Melamine Institutional Dinnerware from China, Indonesia, and Taiwan

Investigations Nos. 731-TA-741-743 (Preliminary)

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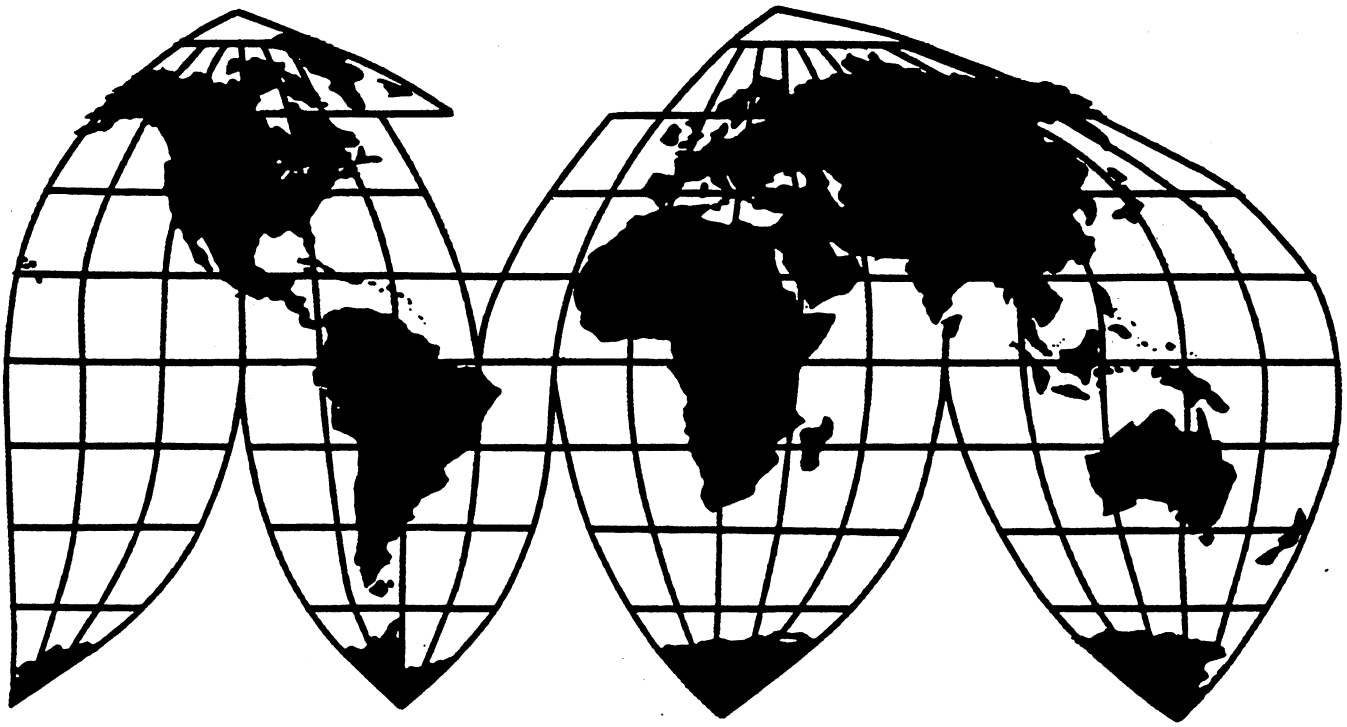
U.S. International Trade Commission



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CONTENTS

Appendixes

Figures

CONTENTS

CONTENTS

Page

Tables--Continued

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

Investigations Nos. 731-TA-741-743 (Preliminary)

MELAMINE INSTITUTIONAL DINNERWARE FROM CHINA, INDONESIA, AND TAIWAN

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China, Indonesia, and Taiwan of melamine institutional dinnerware, provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On February 6, 1996, a petition was filed with the Commission and the Department of Commerce by the American Melamine Institutional Tableware Association (AMITA) (consisting of Continental/SiLite International Co., Oklahoma City, OK; Lexington United Corp (National Plastics Corp.), Port Gibson, MS; and Plastics Manufacturing Co. (Sun Coast Industries, Inc.), Dallas, TX, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of melamine institutional dinnerware from China, Indonesia, and Taiwan. Accordingly, effective February 6, 1996, the Commission instituted antidumping investigations Nos. 731-TA-741-743 (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 February 14, 1996 (61 FR 5801). The conference was held in Washington, DC, on February 27, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in these preliminary investigations, we find that there is a reasonable indication that an industry in the United States is threatened with material injury[1] by reason of imports of melamine institutional dinnerware from China, Indonesia, and Taiwan that are alleged to be sold in the United States at less than fair value ("LTFV").[2] [3]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping investigations 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, by reason of the allegedly LTFV imports.[4] 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."[5]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Background and Product Description

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."[6] Section 771(4)(A) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic

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[1]Commissioner Crawford finds that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly LTFV imports of melamine institutional dinnerware from China, Indonesia and Taiwan. She joins in only the like product and industry, condition of the industry, and cumulation portions of these views. See Additional Views of Commissioner Carol T. Crawford.

[2]19 U.S.C. § 1671 et seq., as amended. Whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

[3]Vice Chairman Nuzum also finds that the record demonstrates "a reasonable indication" that the U.S. melamine institutional dinnerware industry is materially injured by reason of the subject imports. The evidence at this stage of the investigation more strongly supports, however, a preliminary affirmative determination based on threat, and therefore she joins her colleagues in these views.

[4]19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F.Supp. 377, 381 (Ct. Int'l Trade 1992).

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

[6]19 U.S.C. § 1677(4)(A).

production of the product."[7] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . ."[8]

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[9] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[10] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[11]

In its notice of initiation, the Department of Commerce has defined the imported article subject to these investigations as:

> all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (HTSUS).[12]

Melamine is a thermoset plastic distinguished from other plastics used in dinnerware by its break resistance and by a hard surface that resists stains and scratches.[13] Melamine dinnerware is made from melamine, formaldehyde, and cellulose, together with coloring compounds, fillers and adhesives. The chemical melamine (produced from urea under heat and pressure) is reacted with formaldehyde to produce melamine-formaldehyde resin.[14] Melamine dinnerware producers combine this resin with the

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[7]19 U.S.C. § 1677(4)(A).

[8]19 U.S.C. § 1677(10).

[9]See, e.g., Nippon Steel Corp. v. United States, 19 CIT __, Slip Op. 95-57 at 11 (Apr. 3. 1995). In analyzing domestic like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Timken Co. v. United States, 20 CIT __, Slip Op. 96-8 at 9 (Jan. 3, 1996).

[10]See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[11]Torrington Co. v. United States, 747 F. Supp. 744, 748-749 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

[12]Initiation of Antidumping Duty Investigation: Melamine Institutional Dinnerware Products from Indonesia, Taiwan and the People's Republic of China, 61 Fed. Reg. 8039 (March 1, 1996).

[13]Petition at 4; Transcript of Commission Staff Conference (February 27, 1996) at 14-15 ("Conf. Tr."); Confidential Report ("CR") at I-4-I-5, Public Report ("PR") at I-4.

[14]Ex Parte Meeting Notes of February 23, 1996 at 2; CR at I-6, PR at I-5. Only one domestic producer, petitioner Plastics Manufacturing Company (SunCoast Industries, Inc.) ("SunCoast"), is vertically integrated and produces its own melamine resin. The other domestic producers purchase melamine resin, some (continued...)

other ingredients to form a "biscuit" of the proper weight for a particular dinnerware product. The biscuit is heated, placed in a mold of the desired shape and size, and the mold held in a press for between 45 seconds and one minute. The dinnerware item is then removed from the mold for polishing and finishing.[15]

B. Whether the Domestic Like Product Includes Non-Institutional Dinnerware

Petitioner, the American Melamine Institutional Tableware Association ("AMITA"),[16] argues that the like product in these investigations is melamine institutional dinnerware, that is, melamine dinnerware designed and used in institutional and commercial settings like restaurants, schools, health care facilities, and government cafeterias. Petitioner contends that melamine institutional dinnerware can be distinguished from all other forms of melamine dinnerware by its greater weight and thickness, which is necessary for the dinnerware to perform in high-volume, high-wear commercial and institutional settings.[17] Respondents do not agree that melamine institutional dinnerware can always be distinguished from other melamine dinnerware based on weight or thickness, but agree that the like product should be limited to melamine dinnerware for institutional use.[18]

1. The Scope of Investigation

While the Commission must accept Commerce's determination as to which imported articles are within the class of merchandise alleged to be sold at LTFV, the Commission determines which domestic products are "like" the ones in the class or classes defined by Commerce. The Commission may define the domestically-produced like product more broadly than the class of articles described by Commerce, if the facts so warrant.[19] The Commission must, however, define the domestic product or products that are

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[14](...continued)
of it from SunCoast. Ex Parte Meeting Notes of February 23, 1996 at 2; CR at II-4, PR at II-2.

[15]Petition at 3, 5-7; Conf. Tr. at 13-14; CR at I-6-I-7, PR at I-5.

[16]Petitioner AMITA has three member companies: Continental/SiLite International Co. ("Continental/SiLite"), National Plastics Corp. ("NPC"), and SunCoast.

[17]Petitioner also contends that melamine institutional dinnerware is sold through different channels of distribution than other forms of melamine dinnerware, is perceived by producers and consumers as a separate product from other melamine dinnerware, sells at a higher price, and is made through the same production process but with segregated presses and different molds. Petitioner's Postconference Brief at 5-9; Conf. Tr. at 13, 31-33, 42, 48, 49-57.

[18]Respondents argue that other kinds of melamine dinnerware have different physical appearances, different end uses, are not substitutable for melamine institutional dinnerware, are sold through different channels of trade, are not perceived as substitutable with institutional dinnerware by the relevant consumers, and are priced in a different range. Respondents' Postconference Brief at 3-6. Respondents originally argued for a like product including all melamine dinnerware, but changed their position in the course of the investigations. Conf. Tr. at 107.

[19]See, e.g., Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom, Inv. No. 731-TA-738 (Preliminary), USITC Pub. 2930 at 5-6 (Oct. 1995).

like, or most similar in characteristics and uses with, all of the imported products included by Commerce within the scope of these investigations.[20]

In these investigations, there is some ambiguity with respect to the kinds of melamine dinnerware which fall within the scope established by Commerce. Petitioner maintains that Commerce's scope description, which defines the subject merchandise as all melamine dinnerware 0.08 inch or more in thickness, includes all institutional dinnerware and excludes all other melamine dinnerware.[21] Respondents argue that the scope, as presently defined, may also include at least some melamine dinnerware destined for retail markets ("retailware"). These retail products include melamine dinnerware produced with Asian shapes and designs ("asianware") and generally used in Asian restaurants and households, dinnerware designed for children and decorated with cartoon characters and other youthful patterns ("childrensware"), and dinnerware decorated in fashion colors and designs for household use ("household dinnerware").[22] However, information submitted by respondents also indicated that, in general, the 0.08 inch thickness distinction excludes non-institutional products.[23] All parties agree that retailware should be excluded from the scope of these investigations.[24]

While there is some dispute as to how the thickness of melamine dinnerware should be measured, for purposes of these preliminary investigations we conclude, based on the uniform testimony of all of petitioner's witnesses as well as the information provided by ***, that the scope of these investigations is limited to melamine institutional dinnerware, excluding all retailware.[25]

2. Like Product Factors

Based upon our conclusion, for purposes of these preliminary investigations, that the apparent scope of the investigations as initiated by Commerce is limited to melamine institutional dinnerware, we next consider whether the like product should be defined more broadly than Commerce's scope to include some or all melamine retailware.

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[20]See Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 and 731-TA-707-710 (Preliminary), USITC Pub. 2801 at I-10-I-11 & n.42 (Aug. 1994).

[21]Conf. Tr. at 42, 50-51, 52-53, 119.

[22]Conf. Tr. at 75, 91, 92-93, 108-109, 124-125, 127. The ambiguity arises from a disagreement as to the proper methodology for measuring the thickness of dinnerware. CR at I-4 n.5, PR at I-4 n.5; Conf. Tr. at 91-93, 119, 124-125; Petitioner's Postconference Brief at 10 and Exhibit 1, ¶8.

[23]Ex Parte Meeting Notes of February 23, 1996 at 2 (***).

[24]Petition at 5; Respondents' Postconference Brief at 3-6.

[25]As noted above, we have no authority to establish the scope of the subject product in these investigations. Our function is to define the domestic product that is "like" the subject imports and thereby define the domestic industry. In these investigations, there is some ambiguity with respect to the kinds of melamine dinnerware which fall within the scope established by Commerce. Thus, we must rely upon the evidence in our record to interpret Commerce's scope definition until such time as Commerce addresses the issues regarding its scope determination and can clarify that definition. We hope that Commerce will indicate, in its preliminary determinations in these investigations, (1) whether and to what extent retailware falls within the scope of investigation, and (2) if the scope is based on thickness, the methodology it employs for determining the thickness of melamine dinnerware.

a. Physical Characteristics and Uses

All melamine dinnerware products consist of plates, cups, bowls, platters and the like and are used in the preparation, consumption and service of food. Melamine institutional dinnerware products are produced in plain solid colors or simple designs.[26] They are designed to withstand frequent use and handling in commercial and institutional settings and are therefore generally thicker and heavier than other melamine dinnerware products.[27] Some, but not all, melamine institutional dinnerware is certified by the National Sanitation Foundation, which rates institutional dinnerware for design, cleanability and other factors set forth in standard "NSF-36."[28]

Household melamine dinnerware is a "fashion" tableware item, produced in decorative colors and styles that change annually in anticipation of consumer tastes.[29] Petitioner has indicated that all the household melamine dinnerware produced by its members is less than 0.08 inch thick, most of it under 0.07 inch.[30] Household melamine dinnerware is not considered for NSF-36 certification.[31]

Childrensware is melamine dinnerware decorated with cartoon characters or other patterns designed to appeal to children and may be specially sized and shaped to be easy for small children to handle.[32] Petitioner has indicated that childrensware produced by its members is all less than 0.08 inch thick and is generally even thinner than other household dinnerware.[33] Childrensware is not considered for NSF-36 certification.[34]

Based on the record in these preliminary investigations, it is not clear whether melamine institutional dinnerware can be clearly distinguished from other melamine dinnerware based on its physical characteristics, such as weight or thickness. While, in general, melamine institutional dinnerware is heavier and more durable than retailware, there is some dispute whether 0.08 inch constitutes a clear dividing line. There are, however, differences in appearance (shape, color, pattern)

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[26]Petition at Exhibits 1, 2, and 3 (product catalogs); CR at I-5, PR at I-4; Conf. Tr. at 31-32. About 80-90 percent of melamine institutional dinnerware is undecorated (i.e. solid colors). Conf. Tr. at 117-118. Some institutional dinnerware is decorated with proprietary designs for particular restaurant chains. CR at I-5, PR at I-4.

[27]CR at I-4-I-5, PR at I-4; Conf. Tr. at 13, 14-15, 31-32, 54-55.

[28]CR at II-4, PR at II-2-II-3; Conf. Tr. at 51-52; Respondents' Postconference Brief at Exhibit 4.

[29]Conf. Tr. at 31-32, 49-50.

[30]Conf. Tr. at 50-51; Petition at 5 n.5; Petitioner's Postconference Brief at 5-6.

[31]Conf. Tr. at 51.

[32]Conf. Tr. at 52-53, 94, 100; Respondents' Postconference Brief at 4.

[33]Conf. Tr. at 53. If the scope in any final investigations includes childrensware, we will need to determine what domestic product is "like" imported childrensware. Respondents' childrensware may be more than 0.08 inch thick. Conf. Tr. at 91-93. Thus, the domestic product most like the imported childrensware might be either institutional dinnerware, based on similar thickness, or childrensware, based on similar decoration.

[34]Conf. Tr. at 51.

between institutional and other melamine dinnerware, and these differences can be seen in the samples provided to the Commission.[35] [36]

b. Interchangeability

In general, retailware is not and cannot be used interchangeably with melamine institutional dinnerware in commercial and institutional settings, because it lacks the weight and thickness that make it durable in such uses.[37] Moreover, end users that require NSF-36 certification (including many health care facilities and schools) cannot purchase uncertified retailware.[38] Although melamine institutional dinnerware could be used in households and other settings that employ retailware (except to the extent that those users require specially designed shapes like rice bowls or toddler cups), purchasers tend to make their buying decisions based on design factors. Thus, purchasers specifically seeking an Asian or children's design or a decorative household design generally will not use dinnerware with a plain institutional design.[39]

c. Channels of Distribution

Melamine institutional dinnerware is mostly sold through distributors of restaurant supplies. These distributors include "broadliners" (large distributors that sell food as well as equipment and supplies) and dealers in equipment only. Some melamine institutional dinnerware is sold directly to large

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[35]We recognize that the samples provided may not be representative of the various producers' entire product lines. For example, it is possible that more simply designed, solid color retailware may more closely resemble high-end colored institutional patterns. We will ask the parties to provide further information with respect to differentiation by pattern and design in any final investigations.

[36]Asianware is melamine dinnerware decorated with Chinese or Japanese patterns. Asianware includes both standard dinnerware items like plates and platters and typically Asian items like rice bowls and teacups. CR at II-1, PR at II-1; Conf. Tr. at 91; Respondents' Postconference Brief at Exhibit 2; Petition, Exhibit 14. Asianware is used both in Asian restaurants and in households. Conf. Tr. at 75, 90, 99-101. Because asianware is not produced in the United States, it cannot be part of any domestic like product. However, in the event that asianware is included in the scope of any final investigations, we will need to consider the domestic product that is "most similar to" imported asianware.

[37]CR at I-4, PR at I-4; Conf. Tr. at 31-32; Petitioner's Postconference Brief at 6-8.

[38]Conf. Tr. at 51-52.

[39]Conf. Tr. at 53, 54, 94, 99-101, 109; Respondents' Postconference Brief at 4 and Exhibit 3. There are two limited exceptions to this general lack of interchangeability. First, melamine institutional dinnerware has some specialized camping applications. CR at I-6, PR at I-5; Conf. Tr. at 54. Second, petitioner claims that melamine institutional dinnerware is interchangeable with the asianware used in Asian restaurants. Specifically, petitioner claims ***. Petitioner's Postconference Brief at 6 n.4. We note, however, that petitioner testified at the conference that asianware is a form of retailware less than 0.08 inch thick that does not compete with melamine institutional dinnerware. Conf. Tr. at 41-42. Moreover, since domestic producers do not offer rice bowls and other typically Asian dinnerware items, any such interchangeability would be limited to those dinnerware items domestic producers and asianware producers manufacture in common.

restaurant chains that have their own internal distribution networks, like Pizza Hut and Red Lobster.[40] A small amount of melamine institutional dinnerware is sold to warehouse clubs like Sams Club that service both small businesses and consumers.[41] Household melamine dinnerware and most childrensware is sold to retailers (department stores and mass merchandisers) that sell it directly to consumers.[42]

d. Common Manufacturing Facilities, Production Processes, and Production Employees

All melamine dinnerware made in the United States is produced through the same production process, and those domestic producers of institutional dinnerware that also produce other melamine dinnerware products produce them on the same equipment with the same employees.[43] Petitioner argues that it is the mold thickness that distinguishes institutional dinnerware and retailware. Each individual item of dinnerware, however, requires its own individual mold to provide the requisite shape, size, and weight. Those domestic producers that produce both institutional and household dinnerware maintain separate presses for those purposes as a matter of convenience, but the presses are the same and can easily be converted from institutional to household products.[44]

e. Customer and Producer Perceptions

The domestic producers clearly perceive retailware to be a different product from melamine institutional dinnerware for marketing purposes and maintain a fairly strict separation of marketing efforts for the two categories of products. There is very limited information on the record in these preliminary investigations with respect to customer perceptions; that information is discussed above under "interchangeability."

f. Price

Petitioner contends that melamine institutional dinnerware is considerably more expensive than retailware, based on its greater weight.[45] We did not collect pricing data on retailware in these preliminary investigations.

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[40]CR at I-5-I-6, II-1, PR at I-4-I-5, II-1; Conf. Tr. at 23-24, 33-34, 39, 40.

[41]Conf. Tr. at 54-55; CR at I-6, PR at I-5. Petitioner estimates that such sales account for less than 1 percent of the market for melamine institutional dinnerware. This is the only distribution channel the parties could identify whereby consumers might have access to institutional dinnerware products. Id.

[42]Conf. Tr. at 33. Some household dinnerware is sold to distributors that specialize in retail dinnerware. Licensed childrensware produced under contract with Disney or Warner Brothers is distributed by the licensor, e.g. in their own retail stores. Conf. Tr. at 110; CR at II-1-II-2, PR at II-1.

[43]Conf. Tr. at 55-56. As noted above, asianware is not produced in the United States. Conf. Tr. at 42.

[44]CR at II-5, PR at II-3; Conf. Tr. at 55-56; Producer's Questionnaire Responses of *** and *** at 7.

[45]Conf. Tr. at 57. Respondent offered no information with respect to the relative prices of domestic institutional melamine dinnerware and domestic retailware, but did argue that imported asianware and childrensware are priced *** domestic institutional dinnerware. Respondents' Postconference Brief at 5.

g. Conclusion

While the record does not establish very significant differences in physical characteristics between the various kinds of melamine dinnerware, it does provide some support for distinguishing between them. Although all melamine dinnerware can be produced on a single production line, we give greater weight to the evidence of separation in channels of distribution and of a lack of interchangeability between institutional and retail melamine dinnerware. The evidence with respect to customer perceptions and relative pricing is unclear. On balance, given the facts and that no party argued that retailware should be included in the like product, we conclude that the like product should not be expanded beyond the scope to include retailware for purposes of these preliminary investigations. We therefore find a single like product consisting of all melamine institutional dinnerware. We intend, however, to reconsider this issue in any final investigations.[46] [47]

C. Domestic Industry

In making its determination, the Commission is directed to consider the effect of the imports on the industry, defined as "the producers as a [w]hole of a domestic like product..."[48] Based on our definition of the domestic like product, the domestic industry in these investigations consists of all domestic producers of melamine institutional dinnerware.

The sole industry issue in these preliminary investigations concerns whether one of the producers of the domestic like product should be excluded from the industry as a related party.[49] If the Commission determines that a domestic producer satisfies the definition of a related party, the Commission may

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[46]If Commerce does not exclude retailware from the scope in its preliminary determinations, we will consider whether to gather data on all melamine dinnerware in any final investigations, with separate breakouts for institutional, household, asianware and childrensware. If non-institutional dinnerware is included in the scope of investigation, we will also need to define the domestic product(s) most like imported asianware, childrensware and household dinnerware in addition to imported melamine institutional dinnerware. Commissioner Bragg and Commissioner Crawford wish to gather data on all melamine dinnerware regardless of Commerce's resolution of the scope issue. Commissioner Crawford also wishes to gather data on domestic production of polycarbonate dinnerware so that she can consider whether polycarbonate dinnerware is part of the like product.

[47]Commissioner Newquist does not join this statement or the preceding footnote. He notes Congress instructed that the Commission definition of like product should not "be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation." S. Rep. No. 249, 96th Cong., 1st Sess. 91 (1979).

[48]19 U.S.C. § 1677(4)(A). In doing so, the Commission generally includes all domestic production, including tolling operations and captively consumed product, within the domestic industry. See United States Steel Group, et al. v. United States, 873 F. Supp. at (673) at 16 (Ct. Int'l Trade 1994), appeal docketed, No. 95-1245 (Fed. Cir. March 21, 1995).

[49]A domestic producer is a related party if it is either related to the exporters or importers of subject merchandise, or is itself an importer of the subject merchandise. Parties are considered to be related if one party directly or indirectly controls another party. Direct or indirect control exists when "the party is legally or operationally in a position to exercise restraint or direction over the other party." 19 U.S.C. § 1677(4)(B).

exclude such producer from the domestic industry if."appropriate circumstances" exist.[50] Exclusion of a related party is within the Commission's discretion based upon the facts presented in each case.[51]

*** imported melamine institutional dinnerware from *** during the period of investigation and is therefore a related party.[52] Thus, the Commission must determine whether appropriate circumstances exist for excluding *** from the domestic industry. None of the parties addressed this issue.

*** accounted for *** percent of domestic production of melamine institutional dinnerware in 1994.[53] Its imports consist of ***, a product it claims is a specialty item not produced by any domestic manufacturer. Total imports were *** in 1994 and *** in interim (January-September) 1995.[54] By contrast, the company's total production was *** dozen pieces of melamine institutional dinnerware in 1994 and *** dozen pieces in interim 1995.[55] The small volume of imports relative to *** total production indicate that its primary interest lies in domestic production. Most of *** financial data followed the same trend as those of the other domestic producers, but its operating income margins were

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[50]19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

(1) the percentage of domestic production attributable to the importing producer;

(2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and

(3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered whether each company's books are kept separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, the Republic of Korea, Thailand, the United Kingdom, and Venezuela, Inv. Nos. 701-TA-360 and 361, 731-TA-688-695 (Final), USITC Pub. 2870 at I-18 (April 1995).

[51]Torrington v. United States, 790 F. Supp. at 1168 (Ct. Int'l Trade 1992); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987); S. Rep. No. 249, 96th Cong. 1st Sess. at 83 (1979) ("where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry").

[52]CR at IV-1, PR at IV-1; Importer Questionnaire Response of *** at 3, 5.

[53]Table III-1, CR at III-2, PR at III-2; Producer's Questionnaire of *** at 5.

[54]CR at V-4 n.3, PR at V-3 n.3; Importer's Questionnaire Response of *** at 5-6.

[55]Producer's Questionnaire Response of *** at 5.

***.[56] The data thus do not suggest that it is deriving any special benefit from its status as an importer. Moreover, none of the parties has argued that *** should be excluded from the domestic industry as a related party. Accordingly, for purposes of these preliminary investigations, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.

III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of allegedly LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[57] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[58]

There are several conditions of competition pertinent to our analysis of the domestic melamine institutional dinnerware industry. First, the U.S. market for melamine institutional dinnerware consists of five basic categories of purchasers: (1) broadliners (large distributors that carry both food and restaurant supplies and equipment) that account for about 20-25 percent of demand for melamine institutional dinnerware; (2) buying groups (groups of independent restaurant supply dealers that band together to negotiate prices) that account for 20-30 percent of the market; (3) large restaurant chains that buy dinnerware direct from manufacturers and self-distribute, that account for 10-15 percent of the market; (4) institutional (i.e. non-commercial) purchasers such as government, schools, and health care facilities, that account for 10-20 percent of the market; and (5) independent dealers who are not in buying groups, accounting for the remaining portion of the market.[59] Respondents argue that they have little or no access to most of these purchasers and that their sales are principally restricted to independent dealers and a few marginal buying groups.[60] Petitioner argues that the domestic industry is losing sales to imports in all purchaser categories.[61] In any final investigations, we will seek further information on the extent to which the various categories of purchasers purchase subject imports.[62]

Second, in recent years there has been a trend toward concentration of purchasing power in the market for melamine institutional dinnerware. In order to compete more effectively with broadliners, many independent dealers have formed buying groups. Instead of negotiating prices with each dealer,

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[56]Table VI-3, CR at VI-3, PR at VI-3.

[57]19 U.S.C. § 1677(7)(C)(iii).

[58]19 U.S.C. § 1677(7)(C)(iii).

[59]CR at II-1, PR at II-1; Respondents' Postconference Brief, Exhibit 14.

[60]Respondents' Postconference Brief at 22-28 and Exhibit 15; Conf. Tr. at 76-81, 85-90, 106.

[61]Petitioner's Postconference Brief at 22, 25-26 and Exhibit 1; Conf. Tr. at 67.

[62]In particular, we will seek additional information with respect to (1) the extent to which broadliners, buying groups, and restaurant chains purchase imports; and (2) whether and to what extent federal and other government procurements (including schools and public health care facilities) may be closed to the subject imports and the portion of total demand for melamine institutional dinnerware accounted for by any such restricted procurements.

manufacturers now must present a pricing plan for the entire group. Each group selects a few approved suppliers from among the competing manufacturers, and individual dealers within the group may then make their purchases from any approved supplier subject to the group pricing policy. By purchasing in groups, these dealers enhance their negotiating power with respect to manufacturers and are able to capture volume discounts and rebates that they would not qualify for alone.[63]

Third, both the domestic producers and some of the importers offer product lines that include a wide selection of melamine and non-melamine food service and preparation items.[64] Respondents claim that they are largely unable to compete for the business of buying groups because their product lines are limited to melamine dinnerware, while the domestic producers offer a wide range of plastic food preparation and service items; since the purchasers can obtain larger discounts by purchasing a wider range of goods from a smaller group of suppliers, the domestic industry has an advantage.[65] Petitioner argues that breadth of product line is not an advantage to them and that, in any event, a number of importers offer an equally broad selection of melamine and non-melamine items.[66] In any final investigations, we will seek further information on the extent to which breadth of product line is a competitive advantage.

Finally, we note that there are a number of potential substitutes for melamine institutional dinnerware. At the high end, restaurants can substitute low-end china for melamine institutional dinnerware. Although china breaks more easily than melamine, it is also considerably less expensive and aesthetically more appealing.[67] At the low end, polycarbonate dinnerware and trays are beginning to compete with melamine institutional dinnerware in schools and other institutional settings. Polycarbonate is considerably more break resistant than melamine, but scratches more easily and is thus best suited to environments where sharp utensils are not used. Polycarbonate dinnerware is priced comparably or slightly lower than melamine institutional dinnerware.[68] In addition, some articles of polypropylene and acrylonitrile-butadiene-styrene (ABS) may substitute for particular melamine items.[69]

Contrary to petitioner's assertion that the market for melamine institutional dinnerware has been flat, the quantity of apparent U.S. consumption rose by 17.4 percent between 1992 and 1994, from 6,912,000 pounds to 8,117,000 pounds. Apparent consumption by quantity was 5,999,000 pounds in interim (January - September) 1995 compared with 5,895,000 pounds in interim 1994, a difference of 1.8 percent.[70] Apparent consumption by value rose by 8.7 percent between 1992 and 1994, from $17,718,000 to $19,266,000, but was $14,813,000 in interim 1995 compared with $14,950,000 in interim 1994, a

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[63]CR at II-1, PR at II-1; Conf. Tr. at 77-78, 81, 104-106.

[64]CR at II-2, V-17, PR at II-1, V-8; Importer's Questionnaire Response of *** (attaching product list); Petition at Exhibit 7 (G.E.T. catalog).

[65]Conf. Tr. at 76-78; Respondents' Postconference Brief at 22-27.

[66]Petitioner's Postconference Brief at 22-23 and Exhibit 1, ¶6; Conf. Tr. at 40-41; Petition Exhibits 6-7.

[67]CR at I-4-I-5, II-6-II-7, PR at I-4, II-4.

[68]CR at I-4-I-5, II-6-II-7, PR at I-4, II-4.

[69]CR at I-5, PR at I-4.

[70]Table IV-2, CR at IV-3, PR at IV-3.

difference of less than one percent.[71] U.S. producers' share of consumption (by quantity) has fluctuated within a narrow range, rising from 91.9 percent in 1992 to 92.5 percent in 1993, then falling to 89.8 percent in 1994. U.S. producers' share of consumption was 89.7 percent in interim 1995, compared with 89.6 percent in interim 1994.[72]

The domestic industry's capacity to produce melamine institutional dinnerware remained relatively constant over the period of investigation, rising from 21,158,000 pounds in 1992 to 21,197,000 pounds in 1994, and was 15,558,000 pounds in interim 1995 compared with 15,006,000 pounds in interim 1994.[73] The industry's production volume rose from 6,409,000 pounds in 1992 to 6,895,000 pounds in 1993 and 7,254,000 pounds in 1994, an increase of 13.2 percent. The industry's production volume was 5,352,000 pounds in interim 1995 compared with 5,306,000 pounds in interim 1994, a difference of 0.9 percent.[74] Capacity utilization in the domestic industry rose from 30.3 percent in 1992 to 35.4 percent in 1993, before falling to 34.2 percent in 1994. Capacity utilization was 34.4 percent in interim 1995 compared with 35.4 percent in interim 1994.[75]

The domestic industry's total U.S. shipments by volume rose throughout the period of investigation, from 6,349,000 pounds in 1992 to 7,293,000 pounds in 1994, for a total increase of 14.9 percent. U.S. shipments by volume were 5,382,000 in interim 1995 compared with 5,283,000 in interim 1994, an increase of nearly 2 percent.[76] Total U.S. shipments by value rose by 6.5 percent from 1992 to 1994, from $16,684,000 to $17,774,000, but decreased by 1.3 percent in interim 1995 from interim 1994.[77] Both in absolute terms and as a percentage of total shipments, the domestic industry's year-end inventories declined throughout the period of investigation. Inventories fell from 1,415,000 pounds and *** percent of total shipments in 1992 to 1,302,000 pounds and *** percent of total shipments in 1994. Inventories were 1,191,000 pounds and *** percent of total shipments in interim 1995, compared with 1,273,000 pounds and *** percent of total shipments in interim 1994.[78]

Between 1992 and 1994, the average number of production and related workers in the domestic industry rose from 292 to 324, an increase of 11 percent. The number of production and related workers

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[71]Table IV-2, CR at IV-3, PR at IV-3.

[72]Table IV-2, CR at IV-3, PR at IV-3. U.S. producers' market share by value declined over the period of investigation from 94.2 percent in 1992 to 92.3 percent in 1994 and was 92.2 percent in interim 1995 compared with 92.5 percent in interim 1994. Id.

[73]Table III-1, CR at III-2, PR at III-2. Although capacity declined to 19,483,000 pounds in 1993, this was a temporary effect due to Continental/SiLite's transfer of molding equipment from its plant in Lake Bluff, PA (now closed), to its current plant beginning in 1993.

[74]Table III-1, CR at III-2, PR at III-2.

[75]Table III-1, CR at III-2, PR at III-2. We view these capacity utilization data with caution, because melamine institutional dinnerware and household dinnerware are produced on the same equipment and because the capacity data provided by the industry otherwise may not reflect practical conditions for actual production. We do, however, consider the data as an index of relative changes from period to period. CR at III-3, PR at III-1.

[76]Table III-1, CR at III-2, PR at III-2.

[77]Table III-1, CR at III-2, PR at III-2.

[78]Table III-1, CR at III-2, PR at III-2.

remained relatively constant between the interim periods, 291 in interim 1994 compared to 292 in interim 1995. Hours worked and wages paid rose overall from 1992 to 1994 after declining between 1992 and 1993, and were at a slightly lower level in interim 1995 than in interim 1994. Hourly wages remained relatively constant over the period of investigation. Productivity rose from 1992 to 1993 then declined in 1994, remaining above the 1992 level, and was slightly higher in interim 1995 than in interim 1994. Unit labor costs generally declined over the period of investigation.[79]

Net sales, both in terms of quantity sold and value, were nearly constant from fiscal year 1993 through fiscal year 1995.[80] Net sales by value were $17,882,000 in fiscal 1993, $18,351,000 in fiscal 1994, and $18,262,000 in fiscal 1995. Net sales were $13,744,000 in interim 1995 compared with $13,920,000 in interim 1994.[81] The domestic industry's profitability declined over the period of investigation. Gross profits fell from $5,974,000 in 1993 to $5,902,000 in 1994, and to $5,108,000 in 1995, an overall decline of 14.5 percent. Gross profits were $3,783,000 in interim 1995 compared with $4,259,000 in interim 1994, a decline of 11.2 percent.[82] Operating income fell from $2,616,000 in fiscal 1993 to $2,303,000 in fiscal 1994 and $1,080,000 in fiscal 1995. Operating income fell to $707,000 in interim 1995 from $1,556,000 in interim 1994.[83] The industry's operating income margin declined from 14.6 percent in 1993 to 12.5 percent in 1994 and 5.9 percent in 1995. The operating income margin was 5.1 percent in interim 1995 compared with 11.2 percent in interim 1994.[84] These decreases in operating income and profitability are attributable, at least in part, to increasing cost of goods sold and selling, general, and administrative expenses, which rose both in absolute terms and as a percentage of net sales throughout the period of investigation.[85] From fiscal year 1993 to fiscal year 1995, COGS rose by over 10 percent and SG&A by 20 percent.[86]

The domestic industry's capital expenditures declined from *** in fiscal year 1993 to *** in fiscal 1994, then rose to *** in fiscal 1995. Capital expenditures were *** in interim 1995 compared with ***

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[79]Table III-1, CR at III-2, PR at III-2.

[80]We note that our financial data are reported on a fiscal year basis. Each of the three domestic producers has a different fiscal year. Therefore these data may not necessarily be comparable to data reported on a calendar year basis. CR at VI-1 n.1, PR at VI-1 n.1.

[81]Table VI-1, CR at VI-2, PR at VI-2.

[82]Table VI-1, CR at VI-2, PR at VI-2.

[83]Table VI-1, CR at VI-2, PR at VI-2.

[84]Table VI-1, CR at VI-2, PR at VI-2.

[85]Table VI-1, CR at VI-2, PR at VI-2. Factors contributing to the increase in COGS included rising costs for raw materials (primarily formaldehyde), labor, health insurance, and workmen's compensation. Rising SG&A expenses can be traced to rising salaries, insurance, legal fees, rebates and promotional allowances. CR at VI-1 and VI-4, PR at VI-1.

[86]CR at VI-4, PR at VI-1.

in interim 1994. The industry's research and development expenses were small but rising, increasing from *** in fiscal 1993 to *** in fiscal 1995.[87] [88]

IV. CUMULATION

Section 771(7)(G)(i) provides the general rule for cumulation in determining material injury by reason of subject imports.[89] This provision requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.[90] In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has discretion to cumulate the volume and price effects of such imports if the competition and simultaneous initiation requirements are met.[91]

In assessing whether imports compete with each other and with the domestic like product, the Commission generally has considered four factors, including:

> (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;[92]
>
> (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;

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[87]CR at VI-6, PR at VI-4.

[88]Based upon examination of the relevant statutory factors, Commissioner Rohr and Commissioner Newquist conclude that there is a reasonable indication that the domestic industry producing melamine institutional dinnerware is vulnerable to the continuing adverse effects of allegedly unfair imports from China, Indonesia and Taiwan.

[89]Commissioner Rohr does not formally cumulate for purposes of his threat determination; however, he does consider the presence of other unfairly traded imports as another adverse trend affecting the industry. Therefore, he considers imports from all three countries in his determination.

[90]19 U.S.C. § 1677(7)(G)(i). The Statement of Administrative Action (SAA) to the URAA 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, H.R. Rep. 316, 103d Cong., 2d Sess., vol. 1, at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade), aff'd 859 F.2d 915 (Fed. Cir. 1988)).

[91]19 U.S.C. § 1677(7)(H).

[92]Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. Commissioner Crawford finds there is sufficient substitutability to conclude there is a reasonable overlap of competition between all subject imports and the domestic like product and between subject imports from all countries. See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681 and 682 (Final), for a description of her views on cumulation.

(3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

(4) whether the imports are simultaneously present in the market.[93]

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[94] Only a "reasonable overlap" of competition is required.[95] Thus, even if a certain volume of subject imports from a country is of a type or specification not produced by the domestic industry, imports from that country will be cumulated if the remaining imports collectively do compete with the domestic like product and with other imports.[96] In addition, in deciding whether it is appropriate to cumulate for its threat analysis, the Commission considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling or pricing patterns, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.[97] [98] [99]

No party argued that cumulation of all subject imports was not appropriate. The subject imports from China, Indonesia and Taiwan are largely fungible both with the domestic like product and with each other. Producers and importers generally agreed that the subject imports and the domestic like product are equal in quality. Although *** responding importers stated that the Taiwanese product cannot be used interchangeably with the domestic product because many items have different size designs,[100] the record reflects that foreign producers have developed exact copies of petitioner's dinnerware patterns and designs in order to compete for replacement and add-on sales. These copies look, stack and function

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

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

[95]See Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 18 CIT __, Slip Op. 94-201 (Dec. 30, 1994).

[96]See Sandvik AB v. United States, 721 F. Supp. 1322, 1332-33 (Ct. Int'l Trade 1989), aff'd, 904 F.2d 46 (Fed. Cir. 1990).

[97]See Torrington Co. v. United States, 790 F.Supp. 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States 728 F.Supp. 730, 741-42 (Ct. Int'l Trade 1989).

[98]Commissioner Newquist notes that he places little, if any, weight on these "factors" in determining whether to cumulate for purposes of a threat of material injury analysis.

[99]Commissioner Crawford does not participate in any discussion of cumulation for purposes of a threat determination, because she finds a reasonable indication of present material injury by reason of the cumulated subject imports.

[100]CR at II-7, PR at II-5.

exactly like petitioner's dinnerware.[101] While some dealers confirmed respondents' claim that purchasers prefer the domestic product because longstanding relationships with domestic producers give them greater faith in the quality of the domestic product,[102] there is no record evidence to suggest any actual differences in product quality or customer service between any specific domestic product and its imported counterpart from any of the three countries.[103] While some purchasers indicated that domestic producers offer a greater range of both melamine and non-melamine products, other purchasers indicated that breadth of product line was not important to them. Moreover, several importers also offer a broad range of products.[104] With respect to interchangeability among the subject imports, all three U.S. producers and two importers stated that institutional dinnerware from all three subject countries are used in the same applications, while one importer said that the Indonesian product is low-end.[105] In addition, a number of purchasers contacted by staff did not know the country of origin of the imported dinnerware they purchased.[106] [107]

There is no dispute that the domestic like product and the subject imports from all three countries compete in the same geographical markets nationwide.[108]

Both the domestic like product and the subject imports are sold principally through distributors, with some sales direct to end users (restaurant chains). While there is some dispute as to whether domestic producers and importers serve the same distributors (e.g. broadliners versus small

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[101] Conf. Tr. at 19-20, 26, 29-30; CR at I-6, PR at I-5.

[102] Conf. Tr. at 86-87; Respondents' Postconference Brief, Answers to Staff Questions at 2; CR at II-2-II-3, PR at II-1-II-2.

[103] The evidence with respect to which suppliers offer better delivery times is mixed. CR at II-6-II-8, V-15 (*** prefers domestic due to supply concerns), V-16 (*** claims imports offer better lead time), PR at II-4-II-5, V-7, V-8.

[104] CR at II-2, V-17, PR at II-1, V-17; Importer's Questionnaire Response of *** (attaching price list/catalog listing broad range of products); Petition, Exhibit 7 (G.E.T. catalog showing extensive melamine line and large number of non-melamine products)..

[105] CR at II-7-II-8, PR at II-5.

[106] CR at V-15-V-16, PR at V-7-V-8. In fact, *** mixes dinnerware from *** in the same dinnerware line. CR at V-13 n.7, PR at V-6 n.7.

[107] Commissioner Newquist notes that, although he agrees with the "facts" as stated in the foregoing paragraph, in his view, once a like product determination is made, that determination establishes an inherent level of fungibility within that like product. Only in exceptional circumstances could Commissioner Newquist find products to be "like" and then turn around and find that, for purposes of cumulation, there is no "reasonable overlap of competition" based on some roving standard of substitutability. See Additional and Dissenting Views of Chairman Newquist in Flat-Rolled Carbon Steel Products, USITC Pub. No. 2664 (Aug. 1993).

[108] Conf. Tr. at 59 and 111.

independents), there is no dispute that the domestic like product and the subject imports are sold through the same or similar channels of distribution.[109]

Imports from Taiwan and Indonesia have been present in the U.S. market throughout the period of investigation. Imports from China did not enter the U.S. market until 1994.[110] However, we have not required imports from all countries to be imported throughout the entire period of investigation in order to be deemed "simultaneously" present in the market.[111]

Based on the almost complete interchangeability of all of the subject imports with the domestic like product and with each other, competition in the same geographical markets, sales in the same channels of distribution, and the simultaneous presence of all of the subject imports in the U.S. market during at least a significant portion of the period of investigation, we find that there is a reasonable overlap of competition between the domestic product and subject imports from China, Indonesia, and Taiwan.[112]

With respect to whether we should exercise our discretion to cumulate subject imports in our threat determination, we note that the volume of imports from China (beginning in 1994), Indonesia, and Taiwan all increased over the period of investigation, although at somewhat different rates.[113] While there was some divergence in pricing patterns of imports from the three subject countries, the subject imports showed similar patterns of over- and underselling for three of the four products for which data were collected.[114] In addition, several foreign producers either recently have or are about to shift their production facilities from one subject country to another (i.e. Taiwan to China).[115] [116] Accordingly, we find that cumulation for purposes of our threat analysis is appropriate in these preliminary investigations.

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[109]Conf. Tr. at 59 and 109-113.

[110]Table IV-1, CR at IV-2, PR at IV-2.

[111]See Silicomanganese from Brazil, France, India and Ukraine, Inv. Nos. 731-TA- 671-674 (Final), USITC Pub. 2836 (Dec. 1994) at I-13 & n.65, I-34, and I-75; Circular Welded Non-Alloy Steel Pipe from Romania and South Africa, Inv. Nos. 731-TA-732-733 (Preliminary), USITC Pub. 2899 at I-13 (June 1995); Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. 2704 at I-14 & n.74 (Nov. 1993).

[112]Therefore Commissioner Crawford cumulates subject imports from China, Indonesia and Taiwan for purposes of her present material injury analysis. She does not join the rest of this discussion on cumulation in the context of threat.

[113]Table I-1, CR at I-2, PR at I-2; Table IV-1, CR at IV-2, PR at IV-2.

[114]Tables V-1 through V-4, CR at V-6-V-9, PR at V-4-V-5.

[115]CR at VII-1 and VII-3 (Tar-Hong and Chen Hao moves from Taiwan to China), PR at VII-1.

[116]With regard to the foregoing discussion in this paragraph, Commissioner Newquist reiterates his views expressed in footnote 107.

V. THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS[117] [118]

Section 771(7)(F) of the Act directs the Commission to consider whether the U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[119] The Commission may not make such a determination "on the basis of mere conjecture or supposition,"[120] and considers the threat factors "as a whole" in determining "whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued. . . ."[121] In making our determination,

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[117] As part of its consideration of the impact of imports, the statute as amended by the URAA now also specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 180. The statute defines the "magnitude of the margin of dumping" to be used by the Commission in a preliminary determination as "the dumping margin or margins published by the administering authority [Commerce] in its notice of initiation of the investigation." 19 U.S.C. § 1677(35)(C). The estimated dumping margins identified by the Commerce Department in its notice initiating these investigations are 7.06 percent for China, 89.84 percent for Indonesia, and 53.13 percent for Taiwan. 61 Fed. Reg. 8039 (March 1, 1996).

[118] Chairman Watson and Commissioner Bragg note that, although the CIT has not held there to be such a requirement in the law, in R-M Industries, Inc. v. United States the CIT questioned whether the Commission should reach an affirmative threat determination without first addressing whether the domestic industry is presently injured by reason of subject imports. (See 848 F. Supp. at 212.) See also Separate Views of Chairman Watson and Commissioner Bragg, infra.

[119] 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

[120] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire, 8 CIT at 28, 590 F.Supp. at 1280. See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387 and 388(Ct. Int'l Trade 1992) (citing, H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984)).

[121] While the language referring to imports being imminent (instead of "actual injury" being imminent and the threat being "real") is a change from the prior provision, the SAA indicates the "new language is fully consistent with the Commission's practice," the existing statutory language, "and judicial precedent interpreting the statute." SAA at 184.

we have considered, in addition to other relevant economic factors,[122] all statutory factors[123] that are relevant to this investigation.[124]

For the reasons discussed below, we find a reasonable indication that the domestic industry producing melamine institutional dinnerware is threatened with material injury by reason of cumulated imports from China, Indonesia and Taiwan.

All of the foreign producers of melamine institutional dinnerware significantly expanded their production capacity during the period of investigation. Tar-Hong's (China) capacity to produce melamine dinnerware rose from *** pounds in 1992 to *** pounds in 1993, then remained at the same level in 1994. Except in 1993, Tar-Hong operated at under *** percent capacity utilization.[125] We note that Tar-Hong's unused capacity in 1994, by itself, is equivalent to *** percent of apparent U.S. consumption in that year.[126] Although Abadi (Indonesia) maintained a relatively high rate of capacity utilization throughout the period of investigation, it also expanded its capacity from *** pounds in 1992 to *** pounds in 1993 and *** pounds in 1994. Its capacity was *** pounds in interim 1995 compared with *** pounds in interim 1994.[127] Chen Hao (Taiwan) downsized its Taiwanese facility during the period of investigation, from a total melamine dinnerware capacity of *** pounds in 1992 to *** pounds in 1994. In the last quarter of 1995, however, it opened a production facility in China and indicated that it plans to ***.[128] In the absence of capacity figures for the new plant or any statement of an intention to close the Taiwanese facility, we infer that Chen Hao's total production capacity will significantly increase in 1996. Moreover, although Chen Hao's capacity utilization was relatively high over the period of investigation,

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[122]Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F.3d 978 (Fed. Cir. 1994). The Federal Circuit held that 19 U.S.C. § 1677(7)(F)(i) requires the Commission to consider "all relevant factors" that might tend to make the existence of a threat of material injury more probable or less probable. The Commission cannot limit its analysis to the enumerated statutory criteria when there is other pertinent information in the record. Moreover, the court appears to require consideration of the present condition of the industry as among the "relevant economic factors." Id. at 984.

[123]The statutory factors have been amended to track more closely the language concerning threat of material injury in the Antidumping and Subsidies Agreements, although "[n]o substantive change in Commission threat analysis is required." SAA at 185.

[124]19 U.S.C. § 1677(7)(F)(i). Two statutory threat factors have no relevance to these investigations and need not be discussed. Because there are no subsidy allegations, factor I is not applicable. Factor VII regarding raw and processed agriculture products is also inapplicable to the product at issue. In these preliminary investigations, we find no actual or potential negative effects on the development and production efforts of the domestic industry nor do we find any other demonstrable adverse trends indicating the probability that there is likely to be material injury. Moreover, there are no outstanding dumping findings in third countries with respect to melamine dinnerware. See 19 U.S.C. § 1677(7)(F)(iii)(I).

[125]Table VII-1, CR at VII-2, PR at VII-1. Tar-Hong reported capacity data for all melamine dinnerware, not just melamine institutional dinnerware.

[126]Table IV-2, CR at IV-3, PR at IV-3.

[127]Table VII-2, CR at VII-2, PR at VII-2. Abadi produces only institutional melamine dinnerware.

[128]Table VII-3, CR at VII-3, PR at VII-2. Chen Hao reported capacity data for all melamine dinnerware, not just melamine institutional dinnerware.

these data do not account for the new plant in China. Overall, the unutilized capacity in the three subject countries in 1994 was equivalent to over *** percent of U.S. apparent consumption in the same year.[129]

In addition to expanding capacity, we find that the subject countries' production of melamine institutional dinnerware is largely oriented to export sales and that the United States represents by far the largest market for such exports. During the period of investigation, *** percent of Tar-Hong's production was exported, and of that *** percent was exported to the United States.[130] During the same period, Abadi exported between *** percent of its production, of which between *** percent was exported to the United States.[131] The share of Chen Hao's total production dedicated to exports rose from *** percent in 1992 to *** percent in 1994 and *** percent in interim 1995, while the share of those exports going to the United States rose from *** percent in 1992 to nearly *** percent in 1994, falling slightly to *** percent in interim 1995.[132] Based on the significant capacity increases in both China and Indonesia, the existence of significant unused capacity, the export-orientation of the melamine dinnerware industries in all three subject countries, and the predominance of the United States as an export market for the three foreign producers, we find a likelihood of substantially increased imports of subject merchandise into the United States.

As noted above, both Tar-Hong and Chen Hao reported capacity data for all melamine dinnerware rather than melamine institutional dinnerware. We find, however, that production facilities in both China and Taiwan that are presently being used to produce melamine retailware can easily be converted to the production of melamine institutional dinnerware. The record indicates that *** shifted significant capacity from *** to institutional dinnerware in 1994 when demand dropped off for its *** products, and then used the shifted production capacity to enter the United States market for institutional dinnerware.[133] We therefore find a potential for product shifting.

The volume of cumulated subject imports rose by over 46 percent from 1992 to 1994, from 563,000 pounds to 824,000 pounds, and continued to rise between the interim periods.[134] The cumulated market share of the subject imports fell from 8.1 percent in 1992 to 7.5 percent in 1993, then rose to 10.2 percent in 1994, and was 10.3 percent in interim 1995 compared with 10.4 percent in interim 1994.[135] We find that the increase in import penetration and the rapid increase in the absolute volume of imports during the period of investigation also indicate the likelihood of substantially increased imports.

Importers' inventories increased throughout the period of investigation, with an overall increase of 79 percent from 1992 to 1994, and were 39 percent greater in interim 1995 than in interim 1994. Importers' cumulated inventories at the end of 1994 were equivalent to 5 percent of apparent consumption

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[129]Compare Tables VII-1, VII-2, and VII-3, CR at VII-2-VII-3, PR at VII-1-VII-2, with Table IV-2, CR at IV-3, PR at IV-3.

[130]Table VII-1, CR at VII-2, PR at VII-1.

[131]Table VII-2. CR at VII-2, PR at VII-2.

[132]Table VII-3, CR at VII-3, PR at VII-2.

[133]Conf. Tr. at 93; Importer's Questionnaire Response of *** at 12.

[134]Table IV-1, CR at IV-2, PR at IV-2.

[135]Table IV-2, CR at IV-3, PR at IV-3.

during that year. Importers' inventories were equivalent to over 8 percent of apparent consumption for the interim 1995 period.[136]

We also find that imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports. The record demonstrates that there are no significant quality differences between the domestic product and the subject imports and that purchasers choosing imports do so largely on the basis of price.[137] While instances of over- and underselling were somewhat mixed early in the period of investigation, instances of underselling became more predominant toward the end of the period and the margins of underselling rose, particularly with respect to products 3 and 4.[138] Prices for the domestic product also declined at the end of the period, although apparent consumption continued to rise.[139] At the same time as domestic prices were falling, the domestic industry's costs have risen significantly.[140] The record indicates that the domestic industry has not been able to raise prices to cover these cost increases.[141] As a result, the industry experienced a significant worsening of its already declining financial performance in the second half of the period of investigation.[142]

While the domestic industry was able to maintain its production and shipment levels and remained somewhat profitable during the period of investigation, we find that the combination of rising import volumes, large importers' inventories, and downward price pressure from imports at a time of rising costs are likely to have a significant adverse impact on the condition of the domestic industry -- and particularly on its ability to remain profitable -- and therefore pose a real and imminent threat of material injury.[143]

CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing melamine institutional dinnerware is threatened with material injury by reason of allegedly LTFV imports from China, Indonesia, and Taiwan.

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[136]Table IV-2, CR at IV-3, PR at IV-3; CR at VII-4, PR at VII-1.

[137]CR at V-14-V-17, PR at V-7-V-8. See also notes 100 to 107 supra and associated discussion.

[138]The subject imports undersold the domestic product in 61 out of 104 or 59 percent of comparisons from 1993 through 1995, and in 30 out of 43 or 70 percent of comparisons for 1995 alone. Tables V-1 through V-4, PR at V-6-V-9, PR at V-4-V-5.

[139]CR at V-12, PR at V-5-V-6; Table IV-2, CR at IV-3, PR at IV-3.

[140]CR at VI-4, PR at VI-2.

[141]Moreover, some of the cost increases themselves are associated with the need to offer greater rebates and promotional allowances in order to maintain sales volume. CR at VI-4, PR at VI-4.

[142]Table VI-1, CR at VI-2, PR at VI-2.

[143]We have considered the present condition of the domestic industry as among the "relevant economic factors" in our threat analysis.

ADDITIONAL VIEWS OF CHAIRMAN WATSON AND COMMISSIONER BRAGG

Chairman Watson and Commissioner Bragg join the majority in all parts of its opinion and find that the domestic industry is threatened with material injury by reason of the subject imports. However, it is their view that, when the Commission makes such an affirmative threat determination, the reasons for finding no present injury should be examined as well. Accordingly, Chairman Watson and Commissioner Bragg do not find that there is a reasonable indication that the domestic industry producing melamine institutional dinnerware is materially injured by reason of subject imports from China, Indonesia, and Taiwan, for the following reasons.

Volume

We do not find that the volume of cumulated subject imports, or the increase in that volume either in absolute terms or relative to production or consumption in the United States rose to a significant level over the period of investigation. Although the rate of increase in the volume of cumulated subject imports between 1992 and 1994 was fairly rapid, a concurrent increase in U.S. consumption over the same period mitigated this increase. Overall consumption quantity increased by 17.4 percent between 1992 and 1994, and the quantity of domestic shipments increased by 14.9 percent over the same period. As a result, subject importers' market share increased by a relatively small margin from 8.1 percent to 10.2 percent by quantity, and from 5.8 percent to 7.7 percent, by value, between 1992 and 1994. Similarly, the market share of domestic producers declined by a relatively small amount from 91.9 percent to 89.8 percent by quantity, and from 94.2 percent to 92.3 percent by value between 1992 and 1994.

Price

We cannot conclude that there was significant underselling, or significant price suppression or depression over the period of investigation. Price comparisons showed mixed instances of over- and underselling: data for product 1 showed *** for imports from all three subject countries; data for product 2 showed overselling for ***, and primarily underselling for *** and ***; data for product 3 showed mostly underselling for ***; and data for product 4 showed mostly underselling for *** and ***. With respect to price trends, the available data show considerable fluctuation in price for the domestic and the subject imported products between 1993 and 1995, with no clear evidence of price suppression or price depression. We note, however, that the price comparisons did tend to show slightly more -- and increasingly large -- margins of underselling in the later quarters of the investigation period and prices generally declined during 1995 for the four domestic products for which data were collected. We also note that the domestic industry appears to have had difficulty raising its prices to offset increases in its cost of goods sold and selling, general, and administrative expenses. While the data do not support a finding of present price effects, they do support our threat finding that the subject immports are likely to enter the United States at prices that will have depressing or suppressing effects on domestic prices for melamine institutional dinnerware.

Impact

As noted, the industry's operating performance showed a significant decline between 1992 and 1994. However, many of the other indicators for the domestic industry such as production and shipments were positive over the same period, and we are currently unable to draw a direct connection between the declining operating income and the subject imports. Given that we are unable to find significant volume or price effects, we accordingly are unable to find significant adverse present impact on the domestic industry by reason of the LTFV imports.

ADDITIONAL VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these preliminary investigations, I determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of melamine institutional dinnerware from the People's Republic of China ("PRC"), Indonesia, and Taiwan that are allegedly sold in the United States at less-than-fair-value ("LTFV"). I concur in the conclusions of my colleagues regarding like product, domestic industry, related parties, and cumulation, and I join their discussion of the condition of industry, except as noted. However, I determine that there is a reasonable indication that an industry in the United States is materially injured by reason of the allegedly LTFV imports of melamine institutional dinnerware from the PRC, Indonesia, and Taiwan. Because my injury determination in this investigation differs from my colleagues', my additional views follow.

II. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the alleged LTFV imports, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States....[1]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."[2] In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry ... within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[3]

The statute directs that we determine whether there is a reasonable indication of "material injury by reason of the dumped imports." Thus we are called upon to evaluate the effect of allegedly dumped imports on the domestic industry and determine if there is a reasonable indication that they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the alleged dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether there is a reasonable indication that any injury "by reason of" the allegedly dumped imports is material. That is, the Commission must determine if there is a reasonable indication that the subject imports are causing material injury to the domestic industry. "When determining the effects of imports on the

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[1] 19 U.S.C. § 1677(7)(B)(I). As part of its consideration of the impact of imports, the statute as amended by the URAA now also specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

The statute, 19 U.S.C. § 1677(35)(C), defines the "magnitude of the margin of dumping" to be used by the Commission in a preliminary determination as "the dumping margin or margins published by the administering authority (Commerce) in its notice of initiation of the investigation." The calculated dumping margins, as identified by Commerce in its notice of initiation, are 7.06 percent for the PRC, 89.84 for Indonesia, and 53.13 for Taiwan. 61 Fed. Reg. 8039 (March 1, 1996).

[2] 19 U.S.C.§ 1677(7)(B)(ii).

[3] 19 U.S.C. § 1677(7)(C)(iii).

domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry."[4] It is important, therefore, to assess the effects of the allegedly dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. The Court of International Trade has held that the "statutory language fits very well" with my mode of analysis.[5]

In my analysis of material injury, I evaluate the effects of the alleged dumping on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the alleged dumping on domestic prices, I compare domestic prices that existed when the imports were allegedly dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,[6] I compare the level of domestic sales that existed when imports were allegedly dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the alleged dumping, either separately or together, demonstrate that there is a reasonable indication that the domestic industry would have been materially better off if the imports had been priced fairly. If so, there is a reasonable indication that the domestic industry is materially injured by reason of the allegedly dumped imports.

For the reasons discussed below, I determine that there is a reasonable indication that the domestic industry producing melamine institutional dinnerware is materially injured by reason of allegedly LTFV imports of melamine institutional dinnerware from the PRC, Indonesia, and Taiwan.

III. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow them to avoid the price

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[4] S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

[5] U.S. Steel Group v. United States, 873 F.Supp. 673, 695 (Ct. Int'l Trade 1994), appeal docketed, No. 95-1245 (Fed. Cir. March 22, 1995).

[6] In examining the quantity sold, I take into account sales from both existing inventory and new production.

increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, to what extent purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall elasticity of demand for melamine institutional dinnerware likely is moderate.

Importance of the Product. The first factor that measures the willingness of purchasers to pay higher prices is the importance of the product to purchasers. In the case of an intermediate product ("input"), the importance will depend on the significance of the input's cost relative to the total cost of the downstream product or service in which it is used and whether the input is critical to production of the downstream product or service. When the price of an input is a small portion of the total product cost, changes in the price of the input are less likely to alter demand by the downstream user and, by extension, the demand for the input. Similarly, when the input is critical to the production or provision of the end-use product or service, changes in the price of the input are less likely to change the overall content of the input in the domestic product.

Melamine institutional dinnerware is ultimately purchased by food service providers, such as restaurants and schools. These food providers use the dinnerware essentially as a reusable input into the provision of food to consumers. While there is no information on the record regarding the cost of dinnerware per serving as a percentage of the overall food product, it is likely a relatively small share, given the cost per unit of reusable melamine institutional dinnerware.[7] I further note that some kind of dinnerware is generally necessary for serving food. These considerations suggest a lower elasticity of demand for melamine institutional dinnerware.

Demand for the input is also determined by the downstream consumers' price sensitivity of demand (e.g., customers at restaurants). The willingness of downstream consumers to pay higher prices is measured by the importance of the product to consumers. This importance will depend on whether the product is considered a non-discretionary (necessity) purchase or a discretionary (luxury) purchase by the consumer. When the end use product is a necessity, changes in the price of the product are less likely to alter demand by the consumer. When the end use product is considered a luxury, changes in the price of the product are more likely to alter demand by the consumer. There are likely some differences in the elasticity of demand across the major melamine institutional dinnerware downstream consumers, such as those in restaurants or schools. Spending by consumers in restaurants is discretionary while consumption in schools is less discretionary. Since schools have special requirements to provide a food service, demand in this market sector appears to be less sensitive or not at all sensitive to small changes in price. In the restaurant market, where consumption is discretionary, demand for melamine institutional dinnerware appears to be somewhat more elastic. The restaurant market appears to represent the majority of market demand for melamine institutional dinnerware while schools account for a smaller share.[8] All else equal, higher price sensitivity in the majority of the downstream market suggests a higher elasticity of demand for melamine institutional dinnerware.

Alternative Products. A second important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

In this investigation the record suggests that there is some competition between melamine

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[7] See Tables V-1 to V-4, CR at V-6 to V-9; PR at V-4 to V-5.

[8] Conf. Tr. at 75-76 and 79, Respondents' Postconference Brief at 25-28.

institutional dinnerware and alternative institutional dinnerware products, most frequently those made of polycarbonates or low-end china.[9] To the extent they are available and competitive, alternative non-melamine institutional dinnerware products would tend to increase the price sensitivity of demand. I intend to closely examine the nature of such competition, especially regarding institutional dinnerware made of polycarbonates, in any final investigation.[10]

Overall, I find that the elasticity of demand for melamine institutional dinnerware appears to be moderate, based on the cost share and critical nature of the product in food services and the availability of alternative products. That is, purchasers will reduce only somewhat the amount of melamine institutional dinnerware they buy in response to a general increase in the price of melamine institutional dinnerware.[11] [12]

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand elasticity for melamine institutional dinnerware appears to be moderate, overall purchases will not change very much if the overall price of melamine institutional dinnerware increases. Nonetheless, purchasers can avoid price increases from one source by seeking other sources of melamine institutional dinnerware. Apart from any changes in overall demand for melamine institutional dinnerware, the demand for melamine institutional dinnerware from different sources will decrease or increase depending on their relative prices and their substitutability. If melamine institutional dinnerware from different sources are substitutable, purchasers are more likely to shift their demand when the price from one source (i.e., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have two potential sources of melamine institutional dinnerware: domestic producers and

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[9] CR at II-6; PR at II-4. Respondent claims china dinnerware outsells melamine by ten to one and is about 50 percent cheaper. Respondent's Postconference Brief at 16-17 and Exhibits 7 and 10-13; Conf. Tr. at 126-127.

[10] I also intend to further examine the competitive relationship between institutional and retail melamine dinnerware.

[11] Another important demand factor is the possibility of buying power by the largest distributors, the "broadliners" and "buying groups." I intend to explore this issue further in any final investigation.

[12] Petitioners claim U.S. market demand for melamine institutional dinnerware is highly inelastic, based on a lack of change in overall U.S. consumption despite price fluctuations. Petitioner's Postconference Brief at 27. This is not supported by the record, which shows significant increases in consumption from 1992 to 1994. In general, there is only limited information in these preliminary investigations relating to elasticity of demand. In any final investigation, I will seek further information on this issue.

subject imports. There apparently are no nonsubject imports available. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among melamine institutional dinnerware from the different sources as follows.

For purposes of this preliminary investigation, I have made the following determinations regarding substitutability. First, I find that subject imports of melamine institutional dinnerware from the PRC, Indonesia, and Taiwan are good substitutes for domestic melamine institutional dinnerware. Second, I find that nonsubject imports apparently are not available and thus cannot be considered as a serious alternative. Thus, any shift in demand away from subject imports, had they been fairly priced, would have increased demand for domestic melamine institutional dinnerware.

Cumulated subject imports and domestic like product are technically interchangeable in their basic application as dinnerware used by institutional food providers and are generally very similar. Subject imports purposely have been made to conform with domestic products, so as to compete for replacement and add-on sales.[13] Although the record suggests that domestic products consist of a broader range of melamine institutional dinnerware types,[14] this does not appear to have limited subject import competition. I note that 80 to 90 percent of melamine institutional dinnerware apparently is sold in basic, monotone colors.[15] Questionnaire responses by producers and importers indicate their belief that U.S. and subject import products are comparable in terms of quality, though Indonesian imports were in some cases characterized as lower quality. Several customers indicated that they were not sure of the country of origin of their import purchases.[16] Moreover, the production processes of foreign and domestic producers are the same.

Cumulated subject imports and domestic melamine institutional dinnerware apparently are sold through similar though not identical channels of distribution. While smaller U.S. distributors carry both domestic and imported products, there is some dispute as to whether the larger "broadliner" distributors and buying groups, which apparently represent 40 to 55 percent of the market, carry only domestic products.[17] Average lead times between a customer's order and delivery are similar for domestic products and subject imports from inventory.[18] There is no dispute that the domestic like product and the subject imports from all three countries compete in the same geographical markets nationwide.[19]

There is some question about respondents' access to certain domestic buyers. Respondents claim they are prevented from competing with domestic producers for broadliner and buying group customers who are required or prefer to purchase from domestic sources, due to "Buy American" provisions and the greater

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[13] Conf. Tr. at 19-20, 26, 29-30.

[14] CR at II-7 and V-17; PR at II-5 and V-. Respondents' Postconference Brief at 26-27. Petitioner disputes the contention that broader domestic product lines limits substitutability between cumulated subject imports and domestic products. Petitioner's Postconference Brief at 23.

[15] Conf. Tr. at 117-118.

[16] CR at II-7 and V-15; PR at II-5 and V-7.

[17] Respondents' Postconference Brief at 22-25 and Exhibit 14; Conf. Tr. at 76-78, 81, 87-89, 106. Petitioner's Postconference Brief at 22,25-26 and Exhibit 1, Tr. at 96 and 116, and Petition Exhibits 21 and 22.

[18] CR at II-8; PR at II-5. If imports are not available from inventory, the lead times increase dramatically.

[19] Conf. Tr. at 59 and 111.

range of both melamine and non-melamine products of domestic producers.[20] While these do not appear to be a very limiting factors in competition in these investigations, I intend to examine these issues more closely in any final investigations. On balance, I find that cumulated subject imports and domestic melamine institutional dinnerware appear to be very good substitutes.

Therefore, based on the available information, I find that purchasers would have shifted a significant portion of their purchases to domestic melamine institutional dinnerware had subject imports been fairly priced.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of domestic melamine institutional dinnerware appears to be high.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. The total domestic industry capacity remained roughly the same from 1992 to 1994. In 1994, more than one-half of the domestic industry's capacity to produce melamine institutional dinnerware, 65.8 percent, was not used and therefore was available to increase production.[21] In 1994, this available production could have replaced the total quantity of cumulated subject imports several times over.[22] Moreover, two of the three domestic producers produce melamine retail dinnerware on the same equipment with the same employees as melamine institutional dinnerware.[23] The production process is virtually the same for these two products. Production can be shifted readily from one to the other, thus increasing the capacity of melamine institutional dinnerware.

Inventories and Exports. The domestic industry had 1.3 million pounds of melamine institutional dinnerware in inventories available at the end of 1994, representing [***] percent of total shipments in 1994, which it could have shipped to the U.S. market.[24] The domestic industry exported only minimal quantities of melamine institutional dinnerware during the period of investigation. Thus the domestic industry had available inventories that easily could have filled all of the demand supplied by cumulated subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. The domestic melamine institutional

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[20] Respondents' Postconference Brief at 22-28 and Exhibit 15; Conf. Tr. at 76-81, 85-90, 106.

[21] Table I-1, CR at I-2 and I-3, PR at I-2 and I-3.

[22] Table I-1, CR at I-2 and I-3, PR at I-2 and I-3.

[23] Conf. Tr. at 55-56.

[24] Table I-1, CR at I-2 and I-3, PR at I-2 and I-3.

dinnerware industry has been somewhat concentrated. Three large domestic producers account for nearly [***] percent of reported production in 1994.[25] Nonetheless, these producers appear to sell similar products and compete with one another. The record thus indicates that there is substantial available domestic capacity and at least some competition among domestic producers.

IV. MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF MELAMINE INSTITUTIONAL DINNERWARE FROM THE PRC, INDONESIA, AND TAIWAN

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Volume of Subject Imports[26]

Cumulated subject imports of melamine institutional dinnerware increased from 563,000 pounds in 1992 to 824,000 pounds in 1994. The quantity of cumulated subject imports increased by 5,000 pounds from interim 1994 to interim 1995. The value of cumulated subject imports increased from $1.0 million in 1992 to $1.5 million in 1994. The value of cumulated subject imports increased by $39,000 from interim 1994 to interim 1995. By quantity, cumulated subject imports held a market share of 8.1 percent in 1992 and 10.2 percent in 1994. Market share by quantity of cumulated subject imports decreased from 10.4 percent in interim 1994 to 10.3 in interim 1995. Their market share by value was 5.8 percent in 1992 and 7.7 percent in 1994. Market share by value of cumulated subject imports increased from 7.5 percent in interim 1994 to 7.8 in interim 1995. While it is clear that the larger the volume of cumulated subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of their price and volume effects. Given the market share of cumulated subject imports and the conditions of competition in the domestic melamine institutional dinnerware market, I find that the volume of cumulated subject imports is significant in light of their price and volume effects.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of cumulated subject imports on domestic prices I examine whether the domestic industry could have increased its prices if the cumulated subject imports had not been dumped. As discussed, both demand and supply conditions in the melamine institutional dinnerware market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if cumulated subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if cumulated subject imports had not been unfairly priced.

If the cumulated subject imports had not been dumped, their prices in the U.S. market would have increased significantly.[27] Thus, if cumulated subject imports had been fairly priced, they would have become considerably more expensive relative to domestic melamine institutional dinnerware. In such a case, if the imported and domestic melamine institutional dinnerware are highly substitutable, purchasers would have

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[25] CR at I-1 and III-1; PR at I-1 and III-1.

[26] The figures in the following paragraph are from Table I-1, CR at I-2 and I-3, PR at I-2 and I-3.

[27] As discussed below, subject imports from the PRC have lower dumping margins.

shifted towards the relatively less expensive products.

In these investigations, the alleged dumping margins for subject imports from Indonesia and Taiwan are large, 89.84 and 53.13 percent respectively, so that subject imports from these countries likely would have been priced out of the market, had they been fairly traded. Since subject imports and domestic melamine institutional dinnerware are very good substitutes, most if not all of the demand for subject imports from these countries would have shifted to domestic melamine institutional dinnerware. In contrast, it is likely that at least some of the subject imports from the PRC, which have lower alleged margins of 7.06 percent, would continue to have been sold in the U.S. market at the higher, fairly traded prices. Overall, the shift in demand to domestic melamine institutional dinnerware would have been substantial, since subject imports from Indonesia and Taiwan held a significant market share of [***] percent by quantity in 1994 and the PRC held a market share of [***] percent. The moderate elasticity of demand indicates that any price increases by domestic suppliers in response to this shift in demand would have been met with a moderate reduction in demand.

In contrast to demand conditions, supply-side conditions would have limited attempts by the domestic industry to increase prices. The domestic industry had significant production capacity as well as inventories that would have allowed it to increase shipments to the U.S. market and to completely replace subject imports. Fairly traded subject imports from the PRC could also have exercised a limit on price increases, as the alleged margin on subject imports from the PRC is relatively low. In these circumstances, domestic producers could have raised their prices somewhat, but not by large amounts. Any effort to raise prices substantially would have been resisted by competitors and to a lessor extent customers.

In general, while there may be some effects on domestic prices that can be attributed to the unfair pricing of subject imports, I do not find that cumulated subject imports are having significant effects on prices for domestic melamine institutional dinnerware.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of cumulated subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.[28] These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

As discussed above, the domestic industry would not have been able to increase its prices significantly if cumulated subject imports had been sold at fairly traded prices. However, dumped imports appear to have had an impact on the domestic industry's output and sales. Had cumulated subject imports not been dumped, the demand for subject imports from the PRC would have declined, the demand for subject imports from Indonesia and Taiwan likely would have been eliminated, and demand for the domestic product would have increased. Domestic producers, who had a 89.8 percent market share by quantity in 1994, easily could have increased their production and sales enough to completely replace subject imports. For the reasons discussed above, the domestic industry likely would have captured most of the demand for cumulated subject imports. As a result, the domestic industry's output and sales, and therefore its revenues, would have increased significantly. I therefore find that, had cumulated subject imports not been dumped, the impact on the domestic industry's output and sales would have been significant.

Had cumulated subject imports not been dumped, the domestic industry would have been able to increase its output and sales, and therefore its revenues, significantly. Consequently the domestic industry would have been materially better off if the subject imports had been fairly traded. Therefore, I find that there is a reasonable indication that the domestic industry producing melamine institutional dinnerware is

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[28] 19 U.S.C. § 1677(7)(C)(iii).

materially injured by reason of allegedly LTFV melamine institutional dinnerware from the PRC, Indonesia, and Taiwan.

VIII. CONCLUSION

On the basis of the foregoing analysis, I determine that there is a reasonable indication that the domestic industry producing melamine institutional dinnerware is materially injured by reason of allegedly LTFV imports of melamine institutional dinnerware from the PRC, Indonesia, and Taiwan.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on February 6, 1996, by the American Melamine Institutional Tableware Association (AMITA) (consisting of Continental/SiLite International Co. (SiLite), Oklahoma City, OK; Lexington United Corp. (National Plastics Corp.) (NPC), Port Gibson, MS; and Plastics Manufacturing Co. (Sun Coast Industries, Inc.) (Sun Coast), Dallas, TX, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of melamine institutional dinnerware[1] from China, Indonesia, and Taiwan. Information relating to the background of the investigations is provided below.[2]

Date	*Action*
February 6, 1996 ...	Petition filed with Commerce and the Commission;[3] institution of Commission investigations (61 FR 5801, February 14, 1996)
February 27	Commission's conference[4]
March 1	Commerce's notice of initiation (61 FR 8039, March 1, 1996)
March 22	Commission's vote
March 22	Commission's determinations transmitted to Commerce

SUMMARY DATA

A summary of data collected in these investigations is presented in table I-1. Except as noted, U.S. industry data are based on questionnaire responses of 3 firms that accounted for all, or nearly all, U.S. production of melamine institutional dinnerware during the period for which data were collected (1992-January-September 1995). U.S. imports are based on questionnaire responses of 4 firms that are believed to account for 100 percent of U.S. imports of melamine institutional dinnerware during this period. (No other firms importing more than sample quantities are known).

THE PRODUCT

The scope of the product subject to these investigations is dinnerware made predominantly of melamine and with a thickness of at least 0.08 inch. "Dinnerware" is not strictly defined other than

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[1] For purposes of these investigations, melamine institutional dinnerware is all items of dinnerware (e.g. plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. For tariff classification purposes, melamine institutional dinnerware (along with other types of plastic dinnerware) is provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (HTS). The most-favored-nation (column 1-general) tariff rates for these subheadings, applicable to imports from all three countries, are 6.8 percent, 5.3 percent, and 3.4 percent *ad valorem*, respectively. Prior to the expiration of the Generalized System of Preferences on July 31, 1995, the rates of duties under these subheadings for Indonesia were free.

[2] *Federal Register* notices cited in the tabulation are presented in app. A.

[3] The alleged LTFV margins (as revised by Commerce) are 7.06 percent for China, 89.84 percent for Indonesia, and 53.13 percent for Taiwan.

[4] A list of witnesses appearing at the conference is presented in app. B.

Table I-1
Melamine institutional dinnerware: Summary data concerning the U.S. market, 1992-94, Jan.-Sept. 1994, and Jan.-Sept. 1995

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
				Jan.-Sept.					Jan.-Sept.
	1992	1993	1994	1994	1995	1992-94	1992-93	1993-94	1994-95
U.S. consumption quantity:									
Amount	6,912	7,408	8,117	5,895	5,999	17.4	7.2	9.6	1.8
Producers' share	91.9	92.5	89.8	89.6	89.7	-2.0	0.6	-2.6	0.1
Importers' share:									
China									
Indonesia	*	*	*	*	*	*	*	*	
Taiwan									
Subtotal	8.1	7.5	10.2	10.4	10.3	2.0	-0.6	2.6	-0.1
Other sources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	8.1	7.5	10.2	10.4	10.3	2.0	-0.6	2.6	-0.1
U.S. consumption value:									
Amount	17,718	17,780	19,266	14,950	14,813	8.7	0.3	8.4	-0.9
Producers' share	94.2	93.9	92.3	92.5	92.2	-1.9	-0.3	-1.6	-0.3
Importers' share:									
China									
Indonesia	*	*	*	*	*	*	*	*	
Taiwan									
Subtotal	5.8	6.1	7.7	7.5	7.8	1.9	0.3	1.6	0.3
Other sources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	5.8	6.1	7.7	7.5	7.8	1.9	0.3	1.6	0.3
U.S. imports:									
China:									
Quantity									
Value									
Unit value									
Indonesia:									
Quantity	*	*	*	*	*	*	*	*	
Value									
Unit value									
Taiwan:									
Quantity									
Value									
Unit value									
Subtotal:									
Quantity	563	558	824	612	617	46.4	-0.9	47.7	0.8
Value	1,034	1,085	1,492	1,115	1,154	44.3	4.9	37.5	3.5
Unit value	$1.84	$1.94	$1.81	$1.82	$1.87	-1.4	5.9	-6.9	2.7
Other sources:									
Quantity	0	0	0	0	0	ERR	ERR	ERR	ERR
Value	0	0	0	0	0	ERR	ERR	ERR	ERR
Unit value	ERR	ERR	ERR	ERR	ERR	ERR	ERR	ERR	ERR
All sources:									
Quantity	563	558	824	612	617	46.4	-0.9	47.7	0.8
Value	1,034	1,085	1,492	1,115	1,154	44.3	4.9	37.5	3.5
Unit value	$1.84	$1.94	$1.81	$1.82	$1.87	-1.4	5.9	-6.9	2.7

Table continued on next page.

Table I-1—Continued
Melamine institutional dinnerware: Summary data concerning the U.S. market, 1992-94, Jan.-Sept. 1994, and Jan.-Sept. 1995

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

	Reported data					Period changes			
				Jan.-Sept.					Jan.-Sept.
Item	1992	1993	1994	1994	1995	1992-94	1992-93	1993-94	1994-95
U.S. producers':									
Average capacity quantity	21,158	19,483	21,197	15,006	15,558	0.2	-7.9	8.8	3.7
Production quantity	6,409	6,895	7,254	5,306	5,352	13.2	7.6	5.2	0.9
Capacity utilization	30.3	35.4	34.2	35.4	34.4	3.9	5.1	-1.2	-1.0
U.S. shipments:									
Quantity	6,349	6,850	7,293	5,283	5,382	14.9	7.9	6.5	1.9
Value	16,684	16,695	17,774	13,835	13,659	6.5	0.1	6.5	-1.3
Unit value	$2.63	$2.44	$2.44	$2.62	$2.54	-7.3	-7.3	-0.0	-3.1
Export shipments:									
Quantity									
Value	*	*		*	*	*	*		*
Unit value									
Ending inventory quantity	1,415	1,411	1,302	1,273	1,191	-8.0	-0.3	-7.7	-6.4
Inventories/total shipments	*	*		*	*	*	*		*
Production workers	292	289	324	291	292	11.0	-1.0	12.1	0.3
Hours worked (1,000s)	608	599	671	564	563	10.4	-1.5	12.0	-0.2
Wages paid ($1,000s)	4,473	4,440	4,939	4,061	4,058	10.4	-0.7	11.2	-0.1
Hourly wages	$7.36	$7.41	$7.36	$7.20	$7.21	0.1	0.8	-0.7	0.1
Productivity (lbs/hr)	10.54	11.51	10.81	9.41	9.51	2.6	9.2	-6.1	1.0
Unit labor costs	$0.70	$0.64	$0.68	$0.77	$0.76	-2.4	-7.7	5.7	-0.9
Net sales:									
Quantity	6,927	7,007	7,164	*	* *	3.4	1.2	2.2	2.2
Value	17,882	18,351	18,262	13,920	13,744	2.1	2.6	-0.5	-1.3
Unit value	$2.58	$2.62	$2.55	$2.61	$2.52	-1.3	1.5	-2.7	-3.4
COGS	11,908	12,449	13,154	9,661	9,961	10.5	4.5	5.7	3.1
Gross profit (loss)	5,974	5,902	5,108	4,259	3,783	-14.5	-1.2	-13.5	-11.2
SG&A expenses	3,358	3,599	4,029	2,703	3,077	20.0	7.2	11.9	13.8
Operating income (loss)	2,616	2,303	1,079	1,556	706	-58.8	-12.0	-53.1	-54.6
Capital expenditures	*	*		*	*	*	*	*	*
Unit COGS	$1.72	$1.78	$1.84	$1.81	$1.83	6.8	3.3	3.3	0.9
Unit SG&A expenses	$0.48	$0.51	$0.56	$0.51	$0.57	16.0	6.0	9.5	11.4
Unit operating income/loss	$0.38	$0.33	$0.15	$0.29	$0.13	-60.1	-13.0	-54.2	-55.6
COGS/sales	66.6	67.8	72.0	69.4	72.5	5.4	1.2	4.2	3.1
Oper income (loss)/sales	14.6	12.5	5.9	11.2	5.1	-8.7	-2.1	-6.6	-6.0

Note.—The financial data reported for 1992-94 are for fiscal years 1993-95. Silite's fiscal period ends Dec. 31; NPC's ends Aug. 31; and SunCoast's ends June 30.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

including as examples plates, cups, saucers, bowls, creamers, gravy boats, dishes, platters, and trays; however, the petitioners consider dinnerware to be any articles used primarily in the preparation, service, or consumption of food. According to petitioners, melamine dinnerware of 0.08 inch thickness or more is characteristic of that used by institutions (schools, restaurants, government/business cafeterias, hospitals, etc.); melamine dinnerware of less thickness is characteristic of that used by households and is collectively known as "retailware," including items such as souvenirs, articles for children, and specially decorated pieces that may or may not be primarily used in the preparation, service, or consumption of food.[5] The institutional product is made thicker in consideration of its heavier use and harsher treatment.

Melamine resin, a plastic, is only one of a number of types of materials from which dinnerware is made, including ceramics (such as porcelain, stoneware, and pottery), metals (such as tin, silver, and pewter), and other types of plastic (such as polystyrene, polycarbonates, and polypropylene). Disposable varieties of dinnerware are made from paper and polystyrene (styrofoam). In addition to being impervious to soaps, solvents, and foods, a primary requisite for non-disposable dinnerware, melamine dinnerware is noted for its relatively low price and its break and scratch resistance--a combination of advantages that has been particularly attractive to institutional buyers, although alternative plastic products are in use. Particularly noteworthy is dinnerware made from polycarbonates. Polycarbonate dinnerware is considerably more break resistant than melamine and is comparable, if not lower, in price. It is less scratch resistant, however, making it harder to clean and sanitize, and its use to date has primarily been confined to prisons and compartmentalized trays used by schools.[6] Some articles of polypropylene and acrylonitrile-butadiene-styrene (ABS), mainly trays, are also used by institutions. In addition to sharing some of the same end-use markets, different types of dinnerware may also share distribution networks. Producing dinnerware, however, is specific to the base material used. The equipment and methods suitable for manufacturing dinnerware from porcelain, pewter, or polycarbonates, for example, are not suitable for manufacturing dinnerware from melamine.

Such specificity does not extend to institutional and retail dinnerware made from the same base material. Melamine institutional dinnerware and melamine retail dinnerware are made on the same types of equipment using similar, if not identical, processes. Although produced on the same equipment and generally using the same employees, different molds are used to allow for the generally greater thickness of institutional articles. Also, because institutional users put a greater premium on function and durability than on appearance, dinnerware made for such use is, in the aggregate, far less decorative and differentiated in color and design. Though relatively plain, not all melamine institutional dinnerware is devoid of decoration. Restaurants, for example, frequently request dinnerware with special patterns, logos, or other identifying features.

Melamine institutional dinnerware is sold either directly to institutions--which in this case are mostly national restaurant chains like Pizza Hut and Red Lobster--or to an array of variously sized

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[5] There appears to be some confusion, however, as to how and where thickness is measured. According to petitioners, the standard procedure is to dissect the article and consider the aggregate thickness of 80 percent of its profile using a point-calipered micrometer (which allows measurement of contours). Respondents, measuring rim thickness with a flat-calipered micrometer, have shown that several articles of imported dinnerware not made strictly for institutional use have thicknesses over 0.08 inch, including what they characterize as "children's ware," or articles decorated with cartoon characters that are produced under license for children, and "Asian ware," which consists of articles decorated with traditional Chinese designs and sold exclusively to Asian supermarkets and restaurants. The data shown and analyzed in this report consist of melamine dinnerware made for institutional use only.

[6] Prisons use polycarbonate dinnerware exclusive of other types because its extreme break resistance discourages inmates from making weapons and tools, and schools and certain other institutions such as hospitals have less concern for scratch resistance because their food preparations generally require minimal utensil manipulation.

distributor/dealers that in turn supply various institutions. (A relatively small quantity has been sold to retail discount houses and camping outfitters, which do not ordinarily serve the institutional market). The largest dealers are mass food-service distributors known as "broadliners" that offer food and a variety of food-service articles to buyers, mainly large restaurants. Smaller restaurants and other institutions generally purchase through smaller, less diversified dealers, such as restaurant supply houses, or through self-organized buying groups that allow their members (mostly restaurants) to buy in bulk (and thus qualifying them to receive the same quantity discounts as larger purchasers). To date, most imports have been sold to restaurant supply houses and buying groups therefor. In contrast to institutional dinnerware, most melamine retailware is sold either to large retailers--such as department stores, supermarkets, and discount chains (which in turn sell to household consumers)--or to distributors specializing in retail consumer goods. Melamine retailware having trademark decorations, such as cartoon characters, is generally produced under license and distributed by the licensor. Separate channels of distribution for melamine institutional dinnerware and retailware do not preclude interchangeability at the user level; however, retailware is rarely, if at all, purchased for institutional use, and institutional dinnerware, outside of the small quantity sold to camping outfitters and discount clubs, is not available for retail sales.

For the most part, the imported and U.S.-produced products are identical or virtually identical.[7] In general, the imported products have been made to conform with the U.S.-produced product so that imports can more directly compete for replacement sales in the U.S. market. The manufacture of the imported and U.S.-produced products is also similar. Producers start with the same raw materials--melamine-formaldehyde resin, pulp, and other additives such as coloring agents,[8] then mix these materials according to a recipe that meets the parameters for a specific product. The resultant mixture is then made into specially-sized biscuits or "preforms" for insertion into compression molds, where, under heat and pressure, they are made into specific articles of dinnerware. If the piece is to be decorated or glazed, the molding process is interrupted for additional treatment. Before packaging and shipment, the pieces are subjected to sanding and buffing operations to remove any imperfections.

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[7] Other than the afore-mentioned "Asian ware," a Chinese- and Taiwanese-produced product that may arguably be within Commerce's scope but is not included in the data of this report.

[8] Some producers make their own melamine-formaldehyde resin from melamine and formaldehyde purchased separately.

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

MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION

The market for melamine institutional dinnerware in the United States includes U.S. producers and importers which sell product primarily to distributors and large restaurant chains. These distributors then sell the product to end users, including restaurants and institutions such as State and local governments, public and private schools, day care centers, nursing homes, and hospitals. Distributors are made up of "broadliners," or major food distributors which also carry equipment and supplies, and independent dealers which sell only equipment and supplies. Recently, some independent dealers have formed buying co-operatives in an attempt to compete with the broadliners by capturing more incentives and gaining leverage in price negotiations. A small portion of institutional product, less than 1 percent, ends up with mass merchandisers such as discount clubs which tend to mix retail and institutional products.[1]

There are small segments of the melamine dinnerware market which use products possibly meeting the scope of these investigations, but which are not generally used in institutional applications or sold through the distribution channels mentioned above. These include some "Asian-ware," children's dinnerware, products used for camping, and household dinnerware.[2] The "Asian-ware" segment includes specialized products such as rice bowls which are not interchangeable with more standard products. It is also characterized by products with Asian-style decoration. None of this segment is served by Indonesian imports or domestic producers. In addition, it is served through separate channels, which include distributors who sell to Asian supermarkets.[3] Children's dinnerware and products used for camping are sold to households through retail channels of distribution. In the case of licensed children's products, such as Disney products, distribution is controlled by the licensor.[4]

According to both the domestic producers and the importers, broadliners comprise only 20 to 25 percent of the market,[5,6] with large restaurant chains and dealers making up the balance. Manufacturers prefer to deal with broadliners to lower marketing costs, including attending industry shows, and administrative costs involved in filling more orders, by selling more of their product line to a smaller group of purchasers.[7]

The U.S. producers and one of the importers sell a broader product line which includes products other than melamine. These companies may offer purchasers such incentives as rebates for exclusive marketing of their product line and incentives for growth. Since the product lines are broad, and the rebates are based on all products, the importers which only sell melamine are unable to match these incentives due to their limited product lines. This also provides an advantage to larger distributors and cooperative buying groups who are better able to capitalize on these rebates.[8]

*** of ***, a large "broadliner," stated that his impression was that the price of imported melamine institutional dinnerware, even taking into consideration all rebates, was about equal to or slightly less than the domestic product. This firm's primary concern is not the price of the product since

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[1] Conference transcript, pp. 54-55.

[2] Household dinnerware does not generally meet the thickness specification outlined by Commerce's scope for these investigations.

[3] Conference transcript, p. 100.

[4] Ibid., p. 92.

[5] Ibid., p. 40.

[6] Postconference brief, White & Case, p. 22.

[7] Meeting with *** on Feb. 23, 1996.

[8] Ibid.

melamine is not a large part of its business. It chooses domestic producers who carry larger product lines in order to save on the administrative costs involved with using multiple sources, to increase the leverage it has in price negotiations, and to capitalize on freight rebates available for large orders. The firm does not use imports because of concerns with the reputation of the manufacturer and logistical considerations such as the ability to inspect the plant, lack of confidence that the product meets all applicable standards and regulations, and lack of confidence in the ability of the source to fill large orders in a timely manner. In addition, *** stated that although he has no importers on a national program, *** is listed in their system and individual districts can purchase their products. He speculates that few or no imports are purchased by the districts due to the concerns listed above.[9] *** of ***, another large broadliner, stated that they do not purchase imported products, and he doubted that their individual offices do. He stated that he would consider imports, but has not seen many imports on the market. *** purchases the domestic product because it considers it a better product and tries to source locally to avoid logistical problems such as supply.

According to the importers, imports are not able to compete with domestic product when the end user is an institution, such as the federal government, hospitals, colleges, and schools. The importers state that they are excluded from federal government procurements by "Buy American" provisions.[10] According to Jo-Ann Sanders of the General Services Administration, a federal government agency which rejected a bid by G.E.T., although procurements are subject to a number of regulations based on specific circumstances, generally, procurements of under $192,000 are subject to the Trade Agreements Act and product must be purchased from approved countries (which do not include China, Indonesia, or Taiwan, although Taiwan was approved before January 1996). Procurements under $192,000 are subject to "Buy American" provisions, unless specified as a small-business set-aside.[11] Importers also contend that their competitiveness with other institutions is limited because contracts specify a domestic product "or approved equal," and purchasers are not willing to risk using an approved equal.[12] According to ***, a large broadliner which serves institutional buyers, there is no reason why imports could not be used in a contract that specified that an approved equal was acceptable. Although he does not use imports in his contract bids, it is because *** relies on domestic products, and would not stock a whole new line of products for one bid. *** of ***, another large broadliner which serves institutional buyers, stated that he has not heard of imports being denied a contract sale because of specifications which allow for "an approved equal."[13]

***, one of the U.S. producers, is vertically integrated in that it produces and sells melamine resin as well as the finished product. This allows this producer to recycle products by "regrinding" scrap into other products. Factory scrap can be recycled into dinnerware, although material from other sources is limited to use in other products. This company is able to buy back worn-out dinnerware from customers who use its lines. Companies which are not vertically integrated can sell back scrap to those which are capable of recycling.[14]

Some purchasers, particularly those which use a professional dietician to do purchasing, require the melamine institutional dinnerware that they purchase to meet National Sanitation Federation (NSF) standard 36. This standard specifies a thickness and a cleanability standard that the dinnerware must

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[9] Telephone conversation, Mar. 5, 1995.
[10] Conference transcript, p. 79.
[11] Telephone conversations, Mar. 5 and Mar. 12, 1995.
[12] Conference transcript, p. 86.
[13] Telephone conversations of Mar. 5 and Mar. 12, 1995.
[14] Meeting with *** on Feb. 23, 1996.

meet. Not all U.S. or imported products meet the NSF-36 specification; not all purchasers require the certification and it is expensive to maintain.[15]

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on the available information, staff believes that U.S. melamine institutional dinnerware producers are likely to respond to changes in demand with relatively large changes in shipments of U.S.-produced melamine institutional dinnerware to the U.S. market, and smaller changes in prices. Factors contributing to the responsiveness of supply are discussed below.

Capacity in the U.S. industry

The existence of levels of unused capacity in the U.S. melamine institutional dinnerware industry increases the degree to which U.S. producers can respond to increases in demand with changes in production. Total annual capacity of the three responding domestic producers of melamine institutional dinnerware ranged from 19.5 million to 21.2 million pounds from 1992 to 1994 (table I-1). U.S. producers' capacity utilization levels ranged from 30.3 percent to 35.4 percent over the period.

Production alternatives

Household melamine dinnerware can easily be produced on the same presses as institutional dinnerware; only the molds need to be changed. Although domestic producers could switch production to household melamine, according to Robert Parmacek of SiLite, they could not compete with the price of imports. According to Jim Miller of Sun Coast, the presses are a common piece of equipment and can be used for "anything you want to apply pressure to....for household or institutional or some other product..."[16] The expense and logistics of transferring production to a non-melamine product are not known.

Inventory levels

The existence of inventories increases the degree to which U.S. producers can respond to changes in demand with changes in shipments. U.S. producers' year-end inventories fell from 1.4 million pounds in 1992 to 1.3 million pounds in 1994. The total decline in inventories was less than 10 percent. These inventories represented between *** and *** percent of total shipments by weight during 1992 through 1994.

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[15] Conference transcript, pp. 51-52.
[16] Ibid., pp. 55-56.

U.S. Demand

The main factor contributing to the price sensitivity of overall demand for melamine institutional dinnerware is the availability of substitute products. Limitations on the ease with which purchasers can switch to substitute products constrain the price sensitivity of demand.

Substitute Products

There are three classes of products which serve as substitutes for melamine institutional dinnerware -- disposable products, low-end china, and dinnerware made of other plastics such as polypropylene, polystyrene, and acrylontrile-butadiene-styrene (ABS). Disposable products are not as attractive as melamine and are encountering growing disapproval due to environmental concerns. Low-end china is preferable in terms of aesthetics, but is much less durable and break resistant. Low-end china is less expensive than melamine, but is more expensive in terms of life-cycle costs.[17] Polycarbonate is less attractive, not available in decorated versions, less scratch resistant, requires longer drying times than melamine, and, according to Earl Moore of NPC, cannot meet NSF standard 36. It is also slightly less expensive and more break resistant, and therefore may have better life cycle cost in institutions such as prisons and schools where there is not a lot of scratching with sharp utensils.[18] Polypropylene and ABS substitutes include only trays.

According to Earl Moore of NPC, purchasers switch from melamine to a substitute product, or vice-versa, very rarely. The transition usually occurs in a 2- or 3-year cycle.[19] For restaurants, the type of dinnerware is dictated by the type of restaurant, not the price of the product.[20] The petitioners state that customers which switch replace their entire dinnerware inventory,[21] while John Reilly of Nathan Associates, a consultant for the importers, asserts that it is possible to move between the china and melamine dinnerware without wholesale substitution, since many of the melamine colors, sizes, and patterns are copies of china originals and the restaurants which would use the products in question are neighborhood restaurants where the type of dinnerware is not a primary concern.[22,23]

SUBSTITUTABILITY ISSUES

Comparison of Domestic Products and Subject Imports

Producers and importers were requested to provide information regarding the differences in non-price factors between the domestic products and subject imports. According to the responses, the quality of institutional product (excluding children's and Asian dinnerware) from all countries is equivalent, with the exception that *** importer indicated that Indonesian products are all low-end. *** domestic producers responded that imports from all three subject countries are interchangeable

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[17] Ibid., p. 82.
[18] Ibid., pp. 43-44 and 61-65.
[19] Ibid., p. 16.
[20] Ibid., p. 177.
[21] Petitioners' postconference brief, p. 7.
[22] Conference transcript, pp. 126-127.
[23] Respondents also provided affidavits from two restaurant owners, Ta Wei Chien of Szechuan Gallery and Dan Hensley of Carmella Kitty's, in their postconference brief. Both restaurant owners stated that they use china and melamine dinnerware side-by-side.

with the domestic product. *** responding importers responded that Indonesian product is not used interchangeably with the domestic product, stating that Indonesian imports do not include decorated or glazed versions. *** responding importers stated that Chinese imports are not used interchangeably, noting that U.S. manufacturers do not produce Asian dinnerware and cannot produce the licensed products which the importers are bringing in. *** responding importers indicated that product from Taiwan cannot be used interchangeably with the U.S. product, stating that only the few products that have the same size and design as U.S. products can be used interchangeably.[24]

All three U.S. producers and two of the importers stated that imports of melamine institutional dinnerware from all three subject countries are used in the same applications. One of the importers that stated that the product was not used in the same applications indicated that the Indonesian product is only for low-end uses; the other noted that the Chinese design melamine institutional dinnerware is used by Asian restaurants and households.

The average lead time between a customer's order and delivery was reported by the three domestic producers to be between *** and ***. According to the importers, the average lead times from U.S. inventory ranged from *** to ***. If product was not available from inventory, lead-times increased dramatically. For product from Indonesia, lead times were reported to be between *** and ***; for product from Taiwan, between *** and ***; and for product from China, ***.

[24] Commission questionnaire responses.

PART III: CONDITION OF THE U.S. INDUSTRY

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 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 three firms that accounted for all, or nearly all, U.S. production of melamine institutional dinnerware during the period for which data were collected.

U.S. PRODUCERS

In addition to the petitioners, one other firm--Gessner Products, Inc., Ambler, PA--may produce melamine institutional dinnerware, but only in a limited number of lines and in small quantities. (Gessner has refused to respond to Commission inquiries). Petitioners believe that Gessner's production of this product is less than *** percent of total domestic production. In addition to the subject product, the petitioners produce other articles of plastic, including (in the case of SiLite and Sun Coast) melamine retailware. Melamine retailware is produced at the same plants as melamine institutional ware, and each producer operates one plant for this purpose. Of the subject product, each petitioner produces a relatively complete line and markets its lines nationally. None dominates U.S. production or sales.

U.S. PRODUCTION, CAPACITY, CAPACITY UTILIZATION, SHIPMENTS, INVENTORIES, AND EMPLOYMENT

Data for the petitioners are shown in table III-1. For the most part, the data show increases throughout the investigative period, although the increases either slowed considerably or stabilized from January-September 1994 to January-September 1995, particularly in regard to employment. Notable exceptions to the general increases are in shipment unit values and inventories. The declining unit values of melamine institutional dinnerware reflect smaller increases in the value of shipments than in quantities and an actual decline in total value from January-September 1994 to January-September 1995. Inventories fell progressively throughout the period. The decline and subsequent increase in U.S. producers' capacity resulted from SiLite's transfer of molding equipment from its plant in Lake Bluff, PA, to its current plant beginning in 1993. (The extent to which the petitioners' capacity calculations reflect practical conditions for actual production is not clear. For this reason the capacity utilization rates shown in table III-1 should be regarded only as a series of indexes indicating relative changes from period to period and are not necessarily indicative of an actual degree of physical idleness). Producers' exports are minor.

Table III-1
Melamine institutional dinnerware: U.S. production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of U.S. production and related workers, and hours worked by and wages paid to such workers, 1992-94, Jan.-Sept. 1994, and Jan.-Sept. 1995

Item	1992	1993	1994	Jan.-Sept.-- 1994	1995
Production *(1,000 pounds)*	6,409	6,895	7,254	5,306	5,352
Capacity *(1,000 pounds)*	21,158	19,483	21,197	15,006	15,558
Ratio of production to capacity *(percent)*	30.3	35.4	34.2	35.4	34.4
Domestic shipments:					
Quantity *(1,000 pounds)*	6,349	6,850	7,293	5,283	5,382
Value[1] *(1,000 dollars)*	16,684	16,695	17,774	13,835	13,659
Unit value *(per pound)*	$2.63	$2.44	$2.44	$2.62	$2.54
Exports:					
Quantity *(1,000 pounds)*	***	***	***	***	***
Value[1] *(1,000 dollars)*	***	***	***	***	***
Total shipments:					
Quantity *(1,000 pounds)*	***	***	***	***	***
Value[1] *(1,000 dollars)*	***	***	***	***	***
Inventories *(1,000 pounds)*	1,415	1,411	1,302	1,273	1,191
Ratio of inventories to total shipments during the period *(percent)*	***	***	***	***	***
Average number of production and related workers	292	289	324	291	292
Hours worked by production and related workers *(1,000 hours)*	608	599	671	564	563
Pounds produced per hour	10.54	11.51	10.81	9.41	9.51
Wages paid to production and related workers *(1,000 dollars)*	4,473	4,440	4,939	4,061	4,058
Hourly compensation paid to production and related workers	$7.36	$7.41	$7.36	$7.20	$7.21

[1] Net sales value, i.e., gross value less all discounts, allowances, rebates, and the value of returned goods.

Note.--The ratios of inventories to total shipments in Jan.-Sept. 1994 and Jan.-Sept. 1995 are annualized.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

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

China, Indonesia, and Taiwan are the only known sources of imports of melamine institutional dinnerware, and three firms accounted for the overwhelming bulk of these imports during the period for which data were collected. Melamine institutional dinnerware from China was imported by Thunder Group, Inc., El Monte, CA, a subsidiary of Tar-Hong Melamine Co., Ltd., Taiwan, which owns a melamine dinnerware producing facility in Xiamen, China (Tar-Hong Melamine Xiamen Co., Ltd.). (It also owns another U.S. subsidiary, Tar-Hong Melamine USA, Inc., El Monte, CA, that imports melamine retailware for Asian supermarkets). G.E.T. Enterprises, an independent importer headquartered in Houston, TX, accounted for the imports from Indonesia and a large portion of those from Taiwan. The remainder from Taiwan was imported by Admiral Craft Equipment Corp. (ACE), an independent importer in Hicksville, NY.[1]

U.S. imports, by sources, are shown in table IV-1. In the aggregate, import quantities from these countries increased by 46.4 percent from 1992 to 1994 and again, by a small margin, from January-September 1994 to January-September 1995. China entered the U.S. market in 1994. Unit values are considerably lower than those for U.S. producers; however, dinnerware consists of a great many types of articles with a wide range of prices, and the mix of these articles in U.S. producers' and importers' sales is not known.

Apparent U.S. consumption and respective shares of imports and U.S. producers' shipments are shown in table IV-2. Contrary to petitioners' characterization of the market as being flat,[2] the data show a 17.4-percent increase in consumption quantity from 1992 to 1994 and a 1.8-percent increase from January-September 1994 to January-September 1995. As a share of consumption quantity, imports increased irregularly from 8.1 percent to 10.3 percent during the investigative period. More specific effects subject country imports may have had on U.S. producers are explored in the following sections on prices, lost sales, and lost revenues.

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[1] One of the petitioners ***.

[2] Conference transcript, p. 17.

Table IV-1
Melamine institutional dinnerware: U.S. imports, by sources, 1992-94, Jan.-Sept. 1994, and Jan.-Sept. 1995

Item	1992	1993	1994	Jan.-Sept.-- 1994	1995
	Quantity (*1,000 pounds*)				
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total	563	558	824	612	617
	Value (*1,000 dollars*)				
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total	1,034	1,085	1,492	1,115	1,154
	Unit value (*dollars per pound*)				
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Average	$1.84	$1.94	$1.81	$1.82	$1.87
	Share of total quantity (*percent*)				
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
	Share of total value (*percent*)				
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

Note.--Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission

Table IV-2
Melamine institutional dinnerware: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1992-94, Jan.-Sept. 1994, and Jan.-Sept. 1995

Item	1992	1993	1994	Jan.-Sept.-- 1994	1995
	Quantity (*1,000 pounds*)				
Producers' U.S. shipments	6,349	6,850	7,293	5,283	5,382
U.S. imports from--					
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total	563	558	824	612	617
Apparent consumption	6,912	7,408	8,117	5,895	5,999
	Value (*1,000 dollars*)				
Producers' U.S. shipments	16,684	16,695	17,774	13,835	13,659
U.S. imports from--					
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total	1,034	1,085	1,492	1,115	1,154
Apparent consumption	17,718	17,780	19,266	14,950	14,813
	Share of quantity of U.S. consumption (*percent*)				
Producers' U.S. shipments	91.9	92.5	89.8	89.6	89.7
U.S. imports from--					
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total imports	8.1	7.5	10.2	10.4	10.3
	Share of value of U.S. consumption (*percent*)				
Producers' U.S. shipments	94.2	93.9	92.3	92.5	92.2
U.S. imports from--					
China	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total imports	5.8	6.1	7.7	7.5	7.8

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICING

Transportation to the U.S. Market

Transportation charges for melamine institutional dinnerware are estimated to be 15.1 percent for Indonesia, 10.1 percent for China, and 8.6 percent for Taiwan. These estimates are derived from official U.S. import data (under HTS subheadings 3924.10.20, 3924.10.30, and 3924.10.50) and represent the transportation and other charges on imports valued on a c.i.f. basis compared to customs value.

U.S. Inland Transportation Costs

*** of five responding importers of melamine institutional dinnerware indicated that transportation costs are an important factor in their customers' purchase decisions. According to the U.S. producers, transportation costs account for between *** and *** percent of the total delivered costs of melamine institutional dinnerware. The importers estimate that these costs range from *** to *** percent of the total delivered costs.

Exchange Rates

China

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese yuan depreciated by 31.7 percent in relation to the U.S. dollar during the period January-March 1993 through July-September 1995 (figure V-1). The series fell more than 30 percent between October-December 1993 and January-March 1994 due to a change in the way the People's Bank of China sets the exchange rate.[1] From January-March 1994 through October-December 1993, the Chinese yuan appreciated by 4.8 percent. Producer price information for China is unavailable; thus, real exchange rates cannot be calculated.

Taiwan

Quarterly data reported by the Central Bank of China indicate that the nominal value of the Taiwanese NT dollar depreciated by 4.0 percent from January-March 1993 to October-December 1993, appreciated by 5.0 percent from October-December 1993 through April-June 1995, then dropped off by 5.4 percent in the third quarter of 1995. The nominal value of the Taiwanese NT dollar ended the period from January-March 1993 to July-September 1995 down 4.4 percent. The real exchange rate depreciated by 2.7 percent from January-March 1993 to October-December 1993, appreciated by 9.8 percent from October-December 1993 to April-June 1995, then dropped off by 3.5 percent in the third quarter of 1995 to end the period January-March 1993 to July-September 1995 up 3.0 percent (figure V-2).

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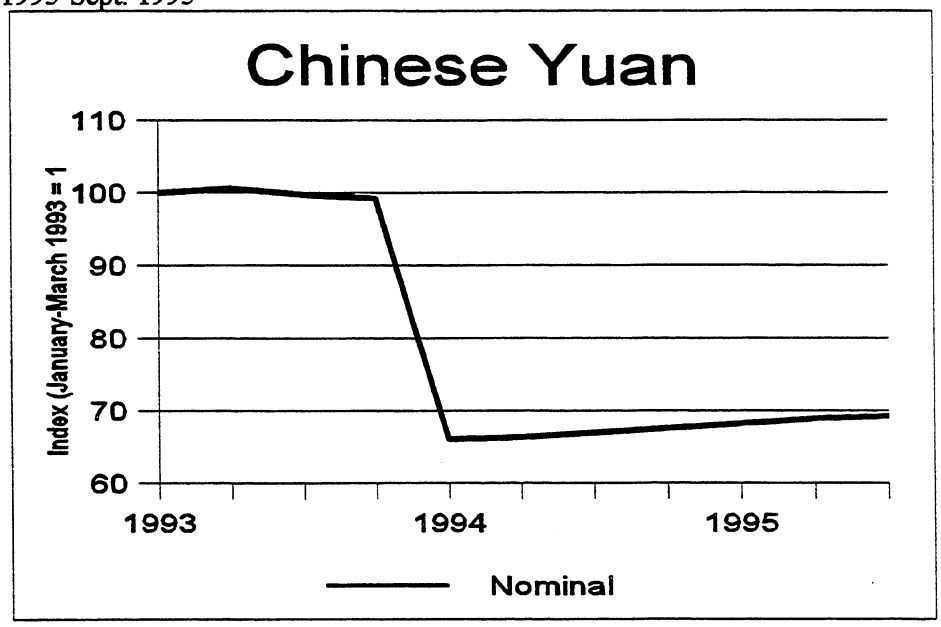
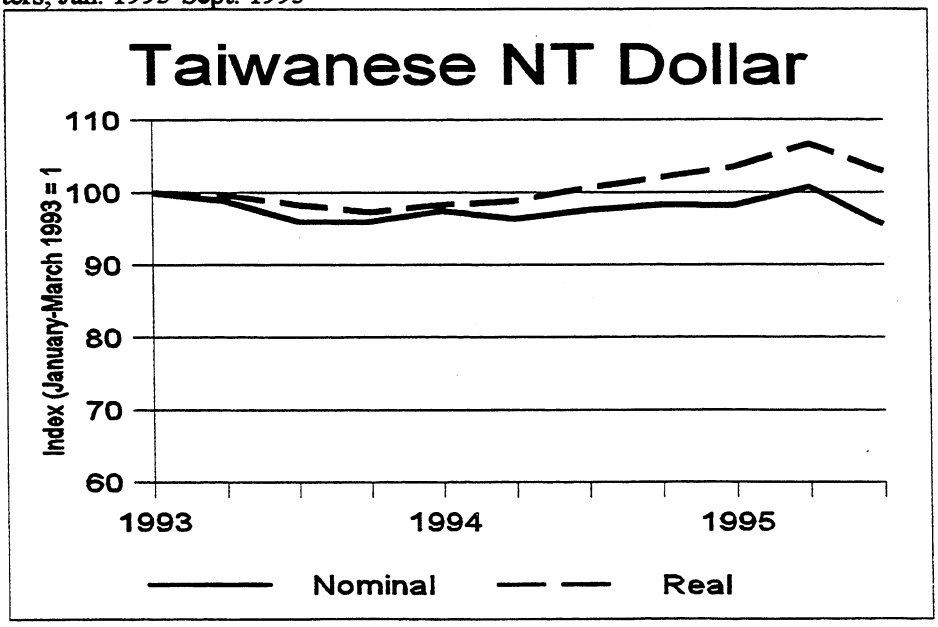
[1] International Monetary Fund, *International Financial Statistics*, September 1995, p. 168.

Figure V-1
Exchange rates: Index of the nominal exchange rate between the U.S. dollar and Chinese yuan, by quarters, Jan. 1993-Sept. 1995



Source: International Monetary Fund, *International Financial Statistics*, January 1996.

Figure V-2
Exchange rates: Indices of nominal and real exchange rates between the U.S. dollar and Taiwanese NT dollar, by quarters, Jan. 1993-Sept. 1995

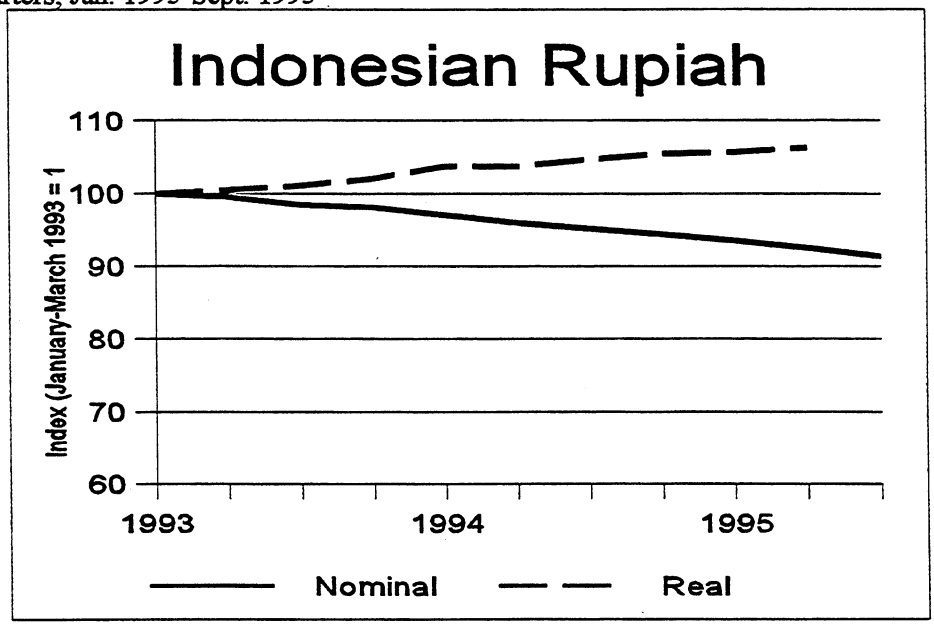


Source: The Central Bank of China, *Financial Statistics, Taiwan District, the Republic of China*, October 1995.

Indonesia

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Indonesian rupiah depreciated steadily from January-March 1993 through July-September 1995, ending the period down 8.6 percent. The real value of the Indonesian rupiah appreciated steadily from January-March 1993 through April-June 1995, ending the period up 6.3 percent (figure V-3).[2]

Figure V-3
Exchange rates: Indices of nominal and real exchange rates between the U.S. dollar and Indonesian rupiah, by quarters, Jan. 1993-Sept. 1995



Source: International Monetary Fund, *International Financial Statistics*, January 1996.

PRICING PRACTICES[3]

All responding domestic producers and importers distribute price lists and offer at least some discounts off of list prices, including discounts to distributors and volume rebates. Most sales of melamine institutional dinnerware are made on a spot basis. *** of the responding importers sold *** product on a contract basis whereas *** of the domestic producers sell at least some product on a contract basis. The percentage of sales of domestic producers made on a contract basis ranged from *** to *** percent. All of the contracts are on an annual basis and generally set price. The U.S. producers indicated that their contracts either rarely or never contain a meet-or-release provision. There are no standard quantity requirements, although *** indicated that a price premium of *** percent applies for sub-minimum shipments.

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[2] Data for the consumer price index for July-September 1995 are unavailable, therefore the real exchange rate could not be calculated for this period.

[3] For purposes of discussion, the questionnaire responses from *** will not be included in the discussion of importers' responses. *** is a petitioner who imports only one specialty product; this product falls outside the standard melamine institutional dinnerware product line and is unavailable from U.S. manufacturers.

All responding domestic producers and importers indicated that small orders are sold on an f.o.b. basis. *** of the domestic producers and *** of the importers reported selling on a delivered basis or with pre-paid freight for large orders. The minimum order required to capture the freight benefits ranged from *** to *** for the importers and from *** to *** or *** for the domestic producers. *** of the three responding U.S. producers and *** of the four responding importers do not offer rebates for prompt payment. The sales terms for these companies range from net 10 days to net 30 days. For the importers that offer rebates, the incentive ranges from *** to *** percent; for the domestic producer, the rebate is *** percent.

PRICE DATA

The Commission requested U.S. producers and importers to report net U.S. delivered selling prices for sales of selected melamine institutional dinnerware products to unrelated U.S. customers, as well as the total quantity shipped and the total net delivered value shipped in each quarter. Quarterly price data were requested for the largest single sale and for total sales of the products specified, from January 1992 through December 1995. The products for which pricing data were requested are as follows:

Product 1: 8-7/8" to 9-3/4" melamine plate, minimum weight 143g

Product 2: 3 to 4 oz. melamine bowl, minimum weight 45g

Product 3: 9 to 9-1/2" melamine platter, minimum weight 124g

Product 4: 7-1/2 oz. melamine stacking cup, minimum weight 71g

Three U.S. producers and three importers provided usable pricing data for sales of the requested products in the U.S. market, although not necessarily for all products or all quarters over the period examined. Pricing data based on largest sales prices weighted by total quantity shipped are presented in Tables V-1-V-4 and Figures V-4-V-7. Pricing data reported are estimated to account for 12.6 percent of U.S. shipments of domestic melamine institutional dinnerware, and 2.6, 25.5, and 37.5 percent of U.S. shipments of melamine institutional dinnerware imported from China, Taiwan, and Indonesia, respectively.

Table V-1
Melamine institutional dinnerware: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product 1 reported by U.S. producers and importers, and margins of under/(over)selling, by quarters, Jan. 1993-Dec. 1995

* * * * * * *

Table V-2
Melamine institutional dinnerware: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product 2 reported by U.S. producers and importers, and margins of under/(over)selling, by quarters, Jan. 1993-Dec. 1995

* * * * * * *

Table V-3
Melamine institutional dinnerware: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product 3 reported by U.S. producers and importers, and margins of under/(over)selling, by quarters, Jan. 1993-Dec. 1995

* * * * * * *

Table V-4
Melamine institutional dinnerware: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product 4 reported by U.S. producers and importers, and margins of under/(over)selling, by quarters, Jan. 1993-Dec. 1995

* * * * * * *

Figure V-4
Melamine institutional dinnerware: Weighted-average net delivered prices for sales of product 1 to U.S. customers reported by U.S. producers and importers, by quarters, Jan. 1993-Dec. 1995

* * * * * * *

Figure V-5
Melamine institutional dinnerware: Weighted-average net delivered prices for sales of product 2 to U.S. customers reported by U.S. producers and importers, by quarters, Jan. 1993-Dec. 1995

* * * * * * *

Figure V-6
Melamine institutional dinnerware: Weighted-average net delivered prices for sales of product 3 to U.S. customers reported by U.S. producers and importers, by quarters, Jan. 1993-Dec. 1995

* * * * * * *

Figure V-7
Melamine institutional dinnerware: Weighted-average net delivered prices for sales of product 4 to U.S. customers reported by U.S. producers and importers, by quarters, Jan. 1993-Dec. 1995

* * * * * * *

U.S. Producers' and Importers' Prices

U.S. Product

U.S. producers' prices for product 1 ranged from *** to *** per dozen. Prices fluctuated throughout the period and ended down *** percent, although the highest price was in January-March 1995. U.S. producers' prices for product 2 ranged from *** to *** per dozen. Prices fluctuated throughout the period, ending down *** percent. The highest prices were seen in January-March 1993 and April-June 1995. For product 3, U.S. producers' prices ranged from *** to *** per dozen. Prices fluctuated throughout the period, ending down less than *** percent. Low prices (under *** per dozen) were seen in the last three quarters of 1993, while highs were seen in January-March 1994, April-June 1995, and July-September 1995. Prices reported by U.S. producers for product 4 ranged from *** to ***

per dozen. Prices fluctuated throughout the period with an upward tendency, ending up *** percent. The highest prices were seen in April-June and July-September 1995.

Chinese Product

No prices for Chinese product were reported for January-March 1993 through April-June 1994. Prices for product 1 fluctuated over a large range, *** to *** per dozen, during the period July-September 1994 through October-December 1995. No discernable trend can be identified. Prices for product 2 ranged from *** to *** per dozen, ending the period for which prices were reported (October-December 1994 through October-December 1995) at ***. Reported prices for product 3 ranged from *** to *** per dozen over the period for which prices were reported, July-September 1994 to October-December 1995. Prices fell over the period, ending down *** percent. Prices for product 4 were only reported for three quarters, January-March 1995 to July-September 1995. Prices ranged from *** to *** per dozen, ending at the high price.

Taiwanese Product

Prices reported by importers for product 1 ranged from *** to *** per dozen and ended the period of investigation down *** percent. Prices were stable through 1993, but fell by *** percent from October-December 1993 to January-March 1994.[4] For the remainder of the period of investigation, prices were relatively stable. Reported prices for product 2 ranged from *** to *** per dozen. Prices were flat in 1993 and 1995, but were markedly lower in 1994.[5] Prices reported for product 3 ranged from *** to *** per dozen and fell over the period by over *** percent.[6] Importers reported prices for product 4 ranging from *** to *** per dozen. Prices were relatively flat over the period, ending down *** percent.

Indonesian Product

Reported prices for product 1 ranged from *** to *** per dozen, ending the period at the high. Prices for product 2 ranged from *** to *** per dozen, ending the period up *** percent. For product 3, prices ranged from *** to *** per dozen, beginning the period of investigation at the high and ending down by *** percent. No prices were reported for product 4.[7]

Price Comparisons

Tables V-1 through V-4 show the margins of underselling/(overselling) for melamine institutional dinnerware from January-March 1993 through October-December 1995 for all countries. For China, margins ranged from *** to *** percent, with *** instances of overselling and *** instances of underselling.[8] For Taiwan, margins ranged from *** to *** percent, with *** instances of overselling and *** instances of underselling. All margins reported for products 1 and 2 are ***.[9] For Indonesia, margins ranged from *** to *** percent, with *** instances of overselling and *** instances of underselling. For product 1, margins ranged from *** to *** percent. Product 2 margins were

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[4] For 1993, only *** reported prices for product 1, but starting in 1994, *** reported prices.
[5] In 1994, *** reported prices, while in 1993 and 1995, *** reported prices.
[6] The highest prices were observed in 1993, for which *** reported prices. In 1994 and 1995, *** reported prices.
[7] According to Edward Sim, ***.
[8] Margins for China are based on price information provided by ***.
[9] Many of the margins for Taiwan, particularly the *** margins, are based on price information provided by ***.

predominantly *** and ranged from *** to *** percent. All margins for product 3 were *** and ranged from *** to *** percent.[10]

LOST SALES AND LOST REVENUES

All of the three responding producers alleged lost sales and/or revenues due to imports of melamine institutional dinnerware from China, Taiwan, and/or Indonesia. *** made *** lost revenue and *** lost sales allegations. Staff was able to get comments from *** of the *** purchasers named. *** provided lost sales/revenues allegations for *** purchasers, *** of which were contacted by staff. *** provided lost sales/revenues allegations for *** purchasers, *** of which were contacted by staff. Responses of the purchasers contacted are detailed below.

*** was cited by *** in an instance of alleged lost revenues of approximately *** in *** to imports from Taiwan. *** of *** stated that the company is currently purchasing both from Taiwan and from a U.S. producer. He would not comment further on the allegation.

*** named *** in another instance of lost revenues of *** due to imports from Taiwan. *** of *** stated that his company does not purchase that large a volume of melamine institutional dinnerware, although he is using both domestic and imported products. He was unsure of the country of origin of his imported product.

*** alleged lost revenues in sales to *** of *** in 1994 due to imports from Taiwan. *** of *** stated that the company does not purchase that much product. He also stated that he is predominantly purchasing U.S. product and that he purchases imports only to meet specific customer requests.

***, a small dealer which serves one restaurant chain, was named in a lost sale allegation of *** by ***. According to *** of ***, they have been purchasing imports from *** as long as they have been purchasing melamine. Before 1987, they had been using ***, not melamine. They choose to purchase imports due to the low price, two-thirds that of the domestic product, and the quality of the product.

*** was named in another lost sales allegation by ***. The allegation claimed losses of ***, but *** stated that the amount is more in the range of *** every 6 months. Although he was not sure of the country of origin of the product he is purchasing, he stated that it is from the Orient.

*** of *** responded to a lost sale allegation by ***. She stated that *** is currently using a domestic supplier and purchases no imported melamine. According to her, they had been importing 5 to 6 years ago, but switched to domestic product after weighing the price differential against supply issues. She confirmed that the amount alleged *** is correct for the amount of product they purchase.

*** stated that *** in annual sales to ***, a small restaurant supply company, were lost to imports ***. In 1995, *** sales were ***, but *** has since switched completely to ***. *** of *** indicated that *** has better lead times and that he still uses domestic products, which have come down in price to match the imports. He also stated that the amount listed in the allegation, ***, is probably high, but he was not sure of the exact amount.

***, a small to mid-sized distributor, was also named in a lost sale allegation by ***. According to the allegation, this *** per year account switched from purchases of domestic product, ***, to ***. In 1995, their purchases from *** were ***. *** of *** confirmed that they have been using *** for 3 to 4 years. She stated that she was not using any domestic product in 1995. She switched to the imported product due to price. She thought that the product provided by *** was from the same source as the ***, an *** product line, she had previously been using, noting that she saw no difference in quality.

According to ***, in order to keep the business of ***, a large broadline food distributor, it was forced to match *** prices on tumblers. *** of *** confirmed that their domestic source lowered its prices to meet the price of imports. He estimated their total purchases of melamine at *** per year. He also stated that the quality of the imports was equivalent to the domestic for his purposes, although maybe a slightly lighter gauge.

---

[10] Margins for Indonesia are based on price information provided by ***.

*** of ***, a small, independent broadliner, responded to allegations that this *** per year account switched from using *** to ***. *** stated that they purchase imported product from Indonesia and Taiwan, indicating that the lead time on the imported product is better, although recently the quality has fallen off and *** has seen rough or raw edges on the product. *** said that *** does not use the imported product for the price but stated that the domestic producers required a high minimum order, but the importers would ship any quantity, eliminating *** need to carry inventory. *** also indicated that *** will likely be switching to domestic product since they have offered to meet the imported price and have decreased their minimum required order. *** estimated their annual purchases of melamine institutional dinnerware to be about ***, far below the allegation which stated ***.

*** indicated in its lost sales allegation that it has lost sales to ***, an account estimated at *** per year, to ***. *** is a small food equipment and supplies dealer which sells mostly to restaurants, although also to schools. *** of *** stated that he purchases mostly domestic product, probably more than the *** in 1995 indicated by ***. The imports he purchases are from Indonesia and have the same quality as the domestic product and are NSF approved. He estimated his total purchases of melamine at *** of the alleged ***.

***, a small, independent dealer, was named in a lost sale/revenue allegation. According to the allegation, *** is going from using *** to purchasing from ***, although it would switch to *** for *** prices. *** of *** indicated that he has purchased from *** and has been approached by *** at a lower price, although he purchases *** which was specially quoted to compete with the imports. He stated that there is no problem with imports except that they do not offer as wide a line within melamine. The *** indicated in the allegation is a reasonable estimate of the total melamine purchases for ***. *** belongs to ***, a small buying group of 75 members, for which *** is an approved supplier.

According to ***, ***, a small to mid-sized distributor of equipment and supplies, purchases from the *** and has also purchased from ***. Their 1995 purchases from *** were *** although their estimated total purchases are *** per year. According to *** of ***, although the imports have excellent prices, ***, he has not purchased any. He now uses ***, but indicated that he will be forced to switch to imports in order to remain competitive. He confirmed that the *** listed in the allegation is a good estimate of his total annual purchases of melamine institutional dinnerware.

*** named ***, a small restaurant equipment and supply distributor, in a lost sale/revenue allegation. *** responded that their use of imports is minimal, but that the alleged 1995 domestic purchase estimate of *** is about right. His use of imports is for price considerations.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

INTRODUCTION

Complete financial information was provided on melamine institutional dinnerware operations by the three petitioning firms,[1] which are believed to have accounted for all or nearly all of U.S. production of melamine institutional dinnerware in 1995. Two of the three petitioners--SiLite[2] and NPC[3]--are subsidiaries of larger firms.[4]

OPERATIONS ON MELAMINE INSTITUTIONAL DINNERWARE

Income-and-loss data for the U.S. producers' melamine institutional dinnerware operations are presented in table VI-1. Income-and-loss data on a *per pound* basis are presented in table VI-2 and selected income-and-loss data, by firm, are presented in table VI-3. Net sales, both in terms of quantity sold and revenues, were nearly constant from fiscal year (FY) 1993 to FY 1995. The decrease in operating income from FY 1993 to FY 1995 was primarily related to increasing costs of goods sold and selling, general, and administrative expenses. According to the petitioners, the current competitive market does not allow them to pass on cost increases in the form of increased prices. The increase in costs was attributed to increased costs of raw materials (primarily formaldehyde), labor, health insurance, and workmen's compensation. Selling, general, and administrative costs increased for every item, including salaries, insurance, legal fees, rebates, and promotional allowances.[5] Cost of goods sold increased by 10 percent from FY 1993 to FY 1995 and selling, general, and administrative expenses increased by 20 percent during the same period. The interim periods reflected the same trends as the annual periods.

VARIANCE ANALYSIS

The variance analysis shown in table VI-4 is on an aggregate basis for the three firms that provided financial data, and it assesses changes in profitability as related to changes in pricing, cost, and volume. ***. The information for the variance analysis is derived from information presented in table VI-1. Although there may have been product mix changes during the period of investigation, it is believed that they are not of sufficient magnitude to invalidate general conclusions about the effects of changes in

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[1] SiLite, NPC, and Sun Coast. SiLite's fiscal year ends Dec. 31, NPC's ends Aug. 31, and Sun Coast's ends June 30. Financial data are reported on a fiscal-year basis and may not necessarily be comparable to data reported on a calendar-year basis.

[2] SiLite is a wholly owned subsidiary of Carlisle Companies, Inc., which had sales of $693 million in 1994. According to Carlisle's 1994 Annual Report, SiLite has a new injection-molding plant in Tianjin, China, a joint venture with a Taiwanese partner, that produces plastic permanentware and acrylic giftware items for export.

[3] NPC is a subsidiary of Perstorp, Inc. (which, in turn, is a wholly-owned subsidiary of Perstorp AB, a Swedish corporation). Perstorp, Inc., had net sales of $362 million in 1995.

[4] Sun Coast had sales of $86 million in its latest fiscal year ended June 30, 1995, during which it acquired Nova Plast, S.A. de C.V., a Mexican company that manufactures plastic consumer products for sale primarily in Mexico. According to Sun Coast's most recent Form 10-K, "Sun Coast intends to move a portion of its domestic dinnerware production to Nova Plast over the next year. . . . Lower labor costs related to manufacture in Mexico are planned to improve the Company's competitive position." Mr. Miller, President and CEO of Sun Coast, also testified during the Commission's conference (Conference transcript, pp. 65-66) that the firm was "very seriously" considering exporting from that plant to the United States.

[5] Conference transcript, pp. 44-46, 67-71.

Table VI-1
Income-and-loss experience of U.S. producers[1] on their operations producing melamine institutional dinnerware, fiscal years 1993-95, Jan.-Sept. 1994, and Jan.-Sept. 1995

Item	1993	1994	1995	Jan.-Sept.-- 1994	Jan.-Sept.-- 1995
	Quantity (*1,000 pounds*)				
Net sales	6,927	7,007	7,164	***	***
	Value (*1,000 dollars*)				
Net sales	17,882	18,351	18,262	13,920	13,744
Cost of goods sold	11,908	12,449	13,154	9,661	9,961
Gross profit or (loss)	5,974	5,902	5,108	4,259	3,783
Selling, general, and administrative expenses	3,358	3,599	4,028	2,703	3,076
Operating income or (loss)	2,616	2,303	1,080	1,556	707
Interest expense	***	***	***	***	***
Other expense	***	***	***	***	***
Net income or (loss) before income taxes	2,374	1,973	710	1,303	433
Depreciation and amortization	***	***	***	***	***
Cash flow[2]	***	***	***	***	***
	Ratio to net sales (*percent*)				
Cost of goods sold	66.6	67.8	72.0	69.4	72.5
Gross profit or (loss)	33.4	32.2	28.0	30.6	27.5
Selling, general, and administrative expenses	18.8	19.6	22.1	19.4	22.4
Operating income or (loss)	14.6	12.5	5.9	11.2	5.1
Net income or (loss) before income taxes	13.3	10.8	3.9	9.4	3.2
	Number of firms reporting				
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Data	3	3	3	3	3

[1] SiLite, NPC, and Sun Coast. SiLite's fiscal year ends Dec. 31, NPC's ends Aug. 31, and Sun Coast's ends June 30. Financial data are reported on a fiscal year basis and may not be comparable to data reported on a calendar year basis.

[2] Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table VI-2
Income-and-loss experience (*on a per-pound basis*) of U.S. producers on their operations producing melamine institutional dinnerware, fiscal years 1993-95, Jan.-Sept. 1994, and Jan.-Sept.1995

	Value (*per pound*)				
				Jan.-Sept.--	
Item	1993	1994	1995	1994	1995
Net sales	$2.58	$2.62	$2.55	***	***
Cost of goods sold	1.72	1.78	1.84	***	***
Gross profit or (loss)	0.86	0.84	0.71	***	***
Selling, general, and administrative expenses	0.48	0.51	0.56	***	***
Operating income or (loss)	0.38	0.33	0.15	***	***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table VI-3
Selected income-and-loss data of U.S. producers on their operations producing melamine institutional dinnerware, by firms, fiscal years 1993-95, Jan.-Sept. 1994, and Jan.-Sept. 1995

				Jan.-Sept.--	
Item	1993	1994	1995	1994	1995
	Value (*1,000 dollars*)				
Net sales:					
SiLite	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	17,882	18,351	18,262	13,920	13,744
Operating income or (loss):					
SiLite	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	2,616	2,303	1,080	1,556	707
	Ratio to net sales (*percent*)				
Operating income or (loss):					
SiLite	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	14.6	12.5	5.9	11.2	5.1

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table VI-4
Variance analysis for U.S. producers of melamine institutional dinnerware, fiscal years 1993-95, Jan.-Sept. 1994, and Jan.-Sept. 1995.

* * * * * * *

pricing, costs, and volume on profitability. The variance analysis revealed that the increased costs for cost of goods sold and selling, general, and administrative expenses, without compensating beneficial changes in net sales, had the most detrimental effect on profitability.

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

U.S. producers' value of property, plant, and equipment, capital expenditures, and research and development expenses for melamine institutional dinnerware are presented in the following tabulation (in thousands of dollars):

* * * * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of melamine institutional dinnerware from China, Indonesia, and Taiwan on their firm's 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 C.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(I)). Information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

Tar-Hong Melamine Xiamen Co., the sole source of imports from China, reported that it represents about *** percent of melamine institutional dinnerware production in China and that the bulk of its production is melamine retailware and other articles of melamine. It began manufacturing articles for shipment to the United States when its parent company, Tar-Hong Melamine Co., closed its facility in Taiwan. The company provided data to the Commission; however, it should be noted that the data, shown in table VII-1, pertain to its melamine dinnerware operations as a whole. The data are not limited to melamine institutional dinnerware.

The only producers exporting the subject product to the United States from Indonesia and Taiwan are, respectively, P.T.M. Multi Raya Indah Abadi Co. (Abadi) and Chen Hao Plastic Industrial Co., Ltd. (Chen Hao). Abadi reported that it produces melamine institutional dinnerware only and that its capacity to produce such articles increased by *** percent from *** pounds in 1992 to over *** pounds in 1995--*** (table VII-2). Its production increased correspondingly. Most of this production was ***. Its exports in this period increased by *** percent, however, and the bulk of these were ***. Counsel for Abadi reported that currently the company does not have the capability to produce decorated articles.[1] In the last quarter of 1995, Chen Hao opened a melamine dinnerware producing plant in Xiamen, China, and plans to ***. The company has been *** its plant in Taiwan ***. Like Tar-Hong Melamine Xiamen Co., Chen Hao reported operational data, but did not distinguish melamine institutional dinnerware from other melamine dinnerware (table VII-3). As far as it is known, the subject product produced by these companies is not subject to any antidumping-duty orders or any investigations thereof outside the United States.

Of the importers of the subject product, G.E.T. Enterprises and Thunder Group reported end-of-period inventories. The data, shown below (in 1,000 pounds), represent inventories on 100 percent of the imports from China and Indonesia and 37 percent of the imports from Taiwan:

* * * * * * *

Importers' inventories increased throughout the investigative period, with an overall increase of 79 percent from 1992 to 1994 and 39 percent from January-September 1994 to January-September 1995.

Table VII-1
Melamine dinnerware: Production, capacity, shipments, and exports of Tar-Hong Melamine Xiamen Co. (China), 1992-94, Jan.-Sept. 1994, and Jan.-Sept. 1995

* * * * * * *

[1] Conference transcript, p. 112.

Table VII-2
Melamine institutional dinnerware: Production, capacity, shipments, and exports of Abadi (Indonesia), 1992-94, Jan.-Sept. 1994, and Jan.-Sept. 1995

* * * * * * *

Table VII-3
Melamine dinnerware: Production, capacity, shipments, and exports of Chen Hao (Taiwan), 1992-94, Jan.-Sept. 1994, and Jan.-Sept. 1995

* * * * * * *

APPENDIX A

FEDERAL REGISTER NOTICES

currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. In this case, although MAN Roland reported that forward currency exchange contracts applied to certain U.S. sales, the record information was not sufficient to conclude that these contracts were directly linked to the particular sales in question. Therefore, for the purpose of the preliminary determination, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." For this preliminary determination, we have determined that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. No adjustment period is warranted in this case, because the deutschemark generally remained constant against the U.S. dollar during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of LNPP systems, additions and components, whether assembled or unassembled, from Germany, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. Furthermore, because we are still in the process of clarifying the definition of a subject LNPP system, addition or component, as explained in the "Scope Issues" section of this notice, we are also directing the Customs Service to suspend liquidation of entries of elements (parts or subcomponents) of components imported to fulfill a contract for an LNPP system, addition, or component, from Germany, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers in the LNPP industry shall be required to provide certification that the imported merchandise would not be used to fulfill an LNPP contract. We will also request that these parties register with the Customs Service the LNPP contract numbers pursuant to which subject merchandise is imported. With respect to entries of LNPP spare and replacement parts, and used presses, from Germany, which are expressly excluded from the scope of the investigation, we will instruct the Customs Service not to suspend liquidation of these entries if they are separately identified and valued in the LNPP contract pursuant to which they are imported. The Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
MAN Roland Druckmaschinen AG	17.70
Koenig & Bauer-Albert AG	46.40
All Others	17.70

The Department has excluded the margin for KBA, which is based on adverse facts available, from the calculation of the All Others rate.

The All Others rate applies to all entries of subject merchandise except for entries of merchandise produced by MAN Roland and KBA.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 16, 1996, and rebuttal briefs, no later than May 23, 1996. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 4, 1996, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(f) of the Act.

Dated: February 23, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96-4730 Filed 2-29-96; 8:45 am]

BILLING CODE 3510-DS-P

[A-560-801, A-583-825, and A-570-844]

Initiation of Antidumping Duty Investigation: Melamine Institutional Dinnerware Products From Indonesia, Taiwan and the People's Republic of China

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

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929 or Erik Warga at (202) 482–0922, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

INITIATION OF INVESTIGATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA").

The Petition

On February 6, 1996, the Department of Commerce ("the Department") received a petition filed in proper form by The American Melamine Institutional Tableware Association ("petitioners"), whose members include Continental/SiLite International Co., Lexington United Corp./National Plastics Corp., and Plastics Manufacturing Company (domestic producers of melamine institutional dinnerware products ("MIDPs")).

In accordance with section 732(b) of the Act, petitioners allege that imports of MIDPs from Indonesia, Taiwan and the People's Republic of China (PRC) 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, a U.S. industry.

Petitioners are an association the majority of whose members are producers of the domestic like product and, therefore, have standing to file the petition because they are an interested party, as defined under section 771(9)(E) of the Act.

Determination of Industry Support for the Petition

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if the domestic producers or workers who support 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.

A review of the production data provided in the petition and other information readily available to the Department indicates that petitioners account for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petition. Petitioners represent more than 90 percent of total production of the domestic like product. Moreover, the only other known domestic producer of MIDPs, Gessner Products, has expressed support for the petition. The Department received no expressions of opposition to the petition from any domestic producer or workers. Accordingly, the Department determines that the petition is supported by the domestic industry.

Scope of the Investigation

The scope of this investigation is all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate are based. Should the need arise to use any of this information in our preliminary or final determinations, we will re-examine the information and may revise the margin calculations, if appropriate.

Indonesia

Petitioners based export price (EP) on a price quotation for a 9-inch plate obtained from a market research report. The terms are ex-factory and, hence, no deductions to EP were made.

Petitioners based normal value (NV) on a price quotation for a 9-inch plate obtained from a market research report. The terms are ex-factory and, hence, no deductions to NV were made.

Based on comparisons of EP to NV, the calculated dumping margin for MIDPs from Indonesia is 89.84 percent *ad valorem*.

PRC

Petitioners prepared two calculations of constructed export price (CEP). In the first instance, petitioners calculated CEP based on a PRC producer's affiliated reseller's price quote. Petitioners deducted cash discounts, ocean freight, U.S. inland freight, containerization, and duties. For purposes of initiation, we disallowed the deduction for U.S. inland freight because the petition did not specify the U.S. customer's location and did not contain any evidence indicating the actual amount of any inland freight expenses incurred.

Alternatively, petitioners argue that the Act requires U.S.-incurred selling expenses to be deducted from CEP. Although section 772(d)(1) of the Act requires this deduction from CEP, petitioners did not make a corresponding adjustment to NV for selling expenses. Therefore, we have not accepted this deduction for purposes of the initiation. We may consider this issue further later in the investigation.

Petitioners assert that the PRC is a non-market economy (NME) within the meaning of sections 771(18) of the Act and in accordance with section 773(c) of the Act. Accordingly, the normal value of the product should be based on the producer's factors of production, valued in a surrogate market economy country. In previous investigations, the Department has determined that the PRC is an NME, and the presumption of NME status continues for the initiation of this investigation. See, e.g., Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the People's Republic of China, 60 FR 16437 (March 30, 1995).

It is our practice in NME cases to calculate NV based on the factors of production of those factories that produced MIDPs sold to the United States during the period of investigation.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC, 59 FR 22585 (May 2, 1994).

Petitioners based the PRC producers' factors of production (*i.e.*, raw materials, labor, and energy) for MIDPs on petitioners' own usage amounts. Petitioners valued these factors, where possible, on publicly available published Indonesian data. Where this data was unavailable, petitioners used other acceptable sources of information. Petitioners estimated the surrogate value of scrap based on their own experience as to the scrap rate in MIDP production.

Indonesia is an acceptable surrogate country because its level of economic development is comparable to that of

the PRC and Indonesia is a significant producer of comparable merchandise.

Petitioners also based factory overhead and general expenses on data contained on the public records of previous investigations in which the information was also used as surrogate values for factors of production of merchandise from the PRC.

Petitioners based profit on a publicly available published industry study of the Reserve Bank of India Bulletin, September 1994, for the Processing and Manufacturing of Metals, Chemicals, and Products thereof.

Finally, petitioners based packing on their own U.S. packing costs, not including packing for ocean voyage. For the purposes of this investigation, we have disallowed the packing costs because they were based on U.S. values rather than a factor value from an appropriate surrogate country.

Based on comparisons of CEP to the factors of production, the calculated dumping margin for MIDPs from the PRC, after adjustments made by the Department, is 7.06 percent *ad valorem*.

Taiwan

Petitioners used a market research firm to obtain an EP price quotation from a Taiwanese producer. Petitioners deducted a discount from this price.

In addition, petitioners calculated CEP based on a Taiwan company's affiliated reseller price quotation. Petitioners believe that the Department should use CEP because there is substantial evidence that, during the POI, this manufacturer produced subject merchandise in Taiwan that was sold in the United States.

Petitioners deducted from CEP discounts, ocean freight, U.S. inland freight, containerization, selling expenses and inventory carrying expenses.

For purposes of initiation, we are rejecting this CEP calculation because there is insufficient evidence that the Taiwan manufacturer, Tar-Hong, produced in Taiwan the subject merchandise sold by its U.S. affiliate during the POI. However, as this investigation proceeds, we will consider this issue further.

Based on comparisons of EP to NV, the calculated dumping margin for MIDPs from Taiwan, after adjustments made by the Department, is 53.13 percent *ad valorem*.

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of MIDPs from Indonesia, the PRC and Taiwan are being, or are likely to be, sold at less than fair value.

Initiation of Investigations

We have examined the petitions on MIDPs and have found that they meet the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of MIDPs from Indonesia, the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by July 15, 1996.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of Indonesia and PRC, as well as to the Taiwan authorities. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by March 22, 1996, whether there is a reasonable indication that imports of MIDPs from Indonesia, the PRC and Taiwan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination in any of the investigations will result in that investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: February 26, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96-4850 Filed 2-29-96; 8:45 am]

BILLING CODE 3510-DS-P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96-001. *Applicant:* University of California, Davis, 174 Physics/Geology Bldg., Davis, CA 95616-8605. *Instrument:* Water Gas Phase Equilibration System. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to analyze the stable oxygen and hydrogen isotopic composition ($^{18}O/^{16}O$ and D(euterium) /H) of water samples derived from seawater samples collected during experimental research and ground water samples from hydrographic studies. The experiments will involve studies of the physiological and environmental parameters responsible for stable isotope variability in the calcium carbonate shells of fossil organisms via the study of living representatives in the laboratory and field. In addition, the instrument will be used in the course Geology 227, Stable Isotope Biochemistry introducing graduate students to different applications of stable isotope geochemistry in the research environment. *Application Accepted by Commissioner of Customs:* January 3, 1996.

Docket Number: 96-002. *Applicant:* DHHS/Food and Drug Administration, National Center for Toxicological Research, Division of Chemistry, 3900 NCTR Road, Jefferson, AR 72079. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad XR. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of food, food ingredients, animal diets, animal tissues and water to determine the quantitation of the levels of trace elements of interest in these samples. The instrument will also be used for speciation studies for toxicologically important elements such as As, Cr, and Mn among others. *Application Accepted by Commissioner of Customs:* January 4, 1996.

Docket Number: 96-003. *Applicant:* Mount Holyoke College, 50 College Street, South Hadley, MA 01075. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used in a wide variety of research projects in the

Illinois Central Railroad Passenger Depot, (Copiah County MPS), 138 N. Ragsdale Ave., Hazlehurst, 96000182.
Marchetti Farm, (Copiah County MPS), 134 Dale Dr., Hazlehurst, 96000183.
Mississippi Mills Packing and Shipping Rooms, (Copiah County MPS), 2058 US 51, Wesson, 96000185.
Rea, James Samuel, House, (Copiah County MPS), 1193 US 51, Wesson, 96000184.

Hinds County

New Orleans Great Northern Railroad Passenger Depot, 618 Pearl St., Jackson, 96000188.

Madison County

Long Moss Plantation House, 305 Quail Rd., Canton vicinity, 96000180.

NEBRASKA

Dodge County

Fremont Post Office, Old, 605 N. Broad St., Fremont, 96000223.

Fillmore County

Cesko-narodni sin—Milligan Auditorium, Jct. of Main and Birch Sts., SW corner, Milligan, 96000224.

NEW HAMPSHIRE

Hillsborough County

Goffstown Congregational Church, 10 Main St., Goffstown, 96000193.
Peterborough Town House, 1 Grove St., Peterborough, 96000194.

NEW JERSEY

Monmouth County

Chauncy Jerome Jr Shipwreck Site, Address Restricted, Long Branch City vicinity, 96000205.

NEW YORK

Greene County

Prattsville Commercial Building, NY 23, Prattsville, 96000203.

Livingston County

Murray Street Historic District, (Mount Morris MPS), 33—47 and 32—46 Murray St., Mount Morris, 96000178.
South Main Street Historic District, (Mount Morris MPS), 123—159 and 124—158 S. Main St., Mount Morris, 96000177.
State and Eagle Streets Historic District, (Mount Morris MPS), 16—34 and 15—39 State St. and 6—12 Eagle St., Mount Morris, 96000179.

Nassau County

Jerusalem District No. 5 Schoolhouse, Old Jerusalem Rd., Levittown, 6000204.

Westchester County

Mandel, Richard H., House, 323 Haines Rd., Bedford Hills, 96000176.

NORTH CAROLINA

Avery County

Crossnore Presbyterian Church, US 221/NC 194 E side, opposite jct. with Dellinger Rd., Crossnore, 96000206.

Buncombe County

Weaverville United Methodist Church, 85 N. Main St., Weaverville, 96000195.

Guilford County

Taplin, A. E., Apartment Building, 408 W. Parkway Ave., High Point, 96000196.

Mecklenburg County

Hopewell Presbyterian Church and Cemetery, 10500 Beatties Ford Rd., Huntersville vicinity, 96000198.

Orange County

Hogan, Alexander, Plantation, Address Restricted, Chapel Hill vicinity, 96000186.

Wake County

Kamphoefner, Henry L., House, (Early Modern Architecture Associated with NCSU School of Design Faculty MPS), 3060 Granville Dr., Raleigh, 96000197.

OHIO

Delaware County

Historic Northwest District, Roughly bounded by Pennsylvania Ave., N. Sandusky St., W. William St., Elizabeth St., W. Fountain St. and N. Franklin St, Delaware, 96000225.

Hamilton County

Gruen Watch Company—Time Hill, 401 E. McMillan St., Cincinnati, 96000219.

Portage County

Mott Drug Store, 8107 Main St., Garrattsville, 96000221.

Summit County

Diamond Match Historic District, 3, 21 and 27 Fourth St., NW. and 8 Second St., NW., Barberton, 96000218.

SOUTH CAROLINA

McCormick County

Calhoun—Gibert House, SC Sec. Rd. 33-60, Willington, 96000220.

[FR Doc. 96-3240 Filed 2-13-96; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-741-743 (Preliminary)]

Melamine Institutional Dinnerware From China, Indonesia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping Investigations Nos. 731-TA-741-743 (Preliminary) under section 733(a) of the Tariff Act of 1930 (the Act) as amended by section 212(b) of the Uruguay Round Agreements Act (URAA), Pub. L. 103-465, 108 Stat. 4809 (1944) (19 U.S.C. 1673b(a)) 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 China, Indonesia, and Taiwan of melamine institutional dinnerware, provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 22, 1996. The Commission's views are due at the Department of Commerce within five business days thereafter, or by March 29, 1996.

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).

EFFECTIVE DATE: February 6, 1996.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-205-3185), 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 or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 6, 1996, by the American Melamine Institutional Tableware Association (AMITA).[1]

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

[1] The members of AMITA are Continental/SiLite International Co., Oklahoma City, OK; Lexington United Corp. (National Plastics Corp.), Port Gibson, MS; and Plastics Manufacturing Co., Dallas, TX.

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. 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 preliminary investigations available to authorized applicants 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 February 27, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than the day preceding the conference to arrange for their appearance. Parties in support of the imposition of antidumping 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 March 1, 1996, 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.

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, as amended by the URAA; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 8, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–3291 Filed 2–13–96; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–366]

Country of Origin Marking: Review of Laws, Regulations, and Practices

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: February 5, 1996.

SUMMARY: Following receipt on January 11, 1996, of a request from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted Investigation No. 332–366, Country of Origin Marking: Review of Laws, Regulations, and Practices, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested by the Committee, the Commission will provide a report that will include the following:

(1) A legislative and administrative history of U.S. marking rules, including a comparison of the concepts and approaches for determining country of origin for foreign and domestic goods;

(2) An analysis of the administrative processes in the United States for determining origin and appealing decisions on marking issues; and

(3) An evaluation of the problems which the country of origin marking rules create for industry, and the benefits of these rules to consumers, including the costs to government and industry of enforcement and compliance.

As requested by the Committee, the Commission in its investigation will focus on the industries producing electronics, steel, pharmaceuticals, hand tools, and frozen vegetables; other industries where information is available will be studied as well. Staff will contact U.S. producers and consumer groups to identify those that have major concerns or interests regarding country of origin marking requirements. Committee staff has indicated that this should include problems, as identified by industry and other sources in the course of the investigation, with foreign country of origin marking requirements. The Commission expects to submit its report of the investigation to the Committee by July 11, 1996.

FOR FURTHER INFORMATION CONTACT: General information on the investigation may be obtained from Dennis Fravel, Office of Industries (202–205–3404) or Mark Paulson, Office of Industries (202–205–3429); and legal aspects of section 332 investigations, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

BACKGROUND: In its letter, the Committee noted that it had held hearings in July 1995, on the issues of rules of origin and country of origin markings for both foreign and domestic goods. The Committee noted that views expressed at the hearings ranged widely, and included requests to modify or eliminate country of origin marking requirements, and also to harmonize rules for domestic and imported goods.

This investigation will focus on country of origin markings, including certain rule of origin issues that directly effect country of origin marking. International rules of origin issues are currently being examined in the Commission's Investigation No. 332–360, *International Harmonization of Customs Rules of Origin,* instituted in April 1995 at the request of the U.S. Trade Representative. The Commission's proposed rules and analysis pertaining to harmonized rules of origin will be published at various intervals in the Federal Register.

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on April 10, 1996. The Commission requests that testimony focus on the issues noted in the SUMMARY section above. All persons shall have the right

APPENDIX B

WITNESSES AT THE COMMISSION'S CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference:

Subject	:	MELAMINE INSTITUTIONAL DINNERWARE FROM CHINA, INDONESIA, AND TAIWAN
Inv. No.	:	731-TA-741-743 (Preliminary)
Date and Time	:	February 27, 1996 - 9:30 a.m.

Sessions were held in the Main Hearing Room of the United States International Trade Commission, 500 E St., S.W., Washington, DC.

In Support of the Imposition of Antidumping Duties:

Baker & McKenzie
Washington, DC
On behalf of

Continental/SiLite International Co., Oklahoma City, OK
National Plastics Corp., Port Gibson, MS
Plastics Manufacturing Co. (Sun Coast Industries, Inc.), Dallas, TX

Earl Moore, President, National Plastics Corp.
Robert K. Parmacek, Chairman and CEO, Continental/SiLite Intl Co.
David Shannon Jr., Continental/SiLite Intl Co.
Jim Miller, President and CEO, Sun Coast Industries, Inc.
Claude A. Brewer III, Vice President, Sun Coast Industries, Inc.
Cynthia Morris, Chief Financial Officer, Sun Coast Industries, Inc.
Brian Kelly, Brian Kelly, Inc.

Kevin M. O'Brien)--OF COUNSEL
Eli D. Cohen)--OF COUNSEL

(OVER)

In Opposition to the Imposition of Antidumping Duties:

White & Case
Washington, DC
On behalf of

Tar-Hong Melamine Co., Ltd., Taiwan
Tar-Hong Melamine USA, Inc., El Monte, CA
Tar-Hong Melamine Xiamen Co., Ltd., Xiamen, China
Chen Hao Plastic Industrial Co., Ltd., Tainan, Taiwan
Chen Hao (Xiamen) Plastic Industrial Co., Ltd., Xiamen, China
Taiwan Melamine Products Industrial Co., Ltd., Taipei, Taiwan
Gin Harvest Enterprises Co., Ltd., Kaoshiung County, Taiwan
Gin Harvest Melamine (Heyuan) Enterprises Co., Ltd., Guangdong, China
Yu Cheer Industrial Co., Ltd., Tainan, Taiwan
Sam Choan Plastic Industrial Co., Ltd., Shenzhen, China
P.T. Multi Raya Indah Abadi, Indonesia

Glen Hou, President, G.E.T. Enterprises
Eve Hou, VP Sales, G.E.T. Enterprises
Ralph Liu, General Manager, Tar Hong Melamine USA, Inc.
John Reilly, Vice President, Nathan Associates

Edmund W. Sim)--OF COUNSEL

(END)

APPENDIX C

EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

Response of U.S. producers to the following questions:

1. Since January 1, 1992, has your firm experienced any actual negative effects on its return on investment or its growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), as a result of imports of melamine institutional dinnerware from China, Indonesia, or Taiwan?

* * * * * * *

2. Does your firm anticipate any negative impact of imports of melamine institutional dinnerware from China, Indonesia, or Taiwan?

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