

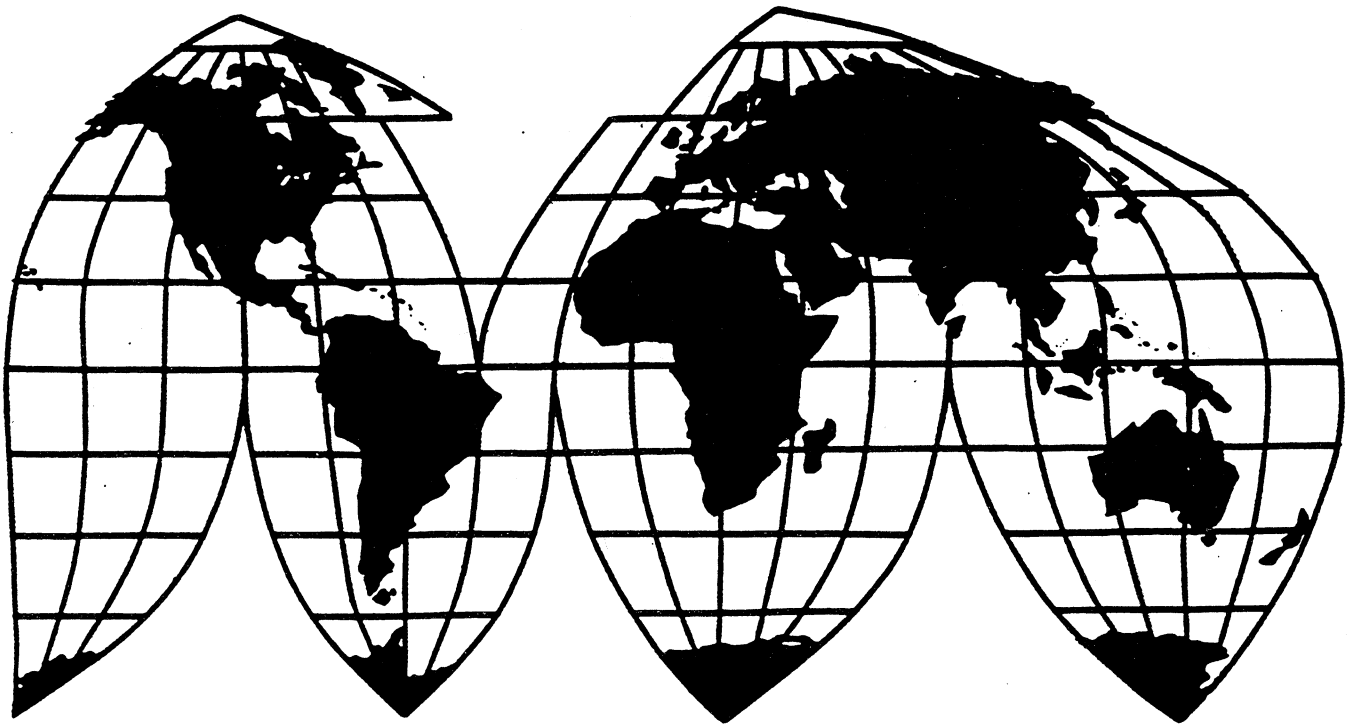
Melamine Institutional Dinnerware From China, Indonesia, and Taiwan

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

Publication 3016

February 1997

U.S. International Trade Commission



U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-741, 742, & 743 (Final)

MELAMINE INSTITUTIONAL DINNERWARE FROM CHINA, INDONESIA, AND TAIWAN

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that the industry in the United States producing melamine dinnerware for institutional use² is materially injured by reason of imports from China, Indonesia, and Taiwan of melamine dinnerware, as defined by the Department of Commerce (Commerce), that have been found by Commerce to be sold in the United States at less than fair value (LTFV), and that are for institutional use.^{3 4}

The Commission further finds that the industry in the United States producing melamine dinnerware for non-institutional use⁵ is not materially injured or threatened with material injury, and the establishment of such an industry in the United States is not materially retarded, by reason of LTFV imports of melamine dinnerware from China and Taiwan that are for non-institutional use. The Commission also unanimously determines that subject imports of melamine dinnerware for non-institutional use from Indonesia are negligible.

BACKGROUND

The Commission instituted these investigations effective February 6, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by the American Melamine Institutional Tableware Association (AMITA).⁶ The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of melamine institutional dinnerware from China, Indonesia, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 11, 1996 (61 FR 47957). The hearing was held in Washington, DC, on January 9, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Defined as melamine dinnerware that is intended for use by institutions such as schools, hospitals, cafeterias, restaurants, nursing homes, etc.

³ In these investigations, Commerce has defined a single class or kind of imported merchandise, consisting of all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays, but not including flatware products such as knives, forks, and spoons) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. Melamine institutional dinnerware is provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States.

⁴ Commissioner Crawford dissenting.

⁵ Defined as melamine dinnerware that is generally sold to the retail sector and is intended for use by households.

⁶ The members of AMITA are Carlisle Food Service Products (formerly known as Continental/SiLite International Co.), Oklahoma City, OK; Lexington United Corp. (National Plastics Corp.), Port Gibson, MS; and Plastics Manufacturing Co. (Sun Coast Industries, Inc.), Dallas, TX.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that an industry in the United States is materially injured by reason of imports of melamine dinnerware for institutional use from China, Indonesia, and Taiwan that have been found by the Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).¹ We further find that an industry in the United States is not materially injured or threatened with material injury by reason of LTFV imports of melamine dinnerware for non-institutional use from China and Taiwan, and that LTFV imports of melamine dinnerware for non-institutional use from Indonesia are negligible.²

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended, (“the Act”) defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁵

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept the

¹ Commissioner Crawford makes a negative determination with respect to subject imports of melamine dinnerware for institutional use from China, Indonesia and Taiwan. She concurs with the majority in finding that subject imports of melamine dinnerware for non-institutional use from Indonesia are negligible and in making a negative determination with respect to subject imports of melamine dinnerware for non-institutional use from China and Taiwan. She joins the majority views on like product, domestic industry, negligible imports and cumulation. *See* Additional and Dissenting Views of Commissioner Carol T. Crawford.

² Whether the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

³ 19 U.S.C. § 1677(4)(A).

⁴ *Id.*

⁵ 19 U.S.C. § 1677(10).

⁶ *See, e.g., Nippon Steel Corp. v. United States*, Slip Op. 95-57 at 11 (Ct. Int’l Trade Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See id.* at n.4, 18; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ *See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).*

⁸ *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991).

determination of Commerce as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Domestic Like Product Issues in These Investigations

In its notice of initiation, Commerce defined the articles subject to these investigations as follows:

all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. . . . Excluded from the scope of investigation are flatware products (e.g., knives, forks, and spoons).¹⁰

Melamine is a thermoset plastic distinguished from other plastics used in dinnerware by its break resistance and by its hard surface that resists stains and scratches.¹¹ In order to produce melamine dinnerware, the chemical melamine (made from urea) is reacted with formaldehyde to produce melamine resin. Melamine dinnerware producers combine this resin with alpha-cellulose, coloring compounds, and other ingredients to form a “biscuit” of the proper weight for a particular dinnerware product. The biscuit is heated, placed in a mold of the desired shape and size, and the mold held in a press for about a minute. The dinnerware item is then removed from the mold for polishing and finishing.¹²

In order to analyze the like product issues in these investigations, it is necessary to define the various types of melamine dinnerware recognized in the marketplace. In the melamine dinnerware market, dinnerware products are usually categorized as either “institutional” or “retail” (the latter are also referred to as “housewares” or “household” dinnerware). These categories are defined in terms of the end uses for which the merchandise is marketed and sold, and do not necessarily correspond to the thickness of the dinnerware. Thus, the industry refers to dinnerware that is produced and sold for use by commercial or institutional users, such as restaurants, schools, day care centers, government cafeterias, hospitals and nursing homes, as “institutional” dinnerware, and to dinnerware produced for and sold to households for home use as “retail” or “household” dinnerware.¹³ In addition, market participants sometimes refer to melamine dinnerware produced in traditional Asian shapes (e.g., sushi bowl or rice dish) and/or decorated in traditional Asian patterns as “Asianware,” and to dinnerware sized and decorated (e.g., with Mickey Mouse or Barney) to appeal to small children as “childrensware.”¹⁴

We use the term “institutional” to refer to melamine dinnerware that is sold for institutional use. Melamine dinnerware sold for other than institutional use will be referred to as “non-institutional” dinnerware or “retailware.” As noted above, the scope established by Commerce for these investigations does not include all melamine dinnerware, but rather is limited to melamine dinnerware at least 0.08 inch (“80 mils”)

⁹ Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ 62 Fed. Reg. 1708, 1709 (Jan. 13, 1997).

¹¹ Petition (Feb. 6, 1996) at 4; Transcript of Commission Staff Conference (Feb. 27, 1996) at 14-15 (“Conf. Tr.”); Confidential Report (“CR”) at I-4, Public Report (“PR”) at I-3.

¹² Petition at 3, 5-7; Conf. Tr. at 13-14; CR at I-4, I-8; PR at I-3, I-5.

¹³ Transcript of Commission Hearing (Jan. 9, 1997) (“Hearing Tr.”) at 7-8, 9-10, 12-17.

¹⁴ Hearing Tr. at 26-27, 82-83, 108-109; Conf. Tr. at 42, 52-53, 75, 92-93, 94, 99-101, 109-110.

thick. We refer to melamine dinnerware that is at least 80 mils thick as “thick” dinnerware, and melamine dinnerware that is less than 80 mils thick as “thin” dinnerware. Thick dinnerware imported from China, Indonesia and Taiwan is “subject” dinnerware. As will be discussed further below, “subject” dinnerware includes melamine dinnerware for both “institutional” and “non-institutional” uses.¹⁵

In the following sections, we consider two issues: (1) whether the domestic like product is limited to institutional dinnerware or includes retailware; and (2) whether the universe of products “like” the subject imports comprises one or more domestic like products. For the reasons discussed below, we find that the domestic products “like” the subject imports include both melamine institutional dinnerware and melamine retailware, but that melamine institutional dinnerware and melamine retailware constitute two separate domestic like products.

1. Does the Domestic Like Product Include Retailware?

In order to define the domestic product or products “like” the subject imports, we must first look to the scope of the investigation, as defined by Commerce. The scope is dictated not by the use of the adjective “institutional” in the title of these investigations, but, rather, by Commerce’s explanation of the scope in its final determinations.¹⁶

In the preliminary determinations, the Commission found that there was “some ambiguity with respect to the kinds of melamine dinnerware which fall within the scope established by Commerce.”¹⁷ Because the record at that time suggested that all thick dinnerware is sold solely for institutional uses, the Commission concluded that only melamine dinnerware for institutional use fell within the scope. The Commission, however, also asked Commerce to clarify “whether and to what extent retailware falls within the scope of investigation.”¹⁸ Although Commerce has not changed the scope, the parties now agree, and our questionnaire responses confirm, that the universe of thick dinnerware falling within the scope includes products that are not ultimately sold to institutional end users.¹⁹ Because the products within the scope serve a broader group of end-users than was apparent in the preliminary investigations, we reconsider the appropriate domestic like product or products.

While all parties agree that the domestic product “like” subject imports of institutional dinnerware is domestic institutional dinnerware, there is no direct domestic counterpart for the subject imports of thick

¹⁵ In the report, the terms “institutional” and “household” refer to what we are calling thick and thin dinnerware, respectively, and the Report then further categorizes the thick products as either “for institutional use” or “for household use.” CR at I-2, n.6; PR at I-2, n.6.

¹⁶ 62 Fed. Reg. 1708, 1709 (Dep’t Commerce, Jan. 13, 1997) (“our written description of the scope of this investigation is dispositive”). See also Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825 at I-7 (Nov. 1994) (scope description includes all raw garlic, not just “fresh” garlic for fresh use).

¹⁷ Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Preliminary), USITC Pub. 2952 at 6 (Apr. 1996) (“Prelim. Det.”). We refer to “the Commission’s” rather than “our” preliminary determinations, because the membership of the Commission was different at that time.

¹⁸ Id.

¹⁹ CR at I-3, n.8; PR at I-3, n.8; Hearing Tr. at 85-88, 105-06; Petitioner’s Prehearing Brief (Dec. 20, 1996) at 15-17; Petitioner’s Posthearing Brief (Jan. 17, 1997) at 11-15. In the preliminary investigations, we relied in part on the statement of respondents’ witness *** that “the 81/1000 of an inch distinction proposed by Commerce does accurately describe the dividing line between institutional and retail melamine dinnerware” in determining what products fell within the scope. Prelim. Det. at 6, citing Ex Parte Meeting Notes of Feb. 23, 1996 at 2. We give little weight to that testimony in the final phase of these investigations, because the evidence of record shows that there are substantial imports of non-institutional dinnerware within the scope.

dinnerware for non-institutional use (i.e., subject retailware). Petitioner²⁰ argues that the subject imports of both institutional and non-institutional dinnerware are more like thick domestic institutional dinnerware than they are like thin domestic retailware.²¹ Respondents²² agree that the domestic product “like” the thick subject imports that are sold for institutional use is thick domestic dinnerware, all of which is sold for institutional use, but argue that the domestic product “like” the thick subject imports that are sold for non-institutional use is thin domestic retailware, all of which is sold for non-institutional use.²³

For the reasons discussed below, we find that the domestic product or products “like” the subject imports within Commerce’s scope include both melamine institutional dinnerware and melamine retailware, each regardless of thickness.

a. Physical Characteristics and Uses

The physical characteristics of a piece of melamine dinnerware include its thickness, weight, shape, size, color and design. Melamine dinnerware, both domestic and subject, is produced in a wide variety of shapes, such as bowls, plates, platters, trays, and cups, each of which may be produced in a variety of sizes.²⁴ As the density of the melamine is constant, the weight of a piece of melamine dinnerware is a function of its size, shape, and thickness.²⁵

The subject imports, which by definition are all at least 80 mils thick, include several categories of dinnerware that are typically identified by different color and design features. In 1995, about *** percent of the subject imports consisted of dinnerware bearing plain colors or simple designs characteristically preferred by institutional end users, the product we have defined as “institutional” dinnerware.²⁶ Some of the remaining *** percent of subject imports were childrensware, characterized by distinctive decorations that appeal to children and sometimes by distinctive shapes suited to use by younger children (e.g., smaller plates, covered

²⁰ The petitioner in these investigations is AMITA, the American Melamine Institutional Tableware Association. AMITA has three members: Carlisle Food Service Products (“Carlisle”) (formerly Continental/SiLite), National Plastics Corporation (“NPC”), and Sun Coast Industries, Inc. (“Sun Coast”). CR at I-1; PR at I-1.

²¹ Hearing Tr. at 15-16, 26-28, 57-58, 59, 82-83, 166; Petitioner’s Prehearing Brief at 8, 15-16; Petitioner’s Posthearing Brief at 7-8, 12-13, 14-15, Exhibits 1, 3 & 9, and Attachment B at 6-7. Petitioner’s witness testified that in an institutional setting a piece of melamine dinnerware should be able to withstand 4 to 9 uses per day over 3 to 4 years, for a total of 4,500 to 13,000 uses prior to replacement. In a household setting, a piece of melamine dinnerware can be expected to be used only once a day for 3 to 4 years, for a total of about 1,000 uses. Hearing Tr. at 14-15. Petitioner argues that because any dinnerware that is at least 80 mils thick is sufficiently strong to withstand commercial or institutional conditions, any thick dinnerware can be a rival for the domestic thick product in sales to institutional users. Thus, in petitioner’s view, what makes dinnerware institutional is its thickness and consequent weight, not how it is shaped or decorated or to whom it may ultimately be sold.

²² Respondents in these investigations include the principal foreign producers of subject melamine dinnerware in each of the subject countries and one importer.

²³ Respondents contend that, at least insofar as the subject imports are concerned, thickness is not the defining feature that makes them institutional rather than household products. Thus, respondents would have us give decisive weight to factors that reflect how the products are actually treated in the marketplace, including customer perceptions, channels of distribution and ultimate end uses. Hearing Tr. at 126-128; Respondents’ Posthearing Brief (Jan. 17, 1997) at 5-6.

²⁴ CR at I-2-I-3; PR at I-2.

²⁵ Hearing Tr. at 57-58.

²⁶ Tables B-2 and B-3, CR at B-5 and B-7; PR at B-5 and B-7.

cups).²⁷ Some are Asianware, characterized by traditional Chinese or Japanese decorative designs and including both traditional (e.g., standard dinner plate) and uniquely Asian shapes (e.g., rice bowl, sushi dish).²⁸ The rest of the subject imports are other retailware. Retailware is generally characterized by fashion colors and designs intended to complement other housewares products.²⁹

In 1995, about *** percent of domestically produced melamine dinnerware was characterized by typically “institutional” designs and colors. All such dinnerware is at least 80 mils thick.³⁰ The remainder of domestic production is accounted for by childrensware and other retailware, all of which is less than 80 mils thick. There was no domestic production of thick childrensware or other thick retailware during the POI.³¹

There is no domestic counterpart for Asianware, nor has such a product ever been produced in the United States.³² With respect to physical characteristics, highly decorated Asianware is more like domestic retailware than it is like domestic institutional dinnerware. With respect to uses, both parties testified that, in addition to household use, Asianware is sometimes used in Asian restaurants, which might otherwise use institutional dinnerware;³³ however, all of the importers that reported imports of subject Asianware in their questionnaire responses also indicated that their products are sold exclusively into the retail market.³⁴

b. Interchangeability

It is clear that subject and domestic institutional dinnerware are fully interchangeable.³⁵ In addition, there is limited interchangeability between subject imports of Asianware and domestic institutional dinnerware. An Asian restaurant using melamine dinnerware could use all Asianware, plain institutional

²⁷ See, e.g., Respondents’ Prehearing Brief at Exhibit 8 (Yu Cheer and Gin Harvest catalogs); Respondents’ Posthearing Brief at Exhibit 10 (Tar-Hong catalog).

²⁸ See, e.g., Respondents’ Prehearing Brief (Dec. 20, 1996) at Exhibit 8 (Gin Harvest catalog); Respondents’ Posthearing Brief at Exhibit 10 (Tar-Hong catalog); Petition at Exhibit 7 (G.E.T. catalog listing for Chinese “longevity” pattern).

²⁹ Hearing Tr. at 14, 69, 83-84; Respondents’ Prehearing Brief, Exhibit 8 (Yu Cheer and Gin Harvest catalogs illustrating novelty trays and other retail products).

³⁰ Tables III-1-III-2, CR at III-5-III-6; PR at III-4.

³¹ Petitioner argues that the domestic industry has produced or considered producing thick dinnerware with childrens’ decorations for sale to institutions that serve children, such as hospital pediatric wards and Head Start programs. Petitioner’s Prehearing Brief at 16; Hearing Tr. at 15-16; Petitioner’s Posthearing Brief at 12 and Exhibits 1 & 9. To date, however, the domestic industry has not succeeded in marketing such products, and petitioner concedes that it does not know of any such institutions that are using imported thick childrensware, as opposed to standard institutional dinnerware. Petitioner’s Posthearing Brief, Responses to Staff Questions at 7; CR at II-2, n.9; PR at II-2, n.9.

³² The domestic industry contends that it does produce “ethnic” dinnerware for restaurant use, such as tortilla servers and Italian pasta bowls, and that Asianware is just another decorated institutional product which the domestic industry could easily produce if pricing in the market justified the investment. Hearing Tr. at 26-27. Respondents argue that Asianware is qualitatively different from petitioner’s “ethnic” institutional items, as those are single items meant to complement standard institutional dinnerware, whereas the subject Asianware includes a whole line of coordinated decorated products in every shape and size. Hearing Tr. at 108-109.

³³ Conf. Tr. at 75, 90, 99-101; Hearing Tr. at 82-83.

³⁴ See importer questionnaire responses of ***. ***.

³⁵ Conf. Tr. at 19-20, 26, 29-30, 58; CR at I-4; PR at I-3; Hearing Tr. at 19-20, 23-26, 111.

dinnerware (either imported or domestic), or a combination of plain institutional dinnerware (such as standard dinner plates) and Asianware (such as tea cups or decorated platters).³⁶

The evidence of record is mixed with respect to whether subject imports of non-institutional dinnerware are interchangeable with domestic institutional dinnerware. While a nine inch plate decorated with Mickey Mouse, colored fish, or a Chinese longevity pattern on it is just as effective in holding food as a plain white nine inch plate with a brown stripe around the rim, it is less clear that all could retain their appearance if used frequently with certain utensils.³⁷ In any event, as discussed below, consumers are generally not willing to purchase these products interchangeably.

It is clear, however, that subject imports of thick retailware and childrensware are interchangeable with thin domestic retailware and childrensware. While the designs of such products will differ from producer to producer, retail outlets appear to display and purchasers to buy such products interchangeably.³⁸

c. Channels of Distribution

Channels of distribution for institutional dinnerware and retailware in the U.S. market are largely separate. Restaurants and other institutions purchase melamine dinnerware from dealers or distributors who specialize in serving the institutional market. Those distributors carry products designed for institutional use and do not carry products suitable only for household use.³⁹ Retail purchasers buy melamine dinnerware from retail stores, such as department stores and housewares stores. Those stores either obtain melamine dinnerware from distributors specializing in housewares products or self-distribute products obtained directly from manufacturers.⁴⁰ Domestic producers testified that distributors that supply the institutional market will only purchase their institutional product and that distributors that supply the retail market will only purchase their retail product.⁴¹ Similarly, among 12 importers of subject merchandise responding to the Commission's questionnaire, only one reported imports of subject merchandise sold to both institutional and retail markets.⁴²

³⁶ The domestic industry may have lost some sales for institutional dinnerware due to Asian distributors' preferences for Asianware. Hearing Tr. at 82-83; Petitioner's Prehearing Brief at 16; Petitioner's Posthearing Brief at 14-15 and Exhibits 1, 3 & 9; CR at V-23 and V-27; PR at V-17 and V-19.

³⁷ Petitioner's witnesses testified that the colors and designs affixed to melamine dinnerware are permanent and cannot be scratched away through the repeated use of metal utensils; they contended that institutional dinnerware patterns are decorated only around the edge because no one can see the middle through the food. Hearing Tr. at 69-70, 168-169; Petitioner's Posthearing Brief, Appendix B at 8, n.1. Respondents argued that institutional patterns are plain in the middle to avoid the decoration being damaged by knives and forks, while patterns are used all over childrensware, Asianware, and retailware (for example, picnicware or holiday pieces) which are seldom used with sharp utensils. Hearing Tr. at 113, 159-60, 171.

³⁸ Hearing Tr. at 83-84, 113.

³⁹ Hearing Tr. at 16-17, 83-84, 111-15; Conf. Tr. at 23-24, 33, 109-110.

⁴⁰ Hearing Tr. at 83-84.

⁴¹ Hearing Tr. at 16-17; Conf. Tr. at 54-55. One domestic producer of thin retailware sells that product to another housewares manufacturer as a private label product. Hearing Tr. at 73. The Commission has no information on how that other manufacturer distributes the product.

⁴² See generally importer questionnaires. *** reported ***. In addition, a number of importers of subject merchandise that received questionnaires complained in letters and telephone calls to Commission staff that they should not be required to respond in a case entitled "melamine institutional dinnerware," because their products, although thick, are not intended for use by institutions and are not sold through channels of distribution that ultimately serve institutional

(continued...)

A somewhat more complicated issue is presented by Asianware. The record indicates that Asianware is distributed by dealers that specialize in serving the Asian community. Although the parties testified that those dealers may serve retail customers (so-called “Asian groceries”), institutional customers, or possibly both, none of the importers who reported in their questionnaire responses that they import subject Asianware indicated that they sell it to institutional users.⁴³

d. Common Manufacturing Facilities, Employees and Methods

Both subject melamine dinnerware and domestic melamine dinnerware, regardless of thickness or end use, are produced using the same basic production method and machinery, described above.⁴⁴ Production of melamine dinnerware requires a compression press and a mold. The presses can be used to produce any piece of melamine dinnerware, as well as a variety of other products. Each individual product requires its own mold, which establishes the shape, size and thickness of the piece (as well as any textured decoration).⁴⁵ Designs are added as the individual pieces are molded.⁴⁶ A mold for an institutional product can be converted to a mold for a thinner household product of the same shape and size at little cost, but the change is permanent; a mold for a thin product cannot be converted to production of a thicker one, but must be replaced.⁴⁷ Each mold is hand tooled and requires a significant capital investment.⁴⁸

e. Producer and Customer Perceptions

The virtually complete separation of channels of distribution devoted to institutional and non-institutional dinnerware in this market supports the view that both producers and consumers do not consider non-institutional dinnerware to be “like” institutional dinnerware, even when both are thick.⁴⁹

f. Price

The price of a piece of melamine dinnerware of a particular size and shape increases with its thickness and degree of decoration.⁵⁰ We are unable to conclude, from the pricing information of record, whether subject retailware is priced more like thick, but undecorated, domestic institutional dinnerware or thin, but decorated, domestic retailware, and therefore give little weight to the pricing factor.

⁴² (...continued)
users. CR at I-2, n.6; PR at I-2, n.6; Hearing Tr. at 48; Letter of Nov. 7, 1996, to Jonathan Seiger from Irv Zakheim, Zak Designs.

⁴³ Hearing Tr. at 26-27, 82-83, 113-14, 153, 162-63; Conf. Tr. at 75, 90, 94, 99-101, 109-110.

⁴⁴ CR at I-7-I-8; PR at I-5; Conf. Tr. at 48, 55-56; Hearing Tr. at 68, 71-72.

⁴⁵ Petitioner’s Posthearing Brief, Attachment B at 11-12; Hearing Tr. at 67; CR at III-3, n.4; PR at III-2, n.4.

⁴⁶ Hearing Tr. at 70.

⁴⁷ Hearing Tr. at 71-72, 88.

⁴⁸ Hearing Tr. at 71, 114; Respondents’ Posthearing Brief, Response to Staff Questions at Q-3 (each mold costs \$*** and a manufacturer needs several molds for each item).

⁴⁹ Although petitioner suggests that a bar might purchase novelty trays to establish a theme decor for a particular occasion, there is no evidence of such sales by institutional distributors, nor is it clear that a bar would use such a product under what petitioner has described as institutional conditions, *i.e.*, 4-9 daily uses over several years. Hearing Tr. at 172.

⁵⁰ CR at I-8-I-9; PR at I-6; Hearing Tr. at 68-70.

g. Conclusion

We find that the domestic product most like thick subject imports for institutional use is thick domestic institutional dinnerware. Domestic institutional dinnerware and subject institutional dinnerware have virtually identical physical characteristics and uses, are interchangeable in their typical end uses, are sold to the same kinds of customers through the same channels of trade, are produced through the same production process, and are perceived by producers and purchasers alike to be the same product.

We find that the domestic product most similar to subject retailware is domestic retailware. Although subject retailware is thick like domestic institutional dinnerware, it more closely resembles domestic retailware with respect to its shapes, patterns and designs. Although some portion of the subject Asianware is used in restaurants, all subject retailware, including Asianware sold for retail use, serves the same household end uses as domestic retailware. The channels of distribution for institutional dinnerware and retail dinnerware in the U.S. market are largely separate. With the exception of Asianware, subject retailware is sold through the same channels of distribution as domestic retailware. Asianware is sold to both institutional dealers and retailers. It appears, however, that a significant portion of such dealers and retailers are distinct from other domestic dealers and retailers in that they serve a largely Asian clientele. Finally, although thickness is critical to the performance of dinnerware in institutional applications, customers select retailware based on design features and perceive subject retailware to be the same product as similarly decorated domestic retailware, despite the differences in thickness.

We therefore find that the domestic product “like” the subject imports is not limited to thick institutional dinnerware, but includes all domestically-produced melamine dinnerware, regardless of thickness or end use.⁵¹

2. Does All Melamine Dinnerware Constitute One or More Like Products?

In the preliminary investigations, the Commission found a single domestic like product, melamine institutional dinnerware, corresponding to the subject imports, which was understood at that time to be limited to melamine institutional dinnerware. The Commission further determined that the domestic like product should not be expanded to include melamine retailware.⁵² We now find two domestic like products: melamine institutional dinnerware and melamine retailware.⁵³ Because the scope is broader than it was

⁵¹ We have also considered whether the domestic like product includes polycarbonate dinnerware and conclude that it does not. Although available in similar shapes and colors, polycarbonate dinnerware is thinner, more break-resistant, and less scratch-resistant than melamine dinnerware. Conf. Tr. at 43-44; Hearing Tr. at 8, 17-18, 63, 133-135, 167; CR at I-5; PR at I-4. Polycarbonate dinnerware is sold through the same channels of distribution as melamine institutional dinnerware, but is principally used in prisons, which do not use melamine dinnerware. The only competition between melamine and polycarbonate dinnerware that the parties identified was in compartment trays for use in schools, and there is no indication that this overlap is significant. Conf. Tr. at 43-44, 61-64; Hearing Tr. at 8, 17-18, 133-135, 167; CR at I-7; PR at I-5; Ex Parte Meeting Notes of Feb. 23, 1996 at 1 & 3; Petition at Exhibit 2. Polycarbonate and melamine dinnerware are made through entirely different processes. Of the three known domestic producers of polycarbonate dinnerware, two do not produce melamine dinnerware, and the third produces the two products with different equipment and in different facilities. Hearing Tr. at 63-64, 67; CR at I-8, III-2-III-3; PR at I-6, III-2-III-3.

⁵² Prelim. Det. at 6-10.

⁵³ The parties agree that domestic melamine institutional dinnerware and domestic melamine retailware are not the same like product. Based on its argument that all the subject imports are “like” domestic institutional dinnerware, petitioner argues that the Commission should find one domestic like product consisting of thick melamine dinnerware. Petitioner also argues, however, that if the Commission finds that the domestic product like the subject imports includes

(continued...)

understood to be in the preliminary investigations, however, we note that the effect of this determination is to reaffirm the Commission's preliminary conclusion that domestic melamine institutional dinnerware is not "like" domestic melamine retailware.

a. Physical Characteristics and Uses

Petitioner concedes that both institutional and non-institutional domestic dinnerware are produced in a range of thicknesses, with the greater thicknesses necessary to prevent larger products, like trays, from bending.⁵⁴ Petitioner's witnesses have uniformly testified, however, that all the products they manufacture for institutional use are at least 80 mils thick and that all the products they manufacture for non-institutional use are less than 80 mils thick (usually in the range of 60-65 mils),⁵⁵ and we have obtained no contrary evidence. Thus, although the same is not true for the imported product, the categories of domestic thick dinnerware and domestic dinnerware for institutional use are perfectly coextensive.

Many of the same basic shapes, like plates, cups and bowls, are common to both institutional and retail dinnerware.⁵⁶ Catalogs and samples provided by the domestic producers demonstrate that melamine dinnerware for institutional use is manufactured with plain colors and designs.⁵⁷ Between 80 and 90 percent of the institutional dinnerware market consists of solid color plates, usually white or beige.⁵⁸ The domestic producers' catalogs show that the product is also available in a variety of other solid colors and that some products are decorated with simple designs (like a single stripe of a contrasting color or a raised pattern) around the rim. Although the domestic producers testified that they offer institutional and retail dinnerware in some of the same colors,⁵⁹ they also testified that retail dinnerware is produced in "fashion" colors and patterns designed to complement other currently popular home decor items or with patterns currently popular with children.⁶⁰

Because institutional purchasers expect to be able to obtain replacement stock rather than frequently replace their entire set of dinnerware, domestic producers' institutional patterns remain constant over many years. Retailers generally sell non-institutional dinnerware for a single season, which may last less than a year, and do not expect manufacturers to have the same pattern available year after year. Thus, retailware patterns change every year or two in accordance with trends in housewares and home furnishings.⁶¹

Some institutional purchasers require that their dinnerware be certified by the National Sanitation Foundation, which rates institutional dinnerware for design, cleanability, and other factors set forth in

⁵³ (...continued)

retailware, it should treat domestic institutional dinnerware and domestic retailware as separate like products. Petitioner's Prehearing Brief at 6-14; Petitioner's Posthearing Brief at 1-4. Respondents argue that the Commission should find two domestic like products corresponding to the subject imports of melamine institutional dinnerware and melamine retailware (including childrensware and Asianware), respectively. Respondents' Prehearing Brief at 3-5; Hearing Tr. at 153; Respondents' Posthearing Brief at 2-6.

⁵⁴ Hearing Tr. at 89.

⁵⁵ Hearing Tr. at 33, 48, 57-58, 87, 89, 90-91; Conf. Tr. at 49-51.

⁵⁶ Hearing Tr. at 59; CR at I-2-I-3; PR at I-2; Petitioner's Posthearing Brief at Exhibit 1, ¶9.

⁵⁷ See generally Petition at Exhibits 1, 2 and 3.

⁵⁸ Hearing Tr. at 14, 69; Conf. Tr. at 49-50, 117-118.

⁵⁹ Hearing Tr. at 59.

⁶⁰ Hearing Tr. at 14, 83-84; Conf. Tr. at 52-53.

⁶¹ Hearing Tr. at 83-84; Conf. Tr. at 49-50.

standard NSF-36.⁶² Domestic manufacturers do not seek NSF-36 certification for retailware; however, they also do not seek NSF-36 certification for all their institutional dinnerware, as not all end users require it and certification is expensive to obtain and maintain.⁶³

b. Interchangeability

In general, domestic retailware cannot be used interchangeably with domestic institutional dinnerware in commercial or institutional settings, because it lacks the weight and thickness that makes dinnerware durable in such uses.⁶⁴ Moreover, end users who require NSF-36 certification cannot purchase uncertified retailware.⁶⁵ Although institutional dinnerware could technically be used in a household setting, both retailers and their customers appear to make their buying decisions based on color and design factors, rather than concerns for durability or availability of replacement stock. Institutional dinnerware, which contains more melamine, may also be more expensive at the retail level.⁶⁶

c. Channels of Distribution

Domestic producers maintain separate marketing staffs for institutional and non-institutional dinnerware. They market and sell their institutional lines to distributors that serve institutional customers or directly to certain large restaurant chains. With the exception of some camping applications and a largely unsuccessful attempt to sell in warehouse clubs with a mixed retail and commercial clientele, domestic producers do not sell their institutional dinnerware through any distribution channels to which a household purchaser would have access.⁶⁷ Only one domestic producer, Sun Coast, manufactures non-institutional dinnerware for retail sale. Sun Coast sells its non-institutional products to national and local retailers like K-Mart, Wal-Mart, Target and others, which do not stock the domestic industry's institutional products.⁶⁸ There are also separate trade shows for institutional and non-institutional dinnerware, and attendees do not overlap.⁶⁹

⁶² CR at I-4; PR at I-3; Respondents' Postconference Brief at Exhibit 4 (NSF-36 specifications). NSF-36 specifications do not include a minimum thickness. Hearing Tr. at 85-86.

⁶³ Conf. Tr. at 51-52.

⁶⁴ Hearing Tr. at 8, 14-15, 36-38, 59-60, 66, 88-89, 90-91.

⁶⁵ Conf. Tr. at 51-52.

⁶⁶ Hearing Tr. at 68-69; Conf. Tr. at 57.

⁶⁷ Hearing Tr. at 16-17, 49; Conf. Tr. at 33, 54-55 (less than 1 percent of institutional product ends up in retail distribution channels).

⁶⁸ Hearing Tr. at 83-84. Petitioner Carlisle produces retailware on an OEM basis for another housewares manufacturer and does no marketing. Hearing Tr. at 64-65, 73.

⁶⁹ Hearing Tr. at 16-17; Petitioner's Prehearing Brief at 12.

d. Common Manufacturing Facilities, Employees and Methods

All melamine dinnerware made in the United States is produced through the same production process, and those domestic producers of institutional dinnerware that also produce other melamine dinnerware products produce them on the same equipment with the same employees.⁷⁰ As noted above, production of melamine dinnerware requires a compression press and a mold. A mold for an institutional product can be converted to a mold for a thinner household product of the same shape and size at little cost; a mold for a thin product cannot be converted to production of a thicker one, but must be replaced.⁷¹ Each mold is hand tooled and requires a significant capital investment.⁷²

e. Producer and Consumer Perceptions

Domestic producers clearly perceive institutional and retail products to be separate for marketing purposes. They have for many years belonged to two separate trade associations, one for institutional dinnerware and one for household dinnerware. They promote the products at different trade shows and market them to different customers. Customers at the level of the first sale, *i.e.* distributors and retailers, also recognize this distinction. Thus, there is little overlap in the products that they purchase to sell to their ultimate customers.⁷³ The lack of any significant demand for institutional products by retail customers is evidenced by what petitioner Carlisle admits was an unsuccessful attempt to sell institutional dinnerware through Sam's Warehouse Clubs.⁷⁴

f. Price

Domestic institutional dinnerware is generally priced higher than the same size and shaped item of domestic retailware at the wholesale level.⁷⁵ This difference in price is due, at least in part, to the greater weight and consequently higher melamine content of institutional dinnerware.⁷⁶

g. Conclusion

Based on the physical dividing line of 80 mils, the limited interchangeability of institutional and retail dinnerware, the existence of almost completely separate channels of distribution serving different end users, and the uniform perception of producers and purchasers that institutional and retail dinnerware are different products with distinct markets, and despite the similar production methods and facilities, we conclude that melamine institutional dinnerware and melamine retailware are separate domestic like products.

⁷⁰ CR at I-7-I-8; PR at I-5; Conf. Tr. at 55-56; Hearing Tr. at 68, 71-72.

⁷¹ Hearing Tr. at 71-72, 88.

⁷² Hearing Tr. at 71, 114; Respondents' Posthearing Brief, Response to Staff Questions at Q-3 (each mold costs \$*** and a manufacturer needs several molds for each item).

⁷³ Hearing Tr. at 7, 13, 16-17; Petitioner's Posthearing Brief, Responses to Staff Questions at 9-10.

⁷⁴ Conf. Tr. at 54-55; Hearing Tr. at 49.

⁷⁵ Table D-1, CR at D-3; PR at D-3. This price differential may be overstated, however, because one of the two domestic producers reported prices for retailware that it sells to another manufacturer on an OEM basis.

⁷⁶ Hearing Tr. at 68-69; Conf. Tr. at 57.

C. Domestic Industry and Related Parties

The Commission is directed to consider the effect of the subject imports on the industry, defined as “the producers as a [w]hole of a domestic like product.”⁷⁷ In defining the domestic industry, the Commission’s general practice has been to include in the industry all producers of the domestic like product, including toll producers, whether the product is captively consumed, or sold in the domestic merchant market.⁷⁸

Consistent with our determination that there are two domestic like products, we find two corresponding domestic industries. The domestic industry producing melamine institutional dinnerware consists of petitioners Carlisle, NPC, and Sun Coast, while the domestic industry producing melamine retailware consists of petitioners Carlisle and Sun Coast.⁷⁹

During the period of investigation, petitioner *** imported *** from ***.⁸⁰ Thus, *** is a “related party,” and we may exclude it from the domestic industry if “appropriate circumstances” exist.⁸¹ In the preliminary investigations, the Commission determined that appropriate circumstances did not exist to exclude *** from the domestic industry, because the volume of its imports was small relative both to its total domestic production and to total subject imports, and because the financial data evidenced no special benefit to the company from its imports.⁸² Neither of the parties addressed the related parties issue in the final phase of these investigations, and we have obtained no evidence suggesting a contrary result. We therefore find that appropriate circumstances do not exist to exclude *** from the domestic industry producing melamine institutional dinnerware.

II. CONDITION OF THE DOMESTIC INDUSTRIES

In assessing whether a domestic industry is materially injured or threatened with material injury by reason of LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁸³ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and

⁷⁷ 19 U.S.C. §1677(4)(A).

⁷⁸ See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996); Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA-736-737 (Final), USITC Pub. 2988 at 7-8 (Aug. 1996).

⁷⁹ CR at III-2-III-3; PR at III-2.

⁸⁰ CR at III-3, n.6; PR at III-2, n.6.

⁸¹ Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the related party will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for related producers; and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). See also Open-End Spun Rayon Singles Yarn from Austria, Inv. No. 731-TA-751 (Preliminary), USITC Pub. 2999 at 7, n.39 (Oct. 1996).

⁸² Prelim. Det. at 10-12.

⁸³ 19 U.S.C. § 1677(7)(C)(iii).

research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸⁴

A. The Melamine Institutional Dinnerware Industry

The quantity of apparent U.S. consumption of melamine institutional dinnerware rose from 1993 to 1994, then declined in 1995, remaining above its 1993 level. The quantity of U.S. consumption was lower in interim 1996 than in interim 1995.⁸⁵ U.S. producers’ share of consumption (by quantity) fell throughout the period⁸⁶ from 1993 to 1995 and was lower by several percentage points in interim 1996 than in interim 1995.⁸⁷

The domestic industry’s capacity to produce melamine institutional dinnerware rose from 1993 to 1994 then fell from 1994 to 1995, remaining above its 1993 level. The domestic industry’s production capacity was higher in interim 1996 than in interim 1995.⁸⁸ The industry’s production volume followed the same trend.⁸⁹ Capacity utilization in the domestic industry producing melamine institutional dinnerware was low throughout the period, but rose from 1993 to 1995. It was lower in interim 1996 than in interim 1995.⁹⁰

The domestic industry’s total U.S. shipments, by volume, rose from 1993 to 1994, then fell in 1995, remaining above their 1993 level. The industry’s U.S. shipments by volume were considerably lower in interim 1996 than in interim 1995.⁹¹ Total U.S. shipments by value also rose from 1993 to 1994, then fell from 1994 to 1995, but ended lower than their 1993 level. Total U.S. shipments by value were lower in

⁸⁴ *Id.* Much of the information regarding the factors considered in this section is business proprietary. Accordingly, the public version of this opinion contains only nonnumerical characterizations of that information. See 19 C.F.R. § 201.6(a).

⁸⁵ Apparent consumption by quantity was *** pounds in 1993, *** pounds in 1994, and *** pounds in 1995, an overall increase of *** percent. Apparent consumption by quantity was *** pounds in interim 1995, compared with *** pounds in interim 1996, a difference of *** percent. Table B-3, CR at B-7; PR at B-7.

⁸⁶ Commissioner Crawford does not rely on changes in industry performance on a year-to-year basis (*i.e.*, trends) in her determinations of no material injury or threat of material injury by reason of dumped imports. See Additional and Dissenting Views of Commissioner Carol T. Crawford.

⁸⁷ U.S. producers’ share of apparent consumption (by quantity) fell from *** percent in 1993 to *** percent in 1994 and *** percent in 1995, a decline of *** percentage points. U.S. producers’ share of apparent consumption was *** percent in interim 1996, compared with *** percent in interim 1995, a difference of *** percentage points. Table B-3, CR at B-7; PR at B-7.

⁸⁸ U.S. producers’ capacity to produce melamine institutional dinnerware rose from *** pounds in 1993 to *** pounds in 1994, then fell to *** pounds in 1995, for an overall increase of *** percent. U.S. producers’ capacity was *** pounds in interim 1996, compared with *** in interim 1995, a difference of *** percent. Table B-3, CR at B-8; PR at B-7.

⁸⁹ U.S. producers’ production volume rose from *** pounds in 1993 to *** pounds in 1994, then fell to *** pounds in 1995, for an overall increase of *** percent. U.S. producers’ production volume was *** pounds in interim 1996, compared with *** pounds in interim 1995, a difference of *** percent. Table B-3, CR at B-8; PR at B-7.

⁹⁰ The domestic industry’s capacity utilization rose from *** percent in 1993 to *** percent in 1994 and *** percent in 1995. Capacity utilization was *** percent in interim 1996, compared with *** percent in interim 1995. Table B-3, CR at B-8; PR at B-7.

⁹¹ Domestic producers’ U.S. shipments by volume rose from *** pounds in 1993 to *** pounds in 1994, then fell to *** pounds in 1995, an overall increase of *** percent. Producers’ U.S. shipments by volume were *** pounds in interim 1996, compared with *** pounds in interim 1995, a difference of *** percent. Table B-3, CR at B-8; PR at B-7.

interim 1996 than in interim 1995.⁹² The quantity of domestic producers' inventories fell from 1993 to 1995, but was substantially higher in interim 1996 than in interim 1995. As a percentage of total shipments, U.S. producers' inventories fell from 1993 to 1994, rose in 1995, remaining below their 1993 level, and were higher in interim 1996 than in interim 1995.⁹³

The average number of production and related workers employed by the domestic melamine institutional dinnerware industry rose from 1993 to 1994, then fell in 1995, remaining above the 1993 level, and was lower in interim 1996 than in interim 1995. Hours worked and wages paid followed the same pattern.⁹⁴ Hourly wages fell from 1993 to 1995, but were higher in interim 1996 than in interim 1995. Productivity rose from 1993 to 1994, then fell in 1995, remaining above its 1993 level, and was higher in interim 1996 than in interim 1995.⁹⁵

Net sales of melamine institutional dinnerware by volume rose from 1993 to 1994, then fell in 1995, remaining above their 1993 level, and were lower in interim 1996 than in interim 1995. Net sales value fell steadily from 1993 to 1995 and was also lower in interim 1996 than in interim 1995.⁹⁶ The domestic industry's profitability declined over the period of investigation. Gross profits rose from 1993 to 1994, then fell in 1995 to below their 1993 level. Gross profits were lower in interim 1996 than in interim 1995.⁹⁷ Operating income and the industry's operating income margin followed the same pattern, reaching negative levels in 1995 and again in interim 1996.⁹⁸ These decreases in operating income and profitability reflect, in some part, increasing cost of goods sold and selling, general, and administrative expenses. Unit COGS fell from 1993 to 1994, then exceeded its 1993 level in 1995 and was higher in interim 1996 than in interim 1995. Unit SG&A expenses rose from 1993 to 1995, and were higher in interim 1996 than in interim 1995.⁹⁹

⁹² Domestic producers' U.S. shipments by value rose from \$*** in 1993 to \$*** in 1994, then fell to \$*** in 1995, an overall decline of *** percent. Producers' U.S. shipments by value were \$*** in interim 1996, compared with \$*** in interim 1995, a difference of *** percent. Table B-3, CR at B-8; PR at B-7.

⁹³ U.S. producers' inventories fell from *** pounds in 1993 to *** pounds in 1994 and *** pounds in 1995, an overall decline of *** percent. Inventories were *** pounds in interim 1996 compared with *** pounds in interim 1995, a difference of *** percent. U.S. producers' inventories as a percent of total shipments fell from *** percent in 1993 to *** percent in 1994, then rose to *** percent in 1995, and were *** percent in interim 1996 compared with *** percent in interim 1995. Table B-3, CR at B-8; PR at B-7.

⁹⁴ Production and related employees engaged in the production of melamine institutional dinnerware rose from *** in 1993 to *** in 1994, then fell to *** in 1995. Employment was *** in interim 1996 compared with *** in interim 1995. Table B-3, CR at B-8; PR at B-7.

⁹⁵ Table B-3, CR at B-8; PR at B-7.

⁹⁶ Net sales by volume rose from *** pounds in 1993 to *** pounds in 1994, then fell to *** pounds in 1995, an overall increase of *** percent. Net sales by volume were *** pounds in interim 1996, compared with *** pounds in interim 1995. Net sales by value fell from \$*** in 1993 to \$*** in 1994, and \$*** in 1995, and were \$*** in interim 1996 compared with \$*** in interim 1995. Table B-3, CR at B-8; PR at B-7.

⁹⁷ Domestic producers' gross profits rose from \$*** in 1993 to \$*** in 1994, then fell to \$*** in 1995, and were \$*** in interim 1996, compared with \$*** in interim 1995. Table B-3, CR at B-8; PR at B-7.

⁹⁸ Operating income rose from \$*** in 1993 to \$*** in 1994, then fell to a loss of \$*** in 1995, and reflected a loss of \$*** in interim 1996 compared with a profit of \$*** in interim 1995. The industry's operating income margin rose from *** percent in 1993 to *** percent in 1994, then fell to *** percent in 1995, and was *** percent in interim 1996, compared with *** percent in interim 1995. Table B-3, CR at B-8; PR at B-7.

⁹⁹ Table B-3, CR at B-8; PR at B-7.

Finally, the domestic industry's capital expenditures rose from 1993 to 1994, then fell below their 1993 level in 1995, and were lower in interim 1996 than in interim 1995.^{100 101}

B. The Melamine Retailware Industry

One condition of competition pertinent to our analysis of the domestic melamine retailware industry is the significant market presence of non-subject imports. Such imports, which include both thin retailware from the subject countries and all retailware, regardless of thickness, from countries other than China, Indonesia and Taiwan, accounted for a majority of domestic consumption of retailware during most of the period of investigation.¹⁰²

The quantity of apparent U.S. consumption of melamine retailware rose from 1993 to 1995, but was lower in interim 1996 than in interim 1995.¹⁰³ U.S. producers' share of consumption (by quantity) rose from 1993 to 1994, then fell in 1995, remaining above its 1993 level, and was lower in interim 1996 than in interim 1995.¹⁰⁴

The domestic industry's capacity to produce melamine retailware rose from 1993 to 1994, remained constant in 1995, and was the same in interim 1995 and interim 1996.¹⁰⁵ The industry's production volume rose from 1993 to 1994, then fell in 1995, remaining above its 1993 level, and was lower in interim 1996 than in interim 1995.¹⁰⁶ Capacity utilization in the domestic industry producing melamine retailware followed the same pattern.¹⁰⁷

The domestic industry's total U.S. shipments by volume rose significantly from 1993 to 1994, then fell in 1995, but remained above their 1993 level. The industry's total U.S. shipments by volume were lower

¹⁰⁰ Table B-3, CR at B-8; PR at B-7.

¹⁰¹ Based upon examination of the relevant statutory factors, Commissioner Newquist concludes that the domestic industry producing melamine institutional dinnerware is experiencing material injury.

¹⁰² Table B-4, CR at B-9; PR at B-7. Because imports of non-subject retailware were underreported, both apparent consumption and the market share of non-subject imports are probably understated. *See, e.g.*, CR at I-2, n.6, IV-1-IV-2; PR at I-2, n.6, IV-1; Hearing Tr. at 101, 130-33.

¹⁰³ Apparent consumption by quantity was *** pounds in 1993, *** pounds in 1994, and *** pounds in 1995, an overall increase of *** percent. Apparent consumption by quantity was *** pounds in interim 1995, compared with *** pounds in interim 1996, a difference of *** percent. Table B-4, CR at B-9; PR at B-7.

¹⁰⁴ U.S. producers' share of apparent consumption (by quantity) rose from *** percent in 1993 to *** percent in 1994 and *** percent in 1995, an overall increase of *** percentage points. U.S. producers' share of apparent consumption was *** percent in interim 1996, compared with *** percent in interim 1995, a difference of *** percentage points. Table B-4, CR at B-9; PR at B-7.

¹⁰⁵ U.S. producers' capacity to produce melamine retailware rose from *** pounds in 1993 to *** pounds in 1994 and 1995, for an overall increase of *** percent. U.S. producers' capacity was *** pounds in both interim 1995 and interim 1996. Table B-4, CR at B-10; PR at B-7.

¹⁰⁶ U.S. producers' production volume rose from *** pounds in 1993 to *** pounds in 1994, then fell to *** pounds in 1996, for an overall increase of *** percent. U.S. producers' production volume was *** pounds in interim 1996, compared with *** pounds in interim 1995, a difference of *** percent. Table B-4, CR at B-10; PR at B-7.

¹⁰⁷ The domestic industry's capacity utilization rose from *** percent in 1993 to *** percent in 1994, then fell to *** percent in 1995. Capacity utilization was *** percent in interim 1996, compared with *** percent in interim 1995. Table B-4, CR at B-10; PR at B-7.

in interim 1996 than in interim 1995.¹⁰⁸ Total U.S. shipments by value followed the same pattern.¹⁰⁹ The quantity of domestic producers' inventories fell from 1993 to 1995, but was higher in interim 1996 than in interim 1995. As a percentage of total shipments, U.S. producers' inventories fell from 1993 to 1995, but were higher in interim 1996 than in interim 1995.¹¹⁰

The average number of production and related workers employed by the domestic melamine retailware industry rose from 1993 to 1994, then fell in 1995, remaining above the 1993 level, and was lower in interim 1996 than in interim 1995. Hours worked and wages paid followed the same pattern.¹¹¹ Hourly wages rose from 1993 to 1995, but were lower in interim 1996 than in interim 1995. Productivity rose from 1993 to 1994, fell to below its 1993 level in 1995, and was higher in interim 1996 than in interim 1995.¹¹²

Net sales of melamine retailware by volume rose from 1993 to 1994, then fell in 1995, remaining significantly above their 1993 level, but were lower in interim 1996 than in interim 1995. Net sales value followed the same pattern.¹¹³ The domestic industry's profitability declined over the period of investigation. Gross profits rose from 1993 to 1994, then fell in 1995 to below their 1993 level. Gross profits were lower in interim 1996 than in interim 1995.¹¹⁴ Operating income followed the same pattern, reaching negative levels in 1995 and again in interim 1996, while the industry's operating income margin declined throughout the period of investigation.¹¹⁵ The domestic industry's unit COGS declined from 1993 to 1994, rose to above its 1993 level in 1995, and was higher in interim 1996 than in interim 1995. Unit SG&A expenses remained constant from 1993 to 1994, fell in 1995, and were higher in interim 1996 than in interim 1995.¹¹⁶ Finally,

¹⁰⁸ Domestic producers' U.S. shipments by volume rose from *** pounds in 1993 to *** pounds in 1994, then fell to *** pounds in 1995, an overall increase of *** percent. Producers' U.S. shipments by volume were *** pounds in interim 1996, compared with *** pounds in interim 1995, a difference of *** percent. Table B-4, CR at B-10; PR at B-7.

¹⁰⁹ Domestic producers' U.S. shipments by value rose from \$*** in 1993 to \$*** in 1994, then fell to \$*** in 1995, an overall increase of *** percent. Producers' U.S. shipments by value were \$*** in interim 1996, compared with \$*** in interim 1995, a difference of *** percent. Table B-4, CR at B-10; PR at B-7.

¹¹⁰ U.S. producers' inventories fell from *** pounds in 1993 to *** pounds in 1994 and *** pounds in 1995, an overall decline of *** percent. Inventories were *** pounds in interim 1996 compared with *** pounds in interim 1995, a difference of *** percent. U.S. producers' inventories as a percent of total shipments fell from *** percent in 1993 to *** percent in 1994 and *** percent in 1995, and were *** percent in interim 1996 compared with *** percent in interim 1995. Table B-4, CR at B-10; PR at B-7.

¹¹¹ Production and related employees engaged in the production of melamine retailware rose from *** in 1993 to *** in 1994, then fell to *** in 1995. Employment was *** in interim 1996 compared with *** in interim 1995. Table B-4, CR at B-10; PR at B-7.

¹¹² Table B-4, CR at B-10; PR at B-7.

¹¹³ Net sales by volume rose from *** pounds in 1993 to *** pounds in 1994, then fell to *** pounds in 1995, an overall increase of *** percent. Net sales by volume were *** pounds in interim 1996, compared with *** pounds in interim 1995. Net sales by value rose from \$*** in 1993 to \$*** in 1994, then fell to \$*** in 1995, and were \$*** in interim 1996 compared with \$*** in interim 1995. Table B-4, CR at B-10; PR at B-7.

¹¹⁴ Domestic producers' gross profits rose from \$*** in 1993 to \$*** in 1994, then fell to \$*** in 1995, and were \$*** in interim 1996, compared with \$*** in interim 1995. Table B-4, CR at B-10; PR at B-7.

¹¹⁵ Operating income rose from \$*** in 1993 to \$*** in 1994, then fell to a loss of \$*** in 1995, and showed a loss of \$*** in interim 1996 compared with a profit of \$*** in interim 1995. The industry's operating income margin fell from *** percent in 1993 to *** percent in 1994 and *** percent in 1995, and was *** percent in interim 1996, compared with *** percent in interim 1995. Table B-4, CR at B-10; PR at B-7.

¹¹⁶ Table B-4, CR at B-10; PR at B-7.

the domestic industry's capital expenditures rose from 1993 to 1994, then fell below their 1993 level in 1995, and were lower in interim 1996 than in interim 1995.^{117 118}

III. NEGLIGIBLE IMPORTS

If imports from a subject country corresponding to a domestic like product account for less than three percent of all such merchandise imported into the United States during the most recent 12 months preceding the filing of the petition for which data are available, the statute provides that, barring certain exceptional circumstances, the Commission is to find such imports "negligible".¹¹⁹ By operation of law, a finding of negligibility serves to terminate the investigation with respect to such imports without an injury determination.¹²⁰

In these investigations, the issue of negligibility arises only with respect to subject imports from Indonesia of melamine dinnerware for non-institutional use.¹²¹ Because there were *** such imports during the period of investigation, we find that the statutory standard is met and that subject imports of melamine dinnerware for non-institutional use from Indonesia are negligible.¹²² Therefore, the investigation with respect to melamine dinnerware for non-institutional use from Indonesia is terminated and we do not reach an injury determination with respect to such imports.

IV. CUMULATION

Section 771(7)(G)(i) requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.¹²³ In assessing whether

¹¹⁷ *Id.*

¹¹⁸ Based upon examination of the relevant statutory factors, Commissioner Newquist concludes that the domestic industry producing melamine dinnerware is experiencing material injury.

¹¹⁹ 19 U.S.C. § 1677(24).

¹²⁰ 19 U.S.C. § 1673b.

¹²¹ When the Commission finds multiple like products, the statute provides that the Commission must make a separate negligibility determination with respect to that portion of the subject imports that corresponds to each like product. 19 U.S.C. § 1677(24)(i); *see also* SAA at 856.

¹²² Table B-4, CR at B-9; PR at B-7. In so concluding, we determine that none of the statutory exceptions to negligibility applies to subject imports of melamine dinnerware for non-institutional use from Indonesia. The 7 percent exception of § 1677(24)(A)(ii) does not apply in this case because there is only one subject country satisfying the negligibility criteria of § 1677(24)(A)(i). The exception in § 1677(24)(A)(iii) is inapplicable to the countries subject to these investigations. Finally, we do not find, pursuant to § 1677(24)(A)(iv), that imports of such merchandise from Indonesia will imminently account for more than 3 percent of the volume of total imports of such merchandise. The sole Indonesian producer of the subject merchandise, Multi Raya, produces only melamine dinnerware for institutional use and does not presently have the capability to produce decorated dinnerware, such as would be sold for retail use. Conf. Tr. at 112; Hearing Tr. at 105-106. Moreover, there were *** during the POI. Importer's Questionnaire of ***. Thus, there is no record evidence to support the conclusion that non-negligible imports of melamine dinnerware for non-institutional use from Indonesia are imminent. Compare Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 at 12-13 (July 1996).

¹²³ 19 U.S.C. § 1677(7)(G)(i).

imports compete with each other and with the domestic like product,¹²⁴ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;^{125 126}
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.¹²⁷

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.¹²⁸ Only a "reasonable overlap" of competition is required.¹²⁹

In our preliminary determinations, we cumulated the subject imports from China, Indonesia and Taiwan.¹³⁰ In the final phase of these investigations, petitioner again urges the Commission to cumulate imports from China, Indonesia and Taiwan.¹³¹ Respondents' counsel conceded at the hearing that the mandatory cumulation factors are satisfied on the record in these investigations.¹³² For the reasons discussed below, we cumulate subject imports of melamine institutional dinnerware from China, Indonesia and Taiwan, and we also cumulate subject imports of melamine retailware from China and Taiwan.

¹²⁴ The SAA expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." SAA at 848 *citing Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), *aff'd* 859 F.2d 915 (Fed. Cir. 1988).

¹²⁵ Commissioner Newquist notes that, in his view, once a like product determination is made, that determination establishes an inherent level of fungibility within that like product. Only in exceptional circumstances could Commissioner Newquist find products to be "like" and then turn around and find that, for purposes of cumulation, there is no "reasonable overlap of competition" based on some roving standard of substitutability. *See* Additional and Dissenting Views of Chairman Newquist in Flat-Rolled Carbon Steel Products, USITC Pub. 2664 (August 1993).

¹²⁶ Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition between the subject imports and the domestic like products. Therefore, she concurs with her colleagues that subject imports of melamine institutional dinnerware from China, Indonesia, and Taiwan and subject imports of melamine retailware from China and Taiwan should be cumulatively assessed. *See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan and Spain*, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), for a description of her views on cumulation.

¹²⁷ *See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

¹²⁸ *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

¹²⁹ *See Wieland Werke*, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685-86 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

¹³⁰ Prelim. Det. at 16-19.

¹³¹ Petitioner's Prehearing Brief at 24-26.

¹³² Hearing Tr. at 129.

A. Melamine Institutional Dinnerware

In the preliminary investigations, the Commission found that the subject imports, which were understood at that time to consist only of melamine institutional dinnerware, were largely fungible with the domestic institutional product and with each other. The Commission concluded that there were no differences in product quality among the various sources, and few differences in selection or design.¹³³ It was undisputed that the domestic product and all of the subject imports compete in the same geographical markets nationwide. The Commission also found that all melamine institutional dinnerware is sold through the same or similar channels of distribution, consisting principally of variously sized distributors with some direct sales to restaurant chains.¹³⁴ It noted that imports from Taiwan and Indonesia were present in the U.S. market throughout the period of investigation. Although imports from China did not enter the U.S. market until 1994, the Commission concluded that subject merchandise from all countries need not be imported throughout the entire period of investigation in order to be deemed “simultaneously” present in the market.¹³⁵ Based on all these factors, as well as the absence of any objection by respondents, the Commission found a reasonable overlap of competition and concluded that cumulation was required.¹³⁶

In the final phase of these investigations, we have obtained no contrary information. Indeed, the record provides further support for the conclusion that subject imports of melamine institutional dinnerware are fungible with each other and with the domestic like product with respect to quality, design, and breadth of product line.¹³⁷ Accordingly, and in light of the lack of objection from any of the parties, we again cumulate subject imports of melamine institutional dinnerware from China, Indonesia, and Taiwan.

B. Melamine Retailware

Because subject imports of melamine retailware from Indonesia are negligible, the issue before us is whether to cumulate subject imports from China and Taiwan. As noted in the like product analysis above, such imports fall into three general categories: Asianware, childrensware, and other retailware.

Domestic, Chinese and Taiwanese childrensware are available in similar shapes and sizes. Domestic childrensware is uniformly thinner than subject childrensware, which may affect its ability to withstand rough treatment by children, but there is no record evidence to suggest any systematic performance differences.¹³⁸ As many of the designs on childrensware are proprietary and subject to exclusive licenses, each manufacturer’s dinnerware will necessarily look somewhat different, but all the designs are selected to appeal to young children.¹³⁹

The samples and testimony provided by the parties suggest that domestic retailware and subject imports of Chinese and Taiwanese retailware, other than Asianware, are available in a wide variety of similar shapes, sizes, colors, and designs. There is no evidence of the same kind of direct copying of domestic product lines by foreign producers as is evident with respect to institutional dinnerware. As replacement sales and stacking ability are not nearly as important in the market for retailware as they are in the market for

¹³³ Prelim. Det. at 17-18.

¹³⁴ Prelim. Det. at 18-19.

¹³⁵ Prelim. Det. at 19 & n.111.

¹³⁶ Prelim. Det. at 19.

¹³⁷ See, e.g., Hearing Tr. at 19-20, 23-26, 111; CR at II-4, II-12-II-15; PR at II-2-II-3, II-8-II-9.

¹³⁸ Hearing Tr. at 109, 124; Conf. Tr. at 52-53; Respondents’ Prehearing Brief at Exhibit 8 (Yu Cheer and Gin Harvest catalogs); Respondents’ Posthearing Brief at Exhibit 10 (Tar-Hong catalog).

¹³⁹ Hearing Tr. at 101-102; Conf. Tr. at 52-53, 91-93, 98, 100, 110.

institutional dinnerware, however, the fact that each manufacturer's product may look somewhat different does not significantly affect their fungibility to the extent that the same variety of plates, bowls, cups, etc. are available.¹⁴⁰

There is no direct domestic counterpart for Asianware. Although the parties stated that Asianware has some institutional applications, all of the importers that reported imports of subject Asianware indicated that their imports were sold exclusively in retail markets.¹⁴¹ Moreover, no party disputed that subject Asianware competes, at least in part, with other retail dinnerware products. Both domestic retailware and the subject retailware from China and Taiwan are marketed and sold nationwide through the same channels of distribution, either directly to national retail stores and local retailers or through distributors that supply the retail dinnerware market (including Asian supermarkets).¹⁴² Moreover, subject imports from China and Taiwan as well as the domestic like product were simultaneously present in the U.S. market throughout the period of investigation.¹⁴³

Although domestic melamine retailware and subject retailware are not as physically alike as are domestic and subject institutional dinnerware, we find that the subject imports are fungible with each other and with the domestic like product to a considerable extent. This limited fungibility combined with the common geographic markets, channels of distribution and market presence establish a reasonable overlap of competition. Accordingly, we cumulate subject imports of non-institutional dinnerware from China and Taiwan.

V. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping investigations, the Commission determines whether an industry in the United States is materially injured by reason of the LTFV imports under investigation.¹⁴⁴ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹⁴⁵ Although the Commission may consider causes of injury to the industry other than the LTFV imports,¹⁴⁶ it is not to weigh causes.^{147 148}

¹⁴⁰ Hearing Tr. at 14, 69, 83-84; Conf. Tr. at 52-53. Even Asianware is available in some of the same basic shapes and sizes as other retailware.

¹⁴¹ See Importer Questionnaires of ***.

¹⁴² CR at II-1-II-2; PR at II-1-II-2; Hearing Tr. at 83-84, 113, 115. Some or all of the distributors and retailers that deal in Asianware are different from those that handle other melamine retailware. Hearing Tr. at 82-83, 113-114, 153, 162-163; Conf. Tr. at 75, 90, 99-101, 109-110.

¹⁴³ Table IV-1, CR at IV-4; PR at IV-3; Tables B-3 and B-4, CR at B-7 and B-9; PR at B-7.

¹⁴⁴ 19 U.S.C. § 1673b(a). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

¹⁴⁵ 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

¹⁴⁶ Alternative causes may include the following:

[T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

(continued...)

A. Melamine Institutional Dinnerware

1. Volume of the Subject Imports

The volume of U.S. shipments of cumulated subject imports of melamine institutional dinnerware rose steadily between 1993 and 1995, for a total increase of nearly *** percent, and was significantly higher in interim 1996 than in interim 1995.¹⁴⁹ Measured by value, the cumulated subject imports followed the same trend, but rose by an even greater amount.¹⁵⁰ In assessing the volume and market share of the subject imports of melamine institutional dinnerware in these investigations, we give particular weight to the data for interim 1996, which show that the increasing trend in subject imports has continued unabated, and indeed intensified, despite the filing of the petition in early 1996.¹⁵¹

The cumulated market share of the subject imports by volume also rose steadily between 1993 and 1995, and was nearly 25 percent higher in interim 1996 than in interim 1995.¹⁵² This rise in the market share of the subject imports was entirely at the expense of the domestic industry, which lost market share in equal or greater amounts to that gained by the subject imports.¹⁵³

Based on the foregoing, we find that both the volume of subject imports of melamine institutional dinnerware and the increase in that volume over the period of investigation are significant.

2. Price Effects of the Subject Imports

The record in these investigations confirms that price is a significant factor in purchasing decisions in the market for melamine institutional dinnerware. There are no significant quality differences between the domestic product and the subject imports. Indeed, as we noted above, foreign producers have developed

¹⁴⁶ (...continued)

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

¹⁴⁷ See, e.g., Gerald Metals, Inc. v. United States, Slip Op. 96-142 at 12 (Ct. Int'l Trade, Aug. 21, 1996); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

¹⁴⁸ Commissioner Newquist further notes that the Commission need not determine that imports are "the principal, a substantial, or a significant cause of material injury." S. Rep. No. 249, at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista, 704 F. Supp. at 1101.

¹⁴⁹ The volume of U.S. shipments of the subject imports of melamine institutional dinnerware rose from *** pounds in 1993 to *** pounds in 1994 and *** pounds in 1995, and was *** pounds in interim 1996, compared with *** pounds in interim 1995, a difference of over *** percent. Table B-3, CR at B-7; PR at B-7.

¹⁵⁰ U.S. shipments of subject imports of melamine institutional dinnerware by value rose from \$*** in 1993 to \$*** in 1994 and \$*** in 1995, an increase of *** percent. U.S. shipments of subject imports by value were \$*** in interim 1996, compared with \$*** in interim 1995, an increase of over *** percent. Table B-3, CR at B-7; PR at B-7.

¹⁵¹ We note that these data reflect three quarters, rather than just a few months. Moreover, there is no evidence of seasonality or other information of record that would cause us to question their reliability.

¹⁵² The cumulated market share of subject imports of melamine institutional dinnerware rose from *** percent in 1993 to *** percent in 1994 and *** percent in 1995, and was *** percent in interim 1996, compared with *** percent in interim 1995. Table B-3, CR at B-7; PR at B-7.

¹⁵³ Table B-3, CR at B-7; PR at B-7.

virtually identical copies of the domestic industry's best-selling patterns that look, stack, and perform just like the originals.¹⁵⁴

During the period of investigation, U.S. producers' prices for melamine institutional dinnerware products fluctuated within a fairly restricted range and showed no clear trend.¹⁵⁵ At the same time, cost of goods sold, as well as general, administrative, and selling expenses, rose significantly.¹⁵⁶ U.S. producers have been unable to raise their prices to cover these cost increases, even in 1993 and 1994, when apparent consumption was rising.¹⁵⁷

The subject imports of melamine institutional dinnerware undersold the corresponding domestic product by large margins in the overwhelming majority of comparisons.¹⁵⁸ In addition, we confirmed a significant number of specific instances where the domestic industry lost sales to the subject imports due to the lower price of those imports, or was forced to reduce its price in order to keep a sale.¹⁵⁹ In light of the pervasive nature of the underselling in these investigations, the size of the underselling margins, and the evidence that price competition from LTFV imports has resulted in lost sales and revenues to the domestic industry, we find the underselling to be significant. Moreover, in light of the evidence that the subject imports and the domestic like product compete on the basis of price, that the domestic industry has lost sales and revenues by reason of lower import prices, that underselling is pervasive, and that the domestic industry has been unable to raise prices in the face of rising costs, we find that the subject imports have suppressed prices for the domestic product to a significant degree.

¹⁵⁴ Conf. Tr. at 19-20, 26, 29-30, 58; CR at I-4, II-3-II-4, II-11; PR at I-3, II-2-II-3, II-7; Hearing Tr. at 19-20, 23-26, 111.

¹⁵⁵ Figures V-4-V-7, CR at V-12-V-13; PR at V-14.

¹⁵⁶ Table B-3, CR at B-8; PR at B-7. In particular, the record indicates that the price of formaldehyde, the principal input in melamine resin, has risen significantly. CR at VI-3; PR at VI-1.

¹⁵⁷ Table B-3, CR at B-7; PR at B-7.

¹⁵⁸ Cumulated subject imports undersold the domestic product in *** comparisons, often by margins of ***. Tables V-1-V-4, CR at V-8-V-11; PR at V-6-V-9.

¹⁵⁹ CR at V-23-V-28; PR at V-17-V-19.

3. Impact of the Subject Imports on the Domestic Industry^{160 161 162}

In recent years, the subject imports have increasingly gained acceptance in the U.S. market for melamine institutional dinnerware. The record reflects that acceptance in several ways: first, in the broad product lines offered by the principal importers of melamine institutional dinnerware, which rival the selection of products offered by domestic producers; second, in the rising U.S. inventories of those importers, which allow them to match the domestic industry's delivery terms; and third, in the fact that these importers are selling products that so closely resemble the domestic producers' patterns that even seasoned market participants cannot tell who manufactured some products without looking at the name on the back. Thus, the subject imports are now able to compete with the domestic industry for all categories of customers, including broadliners, buying groups, and restaurant chains.¹⁶³ The domestic industry has foregone price increases, and even lowered its prices, in order to maintain sales and cover production costs.¹⁶⁴ Early in the period of investigation, the industry experienced rising trends in production, shipments, capacity utilization, and even profitability. By later in the period, however, the domestic industry was unable to maintain its market share. The result was declining production, shipments, capacity utilization, and employment, and an accelerating deterioration in the industry's financial condition to the point of losses by the end of the period.¹⁶⁵

¹⁶⁰ As part of our consideration of the impact of imports, the statute specifies that the Commission is to consider, in an antidumping proceeding, "the magnitude of the dumping margin." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive of the Commission's material injury analysis." SAA at 180. The statute defines the "magnitude of the margin of dumping" to be used by the Commission in a final determination as "the dumping margin or margins most recently published by [Commerce] prior to the closing of the Commission's administrative record." 19 U.S.C. § 1677(35)(C). In these investigations, Commerce found one class or kind of imported merchandise and therefore did not calculate separate margins for institutional dinnerware and retailware. The dumping margins identified in Commerce's final determinations in these investigations ranged from 2.74 to 7.06 percent for China, 8.10 to 12.9 percent for Indonesia; and 3.25 to 53.13 percent for Taiwan. In addition, Commerce found *de minimis* margins for Chen Hao Xiamen (China), Gin Harvest (China), Sam Choan (China), and Yu Cheer (Taiwan). 62 Fed. Reg. 1708, 1719 (Jan. 13, 1997) (China); 62 Fed. Reg. 1719, 1726 (Jan. 13, 1997) (Indonesia); 62 Fed. Reg. 1726, 1733 (Jan. 13, 1997) (Taiwan).

Respondents argue that the dumping margins found by Commerce are so much smaller than either the margins of underselling or the amount by which purchasers said that import prices would have to rise before they would switch to the domestic product that the subject imports could not be a cause of adverse price effects. Respondents' Prehearing Brief at 13-15, Hearing Tr. at 116-18; Respondents' Posthearing Brief at 10. Although some purchasers indicated that import prices would have to rise by up to 50 percent before they would switch to a domestic supplier, others indicated that they would switch if import prices rose by as little as 2 to 5 percent. CR at II-14; PR at II-8. In any event, the statute does not require us to compare margins of dumping with margins of underselling.

¹⁶¹ Vice Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

¹⁶² Commissioner Newquist notes that, in his analytical framework, "evaluation of the magnitude of the margin of dumping" is not generally helpful in answering the questions posed by the statute: whether the domestic industry is materially injured; and, if so, whether such material injury is by reason of the dumped subject imports.

¹⁶³ CR at II-3-II-5, II-9, II-12-II-14; PR at II-2-II-3, II-6, II-8-II-9; Hearing Tr. at 19-26, 28-29, 32, 52-54, 79-81; Conf. Tr. at 19-21, 26, 29-30; Petitioner's Prehearing Brief at 30-31.

¹⁶⁴ Hearing Tr. at 32, 42, 94.

¹⁶⁵ Table B-3, CR at B-8; PR at B-7.

Accordingly, we find that the domestic industry producing melamine institutional dinnerware is materially injured by reason of the subject imports of melamine institutional dinnerware from China, Indonesia, and Taiwan.

B. Melamine Retailware

The cumulated volume of U.S. shipments of subject imports of melamine retailware from China and Taiwan fell from 1993 to 1994, then rose in 1995 to exceed its 1993 level, and was virtually unchanged between interim 1995 and interim 1996. Cumulated U.S. shipments of subject imports of melamine retailware by value followed the same trend from 1993 to 1995, although the increase from 1994 to 1995 was larger. U.S. shipments of subject imports by value were somewhat lower in interim 1996 than in interim 1995.¹⁶⁶ The market share of the subject imports of retailware followed the same general trend, but was at all times very low.¹⁶⁷

While we might have characterized volume and market share trends such as these as significant under some circumstances, neither the levels of, nor the trends in the volume and market share of the subject imports indicate that they are significant in the circumstances of this industry. In particular, we note that the domestic industry has never seriously contended that the subject imports of melamine retailware have adversely affected its sales or market share in the U.S. market for melamine retailware. Rather, petitioner has insisted that it brought its petition to aid the domestic industry producing melamine institutional dinnerware,¹⁶⁸ and has argued forcefully and repeatedly at every stage of these investigations that the subject imports of melamine retailware are institutional products that have injured domestic producers' operations producing melamine institutional dinnerware.¹⁶⁹ In light of these facts, we do not find the volume or market share of the subject imports of melamine retailware to be significant.

Although both the domestic industry and several importers reported prices for subject imports of melamine retailware, those data are inconclusive on the issue of underselling, because of differences in

¹⁶⁶ The volume of U.S. shipments of subject imports of melamine retailware from China and Taiwan fell from *** pounds in 1993 to *** pounds in 1994, then rose to *** pounds in 1995, and was *** pounds in interim 1996, compared with *** pounds in interim 1995. The value of U.S. shipments of subject imports of retailware from China and Taiwan fell from \$*** in 1993 to \$*** in 1994, then rose to \$*** in 1995, and was \$*** in interim 1996, compared with \$*** in interim 1995. Table B-4, CR at B-9; PR at B-7.

¹⁶⁷ The market share of the subject imports of retailware fell from *** percent in 1993 to *** percent in 1994, then rose to *** percent in 1995, and was *** percent in interim 1996, compared with *** percent in interim 1995. Table B-4, CR at B-9; PR at B-7. We note that our data overstate the market share of the subject imports, because imports of non-subject retailware were underreported. *See, e.g.*, CR at I-2, n.6, IV-1-IV-2; PR at I-2, n.6, IV-1; Hearing Tr. at 65.

¹⁶⁸ Petition at 2 ("AMITA does not participate in the retail market."); Hearing Tr. at 7-8, 12-14; Conf. Tr. at 50-51.

¹⁶⁹ *See, e.g.*, Petitioner's Prehearing Brief at 16-17; Petitioner's Posthearing Brief at 14-15, Exhibits 1, 3, and 9, Responses to Staff Questions at 1-10; Hearing Tr. at 15-16, 26-27, 36-38, 82-83. In the preliminary investigations, petitioner argued that the domestic industry producing melamine retailware had long since been eliminated by low-priced imports and was effectively beyond the help of the antidumping laws. Conf. Tr. at 47-49; Petitioner's Postconference Brief at 1-2, 39. Petitioner persisted in this position even though two of its three member companies are the sole domestic producers of melamine retailware, and even though melamine retailware accounts for a significant portion of each such firm's total production of melamine dinnerware. Tables III-1 and III-2, CR at III-5-III-6; PR at III-4. They continued to press the argument that there is no domestic retailware industry worth mentioning at our hearing, Hearing Tr. at 13, until it became clear that the Commission was considering a possible separate like product consisting of retailware.

product mix and in the levels of trade at which those products were sold.¹⁷⁰ Therefore, we do not find that the available data support a finding that the subject imports have depressed or suppressed domestic prices for melamine retailware to a significant degree. Moreover, as was the case with import volume, petitioner has never argued that the subject imports of melamine retailware are adversely affecting the prices the domestic industry receives for its retail products.

We recognize that the performance of the domestic industry producing melamine retailware is less than robust in terms of production, shipments, capacity utilization, employment, and other measures, and that its financial condition shows significant declines.¹⁷¹ Nevertheless, in the absence of sufficient evidence of a causal link between the subject imports and the industry's condition, and in light of our findings of no significant adverse volume or price effects, we do not find that the subject imports of melamine retailware are having an adverse impact on the domestic retailware industry.

Accordingly, we find that the domestic industry producing melamine retailware is not materially injured by reason of the subject imports of melamine retailware from China and Taiwan.

VI. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF MELAMINE RETAILWARE FROM CHINA AND TAIWAN

A. Cumulation

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury.¹⁷² In deciding whether to cumulate for purposes of making our threat determinations, we also consider whether the subject imports are increasing at similar rates and have similar pricing patterns.^{173 174}

Subject imports of melamine retailware from China and Taiwan increased at similar rates from 1993 to 1995, but diverged between interim 1995 and interim 1996, with imports from China *** while imports from Taiwan ***.¹⁷⁵ This divergence may be explained, however, by the decisions of related producers to shift production from Taiwan to China.¹⁷⁶ Because of the similar trends in import volume for most of the period of investigation, as well as the significant degree of common ownership between Taiwanese and Chinese production facilities and the consequent ability of some producers to shift production at will between

¹⁷⁰ See Memorandum dated Feb. 4, 1997, from Theresa Stoll, Applied Economics Division, to the Commission.

¹⁷¹ In accordance with 19 U.S.C. § 1677(7)(C)(iii)(V), we have considered the magnitude of the dumping margins established by Commerce in these investigations. As noted above, Commerce did not calculate separate margins for retailware. 62 Fed. Reg. 1708, 1719 (Jan. 13, 1997) (China); 62 Fed. Reg. 1726, 1733 (Jan. 13, 1997) (Taiwan).

¹⁷² 19 U.S.C. § 1677(7)(H).

¹⁷³ See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

¹⁷⁴ Commissioner Newquist notes that when assessing whether to cumulate for purposes of a threat of material injury analysis, he places little weight on whether imports from various subject countries are increasing at similar rates or have similar margins of underselling and pricing patterns. Nowhere does the statute require that these "factors" be examined in determining whether to cumulate for a threat analysis.

¹⁷⁵ Tables B-3 and B-4, CR at B-7 and B-9; PR at B-7.

¹⁷⁶ CR at IV-3, n.9; PR at IV-2, n.9.

those two countries, we exercise our discretion to cumulate subject imports of retailware from China and Taiwan for purposes of our threat analysis.

B. Analysis of the Relevant Statutory Threat Factors

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁷⁷ The Commission may not make such a determination “on the basis of mere conjecture or supposition,”¹⁷⁸ and considers the threat factors “as a whole.”¹⁷⁹ In making our determination, we have considered all statutory factors¹⁸⁰ that are relevant to these investigations.¹⁸¹

Our data on foreign production capacity in China and Taiwan include producers of both melamine institutional dinnerware and melamine retailware and therefore overstate the capacity of those foreign producers that is dedicated to melamine retailware. Although total Chinese capacity to produce thick melamine dinnerware has increased, we note that capacity utilization has been relatively high and is projected to remain so.¹⁸² More importantly, although there is *** for the Chinese product, exports to third countries have grown far more rapidly than exports to the United States, and the former are projected to overtake the latter.¹⁸³ Overall Taiwanese production capacity for melamine dinnerware has declined and is projected to continue to decline. Moreover, the capacity utilization of the Taiwanese industry has been and is projected to remain extremely high, and there are significant home and third country markets for the Taiwanese product.¹⁸⁴ We therefore do not find any existing unused capacity or imminent, substantial increase in production capacity in the exporting countries indicating the likelihood of substantially increased imports of the subject merchandise into the United States.

Based on their relatively small volume and market share, but more importantly on petitioner’s failure to argue that the domestic retailware industry is experiencing adverse effects by reason of the subject imports

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

¹⁷⁸ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387 & 388 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

¹⁷⁹ While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 184.

¹⁸⁰ The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although “[n]o substantive change in Commission threat analysis is required.” SAA at 185.

¹⁸¹ 19 U.S.C. § 1677(7)(F)(I). Factor I regarding consideration of the nature of the subsidies is inapplicable because there have not been any subsidies alleged. Factor VII regarding raw and processed agriculture products is also inapplicable to the products at issue. See 19 U.S.C. § 1677(7)(F)(iii)(I).

¹⁸² Moreover, Chen Hao Xiamen, the Chinese producer whose *** the Commission relied upon in the preliminary determinations, received a *de minimis* margin from Commerce and has been excluded from our foreign industry data in the final phase of these investigations.

¹⁸³ Table VII-1, CR at VII-4; PR at VII-3.

¹⁸⁴ Table VII-3, CR at VII-8; PR at VII-4.

of melamine retailware, we found that the volume of such imports is not significant. For the same reasons, we find that there has not been a significant rate of increase of the volume or market penetration of imports in the subject merchandise indicating the likelihood of substantially increased imports.

In our present injury analysis, we found no evidence that the subject imports have depressed or suppressed domestic prices for melamine retailware to a significant degree nor did we find any reliable evidence of underselling. We find no record basis for concluding that such price effects are likely to occur in the imminent future. Accordingly, we do not find that imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices or are likely to increase demand for further imports.

Importers' U.S. inventories of subject retailware followed the trend in import volume, falling from 1993 to 1994, rising in 1995 to above their 1993 level, and remaining relatively constant between interim 1995 and interim 1996. Although these inventories are not small relative to importers' total U.S. shipments, they are extremely small relative to both domestic producers' inventories and apparent consumption of melamine retailware.¹⁸⁵

Our affirmative determination with respect to melamine institutional dinnerware raises the possibility that Chinese and Taiwanese producers of the institutional product may convert their facilities to the production of the retail product, as the same presses and some of the same molds can be used to produce institutional dinnerware and thick retailware.¹⁸⁶ In light of the relatively small volume of the subject imports to date, and the lack of any significant rising trend in the volume or market share of those imports, we do not find it likely that any product-shifting that might occur will cause subject imports to rise to an injurious level in the near future.

There is no evidence of actual or potential negative effects on the existing development and production efforts of the domestic industry. One of the two domestic producers, which manufactures melamine retailware on an OEM basis using molds provided by its customer, need not engage in any such efforts.¹⁸⁷ Moreover, the domestic industry's capital expenditures have been fluctuating, but were not inconsiderable over the period of investigation as a whole.¹⁸⁸

There are no other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports of the subject merchandise.

Finally, we note that the Court of Appeals for the Federal Circuit has stated that the Commission is required to consider the extent of domestic industry support for a petition in assessing threat to the domestic industry.¹⁸⁹ In this case, petitioner has failed to press any serious arguments on behalf of the domestic industry producing melamine retailware. This lack of domestic industry support is thus a factor weighing against a finding of threat in these investigations.

In light of the relatively small volume and market share of the subject imports to date, the lack of any significant growth in the volume or market share of those imports, the apparent lack of domestic industry interest in relief in the retail market, as well as the other factors discussed, we do not find it likely that subject imports will rise to an injurious level in the near future, notwithstanding the possibility of some product-shifting. For all these reasons, we find that the domestic industry producing melamine retailware is not threatened with material injury by reason of subject imports of melamine retailware from China and Taiwan.

¹⁸⁵ Table B-4, CR at B-9; PR at B-7.

¹⁸⁶ Hearing Tr. at 87-88. Moreover, a thick mold can be inexpensively modified to produce a thin, non-subject retail product. *Id.*

¹⁸⁷ Hearing Tr. at 64-65.

¹⁸⁸ Table B-4, CR at B-10; PR at B-7.

¹⁸⁹ *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 44 F.3d 978, 984 (Fed. Cir. 1994).

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing melamine institutional dinnerware is materially injured by reason of LTFV imports from China, Indonesia and Taiwan, that imports of melamine retailware from Indonesia are negligible, and that the domestic industry producing melamine retailware is neither materially injured nor threatened with material injury by reason of LTFV imports from China and Taiwan.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these final investigations, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of melamine dinnerware for institutional use ("melamine institutional dinnerware") from China, Indonesia, and Taiwan found by the Department of Commerce to be sold at less-than-fair-value ("LTFV"). I further determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of melamine dinnerware for retail use ("retailware") from China and Taiwan found by the Department of Commerce to be sold at LTFV. I concur in the conclusions of my colleagues in the finding of the like product, domestic industry, related parties, cumulation,¹ negligibility, and in the discussion of the condition of the domestic industry. These additional and dissenting views provide an explanation of my determination of no material injury or threat of material injury to an industry in the United States by reason of LTFV imports of melamine institutional dinnerware from China, Indonesia, and Taiwan and my determination of no material injury or threat of material injury to an industry in the United States by reason of LTFV imports of melamine retailware from China and Taiwan.

I. ANALYTICAL FRAMEWORK

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

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States....²

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."³ In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry ... within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴

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

¹ Unlike my colleagues, I do not rely on a finding of fungibility in my decision to cumulate subject imports. Rather, in each case the evidence indicates sufficient substitutability such that subject imports compete with each other and with the domestic like product.

² 19 U.S.C. § 1677(7)(B)(i).

³ 19 U.S.C. § 1677(7)(B)(ii).

⁴ 19 U.S.C. § 1677(7)(C)(iii).

relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.⁵ It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with my mode of analysis, expressly holding that my mode of analysis comport with the statutory requirements for reaching a determination of material injury by reason of the subject imports.⁶

In my analysis of material injury, I evaluate the effects of the dumping⁷ on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,⁸ I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

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

For the reasons discussed below, I determine that the domestic industry producing melamine institutional dinnerware is not materially injured or threatened with material injury by reason of LTFV imports of melamine institutional dinnerware from China, Indonesia, and Taiwan. I further determine that the domestic industry producing melamine retailware is not materially injured or threatened with material injury by reason of LTFV imports of melamine retailware from China and Taiwan. As discussed in the majority opinion, I find subject imports of melamine retailware from Indonesia to be negligible.

II. CONDITIONS OF COMPETITION

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

⁵ S.Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

⁶ U.S. Steel Group v. United States, 96 F.3d 1352, at 1361 (Fed. Cir. 1996), *aff'g* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

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

⁸ In examining the quantity sold, I take into account sales from both existing inventory and new production.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, to what extent purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall elasticity of demand for both melamine institutional dinnerware and melamine retailware likely are moderate.

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

Institutional. Melamine institutional dinnerware is ultimately purchased by food service providers, such as schools, hospitals, and restaurants. The cost of dinnerware per serving as a percentage of the overall food product and related services is a relatively small share, given the long life of melamine institutional dinnerware.⁹ I further note that for most types of food served, the institution must purchase some form of dinnerware. There are likely some differences in the elasticity of demand across major buyers of melamine institutional dinnerware, such as those in restaurants and schools. Another factor affecting demand is buying power by the largest distributors, the “broadliners” and “buying groups.” The evidence suggests that such groups have increased in importance in recent years. Such buying power stiffens resistance to price increases. These considerations suggest a lower elasticity of demand for melamine institutional dinnerware.

Retail. Demand for melamine retailware is determined by the consumers’ willingness to pay higher prices, as measured by the importance of the product to consumers. This importance will depend on whether the product is considered a non-discretionary (necessity) purchase or a discretionary (luxury) purchase by the consumer. When the end use product is a necessity, changes in the price of the product are less likely to alter demand by the consumer. When the end use product is considered a luxury, changes in the price of the product are more likely to alter demand by the consumer. In the case of melamine retailware, most consumers need some form of dinnerware. There are likely, however, to be some differences in the elasticity of demand across consumers of the different types of melamine retailware, such as childrensware and Asianware. Overall, these considerations suggest a lower elasticity of demand for melamine retailware.

Alternative Products. A second important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price

⁹ Petitioner testified that melamine institutional dinnerware can withstand a total of 4,500 to 13,000 uses. Hearing Tr. at 14-15. So even moderate changes in the unit price of melamine institutional dinnerware would translate into minimal increases in the per serving cost of the food product.

increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Institutional. In these investigations, the record indicates that there is some competition between melamine institutional dinnerware and alternative institutional dinnerware products, such as polycarbonates or low-end china. Evidence in the record indicates that institutional users will “occasionally” switch to or from melamine, or use melamine dinnerware and substitute products side-by-side.¹⁰ Purchasers reported some substitutes for melamine institutional dinnerware.¹¹ The availability of these alternative non-melamine institutional dinnerware products would tend to increase the price sensitivity of demand.

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

Retail. In these investigations the record indicates that there is some competition between melamine retailware and alternative retailware products, such as low-end china. Demand elasticity, however, is likely somewhat lower than in the institutional market. For example, children are less likely to use low-end china due to breakability.

Based on the importance of the product to consumers and the availability of alternative products, I find that the overall elasticity of demand for melamine retailware is relatively moderate. That is, purchasers will reduce the amount of melamine retailware they buy only somewhat in response to a general increase in the price of melamine retailware.

B. Substitutability

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

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another. Thus, while overall demand for a product will only change moderately in response to the overall price change, the demand for products from different sources (e.g., subject imports) will decrease or increase depending on their relative prices and the substitutability of the products from different sources. In other words, purchasers can avoid price increases from one source by shifting their purchases to alternative sources. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

¹⁰ Hearing Tr. at 22. CR at I-7; PR at I-5. Respondent claims china dinnerware outsells melamine by ten to one and is about 50 percent cheaper. Respondent's Postconference Brief at 16-17 and Exhibits 7 and 10-13; Conf. Tr. at 126-127.

¹¹ Only 14 of 41 responding purchasers indicated that there are no substitutes for melamine institutional dinnerware in its end uses. CR at II-9; PR at II-5.

I have made the following determinations regarding substitutability. First, I find that subject imports of melamine dinnerware for institutional use from China, Indonesia, and Taiwan are fairly good substitutes for domestic melamine institutional dinnerware. Second, I find that subject imports of melamine retailware are moderately good substitutes for domestic melamine dinnerware for non-institutional use. Thus, any shift in demand away from subject imports, had they been fairly priced, would have increased demand for domestic melamine institutional dinnerware somewhat. Likewise, any shift in demand away from subject imports of melamine retailware, had they been fairly priced, would have increased demand for domestic melamine retailware.

Institutional. Purchasers have three potential sources of melamine institutional dinnerware: domestic producers, subject imports, and nonsubject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among melamine institutional dinnerware from the different sources as follows.

Cumulated subject imports and domestic like product are technically interchangeable in their basic application as dinnerware used by institutional food providers and are generally very similar.¹² Subject imports purposely have been made to conform with domestic products, so as to compete for replacement and add-on sales.¹³ Although the record suggests that domestic products consist of a broader range of melamine institutional dinnerware types,¹⁴ this does not appear to have limited substantially subject import competition. I note that 80 to 90 percent of melamine institutional dinnerware apparently is sold in basic, monotone colors.¹⁵ Questionnaire responses indicate that the majority of end-users did not specifically order melamine institutional dinnerware from one country in particular over other sources.¹⁶ Many U.S. purchasers use products from different sources interchangeably.¹⁷ Most purchasers reported that there are no significant differences in quality or other nonprice factors between the domestic product and subject imports. Those purchasers that did observe differences indicated that the domestic product was better than the Chinese, Indonesian, and Taiwanese products in terms of supply reliability, product availability, technical support, and delivery time. Average lead times between a customer's order and delivery are similar for domestic products and subject imports from inventory.¹⁸ Moreover, the production processes of foreign and domestic producers are generally the same.

Cumulated subject imports and domestic melamine institutional dinnerware are sold through similar channels of distribution. Both domestic and imported products are sold to "broadliner" distributors, which represent 20 to 25 percent of the market, as well as to independent dealers.¹⁹ There is no dispute that the domestic like product and the subject imports from all three countries compete in the same geographical markets nationwide.²⁰

Although Respondents claim they are prevented from competing with domestic producers for customers who are required or prefer to purchase from domestic sources, due to "Buy American" provisions

¹² CR at II-9; PR at II-6.

¹³ Conf. Tr. at 19-20, 26, 29-30; CR at II-3 and II-13; PR at II-2 and II-8.

¹⁴ CR at II-13; PR at II-8. Respondents' Postconference Brief at 26-27.

¹⁵ Conf. Tr. at 117-118.

¹⁶ CR at II-9; PR at II-6.

¹⁷ CR at II-13; PR at II-8.

¹⁸ CR at II-14; PR at II-9. If imports are not available from U.S. inventory, the lead times increase dramatically.

¹⁹ CR at II-3; PR at II-2.

²⁰ Conf. Tr. at 59 and 111.

and the greater range of both melamine and non-melamine products of domestic producers,²¹ these do not appear to limit competition in this market. On balance, I find that cumulated subject imports for institutional use and domestic melamine institutional dinnerware appear to be fairly good substitutes.

Nonsubject imports are mostly from China.²² They appear to be good substitutes for both subject imports, especially from China, and the domestic product.

Retailware. As is the case for institutional dinnerware, there are three potential sources of melamine retailware: domestic producers, subject imports, and nonsubject imports. Substitutability between subject imports and domestic like product, however, is lower as there is no domestic production of Asianware and little production of childrensware. Nonsubject imports are substantially more important in this market, although there is little information on the level of substitutability of nonsubject imports with subject imports and the domestic product. Overall, I find that cumulated subject imports of melamine retailware and domestic melamine retailware appear to be only moderate substitutes. Likewise, I find that nonsubject imports appear to be only moderately good substitutes for both subject imports and the domestic product.

C. Supply Conditions

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

Capacity Utilization and Inventories. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price.

Institutional. The total domestic industry capacity for melamine institutional dinnerware remained roughly the same from 1993 to 1995. In 1995, more than one-half of the domestic industry's capacity to produce melamine institutional dinnerware, *** percent, was not used and therefore was available to increase production.²³ In 1995, this available production capacity could have replaced the total quantity of cumulated subject imports many times over.²⁴

The domestic industry had *** million pounds of melamine institutional dinnerware in inventories available at the end of 1995, representing *** percent of total shipments in 1995, which it could have shipped to the U.S. market.²⁵ The domestic industry exported only minimal quantities of melamine institutional dinnerware during the period of investigation. Thus the domestic industry had sufficient capacity and inventories available that would have allowed it to fill all of the demand supplied by cumulated subject imports for institutional use.

²¹ Respondents' Postconference Brief at 22-28 and Exhibit 15; Conf. Tr. at 76-81, 85-90, 106; CR at II-4-5; PR at II-3.

²² Several Chinese exporter\producers received *de minimis* or zero margins. Thus, imports from these sources are nonsubject imports.

²³ Table B-3, CR at B-8; PR at B-7.

²⁴ Table B-3, CR at B-7-8; PR at B-7.

²⁵ *Id.*

Retail. The total domestic industry capacity for melamine retailware increased by *** percent from 1993 to 1995. In 1995, more than *** of the domestic industry's capacity to produce melamine retailware, *** percent, was not used and therefore was available to increase production.²⁶ In 1995, this available production capacity could have replaced the total quantity of cumulated subject imports several times over.²⁷

The domestic industry had *** pounds of melamine retailware in inventories available at the end of 1995, representing *** percent of total shipments in 1995, which it could have shipped to the U.S. market.²⁸ The domestic industry *** during the period of investigation. Thus the domestic industry had sufficient capacity and inventories available that would have allowed it to fill all of the demand supplied by cumulated subject imports of melamine retailware.

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

Institutional. The domestic melamine institutional dinnerware industry has been somewhat concentrated. Three large domestic producers account for nearly 100 percent of reported production in 1995.²⁹ Nonetheless, these producers appear to sell similar products and compete with one another. The record thus indicates that there is substantial available domestic capacity and sufficient competition among domestic producers.

Retail. Likewise, the domestic melamine retailware industry appears to have been somewhat concentrated, with only two domestic producers. Non-subject imports, however, have a substantial presence.³⁰ Overall, there appear to be sufficient competitive forces.

Because of the level of competition in the U.S. markets and the domestic industries' abilities to supply the demand for subject imports, I find that the elasticity of supply is relatively high for both the domestic melamine institutional dinnerware industry and the domestic melamine retailware industry.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF MELAMINE INSTITUTIONAL DINNERWARE FROM CHINA, INDONESIA, AND TAIWAN OR BY REASON OF LTFV IMPORTS OF MELAMINE RETAILWARE FROM CHINA AND TAIWAN

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

A. Volume of Subject Imports³¹

Institutional. Cumulated subject imports of melamine institutional dinnerware increased from *** pounds in 1993 to *** pounds in 1995. Subject imports increased by *** pounds from interim 1995 to interim 1996. The value of cumulated subject imports increased from \$*** in 1993 to \$*** in 1995. Subject imports increased by \$*** from interim 1995 to interim 1996. By quantity, cumulated subject imports held a market share of *** percent in 1993 and *** percent in 1995. Subject import market share by quantity rose

²⁶ Table B-4, CR at B-9; PR at B-7.

²⁷ Table B-4, CR at B-9-10; PR at B-7.

²⁸ Table B-4, CR at B-9; PR at B-7.

²⁹ CR at III-2; PR at III-2.

³⁰ Table B-4, CR at B-8; PR at B-7.

³¹ The data in the following section are from Table B-3, CR at B-7-8; PR at B-7.

from *** percent in interim 1995 to *** in interim 1996. Their market share by value was *** percent in 1993 and *** percent in 1995. Market share by value of cumulated subject imports increased from *** percent in interim 1995 to *** in interim 1996. While it is clear that the larger the volume of cumulated subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of their price and volume effects. Based on the market share of cumulated subject imports, the conditions of competition in the domestic market for melamine institutional dinnerware, and the lack of significant price effects or impact on the domestic industry as discussed below, I find that the volume of cumulated subject imports of melamine institutional dinnerware is not significant.

Retail. Cumulated subject imports of melamine retailware increased from *** pounds in 1993 to *** pounds in 1995. The quantity of cumulated subject imports fell by *** pounds from interim 1995 to interim 1996. The value of cumulated subject imports increased from \$*** in 1993 to \$*** in 1995. The value of cumulated subject imports fell by \$*** from interim 1995 to interim 1996. By quantity, cumulated subject imports held a market share of *** percent in 1993 and *** percent in 1995. Market share by quantity of cumulated subject imports increased from *** percent in interim 1995 to *** percent in interim 1996. Their market share by value was *** percent in 1993 and *** percent in 1995. Market share by value of cumulated subject imports decreased from *** percent in interim 1995 to *** in interim 1996. While it is clear that the larger the volume of cumulated subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of their price and volume effects. Based on the market share of cumulated subject imports, the conditions of competition in the domestic market for melamine retailware, and the lack of significant price effects or impact on the domestic industry as discussed below, I find that the volume of cumulated subject imports of melamine retailware is not significant.

B. Price Effects

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

Institutional. In these investigations, the alleged dumping margins for subject imports from China, Indonesia and Taiwan are relatively low. Thus, if cumulated subject imports had been fairly priced, their prices in the U.S. market would have increased only somewhat, and they would have become only somewhat more expensive relative to domestic melamine institutional dinnerware. In such a case, even if the imported and domestic melamine institutional dinnerware are fairly good substitutes, only some purchases would have shifted towards the relatively less expensive products. In other words, even if they had been fairly priced, most subject imports from these countries likely would continue to have been sold. Overall, the shift in demand to domestic melamine institutional dinnerware would have been minimal, as domestic producers would have captured only a fraction of the market share of cumulated subject imports from China, Indonesia and Taiwan. The moderate overall elasticity of demand indicates that any price increases by domestic suppliers in response to this shift in demand would have been met with a moderate reduction in demand.

On the supplyside, competitive market conditions, and excess capacity and inventories would have limited attempts by the domestic industry to increase prices. The three domestic producers compete among themselves as well as with fairly traded Chinese imports.

In these circumstances, domestic producers could have raised their prices only somewhat, and not by significant amounts, had subject imports been fairly priced. Any effort by a producer to raise prices substantially would have been resisted sufficiently by competitors and to some extent by large buying groups with buying power.

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

Retail. In these investigations, the alleged dumping margins for subject imports from China and Taiwan are relatively low. Thus, if cumulated subject imports had been fairly priced, their prices in the U.S. market would have increased only somewhat, and they would have become only somewhat more expensive relative to domestic melamine retailware. In such a case, even if the imported and domestic melamine retailware are moderately good substitutes, only some purchases would have shifted towards the relatively less expensive products. In other words, even if they had been fairly priced, most subject imports from these countries likely would continue to have been sold. Overall, the shift in demand to domestic retailware would have been minimal, as cumulated subject imports from China and Taiwan held a market share of only *** percent by quantity in 1995. The relatively moderate overall elasticity of demand indicates that any price increases by domestic suppliers in response to this shift in demand would have been met with a relatively moderate reduction in demand.

On the supplyside, competitive market conditions would have limited attempts by the domestic industry to increase prices. The two domestic producers, with their excess capacity and available inventories, compete with large quantities of nonsubject imports.

In these circumstances, domestic producers could have raised their prices only somewhat, and not by significant amounts, had subject imports been fairly priced. Any effort by a producer to raise prices substantially would have been resisted sufficiently by competitors.

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

C. Impact

To assess the impact of cumulated subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.³² These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

Institutional. As discussed above, the domestic industry producing melamine institutional dinnerware would not have been able to increase its prices significantly if cumulated subject imports of melamine institutional dinnerware from China, Indonesia, and Taiwan had been sold at fairly traded prices. Therefore, any impact of dumped imports on the domestic industry would have been on the domestic industry's output and sales. Had subject imports not been dumped, the demand for subject imports likely

³² 19 U.S.C. § 1677(7)(C)(iii).

would have declined somewhat, but demand for the domestic product would have increased only minimally. In other words, had cumulated subject imports not been dumped, the domestic industry would not have been able to increase its output and sales, and therefore its revenues, significantly. Consequently the domestic industry would not have been materially better off if the subject imports had been fairly traded. Therefore, I find that the domestic industry producing melamine institutional dinnerware is not materially injured by reason of LTFV imports of melamine institutional dinnerware from China, Indonesia, and Taiwan.

Retail. As discussed above, the domestic industry producing melamine retailware would not have been able to increase its prices significantly if cumulated subject imports of melamine retailware from China and Taiwan had been sold at fairly traded prices. Therefore, any impact of dumped imports on the domestic industry would have been on the domestic industry's output and sales. Had cumulated subject imports not been dumped, the demand for subject imports from China and Taiwan likely would have declined somewhat, but demand for the domestic product would have increased only minimally. In other words, had cumulated subject imports not been dumped, the domestic industry would not have been able to increase its output and sales, and therefore its revenues, significantly. Consequently the domestic industry would not have been materially better off if the subject imports had been fairly traded. Therefore, I find that the domestic industry producing melamine retailware is not materially injured by reason of LTFV imports of melamine retailware from China and Taiwan.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF MELAMINE INSTITUTIONAL DINNERWARE FROM CHINA, INDONESIA, AND TAIWAN OR BY REASON OF LTFV IMPORTS OF MELAMINE RETAILWARE FROM CHINA AND TAIWAN³³

I have considered the enumerated statutory factors that the Commission is required to consider in its determination.³⁴ A determination that an industry "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."³⁵

I am mindful of the statute's requirement that my determination must be based on evidence, not conjecture or supposition. Accordingly, I have distinguished between mere assertions, which constitute conjecture or supposition, and the positive evidence³⁶ that I am required by law to evaluate in making my determination.

Institutional. The data on foreign production capacity in China and Taiwan include producers of both melamine institutional dinnerware and melamine retailware and therefore overstate the capacity of those foreign producers that is dedicated to melamine retailware. The information regarding production capacity in China is limited. Even if capacity is available, I find that it does not represent evidence that any threat of material injury is real, for three reasons. First, although total Chinese capacity to produce melamine dinnerware has increased, I note that capacity utilization has been *** and ***. Second, although there is *** for the Chinese product, exports to third countries have grown far more rapidly than exports to the United

³³ In my determination of no material injury by reason of LTFV imports of melamine institutional dinnerware from China, Indonesia, and Taiwan, I cumulated subject imports from all three countries. I see no reason or evidence to deviate from this approach here. As such, I cumulate LTFV imports of melamine institutional dinnerware from all three countries for purposes of my threat analysis. Likewise, I cumulate subject imports of melamine retailware from China and Taiwan in my analysis of threat.

³⁴ 19 U.S.C. § 1677(7)(F)(i).

³⁵ 19 U.S.C. § 1677(7)(F)(ii).

³⁶ See American Spring Wire Corporation v. United States, 590 F.Supp. 1273 (1984).

States, and the former are projected to overtake the latter.³⁷ Consequently, Chinese producers are not primarily reliant on the U.S. market. Third, Chinese subject imports have been quite small throughout the period of investigation, attaining their highest market share of *** percent in 1995, and there is no positive evidence to indicate that subject imports will exceed these historical levels in the immediate future.

Taiwanese production capacity for melamine dinnerware has declined and is projected to continue to decline. Moreover, the capacity utilization of the Taiwanese industry has been and is projected to remain extremely high, and there are significant home and third country markets for the Taiwanese product.³⁸ I therefore do not find any existing unused capacity or imminent, substantial increase in production capacity in the exporting countries indicating the likelihood of substantially increased imports of the subject merchandise into the United States.

Although Indonesian production capacity for melamine institutional dinnerware has ***, capacity utilization ***. Second, Indonesia *** and ***. Moreover, exports to the U.S. ***. As such, Indonesian producers ***.³⁹

Overall, I find that none of the unused or underutilized Chinese, Indonesian, and Taiwanese capacity will result in increased imports of LTFV imports in the immediate future. For these reasons, I find that the information relevant to production capacity and unused or underutilized capacity in the exporting countries does not represent evidence that any threat of material injury is real or that actual injury is imminent.

While the cumulated market share of subject imports of melamine institutional dinnerware increased from *** percent in 1993 to *** percent in 1995, I find that any "rapid increase" in market penetration from 1993 to 1995 does not constitute persuasive evidence that any threat of material injury is real or that actual injury is imminent. Even though capacity is available in the exporting countries, there is no indication that imports will increase significantly in the immediate future. Therefore, I find that any rapid increase in market penetration that occurred during the period of investigation does not indicate a likelihood that market penetration will increase to an injurious level.

At the end of 1995, U.S. inventories of subject Chinese, Indonesian, and Taiwanese melamine institutional dinnerware were at *** pounds, representing *** percent of overall U.S. consumption and *** percent of U.S. shipments in 1995, by quantity.⁴⁰ Although these inventories are not insignificant, they represent only a moderate increase over 1994.⁴¹ Overall, I do not find that subject import inventories constitute a threat of material injury.

In my determination of no material injury by reason of LTFV imports of melamine institutional dinnerware, I demonstrated that subject imports have had no significant effect on domestic prices. In light of the competition among melamine institutional dinnerware suppliers in the U.S. market and other conditions of competition, I find no evidence that this will change in the immediate future. Therefore, I conclude that subject imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices.

³⁷ Table VII-1, CR at VII-4; PR at VII-3.

³⁸ Table VII-3, CR at VII-8; PR at VII-4.

³⁹ I also considered the potential for product shifting. Chinese and Taiwanese producers of melamine retailware could convert their facilities to the production of melamine institutional dinnerware, as the same presses can be used to production institutional dinnerware and retailware. There is no convincing evidence, however, that these producers would have an incentive to do so. Therefore, I do not find it likely that any product-shifting will cause subject imports to rise to an injurious level in the near future.

⁴⁰ Table B-3, CR at B-7; PR at B-7.

⁴¹ At the end of 1994, U.S. inventories of Chinese, Indonesian, and Taiwanese melamine institutional dinnerware represented *** percent of overall U.S. consumption and *** percent of U.S. shipments in 1993, by quantity. Table B-3, CR at B-7; PR at B-7.

I find no convincing evidence of any actual or potential negative effects on the existing development and production efforts of the domestic industry, nor any other demonstrable adverse trends that indicate the probability that subject imports will be the cause of actual injury.

For the reasons stated above, I find that the domestic industry producing melamine institutional dinnerware is not threatened with material by reason of LTFV imports of melamine institutional dinnerware from China, Indonesia, and Taiwan.

Retail. The data on foreign production capacity in China and Taiwan include producers of both melamine institutional dinnerware and melamine retailware and therefore overstate the capacity of those foreign producers that is dedicated to melamine retailware. Although total Chinese capacity to produce melamine dinnerware has increased, I note that capacity utilization has been relatively high and is projected to remain so. More importantly, although there is *** for the Chinese product, exports to third countries are projected to overtake the latter.⁴² Overall Taiwanese production capacity for melamine dinnerware has declined and is projected to continue to decline. Moreover, the capacity utilization of the Taiwanese industry has been and is projected to remain extremely high, and there are significant home and third country markets for the Taiwanese product.⁴³ I therefore do not find any existing unused capacity or imminent, substantial increase in production capacity in the exporting countries indicating the likelihood of substantially increased imports of the subject merchandise into the United States.⁴⁴

While there have been LTFV imports of melamine retailware from China and Taiwan during the period of investigation, the quantities have been small, reaching their largest market share of *** percent in 1995.⁴⁵ There is no positive evidence that Chinese and Taiwanese LTFV imports of melamine retailware will increase significantly in the immediate future. Absent such evidence, there is no evidence that any threat of material injury is real or that actual injury is imminent, and any conclusion to the contrary would be based on mere supposition or conjecture.⁴⁶

Importers' U.S. inventories of subject retailware fell from 1993 to 1994, rising in 1995 to above their 1993 level, and remained relatively constant between interim 1995 and interim 1996. Although these inventories are not small relative to importers' total U.S. shipments, they are extremely small relative to both domestic producers' inventories and apparent consumption of melamine retailware.⁴⁷

There is no evidence of actual or potential negative effects on the existing development and production efforts of the domestic industry. One of the two domestic producers, which manufactures melamine retailware on an OEM basis using molds provided by its customer, need not engage in any such

⁴² Table VII-1, CR at VII-4; PR at VII-3.

⁴³ Table VII-3, CR at VII-8; PR at VII-4.

⁴⁴ I also considered the potential for product shifting. Chinese and Taiwanese producers of melamine institutional dinnerware could convert their facilities to the production of melamine retailware, as the same presses and in some cases product molds can be used to produce retailware. There is no convincing evidence, however, that these producers would have an incentive to do so. Therefore, I do not find it likely that any product-shifting will cause subject imports to rise to an injurious level in the near future.

⁴⁵ Table B-4, CR at B-9; PR at B-7.

⁴⁶ I also note that petitioner failed to argue that the domestic melamine retailware industry was experiencing adverse effects by reason of LTFV imports of melamine retailware.

⁴⁷ Table B-4, CR at B-9; PR at B-7.

efforts.⁴⁸ Moreover, the domestic industry's capital expenditures have been fluctuating, but were not inconsiderable over the period of investigation as a whole.⁴⁹

In my determination of no material injury by reason of LTFV imports of melamine retailware, I demonstrated that subject imports have had no significant effect on domestic prices. In light of the competition among melamine retailware suppliers in the U.S. market and other conditions of competition, I find no evidence that this will change in the immediate future. Therefore, I conclude that subject imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices.

I find no evidence of any other demonstrable adverse trends that indicate the probability that subject imports will be the cause of actual injury.

For the reasons stated above, I find that the domestic industry producing melamine retailware is not threatened with material injury by reason of LTFV imports of melamine retailware from China and Taiwan.

V. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing melamine institutional dinnerware is not materially injured or threatened with material injury by reason of LTFV imports of melamine institutional dinnerware from China, Indonesia, and Taiwan. I also determine that the domestic industry producing melamine retailware is not materially injured or threatened with material injury by reason of LTFV imports of melamine retailware from China and Taiwan.

⁴⁸ Hearing Tr. at 64-65.

⁴⁹ Table B-4, CR at B-10; PR at B-7.

PART I: INTRODUCTION

BACKGROUND

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

<i>Date</i>	<i>Action</i>
February 6, 1996 . . .	Petition filed with Commerce and the Commission; institution of Commission investigations
March 1	Commerce notice of initiation
March 22	Commission preliminary determinations
August 22	Commerce preliminary determinations; scheduling of final phase of Commission investigations (61 FR 47957, Sept. 11, 1996)
January 9, 1997	Commission hearing
January 13	Publication of Commerce final determinations (62 FR 1708) ³
February 10	Commission vote
February 18	Commission determinations transmitted to Commerce

SUMMARY DATA

A summary of data collected in the investigations is presented in tables B-1-B-6. Except as noted, U.S. industry data are based on questionnaire responses of five firms that accounted for nearly 100 percent of U.S. production of melamine dinnerware, regardless of thickness, during calendar year 1995. U.S. imports

¹ For purposes of these investigations, "melamine institutional dinnerware" is defined as all items of dinnerware (*e.g.*, plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays, but not including flatware products such as knives, forks, and spoons) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. Melamine institutional dinnerware is provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (HTS) with most-favored-nation tariff rates of 6.7, 5.3, and 3.4 percent *ad valorem*, respectively, in 1997 applicable to imports from China, Indonesia, and Taiwan. Certain imports from Indonesia may be eligible for duty-free entry under the GSP through May 31, 1997.

² *Federal Register* notices cited in the tabulation are presented in app. A, a summary of data collected in these investigations is presented in app. B, and a list of witnesses appearing at the Commission's hearing is presented in app. C.

³ Commerce calculated final LTFV margins to be as follows: for Indonesia, margins ranged from 8.10 to 12.90 percent; for China, margins ranged from 0.04 to 7.06 percent, with three of the five firms investigated receiving *de minimis* rates; and for Taiwan, margins ranged from 0 to 53.13 percent, with one of the four firms investigated receiving a zero rate.

are based on questionnaire responses from 24 firms, and are believed to account for the vast majority of imports of the subject merchandise during the period examined.

THE PRODUCT⁴

Product Description

The imported products subject to these investigations are defined as articles of dinnerware that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch.⁵ Accordingly, melamine dinnerware having a wall thickness of less than 0.08 inch, regardless of its end use, is defined as melamine “household” dinnerware.⁶ Melamine dinnerware other than institutional is alternatively referred to in the trade as “household,” “retail,” or “consumer” dinnerware. For purposes of this report, it will be referred to as “household” dinnerware. Typically, melamine institutional dinnerware is available in a variety of sizes, shapes, and plain or glazed solid colors and patterns, in the form of compression-molded plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays.

In its preliminary determinations, the Commission found the domestic like product to be limited to melamine institutional dinnerware, but indicated that it would seek further information on household dinnerware and polycarbonate dinnerware in the final investigations.⁷ In the final investigations, petitioners argue for one like product consisting of melamine institutional dinnerware coextensive with the scope of the investigations as defined by Commerce. By contrast, respondents argue that there are three separate domestic like products that include merchandise within the scope of the investigations: (1) melamine dinnerware for institutional use; (2) melamine dinnerware for use in Asian restaurants and households (Asianware), and (3)

⁴ Additional information on comparisons between imported and domestic melamine dinnerware is presented in part II of this report.

⁵ There appears to be some confusion, however, as to how and where thickness is measured. According to petitioners, the standard procedure is to dissect the article and consider the aggregate thickness of 80 percent of its profile using a point-caliper micrometer (which allows measurement of contours). Respondents, measuring rim thickness with a flat-caliper micrometer, have shown that several articles of imported dinnerware not made strictly for institutional use have thicknesses over 0.08 inch. These products include what parties have referred to as “childrenware,” that is, articles decorated with cartoon characters that are produced under license for children, and “Asianware,” which consists of articles decorated with traditional Chinese designs and sold exclusively to Asian supermarkets and restaurants.

⁶ Therefore, the distinction between “institutional” and “household” dinnerware used here is one solely based on product thickness, not on whether the product is eventually used in the institutional or household markets. In the questionnaires used in these investigations, U.S. producers and importers were instructed to classify their production and/or imports of melamine dinnerware according to this criterion. Several importers noted, however, that much of their imports of melamine dinnerware meeting the thickness-based definition of institutional dinnerware are actually sold into retail markets for household use. In part II of this report, with regard to channels of distribution and end uses, the report refers to dinnerware destined for “institutional use” or “household use.” Such categories may or may not correspond to the institutional and household products when defined by thickness.

⁷ The Commission’s decision regarding the appropriate domestic products that are “like” the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and, where appropriate, (6) price. Information on channels of distribution is presented in part II of this report. The data in the body of this report are generally presented for both melamine dinnerware, regardless of thickness, and for melamine institutional dinnerware separately. Specific data on institutional dinnerware, segregated by end use, are presented in app. B, tables B-3 and B-4.

melamine dinnerware for noninstitutional (retail) use, including dinnerware designed specially for children (childrensware).⁸

Physical Characteristics and Uses

In general, most melamine dinnerware products consist principally of cured, thermoset melamine-formaldehyde resin containing alpha cellulose reinforcing filler ("pulp") formed by compression molding under high pressures and temperatures. Thermoset melamine dinnerware has a unique combination of superior properties relative to thermoplastic materials that soften with rising temperature, including flexural strength; high-temperature dimensional stability; stain, scratch, and chip resistance; and dishwasher safety with rapid drying cycles. These products also generally meet National Sanitation Foundation (NSF) standards.⁹ In addition to being impervious to soaps, solvents, and food, a primary requisite for nondisposable dinnerware, melamine dinnerware is noted for its economy of use and durability--a combination of advantages that has been particularly attractive to institutional buyers.

For the most part, with the exception of Asianware, the imported and U.S.-produced products are reported to be identical or virtually identical.¹⁰ Petitioners asserted that, in general, the imported products have been made to conform with the U.S.-produced product so that imports may more directly compete for replacement sales in the U.S. market.

Melamine institutional dinnerware differs from melamine household dinnerware in that it is generally thicker, heavier, and more durable, owing to more rigorous institutional handling requirements and concomitant abuse associated with high turnover rates demanded by the food service industry in places such as schools, restaurants, government and business cafeterias, hospitals, and nursing homes.¹¹ Petitioners report that, based on end use, a small degree of overlap exists between items sold as institutional and household dinnerware products.¹²

⁸ Appendix table B-3 presents a summary of data on melamine institutional dinnerware for institutional use. Import data in that appendix consist of data from 5 firms that reported shipments of imports of melamine institutional dinnerware (merchandise within Commerce's scope) for institutional end uses. Data on domestic production, shipments, etc. are for melamine institutional dinnerware as defined by Commerce's scope, as petitioners indicated that virtually all product manufactured with thicknesses within Commerce's scope is sold for institutional end uses. Hearing transcript, p. 49.

Appendix table B-4 presents a summary of data on melamine dinnerware for noninstitutional use. Import data in that appendix consist of data from 8 firms who reported shipments of imports of melamine institutional dinnerware (merchandise within Commerce's scope) for noninstitutional end uses (*e.g.*, household and retail), as well as data from other firms reporting imports of noninstitutional melamine dinnerware. Data on domestic production, shipments, etc. are for noninstitutional melamine dinnerware (merchandise falling outside Commerce's scope), as petitioners indicated that all such product manufactured is sold for noninstitutional end uses. Specific data on domestic production, shipments, etc., of Asianware are not presented as it is not produced in the United States. Hearing transcript, p. 17.

⁹ These standards, which cover all dinnerware regardless of component materials, set basic requirements for ease of cleaning, durability, shape, and contour. They do not specifically mention thickness. Respondents' postconference brief, exh. 4.

¹⁰ Depending on thickness, imports of Asianware may be included in the scope of these investigations.

¹¹ Such requirements include withstanding frequent cycles through high-temperature industrial dishwashing equipment.

¹² Hearing transcript, p. 49.

There are, however, a number of other plastics used in the manufacture of dinnerware. For example, some competition may exist between melamine and polycarbonate thermoplastic dinnerware.¹³ Polycarbonate resins are thermoplastic engineering resins that can be used in high-volume injection-molding equipment.¹⁴ When compared to melamine products, polycarbonate dinnerware is superior in break resistance and is comparable in price. It is also, however, lighter, less scratch-resistant, less dimensionally stable, and more difficult to clean and sanitize. Polycarbonate dinnerware has been used principally in correctional institutions, or in schools as compartmentalized trays.

In addition to melamine and polycarbonate resin, there are a number of types of materials from which dinnerware is made. These include ceramics (such as porcelain, stoneware, and pottery), metals (such as tin, silver, and pewter), and other types of plastic (such as polystyrene, acrylonitrile-butadiene-styrene (ABS), and polypropylene). Disposable varieties of dinnerware are made from paper and polystyrene (Styrofoam).

Interchangeability

Petitioners reported that imported melamine institutional dinnerware is basically completely interchangeable with comparable domestic products. They reported further that the same basic quality, shapes, sizes, and types of melamine institutional dinnerware are also produced in countries outside these investigations.

Parties disagreed regarding the extent of interchangeability between melamine institutional and household dinnerware. Both petitioners and respondents essentially agreed that household dinnerware is not generally used in institutional settings.¹⁵ They disagreed, however, as to whether dinnerware designed for institutional uses is extensively used in noninstitutional settings. Respondents alleged that a substantial quantity of merchandise falling under Commerce's scope is actually used in such settings, whereas petitioners asserted that merchandise thick enough to be used in institutional settings is not generally found on retail shelves.¹⁶

Petitioners assert that the degree of interchangeability between polycarbonate dinnerware and melamine institutional dinnerware is limited. For example, polycarbonate dinnerware is generally strongly preferred to melamine institutional dinnerware for use in correctional settings, because the superior break resistance of polycarbonate dinnerware makes it more difficult for prisoners to fashion weapons from it. Further, unlike melamine dinnerware, polycarbonate dinnerware is not generally produced for household markets. Most polycarbonate dinnerware items are produced in plain colors, although clear versions may be produced in limited quantities.

Respondents counter that melamine and polycarbonate dinnerware are somewhat substitutable given their similar physical appearance. They remarked that interchangeability of polycarbonate for melamine may be limited, not so much because of any differences in the physical characteristics of the products, but because polycarbonate dinnerware tends to be used in captive markets such as prisons and schools.¹⁷

¹³ Hearing transcript, p. 133.

¹⁴ This represents a substantial savings in labor hours when compared to the relatively more labor-intensive melamine compression-molding process.

¹⁵ Respondents' posthearing brief at Q-1; petitioners' posthearing brief, p. 13.

¹⁶ Hearing transcript, pp. 49, 110.

¹⁷ Hearing transcript, pp. 134-35.

Consumer and Producer Perceptions

U.S. consumers of melamine institutional dinnerware have reportedly experienced enhanced profitability through the use of high-quality, attractive melamine tableware traditionally used in the food service industry. A large hotel chain recently publicized the positive attributes of using melamine institutional dinnerware as a cost effective way of controlling disposal expenses, when compared with china breakage losses. The firm cited the many virtues of melamine institutional dinnerware, including high quality and heavy weight with the look and feel of china, without the replacement cost. Durability, sterilization, attractive decorative features, a quieter environment, reduction in insurance claims from customers and employees caused by broken china, and a return on investment of 18 months after switching to melamine institutional dinnerware were other desirable features cited.¹⁸ A large educational institution reported that it has used melamine institutional dinnerware for more than 20 years because of the many advantages already cited, and because it could be used in a variety of settings.¹⁹

With regard to polycarbonate dinnerware, producers tend to favor polycarbonate dinnerware over melamine institutional dinnerware because of the lower labor costs associated with its production. Consumers, on the other hand, favor melamine institutional dinnerware because of its superior physical characteristics, including its durability, similarity to china, and the cost savings associated with high turnaround of the product experienced in institutional hot water dishwasher cycles. By contrast, polycarbonate dinnerware is less preferred from the consumer perspective owing to its low tolerance to scratching, relative difficulty in sterilization, and the overall perception of the product as a cheap, disposable substitute item associated with fastfood throwaway items like paper and Styrofoam products.²⁰

Common Manufacturing Facilities and Production Employees

Both institutional and household melamine dinnerware, regardless of intended end use, are made on the same types of equipment using similar, if not identical, processes. Although produced on the same equipment and generally using the same employees, different molds are used to allow for the greater thickness of institutional articles. Also, because institutional users put a greater premium on function and durability than on appearance, melamine institutional dinnerware is generally less decorative and differentiated in color and design than household dinnerware. A small amount of melamine institutional dinnerware, however, is decorated. Restaurants, for example, frequently request dinnerware with special patterns, logos, or other identifying features.

The manufacture of imported and U.S.-produced products is also similar. Producers start with the same raw materials (melamine-formaldehyde resin, pulp, and other additives such as accelerators, plasticizers, and pigments), then mix these materials according to a recipe.²¹ The resultant granular mixture is then made into specially-sized biscuits or "preforms" for insertion into compression molds, where, under heat and pressure, specific articles of dinnerware are formed. If the piece is to be decorated or glazed, a multiple sequence of compression molding is required. Before packaging and shipment, the pieces are subjected to sanding and buffing operations to remove flashing and other imperfections.

¹⁸ Questionnaire response of Sun Coast.

¹⁹ *Id.*

²⁰ Correctional institutions, however, prefer polycarbonate to melamine dinnerware, because for them, unbreakableness is a paramount consideration. Moreover, the fact that polycarbonate dinnerware may scratch is not important to such consumers because they do not use metal utensils.

²¹ Some producers make their own melamine-formaldehyde resin from melamine crystal and formaldehyde purchased separately.

Carlisle, the only domestic firm reporting production of both polycarbonate and melamine dinnerware, reported that ***.²² Further, its ***.

Price

As seen in part V and appendix D of this report, prices for household dinnerware tend to be lower than those for melamine institutional dinnerware, owing to the fact that institutional dinnerware is generally thicker and therefore heavier.²³ This factor may be somewhat offset by the use of complex designs on household dinnerware.²⁴ Polycarbonate dinnerware is believed to be from 5 to 10 percent less expensive on a per-piece basis than melamine institutional dinnerware.

²² Carlisle indicated that ***.

²³ Also see Petitioners' prehearing brief, p. 14.

²⁴ Respondents indicated in the preliminary investigations, though, that imported melamine household dinnerware (e.g., Asianware and childrensware) was priced *** domestic melamine institutional dinnerware. Respondents' postconference brief, p. 5.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET¹

MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION

Melamine institutional dinnerware as defined by Commerce's scope includes all melamine dinnerware, excluding flatware, with a minimum wall thickness of 0.08 inch. On the import side, melamine dinnerware for other than institutional use may be included. The market for melamine dinnerware for institutional use in the United States includes U.S. producers and importers that sell product primarily to distributors and large restaurant chains.² Distributors then sell the product to end users, including restaurants and institutions such as state and local governments, public and private schools, day care centers, nursing homes, and hospitals.³ Distributors are made up of "broadliners," or major food distributors that also carry equipment and supplies, and independent dealers that sell only equipment and supplies. In recent years, independent dealers have formed buying cooperatives to gain leverage in price negotiations with manufacturers and capture volume discounts and other incentives available to the largest purchasers, and thereby compete more effectively with broadliners. According to Robert Parmacek of Carlisle, a small portion of institutional product, less than 1 percent, may end up with mass merchandisers such as discount clubs which tend to mix retail and institutional products.⁴

As mentioned above, there are products classified as melamine institutional dinnerware by Commerce's scope that are not generally used in institutional applications or sold through the distribution channels mentioned above. These include some "Asianware," children's dinnerware, and household dinnerware.⁵ Asianware includes specialized products such as rice bowls, which are not physically interchangeable with more standard products. It is also characterized by products with Asian-style decoration. No Asianware is produced by domestic producers⁶ or imported from Indonesia. In addition, Asianware is sold through separate channels, which include distributors who sell to Asian supermarkets.⁷ Asianware is used both by Asian restaurants and households, thus serving both institutional and noninstitutional end uses.

Children's dinnerware, products used for camping, and other household dinnerware are sold to consumers through retail channels of distribution. In the case of licensed children's products, such as Disney products, distribution is controlled by the licensor.⁸ Children's dinnerware generally has a design

¹ Melamine institutional dinnerware as defined by Commerce's scope may include products that are not intended for institutional or commercial use. The discussion in this section concerns only products intended for institutional or commercial use unless otherwise specified.

² Twenty-four of 35 responding purchasers which are distributors indicated that they compete for sales to customers with the manufacturers or importers that supply their melamine institutional dinnerware.

³ Four purchasers reported selling product to other distributors.

⁴ Conference transcript, pp. 54-55.

⁵ According to the petitioners, household dinnerware does not generally meet the thickness specification outlined by Commerce's scope for these investigations, although responses to the importers' questionnaire indicate that many products imported for household use exceed the thickness requirement.

⁶ Petitioners claim that the domestic industry frequently supplies Oriental restaurants and thus is losing sales of melamine institutional dinnerware to the imports of Asianware. Further, the petitioners state that they would produce Asianware if pricing supported it. Hearing transcript, p. 26.

⁷ Conference transcript, p. 100.

⁸ *Id.*, p. 92.

geared toward children and the size of the pieces may be scaled down.⁹ Household dinnerware is usually decorated and patterns tend to change often. Although some imported melamine dinnerware for household use meets Commerce's thickness criterion for institutional product, most household dinnerware is thinner since there is less need for durability in the household sector. Both the lesser thickness and constantly changing patterns of noninstitutional dinnerware for household use limit the extent to which this product can be used in institutions where dinnerware must perform in harsh conditions and replacement pieces tend to be demanded over a long period.¹⁰

According to both the domestic producers and the importers, broadliners comprise only 20 to 25 percent of the market for melamine dinnerware for institutional use,^{11,12} with large restaurant chains and dealers making up the balance. Manufacturers prefer to deal with broadliners to lower marketing costs, including attending industry shows and administrative costs involved in filling more orders, by selling more of their product line to a smaller group of purchasers.¹³ For domestic producers, between *** percent of total sales are to broadliners, while for importers, between *** percent of total sales are to broadliners. For all importers and domestic producers, the majority of sales are to independent dealers, between *** percent for imports and between *** percent for U.S. product. Buying cooperatives accounted for sales of between *** percent of domestic product, and between *** percent of product sold by importers. Government purchases accounted for *** of sales for both importers and U.S. producers.

Two of the domestic producers and two importers indicate that demand for melamine institutional dinnerware has not changed significantly since January of 1993. *** indicates that demand has slowed due to reduction in government support of schools and health care. Only one of the domestic producers, ***, indicated that there has been a change in the product range or marketing of melamine institutional dinnerware in the past 5 years, noting that more colors have been added to its product line. *** indicates that demand for better service and quality has increased due to the availability of more substitute products.

According to Earl Moore, president of NPC, a domestic producer, the imported products are made to be exact copies of U.S. product lines in order to be sold as replacement stock into existing inventories of the U.S. product.¹⁴ According to ***, an importer, the colors, designs, and shapes of all dinnerware, including melamine institutional dinnerware, in the United States are patterned after chinaware. ***, another importer, indicates that it chooses its colors, designs, and shapes based on consumer demand. ***, a third importer of product for institutional use, has sold the same product for the past 25 years. Two responding importers indicate that the product lines offered by domestic producers do not affect their decisions on which products to offer.

All three U.S. producers and one importer, ***, sell a broad product line which includes products other than melamine. According to ***, these companies may offer purchasers such incentives as rebates for exclusive marketing of their product line and incentives for growth. Since the product lines are broad, and the rebates are based on all products, the importers that sell only melamine are unable to match these

⁹ Although children's dinnerware is generally sold through retail channels of distributions, petitioners allege that melamine dinnerware meeting the minimum thickness requirement of Commerce's scope and having children's designs can be sold to such institutions as pediatric wards in hospitals and day care facilities. *** has sold institutional dinnerware with clown designs to such end users. No evidence has been presented that imported children's dinnerware has been sold for such uses. Hearing transcript, pp. 16, 27, and Petitioners' posthearing brief, exh. 1.

¹⁰ Petitioners claim that some household products which have a minimum thickness of 0.08 inch are used in institutional settings, giving the example of football shaped platters which may be used in a bar. Hearing transcript, p. 166.

¹¹ Conference transcript, p. 40.

¹² Postconference brief, White & Case, p. 22.

¹³ Meeting with *** on Feb. 23, 1996.

¹⁴ Conference transcript, pp. 19-20.

incentives due to their limited product lines. This also provides an advantage to larger distributors and cooperative buying groups, which are better able to capitalize on these rebates.¹⁵ Only 3 of 41 responding purchasers, however, indicated having an exclusive marketing arrangement with their supplier of melamine institutional dinnerware. One of the purchasers indicated that the exclusive marketing arrangement covers only private logo melamine institutional dinnerware items with a 2 or 3 year contract. The other two purchasers indicated that their exclusive marketing arrangement covers products other than melamine institutional dinnerware, with melamine comprising between 65 and 90 percent of total covered purchases. The discount offered on covered purchases is 20 percent for both purchasers.

According to the importers, imports are not able to compete with domestic product when the end user is an institution, such as the Federal Government, hospitals, colleges, and schools. According to the petitioners, 25 to 35 percent of melamine institutional dinnerware is purchased on public bid.¹⁶ The importers state that they are excluded from Federal Government procurements by "Buy American" provisions.¹⁷ Although petitioners acknowledge that these purchases may be "Buy American," they are "very rare."¹⁸ According to Jo-Ann Sanders of the General Services Administration, a Federal Government agency that rejected a bid by G.E.T., although procurements are subject to a number of regulations based on specific circumstances, generally procurements of over \$192,000 are subject to the Trade Agreements Act and product must be purchased from approved countries (which do not include China, Indonesia, or Taiwan, although Taiwan was approved before January 1996). Procurements under \$192,000 are subject to "Buy American" provisions, unless specified as a small-business set-aside.¹⁹ Importers also contend that their competitiveness with other institutions is limited because contracts specify a domestic product "or approved equal," and purchasers are not willing to risk trying an imported product that is proposed as an equal.²⁰ According to ***, a large broadliner that serves institutional buyers, there is no reason why imports could not be used in a contract that specified that an approved equal was acceptable. Although he does not use imports in his contract bids, it is because *** relies on domestic products, and would not stock a whole new line of products for one bid. *** of ***, another large broadliner that serves institutional buyers, stated that he has not heard of imports being denied a contract sale because of specifications which allow for "an approved equal."²¹ Only one purchaser indicated that a purchase or contract may require U.S.-produced melamine institutional dinnerware only or that U.S. product may receive a price preference.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on the available information, staff believes that U.S. melamine institutional dinnerware producers are likely to respond to changes in demand with relatively large changes in shipments of U.S.-

¹⁵ Meeting with *** on Feb. 23, 1996.

¹⁶ Hearing transcript, p. 20.

¹⁷ Conference transcript, p. 79.

¹⁸ Hearing transcript, p. 20.

¹⁹ Telephone conversations, Mar. 5 and Mar. 12, 1996.

²⁰ Conference transcript, p. 86.

²¹ Telephone conversations of Mar. 5 and Mar. 12, 1996.

produced melamine institutional dinnerware to the U.S. market, and smaller changes in prices. Factors contributing to the responsiveness of supply are discussed below.

Capacity in the U.S. industry

The existence of levels of unused capacity in the U.S. melamine institutional dinnerware industry increases the degree to which U.S. producers can respond to increases in demand with changes in production. Total annual capacity of the three responding domestic producers of melamine institutional dinnerware ranged from *** million to *** million pounds from 1993 to 1995 (table B-2). U.S. producers' capacity utilization levels ranged from *** to *** percent over the period.

Production alternatives

Two of the U.S. producers of melamine institutional dinnerware also produce household melamine products. Household melamine dinnerware can easily be produced on the same presses as institutional dinnerware; only the molds need to be changed. According to Robert Parmacek of Carlisle, obtaining the molds necessary to start a new line of product involves millions of dollars of tooling.²² Although domestic producers could switch to additional production of household melamine, according to Mr. Parmacek, they could not compete with the price of imports. According to Jim Miller of Sun Coast, the presses are a common piece of equipment and can be used for "anything you want to apply pressure to....for household or institutional or some other product..."²³ The expense and logistics of transferring production to a nonmelamine product are not known.

Inventory levels

The existence of inventories increases the degree to which U.S. producers can respond to changes in demand with changes in shipments. U.S. producers' year-end inventories remained stable for 1993 through 1995, ranging from *** million pounds in 1993 to *** million pounds in 1995. The total decline in inventories was less than *** percent. These inventories represented between *** and *** percent of total shipments by weight during 1993 through 1995.

Export markets

Only one domestic producer, ***, reports exporting any product. Its principal export markets are Canada, Brazil, Chile, and Australia. Total export shipments for January-September 1996 accounted for *** percent of total shipments. *** indicated that most world markets are dominated by two or three domestic producers with no meaningful import competition.²⁴

U.S. Demand

Factors contributing to the price sensitivity of overall demand for melamine institutional dinnerware are the availability of substitute products and the degree to which purchasers can delay purchases of

²² Hearing transcript, p. 71.

²³ Conference transcript, pp. 55-56.

²⁴ Memorandum on ***.

replacement stock. Limitations on the ease with which purchasers can switch to substitute products constrain the price sensitivity of demand.

Substitute Products

There are three classes of products that serve as substitutes for melamine institutional dinnerware--disposable products, "low-end" china, and dinnerware made of other plastics such as polycarbonate, polypropylene, polystyrene, and acrylonitrile/butadiene/styrene (ABS). Disposable products are not as attractive as melamine and are encountering growing disapproval due to environmental concerns. "Low-end" china is preferable in terms of aesthetics, but has a higher unit weight and is much less durable and break-resistant. "Low-end" china is less expensive than melamine, but is more expensive in terms of life-cycle costs.²⁵ Polycarbonate is less attractive, not available in decorated versions, lighter, less scratch resistant, requires longer drying times than melamine, and, according to Earl Moore of NPC, cannot meet NSF standard 36. It is also slightly less expensive and more break-resistant, and therefore may have better life-cycle cost in institutions such as prisons and schools where there is not a lot of scratching with sharp utensils.²⁶ It is sold through the same channels of distribution as melamine institutional dinnerware. Both china and polycarbonate can be used in the microwave, while melamine cannot. Polypropylene and ABS substitutes include only trays.

According to Earl Moore of NPC, end users switch from melamine to a substitute product, or vice versa, very rarely. The transition usually occurs in a 2- or 3-year cycle.²⁷ For restaurants, the type of dinnerware is dictated by the type of restaurant, not the price of the product.²⁸ The petitioners state that the end users which switch replace their entire dinnerware inventory,²⁹ while John Reilly of Nathan Associates, a consultant for the importers, asserts that it is possible to move between china and melamine dinnerware without wholesale substitution, since many of the melamine colors, sizes, and patterns are copies of china originals and the restaurants that would use the products in question are neighborhood restaurants where the type of dinnerware is not a primary concern.^{30,31}

In addition to the substitutes listed above, purchasers indicated that glass and Corningware are also substitutes for melamine institutional dinnerware. Glass is more breakable and Corningware can stack in a smaller space than melamine. Twelve purchasers indicated that there has been a shift in relative prices for alternate products, but none indicated that they have switched purchases based on this price change. Fourteen of 41 responding purchasers indicated that there are no substitutes for melamine institutional dinnerware in its end uses.

²⁵ Conference transcript, p. 82.

²⁶ *Id.*, pp. 43-44 and 61-65.

²⁷ *Id.*, p. 16.

²⁸ *Id.*, p. 177.

²⁹ Petitioners' postconference brief, p. 7.

³⁰ Conference transcript, pp. 126-127.

³¹ Respondents also provided affidavits from two restaurant owners, Ta Wei Chien of Szechuan Gallery and Dan Hensley of Carmella Kitty's, in their postconference brief. Both restaurant owners stated that they use china and melamine dinnerware side-by-side.

SUBSTITUTABILITY ISSUES

Factors Affecting Purchasing Decisions³²

Purchasers were asked to list the three major factors considered by their firm in deciding from whom to purchase melamine institutional dinnerware. The results are shown in table II-1. Purchasers of both domestic and imported melamine institutional dinnerware generally reported that the same factors are considered when making a purchase decision. One exception is that the majority of purchasers of imported product from Taiwan and Indonesia indicated that the lowest price was very important in their purchase decisions, while the majority of purchasers of domestic product indicated that the lowest price was somewhat important in their purchase decisions. Most purchasers of Chinese melamine institutional dinnerware, excluding Asianware, stated that price was very important or somewhat important. Two purchasers of Asianware indicated that price is not important and one that it is somewhat important. Reasons cited for purchasing the domestic product despite the presence of a lower priced imported product were quality, availability, customer specification, made-in-USA bias, relationship with supplier, and delivery time. Twenty-nine of 40 responding purchasers reported that they or their customers do not specifically order melamine institutional dinnerware from one country in particular over other sources. Eleven purchasers indicated that U.S. product is preferred at least sometimes. Reasons for this preference include a made-in-the-USA request, recognition by end users and distributors, and availability. Three purchasers reported purchasing imports from Taiwan despite the presence of alternate sources at lower prices. Reasons for this include availability, absence of a minimum order requirement, and relationship with supplier. Two purchasers of Asianware reported purchasing imports from China despite the presence of alternate sources at lower prices, citing reliability as the reason.

Thirty-two of 41 responding purchasers stated that the lowest price offered for melamine institutional dinnerware will not always win a contract or sale, although 14 listed price as the top factor considered when deciding from whom to purchase. Twenty-one of 32 purchasers indicated that if the lowest price offered does not win the sale, it will not affect the final sales price in any way. Four purchasers indicated that the presence of less expensive products ultimately lowers sales prices. Another indicated that items priced below market create the perception of a ceiling price. Quality, availability, customer specifications, relationship with supplier, and product line are all factors that purchasers cited as reasons they might not choose the lowest cost supplier. Fourteen purchasers listed quality as the top-ranked factor affecting their purchase decision. Quality is evaluated in such characteristics as thickness, weight, glazing, durability, manufacturer warrantee, NSF approval, consistency, and overall appearance.

Twenty of 41 responding purchasers said that they are always aware whether the product that they purchase is U.S.-produced or imported, 13 that they are usually aware, 5 that they are sometimes aware, and 3 that they are never aware. Thirty-two responding purchasers indicated that their customers are at least sometimes interested in the country of origin of the product, and only 10 stated that their customers are never interested.

³² Responses to the Commission's purchaser questionnaire were received from 43 companies, including broadliners, independent dealers, restaurant chains, and a retail store. The response of *** is not included in the following discussion unless specifically cited because it is a retail store and not included in the channels of distribution for melamine dinnerware to be used in institutions.

Table II-1

Major factors affecting purchasing decisions as ranked by U.S. purchasers

Factor	Number of firms ranking factor as:		
	No. 1	No. 2	No. 3
Price	14	7	13
Quality	14	13	3
Availability	3	13	10
Traditional Supplier	4	1	2
Customer Requirements	3	1	0
Service	0	2	3
Product Line	0	3	3
Other Factors	3	1	4

Source: Responses to the Commission's purchaser questionnaire.

Purchaser Sourcing Patterns

The frequency of purchases by questionnaire respondents varied from daily to irregularly, with most indicating ordering either irregular or monthly. Thirty-two of 40 responding purchasers indicated that their purchasing pattern has not changed since January 1993, 4 indicated that their purchases have increased, 1 that its purchases have decreased, and 1 indicated that it has left the market. Seven of the responding purchasers indicated that they only contact one supplier when placing an order, more than half contact fewer than three suppliers, and no purchasers contact more than five suppliers. Purchasers generally change suppliers infrequently. Some purchasers, particularly those that use a professional dietician to do purchasing, require the melamine institutional dinnerware that they purchase to meet National Sanitation Federation (NSF) standard 36. This standard specifies a cleanability standard that the dinnerware must meet. Not all U.S. or imported products meet the NSF-36 specification; not all purchasers require the certification and it is expensive to maintain.³³ Fourteen responding purchasers indicated that suppliers must become certified or prequalified with respect to the quality, strength, or other performance characteristics of the melamine institutional dinnerware that they buy. Twelve of these purchasers that indicated that NSF certification is required stated that the certification applies to at least 75 percent of their purchases, while 3 said that it applies to 10 percent or less of total purchases. Purchasers that reported the time necessary to qualify a new supplier indicated that it takes from one day to longer than a year. Purchasers reported that factors evaluated to qualify a new supplier include quality, reliability, price, marketing support, service, warranty, lead-time, and demand for product by customers.

Ten purchasers indicated that they have changed suppliers within the last 3 years; 6 switched from U.S. product to imports and 4 switched from one U.S. producer to another U.S. producer. Two purchasers

³³ Conference transcript, pp. 51-52.

indicated that at least one reason they had switched to imported product was product line considerations. Three indicated that price was a factor in their switch to imported products. Four purchasers switched from one U.S. source to another, one because of a private label agreement, one because of price, and two because of vendor consolidation. Six purchasers became aware of ***'s presence in the market during the last 3 years, 8 became aware of ***, and 23 indicated that they had not become aware of any new suppliers.

Comparison of Products from Different Countries

Producers, importers, and purchasers were requested to provide information regarding the differences between domestic melamine institutional dinnerware and imports from China, Taiwan, Indonesia, and other countries. Only six responding purchasers indicated that the U.S. product is not used in the same applications as imported products. One purchaser indicated that imports have a better glaze, faster delivery, and fewer price increases. Another purchaser indicated that Chinese imports do not have the same quality as U.S. product. The third purchaser did not give an explanation. A fourth purchaser indicated that although products from China and Indonesia are used in the same applications, they are not interchangeable since the products will not stack with U.S. melamine institutional dinnerware. Two purchasers of Asianware from China indicated that certain molds and designs are not available from domestic producers and that the domestic quality is not as good. Twenty-nine of 31 responding purchasers indicated that melamine institutional dinnerware from China, Taiwan, and Indonesia is used interchangeably. Neither of the purchasers which responded that the products are not used interchangeably cited a reason. Twenty-four of 29 responding purchasers indicated that imports from China, Indonesia, and Taiwan are used interchangeably with imports from non-subject countries. Seventeen of 37 responding purchasers indicated that they will consider purchases of replacement stock of the same pattern or color from alternate suppliers for inclusion into existing inventory.

The majority of responding purchasers ranked the quality of Chinese melamine institutional dinnerware as either comparable or inferior to that of the U.S. product, the quality of imports from Taiwan as either comparable or superior, and the quality of Indonesian product as comparable. Twenty-two of 33 responding purchasers indicated that there is no difference between the product they supply and that of their direct competitors. Twenty purchasers indicated that the colors and/or patterns offered by suppliers of imported products are the same as those offered by suppliers of domestic products. Ten of these purchasers indicated that although the products overlap, the full range of patterns, sizes, and styles available are different, some indicating that domestic products have a wider range, others that imports have a wider range. Three purchasers indicated that the colors do not match. One purchaser did not specifically state that the colors and patterns were similar, but only commented on differences in the product range. Two purchasers of Asianware stated that the patterns are different. Twenty-seven responding purchasers indicated that there are no grades/types/sizes of melamine institutional dinnerware available only from a single source.

Over 60 percent of responses from purchasers indicate that the price of melamine institutional dinnerware from the United States is higher than the price of product from China, Indonesia, Taiwan, and nonsubject countries. The majority of responses also indicate that prices from China, Taiwan, Indonesia, and nonsubject countries are the same. Purchasers of imported product were asked to indicate how much higher prices of the imported product would have to be in order for them to switch to domestic product. For China, responses ranged from 5 to 45 percent, for Indonesia, 2 to 35 percent, and for Taiwan, 5 to 50 percent.

All U.S. producers and one importer, ***, reported that nonprice differences between the domestic product and imports from China, Taiwan, and Indonesia are not significant in their sales of melamine institutional dinnerware. Two of three importers stated that nonprice differences are important in their firm's sales. According to the importers, advantages of the domestic product include lower transportation costs, shorter lead times, ability to respond to custom design requirements, better quality, and wider product range. One importer cited poor customer service, especially to the small dealers, as a disadvantage of the U.S.

product. U.S. producers' lead times between order and delivery to a customer range from 10 days to 2 weeks, while lead times for the subject imports range between 1 and 14 days for shipments from U.S. inventory and up to 120 days for shipments from Taiwan and Indonesia or 150 days for shipments from China to fill orders that cannot be filled from existing inventory in the United States.

All three domestic producers responded that imports from all three subject countries are interchangeable with the domestic product. *** responding importers stated that Chinese product is not used interchangeably with the domestic product, although its explanation was limited to the fact that U.S. producers do not make Asianware and cannot make licensed products (childrensware). This responding importer indicated that product from Taiwan and Indonesia can be used interchangeably with the U.S. product. All three domestic producers and ***, one of the two responding importers, sell product throughout the United States. The other importer, ***, sells only in California, Seattle, Florida, Texas, and New York and ***'s sales are strongest on the East Coast.

Five purchasers indicated that suppliers failed in their attempts to qualify their melamine institutional dinnerware or lost their approved status. *** failed with two purchasers, one because of product quality and interchangeability with other products, and the other because of limited product line and availability. *** failed with one purchaser because of its lack of established sales and local representation. *** failed with one purchaser because of price, and *** failed with one purchaser because of limits on its range of product line in desired series.

ELASTICITY ESTIMATES³⁴

U.S. Supply Elasticity³⁵

The domestic supply elasticity measures the extent to which U.S. producers are likely to change the quantity of melamine institutional dinnerware supplied to the U.S. market in response to a change in the market price. The elasticity of domestic supply depends on several factors, including the overall rate of capacity utilization in the melamine institutional dinnerware industry, the ease with which producers can alter productive capacity, the ability to shift production to other products, and the availability of alternative markets for U.S.-produced melamine institutional dinnerware.³⁶ Available data indicate that the domestic supply elasticity of melamine institutional dinnerware is within the range of 5 to 10. This suggests that the supply of melamine institutional dinnerware to the U.S. market is sensitive to price changes. Petitioners agreed with the supply elasticity estimate, and respondents did not comment. Staff believes that the supply elasticity for melamine dinnerware intended for household use is likely to also be in the range of 5 to 10.

U.S. Demand Elasticity

The U.S. demand elasticity for melamine institutional dinnerware measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of melamine institutional dinnerware. This

³⁴ This section discusses the elasticity estimates used in the COMPAS analysis (app. F). These elasticity estimates are for melamine institutional dinnerware for institutional use. Due to lack of information on the U.S. market for melamine dinnerware for noninstitutional uses, staff is accepting the Petitioners' assertion that there is no reason for the elasticity estimates to be different for noninstitutional dinnerware. Posthearing brief, exh. 10.

³⁵ A supply function is not defined in the case of a non-competitive market.

³⁶ Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Therefore, factors affecting increased quantities supplied to the U.S. market also affect decreased quantity supplied to the same extent.

estimate depends on the existence, availability, and commercial viability of substitute products and the degree to which users of melamine institutional dinnerware can delay their purchases of replacement stock. Based on available information, staff estimates the elasticity of demand for melamine institutional dinnerware to be in the range -0.5 to -1.0. Overall demand for melamine institutional dinnerware is likely to change slightly with changes in the price of melamine institutional dinnerware.

Petitioners argue that the demand elasticity is effectively zero due to the lack of viability of substitute products. Staff agrees that the substitutes available for melamine institutional dinnerware are not perfect, but does not concede that these substitutes completely lack viability. Evidence presented at the hearing by the petitioners suggest otherwise. Robert Parmacek of Carlisle stated at the hearing that "Occasionally an institutional user of another type of dinnerware product will switch to or from melamine."³⁷ In addition, it is likely that users of melamine institutional dinnerware can delay their purchases of replacement stock to some extent. The respondents agreed with the demand elasticity estimate presented in the prehearing report.

Substitution Elasticities

The elasticity of substitution is a measure of the responsiveness of the relative U.S. consumption levels of subject imports and U.S. like products to changes in their relative prices. This reflects how easily purchasers switch from U.S. melamine institutional dinnerware to the subject imported melamine institutional dinnerware (or vice versa) when prices change. The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products. Product differentiation, in turn, depends upon such factors as quality (*e.g.*, performance standards, reliability of supply, and defect rates) and conditions of sale (*e.g.*, price discounts/rebates, lead times between order and delivery dates, payment terms, product service, brand name recognition, etc.). Based on the available information discussed earlier, the elasticity of substitution between domestic melamine institutional dinnerware and subject imports is likely to be in the range of 3 to 5, indicating that purchasers will switch purchases to the imported product as the relative price changes. Petitioners agree with the elasticity of substitution estimate; no comment was made by the respondent.

³⁷ Hearing transcript, p. 22.

PART III: CONDITION OF THE U.S. INDUSTRY

Section 771(7)(B) of the act (19 U.S.C. § 1677(7)(B)) provides that in making its determinations in these investigations the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and

may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

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

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

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

In examining the impact required to be considered under subparagraph (B)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to, (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in an antidumping investigation, the magnitude of the margin of dumping.

Information on the margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V. Information on the other factors specified is presented in this section and/or part VI and (except as noted) is based on the

questionnaire responses of five firms that accounted for virtually all U.S. production of melamine dinnerware, regardless of thickness, during calendar year 1995.

Information in this section of the report is provided both for melamine institutional dinnerware (corresponding to the scope of the investigations as defined by Commerce), and for melamine dinnerware regardless of thickness (*i.e.*, including both institutional and household dinnerware). Information on melamine dinnerware, broken out by end use of the product, and on polycarbonate dinnerware, is presented in appendix B.

U.S. PRODUCERS

In order to collect data on melamine dinnerware for household use as well as for institutional use, the Commission sent questionnaires to 17 firms, all of which were known to produce or thought to be producing melamine dinnerware, regardless of thickness.¹ The Commission received responses from the three petitioning firms, and received additional information from 3 producers of polycarbonate dinnerware. Two firms responded that they did not produce either melamine or polycarbonate dinnerware during the period examined. Accordingly, 10 firms failed to respond to the Commission's questionnaire. None of these firms is known to be a significant producer of melamine dinnerware.

Carlisle, Sun Coast, and NPC, the three petitioners in these investigations, account for virtually all domestic production of melamine dinnerware, regardless of thickness.² Each firm accounts for *** of domestic production. The three firms, with production facilities located in Wisconsin, Texas, and Mississippi, respectively, all serve a national market. Sun Coast is an independent, publicly held company, whereas NPC and Carlisle are wholly owned subsidiaries of Perstorp, Inc., and the Carlisle Companies, respectively.

Carlisle and Sun Coast produce melamine dinnerware both for institutional use and for household use; NPC manufactures melamine dinnerware solely for institutional use.³ Carlisle also produces small quantities of polycarbonate dinnerware. Carlisle and Sun Coast produce melamine dinnerware for household use on the same production lines as dinnerware for institutional use.⁴ All reporting firms produce other plastic products in the same facilities and using the same production and related workers as those used for melamine dinnerware. These include various thermoplastic parts for industrial and electrical use, as well as custom plastic products such as ashtrays and desk sets. Sun Coast's production process differs from that of the other two petitioners because ***. Sun Coast ***.

With the exception of Sun Coast, no reporting producer indicated that any related domestic or foreign firms were engaged in the production of melamine dinnerware. Sun Coast has a wholly owned subsidiary,

¹ The Commission also collected data on U.S. production of polycarbonate dinnerware. Several of the firms on the Commission's mailing list were believed to be producing polycarbonate dinnerware.

² In the preliminary investigations, the Commission learned of one additional firm, Gessner Products, Inc., Ambler, PA, that may have produced melamine institutional dinnerware during the period examined. Gessner failed to cooperate with Commission requests for information. Petitioners indicated, however, that Gessner's production of this product is less than *** percent of total domestic production. Phone conversation with ***.

³ Hearing transcript, p. 16. In 1995, melamine institutional dinnerware accounted for *** percent of Carlisle's total production of melamine dinnerware, and for *** percent of Sun Coast's total production of melamine dinnerware.

⁴ Sun Coast commented that ***. Sun Coast does, however, ***. Field visit with Sun Coast, Oct. 28, 1996.

Nova Plast, that produces melamine dinnerware in Mexico.⁵ Carlisle indicated that, during the period examined, ***.⁶

Carlisle, ***, and *** were the only producers of polycarbonate dinnerware reporting data to the Commission. None of these firms indicated that it had experienced any negative effects on its operations resulting from imports of the subject merchandise.

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Data on U.S. firms' production capability, production levels, and capacity utilization for melamine dinnerware, regardless of thickness, and for melamine institutional dinnerware, are presented in tables III-1 and III-2. No responding producer reported any problem in obtaining labor, capital, or raw materials during the period examined.⁷

With regard to all melamine dinnerware, capacity remained fairly steady over the 3 calendar years, affected only by *** (table III-1).⁸ Carlisle ***. Production for the three firms increased sharply between 1993 and 1994, then declined in 1995, and again when the interim periods are compared. The trend in capacity utilization mirrored the trend in production, with utilization levels falling below 40 percent in the first three quarters of 1996.

With regard to melamine institutional dinnerware (table III-2), trends in the data were identical, except that when the interim January-September periods are compared, production rose rather than falling as in the case of melamine dinnerware, regardless of thickness.

U.S. PRODUCERS' SHIPMENTS

All three responding producers reported data on their domestic and export shipments of melamine dinnerware. Only *** reported any export shipments. ***. All of NPC's commercial shipments were of institutional dinnerware, whereas Carlisle and Sun Coast shipped both institutional and household dinnerware.

Melamine Dinnerware, Regardless of Thickness

As seen in table III-3, except for a sharp increase between 1993 and 1994, U.S. shipment trends generally fell over the period, with the volume of 1996 interim period shipments declining 22 percent from the 1995 interim period level; however, the overall trend over the 3 full calendar years was upward. Unit values showed no particular pattern over the 3 calendar years, and increased in January-September 1996 when compared to the January-September 1995 values.

Melamine Institutional Dinnerware

Table III-4 indicates that trends in the data regarding U.S. shipments of melamine institutional dinnerware were similar to those for melamine dinnerware, regardless of thickness, except that the value of

⁵ Sun Coast ***.

⁶ Carlisle's *** were equal to *** percent of its domestic production in calendar year 1995, and accounted for *** percent of total imports of melamine institutional dinnerware from Taiwan in that period. Carlisle also reported ***.

⁷ Sun Coast commented, however, that ***. This price, however, ***. Field visit with Sun Coast, Oct. 28, 1996; petitioners' posthearing brief, exh. 9, p. 2; also see Mannsville Chemical Products Corp., *Chemical Products Synopsis*, Apr. 1996.

⁸ The ***. Petitioners' posthearing brief, p. 6.

such shipments declined slightly over the period 1993 through 1995. Also, movements in the data were less marked than for all thicknesses of melamine dinnerware.

Table III-1

Melamine dinnerware, regardless of thickness: U.S. capacity, production, and capacity utilization, by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

Item	1993	1994	1995	Jan.-Sept.-- 1995	1996
<i>Capacity (1,000 pounds)</i>					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	26,188	28,902	27,927	20,605	20,945
<i>Production (1,000 pounds)</i>					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	10,007	13,350	12,525	9,465	8,184
<i>Capacity utilization (percent)</i>					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	38.2	46.2	44.8	45.9	39.1

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

Table III-2

Melamine institutional dinnerware: U.S. capacity, production, and capacity utilization, by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

Table III-3

Melamine dinnerware, regardless of thickness: U.S. producers' U.S. and export shipments, by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

Item	1993	1994	1995	Jan.-Sept.--	
				1995	1996
	Quantity (1,000 pounds)				
U.S. shipments:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	10,016	13,428	12,558	9,860	7,667
Export shipments:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	***	***	***	***	***
Total shipments:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	***	***	***	***	***
	Value (1,000 dollars)				
U.S. shipments:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	30,281	37,002	35,253	26,970	22,964
Export shipments:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	***	***	***	***	***
Total shipments:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	***	***	***	***	***

Table continued on next page.

Table III-3--Continued

Melamine dinnerware, regardless of thickness: U.S. producers' U.S. and export shipments, by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

	<u>Jan.-Sept.--</u>				
Item	1993	1994	1995	1995	1996
	<hr/>				
	Unit value (per pound)				
	<hr/>				
U.S. shipments:					
Carlisle	\$***	\$***	\$***	\$***	\$***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	<hr/> 3.02	<hr/> 2.76	<hr/> 2.81	<hr/> 2.74	<hr/> 3.00
Export shipments:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	<hr/> ***	<hr/> ***	<hr/> ***	<hr/> ***	<hr/> ***
Total shipments:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	<hr/> ***	<hr/> ***	<hr/> ***	<hr/> ***	<hr/> ***

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

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

Table III-4

Melamine institutional dinnerware: U.S. producers' U.S. and export shipments, by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of melamine dinnerware during the period examined, as supplied by all three producers, are presented in tables III-5 and III-6. For melamine dinnerware, regardless of thickness, total end-of-period inventories declined steadily from 1993 to 1995. On the other hand, such inventories increased nearly 60 percent in interim 1996 when contrasted with interim 1995. As a ratio to preceding-period shipments, inventories decreased from 1993 to 1994, remained steady during 1995, then more than doubled in interim 1996 over interim 1995.

For melamine institutional dinnerware, movements in the data for total end-of-period inventories were identical, but far less striking. The overall decrease in inventories from 1993 to 1995 was only *** percent, and the increase when the interim periods are compared was *** percent.

Table III-5

Melamine dinnerware, regardless of thickness: End-of-period inventories of U.S. producers, by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

Item	1993	1994	1995	Jan.-Sept.--	
				1995	1996
	Quantity (1,000 pounds)				
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	1,954	1,805	1,682	1,346	2,134
	Ratio to U.S. shipments (percent)				
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	19.5	13.4	13.4	10.2	20.9

Note.--Part-year inventory ratios are annualized.

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

Table III-6

Melamine institutional dinnerware: End-of-period inventories of U.S. producers, by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

No responding firm reported any unusual occurrences having an impact on inventory levels. Sun Coast indicated that ***. In addition, ***.⁹

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

All producers provided data on the number of production and related workers (PRWs) engaged in the production of melamine dinnerware, the total hours worked by such workers, and the wages paid to such workers during the period examined (tables III-7 and III-8). Data on melamine dinnerware of all thicknesses (table III-7) show irregular increases for all three indicators over the 3 calendar years, with declines when the interim periods are compared. When hourly wages, productivity, and unit labor costs are examined, however, no clear trends are apparent; hourly wages, for example, remained constant between 1994 and 1995, and increased only slightly in January-September 1996 over January-September 1995.

⁹ Field visit with Sun Coast, Oct. 28, 1996.

Table III-7

Average number of production and related workers producing melamine dinnerware (regardless of thickness), hours worked,¹ wages paid to such employees, and hourly wages, productivity, and unit labor costs,² by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996³

Item	1993	1994	1995	Jan.-Sept.-- 1995	1996
Number of production and related workers (PRWs)					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	441	536	514	489	420
Hours worked by PRWs (1,000 hours)					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	915	1,113	1,085	802	679
Wages paid to PRWs (1,000 dollars)					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total	6,731	8,280	8,068	6,014	5,103
Hourly wages paid to PRWs					
Carlisle	\$***	\$***	\$***	\$***	\$***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	7.36	7.44	7.44	7.50	7.52
Productivity (pounds per hour)					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	10.9	12.0	11.5	11.8	12.1
Unit labor costs (per pound)					
Carlisle	\$***	\$***	\$***	\$***	\$***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average	0.67	0.62	0.64	0.64	0.62

¹ Includes hours worked plus hours of paid leave time.

² On the basis of total wages paid.

³ Firms providing employment data accounted for 100 percent of reported total U.S. shipments in 1995.

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

Table III-8

Average number of production and related workers producing melamine institutional dinnerware, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, by firms, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

Data on melamine institutional dinnerware show virtually identical trends; however, the increases from calendar year 1993 to calendar year 1995 were far more modest. Further, hourly wages actually declined slightly over the 3-year period, as contrasted with an increase in this indicator when the data for all thicknesses of melamine dinnerware are considered.

Sun Coast characterized the manufacturing process for melamine dinnerware, at least at the molding and finishing stage, as relatively labor-intensive ***.¹⁰ As a result, workers in Sun Coast's plant ***. Carlisle indicated that ***. Workers in Sun Coast's and NPC's facilities are also ***.

Carlisle noted that during the period examined ***. This involved ***. There was ***.¹¹

¹⁰ Id. A representative of Carlisle, however, stated at the hearing that the production process for melamine dinnerware is highly capital-intensive, with labor input accounting for only 6 to 9 percent of total costs. Hearing transcript, p. 83.

¹¹ Carlisle asserted that ***.

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

U.S. IMPORTERS

In the preliminary investigations, the Commission received responses to its questionnaire from virtually all firms identified as importing melamine institutional dinnerware, the product corresponding to the scope of the investigations as defined by Commerce. Three firms accounted for the vast majority of these imports from China, Indonesia, and Taiwan: (1) G.E.T. Enterprises (G.E.T.), Houston, TX, accounting for the imports from Indonesia and a large portion of those from Taiwan; (2) Thunder Group, Inc. (Thunder Group), El Monte, CA, a subsidiary of Tar-Hong Melamine Co., Ltd., Taiwan, which, along with its subsidiary company, Tar-Hong Melamine USA, Inc. (Tar Hong), El Monte, CA, accounted for all of the imports from China; and (3) Admiral Craft Enterprises (Admiral Craft), which accounted for the remainder of subject imports from Taiwan.¹

In these final investigations the Commission sent importers' questionnaires to the firms listed above as well as to those firms that did not respond in the preliminary investigations. In addition, the Commission sent importers' questionnaires to a number of firms that, based on a review of the Customs Net Import File (CNIF), it believed might have imported melamine dinnerware, regardless of thickness, during the period examined.² The Commission also collected data on imports of polycarbonate dinnerware.

The Commission received usable data on imports of melamine dinnerware, regardless of thickness, from 24 companies.³ In addition, 107 firms reported that they did not import any of the products covered by the questionnaire.⁴ Accordingly, 147 firms failed to respond to the questionnaire, or submitted data that were unusable. Twenty firms reported imports of melamine dinnerware from China, 1 from Indonesia, 12 from Taiwan, and 1 from other sources.⁵

Most of the firms importing significant volumes of melamine dinnerware functioned as middlemen, which resold the product to large U.S. distributors. Several reporting importers, however, were divisions of large department stores (primarily discount department stores), which were importing directly for resale in their retail outlets.⁶ Such firms generally reported small quantities of the subject imports. Of U.S. producers of melamine dinnerware, only one, ***, reported any imports during the period examined.

Importers are spread fairly evenly throughout the country. There is no indication of any particular geographical concentration of imports. Several importers reporting data are subsidiaries of, or related to,

¹ Thunder Group owns a melamine dinnerware producing facility in Xiamen, China, Tar-Hong Melamine Xiamen Co., Ltd.

² Melamine dinnerware is provided for in a basket HTS category that covers all items of dinnerware, of various plastics. The Customs Net Import File indicated several hundred firms importing under this category. From these firms, the Commission selected 268 firms that made significant imports under this category and sent questionnaires to those firms. Imports were considered significant if they amounted to \$100,000 or more in any calendar year. The Commission also sent importers' questionnaires to all firms receiving a producer's questionnaire, for a total of 285 firms.

³ The Commission received data on imports of melamine institutional dinnerware from 13 companies.

⁴ In addition, 7 firms could not be reached with a questionnaire. None of these firms is believed to be a significant importer of the subject merchandise from the subject countries.

⁵ This firm imported melamine dinnerware from Thailand.

⁶ Several of these firms failed to provide usable data because they did not keep their records by weight. Such firms imported melamine dinnerware in sets rather than in bulk form. As a result, their records were kept by piece or by the dozen, and because various pieces were typically combined in each set, there was no way to convert from a piece basis to a weight basis. Conversation with ***.

larger domestic or foreign companies. All these firms reported 100-percent ownership by their parent firms. These firms, and their parent companies, are presented in the tabulation below:

* * * * *

U.S. IMPORTS

As noted in the preceding section, imports of melamine institutional dinnerware are provided for under "basket" import tariff categories (HTS subheadings 3924.10.20, 3924.10.30, and 3924.10.50) that also provide for dinnerware manufactured from all other plastics. Accordingly, import data presented below are based on responses to Commission questionnaires.⁷ The Commission received data from virtually all major known importers of melamine institutional dinnerware from China, Indonesia, and Taiwan during the period examined.⁸

As seen in table IV-1, the volume of subject imports increased markedly from 1993 to 1995, rising 84 percent during the 3-year period. Cumulated subject imports, however, decreased when the interim periods are compared, with increased imports from China and Indonesia being outweighed by substantial declines in reported imports from Taiwan.⁹ Unit values of those imports were relatively flat.

In its questionnaire the Commission also requested importers to provide information on their company transfers, domestic shipments, and export shipments of imported merchandise. Most importers reported sales as domestic shipments, with only one firm, ***, reporting any export shipments and 2 firms reporting company transfers.¹⁰

APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES

Melamine Dinnerware, Regardless of Thickness

Apparent U.S. consumption and respective shares of imports and U.S. producers' shipments are shown in table IV-2. The table shows the share of subject imports (melamine institutional dinnerware) in the U.S. market for all melamine dinnerware, regardless of thickness.

Apparent consumption of melamine dinnerware, in terms of quantity, increased overall from 1993 to 1995, with most of the increase occurring between 1993 and 1994. In value terms, however, the 3-year increase was much smaller. When the interim January-September periods are compared, apparent consumption fell in terms of both volume and value.

⁷ In accordance with Commerce's scope, such imports are limited to melamine institutional dinnerware; i.e., having a minimum wall thickness of 0.08 inch. Data on imports of all melamine dinnerware (i.e., regardless of thickness), are not presented in this report. Data on total shipments of imports of all melamine dinnerware are presented in app. B, table B-1.

⁸ As noted in part I of this report, several firms investigated by Commerce received zero or *de minimis* margins in Commerce's final determinations. To the extent possible, import data presented here have been adjusted to exclude imports from those firms. Specifically, where responding importers reported imports from firms receiving zero or *de minimis* margins, those imports were subtracted from total subject imports and included in nonsubject imports. In addition, data on exports presented in part VII of this report have been adjusted to exclude data from those firms. During the period examined by Commerce (calendar year 1995), excluded companies accounted for 28 percent of imports from China investigated by Commerce and 7 percent of imports from Taiwan investigated by Commerce.

⁹ Much of this trend may be accounted for by ***.

¹⁰ ***, the largest importer of the subject merchandise from Taiwan, failed to provide data on its shipments of imports. For purposes of this report, its reported import data are being used as a proxy for shipment data.

Table IV-1

Melamine institutional dinnerware: U.S. imports from China, Indonesia, Taiwan, and all other countries, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996¹

Item	1993	1994	1995	Jan.-Sept.-- 1995	1996
<i>Quantity (1,000 pounds)</i>					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	419	***	592	397	***
Subtotal	720	964	1,324	823	756
All other imports	***	***	***	***	***
Total imports	***	***	***	***	***
<i>Value (1,000 dollars)</i>					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	914	991	1,369	927	557
Subtotal	1,453	1,832	2,661	1,704	1,510
All other imports	***	***	***	***	***
Total imports	***	***	***	***	***
<i>Unit value (dollars per pound)</i>					
China ¹	\$***	\$***	\$***	\$***	\$***
Indonesia	***	***	***	***	***
Taiwan	2.18	***	2.31	2.33	***
Average	2.02	1.90	2.01	2.07	2.00
All other imports	***	***	***	***	***
Average, all imports	***	***	***	***	***

¹ Imports from China exclude imports from Gin Harvest China and Chen Hao Xiamen, which were found to have *de minimis* LTFV margins. Imports from these companies are included in "all other imports."

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

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

Table IV-2

Melamine dinnerware, regardless of thickness: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996¹

Item	1993	1994	1995	Jan.-Sept.--	
				1995	1996
<hr/>					
<hr/>					
Quantity (1,000 pounds)					
<hr/>					
Producers' U.S. shipments	10,016	13,428	12,558	9,860	7,667
U.S. shipments of subject imports of melamine institutional dinnerware from--					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan ²	390	***	458	314	260
Total, subject imports	685	780	943	636	718
U.S. nonsubject imports ³	***	***	***	***	***
Subtotal	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
<hr/>					
Value (1,000 dollars)					
<hr/>					
Producers' U.S. shipments	30,281	37,002	35,253	26,970	22,964
U.S. shipments of subject imports of melamine institutional dinnerware from--					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan ²	989	986	1,344	907	838
Total, subject imports	1,753	1,951	2,628	1,829	2,080
U.S. nonsubject imports ³	***	***	***	***	***
Subtotal	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
<hr/>					
Share of quantity of U.S. consumption (percent)					
<hr/>					
Producers' U.S. shipments	***	***	***	***	***
U.S. shipments of subject imports of melamine institutional dinnerware from--					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan ²	***	***	***	***	***
Total, subject imports	***	***	***	***	***
U.S. nonsubject imports ³	***	***	***	***	***
Subtotal	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

Table continued on next page.

Table IV-2--Continued

Melamine dinnerware, regardless of thickness: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

	<u>Jan.-Sept.--</u>				
<u>Item</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1995</u>	<u>1996</u>
	<u>Share of value of U.S. consumption (percent)</u>				
Producers' U.S. shipments	***	***	***	***	***
U.S. shipments of subject imports of melamine institutional dinnerware from--					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan ²	***	***	***	***	***
Total, subject imports	***	***	***	***	***
U.S. nonsubject imports ³	***	***	***	***	***
Subtotal	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

¹ Shipments of imports from China exclude shipments of imports from Gin Harvest China and Chen Hao Xiamen, which were found to have *de minimis* LTFV margins. Shipments of imports from these companies are included in "nonsubject imports."

² *** did not provide data on shipments of imports; as a result, data on its imports have been used as a proxy for shipment data. Thus, data on the value of shipments of imports from Taiwan (and the share of the value of U.S. consumption accounted for by such data) are somewhat understated.

³ Includes imports of melamine dinnerware, other than institutional, from China, Indonesia, and Taiwan, and imports of melamine dinnerware, regardless of thickness, from all other sources.

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

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

As a share of consumption quantity, subject imports from China, Indonesia, and Taiwan increased their share of the market from *** percent in 1993 to *** percent in 1995, and then increased their share to over *** percent in interim 1996. In value terms, subject import market share was generally slightly higher throughout the period examined, and the increasing trend was stronger, peaking at over *** percent of the market in the first three quarters of 1996.

Melamine Institutional Dinnerware

Consumption and market share data for melamine institutional dinnerware are presented in table IV-3. These data show that apparent consumption for institutional dinnerware increased both in quantity and value terms from 1993 to 1995. When the interim periods are compared, however, the value of apparent consumption increased, but the volume declined. Market shares of subject imports increased steadily over the 3 calendar years, with the larger rate of increase occurring between 1994 and 1995. Subject imports' market share also increased when the interim January-September periods are compared.

Table IV-3

Melamine institutional dinnerware: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996¹

Item	1993	1994	1995	Jan.-Sept.-- 1995	1996
<i>Quantity (1,000 pounds)</i>					
Producers' U.S. shipments	***	***	***	***	***
U.S. shipments of imports from--					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan ²	390	***	458	314	260
Subtotal	685	780	943	636	718
All other sources	***	***	***	***	***
Total imports	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
<i>Value (1,000 dollars)</i>					
Producers' U.S. shipments	***	***	***	***	***
U.S. shipments of imports from--					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan ²	989	986	1,344	907	838
Subtotal	1,753	1,951	2,628	1,829	2,080
All other sources	***	***	***	***	***
Total imports	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
<i>Share of quantity of U.S. consumption (percent)</i>					
Producers' U.S. shipments	***	***	***	***	***
U.S. shipments of imports from--					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan ²	***	***	***	***	***
Subtotal	***	***	***	***	***
All other sources	***	***	***	***	***
Total imports	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

Table continued on next page.

Table IV-3--Continued

Melamine institutional dinnerware: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

	<u>Jan.-Sept.--</u>				
<u>Item</u>	1993	1994	1995	1995	1996
	<u>Share of value of U.S. consumption (percent)</u>				
Producers' U.S. shipments	***	***	***	***	***
U.S. shipments of imports from--					
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan ²	***	***	***	***	***
Subtotal	***	***	***	***	***
All other sources	***	***	***	***	***
Total imports	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

¹ Shipments of imports from China exclude shipments of imports from Gin Harvest China and Chen Hao Xiamen, which were found to have *de minimis* LTFV margins. Shipments of imports from these companies are included in "all other sources."

² *** did not provide data on shipments of imports; as a result, data on its imports have been used as a proxy for shipment data. Thus, data on the value of shipments of imports from Taiwan (and the share of the value of U.S. consumption accounted for by such data) are somewhat understated.

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

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

According to the petitioners, the market for melamine institutional dinnerware has been fairly flat for the past several years.¹¹ In addition, petitioners commented that the market is well insulated from inroads by competing products, such as other plastic dinnerware, disposables, or "low-end china."¹² According to Sun Coast, ***.¹³

¹¹ Hearing transcript, p. 21; field visit with Sun Coast, Oct. 28, 1996.

¹² Petitioners' posthearing brief, exh. 1, p. 3.

¹³ Field visit with Sun Coast, Oct. 28, 1996.

PART V: PRICING AND RELATED DATA^{1,2}

FACTORS AFFECTING PRICING

Transportation to the U.S. Market

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

U.S. Inland Transportation Costs

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

Importer Markups

During 1995, the percentage difference in unit values between U.S. shipments of imported subject product and U.S. imports of the subject product were as follows: China--*** percent, Indonesia--*** percent, and Taiwan--*** percent.³

Commerce Margins of Dumping

Effective January 13, 1997, Commerce issued its final determinations that imports of melamine institutional dinnerware from China (with the exception of melamine institutional dinnerware produced by Chen Hao Xiamen, Gin Harvest, and Sam Choan), Indonesia, and Taiwan (with the exception of melamine institutional dinnerware produced by Yu Cheer) are sold at LTFV. The weighted-average dumping margins are shown below.

¹ For purposes of discussion, the questionnaire responses from *** will not be included in the discussion of importers' responses. *** is a petitioner who imports only one specialty product; this product falls outside the standard melamine institutional dinnerware product line and is unavailable from U.S. manufacturers.

² Unless otherwise specified, all discussion in this section applies only to melamine dinnerware for institutional use. The only importers' questionnaires included in this discussion are those of *** since the other responding importers' (aside from *** discussed in footnote (1)) primary business is either household or Asian dinnerware.

³ These estimates, derived from tables IV-1 and IV-2, are based on information for all subject imports, whether intended for institutional or household use.

<u>Country</u>	<u>Margin (percent)</u>
China:	
Chen Hao Xiamen	0.97 (<i>de minimis</i>)
Gin Harvest	0.47 (<i>de minimis</i>)
Sam Choan	0.04 (<i>de minimis</i>)
Tar Hong Xiamen	2.74
PRC-wide rate	7.06
Indonesia:	
P.T. Mayer Crocodile	12.90
P.T. Multi Raya Indah Abadi	8.10
All others	8.10
Taiwan:	
Chen Hao Taiwan	3.25
Yu Cheer	0.00
IKEA	53.13
Gallant	53.13
All others	3.25

Exchange Rates

China

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese yuan depreciated by 30.7 percent in relation to the U.S. dollar during the period January-March 1993 through July-September 1996 (figure V-1). The series fell more than 30 percent between October-December 1993 and January-March 1994 due to a change in the way the People's Bank of China sets the exchange rate.⁴ From January-March 1994 through July-September 1996, the Chinese yuan appreciated by 3.2 percent. Producer price information for China is unavailable; thus, real exchange rates cannot be calculated.

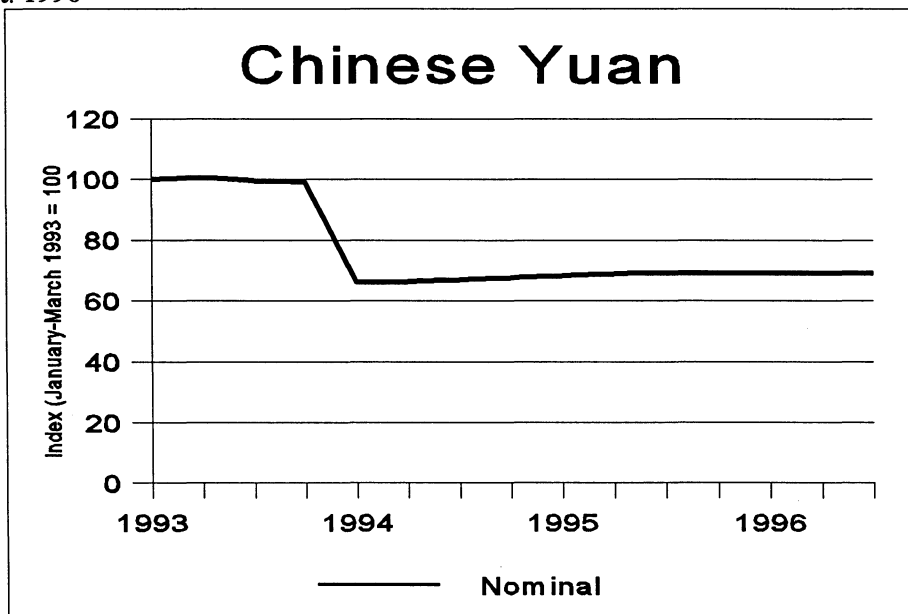
Taiwan

Quarterly data reported by the Central Bank of China indicate that the nominal value of the Taiwan NT dollar depreciated by 3.6 percent from January-March 1993 to April-June 1994, appreciated by 4.6 percent from April-June 1994 through April-June 1995, then fell by 6.6 percent from April-June 1995 through April-June 1996 to end the period of observation down by 5.9 percent. The real exchange rate depreciated by 3.1 percent from January-March 1993 to October-December 1993, appreciated by 9.5 percent from October-December 1993 to April-June 1995, then fell by 8.9 percent from April-June 1995 through April-June 1996 to end the period January-March 1993 to April-June 1996 down 3.3 percent (figure V-2).

⁴ International Monetary Fund, *International Financial Statistics*, Sept. 1995, p. 168.

Figure V-1

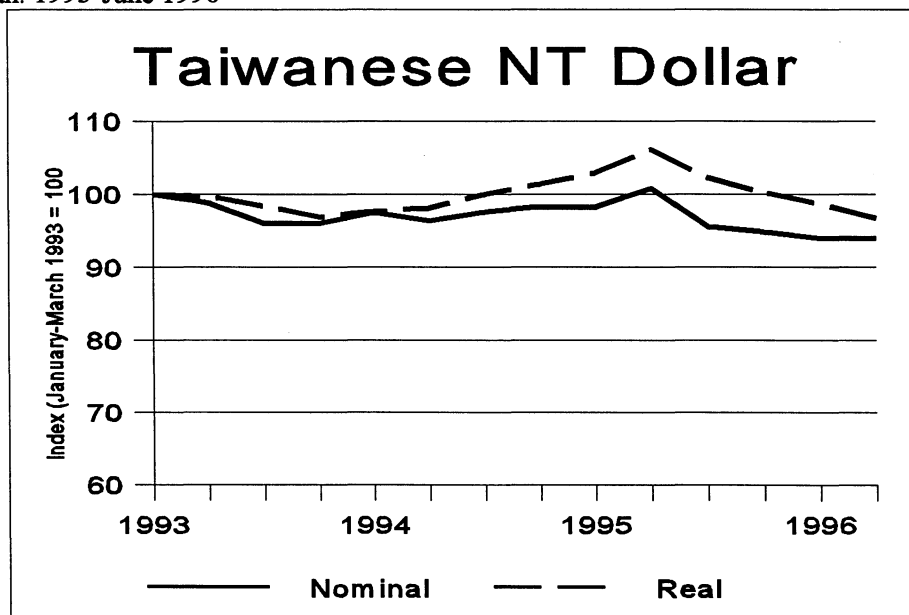
Exchange rates: Index of the nominal exchange rate between the U.S. dollar and Chinese yuan, by quarters, Jan. 1993-Sept. 1996



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

Figure V-2

Exchange rates: Indices of nominal and real exchange rates between the U.S. dollar and Taiwan NT dollar, by quarters, Jan. 1993-June 1996



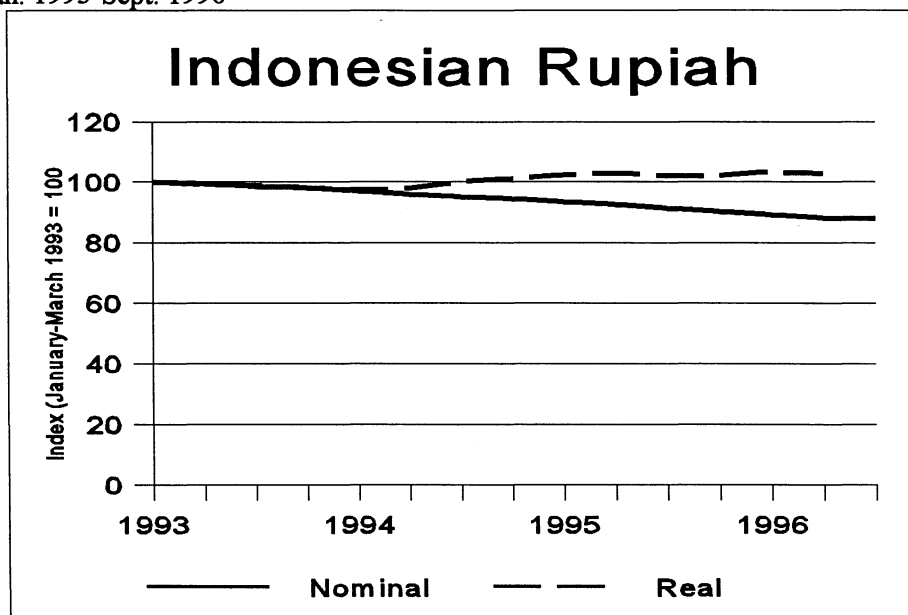
Source: The Central Bank of China, *Financial Statistics, Taiwan District, the Republic of China*, February 1995 and June 1996.

Indonesia

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Indonesian rupiah depreciated steadily from January-March 1993 through July-September 1996, ending the period down 12.1 percent. The real value of the Indonesian rupiah depreciated 2.2 percent from January-March 1993 through April-June 1994, but ended the period January-March 1993 through April-June 1996 up 2.7 percent (figure V-3).⁵

Figure V-3

Exchange rates: Indices of nominal and real exchange rates between the U.S. dollar and Indonesian rupiah, by quarters, Jan. 1993-Sept. 1996



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

PRICING PRACTICES

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

All responding domestic producers and importers indicated that small orders are sold on an f.o.b. basis and large orders are sold with pre-paid freight. The minimum order required to capture the freight

⁵ Data for the consumer price index for July-September 1996 are unavailable, therefore the real exchange rate could not be calculated for this period.

benefits ranged from \$*** to \$*** for the importers and from \$*** to \$*** or *** pounds *** for the domestic producers. *** of the three responding U.S. producers and *** of the three responding importers offer rebates for prompt payment to some customers; for the other responding companies, sales terms are net 30 days. For the importers that offer rebates, the incentive ranges from *** to *** percent; for the domestic producer, the rebate is *** percent. Seventeen purchasers indicated that the terms involved in a sale of melamine institutional dinnerware are negotiable, while 24 stated that they are set by the supplier.

PRICE DATA⁶

The Commission requested U.S. producers and importers to report the quantity and net delivered value of shipments in each quarter of selected melamine institutional dinnerware products to unrelated U.S. customers, with information for shipments of solid color items given separately. In addition, the U.S. producers of household dinnerware were requested to give pricing information for retail melamine dinnerware which most closely match the following products. Quarterly price data were requested for total sales of the products specified, from January 1993 through September 1996. Equivalent data for purchases of melamine institutional dinnerware from U.S. producers and importers were requested of U.S. purchasers. The products for which pricing data were requested are as follows:

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

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

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

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

Three U.S. producers, 3 importers, and 25 purchasers provided usable pricing data for sales of the requested products in the U.S. market, although not necessarily for all products or all quarters over the period examined.⁷ U.S. producer and importer pricing data based on average sales prices of solid color items weighted by the total quantity of these items shipped are presented in tables V-1 through V-4 and figures V-4 through V-7.⁸ Purchaser data are presented in tables V-5 through V-8 and figures V-8 through V-11.

⁶ Price data provided by *** for purchases from *** and *** for purchases from *** were excluded since these imports received *de minimis* margins from Commerce.

⁷ An additional 8 importers and 3 purchasers provided data, but this information was not used in this section since these importers and purchasers primarily serve the household and/or Asian dinnerware markets, which have different pricing practices and channels of distribution, and thus would not be directly comparable with data reported by domestic producers.

⁸ Data for other than solid colors were not used in order to get as close a comparison between products as possible. Products with patterns may be priced higher than solid color products.

Table V-1

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product 1¹ reported by U.S. producers and importers, and margins of under/(over)selling, by quarters, Jan. 1993-Sept. 1996

Period	U.S. Product			Chinese Product				Taiwan Product				Indonesian Product			
	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin
	<i>Per dozen</i>	<i>Dozen</i>		<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>
1993:															
January-March.....	\$16.52	13,922	3	(2)	(2)	-	(3)	(2)	(2)	-	(3)	\$***	***	***	***
April-June.....	14.96	26,335	3	(2)	(2)	-	(3)	(2)	(2)	-	(3)	***	***	***	***
July-September.....	15.93	29,052	3	(2)	(2)	-	(3)	(2)	(2)	-	(3)	***	***	***	***
October-December....	16.14	18,058	3	(2)	(2)	-	(3)	(2)	(2)	-	(3)	***	***	***	***
1994:															
January-March.....	17.30	16,637	3	(2)	(2)	-	(3)	\$***	***	***	***	***	***	***	***
April-June.....	16.14	17,951	3	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
July-September.....	16.66	24,116	3	\$***	***	***	***	***	***	***	***	***	***	***	***
October-December....	16.81	17,686	3	***	***	***	***	***	***	***	***	***	***	***	***
1995:															
January-March.....	17.68	15,342	3	***	***	***	***	***	***	***	***	***	***	***	***
April-June.....	17.19	18,582	3	***	***	***	***	***	***	***	***	***	***	***	***
July-September.....	17.58	21,596	3	***	***	***	***	***	***	***	***	***	***	***	***
October-December....	17.76	14,047	3	***	***	***	***	***	***	***	***	***	***	***	***
1996:															
January-March.....	17.73	13,139	3	***	***	***	***	***	***	***	***	***	***	***	***
April-June.....	18.67	16,498	3	***	***	***	***	***	***	***	***	***	***	***	***
July-September.....	16.45	22,253	3	***	***	***	***	***	***	***	***	***	***	***	***

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

² Data not reported.

³ Margins not calculated.

⁴ Number of companies reporting data.

Note.—Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

Table V-2

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product 2¹ reported by U.S. producers and importers, and margins of under/(over)selling, by quarters, Jan. 1993-Sept. 1996

Period	U.S. Product			Chinese Product				Taiwan Product				Indonesian Product			
	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin
	<i>Per dozen</i>	<i>Dozen</i>		<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>
1993:															
January-March.....	\$7.99	10,981	3	(2)	(2)	-	(3)	(2)	(2)	-	(3)	\$***	***	***	***
April-June.....	7.59	16,765	3	(2)	(2)	-	(3)	(2)	(2)	-	(3)	***	***	***	***
July-September.....	7.30	20,922	3	(2)	(2)	-	(3)	(2)	(2)	-	(3)	***	***	***	***
October-December....	8.12	11,784	3	(2)	(2)	-	(3)	(2)	(2)	-	(3)	***	***	***	***
1994:															
January-March.....	8.07	12,757	3	(2)	(2)	-	(3)	\$***	***	***	***	***	***	***	***
April-June.....	8.12	11,055	3	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
July-September.....	7.98	15,482	3	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
October-December....	8.03	11,249	3	\$***	***	***	***	***	***	***	***	***	***	***	***
1995:															
January-March.....	8.40	13,095	3	***	***	***	***	***	***	***	***	***	***	***	***
April-June.....	8.42	10,383	3	***	***	***	***	***	***	***	***	***	***	***	***
July-September.....	8.50	14,131	3	***	***	***	***	***	***	***	***	***	***	***	***
October-December....	8.23	10,139	3	***	***	***	***	***	***	***	***	***	***	***	***
1996:															
January-March.....	8.34	11,724	3	***	***	***	***	***	***	***	***	***	***	***	***
April-June.....	8.88	11,135	3	***	***	***	***	***	***	***	***	***	***	***	***
July-September.....	8.78	14,075	3	***	***	***	***	***	***	***	***	***	***	***	***

¹ 3 to 4 oz. bowl, minimum weight 45g.

² Data not reported.

³ Margins not calculated.

⁴ Number of companies reporting data.

Note.—Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

Table V-3

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product 3¹ reported by U.S. producers and importers, and margins of under/(over)selling, by quarters, Jan. 1993-Sept. 1996

Period	U.S. Product			Chinese Product				Taiwan Product				Indonesian Product			
	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin
	<i>Per dozen</i>	<i>Dozen</i>		<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>
1993:															
January-March.....	\$26.45	1,546	3	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
April-June.....	23.26	2,441	3	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
July-September.....	20.99	3,844	3	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
October-December....	22.91	2,847	3	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
1994:															
January-March.....	24.98	1,978	3	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
April-June.....	25.06	1,900	3	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
July-September.....	24.71	3,171	3	\$***	***	***	***	***	***	***	***	\$***	***	***	***
October-December....	24.66	2,258	3	***	***	***	***	***	***	***	***	***	***	***	***
1995:															
January-March.....	27.17	1,725	3	***	***	***	***	***	***	***	***	***	***	***	***
April-June.....	28.04	1,819	3	***	***	***	***	***	***	***	***	***	***	***	***
July-September.....	26.13	1,843	3	***	***	***	***	***	***	***	***	***	***	***	***
October-December....	27.04	1,340	3	***	***	***	***	***	***	***	***	***	***	***	***
1996:															
January-March.....	22.57	1,651	3	***	***	***	***	***	***	***	***	***	***	***	***
April-June.....	24.24	2,540	3	***	***	***	***	***	***	***	***	***	***	***	***
July-September.....	22.82	2,728	3	***	***	***	***	***	***	***	***	***	***	***	***

¹ 9" to 9-1/2" platter, minimum weight 124g.

² Data not reported.

³ Margins not calculated.

⁴ Number of companies reporting data.

Note.—Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

Table V-4

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product ⁴ reported by U.S. producers and importers, and margins of under/(over)selling, by quarters, Jan. 1993-Sept. 1996

Period	U.S. Product				Chinese Product				Taiwan Product				Indonesian Product			
	Net delivered price	Quantity	Co. ⁴		Net delivered price	Quantity	Co. ⁴		Net delivered price	Quantity	Co. ⁴		Net delivered price	Quantity	Co. ⁴	
	Per dozen	Dozen			Per dozen	Dozen			Per dozen	Dozen			Per dozen	Dozen		
1993:																
January-March.....	\$13.21	6,778	3		(2)	(2)	-	(3)	\$***	***	***	***	(2)	(2)	-	(3)
April-June.....	12.58	11,347	3		(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
July-September.....	12.28	12,997	3		(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
October-December....	13.38	7,794	3		(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
1994:																
January-March.....	14.09	5,869	3		(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
April-June.....	12.73	7,462	3		(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
July-September.....	13.61	6,985	3		(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
October-December....	12.82	7,009	3		(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
1995:																
January-March.....	12.88	7,450	3		\$***	***	***	***	***	***	***	***	(2)	(2)	-	(3)
April-June.....	14.21	5,972	3		***	***	***	***	***	***	***	***	(2)	(2)	-	(3)
July-September.....	15.01	6,134	3		***	***	***	***	***	***	***	***	(2)	(2)	-	(3)
October-December....	14.38	4,525	3		***	***	***	***	***	***	***	***	(2)	(2)	-	(3)
1996:																
January-March.....	13.58	5,264	3		***	***	***	***	***	***	***	***	(2)	(2)	-	(3)
April-June.....	14.37	5,040	3		***	***	***	***	***	***	***	***	(2)	(2)	-	(3)
July-September.....	14.10	5,256	3		***	***	***	***	***	***	***	***	(2)	(2)	-	(3)

¹ 7-1/2 oz. stacking cup, minimum weight 71g.

² Data not reported.

³ Margins not calculated.

⁴ Number of companies reporting data.

Note. --Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

Table V-5

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices and quantities for purchases from U.S. producers and importers for product 1¹ reported by unrelated U.S. customers, and margins of under/(over)selling, by quarters, Jan. 1993-Sept. 1996

Period	U.S. Product			Chinese Product				Taiwan Product				Indonesian Product			
	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin
	<i>Per dozen</i>	<i>Dozen</i>		<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>
1993:															
January-March.....	\$14.90	6,780	12	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
April-June.....	16.34	4,724	11	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
July-September.....	15.56	7,284	12	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
October-December....	15.08	6,988	11	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
1994:															
January-March.....	16.17	6,786	14	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
April-June.....	17.64	6,159	12	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
July-September.....	16.69	6,689	12	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
October-December....	16.17	5,546	10	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
1995:															
January-March.....	17.08	6,235	13	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
April-June.....	16.45	6,829	13	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
July-September.....	17.32	7,882	13	***	***	***	***	***	***	***	***	***	***	***	***
October-December....	17.16	5,672	12	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
1996:															
January-March.....	17.04	6,314	16	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
April-June.....	17.46	6,906	15	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***
July-September.....	15.51	11,463	16	(2)	(2)	-	(3)	***	***	***	***	***	***	***	***

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

² Data not reported.

³ Margins not calculated.

⁴ Number of companies reporting data.

Note.--Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

Table V-6

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices and quantities for purchases from U.S. producers and importers for product 2¹ reported by unrelated U.S. customers, and margins of under/(over)selling, by quarters, Jan. 1993-Sept. 1996

Period	U.S. Product			Chinese Product			Taiwan Product			Indonesian Product		
	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴
	Per dozen	Dozen		Per dozen	Dozen		Per dozen	Dozen		Per dozen	Dozen	
1993:												
January-March.....	\$9.88	5,812	12	(2)	(2)	-	***	***	***	***	***	***
April-June.....	8.26	6,281	12	(2)	(2)	-	***	***	***	***	***	***
July-September.....	8.58	6,838	13	(2)	(2)	-	***	***	***	***	***	***
October-December....	9.02	5,345	11	(2)	(2)	-	***	***	***	***	***	***
1994:												
January-March.....	9.19	6,013	13	(2)	(2)	-	***	***	***	***	***	***
April-June.....	8.97	4,744	12	(2)	(2)	-	***	***	***	***	***	***
July-September.....	8.81	7,093	12	(2)	(2)	-	***	***	***	***	***	***
October-December....	9.02	4,467	12	(2)	(2)	-	***	***	***	***	***	***
1995:												
January-March.....	8.77	6,043	12	(2)	(2)	-	***	***	***	***	***	***
April-June.....	8.46	5,161	14	(2)	(2)	-	***	***	***	***	***	***
July-September.....	8.53	8,202	14	(2)	(2)	-	***	***	***	***	***	***
October-December....	8.41	5,290	13	(2)	(2)	-	***	***	***	***	***	***
1996:												
January-March.....	8.81	6,262	16	(2)	(2)	-	***	***	***	***	***	***
April-June.....	9.72	7,634	14	(2)	(2)	-	***	***	***	***	***	***
July-September.....	8.83	8,605	17	(2)	(2)	-	***	***	***	***	***	***

¹ 3 to 4 oz. bowl, minimum weight 45g.

² Data not reported.

³ Margins not calculated.

⁴ Number of companies reporting data.

Note.--Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

Table V-7

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices and quantities for purchases from U.S. producers and importers for product 3¹ reported by unrelated U.S. customers, and margins of under/(over)selling, by quarters, Jan. 1993-Sept. 1996

Period	U.S. Product			Chinese Product			Taiwan Product			Indonesian Product		
	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴
	Per dozen	Dozen		Per dozen	Dozen		Per dozen	Dozen		Per dozen	Dozen	
1993:												
January-March.....	\$27.74	199	8	(2)	(2)	-	***	***	***	(2)	(2)	-
April-June.....	39.84	295	7	(2)	(2)	-	***	***	***	(2)	(2)	-
July-September.....	27.67	343	10	(2)	(2)	-	***	***	***	(2)	(2)	-
October-December....	43.17	103	8	(2)	(2)	-	***	***	***	(2)	(2)	-
1994:												
January-March.....	31.70	237	9	(2)	(2)	-	***	***	***	(2)	(2)	-
April-June.....	40.50	212	9	(2)	(2)	-	***	***	***	(2)	(2)	-
July-September.....	33.25	241	8	(2)	(2)	-	***	***	***	***	***	***
October-December....	37.06	194	8	(2)	(2)	-	***	***	***	***	***	***
1995:												
January-March.....	29.85	281	7	(2)	(2)	-	***	***	***	***	***	***
April-June.....	34.32	484	10	(2)	(2)	-	***	***	***	***	***	***
July-September.....	27.77	169	11	(2)	(2)	-	***	***	***	***	***	***
October-December....	30.25	217	8	(2)	(2)	-	***	***	***	***	***	***
1996:												
January-March.....	30.30	261	11	(2)	(2)	-	(2)	(2)	(3)	***	***	***
April-June.....	27.48	558	12	***	***	***	***	***	***	***	***	***
July-September.....	28.41	325	9	***	***	***	***	***	***	***	***	***

¹ 9" to 9-1/2" platter, minimum weight 124g.

² Data not reported.

³ Margins not calculated.

⁴ Number of companies reporting data.

Note.--Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

Table V-8

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices and quantities for purchases from U.S. producers and importers for product 4¹ reported by unrelated U.S. customers, and margins of under/(over)selling, by quarters, Jan. 1993-Sept. 1996

Period	U.S. Product			Chinese Product				Taiwan Product				Indonesian Product			
	Net delivered price	Quantity	Co. ⁴	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin	Net delivered price	Quantity	Co. ⁴	Margin
	<i>Per dozen</i>	<i>Dozen</i>		<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>	<i>Per dozen</i>	<i>Dozen</i>		<i>Percent</i>
1993:															
January-March.....	\$12.54	2,348	10	(2)	(2)	-	(3)	\$***	***	***	***	(2)	(2)	-	(3)
April-June.....	12.66	1,915	10	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
July-September.....	12.91	2,351	10	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
October-December....	12.93	1,833	8	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
1994:															
January-March.....	13.26	1,654	10	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
April-June.....	12.88	1,912	8	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
July-September.....	12.61	1,869	9	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
October-December....	13.11	1,672	8	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
1995:															
January-March.....	12.54	2,564	11	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
April-June.....	12.83	1,451	10	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
July-September.....	12.89	1,643	9	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
October-December....	12.76	1,053	9	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
1996:															
January-March.....	13.20	2,137	11	(2)	(2)	-	(3)	***	***	***	***	(2)	(2)	-	(3)
April-June.....	12.78	1,473	11	(2)	(2)	-	(2)	***	***	***	***	(2)	(2)	-	(3)
July-September.....	12.63	1,540	11	(2)	(2)	-	(2)	***	***	***	***	(2)	(2)	-	(3)

¹ 7-1/2 oz. stacking cup, minimum weight 71g.

² Data not reported.

³ Margins not calculated.

⁴ Number of companies reporting data.

Note.—Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

Figure V-4

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices for sales of product 1 to U.S. customers reported by U.S. producers and importers, by quarters, Jan. 1993-Sept. 1996

* * * * *

Figure V-5

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices for sales of product 2 to U.S. customers reported by U.S. producers and importers, by quarters, Jan. 1993-Sept. 1996

* * * * *

Figure V-6

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices for sales of product 3 to U.S. customers reported by U.S. producers and importers, by quarters, Jan. 1993-Sept. 1996

* * * * *

Figure V-7

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices for sales of product 4 to U.S. customers reported by U.S. producers and importers, by quarters, Jan. 1993-Sept. 1996

* * * * *

Figure V-8

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices for purchases of product 1 from U.S. producers and importers reported by U.S. customers, by quarters, Jan. 1993-Sept. 1996

* * * * *

Figure V-9

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices for purchases of product 2 from U.S. producers and importers reported by U.S. customers, by quarters, Jan. 1993-Sept. 1996

* * * * *

Figure V-10

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices for purchases of product 3 from U.S. producers and importers reported by U.S. customers, by quarters, Jan. 1993-Sept. 1996

* * * * *

Figure V-11

Solid color melamine institutional dinnerware for institutional use: Weighted-average net delivered prices for purchases of product 4 from U.S. producers and importers reported by U.S. customers, by quarters, Jan. 1993-Sept. 1996

* * * * *

U.S. Producers' and Importers' Prices⁹

U.S. Product¹⁰

U.S. producers' prices for product 1 in solid colors ranged from \$14.96 to \$18.67 per dozen from January-March 1993 through July-September 1996. Prices fluctuated throughout the period and ended down less than 1.0 percent. U.S. producers' prices for product 2 ranged from \$7.30 to \$8.88 per dozen, ending the period of investigation up by 9.9 percent. For product 3, U.S. producers' prices ranged from \$20.99 to \$28.04 per dozen. Prices fluctuated throughout the period, ending down 13.7 percent. Prices reported by U.S. producers for product 4 ranged from \$12.41 to \$15.17 per dozen, ending up 6.1 percent.

Chinese Product

No prices for Chinese product were reported for January-March 1993 through April-June 1994. Prices for product 1 ranged from \$*** to \$*** per dozen, although reported prices exceeded \$*** per dozen in only one quarter. Prices for product 2 ranged from \$*** to \$*** per dozen during the period for which prices were reported, October-December 1994 through July-September 1996. Reported prices for product 3 ranged from \$*** to \$*** per dozen over the period for which prices were reported, July-September 1994 to July-September 1996, although reported prices exceeded \$*** per dozen in only one quarter. Prices for product 4 were reported for January-March 1995 through July-September 1996. Prices ranged from \$*** to \$*** per dozen.

Taiwan Product¹¹

No usable price data was reported for product 1 or product 2 for 1993. Prices reported by importers ranged from \$*** to \$*** per dozen for product 1 in solid colors and from \$*** to \$*** per dozen for product 2. Prices reported for product 3 ranged from \$*** to \$*** per dozen, ending the period up *** percent. Importers reported prices for product 4 ranging from \$*** to \$*** per dozen. Prices were relatively flat over the period, ending up *** percent.

⁹ Data for subject imports of melamine dinnerware for noninstitutional uses are not presented in this report. U.S. producers and importers sell these products at different levels in the chain of distribution, and therefore their pricing is not comparable. Data for U.S. retailware was provided for product 1 and is presented in app. D.

¹⁰ Data presented for U.S. producers do not include any glazed product.

¹¹ Pricing data for Taiwan was reported by *** importers. Data reported by *** for products 1 and 2 were excluded because they include only premium products which were not included in data reported by the domestic companies or ***. For products 3 and 4, pricing information shown includes data reported by ***. ***'s data for these products include both standard and premium products, therefore, margins of underselling may be underestimated.

Indonesian Product

Reported prices for product 1 ranged from \$*** to \$*** per dozen, ending the period at the low, down *** percent. Prices for product 2 ranged from \$*** to \$*** per dozen, ending the period down *** percent. Prices fell by *** percent from the high at the beginning of the period of observation to July-September 1993. Prices were relatively flat for the rest of the period, ending near the low. For product 3, prices ranged from \$*** to \$*** per dozen over the period for which prices were reported (July-September 1994 through July-September 1996), ending down by *** percent. No prices were reported for product 4.¹²

Price Comparisons

Tables V-1 through V-4 show the margins of underselling/(overselling) for melamine institutional dinnerware from January-March 1993 through July-September 1996 for all countries. For China, margins ranged from *** percent, with *** instances of overselling and *** instances of underselling. For Taiwan, margins ranged from *** percent, with *** instances of overselling and *** instances of underselling. All margins for products 2, 3, and 4 show underselling. For Indonesia, margins ranged from *** percent, with *** instances of overselling and *** instances of underselling.

Purchaser Prices

U.S. Product

Prices for product 1 in solid colors ranged from \$14.90 to \$17.64 per dozen. The high was reached in April-June 1994. For product 2 in solid colors, reported prices ranged from \$8.26 to \$9.88 per dozen, ending the period of observation down by 10.6 percent. Prices for product 3 in solid colors ranged from \$27.48 to \$43.17 per dozen. The high was reached in October-December 1993 and prices ended the period up by 2.4 percent. For product 4 in solid colors, reported prices ranged from \$12.54 to \$13.26 per dozen. Prices were relatively flat over the period, ending up less than 1 percent.

Chinese Product

Price information for product 1 in solid colors was reported only for July-September 1995. No price information was reported for products 2 or 4. Price information for product 3 was reported for only April-June 1996 through July-September 1996.

Taiwan Product

Reported prices for product 1 in solid colors ranged from \$*** to \$*** per dozen, ending the period of observation up by *** percent. For product 2 in solid colors, reported prices ranged from \$*** to \$*** per dozen. The range of prices reported for product 3 in solid colors was \$*** to \$*** per dozen. No data were reported for the period January-March 1996. For product 4 in solid colors, reported prices ranged from \$*** to \$*** per dozen, ending the period of observation down by *** percent.

¹² According to Edward Sim, ***.

Indonesian Product

Reported prices for product 1 in solid colors ranged from \$*** to \$*** per dozen. No data were reported for October-December 1993. For product 2 in solid colors, reported prices ranged from \$*** to \$*** per dozen, ending the period down by *** percent. For product 3 in solid colors, no prices were reported for the period January-March 1993 through April-June 1994. Reported prices ranged from \$*** to \$*** per dozen, ending the period up by *** percent. No data were reported for product 4.

Price Comparisons

Only *** price comparisons could be made for Chinese products due to lack of reported data. *** showed overselling. Margins for Taiwan products ranged from *** percent with *** instances of overselling and *** instances of underselling. For Indonesian products, calculated margins ranged from *** percent with *** instances of overselling and *** instances of underselling. No data were reported for product 4.

LOST SALES AND LOST REVENUES

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

For the final investigations, all of the three responding domestic producers submitted additional allegations of lost sales and/or revenues. *** made *** lost revenue allegations and *** lost sale allegations. Responses of purchasers were obtained for *** of these transactions. *** made *** lost sale/revenue allegations of which *** were lost sales. Staff was able to contact *** of the purchasers involved. *** made *** additional lost sale/revenue allegations. One of the purchasers was contacted by staff. Responses of the purchasers contacted are detailed below.

*** was cited by *** in an instance of alleged lost revenues of approximately \$*** in 1993 *** because of imports from Taiwan. *** of *** stated that the company is currently purchasing both from Taiwan and from a U.S. producer. He would not comment further on the allegation.

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

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

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

*** was named in two lost sale/revenue allegations by ***. The first allegation, made in the preliminary investigations, claimed losses in sales of \$*** on the *** account with ***. *** of *** stated that the amount is more in the range of \$*** every 6 months. Although he was not sure of the country of origin of the product he is purchasing, he stated that it is from the Orient. The second allegation, submitted in the final

investigations, claimed that revenue was reduced from \$*** to \$*** for ***, another account of ***. *** confirmed the allegation, stating that the end user involved had threatened to use imports.

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

*** provided a lost revenue allegation involving ***. The initial quote was made in April 1995 to ***. *** indicated that he did not recall receiving any quote for the large dollar amount indicated, although he is selling a large amount of melamine to a chain of pizza restaurants. A company selling imported product from Taiwan had quoted a low price that was presented to their U.S. supplier, which offered to lower its price to meet the competition from imports.

*** named *** in a lost sales allegation involving *** quoted in January of 1993. *** of *** responded that he could not comment about the transaction since melamine was not the company's primary business and, therefore, detailed information is not available.

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

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

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

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

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

***, a small, independent dealer, was named in a lost sale/revenue allegation. According to the allegation, *** is going from using *** to purchasing from ***, although it would switch to *** for ***'s prices. *** of *** indicated that he has purchased from *** and has been approached by *** at a lower price,

although he purchases *** which was specially quoted to compete with the imports. He stated that there is no problem with imports except that they do not offer as wide a line within melamine. The \$*** indicated in the allegation is a reasonable estimate of the total annual melamine purchases for ***. *** belongs to ***, a small buying group of 75 members, for which *** is an approved supplier.

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

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

*** was named in a lost sale/revenue allegation by ***. *** of *** stated that they have not bought from *** in 2 years because the quality was too low (the product breaks easily) and that he would not consider *** as a supplier again. He now purchases all melamine institutional dinnerware from ***.

*** was named in two lost sale/revenue allegations, one by *** and one by ***. The lost revenue allegation by *** involved a quote in February of 1994 for ***. According to ***, it was forced to lower its price from \$***. *** of *** confirmed this allegation, stating that the U.S. producer lowered its prices, but couldn't meet ***'s price. *** continued to purchase from its U.S. supplier due to their relationship. *** made a lost sales allegation involving an estimated ***. According to ***, the imported product from China and Indonesia was purchased at \$***. *** of *** stated that he only makes purchases from *** to match a customer's existing stock, that the volume was too large for a lost sale (although he had lost a nursing home account due to high prices -- but the supplier had been *** and he did not know who won the business), and he only purchases U.S. product.

*** made a lost sales allegation involving purchases of an estimated *** by ***. Imports from China and Indonesia were allegedly purchased for an estimated \$***. ***'s quote was made in ***. According to ***, they have had the same pattern of purchases for several years and purchase exclusively from a U.S. supplier, ***, although the lost sale volume was a fair estimation of their total annual melamine business. Their last order with *** was made in ***.

*** was also named in a lost sales allegation by ***. According to ***, it lost an estimated \$***. *** of *** confirmed the allegation, although he indicated that the quantity was more in the range of *** dozen per year, with the imports being *** cheaper than the U.S. product.

*** named *** in a lost sales allegation involving an estimated ***. The accepted quote was estimated at \$*** for imports from ***. *** of *** responded that he did not recall the reported transaction, although he has switched at least some purchases of product from U.S.-produced to imports since January of 1993 due to better availability. *** currently purchases approximately 60 percent U.S.-produced product.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Complete financial information was provided on melamine dinnerware operations by the three petitioning firms,¹ which essentially make up the total number of U.S. producers. The data presented in this section represent approximately *** percent of U.S. production of melamine dinnerware in 1995. The data have changed significantly from the prehearing report as the result of the ***.

OPERATIONS ON MELAMINE DINNERWARE, REGARDLESS OF THICKNESS

Income-and-loss data for the U.S. producers' total melamine dinnerware operations are presented in table VI-1. Income-and-loss data on a per-pound basis are presented in table VI-2 and selected income-and-loss data, by firm, are presented in table VI-3. Although there was a 33 percent increase in quantities sold from FY 1993 to FY 1994, operating income increased by just 17 percent during the period, primarily because the average per-pound price decreased by 6 percent (table VI-2). The average per-pound decrease continued into FY 1995, and the operating income fell dramatically from a positive \$4.6 million to a negative \$376,000 in just one year because of decreased net sales and increased cost of goods sold on an average per-pound basis.² This trend continued from interim 1995 to interim 1996, giving the industry its largest aggregate operating loss, \$690,000, in the 1996 interim period. According to the petitioners, the current competitive market does not allow them to pass on cost increases in the form of increased prices.

The increase in cost of goods sold was attributed to increased costs for raw materials (primarily formaldehyde),³ labor, health insurance, promotional allowances, and workmen's compensation.⁴ The cost increases are most notable from interim 1995 to interim 1996 (table VI-2). Decreased sales volume from 1994 to 1995 and from interim 1995 to interim 1996 significantly increased factory overhead costs on a per-pound basis since there were fewer units to absorb the overhead costs. The same is true for the increase for SG&A expenses on a per-pound basis from interim 1995 to interim 1996 since many of the expenses, *e.g.*, salaries, fringe benefits, building depreciation, etc., have characteristics of fixed expenses.

¹ Carlisle (formerly Continental/Silite International), NPC, and Sun Coast. Carlisle's fiscal year ends Dec. 31, NPC's ends Aug. 31, and Sun Coast's ends June 30. Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

² During a review of Carlisle's questionnaire response, it was noted that the ***. Staff conversation on Nov. 18, 1996 with ***.

³ Sun Coast is the only producer that manufactures the required resin for its melamine operations; however, all the producers are affected by the increase in formaldehyde costs, which is a basic ingredient of the resin.

⁴ Conference transcript, pp. 44-46, 67-71.

Table VI-1

Income-and-loss experience of U.S. producers on their melamine dinnerware operations, fiscal years 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

Item	1993	1994	1995	Jan.-Sept--	
				1995	1996
Quantity (1,000 pounds)					
Net sales	10,381	13,757	12,222	10,045	7,732
Value (\$1,000)					
Net sales	30,851	38,573	33,498	27,055	23,105
Cost of goods sold:					
Raw materials	***	***	***	***	***
Direct labor	***	***	***	***	***
Other factory costs	***	***	***	***	***
Total cost of goods sold.	21,964	27,567	27,964	21,475	19,519
Gross profit or (loss)	8,887	11,006	5,534	5,580	3,586
Selling, general and administrative (SG&A) expenses	4,989	6,450	5,910	4,515	4,276
Operating income or (loss)	3,898	4,556	(376)	1,065	(690)
Interest expense	***	***	***	***	***
Other expense	***	***	***	***	***
Other income	***	***	***	***	***
Net income or (loss)	3,407	3,867	(1,059)	581	(1,163)
Depreciation/amortization.	***	***	***	***	***
Cash flow	***	***	***	***	***
Ratio to value (percent)					
Cost of goods sold	71.2	71.5	83.5	79.4	84.5
Gross profit or (loss).	28.8	28.5	16.5	20.6	15.5
SG&A expenses	16.2	16.7	17.6	16.7	18.5
Operating income or (loss)	12.6	11.8	(1.1)	3.9	(3.0)
Net income or (loss)	11.0	10.0	(3.2)	2.1	(5.0)
Number of firms reporting					
Operating losses.	***	***	***	***	***
Net losses	***	***	***	***	***
Data	3	3	3	3	3

Note.--The producers are Carlisle (formerly Continental/Silite International), NPC, and Sun Coast. Carlisle's fiscal year ends Dec. 31, NPC's ends Aug. 31, and Sun Coast's ends June 30. Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

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

Table VI-2

Income-and-loss experience (per pound) of U.S. producers on their melamine dinnerware operations, fiscal years 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

Item	1993	1994	1995	Jan.-Sept.—	
				1995	1996
Net sales	\$2.97	\$2.80	\$2.74	\$2.69	\$2.99
Cost of goods sold (COGS):					
Raw materials.	***	***	***	***	***
Direct labor.	***	***	***	***	***
Other factory costs	***	***	***	***	***
Total COGS.	2.12	2.00	2.29	2.14	2.52
Gross profit or (loss)	0.86	0.80	0.45	0.56	0.46
SG&A expenses.	0.48	0.47	0.48	0.45	0.55
Operating income or (loss)	0.38	0.33	(0.03)	0.11	(0.09)

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

Variance Analysis

The variance analysis, table VI-4, is on an aggregate basis for the three firms that provided financial data for an assessment of changes in profitability as related to changes in pricing, cost, and volume. ***. The information for the variance analysis is derived from information presented in table VI-1. Although there may have been product mix changes during the period of investigation, it is believed that they are not of sufficient magnitude to invalidate general conclusions about the effects of changes in pricing, costs, and volume on profitability. The variance analysis revealed that price deterioration (1993-95), decreased sales volume (interim 1995 to interim 1996), and increased per-pound cost of goods sold in all periods except 1994, were very detrimental to profitability.

Table VI-3

Income-and-loss experience of U.S. producers (by firm) on their melamine dinnerware operations, fiscal years 1993-95, Jan-Sept. 1995, and Jan.-Sept. 1996

Item	1993	1994	1995	Jan.-Sept.--	
				1995	1996
Quantity (1,000 pounds)					
Netsales:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total quantity.	10,381	13,757	12,222	10,045	7,732
Value (\$1,000)					
Netsales:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total net sales	30,851	38,573	33,498	27,055	23,105
Cost of goods sold:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total cost of goods sold.	21,964	27,567	27,964	21,475	19,519
Gross profit:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total gross profit	8,887	11,006	5,534	5,580	3,586
Selling, general and administrative (SG&A) expenses:					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total SG&A expenses.	4,989	6,450	5,910	4,515	4,276
Operating income or (loss):					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Total operating income or (loss).	3,898	4,556	(376)	1,065	(690)
Ratio to value (percent)					
Operating income or (loss):					
Carlisle	***	***	***	***	***
NPC	***	***	***	***	***
Sun Coast	***	***	***	***	***
Average operating income or (loss).	12.6	11.8	(1.1)	3.9	(3.0)

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

Table VI-4

Variance analysis for melamine dinnerware operations, fiscal years 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

(\$1,000)				
Item	1993-95	1993-94	1994-95	Jan.-Sept.-- 1994-95
Net sales:				
Price variance	(2,824)	(2,311)	(771)	2,280
Volume variance	5,471	10,033	(4,304)	(6,230)
Total sales variance	2,647	7,722	(5,075)	(3,950)
Cost of sales:				
Cost variance	(2,105)	1,540	(3,473)	(2,989)
Volume variance	(3,895)	(7,143)	3,076	4,945
Total cost of sales variance	(6,000)	(5,603)	(397)	1,956
Gross profit variance	(3,353)	2,119	(5,472)	(1,994)
SG&A expenses:				
Expense variance	(36)	161	(180)	(801)
Volume variance	(885)	(1,622)	720	1,040
Total SG&A variance	(921)	(1,461)	540	239
Operating income variance	(4,274)	658	(4,932)	(1,755)

Note: Unfavorable variances are shown in parentheses; all others are favorable. The data are comparable to changes in net sales, cost of sales, gross profit, SG&A expenses, and operating income as presented as presented in table VI-1.

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

Investment in Productive Facilities, Capital Expenditures, and Research and Development Expenses

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

Item	As of the end of fiscal year--			As of Sept.--	
	1993	1994	1995	1995	1996
Property, plant, and equipment:					
Original cost	***	***	***	***	***
Book value	***	***	***	***	***
Capital expenditures	***	***	***	***	***
Research and development expenses	***	***	***	***	***

Note: Capital expenditures and research and development expenses are totals for the periods 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996.

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

OPERATIONS ON MELAMINE INSTITUTIONAL DINNERWARE

Income-and-loss data for the U.S. producers' melamine institutional dinnerware operations are presented in table VI-5. Income-and-loss data on a per-pound basis are presented in table VI-6 and selected income-and-loss data, by firm, are presented in table VI-7. Financial trends for melamine institutional dinnerware operations are similar to the trends for total melamine dinnerware, but of a lesser magnitude. There was a 7 percent increase in quantities sold from FY 1993 to FY 1994, and operating income increased by 5 percent during the period, even though the average per-pound price decreased by 8 percent (table VI-6). The average per-pound price recovered somewhat by 3 percent in FY 1995, but the operating income fell dramatically from *** to *** in just one year because of decreased net sales and increased cost of goods sold on an average per-pound basis (table VI-6). This trend continued from interim 1995 to interim 1996, giving the industry its largest aggregate operating loss, \$***, in the 1996 interim period. According to the petitioners, the current competitive market does not allow them to pass on cost increases in the form of increased prices.

Table VI-5

Income-and-loss experience of U.S. producers on their melamine institutional dinnerware operations, fiscal years 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

Table VI-6

Income-and-loss experience (per pound) of U.S. producers on their melamine institutional dinnerware operations, fiscal years 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

Table VI-7

Income-and-loss experience of U.S. producers (by firm) on their melamine institutional dinnerware operations, fiscal years 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

The increase in cost of goods sold was attributed to increased costs for raw materials (primarily formaldehyde), labor, health insurance, promotional allowances, and workmen's compensation. The cost increases are most notable from interim 1995 to interim 1996 (table VI-6). Decreased sales volume from 1994 to 1995 and from interim 1995 to interim 1996 significantly increased factory overhead costs on a per-pound basis since there were fewer units to absorb the overhead costs. The same is true for the increase for SG&A expenses on a per-pound basis from interim 1995 to interim 1996 since many of the expenses, *e.g.*, salaries, fringe benefits, building depreciation, etc., have characteristics of fixed expenses.

Variance Analysis

The variance analysis, table VI-8, is on an aggregate basis for the three firms that provided financial data for an assessment of changes in profitability as related to changes in pricing, cost, and volume. ***. The information for the variance analysis is derived from information presented in table VI-5. Although there may have been product mix changes during the period of investigation, it is believed that they are not of sufficient magnitude to invalidate general conclusions about the effects of changes in pricing, costs, and volume on profitability. The variance analysis revealed that the price deterioration (1993-94), decreased sales volume (interim 1995 to interim 1996), and increased per-pound cost of goods sold in all periods except 1994, were very detrimental to profitability.

Table VI-8

Variance analysis for melamine institutional dinnerware operations, fiscal years 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

Investment in Productive Facilities, Capital Expenditures, and Research and Development Expenses

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

<u>Item</u>	<u>As of the end of fiscal year--</u>			<u>As of Sept.--</u>	
	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1995</u>	<u>1996</u>
Property, plant, and equipment:					
Original cost	***	***	***	***	***
Book value	***	***	***	***	***
Capital expenditures	***	***	***	***	***
Research and development expenses	***	***	***	***	***

Note: Capital expenditures and research and development expenses are totals for the periods 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996.

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

CAPITAL AND INVESTMENT

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

PART VII: THREAT CONSIDERATIONS

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

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

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

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

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

(V) inventories of the subject merchandise,

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

¹ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "The Commission shall consider [these factors . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition."

(VII) 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),

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

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²

Information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" and any other threat indicators, if applicable, follows.³

THE INDUSTRY IN CHINA

In the preliminary investigations, the Commission received information from Tar-Hong Melamine Xiamen Co. on its operations in China. Tar Hong was identified in the petition as the only firm known to be producing melamine institutional dinnerware in China, although petitioners indicated that there may have been other firms producing and exporting the subject merchandise during the period examined.⁴ Tar Hong submitted a timely response to the Commission's foreign producer questionnaire in these final investigations; and the Commission also received data from four other firms: (1) Chen Hao Xiamen Plastic Industrial Co.,

² 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 WTO 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."

³ No party indicated that melamine institutional dinnerware from China, Indonesia, or Taiwan is subject to any antidumping or countervailing duty orders in countries other than the United States.

⁴ In its preliminary determination, Commerce reported that it had received responses from the Chinese Government identifying 19 exporters of the subject merchandise during Commerce's period of investigation (1995). Two of these companies subsequently advised Commerce that they had not exported the subject merchandise to the United States during the period of investigation. Commerce issued antidumping questionnaires to 18 of the companies, and received 5 responses. Commerce did not receive any information from the other 13 identified firms. Three of the five respondents were wholly foreign-owned, and all U.S. sales of the subject merchandise produced by these Chinese companies were made by the Taiwan parent companies (see 61 FR 43337, Aug. 22, 1996). As indicated previously, of the 5 responding firms, 3 were found to have *de minimis* LTFV margins. Tar Hong's margin was 2.74 percent, and Dongguan received the China-wide rate of 7.06 percent.

Ltd. (Chen Hao Xiamen), (2) Dongguan Thousand Neats Melamineware Co., Ltd. (Dongguan), (3) Sam Choan Plastic Industrial (Shenzhen) Co., Ltd. (Sam Choan), and (4) Gin Harvest Melamine Enterprises Co., Ltd. (China) (Gin Harvest China).⁵ Those data, except for data provided by Chen Hao Xiamen, Sam Choan, and Gin Harvest China, are presented in table VII-1.⁶

Table VII-1

Melamine dinnerware: Chinese capacity, production, inventories, capacity utilization, and shipments, 1993-95, Jan.-Sept. 1995, Jan.-Sept. 1996, and projected 1996 and 1997

* * * * *

As can be seen from the table, capacity to produce melamine dinnerware more than doubled in 1995, reflecting the ***. Both capacity and production increased in January-September 1996, when compared to the corresponding 1995 period. Capacity utilization levels fluctuated widely. Home market shipments were practically nonexistent throughout the period examined. As a share of total shipments, exports to the United States consistently exceeded exports to third countries; this relationship is expected to reverse itself in calendar year 1997.

THE INDUSTRY IN INDONESIA

According to information in the petition, there is only one firm currently offering melamine institutional dinnerware produced in Indonesia for export to the United States: P.T. Multi Raya Indah Abadi Co., Ltd. (Multi Raya). Multi Raya reported that it accounts for *** percent of Indonesian production, and exports to the United States, of melamine institutional dinnerware.⁷ *** of Multi Raya's exports to the United States are imported through ***.

Multi Raya is currently represented by counsel; accordingly, the Commission requested such counsel to provide data on the industry's capacity, production, shipments, and inventories of melamine institutional dinnerware. The data obtained are presented in table VII-2.

Table VII-2

Melamine institutional dinnerware: Indonesian capacity, production, inventories, capacity utilization, and shipments, 1993-95, Jan.-Sept. 1995, Jan.-Sept. 1996, and projected 1996 and 1997

* * * * *

As seen from the table, Multi Raya's Indonesian production of melamine institutional dinnerware *** from 1993 to 1995. Such production is expected to *** in calendar years 1996 and 1997, however. Capacity *** as well over the period examined, but less than ***, resulting in a ***.⁸ Shipments to both the United

⁵ During most of the period examined, Chen Hao had its primary operations in Taiwan.

⁶ These firms received *de minimis* rates in Commerce's final determination and would be excluded from any antidumping order. In addition, Tar Hong indicated that ***. Conversation with Adams Lee, White & Case, Jan. 23, 1997. As a result, data on the industry are overstated.

⁷ Commerce, however, indicated in its final determination that it knew of an additional exporter of melamine institutional dinnerware from Indonesia to the United States: P.T. Mayer Crocodile. This firm did not respond to Commerce's antidumping questionnaire; the percent of total exports of the subject merchandise from Indonesia accounted for by this firm is unknown.

⁸ Multi Raya explained capacity increases by noting that ***.

States and the home market *** over the 3 calendar years, with home market shipments ***; shipments to the United States ***.⁹ Export patterns are ***, although capacity utilization ***.

THE INDUSTRY IN TAIWAN

The Commission received data on the industry in Taiwan from three firms: (1) Chen Hao Plastic Industrial Co., Ltd. (Chen Hao), (2) Yu Cheer Industrial Co., Ltd. (Yu Cheer), and (3) Gin Harvest Melamine Enterprises Co., Ltd. (Gin Harvest). The Commission did not receive responses from Taiwan Melamine Products, Ltd., or Tar Hong Melamine Co., Ltd., the other firms identified in the petition as producing the subject merchandise in Taiwan.¹⁰ Data submitted by these firms, except for Yu Cheer, are presented below in table VII-3.¹¹

Table VII-3

Melamine dinnerware: Taiwan's capacity, production, inventories, capacity utilization, and shipments, 1993-95, Jan.-Sept. 1995, Jan.-Sept. 1996, and projected 1996 and 1997

* * * * *

After a small increase in 1994, Taiwan's capacity to produce melamine dinnerware declined steadily over the period examined. Production declined as well, as capacity utilization, while showing no clear pattern, remained over 90 percent. Despite the declines in capacity, the share of total shipments going to the U.S. market remained fairly constant, as home market shipments fell markedly. Except for 1993, the share of exports to the United States as a share of total shipments was fairly equivalent to the share of exports to other countries in such shipments; this pattern is expected to continue in 1997.

Chen Hao commented that ***. *** Chen Hao's total sales consist of melamine dinnerware. Chen Hao indicated that ***.

U.S. IMPORTERS' INVENTORIES

Of the 13 firms reporting imports of melamine institutional dinnerware from China, Indonesia, and/or Taiwan, 6 carried end-of-period inventories of those imports during the period examined (table VII-4).

⁹ Primary export markets other than the United States include ***.

¹⁰ In its preliminary determination, Commerce reported that, through counsel, it had identified 5 exporters as producers/exporters of institutional melamine dinnerware in Taiwan. In addition, Taiwan's Association of Plastic Producers identified 5 other firms as producers/exporters of the subject merchandise. Three of these 10 firms subsequently advised Commerce that they had no shipments of the subject merchandise to the United States during the period of investigation, and 2 others with affiliates in China (Gin Harvest and Tar Hong Melamine) reported that they made no sales of Taiwan-produced institutional melamine dinnerware to the United States during the period of investigation. Of firms providing data to the Commission, Chen Hao received an LTFV margin of 3.25 percent, Yu Cheer received a zero margin, and Gin Harvest made no sales of Taiwan-produced subject merchandise to the United States during the period examined.

¹¹ Yu Cheer received a zero rate in Commerce's final determination and would be excluded from any antidumping order. In addition, Chen Hao indicated that ***. Conversation with Adams Lee, White & Case, Dec. 2, 1996. As a result, data on the industry are overstated.

Table VII-4

Melamine institutional dinnerware: End-of-period inventories of U.S. importers, by sources, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996¹

Item	1993	1994	1995	Jan.-Sept.-- 1995	1996
	Quantity (1,000 pounds)				
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Total, subject sources	293	425	698	557	645
Other sources	***	***	***	***	***
Total	***	***	***	***	***
	Ratio to U.S. shipments of imports (percent)				
China ¹	***	***	***	***	***
Indonesia	***	***	***	***	***
Taiwan	***	***	***	***	***
Average, subject sources	42.7	54.5	74.1	65.6	67.4
Other sources	***	***	***	***	***
Average, all imports	***	***	***	***	***

¹ Excludes inventories of firms importing from Chen Hao Xiamen and Gin Harvest China.

² Not applicable.

Note.-- Ratios are calculated using data where both comparable numerator and denominator information were supplied. Part-year inventory ratios are annualized.

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

End-of period inventories of imports from all three countries moved upward from 1993 to 1995, and again when the interim periods are compared, with those of imports from China showing the greatest rate of increase. As a ratio to preceding-period shipments, end-of-period inventories from the subject sources also increased, but less markedly.

In its questionnaire the Commission requested importers to list any expected deliveries of melamine dinnerware from China, Indonesia, or Taiwan after September 30, 1996. Responding importers reported an approximate total of 426,000 pounds of melamine institutional dinnerware from all subject sources, of which *** pounds were specifically identified as from China, *** pounds from Indonesia, and *** pounds from Taiwan.

APPENDIX A
FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-741, 742, & 743 (Final)]

Melamine Institutional Dinnerware From China, Indonesia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA-741, 742, & 743 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China, Indonesia, and Taiwan of melamine institutional dinnerware, provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: August 22, 1996.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

¹ For purposes of these investigations, "melamine institutional dinnerware" is defined as all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays, but not including flatware products such as knives, forks, and spoons) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch.

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of melamine institutional dinnerware from China, Indonesia, and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on February 6, 1996, by the American Melamine Institutional Tableware Association (AMITA).²

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of these investigations need not file an additional notice of appearance during this final phase of the investigations. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

² The members of AMITA are Continental/SiLite International Co., Oklahoma City, OK; Lexington United Corp. (National Plastics Corp.), Port Gibson, MS; and Plastics Manufacturing Co., Dallas, TX.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 13, 1996, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on January 9, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 16, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 18, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 20, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 17, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 17, 1997. On February 3, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 5, 1997, but such final

comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: September 3, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-23223 Filed 9-10-96; 8:45 am]

BILLING CODE 7020-02-P

International Trade Administration

[A-570-844]

Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China

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

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Katherine Johnson, or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4136, (202) 482-4929, or (202) 482-4194, respectively.

The Applicable Statute

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

Final Determination

We determine that melamine institutional dinnerware products ("MIDPs") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination and Postponement of Final Determination: Melamine Institutional Dinnerware Products from the PRC* (61 FR 43337, August 22, 1996)), the following events have occurred:

On August 22, 1996, Chen Hao Xiamen alleged that the Department made a ministerial error in its preliminary determination. The Department found that there was an error made in the preliminary determination; however, this error did not result in a change of at least five absolute percentage points in, but no less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination. Accordingly, no revision to the preliminary determination was made. (See Memorandum from the MIDP/PRC Team to Louis Apple dated September 16, 1996.)

In September through November 1996, we verified the questionnaire responses of the following participating respondents and, where applicable, their affiliates: Chen Hao (Xiamen) Plastic Industrial Co. Ltd. ("Chen Hao Xiamen"), Dongguan Wan Chao Melamine Products Co., Ltd., ("Dongguan"), Gin Harvest Melamine (Heyuan) Enterprises Co. Ltd. ("Gin Harvest"), Sam Choan Plastic Co. Ltd. ("Sam Choan"), and Tar-Hong Melamine Xiamen Co. Ltd. ("Tar Hong").

Additional published information (PI) on surrogate values was submitted by petitioner and respondents on November 21, 1996. On November 22, 1996, the Department requested that Chen Hao Xiamen, Dongguan, Sam Choan, and Tar Hong submit new computer tapes to include data corrections identified through verification. This information was submitted on December 3 through 6, 1996.

Petitioner, the American Melamine Institutional Tableware Association ("AMITA"), and the respondents submitted case briefs on November 26, 1996, and rebuttal briefs on December 4, 1996. The Department held a public hearing for this investigation on December 6, 1996.

Scope of the Investigation

This investigation covers all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Excluded from the scope of investigation are flatware products (e.g., knives, forks, and spoons).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) for all participating companies is January 1, 1995, through December 31, 1995.

Separate Rates

Of the five responding exporters in this investigation, three—Gin Harvest, Tar Hong Xiamen, and Chen Hao Xiamen (1) are wholly foreign-owned and (2) make all sales to the United States of merchandise produced by their company through Taiwan parent companies. Thus, we consider the Taiwan-based parent to be the respondent exporter in the proceeding. No separate rates analysis is required for these exporters. (See, e.g., *Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China* (60 FR 22359, 22361, May 5, 1995)).

Sam Choan is wholly foreign owned but its sales to the United States are made from its facilities in the PRC. For this respondent, a separate rates analysis is necessary to determine whether it is independent from PRC governmental control over its export activities.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto*

governmental control over export activities.

1. Absence of De Jure Control

Respondents have submitted for the record the 1994 Foreign Trade Law of the PRC, enacted by the State Council of the central government of the PRC, which demonstrates absence of *de jure* control over the import and export of goods from the PRC by "foreign trade operators." The term "foreign trade operators" refers to legal persons and other organizations engaged in foreign trade activities in accordance with the provisions of the 1994 law. The companies also reported that MIDPs are not included on any list of products that may be subject to central government export constraints.

In prior cases, the Department has analyzed the provisions of the law that the respondents have submitted in this case and found that they establish an absence of *de jure* control (see *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996) (*Bicycles*)). We have no new information in this proceeding which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (See *Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China* (60 FR 22544, May 8, 1995) (*Furfuryl Alcohol*)). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of

losses (see *Silicon Carbide* and *Furfuryl Alcohol*).

Each company asserted, and we verified, the following: (1) it establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, questionnaire responses on the record indicate that pricing was company-specific during the POI, which does not suggest coordination among or common control of exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of governmental control of export functions. Consequently, we have determined that Dongguan and Sam Choan have met the criteria for the application of separate rates.

PRC-Wide Rate

Because some companies did not respond to the questionnaire, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC (except the five participating exporters) based on our presumption that those companies are under common control by the PRC government. See, e.g., *Bicycles*.

Facts Available

Pursuant to sections 776 (a) and (b) of the Act, we have based the PRC-wide rate on facts available, using adverse inferences, because the non-responding companies have failed to cooperate to the best of their ability. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i)—the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its

ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Section 776(c) of the Act provides that where the Department relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA, accompanying the URAA, clarifies that the petition is "secondary information." See, SAA at 870. The SAA also clarifies that "corroborate" means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

The exporters that did not respond in any form to the Department's questionnaire have not cooperated at all. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total facts available the margin alleged in the petition, as adjusted by the Department. We considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition.

The petitioner based its allegation of U.S. price on catalog prices of one of the respondents. The factors used in the petition are based on petitioner's own production experience. The factors in the petition consistent with the factors reported by responding companies on the record of this investigation. The surrogate values used by petitioner are based on publicly available information. Therefore, we determine that further corroboration of the facts available margin is unnecessary.

We also applied adverse facts available to Dongguan based on the fact that we were unable to verify its response. See Comment 20 in the "Interested Party Comments" section of this notice, below.

Fair Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at less than fair value, we compared the export price (EP) to the NV, as described in the

"Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i), we compared weighted-average EPs for the POI to the factors of production.

Export Price and Constructed Export Price

For Chen Hao Xiamen, Gin Harvest, Sam Choan, and Tar Hong, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and when constructed export price ("CEP") methodology was not otherwise indicated, we calculated the price of the subject merchandise in the United States in accordance with section 772(a) of the Act. In addition, for Tar Hong, where sales to the first unaffiliated purchaser took place after importation into the United States, we based the price in the United States on CEP, in accordance with section 772(b) of the Act.

We excluded from our analysis all sales of products with a minimum thickness of less than 0.08 inch to the extent mistakenly or erroneously reported by the exporter in its sales listing. For Tar Hong, we also excluded all sales of three-piece sets where the combined thickness of the three items was less than 0.24 inch because we were unable to determine piece-specific prices and characteristics for such sets. See Comment 10, below.

We corrected respondents' data for errors and omissions found at verification. In addition, we made company-specific adjustments as follows:

1. Chen Hao Xiamen

The calculation of EP for purposes of the final determination did not differ from our preliminary calculations.

2. Dongguan

We based Dongguan's final dumping margin on adverse facts available. See Comment 20.

3. Gin Harvest

We calculated EP in accordance with our preliminary calculations, except for the following changes based on verification findings: (1) we excluded sales of one product which we found to be outside the scope of investigation; (2) we corrected the reported movement expenses for one sale; and (3) we corrected for all sales the reported distance from the factory to the port for calculating the surrogate value for foreign inland freight.

4. Sam Choan

We calculated EP in accordance with our preliminary calculations, except that we corrected the reported market-economy brokerage expense for sales to one customer based on verification findings.

5. Tar Hong Xiamen

We calculated EP and CEP in accordance with our preliminary calculations, except as follows, based on information derived at verification.

We recalculated discounts by applying the reported discount percentage to the gross unit price of the sale. We also recalculated marine insurance by applying a percentage based on value, rather than based on volume as reported, since this expense was incurred on a value basis.

For CEP sales, we reallocated movement expenses and added an amount for unreported U.S. brokerage expenses. We reallocated and corrected indirect selling expenses, all freight expenses not reported elsewhere (see Comment 15), and other expenses not reported elsewhere (see Comment 18). In this reallocation, we recalculated by dividing the combined POI expenses of Tar Hong's two U.S. affiliates, by the sum of the POI sales values from these entities. We also recalculated reported credit based on corrections to reported payment dates.

Normal Value

A. Factors of Production

In accordance with section 773(c) of the Act, we compared the NV calculated according to the factors of production methodology, except as noted below for Chen Hao Xiamen. Where an input was sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance with our practice. See *Lasko Metal Products v. United States*, 437 F. 3d 1442, 1443 (Fed. Cir. 1994) ("*Lasko*"). For all producers, we recalculated the values for materials purchased from market economies, based on our verification findings. We excluded Taiwan VAT assessed on Taiwan material purchases (see Comment 3).

Furthermore, for Tar Hong, we added PRC brokerage for market-economy inputs. For Gin Harvest and Sam Choan, the equivalent charges are included in the reported movement expenses as Hong Kong brokerage. In addition, for Tar Hong and Gin Harvest we added freight from the port to the factory for inputs purchased from market economies.

In instances where inputs were sourced domestically, we valued the factors using published publicly available information from Indonesia. Reported unit factor quantities were multiplied by Indonesian values. From the available Indonesian surrogate values we selected the surrogate values based on the quality and contemporaneity of data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. For a complete analysis of surrogate values, see the Valuation Memorandum: Preliminary Antidumping Duty Determination of Melamine Institutional Dinnerware Product from the People's Republic of China (PRC) dated August 14, 1996 (Preliminary Valuation Memorandum), and the Valuation Memorandum: Final Antidumping Duty Determination of Melamine Institutional Dinnerware Products (MIDP) from the People's Republic of China (PRC) dated December 20, 1996 (Final Valuation Memorandum).

We added amounts for overhead, general expenses, interest and profit, based on the experience of P.T. Multi Raya Indah Abadi (Multiraya), an MIDP producer in Indonesia (see, also, Comment 2), as well as for packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States. We have recalculated the percentages for overhead, selling, general and administrative (SG&A), and interest expenses using the detailed public version of Multiraya's financial statement placed on the record of this investigation by the respondents. In our recalculations, as detailed in the December 20, 1996 Final Valuation Memorandum, we have eliminated the source of possible double counting for electricity alleged by respondents in their case brief. For Tar Hong, we calculated a value for the cost of transporting material purchases from the PRC port to the factory using the surrogate value for truck freight. Based on verification results, we revised calculations for Gin Harvest, as follows. We revised the value of freight for certain material inputs to correct the reported distance from the supplier to the factory. We also revised reported electricity consumption and reported packing material consumption for certain products. For Sam Choan, because freight data for diesel fuel was not reported, we applied facts available

based on the furthest distance to a supplier cited in the response.

B. Multinational Corporation Provision

For Chen Hao Xiamen, petitioner alleged that section 773(d)(3) of the Act, the special rule for multinational corporations, should be applied to Chen Hao Xiamen's NV. We have determined that the record evidence for Chen Hao Xiamen supports a finding that the first two criteria of the MNC provision have been met. In order to determine if the third criterion was satisfied, we calculated NV for Taiwan-produced merchandise (affiliated party NV) in addition to calculating NV using the factors of production methodology, described above, to determine whether affiliated party NV exceeded PRC NV.

We note that there are several ways in which the third criterion may be applied in this case. In the preliminary determination, we found that the affiliated party NV (price or COP, as appropriate) exceeded the PRC NV for a substantial majority (by quantity) of the U.S. sales. An alternative approach is to match each Taiwan transaction with its most comparable PRC NV. For each Taiwan transaction, the PRC NV and the Taiwan price are compared to each other; if the Taiwan price exceeds the PRC NV for a preponderance of Taiwan sales (by quantity), all comparisons of EP to NV are made using Taiwan sales as NV. Yet another approach is to determine the number of models where the Taiwan NV is higher than the NV based on the factors of production. Whichever approach to apply the third criterion of the MNC provision is used, however, the result in each case would be to use the Taiwan NV. In any event, whether or not the MNC provision applies, the result would be the same—a *de minimis* or zero margin for Chen Hao Xiamen.

In applying Taiwan NV, we compared Taiwan sales to Chen Hao Xiamen's U.S. sales in the same manner as discussed in our preliminary determination, except that we adjusted COP in the following manner: a) we revised the financial expense to exclude foreign exchange gains, and to include the interest expense associated with loans from affiliated parties; and b) we adjusted factory overhead expenses to include an amount for pension expenses. These changes are discussed in detail in the final determination notice in the companion Taiwan investigation.

With regard to the calculation of Chen Hao Xiamen's factors of production, at verification, we found that Chen Hao Xiamen did not account for a rebate in its reported cost of melamine powder

purchased from a Taiwan supplier. We do not have sufficient information on the record to accurately allocate this rebate to Chen Hao Xiamen's costs, since neither Chen Hao Xiamen nor Chen Hao Taiwan identified the total amount of purchases from this supplier that were eligible for this rebate, and transferred to Chen Hao Xiamen, as discussed in the Department's verification report of Chen Hao Taiwan. Consequently, we have not adjusted Chen Hao Xiamen's melamine powder costs for the rebate.

In addition, we added PRC brokerage and freight from the port to the factory for market-economy inputs. We also calculated a value for the cost of transporting material purchases from the PRC port to the factory using the surrogate value for truck freight. Finally, we revised the reported consumption of packing materials for certain products, based on our findings at verification.

For comparisons of Chen Hao Xiamen's EP to NV based on Taiwan prices, we made circumstance of sale adjustments for differences in imputed credit, bank charges incurred on U.S. sales, and royalty expenses incurred in Taiwan on Taiwan sales. As Chen Hao Xiamen did not report credit expenses and bank charges in its sales response, we calculated these expenses using payment information obtained during verification. Chen Hao Taiwan, the parent company, reported in its public questionnaire response that it did not borrow in U.S. dollars and thus used the average short-term interest in the United States during the POI of 8.83 percent, as reported in *International Financial Statistics*, published by the International Monetary Fund, to calculate imputed credit for its U.S. sales. We applied this same rate to calculate credit expenses for Chen Hao Xiamen's U.S. sales.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

General Comments

Comment 1: Scope of Investigation

Respondents argue that the scope of investigation should be revised to exclude melamine dinnerware that exceeds a thickness of 0.08 inch and is intended for retail markets when such products are accompanied by

appropriate certifications presented upon importation to the United States.

Petitioner objects to respondents' scope revision proposal because, it believes, it has no legal or factual basis and would result in an order that would be very difficult to administer.

Petitioner further contends that antidumping orders based on importer certifications of use, such as the proposal advocated by respondents, are difficult to administer and should be avoided where possible. Petitioner argues that if respondents want to produce merchandise for the retail market that presents no scope issue, respondents can produce merchandise of a thinner wall thickness that falls outside of the scope.

DOC Position. We agree with petitioner. Petitioner has specifically identified which merchandise is to be covered by this proceeding, and the scope reflects petitioner's definition. As we stated in *Final Determination of Sales at Less Than Fair Value: Carbon and Alloy Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994), [p]etitioners' scope definition is afforded great weight because petitioners can best determine from what products they require relief. The Department generally does not alter the petitioner's scope definition except to clarify ambiguities in the language or address administrability problems. These circumstances are not present here.

The petitioner has used a thickness of more than 0.08 inch, not end use, to define melamine "institutional" dinnerware. The physical description in the petition is clear, administrable and not overly broad. Thus, we agree with petitioner that there is no basis for redefining the scope based on intended channel of distribution or end use, as respondents propose.

Comment 2: Calculation of Profit, Overhead, SG&A, and Interest

Petitioner proposes that the Department use a surrogate profit figure based on sales made in the ordinary course of trade by Indonesian producer, Multiraya, the respondent in the concurrent *MIDP from Indonesia* investigation. Petitioner characterizes the profit figure used at the preliminary determination (i.e., as derived from Multiraya's 1995 financial statement) as inappropriate because it covers non-subject merchandise, below-cost sales, and dumped export sales—all of which petitioner contends should not be included in the profit calculation.

Petitioner argues that the current law is very clear in that, when available, profit for a constructed value (CV)

calculation is home market profit. Petitioner asserts that the Department's consistent practice has been to use either the former statutory minimum of eight percent or else a domestic, rather than an export, profit value.

Respondents argue that the Department should use the public summaries of Multiraya's 1995 financial statement to calculate surrogate overhead, SG&A, interest expense, and profit. According to respondents, Multiraya exports merchandise that is virtually identical to that exported from the PRC; therefore, Multiraya's company-wide profit rate is pertinent to the valuation of PRC merchandise. To the extent that the Department uses Multiraya's company-wide costs to calculate constructed value in the Indonesian proceeding, respondents contend that it should also base surrogate profit on company-wide Multiraya data.

In addition, respondents argue that petitioner's profit calculation is contrary to the Department's practice of basing NV in NME cases on export data. Respondents contend that the Department's practice is meant to ensure that product disparities like those reflected in petitioner's profit calculation do not undermine the accuracy of the CV. Moreover, respondents claim that there is a disparity between the products sold by Multiraya in the home market and the products exported by the PRC companies; the vast majority of products exported by the PRC respondents were decorated and glazed, unlike Multiraya's home market sales, which were virtually all undecorated and unglazed. Therefore, the respondents argue that the Department should use the company-wide profit from Multiraya's public version financial statement to calculate the applicable surrogate profit percentage.

DOC Position. We agree with petitioner and have used as surrogate profit a percentage derived from Multiraya's public version questionnaire response. In this investigation, we are faced with the unusual situation of having on the record both a public financial statement from the surrogate country as well as the public version questionnaire responses of the Indonesian respondent in the concurrent investigation. The Department's preference is to use the most product-specific information possible from the surrogate market to calculate surrogate profit. Insofar as publicly ranged data may be imprecise, it would be speculative to rely on such data as an accurate measure of whether sales are below cost and outside the

ordinary course of trade. Accordingly, for the purpose of deriving a surrogate profit percentage, we have used all sales in the public version, rather than excluding allegedly below cost sales.

Comment 3: Tax Paid on Melamine Purchased From Taiwan

Petitioner argues that the Department should affirm its practice in the preliminary determination and include the tax paid by the PRC respondents on purchases of melamine powder from Taiwan in the valuation of material costs. Petitioner asserts that the respondents pay the Taiwan value added tax (VAT) to unaffiliated suppliers either directly or through affiliated companies in Taiwan, and that the tax imposes a net cost because the PRC companies are not collecting the VAT from their customers. Consequently, petitioner contends that the tax should be included in the material cost calculation. Petitioner claims that even if the Taiwan government rebates to the respondent's affiliate any such tax collected, it does not mean that the purchaser benefits from the rebate.

Respondents argue that the Department should exclude from the market-economy prices of material inputs the Taiwan VAT that was paid upon purchase, but rebated or credited upon export from Taiwan to the PRC. Respondents assert that the Department verified that Taiwan VAT paid on materials purchased from Taiwan suppliers is credited to the purchasers' VAT liability account. As a result, respondents claim that they receive a benefit equal to the amount of VAT paid. Thus, VAT is effectively not paid on these exports.

DOC Position. We agree with respondents. At verification, we confirmed that Taiwan VAT on melamine powder paid by the Taiwan companies is offset by the VAT owed by the PRC purchaser (respondent). This offset is equivalent to a rebate since the PRC purchaser receives a credit against the VAT owed and does not have to pay a VAT amount (as VAT owed is equal to the amount of VAT paid). The net effect is that the respondent incurs a cost for melamine powder exclusive of VAT. Accordingly, we have not added VAT from the market economy to the value of these inputs.

Comment 4: Use of Taiwan Prices for Melamine Powder Purchased from PRC Suppliers

Petitioner argues that the Department should not use Taiwan prices for all melamine powder purchased by PRC producers if the producer has obtained

some of its melamine powder from the PRC. Petitioner claims that it is not enough to provide that the market-economy price may be disregarded "where the amount purchased from a market economy supplier is insignificant" (Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking, 61 FR 7,309, 7,345 (February 27, 1996)). According to petitioner, it should be the other way around—only if the amount purchased within the non-market economy is insignificant will it be appropriate to use the price actually paid to market economy suppliers of the input to represent the overall cost of that factor of production. Or, at a minimum, petitioner argues, the overall value of the factor in question should be a weighted average of the surrogate value and the market-economy price.

Respondents argue that petitioner offers no reasonable justification as to why the Department should not use prices paid to market economy suppliers to value melamine powder purchased from a PRC supplier. Respondents state the Department's practice is to use the price paid to a market economy supplier (See e.g. *Bicycles*) and that this practice has been upheld by the Federal Circuit. *Lasko Metal Products, Inc. v. United States*, 43 F.3d 11442 (Fed. Cir. 1994).

DOC Position. We agree with respondents. When melamine powder was purchased from a market economy, we used the prices paid to market economy suppliers to value this input, even though the producer did not purchase 100 percent of the melamine powder from a market economy. We believe that the market economy price is the most appropriate basis for determining the value of melamine powder purchased from PRC suppliers.

Comment 5: Labor Rate Calculation

Petitioner argues that the Department's labor rate calculation should reflect at most 50 weeks of work time, as opposed to the 52-week work year that was used in the preliminary determination, because Attachment 4 of the August 14, 1996, Preliminary Valuation Memorandum notes that employers in Indonesia are required to provide paid annual leave of at least two weeks per annum.

Respondents argue that just because Indonesian employers are required to give two weeks paid leave per year does not mean that workers actually take two weeks leave, but simply reflects the fact that Indonesian workers have the option of taking this time while receiving full pay. Respondents therefore argue that no adjustment is necessary to the labor

rate because the Department cannot assume that the amount of leave allowed by employers is actually taken by workers.

DOC Position. We agree with respondents that our labor rate calculation is correct. We used monthly labor rates from the 1995 issue of *Indonesia: A Brief Guide for Investors*, which already include paid leave and other benefits, as detailed in the Preliminary Valuation Memorandum. We subsequently derived an hourly rate from the monthly rates, which already includes some benefits. Accordingly, we believe that it would be speculative to adjust the rate as reported for any potentially used vacation days.

Comment 6: Inflation of Costs Denominated in U.S. Dollars

Petitioner argues that the Department made an error in its preliminary determination by not inflating costs denominated in U.S. dollars, particularly those for cardboard and containerization. Petitioner contends that the costs in question are internal Indonesian costs which would have been incurred in rupiahs, even if they happened to have been expressed in 1993 U.S. dollars. Petitioner claims that the changes in the rupiah/dollar exchange rate have not reflected the considerable inflation in Indonesia in recent years, so it is not appropriate to leave these adjustments at their original dollar amounts.

Respondents argue that, contrary to petitioner's suggestion, no adjustment or conversion of figures denominated in U.S. dollars is necessary. Respondents argue that the Department has rejected similar requests in other NME cases. In this case, according to respondents, the value and prices denominated in U.S. dollars are subject to the risks and opportunity costs associated with the U.S. dollars, and are not affected by Indonesian inflation. Respondents contend that petitioner's exchange rate inflation adjustments and exchange rate conversions would bring in numerous factors that would distort the factor value.

DOC Position. With regard to the figures for cardboard and containerization, we agree with respondents that no adjustment or conversion of figures denominated in U.S. dollars is necessary. In accordance with Department practice with regard to NMEs, surrogate values reported in U.S. dollars are not adjusted for inflation. See *Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the Republic of Hungary* (56 FR 41819, August 23, 1991)

and *Final Determination of Sales at Less Than Fair Value: Ferrovandium and Nitrided Vanadium from the Russian Federation* (60 FR 27957, 27963, May 26, 1995). See Valuation Memorandum: Preliminary Antidumping Duty Determination of Ferrovandium from Russia dated December 27, 1994.

Comment 7: Duty on Melamine Powder

Petitioner believes that the Department should increase the cost of melamine powder imported into the PRC by the PRC duty rate applicable to such imports. Petitioner argues that import duties are as much a feature of non-market economies as they are of market economies, and that the proper rate in this case is the PRC duty rate. Petitioner argues that inclusion of the PRC duty rate is necessary to reflect the producer's actual cost for the imported input.

Respondents argue that the Department normally disregards such rates since it deems all NME costs to be unreliable. Respondents further argue that the Department cannot accept the valuation of PRC import duties yet disregard all other PRC values and expenses.

DOC Position. We agree with respondents that we normally disregard such a duty because it is a PRC cost denominated in RMB. See *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 55271, October 25, 1991). Accordingly, we have not increased the cost of melamine imported into the PRC by this duty rate.

Comment 8: Consumption and Yield Information

Petitioner argues that verification revealed Tar Hong's reported consumption of both melamine powder and LG powder to be grossly unreliable. Petitioner states that if the Department does not reject the factor consumption data entirely, then an appropriate adjustment would be to increase the melamine powder consumption for all Tar Hong products by the largest percentage amount which the Department found to be understated. Petitioner argues that this adjustment is conservative, given that four of the five samples described in the verification report were understated.

Similarly, petitioner claims that verification establishes that Gin Harvest maintains product specific yield information, yet it reported an overall yield figure which it applied to all of its products. Petitioner further argues that, because Gin Harvest produces and sells very different products to the United

States, these products necessarily have dramatically different product-specific yields. This sharply differing yield result is fully consistent with the yield information provided by the domestic industry in this investigation, according to petitioner. Petitioner argues that the Department should not accept the overall yield data supplied by Gin Harvest because the issue of product-specific yields has been raised numerous times in this investigation, yet Gin Harvest ignored its more accurate data and submitted less accurate data in order to obtain a lower margin. Finally, petitioner claims that if the Department accepts Gin Harvest's yield data, it should apply the overall yield to each heat treatment step used to produce each transaction listed in the U.S. sales database.

Tar Hong asserts that the Department verified its melamine powder and LG powder consumption allocation methodology and found no discrepancies. Tar Hong further claims that petitioner attacks the reliability of its melamine powder and LG powder allocations because of the production sampling performed at the verification in Xiamen. Although the Department's product sampling showed that per-unit, product-specific consumption was greater than that reported in some instances, according to Tar Hong, many variables (such as air temperature and moisture content on the day of production and the varying amounts of powder actually put into the mold by the individual workers) affect this production process so that the per-unit consumption figure will not be exactly the same for each production run. Accordingly, Tar Hong argues that the Department should ignore petitioner's request to increase the melamine powder consumption for all products and instead use the figures reported by Tar Hong.

Gin Harvest argues that it and other respondents are unable to report material consumption on a product-specific basis. Gin Harvest claims that although the Department noted that Gin Harvest has some production process records that would permit a calculation of product-specific material consumption, it also noted that such records are not maintained for any extended period of time by respondents in the normal course of business. Gin Harvest argues that it should not be punished for failing to provide data that it does not have.

DOC Position. The Department's preference is to use product-specific data. Where such information does not exist, the Department will use the most specific and reasonable information

available (*See, Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia* (59 FR 4023, 4027, January 28, 1994). With regard to consumption, petitioner's argument relies on a selective reading of the Tar Hong verification report. Although our initial sampling, based solely on material withdrawn from inventory, indicated potential under-reporting, a second, more comprehensive sampling, which also accounted for materials returned to inventory, showed no consistent pattern of under- or over-reporting (*See Tar Hong verification report at pages 24-25.*) Although the documents used in our sampling could be used to calculate product-specific yields, the only documents we reviewed were contemporaneous with verification, not the POI. Verification revealed no indication that Tar Hong retained records at this level of detail (records showing materials withdrawn and returned to inventory) for more than a week. Therefore, while our sampling showed some variations between products, there is no information on the record to indicate that Tar Hong's overall production factor methodology is distortive. In the absence of any other, more specific allocation methodology available to Tar Hong, we have accepted its consumption factor reporting.

With regard to Gin Harvest's yield data, it reported an overall yield figure because it claimed that its records do not permit it to calculate product-specific yield data. Our verification revealed nothing to contradict the claim that Gin Harvest does not maintain product-specific yield data in its normal course of business.

Further, petitioner's proposed adjustment methodology of applying the yield percentage at every production stage encountered is inconsistent with the Department's verification findings regarding the manner in which the PRC respondents, including Gin Harvest, calculate yield. Petitioner's methodology incorrectly assumes that, at each step (*i.e.*, heat treatment, decoration, and glazing), the producer inspects the product and discards semi-finished products which do not meet specifications. However, as described in the respondents' questionnaire responses, it is not until all production steps have been completed that the respondents discard off-specification merchandise. That is, the overall yield figure is calculated based on production results after all production steps are completed. There is no information on the record to identify the actual yields at each step of production based on the POI production records maintained by

Gin Harvest. Applying this overall yield to each production step would effectively double- or triple-count the rejection rate and thus unduly increase Gin Harvest's consumption factors. Gin Harvest's allocation was reasonable based on the records available to it. Accordingly, we have made no adjustment to its reported material consumption factors.

Company-Specific Comments

Tar Hong

Comment 9: Reporting of CEP and EP Sales

Petitioner believes that Tar Hong incorrectly reported certain CEP sales as EP sales. Petitioner argues that the burden of proof is on respondent to satisfy the Department's four-prong test regarding the classification of U.S. sales as cited in the Department of Commerce, Antidumping Manual, Chapter 7 at page 3 (revised 8/91). Petitioner contends that in this case, Tar Hong has not even addressed two of the Department's four criteria. Petitioner argues that at verification, the Department found that the U.S. entities play a central role in these sales, which resemble reported CEP sales in all aspects, except that they are not introduced into U.S. inventory. According to petitioner, Tar Hong's U.S. affiliates have the authority to set the price and the quantity of the potentially dumped merchandise. Petitioner also disagrees with Tar Hong's contention that the role of the U.S. affiliates is less than that of the U.S. affiliates in the first administrative review of *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18551 (April 26, 1996) (*Carbon Steel*). Petitioner argues that the Korean firms in *Carbon Steel* had full control of the U.S. sales, and the U.S. affiliates were merely paper processors, as evidenced by the information placed on the record by the Korean firms indicating that the U.S. affiliates had no power to negotiate or approve sales. Consequently, petitioner argues that the Tar Hong sales in question should be treated as CEP transactions.

Tar Hong argues that it properly classified certain sales as EP sales in accordance with the Department's three-factor test, as stated in *Carbon Steel*. First, Tar Hong claims that it has demonstrated that the sales transaction occurs prior to importation into the United States. Secondly, Tar Hong states that direct shipment from Tar Hong Xiamen to the unrelated U.S. customers is a normal commercial distribution

channel used for these U.S. customers. Lastly, Tar Hong asserts that the U.S. affiliates perform limited liaison functions serving primarily as processors of sales-related documentation and communication links with the unrelated buyers. Accordingly, Tar Hong claims that the functions performed by its U.S. affiliates are consistent with selling functions that the Department has determined in other cases to be of a kind that would normally be undertaken by the exporter (see *Carbon Steel*).

DOC Position. We agree with respondents that these sales are properly treated as EP sales. Based on the record evidence, Tar Hong's U.S. affiliates are merely processors of sales-related documentation and a communication link with the unrelated customers. Although these entities play an important role in Tar Hong's sales and distribution process, that role is limited to sales documentation processing and communication links. We find no compelling evidence in Tar Hong's responses or in our verification findings to treat these sales as CEP sales. Consistent with our approach in such cases as *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland* (56 FR 56363, November 4, 1991), we have treated these sales as EP sales.

Comment 10: Transactions Involving Dinnerware Sets

Petitioner states that Tar Hong improperly included non-subject merchandise in its reported sales when it added the thicknesses of the individual pieces of a set (plate, bowl, and cup) together to determine whether the dinnerware set was subject merchandise. Similarly, petitioner argues, pricing for dinnerware sets as well as the factors of production was reported on a combined basis using the plate in the dinnerware set as the identified product. Petitioner argues that this grouping of data for sets was contrary to the instructions in the questionnaire and prevents an item-by-item fair value comparison. Petitioner asserts that if the Department uses this data, it should apply the highest margin for any other transaction to all transactions involving sets as facts available.

Tar Hong contends that the Department has data necessary to calculate piece-specific margins for Tar Hong's set sales and factors because the Department verified that Tar Hong reported the data for sales of products sold in sets on the same basis it reported the data for the factors of production for these products.

DOC Position. We agree with Tar Hong and have appropriately adjusted our calculations to ensure a proper comparison. We excluded all sales of sets where the combined thickness is less than 0.24 inch. We have considered all pieces of a set to be subject merchandise when measurements are equal or greater than 0.24 inch.

Comment 11: Unit Price Reporting

Petitioner contends that, in addition to the errors identified by the Department concerning Tar Hong's reporting of U.S. unit prices on a per-piece, rather than on a per-dozen, basis for many sales, there is reason to believe that there are additional errors of this type which were not individually identified by the Department. Accordingly, petitioner asserts that the Department should compare the margin in the final determination for Tar Hong's sales of pieces with the margin calculated on the sale of dozens or cases, and if the margins for the piece sales are lower than the margins for dozens and cases, then, as facts available, the piece calculations should be disregarded and the sales of dozens or cases should be relied upon for the final determination.

Tar Hong argues that the errors found in its unit reporting do not merit application of facts available. Tar Hong contends that the Department verified that no other sales reported contained such errors.

DOC Position. We examined this issue at verification and are satisfied that the record is complete and accurate with respect to the reported quantities and per-unit prices of U.S. sales. Accordingly, we used the corrected information in our calculations for the final determination.

Comment 12: Production Quantity Data

Petitioner claims that the production quantity data submitted by Tar Hong on two prior occasions is grossly inaccurate, and that Tar Hong's shifting stance regarding the amount of merchandise produced during 1995 confirms that its most recent submission on October 23, 1996, is not reliable. Petitioner argues that the total production quantity is a figure that is fundamental to the integrity of the submission, and that Tar Hong's repeated corrections leave no reasonable basis to believe that its latest number is accurate. Accordingly, petitioner argues, the figure should be rejected.

Tar Hong claims that the Department verified its production quantities and confirmed the accuracy of its data.

DOC Position. We agree with Tar Hong. We have accepted Tar Hong's

explanation for the discrepancies and have verified its response in this regard. Section 782(e) of the Act states that the Department shall not decline to consider information that does not meet all of its requirements if:

(1) The information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

Tar Hong's information meets all of these requirements. Accordingly, we have no basis to conclude that the earlier responses distorted the Department's analysis or otherwise impeded this proceeding.

Comment 13: Total Sales Value

Petitioner states that Tar Hong has dramatically overstated the unit price on a number of U.S. sales transactions. Petitioner contends that if the Department concludes that the application of general facts available for Tar Hong is inappropriate (see Comment 19 below), it must adjust for this exaggeration of submitted prices by assuming that affected sales are of products with margins, and deducting the amount that the CEP and EP sales values were overstated from total U.S. price.

Tar Hong claims that any discrepancy in its U.S. sales value reconciliation is due to petitioner's miscalculation of Tar Hong's sales values. Tar Hong adds that petitioner offers no explanation of its calculation, and suggests that petitioner's calculation failed to properly account for sales sold in units of cases or dozens.

DOC Position. We agree with Tar Hong. Petitioner misinterpreted the information in a verification exhibit. The document does not include the EP sales booked in Taiwan; it applies only to the sales booked in the United States. Moreover, the exhibit cited by petitioner is not the only document the Department used to confirm Tar Hong's sales reporting, as discussed in the verification report. Based on the sum of our verification findings, we found no discrepancies in the total volume and value of sales reported.

Comment 14: Ocean Freight

Petitioner argues that Tar Hong incorrectly assumed that all ocean

freight shipments were made in full container loads and that, the reported volumes of the master pack cartons, which are the basis for the movement charge allocations, are wrong. Petitioner claims that although Tar Hong provided revised information for the master pack cartons at verification, this information was not verified and therefore cannot be used. Petitioner argues that for purposes of the final determination, the container load error must be corrected and that, for the master carton error, either the Department should use general facts available or the highest unit freight reported for each freight adjustment affected by the errors.

Tar Hong contends that the Department should accept its revised allocation because the Department found that Tar Hong's volume-based methodology to recalculate international freight was supported by its records.

DOC Position. With regard to Tar Hong's ocean freight shipments, we found that the majority were in fact made in full container loads. Per our instructions, Tar Hong has reallocated EP ocean freight to account for our verification findings. We have also reallocated CEP ocean freight expenses based on our verification findings. In both situations, we consider the allocations to be proper.

Furthermore, although we did not specifically verify the revised information submitted at verification with regard to the volumes of the master pack cartons, the remainder of Tar Hong's response was verified, and the revised information is consistent with Tar Hong's verified information. Accordingly, we have accepted Tar Hong's information for the purpose of recalculating CEP movement expenses.

Comment 15: U.S. Warehouse to Customer Freight

Petitioner contends that Tar Hong's statements that it does not incur freight charges from the U.S. warehouse to the customer are unsupported. Petitioner claims that the verification report notes that Tar Hong's invoices report terms of CEP sales as "delivered". Petitioner therefore asserts that all freight expenses from Tar Hong's financial statements should be allocated to CEP sales.

Tar Hong claims that the Department verified that, notwithstanding the printed "Delivered" term on Tar Hong's invoice, Tar Hong's CEP customers either come to Tar Hong's warehouse and pick up their purchased products, or make their own freight arrangements. Tar Hong asserts that the Department verified that, for the few deliveries that it made using its own vehicles, its allocation methodology was reasonable.

DOC Position. We have accepted Tar Hong's explanation, but have recalculated and reclassified freight expenses based on our verification findings. Tar Hong's methodology allocated freight expenses to all CEP sales as a movement expense. That is, Tar Hong made no attempt to identify which particular sales may have actually incurred warehouse to customer freight. Since Tar Hong did not, and could not, allocate this expense only to those sales which incurred the expense, we determine that it is appropriate to treat all movement expenses not otherwise accounted for (*i.e.*, warehouse to customer expenses) as indirect selling expenses. In our recalculation of indirect selling expenses, we have also included an amount for freight expenses identified in the financial statements, but not included in Tar Hong's calculation. (*See* Comment 18 below.) In this manner, we have included all expenses related to freight.

Comment 16: Packing Weights

Petitioner argues that it is clear from the verification report that Tar Hong's packing weights are unreliable. Petitioner contends that the Department should increase the packing costs by the largest percentage of under reporting found at verification or, at the least, increase these weights by an average of the under reporting of the five samples.

Tar Hong argues that packing costs are reliable and require no further adjustment because the measured weights of the packing materials were within acceptable tolerances.

DOC Position. We agree with Tar Hong. We verified that the packing weights were within acceptable tolerances.

Comment 17: Unreported Returns and Claims

Petitioner states that where verification exhibits show evidence of returns and claims for Tar Hong that were not reported as U.S. warranty expenses or allowances, at a minimum, the Department should apply information from the verification and adjust total U.S. price accordingly.

Tar Hong claims that petitioner's discovery of alleged unreported returns and claims relate to nonsubject merchandise. Accordingly, no adjustment by the Department is necessary.

DOC Position. We agree with Tar Hong. We found no evidence at verification of warranty claims for the subject merchandise. Tar Hong's explanation is consistent with our findings.

Comment 18: Unreported Movement Charges

According to petitioner, the financial statements of Tar Hong's U.S. affiliates indicate that there are certain expenses that were incurred by respondent, but not reported as selling expenses or movement charges. Petitioner contends that the Department should account for these expenses by applying the total of these amounts directly against the margins.

Tar Hong states that the Department verified that the allegedly unreported charges were not direct selling expenses or movement charges, as petitioner claims. Accordingly, no adjustment to the margin calculation is warranted.

DOC Position. We agree with petitioner that these expenses should be accounted for. However, we disagree with petitioner's contention that the amount of the expenses should be applied directly against the margins. Petitioner offers no basis to consider this approach and there is no precedent for applying it here. Instead, we have included these expenses as part of our recalculation of indirect selling expenses. As discussed above at Comment 15, we have treated Tar Hong's unreported warehouse-to-customer expenses as indirect selling expenses. The additional expenses identified by petitioner appear properly classified in this instance as indirect selling expenses as well.

Comment 19: Use of Facts Available for Tar Hong

Petitioner argues that Tar Hong's EP and CEP prices are grossly overstated through a series of reporting errors or misstatements, including those addressed above. Accordingly, petitioner contends, the Department cannot reasonably conclude that the U.S. sales data base is reliable. Further, petitioner contends that Tar Hong's NV data is also unreliable because, despite numerous changes, Tar Hong's total production figure is inaccurate, its treatment of sets makes a proper factors analysis impossible, and the weights of the reported products as well as the packing materials are systematically understated. Moreover, petitioner claims that the corrections submitted at verification should be rejected because an entirely new factors database was submitted and petitioner did not have a meaningful opportunity to comment on the new data. Petitioner concludes that the Department should use facts available because Tar Hong's data is unreliable and no acceptable means of correction exists.

Tar Hong argues that the Department was able to verify all corrections to source documents and the reason for the corrections. Furthermore, according to Tar Hong, there is no evidence that Tar Hong failed to cooperate with the Department by not acting to the best of its ability to comply with requests for information. Tar Hong believes that in those situations where there are discrepancies, the Department should weigh the record evidence to determine what type of change, if any, would be the most probative of the issue under consideration.

DOC Position. We do not agree with petitioner's assertion that Tar Hong's data is unreliable and no acceptable means of correction exists. Moreover, we do not agree with petitioner that Tar Hong's revised factors database contains entirely new data. As discussed in our responses above, we have rejected many of petitioner's claims with regard to Tar Hong's data. The remaining errors are minimal and do not undermine the integrity of the response. Thus, consistent with our approach in such cases as *Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (November 22, 1996), the use of facts available is not warranted in this instance.

Dongguan

Comment 20: Facts Available

Petitioner argues that the seriousness of the defects in Dongguan's response is evident in that the Department was unable to verify its U.S. sales. Petitioner claims that the verification report records the Department's efforts on this critical issue, and confirms the suspect nature of the data. For example, petitioner cites the Department's finding in the verification report that no confirmation of sales of the subject merchandise to the corporate tax statement was possible. Furthermore, petitioner argues that the Department was unable to complete a sales quantity document trace and that Dongguan's sales records contained duplicate invoices. Petitioner further contends that a failed verification is basically the same as a failure to respond at all and facts available must be used.

Dongguan argues that, although the Department was unable to tie the sales beyond the general ledger, it also noted that it did not observe any apparent inconsistencies in the sales reporting, as revised through verification. Dongguan claims that all other aspects of the accounting system were verified as accurate and reliable. Dongguan also claims that, although the Department

was unable to tie sales to the corporate income tax statement, it was able to verify the general integrity and reliability of the sales reporting data from the invoices to the response and to its accounting system. Dongguan asserts that the Department was also able to verify that non-melamine sales income reported in the accounting system was posted accurately and reliably in the corporate tax system. Accordingly, Dongguan believes that the Department need not apply facts available, given the overall reliability of the accounting system.

DOC Position. We agree with petitioner. Dongguan's failure to reconcile its sales response beyond the general ledger, coupled with the absence of reliable alternative support documentation, such as verifiable sequential invoice records, leaves no basis to accept the integrity of the sales response and constitutes a verification failure under Section 776(a)(2)(D) of the Act. A complete verification failure also renders a response unusable under section 782(e) of the statute. A verification failure of this magnitude demonstrates Dongguan's "failure to cooperate by not acting to the best of its ability to comply with our requests for information." Accordingly, for the above-mentioned reasons, and consistent with *Pasta from Turkey*, 61 FR 30309, 30312 (June 14, 1996), we based Dongguan's final dumping margin on adverse facts available. In addition, because this margin is based on facts available, all other issues raised by the parties concerning Dongguan are moot.

Sam Choan

Comment 21: Reporting Errors

Petitioner states that the verification report identifies a large number of sales transactions of nonsubject merchandise that were included in the preliminary determination. Petitioner further contends that the difficulties experienced by the Department in verifying Sam Choan's product weights undermine the reliability of the response and that Sam Choan's response should be rejected because none of these transactions were accurately reported. If the Department decides to use Sam Choan's data, petitioner asserts that the weights for certain product codes must be increased, consistent with the verification findings.

Sam Choan argues that its revised sales listing reflects the weights and thicknesses verified by the Department. Sam Choan further states that the Department should exclude any merchandise that does not fall within the scope of investigation.

DOC Position. We have used the weights, as corrected per our verification, in our final determination. We find no basis to conclude that errors in the weight reporting affect the overall integrity of the response. As described in *Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (November 22, 1996), these errors are not substantial and thus do not affect the integrity of the response.

With regard to the reporting of out-of-scope merchandise, we have excluded this merchandise for purposes of the final determination.

Chen Hao Xiamen

Comment 22: Application of the Multinational Corporation Provision

Chen Hao Xiamen argues that the Department's application of the MNC rule in this case is not supported by the statute because the Department has failed to demonstrate that the special and unique circumstances required for application of the MNC rule are present in this investigation. Furthermore, according to Chen Hao Xiamen, its reported factors of production have been verified and accurate surrogate country information exists to value the factors of production. In addition, Chen Hao Xiamen argues that the Department's application of the MNC provision arbitrarily assumes that a "proper comparison" based on the factors of production and surrogate valuation is impossible for Chen Hao Xiamen, but is possible for all other respondents. Accordingly, for purposes of the final determination, Chen Hao Xiamen believes that the Department should not apply the MNC rule to Chen Hao Xiamen and instead should apply the surrogate country data to value its factors of production.

Petitioner objects to respondents' claim that the MNC provision does not apply to the Chen Hao respondents. Petitioner argues that respondents misstate the law when they claim that the MNC provision applies only when a comparison based on the factors of production and surrogate valuation is not possible. According to petitioner, there is no requirement that it be impossible to determine NV in the exporting country. Moreover, petitioner argues that the very close cooperation between the Chen Hao companies, confirmed at verification, makes a compelling case for application of the MNC to prevent the use of the the PRC company as an export platform. Finally, petitioner believes that given the very substantial changes it believes should be made to the factors analysis, the NV for

the PRC may exceed that of Taiwan. However, if the NV for Taiwan remains higher, as was the case in the preliminary determination, the petitioner urges that the Department once again apply the MNC provision.

DOC Position. The MNC rule applies when the criteria of section 773(d) of the Act are met, regardless of whether a comparison based on factors is otherwise possible. For Chen Hao Xiamen, we have determined that the record evidence supports a finding that the first criterion of the MNC provision (ownership of the production facilities in the exporting country by an entity with production facilities located in another country) has been met. The second criterion of the MNC provision (concerning viability of the PRC market) has been met, *per se*, because Chen Hao Xiamen, the PRC exporter, did not make any sales at all in the PRC market during the POI.

The third criterion was also met because Taiwan NV exceeded NV based on the factors of production. See "B. Multinational Corporation Provision" section of this notice.

Comment 23: Melamine Consumption

Petitioner states that the verification confirmed that Chen Hao Xiamen used a methodology that leads to an understatement of melamine powder consumption. Petitioner argues that Chen Hao Xiamen's methodology is in contrast to the other PRC respondents and should be restated to include all POI consumption.

Petitioner further argues that the verification report makes clear that Chen Hao Xiamen could have provided yields on a product-specific basis but instead reported an average that hides the peaks and valleys in yields. Petitioner claims that if the Department accepts Chen Hao Xiamen's yield data, it should apply the overall yield to each heat treatment step indicated for each transaction in the U.S. sales database.

Chen Hao Xiamen argues that it accurately reported its melamine powder consumption and petitioner has provided no reasonable basis as to why restating melamine powder consumption from a batch-by-batch basis to a total POI basis would be any more accurate than its current reporting. Accordingly, Chen Hao Xiamen believes that the Department should ignore petitioner's suggestion.

Chen Hao Xiamen further argues that it could not have provided product-specific yields. It provided yields on a production batch basis, which it claims is the most specific data available related to material consumption. Chen Hao Xiamen further argues that it

should not be punished for failing to provide data that it does not have.

DOC Position. With regard to consumption, we agree with Chen Hao Xiamen. Our verification results confirm the reliability of Chen Hao Xiamen's data. Accordingly, we have used Chen Hao Xiamen's reported consumption figures, as corrected through verification, in our analysis.

Moreover, although the Department prefers product-specific yield information, where such information does not exist, the Department will use the most specific information available. In this instance, Chen Hao Xiamen reported yields on a batch specific basis. Further, we have no evidence on the record that the Chen Hao Xiamen's methodology is distortive of its experience during the POI. Accordingly, we have rejected petitioner's arguments and accepted Chen Hao Xiamen's reported yield data, as verified by the Department.

Comment 24: Selling Expense Adjustment

Petitioner contends that, for comparisons of EP to NV based on Taiwan sales or Taiwan CV, EP and NV must be adjusted for selling expenses. Petitioner argues that the Department erred in not adjusting for U.S. selling expenses when the basis for NV was Chen Hao Taiwan's price or CV in comparing EP to NV for Chen Hao Xiamen. Although Chen Hao Xiamen did not provide U.S. selling expense information, according to petitioner, credit expense can be calculated from the verification exhibits.

Chen Hao argues that the Department should not adjust Chen Hao Xiamen's EP when the basis for NV is Chen Hao Taiwan's price or CV. Chen Hao further argues that imputing selling expenses where the Department never provided respondents with an opportunity to present that information would be arbitrary and unfair.

DOC Position. We agree with petitioner that for comparisons of EP to NV based on Taiwan sales or Taiwan CV, EP and NV must be adjusted for selling expenses. See "B. Multinational Corporation Provision" section of this notice.

Comment 25: Product Weights

Petitioner asserts that because verification showed that for six products sampled, the weight verified was greater than the weight reported, Chen Hao Xiamen thus systematically under-reported its product weights. Petitioner contends that to correct the data, the Department should increase the reported product weights by two

percent, which is the degree of under reporting identified for one of the products examined at verification.

Chen Hao Xiamen claims that it did not systematically under report its product weights, as claimed by petitioner. Chen Hao Xiamen argues that, given that products produced from the same production batch may have different weights due to varying amounts of melamine input powder, this degree of discrepancy between the reported and verified weights is well within an acceptable tolerance of reliability.

DOC Position. We agree with Chen Hao Xiamen. We note that the weighing of the subject merchandise is inherently somewhat imprecise, and that the verified weights were within acceptable limits.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96-1: Currency*

Conversions (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Continuation of Suspension of Liquidation

For Chen Hao Xiamen, Gin Harvest, and Sam Choan, we calculated a zero or *de minimis* margin. Consistent with *Pencils*, merchandise that is sold by these producers but manufactured by other producers will be subject to the order, if issued. Entries of such merchandise will be subject to the "PRC-wide" rate.

In accordance with section 733(d)(1) of the Act and 735(c)(1), we are directing the Customs Service to continue to suspend liquidation of all entries of MIDPS from the PRC, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register, except for entries of merchandise manufactured by those producers receiving a zero or *de minimis* margin. The Customs Service to require a cash deposit or posting of a bond equal to the estimated amount by which the NV exceeds the EP as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Chen Hao Xiamen	0.97 (de minimis).
Gin Harvest	0.47 (de minimis).
Sam Choan	0.04 (de minimis).
Tar Hong Xiamen	2.74.
PRC-Wide Rate	7.06.

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that

such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: January 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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[A-560-801]

Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Indonesia

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

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4194 or (202) 482-4136, respectively.

The Applicable Statute

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

Final Determination

We determine that melamine institutional dinnerware products ("MIDPs") from Indonesia are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia* (61 FR 43333, August 22, 1996), the following events have occurred:

In September 1996, we verified the questionnaire responses of P. T. Multi Raya Indah Abadi (Multiraya). On November 22, 1996, the Department

requested Multiraya to submit new computer tapes to include data corrections identified through verification. This information was submitted on December 5, 1996.

Petitioner, the American Melamine Institutional Tableware Association ("AMITA"), and Multiraya submitted case briefs on November 26, 1996, and rebuttal briefs on December 3, 1996. The Department held a public hearing for this investigation on December 5, 1996.

Scope of Investigation

This investigation covers all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Excluded from the scope of investigation are flatware products (e.g., knives, forks, and spoons).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1995, through December 31, 1995.

Fair Value Comparisons

A. P.T. Mayer Crocodile

We did not receive a response to our questionnaire from P.T. Mayer Crocodile, an exporter of the subject merchandise during the POI. Because P.T. Mayer Crocodile failed to submit information that the Department specifically requested, we must base our determination for that company on the facts available in accordance with section 776 of the Act. Section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because P.T. Mayer Crocodile has failed to respond, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. See The

Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess at 870 (1994) ("SAA").

In this proceeding, we considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for this uncooperative respondent. In accordance with section 776(c) of the Act, we attempted to corroborate the data contained in the petition. Specifically, the petitioner based both the export price and normal value in the petition on Multiraya's ex-factory prices for nine-inch plates obtained from a market research report. We compared the petitioner's submitted price data to actual prices reported in Multiraya's questionnaire response for products of the same size and shape. We found the Multiraya normal value data from the market research report appears to be consistent with the normal value data reported in Multiraya's questionnaire response. Thus, we consider the normal value data in the petition to have been corroborated and will therefore utilize such data in our margin calculation for P.T. Mayer Crocodile.

We did not, however, consider the export price from the petition to be corroborated because the Multiraya export price data in the market research report was substantially different from the data reported by Multiraya in its questionnaire response which was confirmed through verification. Therefore, we have not used the export price in the petition. In selecting from among the facts otherwise available with regard to export price, we have used the lowest ex-factory export price reported by Multiraya for a nine-inch plate. We found this information to be sufficiently adverse to effectuate the purpose of the statute, and we also note that the number of EP sales to select from was small. We compared that export price to the ex-factory normal value used in the petition in order to calculate a margin for P. T. Mayer Crocodile.

B. Multiraya

To determine whether Multiraya's sales of the subject merchandise to the United States were made at less than fair value, we compared the Export Price ("EP") to the Normal Value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice. As set forth in section 773(a)(1)(B)(i) of the Act, we calculated NV based on sales at the same level of trade as the U.S. sale. In accordance with section 777A(d)(1)(A)(i), we compared the weighted-average EP to the weighted-average NV during the

POI. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the "Scope of Investigation" section of this notice, produced in Indonesia by Multiraya and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): shape type (*i.e.*, flat, *e.g.*, plates, trays, saucers, etc.; or container, *e.g.*, bowls, cups, etc.), specific shape, diameter (where applicable), length (where applicable), capacity (where applicable), thickness, design (*i.e.*, whether or not a design is stamped into the piece), and glazing (*i.e.*, where a design is present, whether or not it is also glazed).

(ii) Level of Trade

Multiraya did not claim a difference in level of trade. Our findings at verification confirmed that Multiraya performed essentially the same selling activities for each reported home market and U.S. marketing stage. Accordingly, we find that no level of trade differences exists between any sales in either the home market or U.S. market. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is unwarranted.

Export Price

In accordance with subsections 772(a) and (c) of the Act, we calculated EP for Multiraya where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and use of constructed export price ("CEP") was not otherwise warranted based on the facts of record (See Comment 17).

Normal Value

Cost of Production Analysis

As discussed in the preliminary determination, based on the petitioner's allegations, the Department found reasonable grounds to believe or suspect that Multiraya made sales in the home market at prices below the cost of

producing the subject merchandise. As a result, the Department initiated an investigation to determine whether Multiraya made home market sales during the POI at prices below the cost of production (COP) within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Multiraya's reported cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A") and packing costs in accordance with section 773(b)(3) of the Act.

We adjusted Multiraya's raw material costs to include the change in the work-in-process inventory (see Comment 4).

B. Test of Home Market Prices

We used Multiraya's adjusted weighted-average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time, in substantial quantities, and not at prices which permit recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct selling expenses. As in our preliminary determination, we did not deduct indirect selling expenses from the home market price because these expenses were included in the G&A portion of COP. We recalculated the total material costs by including work-in-process (see Comment 4).

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of a respondent's home market sales of a given model during the POI are at prices less than COP, we disregard the below-cost sales because they are (1) made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POI,

were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section

773(b)(2)(D) of the Act. The results of our cost test for Multiraya indicated that for certain home market models less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of the model in our analysis and used them as the basis for determining NV. Our cost test for Multiraya also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Act), for certain home market models more than 20 percent of the home market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Calculation of Constructed Value (CV)

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Multiraya's cost of materials, fabrication, selling, general, and administrative expenses ("SG&A"), and profit, plus U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We calculated Multiraya's CV based on the methodology described above for the calculation of COP.

Price to Price Comparisons

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses (where appropriate) in accordance with section 773(a)(8) of the Act. We calculated price-based normal value using the same methodology used in the preliminary determination, with the following exceptions: (1) We disallowed Multiraya's warranty claim as a circumstance of sale warranty claim adjustment (see, Comment 8) and (2) We recalculated home market credit to reflect verification findings (see Comment 7).

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of

the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks, see *Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Indonesian rupiah did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Multiraya for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Scope of Investigation

Respondents argue that the scope of this investigation should be revised to exclude melamine dinnerware that exceeds a thickness of 0.08 inch and is intended for retail markets when such products are accompanied by appropriate certifications presented upon importation to the United States.

Petitioner objects to respondents' scope revision proposal because, it believes, it has no legal or factual basis and would result in an order that would be very difficult to administer. Petitioner further contends that antidumping orders based on importer certifications of use, such as the proposal advocated by respondents, are difficult to administer and should be avoided where possible. Petitioner argues that if respondents want to

produce merchandise for the retail market that presents no scope issue, respondents can produce merchandise of a thinner wall thickness that falls outside of the scope.

DOC Position

We agree with petitioner. Petitioner has specifically identified which merchandise is to be covered by this proceeding, and the scope reflects petitioner's definition. As we stated in *Final Determination of Sales at Less Than Fair Value: Carbon and Alloy Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994), [petitioners'] scope definition is afforded great weight because petitioners can best determine from what products they require relief. The Department generally does not alter the petitioner's scope definition except to clarify ambiguities in the language or address administrability problems. These circumstances are not present here.

The petitioner has used a thickness of more than 0.08 inch, not end use, to define melamine "institutional" dinnerware. The physical description in the petition is clear, administrable and not overly broad. Thus, we agree with petitioner that there is no basis for redefining the scope based on intended channel of distribution or end use, as respondents propose.

Comment 2: Alleged Underreporting of U.S. Sales

Petitioner states that information on Multiraya's U.S. invoices reviewed at verification demonstrates that Multiraya seriously underreported its U.S. sales because the data taken from the invoices establishes that the product weight reported by Multiraya is less than that found on the actual invoices. Further, petitioner claims Multiraya compounded its underreporting of U.S. sales by not providing the Department with an explanation during the verification to validate the weight discrepancy. Therefore, petitioner asserts the Department should rely on adverse facts available for the final margin calculation for Multiraya. However, if the Department were to determine that facts available should not be applied to Multiraya, petitioner suggests that at a minimum, the Department should apply partial facts available and treat the unreported quantities as "free merchandise."

Multiraya argues that it did not underreport any U.S. sales, and that petitioner's arguments claiming Multiraya has underreported its U.S. sales is based on petitioner's misunderstanding of the information on the record. Multiraya adds that the

Department verified that it did not ship anything to the U.S. other than the subject merchandise in the quantities listed. Therefore, Multiraya argues that petitioner's claim that it has "ghost" or "free" merchandise is false. Finally, Multiraya argues that the differences in weight do not constitute underreporting of its sales to the United States.

DOC Position

We verified that Multiraya sold subject merchandise by the number of pieces and not by weight, and that Multiraya keeps track of its sales by the number of pieces sold. Multiraya's sales reporting was based on the quantity sold, not on the weight of the merchandise. For purposes of responding to the Department's questionnaire, Multiraya reported actual weights, which we verified. Thus, the discrepancies in the weight actually reported to the Department and the "standard" weights which were listed on the U.S. invoices for purposes of duty drawback payments to the Indonesian government are not evidence of any misrepresentation on Multiraya's part. Therefore, we disagree with petitioner's allegation that, since the standard weight and the actual weight differed, Multiraya actually shipped additional "free merchandise" to the U.S. Accordingly, we have used Multiraya's response for our final determination.

Comment 3: Product Characteristics

Petitioner states that, based on the Department's verification of Multiraya's sales data, Multiraya's reporting of product characteristics (*i.e.*, shape, capacity, weight and thickness) is replete with errors. As a result, petitioner argues that the errors make it impossible for the Department to accurately use home market sales data to identify the proper comparisons to U.S. sales. Therefore, petitioner claims that the Department should rely on the facts available for Multiraya's final margin calculation.

Multiraya argues that, although certain product characteristics were misreported for some products (*i.e.*, capacity and thickness), the Department did not find any discrepancies in more determinative characteristics such as length, width, and diameter. Multiraya argues that such misreporting will have an insignificant effect on model matching.

DOC Position

We agree with petitioner's allegation that Multiraya misreported certain product characteristics such as the weight and thickness of the product.

However, we have concluded that these errors are minor with regard to both the product matching criteria and the extent of the incorrect reporting. We have corrected those errors accordingly. We determined that Multiraya misreported the thickness of some of its products because of the point of measurement used for reporting to the Department. We did not specify in the Department's questionnaire where the appropriate point of measurement would be, hence there were differences between the Department's measurement at verification and Multiraya's measurement. We have also determined that the more determinative product characteristics were, in fact, reported correctly (see Memorandum from MIDP Team to Louis Apple, Acting Office Director, August 12, 1996). Therefore, we have rejected petitioner's argument that facts available are required as a result of the differences in Multiraya product matching characteristics.

Comment 4: Work-in-Process Inventory (WIP)

Petitioner claims that Multiraya underreported its material costs by excluding the costs of WIP inventory and points to Multiraya's own submission indicating that WIP decreased from the beginning of the year to year-end. Petitioner states that Multiraya reported only those inputs withdrawn from raw material inventory during the POI, but that the change in Multiraya's WIP inventory should also have been included as part of the material costs. Since opening WIP is much greater than closing WIP, petitioner claims that Multiraya's exclusion of the change in WIP significantly distorted the costs. As a result of Multiraya's deficient response, and the inability of the Department to verify the data completely, petitioner claims that the Department should apply total facts available for Multiraya's final margin calculation.

Multiraya argues that the Department performed numerous tests on its production costs at verification and found no information to indicate that Multiraya had under-reported its costs due to changes in WIP or any other factor. Moreover, Multiraya argues that WIP is irrelevant unless raw material costs fluctuate during the year, and the Department verified that Multiraya's cost of raw materials did not fluctuate during that time period.

DOC Position

We agree with petitioner that Multiraya's reported production costs are understated; however, we disagree with petitioner's suggestion that the

remedy for this error is to apply total facts available. Multiraya reported its per-unit costs based on the cost incurred during the period (without considering the WIP balances), allocated over the total amount of finished goods produced. Because Multiraya failed to include the change in WIP (which represents the costs of semi-finished goods that were completed during the period) the reported costs are understated. We have corrected for this understatement by allocating the net change in WIP balances to all of the goods produced. This allocation was accomplished by determining the percentage relationship between the change in WIP and the reported material cost.

Further, we disagree with Multiraya's assertion that the change in WIP is only significant when the price of raw materials is fluctuating, because the change in WIP represents costs incurred to produce the units recorded as finished goods in this period, thus the amount can be significant.

Comment 5: Transaction and Product-Specific Yields

Petitioner contends that verification revealed that Multiraya could have calculated product-specific yields for home market sales based on stock cards and sales invoices. By Multiraya maintaining its claim that it could not calculate more specific yields and thus using an average yield, it has in effect minimized its dumping margin. Consequently, petitioner argues that this is another reason for the Department should apply total facts available.

Multiraya states that it did not maintain production records in its normal course of business that would have enabled it to calculate product-specific yields. Multiraya contends that petitioner has misunderstood Multiraya's accounting system. Multiraya explains that, because it tracks its consumption of imported melamine powder for purposes of supporting duty drawback claims with the Indonesian government, it can link the purchase of imported melamine powder specifically to the production of melamine dinnerware sold for export. In so far as, Multiraya does not receive a duty drawback refund for domestic melamine, it had no reason to track yields for products that use domestic melamine powder. Thus, Multiraya states that it cannot link the purchase of domestic melamine powder to specific production and sale of melamine dinnerware products. As a result, Multiraya asserts that would be unable to calculate product-specific or batch-specific production yields for products

manufactured from domestic melamine powder. Accordingly, Multiraya contends that it is unfair for the Department to apply facts available for failure to provide information on product-specific yields that cannot be derived from its records.

DOC Position

The Department's preference is to use product-specific cost data, which includes product specific yield results, for calculating COP and CV. The Department uses the most specific and reasonable allocation methodology possible given the available data (see *Final Determination at Sales Less Than Fair Value: Welded Stainless Steel Pipe From Malaysia*, 59 FR 4023, 4027, January 28, 1994). In this instance, Multiraya reported its costs based on overall yield information because it claimed that its records do not permit it to calculate cost data on a more specific basis. Our verification revealed nothing to contradict Multiraya's claim that it does not maintain product-specific yield data in its normal course of business. The accounting records petitioner identified could arguably be used to calculate an average yield for each specific order. Nevertheless, compiling and aggregating this data would not provide product-specific yield information as petitioner claims. Instead, this calculation would result in average yield data, which would be no more specific than the information provided by Multiraya. Accordingly, we have accepted Multiraya's average yield rate calculation which we tested at verification.

Comment 6: Land Rental

Petitioner claims that Multiraya failed to disclose until verification that it leased land from an affiliated party for use in its dinnerware business, and that Multiraya was unable to demonstrate the arm's length pricing of the land rent. Citing Indonesian financial statistics for support its contention that the rent expense is too low, petitioner argues that this lease amount must be adjusted to reflect the true cost of Multiraya's lease and cites

Multiraya argues that rental payments as affiliated party transactions are merely another form of capital contribution by shareholders and the Department's practice is to ignore such intracompany transfers, regardless of whether they relate to sales or production. Multiraya explains that the land was owned by a company official or "shareholder" who contributed the land to Multiraya for a fixed payment. Thus, according to Multiraya, the rent

the shareholder receives is equivalent to a dividend or profit sharing amount.

DOC Position

We verified that Multiraya reported the land rental expense that was reflected in its financial statements. We analyzed the amount of the recorded expense in relation to the total costs and the overhead expense and noted that the reported amount is immaterial. Further the effect of adjusting the recorded amount by the inflation rate experienced from 1991 until the POI, as requested by the petitioner, is also immaterial as petitioner has not shown any substantial link between inflation in Indonesia and the land rental costs. Accordingly, we have accepted the land rental amount as the figure recorded in the financial statement.

Comment 7: Home Market Credit Expenses

Petitioner states that Multiraya overstated its home market credit expenses for most reported transactions. Petitioner argues that the Department should either recalculate or disallow entirely the claimed credit expense.

Multiraya argues that the overstatement of home market credit expense is directly related to a computer programming error and should not warrant applying facts available. Multiraya requests that the Department use verified information for its final margin calculation.

DOC Position

We agree with petitioner that Multiraya's home market credit expenses were overstated, and we also agree that it is appropriate to recalculate these expenses to correct the error. At verification, the Department found that, aside from a computer error, the reported credit expenses were accurate. This computer error does not warrant the application of facts available. In response to the Department's request, Multiraya has resubmitted corrected payment dates. Hence, we have recalculated the home market credit expense using the corrected information submitted by Multiraya.

Comment 8: Home Market Warranty Expense

Petitioner claims that Multiraya improperly allocated home market warranty expenses over all sales, instead of on a more specific basis. According to petitioner, verification demonstrated that Multiraya could have calculated this expense on a customer-specific basis. Accordingly, petitioner contends the Department should treat the claimed warranty amount as an indirect selling

expense rather than a direct selling expense.

Multiraya argues that the Department's practice with respect to warranty expenses does not require a respondent to report a sale-by-sale breakdown of direct warranty expenses. Contrary to petitioner's claim, Multiraya argues that verification proved its warranty expenses are directly related to the subject merchandise because the expenses were incurred for melamine institutional dinnerware products. In addition, Multiraya argues that given its accounting records, an overall allocation methodology was the only feasible method available for it to calculate its warranty expense. Multiraya argues that a customer-specific methodology would not provide any greater accuracy than an overall warranty expense methodology.

DOC Position

It is the burden of the respondent to demonstrate it is entitled to an adjustment under the Act. At verification, Multiraya was unable to provide any documentation to support its claim for warranty expenses. Rather, the claimed warranty expenses had been derived from Multiraya's best estimate and not based on actual results. Because Multiraya was unable to meet its burden, we are calculating normal value without adjustment for home market warranty expenses.

Comment 9: Home Market Inland Freight

Petitioner claims that Multiraya's reported home market freight expense claim could not be verified and contained many discrepancies. Specifically that Multiraya's reported freight expenses were deficient because it did not reflect: (1) Use of diesel fuel, rather than gasoline as reported, (2) lack of documentation to support an allocation methodology of how it determined the freight per transaction, and (3) inclusion of non subject-merchandise.

Multiraya argues that its reported home market freight expenses were verified. As such, Multiraya states that it has reported its home market inland freight expense to the best of its ability, and recommends that the Department not apply facts available to its final margin calculation.

DOC Position

The Department's preference is that, wherever possible, freight adjustments should be reported on a sale-by-sale basis, rather than an overall basis (see, e.g., *Final Results of Antidumping Duty Administrative Review: Replacement*

Parts for Self-Propelled Bituminous Paving Equipment from Canada 56 FR 47451, 47455, September 19, 1991). If a respondent does not maintain its records to enable freight expense reporting at this level, then our preference is to apply an allocation methodology at the most specific level permitted by a respondent's records, unless a respondent can demonstrate that doing so is overly burdensome or that its alternative methodology is representative and non-distortive of transaction-specific sales. Multiraya allocated all home market freight by weight over all home market sales inclusive of subject and non-subject merchandise. Verification did not contradict Multiraya's claim that it is unable to report freight expenses on a transaction-specific basis. The non-subject merchandise included in the freight allocation is all melamine products not covered by the scope of this investigation. In so far as we find that expense allocation of melamine product weight, it is a reasonable approach to account for the inclusion of non-subject merchandise in the reported freight expenses. We have accepted a Multiraya's methodology as representative and non-distortive of transaction-specific sales information (see *Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561, June 28, 1995).

Comment 10: Understating of U.S. Credit Expenses

Petitioner claims that Multiraya improperly calculated reported credit on U.S. sales by reporting shipment date as the date of ocean shipment, rather than as the date of factory shipment. To correct this error, petitioner argues that the Department should recalculate credit using invoice date as shipment date.

Multiraya responds that it correctly reported the shipment date for this expense based on the date from the bill of lading because it is on that date that the merchandise left the factory.

DOC Position

We have accepted Multiraya's reported credit expense, because at verification we found no evidence to indicate any differences between the date of factory shipment and the bill of lading date, i.e., shipment date.

Comment 11: U.S. Dollar Interest Rate vs Rupiah Interest Rate

Petitioner states that, although Multiraya invoices its U.S. customer in U.S. dollars, it ultimately receives payment in Indonesian rupiahs because

the bank converts the customer's payment. As a result, petitioner claims that Multiraya's opportunity cost is incurred in rupiah, not dollars. Therefore, petitioner argues that the Department should apply a rupiah interest rate to calculate U.S. credit expenses.

Multiraya argues that the Department properly applied a U.S. dollar rate to the calculation of U.S. credit expenses. Multiraya states that the fact that it ultimately receives payment for its dollar-denominated sales in rupiahs is not determinative. However, Multiraya states that it invoices its customers in U.S. dollars, and its customers pay in U.S. dollars via letter of credit. Therefore, its opportunity costs are properly associated with U.S. dollars.

DOC Position

We agree with Multiraya's claim that based on the facts in this investigation the opportunity cost experienced by Multiraya was in U.S. dollars. The Department's policy is to calculate imputed credit costs using a weighted average short term borrowing which reflects the currency in which the sale was invoiced. Consistent with the Department's practice we have determined no credit cost adjustments are warranted. (See, e.g., *Final Determination of Sales at Less than Fair Value: Pasta from Turkey*, 61 FR 30309, 30324 (June 14, 1996)).

Comment 12: Duty Drawback Claim

Petitioner claims that Multiraya improperly included as an offset to costs, drawbacks on duties paid prior to the POI. Petitioner argues that the Department should deny Multiraya's duty drawback claim entirely. Petitioner argues that Multiraya's duty amount should be lowered because: (1) Multiraya did not include duties associated with opening WIP, (2) Multiraya recorded material costs inclusive of duties, and (3) Multiraya's WIP that was incorporated in materials was not included in reported material costs. Finally, petitioner states that Multiraya did not demonstrate a tie between the quantity of imported melamine powder on which the duty was paid and the quantity of exports of imported melamine upon which the drawback was received. For the above-mentioned reasons, petitioner argues that the Department should reject Multiraya's claim for a duty drawback in its final margin calculation.

Multiraya argues that it reported its duty drawback refund based on duties paid before the POI in an effort to reflect actual refunds received during the POI. Further, Multiraya argues that

petitioner's claim with regard to unreported duty on the change in WIP is irrelevant to the reported duty drawback amount because the Department requires a respondent to report duty drawback claims on the same basis as it receives duty drawback refunds. Multiraya states that the absence of WIP costs and quantities from its calculation of reported costs is not beneficial to its final margin calculation. Multiraya states that, at verification, the Department confirmed that all imported melamine was indeed used in exported melamine production during the POI.

DOC Position

As discussed in Comment 4, we believe that the change in WIP should be included in the total material costs, and we have adjusted the total cost of melamine production to take this into account. However, we do not agree with petitioner that Multiraya has not demonstrated that it is entitled to a duty drawback. We verified Multiraya's duty drawback process, its method of tracking total duties paid and weights and quantities of production and determined it was appropriate. Accordingly, there is no basis to deny Multiraya's duty drawback claim (See Verification Report at page 11 and Cost Verification Exhibit 109).

Comment 13: Exclusion of Excise Tax From Material Costs

Petitioner argues that Multiraya's claim of an income tax credit for excise taxes paid on exported melamine products is incorrect and should not have been reported as duty drawback because said excise tax is not supported by a link between imports and exports. In addition, petitioner states that Cost Verification Exhibit 111 indicates that the income tax is allocated over a large number of products, including domestic products. Petitioner claims that there is no information on the record to suggest that this tax credit is directly linked to export or export quantities exclusively. Since the burden of proof to support its claim is with Multiraya, petitioner argues the Department must deny Multiraya's duty drawback claim for an income tax credit for paid excise taxes.

Multiraya argues that Cost Verification Exhibit 109 clearly details that import duties and value added tax paid on imported melamine powder were eventually recovered via a tax credit on exported melamine dinnerware products. Thus, Multiraya argues, the Department should accept the duty drawback claim.

DOC Position

We agree with Multiraya. We verified that Multiraya's excise tax was imposed on imported melamine powder (which was used to produce MIDP for export) and was credited through the income tax return upon export of the finished product. Accordingly, the claimed drawback amount was properly classified (see Cost Verification Exhibit 111).

Comment 14: Foreign Inland Freight

Petitioner claims that Multiraya improperly reported a U.S. sale without including the foreign inland freight expense incurred on that sale based on the Department's verification information. Because of this exclusion petitioner contends that the Department should apply facts available and assign the highest amount of foreign inland freight to this sale in the calculation of Multiraya's final margin.

Multiraya argues that it properly reported foreign inland freight for all its U.S. sales. Multiraya contends that foreign inland freight should not have been applied to the U.S. sale at issue because it in fact was not shipped via ground transportation.

DOC Position

We agree with Multiraya. We verified that foreign inland freight was properly applied to U.S. sales and, for the sale in question, we find that foreign inland freight expenses were not incurred (see Verification Exhibit 13 and 19).

Comment 15: U.S. Warranty Expenses

Petitioner contends that Multiraya failed to report warranty expenses incurred on U.S. sales. Petitioner states that the Department's verification of sales documents and customer files revealed that although Multiraya did not have a formal warranty policy, it allowed customers to return unsatisfactory merchandise, which is the equivalent of a warranty expense. Consequently, petitioner contends that the Department should apply facts available to Multiraya's final margin calculation.

Multiraya responds that it did not incur any warranty expenses on U.S. sales. Multiraya states that the Department verified that it did not grant any warranty-related claims during the POI. In addition, Multiraya contends that the Department's reconciliation of U.S. sales to Multiraya's financial statements at verification proved that its U.S. customer did not receive any credits toward its payment to Multiraya.

DOC Position

Although the Department's verification report indicates that Multiraya's customers are able to return unsatisfactory merchandise, at verification we did not find any evidence to suggest that Multiraya is contractually obligated to provide credit or any other redress for unsatisfactory merchandise. Therefore we do not consider this informal return policy to constitute a warranty obligation associated with Multiraya's sales. Accordingly we determined that Multiraya does not incur warranty expenses and application of facts available is not warranted.

Comment 16: U.S. Containerization Costs

Petitioner states that Multiraya failed to report containerization expenses on U.S. sales. Therefore, petitioner contends that the Department should estimate the expense to be equal to labor costs for packing or use the public record figure for Indonesian containerization and include this amount in the final determination margin calculations.

Multiraya argues that the costs of containerization are included in Multiraya's reported expenses.

DOC Position

We agree with Multiraya. We verified that costs associated with containerization are included in Multiraya's packing expenses. (See Verification Exhibit 17).

Comment 17: U.S. Sales Treated as Affiliated Party Sales

Petitioner claims that information on the record indicates a close supplier relationship between Multiraya and its sole U.S. customer. Consequently, petitioner states Multiraya's failure to provide all the information to the Department relevant to its affiliation is equivalent to Multiraya submitting a seriously deficient response. Further, petitioner states that the Department verified all U.S. sales are made to one customer and would fall within the definition of affiliated party set forth in Section 771(33) of the Tariff Act. In addition, petitioner argues that there is clearly an exclusive seller/purchaser relationship with respect to shipments of the subject merchandise from Indonesia to the United States. As a result of Multiraya's failure to provide the Department with the information required to calculate CEP for its U.S. sales, petitioner suggests that the Department apply facts available, as set forth in the petition, to the final margin calculation for Multiraya.

Multiraya states there is not an affiliation with its sole U.S. customer, as neither has the authority or is in the position to exercise restraint or discretion over the other. Multiraya states that Multiraya and its customer do not have an exclusive business relationship, as Multiraya is not the only supplier of the subject merchandise for the U.S. customer. Multiraya states that the Department reviewed supporting documentation that demonstrated that Multiraya, in fact, has sought new business and other customers. In addition, Multiraya states that there is no corporate relationship between it and its U.S. customer. Multiraya states that the Department reviewed its corporate documentation and did not find any reference to the U.S. customer's owners, directors, or managers.

DOC Position

We disagree that Multiraya's U.S. sales should be classified as CEP sales because we do not find that the evidence establishes that the sole U.S. importer and Multiraya are affiliated parties. Section 771(33)(G) of the Act provides, *inter alia*, that parties will be considered affiliated when one controls the other. A person controls another person if the person is "legally or operationally in a position to exercise restraint or direction over another person." SAA at 838. The SAA further states that a company may be in a position to exercise restraint or direction through, among other things, "close supplier relationships in which the supplier or buyer becomes reliant upon the other." *Id.*

Pursuant to section 771(33) of the Act, we reviewed Multiraya's relationship with its U.S. importer. The evidence indicates that there is no corporate or family relationship between the two companies. The Department requested Multiraya to provide evidence to support its assertion that it was not under the control of its sole U.S. customer and it freely negotiated its U.S. prices for the subject merchandise. Multiraya submitted written documentation between Multiraya and this U.S. customer which demonstrated that negotiations occurred between Multiraya and its sole U.S. customer regarding melamine product prices, and that Multiraya was not controlled by the customer in setting the price of the subject merchandise (See Multiraya's June 7, 1996, Supplemental Questionnaire Response at Exhibit 1 and 2). We verified that the negotiated prices reflected the prices reported in Multiraya U.S. sales listing. The evidence on the record also

demonstrates that Multiraya does not have an exclusive supplier relationship with its U.S. customer as it attempted to solicit business from other U.S. companies (See Multiraya's July 15, 1996, Supplemental Questionnaire Response at Exhibit 3). Therefore, we have determined that the evidence on the record supports the claim that Multiraya is not affiliated with its U.S. customer.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of MIDPs that are entered, or withdrawn from warehouse, for consumption on or after August 22, 1996, the date of publication of our preliminary determination in the Federal Register. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacture	Weighted-average margin percentage
P. T. Mayer Crocodile	12.90
P. T. Multi Raya Indah Abah	8.10
All Others	8.10

Pursuant to section 733(d)(1)(A) and section 735(c)(5) of the Act, the Department has not included zero, *de minimis* weighted-average dumping margins, and margins determined entirely under section 776 of the Act, in the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: January 6, 1997.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.

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[A-583-825]

Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan

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

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4194, or (202) 482-4136, respectively.

The Applicable Statute

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

Final Determination

We determine that melamine institutional dinnerware products ("MIDPs") from Taiwan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Taiwan* (61 FR 43341, August 22, 1996)), the following events have occurred:

In September and October 1996, we verified the questionnaire responses of respondents Yu Cheer Industrial Co., Ltd. (Yu Cheer) and Chen Hao Plastic Industrial Co., Ltd. (Chen Hao Taiwan). On November 23, 1996, the Department requested Chen Hao Taiwan to submit new computer tapes to include data corrections identified through verification. This information was submitted on December 5, 1996.

Petitioner, the American Melamine Institutional Tableware Association

("AMITA"), and respondents submitted case briefs on November 27, 1996, and rebuttal briefs on December 3, 1996. The Department held a public hearing for this investigation on December 5, 1996.

Scope of Investigation

This investigation covers all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Excluded from the scope of investigation are flatware products (e.g., knives, forks, and spoons).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is January 1, 1995, through December 31, 1995.

Facts Available

IKEA and Gallant

We did not receive a response to our questionnaire from either IKEA Trading Far East Ltd. (IKEA) or Gallant Chemical Corporation (Gallant). Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner and in the form requested, significantly impedes a proceeding, or provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. Because IKEA and Gallant failed to submit the information that the Department specifically requested, we must base our determinations for those companies on the facts available.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. IKEA's and Gallant's failure to respond to our questionnaire demonstrates that IKEA and Gallant have failed to cooperate to the best of their abilities in this investigation. Accordingly, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

Section 776(c) of the Act provides that where the Department selects from

among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the "SAA"), states that the petition is "secondary information" and that "corroborate" means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition.

The petitioner based its allegation of both normal value and export price in the petition on a market research report which utilized price quotations from a manufacturer/exporter of MIDPs in Taiwan. The petitioner also submitted a published price list of comparable merchandise sold during the POI in Taiwan. The Department has determined that the price list corroborates normal value used in the petition.

The export price in the petition is consistent with export prices reported by responding companies on the record of this investigation. Therefore, we determine that further corroboration of the facts available margin is unnecessary.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Chen Hao Taiwan and Yu Cheer to the United States were made at less than fair value, we compared the Export Price ("EP") to the Normal Value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice. As set forth in section 773(a)(1)(B)(i) of the Act, we calculated NV based on sales at the same level of trade as the U.S. sale. In accordance with section 777A(d)(1)(A)(i), we compared POI-wide weighted-average EPs to weighted-average NVs. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the *Scope of Investigation* section, above, produced in Taiwan and sold in the home market during the POI, to be

foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): shape type (*i.e.*, flat—*e.g.*, plates, trays, saucers etc.; or container—*e.g.*, bowls, cups, etc.), specific shape, diameter (where applicable), length (where applicable), capacity (where applicable), thickness, design (*i.e.*, whether or not a design is stamped into the piece), and glazing (*i.e.*, where a design is present, whether or not it is also glazed).

(ii) Level of Trade

In the preliminary determination, the Department determined that no difference in level of trade existed between home market and U.S. sales for either Chen Hao Taiwan and Yu Cheer. Our findings at verification confirmed that Chen Hao Taiwan and Yu Cheer performed essentially the same selling activities for each reported home market and U.S. marketing stage. Accordingly, we determine that all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is unwarranted.

Export Price

We calculated EP, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and where CEP was not otherwise warranted based on the facts of record.

We calculated EP for each respondent based on the same methodology used in the preliminary determination, with the following exceptions:

Chen Hao Taiwan

We added an amount to U.S. sales denominated in U.S. dollars to account for bank and currency conversion charges not included in Chen Hao Taiwan's reporting, based on information developed at verification (see Comment 13).

Yu Cheer

We made the following corrections, based on our verification findings:

(a) Revised payment dates for certain U.S. sales, for purposes of calculating imputed credit; (b) Corrected foreign inland freight; (c) revised packing labor

expense; and (d) corrected certain packing material expenses.

In order to reflect the corrected payment dates for certain U.S. sales, we recalculated credit for all U.S. sales, using verified shipment and payment dates and Yu Cheer's reported interest rate. Yu Cheer did not provide information to weight-average the different packing material purchase prices observed at verification. Accordingly, we applied the highest price observed at verification for these materials as facts available. This approach was also consistent with Yu Cheer's reporting methodology for some of the packing material expenses.

Normal Value

Cost of Production Analysis

In the preliminary determination, based on the petitioner's allegation, the Department found reasonable grounds to believe or suspect that Chen Hao Taiwan sales in the home market were made at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether Chen Hao Taiwan made home market sales during the POI at prices below their respective cost of production within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the cost of production (COP) analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Chen Hao Taiwan's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act.

We adjusted financial expenses to exclude foreign exchange gains (see Comment 10), and to include the interest expense associated with loans from affiliated parties (see Comment 9). We also adjusted factory overhead to include an amount for pension expenses (see Comment 11).

B. Test of Home Market Prices

We used Chen Hao Taiwan's adjusted weighted-average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and were not at prices which

permit recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct selling expenses. We did not deduct indirect selling expenses from the home market price because these expenses were included in the G&A portion of COP.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of a respondent's home market sales of a given model during the POI are at prices less than COP, we disregard the below-cost sales because they are (1) made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POI, were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. The results of our cost test for Chen Hao Taiwan indicated that for certain home market models less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of the model in our analysis and used them as the basis for determining NV. Our cost test for Chen Hao Taiwan also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Act), for certain home market models more than 20 percent of the home market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

In this case, we found that some models had no above-cost sales available for matching purposes. Accordingly, export prices that would have been compared to home market prices for these models were instead compared to constructed value (CV).

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of a respondent's cost of materials, fabrication, selling, general, and administrative expenses ("SG&A"), profit and U.S. packing costs as reported

in the U.S. sales databases. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Chen Hao Taiwan in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. Where appropriate, we calculated Chen Hao Taiwan's CV based on the methodology described in the calculation of COP above. We made the same adjustments to Chen Hao Taiwan's reported CV as we described above for COP.

Price to Price Comparisons

Adjustments to Normal Value

We based normal value on the same methodology used in the preliminary determination, with the following exceptions:

Chen Hao Taiwan

For one of several packing materials used by Chen Hao Taiwan, we found a slight discrepancy between the reported consumption and costs, and the verified consumption and costs. This discrepancy, however, affects only a small part of the overall packing material cost and would have an *ad valorem* effect of less than .33 percent. Consistent with 19 CFR 353.59(a), which permits the Department to disregard insignificant adjustments, we have not adjusted the reported packing materials cost in our fair value comparisons for Chen Hao Taiwan.

Yu Cheer

We revised packing labor and certain packing material expenses, based on verification findings. Yu Cheer did not provide information to weight-average the different packing material purchase prices observed at verification. Accordingly, we applied the highest price observed at verification for these materials as facts available. This approach was also consistent with Yu Cheer's reporting methodology for some of the packing material expenses.

Price to CV Comparisons

Where we compared Chen Hao Taiwan's CV to Chen Hao Taiwan's export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses (where appropriate) in accordance with section 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of

the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks, see *Change in Policy Regarding Currency Conversions* 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Scope of Investigation

Respondents argue that the scope of investigation should be revised to exclude melamine dinnerware that

exceeds a thickness of 0.08 inch and is intended for retail markets when such products are accompanied by appropriate certifications presented upon importation to the United States.

Petitioner objects to respondents' scope revision proposal because, it believes, it has no legal or factual basis and would result in an order that would be very difficult to administer. Petitioner further contends that antidumping orders based on importer certifications of use, such as the proposal advocated by respondents, are difficult to administer and should be avoided where possible. Petitioner argues that if respondents want to produce merchandise for the retail market that presents no scope issue, respondents can produce merchandise of a thinner wall thickness that falls outside of the scope.

DOC Position. We agree with petitioner. Petitioner has specifically identified which merchandise is to be covered by this proceeding, and the scope reflects petitioner's definition. As we stated in *Final Determination of Sales at Less Than Fair Value: Carbon and Alloy Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994), [p]etitioners' scope definition is afforded great weight because petitioners can best determine from what products they require relief. The Department generally does not alter the petitioner's scope definition except to clarify ambiguities in the language or address administrability problems. These circumstances are not present here.

The petitioner has used a thickness of more than 0.08 inch, not end use, to define melamine "institutional" dinnerware. The physical description in the petition is clear, administrable and not overly broad. Thus, we agree with petitioner that there is no basis for redefining the scope based on intended channel of distribution or end use, as respondents propose.

Comment 2: Acceptance of Chen Hao Taiwan Questionnaire Responses

Petitioner argues that the Department should reject Chen Hao Taiwan's questionnaire responses because the extensive, fundamental changes to the responses submitted during the course of the investigation render its data unreliable. In particular, petitioner objects to Chen Hao Taiwan's submission of allegedly "minor corrections" at the beginning of verification and submitted for the record on October 8, 1996. Petitioner claims that this information is untimely under 19 CFR 353.31 as it contains new information, which may not be accepted

at verification, and should therefore be (wholly or, at a minimum, partially) rejected for use in the final determination following the precedent in *Final Results of Administrative Review: Titanium Sponge from the Russian Federation* (61 FR 58525, November 15, 1996) (*Titanium Sponge*). Further, petitioner claims it was deprived of its ability to comment on this data prior to verification.

Chen Hao Taiwan responds that, by focusing on the absolute number of corrections made, petitioner ignores the fact that the changes were made to ensure that the most complete and accurate responses were submitted for the record and properly verified. According to Chen Hao Taiwan, its revisions corrected typographical and data entry errors; the corrections related to misreported items, rather than unreported items. Chen Hao Taiwan adds that this situation is different from *Titanium Sponge*, where the rejected submission related to previously unreported items of which the Department was not alerted, while in this proceeding, Chen Hao Taiwan properly advised the Department of its corrections. Chen Hao Taiwan states that it responded to the best of its ability in this proceeding and, thus, there is no basis to apply facts available.

DOC Position. We disagree with petitioner's description of Chen Hao Taiwan's October 8 submission as an extensive and entirely new cost submission. Chen Hao Taiwan corrected elements of its labor and factory overhead data, which resulted in revised figures for these components of its COP and CV calculations. Although the labor and overhead expenses for some specific products changed substantially, the effect on the total COP and CV was relatively insignificant. Chen Hao Taiwan did not revise its methodology for calculating these expenses. The corrections submitted by Chen Hao Taiwan prior to verification did not include new methodologies or expense claims; there was no new area of the response in which the petitioner did not have the opportunity to comment. In short, the corrections submitted by Chen Hao Taiwan were typical of the minor corrections routinely accepted by the Department at the commencement of verification.

We agree with Chen Hao Taiwan that the submission of these corrections is not comparable with the *Titanium Sponge* example, where the Department, rather than the respondent, identified the information in the course of verification, and the information discovered was a new issue, not previously discussed in the proceeding.

Chen Hao Taiwan fully apprised the Department of all revisions at the commencement of verification. Its revisions corrected data already on the record and did not introduce new issues not previously reported on the record.

Accordingly, we determine that resorting to facts available is unwarranted in this particular case. The Department's use of facts available is subject to section 782(d) of the Act. Under section 782(d), the Department may disregard all or part of a respondent's questionnaire responses when the response is not satisfactory or it is not submitted in a timely manner. The Department has determined that neither of these conditions apply. The Department was able to verify the response, thus rendering it satisfactory, and the types of revisions submitted by Chen Hao Taiwan met the deadline for such changes. Under section 782(e), the Department shall not decline to consider information that is 1) timely, 2) verifiable, 3) sufficiently complete that it serves as a reliable basis for a determination, 4) demonstrated to be provided based on the best of the respondent's ability, and 5) can be used without undue difficulties. In general, Chen Hao Taiwan has met these conditions.

Accordingly, we find no basis to reject Chen Hao Taiwan's response, and thus, no basis to rely on the facts otherwise available for our final determination.

Comment 3: Yield Rate

Petitioner claims that Chen Hao Taiwan improperly reported overall yield information for its COP and CV data when it had more accurate, product-specific data available. Petitioner alleges that the verification exhibits establish that Chen Hao Taiwan maintains product-specific yield information and, therefore, could have reported its costs on this basis, rather than an overall yield figure applied to all of its products. Petitioner claims that by reporting overall yield figures, Chen Hao Taiwan may be attempting to mask dumping margins generated by sharply different yields among products, which is the experience of the U.S. industry. Since Chen Hao Taiwan allegedly chose instead to report less accurate production data, petitioner contends that the Department should reject Chen Hao Taiwan's data as submitted and adjust the yield rate by applying the reported yield factor to each additional production step that each product undergoes.

Chen Hao Taiwan disputes petitioner's analysis of its production records and states that the Department verified that Chen Hao Taiwan does not

maintain records in its normal course of business that would permit it to report product-specific yield. Chen Hao Taiwan maintains that the verification exhibit cited by petitioner does not support petitioner's contention that Chen Hao Taiwan was able to report product-specific yield data. Chen Hao Taiwan argues that while petitioner may maintain product-specific yield information, it does not mean that the Department must also assume that respondent must also maintain the same information. Chen Hao Taiwan asserts that the Department cannot penalize a respondent with facts available for failure to provide information which does not exist.

DOC Position. We agree with Chen Hao Taiwan. The Department's preference is to use product specific cost data, including product-specific yield results, for calculating COP and CV. The Department uses the most specific and reasonable allocation methods available, given a respondent's normal record keeping system (see *Final Determination of Sales at Less than Fair Value: Welded Stainless Steel Pipe from Malaysia*, 59 FR 4023, 4027, January 28, 1994). In this instance, Chen Hao Taiwan reported its costs based on overall yield information because it claimed that its records do not permit it to calculate cost data on a more specific basis. Our verification revealed nothing to contradict Chen Hao Taiwan's claim that it does not maintain product-specific yield data in its normal course of business. We also verified that Chen Hao Taiwan was not able to calculate yields for the POI on a more specific basis than the yield rate which was reported. The accounting records identified by petitioner could arguably be used to calculate an average yield for each specific order; however, Chen Hao Taiwan does not retain production batch records in its normal course of business beyond a short period of time. The examples from the verification are from the time of verification, October 1996—well beyond the POI. Moreover, Chen Hao Taiwan's financial accounting documents, including inventory and production ledgers, do not track production information on a product-specific basis. For these reasons, we have accepted Chen Hao Taiwan's reported average yield rate calculation, which was adequately analyzed at verification.

Comment 4: Home Market Freight Expenses

Petitioner claims that Chen Hao Taiwan improperly allocated home market freight expenses across all products and all customers during the

POI. Petitioner states that, based on information contained in the verification report, Chen Hao Taiwan should be able to report freight expenses on a customer-specific basis. Petitioner asserts that Chen Hao Taiwan's allocation methodology masks differences in freight expenses that may result in a larger freight expense deduction for subject merchandise sales than if freight expenses had been reported on a more specific basis. Therefore, petitioner contends that the Department should deny Chen Hao Taiwan's claimed freight adjustment.

Chen Hao Taiwan argues that verification indicated that Chen Hao Taiwan's freight expense records did not permit reporting on a more specific basis.

DOC Position. The Department's preference is that, wherever possible, freight adjustments should be reported on a sale-by-sale basis rather than an overall basis (see, e.g., *Final Results of Antidumping Duty Administrative Review: Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada*, 56 FR 47451, 47455, September 19, 1991). If a respondent does not maintain its records to enable freight expense reporting at this level, then our preference is to apply an allocation methodology at the most specific level permitted by a respondent's records. Chen Hao Taiwan allocated all home market freight expenses incurred on subject merchandise by weight over all home market sales, as demonstrated in the sample calculation submitted in the July 19, 1996, supplemental questionnaire response. However, as we noted in our verification report, "we observed that Chen Hao may be able to total the amount charged to each customer during the POI, and divide that amount by the total shipments to that customer." This method is preferable to the method used by Chen Hao Taiwan.

Nevertheless, we note that Chen Hao Taiwan allocated home market freight expenses between subject and non-subject merchandise using a weight-based methodology, in compliance with the Department's supplemental questionnaire request. The Department did not specifically request Chen Hao Taiwan to provide a customer-specific allocation. Although Chen Hao Taiwan had the means to allocate home market freight expenses on a more specific basis, its failure to do so does not mandate the application of adverse facts available in this case because Chen Hao Taiwan has been responsive to the Department's requests. The principal advantage of a customer-specific freight

allocation would be to take into account the freight distance to the customer, since distance is a component of the expense incurred by Chen Hao Taiwan. Given the distribution of Chen Hao Taiwan's home market customers, as identified in the verification report, and the location of Chen Hao Taiwan's principal home market MIDP customer, we find that Chen Hao Taiwan's reported home market freight methodology is sufficient. In similar circumstances, we have accepted a respondent's methodology if it is representative and non-distortive of transaction-specific sales information (see *Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561, June 28, 1995). Chen Hao Taiwan's methodology meets these criteria. Consequently, we have accepted Chen Hao Taiwan's reported home market freight expenses.

Comment 5: Allocation of Melamine Powder Rebate

Petitioner argues that Chen Hao Taiwan improperly allocated melamine powder rebates between its internal consumption and the material transferred to Chen Hao Xiamen. Petitioner claims that by assigning the entire amount of the rebate to melamine powder used for Taiwan consumption, Chen Hao Taiwan undervalued its raw material costs. Petitioner contends that Chen Hao Taiwan's melamine powder costs for COP and CV calculations should be recalculated to remove the amount of the rebate attributable to Chen Hao Xiamen transfers.

Chen Hao Taiwan responds that petitioner is incorrect and that, in fact, the Department verified that the melamine powder rebates were allocated equally over all melamine powder purchases.

DOC Position. We agree with Chen Hao Taiwan. We verified that Chen Hao Taiwan properly allocated the melamine powder rebate over all its purchases during the POI and thus the per-unit melamine powder cost for Chen Hao Taiwan's COP and CV calculations properly accounts for the rebate. However, as we stated in the Chen Hao Taiwan verification report, "[t]he values reported for Chen Hao Xiamen's melamine powder consumption do not include an adjustment for the rebate." (Emphasis added.) Chen Hao Taiwan's melamine powder costs are not in question.

Comment 6: Import Duties on Melamine Powder Costs

Petitioner contends that evidence on the record demonstrates that Chen Hao

Taiwan incurred duties on some imported raw materials, but did not report these duty amounts in its cost response. Petitioner thus argues that the Department should assume that all raw materials are imported and increase the costs of materials to include import duties and related costs.

Chen Hao Taiwan states that the Department verified that Chen Hao Taiwan correctly accounted for duties in reporting the unit prices of melamine powder purchased during the POI and that petitioner's allegation is incorrect. Chen Hao Taiwan further states that the verification exhibits confirm that the reported costs include the import duties paid on melamine powder purchased outside of Taiwan.

DOC Position. We agree with Chen Hao Taiwan. We verified that the reported costs for these inputs included all applicable expenses, including import duties. Support documentation for Chen Hao Taiwan's melamine powder costs, such as the operating statement and journal entries included in the verification exhibits, demonstrates that import duties, when incurred, are part of the total cost reported to the Department, and are included in the cost of materials used in our COP and CV calculations.

Comment 7: Unreconciled Cost Differences

Petitioner claims that Chen Hao Taiwan's cost of manufacturing data shows an unreconciled difference between the components of operating costs and the total operating costs. Because Chen Hao Taiwan has not provided an explanation for this discrepancy, petitioner argues that the cost of manufacturing should be increased to reflect this unreconciled cost difference.

Chen Hao Taiwan states that petitioner is incorrect because it misread a portion of a verification exhibit and thus erroneously arrived at its total. Accordingly, Chen Hao Taiwan states that its operating costs reconcile and no adjustment is needed.

DOC Position. We agree with Chen Hao Taiwan. We verified that Chen Hao Taiwan's operating costs reconciled, as indicated in the operating statement and trial balance included in the verification exhibits, and no adjustment is required. As Chen Hao Taiwan has noted, petitioner has misread the verification exhibit in question and arrived at an incorrect operating costs total.

Comment 8: Sales of Finished Goods in Cost of Materials Calculation

Based on its analysis of verification exhibits, petitioner claims that Chen

Hao Taiwan included purchases of finished goods that it re-sold without further processing in its finished goods inventory, thus including these items in calculating its yield rate. Petitioner asserts that the yield rate used in COP and CV calculations must be adjusted to remove the accounting for these finished goods.

Chen Hao Taiwan contends that petitioner misread the relevant verification exhibit and that these items were not included in its cost of manufacturing calculation. Accordingly, Chen Hao Taiwan maintains that no adjustment is necessary.

DOC Position. We agree with Chen Hao Taiwan. We verified that the resold items were properly excluded from the cost of manufacturing calculation, as indicated in the cost of operations statement included in the verification exhibits, and that no adjustment is required.

Comment 9: Arm's-Length Pricing of Loans

Petitioner claims that Chen Hao Taiwan failed to demonstrate that interest free loans from affiliated parties are made at arm's length. Accordingly, petitioner argues that Chen Hao Taiwan's financial interest expense ratio for COP and CV calculations should be adjusted by adding an estimated market value for these loans based on the highest interest rate experienced by Chen Hao Taiwan.

Chen Hao Taiwan contends that these loans from related parties served as capital infusion. According to Chen Hao Taiwan, the transactions in question were additional investments from the owners of Chen Hao Taiwan of their own money into the company, with these funds labeled as "loans" for purposes of the financial statement. Chen Hao Taiwan argues that the Department's practice is to disregard such intracompany transfers, thus any resulting loan interest expense should be disregarded in the final determination.

DOC Position. Although Chen Hao Taiwan may consider the transactions in question to serve as equity capital infusions, its audited financial statement classifies them as long-term loans. Other than Chen Hao Taiwan's assertions,¹ we have no basis on the record to reclassify these amounts as equity. In such circumstances, the

¹ Chen Hao Taiwan has cited *Final Results of Administrative Review: Fresh Cut Flowers from Colombia* (61 FR 42833, August 19, 1996) in support of its position; however this case is not on point. In that instance, the item in question was interest income, whereas here, the item is interest expense.

Department considers the amounts to be long-term loans, consistent with treatment in the respondent's financial statement (see, *Final Results of Administrative Review: Shop Towels from Bangladesh*, 60 FR 48966, 48967, September 21, 1995, and *Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7039, February 6, 1995). Accordingly, we have recalculated Chen Hao Taiwan's interest expenses to include an interest expense based on the long-term interest rate experienced by Chen Hao Taiwan during the POI, as identified in the financial statement.

Comment 10: Exchange Gains in Financial Expenses

Petitioner contends that the financial expenses for Chen Hao Taiwan's COP and CV calculations include foreign exchange gains on export sales, which should be disallowed. Therefore, petitioner states that the financial expenses should be increased accordingly.

Chen Hao Taiwan does not object to this adjustment but states that the revised percentage identified in the verification report is incorrect; thus a corrected adjustment should be used.

DOC Position. We agree with petitioner and have adjusted financial expenses to exclude foreign exchange gains on export sales. We also agree with Chen Hao Taiwan that the adjustment percentage identified in the verification report contains a typographical error; we applied the correct percentage in our recalculation.

Comment 11: Pension Allowance

Petitioner states that verification revealed that Chen Hao improperly excluded a pension allowance in its costs.

Chen Hao Taiwan argues that, as the Department verified that no actual accrual for the pension allowance was made during the POI, costs should not be adjusted for a theoretically intended amount.

DOC Position. We agree with petitioner. We verified that Chen Hao Taiwan contributed to its employee retirement fund in the two years prior to the POI. It did not make the contribution during the POI and could not provide any satisfactory explanation for this omission. However, Chen Hao Taiwan reported that it made payments from the retirement fund during the POI. Based on these facts, we consider that Chen Hao Taiwan incurred an obligation for its pension plan during the POI. Accordingly, we have included the pension expense in our COP and CV calculations.

Comment 12: Certain Credit Expense Adjustments

Petitioner claims that Chen Hao Taiwan reported certain adjustments to its credit expenses for some U.S. sales. Petitioner asserts that the Department does not permit these adjustments and thus the credit expense for these sales should be disallowed.

Chen Hao Taiwan argues that it properly made these credit adjustments.

DOC Position. We agree with Chen Hao Taiwan. In such instances as those identified by parties in the proprietary versions of their submissions, the Department has added the imputed benefit to the price. (See, e.g., *Final Results of Antidumping Administrative Review: Mechanical Transfer Presses from Japan* (61 FR 52910, October 9, 1996), where, at Comment 5, we stated that "[b]ecause payment was made prior to shipment, [respondent] should receive an imputed benefit for credit.")

Comment 13: Unreported U.S. Dollar Charges

Petitioner contends that, as identified in verification documents, Chen Hao Taiwan did not report charges such as currency brokerage and bank fees for U.S. sales denominated in U.S. dollars. Accordingly, petitioner argues that a percentage based on the observed charges should be added to all U.S. dollar sales.

Chen Hao Taiwan states that it has accounted for all charges and fees. Citing the verification report, Chen Hao Taiwan asserts that the Department verified that the sales value for all U.S. sales was correctly reported, and no discrepancies apart from those identified in the verification report were found.

DOC Position. We agree with petitioner that Chen Hao Taiwan did not include certain bank fees incurred on U.S. dollar denominated sales in its sales reporting. Based on the verification documents, we have calculated a percentage for these charges and included the result as a circumstance of sales adjustment.

Comment 14: Payment Period on U.S. Sales

Petitioner contends that, based on its analysis of a set of verification exhibits, Chen Hao Taiwan incorrectly reported the payment date on U.S. sales by reporting the date that it closed the account receivable entry in its records, rather than the date the payment was actually made. Accordingly, petitioner argues that the payment date for all U.S. sales should be adjusted to reflect the actual payment period, based on information obtained at verification.

Chen Hao Taiwan responds that petitioner misread the documents in the sales verification exhibit, and that the payment situation described by petitioner referred to Chen Hao Taiwan's payment to its freight company, not payment from the U.S. customer. Accordingly, Chen Hao Taiwan states that it has correctly reported its payment dates and no adjustments are required.

DOC Position. We agree with Chen Hao Taiwan. The payment, accounts receivable, and accounts payable documents included in the verification exhibit for this transaction confirm that the payment identified by petitioner does not apply to customer payment, but rather to the freight expense paid to Chen Hao Taiwan's freight company.

Comment 15: Allocation of Home Market Royalty Expenses

Petitioner alleges that Chen Hao Taiwan misreported royalty expenses incurred on certain home market sales because it had not properly accounted for advances paid on royalty expenses owed. Petitioner contends that the royalty advance payments should be treated as indirect selling expenses for purposes of the COP test because these expenses were fixed costs and were incurred regardless of the quantity sold.

Chen Hao Taiwan states that the Department verified the actual royalty amount paid and the actual amount of sales subject to royalty during the POI. In addition, Chen Hao Taiwan states that the Department verified that royalties applied only to certain products. Accordingly, Chen Hao Taiwan contends that the Department should continue to treat royalties as a direct expense and use the verified amount for royalty amounts to calculate the actual per-unit royalty expense paid during the POI.

DOC Position. The Department has normally treated royalty expenses as direct expenses when a respondent incurs this expense upon the sale of a product covered under a royalty agreement (see, e.g., *Final Results of Antidumping Duty Administrative Review: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan*, 58 FR 30018, May 25, 1993). Consistent with the royalty agreement on the record, Chen Hao Taiwan incurred a royalty expense liability for home market sales of the specific type of merchandise covered under the agreement, as discussed in the verification report. Chen Hao Taiwan entered into the royalty agreement at the beginning of the POI. Under the terms of the agreement, which are on the

record, certain advance payments were required during the POI. In order to comply with the terms of the agreement, Chen Hao Taiwan paid these amounts even though its sales of the covered products were not at the level at which it would pay the same amount based on royalty percentages in the agreement. However, the agreement states that future royalty expenses incurred may be offset against this advance. Although we verified that Chen Hao Taiwan does not account for these potential future offsets, we verified that Chen Hao was in full compliance with the terms of the agreement. It is clear that the royalty agreement only applies to certain home market sales and that, after this initial "startup" period, its actual royalty expenses will tie directly to the covered sales. Therefore, this expense is properly classified as a direct expense.

Allocating POI expenses over POI sales is not appropriate because, in effect, a portion of the POI expenses is attributable to future sales. The most appropriate allocation of the expenses is to apply the royalty percentage in the agreement, which is how Chen Hao Taiwan reported the expenses, because it reflects the amount of the expense incurred by a particular sale, after taking into account the eventual offset of all advances. In this instance, we are allocating expenses based on the expected eventual royalty expense liability.

Comment 16: Value Added Tax (VAT) on CV Material Costs

Petitioner argues that Chen Hao Taiwan failed to include a 5 percent VAT on its Taiwan material purchases, thus understating the constructed value of each product. Therefore, petitioner contends that CV materials costs should be increased to reflect the VAT.

Chen Hao Taiwan states that it followed the Department's questionnaire instructions and properly reported its material costs exclusive of VAT. Therefore, Chen Hao Taiwan maintains that CV materials costs should not be increased by the VAT amount.

DOC Position. In accordance with section 773(e) the Department's policy is to include in its calculation of CV internal taxes paid on materials unless such taxes are remitted or refunded upon exportation of the finished product into which the material is incorporated (see e.g. *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 60 FR 10552, February 27, 1995). In this case, we observed that Taiwan MIDP companies are able to credit VAT paid

on inputs (whether used for domestically sold or exported MIDPs) against what they owe to the Taiwan government as a result of VAT collected on domestic sales. More importantly, however, where VAT owed was less than VAT paid because exports outpaced domestic sales, the companies received from the government a refund of VAT paid on materials incorporated into exported finished products. As discussed in the Chen Hao Xiamen verification report in the concurrent MIDPs from PRC investigation:

Chen Hao [Taiwan] paid VAT on its Taiwan purchases, which included such items as melamine powder from the principal supplier. Chen Hao also incurred a VAT liability on sales made in Taiwan. Export sales were excluded from this liability, which included the re-sale of the melamine powder to [an affiliated party]. . . . Chen Hao [Taiwan] paid the difference of VAT collected from its Taiwan sales and VAT paid on Taiwan purchases. (November 18, 1996, verification report at pages 8-9, and included on this record in a December 20, 1996, Memorandum to the File.)

Thus, VAT paid on materials incorporated into exported products is refunded by reason of export and therefore is not appropriately included in CV. Accordingly, we have not added VAT to the CV calculation.

Comment 17: Matching of Certain Products

Petitioner claims that Chen Hao Taiwan assigned certain identical products different control numbers used for model matching. In turn, petitioner contends, the Department's model matching program improperly treated these identical products as different products. Petitioner thus argues that the Department should either revise its computer program to ignore Chen Hao Taiwan's control numbers or re-code these products with identical control numbers.

Chen Hao Taiwan responds that the control numbers in question relate to physically different products because some differ in color from the others. Thus, Chen Hao Taiwan contends that the Department should continue to treat the products as different products with unique control numbers.

DOC Position. Petitioner is incorrect with regard to its description of the Department's model matching program. The program does, in fact, ignore control numbers to determine identical or most similar products. Color is not a matching criterion in this investigation; thus, it is appropriate to treat these products, if otherwise identical, as identical products for purposes of

model matching. In one instance cited by petitioner, we note that the Department properly compared home market sales of both products in question to the U.S. sales of this product. In the other instance cited by petitioner, we did not match the U.S. sales to the second model identified by petitioner because the difference in merchandise adjustment for that comparison exceeded the Department's 20 percent threshold.

Comment 18: Yu Cheer Credit Expenses

Petitioner contends that Yu Cheer incorrectly reported payment dates on U.S. sales because, until verification, it did not indicate that it had received payment for at least some sales on multiple dates. Petitioner states that the record contains no explanation of the multiple payment date procedure and no information on how often Yu Cheer's customers use this payment approach. In addition, petitioner alleges that Yu Cheer has also misreported shipment dates, used to calculate credit expenses, because Yu Cheer stated at verification that it sometimes revises shipping documents after shipment, thus calling into question the reliability of its reported information. Therefore, petitioner argues that the home market credit adjustment should be rejected and the U.S. credit expense should be based on the longest credit period for any reported sale as facts available.

Yu Cheer states that its payment and shipment dates were correctly reported, as noted in the verification report. Further, Yu Cheer states that the verification report indicates that the shipment revisions did not affect Yu Cheer's reported shipment dates. Therefore, Yu Cheer contends that the discrepancies cited by petitioner fail to provide any reasonable basis for rejecting Yu Cheer's claimed credit expenses.

DOC Position. We agree with Yu Cheer. Yu Cheer properly reported the elements of its imputed credit expenses and thus we have accepted its claimed imputed credit expenses. As we stated in the verification report, Yu Cheer's shipment revisions do not affect the reported shipment dates. Where appropriate, we have recalculated the credit expense using the corrected payment information obtained at verification.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of MIDPs—

with the exception of those manufactured/exported by Yu Cheer—that are entered, or withdrawn from warehouse, for consumption on or after August 22, 1996, the date of publication of our preliminary determination in the Federal Register. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Chen Hao Taiwan	3.25
Yu Cheer	0.00
IKEA	53.13
Gallant	53.13
All Others	3.25

Pursuant to section 733(d)(1)(A) and section 735(c)(5) of the Act, the Department has not included zero, *de minimis* weighted-average dumping margins, or margins determined entirely under section 776 of the Act, in the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: January 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-754 Filed 1-10-97; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B
SUMMARY DATA

KEY

- TABLE B-1: MELAMINE DINNERWARE, REGARDLESS OF THICKNESS**
TABLE B-2: MELAMINE INSTITUTIONAL DINNERWARE (CORRESPONDS TO COMMERCE'S SCOPE)
TABLE B-3: MELAMINE INSTITUTIONAL DINNERWARE FOR INSTITUTIONAL USE (EXCLUDES PRODUCTS WITHIN COMMERCE'S SCOPE THAT ARE NOT FOR INSTITUTIONAL USE)
TABLE B-4: MELAMINE DINNERWARE FOR NON-INSTITUTIONAL USE (RESIDUAL OF TABLES B-1 AND B-3)
TABLE B-5: MELAMINE DINNERWARE OTHER THAN INSTITUTIONAL (RESIDUAL OF TABLES B-1 AND B-2)
TABLE B-6: POLYCARBONATE DINNERWARE

Table B-1

Melamine dinnerware: Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)									
Item	Reported data					Period changes			
	1993	1994	1995	Jan.-Sept. 1995	1996	1993-95	1993-94	1994-95	Jan.-Sept. 1995-96
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Share of U.S. importers of melamine institutional dinnerware from (1):									
China	***	***	***	***	***	***	***	***	***
Indonesia	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Share of U.S. importers of nonsubject melamine dinnerware (1)	***	***	***	***	***	***	***	***	***
Total importers' share (1)	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Share of U.S. importers of melamine institutional dinnerware from (1):									
China	***	***	***	***	***	***	***	***	***
Indonesia	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Share of U.S. importers of nonsubject melamine dinnerware (1)	***	***	***	***	***	***	***	***	***
Total importers' share (1)	***	***	***	***	***	***	***	***	***
U.S. shipments of imports of melamine institutional dinnerware from--									
China:									
Quantity	***	***	***	***	***	129.5	6.6	115.3	76.3
Value	***	***	***	***	***	166.0	21.9	118.2	66.2
Unit value	\$1.98	\$2.27	\$2.30	\$2.50	\$2.35	15.9	14.4	1.4	-5.7
Ending inventory quantity	***	***	***	***	***	908.5	352.0	123.1	45.0
Indonesia:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Taiwan:									
Quantity	390	***	458	314	260	17.4	***	***	-17.4
Value	989	986	1,344	907	838	35.9	-0.4	36.4	-7.6
Unit value	\$2.54	***	\$2.94	\$2.88	\$3.23	15.7	***	***	11.9
Ending inventory quantity	***	***	***	***	***	98.4	41.3	40.4	-26.1
Subtotal:									
Quantity	685	780	943	636	718	37.6	13.8	20.9	12.8
Value	1,753	1,951	2,628	1,829	2,080	49.9	11.3	34.7	13.7
Unit value	\$2.56	\$2.50	\$2.79	\$2.87	\$2.90	8.9	-2.3	11.5	0.8
Ending inventory quantity	293	425	698	557	645	138.5	45.1	64.3	15.9
U.S. shipments of imports of nonsubject melamine dinnerware:									
Quantity	***	***	***	***	***	-5.4	-23.7	24.1	15.1
Value	***	***	***	***	***	-34.7	-47.3	24.0	46.3
Unit value	***	***	***	***	***	-31.0	-30.9	-0.1	27.1
Total melamine dinnerware import shipments:									
Quantity	***	***	***	***	***	-1.4	-20.3	23.7	14.8
Value	***	***	***	***	***	-25.2	-40.7	26.3	38.7
Unit value	***	***	***	***	***	-24.1	-25.7	2.1	20.8

Table continued on next page.

Table B-1--Continued

Melamine dinnerware: Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

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

Item	Reported data					Period changes			
	1993	1994	1995	Jan.-Sept. 1995	1996	1993-95	1993-94	1994-95	Jan.-Sept. 1995-96
U.S. producers:									
Average capacity quantity	26,188	28,902	27,927	20,605	20,945	6.6	10.4	-3.4	1.7
Production quantity	10,007	13,350	12,525	9,465	8,184	25.2	33.4	-6.2	-13.5
Capacity utilization (1)	38.2	46.2	44.8	45.9	39.1	6.6	8.0	-1.3	-6.9
U.S. shipments:									
Quantity	10,016	13,428	12,558	9,860	7,667	25.4	34.1	-6.5	-22.2
Value	30,281	37,002	35,253	26,970	22,964	16.4	22.2	-4.7	-14.9
Unit value	\$3.02	\$2.76	\$2.81	\$2.74	\$3.00	-7.1	-8.9	1.9	9.5
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	1,954	1,805	1,682	1,346	2,134	-13.9	-7.6	-6.8	58.5
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	441	536	514	489	420	16.6	21.5	-4.1	-14.1
Hours worked (1,000s)	915	1,113	1,085	802	679	18.6	21.6	-2.5	-15.3
Wages paid (\$1,000s)	6,731	8,280	8,068	6,014	5,103	19.9	23.0	-2.6	-15.1
Hourly wages	\$7.36	\$7.44	\$7.44	\$7.50	\$7.52	1.1	1.1	-0.0	0.2
Productivity (pounds per hour)	10.9	12.0	11.5	11.8	12.1	5.6	9.7	-3.8	2.1
Unit labor costs	\$0.67	\$0.62	\$0.64	\$0.64	\$0.62	-4.2	-7.8	3.9	-1.9
Net sales:									
Quantity	10,381	13,757	12,222	10,045	7,732	17.7	32.5	-11.2	-23.0
Value	30,851	38,573	33,498	27,055	23,105	8.6	25.0	-13.2	-14.6
Unit value	\$2.97	\$2.80	\$2.74	\$2.69	\$2.99	-7.8	-5.7	-2.2	10.9
Cost of goods sold (COGS)	21,964	27,567	27,964	21,475	19,519	27.3	25.5	1.4	-9.1
Gross profit or (loss)	8,887	11,006	5,534	5,580	3,586	-37.7	23.8	-49.7	-35.7
SG&A expenses	4,989	6,450	5,910	4,515	4,276	18.5	29.3	-8.4	-5.3
Operating income or (loss)	3,898	4,556	(376)	1,065	(690)	(2)	16.9	(2)	(2)
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	\$2.12	\$2.00	\$2.29	\$2.14	\$2.52	8.1	-5.3	14.2	18.1
Unit SG&A expenses	\$0.48	\$0.47	\$0.48	\$0.45	\$0.55	0.6	-2.4	3.1	23.0
Unit operating income or (loss)	\$0.38	\$0.33	(\$0.03)	\$0.11	(\$0.09)	(2)	-11.8	(2)	(2)
COGS/sales (1)	71.2	71.5	83.5	79.4	84.5	12.3	0.3	12.0	5.1
Operating income or (loss)/ sales (1)	12.6	11.8	(1.1)	3.9	(3.0)	-13.8	-0.8	-12.9	-6.9

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

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

Table B-2

Melamine institutional dinnerware: Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

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

Item	Reported data					Period changes			
	1993	1994	1995	Jan.-Sept. 1995	1996	1993-95	1993-94	1994-95	Jan.-Sept. 1995-96
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Share of U.S. importers from (1):									
China	***	***	***	***	***	***	***	***	***
Indonesia	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Share of U.S. importers from (1):									
China	***	***	***	***	***	***	***	***	***
Indonesia	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. shipments of imports from--									
China:									
Quantity	***	***	***	***	***	129.5	6.6	115.3	76.3
Value	***	***	***	***	***	166.0	21.9	118.2	66.2
Unit value	\$1.98	\$2.27	\$2.30	\$2.50	\$2.35	15.9	14.4	1.4	-5.7
Ending inventory quantity	***	***	***	***	***	908.5	352.0	123.1	45.0
Indonesia:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Taiwan:									
Quantity	390	***	458	314	260	17.4	***	***	-17.4
Value	989	986	1,344	907	838	35.9	-0.4	36.4	-7.6
Unit value	\$2.54	***	\$2.94	\$2.88	\$3.23	15.7	***	***	11.9
Ending inventory quantity	***	***	***	***	***	98.4	41.3	40.4	-26.1
Subtotal:									
Quantity	685	780	943	636	718	37.6	13.8	20.9	12.8
Value	1,753	1,951	2,628	1,829	2,080	49.9	11.3	34.7	13.7
Unit value	\$2.56	\$2.50	\$2.79	\$2.87	\$2.90	8.9	-2.3	11.5	0.8
Ending inventory quantity	293	425	698	557	645	138.5	45.1	64.3	15.9
Other sources:									
Quantity	***	***	***	***	***	(2)	(2)	(2)	***
Value	***	***	***	***	***	(2)	(2)	(2)	***
Unit value	***	***	***	***	***	(2)	(2)	(2)	***
All sources:									
Quantity	***	***	***	***	***	50.0	13.8	31.7	27.6
Value	***	***	***	***	***	59.5	11.3	43.3	64.0
Unit value	***	***	***	***	***	6.3	-2.3	8.8	28.5

Table continued on next page.

Table B-2--Continued

Melamine institutional dinnerware: Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

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

Item	Reported data					Period changes			
	1993	1994	1995	Jan.-Sept. 1995	1996	1993-95	1993-94	1994-95	Jan.-Sept. 1995-96
U.S. producers:									
Average capacity quantity	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000s)	***	***	***	***	***	***	***	***	***
Hourly wages	\$***	\$***	\$***	\$***	\$***	***	***	***	***
Productivity (pounds per hour)	***	***	***	***	***	***	***	***	***
Unit labor costs	\$***	\$***	\$***	\$***	\$***	***	***	***	***
Net sales:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	\$***	\$***	\$***	\$***	\$***	***	***	***	***
Unit SG&A expenses	\$***	\$***	\$***	\$***	\$***	***	***	***	***
Unit operating income or (loss)	\$***	\$***	\$***	\$***	\$***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not applicable.

(3) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

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

Table B-3
Melamine institutional dinnerware for institutional use: Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

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Table B-4
Melamine dinnerware for non-institutional use: Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

Table B-5

Melamine dinnerware (other than institutional): Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)									
Item	Reported data					Period changes			
	1993	1994	1995	Jan.-Sept. 1995	1996	1993-95	1993-94	1994-95	Jan.-Sept. 1995-96
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Share of U.S. importers from (1):									
China	***	***	***	***	***	***	***	***	***
Indonesia	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Share of U.S. importers from (1):									
China	***	***	***	***	***	***	***	***	***
Indonesia	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. shipments of imports from--									
China:									
Quantity	2,951	1,877	2,230	1,419	2,007	-24.4	-36.4	18.8	41.4
Value	8,444	4,236	4,800	2,928	4,126	-43.2	-49.8	13.3	40.9
Unit value	\$2.86	\$2.26	\$2.15	\$2.06	\$2.06	-24.8	-21.1	-4.6	-0.4
Ending inventory quantity	794	920	712	829	875	-10.3	15.9	-22.6	5.7
Indonesia:									
Quantity	0	0	0	0	0	(2)	(2)	(2)	(2)
Value	0	0	0	0	0	(2)	(2)	(2)	(2)
Unit value	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Ending inventory quantity	0	0	0	0	0	(2)	(2)	(2)	(2)
Taiwan:									
Quantity	3,840	3,302	4,112	3,090	3,082	7.1	-14.0	24.5	-0.3
Value	5,397	3,054	4,073	2,997	3,605	-24.5	-43.4	33.4	20.3
Unit value	\$1.41	\$0.92	\$0.99	\$0.97	\$1.17	-29.5	-34.2	7.1	20.6
Ending inventory quantity	1,792	2,604	1,422	1,819	2,718	-20.6	45.3	-45.4	49.4
Subtotal:									
Quantity	6,791	5,179	6,342	4,510	5,089	-6.6	-23.7	22.5	12.8
Value	13,841	7,290	8,873	5,925	7,731	-35.9	-47.3	21.7	30.5
Unit value	\$2.04	\$1.41	\$1.40	\$1.31	\$1.52	-31.4	-30.9	-0.6	15.6
Ending inventory quantity	2,586	3,524	2,134	2,647	3,593	-17.5	36.3	-39.4	35.7
Other sources:									
Quantity	0	0	0	0	0	(2)	(2)	(2)	ERR
Value	0	0	0	0	0	(2)	(2)	(2)	ERR
Unit value	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	ERR
All sources:									
Quantity	6,791	5,179	6,342	4,510	5,089	-6.6	-23.7	22.5	12.8
Value	13,841	7,290	8,873	5,925	7,731	-35.9	-47.3	21.7	30.5
Unit value	\$2.04	\$1.41	\$1.40	\$1.31	\$1.52	-31.4	-30.9	-0.6	15.6

Table continued on next page.

Table B-5--Continued

Melamine dinnerware (other than institutional): Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where not)								
Item	Reported data					Period changes		
	1993	1994	1995	Jan.-Sept. 1995	1996	1993-95	1993-94	1994-95
U.S. producers:								
Average capacity quantity	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***	***	***
U.S. shipments:								
Quantity	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***	***	***	***
Export shipments:								
Quantity	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***
Wages paid (\$1,000s)	***	***	***	***	***	***	***	***
Hourly wages	\$***	\$***	\$***	\$***	\$***	***	***	***
Productivity (pounds per hour)	***	***	***	***	***	***	***	***
Unit labor costs	\$***	\$***	\$***	\$***	\$***	***	***	***
Net sales:								
Quantity	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***
Unit COGS	\$***	\$***	\$***	\$***	\$***	***	***	***
Unit SG&A expenses	\$***	\$***	\$***	\$***	\$***	***	***	***
Unit operating income or (loss)	\$***	\$***	\$***	\$***	\$***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not applicable.

(3) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

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

Table B-6

Polycarbonate dinnerware: Summary data concerning the U.S. market, 1993-95, Jan.-Sept. 1995, and Jan.-Sept. 1996

* * * * *

APPENDIX C
CALENDAR OF THE PUBLIC HEARING

CALENDAR OF HEARING

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

Subject: MELAMINE INSTITUTIONAL DINNERWARE FROM
CHINA, INDONESIA, AND TAIWAN

Invs. Nos.: 731-TA-741-743 (Final)

Date and Time: January 9, 1997 - 9:30 a.m.

Sessions were held in connection with the investigations in the Main Hearing Room (Room 101), 500 E Street, S.W., Washington, D.C.

In Support of the Imposition of Antidumping Duties:

Baker and McKenzie
Washington, DC
on behalf of

American Melamine Institutional Tableware Association ("AMITA")

Robert K. Parmacek, Chairman and Chief Executive Officer, Carlisle FoodService Products
Dave Shannon, Jr., Vice President and General Manager, Carlisle FoodService Products
Earl Moore, President, National Plastics Corporation
Eddie Lesok, President and CEO, SunCoast Industries, Inc.
Claude A. Brewer, III, Vice President for Sales, SunCoast Industries, Inc.

Kevin M. O'Brien--OF COUNSEL

Brian Kelly, President, Brian Kelly, Incorporated

In Opposition to the Imposition of Antidumping Duties:

White and Case
Washington, D.C.
on behalf of

Tar-Hong Melamine Company, Limited
Tar-Hong Melamine USA, Incorporated
Tar-Hong Melamine Xiamen Company, Limited
Chen Hao Plastic Industrial Company, Limited
Chen Hao (Xiamen) Plastic Industrial Company, Limited
Taiwan Melamine Products Industrial Company, Limited
Gin Harvest Enterprises Company, Limited
Gin Harvest Melamine (Heyuan) Enterprises Company, Limited
Yu Cheer Industrial Company, Limited
Sam Choan Plastic Industrial Company, Limited
P.T. Multi Raya Indah Abadi

Edmund W. Sim)--OF COUNSEL

APPENDIX D
PRICING DATA FOR MELAMINE DINNERWARE
REPORTED BY U.S. PRODUCERS¹

¹ This appendix presents data reported by U.S. producers for sales of both institutional and retail product. Only data for product 1 is presented since no data were reported for sales of retailware conforming to the other 3 product categories.

Table D-1

Melamine dinnerware: Weighted-average net delivered prices and quantities for sales to unrelated U.S. customers for product 1¹ reported by U.S. producers, by quarters, Jan. 1993-Sept. 1996.

Period	Retail Product ²			Institutional Product		
	Net delivered price	Quantity	Co. ³	Net delivered price	Quantity	Co. ³
	<i>Per dozen</i>	<i>Dozen</i>		<i>Per dozen</i>	<i>Dozen</i>	
1993:						
January-March.....	\$***	***	***	\$19.13	16,964	3
April-June.....	***	***	***	17.23	31,642	3
July-September.....	***	***	***	18.22	37,569	3
October-December....	***	***	***	19.71	21,724	3
1994:						
January-March.....	***	***	***	20.43	20,435	3
April-June.....	***	***	***	21.19	22,477	3
July-September.....	***	***	***	19.17	28,702	3
October-December....	***	***	***	19.89	20,391	3
1995:						
January-March.....	***	***	***	22.29	19,953	3
April-June.....	***	***	***	21.11	22,129	3
July-September.....	***	***	***	20.13	25,602	3
October-December....	***	***	***	23.00	17,315	3
1996:						
January-March.....	***	***	***	19.70	15,448	3
April-June.....	***	***	***	21.22	18,275	3
July-September.....	***	***	***	18.90	26,575	3

¹ 8-7/8" to 9-3/4" plate, minimum weight 143g. The retail product reported does not necessarily meet the minimum weight specification.

² One producer of retailware sells to exclusively to an OEM.

³ Number of companies reporting data.

Note.--Percentage margins are calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded figures in the table.

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

APPENDIX E

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

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

1. Since January 1, 1993, has your firm experienced any actual negative effects on its return on investment or its employment, growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of investments as a result of imports of melamine institutional dinnerware from China, Indonesia, and/or Taiwan?

Carlisle--***.

NPC--***.

Sun Coast--***.

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

Carlisle--***.

NPC--***.

Sun Coast--***.

APPENDIX F
COMPAS ANALYSIS

ASSUMPTIONS

The COMPAS model is a supply and demand model that assumes that domestic and imported products are less than perfect substitutes. Such models, also known as Armington models, are relatively standard in applied trade policy analysis and are used extensively for the analysis of trade policy changes both in partial and general equilibrium. Based on the discussion contained in part II of this report, the staff selects a range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e., supply elasticity, demand elasticity, and substitution elasticity) in the U.S. melamine institutional dinnerware market. The model uses these estimates with data on market shares,¹ Commerce's estimated margin of dumping, transportation costs, and current tariffs to analyze the likely effect of unfair pricing of subject imports on the U.S. like product industry.

FINDINGS

The estimated effects of the LTFV pricing of imports on U.S. production of melamine institutional dinnerware (in percent) are as follows:

	<u>Revenue</u>	<u>Price</u>	<u>Volume</u>
For melamine dinnerware for institutional use:			
China	0.1 to 0.2	0.0	0.1
Taiwan	0.3 to 0.6	0.0 to 0.1	0.2 to 0.5
Indonesia.	<u>0.4 to 1.0</u>	<u>0.0 to 0.2</u>	<u>0.4 to 0.9</u>
Subtotal	0.8 to 1.8	0.0 to 0.3	0.7 to 1.5
For melamine dinnerware for non-institutional use: ²			
China	0.2 to 0.4	0.0 to 0.1	0.1 to 0.3
Taiwan.	<u>0.1 to 0.2</u>	<u>0.0</u>	<u>0.1</u>
Subtotal	0.3 to 0.6	0.0 to 0.1	0.2 to 0.4
TOTAL:	1.1 to 2.4	0.0 to 0.4	0.9 to 1.9

More detailed effects of the dumping and the modeling assumptions used for the full range of scenarios are shown in tables F-1 to F-5.

¹ There are several problems with the market share data. Importer questionnaires were sent only to companies listed as importers of record for products in the relevant HTS categories from China, Taiwan, and Indonesia, therefore subject imports from non-subject countries are believed to be understated. Moreover, it is likely that subject imports intended for non-institutional use are understated because many importers of such products may have failed to respond to the questionnaire based on the mistaken assumption that it requested data only on imports for institutional use. Similarly, it is likely that some subject imports have been misclassified as non-subject as questionnaire respondents may have classified data based on end use as opposed to thickness.

² All melamine dinnerware from Indonesia is for institutional use.

Table F-1

The effects of LTFV pricing of subject imports from China for institutional use

* * * * *

Table F-2

The effects of LTFV pricing of subject imports from Taiwan for institutional use

* * * * *

Table F-3

The effects of LTFV pricing of subject imports from Indonesia for institutional use

* * * * *

Table F-4

The effects of LTFV pricing of subject imports from China for non-institutional use

* * * * *

Table F-5

The effects of LTFV pricing of subject imports from Taiwan for non-institutional use

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