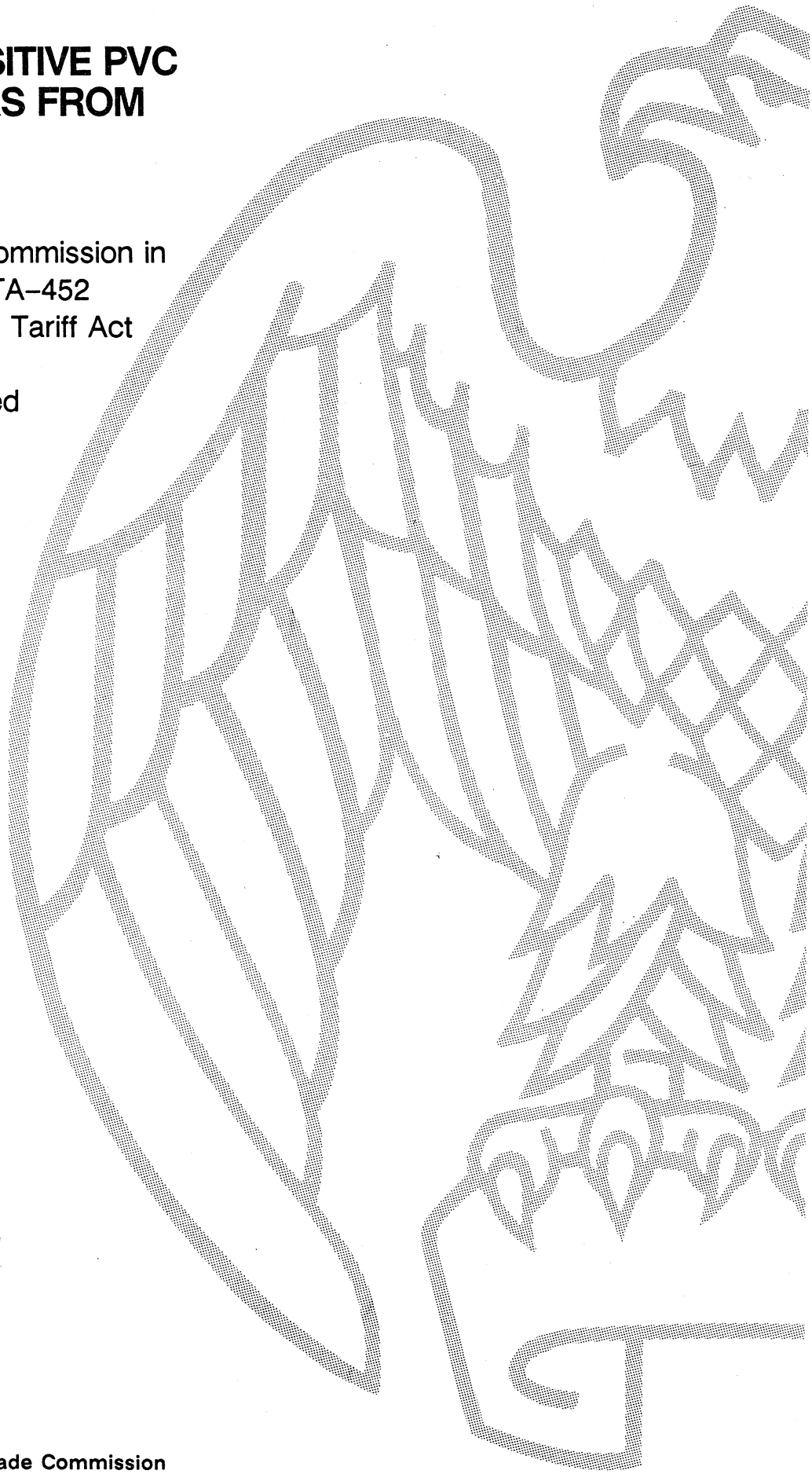
PRESSURE-SENSITIVE PVC BATTERY COVERS FROM WEST GERMANY

Determination of the Commission in Investigation No. 731-TA-452 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal business proprietary operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-452 (Preliminary)

PRESSURE-SENSITIVE PVC BATTERY COVERS FROM WEST GERMANY

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from West Germany of pressure-sensitive PVC battery covers, [2] provided for in subheading 8506.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 682.95 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 19, 1990, a petition was filed with the Commission and the Department of Commerce by National Label Company, Lafayette Hill, PA, alleging that an industry in the United States is materially injured or threatened with material injury or the establishment of a domestic industry is being materially retarded by reason of LTFV imports of pressure-sensitive PVC battery covers from West Germany. Accordingly, effective January 19, 1990, the Commission instituted preliminary antidumping investigation No. 731-TA-452 (Preliminary).

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

[2] The product covered by this investigation is protective and decorative covers for ready-to-use dry-cell consumer batteries. Such covers have at least two, and as many as three layers of polyvinyl chloride (PVC) film, in addition to a layer of adhesive material and a layer of vaporized aluminum.

Notice of the institution of the Commission's investigation 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 January 26, 1990 (55 F.R. 2708). The conference was held in Washington, DC, on February 9, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the information obtained in this preliminary investigation, 1/ we unanimously determine that there is no reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or that the formation of a domestic industry is materially retarded, by reason of imports of pressure-sensitive PVC (polyvinyl chloride) battery covers from the Federal Republic of Germany that are alleged to be sold at LTFV.

The legal standard in preliminary antidumping investigations is set forth in section 733(a) of the Tariff Act of 1930, 19 U.S.C. § 1673b(a), which requires the Commission to determine, based on the best information available at the time of the preliminary determination, 2/ whether there is a reasonable indication of material injury to a domestic industry, or threat thereof, or of material retardation of establishment of such an industry, by reason of imports alleged to be sold at LTFV.

In American Lamb v. United States, 785 F. 2d 994 (Fed. Cir. 1986), the Federal Circuit held that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations, and that the "reasonable indication" standard requires more than a finding that there is a possibility of such injury. Further, the Commission may weigh the evidence in determining whether "(1) the record as a whole contains clear and convincing evidence that there is no material

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1/ Because of the limited number of producers and importers in this investigation, much of the data on which we rely for our determination is business proprietary, and our discussion of data is necessarily general.

2/ We note that the data received in this investigation are virtually complete, and there is little chance that additional data, or contrary evidence will be uncovered in a final investigation.

injury, threat of material injury, or material retardation; and (2) no likelihood exists that contrary evidence will arise in a final investigation." 3/4/

Like Product and Domestic Industry

In this, as in other Title VII investigations, the Commission must first make factual determinations with respect to the "like product" and "domestic industry". The term "industry" is defined 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..." 5/ Section 771(10) of the Tariff Act of 1930 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..." 6/ The Commerce Department has determined that the products subject to investigation are as follows:

> Pressure-sensitive PVC battery covers are protective and decorative covers for ready-to-use dry cell consumer batteries. Such covers have at least two (and may have as many as three) layers of PVC film, in addition to a layer of adhesive material and a layer of vaporized aluminum.

The Commission's decision regarding like product is essentially a

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3/ 785 F. 2d 944 at 1001-04 (Fed. Cir 1986).

4/ Commissioner Eckes' views concerning the legal standard for preliminary investigations are set forth in Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary) USITC Pub. 2128 (1988). He finds this standard to be satisfied in this preliminary investigation.

5/ 19 U.S.C. § 1677(4)(a).

6/ 19 U.S.C. 1677(10).

factual determination, made on a case-by-case basis. 7/ The Commission usually considers a number of factors when determining what product is "like" the product subject to investigation, including: (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) common manufacturing facilities and production employees, (5) customer or producer perceptions, and (6) price. 8/

In this preliminary investigation, we considered three questions relating to the definition of the like product: 1) whether the like product should include sleeve type PVC battery covers in addition to the pressure-sensitive type; 2) whether the duplex and triplex pressure-sensitive battery covers should be considered separate like products; (3) whether all types of battery covers should be included in the like product definition.

Petitioner asserts that the like product should include only pressure-sensitive PVC battery covers and, in particular, that sleeve battery covers are not appropriately included in the like product.

Respondent has not argued for a different like product definition. 9/

For the reasons stated below, we find the like product to be pressure-sensitive PVC battery covers, both duplex and triplex, as proposed by petitioner.

7/ Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT _. 693 F. Supp. 1165, 1169 (1989) (hereinafter "ASOCOLFLORES")

8/ See, e.g., Polychloroprene from France and the Federal Republic of Germany, Inv. Nos. 731-TA-446-447 (Preliminary) USITC Pub. 2233 (November 1989) at 3.

9/ Preliminary Conference Transcript at 101-102.

(1) Pressure-Sensitive versus Sleeve Type Battery Covers

No party argues that the like product should include sleeve type battery covers, although that fact does not preclude the Commission from determining to do so. Petitioner emphasizes that PVC sleeve covers should not be included in the definition of the like product, because (1) the production process and facilities differ for sleeve and pressure-sensitive PVC covers; (2) the application procedures for sleeve and pressure-sensitive battery covers differ considerably; (3) the sleeve and pressure-sensitive covers differ in physical appearance before they are applied to battery cells; (4) the two types of covers are not readily interchangeable by customers; and (5) customers consider each product to be distinctive. Pressure-sensitive PVC battery covers are flat covers for ready-to-use consumer dry cell batteries. 10/

Sleeve PVC battery covers also are constructed out of PVC film, but are produced as a tube or sleeve-shaped cover which is later "shrink-wrapped" around the battery. This can be contrasted with pressure-sensitive PVC covers which require the application of an adhesive material. 11/ Pressure-sensitive and sleeve type battery covers differ somewhat in physical appearance in that pressure-sensitive covers have a brighter, more metallic appearance than the sleeve type. 12/

10/ Report at A-2.

11/ Report at A-8.

12/ This is because metal cannot be used as a base material for PVC sleeve battery covers because it would discolor from the heat used when the cover is applied to the battery. In contrast, metal can be and is used for pressure-sensitive PVC covers, which are applied using a different process. Report at A-9.

The products do not appear to be easily interchangeable either by the producer or the purchaser. The equipment used to manufacture the sleeve type differs from that used to manufacture the pressure-sensitive type, as does the machinery used by the battery manufacturer to apply the various types of covers. In view of the enumerated differences between sleeve and pressure-sensitive PVC battery covers, we see no basis in the record of this investigation for including sleeve type battery covers within the like product.

(2) Duplex vs. Triplex PVC Battery Covers

Pressure-sensitive battery covers are currently available in duplex and triplex covers. No party has argued that the like product should be divided based on the type of cover.

A pressure-sensitive battery cover is either duplex or triplex, depending upon the type of base material used in the construction process. Duplex base material includes a single layer of PVC, or a "monofilm", which is laminated to another monofilm of PVC to yield a two-layer, or "duplex" battery cover. Triplex base material consists of two layers of PVC film which is laminated to a third layer of PVC film, yielding a three-layer, or "triplex" battery cover. The manufacturing process does not differ substantially between the duplex and triplex battery covers; the only difference in production process is the use of either a monofilm (for duplex) or duofilm (for triplex) base material. It appears that there is substitutability between the two types of PVC battery covers. 13/

Given these reasons, and the lack of any clear dividing line between the uses for the duplex and triplex pressure-sensitive covers, for purposes of

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13/ Report at A-2.

our determination, we find no basis for distinguishing between duplex and triplex type PVC pressure-sensitive battery covers.

Other Types of Battery Covers

No party has argued that the like product should include any other types of battery covers. In addition to pressure-sensitive and sleeve-type PVC battery covers, 14/ there are metal jacket and polyester battery covers.

Metal jacket covers consist of steel plates or sheets on which a label or other graphics are lithographed. These covers are added by the battery manufacturers, along with a protective fiberboard layer of insulation between the metal jacket and the battery cell to prevent shorting. The production processes and machinery used in the manufacture of metal jackets differ from those used for battery covers manufactured of PVC. Use of metal jacket covers on alkaline batteries has been declining, due in part to the fact that it is not economically feasible to use them on the redesigned alkaline battery cans which are larger than previous battery cans. 15/

Polyester battery covers consist of a polyester base which is decorated and printed with ink, then backed with adhesive paper. A layer of "metal" may be present; if absent, the cover is often referred to as a paper label. A paper tube is placed around the battery can by battery manufacturers before the label is applied. The design and raw materials, equipment, and processes used to manufacture polyester labels are entirely different from those for battery covers of PVC. Polyester battery covers, like metal

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14/ The distinctions between the PVC type of covers are discussed above and will not be further addressed here.

15/ Report at A-9.

jackets, cannot be placed on alkaline batteries where the can has been re-designed and enlarged, since the thickness of the paper insulation they require leads to an over-sized finished battery. 16/ Polyester and metal jacket covers are applied using separate equipment and differing processes. 17/

Since all types of battery covers other than pressure-sensitive PVC covers appear to use different manufacturing techniques, and are not readily interchangeable for the reasons stated above, and because no party has urged the Commission to include these other types of battery covers in the like product, we find one like product consisting of duplex and triplex type pressure-sensitive PVC battery covers. 18/

II. Related Parties

The related parties provision 19/ allows for the exclusion of certain domestic producers from the domestic industry. Under that provision, when a producer is related to exporters or importers of the product under

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16/ Report at A-9-10.

17/ Report at A-11.

18/ Chairman Brunsdale notes that this result comports with her view that the critical issue in like product determinations "is not whether two products are comfortably differentiated, but rather whether those products are traded in separate markets occupied by separate industries. If an economic event, like the onset of dumping, is likely to have a simultaneous impact on production and sales of two physically different articles, then we can comfortably conclude that the producers in those markets comprise one industry producing one like product." Industrial Belts from Israel, Italy and West Germany, Inv. Nos. 701-TA-293 and 731-TA-412-419 (Final) USITC Pub. 2194 (May 1989) (views of Chairman Anne E. Brunsdale) at 53. In this investigation, the clear separations between the lines of commerce of different battery-cover technologies, compels the conclusion that the impact of dumped imports in this case would fall exclusively on the producers and consumers of pressure-sensitive PVC battery covers. A like-product definition including only that product is therefore appropriate under the statute. 19 U.S.C. §§ 1677(4)(A)(definition of "industry") and 1677(10)(definition of "like product").

19/ 19 U.S.C. § 1677(4)(B).

investigation, or is itself an importer of that product, the Commission may exclude such producer from the domestic industry in "appropriate circumstances".

We generally apply a two-step analysis in addressing the related parties question, considering: (1) whether the company is solely a domestic producer or whether it is also a "related party" within the meaning of section 771(4)(B); and (2) whether, in view of the producer's "related" status, there are "appropriate circumstances" for excluding the producer in question from the domestic industry.

The Commission has examined three factors in deciding whether appropriate circumstances exist to exclude the related parties:

> (1) the percentage of domestic production attributable to the importing producer;
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> (2) the reasons the U.S.producer has decided to import the product subject to investigation, i.e., whether the firm simply benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
>
> (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related parties will skew the data for the rest of the industry. 20/

The Commission has also considered whether each company's books are kept separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. 21/

Prior to December, 1988, petitioner was the exclusive North American licensee of respondent. Petitioner began production in the United States

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20/ See, e.g., Polychloroprene from France and the Federal Republic of Germany, (Preliminary) USITC Pub. 2233 (November 1989) at 10.

21/ See, e.g., Rock Salt from Canada, inv. 731-TA-239, USITC Pub. 1798 (1986) at 12.

of pressure-sensitive PVC battery covers in 1987. In 1986 and for part of 1987, during the start-up phase of its production, petitioner imported pressure-sensitive PVC battery covers from respondent for sale to Eveready in the United States. When petitioner began full production, it discontinued the importation of the battery covers. Thus, petitioner was "related" for 1986 and part of 1987 as an importer, and "related" as an exclusive licensee until December, 1988.

No party argues that appropriate circumstances exist to exclude petitioner from the domestic industry. Based on consideration of the above-specified factors, we decline to exclude petitioner from the domestic industry. Petitioner's sales account for a significant portion of the domestic production of pressure-sensitive PVC battery covers. Further, it has not imported PVC battery covers since it began production in 1987, and its status as an exclusive licensee of respondent was terminated by Zweckform in December, 1988. It is clear that National Label has made a significant commitment to U.S. production, and its interests are now those of a U.S. producer. In addition, we believe that exclusion of the petitioner would skew our economic analysis of the condition of the domestic industry.

No reasonable indication that the establishment of a domestic industry is being materially retarded by reason of the allegedly dumped imports

Petitioner argues that the establishment of a domestic industry is being materially retarded by reason of allegedly dumped imports of pressure-sensitive PVC battery covers from the Federal Republic of Germany. 22/

22/ Material injury or threat of material injury and material retardation are mutually exclusive standards. If the industry is "established", then the material injury or threat of material injury standard applies. If the (continued...)

Petitioner alleges that although the industry is viable, its battery cover business has not reached the "break even point," and Zweckform's entry into the U.S. market has unexpectedly cast doubt on its ability to develop new customers. 23/ Respondent argues that the petitioner is "established". It maintains that the U.S. industry does not constitute a "nascent industry", inasmuch as production has certainly stabilized after three years, and the domestic industry is supplying a large percentage of U.S. demand for pressure-sensitive PVC battery covers. 24/ While the Petitioner began production nearly three years ago, in 1987, and the other domestic producer, Label Resources, began production in 1985 or 1986, that fact alone would not necessarily preclude our application of the material retardation standard. Material retardation may be applied even where an industry has already begun production if the industry has not yet "stabilized" its operations. 25/

Accordingly, we must make a threshold determination as to whether the industry is "established." In the past, in determining whether operations have become established, we have considered when the industry began production, the nature of that production (i.e., steady increase or "start

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22/(...continued)
industry is not established, the material retardation standard is appropriate. See Certain Copier Toner from Japan, Inv. No. 731-TA-373, USITC Pub. 1960 (March, 1987) at 10, n. 26.

23/ Petition at 78.

24/ Respondent's Post Conference Brief at 45-46.

25/ See Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199, USITC Pub. 1711 (July 1985) at 4-5, aff'd, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (CIT 1987); aff'd 852 F.2d 1285 (Fed. Cir. 1988), cert. denied, 109 U.S. 1120; Copier Toner, USITC Pub. 1960 at 9-10 (modest production levels and small size of domestic operations compared to the market as a whole).

and stop"), and whether production has reached a level which "approached a reasonable break-even point". 26/ We have also considered the size of domestic operations compared to the market as a whole, 27/ and whether the "start-up" is more in the nature of the introduction of a new product-line by an already established business. 28/ If the industry is not established, the Commission then determines whether the establishment of that industry is being materially retarded, which involves an analysis of whether the performance of the domestic industry "reflects merely the normal start-up conditions of a company entering an admittedly difficult market or whether the performance is worse than what could reasonably be expected..." 29/

Petitioner National Label Company was founded 72 years ago, when it began to produce labels and labeling systems for a wide range of products. 30/ Petitioner's product line was expanded in 1986 and 1987 to include pressure-sensitive PVC battery covers. The only other domestic producer, Label Resources, has been producing pressure-sensitive PVC battery covers since 1985 or 1986. Domestic production has been increasing on a yearly basis, and the domestic industry accounted for the vast majority of U.S. consumption of pressure-sensitive battery covers in 1989. 31/

26/ Codfish, USITC Pub. 1711 at 5.

27/ Copier Toner.

28/ Lime Oil.

29/ Copier Toner, USITC Pub. 1960 at 10, citing Codfish.

30/ Preliminary Conference Transcript at 10.

31/ Report at A-22, A-43.

Based on the above factors, we find that the domestic industry is established. Since we find that the industry is established, we do not reach the question of whether there is a reasonable indication that the establishment of a domestic industry is being materially retarded by reason of the allegedly dumped imports.

Condition of the Domestic Industry

In assessing the condition of the domestic industry, 32/ we consider, among other factors, production, shipments, capacity, capacity utilization, inventories, employment, wages, financial performance, capital investments and research and development expenditures.

Production of pressure-sensitive PVC battery covers has risen steadily from 1986 to 1988, and also between interim (January-September) 1988 and interim 1989. Domestic shipments increased throughout the entire period of investigation. Capacity increased significantly from 1986 to 1988, reflecting the start-up of production by National Label, which began operations in 1987. Capacity remained constant during the interim period. 33/ Capacity utilization decreased from 1986 to 1987, but then increased

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32/ Vice Chairman Cass does not join in this or subsequent statements referring to conclusions that the Commission has drawn concerning the condition of the domestic industry. He believes that the statute under which the Commission conducts Title VII investigations does not contemplate that the Commission will make a legal finding respecting the condition of the industry. While he believes the condition of the domestic industry is relevant to assessing whether the effect of the LTFV imports had been "material," that information has relevance only in assessing material injury by reason of the LTFV imports. See Digital Readout Systems and Subassemblies Thereof from Japan, Inv. 731-TA-390 (Final), USITC Pub. 2150 (January 1989) at 95-113 (Concurring and Dissenting Views of Commissioner Cass); Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 47 (Additional Views of Vice Chairman Cass).

33/ Report at A-22-24.

consistently thereafter.34/ Employment increased throughout the period of investigation. Productivity increased through most of the period of investigation, decreasing slightly in interim 1989. 35/ While reported U.S. inventories increased for all but the interim period, they remained a very small percentage of U.S. shipments. 36/

The number of workers, hours worked, and total compensation paid to workers producing pressure-sensitive PVC battery covers increased steadily throughout the period of investigation. 37/ The financial data, which are business proprietary, showed mixed trends for some performance indicators throughout the period of investigation. For example, the trends with respect to operating income and capital expenses fluctuated, reflecting expenses incurred as part of National Label's entrance into the market.

Over the period of investigation, the domestic industry has proceeded through significant changes, inasmuch as it has gone from a single supplier industry (Label Resources) to a two-supplier industry. The financial data cover the period of the new producer entering the market, and the unique expenses incurred by that producer. Thus, while the financial indicators may be mixed, we do not feel they indicate problems in the overall performance of the industry. 38/

34/ The decline in capacity utilization between 1986 and 1987 corresponds to National Label's entry into the market.

35/ Report at A-27.

36/ Report at A-25.

37/ Report at A-27-28.

38/ For purposes of this preliminary investigation, Commissioner Eckes finds there is a reasonable indication of material injury.

Further, even if there is a reasonable indication that the domestic industry is materially injured, we do not find a reasonable indication of material injury "by reason of" the allegedly LTFV imports from West Germany. 39/40/

No reasonable indication of material injury by reason of allegedly LTFV imports from the Federal Republic of Germany

In making a preliminary determination in an antidumping investigation, the Commission is charged with determining whether material injury to the domestic industry is "by reason of" the imports under investigation. 41/ The Commission may take into account other causes of harm to the domestic

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39/ Chairman Brunsdale joins in this description of the condition of the domestic industry. However, she does not reach a separate legal conclusion regarding the presence or absence of material injury based on this information. While she does not believe an independent determination is either required by statute or useful, she finds the discussion of the condition of the domestic industry helpful in determining whether any injury resulting from dumped imports is material. See, Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 10-15 (Views of Chairman Brunsdale and Vice Chairman Cass).

40/ Vice Chairman Cass does not join in the Commission's discussion of whether there is a reasonable indication of material injury by reason of the subject allegedly LTFV imports. His analysis of this issue is set forth separately in his Additional Views.

41/ 19 U.S.C. § 1673b(a).

industry, but it is not to weigh causes. 42/ The unfairly traded imports need only be a cause of material injury. 43/44/

We determine that there is no reasonable indication that the subject imports are a cause of material injury to the U.S. pressure-sensitive PVC battery cover industry.

Both parties in this investigation place great emphasis on the fact that petitioner has filed suit against respondent in the U.S. District Court in Atlanta. That lawsuit involves the relationship between respondent Zweckform, and petitioner National Label, as described below.

Zweckform began manufacturing and selling pressure-sensitive PVC battery covers from its facilities in the Federal Republic of Germany in the mid-1980's. In late 1986, Zweckform and petitioner entered into an agreement whereby Zweckform agreed to obtain promptly various U.S. and Canadian patent rights for the pressure-sensitive PVC battery covers it had

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42/ "Current law does not...contemplate that the effects from the subsidized [or LTFV] imports be weighted against the effects associated with other factors (e.g. the volume and prices of nonsubsidized [LTFV] imports, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry) which may be contributing to overall injury to an industry." S. Rep. No. 249, 96th Cong. 1st Sess. 57-58, 74 (1979).

43/ Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (CIT 1988); Hercules, Inc. v. United States, 673 F.Supp. 454, 479 (1987).

44/ Chairman Brunsdale notes that, while the Commission is not to weigh causes, it must nonetheless determine that the injury "by reason of" the subject imports is material in order to reach an affirmative determination. While the language regarding causation used in the text has received some favorable commentary in judicial dicta, this formulation finds no support in the language of the statute or in the legislative history. For a full treatment of this issue, see Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989) at 147-248 and particularly 228-48 (Dissenting Views of Vice Chairman Ronald A. Cass).

developed. Zweckform also agreed to license to the petitioner the exclusive right in North America to exploit these patents and other Zweckform know-how and trade secrets associated with the production of pressure-sensitive PVC covers, and to distribute the pressure-sensitive PVC covers made pursuant to the Zweckform process. In exchange, petitioner was required to pay respondent a royalty. 45/

Relations soured between the two companies and the petitioner asserts that Zweckform undertook to terminate the licensing agreement in December of 1988. At that time, according to petitioner, Zweckform allegedly began approaching potential U.S. customers, contrary to the terms of the licensing agreement. 46/ Petitioner filed an action in U.S. District Court for the Northern District of Georgia, alleging, inter alia, patent infringement, inducement of infringement, contributory infringement, breach of contract, fraud, overpricing, breach of territoriality provision, improper license termination, antitrust violations, and violations of the antidumping act of 1916. 47/ Respondent maintains that the agreement was terminated for good cause. 48/

We note that, in spite of the arguments by each party that we should take specific allegations of the district court complaint into account, our determination is based solely on the finding that there is no reasonable indication that a domestic industry is being materially injured by reason of the allegedly dumped imports. The appropriate forum for addressing the

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45/ Petition at 33-34.

46/ Petition at 37-38.

47/ Petition at Exhibit H.

48/ Preliminary Conference Transcript at 100.

patent infringement, breach of contract, fraud and other causes of action not cognizable under title VII is the federal district court, not an investigation under the antidumping laws. 49/

Our analysis of whether there is a reasonable indication that a domestic industry is being materially injured by reason of the allegedly dumped imports is founded on the characterization of the domestic market for pressure-sensitive PVC battery covers, viz, all consumption is accounted for by only three battery producers -- Eveready, MUTEC, and Power Plus. Eveready is supplied exclusively by the U.S. industry and has never received a bid from the foreign producer. The domestic industry is not qualified to sell to MUTEC, 50/ and Power Plus' decision to purchase from Zweckform was not dependent on price. 51/

Petitioner claims injury by reason of price suppression. 52/ Petitioner maintains that Zweckform's attempt to enter the U.S. market, and subsequent meeting with Eveready (Petitioner's only domestic customer) justifiably caused Petitioner to fear the loss of the Eveready business. Consequently,

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49/ Compare Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final) USITC Pub. 2163 at 32,33 n. 113 (rejecting petitioners' claims that the Commission should issue an affirmative determination because the imports neglected the issue of safety of ATVs, thereby causing a decline in demand); Certain Copier Toner from Japan, Inv. No. 731-TA-373 (Preliminary), USITC Pub. 1960 (March 1987) at 15, n. 42 (leading to a negative determination, the Commission noted that allegations had been made that the exporter/importer had engaged in monopolistic conduct, which was currently being litigated in federal court and in a section 337 investigation before the Commission. The Commission noted that if the allegations were true, they could explain the difficulties incurred by the petitioner.)(Eckes, Lodwick, Rohr).

50/ National Label has failed qualification testing by MUTEC, whereas Label Resources has neither been formally qualified or disqualified by MUTEC.

51/ Report at A-46, A-48-49, A-51.

52/ Petitioner's Post Conference Brief at 39.

Petitioner maintains it lowered its prices in its bid to Eveready in 1988 and 1989, thereby causing material injury. 53/ The Commission has independently investigated the events that transpired at the meeting between Zweckform and Eveready. While the details of the meeting are confidential, and therefore cannot be discussed in a public opinion, we do not feel that the discussions between the two parties reached the point where they were in sufficient detail and scope to provide an indication of price suppression resulting from Zweckform's competition for Eveready's business. 54/ The Commission notes that no party alleges that price was discussed at this meeting, 55/ and also that Zweckform did not bid on any Eveready purchases for its domestic operations. 56/ Thus, there is no price suppression or depression resulting from the subject imports nor is there underselling of the domestic product by the subject imports because there was no head-to-head price competition between the imports and the domestic product. 57/58/

53/ Petitioner's Post Conference brief at 39.

54/ See Report at A-40, A-51.

55/ Petitioner's Post Conference Brief at Exhibit 6, Preliminary Conference Transcript at 68-72.

56/ Preliminary Conference Transcript at 68-72.

57/ Commissioner Lodwick considers that given the complete absence of the subject imports in 1988, there is no correlation between any of the changes in performance indicators and the role of LTFV imports in this investigation. He also considers that the low imported market share and the lack of substitutability of the subject imports for the domestic product (due to the inability of the petitioner to qualify as a MUTEC supplier), as evidence that there is not sufficient effect of the allegedly LTFV imports on either prices or output of the domestic industry to warrant an affirmative determination under the standard for preliminary determinations.

(continued...)

The domestic industry's market share remained significant throughout the period of investigation. The domestic industry's market share increased from 1986 through 1988, accounting for all of the domestic consumption in 1988. 59/ Import penetration increased (from zero in 1988) in interim (Jan.-Sept) 1989. Owing to an increase in imports during the fourth quarter of 1989, annual estimated import penetration for 1989 is expected to increase, and can be expected to be higher in 1990 than in 1989. 60/ However, this increase in market penetration from 1988 to 1989, and the projected increase in 1990 is due primarily to the increased imports by MUTEC, a company which began operations in 1989. Zweckform, the respondent in this investigation is the only qualified supplier of battery covers to MUTEC. 61/ Petitioner challenges the basis for its failure to qualify as a MUTEC supplier, citing MUTEC's potential liability in the petitioner's Atlanta lawsuit 62/ as an incentive for MUTEC to deliberately "fail" petitioner's test samples. 63/ Nevertheless, we are persuaded that petitioner failed to meet MUTEC's quality standards. We thus find that the

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58/(...continued)
58/ We also note that petitioner has alleged lost sales to MUTEC and Power Plus. As indicated above, our investigation found that petitioner is not qualified to sell to MUTEC, and Power Plus' decision to purchase from Zweckform was not due to price.

59/ Imports in 1986 to 1987 were solely those imported by one of the domestic producers, National Label, for sale to its customers before its operations came on line in 1987.

60/ Report at A-41-42.

61/ Report at A-46.

62/ Preliminary Conference Transcript at 27.

63/ Petitioner's Post Conference Brief at 63.

present inroads made by the respondent into the domestic market primarily reflect sales that could not be made by the domestic industry, hence having little or no impact on the U.S. industry.

We therefore find that any difficulties the industry may have experienced over the period of investigation were not caused by the presence of the imports. Accordingly, we find no reasonable indication that imports are a cause of material injury to the domestic pressure-sensitive PVC battery cover industry.

Threat of Material Injury

Section 771(7)(F) 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. Such a determination may not be made on the basis of mere conjecture or supposition." 64/ The ten factors that the Commission must consider are:

> (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,

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64/ 19 U.S.C. § 1677(7)(F)(ii).

> (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 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 1671 or 1673 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 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 advance version of the like product. 65/

In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a reasonable indication of threat of material injury by the domestic industry. 66/ We consider these factors in turn. 67/

We find that there is no evidence of any significant increase in foreign exports to the United States in the near future. As stated by the

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65/ 19 U.S.C. § 1677(7)(F)(i), as amended by Section 1329 of the 1988 Act, Pub. L. 100-418, 102 Stat. 1107, 1206. Factors (I) and (IX) are not applicable to this investigation.

66/ 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.

67/ There is no subsidy alleged in the petition.

Respondent, there is no "great unused capacity in the home market," indicating that respondent does not have sufficient excess capacity with which to supply the U.S. market. 68/ We find that there is no significant unused capacity in Germany at this point in time likely to result in a significant increase in exports of pressure-sensitive battery covers to the United States.

Petitioner maintains that because battery covers are the highest value-added product that can be produced on the roto-gravure production lines, Zweckform has a powerful incentive to engage in product shifting. 69/ Respondent contends that the non-battery labels presently being produced are under contract and that diversity of production is of importance to Zweckform. 70/ Further, there are no known antidumping or countervailing duty investigations or orders that apply to West German production facilities that may be used to produce pressure-sensitive PVC battery covers. There is also no evidence of any dumping findings or antidumping orders in effect in third countries with respect to pressure-sensitive PVC battery covers by reason of imports from the Federal Republic of Germany.

There is also no indication that there will be any rapid increase in market penetration or likelihood that the penetration will increase to an injurious level. Import levels and market penetration are small at present and, as indicated in the earlier discussion, thus far, in fact have not competed with domestic sales. We note that while imports have increased in 1989 and are expected to increase further in 1990, this increase is

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68/ Preliminary Conference Transcript at 84.

69/ Petitioner's Post Conference Brief at 53-54.

70/ Report at A-37.

primarily due to sales to MUTEC, to which no domestic producer is currently qualified to sell. 71/

U.S. importers' inventories, while confidential, do not support an affirmative threat determination. 72/

Because we found no price depression or suppression by the imported product, we have no basis to find that there would be any 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 pressure-sensitive PVC battery covers.

We find no meaningful evidence of any actual or potential negative effects on efforts to develop a derivative or more advanced version of the like product.

Finally, we find no other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of actual injury.

Based upon the threat factors discussed above, we find no reasonable indication of threat of real or imminent material injury to the domestic industry producing pressure-sensitive PVC battery covers by reason of imports from the Federal Republic of Germany.

Conclusion

Based on the relatively complete information obtained in this preliminary investigation, we find that, under the preliminary standard set forth by the Federal Circuit in American Lamb v. United States, that there is no reasonable indication that an industry in the United States is

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71/ See, e.g., Preliminary Conference Transcript at 85, 92.

72/ Report at A-49.

materially injured or is threatened with material injury, or that the formation of a domestic industry is materially retarded, by reason of imports of pressure-sensitive PVC battery covers from the Federal Republic of Germany that are alleged to be sold at less than fair value.

ADDITIONAL VIEWS OF VICE CHAIRMAN RONALD A. CASS

Pressure-Sensitive PVC Battery Covers
from West Germany
Inv. No. 731-TA-452
(Preliminary)

I concur in the Commission's unanimous negative determination in this preliminary investigation, finding that there is no reasonable indication of any of the bases for relief: that the domestic industry has been materially injured by reason of the allegedly less-than-fair-value ("LTFV") imports from West Germany that are the subject of this investigation; that the industry is threatened with material injury by reason of such imports; or that the establishment of a domestic industry has been materially retarded by reason of such imports. I join in the Commission's discussion of the like product and domestic industry issues; its discussion of the issues of threat and material retardation; and its discussion of the condition of the domestic industry to the extent that it accurately summarizes information relevant to my disposition of the Petition. I offer these Additional Views, however, because my understanding of the legal standard applicable in preliminary investigations, and my approach to determining whether a domestic industry has been materially injured by reason of unfairly traded imports, both differ substantially from that of certain of my colleagues. I also believe that certain additional comments respecting the like product and domestic industry definition issues presented in this investigation may be in order.

I. LEGAL STANDARD GOVERNING DISPOSITION OF PRELIMINARY INVESTIGATIONS

The legal standard that controls disposition of preliminary investigations under Title VII of the Tariff Act of 1930 is set forth in sections 703(a) and 733(a) of the Act, as amended.1/ These statutory provisions require the Commission to determine, based on the best information available to us, whether there is a reasonable indication that a domestic industry has been materially injured or is threatened with such injury by reason of unfairly traded imports, or that the establishment of a domestic industry has been materially retarded by reason of such imports. The application of this standard in our Title VII cases has engendered a great deal of recent discussion and, on certain occasions, disagreement within the Commission.2/

In other cases, I have discussed at length my understanding of the relevant legal principles, and their relationship to the language and legislative history of Title VII and relevant judicial precedent, including the decision of the United States Court of Appeals for the Federal Circuit in American Lamb Co. v. United States, elaborating the evidentiary basis for preliminary

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1/ The standard is codified at 19 U.S.C. § 1671b(a) (countervailing duty investigations) and at 19 U.S.C. § 1673b(a) (antidumping investigations).

2/ See, e.g., Plastic Tubing Corrugators from Canada, USITC Pub. 2246, Inv. No. 701-TA-301 (Dec. 1989) (Preliminary) (Dissenting Views of Vice Chairman Cass); New Steel Rails from Canada, USITC Pub. 2135, Inv. Nos. 701-TA-297, 731-TA-422 (Preliminary) (Nov. 1988) ("New Steel Rails I") (Additional Views of Acting Chairman Brunsdale) (Additional Views of Commissioner Cass) (Additional Views of Commissioner Eckes).

determinations.3/ In my view, similarly extended discussion of these issues in this case is neither necessary nor appropriate. Nevertheless, a brief summary of the principles governing this determination may be helpful to an understanding of my assessment of the record in this investigation.

First, in a preliminary investigation, less evidence of injury is required than in a final investigation.4/ Plainly, Congress intended to "weight the scales in favor of affirmative and against negative determinations."5/ Thus, the quantum of proof required to sustain an affirmative determination in a preliminary investigation is lower than that needed to support such a determination in a final investigation. At the same time, however, the "reasonable indication" standard clearly was not intended effectively to rule out the possibility of negative determinations in preliminary investigations. As the Court of Appeals made clear in American Lamb, the statutory standard

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3/ 785 F.2d 994 (Fed. Cir. 1986).

See, e.g., Certain Telephone Systems from Japan, Korea and Taiwan, USITC Pub. 2156, Inv. Nos. 731-TA-426-28 (Preliminary) 53-63 (Feb. 1989) (Additional Views of Commissioner Cass) ("Telephone Systems I"); Generic Cephalexin Capsules from Canada, USITC Pub. 2143, Inv. No. 731-TA-433 (Preliminary) 39-45 (Dec. 1988) ("Cephalexin Capsules") (Dissenting Views of Commissioner Cass); New Steel Rails I, supra, at 19-31 (Additional Views of Commissioner Cass).

4/ See, e.g., Telephone Systems I, supra, at 54-55 (Additional Views of Commissioner Cass); New Steel Rails I, supra, at 21 (Additional Views of Commissioner Cass).

5/ American Lamb Co. v. United States, supra, 785 F.2d at 1001; see also Yuasa-General Battery Corp. v. United States, 688 F. Supp. 1551, 1553-54 (Ct. Int'l Trade 1988).

balances two competing concerns.6/ To ensure that meritorious petitions would not be prematurely rejected on the basis of fragmentary evidence, the law provides that investigations should not be terminated in their preliminary stage simply because the evidence of record is not sufficient to support an affirmative determination in a final investigation. The preliminary determination also is intended to avoid the costly process of final investigations both by this Commission and by the Department of Commerce, and the attendant disruptive effect upon trade of such investigations, unless there is sufficient indication of injury to a domestic industry to justify further investigation.7/

Second, in preliminary investigations, the Commission must consider all of the evidence before us, not just the evidence offered in support of an affirmative determination, in deciding

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6/ See American Lamb Co. v. United States, supra, 785 F.2d at 1002-3, citing S. Rep. No. 1298, 93rd Cong., 2d Sess. 171 (1974).

7/ The legislative history of the Trade Act of 1974, the statute in which the concept of a preliminary investigation originated, contained the following statement:

> Under the present Act, the Secretary of the Treasury must complete his entire investigation as to sales at less than fair value before the matter can be referred to the International Trade Commission for its injury determination. The Committee felt that there ought to be a procedure for terminating investigations at an earlier stage where there was no reasonable indication that injury or the likelihood of injury could be found . . . . The amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade.

S. Rep. No. 93-1298, 93rd Cong., 2d Sess. 170-71 (1974).

whether there is a reasonable indication of injury or threat of injury.8/ This has, in fact, been the Commission's practice for some time, a practice that has also been approved by our reviewing courts in American Lamb and in other cases.9/ In weighing competing evidence, our practice, also approved by our reviewing courts, has been to view the record evidence in a light favorable to petitioners; inferences adverse to petitioners' case are drawn only where the opposing evidence clearly and convincingly refutes the evidence and argument advanced by petitioners.10/ Although this "clear and convincing" evidentiary standard may be applied differently by different commissioners, the standard generally has been understood to mean that a negative determination will not be reached in a preliminary investigation simply because on each substantive issue the Commission finds the weight of the evidence marginally favors an inference consistent with such a decision.

Finally, the absence of evidence necessary to an affirmative finding of injury from dumped or subsidized imports does not, standing alone, indicate that a negative determination is

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8/ See American Lamb Co. v. United States, supra, 785 F.2d at 1002-04.

9/ See, e.g., Yuasa-General Battery Corp. v. United States, cited, supra, at n. 5.

10/ See Certain Welded Carbon Steel Pipes and Tubes from the Republic of Korea and Taiwan, Inv. No. 731-TA-131 and 132 (Preliminary), USITC Pub. 1324 (June 1983); Canned Mushrooms from the People's Republic of China, Inv. No. 731-TA-115 (Preliminary), USITC Pub. 1324 (December 1982).

necessarily appropriate. Rather, the Commission must consider the present lack of such evidence in light of the likelihood that in a final determination evidence might be developed that would support an affirmative decision.11/

Although the Views of the Commission in this investigation are consistent with this set of precepts, there have been two principal points of disagreement among Commissioners respecting the standard for our preliminary determinations that deserve mention here. The first of these concerns the weight to be given to conflicting evidence; the second concerns the treatment of evidentiary gaps. In recent years, the differences among commissioners respecting both these points have been framed largely as differing interpretations of the language employed by the Federal Circuit in American Lamb. In that case, the Court stated that it understood that the Commission's practice is to

> issue a negative determination . . . only when (1) the record as a whole contains clear and convincing evidence that there is no material injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.12/

The Court went on to hold that this practice was "permissible within the governing statute".13/

11/ See, e.g., Certain Residential Door Locks from Taiwan, USITC Pub. 2198, Inv. No. 731-TA-433 (Preliminary) 5-6 (June 1989) (Views of Chairman Brunsdale and Vice Chairman Cass).

12/ American Lamb Co. v. United States, supra, 785 F.2d at 1001.

13/ Id.

After American Lamb was decided, some members of the Commission went on record as reading the law to require respondents to demonstrate by clear and convincing evidence that the relevant domestic industry has not suffered material injury from dumped or subsidized imports, or (after the Court of International Trade's decision in the Yuasa-General case)14/ the even more onerous burden of demonstrating by clear and convincing evidence that there is not even a reasonable indication of such injury from the imports under investigation.15/ In addition, these commissioners have repeatedly emphasized that the absence of information that normally would be considered requires an affirmative determination in preliminary investigations, without regard to the relation of that information to the likely disposition of a final investigation, so long as there is a

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14/ In that case, the Court referred to the two-part test approved in American Lamb as a "requirement". The Court did not indicate, however, whether this test must be applied in all cases, or whether the standard was required in that case because of its adoption by the Commission during the particular administrative proceedings that were the subject of that case. See Yuasa-General Battery Corp. v. United States, supra, 688 F. Supp. at 1553-54, note 2 ("Defendant's memorandum states . . . that 'there is no question in this case that this is the standard applicable'") (emphasis added).

15/ See, e.g., Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, USITC Pub. 2128, Inv. No. 731-TA-421 (Preliminary) 34-39 (September 1988) ("Shock Absorbers") (Views of Commissioner Eckes).

possibility that such information could be obtained in a final investigation.16/

This construction of American Lamb is not consistent with the determination reached by the Commission in this case. Respondent has not really established the absence of material injury from the subject, allegedly LTFV imports, nor do we face a record free from evidentiary lacunae. The evidence taken as a whole, however, does establish the absence of a reasonable likelihood that Petitioner would prevail in a final investigation, even taking account of the points as to which evidence is not yet developed or is ambiguous. In my view, this latter rendering of the relevant standard accurately describes the statutory command, the interpretation actually approved in American Lamb, and the construction invariably applied in negative determinations by the Commission. The alternative construction, which has sometimes been articulated as the basis for affirmative preliminary determinations, cannot, I believe, be squared with the statutory text, its legislative history, the gloss given to it in American Lamb, or the precedents of this Commission and of our predecessor agency in this arena.17/ As a

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16/ See, e.g., Shock Absorbers, supra, at 35, 39 (Views of Commissioner Eckes); New Steel Rails I, supra, at 15-18 (Views of Commissioner Eckes); Fresh, Chilled, or Frozen Pork from Canada, USITC Pub. 2158, Inv. No. 701-TA-298 (Preliminary) (February 1989) (Views of Commissioners Eckes, Lodwick, and Newquist).

17/ See New Steel Rails I, supra, at 19-31 (Additional Views of Commissioner Cass); Cephalexin Capsules, supra, at 39-45 (Dissenting Views of Commissioner Cass).

practical matter, the requirements articulated previously by some of my colleagues would make preliminary investigations -- which consume a substantial amount of the time and resources of the Commission and the parties who appear before us -- an essentially meaningless process in all but the very rare case where we are asked to consider a patently unmeritorious petition.18/ While I do not believe an affirmative determination is merited here, I must emphasize that this is not by any means a Petition so patently without basis as to fail under that alternative standard. I do not urge the invocation here of such an alternative standard, which rests only on a wooden, acontextual reading of the Federal Circuit's language in American Lamb, but I do think Petitioners and Respondents have a right to expect application of a consistent standard to this agency's preliminary determinations. Petitioners here and in some other recent cases 19/ may wonder whether they have been subject to a form of bait-and-switch, with one standard advertised in advance and another, less attractive to them, made available when we arrive at a decision. I would urge that the Commission clarify that the standard that we use today will be employed in all preliminary determinations.

18/ New Steel Rails I, supra, at 30 (Additional Views of Commissioner Cass).

19/ See particularly Plastic Tubing Corrugators from Canada, USITC Pub. 2246, Inv. No. 701-TA-301 (Dec. 1989) (Preliminary) (Views of Commissioners Eckes, Rohr, Lodwick and Newquist). Commissioners who have urged the most generous standards. and indeed have applied those standards in some determinations, have employed the most restrictive standard in other determinations.

II. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

A. Like Product

I concur with the Commission's conclusion that pressure-sensitive PVC battery covers are a single like product appropriate for assessing the effects of the allegedly dumped subject imports in this preliminary investigation. However, it is by no means clear that if this case were before us in a final investigation and the causation issues presented to us were less readily resolved, it would in fact be appropriate to exclude sleeve battery covers from the like product as we have here.

In excluding sleeve battery covers from the like product in this investigation, I have been influenced heavily by three related factors. First, as the Views of the Commission emphasize, the parties to this investigation apparently agree that sleeve battery covers should not be included in the like product for the purposes of evaluating the sufficiency of the allegations made in the Petition in this preliminary investigation. Second, if we were to include sleeve battery covers in the like product, this would only serve to point us even more strongly in the direction of the conclusion that we have already reached, that is, in the direction of a negative determination. This is so because, inter alia, if sleeve battery covers were included in the like product, the imports that are the subject of this investigation would account for an almost vanishingly small percentage of total domestic consumption of the

relevant product.20/ Thus, exclusion of sleeve battery covers from the like product has no effect on the outcome of this investigation. Moreover, such treatment is at least consistent with, if not required by, the legal standard applicable in preliminary investigations which, as previously noted, requires us to view the evidence in a light favorable to Petitioner. Third, and finally, as the Commission's opinion elaborates, there is substantial basis for belief that the like product thus defined accords with our general approach to like product decisions.

That said, I do not believe that the record evidence in this preliminary investigation argues plainly in favor of the exclusion of sleeve battery covers from the like product. The Commission has relied substantially on the differences in production; as the Views of the Commission point out, there is ample evidence before us that domestic producers of battery covers are not able to use the same equipment and other facilities to produce both sleeve battery covers and pressure-sensitive PVC battery covers. Evidence respecting the ability of the domestic purchasers of such covers -- that is, battery producers -- to substitute one type of PVC battery cover for the other is, in my view, much less compelling, however; both types

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20/ See Report at A-15. As recently as 1988, consumption of sleeve battery covers in the United States was [* *] consumption of pressure-sensitive PVC battery covers. Id. The subject imports, by definition, do not include sleeve battery covers.

of battery covers serve the same purposes and, in the main, fit the same batteries. The Commission correctly notes that battery producers must invest in equipment that is dedicated exclusively to the use of one type of cover or the other, but it is not plain that the amount of investment required for such purposes is so large as to preclude the possibility that battery producers might, nevertheless, be able to shift with relative ease from one type of cover to the other if circumstances (e.g., a significant change in the price of one type of cover) made it otherwise advisable for them to do so.21/ As explained elsewhere, evidence concerning the ability and willingness of consumers to shift among products is especially critical in evaluating like product questions and is, in general, entitled to more weight than the evidence bearing on the degree to which it is possible for producers to shift production.22/ Accordingly, the evidence in this investigation respecting the use of pressure-sensitive PVC battery covers and sleeve battery covers would have required more extensive consideration before determination of the appropriate

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21/ For example, the cost of all equipment used to apply PVC battery covers that has been reported by all domestic battery producers is, in total, significantly less than $[* *] by all measures. Report at A-11.

22/ See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, USITC Pub. 2185, Inv. Nos. 303-TA-19-20 and 731-TA-391-399 (Final) 87-96 (May 1989) (Concurring and Dissenting Views of Vice Chairman Cass).

like product if that issue had been important in determining the appropriate disposition of the Petition.

B. Standing

The parties in this investigation have not argued before the Commission another issue that is nevertheless raised by the factual record before us: the issue of standing. Even using the narrow like product definition requested by Petitioner, Petitioner accounts for [* * *] of the production of the domestic industry.23/ The other major domestic producer, Label Resources, accounting for [* *] of domestic production, has not joined in the Petition and [* * * * *].24/

Under Title VII, antidumping and countervailing duty cases must be brought "on behalf of an industry".25/ This requirement has been interpreted to mean that a Petition must be supported by producers representing a majority of the production of the domestic like product.26/ Given that the authority for Title VII investigations is bifurcated between the Commission and the Department of Commerce, that Commerce has the authority to self-initiate investigations (suggesting authority to determine which investigations should be initiated, regardless of the stance

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23/ See Report at A-22.

24/ Id. at A-16.

25/ 19 U.S.C. §§ 1671a(b)(1) and 1673a(b)(1).

26/ See Gilmore Steel Corp. v. United States, 585 F. Supp. 670 (Ct. Int'l Trade 1984).

taken by domestic producers), and that the Court of International Trade has held that Commerce has authority to determine Title VII standing questions, conflicts between the two agencies could arise if the Commission were also to render standing determinations.27/ For this reason, it may be inappropriate for the Commission to pass on standing questions in cases where Commerce has already considered and resolved the issue.28/

In this case, given our negative determination, the Commerce Department will not have the occasion to consider the standing issues presented in this investigation. In light of the ample evidence supporting a negative disposition of the Petition on other grounds, I do not believe that it is appropriate or necessary for us to rule on the standing issue here. I note, however, that this case has come before us in a posture that would otherwise warrant the Commerce Department's careful consideration of the question whether Petitioner had the standing required to bring the Petition in the first instance.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF LTFV IMPORTS: PRESSURE-SENSITIVE PVC BATTERY COVERS FROM WEST GERMANY

In assessing the effects on the domestic industry of the alleged LTFV imports that are the subject of this investigation,

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27/ See Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, USITC Pub. 2103, Inv. Nos. 701-TA-287 and 731-TA-378 (Final) 20-22 (Aug. 1988) (Additional Views of Commissioner Cass).

28/ Id. at 22.

it is necessary both to compare the condition of the domestic industry to the condition that would have existed had there not been unfairly traded imports, and to determine whether the change in the circumstances of the industry that resulted from the alleged unfair trade practices constitutes material injury.29/ Title VII directs the Commission, in assessing the causation of injury by dumped or subsidized imports, to consider, among other factors:

> (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 . . . ."30/

Subsequent provisions of the statute describe these three factors in greater detail.

The statute does not identify all of the factors relevant to an assessment of whether unfairly traded imports have materially injured a domestic industry. In fact, the statute explicitly contemplates that the Commission will consider relevant economic factors in addition to those described specifically in the statute.31/ The factors that are listed in the statute and the

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29/ See, e.g., 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2076, Inv. No. 731-TA-389 (Preliminary) (April 1988) (Views of Commissioner Cass).

30/ See 19 U.S.C. § 1677(7)(B).

31/ See 19 U.S.C. § 1677(7)(C).

Under Title VII, as amended by the Omnibus Trade and

order in which they are listed nevertheless provide us with important guidance respecting the essential elements of the inquiry that the Commission must perform. In particular, three closely-related questions are identified as critical to an assessment of the possible existence of material injury by reason of dumping or subsidization.

First, we are to examine the volumes of imports of the merchandise under investigation. The absolute volumes of imports and their magnitude relative to domestic consumption and production of the competing like product are both relevant to this question. The effects of dumping or subsidization on the prices of the imports are also important in this context, as the change in import volumes brought about by dumping or subsidization will be closely related to changes in the prices of the imports that occurred as a result of sales at less-than-fair-value or at subsidized prices.

Second, we must attempt to determine how dumping or subsidization of the subject imports affected prices, and

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Competitiveness Act of 1988, we are required to explain how these factors affect the outcome reached in any particular investigation. The statute also requires Commissioners to describe the relevance of other economic factors that we consider in addition those specifically identified in the statute. See Pub. L. No. 100-418, § 1328(1), 102 Stat. 1107, 1205 (to be codified as 19 U.S.C. § 1677(7)(B)(ii)). I have explained in detail in other opinions how the three-part inquiry that I employ considers certain other economic factors relevant to an assessment of the impact of unfairly traded imports on the domestic industry producing the like product -- e.g., dumping margins -- in addition to the specific factors listed in the statute. See, e.g, New Steel Rails I, supra, at 35-37; Cephalexin Capsules, supra, at 56-58.

concomitantly sales, of the domestic like product. In addition to evidence relating to the prices at which imports and domestic like products are sold, evidence bearing on three other issues is critical to assessment of this question: the share of the domestic market held by the subject imports; the degree to which consumers see the imported and domestic like products as similar (the substitutability of the subject imports and the domestic like product); and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products.

Finally, we must evaluate the extent to which changes in demand for the domestic like product that were caused by unfairly traded imports affected the financial and employment performance of the domestic industry. Where we are faced with evidence of such effects, we must also determine whether those effects are material.32/ In considering that issue, we must consider data relating to such factors as return on investment, the level of employment and employment compensation, industry capital and research expenditures, and so on.33/

32/ The judgment as to whether these effects are "material" within the meaning of the statute may be assimilated to the third inquiry or may be seen as a fourth part of our inquiry. See Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No. 731-TA-390 (Final) 117-119 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass).

33/ In making each of these inquiries under the statute, we are to consider the particular dynamics of the industries and markets at issue. See new Section 771(7)(C)(iii) of the statute (to be codified at 19 U.S.C. § 1677(7)(C)(iii)). See also S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987).

A. Volumes and Prices of the Subject Imports

During the first nine months of 1989 -- the most recent period for which data are available and the period covered by our investigation that most nearly corresponds to the period during which dumping is alleged to have occurred -- the value of imports of pressure-sensitive PVC battery covers from West Germany was only $[*].34/ By contrast, in 1986, the value of such imports was [* *] greater, amounting to almost $[* *]. In 1987, imports fell [*], to $[*].35/ No imports of pressure-sensitive PVC battery covers were reported in 1988.36/

Measured in unit terms, the volume of the subject imports followed a nearly identical pattern. During the first nine months of 1989, approximately [*] million pressure-sensitive PVC battery covers were imported from West Germany.37/ In 1986, the volume of imports was [* *] higher: over [*] million such battery covers from West Germany were reported.38/ The number of battery covers imported from that country dropped

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34/ Report at A-42, Table 14.

35/ Id.

36/ Id.

37/ Id.

38/ Id.

[* * *] in 1987, before disappearing entirely in 1988.39/

Viewed as a percentage of total domestic consumption, the volume of the subject imports during the first nine months of 1989 (which is the most recent period covered by our investigation and the period that encompasses the time for which dumping allegations have been made) was barely more than [*]. Import market penetration during that period was only [*]% in quantity terms and [*]% in value terms.40/ By contrast, import market penetration during earlier periods, such as 1986 and 1987 (which would not be investigated by Commerce for evidence of dumping), was [* *] higher.41/

These small import volumes, even if related to selling at LTFV prices, are strongly at odds with causation of material injury by reason of dumping. To be sure, the evidence before the Commission in this preliminary investigation compels an inference that the prices of the subject imports have declined substantially as a result of the dumping alleged by Petitioner. Petitioner alleges that these imports were sold at prices that

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39/ Id.

40/ Id. at A-43, Table 15.

41/ In 1986, the subject imports accounted for [*]% of the quantity and [*]% of the value of domestic consumption of pressure-sensitive PVC battery covers. Id. In 1987, import market penetration was somewhat in excess of [*]%, measured either by quantity or value. Id. In 1988, of course, import market penetration was zero.

were lower than fair value by margins ranging as high as 60%.42/ Notwithstanding Respondent's objection, Petitioner's allegations must be credited with respect to the narrow evidentiary issue they address: the difference in prices of Respondent's covers sold to the U.S. market and to the Respondent's home market.43/

These margin allegations have not, of course, yet been thoroughly tested in proceedings before the Commerce Department. The Commerce Department has initiated the investigation largely on the basis of the allegations contained in the Petition, although it has rejected some of the arguments and underlying data advanced by Petitioner.44/ In Title VII preliminary investigations such as these, these alleged margins, as modified by Commerce, are the best evidence available to us, and we are, in my view, generally required to accept them as such.45/ Indeed, the legislative history of the Trade Agreements Act of 1979 makes clear that, in preliminary investigations in antidumping cases, the Commission "will be guided by the description of the allegation of the margin of dumping contained

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42/ Report at A-12; Initiation of Antidumping Duty Investigation: Pressure Sensitive PVC Battery Covers from The Federal Republic of Germany ("Commerce Initiation Notice"), 55 Fed. Reg. 5868 (Feb. 20, 1990), reprinted in Report at B-4.

43/ See note 55, infra.

44/ Id.

45/ See New Steel Rails I, supra, at 39-40.

in the petition or as modified by . . . [Commerce]".46/ Accordingly, although factual assertions such as the Petitioner's alleged margins should not be accepted uncritically, a searching inquiry into the alleged margins is not appropriate under the bifurcated statutory framework established for our preliminary investigations.

Conceivably, where margin allegations are inherently implausible or plainly contradicted by irrefutable record evidence, we may not be able to rely on them.47/ That is not the case, however, in this investigation. Respondent has presented the Commission with various arguments challenging the bases upon which Petitioner's alleged margins were calculated,48/ and Petitioner has presented us with a point-by-point rebuttal of those arguments.49/ The issues raised by Respondent are squarely within the competence of the Commerce Department and, to a large extent, already have been passed upon by the Commerce Department in its consideration of the Petition prior to initiation.50/ For the purposes of this preliminary investigation, then, the

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46/ Statements of Administrative Action, Trade Agreements Act of 1979, at 415.

47/ New Steel Rails I, supra, at 39-40.

48/ Post-Conference Brief of Zweckform Etikettiertechnik GmbH ("Respondent's Postconference Brief") at 32-36.

49/ Post-Conference Brief of the Petitioner, The National Label Company ("Petitioner's Postconference Brief") at 25-27.

50/ Report at A-12. The Department has, for example, rejected the use of certain price lists on which several of Petitioner's alleged margins were predicated. See id.

Commission must, in my view, accept the margins alleged by Petitioner as modified by the Commerce Department in its initiation notice.51/

Dumping margins are not, in any event, conclusive of the effects of dumping on the prices of the subject imports.52/ In general, dumping margins (as alleged or as determined by Commerce) measure the difference between prices in two markets, but they do not constitute a precise measure of the extent to which the prices of subject imports declined as the result of charging different prices in the two markets (that is, as a result of dumping). In most cases, the actual price decrease in sales to the United States will be less than the full amount of the dumping margin.53/ In cases where, as here, the alleged dumping margins at issue reflect an assertion that the subject foreign producers/exporters have charged a lower price for their product in the United States than the price that they have

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51/ In that context, it should be noted that the Commerce Department has not initiated an investigation of Petitioner's claim that the prices charged for the subject merchandise produced by Respondent and sold in the United States were less than Respondent's cost of producing that merchandise. See Commerce Initiation Notice, reprinted in Report at B-4.

52/ See, e.g., New Steel Rails I, supra, at 42; Granular Polytetrafluoroethylene Resin from Japan and the Netherlands, USITC Pub. 2112, Inv. Nos. 731-TA-385 and 386 (Final) 74 (Aug. 1988) (Additional Views of Commissioner Cass); Certain Bimetallic Cylinders from Japan, USITC Pub. 2080, Inv. No. 731-TA-383 (Final) 44 (May 1988) (Additional Views of Commissioner Cass).

53/ The reason for this is explained in 3.5" Microdisks and Media Thereof from Japan, USITC Pub. 2170, Inv. No. 731-TA-389 (Final) 82-89 (Mar. 1989) (Dissenting Views of Vice Chairman Cass). See also note 55, infra.

charged in their home market (or another foreign market used as the surrogate for the home market),54/ the actual decrease in the U.S. price of the subject imports that occurred consequent to dumping will be only a fractional percentage of the dumping margin. This percentage, in turn, will be in large measure a function of the proportion of the total sales of the subject foreign producer(s) in the U.S. and the exporter's home market (or other surrogate foreign market) that is accounted for by sales in the home market.55/

54/ As previously noted, the Commerce Department has not initiated an investigation of Petitioner claim that Respondent sold its products in the United States at prices below Respondent's cost of production.

55/ See, e.g., Certain All-Terrain Vehicles from Japan, USITC Pub. 2163, Inv. No. 731-TA-388 (Final) 58-60 (March 1989) (Additional Views of Commissioner Cass); Granular Polytetrafluoroethylene Resin from Japan and the Netherlands, USITC Pub. 2112, Inv, Nos. 731-TA-385 and 386 (Final) 74 (Aug. 1988) (Additional Views of Commissioner Cass); Certain Bimetallic Cylinders from Japan, USITC Pub. 2080, Inv. No. 731-TA-383 (Final) 44 (May 1988) (Additional Views of Commissioner Cass). The price decline in the United States will be a function both of the difference in competitive conditions faced by the dumping firm in the United States and in its home market and of the value to the firm of sales in each of those markets. The dumping margin, if properly calculated, reflects the first of these considerations, and the relative shares of sales by the firm in the two markets reflects the second (at least over the time frame relevant to our dumping investigations). For that reason, a proportional fraction of the dumping margin equal to the portion of the firm's combined U.S.-home market sales accounted for by sales to the home market will, by combining these two considerations, approximate the price change consequent to dumping.

In reality, an estimate of the decrease in the price of the dumped product that is derived in this fashion will be somewhat overstated as it represents an approximate upper bound of that decrease. For a thorough explication of this subject, see Office of Economics, Assessing the Effects on the Domestic Industry of

Respondent's sales of pressure-sensitive PVC battery covers in its home market have in fact [* * *] outweighed its sales of such products in the United States.56/ Accordingly, for the purpose of this preliminary investigation, there is a plausible basis for inference that the alleged dumping caused prices of the subject imports to decline by a very substantial percentage of the alleged dumping margins.57/ However, even if import prices decreased by this magnitude, given the other record evidence before us, there is no plausible basis for an inference that these price decreases induced importation of significant volumes of Respondent's products.

For one thing, as previously noted, import volumes during the period most closely corresponding to the time when dumping is alleged to have occurred -- the first nine months of 1989 -- were barely more than [*]. Moreover, the record evidence suggests that it is quite unlikely that dumping produced to any significant degree those small import volumes that have been evident. The extent to which decreases in subject import prices cause increases in subject import sales is, in large measure, a

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Price Dumping, USITC Memorandum EC-L-149 at 1, n. 1, 13, 19-21 (May 10, 1988). A more accurate statement of the effects of dumping on import prices also may require some adjustment to reflect the fact that dumping margins are calculated on an ex-factory, rather than final sales price, basis. However, the evidence that would be necessary to make such an adjustment is not contained in the record here.

56/ See Report at A-36, Table 13.

57/ See note 55 supra and authorities cited therein.

function of the degree to which the imported goods are substitutable for the domestically produced product. For reasons explained in more detail in the succeeding section of these Views, the record evidence indicates that the substitutability of the domestic like product for the subject imports was quite limited.

B. Effects on Domestic Prices and Sales

In determining the extent to which LTFV sales of the subject imports affected prices, and concomitantly sales, of the domestic like product, certain evidence in addition to the record evidence relating to import volumes must be considered. The law generally instructs us to evaluate price effects from dumped imports in light of evidence of significant price underselling of the domestic like product by the subject imports or of price suppression or depression. In this investigation, as will generally be true, the record evidence does not provide any reasonable indication of price underselling.58/ Although

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58/ In asking us to look for the existence of significant price underselling (see 19 U.S.C. § 1677(7)(C)(ii)), Congress did not intend to equate that term with simple differences in observed prices. First, that concept would have been quite easy to articulate had that been Congress' intent. Second, that would not be a likely instruction from Congress, given the manifest irrelevance of such gross price differences to the effects of dumped imports on the U.S. industry making the competing domestic like product. As the Commission has recognized, the occurrence of price differences between imports and domestic products cannot provide a basis for inference of effects of dumping or of dumped imports on domestic products' prices without analysis of various product features and sales terms that may differ across products and sales. See, e.g., Certain Granite from Italy and Spain, USITC Pub. 2110, Inv. Nos. 701-TA-289 and 731-TA-381 (Final) (Aug. 1988). When adjustments for such differences are made, it

evidence of price suppression or depression by dumped imports is presented to us with far greater frequency, there also is no reasonable indication of these effects.

Information respecting three issues is central to analysis of such price effects: the share of the domestic market held by the subject imports; the substitutability of the subject imports and the domestic like product; and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products. The record evidence relating to the first two of these issues -- the import market share and the substitutability of the domestic and imported products -- shows that LTFV sales of the subject imports did not have a significant effect on either prices or sales of the domestic like product.

The level of import market penetration is, as previously noted, quite small. During the period covered by our investigation that corresponds most closely to the time during which dumping is alleged to have occurred, the subject imports accounted for only [*]% of the quantity and [*]% of the value of domestic consumption of pressure-sensitive PVC battery covers.59/ When this evidence is considered in conjunction with

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is extraordinary to find price differences of more than a transitory duration. The common effect of price underselling, in most markets, will be depression of the like product's price. Reliable information on that effect will be more readily obtained.

59/ Report at A-43, Table 15.

the record evidence respecting the substitutability of the domestic and imported products, it is impossible to escape the inference that LTFV sales of the subject imports had no significant effect on either prices or sales of the domestic like product.60/ In this investigation, we have been presented with

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60/ Accordingly, in this investigation, it is unnecessary to consider at length the evidence respecting the extent to which domestic demand for pressure-sensitive PVC battery covers is responsive to prices of such products. Evidence concerning the price-responsiveness of domestic demand for the product at issue can be important in some cases because, when consumer demand for the product group in which subject imports are included is highly responsive to changes in price, the effects of dumping on prices and sales of the domestic like product are attenuated, for in that case the lower prices accompanying dumping of the subject imports will stimulate significantly increased domestic demand for the lower-priced product. Conversely, everything else being equal, much greater effects will be felt by U.S. producers when consumers perceive no difference between the imported and domestic product other than price but their overall purchases of these products are relatively unresponsive to price changes. In the latter case, consumers will simply switch their purchases from U.S.-made to lower-priced imported products, with resulting adverse effects on both prices and sales of the domestic product.

In this investigation, it is not necessary to determine conclusively the degree to which domestic demand for pressure-sensitive PVC battery covers is responsive to the price of that product because the other, previously-discussed evidence is sufficient to establish that LTFV sales of the subject imports did not, in any event, significantly increase the volume of those imports, or significantly affect prices or sales of the domestic like product. That said, I note, however, that Petitioner has, in my view, significantly underestimated the extent to which demand for pressure-sensitive PVC battery covers is price-responsive. In its brief, Petitioner stated that such demand is inelastic, asserting that such covers account for a small percentage of the price of a finished battery and that there is a "lack of substitutes" for such covers. See Petitioner's Postconference Brief at 30-31. As discussed supra in connection with the like product issue, I believe that, because the like product is defined to include only pressure-sensitive PVC battery covers, it is evident that sleeve battery covers are, in fact, a potentially significant alternative available to battery producers.

persuasive evidence that there are significant limits on the extent to which domestic battery producers are prepared to substitute domestically-produced pressure-sensitive PVC battery covers for the imported product.

There is, for example, uncontradicted evidence that one of the three major domestic producers that uses such pressure-sensitive battery covers, Power Plus, has been [

DELETIONS REFLECTING BUSINESS PROPRIETARY INFORMATION.

].61/ [

DELETIONS REFLECTING BUSINESS PROPRIETARY INFORMATION.

.]62/ For present purposes, the important point is simply that Power Plus [* * * *] that domestically-produced battery covers [* * * * * * * * *] as [*] has defined them.

Second, the record also suggests that Mutec, another recent entrant to the domestic battery industry, has [* *] determined that domestically-produced covers do not presently meet its needs. Specifically, there is undisputed evidence that Mutec has determined, [*] once and [* * *],

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61/ Report at A-49. See also Respondent's Postconference Brief at 28-29.

62/ Id.

that both Petitioner's and [*] battery covers fail to meet its quality standards.63/ Mutec currently purchases all of its requirements from Respondent Zweckform. Although Petitioner speculates that Mutec may have had some ulterior motive for its failure to qualify Petitioner's batteries,64/ there is no objective evidence whatever to support this claim. To the contrary, even Petitioner concedes that it is possible that Mutec may have had a legitimate problem with the shipment at issue.65/

Finally, it is noteworthy that the principal U.S. buyer of the products at issue -- the major domestic producer of batteries that incorporate pressure-sensitive PVC battery covers, Eveready -- continues to use only domestically-produced battery covers. Although it is, of course, conceivable that Eveready may eventually purchase some of its requirements from Respondent Zweckform,66/ there is persuasive evidence in the record that

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63/ Report at A-46; Respondent's Postconference Brief at 24-28. There is some disagreement between the parties as to [* * * * * * * * * * * * * * * * * * *]. Compare Petitioner's Postconference Brief at 63-66 with Respondent's Postconference Brief at 25-28.

64/ Petitioner's Postconference Brief at 63. Specifically, Petitioner asserts that "Mutec had every incentive to fail . . . [its] sample since it could then turn the alleged quality problem to its advantage in the patent litigation." Id.

65/ Id. at 65.

66/ The parties offered sharply conflicting accounts of the extent, if any, to which Respondent has attempted to obtain domestic business from Eveready. See Petitioner's Postconference Brief at 15-20; Respondent's Postconference Brief at 1-2; 13-14. Given the basis for the determination in this investigation, it

Eveready's [*] requirements [*] the amount of production capacity that Respondent could have devoted to production for increased export to the United States during the relevant period.67/ Accordingly, it is simply implausible to suppose that Eveready, even if it had wished to, could have substituted imported covers produced by Respondent for [* * * *] the needs that Eveready has historically filled through purchases from the domestic producers.

In sum, then, the evidence shows that there were serious limits on the extent to which domestic battery producers were willing or able to substitute domestically-produced battery covers for the imported product. This evidence, when considered in conjunction with the other previously-discussed evidence respecting the small level of import market penetration, is more than sufficient to show that LTFV sales of the subject imports did not have a significant impact on either prices or sales of the domestic like product.

C. Investment and Employment

As in other Title VII investigations, it is extraordinarily difficult to divine the impact of the subject, allegedly dumped, imports on the domestic industry based solely on consideration of the financial and employment data that the Commission has collected. Many factors entirely unrelated to LTFV sales of

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is not necessary to resolve which version of the facts on this issue is correct.

67/ Respondent's Postconference Brief at 38-41.

these imports inevitably have influenced the performance of the industry during the period covered by our investigation. For one thing, it is only relatively recently, in [*] 1987, that Petitioner entered the domestic industry.68/ Moreover, two potentially major producers, Mutec and Power Plus, recently entered the domestic battery business, the industry that consumes the products that are the subject of this investigation. In short, the industry has been very much in flux, and one would expect this to be reflected in the various measures of industry performance that we have collected. Accordingly, the raw financial and employment data, if viewed in isolation, cannot provide a very meaningful indication of the extent to which LTFV sales of the subject imports affected the domestic industry.

Consider, for example, the industry's profitability data. Measured by operating income, the profitability of the industry clearly has [* * *] since 1986. The industry's operating income in 1986 exceeded $[* *].69/ In 1987, however, industry operating income [*] to $[* *] (before [*] to $[* *] in 1988).70/ What can one deduce from these data? One hypothesis is that the [*] in profitability reflects the effects of dumping. However, the bulk

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68/ See Report at A-17, A-30.

69/ Report at A-30-A-31, Table 11.

70/ Id. During the first nine months of 1989, industry operating income was somewhat [*] than it was in the comparable nine-month period in 1988: $[*] vs. $[*]. Id.

of the industry's [* * *] occurred long before dumping is alleged to have occurred. Moreover, as Petitioner entered the market for pressure-sensitive PVC battery covers in 1987, this [*] also occurred at a time when a [* * *] might have been reasonably expected to have occurred given that Petitioner was experiencing start-up costs as well as providing head-to-head domestic competition for the first time to the only previously-existing domestic producer, Label Resources. An equally compelling hypothesis, hence, is that the [*] in gross data on profitability do not in any way reflect effects of dumping. Everything else being equal, one would expect that Petitioner's entry into the market would have [* *] Label Resource's previous level of [*] while producing [* * *] profitability levels for Petitioner. Viewed from that perspective, there is no basis for attributing to the allegedly dumped, subject imports the overall [*] trend in the industry's financial performance that is evident if one compares the industry's recent performance with its 1986 profitability level.

The data relating to employment are similarly difficult to interpret. As Petitioner concedes,71/ all of these data are quite positive.72/ Petitioner argues, in essence, that the data would have been significantly more positive were it not for LTFV

71/ Petitioner's Postconference Brief at 30-32.

72/ See Report at A-28, Table 9.

sales of the subject imports. Certainly, if there is a reasonable indication that this claim is correct, Petitioner should prevail in this preliminary investigation. It is not possible, however, to rest such a conclusion on the data respecting gross changes in the industry, such as the employment data before us. Furthermore, and critically, such a conclusion is insupportable in light of other, probative evidence before us indicating that LTFV sales of the subject imports did not significantly affect either prices or sales of the domestic like product. In the face of that evidence, there is simply no basis upon which we might find that dumping of the subject imports had a significant impact on the employment performance of the domestic industry or other aspects of industry performance.

CONCLUSION

For the foregoing reasons and for the reasons stated in the Views of the Commission, I determine that there is no reasonable indication that the domestic industry producing pressure-sensitive PVC battery covers has been materially injured by reason of LTFV sales of such covers imported from West Germany or is threatened with injury by reason of such unfairly traded imports, or that the establishment of any domestic industry has been materially retarded by reason of such imports.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On January 19, 1990, a petition was filed with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) by the counsel for National Label Company, Lafayette Hill, PA, alleging that an industry in the United States is being materially injured and is threatened with further material injury by reason of imports from West Germany of pressure-sensitive polyvinyl chloride (PVC) battery covers [1] that are allegedly sold in the United States at less than fair value (LTFV). Accordingly, effective January 19, 1990, the Commission instituted antidumping investigation No. 731-TA-452 (Preliminary), under section 733(a) of the Tariff Act of 1930, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports 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 this investigation, by March 5, 1990. Notice of the institution of this investigation 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 January 26, 1990 (55 F.R. 2708). Commerce published its notice of initiation in the Federal Register of February 20, 1990 (55 F.R. 5868). [2] The Commission held a public conference in Washington, DC, on February 9, 1990, at which time all interested parties were allowed to present information and data for consideration by the Commission. [3] The Commission voted on this investigation on February 28, 1990.

The Commission has not conducted a previous investigation on the subject product. [4]

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[1] For purposes of this investigation, "pressure-sensitive PVC battery covers" are protective and decorative covers for ready-to-use dry-cell consumer batteries. Such covers have at least two, and as many as three, layers of PVC film, in addition to a layer of adhesive material and a layer of vaporized aluminum. Such battery covers are provided for in subheading 8506.90.00 of the Harmonized Tariff Schedule of the United States (previously in item 682.95 of the former Tariff Schedules of the United States).

[2] Copies of the Commission's and Commerce's Federal Register notices are presented in app. A.

[3] A list of the participants in the conference is presented in app. B.

[4] However, electrolytic manganese dioxide, which is used in the same types of batteries on which pressure-sensitive PVC covers are applied, was the subject of two final antidumping investigations recently conducted by the Commission: Investigations Nos. 731-TA-406 and 408 (Final), Electrolytic Manganese Dioxide

(continued...)

The Product

Description

Pressure-sensitive PVC battery covers are flat covers, sometimes referred to as "labels," for ready-to-use consumer dry-cell batteries. Pressure-sensitive PVC battery covers have the following characteristics:

1) two or more layers of PVC film designed to allow for "one-way" shrinkage when applied to the battery; [5]

2) printed label information and other decoration;

3) a layer of "metal" (e.g., vaporized aluminum); [6]

4) a layer of adhesive material, which allows the cover to adhere to the battery onto which it is placed (hence the name "pressure-sensitive" battery cover); and

5) a liner which is removed just before the cover is applied by the battery manufacturer.

Both U.S. and foreign-produced pressure-sensitive PVC battery covers have the above characteristics.

Pressure-sensitive PVC battery covers are arranged in one of two configurations: duplex or triplex. Whether the pressure-sensitive PVC cover is duplex or triplex depends upon the type of base material used in the construction process. Duplex base material includes a single layer of PVC, or a "monofilm," which is laminated to another monofilm of PVC to yield a two-layer, or "duplex" battery cover. Triplex base material includes PVC film that has two layers (a "duofilm"), which is laminated to a third layer of PVC film, yielding a three-layer, or "triplex" battery cover. The imported product is of triplex construction; the U.S. industry produces both duplex and triplex covers. The petitioner states that there is a trend toward duplex

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[4] (...continued)
from Greece and Japan. The Commission's determinations in these investigations were affirmative. Its report and findings can be found in USITC Publication 2177, April 1989.

[5] The petitioner states that the PVC in pressure-sensitive battery covers must permit "one-way" shrinkage in the "cross" direction around the battery when the cover is applied. If shrinkage occurred in the opposite or "machine" direction, the edge of the cover would not hold against the body of the battery cell to form a seal along the length of the battery. (Petition, p. 19.)

[6] The petitioner notes that regular ink could be used instead of metal to create a background for the label. An ink background, however, is noticeably duller when compared to the brightness obtained from use of "metal." (Petition, p. 14.)

covers, noting that battery makers have found that they can use the less expensive duplex covers without sacrificing quality. [7]

For covers using duplex construction, the vaporized metal can either be "metal down" or "metal up;" that is, the vaporized metal can either be on the side of the PVC material where it will face the battery cell (metal down), or on the outer side of the PVC material where it will not face the battery cell (metal up). Whether the vaporized metal is metal up or metal down on a battery cover depends on the type of battery cell involved and on customer preference. [8] The different configurations are shown in figure 1.

Quality standards, including size and thickness of the PVC layers, are specified by individual battery manufacturers, which approve or qualify suppliers before purchasing in commercial quantities. Several industry sources commented that it is relatively difficult to produce a pressure-sensitive PVC battery cover of acceptable quality, noting that "seam lift" is a frequently encountered problem. Additional information on quality and the role quality plays in sourcing is presented in the section of this report entitled "Market characteristics and prices."

A pressure-sensitive PVC battery cover system was developed in West Germany in the early 1980's by Zweckform Etikettiertechnik Gmbh (Zweckform), the respondent in this investigation. During the same period, Label Resources, [9] a U.S. manufacturer, developed a similar system. The petitioner first began producing these battery covers in 1987 as Zweckform's exclusive licensee in North America.

Manufacturing process

The manufacturing process for pressure-sensitive PVC battery covers includes the following stages: label printing, lamination, die-cutting, and slitting, followed by inspection and packaging. The manufacturing process begins when rolls of base material (monofilm or duofilm) are fed into presses. [10] [11] During the first stage of production, the surface tension on

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[7] Petition, pp. 13-14. * * *. (Respondent's postconference brief, responses to staff questions.)

[8] Petition, pp. 14-15.

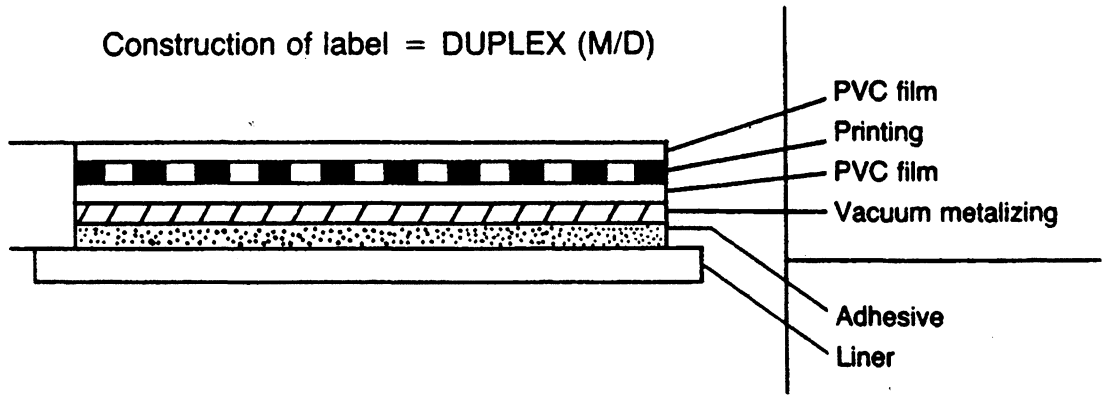
[9] Label Resources worked with Eveready Battery Company, one of the largest U.S. battery manufacturers, to develop its pressure-sensitive system.

[10] The base material, as described here, includes the element of "metal," an adhesive layer, and the thin paper backing. The petitioner currently purchases its base material from * * *; it previously bought from Ritrama, an Italian supplier. Zweckform also purchases from Ritrama. The base material used by Label Resources is manufactured by * * *.

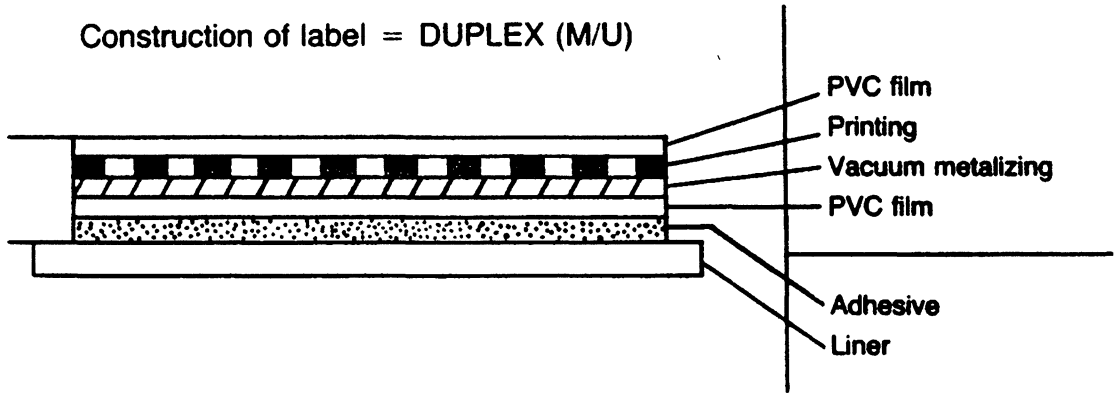
[11] There are only a few other applications for PVC film designed for one-way shrinkage. Other applications include use for the manufacture of transparent covers for certain exotic flowers and decorative ribbons. (Petition, p. 12.)

Figure 1
Configurations of pressure-sensitive PVC battery covers.

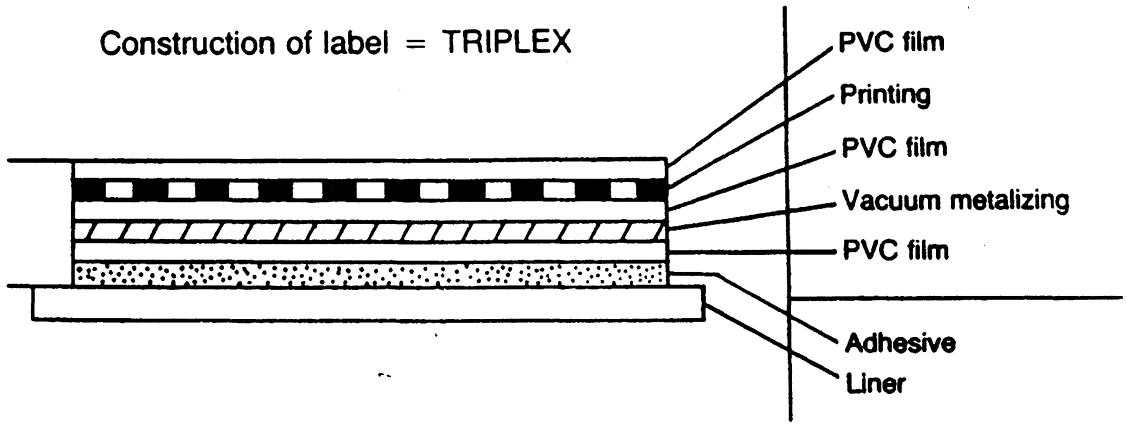
Duplex (metal down) construction



Duplex (metal up) construction



Triplex construction



Source: Provided by petitioner.

the base material is changed by a device known as the corona discharge unit to allow for better flow of the ink on the film surface. The base material then moves through a set of printing towers, or color stations. Each printing tower has a cylinder composed of copper and chrome plate; the cylinder applies ink to the base material. The base material next moves into an oven, where it is heated and dried; this process is repeated until the full range of colors for the label image is applied. The base material is then fed through the final drying unit. Afterwards, an additional layer of PVC is laminated on top of the base material. [12] The laminated base material then continues through the machinery to the die cutters, where dies cut through the top layers down to, but not through, the paper liner. Any excess film is then removed. At this point, all that remains on the base material roll are the finished battery covers, still adhering to the paper liner; multiple battery covers are adjacent to one another across the width of the laminated base material, the exact number depending on the size of the batteries for which the covers are destined. The covers are then wound onto one final, finished, jumbo roll.

The jumbo roll of battery covers is removed from the printing and die-cutting machinery for quality control inspection [13] and then slit into several rolls of single-row battery covers. [14] The rolls are packed into cartons with each roll placed on its side, separated from other rolls by cardboard. The cartons are shipped, primarily by truck, to the battery manufacturer.

The primary difference in the battery cover production processes of National Label, Label Resources, and Zweckform is in the label printing operation. National Label and Zweckform both use the "roto-gravure" method of

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[12] The added PVC material protects the graphics from smearing and adds strength and durability to the cover. Through this lamination process, the original base material that was monofilm or duofilm becomes, respectively, duplex or triplex.

[13] In this process, the roll of battery covers is spun at a rate of several hundred feet per minute under a strobe light, which creates a visual effect of the covers remaining stationary under the light. The label image of thousands of labels can be inspected in this manner in a short time. (Petition, p. 16.)

[14] The petitioner uses a device that cuts the roll containing several rows of covers into single rows and at the same time counts the number of battery covers on the roll.

printing. [15] Label Resources uses a rotary letter press system, similar to the Guttenberg printing process. [16]

Uses

Pressure-sensitive PVC battery covers are used as the outermost layer on ready-to-use consumer dry-cell batteries. [17] The chemical components of batteries are placed within a metal canister, which may be referred to as a battery wall, battery cell, or battery can. The battery can itself is then encased by a battery cover, one kind of which is pressure-sensitive PVC battery covers. [18] Battery covers, in general, serve three functions: (1) to insulate and prevent the battery cell from shorting; (2) to protect against battery leakage; and (3) to provide labelling information and other decoration.

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[15] In this method, the label information that is to appear on the battery cover is electronically engraved into the copper and chrome print cylinder so that the type is recessed in the cylinder. During the printing process, the print cylinder rotates into an ink bath where the ink flows onto the base material as the base material passes between the print cylinder and another rotating cylinder called an impression cylinder. According to the petitioner, the gravure method allows for flexibility in the printing process and a superior printed image. (Petition, pp. 17-18.)

[16] In this method, the label "type" is placed in a raised position on the rotating print cylinder. The type on the print cylinder is inked as the cylinder revolves over an ink roller. The ink is then transferred to the base material that is being drawn over the print cylinder as that cylinder continues its roll. (Petition, p. 17.)

[17] Batteries are devices that convert chemical energy into electrical energy. Electrons generated by the arrangement of the constituent chemicals are released to flow through an electrolytic solution from the anode, or negative electrode, to the cathode, or positive electrode. There are generally two types of batteries: primary batteries, which cannot be recharged, and secondary or "storage" batteries, where the discharge process can be reversed. The types of primary batteries include dry-cell and wet-cell batteries. In dry-cell batteries the electrolyte (i.e., the solution through which the electrons flow) is in a paste rather than liquid form and is thus unspillable and immobilized. Batteries may be single cells or an arrangement of two or more cells.

[18] In addition to pressure-sensitive PVC battery covers, there are also battery covers of PVC that are "sleeve" or tube-shaped, and metal jacket and polyester battery covers. Such battery covers are discussed in the section of this report entitled "Substitute products."

The alkaline dry-cell battery is the battery type on which pressure-sensitive PVC battery covers are most frequently used. [19] The alkaline battery represents a significant improvement over the carbon-zinc (general-purpose) battery and typically has a longer shelf life than a zinc-chloride (heavy-duty) battery. It differs from the other dry cells primarily in the highly alkaline electrolyte that is used. Currently, alkaline batteries account for about two-thirds of the 2.5 billion batteries sold annually in the United States. Pressure-sensitive PVC battery covers are also used on the nickel-cadmium cell (a secondary, dry-cell battery) and on lithium batteries. [20] [21]

The impetus to use a cover such as pressure-sensitive PVC on alkaline batteries arose from the redesign of the alkaline battery that occurred in the early 1980's. At that time, the battery can was made stronger and increased in size (thus eliminating the need for the extra strength provided by a metal jacket). [22] Battery covers of PVC were consequently substituted for the metal jacket as a way to label and decorate the battery and prevent battery leakages and short-circuits. [23] The exterior dimension of the finished battery did not change: the increased size of the battery can was offset by the replacement of the relatively thick metal jacket (and insulating fiberboard) by the much

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[19] The other major types of dry-cell batteries are (1) the carbon-zinc, or general purpose (ammonium chloride) battery, and (2) the zinc-chloride, or heavy-duty battery.

The carbon-zinc battery is the oldest and least sophisticated of the dry-cell batteries. It is inferior in discharge rate, shelf life, and leak resistance to zinc-chloride and alkaline batteries. When made in cylindrical form (as for a "flashlight" battery), this battery consists of a carbon electrode (positive) and electrolyte contained in a zinc can that also serves as the negative electrode of the battery. The carbon-zinc battery was the predominant battery used in the United States as recently as the 1950's, but has since been far surpassed by the zinc-chloride and especially by alkaline batteries. In recent years, sales have been flat, or even decreasing. The zinc-chloride battery has a higher discharge rate than the carbon-zinc battery, but also is more expensive to produce.

[20] Nickel-cadmium batteries, or ni-cads, are small, cylindrical cells, which are assembled into various configurations according to customer specifications. Many are purchased for use as original equipment in small electronic products where rechargeability is desired. Lithium batteries are also rechargeable, and are used in cameras and specialty applications.

[21] Pressure-sensitive PVC covers are used on each of the principal cylindrical battery sizes (i.e., sizes AAA, AA, C, and D). However, they are not currently used on 9-volt batteries.

[22] Staff conversation with * * *, of Mutec, a U.S. battery manufacturer, Jan. 31, 1990.

[23] If not protected, contact between the metal of the battery can and the metal in the device in which the battery is used (or the metal cans of other batteries) can lead to shorting.

thinner PVC. However, because it was now possible to include more dry-cell material in the larger battery can, the life of the battery was significantly increased.

Pressure-sensitive PVC covers (or other covers of PVC) are rarely used on carbon-zinc and zinc-chloride batteries (which typically use the older can construction) since battery manufacturers do not view the market for these types of batteries as one which would justify the cost required to redesign the battery and convert to a new covering system. Also, PVC covers are generally not used on multicell batteries (such as 9-volt) where an outer container of metal or plastic is required to "contain" the individual battery cells. (Such batteries are labeled using paper or foil labels--or, if metal, lithographed--which do not provide any protective function.)

Substitute products

Sleeve-shaped PVC battery covers and battery covers constructed of metal or polyester are also found today on ready-to-use dry-cell consumer batteries. The description, manufacture, and use of such covers are addressed below. [24]

Description and manufacture of substitute products.--Sleeve PVC battery covers are also constructed of a PVC film, but are produced as a tube or sleeve-shaped cover which is later "shrink-wrapped" around the battery. (In contrast, pressure-sensitive PVC covers require the addition of an adhesive material.) For sleeve battery covers, the PVC first undergoes a tendering process, which essentially is a stretching and heating operation. [25] Next,

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[24] Both the petitioner and respondent urge the Commission to define the product most like subject imports as including only pressure-sensitive PVC battery covers. (Petitioner's postconference brief, pp. 69-70; conference transcript, pp. 101-2.)

[25] The petitioner maintains that the PVC used in the manufacture of sleeve covers is designed for "two-way" or "total body shrinkage" and is thus different from that used in the production of pressure-sensitive PVC battery covers which require one-way shrinkage. (Petition, p. 21, and conference transcript, pp. 22-23.) However, manufacturers of sleeve covers (specifically, * * *, CMS Gilbreth, and * * * of Templock) have stated that their product is mono-axially oriented and does, in fact, shrink only one-way. Another industry source has stated that there is a small amount of two-way shrinkage even in a mono-axially oriented PVC product. The precise similarity or difference between PVC used for pressure-sensitive covers and that used for sleeves is not clear. Those sources providing information are using PVC films specially designed for their firms (or produced by them) and are not fully familiar with the other films.

the film is printed with label graphics against a background of ink, [26] after which the base material is slit, then transformed from a flat sheet into long tubes, or sleeves. The sleeves are then flattened for shipment to the battery manufacturer. The printing operations for both pressure-sensitive and sleeve PVC battery covers can be and are done on the same type of production machinery; [27] separate equipment is required for other manufacturing operations specific to pressure-sensitive and sleeve production.

Metal jackets are formed from steel plates or sheets on which labelling information or other graphics are lithographed. These covers are added by the battery manufacturers, along with a protective fiberboard layer of insulation between the metal jacket and the battery cell to prevent shorting. The production processes and machinery used in the manufacture of metal jackets differ from those used for battery covers manufactured of PVC.

A polyester battery cover consists of a polyester base, which is decorated and printed with ink, then backed with adhesive paper. A layer of "metal" may be present; if absent, the cover is often referred to as a paper label. A paper tube is placed around the battery can by battery manufacturers before the label is applied. The design and raw materials, equipment, and processes used to manufacture polyester labels are entirely different than those for battery covers of PVC. [28]

Use of substitute products.--Generally, battery producers use different types of battery covers for different batteries. Information on the use of battery covers by the largest U.S. manufacturers of batteries is presented in table 1.

Sleeve PVC battery covers are used on the same types of batteries, namely alkaline, as are pressure-sensitive PVC covers. Use of metal jacket covers on alkaline batteries has been declining. [29] Polyester battery covers, like metal jackets, cannot be placed on alkaline batteries where the cell has been redesigned and enlarged, since the thickness of the paper insulation they require would lead to an oversized finished battery. [30] * * *, use of PVC (without paper insulation) on carbon-zinc batteries would also pose

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[26] "Metal" cannot be used as a base material for PVC sleeve battery covers because it would discolor from the heat used when the cover is applied to the battery. In contrast, metal can be and is used for pressure-sensitive PVC covers, which are applied using a different process. (Information on the application of covers to batteries is discussed in the following section.)

[27] Specifically, CMS Gilbreth (a U.S. sleeve manufacturer) and two manufacturers of pressure-sensitive PVC covers (National Label and Zweckform) use the roto-gravure printing process described earlier in this report. The cost of the petitioner's roto-gravure line accounts for *** percent of its total investment in machinery and equipment for the production of pressure-sensitive PVC battery covers.

[28] * * *. Letter from * * *, dated Feb. 19, 1990.

[29] They continue, however, to be used on 9-volt batteries, which contain six cells. Also, Rayovac continues to use metal jackets on battery sizes C and D.

[30] * * *. (Conversation with * * *, Feb. 6, 1990.)

Table 1
End uses of battery covers, by types of battery and battery manufacturers, 1989 1/

(In percent)

Type of battery and battery manufacturer	Pressure-sensitive PVC	Sleeve PVC	Metal jacket 2/	Polyester	Total
Alkaline:					
Duracell.....	***	***	***	-	100
Eveready.....	***	-	***	-	100
Rayovac.....	-	***	***	-	100
Zinc-chloride:					
Duracell.....	-	-	-	-	-
Eveready.....	-	-	***	***	100
Rayovac.....	-	-	***	-	100
Carbon-zinc:					
Duracell.....	-	-	-	-	-
Eveready.....	***	-	***	***	100
Rayovac.....	-	-	***	-	100
Nickel-cadmium:					
Duracell.....	-	-	-	-	-
Eveready.....	***	-	-	-	100
Rayovac.....	-	-	-	-	-
Lithium:					
Duracell.....	***	***	-	-	100
Eveready.....	-	-	***	-	100
Rayovac.....	-	-	-	-	-

1/ Excludes data for Mutec and Power Plus, which currently only manufacture alkaline batteries. Mutec uses only pressure-sensitive PVC covers on its cylindrical batteries and metal jackets on its 9-volt batteries. Power Plus only uses pressure-sensitive PVC covers.
2/ Includes 9-volt, but excludes other multi-celled batteries such as lantern batteries.

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

technical problems. Additional information on the battery cover selections of specific U.S. battery manufacturers is presented in the section of this report entitled "U.S. purchasers."

Application of battery covers

Battery covers are applied to batteries at the facilities of battery manufacturers, using machines or "applicators" which are specific to the type of battery cover. Applicators are designed to the specification of the battery cover manufacturer and are generally sold directly by the cover

manufacturer to its customers, the battery manufacturers. [31] Pressure-sensitive PVC battery covers are applied as follows:

> A battery cover is first removed from the paper liner by the applicator and is wrapped around a battery cell. The cover at this point is fractionally longer than the battery cell at both ends. In the next step, the battery passes through a small heating unit where the ends of the cover are heated, causing them to shrink and wrap around the ends of the battery cell, forming a tight protective seal. (Petition, p. 19.)

Sleeve PVC covers are applied by a specially designed applicator or "sleever," which slides the sleeve over the battery cell, cuts the sleeve to the proper length and then, by slow heating, causes the sleeves to shrink to fit tightly around the cells. It is because the entire cover is heated and not just the ends (as with pressure-sensitive PVC covers) that "metal" cannot be used with a sleeve PVC battery cover. Polyester and metal jacket covers are also applied using separate equipment and different processes.

Product substitution is thus limited by the capital investment made by battery manufacturers in the application equipment necessary to utilize the different types of covers. The following tabulation shows the value of the application equipment reported by U.S. battery manufacturers (namely, Duracell, Eveready, Mutec, Power Plus, and Rayovac) as of September 30, 1989, by types of battery cover (in thousands of dollars):

Type of battery cover	Original cost	Book value
For use only with pressure-sensitive PVC...	***	***
For use only with sleeve PVC.....	***	***
For use only with metal jacket.....	***	***
For use only with polyester.....	***	***

No battery manufacturer reported any application equipment that could be used with more than one type of battery cover. The cost of a sleever is $*** per machine; an applicator for pressure-sensitive PVC covers costs between $*** and $***.

U.S. tariff treatment

Pressure-sensitive PVC battery covers are provided for in subheading 8506.90.00 of the Harmonized Tariff Schedule of the United States, a classification that comprises parts of primary cells and primary batteries. [32] The column 1 general (most-favored-nation) rate of duty for this subheading,

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[31] The petitioner's covers can be applied using machinery currently designed to the specifications of Zweckform and Label Resources. (Petition, p. 18.)

[32] Pressure-sensitive PVC battery covers were formerly provided for in item 682.95 of the Tariff Schedules of the United States, now repealed.

applicable to imports from West Germany and to most other countries, is 5.3 percent ad valorem. [33]

Nature and Extent of the Alleged Sales at LTFV

In order to obtain the estimated dumping margin for pressure-sensitive PVC battery covers imported from West Germany, the petitioner compared the United States price of the battery covers with their foreign market value (FMV). The United States price was calculated separately for each of the four principal sizes of consumer dry-cell batteries (sizes AAA, AA, C, and D) from four invoices issued by the foreign manufacturer, Zweckform, to a U.S. customer in August 1989. Each of the covers required three colors of ink.

The petitioner provided two estimates of the FMV, one derived from a third-country price analysis, the other from the use of its own costs as a surrogate for those of the foreign manufacturer. [34] The third-country price analysis was based on price lists for three-color AA, C, and D battery covers provided, or believed to be provided, by the foreign manufacturer to customers in Canada and Europe. The comparison of this data to the United States price yields dumping margins that range from 11 percent to 65 percent, depending upon the battery cover size. When the petitioner's costs are used to estimate those of the foreign manufacturer, the resulting dumping margins range from 38 percent to 60 percent, again varying according to the battery cover size.

The petitioner also requested that Commerce investigate whether the foreign manufacturer is selling battery covers in its home or in third country markets at prices below its production costs. [35]

The U.S. Market for Battery Covers

Apparent U.S. consumption

The data on apparent U.S. consumption of battery covers presented in table 2 are composed of the sum of U.S. producers' shipments (domestic and intracompany consumption) and U.S. importers' shipments (domestic and intracompany consumption) reported in response to the Commission's

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[33] In addition, pursuant to the Omnibus Budget Reconciliation Act of 1986, a user fee is charged on most U.S. imports to cover the cost of the U.S. Customs Service's processing of imports. The user fee is currently 0.17 percent ad valorem.

[34] The petitioner was unable to obtain any information on the foreign manufacturer's prices to its only known home-market customer.

[35] On Feb. 9, 1990, Commerce announced the initiation of its antidumping investigation. Commerce rejected the use of the price lists as the basis for foreign market value and accepted instead petitioner's adjusted costs. Commerce did not initiate a cost investigation. If the Commission should find in the affirmative and if Commerce's LTFV investigation proceeds normally, its preliminary LTFV determination will be made on or before June 8, 1990.

Table 2
Battery covers: Apparent U.S. consumption, by selected product groupings, 1986-88, January-September 1988, and January-September 1989

Item and period	Producers' shipments	Shipments of imports	Apparent consumption
	Quantity (million covers)		
Pressure-sensitive PVC battery covers:			
1986	***	***	***
1987	***	***	***
1988	***	***	***
Jan.-Sept.--			
1988	***	***	***
1989	***	***	***
Pressure-sensitive PVC and sleeve PVC battery covers:			
1986	***	***	***
1987	***	***	***
1988	***	***	***
Jan.-Sept.--			
1988	***	***	***
1989	***	***	***
Pressure-sensitive PVC, sleeve PVC, polyester, and metal jacket battery covers:			
1986	2,268	***	***
1987	2,707	***	***
1988	3,141	***	***
Jan.-Sept.--			
1988	2,237	***	***
1989	2,290	***	***
	Value (1,000 dollars)		
Pressure-sensitive PVC battery covers:			
1986	***	***	***
1987	***	***	***
1988	***	***	***
Jan.-Sept.--			
1988	***	***	***
1989	***	***	***
Pressure-sensitive PVC and sleeve PVC battery covers:			
1986	***	***	***
1987	***	***	***
1988	***	***	***
Jan.-Sept.--			
1988	***	***	***
1989	***	***	***
Pressure-sensitive PVC, sleeve PVC, polyester, and metal jacket battery covers:			
1986	23,926	***	***
1987	27,052	***	***
1988	30,715	***	***
Jan.-Sept.--			
1988	22,556	***	***
1989	22,755	***	***

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

questionnaires. Data are thus understated to the extent that all producers or importers did not respond to the questionnaires. [36]

As shown in table 2, there has been a steady increase in the demand for battery covers of all types: domestic consumption of all battery covers, on the basis of quantity, increased by *** percent from 1986 to 1988. [37] Consumption of PVC covers (pressure-sensitive and sleeve) increased more sharply, by *** percent from 1986 to 1988; [38] consumption of pressure-sensitive PVC battery covers alone rose *** percent from 1986 to 1988.

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[36] Producer and importer questionnaires were sent to the suppliers of battery covers (whether pressure-sensitive PVC, sleeve PVC, polyester, or metal jacket) named by the petitioner and by the largest U.S. battery manufacturers. Importer questionnaires were also sent to significant U.S. importers from West Germany and other countries that reported imports into the United States under the TSUSA and HTS classifications in which battery covers are included. (The TSUSA classification consisted of all primary cells and batteries and parts thereof; the HTS classification consists of parts for primary cells and batteries.)

Data were received from virtually all producers and importers of pressure-sensitive PVC battery covers. (A small domestic manufacturer of pressure-sensitive PVC battery covers * * * did not report.) Shipment data were also received from the * * * U.S. manufacturer of sleeve PVC covers (and were estimated for the * * * firm), from the only known polyester battery cover manufacturer, and from the majority of metal jacket producers. Additional information on U.S. producers and data coverage is provided later in this section. Data on imports of sleeve PVC, polyester, and metal jackets were reported by suppliers to the major U.S. battery manufacturers.

[37] The demand for battery covers is derived from the market for dry-cell batteries, which is in turn derived from the market for consumer products, such as toys, flashlights, portable ratios, cameras, etc., that use such batteries. According to a January 1988 United Press International press release, domestic battery sales are expected to grow from $2.5 billion in 1987 to $3.5 billion in the 1990s.

[38] Use of PVC battery covers is affected by changes in use in dry-cell battery types, specifically the shift from zinc-carbon (which generally use covers of metal or polyester) to alkaline batteries (which generally use PVC covers). The following tabulation shows sales data compiled by Nielsen Marketing Research for U.S. supermarkets with sales of $4 million and over (in thousands of dollars):

Type	1988	1989
Alkaline.....	262,530	284,874
Carbon-zinc.....	51,339	49,980
Lithium.....	1,125	1,205
Nickel-cadmium.....	1,098	1,156

From 1988 to 1989, sales of alkaline batteries increased by 8.5 percent.

Imports of battery covers do not play a major role in supplying the aggregate U.S. market: for 1986 through September 1989, imports accounted for less than *** percent of apparent consumption.

The following tabulation shows the quantity of total apparent U.S. consumption, by types of battery covers, for 1988 (in percent):

Pressure-sensitive PVC....	***
Sleeve PVC.....	***
Polyester.....	***
Metal jacket.....	***
Total.....	100.0

U.S. producers

PVC battery covers (whether pressure-sensitive or sleeve) and polyester battery covers are typically manufactured by firms that also produce labels and flexible packaging products (e.g., shrink wrap) for other consumer products. There are a small number of producing firms: the technology for the production of battery covers is highly technical, requiring product qualification by the end users; there are a small number of purchasers (i.e., battery manufacturers). The overall label and package industry is comprised of several hundred firms, some of which periodically attempt to gain entrance to the market for battery covers. [39]

The manufacturers, position taken on the petition, and shares of production in 1988 are shown in table 3. Reporting firms do not manufacture more than one type of battery cover. A discussion of individual U.S. producers of battery covers follows. [40]

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[39] Such firms generally produce samples and submit them to battery manufacturers for review. Covers being developed include pressure-sensitive covers of one to three layers of PVC, with or without vaporized aluminum, and PVC sleeve covers.

[40] Firms named by industry sources or battery manufacturers include * * *. None of these firms are known to have shipped in commercial quantities. * * * is currently submitting samples of pressure-sensitive PVC battery covers to * * * for testing. * * *.

Table 3
Battery covers: U.S. producers, position on the petition, production, and shares of production, by types of cover and by firms, 1988

(Production in 1,000 covers; shares in percent)

Firm	Position on the petition	Production	Share
		Pressure-sensitive PVC	
Label Resources	* * *	***	***
National Label Company	Supports	***	***
Voxcom-Webb Printing Co. 1/	* * *	2/ ***	***
		Sleeve PVC	
American Fuji Seal, Inc.	* * *	***	***
CMS Gilbreth Packaging Systems, Inc.	* * *	***	***
Templock Corp. 3/	* * *	4/ ***	***
		Polyester	
American National Can	* * *	***	***
		Metal jackets	
Ball Metal Decorating and Service 3/	* * *	5/ ***	***
J.L. Clark	* * *	***	***
Rayovac Corp	* * *	***	***

1/ Did not respond to the Commission's questionnaire.
2/ Data for 1988 estimated based on purchases reported by * * *.
3/ Did not fully respond to the Commission's questionnaire.
4/ Data for 1988 estimated based on purchases reported by * * *; data for the other periods were likewise estimated and are included in all domestic shipment data presented in this report.
5/ Data for 1988 estimated based on purchases reported by * * *.

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

Producers of pressure-sensitive PVC battery covers.--National Label Company, Lafayette Hill, PA, the petitioner in this investigation, is a family-owned firm that also manufacturers other types of labels and labelling systems for a wide range of products. In December 1986, National Label entered into an agreement with Zweckform, a manufacturer in West Germany, to produce pressure-sensitive PVC battery covers using the technology developed by Zweckform. [41] Full production by National Label commenced in * * * 1987. From late 1986 to early 1987, National Label imported pressure-sensitive PVC covers manufactured by Zweckform in West Germany. In 1988, National Label sold over *** percent of its pressure-sensitive PVC covers to the Eveready Battery Co.; [42] the remainder of its U.S. sales were to Duracell. [43]

Accraply, Inc. (also known as Label Resources), Hopkins, MN, is *** owned by Morgan Adhesive Co., Stow, OH, which, in turn, is *** owned by Bemis Company, Inc., Minneapolis, MN. Label Resources worked with Eveready Battery Co. in the early 1980s to also develop a pressure-sensitive covering system for batteries using PVC. [44] Label Resources sells * * * of its product to Eveready.

Producers of other battery covers.--The * * * sleeve PVC battery manufacturers in the United States are CMS Gilbreth Packaging Systems, Inc., Bensalem, PA, and Templock, Carpinteria, CA. CMS Gilbreth sells to * * *; Templock supplies * * *. A * * * producer, American Fuji Seal, Inc., Fairfield, NJ, is * * * owned by Fuji Seal Industries, Osaka, Japan, and * * * owned by Nichimen Corp., Osaka, Japan. American Fuji Seal supplies battery covers to * * * and * * *. [45] [46]

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[41] Specifically, Zweckform agreed to obtain U.S. and Canadian patents for its pressure-sensitive cover technology and to license those patents and other "know-how" to National Label, along with the North American distribution rights. National Label, in turn, agreed to pay a royalty to Zweckform for each cover it sold in North America. Subsequently, disagreements arose between the two firms and, in December 1988, Zweckform terminated the agreement. National Label maintains that the license agreement (and Zweckform's assignment of the U.S. patent for triplex labels, the only patent that has currently been granted, to National Label) is still valid and that any sales or purchases by other parties of triplex pressure-sensitive PVC labels that use Zweckform technology are made in violation of the U.S. patent. Such sales have taken place, and, in June 1989, National Label filed suit against Zweckform and two U.S. purchasers in the U.S. District Court for the Northern District of Georgia.

[42] Petition, p. 26.

[43] * * *. (Staff conversation, Feb. 9, 1990).

[44] Subsequently, Eveready was Label Resources' major customer for its product; the first sales contract between the two firms was signed in * * *.

[45] * * *.

[46] Also, there are other suppliers who sell to smaller battery manufacturers. RJI International, Reno NV, for example, supplies PVC sleeve covers to * * *.

The * * * U.S. producer of polyester battery covers is American National Can Company, Greenwich, CT, which supplies * * *.

Metal jackets are either manufactured by the battery producers or purchased from metal fabricators. Only one battery manufacturer, however, produces a significant quantity of metal jackets--Rayovac Corporation, Madison, WI. (Rayovac produces the bulk of the metal jackets it requires in its plant in Sauk City, WI. This facility, formerly the Raystone Corporation, was purchased by Rayovac in August 1988.) The other battery manufacturers generally purchase a full tubular jacket or buy metal jackets in the form of lithographed sheets, which they finish by a slitting, die-cutting, and rolling operation prior to application to the battery. J.L. Clark, Rockford, IL, is the only known U.S. producer of full metal jackets; lithographed sheets are also manufactured by Ball Metal Decorating and Service, Chicago, IL.

U.S. importers

Importers of pressure-sensitive PVC battery covers.--Two firms accounted for all known imports of the pressure-sensitive PVC battery covers from West Germany through September 1989 (table 4). No other imports of pressure-sensitive PVC battery covers were reported from other countries. The Matsushita-Ultra Technologies Battery Corporation, or Mutec, is a joint venture * * * owned by Matsushita Electric Industrial Co., Ltd. (Osaka, Japan); * * * owned by Eastman Kodak Company (Rochester NY); and * * * owned by Ultra Technologies (Newark, NY). [47] Mutec, a new entrant to the U.S. battery market, began manufacturing operations in its Columbus, GA, facility in * * * 1989; its first requirement for pressure-sensitive PVC battery covers was in * * * 1989. Thus, the data shown in table 4 cover imports by Mutec during the period from * * * to September 1989. From October through December 1989, an additional *** covers were received by Mutec; in January, *** covers were received. In February and March 1990, *** covers were ordered. During the 11-month period from May 1989 to March 1990, Mutec received or ordered *** covers.

[47] Prior to the formation of Mutec, batteries marketed under the Kodak label in the United States were (with the exception of domestically-produced lithium cells) manufactured in Japan by Matsushita. According to the January-February 1988 A.C. Nielsen Share Summary, Kodak had a ***-percent share of the U.S. alkaline battery market. Matsushita, which is one of the world's leading battery manufacturers, also sells batteries in the United States under the National and Panasonic brand names. Mutec will manufacture batteries in its Columbus, GA, plant for Kodak, Matsushita, and * * *.

Table 4
Pressure-sensitive PVC battery covers: Imports from West Germany, by firms, 1986-88, January-September 1988, and January-September 1989

(In millions of covers)

Firm	1986	1987	1988	Jan.-Sept.-- 1988	1989
Mutec	***	***	***	***	***
National Label Company	***	***	***	***	***

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

As noted above, imports by National Label began after its agreement with Zweckform in late 1986, and ceased early in 1987 once the firm began domestic production operations.

A second battery manufacturer, Power Plus of America, Inc., Lawrenceville, GA, has begun purchasing from Zweckform. Power Plus is a new battery manufacturer, which began test operations in * * * 1988. It is * * * owned by Celaya Emparanza y Galdos S.A. ("Cegasa"), Vitoria, Spain [48] and * * * owned by the Amcel Corporation, Lawrenceville, GA. Power Plus received a shipment of *** pressure-sensitive PVC battery covers from West Germany in * * * 1989. All imports by Mutec and Power Plus are used in the production of their own batteries.

Importers of other battery covers.--Sleeve PVC batteries were imported from Japan by * * * in 1986 and 1987 and * * * in 1987. In addition, * * * import metal jackets from Japan.

U.S. purchasers

The U.S. market for battery covers is essentially comprised of the four major U.S. battery manufacturers of dry-cell batteries (Duracell, Eveready, Mutec, and Rayovac). [49] In addition to batteries marketed under their own labels (and, for Mutec, the Kodak and Panasonic brand names), these manufacturers produce most of the U.S.-made private brand labels. [50] Sources

[48] Cegasa is Spain's largest alkaline battery manufacturer.

[49] In January and February 1988, Duracell, Eveready, and Rayovac accounted for *** percent, *** percent, and *** percent, respectively, of the U.S. market for all batteries. For alkaline batteries, Duracell, Eveready, and Rayovac accounted for *** percent, *** percent and *** percent, respectively. (A.C. Nielsen Share Summary). Mutec is a new entrant to the industry.

[50] Hemisphere Services, Inc., Miami, FL, was also named in the petition as another purchaser of pressure-sensitive PVC battery covers from Zweckform.

(continued...)

and shares of total purchases for each source, as reported by purchasers in response to the Commission's questionnaires, are shown in table 5.

Table 5
Battery covers: U.S. purchasers, by firms, by types of battery cover purchased, by sources, and by shares of total purchases, 1989

Firm	Type of battery cover purchased	Source	Share of purchases in 1989 1/ (Percent)
Duracell, Inc.	Pressure-sensitive PVC	National Label	***
	* * *	* * *	***
Eveready Battery Co....	Pressure-sensitive PVC	Label Resources	***
	Pressure-sensitive PVC	National Label	***
	* * *	* * *	***
Mutec.....	Pressure-sensitive PVC	Zweckform 3/	***
	* * *	***	***
Power Plus of America..	Pressure-sensitive PVC	Zweckform 3/ 4/	***
Rayovac Corp.....	* * *	* * *	2/

1/ Share of quantity purchased.
2/ Not available.
3/ Imported into the United States.
4/ * * *. * * *.

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

Duracell, Inc., Bethel, CT. is * * * owned by Duracell Holding Corp., Bethel, CT. Duracell uses primarily a sleeve PVC cover for its alkaline batteries. * * * cites * * * as a key factor in this decision: * * *. [51]

[50] (...continued)
Hemisphere reported to the Commission that, in 1989, Zweckform sent one shipment to Miami. That shipment was forwarded to production plants in * * * and was not entered into the United States for consumption. All future shipments will be sent directly to * * * by Zweckform. (Staff conversation with * * * of Hemisphere.)

[51] * * *. (Staff conversation, Jan. 29, 1990).

Also, Duracell * * *. * * *.[52] Duracell's operations outside the United States use the pressure-sensitive PVC battery cover system.[53]

Eveready Battery Company, Inc., St. Louis, MO, is * * * owned by Ralston Purina Co., St. Louis, MO. Eveready converted its alkaline battery line from metal jackets to pressure-sensitive PVC covers in 1984. It chose pressure-sensitive rather than sleeve PVC covers for * * * reasons (i.e., * * *). Although Eveready notes that * * *. Also, Eveready * * *.[54] Eveready's operations in Europe use pressure-sensitive PVC covers purchased from Zweckform.

Rayovac currently uses sleeve PVC covers for its AAA and AA alkaline batteries and metal jackets for sizes C and D. Although batteries that use a metal jacket have a * * * than do those covered in PVC, Rayovac * * *. * * *.[55]

As noted earlier, Mutec and Power Plus, which both use the pressure-sensitive PVC system, import battery covers from Zweckform for use in their manufacturing operations. Mutec's Japanese parent (Matsushita) and the owner of Power Plus (Cegasa) also purchase covers from Zweckform.

Additional information regarding purchasing decisions among suppliers and pricing is presented in the section of this report on "Market characteristics and prices."

Channels of distribution

Imported and domestic battery covers are marketed and shipped by manufacturers directly to end users, which are the battery producers. Battery covers are produced to the specifications of the battery manufacturers. No known producer ships or markets more than one type of cover to a U.S. customer.

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[52] According to Duracell's supplier, the "metal" in any cover will become distorted or faded when heated during the application process. (As explained previously, "metal" is therefore not used in sleeves where the entire label is heated at application.) However, even in pressure-sensitive labels there is distortion where the covers are heated at the top and bottom of the battery. This is not normally a problem since any such distortion is masked by the colors used at the top and bottom. * * *. (Staff conversation with officials at CMS Gilbreth, Feb. 1, 1990.) * * * of Duracell confirmed that * * *. (Staff conversation, Feb. 12, 1990.)

[53] According to * * *, Duracell Canada chose the pressure-sensitive PVC system for * * *. * * *. (Staff conversation, Feb. 9, 1990.)

[54] Staff conversation with * * *, Eveready Battery Co., Feb. 6, 1990.

[55] Staff conversation with * * *, Rayovac, Jan. 24, 1990.

Consideration of Alleged Material Injury to an Industry in the United States

Data in the following sections are shown separately for pressure-sensitive PVC battery covers and, where available, for all battery covers. Available data for CMS Gilbreth, which accounted for *** percent in 1988 of reported U.S. production of sleeve PVC battery covers, are presented in appendix C.

U.S. production, capacity, and capacity utilization

Data for the production, capacity, and capacity utilization of the firms producing pressure-sensitive PVC battery covers are summarized in table 6.

Table 6
Pressure-sensitive PVC battery covers: U.S. producers' average-of-period capacity, production, and capacity utilization, by firms, 1986-88, January-September 1988, and January-September 1989

Firm	1986	1987	1988	Jan.-Sept.-- 1988	Jan.-Sept.-- 1989
	Capacity (million covers)				
Label Resources 1/	***	***	***	***	***
National Label 2	***	3/ ***	***	***	***
Total	***	***	***	***	***
	Production (million covers)				
Label Resources	***	***	***	***	***
National Label	***	3/ ***	***	***	***
Total	***	***	***	***	***
	Average-of-period capacity utilization (percent) 4/				
Label Resources	***	***	***	***	***
National Label	***	3/ ***	***	***	***
Average	***	***	***	***	***

1/ Reported capacity based on operating *** hours per week, *** weeks per year.
2/ Reported capacity based on operating *** hours per week, *** weeks per year.
3/ Data are for *** months. Production operations began * * * 1987.
4/ Ratios are calculated from unrounded data.

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

Average-of-period capacity to produce increased by *** percent from 1986 to 1988, reflecting the start-up of National Label, which began production operations in * * * 1987. Capacity * * * during the interim periods. Each of the two producers reports a capacity that * * * of pressure-sensitive PVC battery covers. It should be noted that measurement of capacity is not precise for this industry. Capacity will vary according to the mix (i.e., size of the covers) produced. Also, both domestic producers utilize their production equipment to manufacture other labelling products. [56]

Production of pressure-sensitive PVC battery covers has risen steadily, increasing by *** percent from 1986 to 1988; between January-September 1988 and January-September 1989 (after National Label reached full production), production again increased by *** percent. Between January-September 1988 and January-September 1989, production of the subject covers by National Label * * * from *** to *** covers as a result of * * *. Label Resources, which accounted for 100 percent of U.S. production in 1986, comprised *** percent of the two firms' aggregate production in January-September 1989.

Capacity utilization as reported by both domestic producers for January-September 1989 is * * *. If both firms were able to utilize their equipment and machinery solely for the production of battery covers, capacity utilization would have been *** percent in 1988, rising to *** percent in January-September 1989. [57]

U.S. producers' shipments and inventories

The quantity of U.S. shipments of pressure-sensitive PVC battery covers increased by *** percent from 1986 to 1987, by *** percent from 1987 to 1988, and rose again by *** percent between January-September 1988 and January-September 1989 (table 7). The value of U.S. shipments increased by *** percent from 1986 to 1987, by *** percent from 1987 to 1988, and by *** percent between January-September 1988 and January-September 1989.

There is no intracompany consumption of the subject product by either producer. Export shipments, which accounted for *** percent of total shipments from 1986 to September 1989, were made to * * *.

The unit values per 1,000 covers reported by Label Resources * * * from $*** in 1986 (* * *) to $*** in January-September 1989. * * *, the unit values per 1,000 covers reported by National Label ranged from $*** in 1987 to $*** in * * *. * * *. (Larger covers of triplex are the most expensive). Today, National Label produces an equal amount of duplex and triplex covers. (Two years ago, 75 percent of its output was triplex.) Label Resources

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[56] Label Resources and National Label estimated that *** and *** percent, respectively, of their current utilized capacity is devoted to the manufacture of the subject product.

[57] Officials for both domestic producers have stated * * *. (Petitioner further states that its investment of $*** in the roto-gravure line can only be justified financially by dedicating it to producing battery covers.)

Table 7
Pressure-sensitive PVC battery covers: Producers' U.S. shipments 1/ and export shipments, by firms, 1986-88, January-September 1988, and January-September 1989

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
	Quantity (million covers)				
U.S. shipments:					
Label Resources.....	***	***	***	***	***
National Label.....	***	2/ ***	***	***	***
Total.....	***	***	***	***	***
Export shipments:					
Label Resources.....	***	***	***	***	***
National Label.....	***	2/ ***	***	***	***
Total.....	***	***	***	***	***
	Value (1,000 dollars)				
U.S. shipments:					
Label Resources.....	***	***	***	***	***
National Label.....	***	2/ ***	***	***	***
Total.....	***	***	***	***	***
Export shipments:					
Label Resources.....	***	***	***	***	***
National Label.....	***	2/ ***	***	***	***
Total.....	***	***	***	***	***
	Unit value (per 1,000 covers) 3/				
U.S. shipments:					
Label Resources.....	$***	$***	$***	$***	$***
National Label.....	***	2/ ***	***	***	***
Average.....	***	***	***	***	***
Export shipments:					
Label Resources.....	***	***	***	***	***
National Label.....	***	2/ ***	***	***	***
Average.....	***	***	***	***	***

1/ U.S shipments equal domestic shipments. Neither Label Resources nor National Label reported any intracompany consumption of pressure-sensitive PVC battery covers.
2/ Data are for *** months. Production operations began in * * * 1987.
3/ Prices are generally quoted as dollars per 1,000 covers. Unit values are calculated from unrounded data.

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

manufactures only a duplex product. The following tabulation presents shipments by battery sizes (in percent of quantity): [58]

Size of cover	Label Resources	National Label
AAA.....	***	***
AA.....	***	***
C.....	***	***
D.....	***	***
Other.....	***	***
Total.....	100.0	100.0

Reported U.S. shipments for all types of battery covers are presented in table 8.

End-of-period inventories of pressure-sensitive PVC battery covers are reported in the following tabulation:

Period	Inventory (1,000 covers)	Share of U.S. shipments (percent)
1986.....	***	***
1987.....	***	***
1988.....	***	***
Jan.-Sept.--		
1988.....	***	***
1989.....	***	***

Inventories were reported * * *. * * *.

[58] Data for Label Resources are for fiscal year 1989; data for National Label are for January-September 1989.

Table 8
Battery covers: Producers' U.S. shipments, 1/ by types of cover, 1986-88, January-September 1988, and January-September 1989

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
	Quantity (million covers)				
U.S. shipments:					
Pressure-sensitive PVC.....	***	***	***	***	***
Sleeve PVC.....	***	***	***	***	***
Subtotal.....	***	***	***	***	***
Polyester.....	***	***	***	***	***
Metal jacket.....	***	***	***	***	***
Total.....	2,268	2,707	3,141	2,237	2,290
	Value (1,000 dollars)				
U.S. shipments:					
Pressure-sensitive PVC.....	***	***	***	***	***
Sleeve PVC.....	***	***	***	***	***
Subtotal.....	***	***	***	***	***
Polyester.....	***	***	***	***	***
Metal jacket.....	***	***	***	***	***
Total.....	23,926	27,052	30,715	22,556	22,755
	Unit value (per 1,000 covers) 2/				
U.S. shipments:					
Pressure-sensitive PVC.....	$***	$***	$***	$***	$***
Sleeve PVC.....	***	***	***	***	***
Average.....	***	***	***	***	***
Polyester.....	***	***	***	***	***
Metal jacket.....	***	***	***	***	***
Average.....	10.55	9.99	9.78	9.66	9.94

1/ U.S shipments equals domestic shipments plus intracompany consumption.
2/ Prices are generally quoted as dollars per 1,000 covers. Unit values are calculated from unrounded data.

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

Employment and productivity

Data on employment and productivity for the U.S. industry are shown in table 9. The number of workers, hours worked, and total compensation paid to workers producing pressure-sensitive PVC battery covers increased steadily by *** percent, *** percent, and *** percent, respectively, from 1986 to 1988. These increases, again, reflect the startup in operations of National Label. For the interim periods, after National Label was in full operation, the number of workers, hours worked, and total compensation paid again increased, by *** percent, *** percent, and *** percent, respectively.

Hourly wages paid by National Label were * * *, ranging from $*** to $*** per hour, in contrast with * * *. Productivity for the two firms is shown in the following tabulation (in 1,000 covers per hour):

Period	Label Resources	National Label
1986.....	***	***
1987.....	***	***
1988.....	***	***
Jan.-Sept.--		
1988.....	***	***
1989.....	***	***

In 1987 and 1988, productivity for National Label was * * *. * * *. * * *.[59]

Neither the workers for Label Resources nor National Label is represented by a union. Also, in response to a question on the Commission's questionnaire, * * * reported reducing the number of production and related workers producing pressure-sensitive PVC battery covers by at least 5 percent or 50 workers at any time since January 1, 1986.

[59] The size ranges and configurations (i.e., the product mix) of the battery covers produced by Label Resources and National Label vary. This, along with the not insignificant time required to switch production machinery for new runs, should be taken into account when comparing data on productivity and unit labor cost.

Table 9
Pressure-sensitive PVC battery covers: Average number of production and related workers, hours worked, total compensation, hourly wages paid, productivity, and unit labor costs, 1986-88, January-September 1988, and January-September 1989 1/ 2/

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
Production and related workers producing--					
All products	***	***	***	***	***
Pressure-sensitive PVC battery covers	***	***	***	***	***
Hours worked by production and related workers producing--					
All products (1,000 hours)	***	***	***	***	***
Pressure-sensitive PVC battery covers (1,000 hours)	***	***	***	***	***
Total compensation paid to production and related workers producing--					
All products (1,000 dollars)	***	***	***	***	***
Pressure-sensitive PVC battery covers (1,000 dollars)	***	***	***	***	***
Hourly wages paid to production and related workers producing--					
All products	$***	$***	$***	$***	$***
Pressure-sensitive PVC battery covers	$***	$***	$***	$***	$***
Productivity of production and related workers producing pressure-sensitive PVC battery covers (1,000 covers per hour)	***	***	***	***	***
Unit labor cost 3/ for pressure-sensitive PVC battery covers (per 1,000 covers)	$***	$***	$***	$***	$***

1/ Employment data corresponds to 100 percent of shipment data reported in response to the Commission's questionnaire.
2/ Production operations for National Label began in * * * 1987. Thus, 1986 data includes operations only for Label Resources; 1987 data includes National Label's operations for *** months.
3/ On the basis of total compensation paid.

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

Financial experience of U.S. producers

The two primary U.S. producers of pressure-sensitive PVC battery covers provided income-and-loss data on the overall operations of their establishments within which the subject battery covers are produced, and separate income-and-loss data on their pressure-sensitive PVC battery cover operations. The two producers accounted for virtually 100 percent of reported U.S. production of pressure-sensitive PVC battery covers during the period covered by the investigation.

Overall establishment operations.--On the basis of sales values in 1988, pressure-sensitive PVC battery cover operations were *** percent of overall operations. Products produced in the establishments, in addition to the subject battery covers, consist of various types of labels.

Sales of the establishment operations showed * * * throughout the period of investigation, from $*** in 1986 to $*** in 1987 and to $*** in 1988, or * * * of *** percent in the 1986-88 period (table 10). The sales results in January-September 1989 also show * * * over January-September 1988, but at a * * * than between 1987 and 1988. Sales * * * from $*** in January-September 1988 to $*** during the same period in 1989, or by *** percent compared with the *** percent * * * of annual sales from 1987 to 1988.

Table 10
Income-and-loss experience of U.S. producers 1/ on their overall establishment operations within which pressure-sensitive PVC battery covers are produced, accounting years 1986-88, January-September 1988, and January-September 1989

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
			Value (1,000 dollars)		
* * *	*	*	*	*	*
			Share of net sales (percent)		
* * *	*	*	*	*	*
			Number of firms reporting		
* * *	*	*	*	*	*

1/ Label Resources and National Label.

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

Operating income, after a * * * of *** percent from 1986 to 1987, * * * by *** percent to $*** in 1988 from $*** in 1987. The 1988 operating income was $*** * * * the $*** reported in 1986. Operating income as a percent of net sales, however, showed * * * overall, with rates of *** percent, *** percent, *** percent, *** percent, and *** percent for 1986, 1987, 1988, January-September 1988, and January-September 1989, respectively.

Pressure-sensitive PVC battery cover operations.--The petitioner, National Label, began production of the subject battery covers in * * * 1987, under an exclusive licensing agreement with Zweckform. The agreement, however, was terminated abruptly shortly thereafter, causing * * *. These * * *, combined with * * * have contributed to * * *.

Aggregate net sales * * * from $*** in 1986 with one producer to $*** in 1987 with two producers, and to $*** in 1988 with the same producers (table 11). * * * aggregate net sales * * * by *** percent during 1986-88, and by *** percent in January-September 1989 compared with the same period in 1988; operating income showed a * * * during the same periods, on account of * * *. Operating income in 1986, which reflects Label Resources' operations, was $***, then * * * to $*** in 1987 when National Label entered the market. There was an * * * in 1988 when operating income * * * to $***, but there was another * * * in January-September 1989, compared with the same period in 1988. Operating income as a percent of net sales was *** percent in 1986, ***

Table 11
Income-and-loss experience of U.S. producers 1/ on their operations producing pressure-sensitive PVC battery covers, accounting years 1986-88, January-September 1988, and January-September 1989

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
	Value (1,000 dollars)				
* * *	*	*	*	*	*
	Share of net sales (percent)				
* * *	*	*	*	*	*
	Number of firms reporting				
* * *	*	*	*	*	*

1/ Label Resources and National Label.

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

percent in 1987, *** percent in 1988, *** percent in January-September 1988, and *** percent in January-September 1989.

Selected financial data for the two producers on their pressure-sensitive PVC battery cover operations are shown in the tabulation below (in thousands of dollars, except where noted):

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989	
*	*	*	*	*	*	*

* * *. * * *. * * *. * * *. National Label's unit cost for the "duplex" base material is about * * * than the cost of the "triplex" that was used exclusively in 1987; the duplex base material was used for approximately 50 percent of its 1989 production of pressure-sensitive PVC battery covers. Label Resources has used the * * * duplex base material exclusively throughout the period of investigation, with costs that average approximately *** percent * * *. Selected per-unit revenues and costs for the respective producers are shown in the following tabulation (in dollars per 1,000 units):

Item	1986 1/	1987	1988	Jan.-Sept.-- 1988	1989	
*	*	*	*	*	*	*

1/ National Label's pressure-sensitive PVC battery operations began in * * * 1987.

Note: Per-unit values are determined by dividing total dollar amounts by total units sold; therefore, apparent changes in per-unit values may be the result of changes in product mix rather than across-the-board unit increases or decreases in the individual line items. Also, the product mix sold by the respective producers is different: National Label sells a significant portion of the more expensive triplex labels and sells primarily size * * * battery covers, whereas Label Resources sells duplex battery covers exclusively and sells primarily size * * * battery covers.

Value of plant, property, and equipment.--The data provided by the U.S. producers on the end-of-period investment in productive facilities in which pressure-sensitive PVC battery covers are produced are shown in the following tabulation (in thousands of dollars):

Item	1986	1987	1988	As of Sept. 30-- 1988	1989	
*	*	*	*	*	*	*

Return on total assets.--The annual rates of return on total assets [60] for the U.S. producers are shown for total establishment and pressure-sensitive PVC battery cover operations in the following tabulation:

Item	1986	1987	1988	1989 1/
*	*	*	*	*

1/ January-September 1989 data are annualized.

Capital expenditures.--Aggregate capital expenditures by the U.S. producers on pressure-sensitive PVC battery covers * * * from $*** in 1986 to $*** in 1987, or by *** percent (table 12). Capital expenditures also * * * in 1988, but * * * in January-September 1989 compared with the level of capital expenditures in 1988. Throughout the period covered by the investigation, * * * of the capital expenditures was for * * *.

Table 12
Pressure-sensitive PVC battery covers: Capital expenditures by U.S. producers, accounting years 1986-88, January-September 1988, and January-September 1989

(In thousands of dollars)

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
*	*	*	*	*	*

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

Research and development expenses.--Research and development expenses by U.S. producers are shown in the following tabulation (in thousands of dollars):

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
*	*	*	*	*	*

[60] Defined as operating income or net income before taxes divided by total assets, with total establishment assets apportioned to pressure-sensitive PVC battery cover operations on the basis of the ratio of respective book values of property, plant, and equipment.

Capital and investment.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of pressure-sensitive PVC battery covers from West Germany on their growth, investment, development and production efforts (including efforts to develop a derivative or more advanced version of the product), and on their ability to raise capital. Their responses are shown in appendix D.

Consideration of the Question of Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (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 any merchandise, the Commission shall consider, among other relevant factors [61]--
>
> (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,

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[61] 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 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. [62]

Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) 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." Item I, regarding subsidies, and item IX, regarding agricultural products, are not relevant in this case. Parties and staff are unaware of any dumping findings in third countries concerning pressure-sensitive PVC battery covers from West Germany. Available information on U.S. inventories of the imported product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items

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[62] 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."

(II), (VI), and (VIII) above); and any other threat indicators, if applicable (item (VII) above), follows.

The pressure-sensitive PVC battery cover industry in West Germany and its ability to generate exports

The Commission requested counsel for the respondent in the subject investigation (Zweckform Etikettiertechnik Gmbh or "Zweckform") [63] to provide information on its client's pressure-sensitive PVC battery cover operations. The data requested consisted of practical capacity, production, home-market shipments, shipments to the United States, other export shipments, and end-of-period inventories, for 1986-88, January-September 1988-89, and projected for 1989 and 1990.

Zweckform developed its pressure-sensitive PVC battery cover system in the early 1980s, and today markets the product throughout the world. [64] Zweckform holds the German and European patents for its system. It also produces other types of self-adhesive film and paper labels for a variety of items; in 1989, pressure-sensitive PVC battery covers accounted for approximately *** percent of its total sales. In addition to pressure-sensitive battery covers of PVC, Zweckform manufactures battery covers of polyester. [65] These covers, * * * constitute *** percent of its total battery cover sales in its most recent fiscal year. Zweckform produces * * * pressure-sensitive PVC battery covers, * * * the triplex product is currently marketed in the United States. Data on Zweckform's operations for the subject product and (where necessary, additional labelling products) are presented in table 13.

Production of all products on the roto-gravure lines * * * by *** percent from 1987 to 1988; an additional *** percent * * * is projected in 1989. Capacity also * * * by *** percent, from *** running hours in 1987 to *** running hours in 1988, due to * * *. * * *. Capacity utilization has * * *. [66]

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[63] Zweckform is a subsidiary of Steinbeis & Consorten GmbH.

[64] Zweckform is the only other known world producer of the subject product (i.e., in addition to National Label and Label Resources). Petitioner stated at the conference that there may be an additional producer in Japan. (Conference transcript, p. 37.)

[65] The pressure-sensitive PVC battery covers produced by Zweckform are used exclusively on alkaline batteries; the battery covers of polyester are placed on carbon-zinc, zinc-chloride, and rechargeable nickel-cadmium and lithium batteries.

[66] According to the respondent, * * *.

Table 13
Salient data on the pressure-sensitive PVC battery cover industry in West Germany, 1986-89, January-September 1988, January-September 1989, and projected data for 1990

Item	1986	1987	1988	1989	Jan.-Sept. 1988	Jan.-Sept. 1989	Projected 1990
Production (running hours) 1/.....	***	***	***	***	***	***	***
Capacity (running hours) 1/ 2/.....	***	***	***	***	***	***	***
Capacity utilization 1/ (percent)..	***	***	***	***	***	***	***
Shipments: 3/							
Home market (1,000 dollars).....	***	***	***	***	***	***	***
Exports--							
To the United States (1,000 dollars).....	***	***	***	***	***	***	***
To all other countries (1,000 dollars) 4/.....	***	***	***	***	***	***	***
Total shipments (1,000 dollars)..	***	***	***	***	***	***	***

1/ Data for all labels, including pressure-sensitive PVC battery covers. Note 1 below addresses why production and capacity data were available only in aggregate form, in running hours.
2/ Capacity data are based on an operating period of (for 1989) ***. (The work week varies slightly for 1988.) Note 2 below provides the methodology used by respondent to calculate capacity.
3/ Data are only for pressure-sensitive PVC battery covers. Note 3 below addresses why only value data are available.
4/ ***.

Note 1.--Zweckform maintains production statistics for its roto-gravure lines (the machinery on which battery covers are produced) only in running hours. [67] It does not maintain separate quantity data by type of product (i.e., battery cover, label type). Because of the complex mix of battery covers of different sizes and numbers of colors and the variety of labels it produces, accurate estimates cannot be derived. In 1989, *** percent of the capacity of its roto-gravure machines was devoted to the production of other labelling products.

Note 2.--As noted above, 1989 capacity is based upon * * *. Respondent states that additional work time per shift is generally not permitted under labor provisions in West Germany. Based upon this shift pattern, theoretical maximum production time is *** running hours in 1989. This has been adjusted downward to *** running hours (for 1989) due to * * *. Respondent adds that * * *.

Table continued on next page.

[67] If finished PVC base material is purchased, capital expenditures for the roto-gravure machinery are the most significant portion of the remaining expenditure required to produce pressure-sensitive PVC battery covers.

Continuation of table.

Note 3.--Zweckform maintains its accounts only in deutschmarks; quantity data are not maintained and cannot be accurately estimated because of the varying product mix. The data were converted into U.S. dollars by applying the annual deutschmark-to-U.S. dollar conversion rate.

Source: Information supplied by Rogers & Wells, counsel for Zweckform, in submissions dated Feb. 7, 1990, and Feb. 21, 1990.

The respondent currently owns and operates *** roto-gravure lines. * * *. [68] In assessing respondent's ability to increase its capacity for pressure-sensitive PVC battery covers alone, the petitioner maintains that, because such battery covers are the highest value-added product that can be produced on roto-gravure lines, Zweckform has a powerful incentive to engage in product shifting. [69] Respondent replies that the nonbattery labels are * * * and that diversity of production is of importance to Zweckform. [70]

The following tabulation presents the shares (in percent) of Zweckform's total shipments of pressure-sensitive PVC battery covers by destination:

Destination	1987	1988	1989	Projected 1990
Home-market.....	***	***	***	***
United States.....	***	***	***	***
Other export markets..	***	***	***	***
Total.....	100.0	100.0	100.0	100.0

Shipments to the United States amounted to *** percent of Zweckform's total shipments of pressure-sensitive PVC battery covers in 1987, zero in 1988, *** percent in 1989, and *** percent (projected) in 1990. The shipments made to the United States in 1987 were to the petitioner, National Label, for delivery to Eveready. The respondent states that * * * of current 1989 U.S. shipments and projected 1990 shipments represent a shift or re-direction of sales of batteries from Matsushita in Japan to Matsushita's new affiliate, Mutec, in the United States. [71]

Respondent maintains that * * *. In 1988, the value of apparent U.S. consumption of pressure-sensitive PVC battery covers (* * * by Eveready) was equal to *** percent of total worldwide shipments of Zweckform.

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[68] Information supplied by counsel for Zweckform, Feb. 21, 1990.

[69] Petitioner's postconference brief, p. 54.

[70] Respondent's postconference brief, pp. 38-39.

[71] Respondent's postconference brief, p. 43.

U.S. inventories of pressure-sensitive PVC battery covers from West Germany

U.S. importers of pressure-sensitive PVC battery covers reported that the following end-of-period inventories of the subject product were held in the United States (in thousands of covers):

1986.....	***
1987.....	***
1988.....	***
Jan.-Sept.--	
1988.....	***
1989.....	***

The foreign manufacturer, Zweckform, * * *.

Discussion of the future U.S. market for pressure-sensitive PVC battery covers

In the course of this investigative proceeding, petitioner has identified several events or factors which it maintains will lead to future changes in the U.S. market, and, more specifically, to changes in Zweckform's role in that market. These factors include:

(1) the potential increase in the U.S. market for pressure-sensitive PVC battery covers that resulted from the December 1987 formation of Mutec; and

(2) its perception that Zweckform intends to begin selling directly to Eveready, the petitioner's major customer.

The petitioner bases its conclusions regarding Zweckform's intentions (in part) upon the following:

(1) Zweckform's (disputed) termination of National Label's license to manufacture and sell triplex labels in the United States in December 1988 following the November 1988 notice of the award of the U.S. patent for the triplex product to Zweckform;

(2) a March 1989 meeting between Zweckform and Eveready (the petitioner's major customer) during which Zweckform's entrance into the U.S. market allegedly was discussed; and

(3) the April 1989 meeting in London between James Shacklett, chief executive officer of National Label, and key Zweckform officials, during which Mr. Shacklett states that he was given a choice of selling his "battery cover business to Zweckform, or being driven out of the battery cover business through deliberate, below-cost pricing by Zweckform in the United States)." [72] [73]

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[72] Petitioner's postconference brief, pp. 3, 7-21.

[73] The respondent "categorically" denies that Zweckform stated that it would attempt to injure National Label by dumping and below-cost sales. (Postconference brief, p. 44.)

With reference to Zweckform's place in the U.S. market, respondent adds that the outcome of National Label's lawsuit, currently in the U.S. District Court for the Northern District of Georgia, is of key importance. [74] [75]

As discussed earlier, Mutec began manufacturing operations (for 9-volt batteries using metal jackets) in * * * 1989; it first purchased pressure-sensitive PVC battery covers in * * * 1989. Additional information as well as projections on its potential importance within the U.S. market is provided in the following section entitled "U.S. market penetration by imports." * * *. [76]

Eveready Battery Co. purchased over *** percent of all pressure-sensitive PVC battery covers produced or imported into the United States in January-September 1989, and is the major customer for both the petitioner and Label Resources. The petitioner maintains that fear of LTFV sales by Zweckform to Eveready led it to price defensively, thus creating an unprofitable price level. It, in part, attributes its concern to events allegedly occuring at the March 1989 meeting between key Zweckform officials and Eveready purchasing agents. The account of the meeting given to James Shacklett, CEO of National Label, is presented in affidavit form as Exhibit 6 to the petitioner's postconference brief. Respondent maintains that the only competition for Eveready is between the two U.S. producers; the purpose of its meeting with Eveready was to discuss pricing for the battery covers it supplies to Eveready's manufacturing plants in Europe. [77] Zweckform did not

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[74] Respondent states: "The short answer to the threat question is that National Label's lawsuit in federal district court, begun last year, seeks to determine whether Zweckform or National Label has the exclusive legal right to exploit the Zweckform technology in the United States. The court case will address whether Zweckform rightfully terminated the licensing agreement with Petitioner." (Postconference brief, p. 37.) Counsel for respondent further stated at the conference: "If Zweckform loses that case, Zweckform cannot sell in the U.S. market. If National Label loses that case, National Label cannot sell in the U.S. market." (Conference transcript, p. 83.) The court case may be decided in late 1990 or 1991.

[75] It should be noted that the current court case concerns only triplex labels. The patent for duplex labels is still pending. However, if Zweckform obtains that patent, petitioner has stated that it would also then have exclusive rights to the duplex patent in the United States under its license agreement with Zweckform. (Conference transcript pp. 39-40.)

[76] * * *, of Mutec, further stated that * * *. * * *. * * *. * * *. (Staff conversation with * * *, Feb. 14, 1990.)

[77] * * *. (Staff conversation with * * *, Feb. 6, 1990.)

bid for or present any pricing information concerning the sale of battery covers to Eveready in the United States. [78]

Commission staff contacted Eveready to request information on the content and nature of the discussion held during the March 1989 meeting between Zweckform and Eveready purchasing officials. [79] Eveready responded to the Commission's request in a letter dated February 19, 1990. In its letter, Eveready * * * the following:

(1) That * * *. Eveready states "* * *. * * *. * * *."

(2) That * * *. Eveready states "* * *. * * * . . . * * *."

(3) That * * *. "It is Eveready's recollection that * * * . . . * * * . . . * * *."

(4) That * * *. "Eveready recalls * * *."

Eveready did not address in its response * * *. [80] [81] [82]

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[78] Respondent's postconference brief, 17-19.

[79] Specifically, Commission staff requested that Eveready address whether Zweckform had (1) indicated whether it would be interested in entering the U.S. market; (2) discussed or provided information on the status of its licensing agreement with National Label and the status of the U.S. patent for the triplex product; and/or (3) discussed conditions under which sales to Eveready might take place (i.e., source of producing facility; products to be supplied). The Commission further requested that Eveready provide information on its response or reaction to any statements made by Zweckform and to describe any other contacts between itself and Zweckform concerning these issues.

[80] James Shacklett, in his affidavit concerning the March 1989 meeting, stated he was told that "Zweckform was interested in selling battery covers produced at its factory in West Germany to Eveready in the United States." (Petitioner's postconference brief, Exhibit 6.)

[81] * * *. (Conversation with * * *, Eveready, Feb. 6, 1990.)

[82] Respondent provided a copy of a translated internal memorandum (dated Mar. 21, 1989) to the Commission which discusses the Eveready meeting. According to the memorandum: "* * *."

In the memorandum, there is also the statement that: "* * *. * * *. * * *." Respondent, in its Feb. 21, 1990, letter to the Commission, states that discussion regarding this product rose while * * *. * * *. (Information supplied by counsel for Zweckform, Feb. 21, 1990, pp. 7-8 and attachment.)

Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury

U.S. imports of battery covers

Imports of pressure-sensitive PVC battery covers and other types of covers (including PVC sleeve battery covers and metal jackets) are presented in table 14. As described in the section of this report entitled "Importers of pressure-sensitive PVC battery covers," imports of the subject product have not been continuous, and consist of National Label's purchases from Zweckform (to supply its customer, Eveready) in 1986 and 1987 and Mutec's and Power Plus' 1989 purchases from Zweckform. There were no imports of the subject product in 1988. Imports of pressure-sensitive PVC battery covers from West Germany amounted to *** covers valued at $*** in 1986, *** covers valued at $*** in 1987, and *** covers valued at $*** in January-September 1989. The unit value of imports from West Germany * * * from $*** and $*** in 1986 and 1987, respectively, to $*** in 1989 when imports resumed. In addition, *** pressure-sensitive PVC battery covers were imported from West Germany during October-December 1989, and Mutec has ordered *** covers during the first quarter of 1990.

Imports of sleeves ceased in 1987; imports of metal jackets have fluctuated between *** and *** covers annually. No imports of polyester battery covers were reported.

U.S. market penetration by imports

Data on the penetration of imports from West Germany into the U.S. pressure-sensitive PVC battery cover market are presented in table 15. Market penetration of imports decreased from *** percent in 1986 to *** percent in 1987, as National Label replaced its import purchases with domestic production, and to zero in 1988. In January-September 1989, import penetration was *** percent. This ratio includes purchases made by Mutec beginning in * * * 1989. [83] Due to a * * * increase in imports during the fourth quarter of 1989, estimated import penetration (by quantity) of the subject product for calendar year 1989 is *** percent. [84]

Based on sales to Mutec alone, import penetration of pressure-sensitive PVC battery covers from West Germany can be expected to be * * * in 1990 than in 1989. [85] As noted previously, Mutec has recently begun manufacturing operations and is continuing to transfer production from its Japanese parent

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[83] It does not include purchases by Power Plus of America from Zweckform that did not enter the United States until October or November 1989.

[84] Estimate is based upon actual imports and projected 1989 U.S. producers' total domestic shipments.

[85] This presumes continued purchases from Zweckform; * * *.

Table 14
Pressure-sensitive PVC, sleeve PVC, and metal jacket battery covers: 1/
U.S imports for consumption, by types of cover and by sources, 1986-88,
January-September 1988, and January-September 1989

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
	Quantity (1,000 covers)				
Pressure-sensitive PVC:					
West Germany	***	***	***	***	***
All other sources	***	***	***	***	***
Subtotal	***	***	***	***	***
Sleeve PVC 2/	***	***	***	***	***
Metal jackets 2/	***	***	***	***	***
Total	***	***	***	***	***
	Value (1,000 dollars) 3/				
Pressure-sensitive PVC:					
West Germany	***	***	***	***	***
All other sources	***	***	***	***	***
Subtotal	***	***	***	***	***
Sleeve PVC	***	***	***	***	***
Metal jackets	***	***	***	***	***
Total	***	***	***	***	***
	Unit value (per 1,000 covers) 4/				
Pressure-sensitive PVC:					
West Germany	$***	$***	$***	$***	$***
All other sources	***	***	***	***	***
Average	***	***	***	***	***
Sleeve PVC	***	***	***	***	***
Metal jackets	***	***	***	***	***
Average	***	***	***	***	***

1/ No imports of polyester battery covers were reported.
2/ Imports were from Japan.
3/ Landed, duty-paid value.
4/ Prices are generally quoted as dollars per 1,000 covers.

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

Table 15
Pressure-sensitive PVC battery covers: U.S. producers' U.S. shipments, U.S. importers' U.S. shipments, apparent U.S. consumption, and importers' U.S. shipments as a share of apparent U.S. consumption, 1986-88, January-September 1988, and January-September 1989

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
			Quantity (million covers)		
*	*	*	*	*	*	*
			Value (1,000 dollars)		
*	*	*	*	*	*	*
			Percentage distribution of the quantity of consumption		
*	*	*	*	*	*	*
			Percentage distribution of the value of consumption		
*	*	*	*	*	*	*

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

to the United States. [86] Purchases of imports averaged *** covers per month for * * * through September 1989. For November 1989 through March 1990, an average of *** covers per month were received or ordered.

The petitioner estimates that the market share of subject imports in 1990 will range between *** percent and *** percent. [87]

Market characteristics and prices

The demand for battery covers depends upon the demand for dry-cell batteries, which in turn depends upon consumer demand for new products that

[86] As production is shifted from Japan to the United States, production of batteries by Mutec (and its consequent purchases of battery covers) will increase. According to * * *, * * *. * * *. (Staff conversation with * * *, Mutec, Feb. 14, 1990.)

[87] Petitioner's postconference brief, Exhibit 9. Petitioner's estimates are based upon the following assumptions: (1) that apparent U.S. consumption will increase by 7.5 percent from 1989 to 1990 (based on Kodak's market estimate); (2) that Zweckform's projected sales to the United States will approximate purchases by Mutec; and (for the second, and higher, estimate) (3) that the rate of orders by Mutec for the first quarter of 1990 (*** covers) will continue throughout 1990.

include dry-cell batteries and upon the need to replace worn out batteries. The most commonly used dry-cell battery sizes in the U.S. battery market are AAA, AA, C, and D. [88]

Battery producers currently use three battery cover materials: PVC covers, metal covers, and polyester covers. [89] Most alkaline batteries are covered with either pressure-sensitive or sleeve PVC covers whereas most zinc-based batteries are encased with either a metal or polyester cover. Rayovac is the only producer with less than *** percent of its alkaline batteries covered with PVC material. Currently, *** percent of Rayovac's alkaline batteries are covered with PVC material. In addition to its alkaline batteries, *** of Eveready's nickel-cadmium batteries are produced with PVC covers, while *** its lithium batteries are produced with metal covers. On the other hand, Duracell reported that * * * its lithium batteries are produced with PVC covers.

Prior to the availability of PVC battery covers, all alkaline batteries had metal or polyester covers, and these covers are potential substitutes for PVC covers. However, the two types of PVC battery covers that were developed in the mid-1980's, pressure-sensitive and sleeve, are vastly superior to the other covers. The PVC covers are not only considerably thinner, but also meet or exceed the durability, flexibility, and strength characteristics of the other covers. The thinner wall of the PVC covers gives space in the battery for more dry-cell material (electrolytic manganese dioxide or EMD) and thus creates a longer-lasting battery. As a result, the demand for PVC battery covers has increased, and according to a 1988 survey, alkaline batteries constitute nearly 85 percent of the demand for dry-cell batteries. [90]

Petitioner states that PVC battery covers are also less expensive per unit than other covers; however, battery manufacturers incur considerable startup costs with PVC covers because of the initial investment in necessary machinery. According to petitioner, battery manufacturers have moved to PVC covers only where the gain from achieving extended battery life exceeds the startup costs of converting to PVC cover systems. [91]

Although both pressure-sensitive and sleeve PVC covers use similar PVC material, substitution between them is not easily accomplished. The application machinery is different for the two types of PVC covers because the pressure-sensitive PVC can be "shrunk" only on the ends of the battery, whereas the sleeve PVC is "shrink-wrapped" around the battery. Also, the pressure-sensitive PVC cover is rolled onto the battery, while the sleeve PVC cover is slipped over the battery cell. Only those battery producers with the specific application equipment can use pressure-sensitive PVC battery covers.

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[88] Petition, p. 8.

[89] * * *.

[90] Nielsen Marketing Research for U.S. supermarkets with sales of $4 million and over.

[91] Petition, p. 10.

The market for pressure-sensitive PVC battery covers consists primarily of two domestic suppliers and one foreign; the major battery producers, Eveready, Duracell, and Rayovac; and two recent battery-producing entrants, Mutec and Power Plus. [92] The majority of sales of PVC covers are based on agreements varying in length from 3 months to a year that specify the price of the battery cover for each type of battery (i.e., AAA, AA, C, or D), but generally not the quantities. Eveready * * *. [93] Duracell has * * * and Rayovac's contracts * * *. Generally, a battery cover producer will receive a request for a price quotation from a battery maker. After receiving the request, the battery cover producer develops prices for varying quantity levels of each type of battery. Typically, as the quantity increases the per-unit cost decreases. In preparing the quotation the producer analyzes information such as the amount and cost of the base material, ink, and other input materials, as well as the cost of capital and labor. Once quotations have been submitted, the battery producers will choose one or two battery cover producers to supply covers. However, before selecting a supplier the purchaser may negotiate price without revealing the names of competing firms.

Prices for battery covers are quoted on an f.o.b. shipping point basis with payment terms being variations of *** percent less if paid in *** days, otherwise the full payment is due in *** days. Lead times average *** months and transportation costs are *** to *** percent of the total delivered cost.

Bid and price information.--The Commission requested bid and price information from U.S. producers and importers on all agreements made by each firm to supply PVC battery covers scheduled for shipment during 1987-90. Purchasers were also requested to supply information on all agreements for PVC battery covers scheduled for shipment during that period. Five purchasers (i.e., battery producers) and one U.S. PVC battery cover producer submitted price information. Price comparisons between the domestic and West German pressure-sensitive PVC battery covers were not made in this report because there was no direct bid competition and because of the lack of comparable sales in the spot market.

Because the number of participants in the battery cover market is small, the discussion of prices is organized according to the purchasers, Eveready, Mutec, Power Plus, Duracell, and Rayovac, then the petitioner, National Label.

Eveready.--Eveready buys battery covers based on the * * *. In 1987-89, Eveready generally contracted with suppliers * * *, and placed purchase orders * * *. * * *. * * *. When requesting bids, Eveready * * *. * * *. Contracts with suppliers set prices based * * *. When Eveready requires more battery covers than the original estimates, it * * *.

According to Eveready, the demand for battery covers has * * *. Since 1986, Eveready has seen * * * in the demand for alkaline batteries. Currently, Eveready uses pressure-sensitive PVC covers for *** percent of its

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[92] Mutec is a joint venture producing batteries for Kodak and Panasonic, * * *.

[93] In its questionnaire response, Eveready states that * * *.

alkaline batteries, *** percent for its general-purpose batteries, and *** percent of its nickel-cadmium batteries. Eveready uses metal or polyester for *** percent of its alkaline batteries, *** percent of its general purpose batteries, and *** percent of its zinc-chloride and lithium batteries.

Information on Eveready's contracts with domestic battery cover producers is presented in table 16. Eveready did not purchase imported covers in 1988 or 1989. The imported covers Eveready purchased in 1987 were through National Label. In general, the prices paid by Eveready for covers have * * * for all four sizes of consumer batteries during the period 1987-90. Eveready has purchased pressure-sensitive PVC battery covers from * * *. Eveready's purchases from National Label amounted to * * * of such covers for $*** in 1987, *** covers for $*** in 1988, and *** covers for $*** in 1989. [94] Eveready purchased from Label Resources *** such covers for $*** in 1987, *** covers for $*** in 1988, and *** covers for $*** in 1989. Pressure-sensitive covers accounted for *** percent of the value of all covers purchased by Eveready in 1987, *** percent in 1988, and *** percent in 1989.

Mutec.--Mutec, which began operations in * * * 1989, prefers the use of PVC battery covers to other battery covers because PVC battery covers allow more reactive material capacity and provide longer-life batteries. Mutec prefers pressure-sensitive PVC covers over sleeve PVC covers because they * * *. Mutec is presently purchasing triplex covers from Zweckform. According to Mutec, Zweckform is * * * technically approved and qualified source of covers. Other suppliers, including National Label, have failed to pass Mutec's qualification tests. During 1989, Mutec received sample * * * covers for testing from * * *. All failed the initial qualification testing. * * * has since submitted more samples for testing. [95] When Mutec requires more battery covers than the original estimates, it generally issues purchase orders based on the previous purchase order price. * * *.

Currently, Mutec does not purchase from * * *, but from Zweckform. [96] During 1989 all of Mutec's purchases were spot purchases. Mutec purchased *** covers for $*** from Zweckform in 1989. Although Mutec is * * *, in February and August of 1988 and August of 1989, * * * sent Mutec prices for various quantities of labels for AA battery covers. The tabulations below report

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[94] Of the *** covers Eveready purchased from National Label in 1987, *** were imported by National Label from Zweckform. These imports were made before National Label was ready to produce covers. National Label was the exclusive licensee for Zweckform.

[95] * * *, purchasing manager for Mutec, stated that * * *.

[96] * * *.

Table 16
Battery covers: Eveready's contract prices with its suppliers of battery covers, by types of cover and types of battery, 1987-90

(In dollars per 1,000 covers)

Period	Pressure-sensitive PVC		Polyester	
	National Label	Label Resources 1/	* * *	
	Alkaline		General purpose	Zinc-chloride
1987:				
AAA cell.....	1/$***	$***	-	-
AA cell.....	1/ ***	***	$***	$***
C cell.....	2/ ***	***	***	***
D cell.....	2/ ***	***	***	***
1988:				
AAA cell.....	1/ ***	***	-	-
AA cell.....	1/ ***	***	***	***
C cell.....	2/ ***	***	***	***
D cell.....	2/ ***	***	***	***
1989:				
AAA cell.....	1/ ***	***	-	-
AA cell.....	3/ ***	***	***	***
C cell.....	4/ ***	***	***	***
D cell.....	5/ ***	***	***	***
1990:				
AAA cell.....	1/ ***	***	-	-
AA cell.....	1/ ***	***	-	-
C cell.....	6/ ***	***	-	-
D cell.....	7/ ***	***	-	-

1/ Prices are for * * * covers.
2/ Prices are for * * * covers.
3/ $*** through * * * 1989 and $*** from * * * through * * * 1989.
4/ $*** for * * *, $*** for * * *.
5/ $*** for * * *, $*** for * * *.
6/ $*** for * * *, $*** for * * *.
7/ $*** for * * *, $*** for * * *.

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

these prices and the list price from * * * for AA battery covers (in dollars per 1,000 covers).

Volume	* * *	
	3 color	4 color
*** million....	1/ $*** - 2/$***	-
*** million....	3/ ***	3/ $***
*** million....	2/ *** - 1/ ***	-
*** million....	2/ *** - 1/ ***	-
*** million....	3/ ***	3/ ***
*** million....	3/ ***	3/ ***
*** million....	3/ ***	3/ ***

1/ Taken from * * *. Mutec states * * *.
2/ Taken from * * *.
3/ Taken from * * *.

Volume	Zweckform 1/			
	1 color	2 color	3 color	4 color
*** million....	$***	$***	$***	$***
*** million....	***	***	***	***
*** million....	***	***	***	***
*** million....	***	***	***	***
*** million....	***	***	***	***

1/ Zweckform's prices were taken from a price list in West German marks and converted to dollars using the third quarter 1989 exchange rate.

Power Plus.--Power Plus began operations in the United States in * * * 1988; * * *. In February 1989, it purchased covers from * * *, * * *. Power Plus then contacted National Label and received a list of price quotations (table 17).

Table 17
Pressure-sensitive PVC battery covers: Price quotations made by National Label to Power Plus, by sizes and number of colors, for 1989

(In dollars per 1,000 covers)

	Two-color stock		Three-color stock	
Quantity	* * *	* * *	* * *	* * *
*	*	*	*	*	*	*

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

Prior to any decision by Power Plus on National Label's covers, * * *. * * *. In * * * 1989, Power Plus placed a purchase order with Zweckform for specified quantities of covers for different battery types. The prices were negotiated with Zweckform by * * *. These prices, all of which are for pressure-sensitive PVC battery covers, are listed in the tabulation below. [97] [98]

Battery type	Volume (1,000 covers)	Price per 1,000 covers * * *	* * *
AAA	***	$***	$***
AA	***	***	***
C	***	***	***
D	***	***	***

Subsequently, Power Plus received shipments of pressure-sensitive PVC battery covers from Zweckform at * * *. The f.o.b. Germany invoice prices are listed in the tabulation below.

Battery type	Volume (1,000 covers) * * *	* * *	Price per 1,000 covers * * *	* * *
AAA	***	***	$***	$***
AA	***	***	***	***
C	***	***	***	***
D	***	***	***	***

* * *. According to * * *, Power Plus performs * * * tests to qualify potential suppliers of battery covers. * * *. * * *.

Duracell.--Duracell buys battery covers based on the application equipment that currently exists in its facilities. Currently, Duracell covers * * * its battery cells with sleeve PVC battery covers and * * *. [99] All bid requests by Duracell of its suppliers are * * *. Contracts with suppliers set prices based on * * *. When Duracell requires more battery covers than the original estimates, its * * * will cover this event.

According to Duracell, the demand for battery covers has increased as demand for consumer dry-cell batteries has increased. Duracell uses sleeve PVC covers for *** percent of its alkaline batteries, pressure-sensitive PVC

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[97] Power Plus provided a purchase order and invoices of its purchases from Zweckform. * * *. The tabulation provided uses the May 1989 exchange rate.

[98] * * *.

[99] * * *. * * *.

battery covers for *** percent, and metal for *** percent. Duracell also uses sleeve PVC covers for *** percent, and pressure-sensitive PVC battery covers for *** percent of its lithium batteries.

Duracell's purchases of sleeve PVC battery covers amounted to * * * of such covers for $*** in 1987, *** covers for $*** in 1988, and *** covers for $*** in 1989. * * * of Duracell's sleeve PVC battery cover purchases were from * * *. Duracell purchased from * * * *** pressure-sensitive PVC covers for $*** in 1987, *** covers for $*** in 1988, and *** covers for $*** in 1989.

Rayovac.--Rayovac switched its AA alkaline battery line to sleeve PVC battery covers in 1986 to increase battery performance. All bid requests by Rayovac of its suppliers are closed. Contracts with suppliers set prices based on the quantity level Rayovac believes it will need for * * *.

Rayovac uses sleeve PVC covers for *** percent, and metal battery covers for *** percent of its alkaline batteries. It uses sleeve PVC covers for *** percent of its zinc-chloride and general-purpose batteries.

National Label.--The first step in National Label's quoting process occurs when it receives a specific request for a price quotation from a battery producer. After receiving the request, National Label develops prices through a cost estimation process for the specific quantities of the battery covers requested. Typically, as the quantity increases the per-unit cost decreases. Information analyzed in developing prices includes the amount and cost of the base material, ink, and other input materials, as well as the cost of capital and labor.

National Label will order and supply the application machinery needed by the battery producer to apply the pressure-sensitive PVC battery cover to the battery cell. Applicators typically cost about $***.

Currently, National Label has one domestic customer, Eveready, which purchases battery covers * * *. According to National Label, Eveready * * *. Purchase orders are then made on a monthly basis. National Label states that * * *.

The lead time between orders received by National Label and delivery will be * * * if the order requires National Label to produce a battery cover with new dyes and print cylinders, and * * * for purchase orders for ongoing contracts.

According to National Label, there have been several technological developments in the past five years that have greatly enhanced National Label's ability to compete with Zweckform's battery covers. First, National Label developed a duplex material which substitutes for Zweckform's triplex material. Second, National Label believes it has developed an adhesive for its base material which is superior to the adhesive used by Zweckform. National Label believes that its adhesive reduces the likelihood of "seam lift" of pressure-sensitive battery covers. Seam lift is considered one of the most frequent and difficult problems to overcome. Third, National Label believes it uses a production technique that * * *. * * *.

National Label provided information on its contracts with Eveready. The contract prices are the same as presented by Eveready in table 16. [100]

Lost sales and lost revenues

National Label alleged that during 1988 it lost sales to Mutec because of competition from Zweckform. National Label purportedly lost sales of *** covers valued at $***. According to * * *, * * *.

According to National Label, it lost sales to Power Plus because of competition from Zweckform. National Label purportedly lost sales of *** labels valued at $***. As stated earlier, according to * * * of * * *, * * *.

According to National Label, it had to reduce its 1989 price quotes for pressure-sensitive PVC battery covers to Eveready because of competition in the U.S. market from Zweckform, the West German firm. National Label purportedly lost revenues totaling $***. Although National Label * * *. * * *. [101]

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during January 1987-December 1989 the value of the West German mark fluctuated throughout the period, depreciating overall less than 1 percent relative to the U.S. dollar (table 18). [102] Adjusted for movements in producer price indexes in the United States and West Germany, the real value of the West German currency showed an overall depreciation of 10.2 percent for the period January 1987 through the third quarter of 1989, the most recent period for which official price data are available.

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[100] * * *. * * *. * * *.

[101] See section of this report entitled "Discussion of the future U.S. market for pressure-sensitive PVC battery covers" for a discussion of a meeting between Eveready and Zweckform.

[102] International Financial Statistics, January 1990.

Table 18
Exchange rates: 1/ Nominal and real exchange rates of the West German mark, and producer price indexes in the United States and West Germany, 2/ by quarters, January 1987-December 1989

Period	U.S. producer price index	West German producer price index	Nominal exchange-rate index	Real exchange-rate index 3/
1987:				
Jan.-Mar.....	100.0	100.0	100.0	100.0
Apr.-June.....	101.6	99.7	101.9	99.9
July-Sept.....	102.8	100.1	100.0	97.4
Oct.-Dec.....	103.2	100.4	107.9	105.0
1988:				
Jan.-Mar.....	103.8	100.4	109.8	106.2
Apr.-June.....	105.6	101.1	107.7	103.1
July-Sept.....	107.1	101.6	98.6	93.5
Oct.-Dec.....	107.6	102.1	103.6	98.3
1989:				
Jan.-Mar.....	109.9	103.6	99.5	93.7
Apr.-June.....	111.8	104.4	95.1	88.9
July-Sept.....	111.3	104.6	95.6	89.8
Oct.-Dec.....	111.7	4/	99.5	4/

1/ Exchange rates expressed in U.S. dollars per West German mark.
2/ Producer price indexes--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of the International Financial Statistics.
3/ The real exchange rate represents the nominal rate adjusted for relative movements in producer prices in the United States and West Germany. Producer prices in the United States increased 11.7 percent between January 1987 and December 1989 compared to a 4.6-percent increase in West German prices as of July-September 1989, the last period for which the West German producer price index was reported.
4/ Not available.

Note.--January-March 1987=100.

Source: International Monetary Fund, International Financial Statistics, January 1990.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-452 (Preliminary)]

Pressure-Sensitive PVC Battery Covers From West Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-452 (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 West Germany of pressure-sensitive PVC battery covers, provided for in subheading 8506.90.00 of the Harmonized Tariff Schedule of the United States [1] (previously reported under item 682.95 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 5, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-252-1180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on January 19, 1990, by The National Label Company, Lafayette Hill, PA.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), 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. In accordance with sections 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application for protective order be made not later than (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 business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on February 9, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202-252-1180) not later than February 7, 1990 to arrange for their appearance. Parties in support of the imposition of antidumping 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.

Written submissions.—Any person may submit to the Commission on or before February 13, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR §§ 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in

[1] This HTS subheading encompasses parts of primary cells and primary batteries.

thieir written brief, and may also file additonal written comments on such information no later than February 16, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

Issued: January 22, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-1747 Filed 1-25-90; 8:45 am]

BILLING CODE 7020-02-M

[A-428-805]

Initiation of Antidumping Duty Investigation: Pressure Sensitive PVC Battery Covers From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of pressure sensitive PVC battery covers (battery covers) from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of battery covers from the FRG are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 5, 1990. If that determination is affirmative, we will make a preliminary determination on or before June 8, 1990.

EFFECTIVE DATE: February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Joel Fischl, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769 or (202) 377-3003, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On January 19, 1990, we received a petition filed in proper form by National Label Company. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of battery covers from the FRG 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 these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for battery covers is based on battery cover invoices issued by the West German manufacturer to a U.S. customer.

Petitioner's estimate of Foreign Market Value (FMV) for battery covers is based on (1) a 1986 price list, which is the best home and third-country market price information available to the petitioner, and (2) the petitioner's costs adjusted for known differences with the West German manufacturer's costs. Petitioner added the statutory eight percent profit minimum, pursuant to section 773(e) of the Act, to the West German manufacturer's estimated costs. We are not basing FMV on the 1986 price list noted above, because the price list is outdated, and therefore unreliable.

Petitioner also alleges sales below the cost of production. Given that the allegation is based on an outdated 1986 price list, pursuant to section 773(b) of the Act, we have determined that we do not have reasonable grounds to believe or suspect that there are sales below the cost of production. Therefore, we are not initiating a cost investigation.

Comparison of FMV, based on petitioner's costs adjusted for known differences with the West German manufacturer, and USP results in dumping margins of 38 percent to 60 percent, depending on the size of the battery cover.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on battery covers from the FRG and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of battery covers from the FRG are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 8, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Pressure sensitive PVC battery covers are designed to provide a protective and decorative cover for ready-to-use dry cell consumer batteries. Such a cover has at least two, and as many as three layers of PVC film, in addition to a layer of adhesive material and a layer of vaporized aluminum. Battery covers are currently provided for under HTS subheading 8506.90.00 003. Prior to January 1, 1989, battery covers were classifiable under item 682.9500 of the Tariff Schedules of the United States Annotated (TSUSA).

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administative protective order without the written consent of the Deputy Assistant Secretary for Investigations.

Preliminary Determination by ITC

The ITC will determine by March 5, 1990, whether there is a reasonable indication that imports of battery covers from the FRG are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: February 8, 1990.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-3804 Filed 2-16-90; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE IN THE INVESTIGATION

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE

Investigation No. 731-TA-452 (Preliminary)

PRESSURE-SENSITIVE PVC BATTERY COVERS FROM WEST GERMANY

Those listed below appeared at the United States International Trade Commission's conference held in connection with the subject investigation on February 9, 1990, in Conference Room B, at the USITC Building, 500 E Street, S.W., Washington, DC.

In support of the imposition of antidumping duties

Vinson & Elkins--Counsel
Washington, DC
Dilworth, Paxson, Kalish & Kauffman--Counsel
Philadephia, PA
on behalf of--

The National Label Company

Mr. James H. Shacklett, III, Chief Executive Officer, The National Label Company
Mr. William T. Lambe, Controller, The National Label Company

Mr. Anthony S. Janulewicz, Accountant, H.R. Margolis

Theodore W. Kassinger, Esq.--OF COUNSEL
Michael J. Coursey, Esq.--OF COUNSEL
Michael E. Glover, Esq.--OF COUNSEL
James J. Rodgers, Esq.--OF COUNSEL

In opposition to the imposition of antidumping duties

Rogers & Wells--Counsel
Washington, DC and New York, NY
on behalf of--

Zweckform Etikettiertechnik GmbH

Mr. John G. Reilly, Economic consultant
Mr. P. Lance Graef, Trade Research & Analysis

Eugene T. Rossides, Esq.--OF COUNSEL
Klaus H. Jander, Esq.--OF COUNSEL
Craig H. Walker, Esq.--OF COUNSEL
Robert E. Ruggeri, Esq.--OF COUNSEL

APPENDIX C

OPERATIONS OF CMS GILBRETH PACKAGING SYSTEMS, INC.

Table C-1
Sleeve PVC battery covers: Data reported by CMS Gilbreth Packaging Systems, Inc., 1986-88, January-September 1988, and January-September 1989 1/

Item	1986	1987	1988	Jan.-Sept.-- 1988	1989
*	*	*	*	*	*	*

1/ Financial information was not reported.

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

APPENDIX D

IMPACT OF IMPORTS ON U.S. PRODUCERS' GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND EXISTING DEVELOPMENT AND PRODUCTION EFFORTS

Responses of firms to the following questions:

1. Since January 1, 1986, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or more advanced version of your products) as a result of imports of pressure-sensitive PVC battery covers from West Germany?

* * * * * * *

2. Does your firm anticipate any negative impact of imports of pressure-sensitive PVC battery covers from West Germany?

* * * * * * *

3. Has the scale of capital investments undertaken been influenced by the presence of imports of the subject merchandise from West Germany?

* * * * * * *