

Disposable Lighters From The People's Republic of China and Thailand

Investigations Nos. 303-TA-25 and
731-TA-700 and 701 (Preliminary)

Publication 2792

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U.S. International Trade Commission



U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

PART I
DETERMINATIONS AND VIEWS OF THE COMMISSION

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 303-TA-25 (Preliminary)
and 731-TA-700-701 (Preliminary)

DISPOSABLE LIGHTERS FROM THE PEOPLE'S REPUBLIC OF CHINA AND THAILAND

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines,² pursuant to sections 303 and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1303 and 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 allegedly subsidized imports from Thailand and allegedly less than fair value (LTFV) imports from the People's Republic of China and Thailand of disposable pocket lighters, whether or not liquefied hydrocarbon, provided for in subheadings 9613.10.00 and 9613.20.00 of the Harmonized Tariff Schedule of the United States.

Background

On May 9, 1994, a petition was filed with the Commission and the Department of Commerce by the BIC Corporation, Milford, CT, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of disposable lighters from the People's Republic of China and Thailand. Accordingly, effective May 9, 1994, the Commission instituted countervailing duty investigation No. 303-TA-25 (Preliminary) and antidumping investigation Nos. 731-TA-700-701 (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 May 16, 1994 (59 F.R. 25502). The conference was held in Washington, DC, on June 1, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Vice Chairman Nuzum dissenting.

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VIEWS OF THE COMMISSION

Based on the record in these preliminary investigations, we determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of disposable lighters from Thailand that are allegedly subsidized and are allegedly sold in the United States at less than fair value ("LTFV") and from China that are allegedly sold in the United States at LTFV.^{3 4 5}

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping duty investigations requires the Commission to determine, based upon the best 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 subsidized or LTFV imports.⁶ 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 material injury; and (2) no likelihood exists that any contrary evidence will arise in a final investigation."⁷

II. LIKE PRODUCT AND DOMESTIC INDUSTRY

To determine whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the domestic "industry." Section 771(4)(A) of the Tariff Act of 1930, (the "Act"), defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product"⁸ In turn, the Act defines "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"⁹

³ Vice Chairman Nuzum finds that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of disposable lighters from China and Thailand that are allegedly subsidized or allegedly sold at LTFV. See Dissenting Views of Vice Chairman Nuzum, *infra*.

⁴ Commissioner Crawford finds that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of disposable lighters from China and Thailand that are allegedly subsidized or allegedly sold at LTFV. See Additional Views of Commissioner Crawford, *infra*.

⁵ 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.

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

⁷ American Lamb Co. v. United States, 785 F.2d at 1001. See also Torrington Co. v. United States, 790 F. Supp. 1161, 1165 (Ct. Int'l Trade 1992).

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10). The Commission's like product determinations are factual, and the Commission applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. See Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991).

(continued...)

The Department of Commerce ("Commerce") has defined the imported products subject to these investigations as:

disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch.¹⁰

While the Commission must accept Commerce's determination as to which imported merchandise is within the class or kind of merchandise allegedly subsidized or allegedly sold at less than fair value, the Commission determines what domestic product is like the imported articles identified by Commerce.¹¹

Disposable lighters are flame-producing consumer products commonly used to ignite tobacco and other materials, and which are intended to be discarded after the fuel supply is depleted.¹² The petitioner, BIC Corporation ("BIC"), manufactures disposable, non-refillable butane lighters and is the sole U.S. producer of such lighters.¹³ A second U.S. company, Zippo Corporation ("Zippo"), manufactures refillable lighters that use "liquid fuel" (typically naphtha) drawn through a wick.¹⁴

Both refillable and nonrefillable lighters are imported into the United States from the subject countries. All non-refillable lighters from China and Thailand use butane and therefore fall within the scope of investigation. The vast majority of refillable lighters (whether or not disposable) imported from China and Thailand uses liquid fuel and therefore does not fall within the scope.¹⁵

⁹ (...continued)

In analyzing like product issues, the Commission considers a number of factors, including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and where appropriate, (6) price. Calabrian Corp. v. U.S. Int'l Trade Comm'n, 794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington Co. v. United States, 747 F. Supp. at 748-49.

¹⁰ Commerce Dept. Notice of Institution, 58 Fed. Reg. 29411-29413 (June 7, 1994).

¹¹ See, e.g., Algoma Steel Corp. v. United States, 688 F. Supp. 639 (Ct. Int'l Trade 1988) ("ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV."), aff'd, 865 F.2d 240 (Fed. Cir. 1989); Torrington v. United States, 747 F. Supp. 744 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

¹² Confidential Staff Report (hereinafter referred to as "CR") at I-4; Public Staff Report (hereinafter referred to as "PR") at II-3. Such lighters are composed of a body, a base, a lever or fork, a jet, a lighting mechanism, a valve, fuel and other minor components. CR at I-5; PR at II-3.

¹³ CR at I-5; PR at II-9.

¹⁴ Petitioner's Postconference Brief at 7; Transcript at 60 (testimony of Mr. Oleynik). Commerce's scope includes lighters that use as fuel "any liquefied hydrocarbon . . . whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch." This criterion includes butane lighters (also referred to as "gas" lighters) and excludes lighters that use naphtha or similar fuels (also referred to as "liquid" lighters). See ASTM "Standard Consumer Safety Specification for Lighters."

¹⁵ CR at I-9, n. 10; PR at II-4. CPSC Notice - Safety Standard for Cigarette Lighters, 58 Fed. Reg. 37557 (July 12, 1993).

On July 12, 1993, the Consumer Product Safety Commission ("CPSC") issued a safety standard, effective July 12, 1994, that requires disposable and novelty lighters¹⁶ to be child resistant.¹⁷ The regulation defines disposable lighters as those that either (1) are nonrefillable with fuel or (2) use butane or similar fuels and have a Customs Valuation or ex-factory price under \$2.00. The rule requires each manufacturer or importer of covered lighters to certify that its product conforms to the CPSC standard. Lighters that are not certified as child resistant may not be manufactured or imported into the United States after July 12, 1994.

In addition, the rule contains anti-stockpiling provisions that limit the amount of noncomplying lighters that may be produced or imported between July 12, 1993 and July 12, 1994.¹⁸ Non-complying lighters manufactured or imported into the United States before July 12, 1994 can be legally sold to consumers at any time but are subject to the stockpiling rule.

The like product issues in these preliminary investigations are: (1) whether the Commission should accept petitioner's proposed definition of the like product as coextensive with the CPSC standard; (2) whether child resistant lighters constitute a separate like product from standard disposable lighters; and (3) what domestic products are most similar in characteristics and uses to refillable disposable lighters included within Commerce's scope of investigation.

1. The CPSC Standard

Petitioner urges the Commission to find that the domestic product like the subject imports is its disposable butane lighters. Petitioner suggests that the Commission define a single like product consisting of all disposable lighters as defined in the CPSC Safety Standard for Cigarette Lighters.¹⁹

We do not adopt the CPSC standard as our like product definition because there is no clear justification under the Commission's six factor analysis for this like product definition. While we may consider safety or other regulations in evaluating whether products are sufficiently similar to be considered the same like product, we do not view ourselves as bound by such regulations in lieu of applying the like product definition of the antidumping laws.²⁰

2. Whether Child Resistant Disposable Lighters are a Separate Like Product

Respondents argue that the Commission should recognize the market consequences of the CPSC Safety Standard effective July 12, 1994 by finding that standard disposable lighters and child-resistant disposable lighters are two separate like products.²¹ Respondents Thai

¹⁶ Novelty lighters are defined as those that have entertaining audio or visual effects, or that depict (by logos, decals, art work, etc.) or resemble in function articles commonly recognized as appealing to or intended for use by children under 5 years of age. 58 Fed. Reg. 37560 (July 12, 1993).

¹⁷ See 58 Fed. Reg. 37557 (July 12, 1993).

¹⁸ 58 Fed. Reg. 37562 (July 12, 1994).

¹⁹ Petitioner's Postconference Brief at 6. Petitioner argues that the value element of the definition separates refillable disposable lighters (disposable lighters with a refill valve) from true refillable lighters, which are normally constructed of sturdier materials and are meant to be kept and refilled, rather than discarded once the fuel is spent. We note that the fuel restriction has a similar effect because all nonrefillable lighters use butane fuel (58 Fed. Reg. 37563 (July 12, 1993)).

²⁰ See Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (March 1989).

²¹ Postconference Brief of Thai Merry at 5.

Merry Company ("Thai Merry") and New York Lighter Company, Inc. and PolyCity Industrial, Ltd. ("New York Lighter") argue that the Commission should find two like products, standard disposable lighters and child-resistant lighters, corresponding to the disposable butane lighters included within the scope.²²

Respondents KGM Industries Co., Cli-Claque, Halpren Import Co., Sidelines International, and the U.S. Lighter Importers and Distributors Association ("KGM") argue that the Commission should find three like products: (1) standard disposable lighters; (2) child-resistant disposable lighters; and (3) and refillable lighters.²³ They believe that it is necessary for the Commission to find a third like product, consisting of refillable lighters, because they believe that certain refillable lighters produced by KGM may fall within the scope of investigation.

Based on the information in the record we find that, for purposes of these preliminary investigations, standard disposable lighters and child resistant lighters constitute one single like product. Child resistant disposable lighters are, indeed, more expensive²⁴ and more difficult for young children to operate than standard disposable lighters.²⁵ However, the two types of lighters share nearly all of the same physical characteristics,²⁶ have the same end uses, are essentially interchangeable for many consumers, have common channels of distribution,²⁷ and are made using common production processes and employees in the same manufacturing facilities.²⁸ Although the additional components included in the child-resistant lighters require certain additional manufacturing steps and components, BIC, the only domestic producer to produce standard and child-resistant disposable lighters, manufactures both in the same facilities using the same machinery with the same employees.²⁹

Respondents' argue separate like product treatment is appropriate because after July 12 (when the new CPSC rule becomes effective), differences between the two types of lighters, particularly their marketing and manufacture, will be more pronounced, as measured by the like product factors considered by the Commission.³⁰ However, respondents do not stress current differences between child resistant and standard disposable lighters, but rather point to likely events in the near future. In the event of any final investigations, we will reconsider the extent to which the CPSC standard has had an effect on the factors the Commission considers in making like product determinations.

²² Post-Conference Brief of Thai Merry at 2. Respondents New York Lighter, Co., Inc. and PolyCity Industrial ("New York Lighter") state that they adopt in whole respondent Thai Merry's like product arguments.

²³ Postconference Brief of KGM at 2.

²⁴ Transcript at 54 (Testimony of Mr. Gray; CR at I-59 & Table 18; PR at II-24.

²⁵ CR at I-5; PR at II-4.

²⁶ CR at I-5 to I-8; PR at II-4 to II-6.

²⁷ CR at I-18 & I-19; PR at II-10.

²⁸ Transcript at 49-50 (Testimony of Mr. McGrath); Petitioner's Postconference Brief at 11. In these preliminary investigations, we have limited information regarding producer and consumer perceptions of the two products.

²⁹ We note that the production processes for both standard disposable lighters and child-resistant disposable lighters consist of the same five basic operations. See CR at I-5; PR at II-4.

³⁰ Transcript at 80 (testimony of Mr. Lindsey)("After July 12th, the differences in consumer preferences, the lack of interchangeability, and the differences in channels of distribution will be as stark as any that the Commission has ever considered.")

3. Refillable Lighters³¹

Commerce's scope definition in these investigations presents significant difficulties for the Commission's data gathering and analysis. The scope specifies that the subject imports are "disposable lighters, whether or not refillable." This language is ambiguous because it is unclear what imports could be considered to be "refillable disposable" lighters. Respondent KGM asserts that the scope arguably includes imports of certain lower-priced refillable lighters that also use butane fuel.³² KGM argues that should its refillable lighters be determined to fall within the scope, the Commission should find its refillable lighters, or alternatively, all refillable lighters, to be separate like products from nonrefillable lighters.³³ Because there is no domestic product that directly corresponds to these butane-fueled refillable lighters, we must consider whether the domestic products "most similar" to these refillable lighters are the refillable lighters manufactured by Zippo.³⁴ We assume for purposes of these preliminary investigations that KGM's refillable lighters are included within Commerce's scope.

Information on the record indicates that the imported refillable butane lighters are similar to BIC lighters with respect to certain characteristics but are similar to Zippo lighters with respect to others. While we lack significant data regarding the like product factors as they relate to Zippo lighters, for purposes of these preliminary investigations, we find that BIC's lighters are the domestic product most similar in characteristics and uses to any refillable lighters included in the scope.

Both BIC lighters and the subject imported refillable lighters have the same end use, share many physical characteristics, and may share certain channels of distribution.³⁵ Unlike Zippo lighters, both BIC lighters and the subject imports use butane fuel.³⁶ Neither BIC lighters, Zippo lighters, nor the imported refillable butane lighters are in fact manufactured using the same production facilities or employees.³⁷ In these preliminary investigations, we

³¹ Chairman Watson does not join the following discussion. Although all lighters may be "disposable" in a technical sense, the refillable lighters manufactured by KGM are not "disposable" in any practical sense given their qualities. He therefore finds that such lighters are not "disposable" and therefore are not subject to Commerce's investigation as Commerce has defined it.

³² Petitioner concedes that in general, refillable lighters and non-refillable lighters are very different, but asserts that the inclusion of refillable "disposable" lighters in the scope serves the purpose of deterring importers from attempting to circumvent an antidumping duty order on nonrefillable lighters by adding a refill valve to what would otherwise be nonrefillable disposable lighters. Transcript at 52-53. (Testimony of Mr. McGrath). While the scope definition may defer circumvention, the relevant inquiry for the Commission is what is the scope definition, not why is it defined in a particular manner.

³³ Postconference Brief of KGM at 4. Part of KGM's argument is misplaced. We note that it is not the imports that are divided into like products, but rather we consider whether the domestic product is "like" the imported products. E.g., Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731-TA-684 and 685 (Preliminary), USITC Pub. 2766 (March 1994) at I-8 n.41.

³⁴ Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731-TA-684 and 685 (Preliminary), USITC Pub. No. 2766 (March 1994) at I-8 ("Micro roses are included in Commerce's scope of investigation. Therefore, even if micro roses are not produced in the United States, the Commission must still determine which domestic product is "like, or in the absence of like, most similar" to micro roses."); Ferrosilicon from Egypt, Inv. No. 731-TA-642 (Final), USITC Pub. 2688 (October 1993) at I-7.

³⁵ CR at I-9, n.10; PR at II-4.

³⁶ 58 Fed. Reg. 37557 (July 12, 1993).

³⁷ Postconference Brief of KGM at 9 and Exhibit 1.

have limited data regarding customer and producer perceptions of the three types of lighters, as well as information regarding differences in manufacturing processes.³⁸

It may become more clear in any final investigations whether Commerce deems the refillable lighters manufactured by KGM to be subject imports. If such imports are included, we note that in light of the similarities between these lighters and Zippo lighters,³⁹ there appears to be a substantial issue as to whether the Commission should find that the products most like those lighters are the refillable lighters manufactured by Zippo. Moreover, in light of the significant differences between the lighters produced by BIC and by Zippo, it is not clear that Zippo lighters should not be considered to be a separate like product from BIC lighters. We request the parties to consider this issue further in any final investigations.

Accordingly, we find a single like product consisting of disposable lighters, not including Zippo's refillable lighters. In light of our like product determination, the domestic industry consists of the petitioner, BIC.⁴⁰

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 subsidized or LTFV imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. 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 determinative, and we consider all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴¹

A condition of competition distinctive to the domestic industry is that as discussed above, on July 12, 1994, a CPSC safety standard will go into effect that requires certain types of disposable and novelty lighters to meet specified requirements for child resistance.⁴² The rule prohibits domestic production or importation of noncomplying lighters and requires manufacturers and importers to issue certificates of compliance with the standard. Finally, the rule contains anti-stockpiling provisions that limit the production or importation of noncomplying lighters between the date of promulgation of the rule (on July 12, 1993) and its effective date one year later.⁴³

Apparent U.S. consumption of disposable lighters by quantity increased from 1991 to 1993 and was higher in the first three months of 1994 ("interim 1994") compared with the

³⁸ In any final investigations, we will explore under what circumstances BIC's production facilities and equipment used to make disposable lighters could be used to make nondisposable lighters, and Zippo's production facilities and equipment could be used to make disposable lighters.

³⁹ We note that Zippo lighters and the subject refillable lighters appear to possess some common physical characteristics and may be more similar in price than are the subject refillable lighters and BIC's disposable lighters. CR at I-9, n. 10; PR at II-4; Postconference Brief of KGM at 6; Transcript at 111 (Testimony of Mr. Park).

⁴⁰ Chairman Watson and Commissioner Newquist note that even had they included Zippo within the domestic industry, they would have reached an affirmative determination in these preliminary investigations.

⁴¹ 19 U.S.C. § 1677(7)(C)(iii). None of the parties suggested the existence of a business cycle unique to this industry.

⁴² 58 Fed. Reg. 37557 (July 12, 1993).

⁴³ 58 Fed. Reg. 37562 (July 12, 1994). Non-complying lighters manufactured or imported into the United States before July 12, 1994 can be legally sold to consumers at any time but are subject to the stockpiling rule.

same period in 1993 ("interim 1993").⁴⁴ ⁴⁵ By value, however, U.S. consumption of disposable lighters decreased from 1991 to 1993 and was lower in interim 1994 compared with interim 1993, reflecting, at least in part, the declining unit values of subject imports.⁴⁶ The U.S. producer's domestic shipments by quantity and value also increased from 1991 to 1993, but were lower in interim 1994 compared with interim 1993. While U.S. consumption increased, the U.S. producer's market share by quantity fell from 1991 to 1993 and was lower in interim 1994 than in interim 1993.⁴⁷

Domestic production of disposable lighters increased from 1991 to 1993 and was higher in interim 1994 compared with interim 1993.⁴⁸ Production capacity also increased from 1991 to 1992, then fell in 1993 and was lower in interim 1994 than in interim 1993. Capacity utilization fell from 1991 to 1992, but rose from 1992 to 1993 and was higher in interim 1994 than in interim 1993.⁴⁹

The number of production and related workers producing disposable lighters declined between 1991 and 1993, but was higher in interim 1994 than in interim 1993. The wages paid to such workers, number of hours worked, and productivity, however, increased throughout the period examined.⁵⁰

The U.S. producer's end-of period inventories of disposable lighters increased between 1991 and 1993 and were higher in interim 1994 than in interim 1993.⁵¹ The ratio of such inventories to U.S. shipments also increased over the period of investigation.⁵² The domestic industry's level of capital expenditures increased between 1991 and 1993 and was higher in interim 1994 than in interim 1993.⁵³ Expenditures for research and development increased between 1991 and 1993, but were lower in interim 1994 than in interim 1993.⁵⁴

The domestic industry's financial performance over the period of investigation was somewhat mixed.⁵⁵ Although both the quantity and value of net sales rose from 1991 to 1993, net sales were significantly lower in interim 1994 than in interim 1993. Similarly, gross profit and operating income increased from 1991 to 1993, but were lower in interim 1994 compared with interim 1993. The ratio of operating income to sales followed the same pattern.⁵⁶ ⁵⁷

⁴⁴ CR at Table 1 & CR at I-54; PR at II-8. This trend appears to be due in part to the displacement of matches by relatively inexpensive disposable lighters. CR at I-13; PR at II-8.

⁴⁵ Apparent domestic consumption includes consumption of nonrefillable disposable lighters produced by BIC plus imports of subject nonrefillable lighters and the refillable lighters imported by KGM. If KGM's imports of refillable disposable lighters were added to the data shown in Table C-3, it would not affect the trends discussed above.

⁴⁶ CR at Table 16 and Table 1.

⁴⁷ By value the U.S. producer's market share increased from 1991 to 1993 and was higher in interim 1994 than in interim 1993. CR at Table 17.

⁴⁸ CR at Table 2.

⁴⁹ CR at Table 2.

⁵⁰ CR at Table 5.

⁵¹ In these preliminary investigations, it is unclear what effect, if any, the antistockpiling provisions of the CPSC standards have had on the level of inventories of disposable lighters.

⁵² CR at Table 4; PR at II-12.

⁵³ CR at Table 12.

⁵⁴ CR at I-39; PR at II-15.

⁵⁵ We note that in these preliminary investigations it is unclear whether changes in the costs of defending product liability lawsuits have had a significant effect on the financial performance of the domestic industry. We will explore this issue further in the event of any final investigations.

⁵⁶ CR at Table 7.

⁵⁷ Chairman Watson believes that litigation costs associated with product liability lawsuits should not be considered "operating" costs, and therefore, should not affect operating income, although net income would be affected.

IV. CUMULATION⁵⁹

In determining whether there is material injury by reason of allegedly subsidized or LTFV imports, the Commission is required to "cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market."⁶⁰ 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 requirement is met.⁶¹

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.⁶²

With regard to whether the subject imports compete with each other and with the domestic like product, the Commission has generally 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;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (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.⁶³

No single factor is determinative, and the list of factors is not exclusive. Only a "reasonable overlap" of competition is required; the Commission does not have to find that all imports compete with all other imports and all domestic like products.⁶⁴

⁵⁸ (...continued)

⁵⁸ Based upon examination of the relevant statutory factors, Commissioner Newquist and Commissioner Rohr conclude that there is a reasonable indication that the domestic industry producing disposable lighters is not currently experiencing material injury, but that it is in a vulnerable condition.

⁵⁹ Commissioner Rohr and Commissioner Crawford do not join the remainder of this opinion. See Views of Commissioner Rohr and Views of Commissioner Crawford, *infra*.

⁶⁰ 19 U.S.C. § 1677(7)(C)(iv)(I). Cumulation is not required, however, when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry. 19 U.S.C. § 1677(7)(C)(v). In these preliminary investigations, no party argued that the volume of imports from China or Thailand were negligible.

⁶¹ 19 U.S.C. § 1677(7)(F)(iv).

⁶² See *Torrington v. United States*, 790 F.Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); *Metallverken Nederland B.V. v. United States*, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); *Asocoflores*, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

⁶³ See generally, e.g., *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

⁶⁴ See *Wieland Werke, AG*, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989); *Granges Metallverken AB v. United States*, 716 F. Supp. 17, 21-22 (Ct. Int'l Trade 1989).

In these preliminary investigations, no party disputed that the competition requirement has been met.⁶⁵ In addition, while there is some evidence of quality differences between the domestic product and the subject imports, we note that disposable lighters from China and Thailand and the domestic like product are all present in the same geographical markets, are sold through common or similar channels of distribution and are simultaneously present in the market. Accordingly, for purposes of these preliminary investigations, we find that a reasonable overlap of competition exists and that the competition requirement has been met.⁶⁶

We also find that other considerations indicate that cumulation for threat is appropriate. The volume of imports from China and Thailand both increased significantly over the period of investigation and imports from both countries have had consistently high margins of underselling throughout the period of investigation, suggesting that imports from both China and Thailand are likely to enter the United States at prices that will have a depressing or suppressing effect on domestic prices of disposable lighters.^{67 68}

III. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED OR LTFV IMPORTS

Section 771(7) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The Commission cannot base such a determination on mere conjecture or supposition.⁶⁹

The Commission must consider ten factors in its threat analysis, including: (1) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement); (2) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports; (3) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level; (4) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices; (5) any substantial increase in inventories of the merchandise in the United States; (6) the presence of underutilized capacity for producing the merchandise in the exporting country; (7) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product, and (8) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury.⁷⁰

⁶⁵ Transcript at 65 (Testimony of Mr. Pierce) ("For purposes of the preliminary determination, we do not challenge the petition's request that subject imports from Thailand and China be cumulated.")

⁶⁶ Chairman Watson does not find the channels of distribution to be similar for all parties in these investigations. See Additional Views of Chairman Watson.

⁶⁷ CR at Table 20.

⁶⁸ Chairman Watson notes that while the record reveals no evidence of price depression and little evidence of price suppression, he cannot at this point rule out the possibility of future price effects.

⁶⁹ 19 U.S.C. § 1677(7)(F)(ii).

⁷⁰ 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Since these investigations do not involve an agricultural product, Factor IX is not applicable. Product shifting, Factor VII, is not an issue because there is no evidence that foreign manufacturers of subject disposable lighters produce any other products currently under investigation or subject to an order.

The presence or absence of any single threat factor is not necessarily dispositive.⁷¹ In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.⁷²

For the reasons discussed below, we find a reasonable indication that the domestic industry is threatened with material injury by reason of cumulated imports of disposable lighters from Thailand that are allegedly subsidized and allegedly sold at LTFV and allegedly LTFV imports from China.

While Commerce has yet to make any findings regarding the nature of alleged subsidies in these preliminary investigations, petitioner alleges that Thai producers receive subsidies that are in the nature of export subsidies.⁷³

We have somewhat limited data regarding the Chinese and Thai industries producing disposable lighters. While in the petition, petitioner identified over 50 firms in China that it alleges produced and/or exported disposable lighters to the United States, the Commission received data from only one Chinese producer. The production capacity of that producer, however, increased dramatically from 1991 to 1993, increased further in interim 1994, and is projected to continue increasing in 1994 and 1995. The fact that this producer's shipments to the United States also increased significantly while its capacity increased, indicates that further increases in production capacity are likely to result in increased exports to the United States.

The Commission also lacks complete data regarding certain Thai companies that produce disposable lighters, but does have information concerning the Thai producer that accounts for a very large share of current imports from Thailand.⁷⁴ This producer's production capacity increased significantly from 1991 to 1993, and is projected to increase further in 1994 and 1995.⁷⁵ Because exports to the United States also make up a large percentage of this producer's shipments, we find that its recent and projected increases in production capacity are likely to result in increased exports to the United States.⁷⁶

We also find that there has been a rapid increase in U.S. market penetration over the period of investigation and that it is likely that the market penetration of cumulated subject imports from China and Thailand will increase to an injurious level. The market share of cumulated imports increased from 1991 to 1993 and was higher in interim 1994 than in interim 1993.⁷⁷ Given recent increases in capacity in the subject countries and projected further capacity increases, we find that it is likely that the level of market penetration will increase to an injurious level.

Respondents have argued that the subject imports do not threaten the domestic industry because it is likely that Chinese and Thai producers will be either unable to meet the new CPSC child safety standard or unwilling to invest in the R&D necessary to develop a complying lighter.⁷⁸ We do not find this argument to be persuasive for two reasons. First, we note that information collected in these investigations indicates that the largest Thai

⁷¹ See, e.g., *Rhone Poulenc, S.A. v. United States*, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

⁷² 19 U.S.C. § 1677(7)(F)(iii)(I).

⁷³ Petition at 17 & 24-25.

⁷⁴ This producer exported a very small amount of child resistant disposable lighters in 1993 and in interim 1994.

⁷⁵ CR at Table 15.

⁷⁶ CR at Table 15.

⁷⁷ CR at Table 16.

⁷⁸ Postconference Brief of New York Lighter at 34-35; Postconference Brief of Thai Merry at 31 & 37.

producer is currently selling child resistant lighters in the United States and that the largest Chinese exporter is in the final stages of development of a child resistant lighter.⁷⁹ Second, Thai and Chinese producers of disposable lighters that export to the United States have been on notice at least since July 12, 1993, that the CPSC standard will go into effect in July of 1994. Nevertheless, those producers have recently made large investments in expanding their production capacity and they anticipate adding additional production capacity in 1994 and 1995.⁸⁰ This fact provides some evidence that these producers do not intend to abandon the U.S. market after the new safety standards go into effect, particularly in light of the relative lack of importance of home market sales to both Thai and Chinese producers relative to exports to the United States.⁸¹

Available data in these preliminary investigations also indicate that there is a reasonable indication that cumulated imports from China and Thailand are likely to enter the United States at prices that will have a depressing or suppressing effect on domestic prices. While there is evidence of some quality differences between domestically-produced lighters and the subject imports, information collected in these preliminary investigations also indicates that the imports and the domestic product are moderately substitutable.⁸² Pricing data collected by the Commission indicate that the margins of underselling for both Chinese and Thai imports were significant and that the subject imports undersold the domestic product by substantial margins in every quarter in which price comparisons were possible.⁸³ In addition, average unit values of Thai and Chinese imports declined significantly throughout the period of investigation.⁸⁴

An examination of inventories of subject merchandise in the United States supports our finding of threat. U.S. importers' end-of-period inventories of cumulated imports from China and Thailand increased dramatically from 1991 to 1993 and further increased from interim 1993 to interim 1994, as did the ratio of such inventories to imports.⁸⁵

Data collected regarding the expenditures of the domestic industry on research and development, however, indicate that the subject imports have had few if any actual negative effects on the domestic industry's level of capital expenditures or on existing development and production efforts, including efforts to develop a derivative or more advanced version of the like product.⁸⁶

We also note that in November of 1991 the European Union (EU) imposed antidumping duties on certain Chinese and Thai producers of disposable lighters and that the Government of Argentina recently imposed antidumping duties against Chinese disposable lighters.⁸⁷ Given the relative unimportance of home market sales to both Chinese and Thai exporters of disposable lighters, these antidumping duties may serve to increase the importance of U.S. exports to Chinese and Thai producers and may make it less likely that those producers will abandon the U.S. market once the CPSC standard becomes mandatory.

⁷⁹ CR at I-46 & I-47; PR at II-18.

⁸⁰ CR at Tables 14 & 15.

⁸¹ CR at Tables 14 and 15.

⁸² CR at I-9, I-10 & I-57.

⁸³ We note that the consistent pattern of underselling may reflect differences in quality between the domestic product and the subject imports. We will explore this issue further in any final investigations.

⁸⁴ CR at Table 16.

⁸⁵ CR at Table 13.

⁸⁶ CR at I-39 and Table 12; PR at II-15. Petitioners have alleged, however, the existence of negative potential effects of subject imports on the domestic industry. CR at I-39.

⁸⁷ CR at I-51 n. 70.

Conclusion

In light of the evidence on the record in these preliminary investigations and for the reasons discussed above, we conclude that there is a reasonable indication that the domestic industry producing disposable lighters is threatened with material injury by reason of the cumulated subject imports.

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ADDITIONAL VIEWS OF CHAIRMAN WATSON

In determining whether a domestic industry is materially injured by reason of imports that Commerce has found to be sold at LTFV, the statute directs the Commission to consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product.⁸⁸ Although the Commission may consider causes of injury other than the LTFV imports, it is not to weigh causes.⁸⁹ For the reasons discussed below, I find that the domestic industry producing disposable lighters is not materially injured by reason of LTFV imports of disposable lighters from China and Thailand.

A. Volume of the Subject Imports

By quantity, the volume of imports from China and Thailand increased throughout the period of investigations, from 186,598,000 units in 1991 to 293,196,000 units in 1993, coinciding with a gain of *** percentage points in market share by the subject imports.⁹⁰ Approximately *** percent of this gain came, however, at the expense of non-subject imports, which lost *** percentage points in market share from 1991 to 1993.⁹¹ In contrast, the domestic producer lost *** percentage points in market share from 1991 to 1993.⁹² Thus, the majority of the market share gains by the subject imports came at the expense of the ***, not at the expense of the domestic industry.

In addition, much of the increase in shipments of subject imports was absorbed by increases in domestic consumption. U.S. consumption of disposable lighters, by quantity, increased *** throughout the POI, from *** units in 1991 to *** units in 1993 and also increased noticeably during the interim periods.⁹³

By value, domestic producers fared well. Although domestic consumption declined *** percent by value throughout the POI, U.S. producers gained market share. In fact, U.S. producers gained *** in market share while subject imports gained only *** in market share.⁹⁵

⁸⁸ 19 U.S.C. §1677(7)(B)(i). The Commission may also evaluate "all relevant economic factors ... within the context of the business cycle and conditions of competition that are distinctive to the affected industry." 19 U.S.C. §1677(7)(C)(iii).

⁸⁹ For Chairman Watson's interpretation of the statutory requirement of material injury by reason of LTFV imports, see Defrost Timers from Japan, Inv. No. 731-TA-643 (Preliminary), USITC Pub. 2609 at n.41 (March 1993).

⁹⁰ Table C-3, CR at C-5.

⁹¹ Table C-3, CR at C-5. By quantity, all of the market share lost by non-subject imports was gained by subject imports. Interestingly, most of this loss occurred between 1992 and 1993, coinciding with the period in which the subject imports had the greatest market penetration.

⁹² Table C-3, CR at C-5.

⁹³ Table C-3, CR at C-5. Interim domestic consumption ***, from *** units in interim 1993 to *** units in interim 1994. Despite recent trends away from smoking, the overall consumption for disposable lighters has increased. This may have been due to substitution of lighters for matches. CR at I-54.

⁹⁴ U.S. producer's capacity utilization increased slightly over the POI, from *** in 1991 to *** in 1993, and increased noticeably to *** during interim 1994. Thus, the domestic producer's ability to meet increases in domestic consumption is becoming increasingly limited, and therefore any adverse volume effects of the subject imports are similarly limited.

⁹⁵ Table C-3, CR at C-5. This trend continued during the interim periods. U.S. producers gained *** while subject imports gained only ***. Table C-3, CR at C-5.

B. Price Effects of the Subject Imports

While data on the record reveal significant instances and margins of underselling by the subject imports during the period of investigations, there is no evidence of price depression and little evidence of price suppression.⁹⁶ In fact prices for the domestically produced disposable lighters increased while prices for the subject imports were concurrently declining.⁹⁷ This consistent price differential points to other non-price factors which may account for the difference, and suggests that although the products may be technically interchangeable, the domestic like product and the subject like product may not be readily substitutable.

There appear to be three factors contributing to the price differential between the domestic like product and the subject imports. First, substantial quality differences seem to exist between BIC disposable lighters and the like product from the subject countries. As noted in the staff report, the BIC lighters have approximately 2,000 lights per lighter, while the subject imports have about 30 percent less fuel and roughly 20 percent fewer lights.⁹⁸ Additionally, as noted by both the petitioner and the respondents, it is a matter of common knowledge in the industry that BIC manufactures the best quality disposable lighter.⁹⁹ In this regard, I note that BIC lighters meet ASTM safety standards and are generally believed to be safer.¹⁰⁰

A second factor which may explain the petitioner's ability to raise prices despite increased volumes of lower priced imports from China and Thailand is the information suggesting the existence of a segmented market for disposable lighters in the United States. The record indicates that "BIC dominates the brand-name market characterized by sales of disposable lighters to large, national retail chains" whereas disposable lighters imported from China and Thailand are "no-name, low-end lighters that sell at mom and pop convenience stores, neighborhood liquor stores, and street vendors and cigarette stands, places where BIC lighters are not generally sold."¹⁰¹

Differences among the like products in average lead times between a customer's order and the date of delivery may also be a contributing factor to the price differential. BIC's average lead time *** compares favorably to that for the like product from Thailand *** and China ***.¹⁰² Since customers will generally prefer an item earlier than later, it is plausible to assume that they would be willing to pay higher prices for the former.

In sum, the record indicates that despite the consistent underselling by the subject imports, there is no evidence of adverse price effects by the subject imports.

⁹⁶ Tables 18 and 19, CR at I-62, I-63.

⁹⁷ For instance, for product 1 sales to distributors during the ***, BIC's net delivered price *** while the Chinese price dipped to ***. Table 18, CR at I-62.

⁹⁸ CR at I-10, n. 15. Tr. at 102.

⁹⁹ Tr. at 17. CR at I-57.

¹⁰⁰ Tr. at 17. In addition, fixed-flame lighter production is more demanding than variable-flame lighter production because of stricter performance criteria. The valve design for the variable-flame lighter need not be as precise as that required for the fixed-flame lighter. Tr. at 18.

¹⁰¹ CR at I-19. In 1993, *** of BIC's U.S. shipments went to retail outlets whereas *** of disposable lighters from China and *** of disposable lighters from Thailand went to retail outlets. CR at I-19 and I-20.

¹⁰² CR at I-56.

C. Impact of the Subject Imports on the Domestic Industry

There is little evidence indicating that the subject imports have had an adverse impact on the domestic disposable lighter industry during the POI. Indicators point to a healthy domestic disposable lighter industry. Sales increased in terms of both quantity and value. Sales quantity increased ***, from *** units in 1991 to *** units in 1993.¹⁰³ Consistent with increased sales, the domestic industry's operating income also ***, from an operating *** in 1991 to an *** in 1993, an improvement of *** percent over the POI.¹⁰⁴ Capital expenditures also ***, from *** million in 1991 to *** million in 1993.¹⁰⁵ U.S. producer's production and shipments also improved dramatically over the POI.¹⁰⁶

Although the number of production and related workers (PRW) declined slightly, from *** in 1991 to *** in 1993, this decline is small in absolute number and relative to the size of the total work force in this industry.¹⁰⁷ In addition, during the interim period, the number of workers increased to a level above the original 1991 level.¹⁰⁸ I also note that this temporary decline in PRW may be linked to the significant improvements in the U.S. producer's productivity.¹⁰⁹

Accordingly, I conclude that the domestic industry is not materially injured by reason of the subject imports.

¹⁰³ Table C-3, CR at C-6. Sales value increased ***, from *** in 1991 to *** in 1993. Table C-3, CR at C-6.

¹⁰⁴ Table C-3, CR at C-6. Although declines in unit COGS and SG&A expenses contributed to an improved financial picture for the domestic industry, improvements in operating income is due, in large part, to the domestic industry's increased sales.

¹⁰⁵ Table C-3, CR at C-6.

¹⁰⁶ Table C-3, CR at C-6. Production quantity increased ***, from *** units in 1991 to *** units in 1993. U.S. shipments increased *** percent from *** units in 1991 to *** units in 1993. In addition, the value of U.S. producer's U.S. shipments increased *** percent, from *** million in 1991 to *** million in 1993. Table C-3, CR at C-5.

¹⁰⁷ Table C-3, CR at C-5.

¹⁰⁸ PRW increased from *** in interim 1993 to *** in interim 1994. Table C-3, CR at C-5.

¹⁰⁹ Productivity of the U.S. producer improved, from *** in 1991 to *** in 1993. Id.

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**ADDITIONAL VIEWS OF COMMISSIONER DAVID B. ROHR
FINDING THREAT OF MATERIAL INJURY**

I determine that there is a reasonable indication that the domestic industry in this investigation is threatened with material injury by reason of imports of disposable lighters from Thailand that are allegedly subsidized or sold in the United States at less than fair value (LTFV) and from China that are allegedly sold in the United States at LTFV. I set forth these additional views because although I concur with my colleagues regarding reasonable indication of threat, my analysis differs from that expressed in the views of the majority.¹¹⁰

While I conclude that the industry is not currently experiencing material injury, the evidence does suggest a vulnerability to the adverse effects of imports of disposable lighters from Thailand and China. Further, the data collected concerning the probable future effects of the imports from Thailand and China, while not yet complete, suggest that these imports are likely to be injurious. Thus, I have made an affirmative determination on the basis of a reasonable indication of threat of material injury.

Section 771(7)(F) of the Tariff Act of 1930, as amended, directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."¹¹¹ Such a determination may not be made on the basis of "mere conjecture or supposition."¹¹² In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.¹¹³

In addition to the views stated above on the condition of the domestic industry, I find several factors that reasonably indicate that the domestic industry is vulnerable. First, while the operating income of BIC's (the petitioner's) disposable lighter operations, has improved

¹¹⁰ Due to the fact I make affirmative determinations as to the threat posed by imports from China and Thailand individually, I find there is no need to discuss cumulation in this section.

¹¹¹ The ten factors that the statute requires the Commission to consider are: (I) the nature of the subsidy (obviously applicable only to countervailing duty investigations), (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States, (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level, (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise, (V) any substantial increase in inventories of the merchandise in the exporting country, (VI) the presence of underutilized capacity for producing the merchandise in the exporting country, (VII) any other demonstrable adverse trends that indicate the probability that importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, (VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation, (IX) in any investigation under this title which involves imports of both raw agricultural product (within the meaning of paragraph (4)(E)(IV) and any product processed from such raw agricultural product, the likelihood there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and (X) the actual and potential negative effects of the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

¹¹² 19 U.S.C. § 1677(7)(F)(ii).

¹¹³ See 19 U.S.C. § 1677(7)(F)(iii), as amended by Section 1329 of the 1988 Act, Pub.L. 100-418, 102 Stat. 1107, 1206.

in 1991-93, in part due to lower liability payouts according to BIC¹¹⁴, in the interim period, BIC's operating income decreased.¹¹⁵ Also, BIC's market share for disposable lighters decreased steadily throughout the entire investigation period.¹¹⁶

I consider each statutory factor applicable to this investigation below.¹¹⁷

First, Petitioner has alleged that producers of disposable lighters in Thailand receive subsidies in the form of export subsidies.¹¹⁸

Capacity and utilization data show that Thailand has been operating at full or close to full capacity during the investigation period, its capacity has increased and projections for 1994 and 1995 suggest a continued growth in capacity.¹¹⁹ While we have received only limited data on the Chinese industry producing disposable lighters, petitioner identified over 50 firms that are alleged to produce and/or export disposable lighters.¹²⁰ In this preliminary, only one Chinese producer provided any data. The capacity of this single Chinese producer increased sharply over the investigation period and projections indicate further increases in 1994.¹²¹ Both Thailand and China show the ability to easily and rapidly increase their capacity. Thus, I find there is a reasonable indication that imports could increase significantly.

The rapid rise in market share penetration levels for both Thailand and China also supports a finding of a reasonable indication of threat of material injury. Data show Thailand's market share increasing steadily throughout 1991-93 and in the interim period.¹²² Thai exports to the United States are projected to decrease in 1994 but increase sharply in 1995.¹²³ China's market share also increased between 1991 and 1993, as well as in the interim period.¹²⁴ The Chinese company providing data showed sharply increased exports to the U.S. in 1994, as well.¹²⁵ Because of this, I find there is a reasonable indication that this market penetration could increase to an injurious level.

Prices of both the Thai and Chinese imports have undersold BIC consistently at both the distributor and retail chain level during the investigation period.¹²⁶ A comparison of weighted-average prices of imports for both the Thai and Chinese products show large margins of underselling at both the retail chain and distributor markets.¹²⁷ I believe that there is a reasonable indication that these imports could have a depressing or suppressing effect on prices of U.S.-produced disposable lighters.

U.S. inventories of Thai lighters increased throughout the period and increased sharply in the interim, by both absolute levels, and as a percentage of total imports from Thailand.¹²⁸ U.S. inventories of Chinese disposable lighters also increased sharply throughout

¹¹⁴ Confidential Staff Report (hereinafter referred to as "CR") at I-28; Public Staff Report (hereinafter referred to as "PR") at II-12.

¹¹⁵ Table 7.

¹¹⁶ Table 1.

¹¹⁷ Since these investigations do not involve an agricultural product, Factor IX is not applicable. Product shifting, Factor VII, is not an issue because there is no evidence that foreign manufacturers of disposable lighters produce any other products currently under investigation or subject to an order.

¹¹⁸ Petition at 17 and 24-25.

¹¹⁹ Table 15.

¹²⁰ Petition at Exhibit 6.

¹²¹ Table 14.

¹²² Table 1.

¹²³ Table 15.

¹²⁴ Table 1.

¹²⁵ Table 14.

¹²⁶ CR at I-65; PR at II-25 and Tables 18, 19 and 20.

¹²⁷ Table 20.

¹²⁸ Table 15.

1991-93, and increased even more dramatically in the interim.¹²⁹ This data shows a reasonable indication that the domestic industry is vulnerable.

Finally, the European Union has determined that disposable lighters from both Thailand and China have been dumped in that market, and imposed antidumping duties in November 1991. The Government of Argentina also recently imposed antidumping duties against the subject lighters from China.¹³⁰ Because the home markets have not accounted for a significant share of each country's total shipments, these actions may increase the importance of the U.S. market for lighters from Thailand and China.

Based upon the capacity and utilization rates of the Thai and Chinese producers, market share increases for the subject imports, decreasing prices of these imports, increasing U.S. inventories of Thai and Chinese lighters, the possibility of diverted imports from the European Union and Argentina and the limited information on Chinese production of disposable lighters, I find that there is a reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Thailand and China.

¹²⁹ Table 13.

¹³⁰ CR at I-51, n. 70; PR at II-21.

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ADDITIONAL VIEWS OF COMMISSIONER CRAWFORD

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 allegedly LTFV imports of disposable pocket lighters from China and Thailand ("subject imports"). I concur in the conclusions of my colleagues with respect to like product¹³¹ and domestic industry, and in the discussion of the condition of the industry. These additional views provide further explanation of my determination. My analysis follows.

The statute directs that we determine whether there is material injury by reason of the dumped imports. Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they have caused material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh causes, only to determine if the dumping is causing material injury to the domestic industry. It is important, therefore, to assess the effects of the 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 domestic industry to the industry conditions that would have existed had imports been fairly priced.¹³² I then determine whether the change in conditions constitutes material injury.

In my analysis of material injury, I evaluate the effects of the dumping. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on domestic production and sales, I compare the domestic production and sales that existed when the imports were dumped with what domestic production and sales would have been if the imports had been priced fairly. The combined price and output effect translates into an overall revenue impact. Understanding the impact on the domestic industry's prices, production and 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, production, and revenues.

I then determine whether the price, production and sales, and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, I find that the domestic industry is materially injured by reason of dumped imports. For the reasons discussed below, I find that there is a reasonable indication that the domestic industry producing disposable lighters is materially injured by reason of allegedly LTFV imports of disposable lighters from China and Thailand.¹³³

I. CUMULATION OF THE IMPORTS FROM CHINA AND THAILAND

I have cumulated imports from Thailand and imports from China in my determination. The statute requires cumulation if imports from China and Thailand "compete

¹³¹ In the event of any final investigations, I request the parties to present evidence and argument about whether nondisposable lighters and disposable lighters should be included in the same like product.

¹³² 19 U.S.C. § 1677(7)(C)(iii).

¹³³ I have considered and weighed all the evidence in the record in accordance with the holding in American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986).

with each other and with like products of the domestic industry in the United States market."¹³⁴ I find that the subject imports compete with each other and with the like domestic product. They are reasonably good substitutes because they are very similar in their uses and physical characteristics,¹³⁵ and the record indicates that quality differences¹³⁶ between Chinese and Thai lighters and the domestic like products are minimal. Moreover, the subject imports and the domestic products are sold through similar channels of distribution, both distributors and retail chains,¹³⁷ and all of the products are distributed nationally.¹³⁸ They are simultaneously present in the market, often sold side by side in convenience stores or chain stores.¹³⁹ For these reasons I have cumulated subject imports for purposes of these preliminary investigations.

II. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In determining whether a domestic industry is materially injured by reason of the 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 States¹⁴⁰

In assessing the effect of LTFV imports, I compare the current condition of the domestic industry with the condition that would have existed had imports been fairly priced.¹⁴¹ Then, taking into account the condition of the industry, I determine whether any resulting change of circumstances constitutes material injury. For the reasons discussed below, I find that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

A. Volume of the Allegedly LTFV Imports

The cumulated volume and market share of imports from China and Thailand were large throughout the period of investigation, and the market share rose from *** percent to *** percent from 1991 to 1993. In the same time period, the domestic producer's market share decreased from *** percent to *** percent. Based on these market shares, I find the volume of the subject imports to be significant.

¹³⁴ 19 U.S.C. § 1677(7)(C)(iv)(I).

¹³⁵ CR at I-9 to I-10; PR at II-4 to II-7.

¹³⁶ CR at I-57; PR at II-23.

¹³⁷ CR at I-18 to I-19; PR at II-10.

¹³⁸ CR at I-17; PR at II-10.

¹³⁹ CR at I-19; PR at II-10.

¹⁴⁰ 19 U.S.C. § 1677(7)(B)(i). In making its determination, the Commission may consider "such other economic factors as are relevant to the determination." 19 U.S.C. § 1677(7)(B)(ii).

¹⁴¹ 19 U.S.C. § 1677(7)(C)(iii).

B. Effect of Allegedly LTFV Imports on Domestic Prices

To analyze the effect of subject imports on domestic prices of the like product, I consider a number of factors relating to the industry and the nature of the products. These factors include the availability of substitute products in the market, the degree of substitutability between the subject imports and the domestic like product, the presence of fairly traded imports, and capacity utilization in the industry. Consideration of these factors together allows an assessment of whether the domestic industry would have been able to raise its prices if subject imports had been sold at fairly traded prices. Thus, they provide a measure of the price effects of the dumping. For the reasons stated below, I find that the subject imports had no significant price effects on the domestic disposable pocket lighter industry.

The availability of substitute products limits a domestic producer's ability to increase its prices. In these investigations, I find that potential substitutes for disposable lighters do not limit BIC's ability to increase its prices. While nondisposable lighters can be used in place of subject imports, the price differential is so large¹⁴² that it is unlikely that purchasers would have switched to nondisposable lighters. Therefore, I conclude that the domestic industry's ability to increase its prices is not limited significantly by the availability of substitute products.

The degree of substitutability between the subject imports and the domestic like product is reflected by the measure of product differentiation. Purchasers faced with a significant price increase may choose to pay the higher price if the product quality or terms of sale of a particular purchase are sufficiently important. As discussed above, I find that domestic disposable lighters and subject imports are reasonably good substitutes. Therefore, purchasers likely would have bought more domestic disposable lighters had the price of subject imports been higher.

Had the subject imports not been dumped, they would have been priced out of the U.S. market. Examining the factors cited above allows an assessment of how purchasers are likely to respond to the higher prices, and particularly whether purchasers of the subject imports would be likely to switch to the domestic like product. The dumping margins in these preliminary investigations are high enough to make it likely that most of the subject imports would not have entered the domestic market if they had been fairly priced. The availability of fairly traded imports, however, limits the domestic producer's ability to raise its price. Even without the subject imports in the U.S. market, BIC would not have been able to increase its prices due to competition from nonsubject imports. Eight countries other than China and Thailand exported disposable lighters to the United States during the period of investigation. Exports from these countries held a *** percent market share in 1993. Such large alternative sources of supply limit the ability of the domestic producer to raise its prices. That is, attempts by the domestic producer to increase its prices would have been met and "beaten back" by competition from nonsubject imports.

Another important factor is the domestic industry's capacity utilization rate. If subject imports had been priced out of the market, BIC's level of capacity utilization indicates that it would have been able to increase production to replace the subject imports. However, BIC would not have had sufficient available capacity to replace all of the subject

¹⁴² The unit value of standard disposable lighters in 1993 ranged from \$0.09 for imports to *** for domestically produced lighters. CR at C-5; PR at C-3. The unit value of nondisposable lighters ranged from \$0.77 for imports to *** for domestic products. Because of the limited availability of inexpensive nondisposable lighters, I find that the overall price differential is quite large. CR at C-7; PR at C-3.

imports, and thus a net reduction in supply would have resulted. The likely net reduction in supply would tend to increase prices, although it is unlikely that such a result would occur in this case due to competition from nonsubject imports.

For the reasons stated above, I find that subject imports had no significant price effects on the domestic producer.

C. Impact of Allegedly LTFV Imports on the Domestic Industry

In assessing the impact of LTFV imports on the domestic industry, I consider, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development.¹⁴³ These factors either encompass or reflect the volume and price effects of the dumped imports, and so I must gauge the impact of the dumping through those effects.

As discussed above, it is unlikely that any subject imports would have been sold in the domestic market at fairly traded prices. However, because of available capacity and competition from nonsubject imports, domestic prices would not have increased if subject imports had been priced fairly. Therefore, any impact of subject imports on the domestic industry would have been on the volume of the domestic industry's output and sales.

The domestic industry was not operating at full capacity in 1993. If subject imports had been priced out of the market, the domestic industry would have had sufficient available capacity to increase its output significantly. I find it likely that BIC would also have been able to increase its sales significantly. The market for disposable lighters is very competitive, with a number of significant suppliers. BIC has been an active competitor during the period of investigation, even with unfairly traded subject imports in the market. It is quite likely that BIC would have competed as actively or even more actively if subject imports had not been in the market. Consequently, BIC would have increased its output and sold significant additional quantities of lighters. Thus, I find that BIC would have increased its sales and revenues significantly. Therefore, BIC would have been materially better off if subject imports had been fairly traded.

III. CONCLUSION

Having weighed the evidence of record, I therefore determine that there is a reasonable indication that the domestic industry is materially injured by reason of allegedly LTFV imports of disposable lighters from China and Thailand.

¹⁴³ 19 U.S.C. § 1677(C)(iii).

DISSENTING VIEWS OF VICE CHAIRMAN JANET A. NUZUM

I reach negative determinations in these preliminary investigations involving imports of disposable lighters from the People's Republic of China and from Thailand. Based on the best information available, I conclude that there is not a reasonable indication of material injury or threat of material injury to a domestic industry by reason of allegedly less than fair value (LTFV) imports from China and subsidized and LTFV imports from Thailand.

Like my colleagues in the majority, I find that there is one like product consisting of disposable lighters, which includes child-resistant lighters. I generally join my colleagues' discussion, therefore, on "like product," with the exception of the views expressed concerning refillable lighters.¹⁴⁴ In my view, refillable lighters manufactured by KGM are not "disposable" and therefore are not included in the scope of investigation as defined by the Department of Commerce.

I also concur in the majority's finding that the domestic industry consists of one producer -- the petitioner, BIC. Furthermore, I concur in the majority's decision to cumulate the subject imports from China and Thailand for purposes of assessing both present material injury and threat.

In assessing the impact of allegedly dumped and subsidized imports on the domestic industry, the Commission is required to "evaluate all relevant economic factors . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."¹⁴⁵ There is one condition of competition distinctive to the disposable lighter industry that warrants discussion here. In these investigations, the parties have strongly disputed the significance of the impending effective date of the new safety standard for disposable lighters promulgated by the Consumer Product Safety Commission ("CPSC"). On July 12, 1993, the CPSC issued a safety standard that requires certain types of cigarette lighters, including disposable lighters, to meet specified requirements for child resistance. The standard includes labeling, testing, recordkeeping, reporting and stockpiling requirements for manufacturers and importers. This standard will go into effect on July 12, 1994.¹⁴⁶

Contrary to the arguments made by some of the respondents, I am not persuaded that the new CPSC safety standard will adversely affect to a significant degree the respondents' ability to market their disposable lighters in the United States. The record indicates that, notwithstanding their knowledge for almost a year of the effective date of the new safety standard, foreign producers project their exports of disposable lighters to the United States to increase in the foreseeable future. If respondents were unable to manufacture a significant volume of disposable lighters that comply with the new safety standards, I would expect their projected exports to the United States to show significant declines.

Nevertheless, the impending effective date for the new standard does appear to have prompted both the domestic producer and importers to increase their inventories of standard, non-child-resistant disposable lighters. Although the CPSC standard prohibits the manufacture or importation of non-complying lighters after July 12, 1994, sales of non-complying lighters from existing inventories will still be permitted.¹⁴⁷ I have therefore examined various indicators of domestic industry performance and of subject import volumes

¹⁴⁴ See Views of Majority at section II.3.

¹⁴⁵ 19 U.S.C. §1677(7)(C)(iii).

¹⁴⁶ See Consumer Product Safety Commission Notice, Safety Standard for Cigarette Lighters, 58 Fed. Reg. 37557 (July 12, 1993).

¹⁴⁷ See 52 Fed. Reg. 37562 (July 12, 1993).

during 1993 and first quarter 1994 in the context of this upcoming change in the CPSC standard.

Analysis of Present Material Injury

With respect to present material injury, the record shows large increases in the volume of subject imports, and accompanying increases in market share held by those imports.

Cumulated subject imports from China and Thailand increased from 186.6 million units in 1991 to 202.6 million units in 1992 and 293.2 million units in 1993. This upward trend continued between the interim periods, as subject imports increased from 53.2 million units in the first quarter of 1993 to 69.4 million units in the first quarter of 1994.¹⁴⁸ Market share held by the subject imports in terms of quantity increased slightly from 1991 to 1992, and then increased much more significantly from 1992 to 1993. Market share held by the nonsubject imports increased further between the interim periods.¹⁴⁹

Although the increase in subject imports is large in an absolute sense, it is important to examine the increase in the context of trends in consumption, nonsubject imports and the domestic producer's market share. First, consumption of disposable lighters in the United States increased throughout the period of investigation. Consumption climbed by a little more than three percent from 1991 to 1992, and by approximately nine percent from 1992 to 1993.¹⁵⁰ Consumption continued to increase between the interim periods, rising by about three percent.¹⁵¹

Second, while BIC's market share fell marginally throughout the period of investigation, the significance of this small decline in market share is mitigated by the fact that BIC's shipments of disposable lighters increased throughout most of the three full years of the period of investigation.¹⁵² Moreover, as discussed below, there is little evidence of any adverse effects suffered by BIC during the period of investigation.

Nonsubject imports appear to have borne the brunt of the impact of the subject imports from China and Thailand. In terms of volume, nonsubject imports increased slightly from about 328 million units in 1991 to slightly more than 332 million units 1992. Nonsubject imports then experienced a substantial decline, falling to a little less than 301 million units in 1993.¹⁵³ The volume of nonsubject imports fell further between the interim periods, from approximately 75 million units in the first quarter of 1993 to approximately 66 million units in the first quarter of 1994.¹⁵⁴ Market share held by nonsubject imports declined throughout the period of investigation, and by a substantially larger amount than BIC.¹⁵⁵ In sum, although the volume of subject imports experienced a large increase during the period of investigation, other evidence mitigates the significance of this increase.

The pricing data gathered by the Commission showed sizeable margins of underselling by the subject imports from both China and Thailand.¹⁵⁶ For the Chinese

¹⁴⁸ Table 16, CR at I-50; PR at II-20.

¹⁴⁹ Table 17, CR at I-53; PR at II-22.

¹⁵⁰ Table C-3, CR at C-5; PR at C-3.

¹⁵¹ *Id.*

¹⁵² Tables 3 and 17, CR at I-24, I-53; PR at II-12, II-22.

¹⁵³ Table 16, CR at I-50; PR at II-20.

¹⁵⁴ *Id.*

¹⁵⁵ Table 17, CR at I-53; PR at II-22.

¹⁵⁶ The statute directs the Commission to consider whether there has been "significant price underselling" by the subject imports. 19 U.S.C. §1677(7)(C)(ii)(I). The significance of the

(continued...)

product, underselling margins increased for sales to distributors, but remained fairly steady in sales to retail chains.¹⁵⁷ Thai product undersold BIC by similar margins as the Chinese product for sales to distributors. Margins of underselling by the Thai product for sales to retail chains fluctuated, increasing from the beginning through the middle of the period of investigation, and then declining again.¹⁵⁸

Prices for the Chinese products showed substantial declines in sales to distributors, while prices for sales to retail chains were more stable.¹⁵⁹ Thai prices for sales to distributors also declined steadily while prices for sales to retail chains were more stable.¹⁶⁰

Notwithstanding the declining prices and sizeable margins of underselling by the subject imports, BIC's prices for sales to distributors as well as retail chains did not show any significant declines. BIC's prices fluctuated throughout the period examined, with no clear apparent trend. Indeed, in both sets of comparisons, BIC's prices were slightly higher at the end of the period examined as compared to the beginning of the period.¹⁶¹ Based on the lack of any apparent correlation between subject import prices and domestic prices, I find that there are no significant price depressing or suppressing effects attributable to the subject imports.

Most of the evidence with respect to impact of the subject imports on the domestic industry fails to show any significant adverse effects. Indeed, most of the factors showed consistent improvement throughout the three full years examined. Production, capacity, shipments, and net sales all increased.¹⁶² Importantly, shipments increased consistently not only in terms of quantity, but also in terms of value, from 1991 to 1993.¹⁶³ This is consistent with my finding of no price depression or suppression by reason of the subject imports.

BIC's inventories remained stable in 1991 and 1992, then started increasing in 1993; inventories then jumped substantially between interim 1993 and interim 1994.¹⁶⁴ This increase is not necessarily indicative of material injury, however. Rather, the information concerning inventories appears to reflect a decision by BIC to increase its stocks of non-child-resistant lighters before the July 12, 1994 deadline for the new CPSC standard.¹⁶⁵

BIC's profitability improved steadily throughout the three full years examined. Indeed, the most significant improvement occurred from 1992 to 1993, when subject imports were increasing the most.¹⁶⁶ The steady improvement in BIC's profitability in the face of increasing subject imports strongly suggests that BIC did not experience a material adverse impact from those imports during 1991 to 1993. Slight declines in BIC's performance between the interim periods occurred in a few, but not all, indicators. Other evidence of

¹⁵⁶ (...continued)

underselling here is mitigated by evidence that both BIC and the larger importers agree that there are quality differences between U.S.-produced disposable lighters and those imported from China and Thailand. CR at I-57; PR at II-23. Specifically, BIC considers its lighters to be superior to the imports in terms of quality and safety, so much so that BIC can compete with a product half the price. Id.; see also Transcript of Staff Conference at 32 (Testimony of Michael Gray, National Sales Manager, BIC Corporation).

¹⁵⁷ Table 20, CR at I-66; PR at II-25.

¹⁵⁸ Id.

¹⁵⁹ Tables 18 and 19, CR at I-62, I-63; PR at II-24.

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Tables 2, 3 and 7, CR at I-22, I-24, I-32; PR at II-11, II-12, II-14.

¹⁶³ Table 3, CR at I-24; PR at II-12.

¹⁶⁴ Table 4, CR at I-25; PR at II-12.

¹⁶⁵ Id.; see also Table 2, CR at I-22; PR at II-11.

¹⁶⁶ Table 7, CR at I-32; PR at II-14; see also Table 1, CR at I-14; PR at II-8.

healthy and improving performance by BIC can be seen in its capital expenditures, which increased substantially during the full three years of the period of investigation, as well as between the interim periods.¹⁶⁷

In light of the improvement in virtually every factor of industry performance by BIC during most of the period examined, and the absence of evidence of price depression or suppression by reason of the subject imports, I conclude that there is no reasonable indication that the domestic industry is materially injured by reason of the subject imports.

Analysis of Threat of Material Injury

In determining whether there is a reasonable indication that a domestic industry is threatened with material injury, the Commission must base its determination on "the basis of evidence that the threat of material injury is real and that actual injury is imminent."¹⁶⁸ The determination may not be made "on the basis of mere conjecture or supposition."¹⁶⁹ The Commission considers as many of the ten statutory factors as are relevant to the facts of the particular investigations before it, as well as any other relevant economic factors.¹⁷⁰ The Commission also must consider whether dumping in the markets of foreign countries of the same class or kind of merchandise subject to investigation "suggests a threat of material injury to the domestic industry."¹⁷¹

Certain threat factors tend to indicate that subject imports are likely to increase in the future, although not to levels that are likely to be injurious. Foreign capacity and production increased in both countries during the period of investigation.¹⁷² Further, exports from China and Thailand to the United States are projected to increase in the foreseeable future, although at lower rates than occurred during the period of investigation.¹⁷³

The mere likelihood that subject imports will increase in the future, however, is not sufficient to justify a finding of threat of material injury here. Subject imports already increased by what are indisputably large amounts during the period of investigation, yet the domestic industry's condition, including profitability, improved. There must be evidence of the likelihood of some adverse impact to the domestic industry. I am unable to find such evidence, however. For example, during the entire period of investigation, there was no evidence that subject imports had significant price depressing or suppressing effects on domestic prices, notwithstanding very sizeable margins of underselling and significant declines in subject import prices. I find no evidence that suggests the likelihood of future price depressing or suppressing effects from subject imports.

Importers' inventories of the subject merchandise increased significantly from 1992 to 1993, and showed further increases between the interim periods.¹⁷⁴ I do not think these increases in inventories constitute evidence of a threat of material injury, however. Rather, it

¹⁶⁷ Table 12, CR at I-40, PR at II-15.

¹⁶⁸ 19 U.S.C. §1677(7) (F) (ii).

¹⁶⁹ *Id.*

¹⁷⁰ Factor VIII, regarding product shifting, and Factor IX, regarding agricultural products, are not relevant to the facts of these investigations.

¹⁷¹ 19 U.S.C. §1677(7)(F)(iii).

¹⁷² Table 14 and 15, CR at I-46, I-48; PR at II-18, II-19. I note that coverage with respect to Thai production and capacity was fairly complete, while coverage concerning Chinese producers is not so complete. See CR at I-47, n. 63; PR at II-19. Although the coverage with respect to China is incomplete, given the other evidence with respect to threat, I conclude that any additional evidence would not be likely to lead to a contrary determination in a final investigation.

¹⁷³ Tables 14 and 15, CR at I-46, I-48; PR at II-18, II-19.

¹⁷⁴ Table 13, CR at I-44; PR at II-18.

appears that importers are building up their inventories of non-child-resistant disposable lighters before the July 12, 1994 deadline, much as is BIC. In any event, these inventories constituted a relatively small portion of subject imports.

I do not find evidence of any other demonstrable adverse trend indicating the probability that subject imports will be the cause of actual injury. I also do not find evidence of actual or potential negative effects on existing development and production efforts of the domestic industry. To the contrary, BIC's capital expenditures increased at a substantial rate throughout the period of investigation. Likewise, research and development showed significant increases throughout most of the period of investigation.¹⁷⁵

There are third country dumping findings with respect to disposable lighters from China and Thailand.¹⁷⁶ In November 1991, the European Union ("EU") imposed an antidumping duty on imports of lighters from both subject countries. There is no indication, however, that the order, which has been in effect for more than two years, resulted in a diversion of shipments of Thai and Chinese disposable lighters from the EU to the United States. More recently, the Government of Argentina imposed antidumping duties on disposable lighters from China. The record contains no specific information as to the amount of trade affected by the Argentine antidumping order. Consequently, I have no factual basis on which to conclude that these third country dumping findings suggest a threat of material injury to the domestic industry.

In preliminary antidumping and countervailing duty investigations, the Commission must determine, based upon the best information available at the time of the determination, whether there is a "reasonable indication" that a domestic industry is materially injured or threatened with material injury by reason of the allegedly subsidized and LTFV imports.¹⁷⁷ There are isolated pieces of evidence that arguably are consistent with an affirmative threat scenario, including the slight decline in BIC's net sales and profitability in the first quarter of 1994. But I must consider the record as a whole. Given the lack of any significant adverse effects from subject imports during 1991-93, and, at best, mixed indicators during a single calendar quarter, this small quantum of evidence of potential harm is insufficient to support an affirmative threat determination, even in a preliminary investigation. Rather, the small quantum of evidence suggests a more remote threat of material injury, indicating that this petition may have been filed prematurely by BIC. The statute prohibits me from using supposition or conjecture to reach an affirmative threat determination. I am compelled, therefore, to make a negative determination with respect to threat as well as present material injury.

¹⁷⁵ CR at I-39; PR at II-15. Petitioner has alleged that subject imports from Thailand are benefitting from several government programs that constitute countervailable subsidies. Although the Department of Commerce has instituted a countervailing duty investigation concerning those programs, the Commission has no other information with respect to those alleged subsidies. Given the rest of my analysis with respect to threat, however, I conclude that any information with regard to these subsidies would not be likely to support a contrary determination in a final investigation.

¹⁷⁶ See discussion at CR I-51, n.70; PR at II-21.

¹⁷⁷ 19 U.S.C. §1673b(a). In applying this standard, the Commission weighs the evidence before it to determine whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of material injury; and (2) no likelihood exists that any contrary evidence will arise in a final investigation." *Id.*; see also *American Lamb Co. v. United States*, 785 F.2d 994 (Fed. Cir. 1986).

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PART II
INFORMATION OBTAINED IN THE INVESTIGATIONS

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INTRODUCTION

On May 9, 1994, counsel for the BIC Corporation (BIC), Milford, CT, filed a petition with the U.S. International Trade Commission (the Commission) and the U.S. Department of Commerce (Commerce) alleging that an industry in the United States is materially injured and is threatened with material injury by reason of imports from the People's Republic of China (China) and Thailand of disposable lighters¹ that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of Thailand. Accordingly, effective May 9, 1994, the Commission instituted investigations Nos. 303-TA-25 (Preliminary)² and 731-TA-700-701 (Preliminary) under sections 303 and 733(a) of the Tariff Act of 1930 (the Act),³ respectively, to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

The statute directs the Commission to make its preliminary determination within 45 days after receipt of the petition, or, in these investigations, by June 23, 1994. Notice of the institution of the Commission's investigations was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* on May 16, 1994. Commerce published its notice of initiation in the *Federal Register* on June 7, 1994.⁴ Copies of the cited *Federal Register* notices are presented in appendix A. The Commission held a public conference in Washington, DC, on June 1, 1994, at which time all interested parties were allowed to present information and data for consideration by the Commission. A list of conference participants is presented in appendix B. The Commission's votes in these investigations were held on June 20, 1994. The Commission has not conducted a previous investigation of the subject product.

A summary of the data collected in these investigations is presented in appendix C.⁵

THE PRODUCT⁶

Description and Uses

Disposable pocket lighters are flame-producing consumer products commonly used to ignite tobacco in cigarettes, cigars, and pipes. These lighters are normally non-refillable, and are meant to be disposed of after the fuel supply, usually a type of butane or propane gas, is depleted. Such

¹ The products covered by these investigations are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (F) (24 degrees Celsius (C)) exceeds a gage pressure of 15 pounds per square inch (psi). Non-refillable pocket lighters are provided for in subheading 9613.10.00 of the Harmonized Tariff Schedule of the United States (HTS). Refillable, disposable pocket lighters would be imported under subheading 9613.20.00 of the HTS.

² Thailand is not a signatory of the General Agreement on Tariffs and Trade (GATT) subsidies code and thus is not "under the Agreement" pursuant to sec. 701(b) of the Act. However, Thailand has been accorded an injury investigation under sec. 303 of the Act for those articles that enter free of duty.

³ 19 U.S.C. §§ 1303 and 1673b(a).

⁴ 59 F.R. 25502 and 59 F.R. 29412.

⁵ Table C-4 presents data on non-disposable lighters provided in ***.

⁶ The Consumer Product Safety Commission's (CPSC) definition of a disposable lighter is a lighter that either is (1) not refillable with fuel or (2)(i) its fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75°F (24°C) exceeds a gage pressure of 15 psi (103 Kpa), and (ii) it has a customs value or ex-factory price of under \$2.00, as adjusted every 5 years, to the nearest \$0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993.

lighters are composed of a body, a base, a lever or fork, a jet, a lighting mechanism, a valve, fuel, and other minor components.

BIC, the only U.S. producer of disposable pocket lighters, currently manufactures two types of disposable lighters domestically: the BIC Fixed Flame lighter⁷ and the BIC Child Guard lighter.⁸ The patented Child Guard lighter is now in production at its Milford, CT, facility as the company prepares to convert all of this facility over to the Child Guard lighters.⁹

Figures 1 and 2 show the component parts for disposable lighters that make up the Fixed Flame model and the Child Guard design. The Fixed Flame lighter has 17 component parts. The Child Guard has three additional parts that were incorporated to make the lighters child resistant: (1) a jet spring that retards jet movement, (2) a latch that restricts the fork (which lifts the jet that allows fuel release) when not in use, and (3) a latch spring that returns the latch automatically to latched position.

Production Process

The production process for most disposable lighters consists of five operations: (1) components manufacture; (2) sub-assembly; (3) final assembly; (4) test and inspections; and (5) packaging. ***.

BIC purchases most materials within the United States. ***

* * * * *

Substitute Products

Several substitute products perform the same flame-producing function as the disposable pocket lighters under investigation. Non-disposable pocket lighters¹⁰ and certain electrical lighters provide some substitution,¹¹ as do table lighters to a lesser degree. These items are generally more expensive than disposable pocket lighters. Matches, however, are the most direct substitutes. A large percentage of matches are given away as promotional items and are readily available.¹² Even if matches are purchased, they provide a relatively inexpensive substitute for disposable lighters.¹³

⁷ BIC also manufactures a "Limited Edition" line of fixed flame disposable lighters that have a designer or fashion wrap. The wrap designs, such as major league sports logos, are more expensive than the company's basic fixed flame lighter.

⁸ The Child Guard lighter was developed by BIC to meet the CPSC standard which addresses the risks of injury associated with lighters that can be operated by young children.

⁹ The Child Guard lighter, designated as model J-16, is a modification of BIC's fixed flame J-6 model.

¹⁰ Non-disposable lighters are gas fueled, refillable lighters that are not discarded once the fuel has been expended. Non-disposable lighters serve the same function as disposable lighters, but they are more expensive and generally retail for \$10.00 or more. The major advantage of non-disposable lighters is that they last much longer than disposable lighters. Such lighters are not sold at checkout counters as impulse items in multipacks but rather at jewelry stores and tobacco shops as single items.

¹¹ Mr. Park, Senior Vice President of KGM Industries, argues that disposable lighters are unique and do not compete with refillable or electrical lighters; transcript of the staff conference (conference TR), pp. 110-111. Aitken Irvin & Lewin's postconference brief, pp. 4-12.

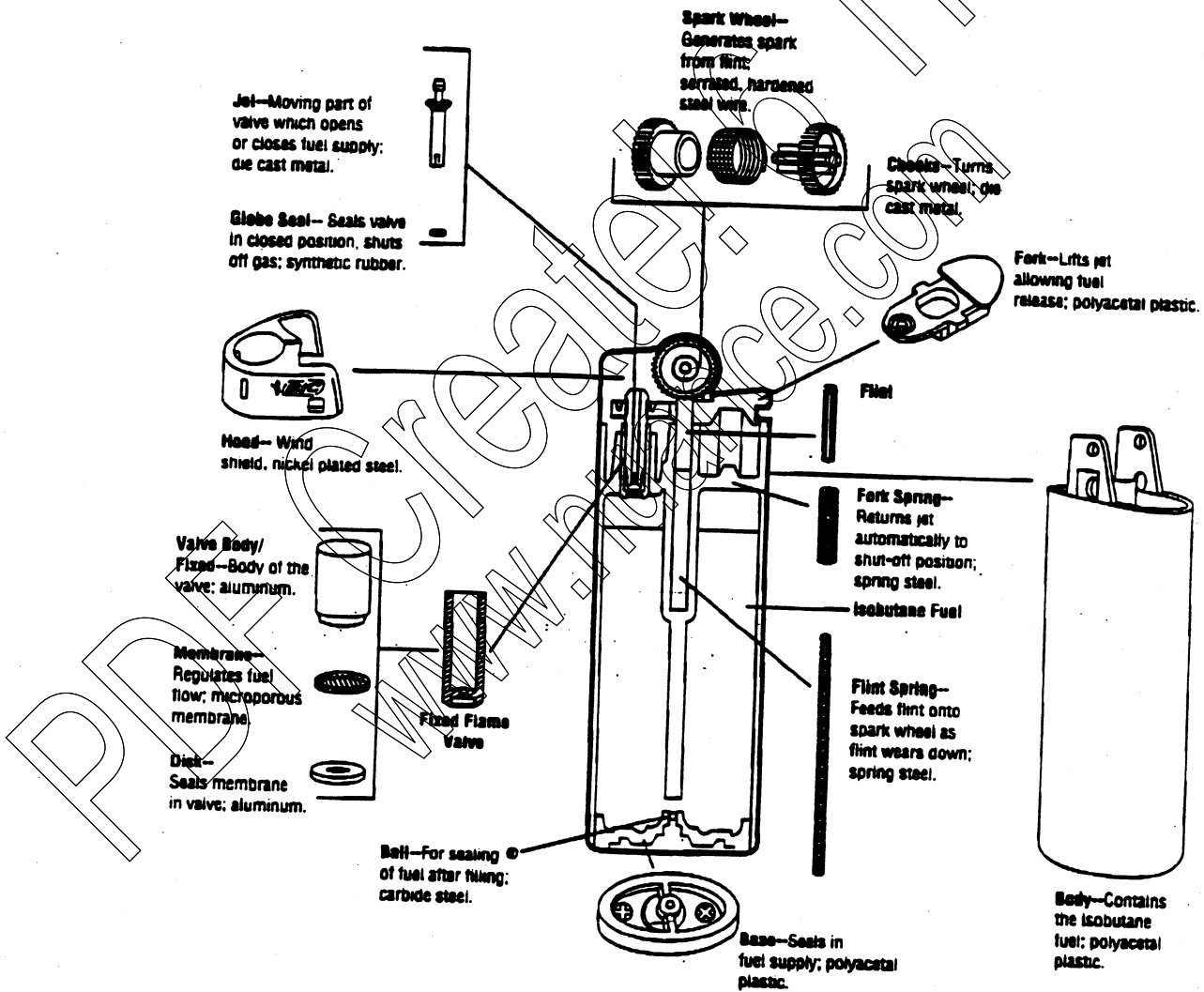
¹² Conference TR, pp. 84 and 92.

¹³ Mr. McDonough, Area Manager for Product Engineering and Quality Control, BIC, argues that disposable lighters are considered by the consumer to be a safer, more convenient product than matches or refillable lighters; conference TR, p. 47.

Figure 1
BIC Fixed Flame lighter

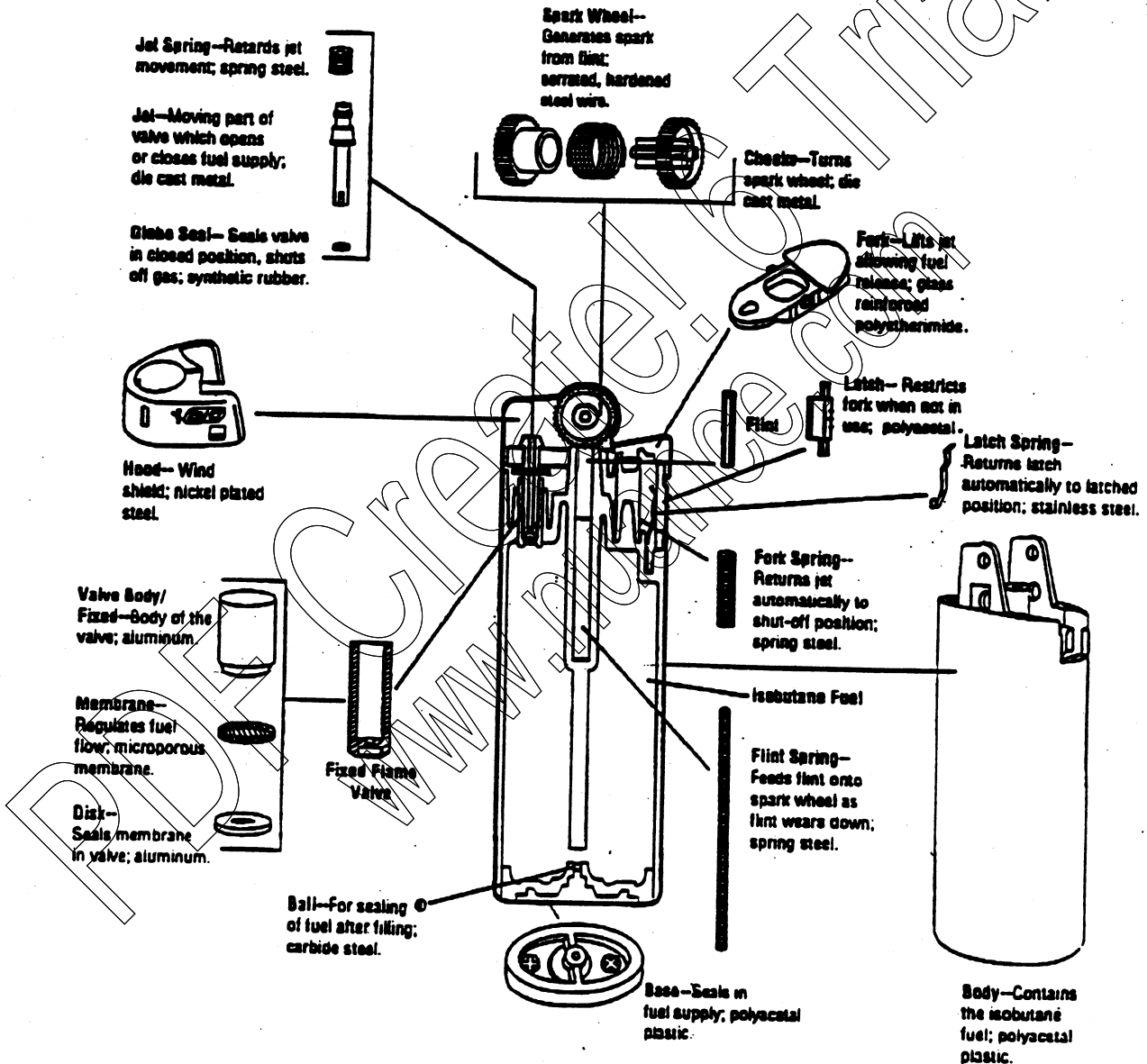


With Fixed Flame



Source: BIC Corp., "Disposable Lighters from the People's Republic of China and Thailand," (petition before the U.S. International Trade Commission), exhibit 1, May 9, 1994.

Figure 2
BIC Child Guard lighter



Source: BIC Corp., "Disposable Lighters from the People's Republic of China and Thailand," (petition before the U.S. International Trade Commission), exhibit 1, May 9, 1994.

Comparison of the Domestic and Imported Product

In its petition, at the conference, and in its postconference brief, petitioner argues that there is little or no functional difference between the domestic disposable lighters and their imported counterparts. All disposable lighters have the same general physical characteristics and provide the same use as a flame-producing product. Petitioner also argues that there is one like product that includes child-resistant disposable lighters and all other standard disposable lighters.¹⁴

Counsel for the Chinese and Thai respondents, on the other hand, argue that the imported disposable lighters are low-end, low-cost products that do not compete with the higher quality domestically produced product.¹⁵ Counsel also argue that child-resistant disposable lighters and all other standard disposable lighters are separate like products.¹⁶

U.S. Tariff Treatment

Pocket lighters, if gas fueled and non-refillable, are classified in HTS subheading 9613.10.00, with a column 1-general duty rate of 10 percent ad valorem. This rate applies to countries entitled to the column 1-general (most-favored-nation) duty rate, including China. Such lighters imported from designated beneficiary countries under the Generalized System of Preferences (GSP) are eligible to be entered free of duty. Thailand is a GSP-eligible country.

THE NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

Alleged Subsidies

The petitioner alleges that Thai producers and exporters of disposable lighters benefit from numerous government programs that constitute subsidies within the meaning of countervailing duty laws. The petition documents the Thai subsidy programs available to producers and exporters of manufactured goods such as lighters. The programs listed in the petition are as follows: (1) Industrial Estates/Export Processing Zones under the "Industrial Estate Authority of Thailand Act of 1979;" (2) preferential short-term loans under the Export Packing Credit Program; (3) tax and duty exemptions under the "Investment Promotion Act of 1977;" (4) tax certificates for exporters under the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act;" (5) rediscount of industrial bills under the Bank of Thailand's "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings;" and (6) the International Trade Promotion Fund.¹⁷

Although Thailand is not a "country under the agreement" pursuant to section 701(b) of the Act, the Commission is conducting a countervailing duty investigation pursuant to section 303 of the Act because disposable lighters from Thailand enter the United States duty-free under the GSP.

¹⁴ Petition, pp. 8-10; conference TR, pp. 49-50; petitioner's postconference brief, pp. 4-20.

¹⁵ A principal difference between the imported item and the domestic item is the type of plastic used in the body of the lighter. Imported disposable lighters are generally made of transparent plastic versus the solid colored polyacetal plastic used in the production of the domestic disposable lighters. In addition, the domestic disposable lighters have a fixed flame, while some imported lighters have an adjustable flame. The domestic lighters have approximately 2,000 lights per lighter while the imported lighters have about 30 percent fewer lights per lighter. Conference TR, pp. 84, 89-90, and 101-102; postconference brief submitted by Willkie Farr & Gallagher, pp. 16-28.

¹⁶ Conference TR, pp. 65-66, 69, 80-83, 89-90, 95, and 101-104; Willkie Farr & Gallagher's postconference brief, pp. 2-10. Aitken Irvin & Lewin's postconference brief adds the argument that refillable lighters should be a third like product, pp. 2-12.

¹⁷ Petition, pp. 24-35, and exhibits 11-16.

Alleged Sales at LTFV

China

In order to calculate the estimated dumping margins for disposable lighters from China, the petitioner compared U.S. prices¹⁸ of the subject merchandise with estimates for foreign market value (FMV) based on constructed value. As China is a state-controlled-economy country under section 773(c) of the Act, the constructed FMV was based, in part, on the value of various factors of production in India and Pakistan, countries with comparable economic development. Petitioner believes that India and Pakistan provide the appropriate surrogate countries because India and Pakistan are at a level of economic development similar to China and India is a significant producer of disposable lighters that are comparable to the subject lighters from China. At Commerce's request, petitioner provided a secondary basis for determining FMV, using prices from a market economy country. Petitioner provided information on the price at which disposable lighters from the Philippines are being sold for export to the United States. The estimated LTFV margin derived from petitioner's comparison of the U.S. price of disposable lighters from China with the FMV based on factor values is 332.43 percent *ad valorem*.¹⁹ An LTFV margin of 197.85 percent is derived when FMV is based on Philippine export prices.

Thailand

To calculate the estimated dumping margin for disposable lighters from Thailand, the petitioner compared U.S. prices²⁰ of the subject merchandise with FMV based on constructed value.²¹ Petitioner estimates that the LTFV margin for Thai disposable lighters is 172.78 percent *ad valorem*.²²

THE U.S. MARKET

Apparent U.S. Consumption

Data on apparent U.S. consumption of disposable lighters based on BIC's U.S. shipments as reported in its questionnaire and official U.S. import statistics are presented in table 1. Apparent consumption, based on quantity, *** during 1991-93 and *** between the interim periods January-March 1993 and January-March 1994. Consumption based on value, however, *** during the period 1991-93 and *** between interim 1993 and interim 1994.

Table 1

Disposable lighters: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

The market for disposable lighters has grown during the past 5 years as disposable lighters have increasingly displaced matches.²³ Petitioner explains the increase in consumption as the result of growth in cigarette sales at convenience stores where disposable lighters are frequently sold as

¹⁸ Petitioner based the U.S. price on a sales invoice from the first quarter of 1994 for Chinese-manufactured disposable lighters sold by Taiwan Trading Imports, Inc.

¹⁹ Petition, pp. 19-21, exhibits 17-21, and Amendment to Antidumping Petition, exhibit 21, May 24, 1994.

²⁰ Petitioner based the U.S. price on the average unit value from official U.S. import statistics.

²¹ The constructed value calculation is based on petitioner's factors of production adjusted to reflect production costs in Thailand.

²² Petition, pp. 21-24, exhibits 22-24, and Amendment to Antidumping Petition, exhibit 24, May 24, 1994.

²³ Conference TR, pp. 47 and 92; Pepper Hamilton & Scheetz postconference brief, p. 23.

packs of lighters.²⁴ Counsel for Thai Merry argues that the increase in demand for disposable lighters is the result of the creation of a new market for a low-end, no-brand lighter that consumers are increasingly buying instead of matches.²⁵

U.S. Producer²⁶

BIC, a subsidiary of Societe BIC, S.A., Clichy, France,²⁷ is the only remaining U.S. producer of disposable lighters, which it produces at its plant in Milford, CT.²⁸ BIC is a diversified company that also produces stationery products (e.g., Wite-Out, ball pen writing instruments, highlighting markers, mechanical pencils, etc.), disposable single-blade and twin-blade shavers, and the BIC Sailboard at three plants in South Carolina and one in Clearwater, FL. BIC also owns and operates manufacturing plants in Canada, Mexico, and Guatemala.

All BIC lighters meet the safety standards of the American Society for Testing and Materials (ASTM) Standard Consumer Safety Specification for Lighters (F-400-92). BIC received a patent on its child-resistant lighter in 1991 and introduced its Child Guard disposable lighter in June 1992. The Child Guard lighter is the result of a 7-year, \$22 million development program. It has a lever to help prevent children from igniting it. A mandatory standard for child-resistant lighters was adopted by the CPSC in 1993.²⁹ In 1991, BIC expanded the Limited Edition line of disposable lighters to include the regular-size lighter, as well as the Mini BIC lighter. During 1992, BIC introduced a distinctive new series of Limited Edition lighters that resemble marble, as well as a new series of "Sports" lighters. In the first quarter of 1993, BIC introduced two new design series: "Country Western" and "Flowers."³⁰

Scripto, Fontana, CA, a wholly owned subsidiary of Tokai Corp., Japan, produced disposable lighters in the United States until mid-1989, when it began moving its disposable lighter operations to *** Mexico. Scripto continued to produce some lighter parts at its plant in Fontana, CA, and ship them to Mexico for assembly. By 1992, Scripto eliminated its U.S. disposable lighter parts operations and in ***.³¹ Scripto imported disposable lighters from *** during 1991-March 1994.

U.S. Importers

Questionnaires were sent to approximately 65 firms believed to be importing disposable lighters from China and/or Thailand.³² The Commission received responses from 37 of these firms.³³ According to the questionnaire responses, 10 companies imported disposable lighters from China during 1991-March 1994, and 2 companies imported such lighters from Thailand. New York Lighter was the *** disposable lighters during 1991-March 1994,³⁴ and Calico Brands, Inc. (Calico)

²⁴ Conference TR, pp. 44 and 63.

²⁵ Wilkie Farr & Gallagher's postconference brief, pp. 15-16.

²⁶ The Commission sent producer questionnaires to six U.S. firms believed to produce disposable and non-disposable lighters. ***.

²⁷ Societe BIC has a *** ownership of BIC. BIC purchases from Societe BIC and other affiliated companies products that it does not presently manufacture (such as the Mini BIC lighters and adjustable flame lighters), certain component parts, and machinery and equipment.

²⁸ BIC is the leading manufacturer and distributor of disposable lighters in North America.

²⁹ The new regulations go into effect on July 12, 1994.

³⁰ BIC's shipments of Limited Edition lighters accounted for *** in 1991, *** in 1992, and *** in 1993 of its total shipments of disposable lighters.

³¹ Petition, p. 38 and ***. See also testimony of Mr. Tucker at the conference, conference TR, p. 105.

³² The petition identified 66 firms believed to be importing disposable lighters from China or Thailand.

³³ Fifteen provided usable data (for the subject countries and/or other countries), 22 responded that they did not import the subject merchandise, and 26 companies did not respond to the Commission's questionnaire. *** reported importing Chinese disposable lighters *** during 1991-92, totaling *** cases containing *** units from ***. BIC reported imports of disposable lighters from France and Spain, and ***.

³⁴ New York Lighter imports disposable lighters from PolyCity in China, as well as from ***.

was the *** lighters.³⁵ Calico's disposable lighters are produced by Thai Merry Co., Ltd. (Thai Merry) and sold under the brand name King Lighter.

Importers of disposable lighters are located throughout the United States and reportedly sell the imported product nationwide. Calico reported that imported disposable lighters have see-through tanks and adjustable flames, but have a fewer number of lights per lighter than the U.S.-produced disposable lighters.³⁶ ***. New York Lighter's Chinese-produced disposable lighter is sold under the brand name City Lites.³⁷ Some Chinese and Thai disposable lighters also incorporate the design wrap features similar to BIC's Limited Edition lighters.³⁸ In addition, some Chinese and Thai producers are beginning production of child-resistant lighters.³⁹ The Chinese lighter is sold under the brand name Apple and the Thai lighter is sold by Calico (Westco) under the brand name Safe-T-Loc.⁴⁰ PolyCity, a major producer/exporter in China, has developed a child-resistant lighter but so far it has not been accepted and certified as complying with the CPSC standards.⁴¹

Channels of Distribution

Disposable lighters produced in the United States are mainly sold to distributors (such as tobacco wholesalers, candy wholesalers, food wholesalers, general merchandise wholesalers, and convenience store wholesalers) whose main distribution base is convenience stores such as 7-Eleven and independently owned food stores,⁴² and retail chains from food stores such as Giant and Safeway to drug stores like CVS and mass merchandisers such as K-Mart and WalMart.⁴³ A high impulse item, marketing surveys show that 80 percent of disposable lighter purchases by consumers are not predetermined. BIC reported that its U.S. shipments of disposable lighters in 1993 went to the following unrelated channels of distribution: *** went to distributors and *** went to retail outlets. The majority (***) of BIC's shipments of child-resistant lighters went to *** while *** of its shipments of all other disposable lighters went to ***.

Some distributors and retail outlets sell both U.S. and imported disposable lighters.⁴⁴ Disposable lighters from China and Thailand reach the market essentially through the same channels of distribution.⁴⁵ Counsel for respondents argue that BIC dominates the brand-name market characterized by sales of disposable lighters to large, national retail chains, whereas the generic market is characterized by sales of no-frills, no-name disposable lighters in smaller volumes to regional independent wholesalers.⁴⁶ Mr. Nordstrom, President of New York Lighter, testified at the conference that the disposable lighters imported from China and Thailand are no-name, low-end

³⁵ Calico included data for *** in its questionnaire response. Calico is the exclusive U.S. importer of disposable lighters produced by Thai Merry, conference TR, p. 99.

³⁶ See also conference TR, p. 102.

³⁷ Max Light lighters are also believed to be of Chinese origin, conference TR, p. 12.

³⁸ Conference TR, p. 31.

³⁹ Conference TR, pp. 20, 34, 37, 64, and 79; petitioner's postconference brief, pp. 26 and 31.

⁴⁰ Petitioner's postconference brief, exhibit 2.

⁴¹ Conference TR, p. 97. Petitioner notes in its postconference brief (p. 24) that the CPSC does not certify compliance of each manufacturer's product with the new performance standard; rather, certification of compliance is made by the manufacturer or importer and must accompany each shipping unit of the product. See also Pepper Hamilton & Scheetz postconference brief, p. 40.

⁴² A trend emerging in the convenience store business in the last five years is the "Wagon Jobber" selling high volume, fast selling items to chain convenience stores and independently owned convenience and food stores; conference TR, pp. 30 and 44; Willkie Farr & Gallagher's postconference brief, pp. 19-21, and postconference brief submitted by Pepper Hamilton & Scheetz, pp. 24-26.

⁴³ Testimony of M. Gray, National Sales Manager, BIC, at the Commission's conference, conference TR, pp. 28-30.

⁴⁴ ***. The store owner's objective is to provide its customers with a choice of brand name lighters or value in the low-end lower-priced lighter; *** and conference TR, p. 101. See also affidavit of ***, exhibit 5 of Willkie Farr & Gallagher's postconference brief.

⁴⁵ Conference TR, p. 56.

⁴⁶ Postconference brief submitted by Willkie Farr & Gallagher, pp. 17-23, and Pepper Hamilton & Scheetz postconference brief, pp. 24-27.

lighters that sell at mom-and-pop convenience stores, neighborhood liquor stores, and street vendor and cigarette stands, places where BIC lighters are not generally sold.⁴⁷ ***. U.S. importers of disposable lighters from China reported that shipments of the imported product in 1993 went to the following channels of distribution: *** to distributors (***) and *** to retail outlets (***). The *** of shipments of Thai disposable lighters in 1993 went to *** distributors (***) and the *** shipments (***) were to unrelated retail outlets.

Disposable lighters are sold individually, in packs of five, in 50-count display trays, etc. Decorated or designer (wrap) lighters have an increasing share of the disposable lighter market. BIC reported in its questionnaire that the share of total lighter shipments of its Limited Edition lighters *** from *** in 1991 to *** in 1993.

CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The information presented in this section of the report is based on the questionnaire response of BIC, the only U.S. producer of disposable lighters during 1991-March 1994.

U.S. Capacity, Production, and Capacity Utilization

Table 2 presents BIC's data on capacity, production, and capacity utilization. BIC's end-of-period capacity to produce disposable lighters *** during 1991-93 and *** between interim 1993 and interim 1994. BIC's production of child-resistant lighters began in 1992 with a capacity of *** units. Such capacity *** units in 1993 and *** units in January-March 1993 to *** units in the corresponding period of 1994. BIC's capacity to produce all other disposable lighters *** during 1991-93 but *** in the first quarter of 1994 compared to the corresponding period of 1993.

Table 2

Disposable lighters: U.S. capacity, production, and capacity utilization, by products, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

U.S. production of disposable lighters *** percent during 1991-93 and by *** between the interim periods. Production of child-resistant lighters and all other disposable lighters *** the period 1991-March 1994. End-of-period capacity utilization *** the period, from *** in 1991 to *** in January-March 1994.

U.S. Producer's Shipments

Table 3 presents data on BIC's total shipments of disposable lighters during January 1991-March 1994. BIC reported *** of disposable lighters during the period for which data were collected. U.S. shipments, based on quantity, *** between 1991 and 1993, and *** between the interim periods. BIC's export shipments of disposable lighters *** between 1991 and 1993, and then *** between the interim periods. The unit values of BIC's shipments were *** throughout the period.⁴⁸ Exports of disposable lighters accounted for *** of total shipments in 1991, *** in 1992, *** in 1993, *** in January-March 1993, and *** in the corresponding period of 1994. BIC's principal export markets are ***. BIC's U.S. shipments of child-resistant lighters accounted for ***

⁴⁷ Conference TR, pp. 95-97. Sales of imported disposable lighters to distributors often involves a multiple chain of companies that distribute and disperse the products to convenience type stores; conference TR, p. 121. See also Willkie Farr & Gallagher's postconference brief, pp. 18-20, and Pepper Hamilton & Scheetz postconference brief, p. 32.

⁴⁸ The majority of BIC's exports of disposable lighters are to ***; telephone conversation with ***.

in 1992, *** in 1993, *** in January-March 1993, and *** in January-March 1994, of its total U.S. shipments of disposable lighters.

Table 3

Disposable lighters: Shipments by U.S. producers, by products and by types, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

U.S. Producer's Inventories

Table 4 present data on BIC's end-of-period inventories of disposable lighters during the period of investigation. Such inventories *** between 1991 and 1993, and *** between interim 1993 and interim 1994. The ratio of inventories to U.S. shipments *** in 1991 to *** in January-March 1994.

Table 4

Disposable lighters: End-of-period inventories of U.S. producers, by products, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Employment, Wages, and Productivity

BIC's employment and productivity data are presented in table 5. The number of production and related workers (PRWs) producing disposable lighters *** between 1991 and 1993, and then *** between the interim periods. ***. The number of hours worked by PRWs *** between 1991 and 1993 and *** between January-March 1993 and the corresponding period of 1994.

Table 5

Average number of U.S. production and related workers producing disposable lighters, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit labor costs, by products, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Wages paid to PRWs *** between 1991 and 1993, and by *** between the interim periods. Total compensation paid to such workers *** during 1991-93, and then *** between interim 1993 and interim 1994. Hourly total compensation *** in 1991 to *** in 1993. Hourly total compensation *** in January-March 1993 to *** in the corresponding period of 1994. Productivity of PRWs *** units per hour in 1991 to *** units per hour in January-March 1994. BIC's PRWs are represented by ***.

Financial Experience of the U.S. Producer

The sole producer, BIC, furnished financial data on its overall establishment operations and on its operations producing child-resistant lighters and all other disposable lighters.

Overall Corporate Operations

BIC, a U.S. subsidiary (publicly held) of a French company (Societe BIC, S.A.), is a diversified manufacturer of disposable consumer items such as stationery products, razors, and lighters. BIC (through its parent company) is affiliated with companies that produce lighters in Brazil, France, Greece, Spain, and New Zealand. In 1993, BIC's total corporate sales were \$439.3 million and worldwide lighter sales were \$102.3 million, 23.3 percent of sales. A summary of

BIC's worldwide lighter sales and income for 1991 to 1993 is shown below (in millions of dollars, except as noted):⁴⁹

| <u>Year</u> | <u>Net sales</u> | <u>Income before taxes</u> | <u>As a share of net sales</u> <u>(percent)</u> |
|-------------|------------------|----------------------------|--|
| 1991..... | 96.1 | 3.3 | 3.4 |
| 1992..... | 101.0 | 8.5 | 8.4 |
| 1993..... | 102.3 | 11.4 | 11.1 |

The increase in profitability for lighter operations was primarily due to decreases in legal costs as stated in BIC's Annual Report:

"Our policy of mounting strong defenses against product liability claims and lawsuits involving lighters continued to prove successful in 1993. As a result of this longstanding policy, we continue to experience a decrease in the number of claims and lawsuits filed, while achieving increases in lighter profits as a result of decreased legal expenses."⁵⁰

The following discussion on lighters is from BIC's 1993 Annual Report.

"A mandatory standard for child-resistant lighters was adopted by the U.S. Consumer Product Safety Commission in July 1993. BIC supports the new standard and actively worked with the CPSC for several years to make the mandatory standard a reality. BIC, as the category expert and leader, introduced its first BIC lighter with Child Guard into the market in June 1992 and is positioned to provide its accounts with a full line of patented, enhanced child-resistant lighters.

However, we do not expect to feel the full impact of the new regulations, which go into effect in July 1994, until 1995 when the industry has worked off its inventories. The current market continues to feel the impact of low-price, low-quality imports, primarily from the Far East. While we expect continued intense competition from both domestic and foreign sources, the higher standards required for child-resistant lighters should force higher prices at the lower end of the market.

We continue to introduce new series of our Limited Edition design lighters. They offer retailers and consumers fashion, quality and long-lasting performance. Despite the changing environment for lighters, we continue to hold our high market share in North America, outselling all other brands. Last year saw growth in sales, units and profit margins for this product."⁵¹

⁴⁹ BIC's 1993 Annual Report, p. 12.

⁵⁰ Ibid, p. 2.

⁵¹ Ibid, p. 6.

Overall Establishment Operations

BIC's Milford, CT, plant is the only U.S. operation that produces disposable lighters. ***. These plants produce stationery products and disposable shavers. In addition, the Milford plant imports lighters from France and Spain. The income-and-loss data that were provided are presented in table 6.

Table 6

Income-and-loss experience of BIC on the overall operations of its establishment wherein disposable lighters are produced, fiscal years 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Operations on All Disposable Lighters

The lighter operations of BIC between 1991 and interim 1994 include transfers to foreign affiliates of between *** of volume per year. These products were transferred at *** during the same periods. The amount of selling, general, and administrative (SG&A) expenses ***.⁵²

Income-and-loss data for all disposable lighters are presented in table 7. Net sales *** from \$*** in 1991 to \$*** in 1993. ***. The operating income margin, as a share of net sales, was ***.

Interim 1994 sales were \$***, *** from interim 1993 sales of \$***. Operating income *** from \$*** in interim 1993 to \$*** in interim 1994. Operating income margins were *** in interim 1993 and *** in interim 1994.

* * * * *

Table 7

Income-and-loss experience of BIC on its operations producing disposable lighters, fiscal years 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Operations on Child-Resistant and Other Disposable Lighters

Income-and-loss data for child-resistant lighters and other disposable lighters are presented in tables 8 and 9, respectively.

Table 8

Income-and-loss experience of BIC on its operations producing child-resistant disposable lighters, fiscal years 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Table 9

Income-and-loss experience of BIC on its operations producing other disposable lighters, fiscal years 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

⁵² According to BIC, transfers to foreign affiliates ***.

SG&A Expenses

***. A summary of BIC's SG&A expenses by type of expense is provided below (in 1,000 dollars):

* * * * *

The product liability expense included in the administrative category above is shown below (in 1,000 dollars):

* * * * *

Per-Unit Analysis

An analysis of BIC's income-and-loss data on a per-unit basis is shown in table 10.

Table 10
Summary of BIC's disposable lighter income-and-loss data on a per-unit basis, fiscal years 1991-93, Jan.-Mar. 1993, and Jan.-Mar.-1994

* * * * *

Investment in Productive Facilities

BIC's investment in property, plant, and equipment and its return on investment are shown in table 11.

Table 11
Value of assets and return on assets of BIC on its operations producing disposable lighters, fiscal years 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Capital Expenditures

BIC's capital expenditures are shown in table 12.

Table 12
Capital expenditures by BIC on disposable lighters, by products, fiscal years 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Research and Development

Research and development expenses for BIC are shown in the following tabulation (in 1,000 dollars):

* * * * *

Capital and Investment

The Commission requested BIC to describe and explain the actual and potential negative effects of imports of disposable lighters from China and Thailand on its growth, investment, ability to raise

capital, or existing development and production efforts (including efforts to develop a derivative or improved version of disposable lighters). BIC's response to this question is as follows:

Actual negative effects

* * * * *

Anticipated negative effects

* * * * *

Influence of imports on capital investment

* * * * *

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors⁵³:

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

⁵³ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

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

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.⁵⁴

Agricultural products (item IX) are not at issue in these investigations. The available information on the nature of the alleged subsidies (item I) above) is presented in the section of this report entitled "The Nature and Extent of Alleged Subsidies and Sales at LTFV;" information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items III) and (IV) above) and any dumping in third-country markets is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item X) is presented in the section entitled "Consideration of Alleged Material Injury to an Industry in the United States." Presented below is the available information on U.S. inventories of the subject products (item V); foreign producers' operations, including the potential for "product-shifting" (items II, (VI), and (VIII) above); and any other threat indicators, if applicable (item VII) above).

U.S. Importers' Inventories

Table 13 presents U.S. importers' end-of-period inventories of disposable lighters from China and Thailand. Eight importers provided data on their inventories of disposable lighters from China and Thailand. U.S. importers' end-of-period inventories of disposable lighters from China and Thailand *** from 1991 to 1993 and *** between the interim periods. Inventories of Chinese disposable lighters *** from 1991 to 1993 and *** between the interim periods. Such inventories of the Thai disposable lighters *** from 1991 to 1993 and *** between the interim periods.

⁵⁴ Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

Table 13

Disposable lighters: End-of-period inventories of U.S. importers, by products and by sources, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Petitioner testified at the conference that the inventory overhang created by the volume of imports from China and Thailand will be in the market for a long time until it is sold even with manufacturers switching to production of child-resistant lighters.⁵⁵ Mr. Park, an importer of disposable and non-disposable lighters from China, argues that the CPSC ruling prohibits stockpiling of disposable lighters and CPSC inspectors have been visiting the importers' offices to ensure compliance with the antistockpiling regulation.⁵⁶

U.S. Importers' Current Orders

In its questionnaire the Commission asked firms to report future contracts or orders for importing disposable lighters from China and Thailand after March 31, 1994. Such orders from China totaled approximately *** units with delivery scheduled through June 1994.⁵⁷ Future orders for imports of the subject product from Thailand totaled approximately *** units with delivery scheduled through June 1994.

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets other than the United States

The Industry in China

The Commission requested information from the U.S. Embassy in Beijing, but the Embassy was unable to obtain any data regarding disposable lighters within the deadline provided by the Commission. Petitioner identified over 50 firms in China that produced and/or exported disposable lighters to the United States.⁵⁸ The Commission received data submitted by *** Chinese producer of disposable lighters that sells to *** in the United States (table 14). *** production capacity *** units in 1991 to *** units in 1993,⁵⁹ and *** units in interim 1993 to *** in interim 1994. *** projects its production capacity to *** units in 1994-95. *** produced disposable lighters *** of production capacity during the period. *** questionnaire response provided ***. Such shipments *** units in 1991 to *** units in 1993, and *** from *** units in January-March 1993 to *** units in the corresponding period of 1994. Its principal other export markets are ***. PolyCity is in the final stages of development of a child-resistant lighter and to date has not exported any of these lighters to the United States.⁶⁰

Table 14

Disposable lighters: *** capacity, production, inventories, and shipments, 1991-93, Jan.-Mar. 1993, Jan.-Mar. 1994, and projected 1994-95

* * * * *

⁵⁵ Conference TR, pp. 34, 39-42; petitioner's postconference brief, pp. 43-44.

⁵⁶ Affidavit of Keith Park, postconference brief filed by Aitken Irvin & Lewin, app. 1; postconference brief of Willkie Farr & Gallagher, pp. 36-37.

⁵⁷ ***.

⁵⁸ Exhibit 6 to the petition.

⁵⁹ ***.

⁶⁰ Conference TR, p. 116.

Mr. Park, Senior Vice President, KGM Industries, testified at the conference that most of the Chinese factories that have been exporting disposable lighters to the United States are near Hong Kong because many of the factories are owned by Hong Kong companies.⁶¹ Cli-Claque, a Hong Kong-based company that produced disposable lighters in China in the past, now produces its lighters in the Philippines.⁶²

The Industry in Thailand

The Commission received data submitted by counsel for Thai Merry, a Thai producer of disposable lighters that is Thailand's major exporter of the subject merchandise to the United States (table 15).⁶³ Thai Merry reported exporting disposable lighters to the following firms in the United States during January 1991-March 1994: ***. Respondents testified at the conference that Thai Merry exported a very small amount of child-resistant disposable lighters beginning in 1993 and 1994.⁶⁴

Table 15

Disposable lighters: Thai Merry's capacity, production, inventories, capacity utilization, and shipments, 1991-93, Jan.-Mar. 1993, Jan.-Mar. 1994, and projected 1994-95

* * * * *

Thai Merry's production capacity *** units in 1991 to *** in 1993, representing ***. Such capacity is projected to *** units and *** units in 1994 and 1995, respectively.⁶⁵ The U.S. Embassy in Bangkok provided the quantity and value of Thai exports of disposable lighters to the United States during 1991-93. Such exports were as follows (in 1,000 units and 1,000 dollars): 106,589 units valued at \$14,107 in 1991, 115,847 units valued at \$13,407 in 1992, and 145,733 units valued at \$15,406 in 1993.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

U.S. imports of disposable lighters are presented in table 16.⁶⁶ The Commission sent importers' questionnaires to approximately 65 firms believed to be importing disposable lighters from China or Thailand. Responses with usable data were received from 12 U.S. importers of disposable lighters from the subject countries.⁶⁷ Such responses accounted for 41.2 percent of the quantity of

⁶¹ Ibid, p. 113.

⁶² Ibid, p. 118.

⁶³ Thai Merry accounted for *** of total Thai production and *** of total Thai exports of disposable lighters to the United States in 1993. The U.S. Embassy identified three Thai firms that manufacture disposable lighters for export: Thai Merry Company, Ltd.; Politop Company, Ltd.; and Hirota International (Thailand) Company, Ltd. Politop has not exported disposable lighters to the United States for several years and has no immediate plans to resume such exports.

⁶⁴ Based on the importer questionnaire response submitted by ***, imports of Thai child-resistant lighters accounted for *** in 1993 and Jan.-Mar. 1994, respectively, of total exports to the United States as reported by Thai Merry.

⁶⁵ ***, Willkie Farr & Gallagher's postconference brief, p. 40.

⁶⁶ Official statistics of the Department of Commerce are believed to accurately reflect all U.S. imports of disposable lighters.

⁶⁷ ***.

Table 16
 Disposable lighters: U.S. imports, by sources, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

| Item | 1991 | 1992 | 1993 | Jan.-Mar.-- | |
|--|---------|---------|---------|-------------|---------|
| | | | | 1993 | 1994 |
| <i>Quantity (1,000 units)</i> | | | | | |
| China | 85,739 | 82,744 | 154,694 | 26,391 | 40,275 |
| Thailand | 100,859 | 119,863 | 138,502 | 26,811 | 29,143 |
| Subtotal | 186,598 | 202,606 | 293,196 | 53,202 | 69,418 |
| Other sources | 328,619 | 332,147 | 300,694 | 75,756 | 66,250 |
| Total | 515,217 | 534,753 | 593,890 | 128,959 | 135,668 |
| <i>Value (1,000 dollars)</i> | | | | | |
| China | 13,669 | 10,465 | 14,126 | 2,903 | 2,959 |
| Thailand | 13,692 | 14,718 | 15,823 | 3,023 | 2,849 |
| Subtotal | 27,361 | 25,182 | 29,950 | 5,926 | 5,808 |
| Other sources | 70,280 | 59,866 | 53,971 | 12,594 | 11,603 |
| Total | 97,641 | 85,048 | 83,921 | 18,520 | 17,411 |
| <i>Unit value</i> | | | | | |
| China | \$0.16 | \$0.13 | \$0.09 | \$0.11 | \$0.07 |
| Thailand | .14 | .12 | .11 | .11 | .10 |
| Average | .15 | .12 | .10 | .11 | .08 |
| Other sources | .21 | .18 | .18 | .17 | .18 |
| Average | .19 | .16 | .14 | .14 | .13 |
| <i>Share of total quantity (percent)</i> | | | | | |
| China | 16.6 | 15.5 | 26.0 | 20.5 | 29.7 |
| Thailand | 19.6 | 22.4 | 23.3 | 20.8 | 21.5 |
| Average | 36.2 | 37.9 | 49.4 | 41.3 | 51.2 |
| Other sources | 63.8 | 62.1 | 50.6 | 58.7 | 48.8 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| <i>Share of total value (percent)</i> | | | | | |
| China | 14.0 | 12.3 | 16.8 | 15.7 | 17.0 |
| Thailand | 14.0 | 17.3 | 18.9 | 16.3 | 16.4 |
| Average | 28.0 | 29.6 | 35.7 | 32.0 | 33.4 |
| Other sources | 72.0 | 70.4 | 64.3 | 68.0 | 66.6 |
| 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 are calculated from unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce.

imports from China and over *** of the imports from Thailand in 1993,⁶⁸ as reported in official statistics.⁶⁹

China

The quantity of U.S. imports of disposable lighters from China fell by 3.5 percent from 1991 to 1992, but rose by 87.0 percent from 1992 to 1993, accounting for an increase of 80.4 percent during 1991-93. Imports increased by 52.6 percent during January-March 1994 compared with the corresponding period in 1993. Imports of Chinese disposable lighters accounted for 26.0 percent of total imports in 1993. The value of Chinese disposable lighter imports increased irregularly by 3.4 percent from 1991 to 1993. Such values continued to increase by 1.9 percent in interim 1994. Average unit values, however, declined from \$0.16 in 1991 to \$0.07 in January-March 1994.

Thailand

The quantity of imports of disposable lighters from Thailand increased by 37.3 percent from 1991 to 1993 and by 8.7 percent during January-March 1994 compared with the corresponding period in 1993. Imports of Thai disposable lighters accounted for 23.3 percent of total imports in 1993. The value of such imports increased by 15.6 percent during 1991-93 but declined by 5.8 percent in interim 1994. Average unit values, however, declined from \$0.14 in 1991 to \$0.10 in interim 1994.

Total Subject Imports⁷⁰

Cumulative imports of disposable lighters from China and Thailand⁷¹ rose from 186.6 million units in 1991 to 293.2 million units in 1993, representing an increase of 57.1 percent. The value of such imports rose from \$27.4 million in 1991 to \$30.0 million in 1993, an increase of 9.5 percent. Imports of disposable lighters from China and Thailand rose from 53.2 million units in interim 1993 to 69.4 million units in 1994, an increase of 30.5 percent. In contrast, such imports decreased from \$5.9 million in interim 1993 to \$5.8 million in the corresponding period of 1994, representing a decline of 2.0 percent.

Market Penetration by the Subject Imports

BIC's market share and the market shares of imports from China, Thailand, and all other sources, based on apparent U.S. consumption of disposable lighters, are presented in table 17.

⁶⁸ *** provided data on imports of disposable lighters from Thailand during the period. Calico, the exclusive U.S. distributor of Thai Merry's exports, reported data ***.

⁶⁹ The value of reported imports accounted for 32.0 percent and *** of 1993 official statistics for China and Thailand, respectively.

⁷⁰ Petitioner argues that U.S. imports of disposable lighters from China and Thailand are likely to continue increasing since the European Union (EU) in November 1991 found that China and Thailand were dumping their lighters. The EU imposed antidumping duties of 16.9 percent for Gao Yao Co. (China), and 14.1 percent and 5.8 percent for Thai Merry and Politop Co. Ltd. (Thailand), respectively. In addition, the Government of Argentina recently imposed antidumping duties against Chinese disposable lighters at the rate of 30 percent *ad valorem*, plus an additional duty of 51.94 percent for imports with an f.o.b. value of under \$0.206 per lighter. Such duties raise the likelihood, petitioner argues, that disposable lighters originally targeted for the EU and Argentine markets will be deflected into the United States at LTFV prices; petition, pp. 52-53, and exhibit 30; postconference brief, p. 32. Counsel for Thai Merry argues that shipments of Thai and Chinese disposable lighters to the EU have remained stable and substantial during the past 3 years and since such exports are predominantly standard, not child-resistant, lighters, there will be no diversion of the lighters to the U.S. market; postconference brief, pp. 44-45.

⁷¹ The quantity of imports from nonsubject countries declined irregularly by 8.5 percent from 1991 to 1993 and the value of such imports declined by 23.2 percent. Mexico, France, the Netherlands, Philippines, and Spain were the main sources of imports of disposable lighters from nonsubject countries.

Table 17

Disposable lighters: Shares of apparent U.S. consumption based on U.S. shipments of disposable lighters and U.S. imports, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Apparent consumption is calculated from U.S. shipment data provided by BIC and from imports provided in official statistics.

BIC's market share, based on the quantity of U.S. consumption, *** in 1991 to *** in 1993. BIC's market share *** in January-March 1993 to *** in the corresponding period of 1994. BIC's market share, based on the value of U.S. consumption, was *** based on quantity, *** in 1991 to *** in interim 1994.

The market share of imports from China, based on quantity, *** in 1991 to *** in 1993 and *** in the first quarter of 1993 to *** in interim 1994. China's market share, based on value, ***.

The market share of imports from Thailand, based on the quantity of U.S. consumption, *** the period, from *** in 1991 to *** in 1993 and from *** in January-March 1993 to *** in the corresponding period of 1994. Thailand's market share, based on value, followed slightly different trends *** in 1991 to *** in 1993 and then *** in interim 1993 to *** in interim 1994.

The aggregated market share of imports from China and Thailand, based on quantity, *** in 1991 to *** in the first quarter of 1994. Such market share, based on value, *** from *** in 1991 to *** in 1993 and from *** in interim 1993 to *** in interim 1994.

Prices

Market Characteristics

Since disposable lighters are consumer goods, the overall demand for these products depends upon their price, and such factors as the prices and relative appeal of substitute products, and consumer tastes and incomes. Despite recent trends away from smoking, the overall consumption of these lighters increased in quantity terms between 1991 and 1993.⁷²

Disposable lighters are generally sold on a spot basis to both distributors and retail chains. Only one importer, ***, has reported contract sales of these lighters.⁷³ *** regardless of the size of the customer. BIC's distributor customers range in size from firms purchasing approximately *** units per year to those purchasing over *** units per year. BIC's retail customers range in size from small retail chains purchasing about *** units per year to larger chains that buy over *** lighters annually. While BIC and the importers sell to the same broad categories of customers, the importers focus their sales efforts on the lower end of the wholesale and retail markets. Their purchasers tend to be less interested in brand names than the typical customers for the BIC product.⁷⁴

While some purchasers have qualification requirements that must be met before they will buy disposable lighters, these requirements vary greatly. ***, although its lighters do meet ASTM standards for safety. Some importers of disposable lighters from China and Thailand reported that they have had to submit samples to customers for testing in order to become qualified as suppliers. The reported testing periods ranged from 1 week to 3 months. In other cases where formal qualification procedures have not been in effect, suppliers were required to provide evidence of product liability coverage on the lighters.

Prices of disposable lighters are commonly quoted on either an f.o.b. or delivered basis. BIC generally quotes prices ***. Calico reported that it quotes prices on ***. New York Lighter reported that its price quotes ***. BIC and the larger importers reported that they generally ***.

* * * * *

⁷² *** representatives of the respondents suggested that these lighters have been rapidly replacing matches.

⁷³ *** stopped importing lighters from China in October of 1993.

⁷⁴ Petition, p. 48.

Inland transportation costs generally account for a relatively small share of the total cost to purchasers of disposable lighters. BIC estimated that they amount to about *** of the average delivered prices of disposable lighters. Importers' estimates generally ranged from 1 percent to 5 percent, although one importer estimated a value of 10 percent. *** consider transportation costs to be an important factor in purchasing decisions. Inland shipments of disposable lighters are mainly by truck. *** reported that *** of its total shipments are by truck, and most importers reported that trucks account for 70 to 100 percent of their total shipments. An exception was ***, an importer of disposable lighters from China. *** reported that all of its shipments are by rail. BIC reported that over *** of its shipments are for distances of over 500 miles. The majority of importers' shipments are for shorter distances.

Disposable lighters are sold throughout the United States by BIC and the larger importers such as Calico and New York Lighter. While the majority of imports are sold throughout the United States, smaller importers often reported that they focus their marketing efforts on particular regions such as the Northeast, the Midwest, or the West Coast and Hawaii.

The average lead time between a customer's order and the date of delivery of disposable lighters reported in the questionnaires varied widely. BIC stated that the typical lead time averages *** working days. Among importers of Chinese-produced product the lead times varied from 7 to 90 days. For importers of disposable lighters from Thailand the lead times ranged from ***.

Product Comparisons

Producers and importers were asked to discuss differences between domestic and imported disposable lighters that would help to explain differences in prices and in purchasing patterns. Product characteristics were discussed along with marketing characteristics in the questionnaire responses.

BIC and the larger importers generally agreed that there are differences in quality between the U.S.-produced disposable lighters and those imported from China and Thailand. BIC believes that the quality and safety of its lighters are superior to the imports even though it considers the products to be interchangeable in use.⁷⁵ In fact, BIC stated that some of its customers continue to purchase exclusively from BIC despite lower priced competition, because of BIC's safety and reliability features. ***. However, they have the disadvantage of a smaller number of lights. Another importer, ***, believes that BIC's child-resistant lighter is superior to any of the products available from China and Thailand. KGM stated that the U.S. requirements for child-resistant safety switches have made the imported disposable lighters from China and Thailand less competitive with the U.S.-produced product.⁷⁶

Questionnaire Price Data

U.S. producers and importers were asked to provide price data on three categories of commonly marketed disposable lighters. For each of the three products, producers and importers were asked to provide prices on their largest sales in each quarter and total quantities and total values shipped in all quarters during January 1991-March 1994. Requests for data were further broken down between sales to distributors and sales to retail chains. Purchaser price data were also requested from firms that import disposable lighters for direct sales to final consumers rather than to distributors or to retail chains. The product categories were:

⁷⁵ The safety features of BIC's lighters are discussed in the conference TR, pp. 15-20.

⁷⁶ While some child-resistant lighters are currently being imported from both China and Thailand, the reported quantity being imported from China is very small. John Nordstrom, president of New York Lighter, and John Tucker, a business consultant for Calico, have both argued at the conference that the development of a child-proof lighter is an expensive and time-consuming process, and that some importers will not be able to meet the new CPSC standards that go into effect on July 12, 1994; conference TR, pp. 78-84, 97-100, and 103-104.

- PRODUCT 1:** Your best selling standard fixed or variable flame lighter with either roll-and-press or push-button ignition, which is normally non-refillable.
- PRODUCT 2:** Your best selling disposable lighter that meets the requirements of the CPSC Child-Resistant Lighter Safety Standard (16 C.F.R. Part 1210).
- PRODUCT 3:** Your best selling disposable lighter that has a graphic design feature either wrapped onto the body of the lighter by the addition of a sleeve film, or imprinted directly on the body of the lighter, whether or not the design is proprietary.

BIC and 11 importers provided varying amounts of usable price information. BIC accounted for all domestic sales of disposable lighters in 1993; the importers providing prices accounted for *** reported imports of these products from Thailand and for *** of the reported imports from China in that year. Domestic and import price data on sales to distributors and retail chains were largely complete for product 1 for the entire period. However, very little price data were available for either product 2, the child-resistant lighter, or for product 3. No prices were reported for imports of products 2 and 3 from China, and prices of product 2 from Thailand were only available in one quarter.

Price Trends

Quarterly prices of product 1 on a delivered basis are shown in figures 3 and 4 and tables 18 and 19 for the period January-March 1991 through January-March 1994. The domestic prices on sales to both distributors and retail chains ***. BIC's prices of product 1 sold to distributors ranged from *** per 1,000 units in *** to *** in *** (table 18). BIC's product 1 prices on sales to retail chains ranged from *** per 1,000 units during *** to *** during *** and *** (table 19).

Figure 3
Net delivered prices of product 1 reported by BIC and weighted-average prices of imports on sales to distributors, by quarters, Jan. 1991-Mar. 1994

* * * * *

Figure 4
Net delivered prices of product 1 reported by BIC and weighted-average prices of imports on sales to retail chains, by quarters, Jan. 1991-Mar. 1994

* * * * *

Table 18
Net delivered prices of product 1 reported by BIC and weighted-average price of imports on sales to distributors, by quarters, Jan. 1991-Mar. 1994

* * * * *

Table 19
Net delivered prices of product 1 reported by BIC and weighted-average prices of imports on sales to retail chains, by quarters, Jan. 1991-Mar. 1994

* * * * *

Weighted-average prices of imports of product 1 sold to distributors *** during the 13-quarter period, while import prices of this product to retailers ***.⁷⁷ Prices of imports from China to distributors *** per 1,000 units in *** to *** per 1,000 units during ***. Prices of imports from Thailand to distributors *** per 1,000 units during *** to *** per 1,000 units during ***.⁷⁸ Prices of imports from China to retail chains ranged from *** per 1,000 units in *** to *** in the ***. In the other eight quarters where data were available, the Chinese price was between *** and ***. Prices of imports from Thailand to retail chains ranged from *** per 1,000 units in *** to *** in ***.

BIC's prices for product 2 were only available for 1993 and were largely incomplete for product 3 before 1993. BIC's f.o.b. price on sales of product 2 to distributors *** per 1,000 units in *** to *** in ***. Its price on sales of product 2 to retailers was *** per 1,000 units ***. BIC's prices of product 3 on sales to distributors were available in 7 out of the 12 quarters from April-June 1991 to January-March 1994, and its prices on sales to retailers were available in 7 out of the 8 quarters from April-June 1992 to January-March 1994. *** in either price series for product 3. The price of this product on sales to distributors ranged from *** per 1,000 units in *** to *** in ***. BIC's product 3 price on sales to retailers ranged from *** per 1,000 units in *** to *** in ***.

Very little import price data relating to products 2 and 3 was available. Two transactions relating to product 2 from Thailand were reported, both in 1994. Calico's price on a sale of product 2 to a distributor was *** per 1,000 units in *** and its price on a sale of product 2 to a retail chain was *** per 1,000 units in ***. No import prices for product 2 from China were reported. *** also reported price data on sales of imports of product 3 from *** to retail chains.⁷⁹ *** price on sales to these chains *** per 1,000 units throughout the 11-quarter period from July-September 1991 through January-March 1994. No import prices of product 3 from China were available.

Price Comparisons

Prices of imports from China and Thailand were *** than BIC's prices at both the distributor and retail chain level in all quarters where comparisons could be made. Prices of imports of product 1 from China were *** than the domestic price at the distributor level during January 1991-March 1994 and prices of imports of product 1 from Thailand were *** during this 13-quarter period (table 20). In both cases the differential on sales at the distributor level *** over the period. In the case of sales to retail chains, ***.

Table 20

Margins of underselling (overselling) on sales to distributors and retail chains, by country source and by quarters, Jan. 1991-Mar. 1994

* * * * *

Exchange Rates

Nominal exchange rate data for China are presented in figure 5 and nominal and real exchange rate data for Thailand are presented in figure 6.⁸⁰ Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese currency depreciated by 10 percent overall in relation to the U.S. dollar between the first quarter of 1991 and the fourth quarter of 1993. The nominal and real exchange rates of the currency of Thailand both remained relatively stable in relation to the U.S. dollar over the 3-year period, fluctuating in a very narrow band.

⁷⁷ *** that imports directly from China for sales to its retail customers reported quarterly quantity and value data on its purchases of product 1 during January 1991-March 1994. The unit value data fluctuated with no clear trend during this period.

⁷⁸ The Thai price data shown in tables 18 and 19 represent prices reported by Calico only. In the majority of quarters, Calico's prices represent sales to ***.

⁷⁹ ***.

⁸⁰ China changed its method of reporting official exchange rates on Jan. 1, 1994. The new exchange rate data are not consistent with the data reported for the 1991-93 period and earlier.

Figure 5
Indexes of nominal exchange rates of the Chinese currency in relation to the U.S. dollar, by quarters, Jan. 1991-Dec. 1993

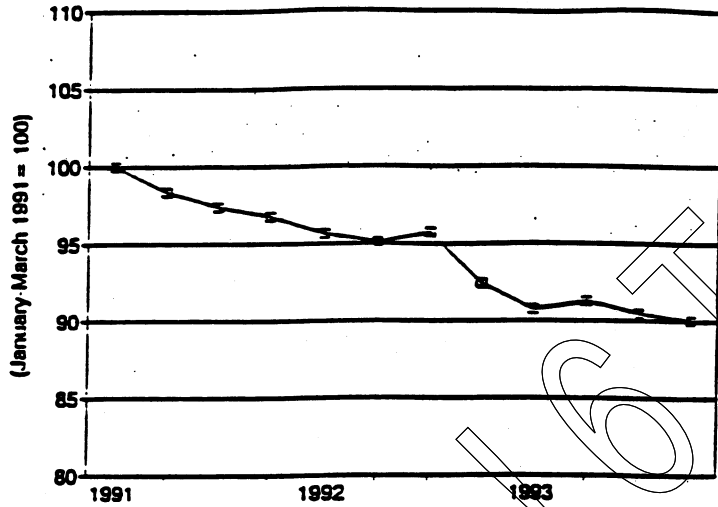
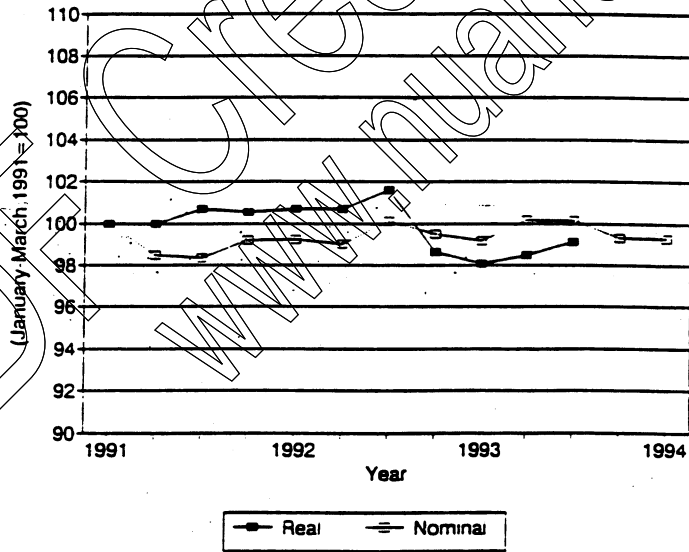


Figure 6
Indexes of nominal and real exchange rates of the Thai currency in relation to the U.S. dollar, by quarters, Jan. 1991-Mar. 1994



Source: International Monetary Fund, *International Financial Statistics*, May 1994.

Lost Sales and Lost Revenues

BIC alleged that it lost sales of over *** disposable lighters valued at more than \$*** due to competition from imports from China and Thailand. The *** separate lost sales allegations all concerned transactions that occurred during 1993.⁸¹ The majority of the allegations concerned imports from ***. The Commission staff investigated nine of the allegations. BIC also alleged that it has lost revenues due to competition from low-priced imports. However, BIC stated in its questionnaire that ***.

BIC alleged that it lost a sale of *** disposable lighters valued at \$*** to *** due to competition from imports from China. However, ***, a spokeswoman for ***, said that she did not have the information available to address the allegation.

BIC also alleged that it lost a sale of *** disposable lighters valued at \$*** to *** as a result of competition from imports from Thailand. ***, a buyer for ***, denied the allegation. He said that the volume, value, and date of the transaction were accurate, and he acknowledged that BIC did lose the bid. However, he said that in this case *** purchased BIC lighters from another distributor instead of purchasing directly from BIC. No purchases of imports from Thailand were involved.

*** lighters from China and Thailand. He said that the quality of the imported lighters is inferior to the BIC products, but they are much lower priced.

BIC further alleged that it lost a sale of *** disposable lighters valued at \$*** to *** as a result of competition from imports from China. ***, a spokesman for ***, acknowledged that his company purchases disposable lighters but was unwilling to address the specific allegation.

BIC further alleged that it lost a sale of *** disposable lighters valued at \$*** to *** as a result of competition from imports from China. *** denied the allegation. He acknowledged that *** purchases imports from China as well as the domestic product. However, he said that *** regards the BIC lighters as a higher quality product than the imports, and does not consider them to be competing with each other. *** views the BIC lighters and the imported lighters as different product lines. *** markets both the BIC lighters and the imported lighters through ***.

BIC alleged that it lost a sale of *** disposable lighters valued at \$*** to *** as a result of competition from imports from Thailand. ***, the spokeswoman for ***, was not able to address the specific allegation. However, she said that her company has shifted purchases from BIC to imports from Thailand because of their lower price. She believes that retail customers view the BIC products and the imports as close substitutes, and that the lower price of the imports gives them a distinct advantage in the competition. However, *** still purchases lighters from BIC in addition to the imports.

BIC alleged that it lost a sale of *** disposable lighters valued at \$*** to *** as a result of competition from imports from China. ***, the spokeswoman for ***, was not able to directly address the allegation, but she did say that *** has shifted some of its business away from BIC because of the lower price of the imports from China. However, she said that *** still purchases about *** of its lighters from BIC.

BIC alleged that it lost a sale of *** disposable lighters valued at \$*** to ***, a *** for ***, in *** as a result of competition from imports from China. ***, the *** named by BIC, *** of *** at the time the lost sales had allegedly occurred. However, ***, and had no information available to address the lost sale allegation.

BIC alleged that it lost a sale of *** disposable lighters valued at \$*** to *** as a result of competition from imports from China. *** was not willing to address the allegation. She said that imports from China were less expensive than the domestic product, but would not provide any other information.

BIC alleged that it lost a sale of *** disposable lighters valued at \$*** to *** as a result of competition from imports from China. ***, the spokesman for ***, denied the allegation. He said that his company, which is a ***, purchases imported disposable lighters from *** rather than China. *** also purchases some BIC lighters, though they are much more expensive than the imported lighters. *** believes that imports are rapidly taking over the U.S. market, and that BIC's brand

⁸¹ ***.

name does not offset the price advantage of the lower priced imports. He said that the lighters from China are the least expensive imports. *** said that he buys the imports from *** because they are higher in quality than the Chinese imports.

BIC alleged that it lost a sale of *** disposable lighters valued at \$*** to *** as a result of competition from imports from Thailand. ***, the spokesman for ***, did not directly address the allegation, but he did discuss the market for disposable lighters. He said that domestically produced lighters and imported lighters from Thailand are generally sold through the same channels of distribution, but that the imports are lower priced and somewhat lower in quality than the domestic lighters. He does not believe that the products compete directly with each other, since they are aimed at different price points. *** said that *** buys both the BIC product and the imports.

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APPENDIX A
FEDERAL REGISTER NOTICES

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**INTERNATIONAL TRADE
COMMISSION**

[Investigations Nos. 731-TA-700-701
(Preliminary)]

**Disposable Lighters From the People's
Republic of China and Thailand**

AGENCY: 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-700-701 (Preliminary) under section 733(a) of the Tariff Act of 1930 (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 is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Thailand of disposable pocket lighters, gas fueled, non-refillable, provided for in subheading 9613.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 23, 1994.

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: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), 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. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed

on May 9, 1994, by BIC Corporation, Milford, CT.

**Participation in the Investigations and
Public Service List**

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) 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 § 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 (7) 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 June 1, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-205-3190) not later than May 27, 1994, 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 §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 6, 1994, 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 (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 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 the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 10, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-11765 Filed 5-13-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 303-TA-25 (Preliminary)]

Disposable Lighters From Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 303-TA-25 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of disposable pocket lighters, gas fueled, non-refillable, provided for in subheading 9613.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Thailand. The Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by June 23, 1994.

For further information concerning the conduct of this investigation 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: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), 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. Information can also be obtained by calling the Office of Investigations remote bulletin board system for personal computers at 202-205-1895 (N.B.1).

SUPPLEMENTARY INFORMATION

Background

This investigation is being instituted in response to a petition filed on May 9, 1994, by BIC Corporation, Milford, CT.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) 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 this investigation 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 § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) 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 this investigation for 9:30 a.m. on June 1, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-205-3190) not later than May 27, 1994, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation 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 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 6, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-11912 Filed 5-13-94; 8:45 am]

BILLING CODE 7020-02-P

In accordance with 19 CFR 353.12, petitioner alleges that imports of disposable pocket lighters from the PRC and Thailand 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 Tariff Act of 1930, as amended (the Act), and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

Petitioner states that it has standing to file the petition because the BIC Corporation is an interested party, as defined under section 771(9)(C) of the Act, and it is the sole domestic producer of disposable pocket lighters. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the assistant Secretary for Import Administration.

Scope of Investigations

The Products covered by these investigations are disposable pocket lighters, whether of not liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written descriptions of the scope of these proceedings are dispositive.

United States Price and Foreign Market Value—The People's Republic of China

Petitioner based United States Price ("USP") on a 1994 sale made on a packed, c.i.f., duty-paid, delivered basis to a U.S. purchaser of disposable pocket lighters from the PRC. Petitioner deducted ocean freight, marine insurance, commission, harbor maintenance fee, and customs processing fee from this price to arrive at an f.o.b. value for the imports.

Petitioner contends that the foreign market value ("FMV") of disposable pocket lighters subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy ("MNE") countries. The Department has determined the PRC to be an NME, within the meaning of section 771(18)(A) of the Act, in previous cases (*see e.g.*, Final

Determination of Sales at Less Than Fair Value: Sebacic Acid from the PRC, May 31, 1994 (59 FR 28053)). In accordance with 771(18)(C) of the Act, that determination continues to apply for purposes of this initiation.

In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the PRC consistent with section 773(c)(1)(B) of the Act (*see Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China*, 57 FR 15052 (April 24, 1992)).

In this case, petitioner provided two alternative approaches for determining FMV. In the first approach, in accordance with section 773(c) of the Act, petitioner attempted to base FMV on the NME producers' factors of production valued in a market economy country at a comparable level of economic development. Petitioner, however, was unable to obtain information on the factors of production in the PRC. Therefore, petitioner used its own factors of production.

In valuing the factors or production, petitioner used India and Pakistan as surrogate countries. For purposes of this invitation, we have accepted India and Pakistan as surrogates because their economies are at a level of development comparable to the PRC's. (*See Memorandum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated August 1993, regarding non-market economy status and surrogate country selection, on file in Room B-099 of the Department of Commerce.*) Also, there is evidence on the record that India is a producer of comparable merchandise, as required by section 773(c)(4) of the Act. When cost information was not available in either of these countries, petitioner valued the factor using its own costs.

In accordance with section 773(c)(1)(B) of the Act, petitioner's FMV consisted of the sum of values assigned to materials, labor, energy, and overhead. Petitioner adjusted certain factor values for inflation. Pursuant to section 773(e)(1) of the Act, petitioner added to the labor and material costs, and general expenses, the statutory minimum of eight percent for profit.

In making its allegation of sales at less than fair value based on the factors of

[A-570-834, A-549-810]

Initiation of Antidumping Duty Investigations: Disposable Pocket Lighters From the People's Republic of China and Thailand

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

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane (202) 482-2815 for the People's Republic of China (PRC); or David Boyland (202) 482-0588 for Thailand, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

INITIATION OF INVESTIGATIONS:

The Petition

On May 9, 1994, we received a petition in proper form filed by the BIC Corporation ("petitioner"), the sole U.S. Producer of disposable pocket lighters. Petitioner filed supplements to the petition on May 23 and 24, 1994.

production methodology, petitioner relied extensively on U.S. costs for valuing the factors. Although the Department has accepted similar allegations in past antidumping investigations against the PRC, we prefer that the NME producers' factors be used and that they be valued in a comparable market economy, which is a significant producer of the merchandise in response to our concern in this regard, petitioner provided a secondary basis for determining FMV, using prices from a market economy country.

Section 773(c)(2) of the Act provides that FMV may be based on the price at which comparable merchandise produced in a market economy country is sold in other countries, including the United States. In accordance with section 773(c)(2) of the Act, petitioner provided information on the price at which disposable pocket lighters from the Philippines are being sold for export to the United States. For purposes of this initiation, we have accepted the Philippines as a surrogate country, because its economy is at a level of development comparable to the PRC's. (See memorandum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated December 4, 1991, regarding non market economy status and surrogate country selection, on file in Room B-099 of the Department of Commerce.) There is also evidence on the record that the Philippines is a producer of comparable merchandise, as required by section 773(c)(4) of the Act. Because the Philippine import price was on an f.o.b. basis, petitioner made no adjustments to this price.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that disposable pocket lighters from the PRC are being, or are likely to be, sold at less than fair value. The comparison of USP and FMV in the petition indicates a margin of 332.43 percent when FMV is based on factor values and a margin of 197.85 percent when FMV is based on Philippine export prices. It becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review these calculation bases.

Thailand

Petitioner was unable to obtain actual sales price information on which to base USP. Petitioner, therefore, based USP on the customs value of imports from Thailand, as reported in the Department of Commerce IM-146 import statistics. No adjustments were made to these

prices, because they were reported on an f.o.b. basis.

Petitioner also was unable to obtain actual prices for sales in Thailand or for export to third countries. Accordingly, petitioner based FMV on its own costs, adjusted for known differences between the costs of petitioner and Thai producers.

Fair Value Comparison

Based on the data provided by the petitioner, there is reason to believe that disposable pocket lighters from Thailand are being, or are likely to be, sold at less than fair value. Furthermore, the comparison of USP and FMV in the petition indicates a margin of 172.78 percent. If it becomes necessary at a later date to consider the petition as a source of BIA, we may review these calculation bases.

Initiation of Investigations

We have examined the petition on disposable pocket lighters and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of disposable pocket lighters from the PRC and Thailand are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of these actions, and we have done so.

Preliminary Determination by the ITC

The ITC will determine by June 23, 1994, whether there is a reasonable indication that imports of disposable pocket lighters from the PRC and Thailand are causing material injury, or threaten to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigations being terminated, otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 31, 1994.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 94-13721 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-05-M

APPENDIX B
CALENDAR OF THE PUBLIC CONFERENCE

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CALENDAR OF THE PUBLIC CONFERENCE

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

**Subject: DISPOSABLE LIGHTERS FROM THE PEOPLE'S
REPUBLIC OF CHINA AND THAILAND**

Investigations Nos. 303-TA-25 and 731-TA-700-701 (Preliminary)

Date and Time: June 1, 1994 - 9:30 a.m.

Sessions were held in connection with the investigations in the Main Hearing Room of the United States International Trade Commission, 500 E Street, SW, Washington, DC.

In support of the Imposition of Countervailing and Antidumping Duties:

**Barnes Richardson & Colburn--Counsel
Washington, DC
On behalf of**

BIC Corporation

Michael Gray, National Sales Manager

Jim McDonough, Area Manager for Product Engineering and Quality Control

Maria Iranpour, Accounting Manager

Robert Mitola, Cost Analyst

Thomas M. Kelleher, General Counsel

Cheryl A. DuBois, Assistant Counsel

Thomas Blandford, Economist

**Matthew T. McGrath)
)--OF COUNSEL
Ronald A. Oleynik)**

In opposition to the Imposition of Countervailing and Antidumping Duties:

Willkie Farr & Gallagher
Washington, DC
On behalf of

Thai Merry Co., Ltd.

John W. Tucker, Calico Brands, Inc.

Kenneth J. Pierce)
)--OF COUNSEL
William B. Lindsey)

Pepper, Hamilton & Scheetz
Washington, DC
On behalf of

New York Lighter and PolyCity Industrial

Richard Boltuck, Consultant, Trade Resources Company

John Nordstrom, President, New York Lighter

Elliot Feldman)
)--OF COUNSEL
Jonathan Cahn)

Aitken Irvin & Lewin
Washington, DC
On behalf of

U.S. Lighter Importers and Distributors Association; and KGM Industries Co., Inc., Cii-Claque, Halpern Import Co., Inc., Sidelines International Inc.

Keith Park, Senior Vice President, KGM Industries and Secretary, U.S. Lighter Importers and Distributors Association

Bruce Aitken)
)--OF COUNSEL
Martin J. Lewin)

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APPENDIX C
SUMMARY TABLES

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Table C-1

Child-resistant disposable lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Table C-2

Other disposable lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Table C-3

Disposable lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Table C-4

Non-disposable lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

Table C-5

All lighters: Summary data concerning the U.S. market, 1991-93, Jan.-Mar. 1993, and Jan.-Mar. 1994

* * * * *

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