

UNITED STATES INTERNATIONAL TRADE COMMISSION

POLYVINYL ALCOHOL FROM CHINA, GERMANY, JAPAN, KOREA, AND SINGAPORE

Investigations Nos. 731-TA-1014-1018 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3553, October 2002)

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Germany, Japan, and Korea of polyvinyl alcohol, provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines that imports of polyvinyl alcohol from Singapore are negligible and therefore its investigation with regard to Singapore is terminated pursuant to section 733(a) of the Act.²

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On September 5, 2002, a petition was filed with the Commission and Commerce by Celanese Chemicals, Ltd. of Dallas, TX and E.I. du Pont de Nemours & Co. of Wilmington, DE, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of polyvinyl alcohol from China, Germany, Japan, Korea, and Singapore. Accordingly, effective September 5, 2002, the Commission instituted antidumping duty investigations Nos. 731-TA-1014-1018 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 September 13, 2002 (67 FR 58076). The conference was held in Washington, DC, on September 26, 2002, 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 Lynn M. Bragg dissenting.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of polyvinyl alcohol from China, Germany, Japan, and Korea that allegedly are sold in the United States at less than fair value. We also find that imports of polyvinyl alcohol from Singapore that allegedly are sold at less than fair value are negligible, and our investigation with regard to Singapore is thereby terminated.¹

The petitions in these investigations were filed on September 5, 2002, by Celanese Chemicals Ltd. (“Celanese”)² and E.I. du Pont de Nemours & Co. (“DuPont”), domestic producers of polyvinyl alcohol (“PVA”) (collectively “petitioners”). Other participants in these investigations include Solutia, Inc. (“Solutia”), a domestic PVA producer that opposes the petitions;³ Sinopec Sichuan Vinylon Works (“Sichuan”) (the subject foreign producer in China); Kuraray Co., Ltd. (“Kuraray Japan”), Nippon Synthetic Chemical Industry Co., Ltd. (“Nippon”), Japan VAM & Poval Co., Ltd. (“Japan VAM”), Denki Kagaku Kogyo Kabushiki (“Denki”) (the subject foreign producers in Japan); Kuraray Specialties Europe GmbH (“Kuraray Germany”) (the subject foreign producer in Germany);⁴ Poval Asia Pte., Ltd. (“Poval”) (the subject foreign producer in Singapore); Kaisha, Kuraray Specialties Asia Pte., Ltd., Nippon Gohsei Singapore Pte., Ltd. (foreign exporters); Japan VAC & PVOH Industry Association (a trade association of Japanese producers); DC Chemical Co., Ltd. (“DC Chemical”) (the Korean subject producer); Clariant Corporation (“Clariant”) (the exclusive importer from Germany); H.B. Fuller Company (“Fuller”) (an importer of ***); Kuraray America (an importer of ***); Marubeni Specialty Chemicals, Inc. (“Marubeni”) (an importer of ***); OCI Chemical International Inc. (“OCI”) (a related importer ***);⁵ and Wego Chemical & Mineral Corp. (“Wego”) (an importer of ***).⁶

PVA has been the subject of prior antidumping duty investigations in the United States. On March 9, 1995, Air Products (since acquired by Celanese) filed antidumping petitions alleging that an industry in the United States was materially injured and threatened with further material injury by reason of subject

¹ Commissioner Bragg finds that subject imports from Singapore will imminently exceed the statutory negligibility threshold. Commissioner Bragg further finds that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from Singapore. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

² Celanese acquired Air Products and Chemicals, Inc. (“Air Products”) in October 2000. See, e.g., Petition at 8.

³ Solutia opposes the petitions for three reasons, as indicated in more detail herein: (1) it argues that Solutia is both a domestic producer and consumer of PVA; (2) it contends that the grade of PVA that Solutia manufactures and purchases is a separate domestic like product; and (3) it asserts that any injuries suffered by DuPont and Celanese in the PVB market cannot be attributed to imports because there have been no commercial imports of that PVA. See, e.g., Transcript of the Commission’s September 26, 2002, Staff Conference (“Conference Tr.”) at 62. Solutia was spun off from Monsanto Company (“Monsanto”) in 1997. See, e.g., Solutia’s Postconference Brief at 7.

⁴ Kuraray purchased the German plant in 2001 from Clariant, and assumed ownership effective January 1, 2002. See, e.g., Clariant’s Postconference Brief at 3.

⁵ OCI is the U.S. sales affiliate of DC Chemical, the manufacturer and exporter of PVA from Korea, that handles direct sales in the U.S. market. Other sales in the U.S. market are ***. See, e.g., OCI’s Postconference Brief at 1 n.1.

⁶ See, e.g., Confidential Staff Report, Mem. INV-Z-175 (Oct. 15, 2002) (“CR”)/Public Staff Report (“PR”) at Table IV-1.

imports from China, Japan, Korea, and Taiwan.⁷ The Commission ultimately determined that an industry in the United States was threatened with material injury by reason of subject imports from China, Japan, and Taiwan, and antidumping duty orders were issued with respect to such imports.⁸ On April 2, 2001, the U.S. Department of Commerce (“Commerce”) initiated a five-year review of the orders.⁹ No domestic producer responded to the notice of initiation, so the antidumping duty orders were revoked on May 14, 2001.¹⁰

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹¹ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”¹²

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that 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.”¹³ 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.”¹⁴ 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”¹⁵

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

⁷ The Commission determined that subject imports from Korea were negligible in those investigations. See, e.g., CR at I-2 & n.6; PR at I-2 & n.6.

⁸ See Polyvinyl Alcohol from China, Japan, and Taiwan, Invs. Nos. 731-TA-726, 727, and 729 (Final), USITC Pub. No. 2960 (May 1996) (“Old PVA Final”).

⁹ 66 Fed. Reg. 17524 (Apr. 2, 2001).

¹⁰ 66 Fed. Reg. 22145 (May 3, 2001).

¹¹ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

¹² American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

¹³ 19 U.S.C. § 1677(4)(A).

¹⁴ Id.

¹⁵ 19 U.S.C. § 1677(10).

characteristics and uses” on a case-by-case basis.¹⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹⁸ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁹ ²⁰ The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, pertaining even to the same imported products, but may draw upon previous determinations in addressing

¹⁶ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹⁷ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

¹⁸ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the 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.”).

¹⁹ 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).

²⁰ On September 30, 2002, petitioners filed simultaneous requests with Commerce and the Commission to exclude from the scope of the Japanese investigation PVA “for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.” The statute directs the Commission to make its injury determination in the preliminary phase of an investigation based on the “subject merchandise” as defined by Commerce and based “on the information available to it at the time of the determination.” See 19 U.S.C. §§ 1673, 1673b(a)(1), 1677(25). Thus, the subject imports that the Commission considers in its injury analysis are defined by Commerce, and the only information regarding the scope that Commerce provided as of the vote was the scope provided in the initiation notice. 67 Fed. Reg. 61591 (Oct. 1, 2002). Until recently, the Commission’s practice of not questioning Commerce’s determinations to make its own independent assessments of the “proper” scope of investigations was judicially sanctioned. See generally Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.2d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989). But see Co-Steel Raritan, Inc. v. United States, Slip Op. 02-59 at 13-19 (Ct. Int’l Trade June 20, 2002), appeal pending. Consistent with our otherwise judicially-sanctioned practice, we relied on the scope of these investigations defined in Commerce’s initiation notice. In any event, as a practical matter, the volume of imports from Japan at issue is quite small, and as such would not have a legally significant impact on the denominator for calculating negligible imports, the volume of subject imports from Japan, or the likely volume of subject imports from Japan. See, e.g., CR at I-3 n.9, VII-6 n.9; PR at I-3 n.9, VII-2 n.9.

pertinent like product issues.²¹ The Commission normally, however, does not find separate domestic like products based on different grades of chemical or mineral products.²²

B. Product Description

Commerce defined the imported merchandise within the scope of these investigations (hereinafter “PVA”) as –

All polyvinyl alcohol hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid. Polyvinyl alcohol in fiber form is not included in the scope of these investigations. The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.²³

The only domestic like product issue before the Commission in the preliminary phase of these investigations is whether PVA formulated for use in the production of polyvinyl butyral (“PVB-grade PVA”) is a separate domestic like product.²⁴ PVB is used in the production of a plastic laminate primarily used as an adhesive in the manufacture of automotive safety glass and load-resistant architectural glass. Both DuPont and Solutia captively produce PVB-grade PVA. Solutia captively produces and purchases PVB-grade PVA from ***.²⁵

Petitioners argue that the Commission should define a single domestic like product coextensive with the scope of these investigations,²⁶ and Solutia argues that PVB-grade PVA is a separate domestic like product.²⁷

²¹ See also Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp.2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169, n.5 (Ct. Int’l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

²² Bulk Acetylsalicylic Acid (Aspirin) from China, Inv. No. 731-TA-828 (Final), USITC Pub. 3314 at 5-6 (June 2000); Bulk Acetylsalicylic Acid (Aspirin) from China, Inv. No. 731-TA-828 (Prelim.), USITC Pub. 3211 at 5 (July 1999).

²³ 67 Fed. Reg. 61591 (Oct. 1, 2002).

²⁴ There was some discussion at the conference about copolymers and certain specialized end-use PVA grades, but most respondents accepted petitioners’ proposed domestic like product for purposes of the preliminary phase of these investigations, and instead asked the Commission to consider the special end-use PVA produced in subject countries without counterpart domestic production in its cumulation and causation analysis. See, e.g., Conference Tr. at 87-94; Japanese Respondents’ Brief at 3, n.1; Sichuan’s Postconference Brief at 1; Clariant’s Postconference Brief at 10-12.

²⁵ See, e.g., Solutia’s Postconference Brief at 2, 4, Exh. 1 at 4-5; CR/PR at Table III-4 n.2.

²⁶ See, e.g., Petitioners’ Postconference Brief at 4-9; Conference Tr. at 31, 36-38, 47-48.

²⁷ See, e.g., Conference Tr. at 62-67, 109-110, 114-117; Solutia’s Postconference Brief at 1-2, 13-20.

C. Domestic Like Product

1. The Previous Investigations Involving Polyvinyl Alcohol

In the previous PVA investigations, Commerce defined the scope as all PVA hydrolyzed in excess of 85 percent,²⁸ and the Commission defined the domestic like product coextensively with the scope.²⁹ In so doing, the Commission rejected the argument by Air Products that wet PVA, then captively produced by Monsanto, should not be included in the domestic like product because the scope covered only PVA in dry form.³⁰ The Commission also rejected arguments that different hydrolysis levels (*i.e.*, above or below 95 percent hydrolysis) or specifications (including Excipient Good Manufacturing Principles) were a basis for distinguishing among different domestic like products.³¹ Finally, the Commission rejected Monsanto's argument that all PVB-grade PVA, which at the time was being produced and internally consumed by Monsanto and DuPont, constituted a separate domestic like product.³²

2. Analysis

PVA is a water soluble polymer often sold as a white granular solid or powder.³³ For most applications, PVA is dissolved in an aqueous solution and its solubility behavior in water depends on several factors, including degree of polymerization, degree of hydrolysis, drying temperature, particle size, and molecular weight.³⁴ PVA in excess of 80 percent hydrolysis is sold in a variety of standard and specialty grades, and each grade varies according to its molecular weight³⁵ and degree of hydrolysis.³⁶ The

²⁸ Specifically, Commerce defined the scope as

a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this investigation are polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, or polyvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. Polyvinyl alcohol in fiber form is not included in the scope of this investigation.

Polyvinyl Alcohol from Taiwan, 61 Fed. Reg. 14064, 14065 (Mar. 29, 1996).

²⁹ Old PVA Final, USITC Pub. 2960 at 3-9.

³⁰ Id. at 6-7.

³¹ Old PVA Final, USITC Pub. 2960 at 8-9.

³² Id. at 8; Polyvinyl Alcohol from China, Japan, Korea, and Taiwan, Invs. Nos. 731-TA-726 to 729 (Prelim.), USITC Pub. 2883 (Apr. 1995).

³³ In contrast to the last PVA investigations, the scope of these investigations does not specify that it only applies to PVA in dry form, and petitioners ***. See, e.g., Petitioners' Postconference Brief at 10.

³⁴ See, e.g., CR at I-4 to I-5; PR at I-3 to I-4.

³⁵ The molecular weight is determined by the average length of the polymer chain in the finished product in terms of monomer units.

³⁶ See, e.g., CR at I-6 & n.11; PR at I-4 & n.11. The degree of hydrolysis is determined by the percentage of acetate groups in the polyvinyl acetate feedstock that are replaced by hydroxyl groups in the finished PVA. Fully hydrolyzed PVA has a replacement percentage in excess of 98 percent. See, e.g., CR at I-4; PR at I-3; Petitioners'

degree of hydrolysis of PVA affects a variety of PVA properties, such as solution interfacial tensions, compatibility, reaction kinetics, rheology, and water solubility.³⁷ The viscosity (a function of mass) of an aqueous solution of PVA increases as the molecular weight of the PVA increases.³⁸ Other physical characteristics of PVA include its pH, the percentage of volatiles, and ash content.

While tighter and more specific parameters may apply with respect to PVB-grade PVA than other types of PVA, the record indicates that other grades of PVA, such as those intended for use in pharmaceutical or paper applications, also meet specialized requirements of end users, and consumers of other grades of PVA, such as in pharmaceutical applications, require certification that the PVA meets certain quality and safety requirements or that it was produced on equipment certified to special standards.³⁹ The record also suggests that all PVA has a similar chemical composition.⁴⁰

PVA has a variety of end uses, including for the production of PVB; in sizing formulations in the textile and paper industries; as a binder in adhesive and soil binding formulations; and as an emulsion or polymerization aid in colloidal suspensions, water-soluble films, cosmetics, and joint compounds.⁴¹ In adhesive applications that require water resistance, a fully hydrolyzed grade of PVA is used, but in adhesive applications that do not require water resistance, a partially hydrolyzed PVA may be used. Paper manufacturers select a specific grade of PVA dependent on the properties required for the paper, such as grease and water resistance, ink receptivity, and solution size components. In the textile market, where PVA is used as a warp sizing for yarns to prevent breakage during weaving, various grades of PVA are selected for use depending on the yarn, machine type, other components of the sizing solution (e.g., starch), required viscosity, abrasion resistance, and ease of solution removal after fabric weaving.⁴²

Although all grades of PVA are not completely interchangeable with other grades, more than one grade may be sold to specific end-use applications. For example, fully hydrolyzed PVA can be used in many of the same end uses in which intermediate or partially hydrolyzed PVA can be used, such as textiles, paper, and adhesives. The same grade of PVA is frequently sold for different commercial uses, and many end users are able to use a wide range of grades. At the same time, the record indicates that many applications have evolved using particular grades such that substitution, although possible, could involve some cost and time to reformulate. Moreover, end users tend to avoid changing the grade of PVA they use in their applications because their formulas and process parameters might have to be adjusted.⁴³

While PVB-grade PVA is used primarily for optical applications – for windshields or architectural glass – and Solutia ***,⁴⁴ many other PVA grades also have unique characteristics that make them most suitable for particular applications.⁴⁵ PVB-grade PVA may be (and is) used for other PVA applications,⁴⁶

Postconference Brief at 5-6.

³⁷ See, e.g., CR at I-4; PR at I-3.

³⁸ Low-viscosity grades tend to have PVA chain lengths as low as 300 monomer units, with average molecular weights around 45,000 to 55,000, whereas high-viscosity, fully-hydrolyzed grades have PVA chain lengths up to 3,500 monomer units and average molecular weights around 200,000 to 225,000. See, e.g., CR at I-4; PR at I-3.

³⁹ See, e.g., Petitions at Vol. II, Exh. D; Conference Tr. at 71, 76-77, 84-107, 141-45; Clariant's Postconference Brief at 5-7; OCI's Postconference Brief at 8-9; Sichuan's Postconference Brief at 1, 9, Exh. B at 1-2.

⁴⁰ See, e.g., Petitioners' Postconference Brief at 5.

⁴¹ See, e.g., CR at I-5, II-1; PR at I-4, II-1; Conference Tr. at 15.

⁴² See, e.g., CR at I-6; PR at I-4.

⁴³ See, e.g., CR at I-6 to I-7; PR at I-5.

⁴⁴ See, e.g., Solutia's Postconference Brief at 15; Exh. 1.

⁴⁵ For example, an Appleton Paper official testified regarding the unique carboxylated copolymer PVA used in thermal image paper. See, e.g., Conference Tr. at 88. Marubeni, an importer of Japanese PVA, indicates that

but the converse is not true. At the same time, while there is overlap in end-use applications among various types of PVA, not all PVA is suitable for all applications. For some customers, the cost and time to reformulate their production process to use different grades of PVA limits interchangeability among grades of PVA.⁴⁷

Based on questionnaire responses, the vast majority of all PVA sold in the United States is either internally transferred for PVB production or sold directly to end-user customers. PVA sold on the open market is either delivered in bulk via railroad cars or packed in bags. In 2001, *** percent of domestic producers' U.S. shipments of PVA were for internal use in producing PVB. *** sold PVB-grade PVA on the merchant market to Solutia. The textile and paper markets were the next-largest markets for PVA, followed by the adhesives market.⁴⁸ The record also indicates that ***.⁴⁹ Thus, the record indicates that both PVB-grade PVA and other PVA were sold in the merchant market to end users and both were internally consumed.⁵⁰

With respect to production processes, equipment, and employees, the record indicates ***.
Whereas Solutia ***.⁵¹

Regarding producer and customer perceptions, domestic producers disagree whether PVB-grade PVA is a separate domestic like product, with DuPont and Celanese arguing it is not and Solutia arguing that it is. The record shows that customers do tend to individualize their specific requirements. Because PVA from different sources may not be identical even if it is intended for the same use, some purchasers require that their PVA suppliers qualify their products through a testing procedure, which may take months or years, depending on the end use.⁵² The record shows that PVA prices for the same grade may vary according to the application for which the product is sold. The average unit value of ***.⁵³

While there are some differences between PVB-grade PVA and other PVA based on the traditional factors, there are also a number of similarities. Based on the current record, we conclude that the differences do not warrant treating PVB-grade PVA as a separate domestic like product instead of as a part of the continuum of PVA products. Accordingly, we define a single domestic like product coextensively with the scope of these investigations.

III. DOMESTIC INDUSTRY

other unique PVA grades are acetoacetylated products for use in paper coating for ink jet and thermal paper applications, sulfonated products for use in dyes for ink used in various printing applications, and ethylene oxide products used in inkjet paper. See, e.g., Marubeni's Postconference Brief at Exh. 2.

⁴⁶ DuPont's witness testified that its PVB-grade PVA can be used in paper applications as well as for PVB applications. See, e.g., Conference Tr. at 49.

⁴⁷ See, e.g., CR/PR at Tables II-2, II-3.

⁴⁸ See, e.g., CR at I-7; PR at I-5; CR/PR at Table II-1.

⁴⁹ ***. See, e.g., CR/PR at Table III-3.

⁵⁰ See, e.g., Petitioners' Postconference Brief at 8; Solutia's Postconference Brief at 16; CR at I-7; PR at I-5; CR/PR at Tables II-1, III-3.

⁵¹ See, e.g., CR at I-5, I-8 & n.17, I-9; PR at I-4, I-6 & n.17; Petitioners' Postconference Brief at 8, 10, Exh. 1 at 2; Solutia's Postconference Brief at 16-19, Exh. 1 at 2.

⁵² See, e.g., Solutia's Postconference Brief at 13-17; Petitioners' Postconference Brief at 4-9; CR at II-7 to II-8; PR at II-5.

⁵³ Compare, e.g., CR/PR at Table III-3 with, e.g., CR/PR at Tables V-1, V-2, V-4.

The domestic industry is defined 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.”⁵⁴ 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.⁵⁵ In these investigations, petitioners contend that the Commission should limit the domestic industry to the two producers of the domestic like product for commercial sale, Celanese and DuPont.⁵⁶ Solutia argues that it is a domestic producer, and several other respondents agree.⁵⁷

The record indicates that ***.⁵⁸

Solutia ***. Unlike ***. These ***, however, are not reason to exclude Solutia from the domestic industry. To be included in the domestic industry, the statute requires that a company be a producer of a domestic like product.⁵⁹ Solutia, in fact, produces PVA ***.⁶⁰ Indeed, petitioners concede that “Solutia’s production process includes a PVA stage”⁶¹ Solutia ***.⁶² Finding that Solutia is part of the domestic industry is also consistent with the Commission’s practice of including in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁶³ Based on our definition of the domestic like product, and because Solutia is a producer of the domestic like product, we determine that Solutia is part of the domestic industry.⁶⁴ Accordingly, we

⁵⁴ 19 U.S.C. § 1677(4)(A).

⁵⁵ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁵⁶ See, e.g., Petitioners’ Postconference Brief at 10-11, Exh. 1 at 5-6. They argue that the Commission’s inclusion of Solutia’s predecessor (Monsanto) in the domestic industry in the previous investigations did not take full account of Monsanto’s production process. They argue that Solutia is not a domestic producer because ***. They contend that Solutia’s labeling of the vessel in which PVA is stored to comply with state law does not make the contents of the vessel a saleable product and there is no indication that the PVA is a saleable product.

⁵⁷ See, e.g., Solutia’s Postconference Brief at 1; Wego’s Postconference Brief at 1; Japanese Respondents’ Postconference Brief at 8.

⁵⁸ See, e.g., Petitioners’ Postconference Brief at 6-7.

⁵⁹ 19 U.S.C. § 1677(4)(A).

⁶⁰ See, e.g., Petitioners’ Postconference Brief at 10-13, Exh. 1 at 5-6; Solutia’s Postconference Brief at 17-20, Exh. 1.

⁶¹ See, e.g., Petitioners’ Postconference Brief at 10.

⁶² See, e.g., Solutia’s Postconference Brief at 17-19, Exh. 1.

⁶³ See, e.g., Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Invs. Nos. 731-TA-919 (Final), USITC Pub. 3076 at 9 (Dec. 1997).

⁶⁴ We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute 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. 19 U.S.C. § 1677(4)(B). In 2001, ***, CR/PR at Table III-4. By definition, therefore, *** is a related party under the statute because *** during the period of investigation. 19 U.S.C. § 1677(4)(B). ***, CR/PR at Table III-4. *** accounts for *** percent of domestic PVA production. *** produced *** million pounds of PVA in 1999, *** million pounds of PVA in 2000, *** million pounds of PVA in 2001, *** million pounds of PVA in interim 2001, and *** million pounds of PVA in interim 2002. CR/PR at Table III-4. As a share of its PVA production, ***, each equivalent to less than ***. Because the volume of ***, and *** primary interest appears to be in domestic production rather than importing, we determine that appropriate circumstances do not exist to exclude *** from the domestic industry as

determine that the domestic industry consists of all U.S. producers of PVA – namely, DuPont, Celanese, and Solutia.

IV. NEGLIGIBLE IMPORTS⁶⁵

By statute, imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent twelve months for which data are available preceding the filing of the petition shall be deemed negligible.⁶⁶ The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States.⁶⁷ The Commission is authorized to make “reasonable estimates on the basis of available statistics” of pertinent import levels for purposes of deciding negligibility.⁶⁸ By operation of law, a finding of negligibility terminates the Commission’s investigations with respect to such imports.⁶⁹

Negligibility is an issue in these investigations with respect to subject imports from Singapore. In the staff report, imports of PVA for all subject countries and non-subject imports are based on unadjusted import data for consumption from Commerce for the period August 2001 to July 2002.⁷⁰ Based on this information, subject imports from Singapore are 1.1 percent of total PVA imports in the most recent twelve months prior to the filing of the petitions, and are thus negligible.⁷¹

We do not find that there is a potential that subject imports from Singapore will imminently account for more than three percent of total imports of PVA. During the period of investigation, subject imports from Singapore never exceeded three percent of total PVA imports; their share of the volume of total PVA imports was 0.1 percent in 1999, 0.2 percent in 2000, 0.6 percent in 2001, 0.4 percent in interim

a related party.

⁶⁵ Commissioner Bragg does not join section IV (negligible imports) of these Views. See Additional and Dissenting View of Commissioner Lynn M. Bragg.

⁶⁶ 19 U.S.C. § 1677(24)(A)(i)(I).

⁶⁷ 19 U.S.C. § 1677(24)(A)(iv).

⁶⁸ 19 U.S.C. § 1677(24)(C); see also Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) at 856.

⁶⁹ 19 U.S.C. § 1673b(a)(1).

⁷⁰ See, e.g., CR at IV-5; PR at IV-4; CR/PR at Table IV-3.

⁷¹ Other sources of volume data are on the record, but use of other data does not affect our conclusion. Commerce statistics include a small amount of PVA not included in the scope of these investigations because importer questionnaire data from six importers indicate *** pounds (or *** percent of total PVA imports in 2001) of imports of PVA with a hydrolysis level of 80 percent or lower. See, e.g., CR at IV-1 n.3; PR at IV-1 n.3. In addition, petitioners allege that imports from non-subject countries United Kingdom and Italy (which collectively accounted for 12.5 percent of total PVA imports in 2001) have a hydrolysis level of 80 percent or lower. See, e.g., CR at IV-3 n.5; Petitioners’ Postconference Brief at 38 n.105. Even if adjustments were made to the denominator to account for these data issues, subject imports from Singapore are still less than three percent of total PVA imports in the most recent twelve months prior to the filing of the petitions (***). Finally, respondents testified that Commerce statistics are understated for Singapore and recommended the use of export statistics from Singapore. See, e.g., Conference Tr. at 96-97. Even if these adjustments were made to the denominator and export statistics from Singapore to the United States were used, subject imports from Singapore are still negligible (***).

2001, and 1.3 percent in interim 2002.⁷² Although the share of PVA imports attributable to Singapore rose throughout the period measured by Commerce statistics, in the most recent period covered by the data, subject imports from Singapore remained well below three percent.⁷³ Thus, imports from Singapore are not “increasing at a rate that indicates that they are likely to imminently exceed” the three percent negligibility threshold.⁷⁴

Although there was ***, Poval reported capacity utilization rates of *** percent in 2000 and *** percent in 2001, and its capacity utilization was *** percent in interim 2002 compared to *** percent in interim 2001. Capacity utilization is projected to be ***.⁷⁵ Poval’s ratio of inventories to shipments also was ***.⁷⁶ While Poval is export-oriented, its exports to the United States are small compared to its total production as well as in relation to total PVA imports into the U.S. market.⁷⁷ Poval’s exports to the United States also are projected ***.⁷⁸

Petitioners assert that the Commission should find that imports from Singapore will imminently exceed the three-percent negligibility threshold because Poval is owned jointly by two Japanese producers of subject PVA, Kuraray Japan and Nippon Gohsei. Petitioners claim that antidumping duty orders on Japan and Germany will cause Poval’s Japanese owners to shift exports from Japan or Germany (where Kuraray also owns a PVA producer) to Singapore to avoid duties. We do not find that this possibility outweighs the other information described above that indicates that imports from Singapore are not likely to imminently exceed the three-percent threshold. Moreover, during the pendency of the previous antidumping duty orders, which covered Japan but not Singapore, Poval’s exports to the U.S. market were limited. In addition, Poval produces only *** grades of PVA in Singapore (***), and only *** of these grades have been sold in the United States.⁷⁹ These facts, in conjunction with the extensive certification process that certain purchasers of PVA require to qualify new suppliers,⁸⁰ limit the ability of Poval to increase PVA imports to the U.S. market imminently, even if orders are placed on its related companies.

Accordingly, we do not find that there is a potential that subject imports from Singapore will imminently exceed three percent of total imports of PVA, and thus, the investigation with respect to subject imports from Singapore is terminated.

⁷² See, e.g., CR/PR at Table IV-2.

⁷³ See, e.g., CR/PR at Table IV-2.

⁷⁴ SAA at 856.

⁷⁵ See, e.g., CR/PR at Table VII-5; Conference Tr. at 82.

⁷⁶ See, e.g., CR/PR at Table VII-5.

⁷⁷ See, e.g., CR/PR at Tables VII-5 & n.1; CR at IV-2; PR at IV-1.

⁷⁸ See, e.g., CR/PR at Table VII-5 at n.2.

⁷⁹ See, e.g., CR/PR at Table VII-5; CR at VII-10 at n.14; PR at VII-3 at n.14.

⁸⁰ See, e.g., CR at I-6 to I-7; PR at I-5.

V. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of reasonable indication 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.⁸¹ In assessing whether subject imports compete with each other and with the domestic like product,⁸² 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.⁸³

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.⁸⁴ Only a “reasonable overlap” of competition is required.⁸⁵

B. Analysis

⁸¹ 19 U.S.C. § 1677(7)(G)(i).

⁸² 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).

⁸³ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 to 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).

⁸⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁸⁵ 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.”).

The conditions for cumulating subject imports from China, Germany, Japan, and Korea have been satisfied. The petition was filed with respect to all subject countries on the same day,⁸⁶ and based on the four factors that the Commission considers in analyzing cumulation, we find that there is a reasonable overlap of competition among subject imports and between subject imports and the domestic like product.

Petitioners argue that the prerequisites for cumulation have been met in these investigations, and thus cumulation is appropriate.⁸⁷ Respondents separately argue that subject imports from China, Germany, Japan, and Korea should not be cumulated.⁸⁸

The record indicates that in 2001, domestic producers shipped PVA to all of the categories identified in the questionnaire responses (*i.e.*, for PVB, textiles, paper, adhesives, emulsion polymerization, and “other/unknown” applications in the U.S. market). *** percent of their reported shipments in 2001 were to PVB applications, where they faced almost no competition from subject imports.⁸⁹ Subject imports from China were sold in all of the same applications as domestic shipments, although in different concentrations. Subject imports from Germany were sold for paper and other/unknown applications, and subject imports from Japan were sold for paper, adhesives, and other/unknown applications. Subject imports from Korea were sold for textiles, adhesives, and other/unknown applications. Thus, in terms of end uses, at least as reported for 2001, imports from China, Germany, and Japan, and the domestic like product were sold for paper applications. Although there were no subject imports from Korea for paper applications, they overlapped in textile applications with the domestic like product and subject imports from China, with Japan in adhesives applications, and with all other subject imports in “other/unknown” applications.⁹⁰

For the period January 1999 through June 2002, the Commission’s pricing data indicate sales of product one (textile) ***; sales of product two (adhesives) ***; sales of product three (paper) ***; and sales of product four (adhesives) ***.⁹¹

There are some limitations in the extent to which subject imports compete with one another and the domestic like product, particularly for certain end uses, as shown in the data above for 2001, but the pricing data covering a broader time period for four particular products shows somewhat more overlap. Importer questionnaires generally report that, with respect to the various country pairings, products from different sources are “sometimes” or “frequently” interchangeable, and importer questionnaires also generally report that differences other than price are “always,” “frequently,” or “sometimes” important with respect to most of the country pairings. The record also indicates that customers do not switch sources readily. Questions remain regarding the extent to which there is differentiation among products and customers with respect to PVA from the various sources, and whether there are physical differences in the PVA that is used in the different applications. For purposes of the preliminary phase of these investigations, however, we find that subject imports are fungible with one another and the domestic like product. We intend to explore this issue further in any final phase investigations.

⁸⁶ As noted above, subject imports from Singapore are negligible and the investigation is terminated with respect to Singapore. Therefore, we do not cumulate subject imports from Singapore for purposes of our material injury analysis. See 19 U.S.C. § 1677(7)(G)(ii)(II). None of the other statutory exceptions to cumulation apply in these investigations.

⁸⁷ See, e.g., Petitioners’ Postconference Brief at 13-18, Exh. 6; Conference Tr. at 27, 58.

⁸⁸ See, e.g., Conference Tr. at 71, 76-77, 84-107, 117-18, 134-35, 141-45; Wego’s Postconference Brief at 1, 4-8; Sichuan’s Postconference Brief at 8, 13-14; Clariant’s Postconference Brief at 1-2, 5-7; Marubeni’s Postconference Brief at 4-15, Exhs. A, B; OCI’s Postconference Brief at 1, 8-9.

⁸⁹ See, e.g., CR/PR at Table III-4. ***.

⁹⁰ See, e.g., CR/PR at Table II-1.

⁹¹ See, e.g., CR/PR at Tables V-1 to V-4.

Table IV-4 in the staff report presents the quantity of U.S. imports of the subject merchandise by month and by region in 2001. While there are some differences among countries with respect to concentration in particular regions, it appears that there are overlapping sales in one or more of the regions.⁹² Subject imports from China, Germany, Japan, and Korea all entered the East region throughout all or almost all of 2001 at not insignificant levels relative to each country's level of imports. Subject imports from China, Japan, and Korea also entered the West region throughout most of 2001, although subject imports from Germany only entered this region in limited quantities and less frequently.⁹³ Thus, there is some indication of a presence of sales of subject imports and the domestic like product in the same geographic markets.

With respect to channels of distribution, questionnaire responses indicate that the vast majority of all PVA sold in the United States, whether domestically produced or imported, is either internally transferred or sold directly to end-user customers.⁹⁴ This indicates the existence of common or similar channels of distribution for subject imports and the domestic like product. Finally, there were imports from all subject countries in 1999, 2000, 2001, and the interim periods.⁹⁵ This indicates that subject imports are simultaneously present in the market.

For purposes of the preliminary phase of these investigations, we conclude that there is a reasonable overlap of competition in the U.S. market among subject imports and between subject imports and the domestic like product. Accordingly, we cumulate subject imports from China, Germany, Japan, and Korea for purposes of analyzing whether there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.⁹⁶

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.⁹⁷ 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

⁹² See, e.g., CR/PR at Table IV-4.

⁹³ See, e.g., CR at V-1 to V-2; PR at V-1. Domestic producers reported selling nationwide, but most importers reported shipping subject imports only short distances, so overlap in districts of entry is likely to have more meaning in these investigations than in investigations where district of entry is less likely to be near the ultimate destination for the goods.

⁹⁴ See, e.g., CR at I-7; PR at I-5. In the U.S. commercial market for PVA, both domestic producers and importers from the subject countries reported that *** percent of their U.S. shipments went directly to end users. Id. at n.12.

⁹⁵ See, e.g., CR/PR at Table IV-2.

⁹⁶ Commissioner Bragg finds that the foregoing analysis and conclusion apply equally when subject imports from Singapore are considered together with subject imports from China, Germany, Japan, and Korea. Accordingly, Commissioner Bragg engages in a cumulative analysis of imports from all five subject countries for purposes of analyzing whether there is a reasonable indication of threat of material injury by reason of allegedly LTFV subject imports from Singapore. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

⁹⁷ 19 U.S.C. § 1673b(a).

U.S. production operations.⁹⁸ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁹⁹ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁰⁰ 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.”¹⁰¹

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing PVA is materially injured by reason of subject imports from China, Germany, Japan, and Korea that allegedly are sold in the United States at less than fair value.

A. Captive Production

The domestic industry captively consumes a significant share of its production of the domestic like product in the manufacture of downstream articles.¹⁰² Thus, we have considered whether the statutory captive production provision requires us to focus our analysis primarily on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.¹⁰³ Petitioners argue that the statutory captive production criteria are met,¹⁰⁴ while several respondents disagree.¹⁰⁵

We determine that the threshold criterion has been met because domestic producers internally transfer significant production of the domestic like product for captive consumption and sell significant

⁹⁸ 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).

⁹⁹ 19 U.S.C. § 1677(7)(A).

¹⁰⁰ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰¹ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰² See, e.g., CR at III-9; PR at III-3.

¹⁰³ The captive production provision, 19 U.S.C. §1677(7)(C)(iv), provides –

- (iv) CAPTIVE PRODUCTION – If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that –
 - (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
 - (II) the domestic like product is the predominant material input in the production of that downstream article, and
 - (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

¹⁰⁴ See, e.g., Petitioners’ Postconference Brief at 11-13.

¹⁰⁵ See, e.g., Clariant’s Postconference Brief at 18-19; Sichuan’s Postconference Brief at 1; Solutia’s Postconference Brief at 2, 11-13; Wego’s Postconference Brief at 2-3.

production of the domestic like product in the merchant market. In 2001, internal transfers accounted for *** percent of the reported volume of producers' U.S. shipments of PVA and commercial (merchant) shipments accounted for *** percent.¹⁰⁶

We also find that the first statutory criterion is met as *** were used in the production of PVB and PVB sheet, and *** entered into the merchant market for PVA.^{107 108}

The Commission also finds that the third statutory criterion¹⁰⁹ has been satisfied because production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article; this criterion is met because only *** percent of the volume of domestic producers' U.S. commercial shipments was used to produce ***.^{110 111}

There is more uncertainty whether the second statutory requirement, that the domestic like product is the predominant material input in the production of that downstream article, is met in these investigations.¹¹² According to information on the current record, *** internally consumes PVA to produce ***. This information indicates that for ***, PVA constitutes ***,¹¹³ ***.¹¹⁴ *** percent of the raw material costs to produce ***.¹¹⁵ For purposes of the preliminary phase of these investigations, we find that the

¹⁰⁶ See, e.g., CR at III-9; PR at III-3.

¹⁰⁷ See, e.g., CR at III-9 to III-10; PR at III-3.

¹⁰⁸ Commissioner Bragg dissenting. In previous investigations Commissioner Bragg outlined her analytical framework for examining the captive production provision, in which she examines whether the type or category of domestic like product that is internally transferred also enters the merchant market (with respect to the first prong of the provision). See, e.g., Certain Hot-Rolled Steel Products from Japan, Views of Chairman Lynn M. Bragg, Commissioner Carol T. Crawford, and Commissioner Thelma J. Askey Regarding the Captive Production Provision, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 25-30 (June 1999). The record in these preliminary investigations indicates that there are substantial volumes of both internal transfers and merchant market sales of ***; consequently, Commissioner Bragg finds that the first prong of the captive production provision is not satisfied for purposes of these preliminary phase investigations.

¹⁰⁹ See Certain Hot Rolled Steel Products from Japan, Inv. No. 731-TA-807, USITC Pub. 3202 at 31-35, 37-38 (June 1999), in which Commissioners Hillman, Miller, and Koplman elaborated on their interpretation of the third captive production factor.

¹¹⁰ See, e.g., CR at III-10; PR at III-3.

¹¹¹ Commissioner Bragg dissenting. In previous investigations, Commissioner Bragg outlined her analytical framework for examining the captive production provision, in which she examines whether the type or category of downstream article produced from internal transfers of the domestic like product is also produced from merchant market sales of the domestic like product (with respect to the third prong of the provision). See, e.g., Certain Hot-Rolled Steel Products from Japan, Views of Chairman Lynn M. Bragg, Commissioner Carol T. Crawford, and Commissioner Thelma J. Askey Regarding the Captive Production Provision, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 25-30 (June 1999). The record in these preliminary investigations indicates that both internal transfers and merchant market sales result in substantial production of ***; consequently, Commissioner Bragg finds that the third prong of the captive production provision is not satisfied for purposes of these preliminary phase investigations.

¹¹² In making this determination, the Commission considers whether the domestic like product is the predominant material input into a downstream product with reference to its share of the raw material cost of the downstream product attributable to the internally consumed domestic like product. See generally, e.g., Pure Magnesium from China and Israel, Invs. Nos. 701-TA-403 (Final) and 731-TA-895-896 (Final), USITC Pub. 3467 at 16 (Nov. 2001).

¹¹³ See, e.g., CR at III-10; PR at III-3; October 11, 2002, memo to the file by Staff Economist.

¹¹⁴ See, e.g., October 17, 2002, memo to the file by Staff Economist.

¹¹⁵ See, e.g., CR at III-10; PR at III-3.

second statutory criterion is met, ***;¹¹⁶ we intend to re-examine this criterion during any final phase investigations. In particular, we intend to seek further information about (1) the products internally produced by Celanese,¹¹⁷ DuPont, and Solutia from PVA (including PVB and PVB sheet); (2) the production processes used to produce those products; (3) the share of raw materials, other than PVA, used to produce those products; and (4) the percentage of raw materials attributable to PVA used to produce each of those products (as opposed to the total cost of production to produce those products).

Because we conclude for purposes of the preliminary phase of these investigations that all of the elements of the statutory captive production provision are met, we focus primarily on the merchant market for the domestic like product in determining market share and the factors affecting financial performance, although we analyze these factors with respect to the whole market as well.¹¹⁸

B. Other Conditions of Competition

The record indicates that overall demand for PVA in the United States has fallen since 1999.¹¹⁹ Much of the reduction in demand is reported to be the result of declines in the U.S. textile market, although the slowdown of the general economy also is reported to have contributed.¹²⁰ In contrast, consumption of PVA for the production of PVB has increased.¹²¹ *** 4 of the 10 responding importers reported that substitutes for PVA exist, including starches, carboxy-methylated cellulose, proteins, latex adhesives, dextrin, sodium silicate, polyacrylamide, and polyvinyl acetate. The firms reporting these substitutes, however, typically stated that each substitute is limited to only certain applications. In addition, *** reported that substitutes provide a different set of characteristics than PVA, which may limit practical substitution.¹²²

During the period of investigation, there were three domestic producers of PVA: Air Products/Celanese, DuPont, and Solutia. This domestic supply was supplemented by imports of PVA from the subject countries (China, Germany, Japan, and Korea), as well as from non-subject countries. Taiwan generally was the largest single source of PVA imports, subject or non-subject, since 1999.¹²³ There are a number of relationships between the various players in the U.S. and world PVA markets. There are

¹¹⁶ ***.

¹¹⁷ ***. See, e.g., CR/PR at Table III-3.

¹¹⁸ For purposes of these preliminary phase investigations, Commissioner Bragg finds that the captive production provision does not apply. Nevertheless, even in circumstances where the captive production provision is inapplicable, the Commission has exercised its discretion to consider captive production as a relevant condition of competition. Commissioner Bragg does so in these investigations.

¹¹⁹ Apparent U.S. consumption for PVA increased from *** million pounds in 1999 to *** million pounds in 2000 before decreasing to *** million pounds in 2001, and it was *** million pounds in interim 2002 compared to *** million pounds in interim 2001. See, e.g., CR/PR at Table IV-5.

¹²⁰ *** , but only 2 of the 10 responding importers, stated that demand for PVA in the United States has fallen since January 1, 1999. Four importers reported that demand had increased, and 4 reported that demand was unchanged or essentially unchanged. One of the four firms only reported that demand for use in PVB increased. See, e.g., CR at II-6; PR at II-4.

¹²¹ See, e.g., CR at II-6; PR at II-4.

¹²² See, e.g., CR at II-6; PR at II-4.

¹²³ See, e.g., CR at II-1 to II-7; PR at II-1 to II-5; Japanese Respondents' Postconference Brief at Exh. 25. ***. See, e.g., CR/PR at Table III-4 & n.1.

corporate relationships among producers in Germany, Japan, and Singapore, ***, and ***.¹²⁴ All three domestic producers produced PVB-grade PVA, with ***.¹²⁵

Because of the high fixed costs associated with the production of PVA, domestic producers report that it is important to maintain a high capacity utilization rate. They argue that profitability is very dependent upon a producer's ability to utilize its assets fully and to sell out its facility, and normal reinvestment is required to maintain the production capability and to keep the assets in a safe operating mode.¹²⁶

While price is an important factor in the sale of PVA, other factors such as quality, form of PVA and product availability can also be important considerations in purchasing decisions. Ten importers reported differences other than price in their purchasing decisions, and many of them reported more than one factor. *** report that aggressive pricing of imports has reduced the importance of other factors, including quality, technical support, and reliability.¹²⁷

As indicated in our cumulation analysis *supra*, there are some differences in terms of the applications for which subject imports from the various countries and the domestic like product are sold. Based on available data in these investigations, the record indicates that where there are identical forms of PVA, there is a high degree of substitution between domestic PVA and subject imports. Products from different sources, however, may not be identical even if the form is intended for the same use. As a result, some purchasers of PVA or of its downstream products require testing before they are able to switch suppliers. Testing may require months or years, depending on end use. Substitutability also is moderated by the fact that different forms of PVA impart different characteristics that are only appropriate for certain end uses, and not all products are available from all producers. Users prefer and frequently require specific forms of PVA. Imported product from the various subject countries tends to be used normally in specific applications reflecting a limited range of forms of PVA normally produced by or imported from certain countries.¹²⁸

As indicated earlier, antidumping duty orders covering PVA imports from China, Japan, and Taiwan entered into effect in mid-1996. Five years later, when no domestic producer responded to Commerce's notice initiating a five-year review of the orders, Commerce revoked the orders effective May 14, 2001.¹²⁹ Petitioners contend that the revocation of the prior antidumping duty orders has no legal significance.¹³⁰ Respondents argue that there is a legal significance to petitioners' failure to support the continuation of the orders against PVA from Japan, China, and Taiwan in 2001; they assert that petitioners' inaction constitutes a tacit admission that the domestic industry does not need protection from imports. They also argue that the Commission should consider imports under the antidumping duty orders to be fairly traded.¹³¹ We note that on the record currently before us, the statute mandates that we engage

¹²⁴ See, e.g., CR at III-4, VII-10; PR at III-3, VII-3; CR/PR at Tables III-3, III-4; Clariant's Postconference Brief at 1-2, 3; OCI's Postconference Brief at 17; Japanese Respondents' Postconference Brief at 1, 37; Conference Tr. at 157. ***. See, e.g., Petitioners' Postconference Brief at Exh. 1 at 8.

¹²⁵ See, e.g., CR/PR at Table III-3; CR at III-9 to III-10; PR at III-3.

¹²⁶ See, e.g., CR at II-2; PR at II-1; Petitioners' Postconference Brief at 24-25; Conference Tr. at 16-17.

¹²⁷ See, e.g., CR at II-10; PR at II-6.

¹²⁸ See, e.g., CR at II-7 to II-8; PR at II-5.

¹²⁹ 66 Fed. Reg. 22145 (May 3, 2001).

¹³⁰ See, e.g., Conference Tr. at 40-41.

¹³¹ See, e.g., Clariant's Postconference Brief at 22-24; Japanese Respondents' Postconference Brief at 6; Conference Tr. at 74-75.

in a cumulative analysis of the subject imports from China, Germany, Japan, and Korea, which requires us to include in our analysis imports from two countries not subject to the previous antidumping duty orders. Furthermore, the fact that until May 2001 certain subject imports from China and Japan were subject to a now-revoked antidumping duty order does not absolve us from investigating and considering under the statute whether there is currently material injury by reason of the subject imports.¹³² We do, however, consider the existence of the antidumping duty orders until May 2001 to be a pertinent condition of competition.

C. Volume of the Subject Imports

Section 771(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.”¹³³

Apparent U.S. consumption in the merchant market fell from *** million pounds in 1999 to *** million pounds in 2001,¹³⁴ over the same period, subject imports increased both in absolute terms¹³⁵ and relative to apparent U.S. consumption¹³⁶ from 23.8 million pounds in 1999 to 26.7 million pounds in 2001. The absolute and relative volumes of subject imports were also higher in interim 2002 than in interim 2001 in a merchant market in which apparent U.S. consumption was higher in interim 2002 than in interim 2001. Similar trends also exist in the total U.S. PVA market as apparent U.S. consumption declined¹³⁷ from 1999 to 2001 while subject imports increased, both in absolute terms and relative to apparent U.S. consumption. The volume of subject imports in interim 2002 was higher than in interim 2001 and apparent U.S.

¹³² Compare, e.g., Softwood Lumber from Canada, Invs. Nos. 701-TA-414 and 731-TA-928 (Prelim.), USITC Pub. 3426 at 13 (May 2001); Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 at I-12, n.70 (June 1994); Certain Carbon Flat-Rolled Steel Products, Invs. Nos. 701-319 et seq., 731-TA-573 et seq. (Final), USITC Pub. 2664, vol. I at 19 (Aug. 1993); Shop Towels from Bangladesh, Inv. No. 731-TA-514 (Final), USITC Pub. 2487 at 20 (March 1992); Uranium from Kazakhstan, Inv. No. 731-TA-539A (Final), USITC Pub. 3213 at 12-13 (July 1999); Honey from China and Argentina, Invs. Nos. 701-TA-402 and 731-TA-892 to 893 (Final), USITC Pub. 3470 at 17 (Nov. 2001).

¹³³ 19 U.S.C. § 1677(7)(C)(i).

¹³⁴ Apparent U.S. consumption in the merchant market increased from *** million pounds in 1999 to *** million pounds in 2000 before declining overall to *** million pounds in 2001, and it was *** million pounds in interim 2002 and *** million pounds in interim 2001. See, e.g., CR/PR at Table C-4.

¹³⁵ The volume of subject imports in the U.S. merchant market increased from 23.8 million pounds in 1999 to 32.1 million pounds in 2000, before declining somewhat to 26.7 million pounds in 2001; the volume of subject imports in the U.S. merchant market was 14.1 million pounds in interim 2002 and 13.6 million pounds in interim 2001. See, e.g., CR/PR at Table C-4.

¹³⁶ Subject imports’ share of apparent U.S. merchant market consumption increased from *** percent in 1999 to *** percent in 2000 before declining somewhat to *** percent in 2001; their share of apparent U.S. merchant market consumption was *** percent in interim 2002 and *** percent interim 2001. See, e.g., CR/PR at Table C-4.

¹³⁷ Apparent U.S. consumption in the total PVA market fell irregularly between 1999 and 2001, increasing from *** million pounds in 1999 to *** million pounds in 2000 and then declining to *** million pounds in 2001; apparent U.S. consumption in the total PVA market was *** million pounds in interim 2002 compared to *** million pounds in interim 2001. See, e.g., CR/PR at Table C-3.

consumption in the total U.S. PVA market was higher in interim 2002 than in interim 2001.¹³⁸ While non-subject imports also increased between 1999 and 2001 in both the merchant market and the total U.S. PVA market,¹³⁹ the volume of non-subject imports in interim 2002 was lower both absolutely and relative to apparent U.S. consumption than in interim 2001 in both these markets.¹⁴⁰

In light of the above, we find the volume of subject imports and the increase in the volume of subject imports, both absolutely and relative to apparent U.S. consumption, to be significant.

C. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁴¹

As indicated supra, there is moderate overlap among subject imports and the domestic like product in terms of end uses, particularly for paper and adhesives applications. Price is an important factor in the sale of PVA, although other factors such as quality, form of PVA and product availability are also important considerations in purchasing decisions.¹⁴² The record indicates that sales of PVA in the United States more frequently are contract rather than spot sales, although spot sales are common. Contracts are typically for ***, with quantities or the shares of purchases set. Because prices tend to fluctuate, most contracts have a meet-or-release provision and truckload minimum orders.¹⁴³

¹³⁸ Subject imports' share of apparent total U.S. PVA consumption increased from *** percent in 1999 to *** percent in 2000 before declining somewhat to *** percent in 2001, and was *** percent in interim 2001 and interim 2002. See, e.g., CR/PR at Table C-3.

¹³⁹ The volume of non-subject imports increased in the U.S. merchant market from 19.1 million pounds in 1999, to 26.2 million pounds in 2001, and declined to 24.1 million pounds in 2001. Non-subject imports' share of apparent U.S. consumption in the U.S. merchant market increased from *** percent in 1999 to *** percent in 2000 to *** percent in 2001. See, e.g., CR/PR at Table C-4. The volume of non-subject imports in the total U.S. PVA market was 19.1 million pounds in 1999, 26.2 million pounds in 2000, and 24.1 million pounds in 2001. See, e.g., CR/PR at Table C-3.

¹⁴⁰ The volume of non-subject imports in the U.S. merchant market in interim 2002 (10.9 million pounds) was much lower than in interim 2001 (12.4 million pounds), and non-subject imports' share of the U.S. merchant market was also lower in interim 2002 (***) percent) than in interim 2001 (***) percent). See, e.g., CR/PR at Table C-4. The volume of non-subject imports in the total U.S. PVA market in interim 2002 (10.9 million pounds) was much lower than in interim 2001 (12.4 million pounds), and non-subject imports' share of the total U.S. PVA market was also lower in interim 2002 (***) percent) than in interim 2001 (***) percent). See, e.g., CR/PR at Table C-3.

¹⁴¹ 19 U.S.C. § 1677(7)(C)(ii).

¹⁴² See, e.g., CR/PR at Tables II-2, II-3.

¹⁴³ See, e.g., CR at V-2; PR at V-1.

We find significant underselling by the subject imports. We sought pricing data for four products suggested by petitioners (one for textile applications, two for adhesive applications, and one for paper applications).¹⁴⁴ The available data show underselling in *** possible quarters at weighted average margins that ranged as high as *** percent.¹⁴⁵

Prices for the four products for which data were gathered show generally similar trends. With the exception of Product 1, domestic prices fluctuated throughout much of the period, moving in a mixed pattern before decreasing in October-December 2001 and thereafter. Prices for domestic PVA products 2, 3, and 4 in April-June 2002 were below all previous price points. Product 1, on the other hand, showed decreases in domestic prices early in the investigation period, falling most sharply in October-December 1999, and remaining below earlier 1999 prices throughout the remainder of the investigation period.

Price trends for subject imports showed generally less movement for those countries and products with more complete data series. Low-priced PVA from China and Korea was reported most frequently but showed little discernible price trends. Higher-priced PVA from Germany and Japan showed generally declining prices. The available data on the four pricing products shows declines of *** to *** percent in domestic PVA prices, suggesting price depression, particularly for products 2, 3 and 4, and price suppression for product 1. Moreover, between 1999 and 2001, domestic producers' raw material costs increased (at least in part due to higher natural gas prices),¹⁴⁶ and petitioners ***,¹⁴⁷ suggesting again possible price suppression. The *** also increased toward the end of the period of investigation.¹⁴⁸

Based on the data collected in the preliminary phase of these investigations, we find significant underselling by increasing volumes of subject imports during a time of declining demand and that subject imports significantly depressed prices during the period of investigation. We intend to examine closely the factors impacting domestic prices in any final phase investigations.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁴⁹ 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

¹⁴⁴ Data on common PVA products are available from U.S. producers and from all subject countries, although the relative volumes reported for Korea, Japan, and especially Germany *** are lower than those for China ***. See, e.g., CR at V-6; PR at V-3. We will attempt to seek pricing data that are more representative in any final phase investigations.

¹⁴⁵ See, e.g., CR/PR at Table V-6.

¹⁴⁶ See, e.g., CR at V-1, VI-1; PR at V-1, VI-1; CR/PR at Table VI-5.

¹⁴⁷ See, e.g., Conference Tr. at 17-18, 21-23, 56-57; Petitioners' Postconference Brief at 29-30; Petition at 3.

¹⁴⁸ See, e.g., CR/PR at Tables V-7, V-8.

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

and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{150 151 152}

Consistent with our findings concerning the volume and price effects of subject imports during the period of investigation, particularly the increasing volumes of subject imports during a period of declining demand and fluctuating costs, at significant margins of underselling and resulting in significant price effects, we find that subject imports are having a significant adverse impact on the domestic industry.

Specifically, in both the U.S. merchant market and the total U.S. PVA market, apparent U.S. consumption by quantity declined irregularly between 1999 and 2001,¹⁵³ yet the volume of subject imports increased and subject imports gained additional U.S. market share, as indicated supra. Between 1999 and 2000, domestic production¹⁵⁴ and domestic producers’ capacity utilization levels increased.¹⁵⁵ The average unit value of PVA in both the U.S. merchant market and the total U.S. PVA market, however, declined from 1999 to 2000 due to subject imports,¹⁵⁶ as did the volume of domestic shipments to the U.S. market,¹⁵⁷ while domestic producers’ inventories increased.¹⁵⁸ Between 2000 and 2001, as average unit values in the

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

¹⁵¹ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated antidumping margins of 97.86 for subject imports from China, 2.45 percent for subject imports from Germany (19.05 percent based on constructed value comparisons), 15.46 to 29.04 for subject imports from Japan (118.46 to 144.16 based on constructed value), and 25.41 percent for subject imports from Korea (31.54 based on constructed value). 67 Fed. Reg. 61591 (Oct. 1, 2002).

¹⁵² Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers, and she also notes that Commerce estimated an antidumping margin of 35.11 percent for Singapore (61.94 percent based on constructed value). See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63; 67 Fed. Reg. 61591 (Oct. 1, 2002).

¹⁵³ Apparent domestic consumption in the merchant market increased from *** million pounds in 1999 to *** million pounds in 2000, then decreased to *** million pounds in 2001, and was *** million pounds in interim 2002 compared to *** million pounds in interim 2001. See, e.g., CR/PR at Table C-2. Apparent domestic consumption in the total PVA market declined from *** million pounds in 1999 to *** million pounds in 2001, and was *** million pounds in interim 2002 compared to *** million pounds in interim 2001. See, e.g., CR/PR at Table C-3.

¹⁵⁴ Domestic producers’ production increased from *** million pounds in 1999 to *** million pounds in 2000. See, e.g., CR/PR at Table C-2.

¹⁵⁵ Domestic producers’ capacity utilization levels increased from *** percent in 1999 to *** percent in 2000. See, e.g., CR/PR at Table C-2.

¹⁵⁶ The average unit value of domestic producers’ merchant market shipments declined from *** in 1999 to *** in 2000, the average unit value of domestic producers’ shipments in the total PVA market declined from *** in 1999 to *** in 2000, and the average unit value of subject imports declined from *** in 1999 to *** in 2000. See, e.g., CR/PR at Tables C-2, C-4.

¹⁵⁷ Domestic producers’ merchant market shipments to the U.S. market decreased from *** million pounds in 1999 to *** million pounds in 2000, CR/PR at Table C-2, and their shipments to the total U.S. PVA market declined from *** million pounds in 1999 to *** million pounds in 2000. See, e.g., CR/PR at Table C-3.

¹⁵⁸ Domestic producers’ inventories increased from *** million pounds in 1999 to *** million pounds in 2000. See, e.g., CR/PR at Table C-2.

merchant market and in the total U.S. PVA market remained at the same low levels,¹⁵⁹ domestic producers decreased the volume of their PVA production,¹⁶⁰ operated at reduced capacity utilization levels¹⁶¹ and consequently faced increased costs.¹⁶²

The volume of subject imports was higher in interim 2002 than in interim 2001 both absolutely and relative to domestic consumption in both the merchant market and the total PVA market.¹⁶³ During this time, domestic producers continued to operate at *** and increased their export shipments. Their production levels and domestic shipments were, however, *** higher in interim 2002 than in interim 2001.¹⁶⁴

With respect to their merchant market operations, domestic producers' operating income fell from *** million in 1999 to *** million in 2000; *** in 2001. Their *** in interim 2002 compared to *** million in interim 2001.¹⁶⁵ Their operating income as a percentage of net merchant sales fell from *** percent in 1999 to *** percent in 2000, and ***; *** as a percent of net merchant sales in interim 2002 were *** percent compared to *** percent in interim 2001.¹⁶⁶ Similar trends exist for domestic producers'

¹⁵⁹ The average unit value of domestic producers' merchant market shipments was *** in 2000 and 2001, see, e.g., CR/PR at Table C-2, and in the total U.S. PVA market declined from *** in 2000 to *** in 2001. See, e.g., CR/PR at Tables C-3, C-4.

¹⁶⁰ Their production declined from *** million pounds in 2000 to *** million pounds in 2001. See, e.g., CR/PR at Table C-4.

¹⁶¹ Domestic producers' capacity utilization declined from *** percent in 2000 to *** percent in 2001. See, e.g., CR/PR at Table C-4.

¹⁶² Domestic producers' unit cost of goods sold in the merchant market increased from *** in 2000 to *** in 2001, see, e.g., CR/PR at Table C-4, and in the total U.S. PVA market, it increased from *** in 2000 to *** in 2001. See, e.g., CR/PR at Table C-3. As indicated supra, a portion of the increased costs is attributable to increased natural gas prices.

¹⁶³ See, e.g., CR/PR at Tables C-3, C-4. In the total PVA market, subject imports' share of apparent domestic consumption was ***.

¹⁶⁴ Their capacity utilization was *** percent in interim 2002 and *** percent in interim 2001. See, e.g., CR/PR at Tables C-3, C-4. Their production was *** million pounds in interim 2002 compared to *** million pounds in interim 2001. See, e.g., CR/PR at Table C-3, C-4. Their shipments to the U.S. merchant market were *** million pounds in interim 2002 compared to *** million pounds in interim 2001, and their shipments to the total U.S. PVA market were *** million pounds in interim 2002 compared to *** million pounds in interim 2001. See, e.g., CR/PR at Tables C-2, C-3. Domestic producers' exports were *** million pounds in interim 2002 compared to *** million pounds in interim 2001. See, e.g., CR/PR at Tables C-3, C-4.

¹⁶⁵ See, e.g., CR/PR at Table C-2.

¹⁶⁶ See, e.g., CR/PR at Table C-2.

performance in the total U.S. PVA market.¹⁶⁷ The domestic industry's capital expenditures increased whereas its R&D expenses declined over the period of investigation.^{168 169}

Based on significant increases in the volume of subject imports, generally declining domestic shipments, significant underselling and price suppression and depression by subject imports during a time of increasing raw material costs, and a deterioration in the domestic industry's condition over the course of the period of investigation, we find for purposes of the preliminary phase of these investigations that subject imports had a significant adverse impact on the domestic industry.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing PVA is materially injured by reason of imports from China, Germany, Japan, and Korea that allegedly are sold in the United States at less than fair value. We also find that imports of polyvinyl alcohol from Singapore that allegedly are sold at less than fair value are negligible, and our investigation with regard to Singapore is thereby terminated.¹⁷⁰

¹⁶⁷ Operating income in the total U.S. PVA market declined from *** million in 1999 to *** million in 2000, and domestic producers *** million in 2001; their *** in interim 2002 was *** compared to *** million in interim 2001. See, e.g., CR/PR at Table C-3.

¹⁶⁸ Capital expenditures were *** in 1999 and *** in 2001. See, e.g., CR/PR at Table C-2. The industry reported R&D expenses of *** in 1999, *** in 2000, and *** in 2001. See, e.g., CR/PR at Table VI-7. The number of production workers increased from *** in 2000 to *** in 2001. The domestic industry paid its workers *** million in 2000 and *** million in 2001. The industry's productivity was *** pounds per hour in 2000 and *** pounds per hour in 2001. Celanese was unable to provide 1999 data for employment, wages, and productivity indicia, limiting our review of these factors. See, e.g., CR/PR at Table III-6 n.1.

¹⁶⁹ In any final phase investigations, we intend to examine the role of non-subject PVA imports from Taiwan, as well as the role of Celanese's purchase price of Air Products, in the domestic industry's performance. See, e.g., Conference Tr. at 81, 133-34; Wego's Postconference Brief at 1-2, 9-10; Japanese Producer Respondents' Postconference Brief at 26-32.

¹⁷⁰ Commissioner Lynn M. Bragg finds that subject imports from Singapore will imminently exceed the statutory negligibility threshold. She further finds that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from Singapore. See Additional and Dissenting Views of Commissioner Lynn M. Bragg.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

Polyvinyl Alcohol from China, Germany, Japan, Korea, and Singapore *Inv. Nos. 731-TA-1014-1018 (Preliminary)*

I join my colleagues in finding a reasonable indication that an industry in the United States is materially injured by reason of imports of polyvinyl alcohol (“PVA”) from China, Germany, Japan, and Korea, that allegedly are sold in the United States at less-than-fair-value (“LTFV”), and except as otherwise noted, I join in the Views of the Commission. However, because I find that subject imports from Singapore are likely to imminently exceed the applicable negligibility threshold, and because I find a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly LTFV subject imports from Singapore, I provide my additional and dissenting views below.

I. NEGLIGIBLE IMPORTS

Imports from a single subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.¹ As noted, only Singapore is implicated by the negligibility provision in these preliminary phase investigations. Based upon unadjusted import data from Commerce, subject imports from Singapore accounted for 1.1 percent of total imports during the relevant 12 month period.² The import data from Commerce include a small volume of nonsubject PVA; when adjustments are made to account for the nonsubject product, imports from Singapore still accounted for only *** percent of total imports during the relevant 12 month period.³ Finally, respondents testified that Commerce statistics are understated for Singapore and recommended the use of export statistics from Singapore; even when the export statistics from Singapore are used, however, imports from Singapore still accounted for only *** percent of total imports during the relevant 12 month period. As a result, subject imports from Singapore are negligible for purposes of a present material injury analysis.

The statute further provides, however, that imports from a single country which comprise less than three percent of total imports of such merchandise shall not be treated as negligible for purposes of a threat analysis if there is a *potential* that imports from such a country will imminently exceed the three percent threshold.⁴ The Petitioners note that as recently as April 2002, monthly import statistics indicate that subject imports from Singapore accounted for 3.3 percent of total PVA imports. In addition, I note that Poval Asia Pte, Ltd. (“Poval”) accounts for 100 percent of PVA production in Singapore.⁵ Yet Poval is jointly owned by Kuraray and Nippon Gohsei, both of which are subject producers of PVA in Japan; moreover, Kuraray owns the sole producer of PVA in Germany, *i.e.* Kuraray Specialties Europe GmbH.⁶ Given Poval’s corporate relationships with subject producers in Japan and Germany, and in light of the affirmative preliminary determinations rendered by the Commission with respect to Japan and Germany in

¹ 19 U.S.C. § 1677(24)(A)(i). In this case the relevant 12 month period extends from August 2001 through July 2002. Confidential Report (“CR”) at IV-5; Public Report (“PR”) at IV-4.

² CR/PR at Table IV-3.

³ See CR at IV-1 n.3 & IV-3 n.5; PR at IV-1 n.3 & IV-1 n.5.

⁴ 19 U.S.C. § 1677(24)(A)(iv) (emphasis added).

⁵ CR at VII-10; PR at VII-3.

⁶ See CR at VII-4 & VII-10; PR at VII-2 & VII-3; Clariant’s Postconference Brief at 3.

these investigations, I find there is a potential that imports from Singapore will imminently exceed the three percent threshold. Accordingly, I proceed to an analysis of threat of material injury in the investigation with respect to Singapore.

II. CUMULATION

I join my colleagues in finding a reasonable overlap of competition among subject imports from China, Germany, Japan, and Korea, between subject imports from those four countries and the domestic like product.⁷ I find that the Commission's analysis and conclusion regarding cumulation apply equally when subject imports from Singapore are considered together with subject imports from China, Germany, Japan, and Korea. Accordingly, I engage in a cumulative analysis of imports from all five subject countries for purposes of analyzing whether there is a reasonable indication of threat of material injury by reason of allegedly LTFV subject imports from Singapore.

III. THREAT OF MATERIAL INJURY

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."⁸ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."⁹ In making my determination, I have considered all factors that are relevant to this investigation.¹⁰

To begin, based upon the progressive deterioration in the profitability of the domestic industry over most of the period of investigation, I find that the domestic industry is vulnerable to material injury.¹¹ Indeed, I have already found a reasonable indication that the domestic industry has experienced present material injury by reason of allegedly LTFV subject imports from China, Germany, Japan, and Korea. My assessment of the threat posed by allegedly LTFV subject imports from Singapore is based on a cumulative analysis with imports from those other subject countries, and thus my affirmative threat determination with respect to Singapore is a natural extension of my affirmative determinations with respect to those other subject countries. Additional threat factors specific to Singapore include the following:

With regard to whether imports of the subject merchandise are likely to increase,¹² as noted, the sole producer of PVA in Singapore is jointly owned by two subject producers in Japan, one of which also owns the sole producer of PVA in Germany. In light of the affirmative preliminary determinations rendered by the Commission with respect to subject imports from Japan and Germany, I find that related producers of PVA in Japan, Germany, and Singapore, are likely to rationalize their exports of PVA to the U.S. market; as a result, I find that imports of the subject merchandise from Singapore are likely to increase significantly in the imminent future.

The statute also directs the Commission to examine whether subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to

⁷ See Views of the Commission at section V.

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

⁹ 19 U.S.C. § 1677(7)(F)(ii).

¹⁰ 19 U.S.C. § 1677(7)(F)(i). Factor (VII) regarding raw and processed agricultural products is inapplicable to the instant investigations, as is factor (I) involving allegations of a countervailable subsidy.

¹¹ See CR/PR at Table C-1.

¹² See 19 U.S.C. § 1677(7)(F)(i)(I).

increase demand for further imports.¹³ Pricing data on the record indicate that subject imports from Singapore undersold the domestic like product in *** out of *** weighted average quarterly pricing comparisons, at average margins ranging from *** percent to *** percent for this commodity-like product.¹⁴ I have already joined my colleagues in finding that significant underselling by subject imports from China, Germany, Japan, and Korea, resulted in significant price depression in the U.S. market for PVA over the period of investigation. I further find that subject imports from Singapore are significantly underselling the domestic like product, and are entering the U.S. market at prices that are likely to exacerbate to a significant degree the price depression that is already evident in the market.

Based upon all the foregoing, I find a reasonable indication that an industry in the United States is threatened with imminent material injury by reason of allegedly LTFV subject imports from Singapore.

IV. CONCLUSION

In sum, I find that subject imports from Singapore are likely to imminently exceed the applicable negligibility threshold. I therefore dissent from the negligibility determination rendered by the Commission majority with respect to subject imports from Singapore, and I further render an affirmative threat determination with respect to Singapore in these preliminary phase investigations.

¹³ 19 U.S.C. § 1677(7)(F)(i)(IV).

¹⁴ CR/PR at Table V-6.