)			
India ¹	***	***	***
Indonesia, subject ²	***	***	***
Thailand ³	17.4	23.1	13.0
Subtotal, subject	***	***	***
Canada ⁴	***	***	***
Mexico ⁵	4.0	14.3	32.9
Subtotal, NAFTA	***	***	***
Taiwan ⁶	1.4	6.4	5.3
Indonesia, nonsubject ⁷	***	***	***
Other sources ⁸	5.6	5.1	5.4
Subtotal, nonsubject	***	***	***
Total	100.0	100.0	100.0

Table continued on next page.

Table IV-2- Continued
PET resin: U.S. imports, by sources, 2002-04

Source	Calendar year		
	2002	2003	2004
Share of value (percent)			
India ¹	***	***	***
Indonesia, subject ²	***	***	***
Thailand ³	17.0	22.3	13.4
Subtotal, subject	***	***	***
Canada ⁴	***	***	***
Mexico ⁵	4.5	14.3	32.6
Subtotal, NAFTA	***	***	***
Taiwan ⁶	1.4	6.8	5.5
Indonesia, nonsubject ⁷	***	***	***
Other sources ⁸	5.5	5.1	6.0
Subtotal, nonsubject	***	***	***
Total	100.0	100.0	100.0

¹ Data for India are compiled from U.S. importer questionnaires.

² Data for Indonesia are compiled from foreign producer questionnaires plus proprietary Customs information on the two nonrespondent foreign producers identified in the petition: Keris and Resindo.

³ Data for Thailand are compiled from official Commerce statistics using HTS statistical reporting numbers 3907.60.0010 and 3907.60.0050. Data from both numbers are used in this instance since a substantial amount of misreporting occurred for PET resin imports from Thailand.

⁴ Data for Canada are compiled using domestic producer *** importers' questionnaire and adding proprietary Customs data for each year less those entries that belonged to ***. Data from *** importers' questionnaire were used since the imports that that firm reported were greater than the amounts recorded for all of Canada in the official Commerce statistics.

⁵ Data for Mexico are compiled using official import statistics under HTS number 3907.60.0010.

⁶ Data for Taiwan are compiled using official import statistics under HTS number 3907.60.0010.

⁷ Data for Indorama are taken from its foreign producer questionnaire.

⁸ Data for other sources are compiled using official import statistics under HTS number 3907.60.0010.

Source: Compiled from official Commerce statistics and responses to the Commission's questionnaires.

Imports of bottle-grade PET resin enter the United States from all regions. Table IV-3 presents data on imports into the United States of bottle-grade PET resin by exporting source and U.S. region. Most subject resin enters the United States on the East and West Coasts, while the majority of nonsubject resin enters the United States from Canada and from Mexico. The majority of Indian resin enters the United States on the East Coast and Gulf Coast regions, while the remaining subject imports enter primarily on the West Coast. Subject Indonesia resin enters almost entirely on the West Coast. Subject Thai resin enters the United States primarily on the West Coast, but also to a lesser extent on the East and Gulf Coasts. The significant increase in imports from "other sources" into the Gulf Coast region is due primarily to domestic producer M&G's imports of subject merchandise from its plant in Altamira, Mexico.

Table IV-3
PET resin: U.S. imports, by source and by region, 2002-04

Region / Source	Calendar year			
	2002	2003	2004	2002-04
<i>Share out of all regions (percent)</i>				
EAST REGION				
India	***	***	***	***
Indonesia, subject	***	***	***	***
Thailand	14.5	8.7	17.7	12.5
Subtotal, subject	***	***	***	***
Taiwan	1.2	0.0	0.0	0.1
Indonesia, nonsubject	***	***	***	***
Other sources	11.2	9.9	6.9	9.3
Subtotal, nonsubject	***	***	***	***
Total	14.4	13.2	9.3	12.5
GREAT LAKES REGION				
India	***	***	***	***
Indonesia, subject	***	***	***	***
Thailand	12.1	10.8	3.9	9.5
Subtotal, subject	***	***	***	***
Taiwan	0.0	0.0	0.0	0.0
Indonesia, nonsubject	***	***	***	***
Other sources	71.6	50.4	10.5	43.6
Subtotal, nonsubject	***	***	***	***
Total	40.5	26.7	7.7	25.6
GULF COAST REGION				
India	***	***	***	***
Indonesia, subject	***	***	***	***
Thailand	20.0	19.5	5.6	16.3
Subtotal, subject	***	***	***	***
Taiwan	0.0	1.1	0.0	0.6
Indonesia, nonsubject	***	***	***	***
Other sources	12.5	36.4	70.7	40.4
Subtotal, nonsubject	***	***	***	***
Total	10.7	24.7	46.8	26.5
WEST REGION				
India	***	***	***	***
Indonesia, subject	***	***	***	***
Thailand	53.4	61.0	72.7	61.8
Subtotal, subject	***	***	***	***
Taiwan	98.7	98.9	100.0	99.3
Indonesia, nonsubject	***	***	***	***
Other sources	4.8	3.3	11.9	6.6
Subtotal, nonsubject	***	***	***	***
Total	34.5	35.5	36.2	35.4
Source: Official Commerce Statistics (HTS 3907.60.0010 for all countries + HTS 3907.60.0050 for Thailand and Indonesia); the breakout for Indonesia is based on proprietary Customs data.				

NEGLIGENCE

The Tariff Act of 1930 provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition – in this case March 2003 to February 2004. The shares of the total quantity of U.S. imports from each of the subject countries in 2004 are shown in table IV-4.

Table IV-4

PET resin: U.S. imports and shares of total imports, by source, March 2003-February 2004

Country	Imports (1,000 pounds)	Share of total imports (percent)
India ¹	***	***
Indonesia	***	***
Thailand	231,403	25.1
Subtotal	388,734	42.1
All other sources	534,194	57.9
Total	922,928	100.0
¹ *** imports of subject merchandise under HTS number 3907.99.0050 have been included in these data. Note: Figures may not add to the totals shown due to rounding. Source: Official Commerce Statistics(HTS 3907.60.0010 for all countries + HTS 3907.60.0050 for Thailand and Indonesia); the breakout for Indonesia is based on proprietary Customs data.		

APPARENT U.S. CONSUMPTION AND MARKET SHARES

Table IV-5 presents data regarding U.S. producers' shipments, imports, and apparent U.S. consumption of bottle-grade PET resin. During the period of investigation, apparent U.S. consumption by quantity increased over each of the periods: 10.3 percent from 2002 to 2003, and 3.2 percent between 2003 and 2004. Within the relative slowdown in the rate of increase in apparent U.S. consumption, U.S. producers' U.S. shipments increased by 5.8 percent between 2002 and 2003, and by 6.8 percent between 2003 and 2004. The 5.8-percent increase in U.S. producers' U.S. shipments in 2003 accounted for 220.5 million pounds, while the ***-percent increase in subject imports that same year accounted for *** pounds. The 6.8-percent increase in U.S. producers' U.S. shipments for 2004 equated to 276.0 million pounds of bottle-grade PET resin consumed, while the ***-percent decrease in subject imports accounted for the withdrawal of *** pounds from consumption. Total consumption increased only slightly in 2004 as consumption shifted from imported resin (which decreased) to domestically produced resin (which increased). While imports of subject bottle-grade PET resin gained some market share in 2003, these imports lost that market share in 2004. However, between 2002 and 2003 the increase in U.S. producers' U.S. shipments of PET resin was *** times that of the increase in subject imports.

Table IV-5
PET resin: U.S. producers' U.S. shipments, U.S. imports by sources, apparent U.S. consumption,
and market shares, 2002-04

Item	Calendar year		
	2002	2003	2004
Quantity (1,000 pounds)			
U.S. producers' U.S. shipments	3,814,182	4,034,731	4,310,705
U.S. imports from-- India	***	***	***
Indonesia, subject	***	***	***
Thailand	133,266	233,943	117,271
Subtotal, subject	***	***	***
Canada	***	***	***
Mexico	30,996	145,152	296,605
Subtotal, NAFTA	***	***	***
Taiwan	10,545	64,467	47,923
Indonesia, nonsubject	***	***	***
Other sources	42,932	52,187	48,645
Subtotal, nonsubject	***	***	***
Total imports	765,825	1,014,843	900,411
Apparent U.S. consumption	4,580,007	5,049,574	5,211,116
Value (1,000 dollars)			
U.S. producers' U.S. shipments	1,651,228	1,870,514	2,286,970
U.S. imports from-- India	***	***	***
Indonesia, subject	***	***	***
Thailand	53,200	98,532	63,424
Subtotal, subject	***	***	***
Canada	***	***	***
Mexico	14,193	63,240	154,262
Subtotal, NAFTA	***	***	***
Taiwan	4,406	30,054	25,982
Indonesia, nonsubject	***	***	***
Other sources	17,146	22,691	28,327
Subtotal, nonsubject	***	***	***
Total imports	312,132	442,741	473,027
Apparent U.S. consumption	1,963,360	2,313,255	2,759,997

Table continued on next page.

Table IV-5- Continued

PET resin: U.S. producers' U.S. shipments, U.S. imports by sources, apparent U.S. consumption, and market shares, 2002-04

Item	Calendar year		
	2002	2003	2004
Share of quantity (percent)			
U.S. producers' U.S. shipments	83.3	79.9	82.7
U.S. imports from--			
India	***	***	***
Indonesia, subject	***	***	***
Thailand	2.9	4.6	2.3
Subtotal, subject	***	***	***
Canada	***	***	***
Mexico	0.7	2.9	5.7
Subtotal, NAFTA	***	***	***
Taiwan	0.2	1.3	0.9
Indonesia, nonsubject	***	***	***
Other sources	0.9	1.0	0.9
Subtotal, nonsubject	***	***	***
Total Imports	16.7	20.1	17.3
Apparent U.S. consumption	100.0	100.0	100.0
Share of value (percent)			
U.S. producers' U.S. shipments	84.1	80.9	82.9
U.S. imports from--			
India	***	***	***
Indonesia, subject	***	***	***
Thailand	2.7	4.3	2.3
Subtotal, subject	***	***	***
Canada	***	***	***
Mexico	0.7	2.7	5.6
Subtotal, NAFTA	***	***	***
Taiwan	0.2	1.3	0.9
Indonesia, nonsubject	***	***	***
Other sources	0.9	1.0	1.0
Subtotal, nonsubject	***	***	***
Total Imports	15.9	19.1	17.1
Apparent U.S. consumption	100.0	100.0	100.0
Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.			

RATIO OF SUBJECT IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of subject imports to U.S. production of PET resin is presented in table IV-6.

Table IV-6
PET resin: Ratio of U.S. imports to U.S. production, by sources, 2002-04

Source	Calendar year		
	2002	2003	2004
U.S. production (1,000 pounds)	4,482,353	4,771,434	5,022,306
India	***	***	***
Indonesia, subject	***	***	***
Thailand	3.0	4.9	2.3
Subtotal, subject	***	***	***
Canada	***	***	***
Mexico	0.7	3.0	5.9
Subtotal, NAFTA	***	***	***
Taiwan	0.2	1.4	1.0
Indonesia, nonsubject	***	***	***
Other sources	1.0	1.1	1.0
Subtotal, nonsubject	***	***	***
Total Imports	17.1	21.3	17.9
Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.			

PART V: PRICING AND RELATED INFORMATION

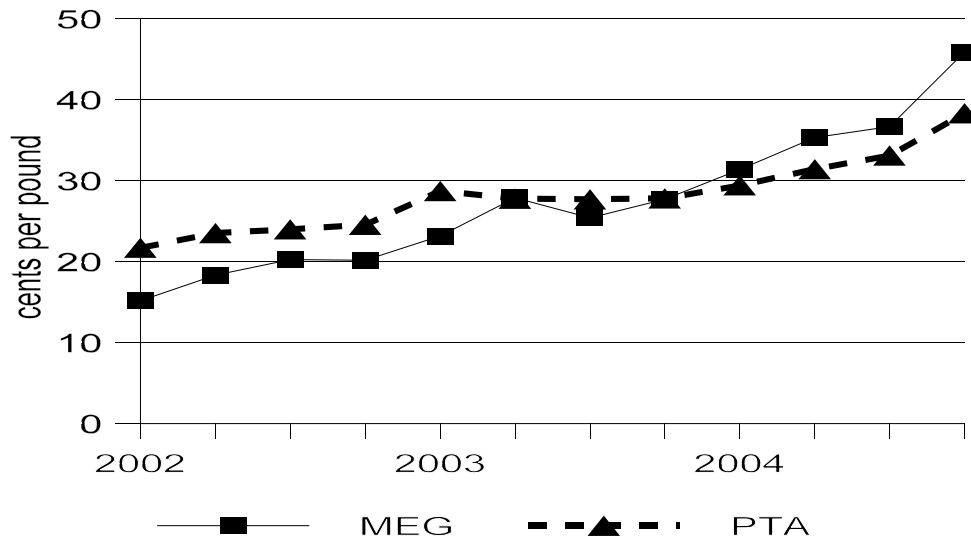
FACTORS AFFECTING PRICES

Raw Material Costs

Two raw materials, MEG and PTA, together account for over 75 percent of the cost of producing PET resin.¹ Weighted averages of purchase prices of these materials reported by U.S. producers are presented on a quarterly basis in figure V-1 below. The price of both MEG and PTA have risen steadily from 2002 to 2004.

Figure V-1

PET resin: Weighted average of purchase prices reported by U.S. producers for mono ethylene glycol (MEG) and purified terephthalic acid (PTA), by quarters, 2002-04



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

Producers and importers were asked to report the percentages of their U.S. shipments with prices based upon formulas that take into account the cost of raw materials. Three of the seven producers and all of the importers said that no formula is used. One firm said that 41 percent of its shipments use a formula which involves the average quarterly change in MEG and PTA. Another firm said that 30 percent of its shipments take into account the cost of MEG and PTA plus a conversion fee which includes other costs plus a margin. Another firm that is engaged in tolling said about 20 percent of its shipments use complex formulas involving MEG and PTA. Finally, one other firm said that 15 percent of its shipments have a fixed price as long as MEG and PTA remain in a certain range; if either MEG or PTA move out of this

¹ MEG and PTA together account for between 75 and 80 percent of the cost of PET resin. Conference transcript, p. 14 (Lane). Of these two inputs, PTA accounts for a larger share of the total material cost of PET resin (***) percent). Petition, exh. 15.

range the price may be adjusted. Moreover, long-term contracts typically involve monthly or quarterly price negotiations following movements in raw material prices.²

Transportation Costs to the U.S. Market

Transportation costs of imported PET resin shipped from India, Indonesia, and Thailand averaged 11.1 percent, 8.5 percent, and 7.8 percent of their respective customs values during 2004. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.³

U.S. Inland Transportation Costs

Transportation costs on U.S. inland shipments of PET resin generally account for a small to moderate share of the delivered price of these products. For the seven U.S. producers, reported costs ranged from 4 to 7 percent of the delivered price. For importers from the subject countries, the costs ranged from 1 percent to as much as 20 percent of the delivered price.

Exchange Rates

Nominal and real exchange rate data for India, Indonesia, and Thailand are presented on a quarterly basis in figure V-2.¹ The data show that the nominal exchange and real exchange rate of the Indian rupee appreciated moderately over the period. In both nominal and real terms the Indonesian rupiah and the Thailand baht appreciated relative to the U.S. dollar for most of the period, although both experienced a slight depreciation beginning in the second quarter of 2004.

² Further discussion of long-term contracts is presented in the section entitled "Pricing Practices."

³ Following normal Commission practice, the estimated cost was obtained by subtracting the customs value from the c.i.f. value of the imports for 2004 and then dividing by the customs value.

¹ Real exchange rates are calculated by adjusting the nominal rates for movements in producer prices in the United States and each of the subject countries.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates between the India, Indonesia, and Thailand currencies and the U.S. dollar, by quarters, 2002-04

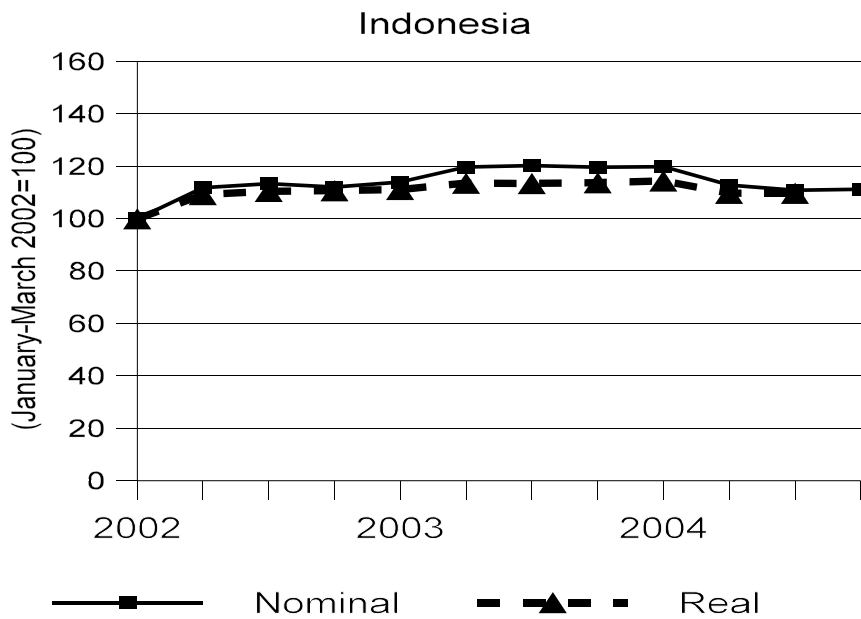
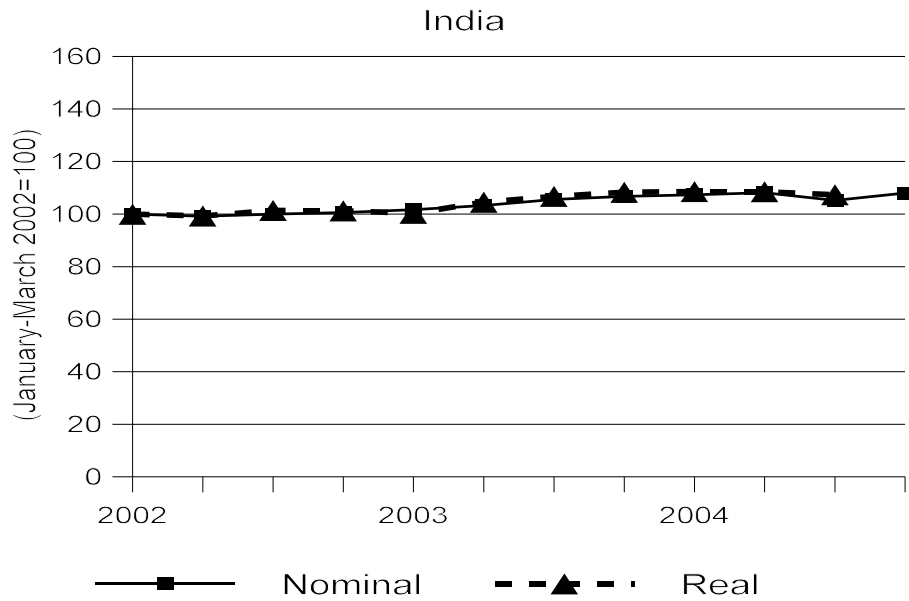
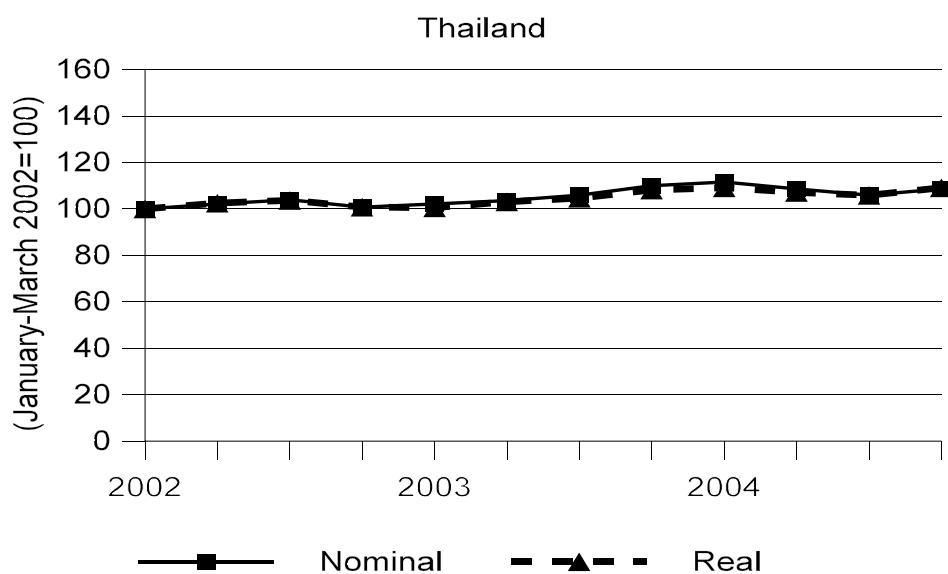


Figure continued on the next page.

Figure V-2-- Continued

Exchange rates: Indices of the nominal and real exchange rates between the India, Indonesia, and Thailand currencies and the U.S. dollar, by quarters, 2002-04



Source: International Monetary Fund, *International Financial Statistics*; St. Louis Federal Reserve, February 11, 2005.

PRICING PRACTICES

Pricing Methods

Questionnaire respondents were asked how they determined the prices that they charge for PET resin; responses were varied. Among U.S. producers, customer-by-customer negotiations or transaction-by-transaction negotiations were cited by some firms. In other cases, the responses focused upon such factors as raw material costs, competitive conditions, payment terms, or shipping costs. Among importers, most firms reported that prices are determined through negotiations with buyers, in some cases on a transaction-by-transaction basis. Six importers also said that prices are determined in the course of negotiations for multiple shipments. None of the producers or importers reported the use of price lists, although one producer said it announces price changes in advance.

Prices of PET resin are most commonly quoted on a delivered basis rather than an f.o.b. basis. Four of seven producers quote exclusively on a delivered basis, while the other firms provide both f.o.b. and delivered quotes. Most of the responding importers that sell PET resin quote on a delivered basis.

Sales Terms and Discounts

U.S. producers and importers of PET resin from India, Indonesia, and Thailand were asked what share of their sales were on a (1) long-term contract basis (multiple deliveries for more than 12 months), (2) short-term contract basis, and (3) spot sales basis (for a single delivery) during 2004. Among producers, one firm reported that it sells entirely on a spot basis. Among the other six producers, one firm

had a relatively equal distribution between short-term and long-term contracts, while the rest had a majority of sales on either a short-term or long-term contract basis. Among the 15 importers that reported sales of imports from the subject countries, seven reported that they sell exclusively on a spot basis, one sells exclusively on a short-term basis, and the remainder sell on both a spot and short-term contract basis. None of the importers reported the use of long-term contracts.

For U.S. producers selling on a contract basis, provisions varied from company to company. Long-term contracts are typically for periods of three years, while short-term contracts are for periods of one year or less. For both long-term and short-term contracts, quantities but not prices are generally fixed during the contract period. For long-term contracts, producers often negotiate a price annually, which serves as the base for a year, and then the price moves with the market either on a quarterly or monthly basis.² Due to the recent volatility in the prices of raw materials, domestic producers are increasingly re-negotiating their prices on a monthly basis.³ These producer contracts usually have a meet-or-release provision. These provisions of producers' contracts are typically the same for both end users and converters.⁴

In the case of importers, short-term contracts are typically for periods of one to 12 months with both prices and quantities typically fixed during the contract period. The vast majority do not contain meet-or-release provisions.

Discount policies on sales of PET resin are widely varied. Among the seven producers, two firms reported that they offer discounts based upon quarterly or annual volumes. One of these firms also offers discounts to purchasers engaged in research and development activities aimed at new PET resin applications, and the other offers discounts for early payments of accounts in some cases. None of the other producers offer discounts. Among importers, two firms offer discounts based upon annual sales volume. None of the other responding importers offer discounts in any form.

PRICE DATA

The Commission requested U.S. producers and importers of PET resin to provide quarterly data for the total quantity and value of PET resin that was shipped to unrelated customers in the U.S. market. Data were requested for the period 2002-04.⁵ Seven U.S. producers and 15 importers provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.⁶

Pricing data reported by these firms accounted for 96.1 percent of U.S. producers' commercial shipments of PET resin from 2002 to 2004. They also account for virtually all U.S. commercial shipments of subject imports from India over the same period; 38.4 percent of U.S. commercial shipments of subject imports from Indonesia over the same period; and 89.3 percent of U.S. commercial shipments of subject imports from Thailand over the same period.⁷ The products for which pricing data were requested are as follows:

² Hearing transcript, p. 68 (Dewsbury).

³ Ibid., pp. 69-70 (Dewsbury).

⁴ Ibid., p. 70 (Dewsbury).

⁵ Weighted-average prices of domestic and imported products 1A, 2, 3A, and 4A, as reported by purchasers, are presented in appendix D. Weighted-average prices of directly imported products 1A and 4A, as reported by importers that consume internally and purchasers, are presented in appendix E.

⁶ Pricing data were received on products 1A, 2, 3A, 3B, and 4A. Only domestic producers reported data on 3B and 4A.

⁷ The pricing data presented here may not account for total U.S. commercial shipments of subject imports because these shipments include some products that were consumed internally and which therefore do not have sales prices. Pricing data on imports that were consumed internally, as reported by importers and purchasers, are presented in appendix E.

Product 1A--Virgin PET resin, being either a clear homo- or co-polymer, and having an intrinsic viscosity of 0.72 IV to 0.84 IV, in the solid stated form. This PET resin product is typically used in water bottle applications.

Product 1B--Blended (Virgin and Recycled) PET resin, being either a clear homo- or co-polymer, and having an intrinsic viscosity of 0.72 IV to 0.84 IV, in the solid stated form. This PET resin product is typically used in water bottle applications.

Product 2--Virgin PET resin, being either a clear homo- or co-polymer, having an intrinsic viscosity of 0.72 IV to 0.84 IV, in the solid stated form. This PET resin product is typically used in sheet and strapping.

Product 3A--Virgin PET resin, being either a clear homo- or co-polymer, and having an intrinsic viscosity of 0.78 IV to 0.86 IV, in the solid stated form. This PET resin product is typically used in carbonated soft drink ("CSD") applications.

Product 3B--Blended (Virgin and Recycled) PET resin, being either a clear homo- or co-polymer, and having an intrinsic viscosity of 0.78 IV to 0.86 IV, in the solid stated form. This PET resin is typically used in carbonated soft drink ("CSD") applications.

Product 4A--Virgin PET resin, being mainly a co-polymer, and having an intrinsic viscosity of 0.75 IV to 0.86 IV, in the solid stated form. This PET resin product is typically used in heat set or hot fill applications; food, household and other customer product.

Product 4B--Blended (Virgin and Recycled) PET resin, being mainly a co-polymer, and having an intrinsic viscosity of 0.75 IV to 0.86 IV, in the solid stated form. This PET resin product is typically used in heat set or hot fill applications; food, household and other customer product.

Price Trends

Weighted-average prices reported for U.S. producers and importers are presented in tables V-1 through V-4 and in figures V-3 through V-5 on a quarterly basis during 2002-04. In general, producer prices show some evidence of seasonality, tending to be higher in the second and third quarters of each year than in the first and fourth quarters.

Table V-1

PET resin: Weighted-average f.o.b. prices and quantities of domestic and imported product 1A and margins of underselling/(overselling), by quarters, 2002-04

* * * * *

Table V-2

PET resin: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, 2002-04

* * * * *

Table V-3

PET resin: Weighted-average f.o.b. prices and quantities of domestic and imported product 3A and margins of underselling/(overselling), by quarters, 2002-04

* * * * *

Table V-4

PET resin: Weighted-average f.o.b. prices and quantities of domestic product 3B and 4A, by quarters, 2002-04

* * * * *

Figure V-3

PET resin: Weighted-average f.o.b prices of domestic and imported product 1A, by quarters, 2002-04

* * * * *

Figure V-4

PET resin: Weighted-average f.o.b prices of domestic and imported product 2, by quarters, 2002-04

* * * * *

Figure V-5

PET resin: Weighted-average f.o.b prices of domestic and imported product 3A, by quarters, 2002-04

* * * * *

The weighted-average sales price of U.S.-produced product 1A increased *** percent from the first quarter of 2002 to the fourth quarter of 2004. The weighted-average sales prices of product 1A imported from Indonesia and Thailand also increased from 2002 to 2004. The weighted-average sales price of product 1A imported from Indonesia increased *** percent from the first quarter of 2002 to the third quarter of 2004 and the weighted-average sales price of product 1A from Thailand increased *** percent from 2002 to 2004.

The weighted-average sales prices of the U.S.-produced product 2 and the imported product 2 all increased from 2002 to 2004. The weighted-average sales price of U.S.-produced product 2 fluctuated over the period, increasing *** percent from the first quarter of 2002 to the fourth quarter of 2004. The weighted-average sales price of product 2 imported from India increased *** percent from the third quarter of 2003 to the second quarter of 2004. The weighted-average sales price of product 2 imported from Indonesia increased *** percent from the third quarter of 2002 to the third quarter of 2004. The weighted-average sales price of product 2 imported from Thailand increased *** percent from 2002 to 2004.

The weighted-average sales price of the U.S.-produced product 3A fluctuated throughout the period, increasing *** percent from the first quarter of 2002 to the fourth quarter of 2004. The weighted-average

sales price of product 3A imported from India increased *** percent from 2002 to 2004.⁸ The weighted-average sales price of product 3A imported from Thailand increased from 2002 to 2004 by *** percent.⁹

Price Comparisons

Margins of underselling and overselling for the three-year period are presented by country and by product category in table V-5 below. Overall, there are 69 instances where prices for domestic PET resin and imported PET resin could be compared (tables V-5 and V-6). The data show that prices of imports from India were lower than the U.S. producer prices in 13 out of 18 quarterly comparisons by margins of 0.5 percent to 55.4 percent; imports from Indonesia were lower in 12 out of 15 comparisons by margins ranging from 8.5 to 28.9 percent; and those from Thailand were lower in 24 out of 36 comparisons by margins of 0.1 to 21.3 percent. In the remaining instances, the imported product was priced above the comparable domestic product; margins of overselling ranged from 0.2 percent to 16.8 percent.

Table V-5
PET resin: Margins of underselling/(overselling) by product and by country, quarterly, 2002-04

* * * * *

⁸ Pricing data for imported product 3A from India include data from ***, ***. E-mail from ***, March 29, 2005; and ***, letter from ***, March 25, 2005. Petitioner argued that ***. Petitioner's prehearing brief, p. 19. Appendix F contains table F-1 and figure F-1, which present pricing data for Product 3A ***. Also, as seen in table F-2 of appendix F, when ***, there is *** in the case of India and *** in the case of product 3A.

⁹ One price on product 3A imported from Thailand as reported by *** was excluded as it was deemed to be an outlier.

Table V-6

PET resin: Instances of underselling/overselling and the range and average of margins for products 1-4, by sources, January 2002-December 2004

Item	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
Country:						
India	13	0.5 to 55.4	10.4	5	0.5 to 11.0	5.2
Indonesia	12	8.5 to 28.9	20.4	3	2.1 to 16.8	8.8
Thailand	24	0.1 to 21.3	7.9	12	0.2 to 11.5	5.7
Total ¹	49	0.1 to 55.4	11.6	20	0.2 to 16.8	6.1
Total subject imports by product:						
1A	10	2.1 to 25.4	15.5	2	***	5.4
2	9	3.9 to 21.3	11.0	3	2.2 to 4.5	3.5
3A	7	0.3 to 9.9	4.2	5	0.6 to 9.6	5.5
Total ¹	26	0.3 to 25.4	10.9	10	0.6 to 9.6	4.9
¹ Total number of instances for all cited countries, range of margins for all cited countries, and average margin for all cited countries. Source: Compiled from data submitted in response to Commission questionnaires.						

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of PET resin to report any instances of lost sales or revenues they experienced due to competition from imports of PET resin from India, Indonesia, and Thailand during 2002-04. *** of the seven responding U.S. producers reported that they had to either reduce prices or roll back announced price increases; however, they only provided *** usable lost sales allegations and *** usable lost revenue allegations. The *** lost sales allegations involved *** pounds of PET resin, valued at \$*** and the *** lost revenue allegations involved up to *** pounds of PET resin, valued at up to \$***.¹⁰ Staff contacted the *** purchasers cited in the allegations; *** responded. The results are summarized in tables V-7 and V-8 and are discussed below.

Table V-7

PET resin: U.S. producers' lost sales allegations

* * * * *

¹⁰ In addition to these allegations, the petitioner alleged that it lost sales of *** pounds a year in *** due to competition from imports from Asia and lost revenues on *** pounds a year in *** due to competition from imports from Asia. However, specific companies and contacts in neither instance were provided.

Table V-8
PET resin: U.S. producers' lost revenue allegations

* * * * *

*** was named in a lost sale of *** pounds valued at \$*** that allegedly occurred in ***. It disagreed with the allegation, stating that it only received price quotes from domestic suppliers on the transaction.

*** was named in a lost sale of *** pounds valued at \$*** that allegedly occurred in ***.¹¹ It disagreed with the allegation, stating that it purchases ***. It further stated that once during *** its domestic supplier was unable to provide the requested amount of the product and it then purchased ***.

*** was named in a lost sale of *** pounds valued at \$*** involving imports from Thailand allegedly occurring in ***. *** disagreed with the allegation, stating that the product it purchased was not from one of the subject countries.

*** was named in a lost revenue allegation concerning *** pounds valued at \$*** involving imports from India allegedly occurring in ***. *** disagreed with the allegation. It said that in ***, it was purchasing from domestic sources at \$*** per pound and \$*** per pound. Furthermore, it said that its negotiations with foreign producers were concluded in ***, well before the time-frame of the allegation.

*** was named in a lost revenue allegation concerning *** pounds valued at \$*** involving imports from Thailand allegedly occurring in ***. It disagreed with the allegation. It further stated that for most of *** it found that Asian pricing was not significantly different than domestic suppliers and on several occasions was in fact equal to or higher than domestic resin.

*** was named in a lost revenue allegation concerning *** pounds valued at *** \$*** allegedly occurring in ***.¹² It disagreed with the allegation, stating that the domestic supplier declined to ship the product to the location in question, ***.

*** was named in a lost revenue allegation concerning *** pounds valued at \$*** allegedly occurring in ***.¹² *** refrained from responding to the specific allegation; however, it said that it typically purchases from one domestic source and one foreign source and that this decision is not based on price, but is rather an attempt to ensure an uninterrupted supply.

*** was named in *** lost revenue allegations involving *** pounds valued at \$***. It stated that over the period of investigation it did not receive initial price offers from its domestic supplier and therefore did not reject any U.S. price. Rather, ***. The domestic supplier met the Asian price in each instance. Furthermore, ***.

¹¹ The source of the imported product involved in this allegation was not reported and may be nonsubject.

¹² The source of the imported product involved in these allegations was not reported and may be nonsubject.

PART VI: FINANCIAL EXPERIENCE OF THE U.S. PRODUCERS

BACKGROUND

Eight companies reported financial results on their U.S. PET resin operations: DAK, Invista, M&G, Nan Ya, StarPet, TiePet, Voridian, and Wellman. With several exceptions, U.S. producers reported their financial results for calendar years 2002 through 2004.¹ The majority of operations represented manufacturing of PET resin for direct commercial sale. Some tolling and a small percentage of transfers and internal consumption were also reported.² Staff verified the questionnaire response of M&G on March 10 and 11, 2005. Changes pursuant to verification are reflected in this report.

During the period examined, reporting companies recognized asset impairments, capacity reductions/closures, restructuring charges, debottlenecking, as well as a large one-time charge related to refinancing. Follow-up information provided by company officials confirmed that some non-recurring items were directly reflected in the operating results reported to the Commission. Voridian reported ***.³ ***.⁴ ***. M&G's 2004 closure of its CP-2 line is directly reflected in the ***.⁵ Wellman, in contrast with M&G and Voridian, ***.⁶

OPERATIONS ON PET RESIN

Income-and-loss data are presented in table VI-1. Selected financial information by firm is presented in table VI-2. A variance analysis is presented in table VI-3.

A notable trend of the period was the steady increase in average raw material costs. Sales volume and revenue also increased.⁷ As noted in a previous section of this report, primary raw materials (PTA, DMT, TPA and EG) are oil and natural gas derivatives. The importance of raw material costs is underscored by Wellman's statement that profitability is driven by the "raw material margin," as well as sales volume.⁸ Similarly, Eastman Chemical Company (Voridian's parent company) states that "fluctuations in raw material and energy costs" are key determinants of profitability.⁹ For the

¹ ***. Staff telephone interview with ***, February 3, 2005. StarPet and TiePet financial information is reported separately in table VI-2.

² ***. Staff telephone interview with ***, April 12, 2004. ***. ***.

³ ***.

⁴ ***. Staff telephone interviews with ***, February 23 and 25, 2005.

⁵ Staff telephone interview with ***, February 23, 2005.

⁶ Staff telephone interview with ***, February 23, 2005. Non-recurring charges recognized by Wellman which were specifically of interest were ***.

⁷ The increase was described as "unprecedented" by Voridian's parent company. January 4, 2005 press release: *Eastman updates fourth-quarter 2004 outlook*, www.eastman.com, retrieved on January 7, 2005.

⁸ Wellman's 3rd quarter 2004 10-K, p. 15. Wellman defines "raw material margin" as the difference between net selling price and raw material cost.

⁹ Eastman Chemical Company, 2003 Annual Report, p. 31.

Table VI-1
PET resin: Consolidated financial results, calendar years 2002-04

Item	Calendar year		
	2002	2003	2004
	Quantity (1,000 pounds)		
Commercial sales	***	***	***
Internal consumption	***	***	***
Transfers	***	***	***
Total net sales quantity	4,424,641	4,767,450	5,097,192
Value (\$1,000)			
Commercial sales	***	***	***
Internal consumption	***	***	***
Transfers	***	***	***
Total net sales value	1,902,535	2,209,998	2,684,835
Cost of goods sold:			
Raw material	1,207,671	1,556,359	2,008,783
Other factory costs	408,393	466,986	478,494
Total cost of goods sold	1,616,064	2,023,345	2,487,277
Gross profit	286,471	186,653	197,558
SG&A expenses	145,017	154,060	168,334
Operating income	141,454	32,593	29,224
Interest expense	39,381	36,067	52,024
Other expenses	7,943	7,507	27,853
Other income items	0	25,846	26,804
Net income or (loss)	94,130	14,865	(23,849)
Depreciation/amortization	89,600	87,752	116,554
Estimated cash flow	183,730	102,617	92,705

Table continued on next page.

Table VI-1--Continued

PET resin: Consolidated financial results, calendar years 2002-04

Item	Calendar year		
	2002	2003	2004
	Ratio to net sales (percent)		
Cost of goods sold:			
Raw material	63.5	70.4	74.8
Other factory costs	21.5	21.1	17.8
Cost of goods sold	84.9	91.6	92.6
Gross profit	15.1	8.4	7.4
SG&A expenses	7.6	7.0	6.3
Operating income	7.4	1.5	1.1
Net income or (loss)	4.9	0.7	(0.9)
	Unit value (per pound)		
Commercial sales	***	***	***
Internal consumption	***	***	***
Transfers	***	***	***
Total net sales	0.43	0.46	0.53
Cost of goods sold:			
Raw material	0.27	0.33	0.39
Other factory costs	0.09	0.10	0.09
Total cost of goods sold	0.37	0.42	0.49
Gross profit	0.06	0.04	0.04
SG&A expenses	0.03	0.03	0.03
Operating income	0.03	0.01	0.01
	Number of firms reporting		
Operating losses	1	2	1
Data	7	8	7
<p>Note: As presented here, total "Other factory costs" include direct labor and energy costs. It has also been reduced by the amount of tolling operating profit reported *** in 2002. The number of firms reporting data by period includes those companies reporting tolling and non-tolling operations. The number of firms also reflects changes in ownership during the period.</p>			
<p>Source: Compiled from data submitted in response to Commission questionnaires.</p>			

Table VI-2
PET resin: Selected financial information by company, calendar years 2002-04

* * * * *

Table VI-3
PET resin: Variance analysis of financial results for calendar years 2002-04

Item	Calendar years		
	2002-04	2002-03	2003-04
	Value (\$1,000)		
Total net sales:			
Price variance	493,914	158,373	323,013
Volume variance	288,385	149,090	151,824
Total net sales variance	782,300	307,462	474,837
Cost of sales:			
Cost variance	(625,569)	(282,073)	(323,987)
Volume variance	(245,644)	(125,208)	(139,945)
Total cost variance	(871,213)	(407,281)	(463,932)
Gross profit variance	(88,913)	(99,819)	10,905
SG&A expenses:			
Expense variance	(1,274)	2,193	(3,618)
Volume variance	(22,043)	(11,236)	(10,656)
Total SG&A variance	(23,317)	(9,043)	(14,274)
Operating income variance	(112,230)	(108,862)	(3,369)
Summarized as:			
Price variance	493,914	158,373	323,013
Net cost/expense variance	(626,844)	(279,880)	(327,605)
Net volume variance	20,699	12,646	1,223
Note: The homogenous nature of the product makes it generally well suited for a variance analysis. The price and sales volume variances presented in this table represent the sum of individual price and sales volume variances for commercial sales, internal consumption, and transfers.			
Source: Compiled from data submitted in response to Commission questionnaires.			

industry as a whole, raw material costs increased from around 75 percent of total COGS in 2002 to 80 percent of total COGS in 2004. Energy costs also increased during the period, but are a smaller component of total COGS.¹⁰

¹⁰ As presented in this report, energy costs are included in "Other factory costs." Information provided at the preliminary phase of these investigations indicated that energy costs were in the range of 1 to 2 cents per pound of (continued...)

As shown in table VI-2, all producers managed to increase their average sales values somewhat during the period.¹¹ No producer, however, was able to completely offset higher raw material costs and prevent erosion of profitability. This pattern of declining profitability, as reported to the Commission, is generally consistent with publicly available information.¹²

Company-specific variations in average unit raw material costs shown in table VI-2 are in part due to differences in the underlying feedstock used. Several U.S. producers also have at least some of their raw material inputs supplied by separate related firms: ***.¹³

The Commission's U.S. producer questionnaire requires purchased inputs from related firms to be reported at cost; e.g., as opposed to a market based transfer value which includes the related firm's profit. Each above-referenced company was contacted by staff to determine whether or not input transfers from related parties were reported at cost. ***.¹⁴ ***.¹⁵ ***.¹⁶

The information submitted by ***, as noted above, generally indicates that raw material costs for the industry are likely somewhat higher due to the inclusion of profit on inputs purchased from related parties. While an adjustment to eliminate such profit is ideal, ***'s information indicates that an overall adjustment would not meaningfully change the industry's financial results. Accordingly, staff has made no adjustment to eliminate profit on inputs purchased from related parties.

The apparent inability to pass a larger share of raw material cost increases to their customers created a strong incentive for the industry to reduce overall costs. For example, Voridian's IntegRex (TM) technology, announced in September 2004, is reportedly a significant departure from the traditional PET resin manufacturing process.¹⁷ While research and development ("R&D") expenses related to IntegRex are reflected in Voridian's financial results, the plant expansion necessary to utilize the new

¹⁰(...continued)
manufactured PET resin.

¹¹ Price increases were announced by DAK in a February 28, 2003 press release: *DAK resins announces price increase to cover increases in paraxylene and glycol material costs*, www.dakamericas.biz, retrieved on January 7, 2005. Wellman announced price increases in early to mid-2003. Wellman's 2004 10-k, p. 28.

¹² "Eastman Chemical Company (NYSE:EMN) {Voridian's parent company} today announced that despite continued strong sales volumes and increased selling prices throughout the company, higher raw material and energy costs, including for paraxylene, ethylene glycol and propane, are expected to have increased by over \$100 million in fourth quarter compared with third quarter 2004, which is substantially above the company's and external consultants' previous forecasts." January 4, 2005 press release: *Eastman updates fourth-quarter 2004 outlook*, www.eastman.com retrieved on January 7, 2005. Voridian's 4th quarter 2004 operating income was higher compared to 4th quarter 2003. This was "... primarily {due} to increased sales volume, higher selling prices and cost reduction efforts that more than offset higher raw material and energy costs." For the year as a whole, however, Voridian's polymer segment reported lower operating income in 2004 compared to 2003.

Wellman's 3rd quarter 10-Q showed that the profit of the Packing Products Group segment declined from \$22.9 million (for the three quarters ending September 30, 2003) to \$14.1 million (for the three quarters ending September 30, 2004). Wellman's 3rd quarter 10-Q, p. 26.

¹³ Voridian's "PET polymers production is vertically integrated back to the raw material paraxylene for a substantial majority of its capacity." Eastman Chemical Company, 2003 Annual Report, p. 26.

***. European Chemical News, January 2005, p. 12. ***. Staff telephone interview with ***, February 22, 2005. ***.

¹⁴ Staff telephone interview with ***, February 24 and 25, 2005. ***.

¹⁵ E-mail from ***, February 25, 2005.

¹⁶ Staff telephone interview with ***, February 25, 2005.

¹⁷ IntegRex essentially eliminates the need for separate CP and SSP production lines and is "... expected to provide a cost-advantaged paraxylene to PET polymer integrated manufacturing process." Eastman Chemical Company's 3rd quarter 2004 10-Q, p. 44.

process won't be completed until 2006.¹⁸ Voridian also shut down a precolored green PET resin line in 2002. Other efforts include Wellman's "cost reduction program" which involved restructuring operations and work force reductions.¹⁹ M&G closed an older CP-2 unit in April 2004. ***.

Average unit COGS by company suggests differences in cost structure beyond the type of raw material used. Differences appear to be in part attributable to the age of the facility and plant layout. ***.²⁰ As shown in table VI-2, DAK reported the ***.^{21 22}

***.²³ ***.²⁴

Other underlying differences also explain some of the variation in average unit COGS. For example and according to staff field trip notes, ***.²⁵ As shown in table VI-2, ***.

Along with higher raw material costs, M&G and Wellman also reported ***. Notwithstanding its effort to improve efficiency through debottlenecking and the closure of the CP-2 unit, M&G ***.

Verification confirmed the ***.²⁶ ***.²⁷ In addition to these factors, M&G's capacity utilization was ***.²⁸ ***.

***.²⁹

Wellman also reported ***.

According to the Wellman company official, ***.³⁰

¹⁸ The 350 thousand metric ton plant expansion that will utilize the technology IntegRex (TM) process will formally begin in early March 2005. It is scheduled to be completed in late 2006 at an estimated cost of more than \$100 million. February 28, 2005 press release: *Eastman plans groundbreaking for new Voridian manufacturing facility*, www.eastman.com, retrieved on February 28, 2005. *Eastman investing big in new PET process*, September 3, 2004, www.plasticsnews.com, retrieved on September 8, 2004. *Eastman to construct \$100 million PET facility*, September 6, 2004, www.chemicalmarketreporter.com, retrieved on November 11, 2004.

¹⁹ ***. Staff telephone interview with ***, February 9, 2005.

²⁰ Staff telephone interview with ***, February 1, 2005. As noted, DAK's North Carolina and South Carolina plants are "single stream." The South Carolina plant ". . . utilizes the same proven technology {as the North Carolina plant} with improved flexibility for manufacturing specialty products." June 12, 2003 DAK press release submitted in DAK's questionnaire response.

²¹ ***.

²² DAK's PET resin facility in South Carolina became operational in 2003. Under current U.S. GAAP (SOP-98-5) start-up costs are expensed in the year incurred. As shown in table VI-2, the approximately ***.

²³ With respect to conversions and adding new pet resin capacity, M&G notes that ". . . a fibre-to-PET conversion . . . is typically very expensive to achieve; often requiring more than twice the capital per unit of output compared to {a} modern PET plant." *M&G Polymers outlines PET resin strategy*, June 10, 2004, www.foodproductiondaily.com, retrieved on February 8, 2005.

²⁴ Staff telephone interview with ***, February 9, 2005. ***.

²⁵ Staff field trip report, Nan Ya Plastics, pp. 2 and 3, February 3, 2005.

²⁶ Staff telephone interviews with ***, February 11, 2005.

²⁷ ***. Staff verification report, M&G, p. 6, March 22, 2005. ***.

²⁸ ***.

²⁹ Staff verification report, M&G, p. 6, March 22, 2005.

³⁰ Staff telephone interview with ***, February 16, 2005. ***. This is consistent with the large share of raw material costs (the primary variable cost) to total PET resin COGS reflected in table VI-1.

CAPITAL EXPENDITURES AND R&D EXPENSES

Data on capital expenditures and R&D expenses are shown in table VI-4. Most U.S. producers added capacity (through new construction and debottlenecking) during the period examined which is reflected, in part, in the reported capital expenditures. *** reported the most significant capital expenditures. ***.³¹

While R&D expenses were reported by all companies, ***.³² ***.

Table VI-4
PET resin: Capital expenditures and R&D expenses, calendar years 2002-04

* * * * *

ASSETS AND RETURN ON INVESTMENT

The value of assets and return on investment is shown in table VI-5.³³

Table VI-5
PET resin: Consolidated value of assets and return on investment, calendar years 2002-04

Item	Calendar years		
	2002	2003	2004
	Value (\$1,000)		
Total assets	1,624,440	1,803,847	1,974,553
	Ratio of sales to assets (asset turnover)		
Asset turnover	1.17	1.23	1.36
	Ratio of operating income to net sales		
Operating income	7.4	1.5	1.1
	Asset turnover multiplied by operating income ratio		
Return on investment	8.7	1.8	1.5
Note: The asset base used to calculate return on investment is affected by the transfer of ownership during the period and the extent to which each company was able to isolate requested asset information to PET resin operations.			
Source: Compiled from data submitted in response to Commission questionnaires.			

³¹ Staff telephone interview with ***, April 19, 2004.

³² Ibid.

³³ Table VI-5 presents return on investment along with its sub-components: asset turnover and operating margin. Asset turnover, sales divided by (in this case) total period assets, is a measure of a firm's ability to generate sales from a specific investment in assets (Financial Reporting and Statement Analysis: A Strategic Perspective, p. 128).

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of PET resin from India, Indonesia, Taiwan, and Thailand on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown in appendix G.

PART VII: THREAT CONSIDERATIONS

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--
In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²

Information on subsidies is presented in Part I; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN INDIA

The petition identified five foreign producers: Reliance Industries, Ltd. ("Reliance"); Pearl Engineering Polymers, Ltd. ("Pearl"); Futura Polyesters, Ltd. ("Futura"); Elque Polyesters, Ltd. ("Elque"); and, South Asian Petrochem, Ltd. ("SAPL"). All five firms provided useable data in response to the Commission's foreign producer questionnaires. Table VII-1 presents data regarding production and exports to the United States for the five PET resin producers/exporters in India. Table VII-2 presents data provided by the five Indian producers/exporters with respect to their bottle-grade PET resin operations in India.

Table VII-1
PET resin: Manufacturers/exporters in India, U.S. importing firms, production, and exports to the United States, by firm, 2004

* * * * *

Indian average production capacity for bottle-grade PET resin increased over the period of investigation and it is projected to continue to rise in the next two years. These increases in capacity are due mainly to additional capacity that came on line and will be coming on line for Reliance. From 2002 to 2004, Reliance's capacity increased by *** percent and from 2004 to 2006, its capacity is slated to increase by an additional *** percent. ***. Additionally, foreign producer SAPL only began production in 2003 so its data augment the trend of increasing Indian capacity over the period of investigation. Of the five respondent firms only ***.

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

Table VII-2

PET resin: Indian production capacity, production, shipments, and inventories, 2002-04 and projected 2005-06

Item	Actual experience			Projections	
	2002	2003	2004	2005	2006
Quantity (1,000 pounds)					
Capacity	337,185	569,962	746,428	938,643	1,008,308
Production	319,615	500,314	714,613	924,248	993,913
End of period inventories	19,094	11,733	45,624	43,240	43,395
Shipments:					
Internal consumption	***	***	***	***	***
Home market sales	***	***	***	***	***
Exports to--					
The United States	***	***	***	***	***
All other markets	***	***	***	***	***
Total exports	159,123	319,737	434,064	628,369	669,006
Total shipments	318,853	507,666	680,722	926,632	993,758
Value (\$1,000)					
Exports to United States	***	***	***	***	***
Unit value (per pound)					
Exports to United States	\$0.36	\$0.37	\$0.52	\$0.59	\$0.59
Ratios and shares (percent)					
Capacity utilization	94.8	87.8	95.7	98.5	98.6
Inventories to production	6.0	2.3	6.4	4.7	4.4
Inventories to total shipments	6.0	2.3	6.7	4.7	4.4
Share of total quantity of shipments:					
Internal consumption	***	***	***	***	***
Home market	***	***	***	***	***
Exports to--					
The United States	***	***	***	***	***
All other markets	***	***	***	***	***
Total exports	49.9	63.0	63.8	67.8	67.3
Note.--Because of rounding, figures may not add to the totals shown.					
Source: Compiled from data submitted by Indian foreign producers Elque, Futura, Pearl, Reliance, and SAPL in response to Commission questionnaires.					

Indian capacity utilization rates were relatively high during the period of investigation and are projected to increase further in 2005 and 2006. According to foreign producers' responses to Commission questionnaires, Indian exports to the United States first increased by 70 percent from 2002 to 2003 and then decreased by 79 percent from 2003 to 2004.³ Over the same period, foreign producers noted that home market sales of the subject merchandise remained relatively constant as a share of total shipments. Given that shipments increased, that exports to the U.S. increased and then decreased, and that inventories stayed relatively low as a percentage of production, other export market destinations increased as a share of total shipments over each of the three years under investigation. Other export destinations for Indian PET resin included a wide range of countries in ***.

THE INDUSTRY IN INDONESIA

The petition identified five Indonesian producers: PT. Indorama Synthetics ("Indorama");⁴ PT. Polypet Karyapersada ("Polypet"); PT. SK Keris ("Keris"); PT. Petnesia Resindo ("Resindo"); and PT. Mitsubishi Chemical ("Mitsubishi"). Three out of the five producers identified in the petition provided the Commission with a useable response to its foreign producer questionnaire: Indorama, Mitsubishi, and Polypet. Table VII-3 presents data regarding production and exports to the United States for the four PET resin producers/exporters in Indonesia. Table VII-4 presents data provided by the two subject Indonesian producers of PET resin (Mitsubishi and Polypet) that responded to the Commission's foreign producer questionnaire.

**Table VII-3
PET resin: Manufacturers/exporters in Indonesia, U.S. importing firms, production, and exports to the United States, by firm, 2004**

* * * * *

**Table VII-4
PET resin: Indonesian production capacity, production, shipments, and inventories, 2002-04 and projected 2005-06**

* * * * *

The Indonesian average production capacity for bottle-grade PET resin as reported by the two subject foreign producers for which the Commission received data remained relatively constant over the period under investigation. These figures understate the total production capacity for the industry in Indonesia in the absence of foreign producer questionnaire responses from Keris and Resindo. The

³ Figures on exports to the United States captured from foreign producers' questionnaires of respondent firms were equivalent to *** percent of official U.S. imports from India in 2002, *** percent of official U.S. imports from India in 2003, and *** percent of officially reported imports in 2004. This under-reporting in the 10-digit statistical reporting number for bottle-grade PET resin is the result of U.S. importer *** imports of PET resin from ***, which *** improperly classified under the HTS number for "Other polyesters" (number 3907.99.0050) during the period of investigation.

⁴ Commerce determined that foreign producer Indorama has not been selling bottle-grade PET resin at less than fair value. See 70 FR 13456. Accordingly, data from Indorama's foreign producers' questionnaire have been deleted from the analysis of this and other relevant sections in this report.

petition estimates that these two firms account for roughly 55 percent of the remaining subject Indonesian capacity.⁵

The disposition of Indonesian PET resin appears to be diverse. Home market sales increased as a share of total shipments during the period of investigation, while exports to the United States decreased as a share of total Indonesian shipments. Exports to the United States are projected to *** according to questionnaire data. As the only subject foreign producer exporting PET resin to the United States, *** indicated that its “zero” projections for 2005 and 2006 were based on the imposition of an antidumping duty in the United States since October 2004.⁶ The quantity of PET resin exported to markets other than the United States as a share of total Indonesian shipments first increased and then decreased over the period of investigation. Mitsubishi and Polypet exported mainly to *** countries including ***.⁷ Based on the respondent firms’ data, it appears that home market consumption increased over the period of investigation and is projected to increase in 2005 and 2006 both in absolute terms and as a share of total shipments.

THE INDUSTRY IN TAIWAN

Commerce ruled that imports from Taiwan have not been sold at less than fair value during the period of the investigation.⁸ Accordingly, the Commission terminated its investigation concerning imports of bottle-grade PET resin imported from Taiwan on March 21, 2005.⁹

THE INDUSTRY IN THAILAND

The petition identified five foreign producers of PET resin in Thailand: Asia Pet Co., Ltd. (“Asia Pet”); Bangkok Polyester Public Co., Ltd. (“Bangkok”); IndoPet, Ltd. (“IndoPet”); Thai Pet Resin Co., Ltd., (“Thai Pet”); and, Thai Shinkong Industry Corporation, Ltd. (“Thai Shinkong”). Four out of five of the foreign producers identified in the petition submitted foreign producer questionnaire responses.¹⁰ Table VII-5 presents data regarding production and exports to the United States for the five PET resin producers/exporters in Thailand. Table VII-6 presents data provided by Thai producer/exporters with respect to their PET resin operations in Thailand.

⁵ See petition, Exhibit 10. According to proprietary data from Customs, foreign producer Keris exported some quantities of PET resin to the United States in 2002 and 2003, while Resindo exported only a minimal quantity in 2002 to the United States. There were no recorded exports from either Keris or Resindo to the United States in 2004. In 2003, foreign producer Keris exported *** pounds to the United States. Additionally, the two foreign producers Resindo and Keris exported a total of *** pounds to the United States in 2002. Adding these quantities to the quantities reported in foreign producer questionnaire responses, exports of subject merchandise to the United States totaled *** pounds in 2002, *** pounds in 2003, and remained the same at *** pounds in 2004.

⁶ See *** foreign producer questionnaire, section II.

⁷ Polypet identified ***.

⁸ 70 FR 13454; March 21, 2005.

⁹ 70 FR 15884; March 29, 2005.

¹⁰ Bangkok, Thai Pet, and Thai Shinkong provided responses to final phase questionnaires. However, Thai Shinkong’s foreign producer questionnaire response was unusable due to data irregularities both within its questionnaire response and in comparison with its preliminary questionnaire submission. Accordingly, the data Thai Shinkong submitted for the preliminary phase of these investigations has been retained for use in the final phase. Additionally, foreign producer IndoPet had submitted a questionnaire response for the preliminary phase, but failed to provide the Commission with a questionnaire response in the final phase. Accordingly, the data IndoPet submitted in the preliminary phase of these investigations has been retained for use in the final phase.

Table VII-5

PET resin: Manufacturers/exporters in Thailand, U.S. importing firms, production, and exports to the United States, by firm, 2004

* * * * *

Thai average production capacity for bottle-grade PET resin increased over the period of investigation and it is projected to remain relatively constant at 820-850 million pounds of annual capacity in 2005 and 2006. The increases in Thai capacity as reported in foreign producer questionnaires are due mainly to an increase in *** annual capacity in 2003 and to the entrance of Thai Pet into the bottle-grade PET resin industry in 2004. Bangkok was the only firm to reduce capacity over the period of investigation.

The disposition of Thai subject merchandise appears to be diverse, yet essentially export driven. Home market sales increased in absolute terms over the period of investigation; however, as a share of total shipments, Thai home market sales of PET resin remained constant at around *** percent. Exports to the United States increased between 2002 and 2003 both in absolute terms and as a percentage share of total Thai shipments, while both measures decreased from 2003 to 2004. Inversely, Thai exports to markets other than the United States decreased as a share of total shipments from 2002 to 2003, but then increased by this same measure from 2003 to 2004.¹¹ Other export destinations for Thai resin included countries in ***.

¹¹ The trend apparent in exports to the United States as reported in Thai foreign producers' questionnaire responses is generally consistent with the trend in official import statistics. However, exports to the United States of these four foreign producers, as reported in their questionnaire responses, accounted for *** percent of official import statistics for HTS number 3907.60.0010 in 2002, *** percent of official statistics in 2003, and *** percent of official statistics in 2004. Misreporting of subject merchandise under HTS number 3907.60.0050 may explain these discrepancies.

Table VII-6

PET resin: Thai production capacity, production, shipments, and inventories, 2002-04 and projected 2005-06

Item	Actual experience			Projections	
	2002	2003	2004	2005	2006
Quantity (1,000 pounds)					
Capacity	532,342	639,952	819,810	844,254	824,412
Production	490,423	600,407	763,906	835,411	827,695
End of period inventories	28,158	22,736	44,707	29,549	21,832
Shipments:					
Internal consumption	***	***	***	***	***
Home market sales	***	***	***	***	***
Exports to--					
The United States	***	***	***	***	***
All other markets	***	***	***	***	***
Total exports	319,148	413,849	531,495	600,547	600,547
Total shipments	442,159	574,570	739,117	835,411	835,411
Value (\$1,000)					
Exports to United States	(1)	(1)	(1)	(1)	(1)
Unit value (per pound)					
Exports to United States	(1)	(1)	(1)	(1)	(1)
Ratios and shares (percent)					
Capacity utilization	92.1	93.8	93.2	99.0	100.4
Inventories to production	5.7	3.8	5.9	3.5	2.6
Inventories to total shipments	6.4	4.0	6.0	3.5	2.6
Share of total quantity of shipments:					
Internal consumption	***	***	***	***	***
Home market	***	***	***	***	***
Exports to--					
The United States	***	***	***	***	***
All other markets	***	***	***	***	***
Total exports	72.2	72.0	71.9	71.9	71.9

¹ Data on value and unit value of exports to the United States are not available due to the use of preliminary questionnaire responses for two out of four of the reported Thai producers.

Note.—Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted by Thai producers Bangkok, IndoPet, Thai Pet, and Thai Shinkong in response to Commission questionnaires.

U.S. IMPORTERS' INVENTORIES OF PET RESIN FROM THE SUBJECT COUNTRIES

Table VII-7 presents data regarding inventories of imports of PET resin from subject countries reported by U.S. importers from 2002 through 2004.

Table VII-7
PET resin: U.S. importers' end-of-period inventories of imports, 2002-04

* * * * *

U.S. IMPORTERS' CURRENT ORDERS

Four importers reported orders for approximately 9.41 million pounds of PET resin from subject countries slated for delivery after December 31, 2004.

ANTIDUMPING AND COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

In November 2000, the EU imposed antidumping duties on imports of PET resin from India, Indonesia, Korea, Malaysia, Taiwan, and Thailand as well as countervailing duties on imports from India, Malaysia, and Thailand. The duties (as applicable), expressed as a percentage of the c.i.f. import price at the EU border, for the countries subject to these investigations are shown in table VII-8. The EU orders are scheduled for expiration after December 31, 2005.¹² In December 2004, an antidumping investigation was initiated in Malaysia regarding imports of PET resin from Indonesia, Korea, Taiwan, and Thailand.¹³

¹² Petitioner's posthearing brief, p. 50

¹³ Ibid. p. 50.

Table VII-8

PET resin: EU antidumping and countervailing duties applicable to imports from India, Indonesia, and Thailand

Country	Firm	Duty (percent)
Antidumping duty:		
India	Reliance Industries, Ltd.	51.5
	Pearl Engineering Polymers, Ltd.	30.0
	Others	51.5
Indonesia	P.T. Bakrei Kasei Corp.	63.5
	P.T. Indorama Synthetics, Tbk	15.2
	P.T. Polypet Karyapersada	73.7
	Others	73.7
Thailand	Thai Shigkong Industry Corp., Ltd.	32.5
	Others	32.5
Countervailing duty:		
India	Reliance Industries, Ltd.	8.23
	Pearl Engineering Polymers, Ltd.	5.80
	Futura Polymer, Ltd.	0.37
	Elque Polyesters, Ltd.	4.43
	Others	8.23
Source: Official Journal of the European Communities, Council Regulation (EC) No. 2604/2000, 27 November 2000, and Council Regulation (EC) No. 2603/2000, 27 November 2000.		

APPENDIX A
FEDERAL REGISTER NOTICES

DEPARTMENT OF COMMERCE**International Trade Administration****[C-533-842]****Notice of Preliminary Affirmative
Countervailing Duty Determination and
Alignment With Final Antidumping
Duty Determination: Bottle-Grade
Polyethylene Terephthalate ("PET")
Resin From India****AGENCY:** Import Administration,
International Trade Administration,
Department of Commerce.**SUMMARY:** The Department of Commerce
(the Department) preliminarily
determines that countervailable
subsidies are being provided to
producers and exporters of Bottle-Grade
Polyethylene Terephthalate (PET) Resin

(BG PET Resin) from India. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: August 30, 2004.

FOR FURTHER INFORMATION CONTACT:

Douglas Kirby or Addilyn Chams-Eddine, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3782 and (202) 482-0648 respectively.

SUPPLEMENTARY INFORMATION:

Case History

The petition in this investigation was filed on March 24, 2004, by the United States PET Resin Producers Coalition (Petitioner). This investigation was initiated on April 13, 2004. See *Notice of Initiation of Countervailing Duty Investigations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India (C-533-842) and Thailand (C-549-824)*, 69 FR 21096 (April 20, 2004). On April 28, 2004, we issued a questionnaire to the Government of India (GOI) and requested that the GOI forward the relevant sections of the questionnaire to Indian producers/exporters of BG PET Resin.

On May 21, 2004, petitioner timely requested a 65-day postponement of the preliminary determination for this investigation until August 21, 2004. On June 3, 2004, the Department extended the deadline for the preliminary determination by 67 days to August 23, 2004, since August 21st falls on a Saturday, in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). See *Postponement of Preliminary Countervailing Duty Determinations: Bottle-Grade Polyethylene Terephthalate Resin from India and Thailand*, 69 FR 31354 (June 3, 2004).

On June 21, 2004, the GOI submitted its questionnaire response. In its questionnaire response, the GOI identified four Indian companies that produced and exported BG PET Resin to the United States during the period of investigation (POI), and indicated which programs had been used by these companies. These four companies are Reliance Industries, Ltd. (Reliance), Futura Polyesters, Ltd. (Futura), South Asia Petrochem Ltd. (SAPL), and Elque Polyesters Ltd. (Elque). In addition, all of the four companies identified by the GOI submitted questionnaire responses to the Department.

Between July 8, and July 15, 2004, the Department issued supplemental questionnaires to the GOI and the four

respondent companies. Between July 27, and August 2, 2004, the GOI and the four respondent companies submitted their responses to the supplemental questionnaires.

Between July 23, and August 3, 2004, the Department issued addenda to the supplemental questionnaires to the four respondent companies. Responses were submitted between August 4, and August 14, 2004.

Scope of the Investigation

The merchandise covered by this investigation is bottle-grade polyethylene terephthalate (PET) resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET is outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigation.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to this investigation. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury, to a U.S. industry. On May 19, 2004, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India, Indonesia, Taiwan, and Thailand of subject merchandise. See *Polyethylene Terephthalate (PET) Resin From India, Indonesia, Taiwan, and Thailand*, 69 FR 28948.

Alignment With Final Antidumping Duty Determinations

On July 30, 2004, petitioner submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping duty investigations of BG PET Resin from India, Thailand, Taiwan, and Indonesia.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2003, through March 31, 2004, which corresponds to the most recently completed fiscal year for all of the respondents. See 19 CFR 351.204(b)(2).

Subsidies Valuation Information

Benchmarks for Loans and Discount Rate

For those programs requiring the application of a benchmark interest rate, 19 CFR 351.505(a)(1) provides a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Both Futura and SAPL have provided information on rupee-denominated short-term commercial loans outstanding during the POI. Thus, in accordance with 19 CFR 351.505(a)(1), we are using these interest rates as company-specific benchmarks for purposes of calculating benefits arising from the rupee-denominated short term loan programs we find countervailable. SAPL and Futura are the only two producers/exporters of BG PET Resin which reported using these short-term loan programs. SAPL also received short-term loans denominated in U.S. dollars. When loans are denominated in a foreign currency, our practice, in accordance with 19 CFR 351.505, is to use a foreign currency benchmark. See, e.g., *Certain Pasta From Turkey: Final Results of Countervailing Duty Administrative Review*, 66 FR 64398 (December 13, 2001) and accompanying Issues and Decision Memorandum in the section entitled "Benchmark Interest Rates for Short-term Loans." For these loans, we used as our benchmark a national average dollar-denominated short-term interest rate for the United States, as reported in the International Monetary Fund's publication *International Financial Statistics*.

For those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated,

long-term benchmark interest rate, we used, where available, company-specific, weighted-average interest rates on comparable commercial long-term, rupee-denominated loans. We did not use those long-term loans that had unpaid interest or principal payments because we do not consider such loans to be comparable loans under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(2)(i). We note that some respondents did not have rupee-denominated, comparable long-term loans from commercial banks for all required years. Therefore, for those years, we relied on a rupee-denominated, short to medium-term benchmark interest rate that is not company-specific, but still provides a reasonable representation of long-term interest rates, in order to determine whether a benefit was provided to the companies from rupee-denominated, long-term loans received from the GOI. Pursuant to 19 CFR 351.505(a)(3)(ii), we used national average interest rates for those years in which the respondents did not report company-specific interest rates on comparable commercial loans. In the absence of data regarding a national average interest rate for long-term rupee-denominated loans, we based these national average interest rates on information on short-to medium-term, rupee-denominated financing from private creditors in the International Monetary Fund's publication *International Financial Statistics*. We will continue to seek information regarding the most appropriate long-term interest rate for purposes of the final determination.

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(ii). For assets used to manufacture products such as BG PET resin, the IRS tables prescribe an AUL of 10 years.

In their questionnaire responses, SAPL, Futura, and Elque rebutted the

regulatory presumption by meeting the criteria set forth in CFR 351.524(d)(2)(iii) and calculating company-specific AULs. Futura and Elque divided the aggregate of their respective annual average gross book values of their depreciable productive fixed assets by their aggregated annual charge to accumulated depreciation for a ten-year period in the manner specified by 19 CFR 351.524(d)(2)(iii). Using this method, Elque calculated an AUL of 20 years, and Futura calculated an AUL of 17 years. Based on information submitted by the respondents, we find the presumptions to be rebutted by those two companies and are using the company-specific AULs for Elque and Futura for purposes of allocating any non-recurring subsidies over time. Reliance and SAPL provided information in an attempt to rebut the AUL presumption, but did not comply with the requirements specified by 19 CFR 351.524(d)(2)(iii) for calculating a company-specific AUL. Thus, for SAPL and Reliance we will use the IRS AUL of 10 years to allocate any non-recurring subsidies for purposes of this preliminary determination.

I. Programs Preliminarily Determined To Be Countervailable

A. GOI Programs

1. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the GOI has established a standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION. Beginning in April 1, 2003, BG PET Resin exporters were eligible to earn credits equal to 17 percent of the free on board (FOB) value of their export shipments until February 9, 2004, when the DEPS rate changed to 13 percent.

The Department has previously determined that the DEPS is countervailable. In *Notice of Final Affirmative Countervailing Duty*

Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India (PET Film from India), 67 FR 34905 (May 16, 2002), and accompanying *Issues and Decision Memorandum*, the Department determined that under the DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because (1) the GOI provides credits for the future payment of import duties; and (2), the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, are consumed in the production of the exported products. Therefore, under 19 CFR 351.519(a)(4) and section 771(5)(E) of the Act, the entire amount of import duty exemption earned during the POI constitutes a benefit. Finally, this program can only be used by exporters and, therefore, it is specific under section 771(5A)(B) of the Act. See the "DEPS" section of the *PET Film from India Issues and Decision Memorandum* on file in the CRU and available online at <http://www.ia.ita.doc.gov>. No new information or evidence of changed circumstances has been presented in this investigation to warrant reconsideration of this finding. Therefore, we continue to find that the DEPS is countervailable.

We have previously determined that this program provides a recurring benefit under 19 CFR 351.524(c). See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India, (Carbon Steel Plate From India)*, 64 FR 73131, 73140 (December 29, 1999). Benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. See comment 4, "Timing and Calculation of DEPS Benefits", *Carbon Steel Plate From India*.

Reliance was the only company that reported that it received post-export credits on BG PET resin under the DEPS program during the POI. We calculated the DEPS program rate using the value of the post-export credits that Reliance earned for its export shipments of subject merchandise to the United States during the POI by multiplying the FOB value of each export shipment by the relevant percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. Finally, we took this sum (the total value of the licenses net of application fees paid)

and divided it by Reliance's total exports of subject merchandise to the United States during the POI. On this basis, we preliminarily determine Reliance's net countervailable subsidy from the DEPS program to be 16.96 percent ad valorem.

2. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, exporters may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to five times the value of the capital goods within a period of eight years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest. In previous investigations, the Department has determined that producers/exporters benefit from the waiver of import duty on imports of capital equipment. Also, a second type of benefit conferred under this program that involves import duty reductions that producers/exporters receive on imports of capital equipment for which producers/exporters have not yet met their export requirements. For those capital equipment imports, producers/exporters have unpaid duties that will have to be paid to the GOI if the export requirements are not met.

When a company has an outstanding liability and the repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan. See 19 CFR 351.505(d)(1). See also *PET Film From India; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India (Hot-Rolled Steel from India)*, 66 FR 49635 (September 28, 2001), and accompanying *Issues and Decision Memorandum (Hot-Rolled Steel Decision Memo)*. The Department preliminarily determined that the EPCGS program is countervailable because (1) the receipt of benefits under this program is contingent upon export performance in accordance with section 771(5A)(B) of the Act; (2) the GOI provided a financial contribution under section 771(5)(D)(ii) of the Act in the two ways described above; and (3) the program provides benefits under section 771(5)(E) of the Act. See *PET Film From India*.

The criteria to be used by the Department in determining whether to allocate the benefits from a

countervailable subsidy program are specified under 19 CFR 351.524. Specifically, recurring benefits are not allocated over time but are attributed to the year of receipt, while non-recurring benefits are normally allocated over time. Normally, tax benefits are considered to be recurring benefits and are expensed in the year of receipt. Since import duties are a type of tax, the benefit provided under this program is a tax benefit, and, thus, normally would be considered a recurring benefit.

However, the Department's regulations recognize that, under certain circumstances, it is more appropriate to allocate over time the benefits of a program normally considered a recurring subsidy, rather than to expense the benefits in the year of receipt. In the Preamble to our regulations, the Department provides an example of when it may be more appropriate to consider the benefits of a tax program to be non-recurring benefits, and, thus, allocate those benefits over time. See *Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998). We stated in the Preamble to our regulations that, if a government provides an import duty exemption tied to major capital equipment purchases, it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring, even though import duty exemptions are on the list of recurring subsidies.

Because the benefit received from the waiver of import duties under the EPCGS is tied to the capital assets of the respondent companies, and, therefore, is just such a benefit, we determine that it is appropriate to treat the waiver of duties as a non-recurring benefit. We note that our approach on this issue is consistent with that taken in *Hot-Rolled Steel from India*. Reliance is the only respondent that reported using the EPCGS program, and for the preliminary determination of this investigation, non-recurring benefits will be allocated over 10 years, the AUL for Reliance. (See "Subsidies Valuation Section" above).

In its questionnaire responses, Reliance reported the capital equipment imports they made using EPCGS licenses are granted pursuant to obligations to export BG PET Resin, as well as the application fees they paid to obtain their EPCGS licenses. We preliminarily determine that the application fees paid by Reliance qualify as an "application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." See

section 771(6)(A) of the Act. In order to calculate the benefit received from the waiver of Reliance's import duties on their capital equipment imports, we determined the total amount of duties which were waived in each year (net of application fees), *i.e.*, those for which the GOI determined other export obligations had been met. Consistent with our approach in *Hot-Rolled Steel from India*, we determine the year of receipt to be the year in which the GOI formally waived the respondent company's remaining outstanding import duties.

A second type of financial contribution and benefit conferred under this program arises from the import duty reductions that the respondent received on the imports of capital equipment for which the respondent has not yet met its export requirements. For those capital equipment imports, the respondent has unpaid duties that will have to be paid to the GOI if the export requirements are not met. When a company has an outstanding liability and the repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan. See 19 CFR 351.505(d)(1). We determine that the amount of contingent liability to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied but, as of the end of the POI, had not been finally waived by the GOI. Accordingly, we determine the benefit to be the interest that the respondent would have paid during the POI had the company borrowed the full amount of the duty reduction at the time of import. We note that this approach is consistent with the methodology employed in *Hot-Rolled Steel from India*.

For purposes of calculating the benefit from this element of EPCGS, we treated the outstanding duties as a long-term interest-free loan. Based on the information provided by Reliance with respect to this program, we determine that Reliance had outstanding contingent liabilities during the POI. Pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for the respondents to fulfill their export commitments) occurs at a point in time more than one year after the date the capital goods were imported.

To calculate the countervailable subsidy rate for Reliance, we combined, where applicable, the sum of the benefits received on waived duties and

allocated to the POI, and the benefits conferred upon Reliance in the form of contingent-liability loans. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6)(A) of the Act. Then, because the licenses were granted specifically for the export of BG PET resin, we divided Reliance's total benefit under the program by its total export sales of BG PET resin during the POI (*see* 19 CFR 351.525). On this basis, we preliminarily determine the net countervailable subsidy from this program to be 11.40 percent ad valorem for Reliance.

3. Export-Oriented Units

Companies designated as Export-Oriented United (EOUs) can receive various types of assistance including: (1) Duty-free import of capital goods and raw materials; (2) reimbursement of Central Sales Tax (CST) paid on materials procured domestically; (3) purchase of materials and other inputs free of Central Excise Duty; and (4) duty drawback on furnace oil procured from domestic oil companies. Elque, Futura, and SAPL have been designated as EOUs.

Since eligibility for the EOU program is contingent upon export performance, we find that the assistance provided under the EOU program is specific within the meaning of section 771(5A)(B) of the Act. We also preliminarily determine that the Duty-Free Import of Capital Goods and Raw Materials program, and the Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically program, provide a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of duty and tax payments. These two EOU programs confer benefits in the amounts of exemptions and reimbursements of customs duties and certain sales taxes in accordance with section 771(5)(E) of the Act. (*See* "Programs for Which Additional Information is Needed" below for a discussion of the Duty Drawback on Furnace Oil Procured from Domestic Oil Companies plan, and the Purchase of Materials and other Inputs free of Central Excise Duty plan.)

Elque, Futura, and SAPL are designated as EOUs, and they reported receiving benefits under the Duty-Free Import of Capital Goods and Raw Materials program, and the Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically program during the POI.

a. Duty-Free Import of Capital Goods and Raw Materials

Under this program, EOUs are entitled to import capital goods and raw materials duty-free. The GOI provided no information to demonstrate that exemptions on raw materials met the standards for non-countervailability pursuant to 19 CFR 351.519(a)(4). Normally, tax benefits are considered to be recurring benefits and are expensed in the year of receipt. Since import duties are a type of tax, the benefit provided under this program is a tax benefit, and, thus, normally would be considered a recurring benefit. Thus, we are treating the duty exemptions on raw materials as recurring benefits.

However, as discussed in the "EPCGS" section above, the Department's regulations recognize that, under certain circumstances, it is more appropriate to allocate over time the benefits of a program normally considered a recurring subsidy, rather than to attribute the benefits to the year of receipt. Because the benefit received from the exemption of import duties on capital goods under this program is granted for the capital goods of the respondent companies, we determine that it is appropriate to treat the exemption of duties on capital goods as a non-recurring benefit.

Therefore, to calculate the countervailable subsidy for Elque, SAPL, and Futura, we summed duty exemptions on raw material inputs received during the POI and the duty exemptions on capital goods allocated to the POI. We then divided each company's total benefits under the program by their total export sales during the POI. On this basis, we preliminarily determine the countervailable subsidy from this program to be 11.20 percent ad valorem for Elque, 18.59 percent ad valorem for SAPL, and 1.03 percent ad valorem for Futura.

b. Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically

Under this program, EOUs are entitled to reimbursements of the CST paid on materials procured domestically. This reimbursement is available on purchases of both raw materials and capital goods. For the reimbursement of CST paid on materials procured domestically, the record shows that EOUs record the CST reimbursement at the point of purchase and receipt of invoice from the domestic supplier. EOU companies then enter the claims in the books of accounts at the point of purchase and, simultaneously, deduct

CST from the cost of domestic goods procured. To calculate the benefit for Elque, SAPL, and Futura, we summed the reimbursements of the CST paid on raw materials procured domestically that each company received during the POI. We separately summed the CST reimbursements paid on capital goods for each year and allocated these sums over each company's AUL using the appropriate discount rate. (*See* "Subsidies Valuation Information" section above.)

For CST reimbursements on capital goods received during the POI, we first conducted the "0.5 percent" test. *See* 19 CFR 351.524(b)(2). Based in the result of this test, we either allocated the total CST reimbursements received during the POI over each company's AUL using the appropriate discount rate (*see* "Subsidies Valuation Information" section above), or we attributed the total CST reimbursements received during the POI to POI, as appropriate. *See Id.*

We then summed the benefits on capital goods allocated to the POI with the benefits on raw materials attributed to the POI and divided the companies' total benefits under the program by their respective total export sales during the POI. (Futura provided no information indicating which CST reimbursements were received for raw materials purchases and which for capital goods purchases. Thus, for the purposes of the preliminary determination, we attributed all of Futura's CST reimbursements to the POI.) On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.07 percent ad valorem for SAPL, 0.79 percent ad valorem for Elque, and 0.12 percent ad valorem for Futura.

4. Income Tax Exemption Scheme (Section 80 HHC) In Certain Iron-Metal Castings From India: Final Results of Countervailing Duty

Administrative Review (Iron-Metal Castings from India), 65 FR 31515 (May 18, 2000), the Department determined that deductions of profit derived from exports under section 80HHC of India's Income Tax Act are countervailable. No new information or evidence of changed circumstances has been submitted in this investigation to warrant reconsideration of this finding. Therefore, we continue to find this program countervailable because it is contingent upon export performance and, therefore, is specific in accordance with section 771(5A)(B) of the Act. Pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of tax revenue not collected. Finally, a benefit is

conferred in the amount of tax savings in accordance with section 771(5)(E) of the Act.

Reliance claimed deductions of profits derived from exported goods, under section 80HHC, in computing its total taxable income during the POI. To calculate the benefit Reliance received under this program, we subtracted the total amount of income tax the company actually paid during the POI from the amount of tax the company otherwise would have paid had it not claimed a deduction under section 80 HHC. Since the Department has previously found section 80 HHC to be an "untied" export subsidy program, *i.e.*, the benefits provided are attributable to all products exported by the company. *See Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review*, 65 FR 31515 (May 18, 2000); *see also e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30370 (June 14, 1996).

To calculate the benefit Reliance received under section 80HHC, we subtracted the total amount of income tax the company actually paid during the POI from the amount of tax the company otherwise would have paid had it not claimed a deduction under section 80HHC. We then divided this difference by total export sales. Thus, the countervailable subsidy is 0.64 percent ad valorem for Reliance.

Elque reported that all of its exports of subject merchandise to the United States during the POI were made through a trading company, and further reported that the trading company claimed Section 80 HHC deductions. In accordance with 19 CFR 351.525(c), we have attributed the trading company's export subsidy benefits from Section 80 HHC to Elque.

To calculate the benefit Elque's trading company received under section 80HHC, we subtracted the total amount of income tax actually paid during the POI from the amount of tax that otherwise would have been paid had a deduction under section 80HHC not been claimed. We then divided this difference by Elque's total export sales. Thus, the countervailable subsidy is 0.02 percent ad valorem for Elque.

5. Pre- and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment export financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-

shipment loans for working capital purposes. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks based upon a company's creditworthiness and past export performance, and may be denominated either in Indian rupees or in foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates capped by the RBI. For post-shipment export financing, exporters are eligible to receive post-shipment short-term credit in the form of discounted trade bills or advances by commercial banks at preferential interest rates to finance the period between the date of shipment of exported merchandise and payment from export customers ("transit period").

The Department has previously determined that this export financing is countervailable to the extent that the interest rates are set by the GOI and are lower than the rates exporters would have paid on comparable commercial loans. *See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India (PET Film from India)*, 67 FR 34905 (May 16, 2002). Specifically, the Department determined that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act. *See the "Pre-Shipment and Post-Shipment Export Financing" section of the PET Film from India Issues and Decision Memorandum.* The Department further determined that the interest savings under this program conferred a benefit pursuant to section 771(5)(E)(ii) of the Act. In addition, the Department determined this program, which is contingent upon exports, to be specific within the meaning of section 771(5A)(B) of the Act. No new information or evidence of changed circumstances have been presented in this investigation to warrant reconsideration of this finding.

SAPL reported that it had outstanding pre- and post-shipment export loans during the POI. Both SAPL's pre-shipment and post-shipment loans were denominated in rupees and U.S. dollars. Futura also reported that it had outstanding pre-shipment export loans during the POI, denominated in rupees. Reliance and Elque reported that they had no outstanding loans under these programs during the POI.

To calculate the benefit conferred by the pre-shipment and post-shipment loans taken out by SAPL and the pre-shipment loans taken out by Futura, we

compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rate. We used a rupee-denominated or dollar-denominated benchmark, as appropriate (*see "Subsidies Valuation Information" section above*). Where the benchmark interest exceeds the actual interest paid, the difference constitutes the benefit. For pre-shipment loans, we divided the total benefit by the company's total exports. However, for Futura, we used its total exports of BG PET resin during the POI since its pre-shipment financing was limited to the BG Resin division. Post-shipment loans are granted for particular shipments, and thus, are tied to particular markets in accordance with 19 CFR 351.525(b)(2). Therefore, we divided the total benefit from post-export loans by SAPL's exports of subject merchandise to the United States.

We preliminarily determine the countervailable subsidy rate under the pre-shipment export financing program for SAPL to be 0.44 percent ad valorem during the POI, and for Futura to be 0.48 percent ad valorem during the POI. The countervailable subsidy rate under the post-shipment export financing program for SAPL is 0.01 percent ad valorem during the POI.

B. State of Maharashtra (SOM) Programs: Maharashtra Industrial Policy 2001 and Scheme of Incentives 1983

The State of Maharashtra (SOM) grants a package scheme of incentives for privately-owned (*i.e.*, not 100 percent owned by the GOI) manufacturers to invest in certain areas of Maharashtra. One of these incentives consists of either an exemption or deferral of state sales taxes. Through this incentive, companies are exempted from paying state sales taxes on purchases, and collecting sales taxes on sales; or, as an alternative, are allowed to defer submitting sales taxes collected on sales to the SOM for ten to twelve years. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOM in equal installments over five to six years. The total amount of the sales tax incentive either exempted or deferred is based on the size of the capital investment, and the area in which the capital is invested.

In *PET Film from India*, the Department determined that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to industries located within designated geographical areas within the SOM. The Department also determined that the

SOM program provided a financial contribution under section 771(5)(D)(i) of the Act in the form of uncollected interest on the deferred sales tax, and that the program conferred benefits under section 771(5)(E) of the Act in the amount of interest otherwise due. See the "Sales Tax Incentives" section of the *PET Film from India Decision Memo*.

The Department initiated on the Maharashtra Industrial Policy 2001. See "Countervailing Duty Investigation Initiation Checklist," April 13, 2004, on file in the CRU. The GOI reported that no sales tax exemptions or deferrals were provided under the Package Scheme of Incentives 2001. However, Reliance reported that it received sales tax exemptions and deferrals under the SOM's Scheme of Incentives 1983, with portions of the sales tax deferrals still outstanding during the POI. Because Reliance has reported incentives received under a prior SOM scheme that were still outstanding during the POI, the Department has determined that it is appropriate to analyze incentives received by Reliance during the POI to determine whether they are countervailable subsidies. See Memorandum from Dana Mermelstein to Barbara E. Tillman entitled "Countervailing Duty Investigation of Bottle-Grade Polyethylene Terephthalate (PET) Resin from India: Initiation of Investigation of Maharashtra Sales Tax Incentive Scheme 1983" on file in the CRU.

First, although the Department initiated on a different scheme for the SOM, Reliance has reported the incentives it received under the SOM's Scheme of Incentives 1983, both in the form of deferrals on sales taxes which were outstanding during the POI, and in the form of exemptions of sales taxes granted during the POI. The Department finds the sales tax incentives and deferrals specific in accordance with section 771(5A)(D)(iv) of the Act because, the 1983 Scheme limited the benefits to industries located within designated geographical areas within the SOM.

Second, for the sales taxes exempted, a benefit exists to the extent that the taxes paid by Reliance as a result of this program are less than the taxes it would have paid in the absence of the program. See 19 CFR 351.510(a)(1). Therefore, we preliminarily determine that a benefit and financial contribution were conferred by the exemption of sales taxes on purchases.

Finally, for the sales taxes deferred, the Department treats such deferred taxes as a government-provided loan in the amount of the taxes deferred because the SOM charges no interest

during the deferral period. A benefit thus exists to the extent that the appropriate interest charges are not collected. See 19 CFR 351.510(a)(2). We therefore preliminarily determine that a benefit was conferred in the amount of the interest that Reliance would have paid during the POI had it borrowed, at the time the collected sales taxes were deferred, the amount of the deferred sales taxes still unpaid at the end of the POI. Pursuant to 19 CFR 351.505(a)(2)(iii), to determine the amount of the benefit conferred, we used a long-term benchmark interest rate (see "Benchmark Interest and Discount Rates section above") during the years in which sales tax deferrals were received.

To calculate the program rate, we first summed Reliance's benefits received on exempted sales taxes on purchases during the POI. For deferred sales taxes which were still outstanding during the POI, we calculated the benefits conferred in the form of unpaid interest on the deferred sales taxes. We then divided Reliance's total benefit under the program by its total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.12 percent ad valorem for Reliance.

C. State of Gujarat (SOG) Program: Sales Tax Incentive Scheme

Under the 1995 Industrial Policy of Gujarat, companies located in specific areas of Gujarat are exempted from payment of sales tax on the purchase of raw materials, consumable stores, packing materials, and processing materials. Other available benefits include exemption or deferral from sales tax and turnover tax on the sale of intermediate products, by-products, and scrap. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOG in equal installments over six years.

The Department preliminarily determines that this program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to industries located within designated geographical areas within the SOG. We also preliminarily find that the SOG provided a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue, and that the Indian companies benefitted under section 771(5)(E) of the Act, in the amount of sales tax exempted or in the amount of interest foregone on sales taxes deferred on purchases noted above.

Reliance is the only company which received benefits from this program during the POI. Reliance reported that it

received sales tax exemptions on qualifying purchases made within the SOG during the POI. In addition, Reliance received tax deferrals in earlier years which were still outstanding during the POI.

To calculate the program rate, we first summed Reliance's benefits received on exempted sales taxes on purchases during the POI. For deferred sales taxes which were still outstanding during the POI, we treated the amount of sales taxes deferred as an interest-free loan received in the year in which the deferral was granted, and we calculated the benefits conferred in the form of unpaid interest on the deferred sales taxes. (See "State of Maharashtra Programs" above). We then divided Reliance's total benefit under the program by its total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy from this program to be 1.12 percent ad valorem for Reliance.

D. State of West Bengal Programs (SWB)

The Department initiated on the New Economic Policy on Industrial Development, a SWB scheme begun in the year 2000. See "Countervailing Duty Investigation Initiation Checklist". The GOI reported that no BG PET resin company benefitted from this program during the POI. However, the GOI reported that Elque received benefits under the West Bengal Scheme of 1993 (Scheme 1993), and SAPL received benefits under the West Bengal Scheme of 1999 (Scheme 1999). Although the Department initiated on a more recent scheme for the SWB, respondent companies have reported incentives received under the SWB schemes of 1993 and 1999 during the POI. Therefore, the Department has determined that it is appropriate to analyze incentives received by BG PET resin companies during the POI to determine whether they are countervailable subsidies. See Memorandum from Dana Mermelstein to Barbara E. Tillman entitled "Countervailing Duty Investigation of Bottle-Grade Polyethylene Terephthalate (PET) Resin from India: Initiation of Investigations of State of West Bengal Scheme of 1993 and 1999" on file in the CRU.

Scheme 1993 was introduced on April 1, 1993. Though the program was terminated effective March 31, 1999, assistance is still being provided under the Scheme. The objective of Scheme 1993 was to assist in the growth of medium- and large-scale industries, the tourism industry, the expansion of existing units, and revival of sick units in the SWB through the provision of

incentives. Industrial projects which receive an industrial license, registration certificate, and term loans from a financial institution are eligible to receive benefits under Scheme 1993. The program offers various incentives and tax concessions to entrepreneurs and industrial units to assist them in the construction of new units or expansion of existing units, and the building of infrastructure in the backward areas of West Bengal. The amount of financial assistance an industrial unit is eligible to receive is determined by its location in West Bengal. Under the scheme, West Bengal is divided into four groups: Group A (*i.e.*, Calcutta) is classified as developed, while Groups B through D are categorized as less developed, with Group D deemed the most backward. Industrial units located in the more backward areas receive greater monetary assistance than those units located in the more developed areas.

See e.g., Certain Iron-Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 64 FR 61592 (November 12, 1999). Under Scheme 1993, Elque qualified for assistance because one of its manufacturing facilities is located in Group B, and received a grant in multiple disbursements under the State Capital Investment Subsidy program, which was made available under the Scheme 1993 to eligible units in any area in Group B.

Scheme 1999, an amended version of Scheme 1993, has not been previously examined by the Department. Under Scheme 1999, the number of geographical groups was reduced from four to three. Companies located in Group A (called the "Calcutta Municipal Corporation"), classified as a developed area, receive few, if any, incentives; according to Scheme 1999, "no subsidy, loan, deferment or remission of tax or incentive will be granted to any unit set up in the area under Group A except to the extent provided for in the Scheme, such as deferments of payments of sales taxes for preferred industries" (*i.e.*, expansion of information technology units, tourist units). Companies located in Group B can receive assistance in the form of sales tax exemptions on purchases of raw materials, capital grant disbursements, and a subsidy for conversion of piped coal gas. Group C is comprised of the most underdeveloped areas in West Bengal, and companies located there are entitled to more incentives under Scheme 1999 than those located in Groups A and B. Group C receives the same types of incentives as Group B, but at a higher

level. For example, for the Exemption of Sales Tax on Purchase of Raw Materials program, companies located in Group C can receive deferrals on payments for substantially longer periods than those in Group B. SAPL is located in Group B, and received an exemption of sales tax on purchases under Scheme 1999, which provided benefits to the company during the POI.

We find that the assistance granted to Elque under Scheme 1993 and the assistance granted to SAPL under Scheme 1999 are specific within the meaning of section 771(5A)(D)(iv) of the Act, because the benefits are limited to companies located in specific regions within SWB. The capital grant which Elque received is a financial contribution in accordance with 771(5)(D)(i) of the Act. The sales tax exemption which SAPL received is revenue foregone, and therefore a financial contribution in accordance with 771(5)(D)(ii) of the Act. Both forms of assistance provide benefits in accordance with 771(5)(E) of the Act.

To calculate the countervailable subsidy for Elque, because the capital grant is a non-recurring subsidy (*see* 19 CFR 351.504), we allocated each of the grant disbursements over Elque's AUL. We used a discount rate from 1995, the year in which Elque was approved for the total capital grant. *See* "Subsidies Valuation Information" section above. We summed the benefits allocable to the POI, and divided that sum by Elque's total sales during the POI. To calculate the countervailable subsidy for SAPL, we divided the total sales tax exemptions received by SAPL during the POI by SAPL's total sales. We thus preliminarily determine the countervailable subsidy to be 0.02 percent ad valorem for Elque and 0.02 percent ad valorem for SAPL.

II. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the producers/exporters of BG PET Resin did not apply for or receive benefits during the POI under the programs listed below.

GOI Programs:

- A. Status Certificate Program
- B. Market Development Assistance Program
- C. Income Tax Exemption Scheme (Sections 10A and 10B)
- D. Loan Guarantees from the GOI
- E. Special Economic Zones (formerly called "Export Processing Zones")

For purposes of this preliminary determination, we have relied on the GOI and respondent companies' responses to preliminarily determine

non-use of the programs listed above. During the course of verification, the Department will examine whether these programs were not used by respondent companies during the POI.

III. Program Preliminarily Determined To Be Terminated

GOI Program: Exemption of Export Credit From Interest Taxes

Indian commercial banks were required to pay a tax on all interest accrued from borrowers. The banks passed along this interest tax to borrowers in its entirety. As of April 1, 1993, the GOI exempted from the interest tax all interest accruing to a commercial bank on export-related loans. The Department has previously found this tax exemption to be an export subsidy, and thus countervailable, because only interest accruing on loans and advances made to exporters in the form of export credit was exempt from interest tax. *See e.g., Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 61 FR 64676, 64686 (December 6, 1996).

The GOI reported that the tax on interest on any category of loan was eliminated prior to the POI. Specifically, the GOI submitted Section 4(3) of the Interest Tax Act which provides that "no interest tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 2000." *See* Appendix 8 of the GOI's June 21, 2004, questionnaire response. In addition, the information reported by the responding companies indicates that they are no longer required to pay tax on any interest on any loans. Therefore, in accordance with 19 CFR 351.526(d), we preliminarily determine that this program has been terminated. If, however, we are unable to establish at verification that there are no residual benefits accruing to exporters of BG PET Resin from India from this program, and that the GOI has not implemented a replacement program, we will not find, for purposes of the final determination that this program has been terminated in accordance with 19 CFR 351.526(d).

IV. Programs for Which Additional Information Is Needed

GOI Programs

A. Certain Assistance Under the Export Oriented Unit (EOU) Program

1. Purchase of Materials and Other Inputs Free of Central Excise Duty

Under this element of the EOU program, eligible companies can purchase raw materials and other inputs

free of the central excise duty. As an element of the EOU program, the Central Excise Duty (CED) exemption is limited to exporters, and therefore specific under section 771(5A)(B) of the Act. However, based on the information in the record of this investigation, we are unable to determine whether the Purchase of Materials and other Inputs of Central Excise Duty provides a financial contribution in accordance with section 771(5)(D)(ii) of the Act, or a benefit in accordance with section 771(5)(E)(iv) of the Act. Therefore, for purposes of this preliminary determination, additional information is needed before making a decision with respect to this program. We will seek additional information from the GOI prior to our verification and final determination.

2. Duty Drawback on Furnace Oil Procured From Domestic Oil Companies

Under this element of the EOU program, an EOU procuring oil from domestic oil companies can file a drawback claim on a quarterly basis. As an element of the EOU program, this duty drawback program is limited to exporters and therefore specific under section 771(5A)(B) of the Act. However, based on the information in the record of this investigation, we are unable to determine whether the duty drawback of domestic furnace oil purchases provides a financial contribution in accordance with section 771(5)(D)(ii) of the Act, or a benefit in accordance with section 771(5)(E)(iv) of the Act. Therefore, for purposes of this preliminary determination, additional information is needed before making a decision with respect to this program. We will seek additional information from the GOI prior to our verification and final determination.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have determined individual rates for Reliance, SAPL, Futura, and Elque. To calculate the "all others" rate, we weight-averaged the individual rates of Reliance, SAPL, Futura, and Elque's by each company's respective exports of subject merchandise made to the United States during the POI. These rates are summarized in the table below:

Producer/exporter	Subsidy rate
Reliance Industries Ltd.	30.24 % ad valorem
South Asia Petrochem Ltd.	19.13 % ad valorem
Futura Polyesters Ltd	1.62 % ad valorem
Elque Polyesters Ltd	12.02 % ad valorem
All Others	24.01 % ad valorem

In accordance with section 703(d)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

As provided for in the section 703(b)(4)(B) of the Act, for developing countries, any rate less than 2.0 percent ad valorem in an investigation is de minimis. Therefore, we preliminarily determine that countervailable subsidies are not being provided to Futura. Accordingly, for Futura, we will not direct CBP to suspend liquidation of entries of subject merchandise.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Notification of Parties

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, interested parties may submit case briefs within 50 days of the date of publication of the preliminary determination in accordance with 19 CFR 351.309(c)(i) of the Department's regulations. As part of

the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed.

In accordance with 19 CFR 351.310, we will hold a public hearing if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 23, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4-1975 Filed 8-27-04; 8:45 am]

BILLING CODE 3510-DS-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigations Nos. 701-TA-439-440
(Final) and 731-TA-1077-1080 (Final)]

**Polyethylene Terephthalate Resin
From India, Indonesia, Taiwan, and
Thailand**

AGENCY: United States International
Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701-TA-439-440 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and allegedly subsidized imports from India and Thailand respectively of polyethylene terephthalate (PET) resin.¹ The Commission also hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA-1077-1080 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value (LTFV) imports from India, Indonesia, and Thailand and alleged LTFV imports from Taiwan of PET resin.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: Effective October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202-708-4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW.,

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as bottle-grade polyethylene terephthalate ("PET") resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle ("PCR") or post-industrial recycle ("PIR") PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET ("RPET"). Waste and scrap PET are outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigations." 69 FR 62852, 62857, 62862, and 62869. The merchandise subject to these investigations is reported under statistical reporting number 3907.60.0010 of the Harmonized Tariff Schedule of the United States ("HTSUS"); however, merchandise classified under HTSUS statistical reporting number 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations.

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 for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India of PET resin, and that such products from India, Indonesia, and Thailand are being sold in the United States at LTFV within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on March 24, 2004, by the PET Resin Producers' Coalition, Washington, DC.

Although the Department of Commerce has preliminarily determined that imports of PET resin from Thailand are not being and are not likely to be subsidized, and that imports of PET resin from Taiwan are not being and are not likely to be sold in the United States at LTFV, for purposes of efficiency the Commission hereby waives rule 207.21(b)² so that the final phase of the investigations may proceed concurrently in the event that Commerce makes final affirmative determinations with respect to such imports.

Participation in the investigations and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A

² Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 1, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 15, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 9, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 11, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the

provisions of section 207.23 of the Commission's rules; the deadline for filing is March 8, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 22, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 22, 2005. On April 6, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 8, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04-25497 Filed 11-16-04; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-533-841]

Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India

AGENCY: Important Administration, International Trade Administration, Department of Commerce.

Final Determination: We determine that bottle-grade PET resin from India is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins are listed below in the Continuation of Suspension of Liquidation section of this notice.

DATES: *Effective Date:* March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Saliha Loucif, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1376 and (202) 482-1779, respectively.

Background

Since the publication of the preliminary determination of this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India*, 69 FR 62856, dated October 28, 2004. *Preliminary Determinary*), the following events have occurred:

In October and November 2004, we verified the questionnaire response of South Asian Petrochem, Ltd. (SAPL). The cost and sales verification reports were issued on January 10, 2005, and January 12, 2005, respectively. *See* Memorandum from Mark Todd, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, Re: Verification of the Cost of Production and Constructed Value Data Submitted by South Asian Petrochem Ltd. (SAPL) in the Investigation of Bottle-Grade PET Resin from India, dated January 10, 2005, and Memorandum from Daniel O'Brien and Saliha Loucif, International Trade Compliance Analysts, to Susan Kuhbach, Director, Office 1, Re: Verification of the Sales Response of SAPL in the Investigation of Bottle-Grade PET Resin from India, dated January 12, 2005. These reports are on file in the Central Records Unit, Room B-099 of the main Department building (CRU).

On January 24, 2005, we received case briefs from the United States Bottle-Grade PET Resin Producers Coalition (the petitioner), and SAPL. On January 31, 2005, we received rebuttal briefs from the petitioner and SAPL. The petitioner requested a hearing on November 16, 2004, but withdrew its request on February 3, 2005. Consequently, no hearing was held.

Scope of Investigation

The merchandise covered by this investigation is bottle-grade polyethylene terephthalate (PET) resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing processes. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) bottle-grade PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET are outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigations.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to this investigation. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition on March 24, 2004.

Facts Otherwise Available

In the *Preliminary Determination*, we based the dumping margin for the mandatory respondent, Reliance Industries, Ltd. (Reliance), on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted in this investigation because Reliance withdrew from the investigation on September 22, 2004. See *Preliminary Determination*. Nothing has changed since the *Preliminary Determination*

was issued that would affect the Department's selection and application of facts available.

Reliance's withdrawal from the investigation significantly impeded this proceeding since the Department cannot accurately determine a margin for Reliance. Therefore, we maintain that Reliance has failed to cooperate by not acting to the best of its ability. In assigning a facts available rate, we have continued to use the corroborated margin from the *Preliminary Determination*, pursuant to section 776(c) of the Act. See Memorandum Regarding Corroboration of Data Contained in the Petition for Assigning Facts Available Rate, dated October 20, 2004. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*.

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information submitted by SAPL. We used standard verification procedures, including examination of the relevant sales, cost, and financial records.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the Issues and Decision Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated March 14, 2005 (*Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov/fjn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and our analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margin for SAPL. These adjustments are discussed in the *Decision Memorandum*.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise from India that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond equal to the amount by which the normal value exceeds the EP less the amount of the countervailing duty determined to constitute an export subsidy in the companion countervailing duty investigation. While we note that in the *Preliminary Determination* we indicated that we would reduce the "All Others" rate by the amount of SAPL's export subsidies, we have now determined that it is more appropriate to reduce the "All Others" rate by the amount of export subsidies found for the "All Others" in the companion countervailing duty investigation because it reflects the experiences of more than one company and is, therefore, more likely to reflect the actual experience of the non-investigated companies. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
SAPL	21.05
Reliance	52.54
All Others	21.05

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from India are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for

consumption on or after the effective date of the suspension of liquidation.

This notice also serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act

Dated: March 14, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary, for Import Administration.

Appendix I—List of Comments in the Issues and Decision Memorandum

- Comment 1: Unreported Home Market Transactions
- Comment 2: Date of Payment for Home Market Transactions
- Comment 3: Home Market Sales Traces
- Comment 4: Indirect Selling Expenses
- Comment 5: Bank Charges for U.S. Sales
- Comment 6: Cash Deposit Rate for Non-Selected Producer
- Comment 7: Treatment of Non-Dumped Sales
- Comment 8: Ministerial Error Allegations
- Comment 9: Incorrectly Stated Amount for the Pre-operative Period
- Comment 10: Imputed Depreciation for the Trial-Run Period
- Comment 11: Miscellaneous Tax
- Comment 12: Duty Drawback
- Comment 13: Start-Up Costs
- Comment 14: G&A and Financial Expense Ratio Denominators
- Comment 15: Purchased Technical Services
- Comment 16: Fixed Overhead Costs for Depreciation

[FR Doc. 05-5553 Filed 3-18-05; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-823]

Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate Resin From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Final Determination: The Department of Commerce (“the Department”) determines that Bottle-Grade Polyethylene Terephthalate (“PET”) Resin from Thailand is being, or is likely to be sold in the United States at less than fair value (“LTFV”), as provided in section 735 of the Tariff Act of 1930, as amended (“the Act”). The estimated margins of sales at LTFV are shown in the “Continuation of Suspension of Liquidation” section of this notice.

EFFECTIVE DATE: March 21, 2005.

FOR FURTHER INFORMATION CONTACT:

Audrey R. Twyman or Natalie Kempkey (202) 482-3534 or (202) 482-1698, respectively; AD/CVD Operations, Office 1, Import Administration, Room 1870, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Case History

On October 28, 2004, the Department published in the *Federal Register* the *Preliminary Determination* in its investigation of PET resin from Thailand. Since the *Preliminary Determination*, the following events have occurred. On October 29, 2004, the Department received from Bangkok Polyester Public Company, Ltd. (“Bangkok Polyester”) a submission containing supplemental and clarifying information and databases for its section B and C questionnaire responses. On October 29, 2004, Bangkok Polyester also submitted an alternative Section D database with comments. On November 4, 2004 and December 9, petitioner¹ submitted pre-verification comments. On November 5, 2004, the Department sent Bangkok Polyester a third supplemental to the questionnaire; the Department received a response to this supplemental questionnaire on December 1, 2004.

From November 8 to 12, 2004, we conducted the COP verification of Bangkok Polyester. Bangkok Polyester submitted its minor corrections from the COP verification on November 10, 2004, and its verification exhibits on November 17, 2004. From December 13 to 16, 2004, we conducted Bangkok Polyester’s sales verification. Bangkok Polyester submitted its minor corrections from the sales verification on December 14, 2004, and its sales verification exhibits on December 23,

2004. The Department issued its COP verification report on January 15, 2005, and its sales verification report on January 25, 2005. On January 4, 2005, Bangkok Polyester submitted revised sections B and C sales databases incorporating minor error corrections reported to the Department at the start of its sales verification.

We received case briefs from petitioner and Bangkok Polyester on February 1, 2005. We received rebuttal briefs from petitioner and Bangkok Polyester on February 7, 2005. Petitioner requested a hearing on November 16, 2004, but withdrew the request on February 9, 2005.

Scope of Investigation

The merchandise covered by this investigation is bottle-grade PET resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle or post-industrial recycle PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin bottle-grade PET resin and recycled PET. Waste and scrap PET is outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigation.

The merchandise subject to this investigation is properly classified under subheading 3907.60.00.10 of the *Harmonized Tariff Schedule of the United States* (“HTSUS”); however, merchandise classified under HTSUS subheading 3907.60.00.50 that otherwise meets the written description of the scope is also subject to this investigation. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is January 1, 2003, through December 31, 2003.

¹ The petitioner in this case is the United States PET Resin Producers Coalition (“petitioner”).

Use of Facts Otherwise Available

For the final determination, the Department continues to find as we did in the *Preliminary Determination* that Thai Shinkong Industry Corporation, Ltd. did not act to the best of its abilities and failed to provide the information requested by the Department. Therefore, the Department continues to find that the use of adverse facts available is warranted under section 776 of the Act. See Memorandum to Barbara E. Tillman, "Final Determination of Polyethylene Terephthalate ("PET") Resin from Thailand: *Corroboration Memorandum*" dated March 15, 2005.

Verification

As provided in section 782(i)(1) of the Act, we verified the COP information submitted by Bangkok Polyester from November 8 to 12, 2004, and the sales information from December 13 to 16, 2004. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by Bangkok Polyester.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by petitioner and Bangkok Polyester are addressed in the Memorandum to Joseph A. Spetrini, "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Bottle-Grade Polyethylene Terephthalate Resin from Thailand" dated March 14, 2005 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which petitioner and Bangkok Polyester have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, room B099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov> or <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Fair Value Comparisons

We calculated export price and normal value for Bangkok Polyester using the same methodology as described in the *Preliminary Determination*, with the exceptions

noted in the "Margin Calculations" section of the *Decision Memorandum*.

Currency Conversions

We made currency conversions into United States dollars in accordance with section 773(a) of the Act based on exchange rates in effect on the dates of the United States sales as certified by the Federal Reserve.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing United States Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of PET resin from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of October 28, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/exporter	Weighted-average margin (percentage)
Bangkok Polyester Public Company, Ltd	24.83
Thai Shinkong Industry Corporation, Ltd	41.28
All Others	24.83

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties in this proceeding in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of the Department's final determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the United States industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury

does exist, the Department will issue an antidumping order.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversation to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(I)(1) of the Act.

Dated: March 14, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Decision Memorandum

- Comment 1: Cost Verification Minor Correction.
- Comment 2: Capitalized Asset Costs.
- Comment 3: Cost Reconciliation Items.
- Comment 4: General and Administrative Expense Ratio.
- Comment 5: Financial Expense Ratio.
- Comment 6: Direct Selling Expenses for Sample United States Sale.
- Comment 7: Bank Charges for Export Sales.
- Comment 8: Duty Drawback.
- Comment 9: United States Packing.
- Comment 10: Unreported United States Sale.
- Comment 11: Dumping Margin Program and Printout for the Preliminary Determination.
- Comment 12: Home Market Packing.
- Comment 13: Indirect Selling Expense.
- Comment 14: Brokerage and Handling.
- Comment 15: Offsets for Non-Dumped Sales.

[FR Doc. E5-1217 Filed 3-18-05; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-840]

Notice of Final Determination of Sales at Not Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Final Determination: We determine that PET Resin from Taiwan is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act).

DATES: *Effective Date:* March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Ashleigh Batton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1376 and (202) 482-6309, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results of this review (*See Notice of Preliminary Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Taiwan*, 69 FR 62868, October 28, 2004. (*Preliminary Determination*)), in which the Department announced an extension of the time limit for the final determination in the antidumping duty investigation to no later than March 14, 2005, in accordance with section 735(A)(2) of the Act, the following events have occurred:

In November 2004, we verified the questionnaire response of Far Eastern Textile, Ltd. (Far Eastern). The cost and sales verification reports were issued on January 4, 2005, and January 18, 2005, respectively. *See* Memorandum from Christopher Zimpo, Accountant, to Neal M. Halper, Director, Office of Accounting, Re: Verification of the Cost of Production and Constructed Value Data Submitted by Far Eastern Textile in the Investigation of PET Resin from Taiwan, dated January 18, 2005, and Memorandum from Ashleigh Batton, International Trade Compliance Analyst, to Susan Kuhbach, Director, Office 1, Re: Verification of the Sales Response of Far Eastern Textile in the Investigation of PET Resin from Taiwan, dated January 4, 2005. These reports are on file in the Central Records Unit, Room B-099 of the main Department building (CRU).

On January 26, 2005, we received case briefs from the United States PET Resin Producers Coalition (the petitioner), and Far Eastern.

On January 31, 2005, we received rebuttal briefs from the petitioner and Far Eastern.

Scope of Investigation

The merchandise covered by this investigation is polyethylene terephthalate (PET) bottle-grade resin, defined as having an intrinsic viscosity of at least .68 deciliters per gram but not more than .86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives

introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET are outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than .68 deciliters per gram, is also outside the scope of the investigation.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to this investigation. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition on March 24, 2004.

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information submitted by Far Eastern. We used standard verification procedures, including examination of the relevant sales, cost, and financial records.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the Issues and Decision Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated March 14, 2005 (*Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version

of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and our analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margin for Far Eastern. These adjustments are discussed in the *Decision Memorandum*.

Suspension of Liquidation

Pursuant to section 733(b)(3) of the Act, because the estimated weighted-average dumping margin¹ for the examined company is *de minimis*, we are not directing CBP to suspend liquidation of entries of PET resin from Taiwan. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Far Eastern	0.10
All Others	0.10

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination.

This notice also serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

¹ Section 735(c)(5)(B) states that, if the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated. In this case we have used the one calculated margin as the all others rate.

Dated: March 14, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I—List of Comments in the Issues and Decision Memorandum

General Comments

Comment 1: Re-Allocation of Additive Costs
 Comment 2: Unreported U.S. Sale
 Comment 3: Home Market Rebates
 Comment 4: Domestic Inland Freight
 Comment 5: Indirect Selling Expense
 Comment 6: U.S. Packing Expenses
 Comment 7: General and Administrative and Financial Expense Ratios
 Comment 8: Major Input Valuation
 Comment 9: Nitrogen Gas From an Affiliate
 Comment 10: Sales Reconciliation

[FR Doc. E5-1220 Filed 3-18-05; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-560-817]

Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Final Determination: The Department of Commerce (“the Department”) determines that PET resin from Indonesia is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (“the Act”). The final weighted-average dumping margins are listed below in the section entitled “Continuation of Suspension of Liquidation.”

DATES: *Effective Date:* March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1174 and (202) 482-1279, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results of this review (see *Notice of Preliminary Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia*, 69 FR 62861 (October 28, 2004) (“*Preliminary Determination*”), the following events have occurred:

On November 3, 2004, the Department published in the **Federal Register** an extension of the time limit for the final determination in the antidumping duty investigation to no later than March 14, 2005, in accordance with the Act. See *Notice of Postponement of Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia*, 69 FR 64026 (November 3, 2004).

In October and November 2004, we conducted verifications of the sales and cost of production (“COP”) questionnaire responses submitted by P.T. Indorama Synthetics Tbk (“Indorama”). The sales and cost verification reports were issued on January 6 and 7, 2005, respectively. See Memoranda to the File, “Verification of the Sales Responses of P.T. Indorama Synthetics, Tbk in the Antidumping Duty Investigation of Bottle-Grade Polyethylene Terephthalate (“PET”) Resin from Indonesia,” (“Indorama SVR”) dated January 6, 2005; and “Verification Report on the Cost of Production and Constructed Value Data Submitted by P.T. Indorama Synthetics, Tbk,” (“Indorama CVR”) dated January 7, 2005. These reports are on file in the Central Records Unit, Room B-099 of the main Department building (“CRU”). On January 25, 2005, we received case briefs from the United States PET Resin Producers Coalition (“the petitioner”) and Indorama. On January 31, 2005, we received rebuttal briefs from the petitioner and Indorama. At the request of interested parties, the Department held a public hearing on February 3, 2005.

Scope of Investigation

The merchandise covered by this investigation is polyethylene terephthalate (“PET”) bottle-grade resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (“PCR”) or post-industrial recycle (“PIR”) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (“RPET”). Waste and scrap PET are outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigations.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the

Harmonized Tariff Schedule of the United States (“HTSUS”); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (“POI”) is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition on March 24, 2004.

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information submitted by Indorama. We used standard verification procedures, including examination of the relevant sales, cost, and financial records.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the “Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia” from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated March 14, 2005 (“*Decision Memorandum*”), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department’s CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Facts Otherwise Available

For the final determination, the Department continues to find that P.T. SK Keris (“SK Keris”) and P.T. Polypet Karyapersada (“Polypet”), both producers/exporters of PET resin from Indonesia, and mandatory respondents in these proceedings, did not act to the

best of their abilities by failing to provide information requested by the Department. Thus, the Department continues to find that the use of adverse facts available (“AFA”) is warranted under section 776(a)(2) of the Act. See *Preliminary Determination* at 62861–62863.

Fair Value Comparisons

We calculated export price (“EP”), constructed export price (“CEP”), normal value (“NV”), COP, and constructed value (“CV”) based on the same methodologies used in the *Preliminary Determination* with the following exception(s):

Indorama

- We made changes based on information in the minor corrections presented at the sales verification. See *Indorama SVR*.
- We revised the calculation of CEP profit. See *Decision Memorandum* at Comment 3.
- We revised the ratio for indirect selling expenses incurred in Indonesia for home market and U.S. sales. See *Decision Memorandum* at Comments 4 and 5; see also *Memorandum to File*, “Final Determination Calculation Memorandum for P.T. Indorama Synthetics Tbk,” dated March 14, 2005.
- We adjusted the cost for inputs obtained from an affiliated supplier at less than arm’s length prices. As a result, Indorama’s cost of manufacture has increased. See *Memorandum to Neal Halper*, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—P.T. Indorama Synthetics, Tbk” (March 14, 2004) (“Cost Calculation Memorandum”), page 1.
- We revised Indorama’s general and administrative expense (“G&A”) ratio by including scrap revenue as an offset to cost of goods sold (“COGS”). See *Cost Calculation Memorandum*, pages 1–2.
- We recalculated Indorama’s financial expense ratio. We deducted the short-term interest income from total interest expenses and included a scrap revenue offset in the COGS. See *Cost Memorandum*, page 2.

Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent’s sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in “substantial quantities.” Where 20 percent or more of a respondent’s sales of a given product are at prices less

than the COP, we determine that the below-cost sales represent “substantial quantities” within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. If so, we disregard the below-cost sales.

Because less than 20 percent of Indorama’s home market sales within an extended period of time were made at prices below the COP, we are not excluding any sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all imports of subject merchandise from Indonesia, except imports of subject merchandise produced and exported by Indorama, that are entered, or withdrawn from warehouse, for consumption on or after October 28, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
P.T. Indorama Synthetics Tbk ..	0.00
P.T. Polypet Karyapersada	27.61
P.T. SK Keris	27.61
All Others	18.41

All Others

All companies that we examined have either a zero margin or rates based on total AFA. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(B) of the Act, we have calculated a simple

average of the three margin rates we have determined in the investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order pursuant to section 736(a) of the Act.

Notification Regarding APOs

This notice also serves as the only reminder to parties subject to the administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 14, 2005.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

Appendix I—List of Comments in the Issues and Decision Memorandum

- Comment 1: Date of Sale for U.S. DDP Sales
- Comment 2: Classification of U.S. Sales
- Comment 3: Calculation of CEP Profit
- Comment 4: Allocation of Indirect Selling Expenses for Home Market and Export Sales
- Comment 5: Indirect Selling Expenses Incurred by Indorama’s Billing Entity
- Comment 6: Indirect Selling Expenses Incurred in the United States by Indorama and its Billing Entity
- Comment 7: Inclusion of Bank Charges as a Direct Selling Expense
- Comment 8: Treatment of Sample Sales
- Comment 9: Inclusion of Negative Imputed Credit Expenses
- Comment 10: Untimely Sales Reconciliation Submission
- Comment 11: Home Market Viability Test
- Comment 12: Affiliated Input Purchases
- Comment 13: Gains on Sale of Assets and Miscellaneous Revenue

Comment 14: Scrap Revenue Offset

Comment 15: Divisional G&A and Net
Interest Expense

Comment 16: Short-Term Interest Income

[FR Doc. E5-1222 Filed 3-18-05; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-533-842]

Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has reached a final determination that countervailable subsidies are being provided to producers and exporters of Bottle-Grade (BG) Polyethylene Terephthalate (PET) Resin from India. For information on the estimated countervailable subsidy rates, please see the "Final Determination" section of this notice.

EFFECTIVE DATE: March 21, 2005.

FOR FURTHER INFORMATION CONTACT:

Douglas Kirby or Addilyn Chams-Eddine, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3782 or (202) 482-0648, respectively.

SUPPLEMENTARY INFORMATION:**Case History**

On August 30, 2004 the Department published the *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India*, 69 FR 52866 (August 30, 2004) (*Preliminary Determination*). Since the issuance of the *Preliminary Determination*, the following events have occurred. Between September 9 and November 17, 2004, the Department issued supplemental questionnaires to each of the respondent parties and all parties submitted timely responses to the questionnaires. On September 29, 2004, the United States PET Resin Producers Coalition (Petitioner) requested a hearing pursuant to 19 CFR 351.310(c) and the Department's *Preliminary Determination*.

From December 2 through December 17, 2004, the Department conducted verification of the questionnaire responses provided by the Government of India (GOI) and the four respondent parties: Reliance Industries, Ltd. (Reliance), Futura Polyesters, Ltd. (Futura), South Asia Petrochem Ltd. (SAPL), and Elque Polyesters Ltd. (Elque). The Department issued the GOI

and the Reliance Industries Ltd. (Reliance) verification reports on January 25, 2005. See Memoranda to the File, *Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Verification of the Government of India's (GOI) Questionnaire Responses (GOI Verification Report)*; and *Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Verification of Reliance Industries Ltd. (Reliance Verification Report)*. The Department issued the Elque, Futura, and SAPL verification reports on January 26, 2004. See Memoranda to the File, *Countervailing Duty Investigation of PET Resin from India: Verification of Elque Ltd. (Elque Verification Report)*; *Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Verification of Futura Polyesters Ltd. (Futura Verification Report)*; and *Countervailing Duty Investigation of PET Resin from India: Verification of South Asia Petrochem Ltd. (SAPL Verification Report)*. In addition, on February 14, 2005, the Department issued a memorandum containing our preliminary analysis of the Export Oriented Unit (EOU) programs which we had noted in the *Preliminary Determination* were programs for which additional information was needed. See Memoranda to the File from Sean Carey, Acting Program Manager, through Dana S. Mermelstein, Acting Director, AD/CVD Operations, Office 6, to Barbara E. Tillman, Acting Deputy Assistant Secretary, for Import Administration, *Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Preliminary Analysis of the Export Oriented Unit (EOU) Program on Duty Drawback on Furnace Oil Procured from Domestic Oil Companies Program and Purchases of Materials and Other Inputs Free of Central Excise Duty (EOU Program Memorandum)*.

On February 4, 2005, case briefs were filed by the Petitioner, the GOI, Reliance, and SAPL. On February 9, 2005, the Petitioner, Reliance, and SAPL filed rebuttal briefs. Neither Futura nor Elque filed case or rebuttal briefs. On February 11, 2005, the Petitioner withdrew its request for a hearing.

The Department also allowed parties a separate opportunity to file comments and rebuttal comments on our *EOU Program Memorandum*. On February 17, 2005, such comments were filed by the Petitioner, the GOI, Reliance and SAPL. On February 22, 2005, the Petitioner submitted rebuttal comments. Also, on February 17, 2005, Reliance requested that the Department proceed with a hearing. On February 18, and February

22, 2005, the Petitioner requested that the Department reject Reliance's request for a hearing as untimely. The Department concurred with the Petitioner that under section 351.310 of the Department's regulations, the request for a hearing was untimely. See Memorandum to the File from Douglas M. Kirby, Case Analyst, Office 6, Import Administration, to Dana S. Mermelstein, Acting Director, AD/CVD Operations, Office 6, *Countervailing Duty Investigation: Polyethylene Terephthalate (PET) Resin from India; Response to the February 17, 2005 Submission of Reliance Industries Limited (Reliance)*, dated February 24, 2005.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2003, through March 31, 2004, which corresponds to the most recently completed fiscal year for all of the respondent companies. See section 351.204(b)(2) of the Department's regulations.

Scope of the Investigation

The merchandise covered by this investigation is polyethylene terephthalate (PET) bottle-grade resin, defined as having an intrinsic viscosity of at least .68 deciliters per gram but not more than .86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET are outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than .68 deciliters per gram, is also outside the scope of the investigation.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs,

as well as their comments on our *EOU Program Memorandum* are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*), dated March 14, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU) at Room B099 of the main Commerce building. A complete version of the *Decision Memorandum* is available at <http://www.ia.ita.doc.gov> under the heading "Federal Register Notices." The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we have determined individual rates for Reliance, SAPL, Futura, and Elque. To calculate the "all others" rate, we weight-averaged the individual company rates by each company's respective sales of subject merchandise made to the United States during the POI. These rates are summarized in the table below:

Producer/exporter	Subsidy rate (percent ad valorem)
Reliance Industries Ltd	20.26
South Asia Petrochem Ltd	19.08
Futura Polyesters Ltd	6.15
Elque Polyesters Ltd	12.41
All Others	14.63

Suspension of Liquidation

In accordance with our preliminary affirmative determination, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of PET Resin from India, which were entered or withdrawn from warehouse, for consumption on or after August 30, 2004, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for merchandise entered on or after December 28, 2004, but to continue the suspension of liquidation of entries made between August 30, 2004, through December 27, 2004.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate suspension of liquidation under section

706(a) of the Act for all entries, and require a cash deposit of estimated countervailing duties for such entries of merchandise at the rates indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: March 14, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I: Issues and Decision Memorandum

I. List of Comments

- Comment 1: Futura's Debonding and Adjustment to Duty Free Exemptions
- Comment 2: Futura's Central Sales Tax Reimbursement
- Comment 3: WBIDC Investment in SAPL
- Comment 4: DEPS Credit Offset
- Comment 5: EOU Exemptions on Raw Materials
- Comment 6: Program-Wide Change of DEPS Rate
- Comment 7: Numerator and Denominator for the EPCGS Subsidy Calculation
- Comment 8: Benchmark Interest Rates for EPCGS
- Comment 9: EPCGS Benefits Received in the POI
- Comment 10: Allocation of EPCGS Benefits and 0.5 Percent Test
- Comment 11: Reliance's Loan Benchmarks

- for State of Maharashtra (SOM) and State of Gujarat (SOG) Sales Tax Incentive Programs
- Comment 12: Average Useful Life (AUL) for SAPL's Assets
- Comment 13: Effective Interest Rate of SAPL's Pre-Shipment Export Loans
- Comment 14: Treatment of Exemptions on Imported Capital Goods
- Comment 15: SAPL's Cash Deposit Rate
- Comment 16: Central Sales Tax Reimbursements on Raw Materials
- Comment 17: EOU Duty Drawback on Furnace Oil

II. Subsidies Valuation Information

- A. Loan Benchmarks
- B. Allocation Period
- C. Trading Company Subsidies

III. Analysis of Programs

A. Programs Determined To Confer Subsidies

1. GOI Programs
- Pre- and Post-Shipment Export Financing
 - Duty Entitlement Passbook Scheme (DEPS)
 - Income Tax Exemption Scheme, Section 80 HHC
 - Export Promotion Capital Goods Scheme (EPCGS)
 - Export Oriented Units (EOUs) Program: Duty Drawback on Furnace Oil Procured From Domestic Oil Companies
 - Export Oriented Units (EOUs) Program: Duty-Free Import of Capital Goods and Raw Materials
 - Export Oriented Units (EOUs) Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically
2. State Programs
- State of Gujarat (SOG) Program: Sales Tax Incentive Scheme
 - State of Maharashtra (SOM) Program: Sales Tax Incentive Scheme
 - State of West Bengal (SWB) Sales Tax Incentive Scheme

B. GOI Program Determined To Be Not Countervailable

- Export Oriented Units (EOUs) Programs: Purchase of Material and Other Inputs Free of Central Excise Duty

C. Programs Determined To Be Not Used

- GOI Programs
- Status Certificate Program
 - Market Development Assistance
 - Income Tax Exemption Scheme (Sections 10A and 10B)
 - Loan Guarantees from the GOI
 - Special Economic Zones (SEZs) formerly called Export Processing Zones (EPZs)

D. Program Determined To Be Terminated

Exemption of Export Credit From Interest Taxes GOI Programs

IV. Analysis of Comments

V. Recommendation

[FR Doc. E5-1219 Filed 3-18-05; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-549-824]

Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has reached a final determination that countervailable subsidies are not being provided to producers of bottle-grade (BG) PET Resin from Thailand. For information on the estimated countervailable subsidy rates, please see the "Final Determination" section of this notice.

DATES: *Effective Date:* March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Dara Iserson or Thomas Gilgunn, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4052 and (202) 482-4236, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 30, 2004, the Department published the *Preliminary Negative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand*, 69 FR 52862 (August 30, 2004) (*Preliminary Determination*). Since the *Preliminary Determination*, the Department issued additional supplemental questionnaires to, and conducted verification of the responses provided by, the Royal Thai Government (RTG), Bangkok Polyester Company (BPC), Thai Shinkong Industry Corporation Limited (Thai Shinkong), Indopet Thailand Limited (Indopet), and Asiapet Thailand Limited (Asiapet) (collectively—"Respondents").

The Department issued the RTG, Indopet, Thai Shinkong, and BPC verification reports on January 10, 2005. See Memoranda to the File from Thomas Gilgunn to Dana Mermelstein, *Countervailing Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: Verification of the Questionnaire Responses Submitted by the Royal Thai Government (RTG); Countervailing Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: Verification of the*

Questionnaire Responses Submitted by Indopet (Thailand) Limited (Indopet); Countervailing Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: Verification of the Questionnaire Responses Submitted by Thai Shinkong Industry Company Limited (Thai Shinkong); and Countervailing Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: Verification of the Questionnaire Responses Submitted by Bangkok Polyester Public Company Limited (BPC). On January 18, 2005, the Department issued the Asiapet verification report. see *Countervailing Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: Verification of the Questionnaire Responses Submitted by Asiapet Thailand Limited (Asiapet).*

On January 21, 2005, case briefs were filed by Petitioner and by all Respondents: RTG, Indopet, Asiapet, Thai Shinkong, and BPC. On January 26, 2005, Respondents and Petitioner filed their respective rebuttal briefs. On February 3, 2005, Respondents filed letter objecting to "untimely legal information" filed in the Petitioner's January 26, 2005, rebuttal brief. On February 7, 2005, Petitioners responded to the arguments raised in Respondent's February 3, 2005, letter. On February 9, 2005, the Department notified Petitioners that certain legal information raised in its January 26, 2005, rebuttal brief did not comply with section 351.309(d)(2) of the regulations. On February 10, 2005, Petitioner refiled its rebuttal brief.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2003, through December 31, 2003, which corresponds to the most recently completed fiscal year for the respondent companies. See section 351.204(b)(2) of the Department's regulations.

Scope of the Investigation

The merchandise covered by this investigation is polyethylene terephthalate (PET) bottle-grade resin, defined as having an intrinsic viscosity of at least .68 deciliters per gram but not more than .86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET are

outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than .68 deciliters per gram, is also outside the scope of the investigations.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

A detailed discussion of the issues of cross-ownership and attribution of subsidies raised by interested parties in their case and rebuttal briefs is contained in the Memorandum to the File from Dana Mermelstein to Barbara E. Tillman, *Countervailing Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin From Thailand: Attribution of Subsidies Received by Supplier Companies to Indopet* (March 14, 2005) (*Attribution Memorandum*) because it includes business proprietary information.

All other issues raised by the interested parties in their case and rebuttal briefs are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) dated March 14, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU). A complete version of the *Decision Memorandum* is available at <http://www.ia.ita.doc.gov> under the heading "Federal Register Notices." The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Final Determination

In accordance with section 703(d)(1)(A)(i) of the Tariff Act of 1930, as amended (The Act), we have determined individual rates for Thai Shinkong, Bangkok Polyester, and Indopet. Section 705(c)(5)(A)(I) of the Act provides that the "all others" rate will generally be an amount equal to the weighted average countervailable subsidy rates established for exporters or producers individually investigated,

excluding any zero or *de minimis* countervailable subsidy rates and any rates determined entirely on the basis of the facts available. In this case, however, the countervailable subsidy rates for all of the individually investigated exporters or producers are *de minimis*. Section 705(c)(5)(A)(ii) of the Act provides that, when this is the case, the administering authority may use any reasonable method to establish the "all others" rate, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually examined. Thus, to calculate the "all others" rate, we weight-averaged the individual rates of Thai Shinkong, Bangkok Polyester, and Indopet, based on each company's respective exports of subject merchandise to the United States during the POI.

These rates are summarized in the table below:

Producer/exporter	Net subsidy rate (percent ad valorem)
Thai Shinkong Industry Corporation Ltd	0.31
Bangkok Polyester Public Company Limited	0.73
Indopet (Thailand) Limited	0.70
All Others Rate	0.47

These countervailable subsidy rates are *de minimis*, in accordance with section 703(b)(4)(B) of the Act and 19 CFR 351.106(b). Therefore, we determine that countervailable subsidies are not being provided to producers/exporters of bottle grade PET Resin from Thailand. See Section 705(a)(3) of the Act. In the *Preliminary Determination*, the total net countervailable subsidy rate was *de minimis*, therefore, we did not suspend liquidation. Since we determine that countervailable subsidies are not being provided to producers or exporters of BG PET Resin from Thailand, we will not direct U.S. Customs and Border Protection to suspend liquidation of entries of the subject merchandise from Thailand.

International Trade Commission (ITC) Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose

such information, either publicly or under administrative protective order (APO), without the written consent of the Assistant Secretary of Import Administration.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 705(d) and 777(i) of the Act.

Dated: March 14, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I: Issues and Decision Memorandum

Summary

I. Comments

Comment 1: Whether the Department Should Apply Adverse Facts Available (AFA) to BPC

Comment 2: The Selection of the Discount Rate for Allocating Subsidies Over Time

Comment 3: Whether the IPA Benefits for BPC, Thai Shinkong, Indopet, and Asiapet are Export Contingent

Comment 4: The Selection of the Denominator for Calculating *Ad Valorem* Subsidy Rates

Comment 5: The Appropriate Method for Calculating Section 35(3) Benefits

Comment 6: Whether Cross-Ownership Between Indopet and Indopet's Suppliers Exists

Comment 7: Whether or Not Indopet, Thai Shinkong, and BPC Used Section 35(4) Benefits

II. Subsidies Valuation Information

A. Discount Rates

B. Allocation Period

C. Cross-Ownership and Attribution of Subsidies

D. Export Contingency

E. Denominator for *Ad Valorem* Subsidy Rates

III. Analysis of Programs

A. Programs Determined To Be Countervailable

Investment Incentives Under the Investment Promotion Act (IPA)

1. Duty Exemptions on Imports of Machinery Under IPA Section 28

2. Additional Income Tax Deductions Under IPA Section 35

B. Programs Determined To Be Not Countervailable

Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36

C. Programs Determined To Be Not Used

1. Import Duty Exemptions on Raw and Essential Materials Under IPA Section 30

2. Corporate Income Tax Exemptions
Under IPA Section 31

IV. Total Ad Valorem Rates

V. Analysis of the Comments

VI. Recommendation

[FR Doc. E5-1221 Filed 3-18-05; 8:45 am]

BILLING CODE 3510-DS-P

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

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.
Issued: March 24, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-6127 Filed 3-28-05; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1079 (Final)]

Polyethylene Terephthalate ("PET") Resin From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On March 21, 2005, the Department of Commerce published notice in the **Federal Register** of a final determination of sales at not less than fair value in connection with the subject investigation (70 FR 13454). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping duty investigation concerning PET resin from Taiwan (investigation No. 731-TA-1079 (Final)) is terminated.

DATES: Effective Date: March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202-708-4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-440 (Final)]

Polyethylene Terephthalate ("PET") Resin From Thailand

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On March 21, 2005, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation (70 FR 13462).

Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning PET resin from Thailand (investigation No. 701-TA-440 (Final)) is terminated.

EFFECTIVE DATE: March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202-708-4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the

Issued: March 24, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-6128 Filed 3-28-05; 8:45 am]

BILLING CODE 7020-02-P

APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand

Inv. Nos.: 701-TA-439-440 and 731-TA-1077-1080 (Final)

Date and Time: March 15, 2005 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, SW, Washington, D.C.

OPENING REMARKS:

Petitioner (**Michael A. Hertzberg**, Howrey Simon Arnold & White, LLP)
Respondents (**Susan G. Esserman**, Steptoe & Johnson LLP)

In Support of the Imposition of Countervailing and Antidumping Duties:

Howrey Simon Arnold & White, LLP
Washington, D.C.
on behalf of

The United States PET Resin Producers Coalition

Hans Kinner, Business Director, Polyester Products
North America, Voridian, a division of
Eastman Chemical Co.

Michael Dewsbury, Vice President, PET Resins,
Wellman, Inc.

Robert Taylor, Business Operations Manager,
PET Resins, Wellman, Inc.

**In Support of the Imposition of
Countervailing and Antidumping Duties (continued):**

Tom Sherlock, Business Director, PET Resins,
DAK Americas LLC

Ricky Lane, Public Affairs, Trade Relations &
Corporate Communications, DAK Americas LLC

Christopher Peterson, Assistant Section Manager,
Nan Ya Plastics Corp. America

Mark Adlam, Americas Commercial Manager,
M&G Polymers USA, LLC

Susan Manning, Economist, The CapAnalysis
Group LLC

Juliana M. Cofrancesco)
) – OF COUNSEL
Michael A. Hertzberg)

**In Opposition to the Imposition of
Countervailing and Antidumping Duties:**

Steptoe & Johnson LLP
Washington, D.C.
on behalf of

Reliance Industries, Ltd.

Bruce Malashevich, President, Economic Consulting
Services, LLC

Susan G. Esserman)
Tina Potuto Kimble)
) – OF COUNSEL
David S. Lorello)
Andrea Mack)

**In Opposition to the Imposition of
Countervailing and Antidumping Duties (continued):**

Cameron & Hornbostel LLP
Washington, D.C.
on behalf of

South Asia Petrochem Ltd. (“SAPL”)

Alexander W. Sierck) – OF COUNSEL

American Beverage Association
Washington, D.C.
on behalf of

The PET Users Coalition

Dan Mullock, Vice President, Purchasing, Constar
International, Inc.

Drew M. Davis, Vice President, Federal Affairs,
American Beverage Association

REBUTTAL/CLOSING REMARKS:

Petitioner (**Juliana M. Cofrancesco**, Howrey Simon Arnold & White, LLP)
Respondents (**Susan G. Esserman**, Steptoe & Johnson LLP)

APPENDIX C
SUMMARY DATA

Contains Business Proprietary Information

Table C-1
PET resin: Summary data concerning the U.S. market, 2002-04

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound;
 period changes=percent, except where noted)

Item	Reported data			Period changes		
	2002	2003	2004	2002-04	2002-03	2003-04
U.S. consumption quantity:						
Amount	4,580,007	5,049,574	5,211,116	13.8	10.3	3.2
Producers' share (1)	83.3	79.9	82.7	-0.6	-3.4	2.8
Importers' share (1):						
India	***	***	***	***	***	***
Indonesia	***	***	***	***	***	***
Thailand	2.9	4.6	2.3	-0.7	1.7	-2.4
Subtotal	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total imports	16.7	20.1	17.3	0.6	3.4	-2.8
U.S. consumption value:						
Amount	1,963,360	2,313,255	2,759,997	40.6	17.8	19.3
Producers' share (1)	84.1	80.9	82.9	-1.2	-3.2	2.0
Importers' share (1):						
India	***	***	***	***	***	***
Indonesia	***	***	***	***	***	***
Thailand	2.7	4.3	2.3	-0.4	1.5	-2.0
Subtotal	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total imports	15.9	19.1	17.1	1.2	3.2	-2.0
U.S. imports from:						
India:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Indonesia:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Thailand:						
Quantity	133,266	233,943	117,271	-12.0	75.5	-49.9
Value	53,200	98,532	63,424	19.2	85.2	-35.6
Unit value	\$0.40	\$0.42	\$0.54	35.5	5.5	28.4
Ending inventory quantity	***	***	***	***	***	***
Subtotal:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Other sources:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
All sources:						
Quantity	765,825	1,014,843	900,411	17.6	32.5	-11.3
Value	312,132	442,741	473,027	51.5	41.8	6.8
Unit value	\$0.41	\$0.44	\$0.53	28.9	7.0	20.4
Ending inventory quantity	82,418	83,405	47,193	-42.7	1.2	-43.4

Table continued on next page.

Contains Business Proprietary Information

Table C-1--Continued
PET resin: Summary data concerning the U.S. market, 2002-04

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound;
 period changes=percent, except where noted)

Item	Reported data			Period changes		
	2002	2003	2004	2002-04	2002-03	2003-04
U.S. producers':						
Average capacity quantity	5,016,061	5,597,045	5,638,199	12.4	11.6	0.7
Production quantity	4,482,353	4,771,434	5,022,306	12.0	6.4	5.3
Capacity utilization (1)	89.4	85.2	89.1	-0.3	-4.1	3.8
U.S. shipments:						
Quantity	3,814,182	4,034,731	4,310,705	13.0	5.8	6.8
Value	1,647,913	1,870,514	2,286,970	38.8	13.5	22.3
Unit value	\$0.43	\$0.46	\$0.53	22.8	7.3	14.4
Export shipments:						
Quantity	629,120	734,582	786,640	25.0	16.8	7.1
Value	257,411	329,347	404,042	57.0	27.9	22.7
Unit value	\$0.41	\$0.45	\$0.51	25.5	9.6	14.6
Ending inventory quantity	272,854	284,045	209,367	-23.3	4.1	-26.3
Inventories/total shipments (1)	6.1	6.0	4.1	-2.0	-0.2	-1.8
Production workers	1,974	1,998	1,781	-9.8	1.2	-10.9
Hours worked (1,000s)	4,077	4,172	3,696	-9.3	2.3	-11.4
Wages paid (\$1,000s)	94,081	97,519	89,210	-5.2	3.7	-8.5
Hourly wages	\$23.07	\$23.37	\$24.14	4.6	1.3	3.3
Productivity (pounds per hour)	1,099.3	1,143.7	1,358.8	23.6	4.0	18.8
Unit labor costs	\$0.021	\$0.020	\$0.018	-15.4	-2.6	-13.1
Net sales:						
Quantity	4,424,641	4,767,450	5,097,192	15.2	7.7	6.9
Value	1,902,535	2,209,998	2,684,835	41.1	16.2	21.5
Unit value	\$0.43	\$0.46	\$0.53	22.5	7.8	13.6
Cost of goods sold (COGS)	1,616,064	2,023,345	2,487,277	53.9	25.2	22.9
Gross profit or (loss)	286,471	186,653	197,558	-31.0	-34.8	5.8
SG&A expenses	145,017	154,060	168,334	16.1	6.2	9.3
Operating income or (loss)	141,454	32,593	29,224	-79.3	-77.0	-10.3
Capital expenditures	***	***	***	***	***	***
Unit COGS	\$0.37	\$0.42	\$0.49	33.6	16.2	15.0
Unit SG&A expenses	\$0.03	\$0.03	\$0.03	0.8	-1.4	2.2
Unit operating income or (loss)	\$0.03	\$0.01	\$0.01	-82.1	-78.6	-16.1
COGS/sales (1)	84.9	91.6	92.6	7.7	6.6	1.1
Operating income or (loss)/ sales (1)	7.4	1.5	1.1	-6.3	-6.0	-0.4

(1) "Reported data" are in percent and "period changes" are in percentage points.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

APPENDIX D

**WEIGHTED-AVERAGE PRICES OF DOMESTIC PRODUCTS 1A, 2, 3A, AND
4A AND IMPORTED PRODUCTS 1A, 3A, AND 4A, AS SUPPLIED BY U.S.
IMPORTERS AND REPORTED BY PURCHASERS,
AND MARGINS OF UNDERSELLING/(OVERSELLING)**

Table D-1

PET resin: Weighted-average prices and quantities of domestic and imported product 1A, as supplied by U.S. importers and reported by purchasers, and domestic product 2, as reported by purchasers, and margins of underselling/(overselling), by quarters, 2003-04

* * * * *

Table D-2

PET resin: Weighted-average prices and quantities of domestic and imported product 3A, as supplied by U.S. importers and reported by purchasers, and margins of underselling/(overselling), by quarters, 2003-04

* * * * *

Table D-3

PET resin: Weighted-average prices and quantities of domestic and imported product 4A, as supplied by U.S. importers and reported by purchasers, and margins of underselling/(overselling), by quarters, 2003-04

* * * * *

APPENDIX E

**WEIGHTED-AVERAGE PRICES AND QUANTITIES OF *DIRECT IMPORTS*
OF PRODUCTS 1A AND 4A, AS REPORTED BY
IMPORTERS THAT CONSUME INTERNALLY AND PURCHASERS**

Table E-1
PET resin: Weighted-average prices and quantities of *direct imports* of products 1A and 4A, as reported by importers that consume internally and purchasers, by quarters, 2003-04

* * * * *

APPENDIX F

**WEIGHTED-AVERAGE PRICES AND QUANTITIES OF PRODUCT 3A
*** AND MARGINS OF UNDERSELLING/(OVERSELLING)
AND
INSTANCES OF UNDERSELLING/OVERSELLING AND THE RANGE AND
AVERAGE OF MARGINS FOR PRODUCTS 1-4 ***
AND
WEIGHTED-AVERAGE PRICES AND QUANTITIES OF PRODUCT 3A
IMPORTED BY *****

Table F-1

PET resin: Weighted-average f.o.b. prices and quantities of domestic and imported product 3A * and margins of underselling/(overselling), by quarters, 2002-04**

* * * * *

Figure F-1

PET resin: Weighted-average f.o.b prices of domestic and imported product 3A *, by quarters, 2002-04**

* * * * *

Table F-2

PET resin: Instances of underselling/overselling and the range and average of margins for products 1-4 *, by sources, January 2002-December 2004**

* * * * *

Table F-3

PET resin: Weighted-average sales prices and quantities of domestic and imported product 3A *, by quarters, 2002-04, and margins of underselling/(overselling)**

* * * * *

APPENDIX G

**ALLEGED EFFECTS OF IMPORTS OF PET RESIN FROM INDIA,
INDONESIA, TAIWAN, AND THAILAND ON U.S. PRODUCERS' EXISTING
DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT,
ABILITY TO RAISE CAPITAL, OR THE SCALE OF CAPITAL
INVESTMENTS**

The Commission requested U.S. firms to describe any actual or anticipated negative effects, since January 1, 2002, of imports of PET resin from India, Indonesia, Taiwan, and Thailand on their growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments. Responses are shown below.

Actual Negative Effects

DAK	***.
Invista	***.
M&G	***.
Nan Ya	***.
Starpet ¹	***.
Tiepet ¹	***.
Voridian	***.
Wellman	***.

Anticipated Negative Effects

DAK	***.
Invista	***.
M&G	***.
Nan Ya	***.
Starpet ¹	***.
Tiepet ¹	***.
Voridian	***.
Wellman	***.

¹ Starpet and Tiepet provided separate responses – Starpet purchased the assets of Tiepet in early 2003.

