

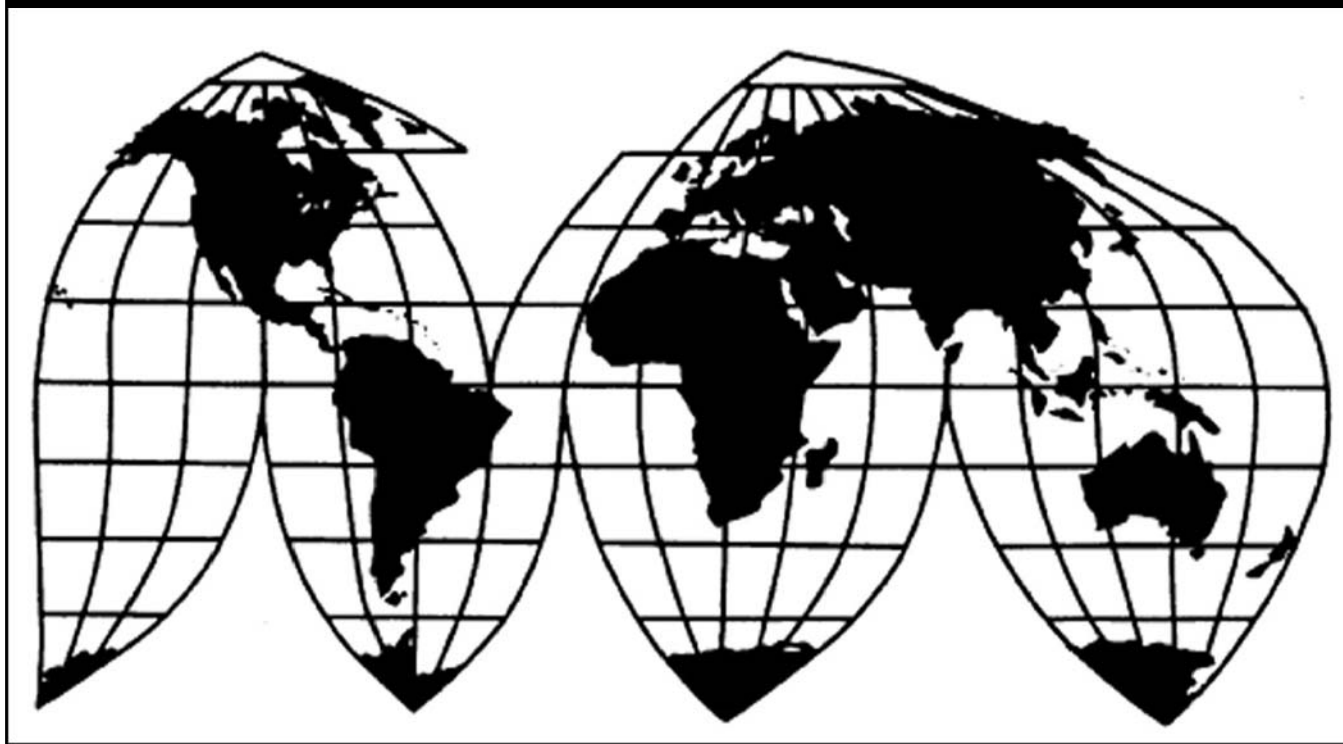
# **Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam**

Investigation Nos. 701-TA-462 and 731-TA-1156-1158 (Preliminary)

**Publication 4080**

**May 2009**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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# 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**Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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. 701-TA-462 and 731-TA-1156-1158 (Preliminary)

POLYETHYLENE RETAIL CARRIER BAGS FROM INDONESIA, TAIWAN, AND VIETNAM

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Indonesia, Taiwan, and Vietnam of polyethylene retail carrier bags (PRCBs) provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States. PRCBs imported from Vietnam are alleged to be subsidized and sold in the United States at less than fair value (LTFV). PRCBs imported from Indonesia and Taiwan are alleged to be sold in the United States at LTFV.

### COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations, have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### BACKGROUND

On March 31, 2009, a petition was filed with the Commission and Commerce by Hilex Poly Co., LLC, Hartsville, SC, and Superbag Corp., Houston, TX, alleging that an industry in the United States is materially injured by reason of subsidized and LTFV imports of PRCBs from Vietnam and LTFV imports of PRCBs from Indonesia and Taiwan. Accordingly, effective March 31, 2009, the Commission instituted countervailing duty investigation No. 701-TA-462 and antidumping duty investigations Nos. 731-TA-1156-1158 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 8, 2009 (74 FR 16009). The conference was held in Washington, DC, on April 21, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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



## IEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of polyethylene retail carrier bags (“PRCBs”) from Indonesia, Taiwan, and Vietnam that are allegedly sold in the United States at less than fair value and PRCBs from Vietnam that are allegedly subsidized by the Government of Vietnam.

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

### II. BACKGROUND

The petitions in these investigations were filed on March 31, 2009. The petitioners are Hilex Poly Co., LLC and Superbag Corporation (collectively, “petitioners”), two of the largest domestic producers of PRCBs.<sup>3</sup> Respondents that participated in the staff conference and filed a post-conference brief in these preliminary investigations include foreign producers and importers Ampac Packaging Vietnam Ltd.; The Cannon Group, Inc.; Chung Va (Vietnam) Plastic Packaging Co., Ltd.; Elkay Plastics Co., Inc.; Glopac Packaging PT; Industrias Chung Va (Holdings) Limitada; MHI Inc.; Packaging Concepts International; PT Super Exim Sari; and PT Super Makmur, and domestic producers and importers Ampac Plastics LLC and Glopac, Inc. (collectively, “respondents”).

### III. DOMESTIC LIKE PRODUCT

#### A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>4</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major

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<sup>1</sup> 19 U.S.C. §§ 1671b(a), 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

<sup>3</sup> Confidential Staff Report (“CR”) at I-1; Public Staff Report (“PR”) at I-1.

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

proportion of the total domestic production of the product.”<sup>5</sup> In turn, the Tariff Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ... .”<sup>6</sup>

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.<sup>7</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>8</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>9</sup> Although the Commission must accept the determination of the U.S. Department of Commerce (“Commerce”) as to the scope of the imported merchandise that is subsidized or sold at less than fair value,<sup>10</sup> the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>11</sup> The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent domestic like product issues.<sup>12</sup>

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<sup>5</sup> 19 U.S.C. § 1677(4)(A).

<sup>6</sup> 19 U.S.C. § 1677(10).

<sup>7</sup> 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).

<sup>8</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>9</sup> 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.”).

<sup>10</sup> See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 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).

<sup>11</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the 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 the Commission’s determination defining six like products in investigations where Commerce found five classes or kinds).

<sup>12</sup> See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1988); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

## **B. Product Description**

In its notices of initiation, Commerce defined the imported merchandise within the scope of the investigations as follows:

The merchandise subject to these investigations is [PRCBs], which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm). PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of these investigations excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, e.g., garbage bags, lawn bags, trash-can liners. Imports of merchandise included within the scope of these investigations are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of these investigations. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.<sup>13</sup>

PRCBs are bags made of polyethylene film with handles that are provided by retailers to their customers free of charge for packaging and carrying purchased goods home from the point of sale.<sup>14</sup> PRCBs come in several varieties. T-shirt bags, so called due to their resemblance to tank-top styled undershirts, are made of thinner (typically less than 1 mil) denser polyethylene film and are generally printed with simple designs of one or two, but up to four, colors.<sup>15</sup> Die-cut and drawstring bags are made of thicker (around 1 mil) polyethylene film with handles die cut, or punched, into the top portion of the bags, sometimes reinforced, and are also generally printed with simple designs.<sup>16</sup> Higher-end PRCBs may be made of even thicker polyethylene film, most greater than 2.5 mils, and may possess one or more of the following features: attached handles of plastic, string, or rope; gussets (i.e., accordion-like creases that enable the bag to contract and expand); square bottoms; cardboard or plastic inserts at the bottom of the bag; plastic or metal grommets and fasteners; and elaborate, multi-colored designs printed on multiple sides of the bag.<sup>17</sup>

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<sup>13</sup> PRCBs from Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations, Case Nos. A-560-822, A-583-843, A-552-804, 74 Fed. Reg. 19049, 19055 (Apr. 27, 2009).

<sup>14</sup> CR at I-3, 8, 13; PR at I-2, 6, 9.

<sup>15</sup> CR at I-7-8, 10, 13; PR at I-6-7, 9-10; Conference Transcript (“Tr.”) at 117 (Gitlin).

<sup>16</sup> CR at I-13; PR at I-9; Tr. at 82 (Daniels), 141 (Wisla).

<sup>17</sup> CR at I-13-14; PR at I-9-10.

### **C. Like Product Analysis**

In these preliminary investigations, petitioners argue that the Commission should define a single domestic like product coextensive with the scope of the investigations, encompassing a continuum of PRCB products. Respondents counter that the Commission should define two domestic like products corresponding to “high-end PRCBs,” which they define as PRCBs that are 2.25 mils or more in thickness and reusable, and “commodity PRCBs,” which they define as PRCBs that are less than 2.25 mils in thickness and disposable.<sup>18</sup> For purposes of the preliminary phase of these investigations, and based on the following analysis, we define a single domestic like product coextensive with the scope of these investigations. We intend, however, to re-examine this issue in any final phase of these investigations.

#### **1. Arguments of the Parties**

##### **a. Petitioners’ Arguments**

Petitioners argue that because the scope of these investigations is identical to the scope of the antidumping duty investigations conducted in 2004 on PRCBs from China, Malaysia, and Thailand, and the nature of PRCBs has not changed since that time, the Commission should again define a single domestic like product encompassing a continuum of PRCB products, as it did in the 2004 investigations.<sup>19</sup>

Petitioners first argue that there is a continuum of PRCB products, with no clear dividing line to separate high-end PRCBs from other PRCBs, based upon the Commission’s six domestic like product factors. They argue that all PRCBs have the same physical characteristics, imparted by polyethylene film, and the same use, being given away free by retailers for carrying goods out of retail establishments.<sup>20</sup> They claim that all PRCBs are generally interchangeable across the spectrum of qualities, sizes, and features,<sup>21</sup> and sold through the same channels of distribution, either direct to retailers or indirectly to retailers via distributors.<sup>22</sup> Consumers and producers perceive all PRCBs as within the same product category, they contend, as all are made of polyethylene film and used to carry goods away from retail establishments.<sup>23</sup> They argue that all PRCBs are produced using the same four-step process – namely blending, extrusion, printing, and bag conversion – using similar production processes and equipment, and the same employees.<sup>24</sup> Finally, with respect to price, petitioners argue that PRCBs exist on a broad price continuum, depending upon the characteristics and features specified by retail purchasers,<sup>25</sup> with high-end PRCBs not necessarily priced higher than other types of PRCBs.<sup>26</sup>

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<sup>18</sup> Respondents’ Br. at 3-4.

<sup>19</sup> Petitioners’ Post-Conference Brief (“Petitioners’ Br.”) at 4; see also Confidential Views, PRCBs from China, Malaysia, and Thailand, Inv. Nos. 731-TA-1043-1045 (Final) (“2004 Confidential Views”) at 12-13; PRCBs from China, Malaysia, and Thailand, Inv. Nos. 731-TA-1043-1045 (Final), USITC Pub. 3710 (August 2004) (“2004 Public Views”) at 9.

<sup>20</sup> Petitioners’ Br. at 5.

<sup>21</sup> Petitioners’ Br. at 6.

<sup>22</sup> Petitioners’ Br. at 6.

<sup>23</sup> Petitioners’ Br. at 7.

<sup>24</sup> Petitioners’ Br. at 7.

<sup>25</sup> Petitioners’ Br. at 8.

<sup>26</sup> Petitioners’ Br. at 8.

Petitioners next argue that respondents have provided the Commission with no reason to “reconsider” its domestic like product definition from the 2004 investigations.<sup>27</sup> They claim that respondents have underscored the absence of any clear dividing line between high-end PRCBs and other PRCBs by proposing multiple, inconsistent definitions of what constitutes high-end PRCBs, as they did in the 2004 investigations.<sup>28</sup> They also contest the factual accuracy of many of respondents’ claims, in particular respondents’ assertions that domestic producers do not offer high-end PRCBs and cannot accept orders for smaller quantities of PRCBs.<sup>29</sup>

## **b. Respondents’ Arguments**

Respondents dispute petitioners’ assertion that nothing has changed since the 2004 investigations, and argue that certain laws enacted since 2004, regulating the use and disposal of plastic bags, constitute an “intervening factor” that warrants the Commission’s reconsideration of the domestic like product issue.<sup>30</sup> In respondents’ view, these laws and a consideration of the Commission’s six domestic like product factors establish the existence of a clear dividing line separating high-end PRCBs, which they define as PRCBs that are 2.25 mils or more in thickness and reusable, from “commodity PRCBs,” which they define as PRCBs that are less than 2.25 mils in thickness and disposable.<sup>31</sup>

First, respondents claim that jurisdictions including San Francisco and New York City began passing laws in 2006 to regulate the use and disposal of certain plastic bags.<sup>32</sup> All of these laws share one thing in common, respondents claim, in that they regulate commodity PRCBs, defined as disposable bags less than 2.25 mils in thickness, while exempting high-end PRCBs, defined as reusable bags 2.25 mils or more in thickness.<sup>33</sup>

Respondents further claim that the Commission’s six domestic like product factors support the existence of a clear dividing line separating high-end PRCBs from commodity PRCBs based on the greater thickness, reusability, and labor-intensive hand assembly of high-end PRCBs. According to respondents, high-end shopping bags are distinguishable from other types of PRCBs in terms of their value added features and full color graphics; their exemption from bag recycling laws; and their use by retailers as walking billboards and by consumers as status symbols.<sup>34</sup> Other PRCBs, by contrast, are used for a single trip from the store to the home and reused by consumers, if at all, for such uses as throwing

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<sup>27</sup> Petitioners’ Br. at 4.

<sup>28</sup> Petitioners’ Br. at 8-10.

<sup>29</sup> See Petitioners’ Br. at 11-15.

<sup>30</sup> Respondents’ Postconference Brief (“Respondents’ Br.”) at 4.

<sup>31</sup> Respondents’ Br. at 3-4.

<sup>32</sup> Respondents’ Br. at 4. We note that the Commission is not bound by local or state legislation that purports to find different categories of PRCBs. Courts have consistently recognized the limited relevance to antidumping and countervailing duty determinations of administrative actions under other statutes. See, e.g., Minivans from Japan, Inv. No. 731-TA-522 (Preliminary), USITC Pub. 2402 (July 1991) at 29 & n.73 (citing Smith Corona v. United States, 915 F.2d 683, 686-87 (Fed. Cir. 1990); Torrington Co. v. United States, 745 F.Supp. 718, 722 (Ct. Int’l Trade 1990); Titanium Co. v. United States, 743 F. Supp. 888, 892 (Ct. Int’l Trade 1990); Bomont Industries v. United States, 733 F.Supp. 1507, 1509 (Ct. Int’l Trade 1990); Roquette Freres v. United States, 583 F.Supp. 599, 605 (Ct. Int’l Trade 1984)). Compare United States v. Eurodif, S.A., 1289 S.Ct. 878, 887 (2009) (private contract law does not bind Commerce Department’s definition of a “good”).

<sup>33</sup> Respondents’ Br. at 4.

<sup>34</sup> See Respondents’ Br. at 8-10.

away pet waste or lining wastepaper baskets.<sup>35</sup> According to them, the divergent physical characteristics and uses of high-end PRCBs and other PRCBs preclude their interchangeable use.<sup>36</sup> With respect to channels of distribution, respondents claim that speciality retailers and boutiques requisition high-end PRCBs in quantities of 2,500 to 5,000 from “packaging distributors,” while commodity PRCBs are sold direct to larger retailers and via distributors to smaller retailers in quantities of hundreds of thousands or millions. In terms of production processes, facilities, and employees, respondents argue that commodity PRCBs are made in highly automated facilities designed to run continually, while high-end PRCBs are made on smaller, more flexible equipment coupled with the labor-intensive hand assembly of value added features, to enable small runs of customized bags.<sup>37</sup> With respect to price, respondents estimate that t-shirt bags cost \$20 to \$25 per 1,000 bags, or \$0.020 to \$0.025 per bag; die-cut/drawstring bags cost \$70 to \$80 per 1,000 bags, or \$0.070 to \$0.080 per bag; and high-end bags cost \$350 to \$650 per 1,000 bags, or \$0.35 to \$0.65 and higher per bag.<sup>38</sup> All of these various differences between high-end PRCBs and commodity PRCBs, they claim, are reflected in differing producer, purchaser, and consumer perceptions of the two product categories.<sup>39</sup>

## 2. Analysis

Although the Commission defined a single domestic like product in the 2004 investigations, we are not bound by the Commission’s findings in those investigations because “each injury investigation by the Commission ‘is sui generis, involving a unique combination and interaction of many economic variables.’”<sup>40</sup> Even with respect to investigations involving precisely the same scope, the Commission makes its determinations based on the record of each investigation, including the arguments of the parties.<sup>41</sup> Accordingly, we are not “reconsidering” the domestic like product definition from the 2004 investigations, as petitioners and respondents suggest, but defining the appropriate domestic like product or products based on the record of these preliminary phase investigations.

### *Physical characteristics and uses*

All PRCBs share the same general physical characteristics and uses. All are made from polyethylene film and have handles, and all are provided by retailers to their customers free of charge to package and carry goods from retail establishments.<sup>42</sup>

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<sup>35</sup> Respondents’ Br. at 8.

<sup>36</sup> Respondents’ Br. at 8-9.

<sup>37</sup> Respondents’ Br. at 11-12.

<sup>38</sup> Respondents’ Br. at 13.

<sup>39</sup> Respondents’ Br. at 10.

<sup>40</sup> Cleo Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007) (quoting Nucor Corp. v. United States, 414 F.3d 1331, 1340 (Fed. Cir. 2005)).

<sup>41</sup> See Nippon Steel Corp. v. United States, 19 CIT 450, 454-55 (1995); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (CIT 1988); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1669 n.5 (1988).

<sup>42</sup> CR at I-13; PR at I-9.



Different types of PRCBs possess different physical characteristics, however.<sup>43</sup> Most are made to the specifications of the retailer and thus are made in a wide variety of shapes and sizes, with various thicknesses, and with a wide variety of handles, gussets, color combinations, and printing.<sup>44</sup>

It is unclear whether the higher-end PRCBs produced in the United States, which reportedly possess physical characteristics and uses similar to those of subject imported high-end PRCBs, satisfy respondents' proposed definition of high-end PRCBs in terms of thickness.<sup>45</sup> At the conference, petitioners submitted as exhibits "higher end" PRCBs produced in the United States by Command Packaging with features similar to those of subject imported high-end PRCBs, including thicker-gauge material, attached handles, square bottoms, gussets, and multi-color graphics printed over a substantial portion of the bags, but did not specify the thickness of the bags.<sup>46</sup>

### *Interchangeability*

There would appear to be limited interchangeability between t-shirt bags, die-cut bags, and drawstring bags, at one extreme, and high-end shopping bags, on the other, given the substantial physical and price differences between these types of PRCBs. Image-conscious specialty retailers and boutiques are willing to pay a substantial premium for aesthetically pleasing high-end bags, and would not likely substitute comparatively duller commodity PRCBs. Conversely, big box retailers, grocery stores, and drug stores would not likely substitute more costly high-end shopping bags for less costly commodity PRCBs when their primary concern is minimizing the cost of PRCBs.<sup>47</sup> Mr. Halimi of Command Packaging testified that his company's domestic competition for sales of higher-end PRCBs is limited to a relative handful of domestic producers, suggesting that most domestic producers do not make PRCBs that are interchangeable with his company's higher-end bags.<sup>48</sup> On the other hand, it is unclear whether the higher-end PRCBs produced in the United States, which are reportedly interchangeable with subject imported high-end PRCBs, satisfy respondents' proposed definition of high-end PRCBs in terms of thickness.<sup>49</sup>

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<sup>43</sup> As noted above, in the 2004 investigations, the Commission concluded that "there is a continuum of PRCBs that are made in a wide range of shapes and sizes with varying features . . . primarily determined by retailers" but "all shar[ing] certain qualities . . ." CR at I-14; PR at I-10; 2004 Confidential Views at 11; 2004 Public Views at 8.

<sup>44</sup> See CR at I-13-14; PR at I-9-10; Tr. at 118 (Gitlin).

<sup>45</sup> Tr. at 38 (Halimi) ("Let me give you an example of one of these [domestic] higher end bags . . . These bags compete directly with [subject imports] that have cardboard inserts at the bottom . . . the two bags compete head to head."). Faced with similar considerations in the 2004 investigations, the Commission found that "[m]ost responding purchasers reported that high-end and low-end PRCBs have the same uses . . . and are interchangeable if size and gauge are comparable . . . However, some purchasers noted differences between high-end and low-end PRCBs with respect to customer perceptions, physical characteristics, and price." CR at I-17; PR at I-12; 2004 Confidential Views at 8-9; 2004 Public Views at 7.

<sup>46</sup> See Tr. at 37-38 (Halimi).

<sup>47</sup> See Tr. at 30 (Rizzo) ("Because the product [PRCBs] is given away, [retailers] prefer that the cost of the product be as close to zero as possible.").

<sup>48</sup> See Tr. at 38 (Halimi) ("We also compete against other U.S. producers of these products including Northwest, Genpak, Ampac, and PacShare [sic]."), 108-09 (Mr. von Schrlitz: "I'm wondering how many domestic competitors you have for your higher end bags." Mr. Halimi: "I have named a few of the companies in my statement. There's a company Pakture [sic], Genpak, there's Rollplast in Northern California. It all really depends on the product line. There's a company locally in California called Leadway. They're a competitor.").

<sup>49</sup> See Tr. at 38 (Halimi).

*Common manufacturing facilities, production processes, and production employees*

All types of PRCBs are generally produced in the same facilities with the same employees, but not necessarily with the same overall production processes.<sup>50</sup> While the first three steps of the four-step PRCB production process – namely, blending, extruding, and printing – are shared by all types of PRCBs, the last production step, conversion, differs according to the type of PRCB being produced.<sup>51</sup> For example, Command Packaging uses the same extrusion and printing equipment for all 10 types of PRCBs that it produces, from t-shirt bags to higher-end PRCBs, but different conversion equipment.<sup>52</sup>

Respondents emphasize that their production process for high-end PRCBs differs from domestic producers' process for making low-end bags due to the labor-intensity of the conversion process, which can include the insertion of cardboard or plastic bottoms and the attachment of rope handles by hand.<sup>53</sup> The labor-intensity of producing imported high-end PRCBs is not a basis for drawing a clear dividing line between high-end PRCBs and other PRCBs produced in the United States, however, because all PRCB production in the United States is fully automated.<sup>54</sup> Nevertheless, there is some evidence that the conversion process for domestically produced higher-end PRCBs that are reportedly similar to imported high-end PRCBs differs from the conversion process for other types of domestically produced PRCBs.<sup>55</sup>

*Channels of distribution*

All types of PRCBs are sold either directly to retailers or to distributors that ultimately sell the PRCBs to retailers.<sup>56</sup> Respondents testified that the channels of distribution for high-end PRCBs and other PRCBs had been different, but have increasingly converged as distributors that used to offer only commodity PRCBs are increasingly offering high-end PRCBs as well.<sup>57</sup>

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<sup>50</sup> See Tr. at 102-103 (Halimi).

<sup>51</sup> CR at I-9-12, 15; PR at I-6-8, 10-11. Respondents argued that subject imported high-end PRCBs are made using higher quality extruders and printed using the rotogravure printing process, unlike subject imported commodity PRCBs. See CR at I-10; PR at I-8; Tr. at 126, 150-51 (Lin). There is no evidence on the record, however, that domestically produced higher-end PRCBs are produced on different extruders or with different printing equipment than other types of PRCBs. See, e.g., CR at I-10; PR at I-7 (noting that domestically produced PRCBs are printed using the flexographic printing process).

<sup>52</sup> CR at I-14; PR at I-10; Tr. at 80 (Halimi).

<sup>53</sup> CR at I-11-12; PR at I-8; see also Tr. at 127-28 (Lin), 131 (Perry).

<sup>54</sup> When considering whether there are two or more domestic like products, the Commission assesses whether there are clear dividing lines among differing domestic articles, and the analysis of the domestic like product factors may thus pertain only to differences in manufacturing methods between domestic articles.

<sup>55</sup> Tr. at 80 (Halimi) (“What is called the conversion line . . . those are specific to the product line.”). In the 2004 investigations, the Commission found that “the basic process for production of PRCBs generally involves blending, extrusion, printing, and bag conversion” and noted that the labor-intensity of imported high-end bag production was not a relevant consideration. CR at I-15; PR at I-11; 2004 Confidential Views at 9-10; 2004 Public Views at 7. The Commission also found that the production facilities, processes, and employees utilized by domestic producers to make high-end PRCBs and other PRCBs varied by producer: “Some U.S. producers reported that high-end and all other PRCBs were produced using very similar production methods . . . A few producers acknowledged some differences in the manufacturing processes between high-end and all other PRCBs.” CR at I-15; PR at I-11; 2004 Confidential Views at 10; 2004 Public Views at 7-8.

<sup>56</sup> CR at II-1-2; PR at II-1; CR/PR at Table II-1.

<sup>57</sup> Tr. at 122-23 (Gitlin). In the 2004 investigations, the Commission found that the channels of distribution for high-end PRCBs and other PRCBs differed somewhat. CR at I-17; PR at I-12; 2004 Confidential Views at 9; 2004

(continued...)

### *Customer and producer perceptions*

Customers and producers perceive some differences between t-shirt, die-cut, and drawstring PRCBs, on the one hand, and high-end PRCBs, on the other.<sup>58</sup> Mr. Halimi of Command Packaging testified that his company's higher-end PRCBs compete directly with imported high-end PRCBs, implying that his company's lower-end PRCB products, including t-shirt bags, do not.<sup>59</sup> He also indicated that his domestic competition for sales of higher-end PRCBs is limited.<sup>60</sup> Mr. Gitlin of Glopack, an importer and foreign producer of high-end PRCBs, testified that retailers perceive high-end PRCBs as different and superior to other PRCBs due to their superior design characteristics and durability, which render them "walking advertisements" when used and reused by consumers.<sup>61</sup> In exempting PRCBs that are 2.25 mils or more in thickness, the state and local environmental statutes cited by respondents also suggest that high-end PRCBs are perceived as different than other PRCBs in certain respects.

### *Price*

The record indicates that high-end PRCBs are priced from 25 to 65 cents per bag, which is substantially more than the average unit value of subject imports or domestic producer shipments, or the prices of the pricing products for which data were collected, none of which were high-end.<sup>62</sup> There is also evidence, however, that PRCBs exist on a broad price continuum, with high-end PRCBs not necessarily more expensive than other types of PRCBs.<sup>63</sup>

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<sup>57</sup> (...continued)  
Public Views at 7.

<sup>58</sup> Data on customer perceptions from purchasers are unavailable since purchasers' questionnaires are not normally issued in preliminary phase investigations. CR at I-17; PR at I-12. In the 2004 investigations, the Commission found that "[m]ost purchasers . . . reported that there is no clear distinction between high-end and low-end PRCBs," though "some purchasers noted differences between high-end and low-end PRCBs with respect to customer perceptions, physical characteristics, and price." CR at I-17; PR at I-12; 2004 Confidential Views at 9; 2004 Public Views at 7.

<sup>59</sup> See Tr. at 37-38 (Halimi).

<sup>60</sup> See Tr. at 38, 108-09 (Halimi).

<sup>61</sup> See Tr. at 121-22, 134, 152-53 (Gitlin).

<sup>62</sup> See CR at I-18; PR at I-12-13; see also Tr. at 120 (Gitlin); Respondents' Br. at 13. The average unit value of domestic producers' U.S. shipments ranged from 1.3 to 1.5 cents per bag, while the average unit value of subject imports ranged from 0.9 to 1.3 cents per bag. CR/PR at Table C-1; see also id. at Tables V-1-4 (pricing product prices ranged from 0.8 to \*\*\* cents). Separate average unit value and pricing data for high-end PRCBs were not collected in these preliminary phase investigations. In the 2004 investigations, the Commission found that non-high-end PRCB prices "were generally lower" than high-end PRCB prices. CR at I-18; PR at I-13; 2004 Confidential Views at 10; 2004 Public Views at 8. It also found, however, that "many U.S. firms had shipments of PRCBs not classified as high-end PRCBs in [price] ranges that were much higher" than the average unit values for commercial domestic shipments of PRCBs. 2004 Confidential Views at 10; 2004 Public Views at 8.

<sup>63</sup> Petitioners' Br. at 8 (citing PRCBs from China, Malaysia, and Thailand, Inv. Nos., 731-TA-1043-1045 (Final), USITC Pub. 3710 (Aug. 2004) at 9 n.37) (noting that in the 2004 investigations, the Commission found that the average unit values of five domestic producers exceeded the average unit value of subject imports of high-end PRCBs, as defined by respondents in those investigations).

## *Conclusion*

The record indicates that, broadly speaking, t-shirt, die-cut, and drawstring PRCBs are similar to high-end PRCBs. All PRCBs are made of polyethylene film and feature handles and printed designs, and all are typically provided by retailers free of charge for packaging and carrying goods out of retail establishments. As such, PRCBs of the same size and gauge are generally interchangeable. The first three steps of the four-step PRCB production process – namely, blending, extrusion, and printing – are shared by all PRCBs, as are production facilities and employees. Since the 2004 investigations, high-end PRCBs have increasingly been distributed by the same distributors that handle other PRCBs.

There are some salient differences between high-end PRCBs and other PRCBs, however. Mr. Halimi testified that the higher-end PRCBs produced by Command Packaging possess certain features, such as square bottoms and attached handles, not generally found on other types of PRCBs. He also indicated that the conversion process for higher-end PRCBs, which presumably imparts their special features, differs from the conversion process for other types of PRCBs.

The significantly higher price of high-end PRCBs would make it uneconomical for purchasers to substitute high-end PRCBs for other types of PRCBs, even if technically feasible. That purchasers are willing to pay such a premium for high-end PRCBs suggests that they are perceived differently in the marketplace, as an advertising vehicle as much as a utilitarian item. The environmental statutes cited by respondents lend further support to this inference, in apparently recognizing that consumers tend to reuse heavier-gauge PRCBs to a greater extent than other types of PRCBs.

Nevertheless, there is insufficient evidence on the record of these preliminary investigations for us to conclude that there is a clear dividing line separating high-end PRCBs from other types of PRCBs on the continuum of PRCB products. Respondents propose drawing such a line on the bases of gauge, with bags 2.25 mils or more in thickness qualifying as “high-end PRCBs,” and reusability. The gauge of the domestically produced higher-end PRCBs that reportedly compete with imported high-end PRCBs is unclear, however, and PRCBs with gauges thinner than 2.25 mils can be reused.<sup>64</sup>

Also unclear is the extent to which domestically produced PRCBs in the middle of the continuum are similar to or different from imported high-end PRCBs. In the 2004 investigations, the Commission found that the respondents’ arguments, which were similar to those advanced by respondents in these preliminary investigations, “do not account for the vast array of PRCBs that fall in the middle of the continuum” but instead “focus on . . . products at the opposite ends of the continuum.”<sup>65</sup> In our view, respondents’ domestic like product arguments in these preliminary phase investigations suffer from a similar shortcoming.

For the foregoing reasons, we define a single domestic like product that is coextensive with the scope of the investigation defined by Commerce, comprised of a continuum of PRCBs. We intend to explore this issue further in any final phase of these investigations, however, and intend to collect separate data on high-end PRCBs, assuming that a clear definition can be provided that distinguishes between these two types of PRCBs.<sup>66</sup>

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<sup>64</sup> Respondents acknowledge that lower quality PRCBs can be reused. *See* Respondents’ Br. at 8.

<sup>65</sup> 2004 Confidential Views at 12; 2004 Public Views at 9.

<sup>66</sup> Respondents have proffered somewhat inconsistent definitions of high-end PRCBs in these preliminary phase investigations. *See* Petitioners’ Br. at 11-12. In their written comments on draft questionnaires for the final phase of these investigations, as provided under 19 C.F.R. § 207.20(b), we expect respondents to provide the Commission with a more detailed definition of the high-end PRCBs that they urge the Commission to define as a separate domestic like product.

#### IV. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>67</sup> 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. Based on our definition of the domestic like product, we define the domestic industry as all domestic producers of PRCBs.<sup>68</sup>

##### A. 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). Subsection 1677(4)(B) 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.<sup>69</sup> Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each investigation.

Eight domestic producers, \*\*\*, qualify as related parties because they were importers of subject merchandise from Indonesia, Taiwan, or Vietnam during the period of investigation.<sup>70</sup> In addition, \*\*\* are related to subject foreign exporters of PRCBs.<sup>71</sup> As discussed below, we find that circumstances do not warrant the exclusion of any related party in these preliminary phase investigations.

Related parties together accounted for a substantial \*\*\* percent of domestic production in 2008, with the three largest related parties, \*\*\*, alone accounting for \*\*\* percent of domestic production that year.<sup>72</sup> During the period of investigation, the ratio of subject imports to domestic production increased \*\*\*, but remained less than 50 percent for all related parties, indicating that all retained a primary interest in domestic production as opposed to importing.<sup>73</sup> Indeed, petitioners assert that domestic producers have

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<sup>67</sup> 19 U.S.C. § 1677(4)(A).

<sup>68</sup> CR/PR at Table III-1. Domestic producers of PRCBs during the period of investigation include Ampac, API, Bemis, Command, Durabag, Europackaging, Genpak, Golden, Hilex, Inteplast, Omega, Poly-Pak, Roplast, Superbag, and Unistar. Id.

<sup>69</sup> 19 U.S.C. § 1677(4)(B).

<sup>70</sup> See CR/PR at Table III-5; 19 U.S.C. § 1677(4)(B).

<sup>71</sup> CR/PR at Table III-1.

<sup>72</sup> See CR/PR at Table III-1.

<sup>73</sup> The ratio of subject imports to domestic production ranged from \*\*\* to \*\*\* percent. CR/PR at Table III-5. Subject imports as a percentage of domestic production increased from \*\*\* in 2006 to \*\*\* percent in 2007 and to \*\*\* percent in 2008 for \*\*\*; from \*\*\* in 2006 to \*\*\* percent in 2007 and to \*\*\* percent in 2008 for \*\*\*; from \*\*\* percent in 2006 to \*\*\* percent in 2008 for \*\*\*; from \*\*\* percent in 2006 to \*\*\* percent in 2008 for \*\*\*; from \*\*\* percent in 2006 to \*\*\* percent in 2008 for \*\*\*; and from \*\*\* in 2006 to \*\*\* percent in 2007 and to \*\*\* percent in 2008 for \*\*\*. Id. With respect to \*\*\*, the ratio of subject imports to domestic production was \*\*\* in 2006, \*\*\* in 2007, and \*\*\* in 2008. Id. With respect to \*\*\*, the ratio of subject imports to domestic production was \*\*\* in each year of the period. Id. We note, however, that the ratio of subject import purchases to domestic production was \*\*\* percent in 2006, \*\*\* percent in 2007, and \*\*\* percent in 2008 for \*\*\* and \*\*\* percent in 2006, \*\*\* percent in 2007, and \*\*\* in 2008 for \*\*\*. Id. We also note that one related party, \*\*\*, and three additional related parties, \*\*\*. See CR/PR at Table III-1.

been forced to import PRCBs as a means of sustaining their higher-cost domestic operations.<sup>74</sup> At the same time, there is currently no evidence that related parties derived a significant financial benefit from their importation of PRCBs from subject countries, since the operating profit margins of related parties did not differ significantly from the operating profit margins of domestic producers that were not related parties.<sup>75 76 77</sup> No party argues that any related party should be excluded from the domestic industry.

In conclusion, we define the domestic industry as all domestic producers of the like product, excluding no related parties.

## V. CUMULATION

### A. Background

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Tariff 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.<sup>78</sup> 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 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.<sup>79 80</sup>

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<sup>74</sup> Petitioners' Br. at 22; Tr. at 20 (Bazbaz) ("[S]ome domestic producers are using blended sales programs. That is a domestic producer will commit to sell a customer its higher priced domestic bags and lower priced imported bags at a single average price.").

<sup>75</sup> See CR/PR at Table VI-2. We note that the related party with the highest ratio of subject imports to domestic production, \*\*\*. See *id.* at Table VI-2 & n.1.

<sup>76</sup> 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 domestic 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.

<sup>77</sup> For purposes of the preliminary phase of these investigations, Commissioner Pinkert does not rely upon financial performance as a factor in determining whether there are appropriate circumstances to exclude related parties from the domestic industry. The present record is not sufficient to infer from the companies' profitability on their U.S. operations whether they have derived a specific benefit from importing. See Allied Mineral Products v. United States, 28 C.I.T. 1861, 1865-67 (2004). For the final phase of these investigations, Commissioner Pinkert invites the parties to provide any information they may have with respect to whether these companies are benefitting financially from their status as related parties.

<sup>78</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>79</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (continued...)

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.<sup>81</sup> Only a “reasonable overlap” of competition is required.<sup>82</sup>

The statutory threshold for cumulation is satisfied in these investigations because petitioners filed the antidumping duty petitions with respect to Indonesia, Taiwan, and Vietnam, and the countervailing duty petition with respect to Vietnam, on March 31, 2009.<sup>83</sup> None of the statutory exceptions to cumulation is applicable.

## **B. Analysis**

Based on the record of these preliminary phase investigations, we find a reasonable overlap of competition between subject imports from Indonesia, Taiwan, and Vietnam, and between subject imports from each source and the domestic like product. First, the record indicates that there is a high degree of substitutability between subject imports from Indonesia, Taiwan, and Vietnam, and subject imports from each source and the domestic like product.<sup>84</sup> Most responding producers and importers reported that subject imports from Indonesia, Taiwan, and Vietnam are “always” or “frequently” used interchangeably with each other and with the domestic like product.<sup>85</sup> When asked whether differences other than price are ever significant to purchasers, most producers and importers responded “sometimes” or “never,” though a significant minority of importers reported that differences other than price are “always” or “frequently” significant to purchasers choosing between subject imports and the domestic like product.<sup>86</sup>

Second, PRCBs from all sources generally served the same geographic markets during the period of investigation. Subject imports from Indonesia, Taiwan, and Vietnam entered the United States through multiple ports of entry dispersed across the country, with roughly one-third shipped under 100 miles, one-third shipped between 100 and 1,000 miles, and one-third shipped over 1,000 miles.<sup>87</sup> Consistent with these data, 21 of 39 importers of subject PRCBs reported serving customers nationwide, while 18

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(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).

<sup>80</sup> 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. 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).

<sup>81</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>82</sup> 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.”).

<sup>83</sup> CR at I-1; PR at I-1.

<sup>84</sup> CR at II-11; PR at II-8.

<sup>85</sup> CR at II-11-12; PR at II-8; CR/PR at Table II-3.

<sup>86</sup> CR/PR at Table II-4.

<sup>87</sup> CR at IV-5, V-2; PR at IV-5, V-2.

reported serving one or more regional markets.<sup>88</sup> Petitioners contend that domestic producers and subject imports alike serve customers nationwide, and 11 of 15 domestic producers reported that they serve customers nationwide.<sup>89</sup> Thus, subject imports from all three sources and the domestic like product serve all regions of the United States.

Third, subject imports from Indonesia, Taiwan, and Vietnam and the domestic like product shared the same general channels of distribution. During the period examined, shipments directly to end users accounted for a majority of U.S. shipments of the domestic like product and subject imports from Indonesia, Taiwan, and Vietnam.<sup>90</sup> The balance of U.S. shipments of PRCBs from all sources were made to distributors.<sup>91</sup>

Finally, PRCBs from all sources were simultaneously present in the U.S. market, given that subject imports from Indonesia, Taiwan, and Vietnam entered the United States in every month of the period examined.<sup>92</sup>

Based on these factors, we conclude that there is a reasonable overlap of competition between and among subject imports and the domestic like product, and, therefore, cumulate subject imports from Indonesia, Taiwan, and Vietnam for our analysis of reasonable indication of material injury by reason of subject imports.

## **VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF IMPORTS OF SUBJECT MERCHANDISE FROM INDONESIA, TAIWAN, AND VIETNAM<sup>93</sup>**

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.<sup>94</sup> 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.<sup>95</sup> The statute defines “material injury” as “harm which is not

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<sup>88</sup> CR at II-3; PR at II-2; CR/PR at Table II-2. We note that these data do not break out the country source of the subject imported PRCBs.

<sup>89</sup> CR/PR at Table II-3, IV-5.

<sup>90</sup> Shipments to end users accounted for between 63.9 and 69.4 percent of U.S. shipments of the domestic like product, between 53.2 and 71.7 percent of U.S. shipments of subject imports from Indonesia, between 55.1 and 64.2 percent of subject imports from Taiwan, and between 35.0 and 57.3 percent of subject imports from Vietnam. CR/PR at Table II-1. U.S. shipments of subject imports from Vietnam to end users were at their nadir in 2006 at 35.0 percent before increasing to 57.3 percent in 2007 and 51.1 percent in 2008. *Id.*

<sup>91</sup> Shipments to distributors accounted for between 30.6 and 36.1 percent of U.S. shipments of the domestic like product, between 28.3 and 46.8 percent of U.S. shipments of subject imports from Indonesia, between 35.8 and 44.9 percent of subject imports from Taiwan, and between 42.7 and 65.0 percent of subject imports from Vietnam. CR/PR at Table II-1.

<sup>92</sup> CR at IV-5; PR at IV-5.

<sup>93</sup> In these preliminary phase investigations, subject imports from Indonesia, Taiwan, and Vietnam, respectively, accounted for more than 3 percent of the volume of PRCBs imported into the United States from all sources in the most recent 12-month period for which data are available preceding the filing of the petition. CR at IV-6; PR at IV-5-6. As such, we find that subject imports are not negligible under 19 U.S.C. § 1677(24).

<sup>94</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>95</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the  
(continued...)



inconsequential, immaterial, or unimportant.”<sup>96</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>97</sup> 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.”<sup>98</sup>

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is “materially injured by reason of” unfairly traded imports,<sup>99</sup> it 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.<sup>100</sup> 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 under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.<sup>101</sup>

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.<sup>102</sup> In performing its examination, however, the Commission need not

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<sup>95</sup> (...continued)

determination” but shall “identify each {such} factor ... {a}nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

<sup>96</sup> 19 U.S.C. § 1677(7)(A).

<sup>97</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>98</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>99</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>100</sup> 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}.”), aff’g 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

<sup>101</sup> 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 Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘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.’” See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

<sup>102</sup> Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 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. 96-317 at 47 (1979) (“in examining the overall injury being experienced 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;” those factors include “the volume and prices of nonsubsidized

(continued...)

isolate the injury caused by other factors from injury caused by unfairly traded imports.<sup>103</sup> Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.<sup>104</sup> It is clear that the existence of injury caused by other factors does not compel a negative determination.<sup>105</sup>

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.”<sup>106 107</sup> Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid

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<sup>102</sup> (...continued)

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, 542 F.3d at 877.

<sup>103</sup> SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{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.” (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-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (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.”).

<sup>104</sup> S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

<sup>105</sup> See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

<sup>106</sup> Mittal Steel, 542 F.3d at 877-78; see also id. at 873 (“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. 96-249 at 75.

<sup>107</sup> Commissioner Pinkert does not join this paragraph or the following four paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, in certain circumstances, to undertake a particular kind of analysis of nonsubject imports. Mittal 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 1369. 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.

542 F.3d at 878.

adherence to a specific formula.”<sup>108</sup>

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.<sup>109</sup> The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have “evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.<sup>110</sup> Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.<sup>111 112</sup>

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency’s institutional expertise in resolving injury issues.<sup>113 114</sup>

For the reasons stated below, we find that there is a reasonable indication that the domestic industry producing PRCBs is materially injured by reason of subject imports from Indonesia, Taiwan, and

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<sup>108</sup> Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

<sup>109</sup> Mittal Steel, 542 F.3d at 875-79.

<sup>110</sup> Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

<sup>111</sup> Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

<sup>112</sup> To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission’s causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

<sup>113</sup> Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

<sup>114</sup> We provide in the discussion of impact in section VI.D. below an analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

Vietnam that are allegedly sold at less than fair value in the United States and subject imports from Vietnam that are allegedly subsidized by the Government of Vietnam.

## **A. Conditions of Competition**

The following conditions of competition inform our analysis in the preliminary phase of these investigations.

### **1. Demand Conditions**

Apparent U.S. consumption for PRCBs declined by 7.0 percent during the period of investigation, from 109.8 billion bags in 2006 to 106.2 billion bags in 2007 and 102.1 billion bags in 2008.<sup>115</sup> When asked how demand for PRCBs in the U.S. market has changed since 2006, seven responding producers reported a decrease, seven reported no change, and one reported an increase.<sup>116</sup> Similarly, 16 of 35 responding importers reported that PRCB demand has declined since 2006, 16 reported no change, and 3 reported an increase.<sup>117</sup> Reasons given by responding producers and importers for the decline in PRCB demand since 2006 included the weakening economy, increased use of alternative bag types, legislative actions regulating the use of PRCBs, environmental concerns, and increased polyethylene prices in 2008 due to high oil prices.<sup>118</sup>

### **2. Supply Conditions**

#### **a. Domestic Capacity**

API, Hilex, Inteplast, and Superbag were \*\*\* domestic producers during the period of investigation, accounting for \*\*\* percent, \*\*\* percent, \*\*\* percent, and \*\*\* percent of domestic PRCB production in 2008, respectively.<sup>119</sup> All other domestic producers combined accounted for only \*\*\* percent of domestic production in 2008.<sup>120</sup> Between 2006 and 2008, four domestic PRCB production facilities closed (three owned by Hilex and one by Europackaging), resulting in a 3.4 percent decline in domestic production capacity.<sup>121</sup>

Petitioners claim that PRCB production facilities must be operated around the clock to reduce

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<sup>115</sup> CR/PR at Table IV-3.

<sup>116</sup> CR at II-9; PR at II-7.

<sup>117</sup> CR at II-9; PR at II-7.

<sup>118</sup> CR at II-9; PR at II-7. Petitioners argued that, notwithstanding the data showing a decline in apparent consumption between 2006 and 2008, PRCB demand has remained stable despite environmental concerns and the recession. As support, they cite Mr. Bazbaz's testimony that only 1 percent of reusable bags are actually reused for subsequent retail purchases, and highlight the finding of the Progressive Bag Alliance that San Francisco's ban on PRCBs has had no effect on PRCB consumption there. Petitioners' Br. at 22-23. The recession has not dented PRCB demand, they claim, because consumers have cut back on the value of each retail purchase but not the frequency of their retail purchases. Petitioners' Br. at 23; Tr. at 92 (Halimi). In any final phase of these investigations, we intend to examine further the short-term and longer-term factors affecting demand for PRCBs, including economic conditions, environmental concerns, and the relative popularity and substitutability of paper bags and reusable bags made of cloth or other materials.

<sup>119</sup> CR/PR at Tables III-1, C-1.

<sup>120</sup> CR/PR at Tables III-1, C-1.

<sup>121</sup> CR/PR at Tables III-2, C-1; CR at III-3; PR at III-2.

unit costs to an economical level, and that this factor compels domestic producers to defend their sales to key customers, their “baseload business,” by meeting low subject import prices.<sup>122</sup> Customers lost to subject imports, they contend, may only be regained by undercutting the new incumbent supplier’s price.<sup>123</sup> In any final phase of these investigations, we intend to explore further the market dynamics associated with sales to large customers.

### **b. Nonsubject Imports**

Nonsubject imports declined from 34.7 billion bags in 2006, or 31.6 percent of apparent U.S. consumption, to 20.9 billion bags in 2007, or 19.7 percent of apparent U.S. consumption, before increasing slightly to 21.8 billion bags in 2008, or 21.3 percent of apparent U.S. consumption, a volume 37.2 percent below that of 2006.<sup>124</sup> The principal sources of nonsubject imports were China, Malaysia, and Thailand,<sup>125</sup> and PRCBs from all three countries are subject to antidumping duty orders imposed in 2004.<sup>126</sup> A substantial proportion of imports from these countries was imported from producers not subject to the orders, however, including \*\*\* percent of imports from China, \*\*\* percent of imports from Malaysia, and \*\*\* percent of imports from Thailand, in 2008.<sup>127</sup>

### **c. Substitutability**

The record indicates that there is a high degree of substitutability between PRCBs, regardless of the source, and that price is an important consideration in purchasing decisions.<sup>128</sup> Most responding producers and importers reported that subject imports from Indonesia, Taiwan, and Vietnam are “always” used interchangeably with each other and with the domestic like product.<sup>129</sup> When asked whether differences other than price are significant in their sales of PRCBs, most producers and importers responded “sometimes” or “never,” though a significant minority of importers reported that differences other than price are “always” or “frequently” significant to purchasers choosing between subject imports and the domestic like product.<sup>130</sup>

Petitioners argue that price competition between the domestic like product and subject imports has intensified since the 2004 investigations due to the increased use of internet events held by purchasers, including reverse auctions.<sup>131</sup> The record does not support petitioners’ claim, however, as 11 of 15 responding producers and 32 of 39 responding importers reported that they do not sell PRCBs over the internet.<sup>132</sup> Of the five responding firms that reported the proportion of their sales made over the internet, only one firm indicated that this proportion was significant, ranging from 30 to 35 percent, while

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<sup>122</sup> Petitioners’ Br. at 20. Respondents agree with petitioners that automated PRCB production facilities are designed to be operated continuously. See Respondents’ Br. at 11.

<sup>123</sup> Petitioners’ Br. at 21.

<sup>124</sup> CR/PR at Tables IV-3-4.

<sup>125</sup> CR at IV-1; PR at IV-1. The next largest source of nonsubject imports was Canada, which accounted for 2 percent of total imports during the 2006-08 period. CR at II-8; PR at II-6.

<sup>126</sup> CR at IV-1; PR at IV-1.

<sup>127</sup> Derived by Commission staff from proprietary Customs data. See EDIS Document No. 403714.

<sup>128</sup> See CR at II-11, 13; PR at II-8-9.

<sup>129</sup> CR at II-11-12; PR at II-8; CR/PR at Table II-3.

<sup>130</sup> CR/PR at Table II-4.

<sup>131</sup> Petitioners’ Br. at 19.

<sup>132</sup> CR at V-7; PR at V-5.

four reported that this proportion was relatively small, ranging from 1 to 10 percent.<sup>133</sup>

## **B. Volume of Subject Imports**

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>134</sup>

During the period of investigation, cumulated subject import shipments increased by 114 percent; increasing from 6.8 billion bags in 2006 to 14.7 billion bags in 2007 and then decreasing to 14.6 billion bags in 2008, as cumulated subject imports increased their share of apparent U.S. consumption from 6.2 percent in 2006 to 13.8 percent in 2007 and 14.3 percent in 2008.<sup>135</sup> The value of cumulated subject imports increased by 188 percent over the period, from \$64.6 million in 2006 to \$161.9 million in 2007 and \$186.0 million in 2008.<sup>136</sup> At the same time, the ratio of subject imports to domestic production, by quantity, increased from 9.5 percent in 2006 to 20.0 percent in 2007 and 21.7 percent in 2008.<sup>137</sup>

We recognize that the 8.1 percentage point increase in cumulated subject import market share between 2006 and 2008 came at the expense of nonsubject import market share, which declined 10.3 percentage points during the period due principally to the imposition of antidumping duty orders on imports from China, Malaysia, and Thailand.<sup>138</sup> We note, however, that the domestic industry increased its market share by only 2.2 percentage points during the period, which was far less than the increase in subject import market share, and lost 2.1 percentage points of market share between 2007 and 2008 as cumulated subject imports further increased their market share by half of a percentage point.<sup>139</sup>

For purposes of the preliminary phase of these investigations, we find that subject import volume is significant, both in absolute terms and relative to consumption and production in the United States, and that the increase in subject import volume and market share also is significant.

## **C. Price Effects of the Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>140</sup>

As addressed in section VI.A.2.c. above, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product and that price is an important consideration in purchasing decisions.<sup>141</sup>

Twelve domestic producers, 12 importers of PRCBs from Indonesia, 13 importers of PRCBs from

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<sup>133</sup> CR at V-7-8; PR at V-5.

<sup>134</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>135</sup> CR/PR at Tables IV-3-4.

<sup>136</sup> CR/PR at Table IV-1.

<sup>137</sup> CR/PR at Table IV-5.

<sup>138</sup> CR/PR at Table IV-4.

<sup>139</sup> CR/PR at Table IV-4.

<sup>140</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>141</sup> See CR at II-11-14; PR at II-8-10; CR/PR at Tables II-3-4.

Taiwan, and 19 importers of PRCBs from Vietnam provided usable quarterly net U.S. f.o.b. selling price data for four products, although not all firms reported pricing for all products for all quarters.<sup>142</sup> Pricing data reported by these firms accounted for approximately 95.4 percent of the domestic industry's U.S. shipments of PRCBs, 59.5 percent of PRCBs imported from Indonesia, 80.1 percent of PRCBs imported from Taiwan, and 16.0 percent of PRCBs imported from Vietnam during the period of investigation.<sup>143</sup> These data indicate a mixed pattern of over- and underselling, with a tendency towards overselling.<sup>144</sup>

Specifically, between the first quarter of 2006 and the fourth quarter of 2008, subject imports oversold the domestic like product in 95 of 143 quarterly comparisons, or 66.4 percent of the time, at margins ranging from 0.1 percent to 162.3 percent.<sup>145</sup> Subject imports undersold the domestic like product in 48 of 143 quarterly comparisons, or 33.6 percent of the time, at margins ranging from 1.2 percent to 79.6 percent.<sup>146</sup>

Subject import overselling was most pronounced with respect to the highest volume pricing products. With respect to products 1 and 2, which accounted for the vast majority of domestic pricing product shipments during the period of investigation, subject imports oversold the domestic like product in 64 of 72 quarterly comparisons, or 88.9 percent of the time.<sup>147</sup>

Nevertheless, there is some question as to the probative value of the pricing data collected in these preliminary phase investigations. Pricing comparisons between different sources of PRCBs are complicated by the fact that each of the four pricing product definitions encompasses a range of sizes and hence weights of bags.<sup>148</sup> Because the price of a given PRCB is influenced by the weight of the polyethylene resin used in its production, the price per 1,000 bags within each pricing product category could vary substantially depending upon bag weight.<sup>149</sup> Though petitioners argue that pricing data collected on the basis of price per pound would be more probative, we note that the Commission relied upon pricing data on the basis of price per 1,000 bags in the 2004 investigations, and petitioners testified at the conference that they "saw no reason to urge the Commission to seek anything different" in these preliminary phase investigations.<sup>150</sup> We intend to collect pricing data on the basis of both price per pound and price per 1,000 bags in any final phase of these investigations. Another factor reducing the probative value of pricing data in these preliminary phase investigations is the low data coverage of subject imports from Vietnam, which was the largest source of subject imports.<sup>151</sup>

Of \*\*\* lost sales allegations totaling \$\*\*\* and \*\*\* lost revenue allegations totaling \$\*\*\*, only two lost sales allegations and one lost revenues allegation were confirmed, totaling \$\*\*\* and \$\*\*\*,

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<sup>142</sup> CR at V-9; PR at V-6.

<sup>143</sup> See CR at V-9-10; PR at V-6.

<sup>144</sup> The probative value of average unit value data is questionable, given evidence that PRCBs can range in price from 2.5 cents to 65 cents per bag depending on their weight and other physical attributes. See CR at I-17-18; PR at I-12-13. We therefore do not rely on such data in our pricing analysis.

<sup>145</sup> CR/PR at Table V-5.

<sup>146</sup> CR/PR at Table V-5.

<sup>147</sup> See CR/PR at Tables V-1-5.

<sup>148</sup> CR at V-10; PR V-6-7.

<sup>149</sup> CR at V-10; PR at V-7.

<sup>150</sup> See 2004 Confidential Views at 31-32; 2004 Public Views at 22 (citing quarterly comparisons based on quantities in thousands of bags); Tr. at 63 (Dorn).

<sup>151</sup> See CR/PR at Table IV-1 (subject imports from Vietnam accounted for 44.9 percent of cumulated subject imports in 2006, 49.7 percent of cumulated subject imports in 2007, and 49.3 percent of cumulated subject imports in 2008); CR at V-10; PR at V-6 (reported pricing data accounted for 16.0 percent of U.S. imports of PRCBs from Vietnam).

respectively.<sup>152</sup> We note, however, that purchasers involved in \*\*\* of the \*\*\* allegations did not respond to the Commission staff's attempts to confirm them, and \*\*\*, neither confirmed nor denied the allegations.<sup>153</sup> Accordingly, we intend to investigate lost sales and revenues allegations further in any final phase of these investigations.

We do not find a strong indication of price depression since domestic like product prices for products 2, 3, and 4 were only slightly lower in the fourth quarter of 2008 than in the first quarter of 2006.<sup>154</sup> Domestic like product prices for product 1 declined 7.1 percent over the period, but accounted for at most 4.9 percent of domestic pricing product shipments in any one quarter.<sup>155</sup>

We do find some indication that subject import competition suppressed domestic like product prices. The domestic industry's unit cost of goods sold ("COGS") increased 7.5 percent during the period of investigation, driven largely by a 12.0 percent increase in unit raw material costs, while the average unit value of domestic industry sales increased only 5.1 percent.<sup>156</sup> Consequently, the ratio of COGS to net sales increased from 90.3 percent in 2006 to 90.4 percent in 2007 and to 92.4 percent in 2008.<sup>157</sup>

The dramatic increase in cumulated subject import volume and market share between 2006 and 2008, coupled with the price sensitivity of the PRCB market and the domestic producers' need to operate their factories continuously, suggests that subject import competition contributed to the cost-price squeeze experienced by domestic producers during the period. Cumulated subject imports could not have increased their penetration of the U.S. market so rapidly without competitive prices, and such price competition would have constrained domestic producers from increasing their own prices. On the other hand, the 7.0 percent decline in apparent U.S. consumption during the period also would have contributed to the cost-price squeeze by reducing the domestic industry's rate of production and hence increasing its unit COGS, as fixed costs came to be spread over fewer units of production. We intend to further examine these factors in any final phase of these investigations.

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<sup>152</sup> CR at V-19; PR at V-14; CR/PR at Tables V-6-7.

<sup>153</sup> CR/PR at Tables V-6-7; CR at V-26; PR at V-14-15.

<sup>154</sup> See CR/PR at Tables V-2-4.

<sup>155</sup> See CR/PR at Table V-1.

<sup>156</sup> CR/PR at Table VI-1. The domestic industry's unit raw material costs per 1,000 bags declined from \$8.82 in 2006 to \$8.17 in 2007, but increased to \$9.88 in 2008. *Id.* Mr. Bazbaz testified at the conference that the index of raw material prices used by Superbag peaked in September 2008 and then declined through December 2008. Tr. at 91.

<sup>157</sup> CR/PR at Table VI-1.



#### **D. Impact of the Subject Imports**<sup>158</sup>

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.”<sup>159</sup> 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.”<sup>160</sup>

Based on the record of these preliminary phase investigations, we find that the domestic industry’s performance declined over the period of investigation according to most measures.

Domestic industry production increased 2.4 percent between 2006 and 2007, from 71.6 billion bags to 73.3 billion bags, but declined 8.4 percent to 67.1 billion bags in 2008, a level 6.3 percent below that in 2006.<sup>161</sup> Domestic PRCB capacity increased a slight 0.5 percent between 2006 and 2007, from 84.3 billion bags to 84.8 billion bags, but declined 4.0 percent in 2008 to 81.4 billion bags, a level 3.5 percent below that in 2006.<sup>162</sup> This capacity reduction resulted in large part from the closure of four domestic PRCB production facilities, three by Hilex and one by Europackaging.<sup>163</sup> Consistent with these trends in capacity and production, the domestic industry’s rate of capacity utilization increased from 84.9 percent in 2006 to 86.4 percent in 2007 before declining to 82.4 percent in 2008, a level lower than that in 2006.<sup>164</sup> Given that domestic producers reportedly must operate their facilities continuously to reduce their unit costs to economical levels, it is particularly noteworthy that domestic producers were unable to boost their rate of capacity utilization even as they shuttered four production facilities.<sup>165</sup> Domestic

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<sup>158</sup> Commerce initiated antidumping duty investigations based on estimated dumping margins of 35.47 to 60.24 percent for PRCBs from Indonesia, 76.25 to 95.81 percent for PRCBs from Taiwan, and 28.49 to 76.11 percent for PRCBs from Vietnam. CR at I-5; PR at I-4 (citing 74 Fed. Reg. 19049 (April 27, 2009)). Commerce initiated a countervailing duty investigation on PRCBs from Vietnam covering 11 alleged subsidy programs, including two policy lending programs, three grant programs, three income tax programs, and three import tax and value added tax (“VAT”) exemption programs. CR at I-5; PR at I-4 (citing 74 Fed. Reg. 19049 (April 27, 2009)). The specific alleged subsidy programs are as follows: (1) preferential lending for exporters; (2) preferential lending for the plastics industry; (3) an export promotion program; (4) an export bonus program; (5) a new product development program; (6) income tax preferences for exporters; (7) income tax preferences for foreign invested enterprises (“FIEs”); (8) income tax preferences for FIEs operating in encouraged industries; (9) import tax exemptions for FIEs using imported goods to create fixed assets; (10) import tax exemptions for FIEs importing raw materials; and (11) VAT exemptions for FIEs using imported goods to create fixed assets. Id.

<sup>159</sup> 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.”)

<sup>160</sup> 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 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>161</sup> CR/PR at Table III-2.

<sup>162</sup> CR/PR at Tables III-2, C-1.

<sup>163</sup> CR at III-3; PR at III-2. We recognize that Mr. Daniels of Hilex testified at the conference that his company’s capacity reductions resulted “to some degree” from efforts to consolidate its production facilities after the acquisition of Sonoco and Vanguard. Tr. at 95 (Daniels).

<sup>164</sup> CR/PR at Table III-2.

<sup>165</sup> See Tr. at 20 (Bazbaz), 26-27 (Daniels) (“Our reduction in capacity has been matched by an equivalent drop in  
(continued...)”)

industry employment declined throughout the period, from 3,348 workers in 2006 to 3,213 workers in 2007 and to 3,030 workers in 2008, for a 9.5 percent decline over the period.<sup>166</sup>

The domestic industry's net sales trended lower with production, increasing 5.0 percent between 2006 and 2007, from 70.3 billion bags to 73.8 billion bags, but declining 8.4 percent in 2008 to 67.6 billion bags, a level 3.8 percent below that of 2006.<sup>167</sup> The domestic industry's U.S. shipments of PRCBs followed a similar trend, increasing 3.4 percent between 2006 and 2007, from 68.3 billion bags to 70.7 billion bags, before declining 7.0 percent to 65.7 billion bags in 2008, a level 3.8 percent below that of 2006. The domestic industry's share of apparent U.S. consumption increased from 62.2 percent in 2006 to 66.5 percent in 2007, but declined to 64.4 percent in 2008, a level 2.2 percentage points higher than in 2006.<sup>168</sup>

The domestic industry's financial performance was weak in 2006 and 2007 and deteriorated markedly in 2008. As domestic producers increased their prices in an effort to recoup higher raw material costs, their net sales value remained stable during the period, declining 3.5 percent between 2006 and 2007, from \$1.017 billion to \$981.4 million, but increasing 4.8 percent to \$1.028 billion in 2008, a level slightly higher than that in 2006.<sup>169</sup> But the domestic industry's operating income of \$4.9 million in 2006 and 2007 amounted to only 0.5 percent of sales in both years, and swung to an operating loss of \$37.5 million in 2008, or 3.7 percent of sales, as the increase in the domestic industry's unit COGS outstripped the increase in the unit value of total net sales.<sup>170</sup> The domestic industry's capital expenditures also declined markedly from \$38.8 million in 2006 to \$17.2 million in 2007 and to \$15.3 million in 2008, a level 60.7 percent lower than that in 2006.<sup>171</sup> Its return on investment, \*\*\* percent in 2006 and 2007, \*\*\* to \*\*\* percent in 2008.<sup>172</sup>

For purposes of these preliminary phase investigations, we find that there is an apparent causal nexus between the subject imports and the deteriorating condition of the domestic industry. Cumulated subject imports increased their market share during the period of investigation, while the domestic industry's share of apparent U.S. consumption declined towards the end of the period.<sup>173</sup> Moreover, the significant increase in cumulated subject import volume and market share during the period examined limited the domestic industry's ability to benefit from the antidumping duty orders imposed on PRCBs from China, Malaysia, and Thailand in 2004, as domestic producers were unable to recoup market share lost to PRCBs from those sources prior to 2004.<sup>174</sup> We also have found some indication that subject

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<sup>165</sup> (...continued)

our sales and production. This has left us with as much excess capacity as we had before closing the three plants. This is a major problem because our facilities, like those of Superbag, are designed to operate continuously.”)

<sup>166</sup> CR/PR at Table III-6. Hours worked declined from 7,536,000 in 2006 to 7,328,000 in 2007 and to 7,140,000 in 2008. Id. Labor productivity in bags per hour initially increased from 9,498 bags in 2006 to 9,998 bags in 2007, but declined to 9,397 bags in 2008, a level 1.1 percent below that in 2006. Id.

<sup>167</sup> CR/PR at Table VI-1.

<sup>168</sup> CR/PR at Tables IV-3-4.

<sup>169</sup> CR/PR at Table VI-1.

<sup>170</sup> CR/PR at Table VI-1. The 30.3 percent increase in SG&A expenses between 2007 and 2008 also contributed to the decline in operating income. Id.

<sup>171</sup> CR/PR at Table VI-5. R&D expenses also declined from \$1.7 million in 2006 and 2007 to \$1.2 million in 2008. Id.

<sup>172</sup> CR/PR at Table VI-6.

<sup>173</sup> CR/PR at Table IV-4.

<sup>174</sup> See Tr. at 18 (Bazbaz) (“[W]e have been deprived of some of the benefits we previously enjoyed as a result of the orders against China, Thailand and Malaysia. In fact, in certain respects, we are in worse shape now than before (continued...)”)

import competition contributed to the cost-price squeeze experienced by domestic producers over the period examined.<sup>175 176</sup> In any final phase of these investigations, we intend to collect additional information to aid in our examination of the impact of subject imports on the domestic industry, particularly with respect to the issues of domestic like product and price competition.

We have considered whether there are other factors that have an impact on the domestic industry. We recognize that the 7.0 percent decline in apparent U.S. consumption may have had a role in the domestic industry's deteriorating performance during the period of investigation. We also recognize that nonsubject imports were a significant factor in the U.S. market during the period, and that subject imports increased their market share largely at the expense of nonsubject imports.<sup>177</sup> There is some evidence, however, that nonsubject import prices were generally higher than domestic like product and subject import prices.<sup>178 179</sup> Thus, it would appear that any injury we have found from cumulated subject imports cannot be attributed to nonsubject imports.

Consequently, the record in these preliminary phase investigations indicates an apparent causal nexus between the subject imports and the adverse condition of the domestic industry and thus demonstrates a reasonable indication of material injury by reason of subject imports. We therefore conclude that for purposes of the preliminary phase of these investigations, the subject imports have had a significant adverse impact on the domestic industry.

## CONCLUSION

For the foregoing reasons, and based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of PRCBs from Indonesia, Taiwan, and Vietnam that are allegedly sold in the United States at less than fair value and PRCBs from Vietnam that are allegedly subsidized by the Government of Vietnam.

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<sup>174</sup> (...continued)

the previous cases were filed. This is not due to factors other than the imports from the countries under investigation.”); see also 2004 Confidential Views at 30; 2004 Public Views at 21 (finding that “[t]he cumulated subject imports gained market share at the expense of the domestic industry,” whose share of apparent U.S. consumption declined from 88.0 percent in 2001 to 77.0 percent in 2003).

<sup>175</sup> See section VI.C., supra. We cannot say that the record as a whole contains clear and convincing evidence that there is no material injury by reason of subject imports, or that no likelihood exists that evidence supporting an affirmative material injury or threat finding will arise in a final investigation. See American Lamb, 785 F.2d at 1001.

<sup>176</sup> Although Commissioner Pinkert agrees that the prior footnote correctly cites the applicable legal standard for affirmative preliminary determinations, he declines to join it.

<sup>177</sup> See section VI.A.2.c., supra. In any final phase of these investigations, we intend to collect additional information on these issues.

<sup>178</sup> Based on pricing product data, nonsubject imports were priced lower than the domestic like product in 43 quarterly comparisons and higher than the domestic like product in 84 quarterly comparisons. Compare CR/PR at Tables D-1-4 and Staff Confidential Spreadsheets (EDIS Document No. 403084) with id. at Tables V-1-4. Nonsubject imports were priced lower than subject imports in 177 quarterly comparisons and higher than subject imports in 201 quarterly comparisons. Id. We note that these pricing comparisons suffer from the same potential shortcomings addressed in section VI.C., supra.

<sup>179</sup> In any final phase of these investigations, Commissioner Pinkert will invite parties to comment on whether Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), is applicable to the facts of these investigations.



## PART I: INTRODUCTION

### BACKGROUND

These investigations result from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by Hilex Poly Co., LLC (“Hilex”), Hartsville, SC, and Superbag Corp. (“Superbag”), Houston, TX, on March 31, 2009, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and less-than-fair-value (“LTFV”) imports of polyethylene retail carrier bags (“PRCBs”)<sup>1</sup> from Vietnam and LTFV imports of PRCBs from Indonesia and Taiwan. Information relating to the background of the investigations is provided below.<sup>2</sup>

Effective date	Action
March 31, 2009	Petition filed with Commerce and the Commission; institution of Commission investigations (74 FR 16009, April 8, 2009)
April 21, 2009	Commission’s conference <sup>1</sup>
April 27, 2009	Commerce’s notices of initiation (74 FR 19049 (AD); 74 FR 19064 (CVD))
May 14, 2009	Date of the Commission’s vote
May 15, 2009	Commission’s determinations transmitted to Commerce
May 22, 2009	Commission’s views transmitted to Commerce

<sup>1</sup> A list of witnesses that appeared at the conference is presented in app. B.

### STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

#### Statutory Criteria

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

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

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

*In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any*

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<sup>1</sup> See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to these investigations.

<sup>2</sup> *Federal Register* notices cited in the tabulation are presented in app. A.

*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, alleged subsidy and dumping margins, and the 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 as well as information regarding nonsubject countries.

## **U.S. MARKET SUMMARY**

PRCBs are generally used by retail customers to package and carry their purchased products home from the point of sale. The leading U.S. producers of PRCBs are Advance Polybag, Inc. ("API"), Hilex, Inteplast Group Ltd. ("Inteplast"), and Superbag, while leading reporting producers of PRCBs in subject countries include \*\*\* and \*\*\* in Indonesia; \*\*\* and \*\*\* in Taiwan; and \*\*\* and \*\*\* in Vietnam. The leading U.S. importer of PRCBs from Indonesia is \*\*\*, while the leading importers from Taiwan are \*\*\* and \*\*\* and the leading importers from Vietnam are \*\*\* and \*\*\*. Leading importers of PRCBs from nonsubject countries (primarily China, Malaysia, and Thailand) include \*\*\*.

Apparent U.S. consumption of PRCBs totaled approximately 102 billion PRCBs (\$1.5 billion) in 2008. Currently, 15 firms are known to produce PRCBs in the United States. U.S. producers' U.S. shipments of PRCBs totaled approximately 66 billion PRCBs (\$997 million) in 2008, and accounted for

64.4 percent of apparent U.S. consumption by quantity and 66.4 percent by value. U.S. imports from subject sources totaled approximately 15 billion PRCBs (\$186 million) in 2008 and accounted for 14.3 percent of apparent U.S. consumption by quantity and 12.4 percent by value. U.S. imports from countries currently subject to antidumping duty orders<sup>3</sup> totaled approximately 19 billion PRCBs (\$255 million) in 2008 and accounted for 18.4 percent of apparent U.S. consumption by quantity and 17.0 percent by value. U.S. imports from other nonsubject sources totaled approximately 3 billion PRCBs (\$63 million) in 2008 and accounted for 2.9 percent of apparent U.S. consumption by quantity and 4.2 percent by value.

## SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on the questionnaire responses of 15 firms that accounted for the vast majority of U.S. production of PRCBs during 2008. U.S. imports are based on official import statistics of Commerce.

## PREVIOUS AND RELATED INVESTIGATIONS

PRCBs have been the subject of previous antidumping duty investigations in the United States. In 2004, the Commission determined that an industry in the United States was materially injured by reason of imports of PRCBs from China, Malaysia, and Thailand of PRCBs that were found by Commerce to be sold in the United States at LTFV. The product scope used in these previous investigations was the same as the scope being used in the current investigations involving Indonesia, Taiwan, and Vietnam.<sup>4</sup> Hilex and Superbag, the two petitioners in these current investigations, were also petitioners in the 2004 investigations.<sup>5</sup>

Additionally, Superbag filed a complaint in 2004 alleging infringement of one of the firm's patents under section 337 of the Tariff Act of 1930 related to the importation into the United States, sale for importation, and/or sale within the United States after importation of certain T-styled plastic grocery and retail bags. An administrative law judge of the Commission found that a violation had occurred and recommended that the Commission issue a general exclusion order on these bags.<sup>6</sup> Settlements and consent orders were entered into with some respondents, and a general exclusion order was entered against all other covered imports.<sup>7</sup>

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<sup>3</sup> Countries subject to antidumping orders in the United States include China, Malaysia, and Thailand.

<sup>4</sup> Petition, p. 5.

<sup>5</sup> *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand*, 69 FR 47957, August 6, 2004. Inteplast Group, Ltd.; PCL Packaging, Inc.; and Vanguard Plastics, Inc. were co-petitioners with Hilex (the High Density Film Division of Sonoco Products Co., which was purchased by Hilex in February 2004) and Superbag in the 2004 investigations.

<sup>6</sup> *In the Matter of Certain Plastic Grocery and Retail Bags; Notice of Commission Determination Not To Review an Initial Determination Finding a Violation of Section 337; Schedule for Written Submissions on Remedy, the Public Interest, and Bonding*, 69 FR 1638, June 4, 2004.

<sup>7</sup> Petition, p. 3.

## NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

### Alleged Subsidies

On April 27, 2009, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on PRCBs from Vietnam.<sup>8</sup> The following government programs in Vietnam are involved:

- A. Policy Lending Programs
  - 1. Preferential Lending for Exporters
  - 2. Preferential Lending for the Plastics Industry
- B. Grant Programs
  - 1. Export Promotion Program
  - 2. Export Bonus Program
  - 3. New Product Development Program
- C. Income Tax Programs
  - 1. Income Tax Preferences for Exporters
  - 2. Income Tax Preferences for Foreign Invested Enterprises (FIEs)
  - 3. Income Tax Preferences for FIEs Operating In Encouraged Industries
- D. Import Tax and Value Added Tax (VAT) Exemption Programs
  - 1. Import Tax Exemptions for FIEs Using Imported Goods to Create Fixed Assets
  - 2. Import Tax Exemptions for FIEs Importing Raw Materials
  - 3. VAT Exemptions for FIEs Using Imported Goods to Create Fixed Assets

### Alleged Sales at LTFV

On April 27, 2009, Commerce published a notice in the *Federal Register* of the initiation of its antidumping duty investigations on PRCBs from Indonesia, Taiwan, and Vietnam.<sup>9</sup> Commerce has initiated antidumping duty investigations based on estimated dumping margins of 35.47 to 60.24 percent for PRCBs from Indonesia, 76.25 to 95.81 percent for PRCBs from Taiwan, and 28.49 to 76.11 percent for PRCBs from Vietnam.

## THE SUBJECT MERCHANDISE

### Commerce's Scope

Commerce has defined the scope of these investigations as follows:

The merchandise subject to these investigations is polyethylene retail carrier bags (PRCBs), which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035

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<sup>8</sup> *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam*, 74 FR 19064, April 27, 2009.

<sup>9</sup> *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049, April 27, 2009.



inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm). PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of these investigations excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, e.g., garbage bags, lawn bags, trash-can liners.<sup>10</sup>

### Tariff Treatment

PRCBs are classifiable in the Harmonized Tariff Schedule of the United States (“HTS”) under subheading 3923.21.00 and reported for statistical purposes under statistical reporting number 3923.21.0085. Table I-1 presents current *ad valorem* tariff rates for PRCBs. Imports of PRCBs from Indonesia are eligible for duty-free treatment under the Generalized System of Preferences, upon proper importer claim, or are dutiable at the general rate. Imports of PRCBs from Taiwan and Vietnam are dutiable at the general rate of 3 percent *ad valorem*.

**Table I-1**  
**PRCBs: Tariff rates, 2009**

HTS provision	Article description	General <sup>1</sup>	Special <sup>2</sup>	Column 2 <sup>3</sup>
		Rates (percent)		
3923.21	Sacks and bags (including cones):			
3923.21.00	Of polymers of ethylene.....	3%	Free (A*, AU, BH, CA, CL, E, IL, J, JO, MA, MX, OM, P, PE, SG) <sup>4</sup>	80%
3923.21.0085	Polyethylene retail carrier bags (PRCBs) with handles (including drawstrings), with no length or width shorter than 6 inches (152.4 mm) or longer than 40 inches (1,016 mm).....			

<sup>1</sup> Normal trade relations, formerly known as the most-favored-nation duty rate, applicable to Taiwan and Vietnam.

<sup>2</sup> Special rates not applicable when the General rate is free. Imports from Indonesia are duty-free pursuant to the Generalized System of Preferences. Taiwan and Vietnam are not eligible for special rates of duty.

<sup>3</sup> Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

<sup>4</sup> General note 3(c)(i) defines the special duty program symbols enumerated in this column.

Source: Harmonized Tariff Schedule of the United States (2009, revision 1).

## THE PRODUCT

### Description and Applications

PRCBs are non-sealable plastic sacks or bags of polyethylene with carrying handles, and are intended to be dispensed free of charge to consumers by retail establishments in order to carry purchased

<sup>10</sup> Ibid.

merchandise.<sup>11</sup> PRCBs, whether domestically produced or imported, consist principally of FDA-approved high-density polyethylene (“HDPE”) resin films, low-density (“LDPE”) resin films, or combinations thereof varying in size, shape, thickness, and strength characteristics depending on their intended use,<sup>12</sup> and may contain single or double-sided printing in single or multiple colors.<sup>13 14</sup> PRCBs produced in the United States generally carry a printed manufacturer’s identification or logo on the bag surface along with a recycling symbol encouraging recycling, and disclosing the predominate form of plastic, #2 for HDPE and #4 for LDPE,<sup>15</sup> while imported PRCBs usually carry the recycling symbol but not necessarily the producer logo or country-of-origin identification.<sup>16</sup> All PRCBs, domestically produced and imported, are equipped with carrying handles of various types (including drawstrings) ranging from die-cut handles formed in the bag surface to applied handles of various types, and may be designed with side or bottom pleats (gussets), square bottoms, or bottom and side seals depending upon the intended use.<sup>17</sup>

PRCBs are generally dispensed free of charge to customers in a full range of retail outlets, including grocery, drug, convenience, department, specialty retail, and discount stores, together with restaurants.<sup>18</sup> T-shirt bags (which derive their name from the fact that they resemble sleeveless undershirts that have two straps that rest on shoulders) are high-volume PRCBs<sup>19</sup> dispensed in a wide variety of retail outlets; they may consist of so-called low-end thin-walled HDPE bags found in grocery and many other stores, to larger and thicker t-shirt bags found in department stores.<sup>20</sup> T-shirt bags may also contain softer, glossier, and more puncture-resistant LDPE resins, especially linear low-density polyethylene (“LLDPE”).<sup>21</sup> In contrast, higher-end bags are typically found in a variety of retail outlets, ranging from medium-scale die cut bags dispensed at fast food outlets to medium to high-scale LDPE die-cut shopping bags found in upscale department stores, and on to even more upscale bags which may contain attached handles, flat bottoms and the like, that are dispensed to customers in boutiques and other specialty stores. According to petitioners, the full range of bags is reportedly produced in both the United States and the subject countries.<sup>22</sup>

### **Manufacturing Process**

The process for manufacturing PRCBs is generally the same everywhere in the world. It is basically a four-step process consisting of (1) blending polyethylene resin pellets, color concentrates and other additives; (2) extrusion and film forming; (3) printing; and (4) bag conversion.<sup>23</sup> In the United

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<sup>11</sup> Information in this paragraph is from the petition unless otherwise noted.

<sup>12</sup> Conference transcript, p. 78 (Daniels).

<sup>13</sup> Petitioners’ postconference brief, Petitioners’ Responses to Questions from Staff, pp. 5-6.

<sup>14</sup> \*\*\*.

<sup>15</sup> Staff examination of samples exhibited during the conference.

<sup>16</sup> Conference transcript, pp. 16-17 (Bazbaz) and p. 33 (Rizzo).

<sup>17</sup> Ibid., pp. 37-38 (Halimi), together with examination of samples exhibited during the conference.

<sup>18</sup> Petition, p. 5.

<sup>19</sup> Conference transcript, pp. 83-84 (Dorn).

<sup>20</sup> Ibid., p. 37 (Halimi), together with examination of samples exhibited during the conference.

<sup>21</sup> Conference transcript, p. 77 (Daniels), together with examination of samples exhibited during the conference.

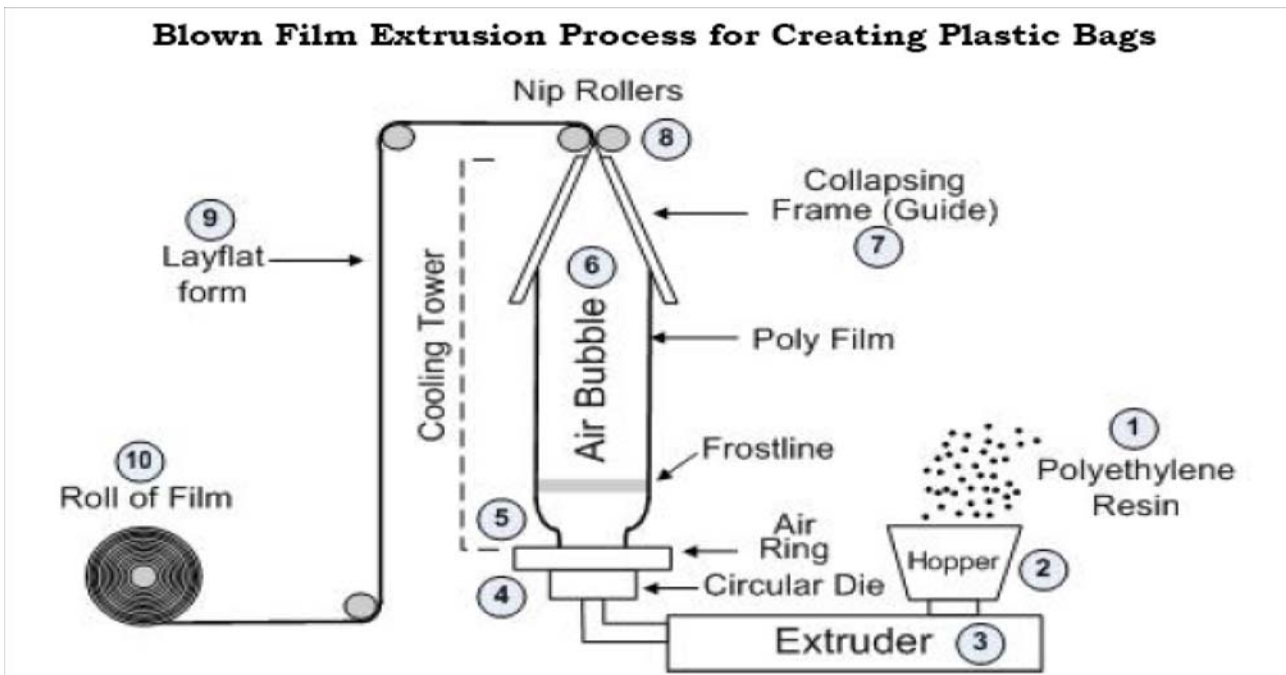
<sup>22</sup> Conference transcript, p. 15 (Dorn).

<sup>23</sup> Ibid., pp. 15-16 (Bazbaz), and \*\*\*.

States, producers run high-volume plants continuously on a 24/7 basis due to the capital-intensive and competitive nature of the business. The major costs are \*\*\*.<sup>24</sup>

The following diagram illustrates the fundamentals of the blown film extrusion process, typically employed worldwide.

**Figure I-1**  
**PRCBs: Typical production process**



Source: "10 Steps to Plastic Bags," J.T. McWilliams, President, Multi-Pak USA, 2006, found at <http://www.multipakUSA.com> (accessed April 2009).

In the process, a polyethylene resin blend is fed to a screw extruder or series of coextruders where the plastic mix is formed into a homogeneous molten mixture. After exiting the extruder, the plastic melt is forced through an annual (circular) die and air-blown into a large cylindrical film bubble of the desired thickness and diameter. The plastic film bubble cools and solidifies as it continues to rise, and upon reaching the top of the cooling tower the bubble of the desired thickness is collapsed and formed into a two-sided plastic film of up to 6 feet or more in width. On the way down to ground level, the plastic film sheet runs through rollers which smooth out the film before being fed to large spools where several thousand pounds of film can be wound. The film is now ready to be sent through the printing and bag conversion processes. Extrusion and bag conversion in the United States are generally separate continuous automated processes employing different equipment and usually a selected set of trained employees.

In the bag conversion section, a continuous run of wide film sheet is first surface-treated to better accept ink, and then fed into a flexographic ink printing press where the sheet is printed on one or each side in up to four colors in multiple parallel sets of the desired logos and identification, depending upon how many individual bags are to be produced. The flexographic printing process employed in the United

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<sup>24</sup> \*\*\*.

States is an environmentally friendly water-based system which eliminates undesirable toxic volatile organic compound (VOC) emissions into the atmosphere, whereas certain subject country producers of imported bags can employ the organic solvent-based rotogravure printing process, and claim superior print quality.<sup>25</sup> The printed film roll next proceeds in a continuous fashion to a slitter sealer which cuts and seals the wide film strips into a selected number of individual bag sections. If the film is to have side or bottom pleats (gussets), the parallel sections of individual bag film pass through gusseting equipment to form the pleats. Following this operation, a handle of the desired configuration is either die cut into or attached to the bag film to complete the bag conversion process. High volume t-shirt or die-cut bags are typically boxed in quantities of 1,000 to 2,000 bags by an operator at the end of the line. Most scrap is recycled, and following bag inspection the boxes are loaded onto pallets, warehoused, and shipped, usually by truck in the United States.<sup>26</sup> The international standard units of measurement for bag film thickness are generally expressed in terms of microns (one-millionth of a meter) or mils (0.001 inch).<sup>27</sup> One mil (0.001 inch) is equal to 25.4 microns.

### **DOMESTIC LIKE PRODUCT ISSUES**

The Commission's decision regarding the appropriate domestic product(s) that are "like" the subject imported product is based on a number of factors including: (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price. Information regarding these factors is discussed below.

Petitioners contend that all PRCBs constitute a single domestic like product, coextensive with the scope of the investigations,<sup>28</sup> as was found by the Commission in the final investigations on PRCBs from China, Malaysia, and Thailand in 2004.<sup>29</sup> Petitioners claim that nothing has changed to revise the definition of the domestic like product as set forth in 2004.<sup>30</sup>

Respondents contend that there are two distinct domestic like products in these investigations: (1) low-end commodity type t-shirt bags and medium-end die-cut handle bags and drawstring bags, and (2) custom-made high-end shopping bags. Respondents assert that although the high-end shopping bags are also made from polyethylene, they are made from thick gauge polyethylene of at least 2.25 mils in thickness, going up to 3 or 4 mils, thus making them reusable items, and that high-end shopping bags also incorporate value-added materials such as cardboard inserts, handles of various materials, and plastic or metal grommets, all of which must be applied by hand.<sup>31</sup> Respondents contend that what has changed since the Commission made its previous domestic like product determination in the 2004 investigations is that beginning in 2006, states and municipalities have begun to regulate the use and disposal of PRCBs, and have defined the term "reusable bags" to mean bags with thicknesses greater than 2.25 mils (57 microns), thus making a clear and defining distinction among PRCBs.<sup>32</sup> They point to a distinct dividing

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<sup>25</sup> Conference transcript, p. 119 (Gitlin).

<sup>26</sup> \*\*\*.

<sup>27</sup> Conference transcript, p. 83 (Daniels).

<sup>28</sup> Petitioners' postconference brief, p. 5.

<sup>29</sup> Ibid.

<sup>30</sup> Conference transcript, p. 8 (Dorn).

<sup>31</sup> Respondents' postconference brief, p. 3.

<sup>32</sup> Ibid., p. 4.

line between “reusable plastic bags” as defined by, for example, the state of California, the state of New York, and New York City as bags having a thickness of 2.25 mils and above.<sup>33</sup>

Petitioners contend that respondents’ allegation that a bright dividing line exists for PRCBs of 2.25 mils or more in thickness (essentially “high-end” PRCBs) cannot be supported. Petitioners contend that there is a continuum of PRCBs with no dividing line, and that domestic producers make PRCBs at the high end of the continuum of PRCBs (e.g., Command Packaging (“Command”)), at the low end (e.g., t-shirt bags of Hilex and Superbag), and bags in between.<sup>34</sup>

In the 2004 investigations of PRCBs from China, Malaysia, and Thailand, the Commission determined that high-end PRCBs “are not clearly distinct from all other PRCBs but are part of a continuum of products which we define as a single domestic like product.”<sup>35</sup>

### **Physical Characteristics and Uses**

Petitioners note that all PRCBs are made of polyethylene film, whether high-density, low-density, and/or linear low-density, and that the end uses for all PRCBs are the same, i.e., to package and carry goods from retail establishments; such bags are given away for free.<sup>36</sup>

Respondents assert that high-end shopping bags are different from t-shirt bags and medium-end die-cut handle bags and drawstring bags in that they incorporate value-added materials such as cardboard or hard plastic bottoms and tops, applied handles made of either hard plastic, rope, ribbon, or paper, and hard plastic or metal grommets and fasteners.<sup>37</sup> High-end shopping bags also reportedly have high-register full-color graphics, with some having 100-percent coverage of the bag, including side gussets. They are viewed by customers as more attractive and decorative, serving as a walking billboard for establishments such as high-end specialty or boutique retailers.<sup>38</sup> Since high-end PRCBs are reportedly 2.25 mils or greater in thickness, they are allegedly not subject to plastic bag recycling laws; in any event, they are not good candidates for recycling because of the various materials of construction, including affixed cardboard, hard plastic, rope, fabric, and metal.<sup>39</sup> On the other hand, t-shirt, die-cut, and drawstring bags are either quickly discarded or recycled.

Nearly all t-shirt bags and die-cut bags are reportedly less than 1 mil in thickness, whereas high-end shopping bags are greater than 2.25 mil (57 microns),<sup>40</sup> and most are made in thicknesses higher than 2.5 mil (63 microns).<sup>41</sup> Die-cut merchandise bags and drawstring bags are generally made in thicknesses of 1 mil (25 microns).<sup>42</sup> T-shirt bags reportedly use either high density polyethylene or a mixture using

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<sup>33</sup> Respondents submitted copies of the various statutes referred to at the Commission's April 21 conference, and those statutes have been placed in the record of the investigations.

<sup>34</sup> Petitioners’ postconference brief, p. 11.

<sup>35</sup> *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand, Invs. Nos. 731-TA-1043-1045 (Final)*, USITC Publication 3710, August 2004, p. 6.

<sup>36</sup> Petitioners’ postconference brief, p. 5.

<sup>37</sup> Respondents’ postconference brief, p. 3.

<sup>38</sup> *Ibid.*, p. 7.

<sup>39</sup> *Ibid.*, p. 8.

<sup>40</sup> T-shirt bags used in grocery stores are very thin (conference transcript, p. 125 (Lin)), approximately 0.6 mils (15 microns) in thickness (respondents’ postconference brief, p. 6).

<sup>41</sup> Respondents’ postconference brief, pp. 4 and 6, and conference transcript, p. 118 (Gitlin).

<sup>42</sup> Respondents’ postconference brief, pp. 6-7.

very high percentages of polyethylene in order for the maximum strength needed for the bags to hold the weight of a bag of groceries.<sup>43</sup>

The Commission determined in 2004 that:

“{T}here is a continuum of PRCBs that are made in a wide range of shapes and sizes, with varying features like handles, gussets, color, and printing. The differences in PRCBs are primarily determined by retailers, who specify the dimensions, size, shape, strength, handle type, color, and printing, as needed to serve their customers. Although PRCBs may vary in size, shape, and printing, they all share certain qualities – they are made of polyethylene resin, have handles, and are provided by retailers to customers free of charge to transport purchased items out of a store.”<sup>44</sup>

### **Manufacturing Facilities and Production Employees**

Petitioners contend that the raw materials, production processes, and equipment used to make PRCBs are essentially the same for all types of PRCBs.<sup>45</sup> For example, U.S. producer Command uses the same extrusion and printing equipment to produce all its t-shirt bags and higher-end bags.<sup>46</sup> In response to respondents’ allegations that the production processes for high-end shopping bags and all other PRCBs are entirely different,<sup>47</sup> petitioners cite Superbag’s film extrusion and printing equipment which can be used to make any type of PRCB. The bag conversion equipment can reportedly be used to make \*\*\*. Hilex’s film extrusion and printing equipment can be used to make die cut merchandise bags, bottom gusset merchandise bags with side seals, and header merchandise bags, while Command’s extrusion equipment and printing equipment are used to make all of its ten PRCB product types. Its converting equipment is product-specific, but its employees are trained to work on any of the converting lines.<sup>48</sup> In addition to producing higher-end t-shirt bags, Command reported that it was a major U.S. producer of other higher-end PRCBs, including wave bags, high trundle bags, and soft knit bags. There is reportedly a significant overlap in the equipment and employees that Command uses to make all of its PRCB products.<sup>49</sup>

Petitioners also state that there is no PRCB production technology that is specific to the subject countries; the very same type of equipment used there is also used by companies in the United States. If necessary, a bag producer can contract out the printing of the rolls of film to companies that specialize in printing, in order to achieve any desired level of print quality.<sup>50</sup>

Respondents argue that t-shirt bags, die-cut bags, and drawstring bags are commodity products that are produced in huge production runs on capital-intensive, fully automated machinery; there is no

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<sup>43</sup> Ibid., p. 7.

<sup>44</sup> *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand, Invs. Nos. 731-TA-1043-1045 (Final)*, USITC Publication 3710, August 2004, pp. 8-9.

<sup>45</sup> Petitioners’ postconference brief, p. 7.

<sup>46</sup> Ibid., p. 7, and conference transcript, pp. 38-39 (Halimi).

<sup>47</sup> Respondents’ postconference brief, pp. 11-12.

<sup>48</sup> Petitioners’ postconference brief, Petitioners’ Responses to Questions from Staff, p. 6.

<sup>49</sup> Conference transcript, p. 38 (Halimi).

<sup>50</sup> Petitioners’ postconference brief, Petitioners’ Responses to Staff Questions, p. 5.

manual labor involved. In contrast, high-end shopping bags require intensive hand assembly<sup>51</sup> and are made on small extruding and printing machines.<sup>52</sup>

In the 2004 investigations, the Commission noted that:

“{T}he basic process for production of PRCBs generally involves blending, extrusion, printing and bag conversion. The entire PRCB production process in the United States is automated, with little or no manual labor required other than for the maintenance and adjustment of the machinery. Thus . . . respondents’ argument that manual labor . . . distinguishes high-end PRCBs from all other PRCBs does not apply to U.S. production of the domestic like product. Some U.S. producers reported that high-end and all other PRCBs were produced using very similar production methods . . . A few producers acknowledged some differences in the manufacturing processes between high-end and all other PRCBs.”<sup>53</sup>

### **Interchangeability and Customer and Producer Perceptions**

Petitioners view PRCBs as a continuum of domestic like products, from lower-end t-shirt bags, to the medium-end t-shirt and die-cut merchandise bags, to the high-end bag categories.<sup>54</sup> They contend that there is no dividing line at the 2.25 mils thickness gauge, and that domestically produced PRCBs are produced both below and above that thickness.<sup>55</sup> For example, Command produces, sells and competes in the full continuum of domestic PRCBs, from more upscale t-shirt bags to various mid-range die-cut merchandise and restaurant bags, to the pricier high-end shopping bags exceeding 2.25 mils in thickness designed with attached carrying handles and up-scale printing demanded by consumers of such bags.<sup>56</sup>

Respondents contend that because high-end shopping bags and other PRCBs are so vastly different, they are not interchangeable in the marketplace.<sup>57</sup> They state that retail high-end shopping bags not only convey the merchandise to purchasers, but also serve as advertising vehicles for brands or names.<sup>58</sup> High-end shopping bags are “reusable,” providing customers with the latitude to use them in other ways, e.g., providing a gift bag for a friend or the carrying of shoes and lunch between home and the workplace. Although these bags are not viewed as candidates for recycling because of the particular materials of construction (e.g., hard plastic or rope handles, plastic or metal grommets, and embedded cardboard and bottom inserts), they are viewed as “reusable” because they are 2.25 mils or more in thickness and not subject to the recycling laws reportedly imposed by various states and municipalities.<sup>59</sup> In fact, respondents view the various state and municipal statutes defining a “plastic reusable bag” as those

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<sup>51</sup> Respondents’ postconference brief, p. 11.

<sup>52</sup> *Ibid.*, p. 10.

<sup>53</sup> *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand, Invs. Nos. 731-TA-1043-1045 (Final)*, USITC Publication 3710, August 2004, pp. 7-8.

<sup>54</sup> Petitioners’ postconference brief, p. 6.

<sup>55</sup> Conference transcript, pp. 14-15 (Dorn).

<sup>56</sup> Conference transcript, pp. 37-38 (Halimi). Command also competes with several other domestic producers of high-end PRCBs. *Ibid.*, p. 38.

<sup>57</sup> Respondents’ postconference brief, p. 8, and conference transcript, p. 122 (Gitlin).

<sup>58</sup> Respondents’ postconference brief, p. 10.

<sup>59</sup> *Ibid.*, p. 8.

plastic bags 2.25 mils or greater, as providing a distinct dividing line between high-end shopping bags and all other PRCBs.

In the 2004 investigations, the Commission stated that:

“Most responding purchasers reported that high-end and low-end PRCBs have the same uses (both are handed out at the point of purchase) and are interchangeable if size and gauge are comparable. Most purchasers also reported that there is no clear distinction between high-end and low-end PRCBs. However, some purchasers noted differences between high-end and low-end PRCBs with respect to customer perceptions, physical characteristics, and price.”<sup>60</sup>

Since purchasers’ questionnaires are not normally sent in the preliminary phase of investigations, there is little developed on the record of the current investigations on purchasers’ perceptions of the similarities and/or differences between high-end shopping bags and other PRCBs.

### **Channels of Distribution**

Petitioners contend that all PRCBs are sold through the same channels of distribution, whether directly to retail establishments or indirectly to retail establishments through distributors.<sup>61</sup> Respondents report that t-shirt bags, die-cut bags, and drawstring bags are commodity products sold in large quantities directly to grocery store chains, drugstore chains, mass merchandisers, and box store chains, and a significant share may be sold through internet sales and reverse auctions. Respondents claim that no high-end bags are sold via internet or reverse auctions. High-end shopping bags are for “mom and pop” stores, retailers like individual boutiques, or large upscale retailers. High-end shopping bags are also custom-made products, and are sold through packaging distributors and in much smaller quantities than other PRCBs.<sup>62</sup>

In the 2004 investigations, the Commission acknowledged “some differences between high-end PRCBs and all other PRCBs, such as . . . distribution channels.”<sup>63</sup>

Information on the channels of distribution of domestically produced and imported PRCBs is presented in Part II of this report, *Conditions of Competition in the U.S. Market*.

### **Price**

Petitioners state that there is a broad price continuum for PRCBs, depending on factors such as the blend of polyethylene film used, the thickness of such film, the design of the bag, the size of the bag, the complexity of the print design, and the number of print colors used.<sup>64</sup> Respondents contend that there

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<sup>60</sup> *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand, Invs. Nos. 731-TA-1043-1045 (Final)*, USITC Publication 3710, August 2004, p. 7.

<sup>61</sup> Petitioners’ postconference brief, p. 6.

<sup>62</sup> Respondents’ postconference brief, p. 9.

<sup>63</sup> *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand, Invs. Nos. 731-TA-1043-1045 (Final)*, USITC Publication 3710, August 2004, p. 6.

<sup>64</sup> Petitioners’ postconference brief, p. 8.



is a definite price distinction for high-end shopping bags, which are priced from 35 to 65 cents per bag, whereas other PRCBs are 8 cents a bag or less (with bulk t-shirt bags at 2.5 cents or less per bag).<sup>65</sup>

In the 2004 investigations, the Commission acknowledged “some differences between high-end PRCBs and all other PRCBs, such as . . . price.”<sup>66</sup> The Commission also indicated that average unit values for commercial domestic shipments of PRCBs other than high-end PRCBs were generally lower than those for high-end PRCBs.<sup>67</sup>

Pricing information obtained in the current investigations is presented in Part V of this report, *Pricing and Related Information*. The Commission obtained pricing data on four product categories of PRCBs, none of which were high-end PRCBs (three of the categories were for types of t-shirt bags and one category was for a type of die-cut bag). Prices varied considerably among the four categories for which pricing data were obtained.

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<sup>65</sup> Respondents’ postconference brief, p. 13.

<sup>66</sup> *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand, Invs. Nos. 731-TA-1043-1045 (Final)*, USITC Publication 3710, August 2004, p. 6.

<sup>67</sup> *Ibid.*, p. 8. In the 2004 investigations, high-end PRCBs were defined as “PRCBs with inserts of cardboard, rigid plastic, or other rugged flat materials at the bottom and/or top and PRCBs with separately applied handles other than drawcords or those made of polyethylene. Also included are heat-sealed square-bottomed or rectangular-bottomed PRCBs without inserts of cardboard, rigid plastic, or other rugged flat materials” (questionnaire instruction booklets in the 2004 investigations).



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

### U.S. MARKET CHARACTERISTICS AND CHANNELS OF DISTRIBUTION

Sales and distribution of PRCBs are organized in a variety of ways. Some large retailers import directly and also purchase from domestic producers. Other firms purchase bags from importers and producers. The market includes distributors of varying sizes that sell imported and domestically produced PRCBs. These distributors may or may not offer other packaging services (e.g., printing) along with the PRCBs. Domestic producers also import or purchase PRCBs in order to complement their product offering. Some retailers may also import directly; in fact, \*\*\* and \*\*\* were among the largest importers of PRCBs during 2006 to 2008. It is very common for sales to be negotiated between producers and retailers, with the product actually being shipped to distributors which will ship a bundle of items, including the PRCBs, to the end user.<sup>1</sup> The percentage of shipments from producers and importers reported to go to distributors and end users is presented in table II-1.

To serve the various categories of customers, plastic bags come in a variety of types, such as t-shirt bags, die-cut handle bags, wave handle bags, patch handle bags, drawstring style bags, flat-bottom loop handle bags, and others. Differences in dimensions and printing further differentiate these products. Imported high-end bags typically are printed using a solvent-based rotogravure process which yields a higher-quality print job than the water-based flexographic printing typically found among domestic producers of PRCBs.<sup>2</sup> High-end bags may have printing that serves as a form of advertising<sup>3</sup> for the firm (a.k.a. “bagvertising”). Parties have agreed that high-end PRCBs account for less than 1 percent of total PRCB consumption in the United States.<sup>4</sup>

Petitioners contend that a large portion of both the subject imports and the domestic like product are shipped to distributors that warehouse them and then ship them to retailers along with other items such as register tape.<sup>5</sup> Respondents contend that this is the case for t-shirt style bags sold through food service distributors to smaller stores, but often t-shirt style bags are also sold directly to mass-market retailers, grocers, drug stores, and big box chain stores. High-end PRCBs, they claim, are sold through packaging distributors which also sell other packaging products such as tissue paper and ribbons.<sup>6</sup> Further, high-end PRCBs used to be sold through different channels of distribution than other PRCBs, but now food service and retail packaging distributors are beginning to sell high-end PRCBs.<sup>7</sup>

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<sup>1</sup> Petitioners’ postconference brief, pp. 25-26 and conference transcript, pp. 31-32 (Rizzo).

<sup>2</sup> Conference transcript, pp. 119 and 162 (Gitlin).

<sup>3</sup> To a certain extent, many PRCBs function as advertising for retail establishments. *See, e.g.*, conference transcript, p. 190 (Dorn). However, high-end bags such as square-bottomed bags may be easier to read than t-shirt bags because the thicker polyethylene film of high-end bags does not bunch up when carrying an item, whereas the film in t-shirt bags bunches up and makes reading the store name or logo difficult. Respondents’ joint postconference brief, p. 10. Also, respondents contend, “High-end bags are a piece of artwork that express the image and the wishes of the retailer.” Conference transcript, p. 122 (Gitlin).

<sup>4</sup> Respondents’ postconference brief, p. 5.

<sup>5</sup> Conference transcript, p. 31 (Rizzo).

<sup>6</sup> Respondents’ postconference brief, p. 9.

<sup>7</sup> Conference transcript, pp. 122-123 (Gitlin).

**Table II-1****PRCBs: U.S. producers' and importers' U.S. shipments of PRCBs, by sources and channels of distribution, 2006-08**

Item	2006	2007	2008
<b>Share of reported shipments (<i>percent</i>)</b>			
<b>Domestic producers' U.S. shipments of PRCBs to:</b>			
Distributors	31.5	36.1	30.6
End users	68.5	63.9	69.4
<b>U.S. importers' U.S. shipments of PRCBs from Indonesia:</b>			
Distributors	28.3	29.9	46.8
End users	71.7	70.1	53.2
<b>U.S. importers' U.S. shipments of PRCBs from Taiwan:</b>			
Distributors	35.8	44.9	39.7
End users	64.2	55.1	60.3
<b>U.S. importers' U.S. shipments of PRCBs from Vietnam:</b>			
Distributors	65.0	42.7	48.9
End users	35.0	57.3	51.1
Note.—Data for domestic producers include only U.S. commercial shipments.			
Source: Compiled from data submitted in response to Commission questionnaires.			

## GEOGRAPHIC MARKETS

Eleven U.S. producers reported selling PRCBs nationwide, whereas the other four reported that they served regional markets. Twenty-one of 39 importers reported serving the national market, whereas the other 18 reported serving regional markets (table II-2).

**Table II-2**

**PRCBs: Geographic market areas in the United States served by domestic producers and importers of subject product**

<b>Region</b>	<b>Producers</b>	<b>Importers</b>
National	11	21
Mid-Atlantic	3	2
Midwest	4	7
Northeast	2	9
Northwest	3	3
Rocky Mountains	2	0
Southeast	3	5
Southwest	3	4
West Coast	2	6

Note.—Fifteen producers and 39 importers responded to this question. Firms were not limited to the number of market areas that they could report.

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

**SUPPLY AND DEMAND CONSIDERATIONS**

**Supply**

Fifteen producers of PRCBs responded to the Commission’s questionnaire. The largest producer is \*\*\* which accounted for \*\*\* percent of sales of domestically produced PRCBs in 2008 on a quantity basis. Petitioners reported that Hilex closed three facilities in California, North Carolina, and Texas since the start of 2007, and Europackaging, LLC (“Europackaging”) has closed its domestic operations.<sup>8</sup> In addition, 10 of 14 U.S. producers imported PRCBs during the period of investigation; representatives of the three producers appearing at the conference noted that this was due, at least partially, to not having the right equipment to make a certain size bag.<sup>9</sup>

**Domestic Production**

Based on available information, U.S. producers have the ability to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced PRCBs to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity, small levels of interchangeable inventories, small levels of export shipments, and the existence of some production alternatives.

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<sup>8</sup> Petitioners’ postconference brief, pp. 33-34.

<sup>9</sup> Conference transcript, pp. 67-69 (Bazbaz, Daniels, and Halimi).

### ***Industry capacity***

U.S. producers' reported capacity utilization decreased unevenly, increasing from 84.9 percent in 2006 to 86.4 percent in 2007 before decreasing to 82.4 percent in 2008 (*see* table III-2). Accordingly, U.S. producers have some excess capacity with which they could increase production of PRCBs.

### ***Alternative markets***

U.S. producers' export shipments as a percent of total shipments increased from 3.1 percent in 2006 to 3.2 percent in 2007 and 2008 (*see* table III-3). This level of exports during the period indicates that domestic producers are somewhat constrained in their ability to shift shipments between the United States and other markets in response to price changes.

### ***Inventory levels***

In general, domestic producers do not keep more inventory on hand than is being prepared for shipment. PRCBs are most often printed with company-specific names or logos, rather than being generic "thank you"-type bags.<sup>10</sup> As such, inventories held by producers tend to be relatively low and can rarely be switched from one customer to another. U.S. producers' inventories, as a share of total shipments, decreased unevenly from 5.4 percent in 2006 to 4.7 percent in 2008 (*see* table III-4). These data indicate that U.S. producers have little ability to use inventories to increase shipments to the U.S. market.

### ***Production alternatives***

Six of the 15 responding producers reported that they produce other products using the same equipment, machinery, and/or production and related workers that they use to produce PRCBs. Alternative products include: envelopes, food bags, garbage bags, industrial bags, LDPE bags and sheeting, non-PRCB merchandise bags, security bags, specialty film, and wickets.

### **Foreign Supply**

Seven countries supplied 94.0 percent of the quantity of imported PRCBs in 2008: Thailand, China, Vietnam, Malaysia, Taiwan, Indonesia, and Canada. Companies in Thailand, China, and Malaysia have been subject to antidumping duty orders in the United States since 2004, which are scheduled to be reviewed beginning in July 2009.<sup>11</sup>

U.S. imports of PRCBs from Indonesia, Taiwan, and Vietnam increased by 114.9 percent (7.8 billion bags) between 2006 and 2007, then decreased by 0.6 percent in 2008 (*see* table C-1).<sup>12</sup> Petitioners reported that there are allegedly 90 manufacturers and exporters of PRCBs in Indonesia, Taiwan, and

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<sup>10</sup> Conference transcript, p. 105 (Daniels). In addition, Mr. Daniels reported that he believes Hilex does not make any unprinted bags. *Ibid*.

<sup>11</sup> These data are based on imports under HTS statistical reporting number 3923.21.0085.

<sup>12</sup> On a quantity basis.

Vietnam combined,<sup>13</sup> and that many of these companies have been increasing their capacity, have excess capacity, and are export-oriented.<sup>14</sup>

### ***Indonesia***

***Industry Capacity***--According to five foreign producer questionnaire responses received by the Commission, reported capacity in Indonesia decreased irregularly by 1.7 percent between 2006 and 2008 (from 4.5 billion bags to 4.7 billion bags in 2007 and 4.4 billion bags in 2008). Production increased 10.3 percent from 2006 to 2007 (from 3.7 billion bags to 4.1 billion bags), but it decreased by 20.6 percent in 2008 to 3.2 billion bags. Capacity utilization decreased irregularly in a similar way: from 82.2 percent in 2006 to 73.3 percent in 2008.

***Alternative Markets***--The share of Indonesia's shipments of PRCBs exported to the United States, as a share of its total shipments, decreased from \*\*\* percent in 2006 to 60.7 percent in 2008.<sup>15</sup> Principal alternative export markets identified by Indonesian producers and exporters include Africa, Canada, Denmark, the EU, Hong Kong, Japan, the Middle East, the Netherlands, Poland, Singapore, Spain, Sweden, and the United Kingdom.

***Inventory Levels***--The ratio of U.S. importers' inventories of Indonesian PRCBs, as a percentage of their total U.S. shipments of PRCBs from Indonesia, increased irregularly from \*\*\* percent in 2006 to \*\*\* percent in 2008.

### ***Taiwan***

***Industry Capacity***--According to three foreign producer questionnaire responses received by the Commission, reported capacity in Taiwan increased by \*\*\* percent between 2006 and 2008 (from \*\*\* billion bags in 2006 to \*\*\* billion bags in 2007 and \*\*\* billion bags in 2008). Production increased \*\*\* percent from 2006 to 2007 (from \*\*\* billion bags to \*\*\* billion bags), and further increased by \*\*\* percent in 2008 to \*\*\* billion bags. Capacity utilization decreased irregularly, however: from \*\*\* percent in 2006 to \*\*\* in 2007 and \*\*\* percent in 2008.

***Alternative Markets***--The share of Taiwan's shipments of PRCBs exported to the United States, as a share of its total shipments, increased from \*\*\* percent in 2006 to \*\*\* percent in 2008. No Taiwan producer or exporter listed alternative export markets for the PRCBs that it exports.<sup>16</sup>

***Inventory Levels***--The ratio of U.S. importers' inventories of Taiwan PRCBs, as a percentage of their total U.S. shipments of PRCBs from Taiwan, decreased from 18.0 percent in 2006 to 13.9 percent in 2007, then increased to 20.8 percent in 2008.

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<sup>13</sup> Petition, exhs. II-4, II-5, and II-6.

<sup>14</sup> Petitioners' postconference brief, pp. 38-43.

<sup>15</sup> The United States is Indonesia's second-largest trading partner under HTS subheading 3923.21, which includes sacks and bags of polymers of ethylene. Whereas Indonesia's exports to the United States under HTS subheading 3923.21 decreased from 20.8 million kg to 9.8 million kg over 2006-08, Indonesia's exports to Japan increased from 29.0 million kg to 31.7 million kg, and now account for 51.3 percent of Indonesia's total exports under this broader HTS subheading. The next-largest destination for Indonesia's exports under this HTS subheading is the United Kingdom, which accounted for just over half of what Indonesia exported to the United States. *Global Trade Atlas*.

<sup>16</sup> The United States is Taiwan's largest destination for exports classified under HTS subheading 3923.21, and was the destination for 80.2 percent of Taiwan's exports in 2008. Taiwan's exports to the United States under HTS subheading 3923.21 increased from 29.1 million kg to 38.0 million kg over 2006-08, and increased the United States' share from 70.3 in 2006 to 80.2 percent in 2008. The only other large export market for Taiwan's exports under this HTS subheading is Japan, which accounted for 16.8 percent of Taiwan's exports in 2008. *Global Trade Atlas*.

## ***Vietnam***

***Industry Capacity***--According to 10 foreign producer questionnaire responses received by the Commission, reported capacity in Vietnam increased by \*\*\* percent between 2006 and 2008 (from \*\*\* billion bags to 3.8 billion bags in 2007 and 5.7 billion bags in 2008). Production increased by \*\*\* percent from 2006 to 2007 (from \*\*\* billion bags to 3.6 billion bags), and further increased by 32.1 percent in 2008 to 4.7 billion bags. Capacity utilization decreased over that time: from \*\*\* percent in 2006 to 94.8 in 2007 and 83.8 percent in 2008.

***Alternative Markets***--The share of Vietnam's shipments of PRCBs exported to the United States, as a share of its total shipments, decreased irregularly, increasing from \*\*\* percent in 2006 to 73.3 percent in 2007 before decreasing to 60.2 percent in 2008. Principal alternative export markets identified by Vietnamese producers and exporters include Australia, the EU, Germany, Hong Kong, Japan, the Netherlands, Panama, South America, and the United Kingdom.

***Inventory Levels***--The ratio of U.S. importers' inventories of Vietnamese PRCBs, as a percentage of their total U.S. shipments of PRCBs from Vietnam, increased from 5.8 percent in 2006 to 20.3 percent in 2008.

## ***Nonsubject Imports***

Thailand, China, and Malaysia were the first, second, and fourth largest sources of imports of PRCBs during 2006-08. On a quantity basis, imports from these countries decreased by 44.6 percent (13.0 billion bags) between 2006 and 2007, with 85.9 percent of the decrease attributable to a drop in imports from Thailand. Imports from these large nonsubject countries that are subject to antidumping duty orders then increased by 16.9 percent (2.7 billion bags) between 2007 and 2008. Canada was the eighth-largest source of imported PRCBs from 2006 to 2008, but only accounted for 2.0 percent of the quantity of total imports during that period.

## **General Supply Conditions**

When asked if there had been any changes in the product range or marketing of PRCBs, 12 of the 13 responding producers<sup>17</sup> and the 35 of the 38 responding importers reported that there have not been any significant changes. Producer \*\*\* noted that there has been a movement away from patch handle bags towards wave top bags. Importer \*\*\* reported that "Recently, bag manufacturers have been marketing a biodegradable additive in their bags." In addition, importer \*\*\* stated that it believes "domestic manufacturers are making thinner bags."

## **Demand**

### **U.S. Demand**

#### ***Demand Characteristics***

Demand for PRCBs is derived primarily from retail and food service demand, as many of these firms provide PRCBs to their customers to carry home food and other merchandise. Petitioners stated that demand has not been hurt by the recent economic downturn, as people are still shopping and needing PRCBs; petitioners noted that consumers are just shopping at stores like Wal-Mart more often.<sup>18</sup> In the 2004 investigations, petitioners suggested that demand is dependent on population growth, not the retail

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<sup>17</sup> Additionally, one producer marked both "yes" and "no." This response was not included in the summation.

<sup>18</sup> Conference transcript, p. 58 (Daniels).



environment.<sup>19</sup> From 2006 to 2008, apparent U.S. consumption of PRCBs decreased by 7.0 percent in terms of quantity.

Producers and importers were asked specifically how the demand for PRCBs in the U.S. and worldwide markets has changed since 2006.<sup>20</sup> One producer (\*\*\*) noted an increase in demand since 2006, seven producers noted a decrease, and seven reported that there has been no change. Five of the producers that described demand as decreasing attributed the decrease to the weakening economy;<sup>21</sup> two attributed the decline to an increasing use of alternative bag types; and two attributed it to pending or passed legislative actions which may limit the use of PRCBs.

Sixteen of 35 responding importers reported a decrease in demand since 2006, three reported an increase, and sixteen reported that there has been “no change.” Importers attributed declining demand to the following causes: increasing use of alternative types of bags (reported by 7 importers); the economic recession (5 importers); environmental concerns (5 importers), legislation in communities banning or taxing PRCBs (3 importers); and the increased cost of oil in 2008, leading to higher polyethylene resin prices (2 importers). Importer \*\*\* reported that overall demand has increased since 2006, despite a decrease in demand in 2008 due to the cost of resin.

### ***Substitute Products***

Four of 15 producers and 21 of 39 importers reported that there are products that can be used in place of PRCBs. All four producers and 18 importers reported that paper bags can be used in place of PRCBs, and three producers and 16 importers reported that reusable bags (whether cloth, woven, non-woven, or something else) could be used as a substitute for PRCBs. According to parties, the demand for reusable heavy duty plastic, cloth, woven, or other bags has been increasing.<sup>22</sup> Petitioners contend that the effect on the market has been minimal and has caused a reduction in demand of less than one percent.<sup>23</sup> A representative from purchaser \*\*\* noted that his firm has undergone advertising campaigns to get people to use the more than \*\*\* reusable bags that it has sold. Their efforts are paying off and people are reusing these bags “more and more and more.” Still, the most recent data he has seen is a decrease in usage of PRCBs of only \*\*\* percent.<sup>24</sup> Four of 15 producers and 16 of 39 importers stated that demand for PRCBs has been affected by the increased availability and/or use of reusable bags. In their importer questionnaire responses, \*\*\* characterized the effect as being “negligible,” “less than 1 percent of the end user customers utilize reusable bags,” and “not that much,” respectively. In contrast, \*\*\* noted that where it has market information, it estimates a “5 percent to 10 percent demand reduction of PRCBs as a result of increased use of reusable bags.”

There has also been a recent push to ban, tax, or add a fee to the use of PRCBs in various localities throughout the United States. San Francisco was the first to enact such a ban for supermarkets and pharmacies for most PRCBs of less than 2.25 mils of thickness. Other jurisdictions have been considering legislative action, but petitioners contend that no other laws have been passed.<sup>25</sup>

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<sup>19</sup> Petitioners’ postconference brief in the 2004 investigations on PRCBs from China, Malaysia, and Thailand, p. 23.

<sup>20</sup> No producer or importer responding to the Commission’s questionnaires described global trends in demand for PRCBs.

<sup>21</sup> One producer that noted that there was “no change” in demand stated that demand has decreased over the last three quarters due to the current recession.

<sup>22</sup> See, e.g., conference transcript, p. 12 (Levinson), pp. 57 and 62 (Daniels).

<sup>23</sup> Conference transcript, pp. 57-59 and 62 (Bazbaz, Daniels, and Halimi).

<sup>24</sup> Telephone interview with \*\*\*.

<sup>25</sup> Conference transcript, pp. 63-66 (Daniels).

## ***Cost Share***

Although high-end bags cost more than other PRCBs, the costs of either type of PRCB are very small compared to most retail purchases, and retailers generally provide PRCBs free to the final consumer.

## **SUBSTITUTABILITY ISSUES**

The degree of substitution between domestic and imported products depends upon such factors as relative prices, quality, and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on producer and importer questionnaire responses, staff believes that on the whole, there is likely to be a high degree of substitution between PRCBs produced in the United States and those produced in Indonesia, Taiwan, and Vietnam.<sup>26</sup>

### **Lead Times**

Eleven of the 14 responding producers reported that at least 50 percent of their PRCBs was made on a produced-to-order basis. Based on a simple average, 66.0 percent was sold produced-to-order and lead times for these orders averaged 27 days. Lead times for those producers who reported selling PRCBs out of inventory ranged from 2 to 14 days and averaged 8.0 days.<sup>27</sup>

Nearly half (17 of 35) of the responding importers reported only selling on a produced-to-order basis and five reported only selling out of inventory.<sup>28</sup> Reported lead times for importers' sales from inventory averaged 5.6 days. For importers' sales that are produced to order, however, lead times averaged 11.6 weeks.<sup>29</sup>

### **Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports**

Producers and importers were asked to assess how interchangeable PRCBs produced in the United States, Indonesia, Taiwan, Vietnam, and nonsubject countries are; responses are presented in Table II-3. The majority of producers and importers that reported familiarity with imported PRCBs replied that U.S.-produced PRCBs are "always" or "frequently" interchangeable with both subject and nonsubject imports. Producers and importers also reported that subject imports are "always" or "frequently" interchangeable with each other, and that domestic PRCBs and subject imported PRCBs are "always" or "frequently" interchangeable with PRCBs from nonsubject countries. Eight importers<sup>30</sup> responding that U.S.-produced PRCBs are "sometimes" or "never" interchangeable with subject imported PRCBs described the differences between domestic product and subject imports that limited their interchangeability. Four importers stated that value-added, hand-applied items such as cardboard

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<sup>26</sup> Staff suggests that, based on the evidence submitted, the degree of substitution between high-end bags manufactured domestically and those imported from the subject countries is lower due to print quality options, handle options (rope, tape, grommets, and other hand-applied options), and cardboard insert options.

<sup>27</sup> These data do not include the response of \*\*\*, since it replied both "3 days" and "4 weeks."

<sup>28</sup> Using a simple average, 70.5 percent is sold on a produced-to-order basis.

<sup>29</sup> \*\*\*.

<sup>30</sup> One of these importers is \*\*\*.

**Table II-3**

**PRCBs: U.S. producers' and importers' perceived degree of interchangeability of products produced in the United States and in other countries<sup>1</sup>**

Country comparison	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Indonesia	10	3	1	0	14	4	4	0
U.S. vs. Taiwan	11	3	0	0	17	3	1	1
U.S. vs. Vietnam	11	3	1	0	17	6	3	0
U.S. vs. other countries	10	2	0	0	14	2	4	1
Indonesia vs. Taiwan	10	1	0	0	12	3	0	0
Indonesia vs. Vietnam	10	1	0	0	12	6	0	1
Indonesia vs. other countries	9	0	0	0	11	4	1	0
Taiwan vs. Vietnam	10	2	0	0	14	4	0	0
Taiwan vs. other countries	8	1	0	0	12	3	0	0
Vietnam vs. other countries	9	1	0	0	13	4	0	0

<sup>1</sup> Producers and importers were asked if PRCBs produced in the United States and in other countries are used interchangeably and to what degree.

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

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

bottoms, injection-molded or rope handles, and grommets are not available from domestic producers. Also, two importers stated that imports have a better print quality and that only imported PRCBs can have side and bottom gussets. One importer, however, stated that the order sizes of imported PRCBs are not acceptable by some end users.

In addition, producers and importers were asked to assess how often differences other than price were significant in sales of PRCBs from the United States, Indonesia, Taiwan, Vietnam, and nonsubject countries (table II-4). A majority of producers and importers reported that differences other than price are “sometimes” or “never” significant in their sales of PRCBs. Thirteen importers identified characteristics other than price that play a role in sales of PRCBs: five reported that bags that have value-added, hand-applied items are not available from producers in the United States; four mentioned superior overseas print quality; three noted that U.S. producers require large minimum quantities; two mentioned PRCBs with side and bottom gussets being unavailable from domestic producers; one mentioned that the domestic industry does not make small bags; one reported better quality bags being imported from Indonesia and Vietnam; and one reported that domestic producers offer shorter lead times.

**Table II-4**

**PRCBs: U.S. producers' and importers' perceived importance of factors other than price in sales of product produced in the United States and in other countries<sup>1</sup>**

Country comparison	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Indonesia	0	2	3	9	3	6	5	8
U.S. vs. Taiwan	0	1	4	9	2	4	6	10
U.S. vs. Vietnam	0	2	4	9	4	7	5	9
U.S. vs. other countries	0	1	3	8	2	5	5	9
Indonesia vs. Taiwan	0	0	3	8	1	1	5	8
Indonesia vs. Vietnam	0	0	3	8	2	1	6	9
Indonesia vs. other countries	0	0	1	7	1	1	6	8
Taiwan vs. Vietnam	0	0	4	7	3	1	6	8
Taiwan vs. other countries	0	0	2	7	2	1	4	8
Vietnam vs. other countries	0	0	2	7	2	1	5	9

<sup>1</sup> Producers and importers were asked if differences other than price between PRCBs produced in the United States and those produced in other countries were a significant factor in their firms' sales of the PRCBs.

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

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

Respondents contend that the PRCBs produced by petitioners are commodity t-shirt bags and that, with regard to imported bags, "High-end bags are a piece of artwork that express the image and the wishes of the retailer out on the street,"<sup>31</sup> which make up about one percent of the PRCB market.<sup>32</sup> Petitioners contend that t-shirt sacks or bags are a commodity product that competes solely on the basis of price.<sup>33</sup>

<sup>31</sup> Conference transcript, p. 122 (Gitlin).

<sup>32</sup> Conference transcript, p. 112 (Perry).

<sup>33</sup> Petitioners' postconference brief, pp. 12-19.

## 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 alleged subsidies and margins of dumping was 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 15 firms that accounted for nearly 100 percent of U.S. production of PRCBs during 2008.<sup>1</sup>

### U.S. PRODUCERS

The Commission sent producer questionnaires to 49 U.S. companies identified in the petition and through independent staff research. Out of these 49 companies, 15 provided useable data, 7 certified that they had not produced PRCBs since January 1, 2006, and the remaining 27 provided no response. Of the producers that provided useable data, petitioners (Hilex and Superbag) combined for almost \*\*\* percent of U.S. production in 2008, with the two companies accounting for approximately \*\*\* and \*\*\* percent of U.S. production in that year, respectively. The remaining production was accounted for almost exclusively by \*\*\*, which when combined with petitioners accounted for over 90 percent of U.S. production in 2008.

Presented in table III-1 is a list of current domestic producers of PRCBs and each company's position on the petition, production location(s), related and/or affiliated firms, and share of reported production of PRCBs in 2008.

**Table III-1  
PRCBs: U.S. producers, positions on the petition, U.S. production locations, related and/or affiliated firms, and shares of 2008 reported U.S. production**

Firm	Position on petition	U.S. production location(s)	Related and/or affiliated firms	Share of production (percent)
Ampac	***	Cincinnati, OH	***	***
API	***	North Las Vegas, NV Oklahoma City, OK Kenner, LA Elkridge, MD	***	***
Bemis	***	Terre Haute, IN	***	***
Command	***	Los Angeles, CA	None	***
Durabag	***	Tustin, CA	None	***
Europackaging	***	Salem, NH	***	***

Table continued on following page.

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<sup>1</sup> Total U.S. PRCB production is unknown; however, a statement provided by petitioners estimated total U.S. production in 2008 of approximately \*\*\* billion bags. See petition exhibit II-3. Data from U.S. producer questionnaire responses results in total production of approximately 67.1 billion bags in 2008.

**Table III-1--Continued**

**PRCBs: U.S. producers, positions on the petition, U.S. production locations, related and/or affiliated firms, and shares of 2008 reported U.S. production**

<b>Firm</b>	<b>Position on petition</b>	<b>U.S. production location(s)</b>	<b>Related and/or affiliated firms</b>	<b>Share of production (percent)</b>
Genpak	***	Bloomington, MN	***	***
Golden	***	Nutly, NJ	None	***
Hilex	***	Carrollton, TX Farmers Branch, TX Jacksonville, FL Jerome, ID Milesburg, PA North Vernon, IN Richmond, VA Overland, MO	None	***
Inteplast	***	Livingston, NJ Lolita, TX N. Dighton, MA	***	***
Omega	***	Lyndhurst, NJ	***	***
Poly-Pak	***	Melville, NY	None	***
Roplast	***	Oroville, NY	***	***
Superbag	***	Houston, TX	None	***
Unistar	***	Harahan, LA Houston, TX	*** ***	***
Total				100.0
<p>Note.-- Because of rounding, shares may not total to 100.0 percent. Pan Pacific Plastics Mfg., Inc., ("PPMI") a U.S. producer of PRCBs, did not provide a questionnaire response but gave estimated production of *** bags in 2008. Letter from ***, April 16, 2009.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>				

### **U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION**

Capacity, production, and capacity utilization all declined during the period for which data were collected. Much of the decrease in capacity and production can be attributed to plant closures by Hilex (three facilities closed) and Europackaging (one facility closed). Additionally, \*\*\* was forced to move production equipment overseas for much of this period due to Hurricane Katrina.<sup>2</sup> Superbag did offset some of this decrease in capacity, however, when the company purchased additional equipment after the

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<sup>2</sup> Producer questionnaire responses, section II-2.

imposition of duties on PRCBs from China, Malaysia, and Thailand.<sup>3</sup> Additionally, \*\*\* added \*\*\* new extruders in 2006 and this led to an increase in capacity of approximately \*\*\* bags annually. U.S. producers' aggregate capacity was well below apparent U.S. consumption of PRCBs in each of the years 2006-2008.

Of the 15 U.S. producers, \*\*\* were the 6 firms reporting production of other products using the same equipment and/or workers used to produce PRCBs.<sup>4</sup> U.S. producers' capacity, production, and capacity utilization data for PRCBs are presented in table III-2.

**Table III-2**  
**PRCBs: U.S. capacity, production, and capacity utilization, 2006-2008**

Item	Calendar year		
	2006	2007	2008
Capacity (1,000 bags)	84,338,496	84,788,204	81,372,448
Production (1,000 bags)	71,574,007	73,259,361	67,090,935
Capacity utilization (percent)	84.9	86.4	82.4

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

### U.S. PRODUCERS' SHIPMENTS

Data on U.S. producers' shipments of PRCBs are presented in table III-3. From 2006 to 2008, total shipments decreased on a quantity basis but increased slightly on a value basis. There was no internal consumption or transfers to related firms reported.

**Table III-3**  
**PRCBs: U.S. producers' shipments, by types, 2006-2008**

Item	Calendar year		
	2006	2007	2008
<b>Quantity (1,000 bags)</b>			
Commercial shipments	68,349,846	70,661,966	65,741,416
Internal consumption	0	0	0
Transfers to related firms	0	0	0

Table continued on following page.

<sup>3</sup> Conference transcript, p. 56 (Halimi).

<sup>4</sup> \*\*\* reported using 29 percent of its production resources to produce PRCBs; \*\*\* reported using 57 percent of its production resources for PRCBs; \*\*\* reported using 100 percent of its equipment and 95 percent of its workers for PRCBs; \*\*\* reported using 85 percent of its equipment and 19 percent of its workers for PRCBs; \*\*\* reported using 40 percent of its production resources for PRCBs; and \*\*\* reported using 47 percent of its equipment and 50 percent of its workers for PRCBs. Alternative products produced using the same production resources consisted mostly of non-PRCB bags and plastic film.

**Table III-3--Continued**  
**PRCBs: U.S. producers' shipments, by types, 2006-2008**

Item	Calendar year		
	2006	2007	2008
<b>Quantity (1,000 bags)</b>			
U.S. shipments	68,349,846	70,661,966	65,741,416
Export shipments	2,204,285	2,367,291	2,204,742
Total shipments	70,554,131	73,029,257	67,946,158
<b>Value (1,000 dollars)</b>			
Commercial shipments	982,919	937,922	997,311
Internal consumption	0	0	0
Transfers to related firms	0	0	0
U.S. shipments	982,919	937,922	997,311
Export shipments	37,913	38,829	36,188
Total shipments	1,020,832	976,751	1,033,499
<b>Unit value (per 1,000 bags)</b>			
Commercial shipments	\$14.38	\$13.27	\$15.17
Internal consumption	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Transfers to related firms	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Average U.S. shipments	14.38	13.27	15.17
Export shipments	17.20	16.40	16.41
Average all shipments	14.47	13.37	15.21
<b>Share of quantity (percent)</b>			
Commercial shipments	96.9	96.8	96.8
Internal consumption	0.0	0.0	0.0
Transfers to related firms	0.0	0.0	0.0
U.S. shipments	96.9	96.8	96.8
Export shipments	3.1	3.2	3.2
Total shipments	100.0	100.0	100.0
<sup>1</sup> Not applicable.  Note.— Because of rounding, figures may not add to the totals shown. *** reported having tolling agreements for PRCB production. Companies with tolling agreements in place were instructed to include tolled production in their shipment data.  Source: Compiled from data submitted in response to Commission questionnaires.			



## U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of PRCBs during the period for which data were collected are presented in table III-4.

**Table III-4**  
**PRCBs: U.S. producers' end-of-period inventories, 2006-2008**

Item	Calendar year		
	2006	2007	2008
Inventories (1,000 bags)	3,820,279	4,042,763	3,187,540
Ratio to production (percent)	5.3	5.5	4.8
Ratio to U.S. shipments (percent)	5.6	5.7	4.8
Ratio to total shipments (percent)	5.4	5.5	4.7

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

## U.S. PRODUCERS' IMPORTS AND PURCHASES

Eight of the 15 U.S. producers imported directly and/or purchased PRCBs from one or more of the subject countries during the period for which data were collected. The U.S. producers with the largest imports of PRCBs from subject countries during this period were \*\*\*, whose imports alone represented \*\*\* of all U.S. imports of PRCBs from Vietnam, and \*\*\*, which represented almost \*\*\* percent of U.S. imports from Taiwan. In 2008, U.S. producers that imported directly or purchased imports of PRCBs from subject countries represented over \*\*\* percent of the quantity of U.S. imports from two of the three subject countries (Taiwan and Vietnam) and \*\*\* percent of U.S. imports from Indonesia. U.S. producers' imports and purchases of PRCBs are presented in table III-5.

**Table III-5**  
**PRCBs: U.S. producers' production, imports, and purchases, by company, 2006-2008**

Item	Calendar year		
	2006	2007	2008
***	***	***	***
<p><sup>1</sup> *** reported importing from Vietnam because this allows its parent company to have geographic diversification and low-cost production.</p> <p><sup>2</sup> *** reported importing from Vietnam because this allows the company to supplement its capacity in the United States.</p> <p><sup>3</sup> *** reported importing from Vietnam because the company needed lower-priced products to compete with the "very low-priced imports from Vietnam, Indonesia, Taiwan."</p> <p><sup>4</sup> *** did not provide a specific reason for importation of PRCBs.</p> <p><sup>5</sup> *** "has been forced to import to avoid losing additional sales to lower-priced dumped imports from Indonesia, Taiwan, and Vietnam."</p> <p><sup>6</sup> *** cited constraints on production capacity including equipment, building space, labor shortages, and seasonality as reasons for importing PRCBs from Taiwan and Vietnam.</p> <p><sup>7</sup> *** cited printing restrictions, price, and quality as reasons for importing PRCBs from Vietnam.</p> <p><sup>8</sup> *** reported importing from Taiwan and Vietnam in order to "compete against low priced imports."</p>			

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

## U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

The U.S. producers' aggregate employment data for PRCBs are presented in table III-6. The data reflect the plant closures mentioned earlier in this section, specifically the approximately \*\*\* positions eliminated as a result of the three closures by Hilex and the \*\*\* positions eliminated by Europackaging during the period for which data were collected. During this same period, API, Command, and Inteplast increased the number of production-related workers employed at their facilities, and these increases offset somewhat the effect of the aforementioned plant closures on the U.S. industry as a whole. Hourly wages and unit labor cost increased during the period for which data were collected, while hours worked and productivity decreased. This stands to reason given that the number of workers producing PRCBs decreased by a relatively smaller percentage than did overall PRCB production in the United States.

**Table III-6**  
**PRCBs: U.S. producers' employment-related data, 2006-2008**

Item	Calendar year		
	2006	2007	2008
Production and related workers (PRWs)	3,348	3,213	3,030
Hours worked by PRWs ( <i>1,000 hours</i> )	7,536	7,328	7,140
Hours worked per PRW	2,251	2,281	2,356
Wages paid to PRWs ( <i>1,000 dollars</i> )	102,313	108,425	108,566
Hourly wages	\$13.58	\$14.80	\$15.21
Productivity ( <i>bags produced per hour</i> )	9,498	9,998	9,397
Unit labor costs ( <i>per 1,000 bags</i> )	\$1.43	\$1.48	\$1.62
Source: Compiled from data submitted in response to Commission questionnaires.			

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

### **U.S. IMPORTERS**

Importer questionnaires were sent to 83 firms believed to be importers of subject PRCBs, as well as to all U.S. producers of PRCBs.<sup>1</sup> Usable questionnaire responses were received from 35 companies, representing over half of the total volume of PRCBs imported from Indonesia, Taiwan, and Vietnam imported from 2006-2008 under HTS statistical reporting number 3923.21.0085.<sup>2</sup>

For subject countries, the leading U.S. importer of PRCBs from Indonesia is \*\*\*, while the leading importers from Taiwan are \*\*\* and the leading importers from Vietnam are \*\*\*. Leading importers of PRCBs from nonsubject countries (primarily China, Malaysia, and Thailand) include \*\*\*.

### **U.S. IMPORTS**

From 2006 to 2008, total imports decreased on a quantity basis but increased on a value basis. Subject imports more than doubled during the period for which data were collected on both a volume and a value basis. This increase from subject countries resulted in an increase in their share of the quantity of total imports from 16.5 percent in 2006 to 40.1 percent in 2008. During the same period, nonsubject imports from all other sources decreased. Nonsubject imports from the three countries that are currently subject to antidumping duty orders decreased on a quantity basis during the period for which data were collected but increased on a value basis.<sup>3</sup>

Table IV-1 presents 2006-2008 annual data for U.S. imports of PRCBs from Indonesia, Taiwan, Vietnam, and all other sources. Table IV-2 presents monthly import data for 2008.

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<sup>1</sup> The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”), may have imported at least five percent of total imports or one million dollars worth of PRCBs from any country under HTS statistical reporting number 3923.21.0085 in any one year since 2006.

<sup>2</sup> According to questionnaire responses, subject imports in 2008 totaled 8.6 billion PRCBs. U.S. Department of Commerce statistics show total subject imports during 2008 of 14.6 billion PRCBs.

<sup>3</sup> At the preliminary conference, counsel for both petitioners and respondents attributed an increase in imports from subject countries to the antidumping duty orders currently in place on China, Malaysia, and Vietnam. Conference transcript, pp. 5-6 (Dorn) and pp. 132-133 (Perry).

**Table IV-1**  
**PRCBs: U.S. imports, by sources, 2006-2008**

Source	Calendar year		
	2006	2007	2008
<b>Quantity (1,000 bags)</b>			
Indonesia	1,592,965	3,396,505	2,819,569
Taiwan	2,171,587	3,988,867	4,575,499
Vietnam	3,061,998	7,288,037	7,192,325
Subtotal	6,826,550	14,673,409	14,587,393
Countries subject to AD duty orders <sup>1</sup>	29,079,228	16,114,332	18,833,894
All other sources	5,575,003	4,748,210	2,942,934
Total	41,480,781	35,535,951	36,364,221
<b>Value (1,000 dollars)<sup>2</sup></b>			
Indonesia	25,400	45,808	40,948
Taiwan	19,454	42,318	56,848
Vietnam	19,734	73,757	88,189
Subtotal	64,588	161,884	185,986
Countries subject to AD duty orders <sup>1</sup>	219,763	228,082	255,232
All other sources	51,774	76,586	63,180
Total	336,125	466,552	504,398
<b>Unit value (per 1,000 bags)<sup>1</sup></b>			
Indonesia	\$15.95	\$13.49	\$14.52
Taiwan	8.96	10.61	12.42
Vietnam	6.44	10.12	12.26
Average	9.46	11.03	12.75
Countries subject to AD duty orders <sup>1</sup>	7.56	14.15	13.55
All other sources	9.29	16.13	21.47
Average, all sources	8.10	13.13	13.87

Table continued on following page.

**Table IV-1--Continued**  
**PRCBs: U.S. imports, by sources, 2006-2008**

Source	Calendar year		
	2006	2007	2008
<b>Share of quantity (percent)</b>			
Indonesia	3.8	9.6	7.8
Taiwan	5.2	11.2	12.6
Vietnam	7.4	20.5	19.8
Subtotal	16.5	41.3	40.1
Countries subject to AD duty orders <sup>1</sup>	70.1	45.3	51.8
All other sources	13.4	13.4	8.1
Total	100.0	100.0	100.0
<b>Share of value (percent)</b>			
Indonesia	7.6	9.8	8.1
Taiwan	5.8	9.1	11.3
Vietnam	5.9	15.8	17.5
Subtotal	19.2	34.7	36.9
Countries subject to AD duty orders <sup>1</sup>	65.4	48.9	50.6
All other sources	15.4	16.4	12.5
Total	100.0	100.0	100.0
<p><sup>1</sup> China, Malaysia, and Thailand. In the 2004 antidumping duty investigations on PRCBs from China, Malaysia, and Thailand, three firms were found by Commerce to have <i>de minimis</i> dumping margins and thus were excluded from the antidumping duty orders: Hang Lung Plastic Manufactory (China), Bee Lian Plastic Industries (Malaysia), and Thai Plastic Bags Industries Group (Thailand). Imports of PRCBs from these firms are included in the category "Countries subject to AD duty orders."</p> <p><sup>2</sup> Landed, U.S. port of entry, duty-paid.</p>			
Source: Compiled from official Commerce statistics.			

**Table IV-2**  
**PRCBs: U.S. imports, by sources, January-December 2008**

Source	Month											
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Quantity (1,000 bags)</b>												
Indonesia	391,104	348,394	230,739	373,328	243,379	237,394	189,968	219,892	130,964	172,495	155,935	125,977
Taiwan	481,292	350,783	575,193	369,719	270,424	234,980	319,714	471,288	488,597	333,771	429,901	249,837
Vietnam	695,106	543,976	628,881	431,336	452,207	570,142	616,063	537,741	579,665	769,291	545,027	822,890
Subtotal	1,567,502	1,243,153	1,434,813	1,174,383	966,010	1,042,516	1,125,745	1,228,921	1,199,226	1,275,557	1,130,863	1,198,704
Countries subject to AD duty orders <sup>1</sup>	1,294,460	1,097,096	1,519,054	1,632,166	1,404,166	1,387,621	1,207,431	1,674,452	1,711,624	1,995,556	2,066,024	1,844,244
All other sources	273,019	252,097	210,038	149,557	232,243	216,660	286,526	214,893	377,115	180,183	355,942	194,661
Total	3,134,981	2,592,346	3,163,905	2,956,106	2,602,419	2,646,797	2,619,702	3,118,266	3,287,965	3,451,296	3,552,829	3,237,609
<b>Value (1,000 dollars)<sup>2</sup></b>												
Indonesia	5,083	4,592	3,696	4,929	3,424	2,835	2,683	3,442	2,321	3,127	2,676	2,140
Taiwan	5,354	4,418	5,020	4,830	3,934	3,703	4,356	5,325	6,052	4,699	5,772	3,384
Vietnam	7,635	6,403	6,547	5,757	5,807	6,864	7,271	7,075	6,625	9,868	9,413	8,927
Subtotal	18,073	15,413	15,263	15,516	13,164	13,402	14,309	15,842	14,998	17,694	17,861	14,450
Countries subject to AD duty orders <sup>1</sup>	18,493	16,161	18,688	18,865	17,724	19,523	18,680	22,512	26,887	28,853	26,302	22,546
All other sources	5,395	5,729	4,558	4,045	5,607	5,429	5,116	4,982	5,255	6,367	5,745	4,951
Total	41,961	37,302	38,508	38,425	36,495	38,354	38,105	43,336	47,140	52,915	49,908	41,947
<sup>1</sup> China, Malaysia, and Thailand. <sup>2</sup> Landed, U.S. port of entry, duty-paid.												
Source: Compiled from official Commerce statistics.												

IV-4

## CUMULATION CONSIDERATIONS

In assessing whether imports should be cumulated, the Commission determines whether U.S. imports from the subject countries compete with each other and with the domestic like product and has generally considered four factors: (1) fungibility; (2) presence of sales or offers to sell in the same geographic market; (3) common or similar channels of distribution; and (4) simultaneous presence in the market. Issues concerning channels of distribution and fungibility are addressed in *Part II* of this report. The remaining factors are addressed below.

### Geographical Markets

With regard to geographical market overlap, U.S. imports of PRCBs from Indonesia entered multiple U.S. ports of entry, dispersed across the nation. The overwhelming majority of imports entered via the ports of Los Angeles, CA, New York, NY, and Norfolk, VA. U.S. imports of PRCBs from Taiwan also entered multiple U.S. ports of entry, dispersed across the nation. The overwhelming majority of imports entered via the ports of Los Angeles, Galveston, TX, and New York. Lastly, U.S. imports of PRCBs from Vietnam also entered multiple U.S. ports of entry, dispersed across the nation, and the overwhelming majority of imports entered via the ports of Los Angeles, Baltimore, MD, New York, and Galveston. At the conference, petitioners argued that imports from the three subject countries are sold in the same geographic markets as each other and as the domestic like product.<sup>4</sup>

### Simultaneous Presence in the Market

Commerce statistics and pricing data submitted to the Commission show that imports from Indonesia, Taiwan, and Vietnam entered the United States in every month of the 2006-2008 period.

## NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.<sup>5</sup> Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than three percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to antidumping duty investigations initiated on the same day that individually account for less than three percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than seven percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.<sup>6</sup> Imports from Indonesia, Taiwan, and Vietnam accounted for 6.5, 11.2, and 19.6 percent of total imports of PRCBs by quantity

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<sup>4</sup> Conference transcript, pp. 42-43 (Narkin).

<sup>5</sup> Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

<sup>6</sup> Section 771(24) of the Act (19 U.S.C. § 1677(24)). For countervailing duty investigations, the applicable percentages are four and seven percent, respectively.

during the 12-month period beginning March 2008 and ending February 2009, respectively, and therefore none of the three subject countries' imports are considered negligible.<sup>7</sup>

### APPARENT U.S. CONSUMPTION

Data concerning apparent U.S. consumption of PRCBs during the period for which data were collected are shown in table IV-3. The volume of apparent U.S. consumption of PRCBs decreased by 7.0 percent between 2006 and 2008 while the value increased by 13.8 percent during this period.

**Table IV-3**  
**PRCBs: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2006-2008**

Item	Calendar year		
	2006	2007	2008
<b>Quantity (1,000 bags)</b>			
U.S. producers' U.S. shipments	68,349,846	70,661,966	65,741,416
U.S. imports from--			
Indonesia	1,592,965	3,396,505	2,819,569
Taiwan	2,171,587	3,988,867	4,575,499
Vietnam	3,061,998	7,288,037	7,192,325
Subtotal	6,826,550	14,673,409	14,587,393
Countries subject to AD duty orders <sup>1</sup>	29,079,228	16,114,332	18,833,894
All other sources	5,575,003	4,748,210	2,942,934
Total U.S. imports	41,480,781	35,535,951	36,364,221
Apparent U.S. consumption	109,830,627	106,197,917	102,105,637
<b>Value (1,000 dollars)</b>			
U.S. producers' U.S. shipments	\$982,919	\$937,922	\$997,311
U.S. imports from--			
Indonesia	25,400	45,808	40,948
Taiwan	19,454	42,318	56,848
Vietnam	19,734	73,757	88,189
Subtotal	64,588	161,884	185,986
Countries subject to AD duty orders <sup>1</sup>	219,763	228,082	255,232
All other sources	51,774	76,586	63,180
Total U.S. imports	336,125	466,552	504,398
Apparent U.S. consumption	1,319,044	1,404,474	1,501,709
<sup>1</sup> China, Malaysia, and Thailand.			
Note.--Because of rounding, figures may not add to the totals shown. In order to obtain greater importer coverage than what was provided by questionnaire data, official Commerce import statistics were used as a proxy for U.S. shipments of imports.			
Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.			

<sup>7</sup> Data compiled using official Commerce statistics.



## U.S. MARKET SHARES

U.S. market share data are presented in table IV-4. U.S. producers' share of apparent U.S. consumption experienced a small increase on a quantity basis during the period for which data were collected. On a value basis, the U.S. producers' share decreased by 8.1 percentage points. This decrease corresponded with an increase in the share of consumption held by subject imports of PRCBs. The share of consumption held by imports of nonsubject-country PRCBs decreased on a quantity basis and increased on a value basis.

**Table IV-4**  
**PRCBs: U.S. consumption and market shares, 2006-2008**

Item	Calendar year		
	2006	2007	2008
<b>Quantity (1,000 bags)</b>			
Apparent U.S. consumption	109,830,627	106,197,917	102,105,637
<b>Value (1,000 dollars)</b>			
Apparent U.S. consumption	1,319,044	1,404,474	1,501,709
<b>Share of quantity (percent)</b>			
U.S. producers' U.S. shipments	62.2	66.5	64.4
U.S. imports from--			
Indonesia	1.5	3.2	2.8
Taiwan	2.0	3.8	4.5
Vietnam	2.8	6.9	7.0
Subtotal	6.2	13.8	14.3
Countries subject to AD duty orders <sup>1</sup>	26.5	15.2	18.4
All other sources	5.1	4.5	2.9
All countries	37.8	33.5	35.6
U.S. producers' U.S. shipments	74.5	66.8	66.4
U.S. imports from--			
Indonesia	1.9	3.3	2.7
Taiwan	1.5	3.0	3.8
Vietnam	1.5	5.3	5.9
Subtotal	4.9	11.5	12.4
Countries subject to AD duty orders <sup>1</sup>	16.7	16.2	17.0
All other sources	3.9	5.5	4.2
All countries	25.5	33.2	33.6
<sup>1</sup> China, Malaysia, and Thailand.			
Note.--Because of rounding, figures may not add to the totals shown.			
Source: Compiled from data submitted in response to Commission questionnaires.			

## RATIO OF IMPORTS TO U.S. PRODUCTION

Data on the ratio of imports to U.S. production of PRCBs are presented in table IV-5. The decrease in U.S. production during the period for which data were collected corresponded with an increase in the ratio of imports from subject countries to U.S. production. During that same period, the ratio of imports from nonsubject countries to U.S. production decreased.

**Table IV-5**  
**PRCBs: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2006-2008**

Item	Calendar year		
	2006	2007	2008
<b>Quantity (1,000 bags)</b>			
U.S. production	71,574,007	73,259,361	67,090,935
Imports from:			
Indonesia	1,592,965	3,396,505	2,819,569
Taiwan	2,171,587	3,988,867	4,575,499
Vietnam	3,061,998	7,288,037	7,192,325
Subtotal	6,826,550	14,673,409	14,587,393
Countries subject to AD duty orders <sup>1</sup>	29,079,228	16,114,332	18,833,894
All other sources	5,575,003	4,748,210	2,942,934
Total imports	41,480,781	35,535,951	36,364,221
<b>Ratio of U.S. imports to production (percent)</b>			
Imports from:			
Indonesia	2.2	4.6	4.2
Taiwan	3.0	5.4	6.8
Vietnam	4.3	9.9	10.7
Subtotal	9.5	20.0	21.7
Countries subject to AD duty orders <sup>1</sup>	40.6	22.0	28.1
All other sources	7.8	6.5	4.4
Total imports	58.0	48.5	54.2
<sup>1</sup> China, Malaysia, and Thailand. Note.—Because of rounding, figures may not add to the totals shown. Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.			

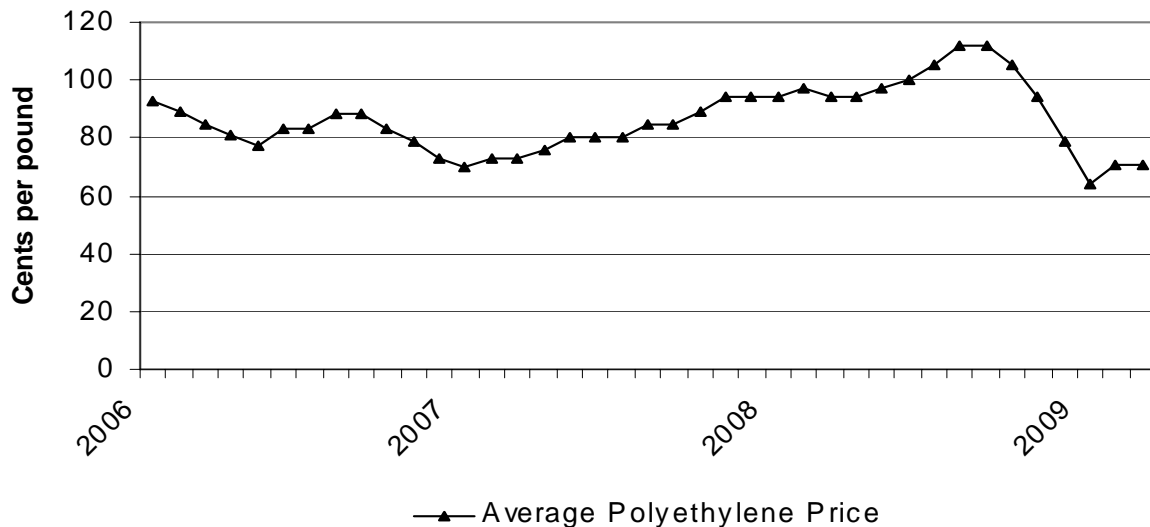
## PART V: PRICING AND RELATED INFORMATION

### FACTORS AFFECTING PRICES

#### Raw Materials

The main raw material used in the production of PRCBs is polyethylene. It and other raw materials accounted for 70.3 percent of the total cost of goods sold during 2008 (*see* Part VI: Financial Condition of U.S. Producers). The price of polyethylene decreased irregularly through 2006 before generally increasing through August 2008 (figure V-1).<sup>1</sup> Prices then decreased rapidly through January 2009 before recovering slightly in February and March 2009.

**Figure V-1**  
**Polyethylene: Average monthly U.S. price, January 2006-March 2009**



Source: Compiled from data published in *Chem Data*.

#### Transportation Costs to the U.S. Market

Transportation costs for PRCBs to the United States (excluding U.S. inland transportation costs) from Indonesia, Taiwan, and Vietnam were estimated to be 8.3, 7.9, and 8.1 percent, respectively, in 2008. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.<sup>2</sup>

<sup>1</sup> Petitioners reported that prices of polyethylene were similar worldwide, partly due to their relationship to changes in oil and natural gas prices. Conference transcript, pp. 59-60 (Bazbaz, Daniels, and Halimi).

<sup>2</sup> These estimates are based on HTS statistical reporting number 3923.21.0085.

## U.S. Inland Transportation Costs

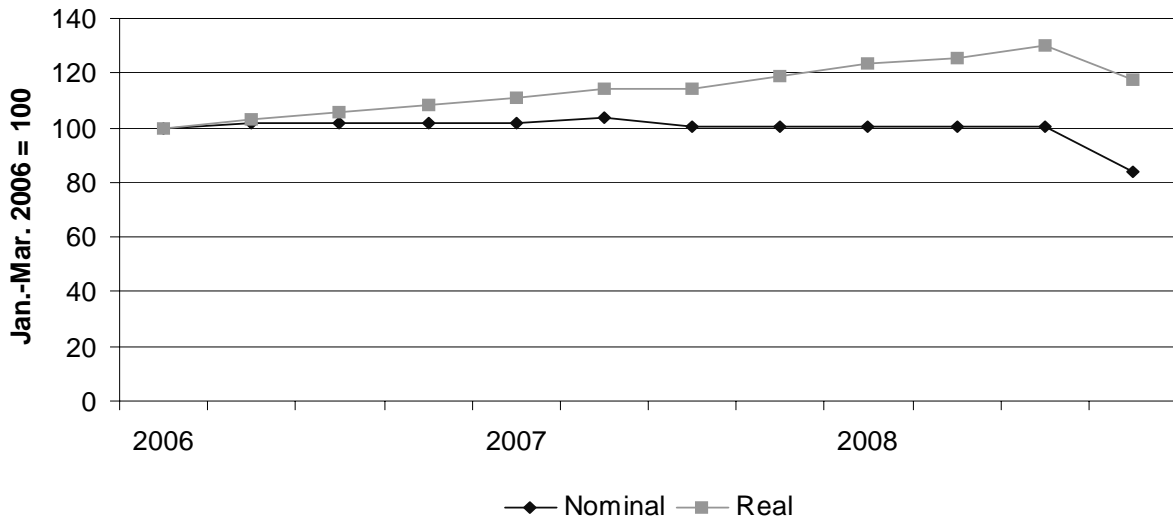
Thirteen U.S. producers reported that, generally, U.S. inland transportation costs ranged from 1.9 to 6.1 percent of the total delivered cost of PRCBs, and averaged 3.6 percent.<sup>3</sup> Twenty-five of 32 responding importers reported that inland transportation costs ranged between 1 and 10 percent (averaging 4.7 percent)<sup>4</sup> of the total delivered cost of PRCBs.

Thirteen of 15 U.S. producers reported that they arranged delivery. Producers reported that they shipped 16.7 percent of their PRCBs less than 100 miles, 56.5 percent of their PRCBs between 101 and 1,000 miles, and 26.8 percent of their PRCBs more than 1,000 miles, based on a simple average. Thirty-three of the 36 responding importers reported that they arranged delivery. Based on a simple average, the 31 responding importers reported shipping 33.6 percent of their PRCBs less than 100 miles, 33.6 percent between 101 and 1,000 miles, and 32.9 percent more than 1,000 miles.

## Exchange Rates

Quarterly nominal and real exchange rate data reported by the International Monetary Fund for the Indonesian rupiah relative to the U.S. dollar are presented figure V-2. Nominal exchange rates between the Taiwan dollar and the U.S. dollar reported by the Federal Reserve Bank of St. Louis are presented in figure V-3, and between the Vietnamese dong and the U.S. dollar (as reported by the International Monetary Fund) are presented in figure V-4.

**Figure V-2**  
**Exchange rates: Indices of the nominal and real exchange rates of the Indonesian rupiah relative to the U.S. dollar, by quarters, January 2006-December 2008**



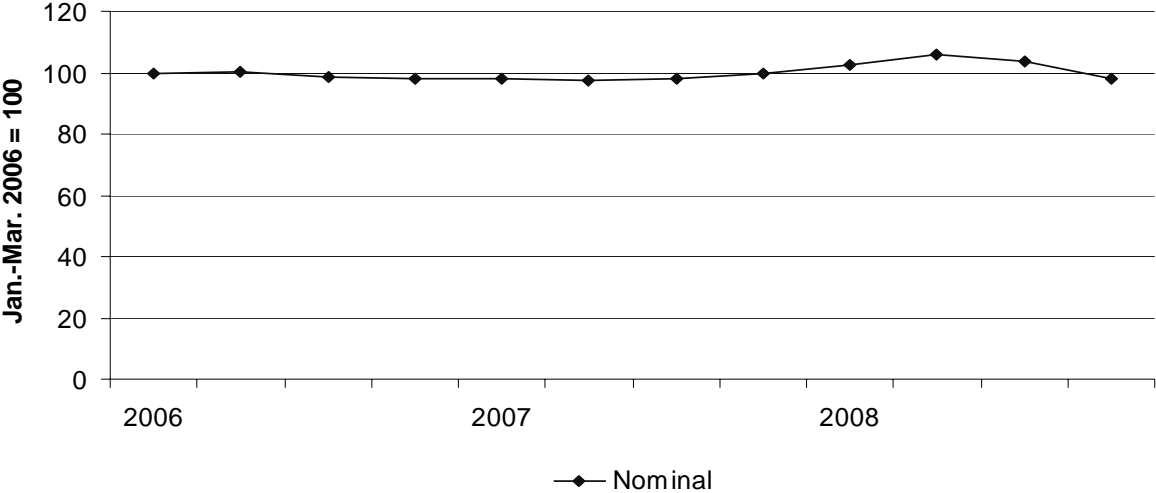
Source: International Monetary Fund, *International Financial Statistics*, retrieved from <http://www.imfstatistics.org/imf/> on April 27, 2009.

**Figure V-3**

<sup>3</sup> Additionally, two producers reported a cost of “100 percent.”

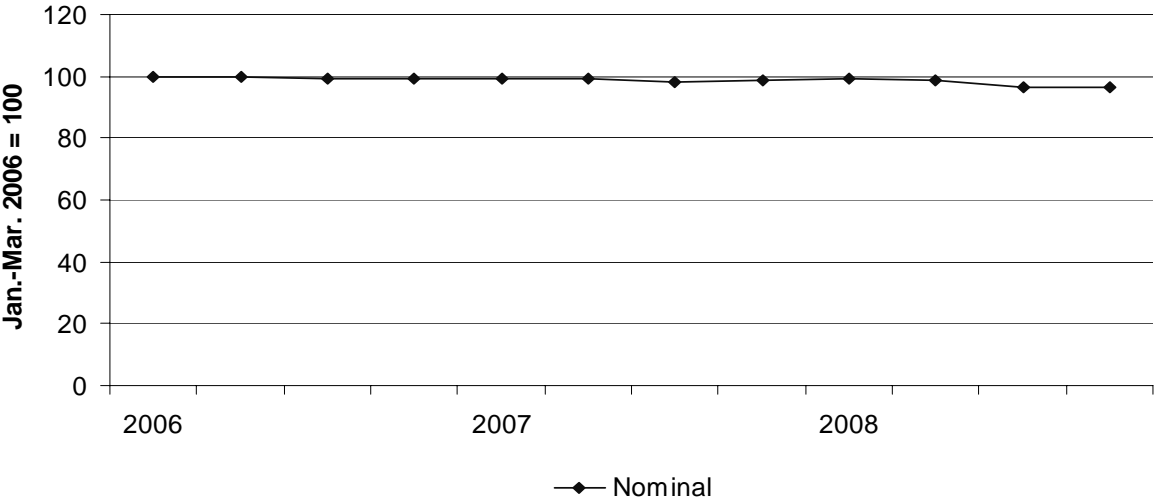
<sup>4</sup> The other seven importers reported even higher transportation costs: 15, 17, 20, 25, 25, 25, and 100 percent. Disregarding the 100-percent data point, the overall average is 7.8 percent.

**Exchange rates: Index of the nominal exchange rate of the Taiwan dollar relative to the U.S. dollar, by quarters, January 2006-December 2008**



Source: Federal Reserve Bank of St. Louis, retrieved from <http://research.stlouisfed.org/fred2/series/EXTAUS/> on April 27, 2009.

**Figure V-4**  
**Exchange rates: Index of the nominal exchange rate of the Vietnamese dong relative to the U.S. dollar, by quarters, January 2006-December 2008**



Source: International Monetary Fund, *International Financial Statistics*, retrieved from <http://www.imfstatistics.org/imf/> on April 27, 2009.

## PRICING PRACTICES

### Pricing Methods

The 15 U.S. producers of PRCBs reported that they use a variety of methods in determining prices. The manner in which prices are determined can depend on the size of the customer. Overall, nine producers use transaction-by-transaction negotiations, five have contracts for multiple shipments, four adjust their prices due to market conditions or competitive pricing, three use price lists, and two reported reverse auctions sometimes determining prices.<sup>5</sup> Additionally, four producers stated that their pricing moves in conjunction with polyethylene resin prices. At the preliminary conference, Mr. Bazbaz of Superbag averred that for his firm, and to his knowledge the rest of the industry, PRCB prices reflect changes in plastic resin prices which “are adjusted by the weight of the bags multiplied by the change of that index.”<sup>6</sup>

Among importers, 21 reported that they set prices on a transaction-by-transaction basis, seven contract for multiple shipments, six use price lists, four use a cost-plus markup, and two use market pricing as a guide. Additionally, four importers use the price of polyethylene resin in determining their prices, and one reported reverse auctions as sometimes determining prices.<sup>7</sup>

Nine of the 15 producers reported that they sell their PRCBs via long-term contracts and short-term contracts, as well as on the spot market. The other six reported that they only sell PRCBs using one or two of those methods. Based on a simple average, 24.6 percent of U.S. producers’ sales are via long-term contracts (over 12 months in length), 29.8 percent are via short-term contracts (12 months or less in length), and 45.6 percent are spot sales.<sup>8</sup> Thirteen of 32 responding importers sell PRCBs exclusively on a spot basis, two sell exclusively on a short-term contract basis, and one sells exclusively on a long-term contract basis. The other half of responding importers used a combination of these approaches, selling 45.3 percent on the spot market, 39.6 percent via short-term contracts, and 15.1 percent via long-term contracts.

The 10 producers selling via long-term contracts reported that contracts are up to two years in length. Seven of the 10 noted that prices could be renegotiated or changed based on changes in polyethylene resin prices. Three producers noted that prices are fixed, three noted that both prices and quantities are fixed, two stated that neither price nor quantities are fixed, one stated that quantities are fixed, and one stated that it varies by contract. Five producers indicated that long-term contracts usually have a meet-or-release clause, while an equal number reported the opposite. Short-term contracts entered into by the 13 responding producers can vary in length from 2 months to a year, do not typically have price renegotiations (reported by nine producers) or meet-or-release clauses (reported by eight producers), and fix both prices and quantities (reported by seven producers).

Twelve importers reported selling via long-term contracts between one and two years in length. Eight of the 12 importers noted that prices could, at least sometimes, be renegotiated or changed based on changes in polyethylene resin prices. Five importers stated that these contracts typically fix both price and quantity, three noted that it depends on the contract, two reported that prices are fixed, and one importer each reported that either quantity is fixed or neither prices nor quantities are fixed. Nine of the 12 responding importers indicated that long-term contracts usually do not have a meet-or-release clause. Short-term contracts entered into by the 20 responding importers can vary in length from 3 months to a

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<sup>5</sup> Multiple producers reported that they use more than one method of determining prices.

<sup>6</sup> Conference transcript, p. 59 (Bazbaz).

<sup>7</sup> As with the producers, multiple importers reported that they use more than one method of determining prices. These data include producers who also import.

<sup>8</sup> \*\*\* reported that although \*\*\* percent of its sales are via short-term contracts, neither quantity nor price is set.

year, do not typically have price renegotiations (as reported by 13 importers) or meet-or-release clauses (as reported by 15 importers), and fix both prices and quantities (as reported by 9 importers).

### **Sales Terms and Discounts**

Eleven of the 15 producers and 22 of 31 responding importers reported that sales terms for PRCBs are generally net 30 days.<sup>9</sup> Eight of the 15 producers and nine of the 31 responding importers stated that they give discounts for early payment. Eight producers reported that prices are generally quoted on a delivered basis, three generally quote prices on an f.o.b. warehouse/factory basis, and four quote prices on both a delivered and f.o.b. basis. Among responding importers, 14 reported that they generally quote delivered prices, 12 generally quote f.o.b. prices, and 5 quote prices using both methods.

With respect to discounts, nine of 14 producers reported offering some type of volume discount on their sales of PRCBs,<sup>10</sup> though these discounts may apply to as few as one customer. Additionally, \*\*\* reported that it offers rebates, and, on occasion, prebates.<sup>11</sup> Five producers reported that they do not offer discounts beyond those granted for early payment. Ten of 34 responding importers reported giving quantity discounts; one reported giving discounts to distributors; one reported giving a rebate based on total volume of purchases that include products other than PRCBs; and 22 reported that they do not offer discounts.<sup>12</sup>

### **Sales via Internet**

Eleven of 15 reporting producers and 32 of 39 reporting importers stated that they do not sell PRCBs over the internet. The firms that listed selling via the internet, including via reverse auctions, were \*\*\*.<sup>13</sup> Among these firms, the following estimates of their sales via internet in 2008 were provided: “perhaps 1 percent,” “nearly 2 percent \*\*\*,” “9.4 percent,” “approximately 10 percent,” and “30 to 35 percent.” Petitioners report that sales via the internet, including reverse auctions, have gained in popularity since the 2004 investigations of PRCBs from China, Malaysia, and Thailand.<sup>14</sup> Some transactions occurred through reverse auctions on the internet, a type of procurement that typically involves a single purchaser and many sellers. Internet auctions conducted in 2008 that petitioners identified include a wide variety of purchasers: \*\*\*. Additionally, internet bids were sought by \*\*\* in 2008. Petitioners alleged that reverse auctions and internet bidding make the focus of the competition solely based on price.<sup>15</sup>

### **PRICE DATA**

The Commission asked U.S. producers and importers of PRCBs to provide quarterly data for the total quantity and f.o.b. value of certain PRCBs that were shipped to unrelated customers in the U.S.

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<sup>9</sup> Other payment terms listed by producers were net 10 and net 31 days. Other payment terms listed by importers were net 10, net 60, net 90, and payment on delivery.

<sup>10</sup> These discounts are in addition to those previously mentioned for early payment.

<sup>11</sup> Prebates are cash incentives offered to customers to enter into a supply agreement that are paid at the beginning of the contract. Conference transcript, p. 72 (Rizzo).

<sup>12</sup> These discounts are in addition to those previously mentioned for early payment.

<sup>13</sup> Only \*\*\*.

<sup>14</sup> Petitioners’ postconference brief, pp. 19-20 and 25, and conference transcript, p. 73 (Bazbaz).

<sup>15</sup> Petitioners’ postconference brief, pp. 18-20.

market during the period January 2006 to December 2008. The products for which pricing data were requested are as follows:

**Product 1.--Small “t-shirt sack”-style bag with (a) dimensions 7-10” width x 4-6” side x 12-20” length, (b) 10-17 microns film thickness, (c) side gussets, and (d) printed with one or two colors on at least one side (5-30 percent ink coverage for entire bag).**

**Product 2.--Medium “t-shirt sack”-style bag with (a) dimensions 11-13” width x 6-8” side x 18-26” length, (b) 11-25 microns film thickness, (c) side gussets, and (d) printed with one or two colors on at least one side (5-30 percent ink coverage for entire bag).**

**Product 3.--Large “t-shirt sack”-style bag with (a) dimensions 15-18” width x 8-10” side x 27-30” length, (b) 13-32 microns film thickness, (c) side gussets, and (d) printed with one or two colors on at least one side (5-30 percent ink coverage for entire bag).**

**Product 4.--Die-cut-handle-style merchandise bags with (a) dimensions 12-20” width x 3-5” side x 20-30” length, (b) 13-32 microns film thickness, (c) side gussets, and (d) printed with at least two colors on at least one side (5-30 percent ink coverage for entire bag).**

Twelve U.S. producers provided usable pricing data for sales of the requested products, along with 12 importers with sales of PRCBs from Indonesia, 13 importers with sales of PRCBs from Taiwan, and 19 importers with sales of PRCBs from Vietnam. In addition, seven importers reported usable pricing data for their imports from nonsubject countries.<sup>16</sup> Not all firms reported pricing for all products for all quarters.<sup>17</sup> Pricing data for the four products reported by these firms, shown in tables V-1 to V-4 and figures V-5 to V-8, accounted for 95.4 percent of U.S. producers’ U.S. shipments of PRCBs, 59.5 percent of U.S. imports of PRCBs from Indonesia, 80.1 percent of U.S. imports of PRCBs from Taiwan, and 16.0 percent of U.S. imports of PRCBs from Vietnam in 2006-08. Pricing data reported by importers of PRCBs from nonsubject countries accounted for \*\*\* percent of U.S. imports from those nonsubject countries in 2008.<sup>18</sup>

Pricing comparisons between different sources of PRCBs are complicated by the fact that each of the four pricing product definitions encompasses a range of sizes, and hence weights, of bags. This can

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<sup>16</sup> The Commission asked importers of PRCBs from nonsubject countries to submit pricing data with respect to their largest source of nonsubject imports. One firm, \*\*\*, refused to comply with the Commission’s request. \*\*\* stated that doing so could \*\*\*. He was informed that BPI could not be shared, but he maintained that \*\*\* without necessarily disclosing it. He was then contacted by the staff attorney, and reiterated these claims, adding that \*\*\* concerns were legitimate, and opined that he had no choice but to balance \*\*\* obligations in the preliminary phase investigations of PRCBs from Indonesia, Taiwan, and Vietnam, with its broader interests. He was reminded that the Commission reserved the right to take adverse inferences against \*\*\* if it were deemed to be uncooperative. He noted that \*\*\* might be in a position to disclose the requested information in any final phase investigations. Telephone interviews with \*\*\*.

<sup>17</sup> Some firms reported data for products that don’t exactly fit the description that was provided, but were thought to compete closely with bags in that category. \*\*\*. These data are included in the pricing data presented below.

<sup>18</sup> Pricing data for nonsubject countries China, Hong Kong, Malaysia, Mexico, Singapore, and Thailand can be found in app. D. The large majority (\*\*\*) percent) of these sales of nonsubject-country imports originated in China.



cause the weight of the unit of measure (1,000 bags) to vary considerably. \*\*\* submitted an analysis calculating the weight of a few sizes of bags that all fall within the definition of pricing product 2. The weight of 1,000 bags of the largest type of PRCBs that fall within the definition of pricing product 2 is 333.6 percent heavier than the weight of the smallest bags that fall within the definition of the same pricing product. The difference in bag weight is due to the increased polyethylene resin and other additives used to make the bags. Because PRCB pricing is affected by the weight of the polyethylene resin used to produce the PRCBs, quarterly pricing data appear to be affected somewhat by this.<sup>19</sup>

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<sup>19</sup> Conference transcript, pp. 59-60 (Bazbaz).

Table V-1

PRCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 1,<sup>1</sup> and margins of (overselling)/underselling, by quarters, January 2006-December 2008

Period	United States		Indonesia			Taiwan			Vietnam		
	Price (per 1,000 bags)	Quantity (1,000 bags)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)
<b>2006:</b>											
Jan.-Mar.	\$9.60	671,117	\$***	***	***	\$12.91	54,352	(34.5)	\$***	***	***
Apr.-June	8.97	634,731	***	***	***	16.39	60,385	(82.6)	***	***	***
July-Sept.	8.70	676,438	***	***	***	12.34	60,992	(41.9)	8.17	41,723	6.1
Oct.-Dec.	8.23	841,592	***	***	***	13.92	76,221	(69.0)	9.09	31,056	(10.4)
<b>2007:</b>											
Jan.-Mar.	8.88	517,017	***	***	***	12.87	67,822	(44.9)	***	***	***
Apr.-June	8.48	651,070	***	***	***	10.11	103,431	(19.2)	8.78	28,398	(3.6)
July-Sept.	8.36	719,592	9.28	33,685	(11.1)	11.60	89,058	(38.8)	***	***	***
Oct.-Dec.	8.12	771,356	***	***	***	13.57	85,060	(67.1)	8.53	52,154	(5.0)
<b>2008:</b>											
Jan.-Mar.	9.29	522,742	***	***	***	16.01	43,627	(72.3)	9.07	43,413	2.4
Apr.-June	9.18	604,699	***	***	***	15.06	52,082	(64.0)	***	***	***
July-Sept.	10.35	599,895	***	***	***	17.56	46,810	(69.7)	10.84	65,524	(4.80)
Oct.-Dec.	8.92	591,512	***	***	***	15.25	68,363	(70.9)	10.58	42,478	(18.6)

<sup>1</sup> Small "t-shirt sack"-style bag with (a) dimensions 7-10" width x 4-6" side x 12-20" length, (b) 10-17 microns film thickness, (c) side gussets, and (d) printed with one or two colors on at least one side (5-30 percent ink coverage for entire bag).

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

Table V-2

PRCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2,<sup>1</sup> and margins of (overselling)/underselling, by quarters, January 2006-December 2008

Period	United States		Indonesia			Taiwan			Vietnam		
	Price (per 1,000 bags)	Quantity (1,000 bags)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)
<b>2006:</b>											
Jan.-Mar.	\$13.56	13,489,844	\$***	***	***	\$***	***	***	\$12.47	67,597	8.1
Apr.-June	12.63	15,098,568	***	***	***	***	***	***	11.70	109,090	7.3
July-Sept.	12.55	15,437,551	***	***	***	***	***	***	12.40	173,778	1.2
Oct.-Dec.	12.65	15,483,317	***	***	***	***	***	***	13.84	153,621	(9.4)
<b>2007:</b>											
Jan.-Mar.	11.21	14,784,483	***	***	***	15.75	464,862	(40.5)	13.27	125,767	(18.3)
Apr.-June	11.22	15,844,584	***	***	***	15.72	591,090	(40.1)	11.27	191,331	(0.5)
July-Sept.	12.07	16,554,222	***	***	***	***	***	***	13.05	194,406	(8.1)
Oct.-Dec.	12.81	15,396,171	***	***	***	***	***	***	14.67	202,439	(14.5)
<b>2008:</b>											
Jan.-Mar.	13.32	13,399,467	***	***	***	***	***	***	14.76	140,321	(10.9)
Apr.-June	13.39	14,886,400	***	***	***	***	***	***	15.23	228,574	(13.7)
July-Sept.	14.23	14,908,821	***	***	***	***	***	***	15.86	204,530	(11.5)
Oct.-Dec.	13.52	15,388,307	***	***	***	***	***	***	16.20	185,842	(19.9)

<sup>1</sup> Medium "t-shirt sack"-style bag with (a) dimensions 11-13" width x 6-8" side x 18-26" length, (b) 11-25 microns film thickness, (c) side gussets, and (d) printed with one or two colors on at least one side (5-30 percent ink coverage for entire bag).

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

Table V-3

PRCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 3,<sup>1</sup> and margins of (overselling)/underselling, by quarters, January 2006-December 2008

Period	United States		Indonesia			Taiwan			Vietnam		
	Price (per 1,000 bags)	Quantity (1,000 bags)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)
<b>2006:</b>											
Jan.-Mar.	\$30.89	196,478	\$***	***	***	\$***	***	***	\$***	***	***
Apr.-June	28.80	207,243	***	***	***	19.29	14,089	33.0	37.45	807	(30.0)
July-Sept.	26.97	274,075	***	***	***	***	***	***	38.61	1,333	(43.1)
Oct.-Dec.	27.60	334,789	***	***	***	***	***	***	49.87	1,883	(80.7)
<b>2007:</b>											
Jan.-Mar.	26.81	234,030	***	***	***	***	***	***	40.06	1,931	(49.4)
Apr.-June	26.35	235,691	***	***	***	***	***	***	53.43	1,605	(102.8)
July-Sept.	28.06	293,331	***	***	***	***	***	***	41.82	4,555	(49.0)
Oct.-Dec.	28.62	369,430	***	***	***	***	***	***	***	***	***
<b>2008:</b>											
Jan.-Mar.	30.57	180,651	***	***	***	***	***	***	42.09	8,983	(37.7)
Apr.-June	31.50	165,801	***	***	***	***	***	***	40.25	8,027	(27.8)
July-Sept.	32.42	197,196	***	***	***	***	***	***	***	***	***
Oct.-Dec.	30.11	326,481	***	***	***	***	***	***	42.81	18,163	(42.2)

<sup>1</sup> Large "t-shirt sack"-style bag with (a) dimensions 15-18" width x 8-10" side x 27-30" length, (b) 13-32 microns film thickness, (c) side gussets, and (d) printed with one or two colors on at least one side (5-30 percent ink coverage for entire bag).

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

Table V-4

PRCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 4,<sup>1</sup> and margins of (overselling)/underselling, by quarters, January 2006-December 2008

Period	United States		Indonesia			Taiwan			Vietnam		
	Price (per 1,000 bags)	Quantity (1,000 bags)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)	Price (per 1,000 bags)	Quantity (1,000 bags)	Margin (percent)
<b>2006:</b>											
Jan.-Mar.	\$27.27	216,215	--	0	--	\$***	***	***	\$***	***	***
Apr.-June	25.79	302,770	\$***	***	***	***	***	***	23.90	21,939	7.3
July-Sept.	24.43	402,233	***	***	***	***	***	***	42.72	28,014	(74.8)
Oct.-Dec.	25.38	414,315	***	***	***	***	***	***	42.09	33,371	(65.9)
<b>2007:</b>											
Jan.-Mar.	23.41	209,736	17.40	14,132	25.7	***	***	***	***	***	***
Apr.-June	23.37	339,141	***	***	***	***	***	***	***	***	***
July-Sept.	23.83	404,186	***	***	***	***	***	***	47.83	25,241	(100.7)
Oct.-Dec.	23.95	430,573	***	***	***	***	***	***	***	***	***
<b>2008:</b>											
Jan.-Mar.	24.49	253,045	17.16	8,456	30.0	***	***	***	38.87	26,814	(58.7)
Apr.-June	25.65	321,157	***	***	***	***	***	***	49.34	23,876	(92.4)
July-Sept.	26.73	320,852	***	***	***	***	***	***	48.33	25,597	(80.8)
Oct.-Dec.	27.19	330,461	***	***	***	***	***	***	48.12	26,189	(76.9)

<sup>1</sup> Die-cut-handle-style merchandise bags with (a) dimensions 12-20" width x 3-5" side x 20-30" length, (b) 13-32 microns film thickness, (c) side gussets, and (d) printed with at least two colors on at least one side (5-30 percent ink coverage for entire bag).

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

**Figure V-5**  
**PRCBs: Weighted-average f.o.b. selling prices of product 1 as reported by U.S. producers and importers, by quarters, January 2006-December 2008**

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**Figure V-6**  
**PRCBs: Weighted-average f.o.b. selling prices of product 2 as reported by U.S. producers and importers, by quarters, January 2006-December 2008**

\* \* \* \* \*

**Figure V-7**  
**PRCBs: Weighted-average f.o.b. selling prices of product 3 as reported by U.S. producers and importers, by quarters, January 2006-December 2008**

\* \* \* \* \*

**Figure V-8**  
**PRCBs: Weighted-average f.o.b. selling prices of product 4 as reported by U.S. producers and importers, by quarters, January 2006-December 2008**

\* \* \* \* \*

### Price Trends

Prices of U.S.-produced PRCBs generally decreased from the start of 2006 until the first or second quarter of 2007. Prices then generally increased for products 2 through 4 until the third quarter of 2008. In contrast, prices for domestically produced product 1 continued to decline slightly through 2007. Prices of product 1 increased irregularly by 11.4 percent between the first and third quarters of 2008. In the fourth quarter of 2008, when prices of polyethylene resin had begun to decrease sharply, prices of products 1, 2, and 3 decreased (by 13.8, 5.0, and 7.1 percent, respectively), while the price of product 4 continued to increase slightly.

Trends are more difficult to discuss for the prices of products imported from Indonesia, Taiwan, and Vietnam during 2006. Prices did not tend to move consistently in conjunction with other subject import prices, with domestic prices, or with the price of polyethylene resin. With respect to products 1 and 2, prices of imports from all three subject countries moved irregularly upward, particularly during the second half of the period of study. Product 3 imported from Indonesia and Taiwan followed this same general pattern, but product 3 imports from Vietnam displayed highly variable prices that decreased on the whole from the fourth quarter of 2007 through the third quarter of 2008 while resin prices were rising. Prices for product 4 imported from all three subject countries were particularly erratic over most of the 2006-08 period.

### Price Comparisons

Imports of PRCBs from Indonesia, Taiwan, and Vietnam undersold the U.S. product in 48 of 143 quarterly comparisons, with margins of underselling ranging from 1.2 to 79.6 percent. Conversely, imports of PRCBs from Indonesia, Taiwan, and Vietnam oversold the U.S. product in 95 of 143 quarterly comparisons, with margins of overselling ranging from 0.1 to 162.3 percent. A summary of margins of underselling and overselling is presented in table V-5.

Table V-5

**PRCBs: Number of quarters of underselling and overselling and highest and lowest margins of underselling and (overselling), by product number**

Product	Number of quarters of underselling	Number of quarters of (overselling)	Average margin of underselling (percent)	Range of margins of underselling (percent)	Average margin of (overselling) (percent)	Range of margins of (overselling) (percent)
<b>Indonesia</b>						
1	0	12	--	--	(54.2)	(0.1) - (162.3)
2	0	12	--	--	(56.6)	(34.9) - (75.6)
3	12	0	21.1	5.1 - 43.6	--	--
4	8	3	31.6	9.5 - 48.8	(86.1)	(39.8) - (143.7)
<b>Total</b>	20	27	25.3	5.1 - 48.8	(58.8)	(0.1) - (162.3)
<b>Taiwan</b>						
1	0	12	--	--	(56.2)	(19.2) - (82.6)
2	1	11	20.6	20.6 - 20.6	(39.4)	(15.4) - (51.3)
3	11	1	19.9	7.0 - 40.6	(0.6)	(0.6) - (0.6)
4	7	5	57.4	3.6 - 79.6	(44.3)	(12.6) - (121.5)
<b>Total</b>	19	29	33.8	3.6 - 79.6	(45.9)	(0.6) - (121.5)
<b>Vietnam</b>						
1	4	8	8.6	2.4 - 16.5	(8.6)	(2.1) - (18.6)
2	3	9	5.5	1.2 - 8.1	(11.9)	(0.5) - (19.9)
3	1	11	27.3	27.3 - 27.3	(49.6)	(19.8) - (102.8)
4	1	11	7.3	7.3 - 7.3	(90.0)	(45.9) - (139.8)
<b>Total</b>	9	39	9.5	1.2 - 27.3	(43.9)	(0.5) - (139.8)
<b>Total Subject</b>	48	95	25.7	1.2 - 79.6	(48.7)	(0.1) - (162.3)
Source: Compiled from data submitted in response to Commission questionnaires.						

### LOST SALES AND LOST REVENUES

The Commission requested that U.S. producers of PRCBs report any instances of lost sales and lost revenues experienced due to competition from imports from Indonesia, Taiwan, and Vietnam since January 1, 2006. Eight of the 14 responding producers reported that they had reduced prices and three had rolled back announced price increases, allegedly due to imports from Indonesia, Taiwan, and Vietnam. Eight of the 14 producers also alleged that they had lost sales due to low-priced imports from Indonesia, Taiwan, and Vietnam. All of the lost sales and lost revenue allegations are presented in tables V-6 and V-7 and are discussed in more detail below. Staff was able to contact 53 of the 60 listed

purchasers.<sup>20</sup> There were \*\*\* lost sales allegations totaling \$\*\*\* and \*\*\* lost revenue allegations totaling \$\*\*\*.<sup>21</sup> Two of the lost sales allegations and one of the lost revenue allegations were confirmed, totaling \$\*\*\* and \$\*\*\*, respectively. Additional information, where relevant, is summarized in the individual responses below.

**Table V-6**  
**PRCBs: U.S. producers' lost sales allegations**

\* \* \* \* \*

**Table V-7**  
**PRCBs: U.S. producers' lost revenue allegations**

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<sup>20</sup> The Commission was not supplied with sufficient information to investigate lost revenue allegations with respect to \*\*\*.

<sup>21</sup> The lost revenue and lost sales allegations were made by \*\*\*. Producers \*\*\* reported that they had neither lost sales nor revenues since January 1, 2006.

<sup>22</sup> Telephone interview with \*\*\*.

<sup>23</sup> Telephone interview with \*\*\*.

<sup>24</sup> Telephone interview with \*\*\*.

<sup>25</sup> Telephone interview with \*\*\*.

<sup>26</sup> Telephone interview with \*\*\*.

<sup>27</sup> Telephone interview with \*\*\*.



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In addition, purchasers responding to lost sales and lost revenue allegations also were asked whether they shifted their purchases of PRCBs from U.S. producers to suppliers of PRCBs from Indonesia, Taiwan, and Vietnam since January 2006. Three of the 28 responding purchasers (\*\*\*) reported that they had shifted purchases of PRCBs from U.S. producers to subject imports since January 1, 2006; one of these purchasers (\*\*\*) reported that price was the reason for the shift. Purchaser \*\*\* stated that \*\*\*. Purchaser \*\*\*.

In addition, two of 24 purchasers (\*\*\*) reported that since January 1, 2006, U.S. producers reduced their prices in order to compete with the prices of subject imports. Additionally, though, \*\*\*.<sup>30</sup> Two purchasers responding that domestic producers had not reduced prices stated why they responded negatively: \*\*\* reported that “\*\*\*\*”<sup>31</sup> and \*\*\* reported that its “\*\*\*\*.”<sup>32</sup> Purchaser \*\*\* noted that its current supplier has stopped purchasing PRCBs from Vietnam as of January 2009, so that “there was no impact to current pricing.”<sup>33</sup>

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<sup>28</sup> Telephone interview with \*\*\*.

<sup>29</sup> Telephone interview with \*\*\*.

<sup>30</sup> Fax from \*\*\*.

<sup>31</sup> Fax from \*\*\*.

<sup>32</sup> Fax from \*\*\*.

<sup>33</sup> Fax from \*\*\*.



## **PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS**

### **BACKGROUND**

Fifteen U.S. firms provided usable financial data for each of their latest three fiscal years on their operations producing PRCBs.<sup>1</sup> These reported data are believed to represent the vast majority of U.S. PRCB production in the period for which data were gathered.

### **OPERATIONS ON PRCBs**

Income-and-loss data for the reporting U.S. producers are presented in table VI-1 and are briefly summarized here. Net sales quantity irregularly declined between 2006 and 2008, while sales value irregularly rose over the same period due to changes in the average unit value of sales. The increase in the cost of goods sold (“COGS”) was greater than the increase in sales whether measured by value (about \$32 million versus \$11 million) or on a per-unit basis (\$0.98 versus \$0.73 per 1,000 bags). The ratio of COGS to net sales also rose by 2 percentage points from 2006 to 2008. The increase in COGS was driven by increasing raw material costs, which offset a decline in other factory costs and an increase in sales value. The increase in COGS resulted in gross profit being lower in 2008 than in 2007. Total selling, general, and administrative (“SG&A”) expenses also irregularly rose from 2006 to 2008,<sup>2</sup> and the industry as a whole recorded an operating loss in 2008 after reporting small levels of profit in 2006 and 2007. Net income before taxes was negative in each of the three years for which data were gathered, but cash flow, which declined from 2006 to 2008, was positive because depreciation expenses were higher than the negative net income figure in each year.

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<sup>1</sup> The firms are: Ampac; API; Bemis; Command; Durabag; Europackaging; Genpak; Golden; Hilex; Inteplast; Omega; Poly-Pak; Roplast; Superbag; and Unistar. Except for \*\*\*, each of the reporting firms has a fiscal year that ends on or about December 31; this includes \*\*\*. Differences between data reported in the trade and financial sections of the Commission’s producers’ questionnaire primarily are attributable to year-end timing differences of \*\*\*.

<sup>2</sup> Adding to the industry’s recorded operating loss, \*\*\*.

**Table VI-1**  
**PRCBs: Results of operations of U.S. producers, fiscal years 2006-2008**

Item	Fiscal year		
	2006	2007	2008
<b>Quantity (1,000 bags)</b>			
Net sales <sup>1</sup>	70,282,963	73,816,808	67,625,322
<b>Value (\$1,000)</b>			
Net sales <sup>1</sup>	1,016,647	981,429	1,028,098
<b>COGS</b>			
Raw materials	620,065	602,887	668,040
Direct labor	102,419	103,307	103,244
Other factory costs	195,349	181,329	178,315
Total COGS	917,833	887,523	949,599
Gross profit	98,814	93,906	78,499
SG&A expenses <sup>2</sup>	93,910	89,053	116,046
Operating income or (loss) <sup>2</sup>	4,904	4,853	(37,547)
Interest expense	33,335	45,402	34,363
Other expense	9,975	4,010	5,290
Other income	7,696	8,010	14,204
Net income or (loss)	(30,710)	(36,549)	(62,996)
Depreciation	65,120	64,567	69,200
Cash flow	34,410	28,018	6,203
<b>Ratio to net sales (percent)</b>			
<b>COGS:</b>			
Raw materials	61.0	61.4	65.0
Direct labor	10.1	10.5	10.0
Other factory costs	19.2	18.5	17.3
Average COGS	90.3	90.4	92.4
Gross profit	9.7	9.6	7.6
SG&A expenses <sup>2</sup>	9.2	9.1	11.3
Operating income or (loss) <sup>2</sup>	0.5	0.5	(3.7)
Net income or (loss)	(3.0)	(3.7)	(6.1)

Table continued on following page.

**Table VI-1--Continued**

**PRCBs: Results of operations of U.S. producers, fiscal years 2006-2008**

Item	Fiscal year		
	2006	2007	2008
<b>Unit value (per 1,000 bags)</b>			
Total net sales	\$14.47	\$13.30	\$15.20
<b>COGS:</b>			
Raw materials	8.82	8.17	9.88
Direct labor	1.46	1.40	1.53
Other factory costs	2.78	2.46	2.64
Total COGS	13.06	12.02	14.04
Gross profit	1.41	1.27	1.16
SG&A expenses <sup>2</sup>	1.34	1.21	1.72
Operating income or (loss) <sup>2</sup>	0.07	0.07	(0.56)
Net income or (loss)	(0.44)	(0.50)	(0.93)
<b>Number of firms reporting</b>			
Operating losses <sup>3</sup>	6	6	6
Data	15	15	15
<sup>1</sup> As noted earlier, there are *** differences between the data reported in the trade section of the responses to the Commission's questionnaire and these data due to timing differences. <sup>2</sup> In 2008, ***. If this were not included, the industry's operating income would still be negative although it would be lower by this amount. Also, the ratio of industry SG&A expenses to sales would be *** percent while the average per-unit value would be \$*** per 1,000 bags; the industry's ratio of operating loss to sales would be *** percent while its average unit value would be a negative \$*** per bag instead of the numbers shown. ***. <sup>3</sup> ***.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Raw material costs, which are primarily composed of polyethylene resin and color concentrates, rose in absolute value and as a percentage of net sales during the period for which data were gathered, as noted earlier. Raw material costs also increased as a share of total COGS, from 68 percent in 2006 to 70 percent in 2008. Raw material costs ranged from \$\*\*\* per 1,000 bags to \$\*\*\* per 1,000 bags in 2008 depending upon the firm. These values appear to be in line with reported sales values and the corresponding company product mix; the average of \$9.88 per 1,000 bags in 2008 reflects the large-scale production of light-weight bags by several U.S. firms. The relationship between raw material costs and sales value is shown in the following tabulation:

**PRCBs: Average unit values of raw material costs and sales, by firms, 2008**

Firm	Unit value of raw material costs (per 1,000 bags)	Unit value of total net sales (per 1,000 bags)
***	\$***	\$***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
Average	9.88	15.20

Table VI-2 presents the results of operations on a company-by-company basis, while table VI-3 presents operating data for the 15 firms sorted into three industry segments according to sales.

**Table VI-2**  
**PRCBs: Results of operations of U.S. producers, by firms, fiscal years 2006-2008**

\* \* \* \* \*

Table VI-3 presents operating data on domestic producers grouped into segments by sales in 2008. The company-by-company data were sorted into three groups by sales, over \$100 million (comprised of \*\*\*), between \$25 million and \$99.9 million (comprised of \*\*\*), and less than \$25 million (the remaining firms). Within the first group, \*\*\*,<sup>3</sup> while the \*\*\*. Overall sales value increased \*\*\* while the operating \*\*\* from 2006 to 2008. Within the middle group, \*\*\* from 2006 to 2007, which led to the decline overall in the group’s profitability during 2006-08; \*\*\* during 2006-08. The third group’s results are led by \*\*\* (\*\*\*) in each period); overall for the third group, sales declined and the operating loss increased from 2006 to 2008.

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<sup>3</sup> It should be noted that Hilex reported \*\*\*. Also, Hilex filed for relief under Chapter 11 of the U.S. Bankruptcy Code on May 6, 2008. “Plastic bag manufacturer Hilex Poly files bankruptcy petition, seeks approval of prepack,” posted 8:23 am on May 9, 2008 by Thomas Horan, Morris James LLC, found at <http://bankruptcy.morrisjames.com/2008/05/articles>, retrieved on May 7, 2009. According to a press release issued by Hilex, the voluntary filing was to significantly reduce its overall debt and strengthen its balance sheet while continuing to operate. Hilex press release dated May 6, 2008, found at <http://hilexpoly.com>, retrieved on May 7, 2009. Hilex’s petition for financial reorganization and emergence from Chapter 11 was approved on June 26, 2008. Company press release, “Hilex emerges from Chapter 11,” dated July 9, 2008, found at <http://hilexpoly.com>, retrieved on May 7, 2009.

**Table VI-3**  
**PRCBs: Results of operations of U.S. producers, by industry group, fiscal years 2006-2008**

\* \* \* \* \*

As noted by petitioners, domestic producers require a certain baseload of business to enable them to operate as efficiently as possible.<sup>4</sup> At the request of staff, petitioners provided a breakdown between fixed costs and variable costs for three firms, Hilex, Command, and Superbag. These firms together accounted for \*\*\* percent of total sales, \*\*\* percent of total COGS, and \*\*\* percent of total SG&A expenses reported by the 15 reporting firms in 2008. For the three firms together, fixed costs account for about \*\*\* percent of COGS and \*\*\* percent of SG&A expenses in 2008.<sup>5</sup> While the fixed cost portion of COGS seems very low, it should be noted that raw materials costs accounted for over \*\*\* percent of total COGS in 2008. Based on the breakdown between fixed and variable costs, the break even point, which is the quantity sold where total revenues and total costs are equal,<sup>6</sup> can be calculated for the three firms. That point, in number of bags, is \*\*\* bags versus the \*\*\* bags that the three firms actually sold in 2008; the break even point for Hilex by itself is \*\*\* bags compared with \*\*\* bags that the firm sold in 2008.<sup>7</sup>

A variance analysis for U.S. producers is presented in table VI-4, and is derived from the information presented in table VI-1. The variance analysis provides an assessment of changes in profitability as related to changes in pricing, cost, and volume. This analysis is more effective when the product involved is a homogeneous product with no variation in product mix.<sup>8</sup> In table VI-4, between 2006 and 2008, the unfavorable operating income variance of \$42.5 million was attributable primarily to a unfavorable net cost/expense variance (unit costs increased) that overwhelmed a favorable variance on price (unit prices increased); there was a small unfavorable net volume variance.<sup>9</sup> The mix of favorable

<sup>4</sup> Petitioners' postconference brief, p. 20. Petitioners assert that domestic producers have cut prices to secure enough business to keep their operations running continuously, leading to a cost-price squeeze, as well as cutting production and adding more than usual downtime to rectify a supply-demand imbalance. A list of the three plant closures by Hilex and one by Europackaging is given in petitioners' postconference brief, pp. 33-34.

<sup>5</sup> Petitioners' postconference brief, responses to staff, p. 3.

<sup>6</sup> The breakeven point is where both fixed and variable costs are covered and operating income is zero. The equation can be rearranged as unit selling price times quantity minus unit variable cost times quantity equals fixed costs. Therefore, at the break even point, the quantity needed to be sold to break even equals fixed costs in dollars divided by unit contribution margin (which is the unit selling price minus unit variable costs). The validity of this calculation depends upon a number of crucial assumptions. See, Charles T. Horngren, George Foster, Srikant M. Datar, *Cost Accounting: A Managerial Emphasis* (New Jersey: Prentice Hall, 9<sup>th</sup> Ed, 1997), p. 60.

<sup>7</sup> Hilex's reported production capacity in 2008 was \*\*\*, down from \*\*\* in 2006. Hilex's U.S. producers' questionnaire response, question II-9. Hilex closed \*\*\*. Hilex's U.S. producers' questionnaire response, question II-2. Hilex also underwent financial restructuring in 2008, as noted earlier.

<sup>8</sup> In the 2003-2004 investigations on PRCBs, producers and respondents commented on changes in product mix. See note 4, p. VI-4 in *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand*, Invs. Nos. 731-TA-1043-1045 (Preliminary), USITC Publication 3618 (August 2003), for producer and respondent comments received in the preliminary phase of those investigations with regard to changes in product mix. In addition, the per-unit sales and costs (tables VI-2 and VI-3) appear to be relatively consistent for each reporting firm in each period, which may offset changes in product mix within a single producer.

<sup>9</sup> A variance analysis is calculated in three parts, sales variance, cost of sales variance, and SG&A expense variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the cost of sales and SG&A expense variance) and a volume variance. The sales or cost variance is calculated as the change in unit price times the new volume, while the volume variance is calculated as the change in volume times

(continued...)

and unfavorable variances changed during the period and the price variance was unfavorable between 2006 and 2007 (unit prices fell) while the net cost/expense variance was favorable (unit costs declined) in that period. Between 2007 and 2008, the favorable price variance was again overwhelmed by an unfavorable net cost/expense variance.

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<sup>9</sup> (...continued)

the old unit price. Summarized at the bottom of the table, the price variance is from sales; the cost/expense variance is the sum of those items from COGS and SG&A variances, respectively, and the volume variance is the sum of the lines under price and cost/expense variance. The volume component of price variance is nearly always negative because of the way in which the spreadsheet is constructed.



**Table VI-4****PRCBs: Variance analysis on results of operations of domestic producers, fiscal years 2006-2008**

Item	Between fiscal years		
	2006-2008	2006-2007	2007-2008
<b>Value (\$1,000)</b>			
Total net sales:			
Price variance	49,894	(86,335)	128,988
Volume variance	(38,443)	51,117	(82,319)
Total net sales variance <sup>1</sup>	11,451	(35,218)	46,669
Cost of goods sold:			
Cost variance	(66,472)	76,459	(136,518)
Volume variance	34,706	(46,149)	74,442
Total cost of goods variance	(31,766)	30,310	(62,076)
Gross profit variance	(20,315)	(4,908)	(15,407)
SG&A expenses:			
Expense variance	(25,687)	9,579	(34,462)
Volume variance	3,551	(4,722)	7,469
Total SG&A variance	(22,136)	4,857	(26,993)
Operating income variance	(42,451)	(51)	(42,400)
Summarized as:			
Price variance	49,894	(86,335)	128,988
Net cost/expense variance	(92,159)	86,038	(170,981)
Net volume variance	(185)	247	(407)
Note.--Unfavorable variances are shown in parenthesis; all others are favorable. The data are comparable to changes in operating income as presented in table VI-1.			
Source: Compiled from data submitted in response to Commission questionnaires.			

**CAPITAL EXPENDITURES, RESEARCH AND DEVELOPMENT EXPENSES,  
AND INVESTMENT IN PRODUCTIVE FACILITIES**

The responding firms' data on capital expenditures, research and development ("R&D") expenses, and the value of their property, plant, and equipment used in the production of PRCBs are shown in table VI-5.



**Table VI-6**

**PRCBs: The value of assets and return on investment of U.S. producers, fiscal years 2006–2008**

Item	Value (\$1,000)		
	2006	2007	2008
<b>Current assets:</b>			
Cash and equivalents	16,533	15,353	5,277
Accounts receivable, net	127,039	134,688	115,064
Finished goods inventories	47,732	56,660	33,950
Raw materials and work-in-process inventories	41,561	74,570	34,959
Other current assets <sup>1</sup>	16,622	17,189	48,013
Subtotal current assets	249,487	298,460	237,263
<b>Noncurrent assets:</b>			
Original cost of property, plant, and equipment	428,974	470,367	474,059
Accumulated depreciation	232,861	276,933	311,865
Book value of property, plant, and equipment	196,113	193,434	162,194
Other noncurrent assets <sup>2</sup>	116,084	110,255	75,768
Total assets	561,684	602,149	475,225
Operating income, as adjusted	***	***	***
<b>Ratio of operating income to total assets (percent)</b>			
Return on investment	***	***	***
<sup>1</sup> Includes such items as other receivables, prepaid expenses, company loans, and short-term investments. <sup>2</sup> Includes such items as goodwill, patents, or intangible assets, investments, life insurance, or other non-current assets.  Note: ***.  Source: Compiled from data submitted in response to Commission questionnaires.			

The original cost of fixed assets increased between 2006 and 2008 in response to both capital expenditures and acquisitions. However, depreciation expenses rose at a greater rate than did investment, and book value declined. Book value also was lower in 2008 than in earlier periods because of the \*\*\*. Other noncurrent assets declined from 2007 to 2008 because of \*\*\*.

### CAPITAL AND INVESTMENT

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



## **PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES**

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the nature of the alleged subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any antidumping or countervailing duty investigations in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

### **THE INDUSTRY IN INDONESIA**

The Commission requested data from 10 firms in Indonesia believed to be possible producers of PRCBs. Of these firms, five provided questionnaire responses containing useable data, one certified that it had not produced or exported PRCBs since January 1, 2006, and four did not provide responses. The five responding firms estimated that in 2008 they accounted for 10.1 percent of production of PRCBs in Indonesia and 32.3 percent of exports of PRCBs from Indonesia to the United States.<sup>1</sup> Reported exports of PRCBs to the United States by these firms in 2008 were equivalent to 42.8 percent of the quantity of U.S. imports of PRCBs from Indonesia in that year based on official Commerce statistics.

During the period for which data were collected, reported capacity, production, and total shipments made by Indonesian producers decreased. Reported exports to the United States also decreased during this period, which was due in large part to a decrease in capacity and production by \*\*\*.<sup>2</sup> One Indonesian producer, \*\*\*, reported that it will be adding capacity in order to service the domestic, European, African, and American markets. Another producer, \*\*\*, stated that new capacity will be used to increase exports to Japan and Europe. Two producers, \*\*\*, reported producing other products on the same equipment as PRCBs. These products were mainly garbage bags and other non-PRCB plastic bags.<sup>3</sup> Table VII-1 presents data for reported production and shipments of PRCBs in Indonesia.

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<sup>1</sup> One of the five responding firms \*\*\*, did not provide useable data in response to questions on the percentage of production and exports represented by its PRCB operations.

<sup>2</sup> According to this company's foreign producer questionnaire response, the decreases in capacity and production are due to "commercial consideration and also the need to diversify the product as a result of the environmental issue."

<sup>3</sup> In 2008, \*\*\* reported devoting 80 and 99 percent of production, respectively, to PRCBs.

**Table VII-1**  
**PRCBs: Indonesia's reported production capacity, production, shipments, and inventories, 2006-2008, and projections for 2009 and 2010**

Item	Actual experience			Projections	
	2006	2007	2008	2009	2010
<b>Quantity (1,000 bags)</b>					
Capacity	4,507,096	4,710,061	4,431,083	4,375,512	4,304,689
Production	3,705,512	4,087,783	3,247,146	3,275,573	3,349,775
End-of-period inventories	60,600	100,798	72,867	34,625	37,625
Shipments:					
Internal consumption	***	***	0	0	0
Home market	***	***	365,893	388,000	438,000
Exports to--					
The United States	***	***	1,993,060	1,885,013	1,805,513
All other markets	***	***	924,800	1,060,802	1,133,262
Total exports	***	***	2,917,860	2,945,815	2,938,775
Total shipments	***	***	3,283,753	3,333,815	3,376,775
<b>Ratios and shares (percent)</b>					
Capacity utilization	82.2	86.8	73.3	74.9	77.8
Inventories to production	1.6	2.5	2.2	1.1	1.1
Inventories to total shipments	***	***	2.2	1.0	1.1
Shares of total quantity of shipments:					
Internal consumption	***	***	0.0	0.0	0.0
Home market	***	***	11.1	11.6	13.0
Exports to--					
The United States	***	***	60.7	56.5	53.5
All other markets	***	***	28.2	31.8	33.6
Total exports	***	***	88.9	88.4	87.0
Source: Compiled from data submitted in response to Commission questionnaires.					

## THE INDUSTRY IN TAIWAN

The Commission requested data from 12 firms in Taiwan believed to be possible producers or exporters of PRCBs. Of these firms, three producers and one exporter<sup>4</sup> provided questionnaire responses containing useable production or export data and the remaining eight did not provide responses. The four responding firms estimated that in 2008 they accounted for 0.5 percent of production of PRCBs in Taiwan and 1.1 percent of exports of PRCBs from Taiwan to the United States.<sup>5</sup> Reported exports of PRCBs to the United States by these firms in 2008 were equivalent to 28.2 percent of the quantity of U.S. imports of PRCBs from Taiwan in that year based on official Commerce statistics.

During the 2006-2008 period, production, capacity, exports, and total shipments all increased by large amounts. These increases are due to the arrival of two new producers, \*\*\* and \*\*\*, which brought capacity online during this period.<sup>6</sup> Table VII-2 presents data for reported production and shipments of PRCBs in Taiwan.

**Table VII-2**

**PRCBs: Taiwan's reported production capacity, production, shipments, and inventories, 2006-2008, and projections for 2009 and 2010**

\* \* \* \* \*

## THE INDUSTRY IN VIETNAM

The Commission requested data from 29 firms in Vietnam believed to be possible producers or exporters of PRCBs. Of these firms, 10 producers provided questionnaire responses containing useable production data and the remaining 19 did not provide responses. The 10 responding firms estimated that in 2008 they accounted for 28.8 percent of production of PRCBs in Vietnam and 28.3 percent of exports of PRCBs from Vietnam to the United States.<sup>7</sup> Reported exports of PRCBs to the United States by these firms in 2008 were equivalent to 41.1 percent of the quantity of U.S. imports of PRCBs from Vietnam in that year based on official Commerce statistics.

During the period for which data were collected, capacity, production, inventories, and shipments all increased by large amounts. The main reason for this expansion has been the large number of companies that began producing PRCBs at some point after the beginning of 2006.<sup>8</sup> Projected increases in production during 2009 and 2010 reflect planned expansions by four Vietnamese producers, \*\*\*.<sup>9</sup>

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<sup>4</sup> This exporter, \*\*\*, reported that Taiwanese producers only export through trading companies and thus the production that \*\*\* represents would not be represented by another responding firm. Staff has requested the name of the Taiwanese producer.

<sup>5</sup> Out of the four respondent firms, only \*\*\* provided useable data in response to questions on the percentage of production and only \*\*\* reported on the percentage of exports represented by its PRCB operations.

<sup>6</sup> Both \*\*\* and \*\*\* are affiliated with \*\*\* and each included tolling for \*\*\* in production and shipment data.

<sup>7</sup> Out of the ten respondent firms, only \*\*\* provided useable data in response to questions on both the percentage of production and the percentage of exports represented by the companies' PRCB operations. \*\*\*, an exporter, did not provide production data but did provide export data.

<sup>8</sup> Only \*\*\* and \*\*\* reported existing PRCB production or capacity in 2006.

<sup>9</sup> \*\*\* is building a new factory set to complete phase 1 installation in September 2009. This factory is expected to increase the company's PRCB production by \*\*\*. \*\*\* is expanding capacity by 26 percent in 2009 in order to accommodate demand from the Japanese market. \*\*\* plans to increase production capacity in the next few months in order to export more PRCBs to the European Union and Japan. \*\*\* plans to increase capacity by 50 percent by

(continued...)

Three of the firms, \*\*\*, reported producing other products in addition to PRCBs using the same resources.<sup>10</sup> Table VII-3 presents data for reported production and shipments of PRCBs in Vietnam.

**Table VII-3**  
**PRCBs: Vietnam's reported production capacity, production, shipments, and inventories, 2006-2008, and projections for 2009 and 2010**

Item	Actual experience			Projections	
	2006	2007	2008	2009	2010
<b>Quantity (1,000 bags)</b>					
Capacity	***	3,790,851	5,661,767	6,202,796	6,768,952
Production	***	3,594,026	4,746,091	4,735,244	5,404,784
End-of-period inventories	***	172,381	222,492	166,890	166,668
Shipments:					
Internal consumption	***	0	4	0	0
Home market	***	0	8,869	0	8,000
Exports to--					
The United States	***	2,693,798	2,953,030	1,928,453	1,979,537
All other markets	***	980,619	1,943,892	2,751,099	3,366,732
Total exports	***	3,674,417	4,896,922	4,679,552	5,346,269
Total shipments	***	3,674,417	4,905,795	4,679,552	5,354,269
<b>Ratios and shares (percent)</b>					
Capacity utilization	***	94.8	83.8	76.3	79.8
Inventories to production	***	4.8	4.7	3.5	3.1
Inventories to total shipments	***	4.7	4.5	3.6	3.1
Shares of total quantity of shipments:					
Internal consumption	***	0.0	0.0	0.0	0.0
Home market	***	0.0	0.2	0.0	0.1
Exports to--					
The United States	***	73.3	60.2	41.2	37.0
All other markets	***	26.7	39.6	58.8	62.9
Total exports	***	100.0	99.8	100.0	99.9
Source: Compiled from data submitted in response to Commission questionnaires.					

<sup>9</sup> (...continued)

2010 in order to serve the European, Japanese, and United States markets.

<sup>10</sup> Products other than PRCBs produced by \*\*\* represented 20 percent, .05 percent, and 35 percent of their production in 2008, respectively.



## THE INDUSTRIES IN THE SUBJECT COUNTRIES COMBINED

Table VII-4 presents aggregate data for the reporting producers of PRCBs in Indonesia, Taiwan, and Vietnam.

**Table VII-4**

**PRCBs: Subject countries' combined reported production capacity, production, shipments, and inventories, 2006-2008, and projections for 2009 and 2010**

\* \* \* \* \*

### U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of subject merchandise from Indonesia, Taiwan, and Vietnam are shown in table VII-5.

### U.S. IMPORTERS' CURRENT ORDERS

The Commission asked importers to indicate whether they imported or arranged for the importation of PRCBs from Indonesia, Taiwan, and/or Vietnam after December 31, 2008. As data provided by importers were not always in a common unit of measure, a combined tally of imports cannot be provided as part of this report. However, it is evident that large quantities of PRCBs continue to be imported based upon information provided by individual responding firms, including \*\*\*. Importer responses can be found at appendix F.

### ANTIDUMPING INVESTIGATIONS IN THIRD-COUNTRY MARKETS

There are no known antidumping or countervailing duty investigations on PRCBs from Indonesia, Taiwan, or Vietnam reported in third-country markets. The only known trade remedy case related to plastic bags conducted outside of the United States was the antidumping duty investigations conducted by the European Union in 2005-2006. These investigations involved the importation of bags from China, Malaysia, and Thailand, and antidumping duty orders were put into place in September 2006 on plastic bags from China and Thailand. These duty orders are still in place.<sup>11</sup>

### INFORMATION ON NONSUBJECT COUNTRIES

In assessing whether the domestic industry is materially injured or threatened with material injury “by reason of subject imports,” the legislative history states “that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) ‘to ensure that it is not attributing injury from other sources to the subject imports.’”<sup>12</sup>

There is no publicly available information regarding international production or exports of PRCBs during the period for which data were collected. Countries other than Indonesia, Taiwan, and

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<sup>11</sup> E-mail from \*\*\*, April 29, 2009.

<sup>12</sup> Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

Vietnam known to be large producers of PRCBs include China, Malaysia, and Thailand. Other countries believed to be producing PRCBs on a smaller scale include Canada, Korea, Japan, and Turkey.<sup>13</sup>

**Table VII-5**  
**PRCBs: U.S. importers' end-of-period inventories of all imports, by source, 2006-2008**

Source	Calendar year		
	2006	2007	2008
Imports from Indonesia:			
Inventories ( <i>1,000 bags</i> )	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***
Imports from Taiwan:			
Inventories ( <i>1,000 bags</i> )	425,033	504,626	614,971
Ratio to imports ( <i>percent</i> )	15.4	12.2	18.5
Ratio to U.S. shipments of imports ( <i>percent</i> )	18.0	13.9	20.8
Imports from Vietnam:			
Inventories ( <i>1,000 bags</i> )	41,650	429,890	745,066
Ratio to imports ( <i>percent</i> )	5.1	8.5	17.3
Ratio to U.S. shipments of imports ( <i>percent</i> )	5.8	15.6	20.3
Imports from subject sources:			
Inventories ( <i>1,000 bags</i> )	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***
Imports from all other sources:			
Inventories ( <i>1,000 bags</i> )	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***
Imports from all sources:			
Inventories ( <i>1,000 bags</i> )	1,502,819	2,877,031	3,324,231
Ratio to imports ( <i>percent</i> )	11.1	14.7	19.5
Ratio to U.S. shipments of imports ( <i>percent</i> )	12.1	18.6	22.2
Source: Compiled from data submitted in response to Commission questionnaires.			

<sup>13</sup> Conference transcript, pp. 51-52 (Dorn).

**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



**INTERNATIONAL TRADE  
COMMISSION**

[Investigation Nos. 701–TA–462 and 731–  
TA–1156–1158 (Preliminary)]

**Polyethylene Retail Carrier Bags From  
Indonesia, Taiwan, and Vietnam**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Institution of antidumping and  
countervailing duty investigations and  
scheduling of preliminary phase  
investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–462 and 731–TA–1156–1158 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that 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 imports from Indonesia, Taiwan, and Vietnam of polyethylene retail carrier bags, provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Vietnam. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or

1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by May 15, 2009. The Commission's views are due at Commerce within five business days thereafter, or by May 22, 2009.

For further information concerning the conduct of these investigations 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 B (19 CFR part 207).

**DATES:** *Effective Date:* March 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joshua Kaplan (202–205–3184), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on March 31, 2009, by Hilex Poly Co., Hartsville, SC and Superbag Corporation, Houston, TX.

*Participation in the Investigations and Public Service List.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*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 these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 21, 2009, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Joshua Kaplan (202-205-3184) not later than April 16, 2009, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written Submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 24, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the 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 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 1, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-7967 Filed 4-7-09; 8:45 am]

**BILLING CODE 7020-02-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-560-822, A-583-843, A-552-804]

**Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 27, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Dmitry Vladimirov at (202) 482-0665 or Minoo Hatten at (202) 482-1690 (Indonesia and Taiwan), AD/CVD Operations, Office 5; Maisha Cryor at (202) 482-5831 or Robert Bolling at (202) 482-3434 (Socialist Republic of Vietnam), AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****The Petitions**

On March 31, 2009, the Department of Commerce (the Department) received petitions concerning imports of polyethylene retail carrier bags (PRCBs) from Indonesia, Taiwan, and the Socialist Republic of Vietnam (Vietnam) filed in proper form by Hilex Poly Co., LLC, and Superbag Corporation (the petitioners). See the Petition for the Imposition of Antidumping and Countervailing Duties on Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam submitted on March 31, 2009 (the Petitions). On April 3, 2009, the Department issued a request for additional information and clarification of certain areas of the Petitions. Based on the Department's requests, the petitioners filed additional information on April 8, 10, 15, and 16, 2009

(hereinafter, Supplement to the Petitions, dated respectively). The period of investigation (POI) for Indonesia and Taiwan is January 1, 2008, through December 31, 2008. The POI for Vietnam is July 1, 2008, through December 31, 2008. See 19 CFR 351.204(b)(1).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of PRCBs from Indonesia, Taiwan, and Vietnam are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigations that the petitioners are requesting that the Department initiate (see "Determination of Industry Support for the Petitions" section below).

**Scope of Investigations**

The merchandise covered by these investigations is PRCBs. See Attachment I to this notice for a complete description of the merchandise covered by these investigations.

**Comments on Scope of Investigations**

During our review of the Petitions, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the date of publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

### Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of PRCBs to be reported in response to our antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report more accurately the relevant factors and costs of production as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as 1) general product characteristics and 2) the product-comparison criteria. We recognize that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics used by manufacturers to describe PRCBs, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by May 11, 2009. Additionally, we must receive rebuttal comments by May 21, 2009.

### Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for (i) at least 25 percent of the total production of the domestic like product and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D)

of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), affirmed 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic-like-product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that PRCBs constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic-like-product analysis in this case, see Antidumping Investigation Initiation

Checklist: PRCBs from Indonesia (Indonesia Initiation Checklist) at Attachment II (Analysis of Industry Support), Antidumping Investigation Initiation Checklist: PRCBs from Taiwan (Taiwan Initiation Checklist) at Attachment II (Analysis of Industry Support), and Antidumping Investigation Initiation Checklist: PRCBs from Vietnam (Vietnam Initiation Checklist) at Attachment II (Analysis of Industry Support) which are on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

With regard to section 732(c)(4)(A) of the Act, in determining whether the petitioners have standing (i.e., the domestic workers and producer supporting the Petitions account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions), we considered the industry-support data contained in the Petitions with reference to the domestic like product as defined in the "Scope of Investigations" section above and Attachment I. To establish industry support, the petitioners provided their shipments of the domestic like product for the year 2008 and compared them to an estimate of shipments of the domestic like product for the entire industry. See Volume II of the Petitions at Exhibit 3 and Supplement to the Petitions dated April 10, 2009. The petitioners argue that U.S. shipments of PRCBs are a reasonable proxy for U.S. production of PRCBs as most PRCBs are produced to order for specific retail customers and that inventories that are maintained are typically small. See Volume II of the Petitions at Exhibit 3. Based on the fact that total industry-production data for the domestic like product for 2008 are not reasonably available and that the petitioners have established that shipments are a reasonable proxy for production data, we have relied upon shipment data for purposes of measuring industry support. For further discussion see Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation Checklist at Attachment II (Analysis of Industry Support).

On April 15, 2009, the Government of Vietnam (GOV), an interested party to this proceeding as defined in section 771(9)(B) of the Act, provided the Department with a written statement to accompany its remarks during consultations with the Department regarding the countervailing duty (CVD) petition involving imports of PRCBs



from Vietnam. The first issue raised in this statement addresses the GOV's concerns that the petitioners may not meet the required threshold for standing. Because this information pertains to industry support and, thus, is an acceptable form of pre-initiation communication under section 732(c)(4)(E) of the Act, the Department placed the GOV's written statement on the record of all three antidumping petitions. See Memorandum to the File from Mark Hoadley, Program Manager through Barbara E. Tillman, Director AD/CVD Operations, Office 6: "Antidumping Petitions on Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam), Indonesia, and Taiwan: Information Provided by the Government of Vietnam (GOV) Regarding Industry Support," dated April 16, 2009. Also, on April 17, 2009, we received submissions on behalf of Vietnamese producers of PRCBs, interested parties to this proceeding as defined in section 771(9)(A) of the Act, questioning the industry-support calculation. See Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation Checklist at Attachment II (Analysis of Industry Support). On April 20, 2009, the petitioners filed their reply to these challenges. For further discussion of these submissions see Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation Checklist at Attachment II (Analysis of Industry Support).

The Department's review of the data provided in the Petitions, supplemental submissions, other information on the record, and other information readily available to the Department indicates that the petitioners have established industry support. Because the Petitions establish support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See section 732(c)(4)(D) of the Act and Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation Checklist at Attachment II. Nonetheless, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product. See Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation

Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation Checklist at Attachment II.

The Department finds that the petitioners filed the Petitions on behalf of the domestic industry in accordance with section 732(c)(4)(A) of the Act. The petitioners are an interested party as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigations that they are requesting that the Department initiate. See Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation Checklist at Attachment II.

#### **Allegations and Evidence of Material Injury and Causation**

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioners contend that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation Checklist at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Petition).

#### **Allegations of Sales at Less Than Fair Value**

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations of imports of PRCBs from Indonesia, Taiwan, and Vietnam. The sources of data for the deductions and adjustments relating to the U.S. price, constructed value (CV) (for Indonesia and Taiwan), and the factors of production (for Vietnam) are also discussed in the country-specific initiation checklists. See Indonesia Initiation Checklist, Taiwan Initiation Checklist, and Vietnam Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

#### **Export Price**

##### **Indonesia, Taiwan, and Vietnam**

The petitioners calculated three versions of export price (EP) for each country using the average per-unit customs values (AUV) of imports of subject merchandise from Indonesia, Taiwan, and Vietnam during the country-specific POI derived from U.S. Census Bureau import statistics. See Volume I of the Petitions at pages 22–26, 33, 35, 41, Volume II of the Petitions at Exhibit 13, Supplement to the Petitions, dated April 8, 2009, at pages 7–11 and Exhibits CI–6, CI–9, CI–11, CI–14, and Supplement to the Petitions, dated April 15, 2009, at pages 2–7 and Exhibit 1. The petitioners used a single reporting number of the Harmonized Tariff Schedule of the United States (HTSUS) under which subject merchandise is imported (3923.21.0085). The first method of calculating EP uses total import quantities and values for the respective POI. The petitioners calculated EP under this scenario by weight-averaging the per-unit AUVs during the country-specific POI using the entry-specific gross packed shipment weight in kilograms. *Id.*

The second method of calculating EP relies on the lowest monthly port-specific per-unit AUVs during the country-specific POI. The petitioners calculated EP under this method by simple-averaging the monthly per-unit AUVs during the POI. *Id.* The petitioners claim that the second method of estimating EP is likely to produce a more representative estimate of actual margins of dumping. The petitioners assert that it is reasonable to assume that the lowest monthly port-

specific per-unit AUVs appear to represent sales of t-shirt bags (the type of product which the ITC has acknowledged is at the low end of PRCBs price and cost continuum (see footnote 9 of the Supplement to the Petitions, dated April 15, 2009)) which are the same type of PRCBs on which the petitioners based their cost model in calculating normal value. *Id.* See Supplement to the Petitions, dated April 8, 2009, at pages 9–11 and Exhibit CI–6. At the Department’s request to substantiate their claims, the petitioners used Automated Manifest System data to determine which particular imports were of t-shirt bags. This resulted in complete information from manifests for one month of the POI for Indonesia and Taiwan, partial information for certain other POI months for Indonesia and Taiwan, and partial information for one month of the POI for Vietnam. As a result of this information, the petitioners provided a third method of calculating EPs for all countries using the lowest port-specific per-unit AUVs for a single month of the POI for which the petitioners substantiated their assertion (fully for Indonesia and Taiwan and partially for Vietnam) that the corresponding shipments are of t-shirt bags. See Supplement to the Petitions, dated April 15, 2009, at pages 2 through 7 and Exhibits 1 and 3.

We have relied on the petitioners’ first and third methods of calculating EPs. We did not rely, however, on the petitioners’ second method of calculating EPs because the petitioners did not substantiate their assertion with respect to all POI months for all three countries that the lowest monthly port-specific per-unit AUVs were shipments of t-shirt bags.

Because the petitioners’ derivation of the per-unit AUVs for both EP-calculation scenarios relied on the gross-weight basis (*i.e.*, packed weight of subject merchandise), the petitioners converted the per-unit AUVs for both EP-calculation scenarios from the gross-weight basis to net-weight basis using an adjustment which estimates the weight of packing materials required to pack one metric ton of subject merchandise. See Volume I of the Petitions at pages 22–26, 33, 35, 41, Volume II of the Petitions at Exhibit 13, and Supplement to the Petitions, dated April 15, 2009, at Exhibit 3. The petitioners made an adjustment for foreign brokerage and handling expenses and foreign inland-freight expenses because the AUVs are based on free-on-board (FOB) foreign port prices. See Indonesia Initiation Checklist, Taiwan Initiation Checklist, Vietnam Initiation Checklist, and “Fair-

Value Comparisons” section below for EP-to-NV margins.

#### NV Based on CV

With respect to NV, the petitioners state that neither home-market prices nor third-country POI prices of PRCBs produced in Indonesia or Taiwan were reasonably available. According to the petitioners, they were unsuccessful in obtaining Indonesian or Taiwanese POI pricing information despite their best efforts. See Volume I of the Petitions at pages 26–27. Further, the petitioners claim that they were unable to base NV on publicly available information covering Indonesian or Taiwanese third-country export prices because the underlying statistics for Indonesian or Taiwanese HTS numbers cover a far broader group of products than those covered by the scope of the petitions (*i.e.*, HTSUS number 3923.21.0085). The petitioners claim that the World Trade Atlas (WTA) data indicate that there is no additional disaggregation beyond the six-digit HTS level (*i.e.*, 3923.21) allowable with either Indonesian or Taiwanese tariff classification numbers. *Id.* Therefore, the petitioners based NV on CV.

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM) selling, general, and administrative (SG&A) expenses, packing expenses, and profit. In calculating COM and packing, the petitioners based the quantity of each of the inputs used to manufacture and pack PRCBs in Indonesia or Taiwan based on its own production experience during the POI. The petitioners claim that the actual usage rates of the foreign manufacturers of PRCBs are not reasonably attainable because such information is closely guarded by foreign producers and is not otherwise publicly available. The petitioners claim that the major foreign exporters of PRCBs use production machinery, raw-material inputs, and production processes similar to those of U.S. producers. See Volume I of the Petitions at pages 27–30 and Volume II of the Petitions at Exhibits 20, 21, 23, and 24.

The petitioners then multiplied the usage quantities of the inputs used to manufacture and pack PRCBs by the Indonesian or Taiwanese values based on publicly available data or, where appropriate, data from a surrogate foreign country.<sup>1</sup> See Volume I of the Petitions at pages 30, 32, and 34 and

<sup>1</sup> With respect to masterbatch colorants, because Indonesian import statistics do not report any imports during the POI under the applicable HTS number for this product, the petitioners valued this input using the simple average of Taiwanese and Indian average import values during the POI.

Volume II of the Petitions at Exhibits 20, 21, 24, 25, and 26.

Raw materials (*e.g.*, polyethylene resin) are the most significant inputs used in the production of PRCBs. The petitioners determined the consumption of all raw materials and packing materials based on the quantities they used to produce a metric ton of PRCBs (*i.e.*, t-shirt bags).

#### Indonesia

The petitioners valued all raw materials and packing materials using the Indonesian import statistics as reflected in the WTA data for the most recent twelve-month period available, December 2007 through November 2008. The petitioners excluded from these import statistics imports from countries previously determined by the Department to be non-market-economy (NME) countries and from Indonesia, the Republic of Korea, and Thailand because the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies. Because Indonesian import statistics report import values in U.S. dollars, the petitioners did not make currency conversions. The petitioners did not adjust the import values using the producer-price inflation index (PPI) for the United States to make it contemporaneous with the POI. See Volume I of the Petitions at pages 30–32 and Volume II of the Petitions at Exhibits 20 and 24.

The petitioners determined labor costs using the labor consumption in hours derived from their own experience. The petitioners valued labor inputs using Indonesian wage rates obtained from the International Labour Organization’s “Laborsta” database at <http://laborsta.ilo.org>. The petitioners adjusted Indonesian labor rates to make them contemporaneous with the POI using Indonesian Wholesale Price Indices as published by International Financial Statistics of the International Monetary Fund (IFS). The petitioners converted the Indonesian labor rates into U.S. dollars using the Department’s POI exchange rates at <http://ia.ita.doc.gov/exchange/index.html>. See Volume I of the Petitions at page 32 and Volume II of the Petitions at Exhibits 20 and 25.

The petitioners determined electricity costs using the electricity consumption in kilowatt hours derived from their own experience. The petitioners valued electricity using the Indonesian electricity rate for the industry reported by the International Energy Agency. Because Indonesian electricity rates are reported in U.S. dollars, the petitioners

did not make currency conversions. The petitioners adjusted Indonesian electricity rate to make it contemporaneous with the POI using the PPI for the United States as published by IFS. See Volume I of the Petitions at page 32 and Volume II of the Petitions at Exhibits 20 and 26.

To calculate factory overhead, SG&A, financial expenses and a profit rate, the petitioners relied on financial statements of an Indonesian producer of plastic packaging products, PT. Dynaplast Tbk., for the period most contemporaneous with the POI for which the petitioners were able to obtain such information. See Volume I of the Petitions at pages 32–33, Volume II of the Petitions at Exhibits 20 and 27, and Supplement to the Petitions, dated April 8, 2009, at Exhibit CI–9. See also Indonesia Initiation Checklist.

### Taiwan

The petitioners valued all raw materials and packing materials using the Taiwanese import statistics as reflected in the WTA data for the POI. The petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries and from Indonesia, the Republic of Korea, and Thailand because the Department has previously excluded prices from these countries because they maintain broadly available, non–industry-specific export subsidies. Because Taiwanese import statistics report import values in Taiwanese dollars, the petitioners converted the import values into U.S. dollars using the Department’s POI exchange rates. See Volume I of the Petitions at pages 30–31 and 34 and Volume II of the Petitions at Exhibits 21 and 24.

The petitioners determined labor costs using the labor consumption in hours derived from their own experience. The petitioners valued labor inputs using Taiwanese wage rates obtained from the International Labour Organization’s “Laborsta” database at <http://laborsta.ilo.org>. The petitioners adjusted Taiwanese labor rates to make them contemporaneous with the POI using Taiwanese Wholesale Price Indices as published by IFS. The petitioners converted the Taiwanese labor rates into U.S. dollars using the Department’s POI exchange rates. See Volume I of the Petitions at page 34 and Volume II of the Petitions at Exhibits 21 and 25.

The petitioners determined electricity costs using the electricity consumption in kilowatt hours derived from their own experience. The petitioners valued electricity using the Taiwanese

electricity rate for the industry reported by the International Energy Agency. Because Taiwanese electricity rates are reported in U.S. dollars, the petitioners did not make currency conversions. The petitioners adjusted the electricity rate for Taiwan to make it contemporaneous with the POI using the PPI for the United States as published by the IFS. See Volume I of the Petitions at page 34 and Volume II of the Petitions at Exhibits 21 and 26.

To calculate factory overhead, SG&A, and a profit rate, the petitioners relied on financial statements of a Taiwanese producer of plastic packaging products, Formosa Taffeta Corporation, Ltd. (Formosa Taffeta), for the period most contemporaneous with the POI for which the petitioners were able to obtain such information. For the calculation of the financial expense, the petitioners relied on the financial statements of Formosa Taffeta’s parent company, Formosa Plastics Corporation. See Volume II of the Petitions at Exhibit 21 and Supplement to the Petitions, dated April 8, 2009, at Exhibits CI–11, CI–12, and CI–13. We revised the petitioners’ calculation of the SG&A rate to exclude foreign–exchange gains and interest expenses that were also accounted for in the financial–expense rate as well as other income and expenses related to investments. We then revised the petitioners’ profit calculation to account for the revised SG&A expenses. See Taiwan Initiation Checklist.

### Vietnam

The petitioners state that Vietnam is an NME country and no determination to the contrary has been made by the Department. See Volume I of the Petitions at 36. The petitioners state that, in each of the three antidumping duty investigations the Department has conducted on imports from Vietnam, the Department determined that Vietnam is an NME country, citing *Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 62479 (October 21, 2008), *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004), and *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in

effect until revoked by the Department. The presumption of NME status for Vietnam has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market–economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of Vietnam’s NME status and the granting of separate rates to individual exporters.

Citing section 773(c)(4) of the Act, the petitioners contend that India is the appropriate surrogate country for Vietnam because 1) it is at a level of economic development comparable to that of Vietnam, 2) it is a significant producer of PRCBs, and 3) the Department has previously found India to be a ready source for reliable surrogate values for Vietnam proceedings. See Volume I of the Petitions at 36–39. Based on the information provided by the petitioners, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate–country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

The petitioners calculated NV and dumping margins for the U.S. price, discussed above, using the Department’s NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. The petitioners calculated NV based on their own consumption rates for producing PRCBs in 2008. See Vietnam Initiation Checklist. The petitioners state that their production experience is representative of the production process used in Vietnam because all of the material inputs and processing are unlikely to be materially different for a Vietnam producer of PRCBs. See Volume I of the Petitions at page 28.

The petitioners valued the factors of production based on reasonably available, public surrogate–country data, including India statistics from the WTA and the Central Electric Authority of the Government of India. See Vietnam Initiation Checklist. Where the petitioners were unable to find input prices contemporaneous with the POI, the petitioners adjusted for inflation

using the Indian Wholesale Price Index from the IFS. See Supplement to the Petition, dated April 8, 2009, at page 21. In addition, the petitioners made currency conversions, where necessary, based on the POI–average rupee/U.S. dollar exchange rate, as reported on the Department’s website. See Supplement to the Petitions, dated April 15, 2009, at pages 9–12 and Exhibit 7. The petitioners determined labor costs using the labor consumption, in hours, derived from their own experience. See Volume II of the Petitions at Exhibit 23. The labor cost was then determined using the Department’s NME Wage Rate for Vietnam at <http://ia.ita.doc.gov/wages/index.html>. See Volume I of the Petitions at page 40 and Volume II of the Petitions at Exhibit 29. For purposes of initiation, the Department determines that the surrogate values used by the petitioners are reasonably available and, thus, acceptable for purposes of initiation.

The petitioners determined electricity costs using the electricity consumption, in kilowatt hours, derived from their own experience. The petitioners valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. The petitioners inflated the electricity rate to the POI using the Indian Wholesale Price Index as published by the IFS and converted it from Indian rupees to U.S. dollars using the Department’s POI exchange rates. See Supplement to the Petitions, dated April 8, 2009, at page 21 and Exhibit CI–16.

The petitioners based factory overhead, SG&A, and profit on data from Synthetic Packers Pvt. Ltd. for the fiscal year April 1, 2007, through March 31, 2008. See Volume I of the Petitions at page 40 and Volume II of the Petitions at Exhibit 31. For purposes of initiation, the Department finds the petitioners’ use of Synthetic’s financial ratios appropriate.

#### Fair–Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of PRCBs from Indonesia, Taiwan, and Vietnam are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of EPs (using methods one and three presented by the petitioners) and CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for PRCBs from Indonesia range from 35.47 to 60.24 percent. See Indonesia Initiation Checklist. Based on a comparison of EPs (methods one and three) and CV calculated in accordance with section 773(a)(4) of the Act, the estimated

revised dumping margins for PRCBs from Taiwan range from 76.25 to 95.81 percent. See Taiwan Initiation Checklist. Based on a comparison of EPs (methods one and three) and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margins for PRCBs from Vietnam range from 28.49 to 76.11 percent. See Vietnam Initiation Checklist.

#### Initiation of Antidumping Investigations

Based upon the examination of the Petitions on PRCBs from Indonesia, Taiwan, and Vietnam the Department finds that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of PRCBs from Indonesia, Taiwan, and Vietnam are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### Targeted–Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted–dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted–dumping allegations, 19 CFR 351.301(d)(5). See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that “{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.” *Id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted–dumping allegation in any of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the country–specific preliminary determination.

#### Respondent Selection

##### Indonesia and Taiwan

For these investigations, the Department intends to select respondents based on U.S. Customs and

Border Protection (CBP) data for U.S. imports under HTSUS number 3923.21.0085 during the POI. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department’s website at <http://ia.ita.doc.gov/apo>.

#### Vietnam

For this investigation, the Department will request quantity and value information from all known exporters and producers identified with complete contact information in the Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate–rate application by the respective deadlines in order to receive consideration for separate–rate status. See *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008), and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People’s Republic of China*, 70 FR 21996, 21999 (April 28, 2005). Attachment II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than May 11, 2009. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration website at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. Also, the Department will send the quantity and value questionnaire to those Vietnam companies identified in the Supplement to the Petitions, dated April 16, 2009, at Exhibits II–6, III–12.

#### Separate Rates

In order to obtain separate–rate status in NME investigations, exporters and producers must submit a separate–rate status application. See Policy Bulletin

05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, e.g., *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/nme/nme-sep-rate.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.

#### Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates"

because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin, at page 6 (emphasis added).

#### Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the representatives of the Governments of Indonesia, Taiwan, and Vietnam. We will attempt to provide a copy of the public version of the Petitions to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

#### International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

#### Preliminary Determinations by the International Trade Commission

The ITC will preliminarily determine, no later than May 15, 2009, whether there is a reasonable indication that imports of PRCBs from Indonesia, Taiwan, and Vietnam are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination with respect to any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 20, 2009.

**Ronald K. Lorentzen**,  
*Assistant Secretary for Import Administration.*

#### Attachment I

##### Scope of the Investigations

The merchandise subject to these investigations is polyethylene retail carrier bags (PRCBs), which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than

0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of these investigations excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, e.g., garbage bags, lawn bags, trash-can liners.

Imports of merchandise included within the scope of these investigations are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of these investigations. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

#### Attachment II

##### Format For Reporting Quantity and Value of Sales

In providing the information in the chart below, please provide the total quantity in both pieces (1,000 units) and kilograms (kg) (net weight) and total value (in U.S. dollars) of all your sales to the United States during the period July 1, 2008, through December 31, 2008, covered by the scope of this investigation (see Attachment II), produced in the Vietnam, *i.e.* PRCBs. Please provide the conversion factor used to convert pieces (1,000 units) to kg (net weight).

Please use the invoice date when determining which sales to include within the period noted above.<sup>1</sup> Additionally, if you believe that you should be treated as a single entity along with other named exporters, please complete the chart, below, both in the aggregate for all named parties in your

<sup>1</sup> If you believe that another date besides the invoice date would provide a more accurate representation of your company's sales during the designated period, please provide a full explanation.

group and, in separate charts, individually for each named entity. Please label each chart accordingly. Please state whether you exported PRCBs to the United States during the POI.

If you did export PRCBs to the United States during the POI, please state whether you produced 100 percent of the PRCBs that you exported to the United States during the POI.

If you did produce 100 percent of the PRCBs that you exported to the United States during the POI, please provide the following:

Market: United States	Total Quantity (kg) (Net Weight)	Total Quantity Pieces (1,000 units)	Terms of Sale <sup>2</sup>	Total Value <sup>3</sup> (\$U.S.)
1. Export Price <sup>4</sup> . 2. Constructed Export Price <sup>5</sup> . 3. Further Manufactured <sup>6</sup> . Total.				

<sup>2</sup>To the extent possible, sales values should be reported based on the same terms (e.g., FOB).

<sup>3</sup>Values should be expressed in U.S. dollars. Indicate any exchange rates used and their respective dates and sources.

<sup>4</sup>Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States.

<sup>5</sup>Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation. Do not report the sale to the affiliated party in the United States, rather report the sale made by the affiliated party to the unaffiliated customer in the United States.

<sup>6</sup>"Further manufactured" refers to merchandise that undergoes further manufacture or assembly in the United States before sale to the first unaffiliated customer.

If you did not produce 100 percent of the PRCBs that you exported to the United States during the POI, please provide the following information:

- 1) Identify **each** company which produced the PRCBs (Company A) that you (Company B) exported to the United States;
- 2) Provide the physical address of **each** company which produced the

- PRCBs (Company A) that you (Company B) exported to the United States during the POI;
- 3) For **each** company (Company/ Companies A) which produced the PRCBs that you (Company B) exported, provide the quantity (in kg and pieces) and value of the PRCBs that you (Company B) exported to the United States during

- the POI;
- 4) Provide the quantity (in kg and pieces) and the value of the PRCBs that you (Company B) exported to the United States during the POI that was produced by your company (Company B);
- 5) Use the chart below to provide the information requested above:

Market: United States	Name of Company A	Country of Company A	Name of Company B	Quantity in Both (kg) (Net Weight) and Pieces (1,000 units) Produced By Company A and Exported by Company B	Quantity (kg) (Net Weight) and Pieces (1,000 units) Produced By Company B and Exported by Company B	Value of Quantity Produced By Company A and Exported by Company B	Value of Quantity Produced By Company B and Exported by Company B
Export Price. Constructed Export Price. Further Manufactured. Total.							

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-552-805]

**Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* April 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jun Jack Zhao or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-1396 and (202) 482-3586, respectively.

**SUPPLEMENTARY INFORMATION:****The Petition**

On March 31, 2009, the Department of Commerce (the Department) received a petition concerning imports of polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam) filed in proper form by Hilex Poly Co., LLC and Superbag Corporation (collectively, the petitioners), domestic producers of PRCBs. On April 6, 2009, the Department issued requests for additional information and clarification of certain areas of the Petition involving

countervailable subsidy allegations. *See* Letter from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, to the petitioners, "Petitions for the Imposition of Antidumping Duties on Polyethylene Retail Carrier Bags (PRCBs) from Indonesia, Taiwan, and Vietnam, and Countervailing Duties on Imports of PRCBs from Vietnam: Supplemental Questions on the Countervailing Duty Allegations, April 6, 2009." Based on the Department's request, the petitioners timely filed additional information concerning the Petition on April 8, 2009. The petitioners submitted a revised exhibit concerning domestic company shipments on April 10, 2009, and a revised list of all known Vietnamese producers and exporters of PRCBs that are believed to be benefitting from countervailable subsidies on April 16, 2009. During the consultations with the Government of Vietnam (GOV), *see* "Consultations" section below, the GOV presented a written statement and government publications in opposition of the countervailing duty Petition. On April 17, 2009, Bin Tay Import Export Production Services Joint Stock Company, Loc Cuong Trading Producing Co., Ltd., Ontrue Plastics Co., Ltd., (Vietnam) and Alta Company (collectively, Vietnamese producers) submitted comments on the level of industry support expressed in the Petition. On April 20, 2009, the petitioners submitted rebuttal comments to the GOV and Vietnamese producers concerning industry support. The GOV submitted additional government publications on April 16 and April 20, 2009.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that manufacturers, producers, or exporters of PRCBs in Vietnam received countervailable subsidies within the meaning of section 701 of the Act, and that imports materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioners filed this Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and the petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate (*see, infra*, "Determination of Industry Support for the Petition").

#### Period of Investigation

The anticipated period of investigation (POI) is calendar year 2008. *See* 19 CFR 351.204(b)(2).

#### Scope of the Investigation

The merchandise covered by this investigation is polyethylene retail carrier bags. *See* Attachment to this notice for a complete description of the merchandise covered by this investigation.

#### Comments on Scope of the Investigation

As discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

#### Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Vietnam (the GOV) for consultations with respect to the countervailing duty Petition. The Department held these consultations on April 15, 2009. *See* Memorandum to the File, *Petition on Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam): Consultations with the Government of Vietnam (GOV)*, April 16, 2009 (Consultations Memo), on file in the CRU.

#### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product,

the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by section 702(c)(4)(A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), *citing Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that PRCBs constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see Countervailing Duty Investigation Initiation Checklist: Countervailing Duty Petition on Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam (Initiation Checklist)*, at Attachment II (Analysis of Industry



Support for the Petition), on file in the CRU.

With regard to section 702(c)(4)(A) of the Act, in determining whether the petitioners have standing, (*i.e.*, those domestic workers and producers supporting the Petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition), we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation" section above. To establish industry support, the petitioners provided their shipments of the domestic like product for the year 2008, and compared them to an estimate of shipments of the domestic like product for the entire industry. *See* Volume II of the Petition at Exhibit 3, and Supplement to the Petition, dated April 10, 2009. The petitioners argue that U.S. shipments of PRCBs are a reasonable proxy for U.S. production of PRCBs as most PRCBs are produced to order for specific retail customers, and that inventories that are maintained are typically small. *See* Volume II of the Petition at Exhibit 3. Based on the fact that total industry production data for the domestic like product for 2008 are not reasonably available, and that the petitioners have established that shipments are a reasonable proxy for production, we have relied upon shipment data for purposes of measuring industry support. For further discussion, *see Initiation Checklist* at Attachment II.

On April 15, 2009, the GOV, an interested party to this proceeding as defined in section 771(9)(B) of the Act, provided the Department with a written statement to accompany its remarks during consultations with the Department regarding the Petition. The first issue raised in this statement addresses the GOV's concerns that the petitioners may not meet the required threshold for standing. The Department placed the GOV's written statement on the record of the Petition. *See Consultations Memo*. Also, on April 17, 2009, we received submissions on behalf of Vietnamese producers of PRCBs, interested parties to this proceeding as defined in section 771(9)(A) of the Act, questioning the industry support calculation. *See Initiation Checklist*, at Attachment II (Analysis of Industry Support for the Petition). On April 20, 2009, the petitioners filed their reply to these challenges. For further discussion of all

of these submissions *see Initiation Checklist* at Attachment II (Analysis of Industry Support for the Petition).

The Department's review of the data provided in the Petition, supplemental submissions, other information on the record, and other information readily available to the Department, indicates that the petitioners have established industry support. Because the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 702(c)(4)(D) of the Act and *Initiation Checklist* at Attachment II. Nonetheless, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See Initiation Checklist* at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Initiation Checklist* at Attachment II.

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. *See Initiation Checklist* at Attachment II.

#### Injury Test

Because Vietnam is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Vietnam materially injure, or threaten material injury to, a U.S. industry.

#### Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of PRCBs from Vietnam are benefitting from countervailable subsidies and that such imports are causing, or threatening to cause, material injury to the domestic industries producing PRCBs. In addition, the petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act, as required by section 701(a)(1) of the Act.

The petitioners contend that the industries' injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production, reduced shipments, reduced employment, and an overall decline in financial performance. *See* the Petition at pages 13 and 17. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment III (*Injury*).

#### Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act, and (2) is accompanied by information reasonably available to the petitioners supporting the allegations. The Department has examined the countervailing duty Petition on PRCBs from Vietnam and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether producers and exporters of PRCBs from Vietnam receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see Initiation Checklist*.

We are including in our investigation the following programs alleged in the Petition to provide countervailable subsidies to producers and exporters of the subject merchandise:

- A. Policy Lending Programs
  - 1. Preferential Lending for Exporters
  - 2. Preferential Lending for the Plastics Industry
- B. Grant Programs
  - 1. Export Promotion Program

- 2. Export Bonus Program
- 3. New Product Development Program
- C. Income Tax Programs
  - 1. Income Tax Preferences for Exporters
  - 2. Income Tax Preferences for Foreign Invested Enterprises (FIEs)
  - 3. Income Tax Preferences for FIEs Operating In Encouraged Industries
- D. Import Tax and Value Added Tax (VAT) Exemption Programs
  - 1. Import Tax Exemptions for FIEs Using Imported Goods to Create Fixed Assets
  - 2. Import Tax Exemptions for FIEs Importing Raw Materials
  - 3. VAT Exemptions for FIEs Using Imported Goods to Create Fixed Assets

For further information explaining why the Department is investigating these programs, see *Initiation Checklist*.

#### **Application of the Countervailing Duty Law to Vietnam**

This is the first countervailing duty Petition filed involving Vietnam. Vietnam has been treated as a non-market economy (NME) country in all past antidumping duty investigations and administrative reviews. See, e.g., Memorandum from Office of Policy, to Faryar Shirzad, Assistant Secretary, Import Administration, *Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam - Determination of Market Economy Status*, November 8, 2002 (this document is available online at <http://ia.ita.doc.gov/download/vietnam-nme-status/vietnam-market-status-determination.pdf>); see also *Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45738, 45739 (August, 6, 2008), unchanged in *Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 62479 (October 21, 2008). In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001-2002 Administrative Review and Partial Rescission of*

*Review*, 68 FR 70488 (December 18, 2003).

The petitioners contend that there is no statutory bar to applying countervailing duties to imports from non-market economy countries like Vietnam. Citing *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown Steel*), the petitioners argue that the Court of Appeals for the Federal Circuit affirmed the Department's discretion regarding application of the countervailing duty law to NME countries.

Following its assessment of another NME country, the People's Republic of China (China), the Department, in its final affirmative countervailing duty determination on coated free sheet paper from China, determined that the current nature of the Chinese economy does not create obstacles to applying the necessary criteria in the countervailing duty law. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from the Office of Policy, Import Administration, *Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Whether the Analytical Elements of the Georgetown Steel Holding are Applicable to the PRC's Present-day Economy*, March 29, 2007 (*Georgetown Memo*); *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying *Issues and Decision Memorandum at Comment 1*; see also *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying *Issues and Decision Memorandum at Comment 1*.

The petitioners argue that the Vietnamese economy, like China's economy, is substantially different from the Soviet-style economy investigated in *Georgetown Steel* and that the Department should not have any special difficulties in the identification and valuation of subsidies involving a non-market economy like Vietnam. Finally, the petitioners contend that Vietnam's economy significantly mirrors China's present-day economy and is at least as different from the Soviet-style economy at issue in *Georgetown Steel*, as China's economy was found to be in 2007. The petitioners also argue that Vietnam's accession to the World Trade Organization (WTO) allows the Department to apply countervailing duties on imports from that country. The WTO Subsidies and Countervailing

Measures Agreement (SCM Agreement), similar to U.S. law, permits the imposition of countervailing duties on subsidized imports from member countries and nowhere exempts non-market economy imports from being subject to the provisions of the SCM Agreement. As Vietnam agreed to the SCM Agreement and other WTO provisions on the use of subsidies, the petitioners argue Vietnam should be subject to the same disciplines as all other WTO members.

#### **Request for Public Comment on the Application of the Countervailing Duty Law to Imports From Vietnam**

Because the petitioners have provided sufficient information to support their allegations, meeting the statutory criteria for initiating a countervailing duty investigation of PRCBs from Vietnam, initiation of a countervailing duty investigation is warranted in this case. However, the Department intends to determine whether the countervailing duty law should be applied to imports from Vietnam. Given the complex legal and policy issues involved, the Department, therefore, invites public comment on this matter.

Any person wishing to comment should file a signed original and eight copies of each set of comments which must be submitted no later than thirty days after publication of this Notice. Comments should be limited to thirty pages, double spaced. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice of request for public comment will be a matter of public record and will be available for public inspection and copying at Import Administration's CRU. The Department requires that comments be submitted in written form, but also recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: <http://ia.ita.doc.gov/>. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import

Administration Webmaster, at (202) 482-0866, e-mail address: [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

All comments and submissions should be submitted to Barbara E. Tillman, Director, AD/CVD Operations, Office 6; Subject: Application of the Countervailing Duty Law to Imports from the Socialist Republic of Vietnam: Request for Comment; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

#### Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under Harmonized Tariff Schedule of the United States (HTSUS) number 3923.21.0085 during the POI (*i.e.*, calendar year 2008). We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public versions of the Petition and amendments thereto have been provided to the GOV. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, by no later than May 15, 2009, whether there is a reasonable indication that imports of subsidized PRCBs from Vietnam materially injure, or threaten material injury to, a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the

investigation being terminated; *see* section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 20, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

#### ATTACHMENT

##### Scope of the Investigation

The merchandise subject to this investigation is polyethylene retail carrier bags (PRCBs), which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, *grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products.* The scope of this investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, *garbage bags, lawn bags, trash-can liners.*

Imports of merchandise included within the scope of this investigation are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. E9-9565 Filed 4-24-09; 8:45 am]

**BILLING CODE 3510-DS-S**



**APPENDIX B**

**CALENDAR OF THE COMMISSION'S APRIL 21, 2009 CONFERENCE**



**CALENDAR OF PUBLIC CONFERENCE**

Those listed below appeared as witnesses at the United States International Trade Commission’s conference:

**Subject:** Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam  
**Inv. Nos.:** 701-TA-462 and 731-TA-1156-1158 (Preliminary)  
**Date and Time:** April 21, 2009 - 9:30 a.m.

The conference in connection with these investigations was held in Courtroom A, 500 E Street, SW, Washington, DC.

**OPENING REMARKS:**

Petitioners

Joseph W. Dorn, King & Spalding LLP

Respondents

William E. Perry, Garvey Schubert Barer

**In Support of the Imposition of Antidumping and Countervailing Duties:**

King & Spalding LLP  
Washington, DC  
on behalf of

Hilex Poly Co., LLC  
Superbag Corporation

**Isaac Bazbaz**, Director, Superbag Corporation  
**Mark Daniels**, Vice President of Marketing & Environmental Affairs,  
Hilex Poly Co., LLC  
**Anthony Rizzo**, Vice President - Sales, Hilex Poly Co., LLC  
**Albert Halimi**, Chief Operating Officer, Command Packaging

**Joseph W. Dorn**, Esq.     )  
**Stephen J. Narkin**, Esq.   ) – OF COUNSEL

*Continued on the following page.*

**In Opposition to the Imposition of Antidumping and Countervailing Duties:**

Garvey Schubert Barer  
Washington, DC  
on behalf of

Ampac Packaging Vietnam Ltd.  
Ampac Plastics LLC  
The Cannon Group, Inc.  
Chung Va (Vietnam) Plastic Packaging Co., Ltd.  
Elkay Plastics Co., Inc.  
Glopack, Inc.  
Glopack Packaging PT  
Industrias Chung Va (Holdings) Limitada  
MHI Inc.  
Packaging Concepts International  
PT Super Exim Sari  
PT Super Makmur

**Faye Lin**, Marketing Executive, PT Super Exim Sari  
**Steven Gitlin**, Sales Manager, Glopack, Inc.

**Lizabeth R. Levinson**, Esq. )  
**William E. Perry**, Esq. ) – OF COUNSEL  
**Ronald M. Wisla**, Esq. )

**REBUTTAL/CLOSING REMARKS:**

Petitioners

Joseph W. Dorn, King & Spalding LLP

Respondents

Lizabeth R. Levinson, Garvey Schubert Barer



**APPENDIX C**  
**SUMMARY DATA**



**Table C-1**  
**PRCBs: Summary data concerning the U.S. market, 2006-2008**

(Quantity=1,000 bags, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per 1,000 bags;  
period changes=percent, except where noted)

Item	Reported data			Period changes		
	2006	2007	2008	2006-2008	2006-2007	2007-2008
<b>U.S. consumption quantity:</b>						
Amount . . . . .	109,830,627	106,197,917	102,105,637	-7.0	-3.3	-3.9
Producers' share (1) . . . . .	62.2	66.5	64.4	2.2	4.3	-2.2
Importers' share (1):						
Indonesia . . . . .	1.5	3.2	2.8	1.3	1.7	-0.4
Taiwan . . . . .	2.0	3.8	4.5	2.5	1.8	0.7
Vietnam . . . . .	2.8	6.9	7.0	4.3	4.1	0.2
Subtotal . . . . .	6.2	13.8	14.3	8.1	7.6	0.5
China, Malaysia and Thailand:	26.5	15.2	18.4	-8.0	-11.3	3.3
All other sources . . . . .	5.1	4.5	2.9	-2.2	-0.6	-1.6
Total imports . . . . .	37.8	33.5	35.6	-2.2	-4.3	2.2
<b>U.S. consumption value:</b>						
Amount . . . . .	1,319,044	1,404,474	1,501,709	13.8	6.5	6.9
Producers' share (1) . . . . .	74.5	66.8	66.4	-8.1	-7.7	-0.4
Importers' share (1):						
Indonesia . . . . .	1.9	3.3	2.7	0.8	1.3	-0.5
Taiwan . . . . .	1.5	3.0	3.8	2.3	1.5	0.8
Vietnam . . . . .	1.5	5.3	5.9	4.4	3.8	0.6
Subtotal . . . . .	4.9	11.5	12.4	7.5	6.6	0.9
China, Malaysia and Thailand:	16.7	16.2	17.0	0.3	-0.4	0.8
All other sources . . . . .	3.9	5.5	4.2	0.3	1.5	-1.2
Total imports . . . . .	25.5	33.2	33.6	8.1	7.7	0.4
<b>U.S. imports from:</b>						
Indonesia:						
Quantity . . . . .	1,592,965	3,396,505	2,819,569	77.0	113.2	-17.0
Value . . . . .	25,400	45,808	40,948	61.2	80.3	-10.6
Unit value . . . . .	\$15.95	\$13.49	\$14.52	-8.9	-15.4	7.7
Ending inventory quantity . . . . .	***	***	***	***	***	***
Taiwan:						
Quantity . . . . .	2,171,587	3,988,867	4,575,499	110.7	83.7	14.7
Value . . . . .	19,454	42,318	56,848	192.2	117.5	34.3
Unit value . . . . .	\$8.96	\$10.61	\$12.42	38.7	18.4	17.1
Ending inventory quantity . . . . .	425,033	504,626	614,971	44.7	18.7	21.9
Vietnam:						
Quantity . . . . .	3,061,998	7,288,037	7,192,325	134.9	138.0	-1.3
Value . . . . .	19,734	73,757	88,189	346.9	273.8	19.6
Unit value . . . . .	\$6.44	\$10.12	\$12.26	90.3	57.0	21.2
Ending inventory quantity . . . . .	41,650	429,890	745,066	1688.9	932.1	73.3
Subtotal:						
Quantity . . . . .	6,826,550	14,673,409	14,587,393	113.7	114.9	-0.6
Value . . . . .	64,588	161,884	185,986	188.0	150.6	14.9
Unit value . . . . .	\$9.46	\$11.03	\$12.75	34.8	16.6	15.6
Ending inventory quantity . . . . .	***	***	***	***	***	***
China, Malaysia and Thailand:						
Quantity . . . . .	29,079,228	16,114,332	18,833,894	-35.2	-44.6	16.9
Value . . . . .	219,763	228,082	255,232	16.1	3.8	11.9
Unit value . . . . .	\$7.56	\$14.15	\$13.55	79.3	87.3	-4.3
Ending inventory quantity . . . . .	(2)	(2)	(2)	(2)	(2)	(2)
All other sources:						
Quantity . . . . .	5,575,003	4,748,210	2,942,934	-47.2	-14.8	-38.0
Value . . . . .	51,774	76,586	63,180	22.0	47.9	-17.5
Unit value . . . . .	\$9.29	\$16.13	\$21.47	131.2	73.7	33.1
Ending inventory quantity . . . . .	***	***	***	***	***	***
All sources:						
Quantity . . . . .	41,480,781	35,535,951	36,364,221	-12.3	-14.3	2.3
Value . . . . .	336,125	466,552	504,398	50.1	38.8	8.1
Unit value . . . . .	\$8.10	\$13.13	\$13.87	71.2	62.0	5.6
Ending inventory quantity . . . . .	1,502,817	2,877,031	3,324,231	121.2	91.4	15.5

Table continued on following page.

**Table C-1--Continued**  
**PRCBs: Summary data concerning the U.S. market, 2006-2008**

(Quantity=1,000 bags, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per 1,000 bags;  
period changes=percent, except where noted)

Item	Reported data			Period changes		
	2006	2007	2008	2006-2008	2006-2007	2007-2008
U.S. producers:						
Average capacity quantity . . . . .	84,338,496	84,788,204	81,372,448	-3.5	0.5	-4.0
Production quantity . . . . .	71,574,007	73,259,361	67,090,935	-6.3	2.4	-8.4
Capacity utilization (1) . . . . .	84.9	86.4	82.4	-2.4	1.5	-4.0
U.S. shipments:						
Quantity . . . . .	68,349,846	70,661,966	65,741,416	-3.8	3.4	-7.0
Value . . . . .	982,919	937,922	997,311	1.5	-4.6	6.3
Unit value . . . . .	\$14.38	\$13.27	\$15.17	5.5	-7.7	14.3
Export shipments:						
Quantity . . . . .	2,204,285	2,367,291	2,204,742	0.0	7.4	-6.9
Value . . . . .	37,913	38,829	36,188	-4.5	2.4	-6.8
Unit value . . . . .	\$17.20	\$16.40	\$16.41	-4.6	-4.6	0.1
Ending inventory quantity . . . . .	3,820,279	4,042,763	3,187,540	-16.6	5.8	-21.2
Inventories/total shipments (1) . . . . .	5.4	5.5	4.7	-0.7	0.1	-0.8
Production workers . . . . .	3,348	3,213	3,030	-9.5	-4.0	-5.7
Hours worked (1,000s) . . . . .	7,536	7,328	7,140	-5.3	-2.8	-2.6
Wages paid (\$1,000s) . . . . .	102,313	108,425	108,566	6.1	6.0	0.1
Hourly wages . . . . .	\$13.58	\$14.80	\$15.21	12.0	9.0	2.8
Productivity (bags/hour) . . . . .	9,498	9,998	9,397	-1.1	5.3	-6.0
Unit labor costs . . . . .	\$1.43	\$1.48	\$1.62	13.2	3.5	9.3
Net sales:						
Quantity . . . . .	70,282,963	73,816,808	67,625,342	-3.8	5.0	-8.4
Value . . . . .	1,016,647	981,429	1,028,098	1.1	-3.5	4.8
Unit value . . . . .	\$14.47	\$13.30	\$15.20	5.1	-8.1	14.3
Cost of goods sold (COGS) . . . . .	917,833	887,523	949,599	3.5	-3.3	7.0
Gross profit or (loss) . . . . .	98,814	93,906	78,499	-20.6	-5.0	-16.4
SG&A expenses . . . . .	93,910	89,053	116,047	23.6	-5.2	30.3
Operating income or (loss) . . . . .	4,904	4,853	(37,548)	(3)	-1.0	(3)
Capital expenditures . . . . .	38,820	17,186	15,268	-60.7	-55.7	-11.2
Unit COGS . . . . .	\$13.06	\$12.02	\$14.04	7.5	-7.9	16.8
Unit SG&A expenses . . . . .	\$1.34	\$1.21	\$1.72	28.4	-9.7	42.2
Unit operating income or (loss) . . . . .	\$0.07	\$0.07	(\$0.56)	(3)	-5.8	(3)
COGS/sales (1) . . . . .	90.3	90.4	92.4	2.1	0.2	1.9
Operating income or (loss)/ sales (1) . . . . .	0.5	0.5	-3.7	-4.1	0.0	-4.1

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not available. Included in "all other" category.

(3) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from official trade statistics of the U.S. Department of Commerce and from data submitted in response to Commission questionnaire

**APPENDIX D**

**NONSUBJECT-COUNTRY QUARTERLY PRICE DATA**



**Table D-1**

**PRCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 from nonsubject countries, and margins of (overselling)/underselling, by quarters, January 2006-December 2008**

\* \* \* \* \*

**Table D-2**

**PRCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 from nonsubject countries, and margins of (overselling)/underselling, by quarters, January 2006-December 2008**

\* \* \* \* \*

**Table D-3**

**PRCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 from nonsubject countries, and margins of (overselling)/underselling, by quarters, January 2006-December 2008**

\* \* \* \* \*

**Table D-4**

**PRCBs: Weighted-average f.o.b. prices and quantities of domestic and imported product 4 from nonsubject countries, and margins of (overselling)/underselling, by quarters, January 2006-December 2008**

\* \* \* \* \*





**APPENDIX E**

**ALLEGED EFFECTS OF SUBJECT IMPORTS ON  
PRODUCERS' EXISTING DEVELOPMENT AND  
PRODUCTION EFFORTS, GROWTH, INVESTMENT,  
AND ABILITY TO RAISE CAPITAL**



Presented below are the responses of U.S. producers to the following question: Since January 1, 2006, has your firm experienced any actual negative effects on its return on investment or its 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 PRCBs from Indonesia, Taiwan, and/or Vietnam?

\*\*\*

“Yes. The cancellation, postponement, or rejection of expansion projects. Other—extreme pressure on prices and inability to raise credit line amount.”

\*\*\*

“Yes. The cancellation, postponement, or rejection of expansion projects; denial or rejection of investment proposal; a reduction in the size of capital investments. Other—price erosion, lower profits, and reduced growth.”

\*\*\*

“Yes. Cancellation, postponement, or rejection of expansion projects; the denial or rejection of investment proposal; reduction in the size of capital investments.”

\*\*\*

“No.”

\*\*\*

“Yes. Other—impaired growth/loss of margin/reduced income and ROIC.”

\*\*\*

“Yes. The cancellation or rejection of expansion projects; denial or rejection of investment proposals; and reduction in the size of capital investments. Other—The plant was originally set up \*\*\* to supply PRCBs. As a result of the surge in imports of PRCBs from Asia which started in the mid 1990s, we have switched capacity as far as possible to industrial products. It is not possible to convert some 40% - 50% of capacity from PRCBs since the equipment on which it is made is specialized. The flood of imported PRCBs from Asia was stemmed after the anti-dumping action versus China but the PRCBs are now reappearing from neighboring countries.”

\*\*\*

“Yes. Other—other parts of \*\*\* have performed better than the US PRCB production division. As such, most capital investment has been diverted to the higher growth divisions.”

\*\*\*

“No.”

\*\*\*

“Yes. A reduction in the size of capital investments. Other—suffered lost sales, price compression, and a sharp decline in profits specifically due to imports from Vietnam, Taiwan, and Indonesia. These imports also forced \*\*\*.”

\*\*\*

“No.”

\*\*\*

“Yes. Cancellation, postponement or rejection of expansion projects; reduction in the size of capital investment.”

\*\*\*

“No.”

\*\*\*

“No.”

\*\*\*

“Yes. The cancellation, postponement, or rejection of expansion projects; denial or rejection of investment proposal; reduction in the size of capital investments. Other—As previously indicated, imports from Indonesia, Taiwan, and Vietnam have grabbed market share from domestic producers. To compete with these dumped imports, U.S. producers have had to drop prices substantially, yet we have still lost a large volume of sales. Consequently, U.S. producers have run at lower capacity utilization rates which has increased unit costs. The combination of lower prices and higher unit costs has caused profits to decrease. Certain of these lost sales have been especially damaging. For example, we lost business at \*\*\* beginning at the end of the 2<sup>nd</sup> quarter of 2008 and the beginning of the 3<sup>rd</sup> quarter. This resulted in a drop in production \*\*\*, and we were, therefore, forced to lay off workers. Our payroll records show that the number of employees dropped significantly in late May and early June with a continual decline through mid-September with approximately \*\*\* employees being laid off.”

Presented below are the responses of U.S. producers to the following question: Does your firm anticipate any negative impact of imports of PRCBs from China, Malaysia, or Thailand?

\*\*\*

“No.”

\*\*\*

“Yes. If unfair trading of imports from Vietnam, Taiwan, and Indonesia were to continue, \*\*\* will suffer more lost sales, its prices will remain under severe pressure, and our profitability will continue to deteriorate. Under such circumstances, \*\*\* may well be forced to close \*\*\* facilities.”

\*\*\*

“Yes. Price erosion, loss of business, lower profits, reduced growth, reduction of U.S.A. employee base, cancellation of expansion projects, reduction in the size of manufacturing facility or possible plant closure.”

\*\*\*

“Yes. Due to antidumping duties imposed on China and others, the factories had moved to these countries and make cheap bags to compete in the United States. They also manage to tranship from China to these nations to export to the United States.”

\*\*\*

“Yes. Continued pricing pressures and loss of customers to lower priced imports from these areas. Limits our ability to grow the business and long-term planning. Results in the loss of American manufacturing jobs.”

\*\*\*

“None.”

\*\*\*

“No.”

\*\*\*

“Yes. Revenue loss/margin erosion/reduced income/inability to grow.”

\*\*\*

“Yes. Imports from Indonesia, Taiwan, and Vietnam are priced so low that if dumping of these products continues unabated we simply will not be able to stay in this business.”

\*\*\*

“No.”

\*\*\*

“No. Our firm does not anticipate any negative impact of imports of PRCBs from Indonesia, Taiwan, and/or Vietnam. We actually anticipate positive impacts from imports. In the past, imports of PRCBs from China had a negative impact in the U.S. market due to unfair competition. At the time, the selling price was lower than variable cost (PE resin plus conversion plus ocean freight plus inland freight), and \*\*\*. These same issues are not present for imports from Taiwan and Vietnam. We \*\*\* and fulfill customer demand. Furthermore, imports help \*\*\* in fulfilling customers’ contracts in almost all of the special design carry out bags such as soft loop handle, patched handle, rigid handle round die cut handle, rope handle, square bottom, etc., as well as bags with complicated printing (more than 4 color print) and process print for which U.S. producers cannot meet demand. Therefore, \*\*\* Taiwan and Vietnam. However, \*\*\*.”

\*\*\*

“Yes.”

\*\*\*

“Yes. If unfair trade is not stopped by this case, we will certainly suffer even more price erosion and lost sales due to growth of imports from these countries. This will also reduce investment and employment at \*\*\*.”

\*\*\*

“Yes. An even greater reduction in margins, lost sales, inability to pass cost of raw material increases, reduction in production including shutting down lines and/or shutting down equipment with substantial layoffs.”

**APPENDIX F**

**U.S. IMPORTERS' COMMENTS REGARDING THE IMPORTATION OF  
PCBs AFTER DECEMBER 31, 2008**





**U.S. IMPORTERS' COMMENTS REGARDING THE IMPORTATION OF PRCBs AFTER  
DECEMBER 31, 2008**

The Commission requested producers to provide information on whether they had imported or arranged for the importation of PRCBs from Indonesia, Taiwan, and/or Vietnam for delivery after December 31, 2008 (Question II-3). Their responses are found below. In some instances, responses have been excerpted or summarized.

\*\*\*:

“We will have one container of PRCB from Vietnam by April 20. The quantity will be around \*\*\*.”  
(\*\*\*)

\*\*\*:

“We have budgeted for an annual total of approximately \*\*\* bags in 2009 from our sister plant in \*\*\*.”

\*\*\*:

Imported or arranged to import \*\*\* bags from Vietnam from January-April, 2009.

\*\*\*:

Currently purchases 4 containers of PRCBs per month from an importer from Vietnam.

\*\*\*:

Has already had \*\*\* bags delivered from Taiwan with an additional \*\*\* bags to be delivered from Taiwan in June 2009. Plans to have \*\*\* bags from Vietnam delivered in May 2009 and \*\*\* bags from Vietnam to be delivered in June 2009.

\*\*\*:

Through June 1<sup>st</sup>, 2009, imported or arranged to import \*\*\* bags from Indonesia.

\*\*\*:

Imported \*\*\* bags valued at \*\*\* dollars from Vietnam in February 2009.

\*\*\*:

Through August 2009, imported or arranged to import \*\*\* bags from Indonesia.  
Through February 2009, imported \*\*\* bags from Vietnam.

\*\*\*:

Through April 2009, arranged to import \*\*\* bags from Taiwan.

\*\*\*:

Through April 2009, received \*\*\* bags from Taiwan and \*\*\* bags from Vietnam. Through April 2009, ordered but not have yet received \*\*\* bags from Taiwan and \*\*\* bags from Vietnam.

\*\*\*:

Through May, imported or arranged to import \*\*\* bags from Indonesia.

\*\*\*:

Through March, imported \*\*\* bags from Vietnam.

\*\*\*:

Imported \*\*\* bags from Taiwan in January 2009.

\*\*\*:

“About \*\*\* 40' containers from Indonesia through August, 2009.”

\*\*\*:

Through June 2009, imported or arranged to import approximately \*\*\* bags from Vietnam.

\*\*\*:

Through May 2009, imported or arranged to import \*\*\* bags from Indonesia.

\*\*\*:

Through June 2009, imported or arranged to import \*\*\* bags from Indonesia.

\*\*\*:

Through March, imported approximately \*\*\* bags from Vietnam.

\*\*\*:

Through March, imported \*\*\* bags from Vietnam.

\*\*\*:

Through March 2009, imports of \*\*\* bags from Indonesia.

Through March 2009, imports of \*\*\* bags from Taiwan.

Through March 2009, imports of \*\*\* bags from Vietnam.

Plans to import through July 2009, imports of \*\*\* bags from Taiwan.

Plans to import through May 2009, imports of \*\*\* bags from Vietnam.

\*\*\*:

Through June 2009, order of \*\*\* “case of product” from Vietnam.

\*\*\*:

\$\*\*\* worth of outstanding orders from Vietnam “all to them to be delivered within the next 4 months.”

\*\*\*:

\*\*\* bags imported from Taiwan in January 2009.

\*\*\*:

Through May 31, 2009, \*\*\* cases from Taiwan and \*\*\* cases from Vietnam.

\*\*\*:

Through September 2009, \*\*\* bags to be delivered from Taiwan.

