

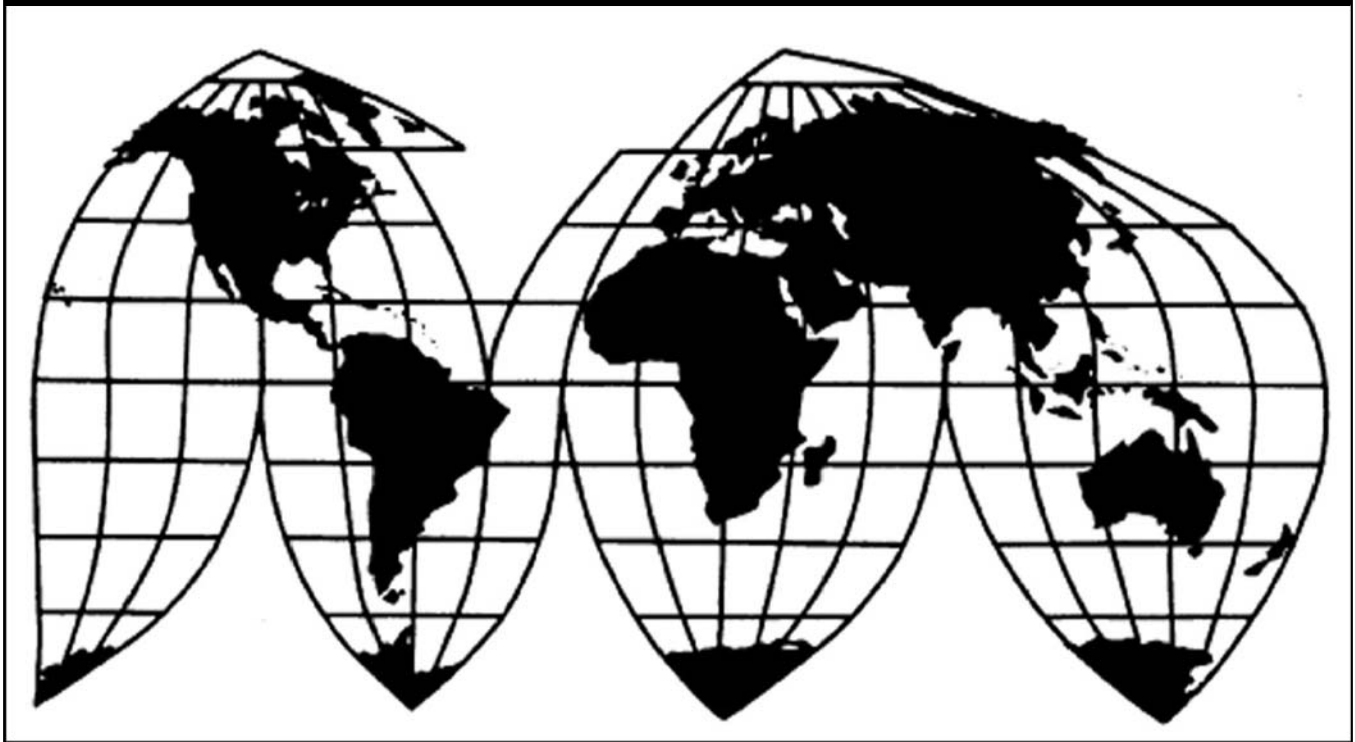
Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates

Investigation Nos. 731-TA-1131-1134 (Final)

Publication 4040

October 2008

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1131-1134 (Final)

POLYETHYLENE TEREPHTHALATE FILM, SHEET, AND STRIP FROM BRAZIL, CHINA, THAILAND, AND THE UNITED ARAB EMIRATES

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from Brazil, China, and the United Arab Emirates (“UAE”) of polyethylene terephthalate film, sheet, and strip (“PET film”), provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).² In addition, the Commission determines that it would not have found material injury but for the suspension of liquidation.

The Commission further determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports from Thailand of PET film that have been found by Commerce to be sold in the United States at LTFV.²

BACKGROUND

The Commission instituted this investigation effective September 28, 2007, following receipt of a petition filed with the Commission and Commerce by DuPont Teijin Films, Hopewell, VA; Mitsubishi Polyester Film of America, Greer, SC; SKC America, Inc., Covington, GA; and Toray Plastics (America), Inc., North Kingston, RI. The final phase of the investigations was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of polyethylene terephthalate from Brazil, China, Thailand, and the UAE were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission’s investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 26, 2008 (73 FR 36353). The hearing was held in Washington, DC, on September 18, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of imports of PET film from Brazil, China, Thailand, and the United Arab Emirates.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is threatened with material injury by reason of subject imports of polyethylene terephthalate film, sheet and strip (“PET film”) from Brazil, China and the United Arab Emirates (“UAE”) that have been found by the Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”). We also determine that an industry in the United States is not materially injured or threatened with material injury by reason of subject imports of PET film, sheet and strip from Thailand.^{1 2}

I. BACKGROUND

In 1990, the U.S. PET film industry petitioned for relief from LTFV imports of PET film from Korea, Japan and Taiwan. The Commission made a negative determination with respect to Taiwan in its preliminary investigations. Antidumping duty orders covering subject imports from Japan and Korea were issued in 1991. Commerce revoked the order on PET film from Japan in 1995, after concluding that the order was no longer of interest to interested parties.³ The order covering subject imports from Korea has been the subject of two five-year reviews (in 2000 and 2005); both resulted in continuation of the order.

In 2001, the U.S. PET film industry petitioned for relief from LTFV imports of PET film from India and Taiwan as well as subsidized imports from India. After affirmative determinations were reached by Commerce and the Commission, antidumping and countervailing duty orders covering subject imports from both countries were issued in July 2002. Five-year reviews resulted in continuation of these orders in May 2008.⁴

The petition in the present investigations was filed on September 28, 2007, by DuPont Teijin Films (“DuPont Teijin”); Mitsubishi Polyester Film, Inc. (“Mitsubishi”); SKC, Inc. (“SKC”); and Toray Plastics (America), Inc. (“Toray”) on behalf of the domestic industry. Representatives of petitioners appeared at the hearing and filed prehearing and posthearing briefs, as did representatives of Terphane Inc. (“Terphane”), a U.S. corporation with a Brazilian subsidiary, Terphane Ltda.; Flex Middle East FZE and Flex America Inc. (“Flex”), which are the sole producer/exporter and U.S. importer, respectively, of subject merchandise from the UAE; the China Plastics Processing Industry Association (“BOPET”), comprising Chinese producers and exporters; and Bemis Company, Inc. (“Bemis”), a large purchaser that also owns domestic producer Curwood, Inc. No producer or exporter of the subject merchandise from Thailand appeared at the hearing or submitted prehearing or posthearing briefs.

PET film is a high-performance, clear, flexible, and transparent or translucent material that is produced from PET polymer, a linear, thermoplastic polyester resin. It is generally more expensive than other plastic films and is typically used only when its unique properties are required. Special properties imparted to PET film during the manufacturing process are integral to its use in a myriad of downstream applications.⁵ PET film is produced and sold both as general purpose commodity-grade films (representing approximately 68 percent of the market) and specialty-grade films (representing

¹ Commissioner Lane finds that an industry in the United States is presently materially injured by reason of all of the subject imports. See Dissenting Views of Commissioner Charlotte R. Lane. She joins sections I-VI of these views.

² Material retardation of an industry in the United States is not an issue in these investigations.

³ Confidential Report (“CR”) at I-4 - I-5, Public Report (“PR”) at I-4.

⁴ CR at I-6, PR at I-5; 73 Fed. Reg. 26,079, 26,080 (May 8, 2008).

⁵ CR at I-9, PR at I-7.

approximately 32 percent of the market) that command a price premium relative to the commodity grades.^{6 7}

Examples of industrial and allied commodity-grade end use markets⁸ include hot stamping foil, pressure sensitive labels (thermally/chemically resistant), release films (pull away labels), photo resist films, metallic yarns, adhesive tapes, plastic cards (including “smart” cards), labels, lamination films, solar/safety window films, medical test strips, and other miscellaneous uses. Packaging commodity-grade markets are growing rapidly in certain end use areas due to technology and changing customer tastes, such as convenient cook-in bags. Typical uses for packaging commodity-grade films include flexible pouches and peelable seals (microwave tray film) for foods, snack food and pet food packaging, barrier films to keep moisture away from foods, industrial packaging, can laminations, and vacuum insulation panels.⁹

Magnetic media, electrical and imaging applications are generally more specialized markets than the commodity-grade industrial and packaging segments. Magnetic media include VCR, audio and floppy disk tapes for which the market has been in decline for many years. There has been significant growth, however, in high-density storage media for computer backups. Electrical applications include brightness-enhancing display films (for computer monitors and wide-screen TVs), motor wire and cable, cable wrap and insulation, transformer insulation films, capacitors, thermal printing tapes, touch screens and membrane touch switches for computer and calculator keyboards, as well as microwave oven and other touch screens, and electrical laminates such as flexible printed circuit board films. There has reportedly been some growth in usage for display films, touch screens and membrane touch switches, as well as electrical laminates, while usage in wire and cable wrap and motor films is reportedly declining.¹⁰

Imaging applications are reportedly declining as well. This end use category includes microfilm, which is being replaced by computer storage, a growing PET film end use; x-ray films and instant photos, which are being replaced by digital imaging; printing processes, such as magazine advertisements; drafting films, which are being replaced by computer-aided design; and overhead transparencies, which are being replaced by projection.¹¹

II. DOMESTIC LIKE PRODUCT

A. In General

In making its determination under section 751(c) of the Tariff Act of 1930, as amended (“the Tariff Act”), the Commission first defines the “domestic like product.” The Act defines the “domestic

⁶ CR at I-10 - I-11, PR at I-8. Different producers sell different amounts of commodity-grade and specialty-grade PET film. See Petitioners’ Posthearing Brief, Answers to Commission Questions at 9-10. See also Tr. at 176 (Mr. Tyle) (global demand for PET film is increasing), 181 (Mr. Roy) (demand is growing in the United States in line with GDP growth).

⁷ There are five PET film end use categories generally recognized by the industry: industrial, packaging, magnetic media, electrical, and imaging. CR at I-10, PR at I-8.

⁸ This is the largest and broadest market segment. Tr. at 16 (Mr. Kim). Together with the packaging segment, it comprises 68 percent of the total PET film market. *Id.* at 24 (Mr. Eckles).

⁹ CR at I-11 - I-12, PR at I-9.

¹⁰ CR at I-12, PR at I-9.

¹¹ CR at I-12, PR at I-9 - I-10.

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.”¹²

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.¹³ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁴ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁵ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise subsidized or sold at less than fair value,¹⁶ the Commission determines the domestic product that is like the imported articles Commerce has identified.¹⁷

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

all gauges of raw, pre-treated, or primed PET Film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is Roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET Film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (“HTSUS”). While HTSUS subheadings are provided for

¹² 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹³ See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors, including the following: (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).

¹⁴ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹⁵ Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁶ See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 at 9 (Fed. Cir. Apr. 25, 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

¹⁷ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298, n.1 (“Commerce’s [scope] finding does not control the Commission’s [like product] determination.”); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

convenience and Customs purposes, our written description of the scope of this investigation is dispositive.¹⁸

B. Prior Investigations¹⁹

In the 1990 investigations of PET film from Japan and Korea, the Commission found PET film to be a single like product, based on general similarities in physical characteristics, production processes and facilities, the perceptions of U.S. producers, and channels of distribution. The Commission found PET film to be “a continuum product without clear dividing lines.”²⁰ The Commission also considered whether the like product should be expanded beyond the scope of those investigations to include “equivalent film,” and decided it should be included. Equivalent film differs from PET film in that the former has at least one surface coated with a performance-enhancing resinous or inorganic layer of more than 0.00001 inch (0.254 micrometer or one gauge) in thickness.²¹ In the 2000 five-year review of the order covering subject imports from Korea, the Commission found that there was no basis for revisiting its original like product definition.²²

In the 2001 investigations of PET film from India and Taiwan, the Commission again found a single domestic like product. It declined to expand the scope of the investigations to include equivalent film in the definition of the domestic like product, however, based on the evidence regarding physical characteristics and uses, channels of distribution, manufacturing facilities, customer and producer perceptions, and pricing.²³

C. Analysis

In the preliminary phase of these investigations, we did not include equivalent PET film in the definition of the domestic like product and found a single domestic like product, coextensive with the scope of the investigations.²⁴ In the final phase of these investigations, no party advocates defining the domestic like product differently. No new information has been developed since the preliminary phase of the investigations to suggest that a different like product definition is warranted. Accordingly, as in the preliminary phase of these investigations, we define a single domestic like product coextensive with the scope of the investigations.

¹⁸ 73 Fed. Reg. 55,035, 55,036 (Brazil), 55,036, 55,037 (UAE), 55,039, 55,039-40 (China), 55,043, 55,044 (Thailand) (Sept. 24, 2008).

¹⁹ The Commission must base its domestic like product determination on the record in each investigation. The Commission is not bound by prior determinations concerning even the same imported product. Acciai Speciali Terni S.p.A v. United States, 118 F. Supp. 2d 1298, 1304-1305 (Ct. Int’l Trade 2000). Congress intended that Commission determinations be sui generis because of its concerns regarding the differing competitive conditions between one industry and another, e.g. S. Rep. No. 249, 96th Cong, 1st Sess. 88-89 (1979), and its concerns that the Commission consider, in each case, the conditions of competition present at the time for the industry at issue, e.g. S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987).

²⁰ Polyethylene Terephthalate (PET) Film, Sheet and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458-459 (Final), USITC Pub. 2383 (May 1991), at 8-14.

²¹ See 72 Fed. Reg. at 60,802 (Commerce’s scope).

²² Polyethylene Terephthalate Film, Sheet and Strip from Korea, Inv. Nos. 731-TA-459 (Review), USITC Pub. 3278 (Feb. 2000), at 5. The order covering subject imports from Japan was revoked in 1995.

²³ Polyethylene Terephthalate Film, Sheet and Strip from India and Taiwan, Inv. Nos. 701-TA-415 and 731-TA-933-934 (Final), USITC Pub. 3518 (June 2002), at 6.

²⁴ Polyethylene Terephthalate Film, Sheet and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Preliminary), USITC Pub. 3962 (Nov. 2007), at 4-8.

III. DOMESTIC INDUSTRY

A. In General

Section 771(4)(A) of the Act defines the relevant industry as the domestic “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.”²⁵ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²⁶

There are eight known domestic producers of PET film: 3M, Curwood, DuPont Teijin, Kodak, Mitsubishi, SKC, Terphane, and Toray. The Commission received a domestic producer questionnaire response from each firm.²⁷

B. Related Parties

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B), which 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. The Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of subject imports. The Commission has found such control to exist when the domestic producer is responsible for a predominant proportion of an importer’s purchases and these purchases are substantial.²⁸

In the preliminary phase of these investigations, the Commission determined to exclude none of the four domestic producers then identified as related parties.²⁹ In the final phase of these investigations, we re-examine the facts relating to those four domestic producers and consider whether to exclude two other producers as well.

²⁵ 19 U.S.C. § 1677(4)(A).

²⁶ 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).

²⁷ CR/PR at III-1 & Table III-1.

²⁸ See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 (Sept. 2001) at 8-9; Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 & 731-TA-815-822 (Preliminary), USITC Pub. 3181 (Apr. 1999) at 12; Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (Apr. 1997) at 10 n.50. See also Statement of Administrative Action for the Uruguay Round Agreements Act, H.R. Rep. 316, 103rd Cong., 2d Sess., vol. 1 at 858 (1994).

²⁹ USITC Pub. 3962 at 8-11.

1. Domestic Producers That Import Subject Merchandise

***, *** and *** imported subject merchandise from ***, and Terphane imported subject merchandise from *** and Brazil.³⁰ These producers are thus considered related parties, and the Commission must determine whether appropriate circumstances exist to exclude them from the domestic industry.

***.³¹ Terphane and BOPET argue that *** should be excluded from the domestic industry.³² *** were equivalent to *** percent of its U.S. production in 2007.³³ *** reported that it imports subject merchandise because ***.³⁴ *** is also a petitioner and was the *** domestic producer of PET film throughout the period of investigation, accounting for *** percent of total reported U.S. PET film production in 2007.³⁵ Based on these facts, we find that ***'s principal interest lies in domestic production rather than in importation.

Moreover, *** does not appear to be benefitting from its affiliation with a subject producer.^{36 37} It experienced *** that grew from \$*** in 2005 to \$*** in 2007. These *** losses totaled \$*** in January-June 2007 and \$*** in January-June 2008.³⁸ *** exclusion from the domestic industry would skew the data. Moreover, *** does not appear to be shielded from injury by virtue of its subject imports. We therefore determine that appropriate circumstances do not exist to exclude *** from the domestic industry on this basis.

³⁰ CR at Tables III-4, IV-1. In addition, *** and *** have affiliates that are subject producers. *Id.* at nn.2, 9.

³¹ Effective *** is now *** percent owned by *** and *** percent ***. CR/PR at III-1. *** together maintain joint production facilities in China, among other countries. ***. Petitioners' Prehearing Brief at 9, Petitioners' Posthearing Brief at 5. While it is unclear whether *** affiliation with the foreign producer constitutes an additional ground on which to conclude that it is a related party, we need not resolve that question given that *** imported subject merchandise during the period examined.

³² See Terphane's Prehearing Brief at 5-11; Terphane's Posthearing Brief at 7-10 & Exh. 1 at 5-16; BOPET's Posthearing Brief at 3-8.

³³ CR/PR at Table IV-1 n.2. We disagree with Terphane's argument that the possibility that *** interest may not be in U.S. production, but in global production, notably in China, disposes of the issue of whether to exclude *** from the U.S. industry. See Terphane's Prehearing Brief at 5-11; Terphane's Posthearing Brief at 9-10 & Exh. 1 at 5-13. In particular, ***, a petitioner, was the *** domestic producer throughout the period of investigation and has substantial capital expenditures and research and development expenses. CR/PR at Tables III-2, VI-7.

³⁴ *** Importer Questionnaire Response at II-4.

³⁵ CR/PR at Table III-1.

³⁶ CR/PR at Table VI-2.

³⁷ Consistent with her practice in past investigations and reviews, Chairman Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation.

³⁸ Commissioner Pinkert does not rely in these investigations upon related party financial performance with respect to U.S. manufacturing operations as a factor in determining whether there are appropriate circumstances to exclude related parties from the domestic industry. The record is insufficient to establish a link between related party profitability and any specific benefit received from importation. Thus, Commissioner Pinkert has relied on information unrelated to company profitability in determining whether appropriate circumstances exist to exclude related parties from the domestic industry.

Terphane. No party argues that Terphane should be excluded from the domestic industry. The ***³⁹ reporting domestic producer, Terphane accounted for *** percent of domestic production in 2007.⁴⁰ Over the period of investigation, Terphane’s domestic production fluctuated between *** pounds and *** pounds annually, while its subject imports rose in volume from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007.⁴¹ As a ratio to its domestic production, Terphane’s subject imports were *** percent in 2005, *** percent in 2006, and *** percent in 2007.⁴² Although Terphane reported that it imported subject merchandise “as feedstock for further manufacturing,”⁴³ it sold the vast majority of its imports to purchasers without performing any further processing in the United States.⁴⁴ ***⁴⁵ Terphane opposes the petition insofar as it relates to Brazil.⁴⁶

Terphane’s operating income *** in 2007. Its operating income totaled \$*** in January-June 2008.⁴⁷ Although the financial data are mixed, it is clear that Terphane imports a very large amount of subject product relative to its production. Accordingly, we find that its interests are more closely aligned to those of an importer than a domestic producer. We therefore determine that appropriate circumstances exist to exclude Terphane from the domestic industry in these investigations.

. No parties argue that appropriate circumstances exist to exclude *** from the domestic industry. *** is the *** largest of the reporting producers, accounting for *** percent of domestic PET film production in 2007.⁴⁸ *** in 2006, amounting to *** percent of its U.S. production.⁴⁹ It reported that it imported ***.⁵⁰ *** operating income increased *** from \$ in 2005 to \$*** in 2007, and was \$*** in January-June 2007 as compared to \$*** in January-June 2008.⁵¹ It does not appear to be deriving a financial benefit from its subject imports, especially insofar as it imported a *** amount of subject merchandise in only one year of the period examined. In view of the fact that *** is a *** and imported only *** of subject merchandise in one year of the period of investigation, we find it is primarily interested in domestic production and do not find that those imports shielded it from injury. We also note that its exclusion from the domestic industry would skew the data. We therefore determine that appropriate circumstances do not exist to exclude *** from the domestic industry on this basis.

***. No party argues that appropriate circumstances exist to exclude *** from the domestic industry. *** regarding the petition. It is the *** of the reporting producers, accounting for *** percent

³⁹ CR/PR at Table III-1.

⁴⁰ CR/PR at Table III-1.

⁴¹ CR/PR at Table III-4.

⁴² CR/PR at Table III-4.

⁴³ Terphane’s Importer Questionnaire Response at II-4.

⁴⁴ Compare Terphane’s Importer Questionnaire Response at II-5 with Purchaser Questionnaire Responses at II-2 - II-3; see also CR/PR at IV-1 (***) and CR at II-16, PR at II-11, CR/PR at Table II-5 (indicating that seven responding purchasers compared subject imports from Brazil to other PET film).

⁴⁵ Terphane’s Importer Questionnaire Response at II-4.

⁴⁶ CR/PR at Table III-1. Terphane ***. CR/PR at Table III-1 n.4.

⁴⁷ CR/PR at Table VI-2.

⁴⁸ CR/PR at Table III-1.

⁴⁹ Compare *** Importer Questionnaire Response at II-6 with CR/PR at Table III-2.

⁵⁰ *** Importer Questionnaire Response at II-4; CR/PR at Table VI n.6.

⁵¹ CR/PR at Table VI-2.

of domestic PET film production in 2007.⁵² *** subject imports from *** amounted to *** percent of its U.S. production in 2007.⁵³ *** reported that it imports subject merchandise in order to ***,⁵⁴

*** operating income increased from \$*** in 2005 to \$*** in 2007, and was \$*** in January-June 2007 as compared to \$*** in January-June 2008.⁵⁵ Its small level of subject imports relative to U.S. production indicates that its primary interest is in domestic production and that it is not being shielded from injury by subject imports. Accordingly, we determine that appropriate circumstances do not exist to exclude *** from the domestic industry.

2. Other Domestic Producers

***. *** has a joint venture in China.⁵⁶ There is no record evidence, however, regarding the extent to which the Chinese affiliate exerts direct or indirect control, if any, over ***. Accordingly, it appears that *** does not qualify as a related party, given that it also did not import any subject merchandise during the period of investigation.⁵⁷ *** is a petitioner and accounted for *** percent of domestic PET film production in 2007.⁵⁸

The only argument presented by any party with respect to excluding *** as a related party is Terphane's statement that, although its immediate concern is DuPont Teijin, it is also concerned about *** production facility in China because of the great amount of excess capacity in China that is driving exports to the United States.⁵⁹ *** experienced an *** of \$*** in 2005, which rose to an *** in 2007. It experienced ***,⁶⁰ It does not appear from these data that *** is benefitting from its joint venture with a Chinese producer. Accordingly, we do not find that circumstances are appropriate to exclude *** from the domestic industry, even if it is deemed to be a related party.

***. *** purchased subject imports during the period of investigation. As discussed above, if its purchases were such that it was responsible for a predominant share of an importer's purchases and the importer's imports were substantial, it may be deemed a related party.⁶¹ No party argues that appropriate circumstances exist to exclude *** from the domestic industry as a related party.

*** made all of its purchases of imports from China from ***. Its purchases from *** accounted for *** percent of *** imports during the period of investigation. In addition, *** purchases of PET film from Brazil accounted for *** percent of *** imports from Brazil over the period of investigation.⁶² Although these imports represent a predominant share of at least *** imports, under the circumstances of these investigations we do not conclude that they make *** a related party to either *** or ***. Both *** and *** are domestic producers as well as importers and have affiliates with substantial capacity in

⁵² CR/PR at Table III-1.

⁵³ CR/PR at Table IV-1 n.12.

⁵⁴ *** Importer Questionnaire Response at II-4; CR/PR at Table IV-1 n.12.

⁵⁵ CR/PR at Table VI-2.

⁵⁶ CR/PR at Table IV-1 n.10.

⁵⁷ CR/PR at Table IV-1 n.10.

⁵⁸ CR/PR at Table III-1.

⁵⁹ Terphane's Prehearing Brief at 11 n.26.

⁶⁰ CR/PR at Table VI-2.

⁶¹ See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 (Sept. 2001), at 8-9; Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 (Apr. 1999), at 2. See also SAA at 858.

⁶² *** Producer Questionnaire Response at II-23; *** Importer Questionnaire Response at II-5; *** Importer Questionnaire Response at II-6.

subject countries. Moreover, ***.⁶³ ***.⁶⁴ Accordingly, there is no indication in the record that Curwood “controls” these two companies or their importing activities in any meaningful way.

Even if we were to find Curwood to be a related party, we determine that appropriate circumstances to exclude it from the domestic industry do not exist. Although *** the petition, it is the *** of the reporting producers, accounting for *** percent of domestic PET film production in 2007.⁶⁵ *** purchased subject merchandise from *** and *** during the period of investigation. These purchases amounted to *** percent of its U.S. production in 2007.⁶⁶ It reported that it purchases subject merchandise because it has limited supply for its production requirements and the film grades required were not available or were not produced by domestic suppliers.⁶⁷

*** operating income fell from \$*** in 2005 to \$*** in 2007, and was \$*** in January-June 2007 as compared to \$*** in January-June 2008.⁶⁸ Although the very large amount of *** subject imports relative to production might indicate that it is gaining some financial advantage from these imports, the financial data indicate that *** is not being shielded from injury by subject imports. In addition, it is the *** of the reporting domestic producers and, as such, its inclusion in the domestic industry will not skew the data. Accordingly, even if we were to find that *** is a related party, we determine that appropriate circumstances do not exist to exclude it from the domestic industry.

In view of the foregoing, we find a single domestic industry consisting of all U.S. producers of the subject merchandise, except Terphane.

IV. NEGLIGIBILITY

A. In General

Under the statute, in antidumping duty investigations, imports from a subject country corresponding to a domestic like product are individually negligible for purposes of the Commission’s present material injury analysis if they account for less than 3 percent of the volume 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. Imports that are individually negligible may not be negligible if the aggregate volume of imports from several countries with negligible imports exceeds 7 percent of all such merchandise imported into the United States in the statutory period for assessing negligibility referenced above.⁶⁹

⁶³ Petitioners’ Posthearing Brief, Answers to Commission Questions at 2 (emphasis added).

⁶⁴ Petitioners’ Posthearing Brief, Answers to Commission Questions at 2.

⁶⁵ CR/PR at Table III-1.

⁶⁶ CR/PR at Table III-5.

⁶⁷ CR at III-12, PR at III-5.

⁶⁸ CR/PR at Table VI-2.

⁶⁹ 19 U.S.C. § 1677(24)(A)(i)-(ii).

B. Analysis

In the preliminary phase of the investigations, we found that evidence in the record indicated that a significant portion of what had been classified as subject imports from Brazil throughout the period of investigation had been misclassified and that nonsubject imports from Oman and Canada had been classified as PET film. Thus, we found that it was appropriate to adjust the official import statistics to exclude reported imports of PET film from Canada and Oman and to use the Brazilian importer questionnaire data in lieu of official import data in determining whether subject imports were negligible.⁷⁰

These issues remain present in the final phase of these investigations. Petitioners assert that because Terphane refused to cooperate in Commerce's investigations, it is impossible to verify Terphane's claim that the *** nonsubject equivalent PET film and the Commission should use official import statistics to calculate Terphane's imports.⁷¹ Terphane argues that there is no information as to the exact quantity of imports from Canada from September 2007 to August 2008 that were classified under HTS 3920.6200.90 that were subject or nonsubject PET film. It claims there is a reasonable basis to believe that if such data were fully collected, Brazil's subject imports would be deemed negligible and the investigation as to Brazil would be terminated.⁷² In particular, transshipments to Canada from Brazil should be excluded from the data for imports from Brazil into the United States.⁷³

No new data were presented in the final phase of these investigations that would indicate that the Commission's findings in the preliminary phase of the investigations should be modified. The information as to imports from Oman was confirmed during the preliminary phase.⁷⁴ As to imports from Canada, Commission staff have corroborated that the two Canadian firms that purchase PET film from U.S. producers produce amorphous PET film as well as finished film believed to be classified as equivalent PET film, both of which constitute merchandise excluded from the scope of the investigations.⁷⁵ Thus, we find that imports from Canada and Oman should be excluded from official import statistics. In addition, Commission staff have obtained no new information indicating that the imports from Brazil classified as merchandise within the scope were actually merchandise outside the scope. Accordingly, we again determine that we should use importer questionnaire data when analyzing subject imports from Brazil. As a result, no country's imports fall within the negligibility exception to the statute. Subject imports as a percentage of all imports during the most recent twelve months for which data are available preceding the filing of the petition, which was September 2006 through August 2007, were *** percent for Brazil, *** percent for China, *** percent for Thailand, and *** percent for the UAE.⁷⁶

⁷⁰ USITC Pub. 3962 at 12.

⁷¹ See Petitioners' Prehearing Brief at 5-6; Petitioners' Posthearing Brief at 4-5; see also Petitioners' Posthearing Brief, Answers to Commission Questions at 8-9, 15.

⁷² Terphane's Prehearing Brief at 16-17; Terphane's Posthearing Brief at 14.

⁷³ Terphane's Posthearing Brief, Exh. 1 at 41.

⁷⁴ See CR at IV-5, PR at IV-2 - IV-3.

⁷⁵ CR at IV-4 - IV-7, PR at IV-2 - IV-3.

⁷⁶ CR/PR at Table IV-3.

V. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁷⁷ In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered the following four factors:

- (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.^{78 79}

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.⁸⁰ Only a “reasonable overlap” of competition is required.⁸¹

In these investigations, the threshold criterion is satisfied because the petition with respect to each of the subject countries was filed on the same day, September 28, 2007.

⁷⁷ 19 U.S.C. § 1677(7)(G)(i).

⁷⁸ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁷⁹ Commissioner Lane notes with respect to the first factor that her analysis does not require such similarity of products that a perfectly symmetrical fungibility is required and that this factor would be better described as an analysis of whether subject imports from each country and the domestic like product could be substituted for each other. See Separate Views of Commissioner Charlotte R. Lane, Certain Lightweight Thermal Paper from China, Germany, and Korea, Inv. Nos. 701-TA-451 and 731-TA-1126-1128 (Preliminary), USITC Pub. 3964 (Nov. 2007).

⁸⁰ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

⁸¹ The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 848 (1994) (“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). See Goss Graphic Sys., 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”); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

B. Analysis

In the preliminary phase of the investigations, we found that there was at least a substantial degree of fungibility between domestic PET film and the subject imports, as well as among the various subject imports; that the criteria regarding geographic markets and simultaneous presence were satisfied; and that there was overlap in channels of distribution between the domestic product and the subject imports, as well as among the subject imports, with the exception of subject imports from Brazil and Thailand. We found, however, that there need not be an overlap in terms of every factor and every country comparison, as no single factor or comparison is necessarily determinative. Accordingly, we concluded that subject imports from Brazil, China, Thailand, and the UAE competed with each other and with the domestic like product and cumulatively assessed the volume and effects of subject imports in determining injury from those imports.⁸²

Only BOPET argues against cumulating for purposes of our determination regarding material injury, claiming that the Commission should not cumulate subject imports from China with other subject imports. With regard to fungibility, BOPET concedes that the U.S.-produced and foreign-produced films of the same types and grades are viewed as essentially the same. In addition, BOPET acknowledges that subject imports and domestic PET film were present simultaneously in the market. As pertains to sales or offers to sell in the same geographic market, however, BOPET points out that Chinese-produced PET film consistently entered more Customs districts than film produced in any other subject country during the period examined. BOPET also claims that the Chinese film had different channels of distribution than the other subject countries, *i.e.* its channels of distribution were “different and more complex.”⁸³

Fungibility. Most U.S. producers, importers and purchasers reported that PET film from each of the subject countries and the United States could “always” or “frequently” be used interchangeably.⁸⁴ We note that one U.S. producer reported that while one hundred percent of the commodity-grade PET film products are fully interchangeable, in limited instances some chemically treated products for the packaging market are not fully interchangeable.⁸⁵

Same Geographical Markets. PET film produced in the United States is shipped nationwide. While subject imports of PET film may enter specific Customs districts, the product is then generally sold in multiple regions or nationwide. Subject imports from Brazil entered through 11 districts; subject imports from China entered through 31 districts; subject imports from Thailand entered through 14 districts; and subject imports from the UAE entered through 14 districts.⁸⁶ Thus, subject imports from the four countries are not geographically isolated, as BOPET implies.

Channels of Distribution. During the period of investigation, the majority (between 59.7 and 62.9 percent) of U.S. producers’ U.S. shipments of PET film were shipped to processors, with some product shipped to distributors and end users. For importers of PET film from Brazil, ***; although some product was shipped to end users in 2005 and 2006, there were no shipments to distributors. The majority of shipments by U.S. importers of PET film from China and Thailand were to ***. There was a substantial number of shipments of PET film from China to *** as well, but a much smaller number of shipments of PET film from Thailand went to *** (zero in 2005 and in both interim periods). For importers of PET film from the UAE, ***.⁸⁷ Thus, there is reasonable overlap in terms of channels of

⁸² USITC Pub. 3962 at 14-15.

⁸³ BOPET’s Posthearing Brief at 10-13.

⁸⁴ CR at II-15, II-17, PR at II-12, CR/PR at Table II-6.

⁸⁵ CR at II-18, PR at II-13.

⁸⁶ CR at IV-20, PR at IV-6, CR/PR at Table IV-8.

⁸⁷ CR at II-3, PR at II-2, CR/PR at Table II-2. See also Flex’s Posthearing Brief, Responses to Commission Questions at 6.

distribution between the subject imports and the domestic like product, as the domestic producers sold through all three channels during the period of investigation. There is likewise a reasonable overlap among subject imports from China, Thailand and the UAE for the same reason. Although there were no shipments of subject PET film from Brazil to distributors during the period, there were shipments from Brazil to end users and processors – channels of distribution that are also used by importers of subject merchandise from the other subject countries and by domestic producers. As we stated in our determinations in the preliminary phase, there need not be an overlap in terms of every factor and every country comparison, as no single factor or comparison is necessarily determinative.⁸⁸ In particular, contrary to BOPET’s claims,⁸⁹ there need not be an overlap in terms of “complex channels” of distribution.

Simultaneous Presence. Imports from each of the subject countries have been present in the U.S. market throughout the period examined. Specifically, subject imports from China and Thailand were recorded in every month of the period examined. Subject imports from Brazil were present in all but four months of the period, and subject imports from the UAE were present in all but three months of the period.⁹⁰

In view of the foregoing, there is at least a moderate level of fungibility between domestic PET film and the subject imports, as well as among the various subject imports,⁹¹ and the other criteria for cumulation are likewise generally satisfied. Accordingly, we find that the subject imports from Brazil, China, Thailand, and the UAE compete with each other and with the domestic like product and thus we assess cumulatively the volume and effects of subject imports in determining whether there is material injury by reason of subject imports.

VI. CONDITIONS OF COMPETITION AND THE BUSINESS CYCLE

The following conditions of competition are pertinent to our analysis of the impact of the cumulated imports of PET film from Brazil, China, Thailand, and the UAE on the domestic industry.

⁸⁸ See Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁸⁹ BOPET’s Posthearing Brief at 12-13.

⁹⁰ CR/PR at Table IV-9.

⁹¹ See CR at I-17, PR at I-12.

A. Captive Production⁹²

*** domestic producers consume all or a portion of their PET film production captively.⁹³ The PET film that is captively consumed is used to produce downstream products primarily in the photography and imaging market segments.⁹⁴ In the preliminary phase of these investigations we considered whether to apply the captive production provision of the statute and therefore focus primarily on the merchant market when assessing market share and factors affecting the financial performance of the domestic industry. We determined that the second prong of the statutory provision was not met because PET film represents only approximately 30 percent of the total cost of producing the downstream articles.⁹⁵ In these final phase investigations we again consider whether to apply the provision.

As an initial matter, we find that a significant amount of domestic production of PET film is both captively consumed and sold on the merchant market.⁹⁶ With respect to the first prong of the provision – whether the domestic like product produced that is internally transferred for processing into the downstream article does not enter the merchant market for the domestic like product – we consider whether any of the domestic like product that is transferred internally for further processing is in fact sold on the merchant market. As noted above, *** of the eight reporting domestic producers internally transfer PET film. There is no evidence in the record that any U.S. producer diverted PET film intended for internal consumption to the merchant market. Thus, we find that the first statutory criterion is satisfied.

Although the evidence in the record of these final phase investigations is somewhat limited, it does not support a finding that the second prong of the provision, *i.e.* whether the domestic like product is the predominant material input in the production of the downstream article, has been satisfied. As noted above, PET film is used to make a large number of downstream products, and we were unable to obtain the necessary cost information for all of the products. Available information on the record suggests that

⁹² As amended by the URAA, section 19 U.S.C. § 1677(7)(C)(iv) provides as follows:

(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.

19 U.S.C. § 1677(7)(C)(iv). The SAA indicates that where a domestic like product is transferred internally for the production of another article coming within the definition of the domestic like product, such transfers do not constitute internal transfers for the production of a “downstream article” for purposes of the captive production provision. SAA at 853.

⁹³ ***. CR at III-7, PR at III-4.

⁹⁴ CR at II-1, III-6 - III-8, PR at II-1, III-3 - III-4.

⁹⁵ USITC Pub. 3962 at 16.

⁹⁶ Internal consumption accounted for *** percent of the domestic producers’ total U.S. shipments in 2005, *** percent in 2006 and *** percent in 2007. CR at III-7, PR at III-4.

PET film is not the predominant material input of the downstream products in which it is used. For example, with respect to ***.⁹⁷ ***.⁹⁸ ***.⁹⁹ ***.¹⁰⁰ ***.¹⁰¹

Petitioners urge the Commission to apply a weight-based, rather than value-based, analysis to determine whether PET film accounts for the major part of the captively produced downstream products.¹⁰² The Commission, however, has generally analyzed the captive consumption issue in terms of costs,¹⁰³ as noted above, even when specifically faced with the issue of a weight-based analysis in other PET film investigations.¹⁰⁴ We find no evidence in the record that warrants departure from our standard mode of analysis in these investigations. We also note that the only rationale petitioners offered for a weight-based analysis in these investigations is that it would support their desired outcome, which we do

⁹⁷ CR at III-7, PR at III-4.

⁹⁸ CR at III-8, PR at III-4.

⁹⁹ CR at III-8, PR at III-4.

¹⁰⁰ CR at III-8, PR at III-4.

¹⁰¹ CR at III-8, PR at III-4.

¹⁰² Petitioners claim that applying the test this way focuses the Commission's analysis of the impact of subject imports on those producers that compete directly with the subject imports, as domestic producers that supply the merchant market "bear the full brunt" of the subject imports. Petitioners' Prehearing Brief at 9-11; Petitioners' Posthearing Brief at 7-8, Answers to Commission Questions at 1-2, 34-35. Petitioners state that the weight of PET film ***. Petitioners' Posthearing Brief, Answers to Commission Questions at 11. Petitioners also argue that the fact that PET film represents 30 percent of the total cost of production of the downstream products suggests that it is the predominant material input from which those products are made, even using a value-based method of analysis. Petitioners' Posthearing Brief, Answers to Commission Questions at 16. Petitioners further claim that the plain language of the statute requires a focus on the value of PET film relative to the value of each of the other materials used to produce the downstream product and, if the Commission does not have value data, it must collect it. Petitioners' Posthearing Brief at 8 n.17; see also Tr. at 121-22 (Mr. Greenwald) (analysis of value should focus on raw material inputs only).

In these final phase investigations, petitioners did not suggest that weight be used for this analysis until they filed their prehearing brief – long after the opportunity to comment on the Commission's questionnaires had passed – and provided little pertinent data to the Commission for its analysis. While petitioners did make an argument to this effect in the preliminary phase of the investigations, they effectively abandoned it because they made no request that the Commission seek data regarding weight at the time they submitted written comments on the draft questionnaires in the final phase of the investigation. See Notice of Final Rulemaking, 61 Fed. Reg. at 37,826, discussed above.

We note that, as our rules contemplate, arguments that would require data collection should be made during the preliminary phase of the investigation, or at least no later than the written comments on draft questionnaires. See Notice of Final Rulemaking, 61 Fed. Reg. 37,818, 37,826 (July 22, 1996) (explaining the promulgation of rule 207.20(b)) ("It is often impracticable to satisfy new data collection requests made during the later stages of a final phase investigation, given the need to collect, verify, and analyze data, release data under APO, and receive comments from the parties concerning data before the record closes.")).

¹⁰³ Neither the statute nor the legislative history specifies whether the second criterion should be analyzed in terms of the relative cost, weight or volume of the material inputs used in producing the downstream products. The Commission has, however, traditionally conducted the analysis in terms of costs. See, e.g., Pure Magnesium from China, Israel and Russia, Inv. Nos. 701-TA-403 and 731-TA-895-897 (Final), USITC Pub. 3467 (Nov. 2001), at 16; Beryllium Metal and High-Beryllium Alloys from Kazakhstan, Inv. No. 731-TA-476 (Final), USITC Pub. 3019 (Feb. 1997), at 8-9.

¹⁰⁴ See Polyethylene Terephthalate Film, Sheet and Strip from India and Taiwan, Inv. Nos. 701-TA-415 and 731-TA-933-934 (Final), USITC Pub. 3518 (June 2002), at 11 n.51. In those original investigations, petitioners did not suggest that the Commission should depart from its traditional analysis until the hearing. Thus, the record regarding the issue was limited. While the Commission found it may be appropriate to analyze the criterion using relative weight or volume in certain circumstances, it did not find convincing reasons to do so in those reviews. Id.

not view as a persuasive reason to depart from our practice.¹⁰⁵ In any event, the record contains only scant information as to the relative weight of inputs into the downstream products in which PET film is internally consumed.

In view of the foregoing, we find that the statutory captive production provision is not met in these investigations. Nevertheless, as we did in the preliminary phase of these investigations (as well as the investigations involving PET film from India and Taiwan), we consider the fact that a significant portion of domestic production is captively consumed to be a significant condition of competition, and thus we examine merchant market data, as well as data for the total U.S. market, in making our injury determinations.

B. Demand Considerations

The demand for PET film is driven by the demand in the five main end-use market segments. Subject PET film demand overall is estimated to be growing, with demand for commodity grades growing faster.¹⁰⁶ When asked if demand for PET film in the U.S. market had changed during the period of investigation, industry participants gave mixed responses. Five of the eight responding U.S. producers reported that demand had increased, two reported that demand was unchanged and one reported that demand ***.¹⁰⁷ In addition, it was reported that global demand had increased during the period.¹⁰⁸ Demand is reported to be seasonal as well as cyclical.¹⁰⁹ Apparent U.S. consumption in the total market decreased over the entire period of investigation when measured by both quantity and value.¹¹⁰ Apparent U.S. consumption in the merchant market alone followed the same trend in terms of quantity; in terms of value, it decreased from 2005 to 2007, but was greater in interim 2008 when compared to interim 2007.¹¹¹

C. Supply Considerations

There are three sources of supply for PET film: domestic production, subject imports and nonsubject imports. In terms of domestic supply, there are eight domestic producers, the majority of which have foreign affiliations and/or foreign production facilities. As indicated above, DuPont Teijin is *** percent owned by Teijin Holdings, USA, Inc. and *** percent owned by DuPont. Effective January 1, 2000, DuPont formed a joint venture with the Japanese producer Teijin and now maintains joint production facilities in Luxembourg, the United Kingdom, Japan, Indonesia, and China. Mitsubishi is wholly owned by Mitsubishi Polyester Film Corp. of Tokyo, Japan, with related firms that produce PET film in Japan, Germany and Indonesia. Toray is owned by the Japanese firm Toray Industries and

¹⁰⁵ See Tr. at 48 (Mr. Greenwald).

¹⁰⁶ CR at I-11, PR at I-8. Commodity-grade films are generally viewed by the industry as large-volume bulk films used principally in the packaging and industrial sectors, in which pressure from subject imports is reportedly more intense. CR at I-11, PR at I-8.

¹⁰⁷ CR at II-9, PR at II-6. Importers' and purchasers' responses were also mixed. See CR at II-10, PR at II-7.

¹⁰⁸ CR at II-9, II-10 n.11, PR at II-6, II-7 n.11.

¹⁰⁹ CR at II-9 nn.8-9, PR at II-6 nn.8-9.

¹¹⁰ As measured by quantity, total apparent U.S. consumption fell from *** pounds in 2005 to *** pounds in 2007, and was *** pounds in January-June 2007 as compared to *** pounds in January-June 2008. As measured by value, total apparent U.S. consumption decreased from \$*** in 2005 to \$*** in 2007, and was \$*** in January-June 2007 as compared to \$*** in January-June 2008. CR/PR at Table C-3.

¹¹¹ As measured by quantity, apparent U.S. consumption in the merchant market declined from *** pounds in 2005 to *** pounds in 2007, and was *** pounds in Jan.-June 2007 as compared to *** pounds in January-June 2008. As measured by value, apparent U.S. consumption in the merchant market decreased from \$*** in 2005 to \$*** in 2007, and was \$*** in January-June 2007 as compared to \$*** in January-June 2008. CR/PR at Table C-4.

maintains production sites in France, Korea and Malaysia. Terphane is related to Terphane Ltd. in Brazil and SKC is owned by SKC Co., Ltd. of Seoul, Korea.¹¹²

Throughout the period examined, the domestic industry was unable to supply total domestic demand. While total apparent U.S. consumption varied between *** and *** pounds between 2005 and 2007, U.S. producers' average capacity varied between *** and *** pounds.¹¹³ Domestic producers' production decreased during the period.¹¹⁴ Their total U.S. shipments fell during the entire period, while their merchant market shipments rose.¹¹⁵

The domestic producers' market share was substantially higher than the shares of subject and nonsubject imports, both in the total market and merchant market, throughout the period examined. While domestic producers' market share remained static throughout the period of examination in the total market, it increased slightly in the merchant market.¹¹⁶ For both the total market and the merchant market, cumulated subject imports' market share rose between 2005 to 2007, but declined in January-June 2008 as compared to January-June 2007.¹¹⁷ Nonsubject imports' market share, which was substantially larger than subject imports' market share, declined in both the total market and merchant market between 2005 and 2007, but increased for the total market in January-June 2008 as compared to January-June 2007, and remained steady for the merchant market in January-June 2008 as compared to January-June 2007.¹¹⁸ Most nonsubject imports were from Indonesia, Japan, Korea, the Netherlands, Mexico, Taiwan, and Turkey, which in the aggregate accounted for approximately 82.2 percent of all nonsubject imports in 2007.¹¹⁹

¹¹² CR at III-1 - III-2, PR at III-1.

¹¹³ CR/PR at Table C-3.

¹¹⁴ Domestic producers' production declined from *** pounds in 2005 to *** pounds in 2007. It was *** pounds in January-June 2007 as compared to *** pounds in January-June 2008. CR/PR at Table C-3.

¹¹⁵ U.S. producers' total U.S. shipments fell from *** pounds in 2005 to *** pounds in 2007, and were *** pounds in January-June 2007 as compared to *** pounds in January-June 2008. CR/PR at Table C-3. U.S. producers' merchant market shipments increased from *** pounds in 2005 to *** pounds in 2007, and were *** pounds in January-June 2007 as compared to *** pounds in January-June 2008. CR/PR at Table C-4.

¹¹⁶ Domestic producers' total market share was *** percent in 2005 and 2007, and was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3. For the merchant market, it climbed from *** percent in 2005 to *** percent in 2007, and was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4.

¹¹⁷ For the total market, cumulated subject imports' market share increased from *** percent in 2005 to *** percent in 2007, and was *** percent in January-June 2007 as compared to *** percent in January-June 2008. CR/PR at Table C-3. For the merchant market, cumulated subject imports' market share climbed from *** percent in 2005 to *** percent in 2007, and was *** percent in January-June 2007 as compared to *** percent in January-June 2008. CR/PR at Table C-4.

¹¹⁸ For the total market, nonsubject imports' market share fell from *** percent in 2005 to *** percent in 2007, and was *** percent in January-June 2007 as compared to *** percent in January-June 2008. CR/PR at Table C-3. For the merchant market, nonsubject imports' market share fell from *** percent in 2005 to *** percent in 2007, and was *** percent in January-June 2007 as compared to *** percent in January-June 2008. CR/PR at Table C-4.

¹¹⁹ CR/PR at Table IV-2.

D. Substitutability

Evidence in the record indicates that there is at least a moderate degree of substitutability between imported and domestic PET film.¹²⁰ Most U.S. producers, importers and purchasers reported that PET film from each of the country pairs could “always” or “frequently” be used interchangeably.¹²¹

Purchasers require their sources to be prequalified/certified, a process that can require weeks or months. All 16 responding purchasers indicated that they required prequalification for all of their purchases. Six of 15 responding purchasers reported that at least one supplier had failed to qualify or be certified during the period of investigation. Factors considered in qualifying a supplier include quality, price, reliability, sample rolls for in-house testing, product range, width capability, meeting shrinkage specifications, technology, service, and consistency of the product.¹²² While the largest number of purchasers reported price as the most important factor in making their purchasing decisions and a large number also reported price as the second most important factor, some purchasers reported the availability of pre-arranged contracts as the most important factor and some reported quality as the second most important factor. A number of purchasers listed product availability as one of the top three factors.¹²³

E. Other Considerations

The basic raw materials used in producing PET film are (1) either dimethyl terephthalate (“DMT”) or purified terephthalic acid (“PTA”) and (2) monoethylene glycol (“MEG”). These inputs are petroleum-based chemicals and are subject to global oil price fluctuations. Thus, as world oil and natural gas prices rise, prices for these chemicals also rise and, consequently, the cost of PET film production increases.¹²⁴ During the period examined, raw material costs averaged approximately *** percent of the cost of goods sold during the period.¹²⁵ Another important factor in the production of PET film is energy costs. Natural gas prices declined somewhat in 2006 and 2007, then increased in 2008. Crude oil prices doubled from 2005 to 2008.¹²⁶

Evidence in the record indicates that the PET film industry is capital intensive¹²⁷ and that a producer therefore has a strong incentive to operate 24 hours a day, seven days a week, 50-plus weeks a year, with downtime only for repair and maintenance. As indicated above, the PET film market is divided between commodity-grade and specialty-grade film. It is reportedly impossible for a U.S. producer to keep a plant running at full capacity producing only specialty-grade films.¹²⁸

Commodity-grade films are thin films that generally fall in the 48 to 92 gauge range, with the popular 48 gauge corona-treated film typically being used as the baseline for pricing, as pricing in the commodity grades affect pricing in the specialty grades.¹²⁹ Competition between domestic production and subject imports is concentrated in commodity-grade films for use in packaging and industrial

¹²⁰ CR at II-11, PR at II-8.

¹²¹ CR at II-17, PR at II-12.

¹²² CR at II-13, PR at II-9; Tr. at 186 (Mr. O’Brien).

¹²³ CR at II-11 - II-12, PR at II-8, CR/PR at Table II-3.

¹²⁴ CR/PR at V-1.

¹²⁵ CR at VI-4, PR at VI-2.

¹²⁶ CR/PR at V-2.

¹²⁷ A new film line costs between \$50 million and \$100 million to produce 10,000 to 20,000 tons per year. CR at I-14, PR at I-10.

¹²⁸ Petitioners’ Prehearing Brief at 14.

¹²⁹ Tr. at 27-28 (Mr. Eckles). Terphane considers ***. CR at I-11 n.39, PR at I-9 n.39.

applications.¹³⁰ Evidence in the record indicates that there is considerable price sensitivity in the market.¹³¹

PET film is sold on both a contract basis and a spot basis. One producer sold exclusively on a long-term contract basis; one sold using only short-term contracts or on a spot basis; and four sold using long- and short-term contracts and on a spot basis. Long-term contracts are in effect for up to three years, during which time prices may be renegotiated. Five of six producers reported that long-term contracts typically contain meet-or-release provisions. Short-term contracts may last from three months up to one year.¹³²

VII. NO MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS

A. In General

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.¹³³ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹³⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹³⁵ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹³⁶ 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.”¹³⁷

The statute requires the Commission to determine whether the domestic industry is “materially injured by reason of” the unfairly traded imports.¹³⁸ The statute, however, does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.¹³⁹ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation must ensure that subject imports are more than a minimal or tangential cause of material injury and that there is a sufficient causal nexus between subject

¹³⁰ Petitioners’ Prehearing Brief at 12-13; see CR/PR at Tables V-1 - V-6.

¹³¹ Petitioners’ Prehearing Brief at 13.

¹³² CR at V-5, PR at V-4.

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

¹³⁴ 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).

¹³⁵ 19 U.S.C. § 1677(7)(A).

¹³⁶ 19 U.S.C. § 1677(7)(C)(iii).

¹³⁷ 19 U.S.C. § 1677(7)(C)(iii).

¹³⁸ 19 U.S.C. § 1673d(b).

¹³⁹ Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“[T]he statute does not ‘compel the commissioners’ to employ [a particular methodology] . . . [however] regardless of what approach is used, whether it be the two-step or unitary approach or some other approach, the three mandatory factors must be considered in each case”), aff’d 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

imports and material injury.¹⁴⁰ Thus, the Commission interprets the “by reason of” language in a manner that implements the statutory requirement of finding a causal, not merely a temporal, link between the subject imports and the material injury to the domestic industry.

In most investigations, there are other economic factors that also may be causing injury to the domestic industry. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from these sources to the subject imports, but does not require the Commission to isolate the injury caused by other factors from injury caused by unfair imports.¹⁴¹ The statutory scheme clearly contemplates that an industry may be facing difficulties from a variety of sources, including non-subject imports and other factors, but the existence of injury caused by other factors does not compel a negative determination if the subject imports themselves are making more than a minimal or tangential contribution to material injury.¹⁴² The legislative history further clarifies that dumped imports need not be the “principal” cause of material injury and that the “by reason of” standard

¹⁴⁰ The Federal Circuit, in addressing the causation standard of the statute, observed that “[a]s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006) (noting the “causation requirement is met so long as the effects of dumping are not merely incidental, tangential, or trivial”). See also Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“to ensure that the subject imports are causing the injury, not simply contributing to the injury in a tangential or minimal way.”); Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (“the statute requires adequate evidence to show that the harm occurred ‘by reason of’ the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods”); Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 10 (Fed. Cir. Sept. 18, 2008).

¹⁴¹ Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act, 103d Cong., H.R. Doc. 103-316, Vol. I at 851-52 (1994) (“[T]he Commission need not isolate the injury caused by other factors from injury caused by unfair imports. . . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (“in examining the overall injury being experience by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors” . . . “(e.g. the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry)”); accord Mittal Steel, Slip Op. 2007-1552 at 17.

The Federal Circuit has affirmed that: “[T]he Commission need not isolate the injury caused by other factors from injury caused by unfair imports. . . . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (emphasis in original); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“[t]he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.). See also Softwood Lumber from Canada, Inv. Nos. 701-414 and 731-TA-928 (Remand), USITC Pub. 3658 (Dec. 2003), at 100-01 (Commission recognized that “[i]f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e. it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices”).

¹⁴² See SAA at 851-52, 885.

does not contemplate that injury from dumped imports be weighed against other factors, such as non-subject imports, which may be contributing to overall injury to an industry.¹⁴³

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure[s] that it is not attributing injury from other sources to the subject imports.”¹⁴⁴ Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”¹⁴⁵ The Federal Circuit has provided guidance on the questions that it would raise and expect the Commission to have considered in its analysis “where commodity products are at issue and fairly traded, price competitive, non-subject imports are in the market.”^{146 147}

Nonetheless, the question of whether one out of several possible causes of injury exceeds the minimal or tangential threshold and is an independent cause of material injury to the domestic industry is left to the expertise of the Commission. The finding as to whether the threshold is satisfied is a factual one, subject to review under the substantial evidence standard. Congress has delegated these factual findings to the Commission because of the agency’s institutional expertise in resolving injury issues.^{148 149}

¹⁴³ S. Rep. No. 249, 96th Cong., 1st Sess. 74-75 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. at 47 (1979); see also Nippon Steel Corp., 345 F.3d at 1381 (“[D]umping need not be the sole or principal cause of injury.”).

¹⁴⁴ Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 16-17, 19 (Fed. Cir. Sept. 18, 2008); see also id at 9 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination. . . . [and has] broad discretion with respect to its choice of methodology.”), citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979).

¹⁴⁵ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005). See also Mittal Steel, Slip Op. 2007-1552 at 20 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

¹⁴⁶ Mittal Steel, Slip Op. 2007-1552 at 13-21.

¹⁴⁷ Commissioner Pinkert does not join in this sentence. He points out that the Federal Circuit, in Bratsk Aluminum Smelter v. United States, 444 F.2d 1369 (Fed. Cir. 2006) and Mittal Steel, held that the Commission is required, in certain circumstances, to undertake a particular kind of analysis of non-subject imports. Mittal Steel explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price competitive, non-subject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1269. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

Slip Op. 2007-1552, at 20. Commissioner Pinkert notes that such an analysis is unnecessary here because he finds an absence of material injury by reason of subject imports without resorting to it.

¹⁴⁸ Mittal Steel, Slip Op. 2007-1552 at 9-10; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group v. United States, 96 F.3d 1352, 1357 (Fed. Cir. 1996); S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979) (“The determination of the ITC with respect to causation is . . . complex and difficult, and is a matter for the judgment of the ITC.”).

¹⁴⁹ Commissioner Lane joins the Commission's Views regarding the legal standards for material injury by reason of subject imports, and further explains her view regarding these legal standards in her Dissenting Views.

B. Volume of the Subject Imports

Section 771(7)(C) of the Tariff Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁵⁰

In absolute terms, the volume of cumulated subject imports increased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008.¹⁵¹ In terms of market share, the gains realized by cumulated subject imports were modest. For the total market, cumulated subject import market share increased from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008.¹⁵² For the merchant market, cumulated subject import market share climbed from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008.^{153 154}

In evaluating whether the volume of subject imports is significant, we consider that nonsubject imports were substantially larger in absolute volume than cumulated subject imports throughout the period examined, even though they declined between 2005 and 2007 as subject imports rose.¹⁵⁵ Nonsubject import market share followed the same trend in both the total market and the merchant market.¹⁵⁶ As discussed below, we find it significant that cumulated subject imports did not capture market share from the domestic producers, but instead largely displaced nonsubject imports during the period examined.

We also evaluate subject import volume in light of a decline in apparent U.S. consumption over the period examined.¹⁵⁷ U.S. producers’ U.S. shipments fell over the period as well, although their

¹⁵⁰ 19 U.S.C. § 1677(7)(C)(i).

¹⁵¹ CR/PR at Tables C-3, C-4.

¹⁵² CR/PR at Table C-3.

¹⁵³ CR/PR at Table C-4.

¹⁵⁴ Relative to U.S. production, subject imports increased during 2005 to 2007, and decreased in January-June 2008 as compared to January-June 2007. The ratio of cumulated subject imports to U.S. production was 9.2 percent in 2005 and rose to 12.6 percent in 2007. It was 12.1 percent in January-June 2007 and 8.3 percent in January-June 2008. CR/PR at Alternative Table IV-7 (Staff compilation of the ratio of cumulated subject imports to U.S. production, excluding Terphane). U.S. producers’ production was *** pounds in 2005, falling to *** pounds in 2007. It was *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3.

¹⁵⁵ Nonsubject imports fell from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3, C-4.

¹⁵⁶ For the total market, nonsubject import market share declined from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at C-3. For the merchant market, nonsubject import market share fell from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4.

¹⁵⁷ For the total market, apparent U.S. consumption decreased from *** pounds in 2005 to *** pounds in 2007. It was *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3. For the merchant market, apparent U.S. consumption declined from *** pounds in 2005 to *** pounds in 2007. It was *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-4.

shipments to the merchant market rose.¹⁵⁸ U.S. producers' market share remained steady over the period in the total market, but rose slightly in the merchant market when the interim periods are compared.¹⁵⁹

Based on the above, we find that the volume of cumulated subject imports and the increase in that volume are significant in absolute terms when viewed in isolation, particularly in light of declining apparent U.S. consumption. As explained below, however, the effects of the volume of subject imports on prices and the impact of the imports on the domestic industry are diminished given that (1) the subject imports gained market share largely from the nonsubject imports and not from the domestic industry and (2) the adverse effects experienced by the domestic industry were less pronounced in sales to the merchant market than in sales to the total market.

C. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁶⁰

As noted above, the domestic and imported products, as well as the nonsubject imports, are substantially interchangeable.¹⁶¹ As also noted above, price is an important factor in purchasing decisions.¹⁶²

Underselling by subject imports was prevalent throughout the period examined, occurring in 174 of 212 of possible quarterly comparisons (82 percent). The margins of underselling ranged from 0.2 to 33.7 percent.¹⁶³ We find this level of underselling to be significant.¹⁶⁴

In evaluating the effects of subject imports on prices for domestic PET film, we observe that U.S. prices trended downward over the period¹⁶⁵ and that the domestic industry experienced a cost/price

¹⁵⁸ For the total market, U.S. producers' U.S. shipments fell from *** pounds in 2005 to *** pounds in 2007. They totaled *** million pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3. For the merchant market, U.S. producers' U.S. shipments increased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-4.

¹⁵⁹ For the total market, U.S. producers' market share was *** percent in 2005 and 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3. For the merchant market, U.S. producers' market share was *** percent in 2005 and increased to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4.

¹⁶⁰ 19 U.S.C. § 1677(7)(C)(ii).

¹⁶¹ CR at II-17, PR at II-12, CR/PR at Table II-6.

¹⁶² CR at II-11, PR at II-8, CR/PR at Table II-3.

¹⁶³ CR/PR at Table V-8.

¹⁶⁴ We note that even if DuPont Teijin's subject imports from China are not considered in the pricing comparisons (as advocated by some respondents), the record still shows predominant underselling by subject imports from China, occurring in *** of *** quarterly comparisons. CR/PR at Alternative Table V-8 (Summary of underselling/overselling), by country, excluding DuPont Teijin's imports from China).

¹⁶⁵ See CR/PR at Tables V-1 - V-6, V-7.

squeeze as the ratio of its cost of goods sold (“COGS”) to net sales increased over the period examined.¹⁶⁶ While there is evidence that the domestic industry experienced falling prices and a growing cost/price squeeze during the period of investigation, the record does not establish that the subject imports had significant price depressing or price suppressing effects. Although subject imports undersold the domestic product, nonsubject imports undersold both the domestic product and subject imports.¹⁶⁸ Considering that the price declines experienced by the domestic industry were not of a very large magnitude, we find the subject imports did not have significant price depressing effects during the period examined. As to price suppression, the domestic industry experienced a smaller deterioration in its COGS/net sales ratio in merchant sales than in overall sales (** percentage points compared to ** percentage points).¹⁶⁹ That the domestic industry experienced the smaller deterioration in the merchant market, in which it competes head-to-head with subject (and nonsubject) imports, indicates that causes other than subject imports explain much of the cost/price squeeze.

In light of this evidence, we cannot conclude that the subject imports had a significant adverse effect on U.S. prices during the period examined.

D. Impact of the Subject Imports¹⁷⁰

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

¹⁶⁶ For the total market, the ratio of COGS to net sales increased from ** percent in 2005 to ** percent in 2007. This ratio was ** percent in January-June 2007 as compared to ** percent in January-June 2008. CR/PR at Table C-3. For the merchant market, the ratio of COGS to net sales increased from ** percent in 2005 to ** percent in 2007. This ratio was ** percent in January-June 2007 and ** percent in January-June 2008. CR/PR at Table C-4.

¹⁶⁷ Some of the domestic producers’ lost sales and revenue allegations were confirmed, but they were relatively small. Lost sales were confirmed in the amount of \$***. CR/PR at Table V-9. Lost revenues were confirmed in the amount of \$***. CR/PR at Table V-10. See also CR at V-19, V-22 - V-26, PR at V-8. As noted above, apparent consumption in this industry in 2007 was \$*** in the total market and \$*** in the merchant market. CR/PR at Tables C-3, C-4.

¹⁶⁸ Compare CR/PR at Tables D-1 - D-6 with CR/PR at Tables V-1 - V-6.

¹⁶⁹ See CR/PR at Table C-4.

¹⁷⁰ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determinations finding sales at LTFV, Commerce calculated weighted-average dumping margins of 28.72 percent to 44.36 percent for subject imports from Brazil, 73 Fed. Reg. at 55,036; 3.49 percent to 76.72 percent for subject imports from China, 73 Fed. Reg. at 55,041; 6.07 percent for subject imports from Thailand, 73 Fed. Reg. at 55,044; and 4.80 percent for subject imports from the UAE. 73 Fed. Reg. at 55,038.

In its prehearing brief, BOPET argued that the Commission should only look at those rates that were obtained by producers unrelated to the domestic industry. This argument reflects BOPET’s concern that domestic producers with a strong international component could, before filing a case, manipulate the data in order to create an artificially high margin, exclude fair traders from the market and increase the probability of an unfounded finding of injury, thereby “gaming the system.” BOPET’s Prehearing Brief at 6, 16-17; see also BOPET’s Posthearing Brief, Answers to Commission Questions at 9-14. Commerce calculated the weighted-average dumping margin for DuPont Teijin to be 3.49 percent. The PRC-wide margin was calculated to be 76.72 percent. 73 Fed. Reg. at 55,041.

We note that the statute requires the Commission to use the dumping margin calculated by Commerce before the Commission’s record closes and does not allow the Commission to calculate such margins or to decline to consider margins for individual companies. Accordingly, we have considered the full range of margins calculated by Commerce. 19 U.S.C. § 1677(35)(C). See also *Algoma Steel Corp. v. United States*, 688 F. Supp. 639 (Ct. Int’l Trade 1988), aff’d, 865 F.2d 240 (Fed. Cir. 1989) (noting the bifurcation of authority between Commerce and the Commission).

the state of the industry.”¹⁷¹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁷²

The domestic industry’s capacity decreased throughout the period of investigation.¹⁷³ Production and capacity utilization also declined.¹⁷⁴ Net sales fell throughout the period in the total market; in the merchant market, net sales declined from 2005 to 2007, but were higher in January-June 2008 as compared to January-June 2007.¹⁷⁵ The domestic industry’s U.S. shipments decreased throughout the period in the total market, but exhibited the opposite trend in the merchant market.¹⁷⁶ The domestic industry’s market share remained steady throughout the period in the total market. For the merchant market, the domestic industry’s market share increased throughout the period of investigation.¹⁷⁷

Inventories were relatively steady from 2005 to 2007, but were lower in January-June 2008 as compared to January-June 2007.¹⁷⁸ The industry’s employment factors declined during the period. The

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

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

¹⁷³ U.S. producers’ average capacity declined from *** pounds in 2005 to *** pounds in 2007. It was *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3.

¹⁷⁴ Domestic production decreased from *** pounds in 2005 to *** pounds in 2007. It totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3.

U.S. producers’ capacity utilization fell from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3.

¹⁷⁵ Total market net sales fell from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3. Merchant market net sales declined from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-4.

¹⁷⁶ In the total market, U.S. producers’ U.S. shipments decreased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3. In the merchant market, U.S. producers’ U.S. shipments climbed from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-4.

¹⁷⁷ For the total market, the domestic industry’s market share was *** percent in 2005 and in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3. For the merchant market, the domestic industry’s market share rose from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4.

¹⁷⁸ The domestic industry’s end-of-period inventories rose from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3.

number of production and related workers decreased,¹⁷⁹ as well as their hours worked¹⁸⁰ and wages paid.¹⁸¹ Productivity, however, increased from 2005 to 2007.¹⁸²

The industry's financial indicators also generally declined. COGS as a ratio to net sales increased over the entire period for the total market; it followed the same trend from 2005 to 2007 for the merchant market, then was slightly lower in January-June 2008 as compared to January-June 2007.¹⁸³ Operating income fell in both the total market and the merchant market.¹⁸⁴ In both the total market and the merchant market, the operating income margin declined during 2005 to 2007, but was higher in January-June 2008 as compared to January-June 2007.¹⁸⁵ Capital expenditures rose substantially over the entire period.¹⁸⁶ Research and development decreased slightly over the period, however.¹⁸⁷

Despite the negative trends, we find that subject imports did not have a significant adverse impact on the condition of the domestic industry over the period examined. Although cumulated subject imports increased between 2005 and 2007 in both the total market and the merchant market, they largely replaced

¹⁷⁹ The number of production and related workers fell from *** in 2005 to *** in 2007. They totaled *** in January-June 2007 and *** in January-June 2008. CR/PR at Table C-3.

¹⁸⁰ Hours worked declined from *** in 2005 to *** in 2007. They totaled *** in January-June 2007 and *** in January-June 2008. CR/PR at Table C-3.

¹⁸¹ Wages paid decreased from \$*** in 2005 to \$*** in 2008. They totaled \$*** in January-June 2007 and \$*** in January-June 2008. CR/PR at Table C-3.

¹⁸² Productivity increased from *** pounds per hour in 2005 to *** pounds per hour in 2007. It was *** pounds per hour in January-June 2007 and *** pounds per hour in January-June 2008. CR/PR at Table C-3.

¹⁸³ For the total market, the ratio of COGS to net sales increased from *** percent in 2005 to *** percent in 2007. This ratio was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3. For the merchant market, the ratio of COGS to net sales rose from *** percent in 2005 to *** percent in 2007. This ratio was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4.

¹⁸⁴ Total market operating income fell from \$*** in 2005 to \$*** in 2007. It totaled \$*** in January-June 2007 and \$*** in January-June 2008. CR/PR at Table C-3. Merchant market operating income declined from \$*** in 2005 to *** in 2007. It totaled \$*** in January-June 2007 and \$*** in January-June 2008. CR/PR at Table C-4.

¹⁸⁵ The total market operating income margin decreased from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3. The merchant market operating income margin declined from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4.

¹⁸⁶ Capital expenditures climbed from \$*** in 2005 to \$*** in 2007. They totaled \$*** in January-June 2007 and \$*** in January-June 2008. CR/PR at Table C-3.

¹⁸⁷ Research and development expenses fell from \$*** in 2005 to \$*** in 2007. They totaled \$*** in January-June 2007 and \$*** in January-June 2008. CR/PR at Table VI-7.

nonsubject imports, not the domestic like product. As indicated above, from 2005 to 2007, the domestic industry's market share remained steady in the total market and increased in the merchant market.^{188 189}

Moreover, the subject imports, which undersold the domestic like product, replaced nonsubject imports that were generally priced even lower.¹⁹⁰ Nonsubject imports undersold the subject imports by margins ranging from *** percent to *** percent during the period examined. These margins were especially large with respect to pricing product 2, for which there was a large volume of nonsubject merchandise from Indonesia.¹⁹¹

Any adverse effects of subject imports would normally be most visible with respect to the industry's operations supplying the merchant market, where head-to-head competition occurs. In these investigations, however, certain important indicators of the industry's performance actually showed more improvement, or deteriorated to a lesser degree, in the merchant market than in the total market. For example, the domestic producers' market share and U.S. shipments increased in the merchant market, but decreased in the total market.¹⁹²

We also note that apparent U.S. consumption declined steadily throughout the period in both the total market and the merchant market and contributed to any adverse trends in the condition of the industry. In addition, although we examine the industry as a whole,¹⁹³ we note that DuPont Teijin, the *** domestic producer,¹⁹⁴ acknowledged that in one plant it is operating only one line that "does not

¹⁸⁸ In the total market, nonsubject import market share declined from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3. In the merchant market, nonsubject import market share fell from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4.

At the same time, in the total market, subject import market share rose from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3. In the merchant market, subject import market share increased from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4. In the total market, domestic producers' market share remained at *** percent between 2005 and 2007, and was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-3. In the merchant market, domestic producers' market share increased from *** percent in January-June 2005 to *** percent in January-June 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR at Table C-4.

¹⁸⁹ The domestic industry held a higher market share in January-June 2008 than in January-June 2007 in both the merchant and total markets. We recognize that this increase, as well as the decrease in cumulated subject imports, when these periods are compared may be due, at least in part, to the filing of the petition in September 2007. 19 U.S.C. § 1677(7)(I) states that "[t]he Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation . . . is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States." Accordingly, we have given reduced weight to the decline in imports and rise in domestic industry market share in January-June 2008.

¹⁹⁰ Compare CR/PR at Tables V-1 - V-6 with CR/PR at Tables D-1 - D-6.

¹⁹¹ See CR/PR at Tables D-7 - D-12.

¹⁹² Compare CR/PR at Table C-4 with CR/PR at Table C-3.

¹⁹³ See, e.g., Committee for Fair Coke Trade v. United States, 28 CIT 1140, 1167 (2004).

¹⁹⁴ See CR/PR at Table III-1.

produce the economies of scales required,” and that some of its film lines are older and inefficient,¹⁹⁵ which are problems unrelated to the subject imports. DuPont Teijin also has imported ***.¹⁹⁶

Evidence in the record also indicates that there were shortages of PET film in the U.S. market throughout the period examined.¹⁹⁷ Petitioners acknowledge this fact and state that this problem will continue in the future due to lack of domestic capacity.¹⁹⁸ The record contains evidence that some customers that wanted to purchase domestic product were refused.¹⁹⁹

As noted above, in addressing the issue of whether there is a causal link between subject imports and material injury to the domestic industry, we must ensure that subject imports are more than a minimal or tangential cause of material injury and that we are not attributing injury from other factors to subject imports. Accordingly, although the volume of subject imports, viewed in isolation, is significant and subject imports may have undersold domestic prices during the period examined, in light of the prevailing conditions of competition in this industry we cannot conclude that the subject imports are contributing materially to the problems faced by the domestic industry at the present time. Inasmuch as we find that the record does not demonstrate the requisite causal nexus between the subject imports and the condition of the domestic industry, we cannot find that subject imports are having a significant adverse impact on the domestic industry. Accordingly, we determine that the domestic industry producing PET film is not materially injured by reason of subject imports from Brazil, China, Thailand, and the UAE.

VIII. THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”²⁰⁰ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”²⁰¹ In making our determination, we have considered all factors that are relevant to

¹⁹⁵ Petitioners’ Posthearing Brief, Answers to Commission Questions at 29-30.

¹⁹⁶ DuPont Teijin imported *** pounds of subject PET film from China in 2007. Revisions to DuPont Teijin’s Importer Questionnaire Response at II-6; CR/PR at Table III-4. Its subject imports from China *** the domestic product by *** percent in *** possible quarterly comparisons during the period examined. CR/PR at Alternative Table V-8.

¹⁹⁷ See, e.g., Bemis’ Prehearing Brief at 7, 13-14; Bemis’ Posthearing Brief at 11; Tr. at 165 (Mr. Falk).

¹⁹⁸ Petitioners stated at the hearing that the domestic industry’s financial situation has not allowed it to invest in enough capacity to supply 100 percent of the domestic market. Tr. at 54, 113-14 (Mr. Trice).

¹⁹⁹ For example, one purchaser stated that DuPont Teijin, Mitsubishi and Toray told it to look overseas for additional films because they could not supply this purchaser’s needs. *** Purchaser Questionnaire Response at II-3. Other purchasers reported similar experiences. See, e.g., Terphane’s Prehearing Brief at 28-31.

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

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

these investigations.²⁰² For the reasons discussed below, we determine that the domestic industry is threatened with material injury by reason of subject imports from Brazil, China and the UAE.

A. Cumulation

Section 771(7)(H) of the Act provides as follows:

(H) Cumulation for determining threat of material injury – To the extent practicable and subject to subparagraph (G)(ii), for purposes of clause (i)(III) and (IV) of subparagraph (F), the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which –

- (i) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day.
- (ii) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or
- (iii) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on

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

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

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

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

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

(V) inventories of the subject merchandise,

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

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

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

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

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

Factors I and VII are inapplicable to these investigations.

the same day, if such imports compete with each other and with domestic like products in the United States market.²⁰³

Thus, the same limitations as to which imports are eligible for cumulation and the same exceptions to cumulation that are applicable to cumulation for purposes of determining material injury are also applicable to cumulation for threat. This provision, however, leaves to the Commission's discretion whether to cumulate imports in analyzing threat of material injury. In that regard, the Commission has considered such factors as whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.²⁰⁴ The Commission has also considered whether imports from certain subject countries are subject to significantly different conditions of competition than other subject countries.²⁰⁵

Based on an evaluation of the relevant criteria as well as our analysis supporting cumulation in the context of assessing present material injury, we exercise our discretion to cumulate subject imports from Brazil, China and the UAE for purposes of assessing threat of material injury. We decline, however, to exercise our discretion to cumulate subject imports from Thailand with other subject imports.

While subject import volumes from Thailand decreased substantially between 2005 and 2007, subject imports from the other three countries increased substantially.²⁰⁶ Between 2005 and 2007, subject imports from Thailand fell by *** pounds; in contrast, subject imports from Brazil, China and the UAE rose by *** pounds, *** pounds and *** pounds, respectively.²⁰⁷ The industry data for exports to the United States showed the same trend.²⁰⁸ Thailand's PET film industry maintained steady capacity during the period examined, while capacity in the other countries rose substantially.²⁰⁹

²⁰³ 19 U.S.C. 1677(7)(H) (emphasis added).

²⁰⁴ See Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

²⁰⁵ See Coated Free Sheet Paper from China, Indonesia and Korea, Inv. Nos. 701-TA-444-446 (Final) and 731-TA-1107-1109 (Final), USITC Pub. 2969 (Dec. 2007), at 22-23.

²⁰⁶ Subject imports from Thailand decreased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. In contrast, subject imports from Brazil increased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. Subject imports from China increased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. Subject imports from the UAE increased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Tables C-3, C-4.

²⁰⁷ CR/PR at Tables C-3, C-4.

²⁰⁸ Thailand's exports to the United States declined from *** pounds in 2004 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table VII-3, as corrected in INV-FF-131 (Oct. 20, 2008). On the other hand, Brazil's exports to the United States rose from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table VII-1. China's exports to the United States climbed from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table VII-2. The UAE's exports to the United States increased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table VII-4.

²⁰⁹ Thailand's capacity to produce PET film was *** pounds between 2004 and 2007, and is projected to remain the same in 2008 and 2009. CR/PR at Table VII-3 (corrected). Brazil's capacity increased from *** pounds in 2005 to *** pounds in 2007. It is projected to be *** pounds in 2008 and *** pounds in 2009. CR/PR at Table VII-1. China's capacity rose from *** pounds in 2005 to *** pounds in 2007. It is projected to be *** pounds in 2008 and

Thus, in light of the opposite trends in subject import and export volumes and the differing trends in capacity between Brazil, China and the UAE on the one hand and Thailand on the other hand, we decline to exercise our discretion to cumulate Thailand with the other three subject countries.

B. Analysis of Statutory Threat Factors

1. Cumulated Subject Imports from Brazil, China and the UAE

The import volume and market share of the subject producers increased between 2005 and 2007.²¹⁰ The PET film industries in Brazil, China and the UAE are all export oriented,²¹¹ and their export orientation increased over the period,²¹² indicating that they all view the United States as an attractive market.

Although our data coverage for the Chinese industry is not complete (exports to the United States by the eight responding Chinese producers were equivalent to 75.5 percent of U.S. PET film imports from China in 2007 as reported in official statistics),²¹³ the responding Chinese producers' production in 2007 nevertheless was equivalent to *** percent of U.S. consumption in that year.²¹⁴ In that year as well, excess Chinese capacity alone exceeded *** pounds, which was equivalent to more than *** percent of apparent U.S. consumption.²¹⁵ The responding Chinese producers' home market shipments fell from 82.6 percent of total shipments in 2005 to 72.8 percent in 2007. Over the same period, their export shipments to the United States rose from 8.9 percent of total shipments to 10.9 percent.²¹⁶ The responding Brazilian producer's home market shipments decreased significantly between 2005 and 2007 (although they are projected to increase substantially in 2008 and 2009).²¹⁷ We note that Brazil projects that it will have no subject PET film exports to the United States in 2009, as it ***.²¹⁸ However, given past export trends and Brazil's growing capacity and production, we give little weight to this projection. Notwithstanding its claim that its business plan provided for a shift to exports of nonsubject product, Terphane failed to

*** pounds in 2009. CR/PR at Table VII-2. The UAE's capacity climbed from *** pounds in 2005 to *** pounds in 2007. It is projected to be *** pounds in 2008 and 2009. CR/PR at Table VII-4.

²¹⁰ Cumulated subject imports increased from *** pounds in 2005 to *** pounds in 2007. They were *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-3. We attribute the decrease when the interim periods are compared to the effects of the filing of the petition in September 2007. Cumulated subject import market share in the merchant market increased from *** percent in 2005 to *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008. CR/PR Alternative Table IV-5.

²¹¹ In 2005, Brazil exported *** percent of its shipments, increasing to *** percent in 2006 and to *** percent in 2007, CR/PR at Table VII-1. In 2005, China exported *** percent of its shipments, rising to *** percent in 2006 and to *** percent in 2007, CR/PR at Table VII-2. In 2005, the UAE exported *** percent of its shipments, increasing to *** percent in 2006 and to *** percent in 2007. CR/PR at Table VII-4.

²¹² Exports from Brazil increased from *** pounds in 2005 to *** pounds in 2007. CR/PR at Table VII-1. Exports from China rose from *** pounds in 2005 to *** pounds in 2007. CR/PR at Table VII-2. Exports from the UAE climbed from *** pounds in 2005 to *** pounds in 2007. CR/PR at Table VII-4.

²¹³ CR at VII-3, PR at VII-1.

²¹⁴ Compare CR/PR at Table VII-2 with CR/PR at Table C-3.

²¹⁵ Compare CR/PR at Table VII-2 with CR/PR at Tables C-3, C-4.

²¹⁶ CR at VII-3, PR at VII-1.

²¹⁷ Brazil's export shipments increased from *** percent of total shipments in 2005 to *** percent of total shipments in 2007. Its home market shipments decreased from *** percent of total shipments in 2005 to *** percent in 2007, and are projected to increase to *** percent in 2008 and *** percent in 2009. CR/PR at Table VII-1.

²¹⁸ CR/PR at VII-1 & Table VII-1.

provide any such plan to the Commission.²¹⁹ The responding UAE producer's home market shipments relative to all shipments decreased between 2005 and 2007 and are projected to decrease further by 2008, although the absolute quantity of its home market shipments increased slightly between 2005 and 2007 and is projected to increase more in 2008 and 2009.^{220 221 222}

In light of these factors, we find that a significant increase in the volume of subject imports from Brazil, China and the UAE is likely in the imminent future.

We next consider whether the significantly increased volume of subject imports is likely to have significant depressing or suppressing effects on prices for domestic PET film. In that respect, we note that apparent U.S. consumption fell slightly during the period examined, that no substantial increase in demand is projected, and that the product competes largely on the basis of price. As discussed above, the margins of underselling by the subject merchandise ranged from *** percent during the period of investigation.²²³ We find that such underselling likely would increase as subject imports use lower prices to gain market share from the domestic industry, while in competition with even lower priced nonsubject imports. Although we concluded that the price effects of subject imports were not significant during the period of investigation, they will have increasing depressing and/or suppressing effects on domestic prices as the volume of unfairly priced subject imports increases significantly, given that no substantial increase in demand is projected and that competition for sales will be largely price based. We find that these price effects will rise to a significant level in the immediate future.

Our discussion of impact above demonstrates that the domestic industry is in a weakened state, and we therefore find it to be vulnerable to material injury.²²⁴ Given projections for demand, the U.S. market cannot absorb significant additional subject volumes without intense competition for market share, based largely on price. We also note that, while subject imports gained market share largely at the expense of nonsubject imports over the period examined, the increased volume of subject imports that is likely to occur in the imminent future will significantly undersell the domestic like product, take market share from the domestic industry, and have depressing or suppressing effects on prices for domestically produce PET film.

As indicated above, PET film producers in the cumulated subject countries had a large amount of capacity that increased significantly during the period examined. There is a large amount of excess capacity as well, which equaled *** percent of apparent U.S. consumption in the merchant market in

²¹⁹ See Tr. at 138 (Mr. Koenig).

²²⁰ The UAE's home market shipments increased from *** pounds in 2005 to *** pounds in 2007, and are projected to increase to *** pounds in 2008 and 2009. Its ratio of home market shipments to total shipments decreased from *** percent in 2005 to *** percent in 2007, and is projected to decrease to *** percent in 2008 and remain steady at *** percent in 2009. CR/PR at Table VII-4.

²²¹ Brazil's end-of-period inventories totaled *** pounds in 2007 and are projected to be *** pounds in 2008 and *** pounds in 2009. CR/PR at Table VII-1. China's end-of-period inventories totaled *** pounds in 2007 and are projected to be *** pounds in 2008 and *** pounds in 2009. CR/PR at Table VII-2. The UAE's end-of-period inventories totaled *** pounds in 2007 and are projected to be *** pounds in 2008 and *** pounds in 2009. CR/PR at Table VII-4.

U.S. importer's end-of-period inventories of PET film from the cumulated countries totaled *** pounds in 2007. CR/PR at Table VII-5.

²²² Evidence in the record indicates that product-shifting is not an issue in these investigations. See Flex's Prehearing Brief at 7 (most producers produce only polyester film and cannot shift production from nonsubject merchandise).

²²³ CR/PR at Table V-8.

²²⁴ See also CR at VI-18 - VI-22, PR at VI-5 - VI-6 (discussion of actual and anticipated negative effects on development and production efforts).

2007.²²⁵ In view of this substantial excess capacity, along with recent rapid increases in capacity, cumulated subject imports likely will increase significantly in the immediate future. The significantly increased cumulated subject import volumes, which will likely significantly undersell the domestic product, will likely erode not only the nonsubject imports' market share, but the domestic industry's market share as well. Given that demand is not projected to increase substantially, and that competition is largely price-based, subject imports are likely to have significant price depressing and suppressing effects as well. As a consequence, the domestic industry's already weakened condition will likely deteriorate further.

In contrast to the likely increase in subject imports, the volume of nonsubject imports is likely to remain steady or decline further for several reasons. First, imports of PET film from several nonsubject countries – India, Indonesia, Korea, Malaysia, and Taiwan – are subject to antidumping and countervailing duty orders limiting their ability to lower prices in competition with the increased volumes of subject imports.²²⁶ Second, imports from other nonsubject sources, such as Japan, tend to be of higher priced films.²²⁷ Finally, although UAE producer Flex has announced construction of a new plant in Mexico that is designed to produce commodity-grade flexible packaging film, the commencement of production by this plant is not imminent.²²⁸

In conclusion, given the vulnerability of the domestic industry, together with the likelihood that cumulated subject imports, in contrast to nonsubject imports, will increase significantly in the imminent future at prices that will likely undersell the domestic like product and depress and suppress domestic prices to a significant degree, we find that material injury by reason of subject imports will occur absent issuance of antidumping duty orders against subject imports. We therefore conclude that the domestic PET film industry is threatened with material injury by reason of cumulated subject imports from Brazil, China and the UAE.^{229 230}

²²⁵ Compare CR/PR at Tables VII-1, VII-2, VII-4 with CR/PR at Table C-4. Excess capacity for the three cumulated countries totaled *** pounds in 2007. CR/PR at Tables VII-1, VII-2, and VII-4.

²²⁶ CR at VII-10 n.10, VII-16, VII-19, VII-23, PR at VII-5 n.10, VII-9, VII-11, VII-14.

²²⁷ See Tr. at 85 (Mr. Greenwald).

²²⁸ CR at I-14 n.57, VII-7, VII-21 n.69, PR at I-10 n.57, VII-2, VII-12 n.69. In addition, it is not clear how much PET film will be imported into the United States from this facility, as it is aimed at markets in Central and South America as well as North America. CR at VII-21 n.69.

²²⁹ We note that our determination would be the same if we had included Terphane in the domestic industry.

²³⁰ We further determine, pursuant to 19 U.S.C. § 1673d(b)(4)(B), that the record does not indicate that the domestic industry would have been materially injured “but for” the suspension of liquidation, which occurred on May 5, 2008. See Commerce’s Preliminary Determinations, 73 Fed. Reg. 24,547 (UAE), *id.* at 24,552 (China), *id.* at 24,560 (Brazil), and *id.* at 24,565 (May 5, 2008).

C. Subject Imports from Thailand²³¹

Although the Thai industry's production of PET film increased over the period examined²³² and is expected to further increase slightly,²³³ U.S. imports from Thailand actually declined,²³⁴ as did their market share, which fell from *** percent in 2005 to *** percent in 2007, and was only *** percent in January-June 2008 as compared with *** percent in January-June 2007.²³⁵ Although export oriented,²³⁶ the Thai industry is focused on other markets, as evidenced by the rise in exports to those markets as exports to the United States declined.²³⁷ The share of the Thai industry's shipments that were exported to the United States fell from *** percent in 2005 to *** percent in 2007 (it was *** percent in January-June 2007 and *** percent in January-June 2008). The share of shipments exported to other markets rose from *** percent in 2005 to *** percent in 2007 (it was *** percent in January-June 2007 and *** percent in January-June 2008). The share of shipments that were internally consumed also rose from *** percent in 2005 to *** percent in 2007 (it was *** percent in January-June 2007 and *** percent in January-June 2008).²³⁸ Significantly, after Commerce issued its negative preliminary determination, the volume of imports from Thailand continued to decline further, evidencing the Thai industry's declining interest in the U.S. market. The Thai industry is already operating at high levels of capacity utilization;²³⁹ in addition, capacity has remained steady and is expected to remain at current levels in the future.²⁴⁰ Lastly, the Thai producers' inventories of subject merchandise are low and decreased over the period;

²³¹ Although we concluded above that circumstances were appropriate to exclude Terphane from the domestic industry in making our determination with respect to the other three countries, we note that Terphane's relationship is solely with Brazil. As we have determined not to cumulate subject imports from Brazil with those from Thailand, we find that circumstances are not appropriate to exclude Terphane from the domestic industry in making our threat of material injury finding with respect to Thailand alone. We note our determination would not change even if we excluded Terphane.

²³² The Commission received foreign producer questionnaire responses from all three Thai firms identified by petitioners as PET film producers. CR/PR at VII-5.

²³³ Thailand's production increased from *** pounds in 2005 to *** pounds in 2007. It was *** pounds in January-June 2007 and *** pounds in January-June 2008. It is projected to total *** pounds in 2008 and *** pounds in 2009. CR/PR at Table VII-3 (corrected).

²³⁴ Subject imports from Thailand fell from *** pounds in 2005 to *** million pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. CR/PR at Table C-1.

²³⁵ CR/PR at Table C-1.

²³⁶ The Thai industry shipped between *** percent and *** percent of its shipments to export markets from 2005 to 2007, and projects that it will ship *** percent in 2008 and *** percent in 2009. CR/PR at Table VII-3 (corrected).

²³⁷ Thailand's exports to the United States decreased from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. They are projected to total *** million pounds in 2008 and *** pounds in 2009. Thailand's exports to all other markets rose from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and January-June 2008. They are projected to total *** pounds in 2008 and *** pounds in 2009. CR/PR at Table VII-3 (corrected).

²³⁸ CR/PR at Table VII-3 (corrected).

²³⁹ Capacity utilization was *** percent in 2007. It was *** percent in January-June 2007 and *** percent in January-June 2008, and is projected to be *** percent in 2008 and *** percent in 2009. CR/PR at Table VII-3 (corrected).

²⁴⁰ Thailand's capacity remained at *** pounds from 2005 to 2007. CR/PR at Table VII-3 (corrected).

they are projected to remain low in 2008 and 2009,²⁴¹ as are U.S. importers' inventories of subject imports from Thailand.²⁴² In view of the foregoing, we do not find that subject imports from Thailand will imminently enter the U.S. market in significantly increased volumes absent an antidumping duty order.²⁴³

Prices for PET film from Thailand declined over the period of examined and generally undersold the U.S. product.²⁴⁴ The relatively small and declining presence of subject imports from Thailand, however, is not likely to have significant adverse price effects in the imminent future even if such imports significantly undersell the domestic like product. The lack of significant likely adverse price effects of imports from Thailand is further buttressed by the fact that the pricing of the highest volume product imported from Thailand, pricing product 4, actually indicated more instances of overselling than underselling.²⁴⁵

As noted above, we find the domestic industry to be vulnerable to material injury. Nevertheless, because we do not find that subject imports from Thailand will increase significantly in the immediate future or otherwise adversely affect the domestic industry, we find that material injury by reason of subject imports will not occur absent the issuance of an antidumping duty order against subject imports from Thailand. We therefore conclude that the domestic PET film industry is not threatened with material injury by reason of subject imports from Thailand.

CONCLUSION

For the reasons stated above, we determine that an industry in the United States is threatened with material injury by reason of imports of PET film from Brazil, China and the UAE that have been found by Commerce to be sold in the United States at less than fair value. We also determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of PET film from Thailand.

²⁴¹ Thai producers' end-of-period inventories fell from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and *** pounds in January-June 2008. Thailand's end-of-period inventories are projected to be *** pounds in 2008 and *** pounds in 2009. CR/PR at Table VII-3 (corrected).

²⁴² U.S. importers' end-of-period inventories of subject imports from Thailand rose from *** pounds in 2005 to *** pounds in 2007. They totaled *** pounds in January-June 2007 and in January-June 2008. CR/PR at Table VII-5.

²⁴³ PET film from Thailand is subject to antidumping and countervailing duties in the European Union ("EU") and Brazil. CR at VII-10, PR at VII-5. Given that the EU duties have been in place more than seven years, subject producers in Thailand likely have adjusted to them. The antidumping duties in Brazil were imposed in October 2008. CR at VII-10, PR at VII-5, ***. We note that, similar to its reaction to Commerce's negative preliminary determination, the Thai industry did not redirect exports to the U.S. market after commencement of the investigation in Brazil, which occurred in March 2007. See CR/PR at Table VII-3, CR at VII-10, PR at VII-5. Further, Brazil is not listed as one of the Thai industry's major export markets. See Thailand's Foreign Producer Questionnaire at II-9. Finally, there are no orders in effect against Thai PET film exports in Southeast Asia, the Thai industry's home region. See Foreign Producers' Questionnaire Responses at II-9.

²⁴⁴ See CR/PR at Tables V-1 - V-6. Subject imports from Thailand undersold the domestic product in 43 of 55 quarterly price comparisons, with margins ranging from 0.4 to 18.4 percent; the average margin of underselling was 6.8 percent. CR/PR at Table V-8.

²⁴⁵ Compare CR/PR at Table V-4 with CR/PR at Tables V-1 - V-3 & V-5 - V-6.

DISSENTING VIEWS OF COMMISSIONER CHARLOTTE R. LANE

Based on the record in these final phase investigations, I find that an industry in the United States is materially injured by reason of imports of polyethylene terephthalate film, sheet and strip (“PET film”) from Brazil, China, Thailand and the United Arab Emirates, that are sold in the United States at less than fair value (“LTFV”).

MATERIAL INJURY BY REASON OF SUBJECT IMPORTS²⁴⁶

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.²⁴⁷ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.²⁴⁸ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²⁴⁹ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.²⁵⁰ 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.”²⁵¹

The determination of whether the domestic industry is injured “by reason of” subject imports has been the issue of several proceedings, including Gerald Metals, Inc. v. United States (“Gerald Metals”),²⁵² Bratsk Aluminum Smelter v. United States (“Bratsk”),²⁵³ and Mittal Steel Point Lisas Limited v. United States (“Mittal”) (formerly Caribbean Ispat, Ltd. v. United States (“Caribbean Ispat”).²⁵⁴ In its recent decision in Mittal, the United States Court of Appeals for the Federal Circuit (“the Court”) vacated the Court of International Trade’s judgment and instructed it to remand the Commission’s determination responding to the Caribbean Ispat remand involving wire rod from Trinidad and Tobago.²⁵⁵ In Mittal the Court addressed the analysis of injury by reason of subject imports arising from those cases.

The primary issue faced by the Commission in the Caribbean Ispat remand was to apply what was perceived to be a specific injury causation test mandated by the Court in Bratsk. In Bratsk, it appeared that when the merchandise under investigation was a commodity product, the Court directed that the

²⁴⁶ I join the Commission’s Views with respect to background, domestic like product, domestic industry, negligibility, cumulation, conditions of competition and the legal standards for material injury by reason of subject imports for purposes of the Commission’s material injury analysis. While I join the Commission’s Views with respect to the legal standards for material injury by reason of subject imports, I further explain my views regarding these legal standards herein.

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

²⁴⁸ 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).

²⁴⁹ 19 U.S.C. § 1677(7)(A).

²⁵⁰ 19 U.S.C. § 1677(7)(C)(iii).

²⁵¹ 19 U.S.C. § 1677(7)(C)(iii).

²⁵² Gerald Metals, Inc. v. United States, 132 F.3d 715 (Fed. Cir. 1997).

²⁵³ Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

²⁵⁴ Caribbean Ispat, Ltd. v. United States, 450 F.3d 1346 (Fed. Cir. 2006).

²⁵⁵ Mittal Steel Point Lisas Limited v. United States, - F.3d -, Slip Op. 2007 - 1552 (Fed. Cir. Sept. 18, 2008).

Commission determine whether non-subject imports would have replaced subject imports without benefit to the domestic industry (“replacement benefit” test).

In attempting to comply with the Court’s directive in Caribbean Ispat, I explained that I did not agree with the Court to the extent that it was mandating a specific “replacement benefit” test. I noted that there is no statutory requirement that a duty imposed as a result of an affirmative determination result in removal of subject imports from the U.S. market or eliminate the injury incurred by the domestic industry. I further explained that the purpose of antidumping and countervailing duty orders is not to “eliminate” the subject merchandise from the domestic market, or award subject import market share to U.S. producers, but rather to impose remedial duties to ensure that the subject merchandise is sold at fairly traded prices.²⁵⁶

In its recent decision in Mittal, vacating the Commission’s Caribbean Ispat remand determination, the Court explained that the Commission took the Court’s Bratsk decision too literally in thinking that the Court was directing that an affirmative injury determination required a specific test in order to determine whether non-subject imports would have replaced subject imports without benefit to the domestic industry. In Mittal the Federal Circuit explained,

[W]e intend no criticism of the Commission's effort to comply with this court's previous directions. Indeed, the error we have found flows largely from the Commission's effort to proceed with scrupulous attention to the terms of this court's remand instructions. The problem may stem from a lack of sufficient clarity in our prior opinion, which we hope has been rectified in this one.²⁵⁷

The Court indicated that the Commission interpreted its remand instructions and the decision in Bratsk “too rigidly”. The Court explained that in the context of an injury determination, the Commission determines whether conditions would have been different for the domestic industry in the absence of dumping. The court noted that it views the Commission's responsibility as not being concerned with whether an antidumping order would actually lead to the elimination of dumped goods from the market in the future or whether those goods would be replaced by goods from other sources. Rather, the inquiry is a hypothetical one that sheds light on whether the injury to the domestic industry can reasonably be attributed to the subject imports. The focus of the inquiry is on the cause of injury in the past, not the prospect of effectiveness of an order in the future.

The Court stated:

[W]e do not regard the decision in Bratsk as requiring the Commission to presume that producers of non-subject goods would have replaced the subject goods if the subject goods had been removed from the market. Although we stated there, and reaffirm here, that the Commission has the responsibility to consider the causal relation between the subject imports and the injury to the domestic industry, that responsibility does not translate into a presumption of replacement without benefit to the domestic industry.²⁵⁸

The Court further explained that it could not direct a specific methodology of analysis and further stated:

²⁵⁶ In Caribbean Ispat, I made an affirmative determination and did not apply the “replacement benefit” test since I determined that the subject product was not a commodity product for purposes of injury determination. However, a majority of the Commission applied the test and reached a negative determination. The Commission’s negative determination was appealed by Mittal.

²⁵⁷ Mittal, Slip Op. At 21-22.

²⁵⁸ Mittal, Slip Op. p. 18.

To say that an affirmative determination must be based on evidence that the injury to the domestic industry is "by reason of" subject imports does not require the Commission to address the causation issue in any particular way, or to apply a presumption that non-subject producers would have replaced the subject imports if the subject imports had been removed from the market. The Commission is simply required to give full consideration to the causation issue and to provide a meaningful explanation of its conclusions.²⁵⁹

It is clear to me that the Court has clarified Gerald Metals and Bratsk and explained that the Commission's responsibility is to consider not only subject imports, but other possible causes of injury to the domestic industry to determine whether the subject imports were a substantial factor in the injury to the domestic industry, as opposed to a merely "incidental, tangential, or trivial" factor, and to ensure it does not attribute injury from other sources to the subject imports.²⁶⁰ Therefore, I find that the Commission is not required to apply the "replacement benefit test."

It is with this understanding of the Court's Bratsk determination that I address whether subject imports were a substantial factor contributing to material injury to the domestic industry.

A. Volume of the Subject Imports

Section 771(7)(C) 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."²⁶¹

I find that the volume of subject imports is significant and increased significantly from 2005 to 2007, both in absolute terms and relative to consumption in the United States. Subject imports increased their presence in the U.S. market between 2005 and 2007 despite the fact that apparent U.S. consumption in both the total market and the merchant market declined throughout the POI.²⁶²

The volume of subject imports measured by quantity increased by *** percent, from *** pounds in 2005 to *** pounds in 2007.²⁶³ Subject import market share in the merchant market, measured by quantity, increased from *** percent in 2005, to *** percent in 2006 and to *** percent in 2008.²⁶⁵ Subject import market share in the total U.S. market, measured by quantity, increased from *** percent in 2005, to *** percent in 2006 and to *** percent in 2007.²⁶⁶ The data therefore show that subject import volumes increased consistently between 2005 and 2007.

For the foregoing reasons, I find that the volume and the increase in volume of subject imports are significant, both in absolute terms and relative to consumption in the United States.

²⁵⁹ Mittal, Slip Op. p. 19-20.

²⁶⁰ Mittal, Slip Op. p. 17 and 21.

²⁶¹ 19 U.S.C. § 1677(7)(C)(i).

²⁶² Apparent U.S. consumption in the total U.S. market declined by *** percent between 2005 and 2007, and by *** percent in interim 2008 as compared to interim 2007. Apparent U.S. consumption in the merchant market declined by *** percent between 2005 and 2007, and by *** percent in interim 2008 as compared to interim 2007. CR/PR at Tables C-3 and C-4.

²⁶³ CR/PR Table C-3. The volume of subject imports measured by quantity increased from *** pounds in 2005, to *** pounds in 2006 and *** pounds in 2007. CR/PR at Table IV-4.

²⁶⁴ Subject imports measured by value increased by *** percent between 2005 and 2007, from *** in 2005, to *** in 2006 and *** in 2007. CR/PR at Table IV-4.

²⁶⁵ CR/PR at Table C-4.

²⁶⁶ CR/PR at Table C-3.

B. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.²⁶⁷

As previously noted, price is an important factor in purchasing decisions. Price was cited most often by purchasers as the most important factor considered when making purchasing decisions.²⁶⁸ The record also demonstrates that domestically produced PET film and subject merchandise are substantially interchangeable, thus emphasizing the importance of price in purchasing decisions.

U.S. producers and importers provided quarterly pricing data for seven types of PET film.²⁶⁹ The pricing information show extensive underselling of domestic PET film by the subject imports, often by substantial margins. Subject imports undersold the domestic like product 82 percent of the time, in 174 out of 212 possible comparisons.²⁷⁰ The margins of underselling by subject imports ranged from 0.2 to 33.7 percent.²⁷¹ Accordingly, I find that subject imports significantly undersold the domestic like product during the period of investigation.

Available data indicate that subject imports both suppressed and depressed domestic producer prices over the period of investigation. The pricing information show that U.S. producer prices for six of the seven pricing products generally ***,^{272 273} These declines occurred while subject imports were consistently underselling the domestic like product and strongly indicate that domestic prices were depressed by subject imports.

Despite rising raw material and other costs, the domestic industry was not able to raise prices and therefore experienced a cost-price squeeze over the period of investigation.²⁷⁴ The ratio of cost of goods sold to net sales for the total U.S. market increased from *** percent in 2005, to *** percent in 2006 and to *** percent in 2007.²⁷⁵ The ratio of cost of goods sold to net sales for the U.S. merchant market also increased, rising from *** percent in 2005, to *** percent in 2006 and to *** percent in 2007.²⁷⁶ As

²⁶⁷ 19 U.S.C. § 1677(7)(C)(ii).

²⁶⁸ CR/PR at Table II-3.

²⁶⁹ The seven types of PET film for which pricing data were requested were: Product 1 - 48 gauge plain film (for packaging/industrial markets); Product 2 - 48 gauge corona-treated film (for packaging/industrial markets); Product 3 - 48 gauge chemically-treated film (for packaging/industrial markets); Product 4 - 43-44 gauge balance shrink film (for thermal lamination); Product 5 - 45-60 gauge shrink stable film (for hot-stamping applications); Product 6 - 92 gauge plain film (for packaging/industrial markets); and Product 7 - 120 gauge plain film (for packaging/industrial markets). CR at V-6. PR at V-4.

²⁷⁰ CR/PR at Table V-8.

²⁷¹ *Id.*

²⁷² CR/PR at Tables V-1 - V-6.

²⁷³ CR at V-2. PR at V-2.

²⁷⁴ CR/PR at Table VI-1.

²⁷⁵ CR/PR at Table C-3.

²⁷⁶ CR/PR at Table C-4.

previously noted, this industry is highly price sensitive, which increases the injurious effect of the cost-price squeeze experienced by domestic producers.

Finally, the Commission has confirmed multiple instances in which domestic producers lost sales to subject imports or had to lower their prices in response to low-priced offers for subject imports.²⁷⁷ These instances of lost sales and lost revenues confirm the fact that the underselling had an effect in the market and that subject imports played a role in causing domestic prices to decline.

In sum, the record indicates significant underselling by subject imports during the period of investigation, and that subject imports have depressed and suppressed domestic prices to a significant degree. Accordingly, I find that subject imports have had significant adverse price effects on domestic prices during the period of investigation.

C. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”²⁷⁸ These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²⁷⁹ I have examined the performance indicators in the trade and financial data for the domestic industry producing PET film. These data indicate declining overall trends from 2005 to 2007 in both the total U.S. market and the U.S. merchant market.

U.S. production, capacity and capacity utilization all declined overall from 2005 to 2007 and from interim 2007 to interim 2008. U.S. production of PET film declined by *** percent between 2005 and 2007 and by *** percent in interim 2008 as compared to interim 2007.²⁸⁰ Domestic industry capacity declined by *** percent between 2005 and 2007 and declined by *** percent in interim 2008 as compared to interim 2007.²⁸¹ Domestic producers’ capacity utilization levels declined irregularly between 2005 and 2007, and in interim 2008 as compared to interim 2007, despite the declines in domestic industry capacity.²⁸² Furthermore, the domestic industry’s U.S. shipments in the total U.S. market declined from *** pounds in 2005 to *** pounds in 2007, and from *** pounds in interim 2007 to *** pounds in interim 2008.²⁸³

²⁷⁷ CR/PR at Tables V-9 and V-10.

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

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

²⁸⁰ Domestic industry production declined from *** pounds in 2005, to *** pounds in 2006 and to *** pounds in 2007, and declined from *** pounds in interim 2007 to *** pounds in interim 2008. CR/PR at Table C-3.

²⁸¹ Domestic industry capacity declined from *** pounds in 2005, to *** pounds in 2006 and to *** pounds in 2007, and fell from *** pounds in interim 2007 to *** pounds in interim 2008. CR/PR at Table C-3.

²⁸² Domestic industry capacity utilization fluctuated from *** percent in 2005, to *** percent in 2006 and to *** percent in 2008, and declined from *** percent in interim 2007 to *** percent in interim 2008. CR/PR at Table C-3.

²⁸³ CR/PR at Table C-3.

During the period 2005-2007 domestic producers' inventories of PET film remained relatively flat.²⁸⁴ However, U.S. importers' inventories of subject merchandise increased substantially, by *** percent, between 2005 and 2007.²⁸⁵

Several domestic industry employment-related indicators declined over the period of investigation. The number of PET film production related workers declined by *** percent between 2005 and 2007 and declined by *** percent in interim 2008 as compared to interim 2007.²⁸⁶ Wages paid and hours worked by PET film production related workers also declined during the period 2005-2007, as well as in interim 2008 as compared to interim 2007.^{287 288} Domestic industry productivity increased by *** percent between 2005 and 2007.²⁸⁹

The domestic industry's financial indicators, including operating income and operating margins, declined consistently between 2005 and 2007 in both the total U.S. market and the U.S. merchant market. Operating income in the total U.S. market fell from *** in 2005, to *** in 2007 and *** in 2008.²⁹⁰ Operating income in the merchant market fell from *** in 2005, to *** in 2006 and to *** in 2007.²⁹¹

The domestic industry's ratio of operating income to net sales in the total U.S. market fell from *** percent in 2005, to *** percent in 2006 and to *** percent in 2007.²⁹² Merchant market operating income to net sales ratios followed a similar trend and were lower than those for the total market, falling from *** percent in 2005, to *** percent in 2006 and *** percent in 2007.²⁹³ Furthermore, domestic industry return on investment declined and remained low throughout the period of investigation, dropping from *** percent in 2005, to *** percent in 2006 and *** percent in 2007.²⁹⁴

Net sales volumes, in both the total U.S. market and merchant market, declined between 2005 and 2007. Domestic producers' total U.S. market sales volumes declined by *** percent between 2005 and 2007 and merchant market sales volumes declined by *** percent during the same period.^{295 296}

²⁸⁴ Domestic producers' ending inventories fluctuated from *** pounds in 2005, to *** pounds in 2006 and to *** pounds in 2007, and declined from *** pounds in interim 2007 to *** pounds in interim 2008. CR/PR at Table C-3.

²⁸⁵ CR/PR at Table C-3.

²⁸⁶ Domestic industry production related workers declined from *** in 2005, to *** in 2006 and to *** in 2007, and declined from *** in interim 2007 to *** in interim 2008. CR/PR at Table C-3.

²⁸⁷ Wages paid to domestic industry production related workers declined from *** in 2005, to *** in 2006 and to *** in 2007, and declined from *** in interim 2007 to *** in interim 2008. CR/PR at Table C-3.

²⁸⁸ Hours worked by domestic industry PET film production related workers fell from *** hours in 2005, to *** hours in 2006 and to *** hours in 2007, and declined from *** hours in interim 2007 to *** hours in interim 2008. CR/PR at Table C-3.

²⁸⁹ CR/PR at Table C-3. Productivity increased from *** pound per hour in 2005, to *** pounds per hour in 2006 and to *** pounds per hour in 2007.

²⁹⁰ CR/PR at Table C-3.

²⁹¹ CR/PR at Table C-4.

²⁹² CR/PR at Table C-3.

²⁹³ CR/PR at Table C-4.

²⁹⁴ CR/PR at Table VI-8. I note that while the Return on Investment data in Table VI-8 include Terphane, who was excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B), this data would be approximately the same with Terphane excluded.

²⁹⁵ Domestic producer net sales volumes in the total market declined from *** pounds in 2005, to *** pounds in 2006 and to *** pounds in 2007. CR/PR at Table C-3.

²⁹⁶ Domestic producer net sales volumes in the merchant market declined between 2005 and 2007 from *** pounds in 2005, to *** pounds in 2006 and to *** pounds in 2007. CR/PR at Table C-4.

Commission data therefore indicate that the domestic industry suffered material injury during the period of investigation. However, it is necessary to determine the extent to which the injury is attributable to subject imports.

In order to determine what extent of the material injury experienced by the domestic industry is attributable to subject imports in these investigations I analyze the likely effects the domestic industry would have experienced if subject imports had been fairly traded in the U.S. market.²⁹⁷ Furthermore, in order to determine the likely effect on the domestic industry if subject imports had been fairly traded in the U.S. market, it is necessary to understand the conditions of competition of the industry. These conditions include supply and demand conditions and certain related elasticity factors. Although the Commission has discussed some of these conditions earlier, I will now discuss them as they relate to the ability of the U.S. industry to beneficially respond if subject imports had been fairly traded in the U.S. market.

Supply conditions determine how producers can respond to an increase in demand for their product. Supply conditions also indicate whether price increases are likely to be fully achieved without significant undercutting from other suppliers in the market. These supply conditions are described mostly by available capacity to increase output, the ability to divert exports into the domestic market and inventory levels.

As noted above, total U.S. capacity to produce PET film, including merchant market production capacity and capacity that was used for internally transferred PET film, decreased between 2005 and 2007. However, even with a drop in gross production capacity, the amount of unused capacity that was available to meet additional demand for U.S. produced PET film increased from *** pounds in 2005 to *** pounds in 2007.²⁹⁸ In interim 2007 unused capacity was *** pounds and this number increased to *** pounds in interim 2008.²⁹⁹ This increase in unused capacity is further evidenced by the capacity utilization of the domestic industry. Capacity utilization fell from *** percent in 2005 to *** percent in 2007 and was only *** percent in interim 2008.³⁰⁰ The unused capacity in 2007 represented *** percent of total subject imports. These data indicate that the domestic industry had significant amounts of unused capacity with which they could increase production in the event of favorable price changes.

The domestic industry had some, but limited levels of exports during the period of investigation. U.S. producers' export shipments as a share of total shipments ranged from a high of *** percent in 2005 to a low of *** percent in 2007.³⁰¹ The relatively low level of exports indicate that domestic PET film producers have limited ability to shift shipments from export markets to the U.S. market in response to favorable prices in the U.S. market.³⁰²

²⁹⁷ As previously noted, the Court in *Mittal* found that the implementation of the finding of material injury to the domestic industry “by reason of” subject imports in antidumping and countervailing duty cases “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure[s] that it is not attributing injury from other sources to the subject imports.” *Mittal*, Slip Op. At 16-17 and 19. I find that the fact pattern in these investigations, particularly the significant presence of non-subject imports, dictate that I analyze the likely effects the domestic industry would have experienced if subject imports had been fairly traded in the U.S. market when I determine what extent of the material injury experienced by the domestic industry is attributable to subject imports. While I find this approach advisable under this particular fact pattern, I also find that different approaches could be advisable in different investigations with different records.

²⁹⁸ CR/PR at Table C-3.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ CR/PR at Table C-3.

³⁰² CR at II-5 - II-6. PR at II-4.

Inventory levels of domestic producers increased by *** percent between 2005 and 2006, but then declined by *** percent from 2006 to 2007.³⁰³ Overall, inventory levels increased modestly between 2005 and 2007. At the end of 2007, inventory levels of domestic producers were *** pounds.³⁰⁴ This level of inventory represented *** percent of total shipments by domestic producers and *** percent of total subject imports in 2007. These levels of inventories suggest that the domestic industry has some ability to use inventories to respond to price changes.

My analysis of the domestic supply factors indicate that the elasticity of domestic supply of PET film is moderately high. This is consistent with the Commission's Staff Report which suggests a domestic supply elasticity in the range of 4 to 6.³⁰⁵

An analysis of demand conditions indicate what options are available fo purchasers and how they are likely to respond to changes in market conditions. The price that purchasers are willing or able to pay for PET film will depend on a number of factors, including the relative cost of the film to the value of the product that purchasers are making, purchasers' ability to switch to imports or alternate products in lieu of paying higher domestic prices for PET film, and purchasers' collective market power to resist price increases.

PET film is used in a wide variety of products, some of which are inputs into further downstream products. Although in some products the share of PET film is as low as *** percent, the larger uses of PET film generally have a PET film cost share of *** to *** percent.³⁰⁶ These data, taken alone, indicate that the likely responsiveness of purchasers to price increases will be moderate.

There are significant limitations of the ability of purchasers to substitute alternative products for PET film. There were some reported substitutes for PET film; however, the desirability and need for the high thermal, high tensile strength, excellent chemical resistance and printability of PET film indicate that this product has very limited substitutes in most applications. This factor, taken by itself, would indicate that the likely responsiveness of purchasers to price increases will be low.

Looking at the relative value of PET film in downstream products and the very limited availability of substitute products, the record shows that the demand elasticity is likely to be low. This is consistent with the Commission's Staff Report which suggests a demand elasticity in the range of -0.5 to -1.0.³⁰⁷

An important substitution factor unrelated to the ability of purchasers to substitute alternate products for PET film is the ability of purchasers to substitute imported PET film for domestic PET film. A high elasticity of substitution for all imported product would indicate that purchasers would be likely to move to lower priced imports in response to increases in domestic products. This factor is important in two respects. One, to determine whether any imports, including subject imports, would be an important factor in holding down domestic price increases, and two, to determine whether increases in prices of subject imports would be likely to increase demand for domestic production, non-subject imports, or both.

In response to Commission questionnaires, price was reported by the largest number of purchasers as the most important factor affecting purchasing decisions.³⁰⁸ However, to determine the degree of substitutability of PET film from various countries, I consider other supply factors. Regardless of price, if purchasers simply cannot meet their customers' expectations with substitute PET film in, this substitution elasticity factor will be low.

³⁰³ CR/PR at Table C-3.

³⁰⁴ *Id.*

³⁰⁵ CR at II-20. PR at II-15.

³⁰⁶ CR at II-11. PR at II-8.

³⁰⁷ CR at II-20. PR at II-15.

³⁰⁸ CR/PR at Table II-3.

Purchasers place a premium on product consistency, quality, availability, reliability, packaging, and delivery times. These factors were identified as “very important” the greatest number of times by purchasers.³⁰⁹ A comparison of U.S. to subject PET film in these categories indicated that purchasers generally considered all subject product to be at least comparable to the U.S. product in most cases, although *** received some scores of inferiority as compared to the U.S. product from more than one purchaser in all of the categories except quality and packaging. Likewise, most purchasers generally considered non-subject imports as being at least comparable to U.S. product in these categories.³¹⁰ The record indicates that there is at least a moderate degree of substitutability between domestic PET film, subject imports and non-subject imports.³¹¹ This is consistent with the Commission’s Staff Report which suggests a substitution elasticity in the range of 3 to 8.³¹²

I find the evidence regarding whether PET film is a commodity product to be mixed. Although much PET film produced both domestically and by subject producers is commodity grade, specialty grade PET film also comprises a substantial portion of the U.S. market.³¹³ The record demonstrates that the specialty grade segment of the market is continuously changing, as producers often engage in research and development projects designed to introduce new upscale products to the market.³¹⁴ Consequently, all PET film is not replaceable by or interchangeable with PET film from any or all sources.

Overall, the record indicates to me that lower priced subject imports were being substituted for higher priced domestic PET film from 2005 through 2007. The record further indicates that a shift in demand away from subject imports that would have occurred if subject imports had been fairly traded would likely have increased demand for both nonsubject imports and domestic PET film. Moreover, the ability of the domestic industry to increase prices if subject imports had been fairly traded would have benefitted the domestic industry even if it captured only a portion or even none of the volumes of the subject imports.

If prices of subject imports increased to reflect their fairly traded market price, there would have been a beneficial impact on the domestic industry, either in price increases, volume increases or both. This is supported by the level of margin found by the Department of Commerce to represent the dumping margins of the subject imports and the price increases that would have been needed for subject imports to have been fairly traded. It is further supported by the reaction of subject imports after the filing of the petition in these investigations on September 28, 2007.

After the filing of the petition prices trended *** for domestic sales of domestic production and imports for most of the 6 pricing products for which information was gathered. The domestic industry prices *** by significant amounts in most cases and *** prices during the Period of Investigation prior to the end of 2007.³¹⁵ This trend in the pricing product quarterly prices is consistent with the movement of AUVs and total subject imports after the filing of the petition in these investigations. In interim 2008 the AUVs for all subject imports *** and the volumes of these imports ***. AUVs for imports from Brazil *** by *** percent from interim 2007 to interim 2008 and volumes *** by *** percent.³¹⁶ AUVs for

³⁰⁹ CR/PR at Table II-4.

³¹⁰ CR/PR at Table II-5.

³¹¹ CR at II-11. PR at II-8.

³¹² CR at II-20. PR at II-15.

³¹³ Approximately 68 percent of PET film is commodity grade and 32 percent is specialty grade. CR at I-11. PR at I-8.

³¹⁴ CR at I-13; PR at I-10.

³¹⁵ CR/PR at Tables V-1 through V-6.

³¹⁶ CR/PR at Table C-3.

imports from China increased by *** percent from interim 2007 to interim 2008 and volumes *** by *** percent.³¹⁷ AUVs for imports from Thailand *** by *** percent from interim 2007 to interim 2008 and volumes *** by *** percent.³¹⁸ AUVs for imports from the UAE *** by *** percent from interim 2007 to interim 2008 and volumes *** by *** percent.³¹⁹ Since these volume changes coincided with U.S. market that *** by *** percent, and there was a modest *** of *** percent in non-subject imports, the data does not show an *** in volume for domestic shipments.³²⁰ However, the percentage *** in domestic shipments was somewhat less than the percentage *** in total domestic consumption. Moreover, the AUVs of domestic industry shipments in the total U.S. market and the merchant market both *** between interim periods, even in the face of a *** market.³²¹ Non-subject import AUVs also *** in interim 2008 as compared to interim 2007.³²²

The above data indicate that prices would have been higher for all fairly traded PET film in the absence of unfairly traded subject imports. The data also confirm that a shift in demand away from subject imports would have occurred if those imports had been fairly traded and the demand served by subject imports would have shifted to both nonsubject imports and domestic PET film.

The improved financial condition of the domestic industry following the filing of the petition in these investigations illustrates the impact that would have been experienced by the domestic industry if subject imports had been fairly traded throughout the period of investigations. The beneficial price impact to the domestic industry translated to higher profit levels as operating income for the total U.S. market increased by *** percent in interim 2008 as compared to interim 2007 and unit operating income increased by *** percent.³²³ The domestic industry's improvement in the merchant market was even more pronounced as operating income increased by *** percent and unit operating income increased by *** percent in interim 2008 as compared to interim 2007.³²⁴ For the total U.S. market, the domestic industry's operating income as a ratio to net sales increased from *** percent in interim 2007 to *** percent in interim 2008, an increase of *** percentage points, or *** percent.³²⁵ This relative measure of profitability had declined from *** percent in 2005 to only *** percent in 2007 in the face of unfairly traded subject imports that had increased by *** percent over the same time period.³²⁶ Furthermore, the domestic industry's operating income as a ratio to sales in the merchant market increased from *** percent in interim 2007 to *** percent in interim 2008.³²⁷

Translating this data to the full years of the period of investigation, I find that the data supports a finding that the domestic industry would have benefitted through increased prices and increased market share if subject imports had been fairly traded. This would have translated to increased operating profits,

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ Domestic industry AUVs in the total U.S. market *** by *** percent in interim 2008 as compared to interim 2007 while domestic industry AUVs in the merchant market *** by *** percent during the same period. CR/PR at Tables C-3 and C-4.

³²² Non-subject import AUVs *** by *** percent in interim 2008 as compared to interim 2007. CR/PR at Table C-3.

³²³ CR/PR at Table C-3.

³²⁴ CR/PR at Table C-4.

³²⁵ CR/PR at Table C-3.

³²⁶ *Id.*

³²⁷ CR/PR at Table C-4.

increased return on investment and increased cash flows for the domestic industry. Although there would have been some benefits to non-subject imports during the same period, non-subject imports would not have captured all of the benefits of imports from Brazil, China, Thailand and the UAE trading at fair prices. Therefore, I conclude that the domestic industry would have been better off if the imports from the subject countries had been fairly traded. Consequently, I find that the subject imports were a substantial factor contributing to the material injury experienced by the domestic industry during the period of investigation, as opposed to a merely being an "incidental, tangential, or trivial" factor.

Consequently, based on the record in these final phase investigations, I conclude that subject imports had an adverse impact on the condition of the domestic industry during the period of investigation. In particular, I find that the absolute and relative volumes of subject imports, and the increase in those volumes, are significant and that subject imports have undersold the domestic product, and have depressed and suppressed domestic prices to a significant degree. The pattern of consistent underselling by the subject imports, which depressed and suppressed domestic prices, has caused declines in the domestic industry's relevant economic factors over the period of investigation.

CONCLUSION

For the reasons stated above, I find that the domestic industry producing PET film is materially injured by reason of cumulated subject imports of PET film from Brazil, China, Thailand and the United Arab Emirates that are sold in the United States at less than fair value.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by counsel on behalf of DuPont Teijin Films (DuPont Teijin), Hopewell, VA; Mitsubishi Polyester Film of America (Mitsubishi), Greer, SC; SKC America, Inc. (SKC), Covington, GA; and Toray Plastics (America), Inc. (Toray), North Kingston, RI, on September 28, 2007, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of imports of polyethylene terephthalate film, sheet, and strip (PET film) from Brazil, China, Thailand, and the United Arab Emirates (UAE) that are alleged to be sold in the United States at less than fair value (LTFV). Information relating to the background of the investigations is provided below.¹

Effective date	Action
September 28, 2007	Petition filed with Commerce and the Commission; institution of the Commission's investigations
October 26, 2007	Commerce's notice of initiation
November 13, 2007	Commission's preliminary determination
May 5, 2008	Commerce's preliminary determinations (73 FR 24547 (UAE), 73 FR 24552 (China), 73 FR 24560 (Brazil), 73 FR 24565 (Thailand)); scheduling of final phase of Commission investigations (73 FR 36353, June 26, 2008)
September 24, 2008	Commerce's final determinations (73 FR 55035 (Brazil), 73 FR 55039 (China), 73 FR 55043 (Thailand), and 73 FR 55036 (UAE))
September 18, 2008	Commission's hearing ¹
October 21, 2008	Commission's vote
October 31, 2008	Commission's determinations transmitted to Commerce

¹ App. B is a list of witnesses who appeared at the hearing.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

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

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

¹ Federal Register notices cited in the tabulation are presented in app. A.

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

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

...

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

...

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

...

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

Organization of the Report

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

U.S. MARKET SUMMARY

PET film generally is used in industrial, packaging, magnetic media, electrical, and imaging applications. The leading U.S. producers of PET film are Dupont Teijin, Mitsubishi, SKC, and Toray, while leading producers of PET film outside the United States include Terphane of Brazil, Fuwei Films Shandong, Jiangyin Jinzhongda, and Shanghai Zidong Films of China, Polyplex Thailand of Thailand, and Flex Middle East of the UAE. The leading U.S. importer of PET film from Brazil is Terphane; the

leading importer from China is DuPont Teijin; the leading importer from Thailand is Polyplex Americas; and, the leading importer from the UAE is Flex America. Leading importers of PET film from nonsubject countries include Toray and SKC. U.S. purchasers of PET film are processors as well as firms that produce hot stamping foil, flexible packaging, and photographic printed film; leading purchasers include Bemis, Kodak, ExoPack, FilmTech, and KS Plastics.

Apparent U.S. consumption of PET film totaled approximately *** in 2007. Currently, eight firms are known to produce PET film in the United States. U.S. producers' U.S. shipments of PET film totaled approximately *** in 2007, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from subject sources totaled approximately *** in 2007 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from nonsubject sources totaled approximately *** in 2007 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

SUMMARY DATA

A summary of data collected in these investigations is presented in appendix C. Except as noted, U.S. industry data on PET film are based on questionnaire responses of eight firms--seven firms that accounted for all known production of PET film for commercial sale during 2007 plus one firm² that consumed all of its PET film internally to produce downstream products. U.S. imports are based on adjusted official Commerce statistics (excluding Canada and Oman) and responses to Commission questionnaires for Brazil.^{3 4}

PREVIOUS COMMISSION INVESTIGATIONS

In 1990, the U.S. PET film industry filed for relief from LTFV imports of PET film from Korea, Japan, and Taiwan.⁵ The Commission made a negative determination with respect to Taiwan in the preliminary investigations.⁶ The Commission published its affirmative final determinations on imports of PET film⁷ from Japan and Korea in May 1991.⁸ Antidumping duty orders covering imports of PET film

² Kodak provided separate data on its PET film operations. All of Kodak's PET film is consumed internally by the firm to produce downstream products.

³ The subject PET film is imported into the United States mainly under HTS statistical reporting number 3920.62.0090.

⁴ In its preliminary determinations, the Commission found "that it is appropriate to adjust the official statistics to exclude reported imports of PET film from Canada and Oman and to use the Brazilian importer questionnaire data in lieu of official import data in determining whether subject imports are negligible." *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the UAE*, Inv. Nos. 731-TA-1131-1134 (Preliminary), USITC Publication 3962, November 2007, p. 12.

⁵ DuPont, Hoechst, and ICI were the petitioners.

⁶ *Polyethylene Terephthalate Film, Sheet, and Strip from Japan, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-458 through 460 (Preliminary), USITC Publication 2292, June 1990.

⁷ In its 1991 determinations, the Commission defined the domestic like product to include equivalent PET film. Equivalent PET film is PET film that is thickly coated during the production process with a resinous layer more than 0.00001 inch thick (e.g., Cronar® and Estar®).

⁸ *Polyethylene Terephthalate Film, Sheet, and Strip From Japan and the Republic of Korea*, Invs. Nos. 731-TA-458 and 459 (Final), USITC Publication 2383, May 1991.

from Japan and Korea⁹ were issued in 1991. Commerce revoked the order on PET film from Japan in 1995, after concluding that requirements for revocation based on changed circumstances (i.e., the order no longer was of interest to interested parties) were met.¹⁰

On July 1, 1999, Commerce initiated a five-year “sunset” review of the antidumping duty order on PET film from Korea. Commerce subsequently determined that dumping would likely continue or recur if the order were revoked and the Commission determined that revocation of the order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹¹ As a result, Commerce continued the order on PET film from Korea effective March 7, 2000.¹² In 2005, pursuant to expedited second reviews conducted by Commerce and the Commission, the order on PET film from Korea was again continued, effective October 20, 2005.¹³ Commerce conducted a changed circumstances review to reinstate Kolon Industries, Inc., a Korean producer of PET film, under this order and issued its final results in the review, effective April 3, 2008.¹⁴ Commerce determined that Kolon sold subject merchandise at less than normal value during the period of review and reinstated Kolon in the order with a final weighted average dumping margin of 1.53 percent.¹⁵

In 2001, the U.S. PET film industry filed for relief from LTFV imports of PET film from India and Taiwan and subsidized imports from India.¹⁶ The Commission published its affirmative final determinations on imports of PET film from India and Taiwan in June 2002.¹⁷ Antidumping and countervailing duty orders covering imports of PET film from India and Taiwan were issued in July 2002.¹⁸

The Commission instituted reviews of the countervailing duty orders on PET film from India and antidumping duty orders on PET film from India and Taiwan on June 1, 2007¹⁹ and determined on September 14, 2007 that it would conduct full reviews.²⁰

⁹ After conducting administrative reviews, Commerce revoked the antidumping order with respect to product produced/exported by Korean firms Saehan (formerly Cheil Synthetics, Inc.), Kolon Industries, and H.S. Industries (61 FR 35177, July 5, 1996, 61 FR 58374, November 14, 1996, and 66 FR 57417, November 15, 2001, respectively).

¹⁰ 60 FR 52366, October 6, 1995.

¹¹ See *Polyethylene Terephthalate (PET) Film From Korea*, Inv. No. 731-TA-459 (Review), USITC Publication 3278, February 2000.

¹² 65 FR 11984.

¹³ See *Polyethylene Terephthalate (PET) Film From Korea*, Inv. No. 731-TA-459 (Second Review), USITC Publication 3800, September 2005, and 70 FR 61118, October 20, 2005.

¹⁴ 73 FR 18259, April 3, 2008.

¹⁵ *Ibid.*

¹⁶ DuPont Teijin, Mitsubishi, and Toray were the petitioners.

¹⁷ In its 2002 determinations, the Commission defined the domestic like product as PET film and chose to exclude equivalent PET film. In this regard, the Commission stated:

“We conclude that the definition of the domestic like product is all PET film, not including equivalent PET film. We find that the record in these investigations, including the evidence on physical characteristics and uses, channels of distribution, manufacturing facilities, customer and producer perceptions, and pricing, considered together, weighs in favor of not including equivalent PET film in the definition of the domestic like product.”

Polyethylene Terephthalate Film, Sheet, and Strip from India and Taiwan, Inv. Nos. 701-TA-415 and 731-TA-933-934 (Final), USITC Publication 3518, June 2002, p. 6.

¹⁸ 67 FR 44174-44175 and 67 FR 44179, respectively.

¹⁹ 72 FR 30627.

²⁰ 72 F.R. 52582, Sept. 14, 2007.

The Commission subsequently determined that revocation of the countervailing duty order on polyethylene terephthalate film, sheet, and strip from India and the antidumping duty orders on polyethylene terephthalate film, sheet, and strip from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²¹ As a result, Commerce instituted its final expedited review countervailing duty orders of 27.39 percent for Ester Industries Ltd., 33.44 percent for Garware Polyester Ltd., 22.71 percent for Polyplex Corp. Ltd., and 29.36 percent for all other companies, effective October 9, 2007. Commerce also instituted its final expedited review antidumping duty orders, effective October 9, 2007, of 5.71 percent for Ester, 0.01 percent for Polyplex Corp. Ltd., and 5.71 percent for all other companies in India and 2.49 percent for Nan Ya Plastics Corp., Ltd., 2.05 percent for Shinkong Synthetic Fibers Corp., and 2.40 for all other companies in Taiwan.

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the scope of this investigation as follows:

“All gauges of raw, pre-treated, or primed PET Film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is Roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded.”

U.S. Tariff Treatment

Imports of this product are currently classifiable with other PET products under Harmonized Tariff Schedule of the United States (“HTS”) subheading 3920.62.00 and reported under statistical reporting number 3920.62.0090 as set forth in the following tabulation:

²¹ See *Polyethylene Terephthalate Film, Sheet, and Strip from India and Taiwan: Investigation Nos. 701-TA-415 and 731-TA-933 and 934 (Review)*, USITC Publication 3994, April 2008 and 73 FR 25030, May 6, 2008.

HTS provision	Article description	General ¹	Special ²	Column 2 ³
		Rates (<i>ad valorem</i>)		
3920	Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials:			
3920.62.00	Of poly(ethylene terephthalate)	4.2 ⁴	Free (A*, AU, BH, CA, CL, E, IL, J, JO, MA, MX, P, SG)	25
3920.62.0090	Other			

¹ Normal trade relations, formerly known as the most-favored-nation duty rate, applicable to India and Taiwan.
² Special rates apply to imports of PET film from certain trading partners of the United States as follows: A (GSP); AU (United States-Australia Free Trade Agreement); BH (United States-Bahrain Free Trade Agreement Implementation Act); CA and MX (North American Free Trade Agreement); CL (United States-Chile Free Trade Agreement); E (Caribbean Basin Economic Recovery Act); IL (United States-Israel Free Trade Area); J (Andean Trade Preference Act); JO (United States-Jordan Free Trade Area Implementation Act); MA (United States-Morocco Free Trade Agreement Implementation Act); P (Dominican Republic-Central America-United States Free Trade Agreement Implementation Act); SG (United States-Singapore Free Trade Agreement). Thailand is currently excluded from GSP eligibility for this subheading.
³ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.
⁴ HTS heading 9902.25.76 reduces the general rate of duty on biaxially oriented polyethylene terephthalate film certified by the importer as intended for use in capacitors and as produced from solvent-washed low ash content (< 300 ppm) polymer resin (CAS No. 25038-59-9) (provided for in subheading 3920.62.00) to 3.4 percent for goods entered on or before December 31, 2009.

Source: Harmonized Tariff Schedule of the United States (2008).

NATURE AND EXTENT OF SALES AT LTFV

On September 24, 2008, Commerce published notices in the *Federal Register* of its final determination of sales at LTFV with respect to imports from Brazil,²² China,²³ Thailand,²⁴ and the UAE.²⁵ Tables I-1, I-2, I-3 and I-4 present Commerce's dumping margins with respect to imports of PET film from Brazil, China, Thailand, and the UAE, respectively.

Table I-1
PET film: Commerce's final weighted-average LTFV margins with respect to imports from Brazil

Exporter	Producer	Final dumping margin (percent)
Terphane	Terphane	44.36
All others		28.72

Source: 73 FR 55035, September 24, 2008.

²² *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, Strip from Brazil*, 73 FR 55035, September 24, 2008.

²³ *Polyethylene Terephthalate Film, Sheet, Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, September 24, 2008.

²⁴ *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, Strip from Thailand*, 73 FR 55043, September 24, 2008.

²⁵ *Polyethylene Terephthalate Film, Sheet, Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 55036, September 24, 2008.

Table I-2**PET film: Commerce's final weighted-average LTFV margins with respect to imports from China**

Exporter	Producer	Final dumping margin (percent)
DuPont Teijin Films China, Ltd.	DuPont Hongji Films Foshan Co., Ltd.	3.49
DuPont Teijin Films China, Ltd.	DuPont Teijin Hongji Films Ningbo Co., Ltd.	3.49
Fuwei Films (Shandong) Co., Ltd.	Fuwei Films (Shandong) Co., Ltd.	3.49
Shaoxing Xiangyu Green Packing Co., Ltd.	Shaoxing Xiangyu Green Packing Co., Ltd.	3.49
Sichuan Dongfang Insulating Material, Ltd.	Sichuan Dongfang Insulating Material, Ltd.	3.49
Tianjin Wanhua Co., Ltd.	Tianjin Wanhua Co., Ltd.	3.49
Shanghai Uchem Co. Ltd.	Sichuan Dongfang Insulating Material, Ltd.	3.49
Shanghai Uchem Co. Ltd.	Shanghai Xishu Electric Material Co., Ltd.	3.49
China-wide entity		76.72
Source: 73 FR 55039, September 24, 2008.		

Table I-3**PET film: Commerce's final weighted-average LTFV margins with respect to imports from Thailand**

Exporter	Producer	Final dumping margin (percent)
Polyplex (Thailand) Public Co., Ltd.	Polyplex (Thailand) Public Co., Ltd.	6.07
All others		6.07
Source: 73 FR 55043, September 24, 2008.		

Table I-4**PET film: Commerce's final weighted-average LTFV margins with respect to imports from the UAE**

Exporter	Producer	Final dumping margin (percent)
Flex Middle East FZE	Flex Middle East FZE	4.80
All others		4.80
Source: 73 FR 55036, September 24, 2008.		

THE PRODUCT

PET film is a high-performance, clear, flexible, and transparent or translucent material that is produced from PET polymer, a linear, thermoplastic polyester resin. It is generally more expensive than other plastic films and is used typically only when its unique properties are required. Special properties imparted to PET film during the manufacturing process are integral to its use in a myriad of downstream commodity and specialty applications.

Physical Characteristics and Uses

PET film has certain inherent desirable qualities such as high tensile strength, good flexibility, and retention of physical properties over a fairly wide temperature range, excellent electrical insulation properties, durability, heat resistance, good gas-barrier properties, excellent dimensional stability, chemical inertness, good optical clarity, and relatively low moisture absorption.^{26 27} It is available commercially in a range of widths, thicknesses, and properties depending upon the need of end users, and is generally more expensive than other plastic films.²⁸ PET film can be made as a single layer or can be coextruded with other polyester polymers, blended with pigments, and coated inline with applied polymer and other agents into a multilayer film encompassing the desired characteristics. The end product typically comes off the production line in widths of 12 and 24 feet,²⁹ and in thicknesses reportedly ranging from about 0.5 microns (2 gauge) to 350 microns (1,400 gauge).³⁰ PET film is typically slit into rolls ranging from 2 inches to 11 feet wide and 500 to 200,000 feet in length, and sold to downstream converters who apply various thicker substrates to the film for ultimate nonsubject end-use requirements.³¹ DuPont Teijin also converts subject base PET film offline at another location into nonsubject “equivalent PET film” having coatings exceeding 0.254 microns (0.00001 inch; ca. 1 gauge) and sells the value added film to downstream end users.³² Certain films may also be sold to distributors, directly to end-use consumers, or exported.³³

There are five subject PET film end-use categories generally recognized by the industry: industrial, packaging, magnetic media, electrical, and imaging.³⁴ PET film is produced and sold for a myriad of end-uses in two major categories: general purpose commodity-grade films, and specialty-grade films which generally command a price premium relative to the commodity grades. The volume split is estimated to be about 68 percent commodity grade, to 32 percent specialty grade.³⁵ Subject U.S. PET film demand overall is estimated to be growing, with commodity grades growing faster.^{36 37} Commodity-grade films are generally viewed by the industry as large-volume bulk films used principally in the packaging and industrial sectors, where pressure from subject imports is reportedly more intense.³⁸

²⁶ PET film has the widest service temperature range of any competing material (-70°C to 150°C); the highest tensile and tear strength, and electrical insulation breakdown properties; together with superior dimensional stability, oxygen barrier properties, and dielectric constant (electrical resistivity).

²⁷ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

²⁸ Ibid.

²⁹ New state-of-the-art commodity lines can produce PET films of 29 feet in width. Hearing transcript, p. 152 (Tyle).

³⁰ Film gauge increases with film thickness: 1 micron = 3.937 gauge = 0.0001 cm = 0.00004 inch.

³¹ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

³² DuPont Teijin produces and sells ***. Dupont Teijin’s producer questionnaire response, sections II-11;13-15.

³³ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

³⁴ Hearing transcript, pp. 16-17 (Kim).

³⁵ Ibid., p. 24 (Eckles).

³⁶ Ibid., pp. 16-17 (Kim).

³⁷ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

³⁸ Hearing transcript, p. 16 (Kim); p. 24 (Eckles).

Commodity-grade films are described as thin films³⁹ which generally fall in the 48 to 92 gauge range,^{40 41} with the popular 48 gauge corona-treated film⁴² typically used as the baseline for pricing.^{43 44}

Examples of industrial and allied commodity-grade end-use markets⁴⁵ include hot stamping foil, pressure sensitive labels (thermally/chemically resistant), release films (pull away labels), photo resist films, metallic yarns, adhesive tapes, plastic cards (including “smart” cards), labels, lamination films, solar/safety window films, medical test strips, and other miscellaneous uses. Packaging commodity markets are growing rapidly in certain end-use areas due to technology and changing customer tastes, such as convenient cook-in bags. Typical uses include food packaging: flexible pouches, peelable seals (microwave tray film); snack foods (chips and pretzels, etc.) and barrier films to keep moisture out; pet food packaging, industrial packaging; can laminations, and vacuum insulation panels.^{46 47} Mitsubishi also produces subject and *** PET film shrink films.⁴⁸

Magnetic media, electrical, and imaging applications, in general, are more specialized markets compared to commodity-grade industrial and packaging. Magnetic media include VCR, audio, and floppy disk tapes which have been on the decline for many years; however, advanced high-density computer storage media for computer backups has been a significantly high growth area in this market. Electrical applications include brightness-enhancing display films (computer monitors and wide-screen TVs); motor wire and cable, cable wrap and insulation, transformer insulation films, capacitors, thermal printing tapes, touch screens and membrane touch switches (computer and calculator keyboards, and microwave oven and other touch screens), and electrical laminates (flexible printed circuit board films for example). Some growth areas are reportedly in the areas of display films, touch screens and membrane touch switches, and electrical laminates, while declining uses are reportedly wire and cable wrap and motor films. Imaging applications are reportedly declining in general. This end-use category includes microfilm, which is being replaced by computer storage, a growing PET film end-use; X-ray films and instant photo which are moving into digital imaging, printing processes (magazine ads, etc.); drafting

³⁹ Terphane, Inc. (Terphane), a U.S. and Brazilian producer, considers ***.

⁴⁰ Conference transcript, p. 68 (Kasoff).

⁴¹ In July 2007, DuPont Teijin Films U.S. reported experiencing healthy demand for all their PET film products, the demand for their thin films of 48-92 gauge for packaging and industrial being exceptionally strong and forecast to remain so for the foreseeable future. In May 2008, the firm announced a price increase of \$0.10/lb. minimum due to volatility in raw material, utility and transportation costs coupled with strong demand across multiple thin film market segments. In July 2008, an additional price increase of 10 percent was announced due to unprecedented increases in raw material, utility and transportation costs. The firm reported that it was the leading world producer of PET films, and continues to invest in capacity, capability and people while maintaining extensive business improvement programs globally. DuPont Teijin Press Releases, July 15, 2007, May 5, 2008, and July 3, 2008, <http://usa.dupontteijinfilms.com/>, retrieved October 18, 2007, and August 18, 2008.

⁴² Corona-treated film is produced by exposing the base film surface to a highly active electric field to modify its surface energy; which is especially important to downstream printing and coating applications.

⁴³ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

⁴⁴ Toray reported that its thin films range up to *** gauge. Toray’s producer questionnaire response, section II-2B.

⁴⁵ Hearing transcript, p. 16 (Kim).

⁴⁶ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

⁴⁷ The Global Association of Manufacturers of Polyester Film (AMPEF), <http://www.ampef.com/>, retrieved August 24, 2008.

⁴⁸ Small quantities of ***. Mitsubishi’s producer questionnaire response, section II-3.

films which are moving to computer-aided design; and overhead transparencies which are moving towards projection.^{49 50}

U.S. PET film producers are continuously engaged in research and development (R&D) projects designed to introduce new upscale products to the market to remain competitive. DuPont Teijin has developed new products for new applications such as ***. Most markets have reportedly required product improvements resulting from ***.⁵¹ Mitsubishi is actively pursuing new developmental products in the ***.⁵² Toray has strengthened its R&D and marketing efforts on the ***.⁵³ Terphane is ***.⁵⁴

Manufacturing Facilities and Production Employees

The basic PET film “sequential draw” production process is fundamentally standard across the industry.⁵⁵ PET film operations are capital-intensive, dictating that plants be run at relatively high capacity utilization rates for sustainable periods to remain profitable. Most plants operate on a 24 hour-per-day, 7 day-per-week basis, with some allotted downtime for maintenance and repairs. Each production line could cost anywhere between \$50 million and \$100 million to produce 10,000 to 20,000 tons per year.^{56 57} The PET film production process is conducted in a “clean room” environment to protect the finished film from microscopic airborne contamination. Sturdy equipment and vibratory control are essential to the production of PET films of uniform thickness and surface features. The major producers of PET film do not normally run other types of film on their PET film production lines unless necessary owing to the intricacies of the process, and, therefore, do not normally employ production workers for other purposes.^{58 59} Also, most PET film production lines are geared to the production of products within specified gauge ranges (thin, intermediate, or thick) across end-use groups because of the exacting requirements of the process and variability in PET polymer processing characteristics. Therefore, the larger producers with more lines and sophisticated surface modification and other technologies, together with the capability to generally produce multiple polymer grades, tend to have the capability to provide a wider range of products to each end-use sector.⁶⁰

Most PET film manufacturers produce their own PET polymer using the batch polymerization or continuous polymerization process, or a combination thereof.⁶¹ The batch process allows the film producer to custom tailor PET polymer for specific end-use applications. PET polymer may also be

⁴⁹ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

⁵⁰ Hearing transcript, pp. 16-17 (Kim).

⁵¹ DuPont Teijin’s producer questionnaire response, section IV-15.

⁵² Mitsubishi’s producer questionnaire responses, sections IV-15(2) and IV-20.

⁵³ Toray’s producer questionnaire response, section IV-15.

⁵⁴ Terphane’s producer questionnaire response, section IV-15.

⁵⁵ Hearing transcript, p. 18 (Kim).

⁵⁶ *Ibid.*, pp. 17-19.

⁵⁷ The new Uflex Ltd. PET film facility presently under construction at Altamara, Mexico, and scheduled to go onstream in 2009, will reportedly dramatically improve the production economics of commodity-grade flexible packaging PET film relative to conventional lines. The new line will produce film widths about 20 percent higher than conventional film lines, and at a higher production rate in excess of 1,640 feet per minute. Hearing transcript, p. 152 (Tyle).

⁵⁸ *Ibid.*

⁵⁹ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

⁶⁰ *Ibid.*

⁶¹ Toray utilizes a batch process; Mitsubishi, a continuous process; and DuPont Teijin, a combination of batch and continuous on different assets. Conference transcript, pp. 62-63 (Eckles, Trice, and Kasoff).

produced by a continuous process, but this process may be less flexible in the types of end-use films that can be manufactured. PET film grade polymer can be manufactured from either purified terephthalic acid (PTA) or dimethyl terephthalate (DMT) in combination with ethylene glycol. Producers tend to produce PET film grade polymer from either PTA or DMT dependent upon process design and end product property/quality perceptions.^{62 63} Newer plants are believed to be more heavily weighted towards PTA because of advantageous process economics.⁶⁴

A typical PET film production scheme is shown in the process flow diagram of figure I-1. The basic process steps are polymerization, extrusion and film casting, drawing and biaxial orientation, crystallization, cooling, winding, and finishing. Sophisticated scanners and control systems maintain optimal process conditions. Many value added in-line film treatments may also be applied to modify the film⁶⁵ during routine processing, including antistatic agents applied by running the film over microporous liquid coating drums, other chemical treatments, co-extrusion of other polyester substrates onto one or both sides of the film via melt phase lamination processes to promote adhesion, introduction of fillers and pigments into the PET polymer melt via masterbatch systems, and corona treatment for downstream converter requirements.^{66 67}

In the sequential draw process, molten PET polymer is extruded under pressure through a narrow slotted die which may vary from 18 inches to 6 feet in length. The molten material exits the die directly onto an ultra smooth casting drum which cools the melt and forms an amorphous polymeric film. From there, the film is stretched (drawn) in a longitudinal direction over a series of precision motorized rollers. The stretched film next enters a long heated chamber called a stenter (or tenter) oven, where it is subjected to a transverse stretch (sideways draw) to complete biaxial orientation. Biaxial orientation aligns the polymeric chains into a uniform structure which imparts strength, toughness, clarity, and all the other value-added properties characteristic of PET film. The finished film of the desired width and gauge (nominally 0.5 microns (2 gauge) to 350 microns (1,400 gauge)) is wound into rolls for shipment to the customer.^{68 69} PET film is typically slit into rolls ranging from 2 inches to 11 feet wide and 500 to 200,000 feet in length, and sold to downstream converters who apply various thicker substrates to the film for ultimate nonsubject end-use requirements.⁷⁰

⁶² DuPont Teijin, Mitsubishi, Toray, and SKC purchase feedstock for PET polymerization on the open market; SKC reportedly imports some resin from its parent company in Korea. Conference transcript, pp. 56-58 (Trice, Kasoff, Greenwald, and Gray).

⁶³ In addition to domestic supplies, Terphane ***. Terphane's producer questionnaire responses, sections II-3&21, and III-7.

⁶⁴ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

⁶⁵ Kodak ***. Staff field trip report, Kodak, May 14, 2002.

⁶⁶ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

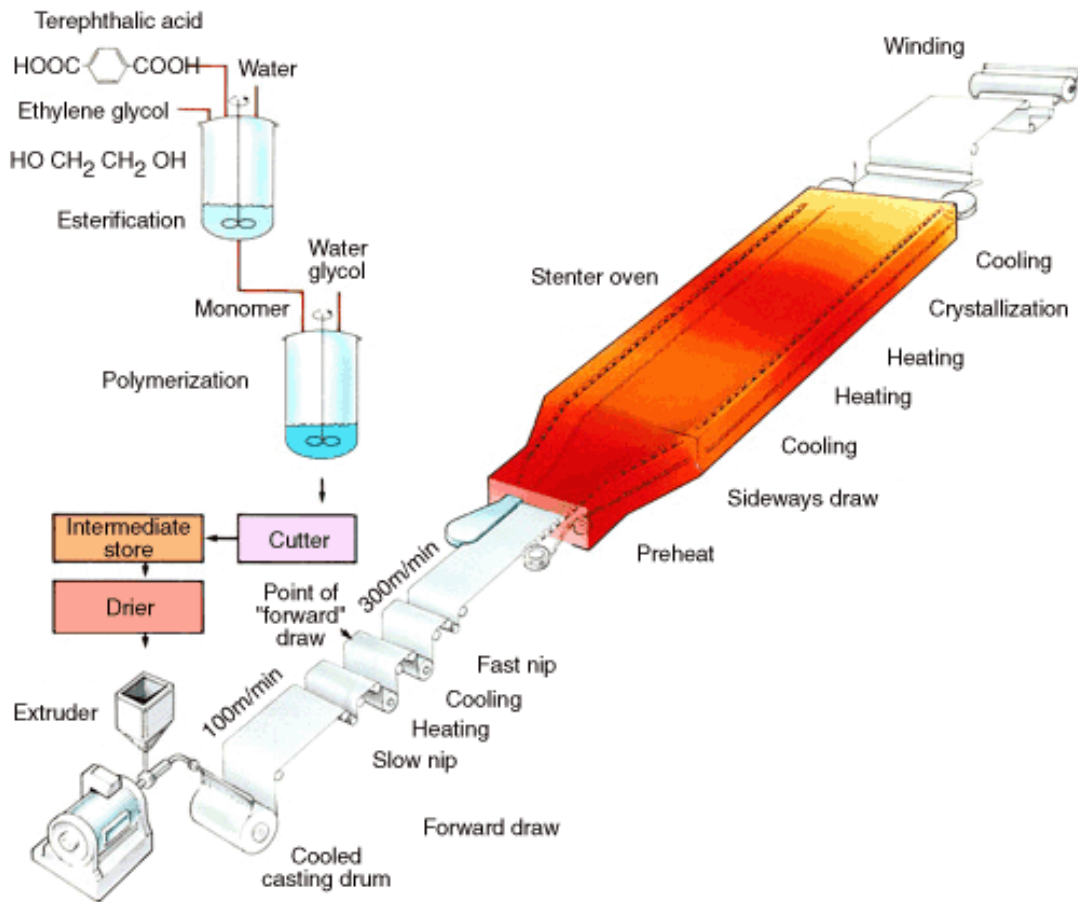
⁶⁷ Corona treatment is the act of exposing the surface of a material to a highly active electric field to modify its surface energy.

⁶⁸ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

⁶⁹ The Global Association of Manufacturers of Polyester Film (AMPEF), <http://www.ampef.com/>, retrieved September 29, 2008.

⁷⁰ Staff plant visit, DuPont Teijin Films, Hopewell, VA, August 26, 2008.

Figure I-1
Process flow chart for PET film production



Source: Obtained online at <http://www.ampef.com/technology2.html>.

Interchangeability and Customer and Producer Perceptions

U.S. producer and importer questionnaire respondents reported that there was general interchangeability between U.S.-produced, Brazilian, Chinese, Thai, and UAE PET film. U.S. producers and most responding importers cited few alternatives to the use of PET film. However, biaxially oriented polypropylene (BOPP) finds use in packaging where barrier, durability or thermal stability is less important; nylon in packaging where certain physical properties are required; and polycarbonate in membrane touch switches (e.g., microwave ovens) where durability is less important.⁷¹ With respect to customer and producer perceptions, questionnaire respondents reported that U.S.-produced and imported PET film were viewed as essentially the same. More detailed information on interchangeability and customer and producer perceptions can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

⁷¹ Responses to domestic producer questionnaires, sections IV-13a-b.

Channels of Distribution

For the most part, during the period examined in these investigations, shipments of PET film by U.S. producers went to either end users and processors, with distributors receiving a small portion of shipments. For the four subject countries, the majority of shipments went to end users, while processors received the majority of shipments from importers of nonsubject product.⁷² More detailed information on channels of distribution can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

Price

Information with regard to prices of PET film is presented in Part V of this report, *Pricing and Related Information*.

DOMESTIC LIKE PRODUCT AND THE DOMESTIC INDUSTRY

Petitioners have proposed a domestic like product coextensive with the scope of the investigations, which was discussed earlier in this section. At the staff conference in the preliminary phase of these investigations, participants were asked to discuss the domestic like product using the six factors the Commission generally examines in determining domestic like product. In particular, parties were asked to discuss the aforementioned issue as it related to petitioners' exclusion of "equivalent PET film" from the domestic like product definition. In its postconference submission, petitioners stated that PET film with equivalent PET film excluded is "consistent with the Commission's 'like product' decision in *PET Film from India and Taiwan*."⁷³ In their six-factor discussion, petitioners stated:

The Commission generally defines the domestic like product with reference to six factors: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities, production processes, and production employees; and, when appropriate, (6) price. Under this analysis, PET film and equivalent PET film are separate products, and the latter is not included in the definition of the domestic like product. The Commission itself made this conclusion in an earlier matter involving PET Film.

Physical Characteristics and Uses. PET film and equivalent PET film have different physical characteristics and uses. According to ***, equivalent PET film differs from PET film due to its "thick functional coating on one or both sides," which alters the product's "surface physical properties." The Commission has defined equivalent PET film as PET film to which has been applied a coating of more than 0.00001 inch thick. Due to these enhanced physical properties, such as barrier and heat sealability, producers sell equivalent PET film for more specific applications as compared to the more general uses of PET film.

Interchangeability. There is little, if any, interchangeability between PET film and equivalent PET film. According to ***, equivalent PET films have "specific maker-unique coatings ... {that are} specifically designed for particular end-use applications" so that the film types are not interchangeable. *** agreed, stating that "once a functional coating is applied the equivalent PET film becomes specific to a certain application."

⁷² In the latter instance, most of the nonsubject product was brought in by U.S. producers of PET film.

⁷³ Petitioners' postconference brief, Part I, p. 10 and Part II, pp. 1-4.

Channels of Distribution. The channels of distribution differ markedly between these two types of film. Equivalent PET film is sold more to end-users than most PET film. As a result, the distribution network differs, as equivalent PET film may be distributed using “technically advanced distributors who add value through identifying the special treatment requirements for end markets” while PET film is distributed typically through more general distributors.

Customer and Producer Perceptions. Both customers and producers alike perceive significant differences between equivalent film and PET film. Both *** agree that customers and producers view equivalent PET film as a specialty film with a higher “value” than PET film. The Commission earlier concluded that “producers and purchasers of PET film perceive film with thicker and thinner coatings (with one gauge as the dividing line) as separate products.

Common Manufacturing Facilities, Production Processes and Production Employees. The Producers’ Questionnaire responses demonstrate that the manufacturing processes involved in PET film and equivalent film production differ dramatically, and thus confirm that these are separate products under the Commission’s like-product analysis. *** responded that equivalent PET film makers have their “own coating stations, treatment stations and process control stations” in order to impart the different qualities found in equivalent PET film. *** stated that two major types of equivalent PET film, “laminated” and “metallized,” are both produced using special off-line machines. *** produces its equivalent PET film on “dedicated assets” located off-site from the machines used to produce PET film and cannot be used to manufacture the latter. Finally, explaining that the coating process may cause “contamination,” *** either uses “dedicated” film lines or uses a “secondary” off-line coating procedure to make equivalent PET film.

Pricing. The price of PET film and equivalent PET film is not comparable. Several of the producers agree that, due to its special properties and specific uses, equivalent PET film commands a premium price as compared to PET film.

With respect to respondents’ views on like product, counsel for the Brazilian respondent responded:

“On the six factor test or the like product I don’t think we’re going to take a position on the petition, the current definition that they’re proposing.”⁷⁴

The Brazilian respondent offered no additional views on the subject in its postconference submission. Likewise, representatives for the UAE industry offered no views on domestic like product in their postconference presentation.

⁷⁴ Conference transcript, pp. 92-93 (Koenig).

While not raised as a domestic like product issue, Commission staff asked parties to explain “exactly what specialty film is compared to the other film that’s in the market segments” for PET film.⁷⁵ Petitioners, in their postconference brief, responded:⁷⁶

“As noted in the Conference, subject PET film consists of both commodity-grade and specialty-grade films. The simplest types of PET film are untreated base film or base film with very simple coatings, such as corona-treated. These are generally used throughout the packaging and industrial markets. Specialized films involve more advanced, specialized coatings applied to the base treatments of the film. These coatings and treatments add unique properties such as chemical resistance or adhesion, and may be used in a number of end-use applications such as optical, labels, and graphics. Producers and customers view these basic and more advanced products as products along the same continuum. They all involve the same base PET film containing the same essential product characteristics, as well as coatings that are less than 0.00001 inches in thickness.”⁷⁷

⁷⁵ Conference transcript, p. 39 (Hughes).

⁷⁶ Neither the Brazilian respondent nor the representatives for the UAE industry responded to this question.

⁷⁷ Petitioners’ postconference brief, Part II, p. 5.

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

U.S. MARKET CONDITIONS AND CHARACTERISTICS

PET film is produced for five main end-use segments: packaging, industrial, electrical, imaging, and magnetics. Within each of those larger segments, there are numerous sub-segments. Each sub-segment consists of a particular type of PET film (defined by gauge, coatings, and other specifications) that is often produced for that particular sub-segment and sold to purchasers who participate primarily in that sub-segment. Different producers also have different specialties and emphases across segments and sub-segments.¹

The eight responding U.S. PET film producers fall into two categories: producers primarily or solely for the merchant market (DuPont, Mitsubishi, SKC, Terphane, and Toray) and producers primarily or solely for captive consumption (Curwood, Kodak, and 3M). The producers which captively consume the product tend to be concentrated in large end-use markets, such as photography and X-rays, into which merchant-market producers rarely sell.²

PET film is available in many different grades ranging from commodity-type grades to highly specialized grades. Based on available data, U.S. producers of PET film as well as importers of PET film from Brazil, China, Thailand, and the UAE sell commodity and specialized products in the U.S. market. U.S. producers submitted data for their sales of commodity and specialized PET film products which were produced in the United States and which were imported during the most recent review investigations. These data indicate that the percentage of their total shipments accounted for by commodity-grade PET film declined each year while the percentage of specialized product increased. With regard to commodity-grade products, the vast majority of shipments by U.S. producers was of domestic product. U.S. producers reported that between 85 and 93 percent of the commodity grade PET film products that they sold in the U.S. market were domestically produced.³

The five U.S. producers that primarily sold in the merchant market sold their PET film throughout the United States. Ten of the 20 responding importers also sold nationwide and the remaining 10 served only regional markets (see table II-1).⁴

Producers and importers were asked to estimate the shares of their sales that occurred within certain distance ranges. Four producers sold most of their PET film between 101 and 1,000 miles and two sold most of their PET film beyond 1,000 miles. Eight of the 18 responding U.S. importers of PET film sold the majority of their PET film within 100 miles of their storage or production facilities; seven sold most between 101 and 1,000 miles; and one sold most over 1,000 miles.

¹ *Polyethylene Terephthalate Film, Sheet, and Strip from India and Taiwan, Inv. Nos. 701-TA-415 and 731-TA-933 and 934 (Review)*, USITC Publication No. 3994 (Apr. 2008). (Hereinafter, PET Film Review, USITC).

² Ibid.

³ PET Film Review, USITC.

⁴ The eight reporting producers are also importers of PET film. *** is the only producer that did not respond to section III of the U.S. Importers' questionnaire. The other seven firms' U.S. Importers questionnaire answers are included in Section II and V of this report.

Table II-1
PET film: Geographic market areas in the United States served by domestic producers and importers

Region	Producers	Importers
National	5	10
Northeast	0	6
Mid-Atlantic	0	2
Midwest	0	3
Southeast	0	3
Southwest	0	1
Rocky Mountains	0	1
West Coast	0	2
Northwest	2	1

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

CHANNELS OF DISTRIBUTION

U.S. producers of PET film and U.S. importers of PET film from subject and nonsubject countries reported their shipments of PET film to different types of customers (table II-2). During the period 2005-07, the majority (between 59.7 and 62.9 percent) of U.S. producers' U.S. shipments of PET film was shipped to processors. For importers of PET film from Brazil, ***. Unlike the U.S. producers, the majority of shipments by U.S. importers of PET film from China and Thailand was to end users during the January 2005-June 2008 period. ***, for importers of PET film from the UAE, ***. The majority of shipments of nonsubject imported PET film went to processors.

U.S. producers and importers often sell to processors that take the PET film and add additional coatings or treatments before selling it to an ultimate user. There are also some sales to a small distribution network and direct sales to end users. Sales to the distributors tend to be for lower-priced, more common-grade film that can be sold into multiple end-use markets.

Some coatings for PET film are applied at the producers' plants and others at the processors. Whether or not a coating is applied at a producer's plant or at a processor's plant is determined by whether the coating can be applied continuously on a large line, in which case it will usually be done at the producer's plant, or whether it is a highly specific coating more appropriate for a smaller line, in which case it will usually be performed by a processor.⁵

Two U.S. producers of PET film, ***, reported selling most of their product from inventories, *** and *** percent, respectively. Six of the 17 responding importers reported selling the majority of

⁵ Ibid.

Table II-2

PET film: U.S. producers' and importers' shares of reported U.S. shipments, by sources and channels of distribution, 2005-07, January-June 2007, and January-June 2008

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Share of reported shipments (percent)					
Domestic producers' shipments:					
To distributors	5.2	4.9	7.7	5.9	9.2
To end users	35.1	33.0	29.4	32.6	23.1
To processors	59.7	62.1	62.9	61.5	67.7
Shipments of imports from Brazil:					
To distributors	***	***	***	***	***
To end users	***	***	***	***	***
To processors	***	***	***	***	***
Shipments of imports from China:					
To distributors	3.3	2.5	2.0	3.2	1.1
To end users	57.7	58.3	50.8	49.9	27.6
To processors	39.1	39.2	47.2	47.0	71.3
Shipments of imports from Thailand:					
To distributors	***	***	***	***	***
To end users	***	***	***	***	***
To processors	***	***	***	***	***
Shipments of imports from UAE:					
To distributors	***	***	***	***	***
To end users	***	***	***	***	***
To processors	***	***	***	***	***
Shipments of imports from nonsubject sources:					
To distributors	4.6	3.2	3.4	3.5	3.0
To end users	19.4	32.3	11.9	12.3	13.0
To processors	76.0	64.5	84.6	84.2	84.1

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

their product from inventories. The reported lead times for U.S. producers' PET film⁶ from inventory range from one day to three weeks, while non-inventoried orders' lead times range from two to eight weeks. Importers of PET film from both subject and nonsubject countries generally reported lead times from inventories ranging from 1 day to 1 week, while their non-inventory orders lead times ranged from 2 weeks to 12 weeks.

⁶ The petitioners testified that their lead times have increased since the "Commission granted temporary relief ... and all of a sudden, very quickly, the demand for domestic product did increase...we're trying to adjust to those lead times now...we've worked with our customers to explain that our lines are getting full' that we need to speak to them sooner when we start planning to product film to those customers." The petitioners also testified that lead times will continue to increase as U.S. producers face stronger demand. Hearing transcript, pp. 122-123 (Kim, Eckles).

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, staff believes that U.S. producers of PET film have the ability to respond to changes in demand with moderate shipments of PET film to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the existence of some unused capacity and moderate inventories; however, supply responsiveness may be constrained by an inability to produce alternate products. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

Total U.S. capacity to produce PET film decreased from approximately *** pounds in 2005 to approximately *** pounds in 2007; capacity decreased between the interim periods, falling from approximately *** pounds in January-June 2007 to approximately *** pounds in January-June 2008. U.S. producers' reported capacity utilization for PET film declined irregularly from *** percent in 2005 to *** percent in 2007; interim data show a decrease from *** percent in January-June 2007 to *** percent in January-June 2008. Overall, the level of capacity utilization indicates that U.S. producers of PET film have some available capacity with which they could increase production of PET film in the event of a price change.

Alternative markets

U.S. producers' export shipments, as a share of total shipments, decreased from *** percent in 2005 to *** percent in 2007. Exports' share increased in the interim periods from *** percent in January-June 2007 to *** percent in the corresponding period of 2008. The relatively low level of exports during the period of investigation indicates that domestic PET film producers may be somewhat constrained in their ability to shift shipments between the United States and other markets in the short run in response to price changes.

Inventory levels

End-of-period inventories for U.S. producers were equivalent to *** percent of U.S. producers' total shipments in 2005, but then increased to *** percent in 2007. U.S. producers' end-of-period inventories decreased from *** percent of total shipments in January-June 2007 to *** percent in January-June 2008. These levels of inventory suggest that U.S. producers may have some ability to use inventories to respond to price changes in the short term.

Supply of Subject Imports

Based on available information, producers in Brazil, China, Thailand, and the UAE have the ability to respond to changes in demand with at least moderate changes in the quantity of shipments of PET film to the U.S. market. The main contributing factors are the availability of unused capacity and the existence of alternative markets.

Brazil

During 2005-07, the capacity for the one responding Brazilian producer of PET film increased from approximately *** pounds in 2005 to approximately *** pounds in 2007. It reported operating at *** capacity throughout the period. Inventories, as a share of total shipments, ranged from *** percent in 2006 to *** percent in 2007. The share of home market shipments (including internal consumption/transfers) to total shipments ranged from a low of *** percent in 2007 to a high of *** percent in 2005. Exports to United States increased from *** percent of total shipments in 2005 to *** percent in 2007.

Low inventories and *** constrain the ability of the Brazilian producer to increase shipments to the United States, while the existence of exports to other countries, decreasing shipments to the home market, and rising overall capacity may indicate a greater ability to increase sales to the U.S. market.

China

Capacity to produce PET film reported by Chinese producers increased from approximately *** million pounds in 2005 to approximately *** million pounds in 2007. The capacity utilization rate decreased irregularly from 85.7 percent in 2005 to 77.4 percent in 2007. Inventories, as a share of total shipments, increased from 10.1 percent in 2005 to 14.1 percent in 2007. The share of home market shipments (including internal consumption/transfers) to total shipments ranged from a high of 83.7 percent in 2005 to a low of 73.5 percent in 2007. Exports to the United States increased irregularly from 8.9 percent of total shipments in 2005 to 10.9 percent in 2007.

Moderately low inventories may constrain the ability of the Chinese producers to increase shipments to the United States, while excess capacity and existence of exports to other countries may indicate a greater ability to shift sales to the U.S. market.

Thailand

During 2005-07, the capacity for Thai producers of PET film remained constant at *** pounds. Their capacity utilization rate ranged from a low of *** percent in 2005 to a high of *** percent in 2007. Inventories, as a share of total shipments, decreased irregularly from *** percent in 2005 to *** percent in 2007. The share of home market shipments (including internal consumption/transfers) to total shipments increased irregularly from *** in 2005 to *** in 2007. Exports to the United States fell from *** percent of total shipments in 2005 to *** percent in 2007.

Low inventories, *** capacity, and *** capacity utilization rates constrain the ability of these Thai producers to increase shipments to the United States, while the large share of total sales exported to other countries enhance the ability to shift sales to the U.S. market.

UAE

During 2005-07, the capacity for the one responding producer of PET film in the UAE increased from approximately *** million pounds in 2005 to approximately *** million pounds in 2007. The capacity utilization rate increased from *** percent in 2005 to *** percent in 2007. Inventories, as a share of total shipments, increased irregularly from *** percent in 2005 to *** percent in 2007. The share of home market shipments (including internal consumption/transfers) to total shipments decreased from *** percent in *** to a low of *** percent in ***. Exports to the United States increased irregularly from *** percent of total shipments in 2005 to *** percent in 2007.

Low inventories, *** capacity, and *** capacity utilization rates constrain the ability of the UAE producer to increase shipments to the United States, while a large share of total sales exported to other countries may indicate a greater ability to shift sales to the U.S. market.

All other sources

There are several nonsubject countries that ship PET film to the U.S. market. The majority of U.S. imports from nonsubject sources was from Japan, Korea, the Netherlands, Mexico, and Taiwan.

U.S. Demand

Based on available information, U.S. consumers of PET film are likely to respond to changes in the price of PET film with small to moderate changes in their purchases of PET film. The main contributing factors to the relatively small degree of responsiveness of demand are the low level of substitutability of other products for PET film and the fact that PET film represents a moderate share of overall product costs.

Demand Characteristics

PET film is produced for five main end-use segments: packaging (includes food packaging general uses, film for flexible pouches, peelable seals, lids, snacks, barrier films, can laminations, and vacuum insulation panels), industrial (includes hot stamping foil, release film, photo resist film, metallic yarns, adhesive tapes, plastic cards, labels, lamination films, brightness enhancement films (computer screens), solar/safety window films, medical test strips, and miscellaneous uses), electrical (includes motor wire and cable insulation, transformer insulation films, capacitors, thermal printing tapes, membrane touch switches, and flexible printed circuit films), imaging (includes microfilm, printing and pre-press films, colorproofing, printing plates, drawing office drafting film, signage, overhead transparencies, X-ray film, instant photos, business graphics, and wide format displays), and magnetics (includes videotape, audio cassette tape, floppy discs, and advanced high-density computer storage media, and computer backup tapes).⁷

Available data indicate that total apparent U.S. consumption of PET film decreased irregularly from approximately *** million pounds in 2005 to approximately *** million pounds in 2007. Apparent consumption of PET film decreased between the interim periods, from *** million pounds in interim 2007 to *** million pounds in interim 2008.

When asked if demand for PET film in the U.S. market had changed since January 1, 2005, five of the eight responding U.S. producers reported that demand had increased, two reported that demand was unchanged, and one, ***, reported that demand ***.⁸ The two responding U.S. producers that commented on demand outside of the United States reported that it increased since 2005. Eight of the 27 responding importers reported that U.S. demand had increased, eight reported that demand was unchanged, and four reported that demand had declined.⁹ One importer reported that the growth in

⁷ PET Film Review, USITC.

⁸ The petitioners testified that, overall, the demand for PET film is stable: “there are five application areas. Two of them are growing, three of them are either steady or declining;” the market is constantly readjusting “as new applications arise where other applications are...becoming extinct.” Hearing transcript, p. 56 (Eckles). The petitioners also testified that demand for PET film is seasonal: “our businesses are more busy in certain parts of the season rather than others...based on the films that we’re supplying and the seasonality of those businesses.” Hearing transcript, p. 124 (Eckles). Moreover, prices and demand for PET film has increased during July 2007-August 2008. Hearing transcript, p. 57 (Trice).

⁹ The respondents testified that demand for PET film is cyclical and “is driven by the demand for the many products for which it is used.” Hearing transcript, p. 142 (Roy).

demand for PET film is driven by the increased usage of flexible packaging.¹⁰ One responding importer reported that demand outside of the United States has increased because of growth in emerging markets.¹¹

Four of the 10 responding purchasers reported that demand in the U.S. market increased since 2005, 3 reported that demand decreased, and 2 reported that demand was unchanged. Reasons cited for increased demand included market/GDP growth. Reasons cited for declining demand included a downturn in the housing market.

Substitute Products

PET film substitutes are limited due to PET film's high thermal and tensile strengths, excellent chemical resistance, lay-flat characteristics, and printability, although there may be substitutes in certain applications and under certain conditions.¹² Six producers, 10 importers, and 6 purchasers reported some substitutes for PET film in some uses; these included: BOPP, biaxially oriented polypropylene (OPP), polypropylene, biaxially oriented nylon, dracon film, or high end PET.¹³

Cost Share

Because PET film is used in a wide variety of end-use products (which are themselves often used in other downstream products), the percent of the final cost that is accounted for by PET film varies widely across and within end uses. Producers, importers, and purchasers estimated that PET film's cost share varies by end-use application, as shown in the following tabulation.

¹⁰ Flexible packaging is replacing rigid and semi-rigid packaging that consume more oil and energy. With increases in oil and energy prices, the consumers are shift towards the usage of flexible packaging, hence the increase in demand. Ibid.

¹¹ The respondents reported that global demand for PET film is increasing, "varies from country to country...when we are present in 94 countries, somewhere it is growing four 4 percent; somewhere it is growing 25 to 30 percent" and it is aligned with GDP growth in the individual countries." Hearing transcript, pp. 176-177 (Tyle).

¹² PET Film Review, USITC.

¹³ The petitioners testified that the "weight of polypropylene has a density less than polyester...if the price fluctuates to the point where it's cheaper to use polypropylene in some applications, they can use polypropylene versus polyester...in less sophisticated packaging applications, where the physical properties of the product is less important tot the functionality of the product." Hearing transcript, pp. 91-92 (Eckles).

End use	Share of total cost of end-use product (in percent)
Automotive printed film	***
Candy packaging	***
Cookie packaging	***
Fiber reinforced pressure sensitive tape	***
Flexible a/c and heating duct	***
Flexible packaging	***
Frozen food pouch	***
Hot stamping foil	***
Label stock for office products	***
Metallic flake paint	***
Optical films	***
Overhead projector transparency	***
Photographic printed film	***
Thermal Transfer D2T2 Ribbon	***

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported PET film depends upon such factors as relative prices, quality, end-use applications, and conditions of sale (such as lead times between order and delivery, payment terms, product services, etc.). Based on available data, it is likely that there is at least a moderate degree of substitution between imported and domestic PET film.

Factors Affecting Purchasing Decisions

Major Factors in Purchasing

Purchasers were asked to identify the three major factors considered by their firm in deciding from whom to purchase PET film (table II-3). Price was reported by the largest number of purchasers (six firms) as the most important factor and as the second most important factor (six firms). Contracts were also reported as the most important factor (three firms) and quality as the second most important factor (six firms). Another factors listed among the top three factors by more than one purchaser was product availability.

Purchasers were asked if they or their customers ever specifically order PET film from one country in particular over other possible sources of supply. Three firms purchase only from one source/country: one purchases only from *** because they manufacture ***; another firm purchases only *** and only ***; and the third firm purchase PET film only from ***.Purchasers were asked if certain grades/types/sizes of PET film are available from a single source. Six firms reported that certain types are available only from one source; these include ***.

Purchasers were also asked if they purchased from one source although comparable product was available from another source at a lower price. Six purchasers reported they purchase from a higher priced source; reasons included: purchasing U.S. material for the specific width of master rolls;

Table II-3
PET film: Most important factors in selecting a supplier, as reported by purchasers

Factor	First	Second	Third
Price	6	6	5
Prearranged contracts/contractual agreement	3	0	0
Quality	2	6	2
Availability	3	3	6
Meet specifications	1	0	0
Other ^{1 2}	1	2	4
¹ "Other" includes functionality of material and service as the third most important factors. ² Four firms reported additional factors: delivery and consigned inventory, technology, product range, width capability, and country of origin based upon expected export of finished goods. Source: Compiled from data submitted in response to Commission questionnaires.			

purchasing Korean material rather than Taiwanese (Taiwanese material only allows for 90 days of free warehousing, while the Korean film has open-ended warehousing/consignment terms); purchasing Taiwanese material for better barrier properties and quality and Korean material for best haze properties; and purchase at a higher price in an effort to maintain multiple suppliers.

Factors Determining Quality

Purchasers were asked to identify the factors that determine the quality of PET film. Purchasers reported numerous factors including: gauge uniformity, surface characteristics, toll hardness, treat level, appearance, packaging, processability, shrinkage, haze, gloss, printability, ability to laminate, coat, and metalize, clarity, free of contaminates, optical color, coating quality, and ability to bond to other substrates.

Certification/Qualification Issues

Purchasers were asked if they require prequalification of their suppliers. All 16 responding purchasers reported that they required prequalification for all of their purchases. Purchasers were also asked whether, since 2005, any domestic or foreign producer failed in its attempts to certify or qualify its PET film with their firm or if any producer lost its approved status. Six of 15 responding purchasers reported that at least one supplier had failed. Reasons reported for failing included: reliability, inability to meet a quality specification, film contamination, and roll conformity.

Purchasers reported the following factors they consider in qualifying a supplier: quality, price, reliability, sample rolls for in-house testing, product range, width capability, meeting shrinkage specifications, technology, service, and consistency of the product.

Importance of 15 Specified Purchase Factors

Purchasers were asked to rate the importance of 15 factors in their purchasing decisions (table II-4). All 17 responding firms reported that product consistency was "very important," and the vast majority reported that availability, packaging, quality meets industry standards, and reliability of supply were "very important." Other factors listed as "very important" by the majority of firms were delivery time and U.S. transportation costs.

Table II-4**PET film: Importance of purchase factors, as reported by purchasers**

Factor	Very important	Somewhat important	Not important
	<i>Number of firms responding</i>		
Availability	16	1	0
Delivery terms	9	8	0
Delivery time	11	6	0
Discounts offered	3	11	3
Extension of credit	4	8	5
Price	4	8	5
Minimum quantity requirement	4	10	3
Packaging	14	3	0
Product consistency	17	0	0
Product range	0	14	3
Quality meets industry standards	16	1	0
Quality exceeds industry standards	2	9	5
Reliability of supply	16	1	0
Technical support/service	4	11	2
U.S. transportation costs	10	5	2
Other ¹	5	2	0

¹ Other includes as very important, consignment program, domestic warehouse, commitment to hot stamping, capacity to supply, and customer service, and for somewhat important roll dimensions, and customer service.

Note: Not all firms responded for all questions.

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

Changes in Purchasing Patterns

Purchasers were asked a number of questions about whether their purchasing patterns for PET film from subject and nonsubject sources had changed since 2005. Nine of 17 purchasers have changed their purchasing patterns: four firms increased their purchases of PET film due to increased demand, two firms decreased their usage of film due to a general decline in the housing industry, and one firm reported that it purchases more material from *** because of less supply available from U.S. producers.

Comparisons of Domestic Products and Subject Imports

Purchasers were also asked to compare domestically-produced PET film and PET film produced in subject and nonsubject countries with respect to 15 different attributes (table II-5).

Table II-5
PET film: Comparisons of imported and U.S. product, as reported by purchasers

Factor	U.S. vs. Brazil			U.S. vs. China			U.S. vs. Thailand			U.S. vs. nonsubject ¹			Brazil vs. China		
	S	C	I	S	C	I	S	C	I	S	C	I	S	C	I
Availability	3	3	1	4	3	2	2	5	1	3	8	2	0	1	1
Delivery terms	0	6	1	1	6	2	0	7	1	1	11	1	0	1	1
Delivery time	1	5	1	4	3	2	4	3	1	9	4	0	0	1	1
Discounts offered	0	6	1	0	8	0	0	8	0	0	9	3	0	1	1
Extension of credit	0	7	0	3	5	0	0	5	1	1	6	3	0	2	0
Lower price ²	0	5	2	0	6	3	2	3	3	2	5	6	0	2	0
Minimum quantity requirements	1	4	2	4	3	2	3	5	0	8	5	0	0	0	2
Packaging	1	6	0	1	8	0	1	7	0	3	10	0	0	2	0
Product consistency	1	6	0	0	6	3	1	7	0	1	10	2	0	2	0
Product range	4	3	0	6	1	1	6	2	0	5	5	0	0	1	1
Quality meets industry standards	0	7	0	0	8	1	1	7	0	1	12	2	0	2	0
Quality exceeds industry standards	0	7	0	0	0	0	1	7	0	1	9	2	0	2	0
Reliability of supply	1	4	2	3	3	3	1	6	1	3	8	0	0	2	0
Technical support/service	5	2	0	5	3	1	4	4	0	5	8	2	0	1	1
U.S. transportation costs	1	6	0	1	8	0	1	7	0	4	7	1	0	2	0
Factor	Brazil vs. Thailand			Brazil vs. UAE			China vs. Thailand			China vs. nonsubject			Thailand vs. nonsubject		
	S	C	I	S	C	I	S	C	I	S	C	I	S	C	I
Availability	0	1	0	0	1	0	0	3	0	0	4	0	0	4	0
Delivery terms	0	1	0	0	1	0	0	3	0	0	4	0	0	4	0
Delivery time	0	1	0	0	1	0	0	3	0	0	4	0	0	4	0
Discounts offered	0	1	0	0	1	0	0	3	0	0	3	1	0	3	1
Extension of credit	0	1	0	0	1	0	1	0	1	0	0	1	0	2	0
Lower price ²	0	1	0	0	1	0	1	2	0	1	3	0	0	4	0
Minimum quantity requirements	0	1	0	1	0	0	0	3	0	0	4	0	0	4	0
Packaging	0	1	0	0	1	0	0	3	0	0	4	0	0	4	0
Product consistency	0	1	0	0	1	0	1	2	0	1	3	0	0	1	3
Product range	0	1	0	0	1	0	0	1	1	1	1	0	0	2	0
Quality meets industry standards	0	1	0	0	1	0	1	2	0	0	4	0	0	1	3
Quality exceeds industry standards	0	1	0	0	1	0	1	2	0	0	4	0	0	2	2
Reliability of supply	0	1	0	0	1	0	0	2	1	0	4	0	0	4	0
Technical support/service	0	1	0	0	1	0	0	2	1	0	4	0	0	4	0
U.S. transportation costs	0	1	0	0	1	0	0	3	0	1	4	1	2	4	0

¹ Some firms reported answers for multiple nonsubject countries. When these answers differed among the different nonsubject countries, all answers have been reported.

² A rating of superior means that the price is generally lower. For example, if a firm reported "U.S. superior," it meant that the price of the U.S. product was generally lower than the price of the imported product.

Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior. Not all companies gave responses for all factors.

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

Thirteen purchasers provided comparisons between U.S. product and nonsubject product.¹⁴ Seven purchasers compared U.S. and Brazilian product, eight purchasers compared U.S. product to that from China, and eight compared U.S. product with that from Thailand. Two purchasers each compared Brazilian product with that from China, and one purchaser compared Brazilian product with that from Thailand and the UAE. Three firms compared product from China with that from Thailand; four compared product from China to that from nonsubject countries; and four compared product from Thailand with that from nonsubject countries.

The majority of firms reported that U.S. and Brazil product were comparable for all factors except technical support and product range where most firms rated that the U.S. product was superior; and availability where an equal number of purchasers rated U.S. product as superior and as comparable to the Brazilian product. The majority of firms comparing U.S. and Chinese product reported that they were comparable for all factors except product range and technical support which the majority of the responding purchasers reported that the U.S. product was superior; availability, delivery time and minimum quantity requirements where three firms reported that they were comparable, four each reported that the U.S. product was superior, and two each reported that the U.S. product was inferior; and reliability of supply where three firms reported that the U.S. product was comparable to the Chinese product, three firms reported that the U.S. product was superior, and three firms reported that the U.S. product was inferior to the Chinese product.

The majority of firms that compared the U.S. product with that from Thailand reported that they were comparable for all factors except product range and delivery time, which most firms reported U.S. product was superior; lower price where three firms reported that the U.S. product was comparable to the Thai product, three firms reported that the U.S. product was inferior, and two firms reported that the U.S. product was superior to the Thai product.

The majority of firms comparing the U.S. and nonsubject product reported that they were comparable for all factors except delivery time and minimum quantity requirements which the majority reported U.S. product was superior; and product range where an equal number of purchasers rated U.S. product as superior and as comparable to the nonsubject product.

The majority of responding purchasers reported Chinese and Thai product were comparable for all factors except extension of credit where one purchaser reported that the U.S. product was superior and one reported that the U.S. product was inferior; and product range where one firm reported that the U.S. product was comparable and one reported that the U.S. product was inferior to the Chinese product. The majority of all responding firms reported Chinese product was comparable to that from nonsubject countries for all factors except extension of credit where one purchaser reported that the Chinese product was inferior.

The majority of firms comparing product from Thailand to that from nonsubject countries reported that they were comparable for all factors except product consistency and quality meets industry standard for which most purchasers reported that the Thai product was inferior; and quality exceeds industry standard for which an equal number of firms rated the Thai product as comparable and as inferior to the nonsubject product.

Firms were asked whether PET film from different countries can be used interchangeably (table II-6). Most U.S. producers, importers, and purchasers reported that PET film from each of the country pairs could “always” or “frequently” be used interchangeably.

¹⁴ Some purchasers compared U.S. product with that from more than one nonsubject country; each of these comparisons was counted separately if responses differed for each nonsubject country, otherwise the response is included only once.

Table II-6

PET film: U.S. firms' perceived degree of interchangeability of products produced in the United States, subject, and nonsubject countries¹

Country comparison	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. Brazil	3	3	1	0	3	3	1	0	3	4	1	0
U.S. vs. China	4	3	0	0	6	4	4	0	2	4	3	0
U.S. vs. Thailand	3	3	1	0	4	4	2	0	3	6	2	0
U.S. vs. UAE	3	3	1	0	3	4	2	0	2	4	3	0
Brazil vs. China	4	2	1	0	4	2	1	0	2	2	1	0
Brazil vs. Thailand	5	2	0	0	5	3	1	0	2	2	1	0
Brazil vs. UAE	5	2	0	0	5	2	1	0	2	2	1	0
China vs. Thailand	4	1	1	0	5	2	2	0	2	3	2	0
China vs. UAE	4	1	1	0	4	2	2	0	2	3	2	0
Thailand vs. UAE	5	1	0	0	5	2	1	0	1	3	2	0
U.S. vs. nonsubject	4	3	0	0	5	4	3	0	4	5	2	0
Brazil vs. nonsubject	3	3	1	0	3	3	2	0	3	2	1	0
China vs. nonsubject	4	2	0	0	5	2	2	0	2	3	1	0
Thailand vs. nonsubject	3	2	1	0	4	3	2	0	2	3	2	0
UAE vs. nonsubject	3	2	1	0	3	2	2	0	2	3	1	0

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

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

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

Two U.S. producers, two importers, and five purchasers made additional comments regarding the interchangeability of U.S.-produced and subject imported PET film. One U.S. producer reported that domestically produced PET film and the subject PET film are fully interchangeable, and the second producer reported that a hundred percent of the commodity products are fully interchangeable, however, in limited instances, some chemically treated products for the packaging market are not fully interchangeable. One importer reported that PET film from China has been shown to be of lower general quality when compared to the U.S. product, as well as the PET film from India can sometimes be substituted into limited uses, and is also shows limited product line-up.

Producers and importers were also asked to compare U.S.-produced products with imports from each of the subject countries in terms of the significance of differences other than price (table II-7). The majority of U.S. producers and importers reported that nonprice differences between U.S. product, subject product, and nonsubject product were either only “sometimes” or “never” significant.

Table II-7

PET film: U.S. firms' perceived significance of differences other than price between U.S.-produced and imported product¹

Country comparison	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Brazil	0	0	3	2	0	0	3	2
U.S. vs. China	0	0	3	2	2	2	5	3
U.S. vs. Thailand	0	1	2	2	1	0	4	3
U.S. vs. UAE	0	0	2	2	0	1	2	2
Brazil vs. China	0	0	1	3	0	0	1	3
Brazil vs. Thailand	0	0	0	3	0	0	1	3
Brazil vs. UAE	0	0	0	3	0	1	0	3
China vs. Thailand	0	0	1	3	0	1	4	2
China vs. UAE	0	0	1	3	0	1	1	3
Thailand vs. UAE	0	0	0	3	0	1	1	3
U.S. vs. nonsubject	0	0	3	2	2	1	5	3
Brazil vs. nonsubject	0	0	3	1	0	1	3	1
China vs. nonsubject	0	0	3	1	0	1	4	2
Thailand vs. nonsubject	0	0	2	1	0	1	3	2
UAE vs. nonsubject	0	0	2	1	0	1	2	1

¹ Producers and importers were asked if differences other than price between PET film produced in the United States and in other countries were a significant factor in their sales of the products.

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

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

ELASTICITY ESTIMATES

This section discusses elasticity estimates. Parties were requested to provide comments in their prehearing briefs; no parties commented on staff's elasticity estimates.

U.S. Supply Elasticity¹⁵

The domestic supply elasticity for PET film measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of PET film. The elasticity of domestic supply depends on factors such as the level of excess capacity, the existence of inventories, and the availability of alternate markets for domestically produced PET film. Analysis of these factors indicates that the U.S. industry has some excess capacity, inventories, and export shipments which could be used to increase or decrease domestic shipments in response to price increases. A supply elasticity in the range of 4 to 6 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for PET film measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of PET film. This sensitivity depends on the availability and viability of substitute products as well as on the component share of PET film in the production of downstream products. There are few products that can be successfully substituted for PET film. Demand is estimated to be moderately elastic and the demand elasticity is likely to be in the -0.5 to -1.0 range.

Substitution Elasticity

The elasticity of substitution depends on the extent of product differentiation between the domestic and imported products. Product differentiation depends on factors such as the range of products produced, quality, availability, and reliability of supply. The elasticity of substitution for imports from Brazil, China, Thailand, and the UAE is estimated to be in the range of 3 to 8.

¹⁵ A supply function is not defined in the case of a non-competitive market.

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

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the margins of dumping were presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of eight firms that accounted for virtually all of U.S. production of PET film during 2007.

U.S. PRODUCERS

The Commission sent questionnaires to the eight firms cited in the petition. Responses were received from all eight firms,¹ which provided usable data on their production of PET film.² Producers of PET film, their positions with respect to the petition, and information on their production of PET film are shown in table III-1.

Table III-1
PET film: U.S. producers, locations, positions on the petition, and production and shares of production in 2007

Firm	Plant location(s)	Position	Reported production of PET film 2007	
			Quantity (1,000 pounds)	Share (percent)
3M	St. Paul, MN	***	***	***
Curwood ¹	Oshkosh, WI	***	***	***
DuPont Teijin	Fayetteville, NC Circleville, OH Florence, SC Hopewell, VA	Petitioner	***	***
Kodak ²	Rochester, NY	***	***	***
Mitsubishi	Greer, SC	Petitioner	***	***
SKC ³	Covington, GA	Petitioner	***	***
Terphane ⁴	Bloomfield, NY	***	***	***
Toray	North Kingston, RI	Petitioner	***	***

¹ Curwood ***.

² Kodak, a producer of PET film and equivalent PET film that is all captively consumed for use in ***, provided data on the production of its PET film. The data shown for its production of PET film do not include the PET film that is produced and consumed in the *** production of equivalent PET film.

³ SKC opened a new facility in Covington, GA, in 1999, with announced plans to expand to 10 lines. To date, SKC has opened 3 film lines and testified that further expansion has been stalled by unfair import competition. Conference transcript, pp. 27-28 (Trice).

⁴ Terphane ***.

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

¹ The eight firms cited in the petition were: (1) 3M, (2) Curwood, (3) DuPont Teijin, (4) Kodak, (5) Mitsubishi, (6) SKC, (7) Terphane, and (8) Toray. Kodak consumes all of its PET film and equivalent PET film to produce ***.

² Of the eight, four (***) internally consumed a portion of their PET film production in the production of equivalent PET film and a fifth firm (***) internally consumed *** of its PET film production.

The majority of responding U.S. producers have foreign affiliations and/or production facilities.³ DuPont Teijin is *** owned by Teijin Holdings USA, Inc., New York, NY and *** owned by E.I. du Pont de Nemours & Co., Wilmington, DE. Effective January 1, 2000, DuPont formed a joint venture with the Japanese producer Teijin and now maintains joint production facilities in Luxembourg, the United Kingdom, Japan, Indonesia, and China⁴. Mitsubishi is wholly owned by Mitsubishi Polyester Film Corp., Tokyo, Japan, with related firms that produce PET film in Japan, Germany, and Indonesia. Toray is owned by the Japanese firm, Toray Industries, and maintains production sites in France, Korea, and Malaysia. Terphane is related to Terphane Ltd. in Brazil⁵ and SKC is owned by SKC Co., Ltd. of Seoul, Korea.

U.S. PRODUCERS' CAPACITY, PRODUCTION, CAPACITY UTILIZATION

Table III-2 presents U.S. producers' capacity, production, and capacity utilization data for PET film. *** accounted for *** percent, *** percent, and *** percent of U.S. production of PET film in 2007, respectively, and together accounted for approximately *** percent of U.S. production of PET film in 2007.

Table III-2
PET film: U.S. capacity, production, and capacity utilization, by firm, 2005-07, January-June 2007, and January-June 2008

* * * * *

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

Table III-3 presents U.S. producers' shipment data for PET film. Commercial U.S. shipment quantity increased irregularly during the period for which data were gathered. Internal consumption quantity fluctuated downward over the period. Certain U.S. producers consume *** (***), or a portion (***) of their production captively; however, *** report any internal consumption of PET film production. *** U.S. producers reported transfers to related firms during the period; however, ***. Export shipment quantity decreased steadily during 2005-07, then increased in interim 2008 as compared with interim 2007. Six companies reported export shipments during all or a portion of the period of investigation to markets in ***. *** did not report export shipments during the period for which data were collected. *** was the largest exporter of PET film and accounted for *** percent of all export shipments during the period for which data were gathered. ***.⁶

Table III-3
PET film: U.S. producers' shipments, by type, 2005-07, January-June 2007, and January-June 2008

* * * * *

³ ***.

⁴ DuPont and Teijin hold ***. U.S. producers' questionnaire response (sections I-5 and I-6).

⁵ Terphane reported that its Brazilian affiliate is "****." U.S. producers' questionnaire response (sections I-5 and I-6). Terphane Inc. is a wholly owned subsidiary of Terphane Holding of Bloomfield, NY, which in turn is owned by Rhone Capital, an investment fund with many private investors and offices in London, Paris and New York. Another Terphane Holding wholly owned subsidiary, Terphane Acquisition Corp., Cayman Islands, 99.99 percent owns and "100-percent controls Terphane Ltda, Brazil." Staff correspondence with counsel for Terphane, September 29 and October 1, 2008.

⁶ ***.

The value of U.S. shipments generally decreased during the period for which data were collected. Export shipment value decreased steadily during 2005-07, then rose during interim 2008 as compared with interim 2007.

CAPTIVE CONSUMPTION

Section 771(7)(C)(iv) of the Act states that–

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 . . . , shall focus primarily on the merchant market for the domestic like product.*⁷

As noted earlier, certain of the U.S. producers consume all or a portion of their production captively. In this regard, staff noted at the conference that the Commission examined captive production in the 2001-02 investigation and asked parties in the current investigations to comment on how that issue should be approached in these investigations. In its postconference submission, petitioners stated:

“Petitioners estimate that approximately *** pounds of domestic production of PET film were internally transferred, making captive production *** percent of the total U.S. market in 2006. As stated in the Petition, U.S. captive production of PET film meets the three statutory requirements that enable the Commission to focus primarily on the merchant market in making its injury determination. Those requirements are:

- the domestic like product that is internally transferred does not enter the merchant market for the domestic like product.
- the domestic like product is the predominant material input in the downstream product.
- the domestic like product sold in the merchant market is generally not used in the production of the downstream article manufactured from the captive production.

Petitioners believe that the captive production of the domestic producers is primarily used to produce x-ray and photographic products, and does not enter the merchant market for the domestic like product. PET film is the predominant material input in x-ray and photographic film, and PET film sold in the merchant market is generally not used to produce these products. The major segments for the merchant market are packaging,

⁷ 19 U.S.C. § 1677(7)(C)(iv).

industrial, graphics and magnetic media. Given the above, the Commission should focus its injury analysis on the merchant market.”⁸

In its prehearing submission for the final phase of these investigations, petitioners stated:

“The downstream product made from captively produced PET film does not enter the merchant market for PET film and the PET film sold into the merchant market is generally not used to make ***.”⁹

In its posthearing submission for the final phase of these investigations, petitioners stated:

“The record of this investigation clearly shows that direct competition between subject imports and domestic production occurs *only* in the merchant market.”¹⁰

In these investigations, U.S. producers’ internal consumption to produce equivalent PET film and “other” internal consumption accounted for *** percent of total U.S. producers’ U.S. shipments in 2005, *** percent in 2006, and *** percent in 2007.¹¹ *** U.S. producers consume PET film internally. During the period for which data were collected, ***. The PET film was internally consumed by these firms as follows: ***.

***.

***.

***.

***.¹²

U.S. PRODUCERS’ IMPORTS AND PURCHASES

Four of the eight U.S. producers (***) reported that they imported PET film from countries subject to these investigations as well as nonsubject sources.¹³ The other four producers, ***, reported imports of PET film from nonsubject sources.¹⁴ At the staff conference in these investigations, participants were asked to comment on whether Terphane should be excluded from the domestic industry on the basis of being a related party.¹⁵ In this regard, petitioners stated:

“The Commission should include Terphane, Inc. in the domestic industry. A producer may be excluded, ‘in appropriate circumstances,’ from the industry if the

⁸ Petitioners’ postconference brief, Part II, pp. 9-10. Petitioners urged the Commission to reference relative weight of PET film in the downstream product for the second criteria of captive consumption. *Ibid.*, p. 10.

⁹ Petitioners’ prehearing brief, p. 10.

¹⁰ Petitioners’ posthearing brief, p. 7. Petitioners urged the commission to analyze the significance of PET film to the production of captive downstream products by weight. *Ibid.*, p. 8.

¹¹ No transfers to related firms were reported.

¹² U.S. producers’ questionnaire responses, sections II-10 to 11-22.

¹³ ***.

¹⁴ ***.

¹⁵ With respect to U.S. producers other than Terphane, petitioners state that “the volumes of subject PET film imported by petitioning companies was in each case a small fraction of its U.S. production. The overriding interests of each petitioning company in this case is as a domestic producer . . . there are no grounds to exclude any one of them from the domestic industry for purposes of the Commission’s injury analysis.” Petitioners’ postconference brief, p. 10. Neither the Brazilian respondent or the representatives from the UAE offered any comment regarding the exclusion of the petitioning firms.

exporter or importer are related parties, or if the producer is also itself an importer of the subject products. The decision to exclude is wholly within the discretion of the Commission. As Terphane’s ***. Terphane should not be excluded from the market because the ‘appropriate circumstances’ do not exist for the exclusion . . . The facts here demonstrate that Terphane has not accrued a significant benefit from its relationship with its Brazilian affiliate. There is no indication that Terphane imports PET film from Brazil to benefit from unfair trade practices. In an earlier case, the Commission’s decision to exclude a domestic producer was upheld where the producer used the subject imports as raw materials to create cheaper processed products. Here, Terphane does not appear to use the imported subject PET film to create a ‘competitive advantage’ in domestic production. Because Terphane’s production is such a *** of the domestic market, its inclusion will not skew the data for the rest of the industry.”¹⁶

Counsel for Terphane responded:

“Yes, Terphane Inc. does not import for purposes of benefitting from dumped imports. Rather, it imports to facilitate its U.S. production, including further U.S. manufacturing operations as to imported Brazil PET film. The imported Brazil PET film feedstock is not available from domestic producers, who will not supply it. Under Commission precedent, Terphane Inc. should be considered part of the domestic industry given its commitment to U.S. production.”¹⁷

Table III-4 presents U.S. producers’ direct imports of PET film from subject sources. In addition, *** reported importing PET film from nonsubject countries since 2005. The nonsubject imports were from Belgium, Canada, France, Germany, Indonesia, Italy, Japan, Korea, Luxembourg, Malaysia, Mexico, Singapore, Taiwan, and the United Kingdom.

Table III-4
PET film: U.S. producers’ production, imports of PET film from subject countries, and ratios of imports to production, 2005-07, January-June 2007, and January-June 2008

* * * * *

Table III-5 presents U.S. producers’ U.S. purchases of PET film from subject, nonsubject, domestic producer, and all other sources. *** U.S. producers, ***, purchased PET film during the period of investigation. ***. Reasons reported for these purchases are as follows: ***.

Table III-5
PET film: U.S. producers’ purchases of U.S.-produced and imported product, 2005-07, January-June 2007, and January-June 2008

* * * * *

¹⁶ Petitioners’ postconference brief, Part II, pp. 6-7.

¹⁷ Brazilian respondent’s postconference brief, p. 11.

U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of PET film for the period examined are presented in table III-6.

Table III-6
PET film: U.S. producers' end-of-period inventories, 2005-07, January-June 2007, and January-June 2008

* * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers ("PRWs") engaged in the production of PET film, the total hours worked by such workers, and wages paid to such workers during the period for which data were collected in these investigations are presented in table III-7. Employment declined steadily during the period examined. ***.

Table III-7
PET film: Average number of production and related workers producing PET film, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2005-07, January-June 2007, and January-June 2008

* * * * *

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

U.S. IMPORTERS

The Commission sent questionnaires to 37 firms believed to be importers of PET film, based on information provided in the petition and information provided by U.S. Customs and Border Protection. In addition, importer questionnaires were sent to the eight firms that received producer questionnaires. As a share of official statistics, questionnaire responses were received from companies that in 2007 accounted for *** percent of U.S. imports from Brazil,¹ *** percent from China, more than 100 percent (***) from Thailand, *** percent from the UAE, and *** percent from nonsubject sources. Table IV-1 presents a list of the 28 firms responding to the Commission's importer questionnaire and the countries from which they imported during 2005-June 2008.

Table IV-1
PET film: U.S. importers and sources of their imports, 2005-June 2008

* * * * *

U.S. IMPORTS

As these investigations have developed, there has been much debate over the import numbers the Commission should consider in its analysis of import volumes. While parties agree that official statistics should be used, they have proposed various modifications of those numbers largely based on their belief that the data from certain sources (Brazil, Canada, and Oman) may include nonsubject product (i.e., merchandise that is not PET film). The issue is of consequence due to the fact that both Brazil and the UAE have argued that their investigations should be terminated owing to their belief that their imports were less than 3 percent of total imports during the 12 months preceding the filing of the petition in these investigations. Depending on the denominator (import statistics) used, different outcomes may be possible with respect to the issue of negligibility. In short, the petitioners argue that imports from Canada and Oman are not subject product and should be removed from the official statistics. The Brazilian respondent argues that more than half of the official statistics for Brazil include PET film that is not subject and, therefore, data reported in its questionnaire are a better measure of subject imports from Brazil. Additionally, the Brazilian respondent argues that imports from Canada should be included in the import statistics.² Finally, representatives of the UAE producer/importer, stated that "there is no justified reason to believe or suspect that the imports from Canada are not indeed imports of subject merchandise." A discussion of the reasoning behind the various imports scenarios proposed by the parties follows.

Imports of PET film enter the United States under HTS statistical reporting number 3920.62.0090. According to petitioners, the category "was established in July 2003 to accurately capture

¹ ***, a U.S. producer and importer, accounted for *** imports from Brazil; however, the numbers reported by Terphane (***) pounds as opposed to official statistics of 16.2 million pounds in 2007 and similar lower data compared with official statistics in other years and periods) reflect the firm's belief that many of its imports, although classified under HTS statistical reporting number 3920.62.0090, are not properly classified and, therefore, are nonsubject product. See the discussion of U.S. imports and negligibility later in this section of the report for a more detailed discussion of this and other import data issues.

² Flex Middle East (FME)/Flex America (FAM) postconference brief, p. 5. FME/FAM offered no comment with regard to the proposed exclusion of imports from Oman or the use of Brazilian importer questionnaire numbers in lieu of official statistics for Brazil.

imports of PET film.”³ Petitioners further state that it “appears that entries under this import category include certain nonsubject films (e.g., amorphous PET (APET) film) and, therefore, overstate total imports within the scope of the petition.”⁴ In particular, petitioners believe that certain entries from Canada and Oman under HTS statistical reporting number 3920.62.0090 appear to be nonsubject products—e.g., APET and, therefore, would overstate total imports within the scope of the petition.⁵ Petitioners know of no known production of PET film in either Canada or Oman.⁶ Petitioners note that at the staff conference in these investigations both petitioners and the Brazilian respondent agreed that there was no PET film production in Canada.⁷ Further regarding their argument concerning imports from Canada, petitioners claim that the unit values declared at certain U.S. ports are far too high to be subject PET film.⁸ The Brazilian respondent, Terphane, in its postconference brief, argues that it “is confident that most of the U.S. import volumes from Canada are of foreign volumes of subject PET film imported into Canada from Asia and shipped across the border to the U.S.” and, therefore, should be included in the total subject imports figure for purposes of determining negligibility.⁹

With respect to imports from Oman, petitioners state that they have reason to believe that such imports under the given HTS statistical reporting number are APET, which is purported to be a nonsubject product.^{10 11} In this regard, petitioners stated:

“In the case of Oman, petitioners’ counsel met with the Customs specialist responsible for PET film imports on July 31, 2007 to determine whether the imports from that country were, in fact, PET film. Based on the meeting and on further research of Omani manufacturing capabilities, we believe that imports from Oman, which year-to-date have been 13,451,157 pounds, are, in fact, imports of amorphous polyethylene terephthalate (or APET), a nonsubject product. Recent information confirms this conclusion. Imports from Oman under HTSUS statistical reporting number 3920.62.00.90 first appear in the data in 2007. The October 23, 2007 edition of the Times of Oman (attached at *Exhibit 1*) reports that Octal Petroleum, an APET producer, began production in Oman’s Salalah Free Zone in December 2006, with the United States among its target markets. Although we do not have access to the import documents available to Customs, we are confident that those documents will confirm that the imports from Oman entered under HTSUS statistical reporting number 3920.62.00.90 are nonsubject APET. Exclusion of imports from Oman from imports of subject PET film during the period September 1, 2006-August 31, 2007 reduces the total volume (*i.e.*, the denominator for a negligibility claim) from 240,714,410 pounds to 227,263,253 pounds.”¹²

³ Petitioners’ postconference brief, p. 3. Petitioners note that for purposes of the petition, they based their analysis of the volume of imports from each of the subject countries on official data under this statistical reporting number.

⁴ *Ibid.*

⁵ Petitioner’s postconference brief, pp. 3-4.

⁶ *Ibid.*, p. 4.

⁷ *Ibid.* Conference transcript, p. 8 (Meltzer), pp. 36-38 (Trice, Meltzer), p. 104 (Roy).

⁸ *Ibid.*, p. 5. The ports named are Pembina, ND, Seattle, WA, New Orleans, LA, and Cleveland, OH.

⁹ Terphane’s postconference brief, p. 4.

¹⁰ Petitioners’ postconference brief, pp. 3-4.

¹¹ *Ibid.*, exhibit 1.

¹² Petitioners’ postconference brief, p. 4.

Representatives of ***.¹³

With respect to imports from Canada, petitioners report that although the exact nature of the Canadian import entries under HTS statistical reporting number 3920.62.0090 is not clear-cut, both Klockner and Scott Office Systems (Scott) in Canada purchase PET film from U.S. producers and produce nonsubject merchandise from it—APET and shrink films in the case of Klockner, downstream products made from PET film in the case of Scott.¹⁴ According to information obtained by staff, ***.^{15 16} Petitioners contend that APET film alone is not subject product because it is not drawn (stretched) subsequent to casting; however, it is considered to be a part of subject PET film product when coextruded onto base PET film as it goes through the die, then cast and biaxially oriented, serving as a heat seal in ovenable food packaging.¹⁷

SKC and Mitsubishi testified that they assumed other petitioners sell base PET film to Scott Office Systems in Canada which, in turn, brings it back into the United States in sheet and roll form for the production of office supplies, index tabs, protectors for documents, etc.^{18 19} Staff has subsequently ***.²⁰

In the preliminary phase of these investigations, the Commission determined “that it is appropriate to adjust the official statistics to exclude reported imports of PET film from Canada and Oman and to use the Brazilian importer questionnaire data in lieu of official import data in determining whether subject imports are negligible.”²¹

Imports of PET film based on questionnaire data for Brazil and adjusted official statistics (excluding Canada and Oman) as reported under HTS statistical reporting number 3920.62.0090 are presented in table IV-2.

Table IV-2
PET film: U.S. imports, by sources, 2005-07, January-June 2007, and January-June 2008

* * * * *

NEGLIGIBILITY

The Tariff Act provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition – in this case September 2006 to August 2007.

As noted earlier in this section, petitioners and respondents have presented a number of scenarios for the adjustment of official statistics to aid the Commission in its analysis of import volume as it relates

¹³ Staff interview with *** October 26, 2007.

¹⁴ Petitioner’s postconference brief, pp. 4-5.

¹⁵ Staff interview with ***, October 26, 2007.

¹⁶ Staff e-mail correspondence from ***, October 22-25, 2007.

¹⁷ Conference transcript, pp. 38, 64 (Kasoff).

¹⁸ Ibid., pp. 71-72 (Gray, Trice).

¹⁹ Ibid., p. 37 (Trice).

²⁰ Staff interview with *** October 22, 2007.

²¹ *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the UAE*, Inv. Nos. 731-TA-1131-1134 (Preliminary), USITC Publication 3962, November 2007, p. 12.

to the issue of negligibility. Depending on the denominator (import statistics) used, different outcomes may be possible with respect to this issue.

In the preliminary phase of these investigations, the Commission determined that no country's imports fell within the negligibility exception, stating:

“ . . . we determine that it is appropriate to adjust the official statistics to exclude reported imports of PET film from Canada and Oman and to use the Brazilian importer questionnaire data in lieu of official import data in determining whether subject imports are negligible. Accordingly, using the adjusted data for the period September 2006 through August 2007, we find that subject imports from Brazil constitute *** percent of total imports of PET film and subject imports from the UAE constitute *** percent of total imports. In addition, we find that subject imports from China constitute *** percent of total imports, and those from Thailand constitute *** percent.²² Thus, no country's imports fall within the negligibility exception.”²³

Table IV-3 presents the shares according to official statistics with the exclusion of Canada and Oman (as proposed by petitioners) and adjusted Brazilian imports (using Terphane's questionnaire data in lieu of official statistics for Brazil).^{24 25}

Table IV-3
PET film: U.S. imports, by sources, based on official Commerce statistics (excluding Canada and Oman and using importer questionnaire data for Brazil), and shares of total imports (in percent), September 2006-August 2007

* * * * *

APPARENT U.S. CONSUMPTION

Table IV-4 shows data on total apparent U.S. consumption and open-market consumption for PET film using questionnaire data for Brazil and adjusted official import statistics (excluding Canada and Oman) for all countries. Total apparent U.S. consumption²⁶ of PET film decreased by *** percent on a quantity basis and *** percent on a value basis during 2005-07. U.S. producers' market share, based on quantity, fluctuated from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007 (table IV-6). The market share of the subject countries, based on quantity, increased from *** percent in 2005 to *** percent in 2007. With the exception of Thailand (whose share decreased), the market share of each of the subject countries increased over the same period.

²² *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv Nos. 731-TA-1131-1134 (Preliminary)*, USITC Publication No. 3963 (Nov. 2007), Table IV-4.

²³ *Ibid.*, pp. 12-13.

²⁴ Petitioners, while not agreeing with the proposed adjustment to the Brazilian numbers, stated that “if there is to be an adjustment to Terphane's data to exclude nonsubject imports from Brazil, the data for other countries must similarly be adjusted. In this regard, for the reasons already explained, the data must be reduced by the imports ascribed to both Canada and Oman.” Petitioners' postconference brief, p. 8.

²⁵ Although representatives of the FME/FAM proposed the use of FAM's (slightly lower) importer questionnaire numbers in lieu of official statistics for the UAE, they made no allegation concerning any nonsubject product being included in the official statistics concerning the UAE. FME/FAM postconference brief, pp. 3-4. Therefore, the use of official statistics for the UAE is believed to be the best data for the purposes of the Commission's analysis.

²⁶ Includes internally consumed (captive) shipments of domestic producers.

Table IV-4

PET film: U.S. producers' U.S. shipments, by types, U.S. imports, by sources, and merchant-market and total U.S. consumption (merchant market and total), 2005-07, January-June 2007, and January-June 2008

* * * * *

Merchant-market apparent U.S. consumption²⁷ of PET film fluctuated downward by *** percent on a quantity basis and downward by *** percent on a value basis during 2005-07. U.S. producers' market share, based on quantity, fluctuated upward from *** percent in 2005 to *** percent in 2007. The market share of the subject countries, based on quantity, increased from *** percent in 2005 to *** percent in 2007 (table IV-5). With the exception of Thailand (whose share decreased), the market share of each of the subject countries increased over the same period.

U.S. MARKET SHARES

U.S. market shares according to official statistics with the exclusion of Canada and Oman (as proposed by petitioners) and adjusted Brazilian imports (using Terphane's questionnaire data in lieu of official statistics for Brazil) for merchant-market consumption and total consumption are presented in table IV-5 and IV-6, respectively.

Table IV-5

PET film: Merchant-market U.S. consumption¹ and market shares, based on official Commerce statistics (excluding Canada and Oman and using importer questionnaire data for Brazil), 2005-07, January-June 2007, and January-June 2008

* * * * *

Table IV-6

PET film: Total U.S. consumption¹ and market shares, based on official Commerce statistics (excluding Canada and Oman and using importer questionnaire data for Brazil), 2005-07, January-June 2007, and January-June 2008

* * * * *

RATIO OF IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of imports to U.S. production of PET film is presented in table IV-7.

²⁷ Does not include internally consumed (captive) shipments of domestic producers.

Table IV-7**PET film: Ratio of U.S. imports to U.S. production, by sources, 2005-07, January-June 2007, and January-June 2008**

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Ratio of U.S. imports to domestic production (percent)					
Brazil	0.2	0.9	1.3	1.1	0.6
China	5.3	7.3	7.5	7.7	3.3
Thailand	3.2	2.3	2.1	2.1	2.0
UAE	0.5	1.0	1.6	1.2	2.5
All subject countries	9.1	11.5	12.5	12.1	8.3
India	0.7	0.6	0.7	0.7	0.5
Taiwan	1.6	2.2	2.8	2.8	2.5
Korea	9.5	10.0	8.3	8.1	10.3
Germany	0.5	0.6	0.7	0.7	0.7
Indonesia	0.1	0.2	0.2	0.3	0.2
Japan	2.1	1.6	1.0	0.7	0.9
Mexico	0.9	0.7	0.8	0.7	0.7
Turkey	0.0	0.8	0.4	0.5	0.8
All other sources	5.1	5.9	3.2	2.3	2.0
All nonsubject countries	20.5	22.5	18.1	16.7	18.7
All countries	29.6	34.0	30.7	28.8	27.0
Source: Compiled from data submitted in response to Commission questionnaires (U.S. production and imports from Brazil) and from official Commerce statistics (excluding Canada and Oman).					

CUMULATION CONSIDERATIONS

In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) the degree of fungibility, including specific customer requirements and other quality related questions; (2) presence of sales or offers to sell in the same geographical markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Degree of fungibility and channels of distribution are discussed in Parts I and II of this report; geographical markets and presence in the market are discussed below.

Geographical Markets

PET film produced in the United States is shipped nationwide. While imports of PET film from the subject countries may enter specific Customs districts, the product is then generally sold in multiple regions or nationwide. Brazilian product entered through 11 districts; Chinese product entered through 31 districts; Thai product entered through 14 districts; and, UAE product entered through 14 districts. Table IV-8, based on Commerce statistics for the period 2005-07 and January-June 2008, presents U.S. import quantities of PET film, by each subject country, according to the Customs districts.

Table IV-8

PET film: U.S. imports, by subject countries and by Customs districts, 2005-07 and January-June 2008

Customs district	Brazil				China			
	2005	2006	2007	Jan.-June 2008	2005	2006	2007	Jan.-June 2008
	Quantity (1,000 pounds)							
Anchorage, AK	0	0	0	0	0	2	3	0
Baltimore, MD	51	0	0	0	0	40	2	82
Boston, MA	0	0	0	0	317	592	1,994	81
Buffalo, NY	0	2	0	0	1	61	104	4
Charleston, SC	309	202	798	474	8,264	11,294	3,334	663
Charlotte, NC	0	1	0	0	316	447	376	51
Chicago, IL	0	0	0	0	11,381	13,603	14,700	4,937
Cleveland, OH	0	0	0	0	96	389	706	96
Columbia-Snake, OR	0	0	0	0	0	79	0	119
Dallas-Fort Worth, TX	0	0	0	0	42	528	3	0
Detroit, MI	0	0	5	0	158	158	78	0
Great Falls, MT	0	0	0	0	411	471	305	69
Honolulu, HI	0	0	0	0	1	0	0	39
Houston-Galveston, TX	0	0	0	42	264	2,769	4,600	932
Laredo, TX	0	0	0	0	3	2	0	0
Los Angeles, CA	0	0	0	0	4,404	3,865	2,973	803
Miami, FL	0	0	0	0	20	0	87	32
Milwaukee, WI	0	0	0	0	0	0	2	0
Minneapolis, MN	0	0	0	0	678	1,951	2,637	41
New Orleans, LA	0	0	0	0	772	830	108	5
New York, NY	1,917	14,446	15,306	5,575	3,759	5,934	8,120	1,094
Nogales, AZ	0	0	0	0	0	86	41	0
Norfolk, VA	101	0	81	330	840	88	1,398	0
Ogdensburg, NY	0	0	0	0	73	50	20	18
Pembina, ND	0	0	0	0	0	4	0	0
Philadelphia, PA	0	0	0	0	0	0	0	0
San Francisco, CA	0	0	18	0	1,253	1,520	1,659	158
San Juan, PR	0	0	0	0	0	31	0	0
Savannah, GA	0	67	0	393	851	1,969	1,908	396
Seattle, WA	0	0	0	7	1,091	243	113	10
St. Louis, MO	0	0	0	0	0	375	0	0
Tampa, FL	0	0	0	0	8	1	2	0
Total	2,378	14,718	16,209	6,820	35,002	47,382	45,267	9,628

Table continued on next page.

Table IV-8—Continued

PET film: U.S. imports, by subject countries and by Customs districts, 2005-07 and January-June 2008

Customs district	Thailand				UAE			
	2005	2006	2007	Jan.-June 2008	2005	2006	2007	Jan.-June 2008
	<i>Quantity (1,000 pounds)</i>							
Boston, MA	115	39	0	0	3	0	0	0
Charleston, SC	160	2,377	1,583	15	872	4,454	6,751	3,520
Charlotte, NC	2	2	0	51	730	0	0	0
Chicago, IL	214	235	415	2	477	79	235	40
Cleveland, OH	0	1	0	0	51	1	120	78
Dallas-Fort Worth, TX	9,466	2,569	2,116	198	0	0	0	0
Houston-Galveston, TX	0	0	0	0	0	78	86	5
Laredo, TX	0	77	0	0	0	0	0	0
Los Angeles, CA	8,214	4,494	4,479	591	42	0	0	0
Miami, FL	1	0	0	0	0	0	0	0
Milwaukee, WI	0	0	0	0	0	0	0	0
Minneapolis, MN	0	0	0	0	0	1	0	0
New Orleans, LA	0	0	0	0	163	80	0	269
New York, NY	1,376	196	227	182	130	581	2,377	2,776
Norfolk, VA	0	39	0	0	423	1,265	200	511
Philadelphia, PA	0	0	0	0	0	2	1	0
San Francisco, CA	1	0	0	0	0	0	0	0
Savannah, GA	304	117	1,638	1,618	40	0	0	40
Seattle, WA	1,048	5,125	2,220	3,185	0	0	0	0
St. Louis, MO	0	0	0	0	40	0	40	0
Total	20,901	15,271	12,727	5,842	2,971	6,541	9,809	7,238
Source: Compiled from unadjusted official Commerce statistics.								

Simultaneous Presence in the Market

PET film produced in the United States was present in the market throughout the period for which data were collected. Table IV-9 presents monthly U.S. imports of PET film during January 2005-June 2008. Based on official U.S. import statistics, there were U.S. imports of PET film from each of the subject countries in each month during January 2005-June 2008 save for six months during 2005. During March, May, July, and August 2005 there were no imports from Brazil and during January, February, and March 2005 there were no imports from the UAE.

Table IV-9

PET film: U.S. imports, by source and month, January 2005-June 2008

Month	Brazil	China	Thailand	UAE	All other sources	Total
<i>Quantity (1,000 pounds)</i>						
January 2005	116	2,401	1,762	0	13,686	17,964
February 2005	37	2,583	1,966	0	11,334	15,919
March 2005	0	2,099	1,473	0	15,422	18,995
April 2005	156	1,718	2,196	2	14,347	18,418
May 2005	0	3,429	2,367	335	17,475	23,606
June 2005	169	3,585	2,056	334	12,819	18,963
July 2005	0	3,007	1,623	164	15,278	20,072
August 2005	0	1,713	1,755	277	13,946	17,691
September 2005	50	3,359	1,754	388	12,003	17,554
October 2005	216	4,085	1,082	388	12,321	18,093
November 2005	1,237	3,719	1,452	470	14,610	21,488
December 2005	398	3,304	1,414	614	13,757	19,488
January 2007	1,119	5,861	977	675	15,404	24,036
February 2006	1,342	3,197	665	677	21,260	27,141
March 2006	952	5,536	1,870	441	16,801	25,600
April 2006	1,544	4,384	1,113	285	16,005	23,331
May 2006	1,178	4,761	1,353	641	16,221	24,154
June 2006	1,088	4,157	1,681	591	15,428	22,945
July 2006	1,407	4,054	1,161	531	15,822	22,975
August 2006	1,164	3,236	1,789	396	13,166	19,751
September 2006	1,227	2,041	1,249	307	12,892	17,716
October 2006	1,217	3,807	1,064	536	13,979	20,602
November 2006	1,269	3,053	1,007	684	11,595	17,607
December 2006	1,211	3,295	1,345	776	12,016	18,642
January 2007	1,343	3,315	1,277	887	13,551	20,372
February 2007	1,511	3,300	964	722	11,073	17,570
March 2007	1,354	3,802	1,142	519	14,700	21,517
April 2007	1,546	4,595	1,167	535	11,720	19,563
May 2007	1,065	4,337	1,285	556	13,434	20,678
June 2007	545	5,634	886	564	12,544	20,174

Table continued on next page.

Table IV-9—Continued

PET film: U.S. imports, by source and month, January 2005-June 2008

Month	Brazil	China	Thailand	UAE	All other sources	Total
Quantity (1,000 pounds)						
July 2007	1,771	3,905	1,141	359	13,264	20,440
August 2007	1,317	4,691	1,004	1,233	17,589	25,834
September 2007	1,801	4,048	1,006	682	14,095	21,632
October 2007	1,775	3,209	1,041	953	13,798	20,776
November 2007	736	2,300	1,385	1,391	13,245	19,058
December 2007	1,444	2,131	429	1,408	15,396	20,809
January 2008	1,202	1,762	1,126	1,030	15,835	20,955
February 2008	1,627	2,802	842	1,036	13,878	20,184
March 2008	1,295	1,647	634	1,407	15,740	20,723
April 2008	903	1,147	1,086	1,215	14,395	18,745
May 2008	763	1,719	1,314	1,162	15,345	20,303
June 2008	1,031	550	841	1,388	17,052	20,862
Source: Compiled from unadjusted official Commerce statistics.						

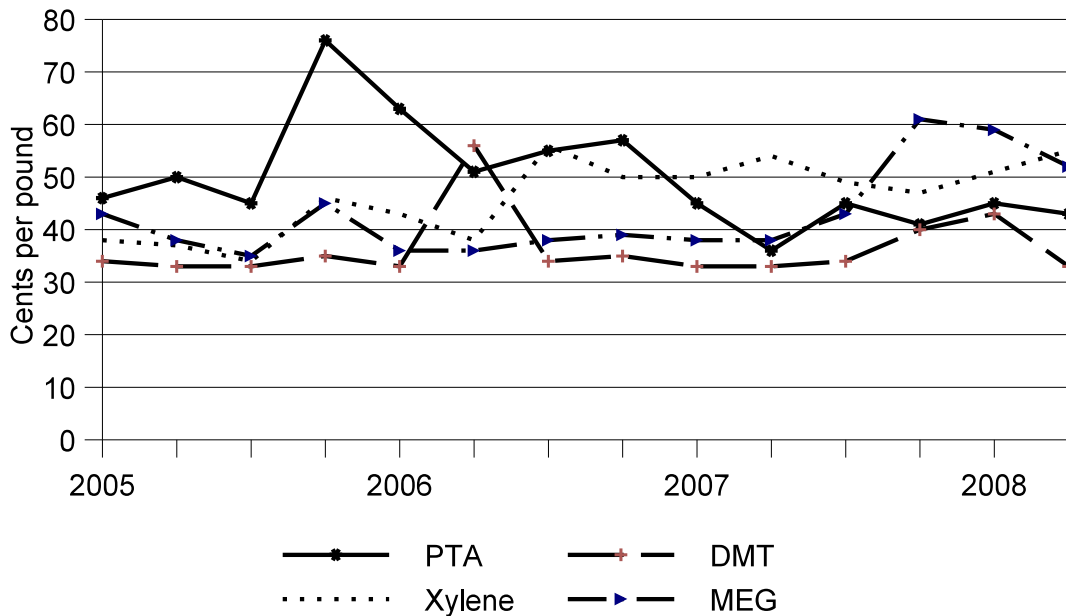
PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Materials

The basic raw materials for producing PET film are (1) dimethyl terephthalate (“DMT”) or purified terephthalic acid (“PTA”) and (2) monoethylene glycol (“MEG”), which come from xylene and ethylene, respectively. These chemicals are petroleum-based and are subject to global oil price fluctuations, so as world oil prices rise so do the prices for chemicals and the cost of polyester film. Ethylene usually is manufactured from natural gas while xylene is a byproduct from oil refineries.^{1,2}

Figure V-1
PET film: Raw material costs, as reported by U.S. producers, January 2005-June 2008



Source: USITC Dataweb, accessed August 23, 2008.

¹ PET Film Review, USITC.

² The respondents argued that ***. Respondent Bemis' posthearing brief, exhibit 1.

Energy costs are another important factor in the production of PET film. Natural gas prices declined somewhat in 2006 and 2007 and then increased in 2008. Crude oil prices doubled from 2005 to 2008.

Item	2005	2006	2007	2008
U.S. natural gas industrial price ¹	\$8.56	\$7.86	\$7.58	\$8.32 ²
U.S. crude oil price ³	\$56.64	\$66.05	\$72.34	\$114.15 ⁴
¹ In dollars per thousand cubic feet. ² January-July 2008. ³ U.S. spot price f.o.b. (In dollars per barrel) - area: WTI - Cushing, Oklahoma. ⁴ January-May 2008. Source: U.S. Energy Information Administration, http://www.eia.doe.gov , accessed August 25, 2008.				

Transportation Costs to the U.S. Market

Transportation costs for PET film from Brazil, China, Thailand, and the UAE to the United States (excluding U.S. inland costs) are estimated for 2007 in the following tabulation. Estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.³

Country	Estimated shipping cost in 2007 (percent)
Brazil	6.0
China	9.5
Thailand	12.0
UAE	11.9

U.S. Inland Transportation Costs

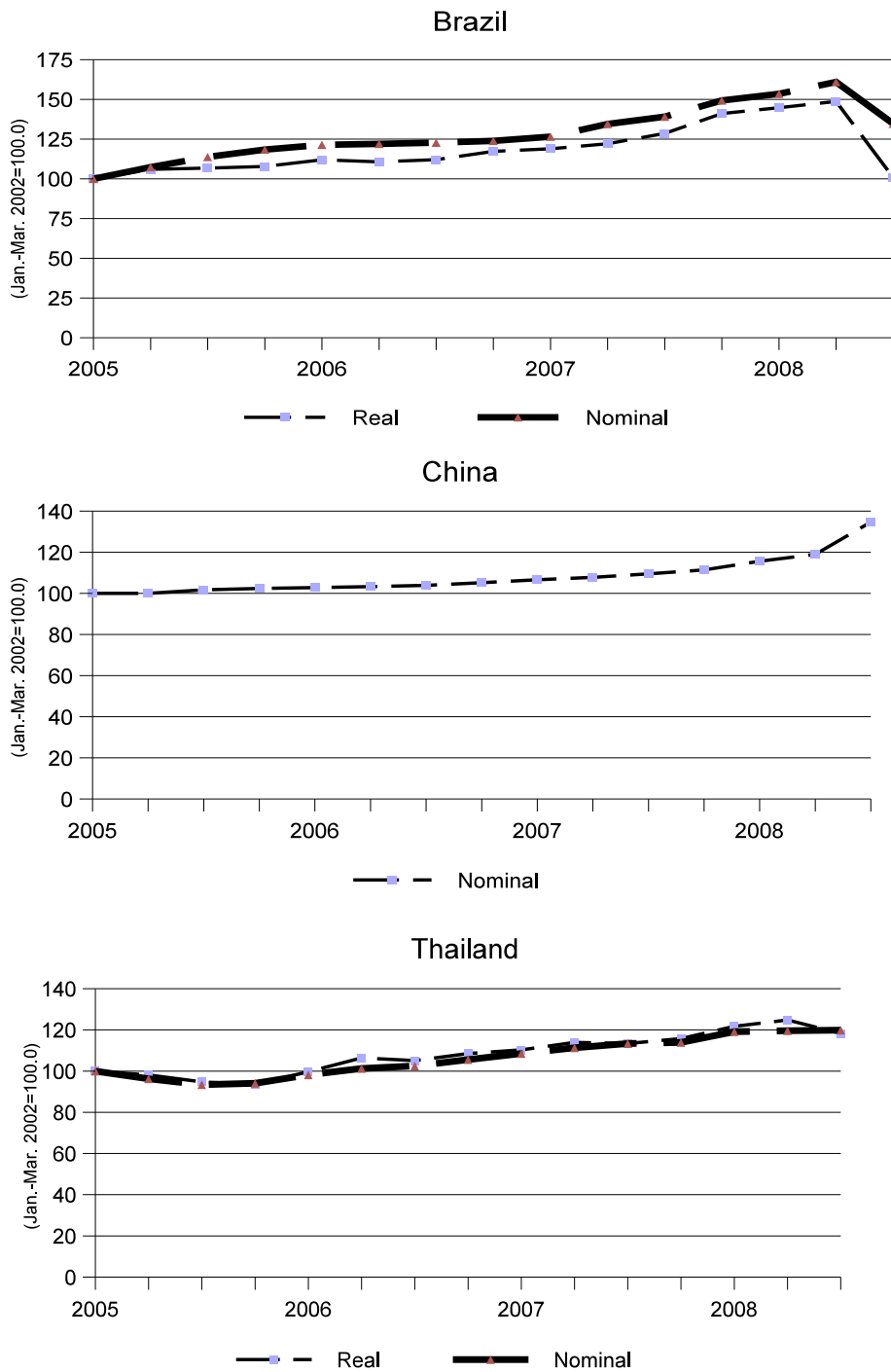
U.S. producers' U.S. inland transportation costs, as a share of the total delivered cost for PET film, were reported by 6 of 7 responding producers to be 5 percent or less of the total delivered cost of PET film; one producer reported that such costs were 6.5 percent. Similarly, about half of the responding importers (7 of 16) reported that U.S. inland transportation costs were 6.5 percent or less of the total delivered cost of PET film, and the other 9 responding importers' costs were higher (from 10 percent to 15 percent).

Exchange Rates

Nominal and real exchange rates for the currencies of Brazil, China, and Thailand in relation to the U.S. dollar during January 2005-June 2008 are presented in figure V-2. Throughout the period for which data were collected, the UAE currency was pegged to the U.S. dollar at a fixed rate of 3.67 Dirham per U.S. dollar.

³ Estimates are based on HTS subheading 3920.62.0090.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates of the currencies of Brazil, China,
and Thailand relative to the U.S. dollar, January 2005-June 2008



Source: IMF International Financial Statistics at <http://www.imfstatistics.org/imf/>, Federal Reserve Bank of St. Louis at <http://stlouisfed.org/>. Data retrieved August 25, 2008.

PRICING PRACTICES

Pricing Methods

PET film is sold on both a contract and on a spot sales basis. One producer sold exclusively on a long-term contract basis; one sold using only short-term contracts or on a spot basis; and four sold using long- and short-term contracts and on a spot basis. Producers reported that long-term contracts were for up to three years; four firms reported that prices renegotiated during the contract period, one firm reported that contracts may be renegotiated during the contract period. Five of six producers reported that long-term contracts contain meet-or-release provisions. Three producers reported that short-term contracts were for one year; one reported contracts of nine months; and another reported some contracts as short as 3-6 months.

Importers reported selling mostly on a spot basis or on a short-term contract basis; only two importers sold on a long-term contract basis and such sales accounted for 85-90 percent of these firms' total sales. One of the two importers selling on a long-term contract basis reported that the contract period was two years; the other reported that the contract period was three years. With regard to the duration of short-term contracts, four importers reported one to six months, one reported three months, and two reported up to a year.

The majority of firms reported selling PET film on a delivered basis. Five U.S. producers reported selling on a delivered basis; one reported selling on an f.o.b. basis; and one reported both on a delivered and f.o.b. basis. Five importers reported selling on a delivered basis; two reported selling on an f.o.b. basis, and four reported selling on both an f.o.b. and a delivered basis.

Producers and importers reported offering some discounts, typically on a case-by-case basis such as large accounts, annual contracts, multiple shipments, early payment, and rebates upon reaching volume thresholds. Five of seven U.S. producers reported offering discounts for their sales of PET film. One reported that discounts may be part of contract agreements; one offers annual volume discounts for certain large accounts; one reported that discounts are customer-specific; and two reported volume discount rebates. Fourteen of 21 importers reported that they may offer discounts to their customers. Specifically, five importers reported offering discounts on a case-by-case basis such as for large volume orders or to meet competition; three reported early payment discounts; and two reported annual volume discounts.

PRICE DATA

The Commission requested U.S. producers and importers of PET film to provide quarterly data for the total quantity and delivered value of PET film shipped to unrelated U.S. customers during January 2005-September 2007. Data were requested for the following products:

Product 1.---48 gauge plain film (for packaging/industrial markets).

Product 2.---48 gauge corona-treated film (for packaging/industrial markets).

Product 3.---48 gauge chemically-treated film (for packaging/industrial markets).

Product 4.---43-44 gauge balance shrink film (for thermal lamination).

Product 5.---45-60 gauge shrink stable film (for hot-stamping applications).

Product 6.---92 gauge plain film (for packaging/industrial markets).

Product 7.---120 gauge plain film (for packaging/industrial markets).⁴

⁴ U.S. producer *** reported pricing data for product 7 for one quarter, importer *** reported pricing data for imports from Thailand for one quarter, and importer *** reported six quarters of data for imports from the UAE. No price comparisons were possible; therefore, these data are not presented in the analysis.

Six U.S. producers,⁵ one importer of PET film from Brazil,⁶ eight importers of PET film from China,⁷ three importers of PET film from Thailand,⁸ one importer of PET film from the UAE,⁹ and seven importers of PET film from other countries¹⁰ provided usable pricing data for sales of the requested products, although not all firms reported pricing for all quarters. By quantity, pricing data provided by responding firms accounted for 22.9 percent of U.S. commercial shipments of U.S.-produced PET film during January 2005-June 2008, *** percent of reported U.S. commercial shipments of imports from Brazil, 61.9 percent of reported U.S. commercial shipments of imports from China, 40.2 percent of reported U.S. commercial shipments of imports from Thailand, and *** percent of such shipments from the UAE. Price data are presented in tables V-1 to V-6 and figure V-3.¹¹

Table V-1

PET film: Weighted-average delivered prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 2005-June 2008

* * * * *

Table V-2

PET film: Weighted-average delivered prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2005-June 2008

* * * * *

Table V-3

PET film: Weighted-average delivered prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, January 2005-June 2008

* * * * *

Table V-4

PET film: Weighted-average delivered prices and quantities of domestic and imported product 4 and margins of underselling/(overselling), by quarters, January 2005-June 2008

* * * * *

Table V-5

PET film: Weighted-average delivered prices and quantities of domestic and imported product 5 and margins of underselling/(overselling), by quarters, January 2005-June 2008

* * * * *

Table V-6

PET film: Weighted-average delivered prices and quantities of domestic and imported product 6 and margins of underselling/(overselling), by quarters, January 2005-June 2008

* * * * *

⁵ ***.

⁶ ***.

⁷ ***.

⁸ ***.

⁹ ***.

¹⁰ ***.

¹¹ Additional analysis of the pricing data is presented in Appendix D (nonsubject countries) and Appendix E (imports of Chinese PET film sold by traditional importers and by firms that are also U.S. producers).

Figure V-3
PET film: Weighted-average delivered prices of products 1-6, by country, January 2005-June 2008

* * * * *

Price Trends

Weighted-average prices for U.S.-produced PET film generally fluctuated during January 2005-June 2008.^{12,13} Prices for domestically produced products 1-6 were lower at the end of the period as compared to the beginning of the period. Prices for imports from the subject countries follow a similar pattern to the prices for domestically produced product. A summary of price trends is shown in table V-7.

When purchasers were asked if there was a price leader in the PET film industry, 11 responding purchasers reported “yes,” with the vast majority citing Dupont and two reported that they are not aware of any price leaders. Most purchasers reported that this firm exhibited price leadership by being the first to announce changes in price.

¹² The petitioners testified that post-2007 PET film prices have increased due to increases in energy costs. Pre-2007 prices were historically low due to the additional capacity in Southeast Asia, China, and other regions. Hearing transcript, pp. 58-60 (Eckles, Kim).

¹³ The respondents reported that “PET film resin cost rose with oil and other energy costs, and the effect was world wide.” PET film price increase is also due to devaluation of the U.S. dollar, as well as some seasonality.” (Respondent Bemis’ posthearing brief , p. 9).

Table V-7
PET film: Summary of weighted-average f.o.b. prices, by product, and by country

Item	Number of quarters	Low price (per pound)	High price (per pound)	Change in price ¹ (percent)
Product 1				
United States	14	\$1.11	\$1.34	(7.7)
Brazil	5	***	***	10.0
China	14	1.02	1.19	2.8
Thailand	0	-	-	-
UAE	6	***	***	4.2
Product 2				
United States	14	1.07	1.29	(4.4)
Brazil	14	***	***	(11.1)
China	14	1.00	1.22	0.7
Thailand	14	0.99	1.22	(4.2)
UAE	13	***	***	3.2
Product 3				
United States	14	1.27	1.40	(0.9)
Brazil	12	***	***	14.6
China	0	-	-	-
Thailand	14	1.16	1.40	(10.6)
UAE	12	***	***	1.8
Product 4				
United States	14	0.89	1.39	(23.5)
Brazil	0	-	-	-
China	6	1.13	1.17	(3.4)
Thailand	14	1.12	1.22	(3.3)
UAE	13	***	***	1.9
Product 5				
United States	14	1.08	1.34	(16.7)
Brazil	5	***	***	(3.9)
China	13	0.89	1.27	(18.2)
Thailand	3	0.94	0.95	0.6
UAE	5	***	***	15.5
Product 6				
United States	14	1.30	1.48	(0.9)
Brazil	0	-	-	-
China	14	1.01	1.22	(0.7)
Thailand	10	1.24	1.33	3.7
UAE	11	***	***	21.0
¹ Percentage change from the first quarter in which price data were available to the last quarter in which price data were available, based on unrounded data.				
Source: Compiled from data submitted in response to Commission questionnaires.				

Price Comparisons

Prices for imported PET film from subject countries were lower than those for U.S.-produced PET film in 82 percent of possible comparisons. A summary of margins of underselling and overselling is presented in table V-8.

Table V-8
PET film: Summary of underselling/(overselling), by country

Source	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
Brazil	25	***	***	11	***	***
China	54	0.5 to 25.6	12.0	7	0.6 to 9.5	3.0
Thailand	43	0.4 to 18.4	6.8	12	0.2 to 25.8	6.6
UAE	52	***	***	8	***	***
Total	174	0.2 to 33.7	10.5	38	0.1 to 25.8	4.9

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

LOST SALES AND LOST REVENUES

In the preliminary phase of these investigations, petitioners provided a list of 35 lost sale allegations due to competition with imports from Brazil, China, Thailand, and the UAE since January 2004; petitioners also provided 15 lost revenue allegations; no lost sale and no lost revenue allegations were reported in the final phase of the investigations. The lost sale allegations totaled 64.85 million pounds and involved approximately \$79.1 million of PET film while the lost revenue allegations totaled approximately \$1.22 million and involved approximately 6.3 million pounds of PET film. Staff attempted to contact the customers named in the lost sale and lost revenue allegations. Information obtained from the companies named in these allegations is presented in tables V-9 and V-10 and is discussed below.

Table V-9
PET film: U.S. producers' lost sale allegations

* * * * *

Table V-10
PET film: U.S. producers' lost revenue allegations

* * * * *

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

All eight producers that provided trade data also provided useable financial data.¹ In addition to commercial sales, *** of the firms (***) reported financial data on their internal consumption, and *** reported minuscule amounts of intracompany transfers. On a quantity basis, internal consumption accounted for *** percent of net sales in 2007.²

Operations on PET Film

Aggregate income-and-loss data for the producers on their total operations producing PET film (commercial sales, internal consumption, and related party transfers) are presented in table VI-1. In sum, the financial results of the domestic industry reflected lower net sales (due to lower sales quantities and unit values) and the combination of higher cost of goods sold (“COGS”) and selling, general, and administrative (“SG&A”) expenses on a per-unit basis, resulting in lower profitability between 2005 and 2007. Between the interim periods, net sales quantity and value were both lower; costs were lower in January-June 2008 compared with January-June 2007 because of the lower quantity sold and because of declines in overall per-unit costs, particularly SG&A expenses. As a result, operating profits rose by about one-third. Net income before taxes and cash flow tended to follow operating income.

Table VI-1

PET film: Results of producers on their trade, transfer, and internal consumption operations, fiscal years 2005-07, January-June 2007, and January-June 2008

* * * * *

The dollar value, average unit value, and ratio to net sales of raw materials increased between 2005 and 2007 and were higher in January-June 2008 than in January-June 2007 (table VI-1). The share of raw materials in total COGS also increased. The incremental increase was highest between January-

¹ These firms are: 3M; Curwood; DuPont Teijin; Kodak; Mitsubishi; SKC; Terphane; and Toray. Each reported for its fiscal year that ends on December 31 on the basis of GAAP. The data presented here differ from those presented in the preliminary phase of these investigations in that the data of one additional U.S. firm is included here and recycled scrap was removed from internal consumption and included here as an offset to raw materials in cost of goods sold (“COGS”). These data are consistent with the data reported in the PET film review that the Commission recently concluded. See *Polyester Terephthalate Film, Sheet, and Strip from India and Taiwan*, Investigation Nos. 701-TA-415 and 731-TA-933 and 934 (Review), publication 3994, April 2008. Commission staff verified the questionnaire response of DuPont Teijin Films; see Verification Report, Memorandum INV-FF-115, September 9, 2008.

In the preliminary phase of these investigations the Commission determined that appropriate circumstances did not exist to exclude Terphane from the domestic industry as a related party but would seek further data. See Views of the Commission, *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates*, Investigation Nos. 731-TA-1131-1134 (Preliminary), publication 3962, November 2007, p. 9; also see the separate discussions of Vice Chairman Aranoff and Commissioner Okun (footnote 40) and Commissioner Pinkert (footnote 41). Financial data for the domestic industry excluding Terphane as well as Curwood are presented in app. F.

² In the preliminary phase of these investigations, the Commission determined that the statutory captive production provision was not met. See Views of the Commission, *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates*, Investigation Nos. 731-TA-1131-1134 (Preliminary), publication 3962, November 2007, pp. 16-17.

June 2007 and January-June 2008 for each of these measures. For example, the ratio of raw materials to total COGS increased from 50 percent to 51 percent between 2005 and 2007, but was 57 percent in January-June 2008 compared with 52 percent in the same period in 2007.³

Selected company-by-company data are presented in table VI-2. DuPont Teijin, ***. In an effort to ***, the company *** of PET film related employees and incurred ***.⁴ It also recorded \$*** in asset impairment charges on December 31, 2007 that it ascribed to: adverse changes in market conditions, the rapid rise in oil-related raw material costs, and a decline in business volume ***.⁵ On a quantity basis, DuPont Teijin *** of its PET film every period.

Kodak, the *** producer measured by sales value in 2007, internally consumed the vast majority of its PET film to produce ***; it reported *** in 2007 and interim 2008. The company reported decreasing ***. Kodak reported that it ***.⁶

Table VI-2

PET film: Selected financial data of producers on their trade, transfer, and internal consumption operations, fiscal years 2005-07, January-June 2007, and January-June 2008

* * * * *

Mitsubishi, *** producer, reported that it has reduced the number of its employees, ***.⁷ At least in the short term, Mitsubishi's efforts to ***.

SKC, ***. Although the firm reported *** increased sales from 2005 to 2007 (***, by value), SKC's ***, which it attributed to ***.⁸ SKC reported increased net sales between the interim periods, but also reported ***.

3M *** the majority of its PET film production in 2005 and 2006 and ***.⁹ The company reported decreasing sales in every full-year period, but ***. 3M reported unit sales prices that were ***. Contrary to other U.S. producers, 3M ***.¹⁰

*** reported irregular profitability during the period for which data were gathered. *** reported an *** in January-June 2008; *** reported an *** in 2005 but *** in 2006, 2007, and interim 2008.¹¹ Sales unit values of *** were generally below those of other U.S. producers, except in January-June 2008 when *** unit values were slightly higher than the average. *** reported increasing unit sales values and unit cost of goods sold in every period, while *** unit sales values declined between the full-year periods and then were higher in interim 2008 compared to interim 2007; its unit cost of goods sold declined ***

³ For a discussion of raw materials, *see* petitioners' posthearing brief, responses to Commission questions, pp. 7 and 22-24, and hearing transcript, pp. 60-61 (Trice).

⁴ DuPont Teijin's producer questionnaire, p. 16 (response to question III-10).

⁵ DuPont Teijin's producer questionnaire, p. 16 (response to question III-10). Also, *see* petitioners' posthearing brief, p. 11, and responses to Commission questions, pp. 29-30 for ***. DuPont Teijin recorded a \$*** impairment charge to *** to estimated fair value. In connection with this charge, DuPont Teijin also wrote off \$*** of book value of goodwill.

⁶ Kodak's producer questionnaire, p. 4 (response to question II-2A and II-2B).

⁷ Mitsubishi's producer questionnaire, p. 4 (response to question II-2A). Also, Hearing transcript, pp. 31-32 (Trice).

⁸ SKC producer questionnaire, p. 6 (response to question II-4).

⁹ 3M producer questionnaire, p. 6 (response to question II-11). 3M reported commercial sales to ***.

¹⁰ 3M producer questionnaire, p. 4 (response to question II-2C).

¹¹ ***. Producer questionnaire, pp. 4-5 (response to questions II-2A and II-2B).

between 2005 and 2006, increased in 2007, and was the same in interim 2007 and interim 2008. *** the vast majority of its production ***. It reported ***.¹²

Aggregate income-and-loss data for the commercial sales and related party transfers of U.S. producers are presented in table VI-3 and are summarized briefly here. Net sales quantities declined ***, while net sales values increased *** from 2005 to 2007; both increased between the interim periods. Gross profits and operating profits both fell between the full-year periods before increasing from interim 2007 to interim 2008. Petitioners attributed the decline in operating profits between the full years and the increase between the interim periods to a combination of factors, including loss of volume to and price suppression from imports and the effect of these investigations. They stated that reducing the production of commodity products in favor of increasing the production of specialty products gave rise to higher unit fixed costs because of reduced throughput and greater setup times and lower productivity.¹³

Aggregate income-and-loss data for the internal consumption of the U.S. producers are presented in table VI-4 and are summarized briefly here. Net sales quantities and values decreased between every period, mostly attributable ***. Operating income decreased *** from 2005 to 2007 but was *** between January-June 2007 and January-June 2008. Unit sales values decreased from 2005 to 2007 and were higher in January-June 2008 than in January-June 2007, while unit cost of goods sold increased during the full-year periods and was essentially flat between the two interim periods.

Table VI-3
PET film: Results of producers on their commercial (trade sale) and related party transfer operations, fiscal years 2005-07, January-June 2007, and January-June 2008

* * * * *

Table VI-4
PET film: Results of producers on their internal consumption operations, fiscal years 2005-07, January-June 2007, and January-June 2008

* * * * *

The variance analysis showing the effects of prices and volume on the producers' trade, transfer, and internal consumption operations, and of costs and volume on their total cost, is shown in table VI-5. The analysis illustrates that from 2005 to 2007 profitability decreased because the per-unit sales values decreased while the per-unit operating costs (net cost/expense variance) increased; moreover, sales volume decreased. When comparing January-June 2007 to January-June 2008, profitability increased although sales volume declined because per-unit revenues (price variance) increased while per-unit operating costs (net cost/expense variance) declined.

Table VI-5
PET film: Variance analysis of U.S. producers on their trade, transfer, and internal consumption operations, fiscal years 2005-07, January-June 2007, and January-June 2008

* * * * *

Table VI-6 presents a variance analysis for U.S. producers in summary form for their commercial operations and transfers and for their internal consumption separately.

¹² E-mail from *** to Commission staff on August 28, 2008.

¹³ Hearing transcript, pp. 28 (Eckles), 31 (Trice), 103 (Kim); also, *see* petitioners' posthearing brief, answers to Commission questions, pp. 30-32.

Table VI-6

PET film: Summary variance analysis of U.S. producers on their trade and transfer operations and on their internal consumption separately, fiscal years 2005-07, January-June 2007, and January-June 2008

* * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Domestic PET film producers' capital expenditures and research and development (R&D) expenses are presented in table VI-7. *** dominated the expenditures.

*** of reported R&D expenses.

Table VI-7

PET film: U.S producers' capital expenditures and research and development expenditures, fiscal years 2005-07, January-June 2007, and January-June 2008

Item	Fiscal year			January-June	
	2005	2006	2007	2007	2008
<i>Value (1,000 dollars)</i>					
Capital expenditures:					
3M	***	***	***	***	***
Curwood	***	***	***	***	***
DuPont Teijin	***	***	***	***	***
Eastman Kodak	***	***	***	***	***
Mitsubishi	***	***	***	***	***
SKC	***	***	***	***	***
Terphane	***	***	***	***	***
Toray	***	***	***	***	***
Total	37,058	43,046	92,880	38,122	57,235
Research and development expenses:					
3M	***	***	***	***	***
Curwood	***	***	***	***	***
DuPont Teijin	***	***	***	***	***
Eastman Kodak	***	***	***	***	***
Mitsubishi	***	***	***	***	***
SKC	***	***	***	***	***
Terphane	***	***	***	***	***
Toray	***	***	***	***	***
Total	***	***	***	***	***
Source: Compiled from data submitted in response to Commission questionnaires.					

ASSETS AND RETURN ON INVESTMENT

Data on the domestic PET film producers' assets and their return on investment (defined as operating income divided by total assets) are presented in table VI-8. The value of total assets decreased irregularly from 2005 to 2007; operating income and the return on investment also decreased from 2005 to 2007.

Table VI-8
PET film: U.S producers' value of assets and return on investment, fiscal years 2005-07

* * * * *

Changes in the book value of fixed assets are typically driven by capital expenditures (which increase asset costs) and depreciation charges (which decrease book value). Increases in book value were recorded by ***, which reported \$*** of capital expenditures during 2006-07 with a resulting increase of \$*** in book value during 2006-07 and \$*** during 2007-08). These were related to upgrades at its facilities in ***, and equipment modifications at its plant in **. A number of U.S. producers reported higher accumulated depreciation in 2007 compared with 2005 leading to lower book value of fixed assets. Additionally, ** in 2007, as noted earlier.

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual negative effects since January 1, 2005, on their return on investment, growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of PET film from Brazil, China, Thailand, and the United Arab Emirates. Their responses are as follows:

Actual Negative Effects

DuPont Teijin	***.
Curwood	***.
Kodak	***.
Mitsubishi	***. ¹⁴ ***.
SKC	***. ¹⁵
Terphane	***.

¹⁴ Also, see the firm's response to question II-2A (which asks about changes in the character of PET film operations) in the preliminary phase of these investigations.

¹⁵ This firm stated in response to this question in the preliminary phase of these investigations: ***.

Toray ***.

3M ***.

Anticipated Negative Effects

DuPont Teijin ***.¹⁶

Curwood ***.

Kodak ***.

Mitsubishi ***.

SKC ***.

Terphane ***.

Toray ***.

3M ***.

¹⁶ Also, see this firm's response to this question in the preliminary phase of these investigations.

PART VII: THREAT CONSIDERATIONS AND *BRATSK* INFORMATION

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission in relation to *Bratsk* rulings.

THE INDUSTRY IN BRAZIL

As noted earlier in this report, Terphane is the only producer/exporter of PET film in Brazil. Data provided by Terphane are presented in table VII-1. According to counsel for Terphane, PET film imports from Brazil will not increase in the future and, if anything, will decline for "many reasons."¹ Among the reasons cited for this possibility are: (1) Terphane is operating at full production capacity; (2) ***; (3) Terphane has also been shifting its limited production capacity to nonsubject PET film;² and (4) trade remedies in Brazil are *** opportunities in Brazil.^{3 4}

Table VII-1

PET film: Brazil's production capacity, production, shipments, and inventories, 2005-07, January-June 2007, January-June 2008, and projected 2008-09

* * * * *

THE INDUSTRY IN CHINA

The petition listed 53 Chinese firms believed to be producing PET film. Foreign producer/questionnaires were sent to the nine firms that responded in the preliminary phase of these investigations via fax and/or e-mail. Eight firms provided useable responses and those data are presented in table VII-2. The exports to the United States of these firms were equivalent to 75.5 percent of PET film U.S. imports from China in 2007 reported in official statistics. China's share of shipments going to the home market dropped from 82.6 percent in 2005 to 72.8 percent in 2007. Over the same period, the share of Chinese shipments exported to the United States increased from 8.9 to 10.9 percent while the share of shipments going to all other export markets rose from 7.4 to 15.6 percent.

¹ Terphane's postconference brief, p. 4.

² Metallized and other higher value-added nonsubject PET film. Ibid., pp. 6-7.

³ Terphane's postconference brief, pp. 4-8.

⁴ In this regard, counsel notes:

"In 2006, Terphane filed anti-dumping and anti-subsidy petitions with the Brazilian government against Indian PET film imports. Brazilian authorities initiated an investigation in late February 2007. As indicated above, the investigation has already had an impact on the Brazilian PET film market, with Terphane's share of the market ***. . . "Terphane expect{s} significant antidumping and countervailing duties to be imposed on Indian PET film, similar to what occurred in the U.S. and Europe further *** Terphane's opportunities in the Brazilian market, and concomitantly ***." ***.

Table VII-2

PET film: China's production capacity, production, shipments, and inventories, 2005-07, January-June 2007, January-June 2008, and projected 2008-09

* * * * *

THE INDUSTRY IN THAILAND

The petition listed three Thai firms believed to be producing PET film. All three firms provided useable responses and those data are presented in table VII-3. The exports to the United States of these firms were equivalent to 108.3 percent of PET film U.S. imports from Thailand in 2007 reported in official statistics. ***.⁵ The Thai PET film industry is export oriented with approximately two-thirds of its shipments having gone to the export market during 2005-07. ***.

Table VII-3

PET film: Thailand's production capacity, production, shipments, and inventories, 2005-07, January-June 2007, January-June 2008, and projected 2008-09

* * * * *

THE INDUSTRY IN THE UAE

As noted earlier in this report, Flex Middle East (FME) is the only producer/exporter of PET film in the UAE. All of FME's product is imported into the United States by its related company, Flex Americas (FAM). Data provided by FME are presented in table VII-4. FME's parent company, Uflex, Ltd., is a PET film producer in India and is subject to antidumping duties in the United States as a result of the Commission's 2001-02 investigations and affirmative determination in the Commission's 2008 review investigation. FME's reported exports to the United States were equivalent to 102.7 percent of PET film U.S. imports from the UAE in 2007. At the conference, representatives from FME/FAM stated that the UAE facility was designed to primarily serve markets in the Middle East and Europe with a smaller share of its production going to the United States.⁶ Additionally, FME/FAM noted that its parent, Flex, Ltd. planned to construct a PET film facility in Mexico. In this regard FME/FAM stated:

"We are now planning to construct, it's already announced, a PET film manufacturing plant in Mexico. This was announced and approved by board of directors well before this petition was filed. It is to supply the local Mexican market, which is quite a big market in Latin America, South America, as well as North and South America. The Mexico plant is good for U.S. market because of less transit time and being closer to the customers. The Mexico plant will be able to supply the U.S. customers within five days generally by rail or road. In contrast, it takes four to five weeks for PET film to arrive into U.S. from UAE plant."⁷

At the hearing, representatives from FME/FAM stated that the Mexican facility was conceived in early 2006, the company took possession of the land in early 2007, they expect the plant to be

⁵ Polyplex Corp., Ltd. (India) is subject to antidumping duties in the United States. Additionally, the Government of Brazil is conducting antidumping investigations with respect to imports of PET film from India, Korea, and Thailand.

⁶ Conference transcript, pp. 83-85 (Katsuria).

⁷ Ibid., pp. 85-86 (Katsuria).

commissioned in 2009, and will only produce material against orders.⁸ The Mexican facility will have a batch process capacity of *** per year as compared to *** pounds per year capacity in the UAE in 2008.⁹

Table VII-4
PET film: The UAE's production capacity, production, shipments, and inventories, 2005-07, January-June 2007, January-June 2008, and projected 2008-09

* * * * *

U.S. IMPORTERS' INVENTORIES

Inventories of PET film as reported by U.S. importers are presented in table VII-5.

⁸ Hearing transcript, pp. 190 and 194 (Tyle).

⁹ Flex Middle East FZE/Flex America's post hearing brief, exhibit 1, p. 5.

Table VII-5

PET film: U.S. importers' end-of-period inventories of imports, 2005-07, January-June 2007, and January-June 2008

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Imports from Brazil:					
Inventories (1,000 pounds)	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***
Imports from China:					
Inventories (1,000 pounds)	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***
Imports from Thailand:					
Inventories (1,000 pounds)	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***
Imports from the UAE:					
Inventories (1,000 pounds)	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***
Imports from subject sources:					
Inventories (1,000 pounds)	3,747	4,822	7,063	6,393	4,128
Ratio to imports (percent)	7.7	8.5	11.7	11.3	8.3
Ratio to U.S. shipments of imports (percent)	8.2	9.1	12.6	12.5	7.9
Imports from all other sources:					
Inventories (1,000 pounds)	8,031	7,785	11,176	8,250	9,744
Ratio to imports (percent)	10.2	8.1	16.9	11.8	14.2
Ratio to U.S. shipments of imports (percent)	10.1	8.1	18.1	12.1	14.0
Imports from all sources:					
Inventories (1,000 pounds)	11,778	12,623	18,239	14,643	13,872
Ratio to imports (percent)	9.3	8.2	14.4	11.6	11.7
Ratio to U.S. shipments of imports (percent)	9.4	8.5	15.4	12.3	11.4
Note.--Ratios are based on firms that provided both inventory data and import and/or shipment data. January-June ratios are based on annualized import and shipment data.					
Source: Compiled from data submitted in response to Commission questionnaires.					

IMPORTS SUBSEQUENT TO JUNE 30, 2008

Importer questionnaire respondents reported there were more than ***.

ANTIDUMPING DUTY ORDERS IN THIRD-COUNTRY MARKETS

In 2005-06, the EU, after conducting sunset reviews, continued to impose antidumping duties on PET film from Thailand and a number of other countries.¹⁰ In March 2007, the Government of Brazil initiated antidumping investigations against PET film imports from India, Korea, and Thailand. The investigations resulted in ***.¹¹

INFORMATION ON NONSUBJECT SOURCES

“Bratsk” Considerations

As a result of the Court of Appeals for the Federal Circuit (“CAFC”) decision in *Bratsk Aluminum Smelter v. United States* (“Bratsk”), the Commission is directed to:

*undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.” The additional inquiry required by the Court, which we refer to as the Bratsk replacement/benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.”*¹²

Nonsubject Source Information

In 2007, nonsubject imports accounted for 66.2 percent of total U.S. PET film imports for consumption by quantity as reported under HTS statistical reporting number 3920.62.0090.¹³ The majority of U.S. imports of PET film from nonsubject sources under this statistical reporting number during the period examined in these investigations was from Canada, Japan, Korea, the Netherlands, Mexico, Oman, and Taiwan which, in the aggregate, accounted for about 85 percent of all nonsubject imports in 2007. For purposes of these investigations, the Commission chose to examine three nonsubject

¹⁰ India (antidumping and countervailing duties), Indonesia, Korea, Malaysia, and Taiwan (antidumping duties). Additionally, South Africa and Turkey currently impose antidumping duties on Indian producers.

¹¹ ***.

¹² *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

¹³ This statistical reporting number may include certain PET film, sheet, and strip imports not subject to the investigation, including out of scope PET film having coatings greater than 0.254 microns (“Equivalent PET film”), PET copolymers, and possibly other products in question as out of scope, including amorphous PET (APET), crystallized PET (CPET), and other miscellaneous PET products.

countries under existing antidumping duty orders (Korea, India, and Taiwan)^{14 15} together with four countries free of dumping orders (Indonesia, Malaysia, Mexico, and Turkey). Canada and Oman, nonsubject countries believed to predominately ship non-scope PET film, were also examined.¹⁶

The largest PET film producers and consumers in recent years include the United States, China, Japan, Korea, India, Taiwan, and Western Europe.¹⁷ In 2007, these producers were also significant global exporters of PET film, although trade deficits were experienced in China, Japan, and the United States.¹⁸ In 2004, Western Europe exported a little more than *** percent of its production;¹⁹ Korea, also about *** percent; Taiwan about ***, India about *** percent, and China and Japan about *** percent each.²⁰ The demand for PET film overall continues to grow at an annual rate of 5-6 percent worldwide²¹ because of its unique properties and myriad end uses. Its broad range of chemical, physical, and thermal properties permits it to be used in a number of market segments, including packaging, industrial, electronics, graphics, magnetic media, and imaging applications.

Petitioners view the Bratsk analysis determination as inconsequential, principally because the domestic industry has reportedly benefitted since the preliminary affirmative determinations of reasonable indication of material injury were made by the Commission, and preliminary dumping duties were imposed by Commerce. Petitioners also argue that nonsubject imports under the discipline of dumping orders are now fairly traded and are no longer injurious to the domestic industry, while the nonsubject imports free of dumping orders, although fairly traded for the most part, are nominally too small to replace the subject imports, and thus not injurious to the domestic industry. Specialty products that carry a higher price, whether fairly traded or not, are not viewed as injurious to the domestic industry because injury is principally due to commodity grade PET film imports.²² In petitioner's view, there are only three nonsubject countries without dumping orders—Turkey, Malaysia, and Indonesia—that may have surplus availability for export, and these countries combined reportedly only have 150,000 tons of capacity, roughly half of which is owned by petitioners ***, neither of whom intends to export to the United States.²³ Petitioners do concede to respondents' and other supporting parties' allegations that shortages occurred following the imposition of the orders on subject countries, stating that, in their view, lead times have increased by are being corrected by adjusting product mix by the domestic industry.²⁴

Respondents and supporting parties take the opposite view and consider that sufficient evidence exists to support an affirmative Bratsk determination by the Commission. Respondents cite PET film statistics that show an adequate supply of fairly traded nonsubject PET film to replace subject tonnages.²⁵ Additionally, respondents have testified to domestic shortages of commodity product and the inability of domestic producers to meet existing contracts that have resulted in the necessity to replace lost contract

¹⁴ *Polyethylene Terephthalate (PET) Film from Korea*, Inv. No. 731-TA-459 (Second Review), USITC Publication 3800, September 2005.

¹⁵ *Polyethylene Terephthalate Film, Sheet, and Strip from India and Taiwan*, Inv. Nos. 701-TA-415 and 731-TA-933-934 (Review), USITC Publication 3994, April 2008.

¹⁶ Petitioners' posthearing brief, response to Commissioner Lane's questions, Part II, pp. 8-9, 15.

¹⁷ ***.

¹⁸ Global Trade Atlas database.

¹⁹ There is a significant amount of intra regional trade between the various European countries, while a trade deficit has traditionally been experienced with countries outside Europe.

²⁰ Ibid.

²¹ ***.

²² Petitioners' posthearing brief, pp. 1-4; 19.

²³ Petitioners' posthearing brief, part II, p. 33.

²⁴ Hearing transcript, pp. 122-123 (Trice).

²⁵ Response to Commission questions, exhibit I, Terphane posthearing brief, pp. 22 & 27.

tonnage with nonsubject tonnage.^{26 27} Respondents report that additional tonnage is available from several nonsubject countries and that sources have been found in Turkey, Taiwan, and Indonesia to replace lost domestic tonnage.^{28 29} A generally favorable global supply-demand balance and growth in markets comparable to country GDPs, has reportedly been adequate to generate profitability, and more than offset the rise in raw material prices.³⁰

The following data presented are derived from Global Trade Atlas (GTS) statistics, which are based on best available data at the 6-digit HTS level, and may include certain quantities of nonsubject products (i.e., metallized PET films, other PET films having coatings of more than 0.254 microns, copolyester films, and miscellaneous polyester films). Nonsubject country imports by volume obtained from official U.S. import statistics at the 10 digit HTS level, are shown as a percentage of GTS export data at the 6-digit level, in the tabulation below for 2007.³¹

Country	Ratio (percent)
Canada	90.7
India	57.1
Indonesia ¹	256.5
Korea	73.3
Mexico ¹	251.5
Taiwan ¹	378.6
Turkey	60.2
<p>¹ Taiwanese, Mexican, and Indonesian PET film export shipments reported at the 6-digit level may be potentially understated when compared to U.S. import statistics at the 10-digit level due to timing differentials, misclassifications, and other statistical discrepancies.</p> <p>Source: Compiled from the Global Trade Atlas database and official Commerce statistics. The Global Trade Atlas database includes nonsubject products (all types of PET films).</p>	

Canada

Two Canadian companies, ***, are believed to be the major firms responsible for about 70 percent of PET film imports by value into the United States in 2007, under the subject 10-digit HTS statistical reporting number.³² Another firm, ***, is believed to account for another 12 percent by value.³³ In 2007, Canadian imports from the United States as a percentage of total Canadian imports by volume

²⁶ Hearing transcript, pp. 155-161 (Lammers).

²⁷ Ibid. pp. 162-169 (Falk).

²⁸ Ibid, p. 223 (Michalkiewicz).

²⁹ Ibid., p. 249 (O'Brien).

³⁰ Hearing transcript, p. 184 (Tyle).

³¹ There were no known imports of subject product from Oman during the period of investigation (Oman discussion).

³² Proprietary Customs data, September 17, 2008.

³³ Ibid.

were about 66 percent at the 6-digit level, while Canadian exports to the United States were about 98 percent of the total.³⁴ As noted earlier in this report, ***,³⁵ ***,³⁶ ***,³⁷ Table VII-6 presents data on Canadian exports and imports of PET film.

Table VII-6
PET film: Canada's exports and imports, 2005-07, January-June 2007, and January-June 2008

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Exports	35,156	37,967	40,626	18,920	25,388
Imports	56,349	58,896	61,766	30,066	37,663
Net exports/(Imports)	(21,194)	(20,929)	(21,140)	(11,146)	(12,275)
Note.—Export and import figures are quantities reported at the 6-digit level for HTS subheading 3920.62 and may include nonsubject products, including metallized PET films; PET films having performance enhancing coatings exceeding 0.254 microns; copolyester films; and possibly APET and CPET films, unless otherwise defined.					
Source: Compiled from the Global Trade Atlas database.					

India³⁸

India ranked eighth in terms of nonsubject source of imports of PET film to the United States (4.6 million pounds in 2007).³⁹ The United States accounted for about 4 percent of India's export shipment volume in 2006, and 6 percent in 2007. Indian shipments of PET film to the United States are currently subject to antidumping duty orders as previously reported, and U.S. subject PET film imports from India at the 10-digit level have been relatively flat during the period of investigation.⁴⁰ In 2005, there were believed to be seven principal producers of PET film in India: ***. Most producers reportedly produce PET film from ***, mainly for *** use. In 2004, total consumption in India was estimated to be about ***, with exports of 82 million pounds,⁴¹ or about ***, according to available data. Table VII-7 presents data on India's exports and imports of PET film.

³⁴ Global Trade Atlas data.

³⁵ Staff interview with ***, October 26, 2007.

³⁶ Staff e-mail correspondence from ***, October 22-25, 2007.

³⁷ Staff e-mail correspondence from ***, September 18, 2008.

³⁸ ***.

³⁹ USITC trade dataweb.

⁴⁰ Ibid.

⁴¹ Global Trade Atlas statistics.

Table VII-7
PET film: India's exports and imports, 2005-07, January-February 2007, and January-February 2008

Item	Calendar year			January-February	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Exports	112,740	95,724	120,243	25,860	26,499
Imports	1,547	7,131	14,551	4,107	432
Net exports	111,193	88,594	105,692	21,753	26,067
<p>Note.—Export and import figures are quantities reported at the 6-digit level for HTS subheading 3920.62 and may include nonsubject products, including metallized PET films; PET films having performance enhancing coatings exceeding 0.254 microns; copolyester films; and possibly APET and CPET films, unless otherwise defined.</p> <p>Source: Compiled from the Global Trade Atlas database.</p>					

India is subject to countervailing duty orders ranging from 22.71 to 33.44 percent ad valorem and antidumping duty orders ranging from 0.01 to 5.71 percent ad valorem.⁴²

Indonesia

Petitioners cite Indonesia as one of three nonsubject countries, along with Malaysia and Turkey, as having surplus availability of PET film for export.⁴³ In 2007, Indonesia ranked as the 12th largest global exporter of PET film, and the fifth largest in terms of trade surplus.⁴⁴ In late-2005, there were *** known producers of PET film having a combined annual capacity of ***.⁴⁵ Petitioners *** are known to have affiliated plants in Indonesia.⁴⁶ Indonesia's major export markets are Japan, China, Malaysia, Taiwan, and Hong Kong. U.S. imports of subject PET film from Indonesia at the 10-digit level have been relatively flat and minuscule during the period of investigation.⁴⁷ Table VII-8 presents data on Indonesia's exports and imports of PET film.

⁴² 72 FR 57300, October 9, 2007 and 72 FR 57297, October 9, 2007, respectively.

⁴³ Responses to Commissioner Williamson's hearing questions, petitioners' posthearing brief, part II, p. 33.

⁴⁴ Global Trade Atlas data.

⁴⁵ ***.

⁴⁶ Producers' questionnaire responses, Part I-6.

⁴⁷ USITC trade dataweb.

Table VII-8
PET film: Indonesia's exports and imports, 2005-07, January-May 2007, and January-May 2008

Item	Calendar year			January-May	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Exports	64,007	67,722	75,429	32,851	30,186
Imports	5,614	7,617	9,842	4,420	4,667
Net exports	58,393	60,105	65,587	28,431	25,519
<p>Note.—Export and import figures are quantities reported at the 6-digit level for HTS subheading 3920.62 and may include nonsubject products, including metallized PET films; PET films having performance enhancing coatings exceeding 0.254 microns; copolyester films; and possibly APET and CPET films, unless otherwise defined.</p> <p>Source: Compiled from the Global Trade Atlas database.</p>					

Korea

Korea is the world's largest exporter of PET film, and the leading trade surplus nation. Korean export shipment volume to the United States accounted for about 21-24 percent of its total export shipments during the 2005-07 period; the United States ranked as Korea's second leading export market after Japan.⁴⁸ Although nonsubject Korean shipments of PET film to the United States are currently subject to antidumping duty orders, U.S. imports of subject PET film at the 10-digit level increased 86 percent by volume during the 2004-06 period, before declining 23 percent in 2007. Korea has maintained its position as the primary source of nonsubject U.S. imports during the period of investigation. Petitioners believe the Korean producer Kolon has been largely responsible for the Korean increase, and on November 5, 2007, filed comments with the Department of Commerce in conjunction with its intent to reinstate Kolon in the antidumping duty order under the provisions of an administrative review.^{49 50} The average U.S. landed duty-paid value of subject Korean PET film imports during the period of investigation was \$1.21 per pound compared to the overall U.S. average of \$1.39 per pound.⁵¹

Korea is one of the world's major PET film producers with a production capability of about ***. As of September 2005, there were *** principal producers of PET film in Korea; the largest are ***,⁵² with *** percent of total capacity, followed by *** (***) percent,⁵³ and *** (***) percent). In 2004, Korean PET film producers, in the aggregate, operated at a capacity utilization rate above *** percent; export shipments reportedly accounted for about *** percent of production.⁵⁴ Table VII-9 presents data on Korean exports and imports of PET film.

⁴⁸ Global Trade Atlas statistics.

⁴⁹ 73FR 18259, April 3, 2008. Commerce imposed a dumping margin of 1.53 percent on Kolon for the period July 1, 2005 through June 30, 2006. The order was revised to 1.52 percent due to an administrative error (73 FR 26078, May 8, 2008). According to Michael J. Heaney of Commerce, the administrative review process on Kolon for any future revision to its margin is ongoing. Commission staff contact, September 15, 2008.

⁵⁰ Petitioners reported that imports from Korea had been a very significant problem because of one producer, Kolon, which has recently been brought back under antidumping law discipline. Hearing transcript, p. 46 (Greenwald).

⁵¹ USITC trade dataweb.

⁵² SKC is a petitioner in these investigations.

⁵³ Toray is a petitioner in these investigations.

⁵⁴ ***.

Table VII-9
PET film: Korea's exports and imports, 2005-07, January-June 2007, and January-June 2008

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Exports	309,685	337,127	321,231	152,669	173,554
Imports	27,238	29,466	45,439	20,871	24,412
Net exports	282,447	307,661	275,792	131,798	149,243
Note.—Export and import figures are quantities reported at the 6-digit level for HTS subheading 3920.62, and may include nonsubject products, including metallized PET films; PET films having performance enhancing coatings exceeding 0.254 microns; copolyester films; and possibly APET and CPET films, unless otherwise defined.					
Source: Compiled from the Global Trade Atlas database.					

In 2005, pursuant to expedited second reviews conducted by Commerce and the Commission, the antidumping duty order on PET film from Korea was again continued, effective October 20, 2005.⁵⁵ Commerce conducted a changed circumstances review to reinstate Kolon Industries, Inc., a Korean producer of PET film, under this order and issued its final results in the review, effective April 3, 2008.⁵⁶ Commerce determined that Kolon sold subject merchandise at less than normal value during the period of review and reinstated Kolon in the order with a final weighted average dumping margin of 1.53 percent.⁵⁷ The order on Kolon was later revised to 1.52 percent due to an administrative error.⁵⁸

Malaysia

Table VII-10 details Malaysia's trade data for PET film. Petitioners cite Malaysia as one of three nonsubject countries not subject to dumping actions, along with Indonesia and Turkey, as having surplus availability of PET film for export.⁵⁹ In 2007, nonsubject Malaysia was the seventh largest global exporter of PET film (101 million pounds) and ranked as the fourth largest trade surplus country (72 million pounds) after Korea, Thailand, and Luxembourg.⁶⁰ Its major export markets were Japan, Hong Kong, and China. The United States was a relatively minor factor in Malaysian PET film exports (2 percent). U.S. imports of Malaysian subject PET film at the 10-digit level in 2007 were minuscule.⁶¹ *** is known to have subsidiary PET film facilities in Malaysia.⁶²

⁵⁵ See *Polyethylene Terephthalate (PET) Film From Korea*, Inv. No. 731-TA-459 (Second Review), USITC Publication 3800, September 2005, and 70 FR 61118, October 20, 2005.

⁵⁶ 73 FR 18259, April 3, 2008.

⁵⁷ *Ibid.*

⁵⁸ 73FR 26078, May 8, 2008.

⁵⁹ Responses to Commissioner Williamson's questions, petitioners' posthearing brief, part II, p. 33.

⁶⁰ Global Trade Atlas database.

⁶¹ Commission trade dataweb.

⁶² Producers questionnaire response, part II, I-6.

Table VII-10
PET film: Malaysia's exports and imports, 2005-07, January-June 2007, and January-June 2008

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Exports	60,764	75,030	101,264	NA	NA
Imports	21,821	25,864	29,345	NA	NA
Net exports/(Imports)	38,942	49,166	71,919	NA	NA
Note.—Export and import figures are quantities reported at the 6-digit level for HTS subheading 3920.62, and may include nonsubject products, including metallized PET films; PET films having performance enhancing coatings exceeding 0.254 microns; copolyester films; and possibly APET and CPET films, unless otherwise defined.					
Source: Compiled from the Global Trade Atlas database.					

Mexico

As of 2004, there were *** of subject PET film in Mexico; thus, some of the Mexican PET film exports may conceptually be *** in nature. Mexico is a net importer of PET film, and in 2007 imported 56 percent of its PET film by volume from the United States, and another 15 percent from Korea. The remainder was imported in smaller quantities from several other countries in Latin America, Asia, and Europe.⁶³ Mexico's PET film production in 2004 was believed to be primarily dedicated to the manufacture of ***. Other PET film production includes ***.⁶⁴ Bemis and Printpack have flexible packaging PET film converter plants in Mexico.^{65 66}

Uflex Ltd. has announced a new PET film plant in Mexico designed to produce commodity grade flexible packaging film. The plant has been variably announced for scheduled startup sometime in 2009, reportedly in mid- to late-2009.⁶⁷ The new Uflex Mexican plant will initially start up with one production line having an annual capacity of 30,000 metric tons (66 million pounds).^{68 69} The firm hopes to build a market for converters in Mexico and other countries in the region. Currently, North and South America are being serviced by production from the UAE and India.⁷⁰ According to Uflex officials, new PET film process designs and concomitant efficiencies have improved dramatically over the past 10 years. For example, today's state-of-the-art technologies produce film 8.7 meters (29 feet) wide compared to older

⁶³ Global Trade Atlas data.

⁶⁴ ***.

⁶⁵ Hearing transcript, p. 177 (Lammers).

⁶⁶ Ibid., p. 162 (Falk).

⁶⁷ Ibid, p. 200 (Tyle).

⁶⁸ Flex Middle East FZE and Flex America's posthearing brief, Responses to Commission Questions, p. 5.

⁶⁹ In a recent interview on September 2, 2008, Mr. Tyle reported that Uflex expects to have the first phase operational in early-2009, with an initial capacity of 80 million pounds per year. The \$108 million PET film plant is cited at the port of Altamira near *** on Mexico's ***. The firm is reportedly targeting markets in North, Central and South America, and plans to eventually triple the plant's production capacity. Plastics News, September 2-3, 2008; retrieved at www.plasticsnews.com (subscriber edition), September 26, 2008; and Plastics News, September 8, 2008.

⁷⁰ Hearing transcript, p. 150.

7.2 meter (23-24 feet) wide film lines, and at a higher speed of 500 meters (1,640 feet) per minute or greater.⁷¹ Mexico's PET film trade data are reported in table VII-11.

Table VII-11
PET film: Mexico's exports and imports, 2005-07, January-June 2007, and January-June 2008

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Exports	6,830	5,401	7,039	3,188	2,549
Imports	37,266	38,349	38,673	19,290	22,053
Net exports	(30,436)	(32,948)	(31,634)	(16,102)	(19,509)
Note.—Export and import figures are quantities reported at the 6-digit level for HTS subheading 3920.62 and may include nonsubject products, including metallized PET films; PET films having performance enhancing coatings exceeding 0.254 microns; copolyester films; and possibly APET and CPET films, unless otherwise defined.					
Source: Compiled from the Global Trade Atlas database.					

Taiwan

Table VII-12 presents data on Taiwanese exports and imports of PET film. Taiwan ranks as the secondary source of nonsubject U.S. imports of PET film.⁷² Taiwan's trade surplus was 3 million pounds in 2005, and declined to a trade deficit of 8 million pounds in 2007. The United States accounted for about 15 percent of Taiwan's export shipments on average during the 2005-07 period, while Taiwan experienced a small trade deficit with the United States during the same period according to Global Trade Atlas data.⁷³ Taiwan's import share from the United States fell from 20 percent in 2005 to 10 percent in 2007.⁷⁴ Taiwan PET film shipments to the United States are subject to antidumping duty orders as previously noted. There are reportedly ***.⁷⁵ Petitioners claim that ***.⁷⁶

⁷¹ Hearing transcript, p. 152 (Tyle).

⁷² USITC trade dataweb.

⁷³ Taiwan's export shipments to the United States appear to be potentially understated when compared to official U.S. import statistics.

⁷⁴ Global Trade Atlas statistics.

⁷⁵ ***.

⁷⁶ In 2007, the landed duty paid value of U.S. imports of subject PET film from Taiwan averaged \$1.09 per pound relative to the overall average U.S. PET film import value of \$1.32 per pound. USITC trade dataweb.

Table VII-12**PET film: Taiwan's exports and imports, 2005-07, January-June 2007, and January-June 2008**

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Exports	26,813	25,234	35,360	14,680	24,284
Imports	23,616	30,275	43,751	17,895	26,907
Net exports/(imports)	3,197	(5,041)	(8,391)	(3,214)	(2,623)
Note.—Export and import figures are quantities reported at the 6-digit level for HTS subheading 3920.62, and may include nonsubject products, including metallized PET films; PET films having performance enhancing coatings exceeding 0.254 microns; copolyester films; and possibly APET and CPET films, unless otherwise defined.					
Source: Compiled from the Global Trade Atlas database.					

Imports of PET film from Taiwan are subject to antidumping duty orders ranging from 2.40 to 2.49 percent ad valorem.⁷⁷

Turkey⁷⁸

Polyplex (Thailand) commenced commercial production of thin PET films at its 53 million pound-per-year Turkish plant in October 2005; a smaller 11 million pound PET metallizing plant was to follow. Mr. Manish Gupta, a company director of the firm known as Polyplex Europa Polyester Film Sanayi Ve Ticaret Anonim Sirketi (PE), cited Turkey as a bridge between Asia and Europe, with access to high-growth markets in central and Western Europe as well as the Commonwealth of Independent States and Russia. Turkey was said to also be a major market for thin films. The Turkish firm intends to focus on high-growth segments of the packaging, industrial and electrical sectors, which reportedly constituted 85 percent of the global market in 2004, compared with 70 percent in 1999.⁷⁹ Petitioners cite Turkey, together with Indonesia and Malaysia, as nonsubject countries not subject to dumping orders that may have surplus capacity available for export.⁸⁰ ***.⁸¹ U.S. subject imports from Turkey of significance began to show up in Commerce trade statistics in 2005, and on an annualized basis, interim 2008 data project to be slightly higher than the 2005 tonnage (5.3 million pounds); tonnage was down in 2007 to 2.7 million pounds; however, Turkey ranked fourth as source of nonsubject PET film U.S. imports during January-June 2008.⁸² The landed duty paid value was relatively constant during 2006-07, but has increased about 19 percent in interim 2008 to \$1.35 per pound, compared to the average U.S. import price of \$1.39 per pound.

Partner country trade data reflected in table VII-13 show a large growth in exports which has caused the former Turkish trade deficit in 2005 to rise significantly to an ever increasing trade surplus

⁷⁷ 72 FR 57297, October 9, 2008.

⁷⁸ Information on Turkish PET film production capacity and trade is limited primarily to staff research, and partner country trade data obtained from GTS statistics. According to Global Trade Atlas personnel, official Turkish PET film trade data are not complete due to confidential disclosure issues.

⁷⁹ Plastics News (subscriber e-mail), March 6, 2006; retrieved at www.plasticsnews.com, September 26, 2008.

⁸⁰ Petitioners' posthearing brief, part II, p. 33.

⁸¹ *** posthearing brief, "Responses to Commission Hearing Questions," p. 4.

⁸² USITC trade dataweb.

during the 2006-07 period. In 2007, Turkish PET film exports were predominately to the Netherlands (40 percent), Italy (18 percent), the United States (10 percent), Russia (9 percent), and UK (5 percent); Turkey shipped to a total of 33 countries. In 2006, the United States was 16 percent of the total. Turkish PET film imports were relatively constant during 2005-07. The largest imports in 2007 were from India, Luxembourg, and Germany, although Turkey imported from 24 countries in total.

Table VII-13
PET film: Turkey's exports and imports, 2005-07, January-June 2007, and January-June 2008

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Exports	3,153	35,569	45,671	NA	NA
Imports	12,641	10,785	14,123	NA	NA
Net exports/(Imports)	(9,488)	24,784	31,548	NA	NA
<p>Note.—Export and import figures are quantities reported at the 6-digit level for HTS subheading 3920.62, and may include nonsubject products, including metallized PET films; PET films having performance enhancing coatings exceeding 0.254 microns; copolyester films; and possibly APET and CPET films, unless otherwise defined.</p> <p>Source: Compiled from the Global Trade Atlas database; calendar year data based on partner country statistics. According to Global Trade Atlas personnel, official Turkish trade data are incomplete due to disclosure issues.</p>					

Oman

In December 2006, Octal Holding Company (Octal) commenced operations of a 20,000 metric ton per year APET resin and sheet plant in Oman, which was expanded by another 10,000 annual tons in September 2007. The merchant-oriented plant, the first of its kind in Oman, is situated at Salalah port in the Salalah Free Zone, and initially targeted markets in the United States, the United Kingdom, and other Western European countries. Octal's clear, rigid APET sheet is produced and shipped downstream in rolls to customers who thermoform the product into rigid containers used for food packaging and industrial applications. The United States commenced imports of APET sheet from Oman in January 2007, and during the 18-month period ending June 30, 2008, imported about 16,700 metric tons, or about 56 percent of Octal's initial 20,000 tons of capacity on an annualized basis. Octal's U.S. imports of rigid APET sheet were entered under HTS 3920.62.0090, the same HTS statistical reporting number as that of subject PET film. The landed value averaged about \$0.68 per pound on a duty-free basis as prescribed under the U.S.-Oman Free Trade Agreement signed on January 19, 2006.^{83 84}

By April 2008, the \$300 million project was expected to be completed with the addition of a 300,000 annual ton integrated complex which will produce both APET resin and APET rigid sheet. At this stage, Octal believes it will be the largest global producer of APET sheet, with a 20-percent share of the \$2.25 billion global market. Plans are to further expand capacity as needed. Octal's parent companies, Chemlink Capital Limited and Pound Capital Limited, both U.S.-based private investment firms, provided the initial funding along with others in Oman, Saudi Arabia, and Kuwait. Octal's sales to the United States are reportedly benefitting through the recently signed U.S.-Oman FTA; the United

⁸³ "United States and Oman Sign Free Trade Agreement," Office of the United States Trade Representative, Executive Office of the President, Washington, D.C., January 19, 2006. <http://www.ustr.gov>, retrieved, November 5, 2007.

⁸⁴ <http://dataweb.usitc.gov>, retrieved November 2-5, 2007.

States is expected to account for about 50 percent of Octal's output. Octal reportedly has product quality and control advantages by tailoring its products to specific gauges and tight gauge tolerances which enhance customer production efficiencies. The firm has reportedly found a way to take an existing process and make it better. Octal's APET sheet reportedly provides the customer with higher yield and better thermoformed rigid tray quality at a lower cost.⁸⁵

⁸⁵ Petitioners' postconference brief, exhibit 1, October 24, 2007.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1131-1134 (Final)]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, China, Thailand, and the United Arab Emirates

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731-TA-1131-1134 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Brazil, China, Thailand, and the United Arab Emirates of polyethylene terephthalate film, sheet, and strip, provided for in statistical reporting number 3920.62.00.90 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 5, 2008.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202-205-3354), Office of Investigations, U.S. International

Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of polyethylene terephthalate film, sheet, and strip from Brazil, China, and the United Arab Emirates are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 28, 2007, by DuPont Teijin Films, Hopewell, VA; Mitsubishi Polyester Film of America, Greer, SC; SKC America, Inc., Covington, GA; and Toray Plastics (America), Inc., North Kingston, RI.

Although the Department of Commerce has preliminarily determined that imports of polyethylene terephthalate film, sheet, and strip from Thailand are not being and are not likely to be sold in the United States at less than fair value, for purposes of efficiency the Commission hereby waives rule 207.21(b)² so that the final phase of the investigations may proceed concurrently in the event that Commerce makes a final affirmative determination with respect to such imports.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A

party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 5, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 18, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 11, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 15, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission.

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as:

"All gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of its surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is Roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and purposes of Customs and Border Protection (CBP), our written description of the scope of these investigations is dispositive."

² Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 12, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 25, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 25, 2008. On October 14, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 16, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will

not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 10, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-14441 Filed 6-25-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-351-841

Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 24, 2008.

SUMMARY: The Department of Commerce (the Department) determines that imports of polyethylene terephthalate film, sheet and strip (PET film) from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final dumping margins are listed below in the section entitled "Final Determination of Investigation."

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington,

DC 20230; telephone: (202) 482-4475, or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 2008, the Department published the preliminary determination of sales at less than fair value (LTFV) in the antidumping investigation of polyethylene terephthalate film, sheet and strip from Brazil. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil*, 73 FR 24560 (May 5, 2008) (Preliminary Determination). On June 5, 2006 we extended the due date for issuing our final determination to September 17, 2008. See *Postponement of Final Determination of Antidumping Duty Investigations: Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China, Brazil, and Thailand*. 73 FR 31964, June 5, 2006. We invited parties to comment on the *Preliminary Determination*. We received no comments.

Period of Investigation

The period of investigation is July 1, 2006, through June 30, 2007.

Scope of Investigation

The products covered in this investigation are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also, excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Adverse Facts Available

For the final determination, we continue to find that by failing to respond to sections A through E of our questionnaire and by withdrawing from the proceeding, Terphane Ltda, (Brazil) (Terphane) did not cooperate to the best of its ability in this investigation. See *Preliminary Determination*, 73 FR at 24562-24563. Thus, the Department continues to find the use of adverse facts available is warranted for this

company in accordance with sections 776(a)(2) and (b) of the Act. As we explained in the *Preliminary Determination*, the rate of 44.36 percent we selected as the adverse facts-available rate is the highest margin alleged in the petition and we corroborated the adverse facts-available rate pursuant to section 776(c) of the Act.

All-Others Rate

As explained in the *Preliminary Determination*, we continue to assign as the all-others rate a simple average of the rates in the petition, that is, 28.72 percent. See *Preliminary Determination*, 73 FR at 24564.

Final Determination of Investigation

We determine that the following weighted-average dumping margins exist for the period April 1, 2006, through March 31, 2007:

Producer/Exporter	Weighted-Average Margin (Percentage)
Terphane	44.36
All Others	28.72

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.210(d)(1), we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after May 5, 2008, the date of the publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated in the chart above, as follows: (1) the rate for Terphane will be the rate we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 28.72 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative, and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in

the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: September 17, 2008.

Stephen J. Claeys,
Acting Assistant Secretary for Import Administration.

[FR Doc. E8-22449 Filed 9-23-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-520-803]

Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 5, 2008, the Department of Commerce (Department) published its preliminary determination of sales at less than fair value (LTFV) in the antidumping investigation of polyethylene terephthalate film, sheet and strip (PET film) from the United Arab Emirates (UAE). On August 4, 2008, the Department issued a decision memorandum concerning the targeted dumping allegation by petitioners. See Memorandum to Stephen Claeys,

Deputy Assistant Secretary for Import Administration, from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, *Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from the United Arab Emirates: Analysis of Petitioners' Allegation of Targeted Dumping*, dated August 4, 2008 (*Targeted Dumping Memorandum*). In that memorandum, we found that petitioners had not provided sufficient information to warrant a targeted dumping analysis. We invited interested parties to comment on our preliminary determination of sales at LTFV and on our targeted dumping decision. Based on our analysis of the comments received, we have made changes to our calculations for the sole respondent. See "Changes Since the Preliminary Determination" section below. We determine that PET film from the UAE is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

EFFECTIVE DATE: September 24, 2008.

FOR FURTHER INFORMATION CONTACT:

Douglas Kirby or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3782 or (202) 482-2371, respectively.

SUPPLEMENTARY INFORMATION: The Department published its preliminary determination of sales at LTFV on May 5, 2008. See *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 24547 (May 5, 2008) (*Preliminary Determination*).

Additionally, the Department postponed the deadline for the final determination to the 135th day following publication of the *Preliminary Determination*. See *id.* at 24548. As a result, the deadline for this final determination is September 17, 2008. See *id.* The petitioners are DuPont Teijin Films, Mitsubishi Polyester Film of America, Inc., SKC, Inc. and Toray Plastics (America), Inc. (collectively, the petitioners). The respondent for this investigation is Flex Middle East FZE (Flex UAE).

On March 21, 2008, the petitioners submitted a timely allegation that Flex UAE engaged in targeted dumping during the POI in accordance with 19

CFR 351.301(d)(5). On March 31, 2008, Flex UAE submitted comments in response to the petitioners' targeted dumping allegation. On April 11, 2008, the Department requested additional information from the petitioners regarding their targeted dumping allegation, which was submitted on April 21, 2008. Since there was not sufficient time to analyze the information and fully consider the petitioners' allegation before the preliminary determination, the Department stated in the *Preliminary Determination* that it would issue a decision regarding targeted dumping following the issuance of the preliminary determination, and would allow parties to comment on it prior to the final determination. After reviewing petitioners' April 21, 2008 supplemental information, the Department determined that additional information was needed from petitioners and issued a second request for information on June 6, 2008. Petitioners filed their submission on June 9, 2008. On August 4, 2008 the Department issued the *Targeted Dumping Memorandum* in which we determined that petitioners had not provided sufficient information to warrant a targeted dumping analysis. See "Targeted Dumping" section below for additional information.

Cost and sales verifications of Flex UAE were conducted by the Department in May 2008, and a sales verification of Flex UAE's U.S. affiliate, Flex America Inc. (Flex America) was conducted in July 2008. See the "Verification" section below for additional information.

Upon the release of the last verification report on August 11, 2008, we invited parties to comment on the *Preliminary Determination*, the targeted dumping decision, and the verification reports. On August 18, 2008, petitioners and respondents filed timely case briefs. On August 22, 2008, both parties filed rebuttal briefs. No parties requested a hearing.

Period of Investigation

The period of investigation (POI) is July 1, 2006 through June 30, 2007.

Scope of the Investigation

The products covered by this investigation are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is Roller transport cleaning film which has at least one of its surfaces modified by

application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, our written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, *Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates (UAE) (Issues and Decision Memorandum)*, dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the *Issues and Decision Memorandum* is attached to this notice as an appendix. The *Issues and Decision Memorandum* is a public document and is on file in the Central Records Unit (CRU), Main Commerce Building, Room 1117, and is accessible on the World Wide Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

Targeted Dumping

On August 4, 2008, the Department issued its *Targeted Dumping Memorandum*, finding that the petitioners' allegation did not provide sufficient information and analysis to warrant the conduct of a targeted dumping analysis. The Department therein recommended applying the standard methodology of comparing weighted-average normal values to weighted-average export prices (or constructed export prices) for purposes of calculating the dumping margin for the final determination. After considering comments received in the case and rebuttal briefs, the Department continues to find that petitioners' allegations of targeted dumping do not provide a reasonable basis to find a pattern of export prices for comparable merchandise that differ significantly among purchasers. We determine further that petitioners did not demonstrate that any such differences could not be taken into account using the average-to-average methodology,

pursuant to section 777A(d)(1)(B) of the Act. We therefore conclude that, for this final determination, we will continue to utilize the average-to-average methodology in calculating the final margin for respondent. For further discussion, see Comment 12 in the *Issues and Decision Memorandum*.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, and comments received from the interested parties, we have made changes to the margin calculations for Flex UAE. We have also considered information received in response to our April 25, 2008 questionnaire and information obtained at verification. As a result, we have reclassified certain channel 2 and channel 3 sales as channel 1 (direct) sales. Further, we have revised the date of sale for Flex UAE's channel 1 sales and recalculated credit expenses and inventory carrying costs for the different channels as necessary. We have also made adjustments to normal value (NV) for customs clearance fees and export credit insurance, and to CEP for bank charges, sample sales expenses and cash discounts as required. In addition, we have made corrections to Flex UAE's cost of production. All of these changes are fully discussed in the *Issues and Decision Memorandum*, the *Analysis Memorandum for the Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates*, dated September 17, 2008, and the Memorandum to Neal M. Halper, Director, Office of Accounting, *Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Flex Middle East FZE*, dated September 17, 2008.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by Flex UAE for use in our final determination. We also conducted a sales verification of Flex UAE's U.S. affiliate Flex America. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by Flex UAE and Flex America. See Memorandum to the File, *Verification of the Sales Response of Flex Middle East (FZE) in the Antidumping Investigation of Polyethylene Terephthalate Film, Sheet and Strip (PET film) from the United Arab Emirates (UAE)*, dated July 23, 2008; Memorandum to Neal M. Halper, Director, Office of Accounting, *Verification of the Cost of Production*

and Constructed Value Data Submitted by Flex Middle East FZE in the Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Film, Sheet, and Strip from United Arab Emirates, dated July 8, 2008; and Memorandum to the File, *Verification of the Sales Response of Flex America Inc. in the Antidumping Investigation of Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from the United Arab Emirates (UAE)*, dated August 11, 2008.

All-Others Rate

Pursuant to section 735(c)(5)(A) of the Act, the all-others rate is equal to the weighted average of the dumping margins of each respondent investigated, excluding zero or *de minimis* margins and any margins determined exclusively under section 776 of the Act. Flex UAE is the only respondent in this investigation for which the Department has calculated a rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the rate calculated for Flex UAE as the all-others rate, as referenced in the "Final Determination Margins" section below.

Final Determination Margins

We determine that the weighted-average dumping margins are as follows:

Producer/Exporter	Weighted-Average Margin
Flex Middle East FZE ...	4.80%
All Others	4.80%

Disclosure

We will disclose the calculations performed in reaching this final determination within five days of the date of public announcement of this determination to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from the UAE entered, or withdrawn from warehouse, for consumption on or after May 5, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margins, as indicated in the chart above, as follows: (1) the rate for the firm listed above will be the rate we have determined in this final determination; (2) if the exporter is

not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.80 percent. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative, and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: September 17, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix - Issues in Decision Memorandum

Comment 1: Date of Sale/Credit Expenses for U.S. Channel 1 Sales
Comment 2: Calculation of Inventory Carrying Costs for U.S. Sales
Comment 3: Reclassification of Direct Sales Reported as Channel 3 Sales
Comment 4: Correction to Erroneous Calculation for a U.S. Credit Expense
Comment 5: Treatment of Bank Charges Incurred on U.S. Sales

Comment 6: Unreported Cash Discounts for a U.S. Sale

Comment 7: Treatment of U.S. Sample Sales

Comment 8: Whether to Adjust Normal Value for Customs Clearance Fees Incurred on Home Market Sales

Comment 9: Whether to Adjust Normal Value for Export Credit Insurance Incurred on Home Market Sales

Comment 10: Whether to Include the Surrogate Cost for a Domestic Product Sold but Not Produced During the POI

Comment 11: Corrections to Flex UAE's Reported Cost of Production

Comment 12: Targeted Dumping [FR Doc. E8-22453 Filed 9-23-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-924]

Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 24, 2008.

SUMMARY: On May 5, 2008, the Department of Commerce ("Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of polyethylene terephthalate film, sheet, and strip ("PET Film") from the People's Republic of China ("PRC"). The period of investigation ("POI") is January 1, 2007, through June 30, 2007. We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculation for the mandatory respondent. The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Toni Dach, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1442 or (202) 482-1655, respectively.

FINAL DETERMINATION

We determine that PET Film from the PRC is being, or is likely to be, sold in the United States at LTFV as provided

in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its preliminary determination of sales at LTFV on

May 5, 2008. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552 (May 5, 2008) ("*Preliminary Determination*").

On May 2, 2008, DuPont Teijin Films China Limited ("DTFC"), the sole active mandatory respondent, along with its affiliates DuPont Teijin Hongji Films Ningbo Co., Ltd. ("DTHFN") and DuPont-Hongji Films Foshan Co., Ltd. ("DPHJ"), (collectively the DuPont Group), requested a 60-day extension of the final determination. On June 2, 2008, the Department published the postponement of the final determination. See *Postponement of Final Determinations of Antidumping Duty Investigations: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China, Brazil, and Thailand*, 73 FR 31964 (June 5, 2008).

Between June 5, 2008, and June 20, 2008, the Department conducted verifications of DTFC and DPHJ, and their U.S. affiliate, DuPont Teijin Films U.S. Limited Partnership ("DTFUS"). See the "Verification" section below for additional information. Upon the July 28, 2008, release of the verification reports for DPHJ, DTFUS, and DTFC, parties were allotted seven days to comment on the *Preliminary Determination*. On August 5, 2008, the DuPont Group filed a case brief. No other interested parties submitted case briefs or rebuttal briefs.

Analysis of Comments Received

All issues raised in the DuPont Group's case brief are addressed in the "Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated September 17, 2008 ("*I&D Memo*"), which is hereby adopted by this notice. A list of the issues which the DuPont Group raised and to which we respond in the I&D Memo is attached to this notice as an appendix. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 1117, and is accessible on the

world wide web at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, and comments received from the interested parties, we have made changes to the margin calculations for the DuPont Group. We have revalued some of the surrogate values used in the *Preliminary Determination*. The values that were modified for this final determination are those for surrogate financial ratios and PET chips. For further details see I&D Memo at Comments 1 and 3, and Memorandum to the File from Erin Begnal, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9; Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Surrogate Values for the Final Determination, dated September 17, 2008 ("*Final Surrogate Value Memo*").

In addition, we have made some company-specific changes since the *Preliminary Determination*. Specifically, we have incorporated, where applicable, post-preliminary clarifications based on verification for DTFC. For further details on these company-specific changes, see Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding "Program Analysis for the Final Determination of Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated September 17, 2008 ("*DTFC Analysis Memorandum*").

Scope of Investigation

The products covered by this investigation are all gauges of raw, pre-treated, or primed PET Film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is Roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET Film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States ("HTSUS"). While HTSUS subheadings are provided for

convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Affiliations

In the *Preliminary Determination*, the Department preliminarily found, based on the evidence on the record in this investigation and based on the evidence presented in the questionnaire responses, that DTFC, DPHJ, and DTHFN, are affiliated parties within the meaning of section 771(33)(E) of the Act, due to common ownership. See *Preliminary Determination*, 73 FR at 24555. No other information has been placed on the record since the *Preliminary Determination* to contradict the information upon which we based our finding that these companies are affiliated. Therefore, for the final determination, we continue to find that DTFC, DPHJ, and DTHFN are affiliated parties pursuant to section 771(33)(E) of the Act, based on common ownership.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the DuPont Group for use in our final determination. See Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, and Toni Dach, International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding, "Verification of the Sales Response of DuPont-Hongji Films Foshan Co., Ltd. in the Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated July 28, 2008; Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, and Toni Dach, International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding, "Verification of the Sales Response of DuPont Teijin Films China Ltd. in the Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated July 28, 2008; and Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, and Toni Dach, International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding, "Verification of the Sales Response of DuPont Teijin Films U.S. Limited

Partnership in the Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated July 28, 2008. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act (2); it is a significant producer of identical merchandise; (3) and we have reliable data from India that we can use to value the factors of production. See *Preliminary Determination*, 73 FR at 24554–24555. For the final determination, we received no comments and, therefore, made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's practice to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate ("SR"). See, e.g., *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"), and Section 351.107(d) of the Department's regulations.

In the *Preliminary Determination*, we found that because there is no PRC ownership of DTFC and Fuwei Films (Shandong) Co., Ltd. ("Fuwei Films"), i.e., they are wholly foreign-owned, a separate rates analysis was not necessary to determine whether these companies were independent from government control, and we preliminarily granted them a separate rate. See *Preliminary Determination*, 73 FR at 24556. For Shaoxing Xiangyu Green Packing Co., Ltd., Tianjin

Wanhua Co., Ltd., Sichuan Dongfang Insulating Material Co., Ltd., and Shanghai Uchem Co., Ltd. (collectively, "SR Applicants") we found that each demonstrated their eligibility for separate-rate status. *Id.* For the final determination, we continue to find that the evidence placed on the record of this investigation by the SR Applicants demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus they are eligible for separate rate status. We also continue to find, based on evidence placed on the record by DTFC and Fuwei Films, that DTFC and Fuwei Films are eligible for separate rate status.

For the final determination, we have established a margin for the SR Applicants based on the rate we calculated for the cooperating mandatory respondent, DTFC.¹

The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that Jiangyin Jinzhongda New Material Co., Ltd. ("JJ New Material"), which was selected as a mandatory respondent, did not respond to the Department's questionnaire and informed the Department that it would not participate in the investigation. In the *Preliminary Determination* we treated JJ New Material as part of the PRC-wide entity because it did not demonstrate that it operates free of government control over its export activities. See *Preliminary Determination*, 73 FR at 24557. No additional information has been placed on the record with respect to JJ New Material after the *Preliminary Determination*. The PRC-wide entity, which includes JJ New Material, has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A),(B) and (C) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales*

¹ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation, 65 FR 5510, 5518 (February 4, 2000). See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) ("SAA") at 870. We determined that, because the PRC-wide entity did not respond to our requests for information and stated that it would not participate in the investigation, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate - the PRC-wide rate - to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the "Final Determination Margins" section below.

Corroboration

In the Preliminary Determination, the Department assigned to the PRC-wide entity a rate of 76.72 percent, the highest calculated rate from the petition. See *Preliminary Determination*, 73 FR at 24557. Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We

have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554, 5568 (February 4, 2000). See also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

To corroborate the petition margin for use as adverse facts available for the PRC-wide entity, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. See *Initiation Checklist*. We examined evidence supporting the calculation in the petition to determine the probative value of the margin alleged in the petition for use as PRC-wide rate. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the petition to derive the margin. Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, that corroborates key elements of the export-price and normal-value calculations used in the petition to derive the

estimated margin. See 19 CFR 351.308(d).

We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rate derived from the petition for purposes of initiation is reliable for the purpose of being selected as the adverse facts available rates assigned to the PRC-wide entity (including JJ New Material). Similar to our position in *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Light-Walled Rectangular Pipe and Tube From the Republic of Korea*, 73 FR 5794 (January 31, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from the Republic of Korea*, 73 FR 35655 (June 24, 2008), 72 FR 1982 (January 17, 2007), because this is the first proceeding involving the PRC-wide entity (including JJ New Material) in this particular case, to which we are applying AFA, there are no probative alternatives.

Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we determine the highest margin in the petition, which we determined during our pre-initiation analysis was based on adequate and accurate information, and which we have corroborated for purposes of this final determination, is relevant as the adverse facts-available rate for the PRC-wide entity (including JJ New Material). Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and determined to be relevant to the PRC-wide entity (including JJ New Material) in this investigation, we have corroborated the adverse facts-available rate "to the extent practicable."

Final Determination Margins

The weighted-average dumping margins are as follows:

PET FILM FROM THE PRC

Exporter	Producer	Weighted-Average Margin
DuPont Teijin Films China Ltd.	DuPont Hongji Films Foshan Co. Ltd.	3.49 %
DuPont Teijin Films China Ltd.	DuPont Teijin Hongji Films Ningbo Co., Ltd.	3.49 %
Fuwei Films (Shandong) Co., Ltd.	Fuwei Films (Shandong) Co., Ltd.	3.49 %
Shaoxing Xiangyu Green Packing Co., Ltd.	Shaoxing Xiangyu Green Packing Co., Ltd.	3.49 %
Sichuan Dongfang Insulating Material Co., Ltd.	Sichuan Dongfang Insulating Material Co., Ltd.	3.49 %
Tianjin Wanhua Co., Ltd.	Tianjin Wanhua Co., Ltd.	3.49 %
Shanghai Uchem Co., Ltd.	Sichuan Dongfang Insulating Material Co., Ltd.	3.49 %
Shanghai Uchem Co., Ltd.	Shanghai Xishu Electric Material Co., Ltd.	3.49 %
PRC-wide (including Jiangyin Jinzhongda New Material Co., Ltd.)		76.72 %

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

We will instruct U.S. Customs and Border Protection ("CBP") to continue the suspension of liquidation required by section 735(c)(1)(B) of the Act, of all entries of subject merchandise from DTFC, the SR Applicants, and the PRC-wide entity entered, or withdrawn from warehouse, for consumption on or after May 5, 2008, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. *See* section 735(c)(1)(B)(ii) of the Act. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. *See* section 735(c)(2) of the Act. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation. *See id.*; section 736 of the Act.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 17, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I**DISCUSSION OF THE ISSUES:**

Comment 1: Surrogate Value for PET Chips

Comment 2: Surrogate Value for Paper Cores

Comment 3: Revisions to Financial Ratio Calculations

[FR Doc. E8-22454 Filed 9-23-08; 8:45 am]

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Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margin is listed below in the section entitled "Final Determination of Investigation."

FOR FURTHER INFORMATION CONTACT:

Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0193 or (202) 482-3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

The preliminary determination in this investigation was published on May 5, 2008. *See Preliminary Determination.* Since then, we conducted sales and cost verifications of the responses submitted by Polyplex Thailand Public Company Limited and Polyplex Americas, Inc. (collectively Polyplex). *See Memoranda to the File from Stephen Bailey, Case Analyst, through Angelica L. Mendoza, Program Manager, Office 7, titled "Verification of the Sales Responses of Polyplex Thailand Public Company Limited in the Antidumping Investigation of Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Thailand" dated July 23, 2008 (Polyplex Verification Report); and "Verification of the U.S. Sales Responses of Polyplex Thailand Public Company Limited and its U.S. Affiliate, Polyplex (Americas), Inc., in the Antidumping Investigation of Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Thailand," dated July 23, 2008 (Polyplex Americas Verification Report); see also Memorandum to the File through Neal M. Halper, from Angela Strom, titled "Verification of the Cost Response in the Investigation of Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Thailand," dated July 15, 2008 (Polyplex Cost Verification Report).* All verification reports are on file and available in the Central Records Unit (CRU), Room 1117, of the main Department of Commerce building.

Based on the Department's findings at verification, as well as the minor corrections presented by Polyplex at the start of the Thailand and U.S. verifications, we requested that respondent submit revised electronic sales databases for both the U.S. and comparison markets, and a revised cost database. *See Letter from Angelica L. Mendoza, Program Manager, Office 7, to Polyplex, dated July 28, 2008.* As requested, Polyplex submitted its revised sales and cost databases on July 30, 2008. On July 31, 2008, Polyplex

informed the Department that its July 30, 2008, revised U.S. sales database contained a transcription error in the reported returned and net quantity fields relating to a sale that the Department instructed Polyplex to correct. *See Letter from Angelica L. Mendoza, Program Manager, Office 7, to Polyplex, dated July 28, 2008, at question 13 and Polyplex's letter to the Department dated July 31, 2008.* The error did not impact other data fields of the sale in question and the Department corrected the transcription error in the U.S. margin program. *See lines 2257 through 2259 of the Department's margin calculation program.*

We have also determined that an allegation of targeted dumping submitted by DuPont Teijin Films, Mitsubishi Polyester Film of America, Inc., SKC, Inc. and Toray Plastics (America), Inc. (collectively, petitioners) on March 28, 2008, and supplemented on April 17, 2008, and May 23, 2008, was inadequate. *See Memorandum from Angelica L. Mendoza, Program Manager, Office 7, to Richard O. Weible, Director, Office 7, regarding "Analysis on Targeting Dumping," dated June 30, 2008 (Targeted Dumping Memo); see also Targeted Dumping section below.*

We received a case brief from petitioners on August 11, 2008, and a rebuttal brief from Polyplex on August 14, 2008.¹ On August 26, 2008, we rejected an argument, and part of an argument, contained in Polyplex's rebuttal case brief because they constituted new arguments and were not a rebuttal of petitioners' case brief. *See the Department's August 26, 2008, letter to Polyplex.* On August 28, 2008, we received Polyplex's revised rebuttal brief per our August 26, 2008, letter.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Thailand" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated September 17, 2008, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have

¹ Polyplex submitted a letter to the Department on August 11, 2008, in which it agreed with the Department's *Preliminary Determination*.

DEPARTMENT OF COMMERCE

International Trade Administration
[A-549-825]

Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 24, 2008.

SUMMARY: On May 5, 2008, the Department of Commerce (the Department) published its preliminary determination in the investigation of sales at less than fair value of polyethylene terephthalate film, sheet, and strip (PET Film) from Thailand. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand, 73 FR 24565 (May 5, 2008) (Preliminary Determination).*

The Department has determined that PET Film is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the

responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Targeted Dumping

We determined that petitioners' allegation of targeted dumping failed to address the Department's concerns regarding the significance of price differences between allegedly targeted and non-targeted customers. Therefore, petitioners' allegation did not allow the Department to determine whether observed price differences between allegedly targeted and non-targeted customers were significant. We concluded that for the final determination, we should continue to utilize the average-to-average methodology in calculating the final margins for Polyplex, which we are doing for the reasons set forth in the Decision Memorandum.

Scope of Investigation

The products covered by this investigation are all gauges of raw, pre-treated, or primed PET Film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is Roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET Film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and purposes of Customs and Border Protection (CBP), our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 2006, through June 30, 2007.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Polyplex for use in our final determination. We used standard verification procedures including

examination of relevant accounting and production records, and original source documents provided by Polyplex.

Changes since the Preliminary Determination

Based on our analysis of the comments received and our findings at both the sales and cost verifications, we have made certain changes to the margin calculation for Polyplex. With regard to cost, we have revised the amounts reported for direct materials, labor and fixed overhead costs associated with the production of PET Film. We have also recalculated the general and administrative (G&A) expense rate using our adjusted cost of sales figure as the denominator of the rate calculation. See Memorandum to the File from Angela Strom titled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Polyplex (Thailand) Public Company Ltd. ("Polyplex")" dated September 17, 2008 (Cost Calculation Memorandum).

With regard to sales, the Department determined that it is more appropriate to use sales of identical non-prime merchandise to certain U.S. customers as the basis of the margin for sales to a U.S. customer for whom we are applying the special rule, because all the transactions to that U.S. customer were of the same merchandise. Additionally, the Department has adjusted the indirect selling expense (ISE) ratio for Polyplex Thailand Public Company Limited because there was insufficient record evidence to support Polyplex's offset to ISE for storage of non-subject merchandise. The Department also adjusted the ISE ratio for Polyplex Americas, Inc. (PA) because expenses associated with one of Polyplex's product divisions, expenses which Polyplex removed from PA's ISE ratio, properly belong in the ISE expenses of PA as a whole. See Decision Memorandum at Comments 4, 5 and 6. For a discussion of these changes, see Memorandum to the File from Stephen Bailey, Case Analyst, through Angelica L. Mendoza, Program Manager, Office 7, titled "Analysis Memorandum for the Final Determination of Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Thailand: Polyplex Thailand Public Company Limited and Polyplex Americas, Inc.," dated September 17, 2008 (Sales Analysis Memorandum).

Final Determination of Investigation

We determine that the following weighted-average dumping margin exists for the company listed below for

the period July 1, 2006, through June 30, 2007:

Manufacturer or Exporter	Weighted-Average Margin (Percentage)
Polyplex	6.07
All Others	6.07

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct CBP to suspend liquidation of all entries of subject merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of this final determination. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated in the chart above, as follows: (1) the rate for Polyplex will be 6.07 percent; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 6.07 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance

with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: September 17, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix

Issues

Comment 1: Whether Polyplex Understated the Cost of Polymer Chips for PET Film Production

Comment 2: Whether Polyplex Understated Labor Costs associated with PET Film Production

Comment 3: Whether Polyplex Correctly Reported the Cost of Sales Denominator for the General and Administrative Expense Ratio

Comment 4: Whether Polyplex Understated Warehousing Expenses and Misclassified Warehousing Expenses as Indirect Selling Expenses

Comment 5: Whether Polyplex Understated the Indirect Selling Expenses Incurred by Polyplex America, Inc.

Comment 6: Whether the Department Should Apply the Dumping Margin Calculated on Sales of Identical Merchandise to the Further Manufactured Sales

Comment 7: Whether to Accept Petitioners' Targeted Dumping Allegation

Comment 8: Clerical Error

[FR Doc. E8-22472 Filed 9-23-08; 8:45 am]

BILLING CODE 3510-DS-S

APPENDIX B
CALENDAR OF PUBLIC HEARING

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates

Inv. Nos.: 731-TA-1131-1134 (Final)

Date and Time: September 18, 2008 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:

Petitioners (**John D. Greenwald**, WilmerHale)

Respondents (**Peter Koenig**, Miller Chevalier)

In Support of the Imposition of Antidumping Duties:

WilmerHale
Washington, D.C.
on behalf of

Dupont Teijin Films
Mitsubishi Polyester Film, Inc.
SKC, Inc.
Toray Plastics (America), Inc.

Ronald Kassoff, Sales and Operations Planning
Manager, Dupont Teijin Films

Todd Eckles, Director of Sales, Toray Plastics
(America), Inc.

Dennis Trice, President and Chief Operations
Officer, Mitsubishi Polyester Film, Inc.

**In Support of the Imposition of
Antidumping Duties (continued):**

David Kim, Director, Business Development,
SKC, Inc.

Ronald I. Meltzer)
) – OF COUNSEL
John D. Greenwald)

**In Opposition to the Imposition of
Antidumping Duties:**

Baker & McKenzie LLP
Washington, D.C.
on behalf of

Bemis Company, Inc. (“Bemis”)

Bryan L. Falk, Strategic Sourcing Manager,
Printpack, Inc.

Jeffrey E. Lammers, Vice President, Global
Sourcing, Bemis

Gary Michalkiewicz, Manager, Corporate
Purchasing, Bemis

Kevin M. O’Brien) – OF COUNSEL

**In Opposition to the Imposition of
Antidumping Duties (continued):**

Arent Fox LLP
Washington, D.C.
on behalf of

Flex Middle East FZE
Flex America Inc.

Pradeep Tyle, Director, Flex Middle East FZE
and Senior President, Uflex Ltd.

Mark P. Lunn) – OF COUNSEL

Miller Chevalier
Washington, D.C.
on behalf of

Terphane Ltda.
Terphane, Inc.

Dan Roy, General Manager, Terphane, Inc.

Peter Koenig)
Robert Herzstein) – OF COUNSEL
James Altman)

Riggle & Craven
Chicago, IL
on behalf of

The China Plastics Processing Industry Association (BOPET Association)

David J. Craven) – OF COUNSEL

REBUTTAL/CLOSING REMARKS:

Petitioners (**John D. Greenwald**, WilmerHale)
Respondents (**Kevin M. O'Brien**, Baker & McKenzie LLP)

APPENDIX C
SUMMARY DATA

Table C-1

PET film: Summary data concerning the U.S.-market, 2005-07, January-June 2007, and January-June 2008

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Table C-2

PET film: Summary data concerning the U.S. merchant market, 2005-07, January-June 2007, and January-June 2008

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Table C-3

PET film: Summary data concerning the U.S.-market (excluding U.S. producer Terphane), 2005-07, January-June 2007, and January-June 2008

* * * * *

Table C-4

PET film: Summary data concerning the U.S. merchant market (excluding U.S. producer Terphane), 2005-07, January-June 2007, and January-June 2008

* * * * *

APPENDIX D
NONSUBJECT COUNTRIES' PRICING DATA

Table D-1

PET film: Weighted-average delivered prices and quantities of domestic and imported product 1 by quarters, January 2005-June 2008

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Table D-2

PET film: Weighted-average delivered prices and quantities of domestic and imported product 2 by quarters, January 2005-June 2008

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Table D-3

PET film: Weighted-average delivered prices and quantities of domestic and imported product 3 by quarters, January 2005-June 2008

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Table D-4

PET film: Weighted-average delivered prices and quantities of domestic and imported product 4 by quarters, January 2005-June 2008

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Table D-5

PET film: Weighted-average delivered prices and quantities of domestic and imported product 5 by quarters, January 2005-June 2008

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Table D-6

PET film: Weighted-average delivered prices and quantities of domestic and imported product 6 by quarters, January 2005-June 2008

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APPENDIX E

**PRICING DATA OF IMPORTS OF CHINESE PET FILM SOLD BY
TRADITIONAL IMPORTERS AND BY
FIRMS THAT ARE ALSO U.S. PRODUCERS**

Table E-1
PET film: Weighted-average delivered prices and quantities of U.S. and imported Chinese products 1 and 2, by firms' producer status, by quarters, January 2005-June 2008

* * * * *

APPENDIX F

**FINANCIAL CALCULATIONS FOR THE
DOMESTIC INDUSTRY EXCLUDING
POSSIBLE RELATED PARTIES**

This appendix presents certain financial data for the U.S. industry and supplements the data and discussion presented in part VI of the staff report. In the preliminary phase of these investigations the Commission determined that appropriate circumstances did not exist to exclude Terphane from the domestic industry as a related party.¹ However, because the Commission indicated that it intended to revisit this topic in the final phase of these investigations, financial data for the reporting U.S. producers excluding Terphane as well as Curwood are presented in table F-1.

Table F-1

PET film: Results of producers on their trade, transfer, and internal consumption operations excluding Curwood and Terphane, fiscal years 2005-07, January-June 2007, and January-June 2008

* * * * *

The underlying data and calculated per-units and ratios shown in table F-1 are generally the same as those in table VI-1 because both firms together represent a *** of the total.

¹ See Views of the Commission, *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates*, Investigation Nos. 731-TA-1131-1134 (Preliminary), publication 3962, November 2007, p. 9; also see the separate discussions of Vice Chairman Aranoff and Commissioner Okun (footnote 40) and Commissioner Pinkert (footnote 41). ***.

