

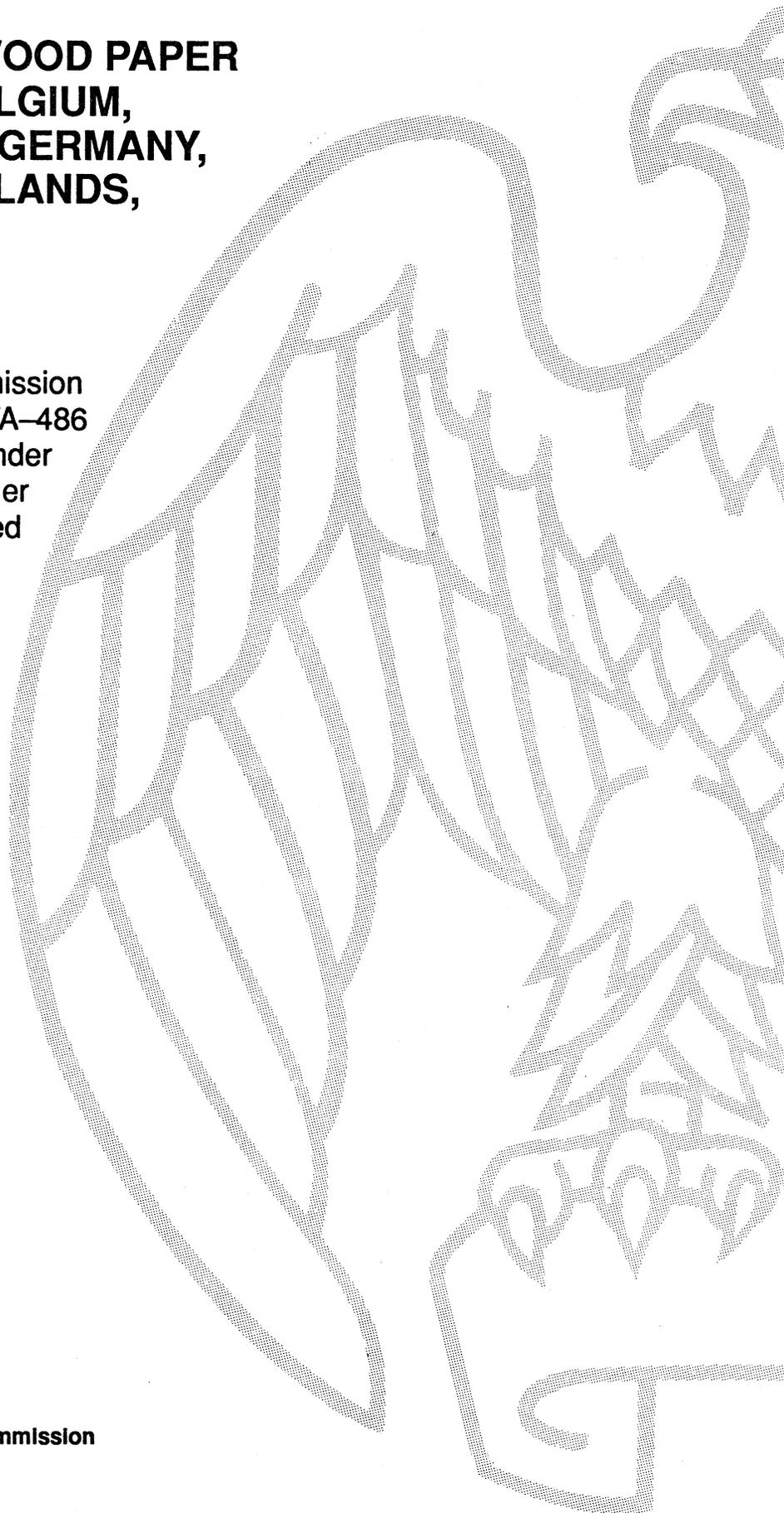
**COATED GROUNDWOOD PAPER
FROM AUSTRIA, BELGIUM,
FINLAND, FRANCE, GERMANY,
ITALY, THE NETHERLANDS,
SWEDEN, AND THE
UNITED KINGDOM**

Determinations of the Commission
in Investigations Nos. 731-TA-486
through 494 (Preliminary) Under
the Tariff Act of 1930, Together
With the Information Obtained
in the Investigations

USITC PUBLICATION 2359

FEBRUARY 1991

United States International Trade Commission
Washington, DC 20436



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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-486 through 494 (Preliminary)

COATED GROUNDWOOD PAPER FROM AUSTRIA, BELGIUM, FINLAND, FRANCE,
GERMANY, ITALY, THE NETHERLANDS, SWEDEN, AND THE UNITED KINGDOM

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Belgium, Finland, France, Germany, and the United Kingdom of coated groundwood paper,³ provided for in subheadings 4810.21.00 and 4810.29.00 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be sold in the United States at less than fair value (LTFV).

Further, on the basis of the record¹ developed in the subject investigations, the Commission determines,⁴ pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in

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

² Vice Chairman Brunsdale dissenting.

³ For purposes of these investigations, coated groundwood paper is paper (excluding paperboard) used for writing, printing, or other graphic purposes, coated on both sides with kaolin (China clay) or other inorganic substances, and of which more than 10 percent by weight of the total fiber content consists of fibers obtained by a mechanical process.

⁴ Commissioner Lodwick dissenting with respect to Italy, the Netherlands, and Sweden.

the United States is materially retarded, by reason of imports from Austria, Italy, the Netherlands, or Sweden of coated groundwood paper, provided for in subheadings 4810.21.00 and 4810.29.00 of the HTS, that are alleged to be sold in the United States at LTFV.

Background

On December 28, 1990, a petition was filed with the Commission and the Department of Commerce by the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, New York, NY, and each of its individual members, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of coated groundwood paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom. Accordingly, effective December 28, 1990, the Commission instituted preliminary antidumping investigations Nos. 731-TA-486 through 494 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 4, 1991 (56 F.R. 444). The conference was held in Washington, DC, on January 18, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

..... VIEWS-OF COMMISSIONER LODWICK, COMMISSIONER ROHR,
AND COMMISSIONER NEWQUIST

On the basis of the information obtained in these preliminary investigations, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of coated groundwood paper from Belgium, Finland, France, Germany, and the United Kingdom that are allegedly sold at less than fair value (LTFV). We also determine that there is no reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of alleged LTFV imports of coated groundwood paper from Austria, Italy, the Netherlands, and Sweden.¹

I. Like Product

In order to determine whether there is "material injury" or "threat of material injury," to a domestic industry, the Commission must first define the parameters of the "domestic industry." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."² "Like product" is defined as a "product that is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation."³

The Commission's decision regarding the appropriate like product in an investigation is essentially a factual determination, and the Commission has

¹ Commissioner Lodwick does not join the majority determination, and makes an affirmative determination, with respect to imports from the Netherlands, Sweden, and Italy. See Additional Views of Commissioner Lodwick.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10).

applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. In analyzing like product issues, the Commission generally considers a number of factors relating to characteristics and uses including (1) physical appearance, (2) interchangeability, (3) channels of distribution, (4) customer perception, (5) common manufacturing facilities and production employees, and, where appropriate, (6) price.⁴ No single factor is necessarily dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Generally the Commission disregards minor variations between the articles subject to an investigation, and requires "clear dividing lines among possible like products."⁵

The imported article subject to these investigations is coated groundwood paper. Coated groundwood paper is "paper coated on both sides with kaolin (China clay) or other inorganic substances (e.g., calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes. . . ."⁶ All coated groundwood paper is included in the scope of the investigation regardless of basis

⁴ Torrington Co. v. United States, Slip Op. 90-90 at 10 (CIT Sept. 11, 1990); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1168 n.4, 1180 n.7 (1988) (Asocoflores); 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Final), USITC Pub. 2170 at 7-8 (March 1989).

⁵ Certain Telephone Systems and Subassemblies Thereof from Japan, Korea and Taiwan, Inv. Nos. 731-TA-426-428 (Preliminary), USITC Pub. 2156 at 4 n. 4 (February 1989)(citing Asocoflores, 692 F. Supp. at 1170 n. 8).

⁶ Department of Commerce Notice of Initiation, 56 Fed. Reg. 2900 (January 17, 1991); see Report of the Commission (Report) at Appendix A.

weight,⁷ GE brightness,⁸ and the form in which the paper is sold (rolls, sheets, or other forms).⁹

Petitioner urges the Commission to find a single like product coextensive with the scope of the investigations. The Respondent Producers and the European Paper Institute (EPI) agree that the differences in weight, brightness, or form do not support a finding of separate like products.¹⁰ They do, however, assert that the like product in these investigations should be expanded to include not only coated groundwood paper, but also coated "free sheet" and uncoated "supercalendered paper."¹¹ These two additional categories allegedly fall at the high end and low end, respectively, of the "commercial print paper" spectrum.

Supercalendered paper is distinguished from coated groundwood paper primarily because it is uncoated paper. Instead of having a clay coating, it is clay-filled. As a result, it has inferior color clarity and gloss, compared to coated groundwood paper. Coated free sheet is distinguished from coated groundwood paper primarily because of the difference in raw material. Coated free sheet is produced from a minimum of 90 percent chemical pulp, whereas the raw material used to produce coated groundwood paper is more than

⁷ Basis weight is the number of pounds per ream or grams per one square meter sheet of paper. Postconference Brief of Petitioner at 7, n. 7; Report at A-4.

⁸ GE brightness refers to the ability, in percentage terms, of paper to reflect light. Thus, a GE brightness of 77.0 indicates that the paper will reflect 77 percent of projected light. Postconference Brief of Petitioner at 8, n. 8; Report at A-4.

⁹ Report at Appendix A.

¹⁰ Postconference Brief of EPI at 119-20.

¹¹ Postconference Brief of EPI at 115-139.

10 percent mechanical/groundwood pulp.¹² Because of the difference in raw material, free sheet is generally stronger, heavier, and brighter than groundwood paper.¹³

The physical distinctions between the three types of commercial print paper have traditionally led to distinctions in their characteristics and uses.¹⁴ Respondents argue, however, that the traditional distinctions among uncoated supercalendered, coated groundwood, and coated free sheet have diminished over time and that, currently, there are no clear dividing lines separating them.¹⁵ As a result, respondents assert that supercalendered paper, at the low end, and coated free sheet, at the high end, compete directly with coated groundwood paper. The extent of that overlapping competition, however, is apparently marginal.¹⁶

Industry witnesses testified at the conference that the three types of commercial printing paper have distinct end uses determined by their particular characteristics.¹⁷ The different raw material mix used in producing coated free sheet results in a considerably heavier, stronger, brighter, and longer-lasting paper than coated groundwood. Industry witnesses

¹² See Report at A-3-A-4. Petitioner alleges that the percentage is virtually always in excess of 30 percent groundwood pulp. Postconference Brief of Petitioner at 7.

¹³ See Report at A-3-A-5.

¹⁴ Postconference Brief of EPI at 131; Transcript of Conference (Tr.) at 158-60.

¹⁵ Postconference Brief of EPI at 131, n. 93.

¹⁶ Report at A-23-A-24.

¹⁷ Tr. at 15-25. In this regard, petitioner noted the lack of any industry witnesses to support the respondents' broader like product argument. Tr. at 218.

asserted that free sheet is uniquely suited for end uses such as premium quality magazines, corporate annual reports, "coffee table" books and the like. They also stated that free sheet is better suited for advertising of luxury items, such as jewelry, where the brightness and print quality are critical to marketing. Coated groundwood paper's different raw material composition apparently causes it to discolor over time and it is therefore not suitable for a document, magazine, or book requiring a long shelf life. The difference between coated free sheet and coated groundwood paper is also reflected in price differential in the range of 10 to 25 percent.

While both free sheet and groundwood paper are coated products and are processed on similar machinery, there is very limited flexibility for shifting production between the two products.¹⁸ Practical problems in production design and cost considerations severely limit the ability to shift production in the short term. As a result, coated free sheet and coated groundwood paper are produced on discreet, dedicated paper machines. The record indicates that there is only one "swing" machine operational in the United States that is capable of producing coated groundwood paper and free sheet without significant down time and major retooling.¹⁹

With regard to supercalendered paper, since it is an uncoated product, the production process is necessarily different. Moreover, given the differences in the production processes, the ability to shift production is even more limited than with free sheet and would require even more financial investment and alteration of equipment. There are no "swing" machines capable of producing coated groundwood paper and supercalendered paper.

¹⁸ See Report at A-7.

¹⁹ Report at A-7.

The lack of a coating results in a product that is duller than coated groundwood paper and more closely resembles newsprint. Its color clarity is also inferior to coated groundwood paper. Further, the end uses for supercalendered paper are limited to short-lived, throwaway publications such as children's workbooks and newspaper inserts. The differences between supercalendered paper and coated groundwood paper are also reflected in significant price differences (up to \$100 per ton).²⁰

In light of the foregoing, we find that the like product in these investigations is coated groundwood paper, and that the domestic industry is comprised of the domestic producers of coated groundwood paper.²¹ Virtually all of the factors traditionally relied upon by the Commission support this determination. Domestic coated groundwood paper is identical to the imported product and differs from supercalendered paper and coated free sheet in its physical characteristics and end uses. Coated groundwood paper is not generally interchangeable with supercalendered paper or coated free sheet, as each have their own relatively distinct applications.²² Thus, purchasers reported that they did not substitute either supercalendered paper or coated free sheet for coated groundwood paper.²³ Moreover, customers generally perceive that the three types of commercial printing paper are different products with different end uses.²⁴ The differences in the products are also

²⁰ Postconference Brief of Petitioner at 17-22.

²¹ There are no domestic industry issues, such as related parties, in these investigations other than the definition of the like product.

²² Report at A-4-A-5.

²³ Report at A-24.

²⁴ Report at A-4-A-5.

apparent in the different, although related, prices that they command in the market.²⁵ To the extent that there is any overlap between coated groundwood paper and supercalendered paper or coated free sheet, that overlap is marginal and limited to the low end and high end, respectively, of the coated groundwood paper spectrum. Furthermore, the products are produced on separate machinery and equipment and there is very little if any practical ability to readily shift production from one type to the other. Further, coated groundwood paper goes through a different process than does supercalendered paper and is made from different raw materials than is coated free sheet.²⁶

II. Condition of the domestic industry

In determining the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, domestic production, capacity, capacity utilization, shipments, inventories, employment, market share, domestic prices, profitability, the ability to raise capital, and investment.²⁷ In addition, the Commission evaluates all of these factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."²⁸

²⁵ Report at A-23-A-25.

²⁶ Report at A-3, A-7. Workers, however, are often trained to work on all kinds of paper machinery. Report at A-9. Further, all types of paper products are marketed through the same channels of distribution (direct sales to printers and brokers), including but not limited to the three types that respondents suggest constitute one like product. This factor, however, supports a like product even broader than that suggested by respondents and would include other products such as newsprint and uncoated groundwood paper. This one factor alone does not provide a sufficient basis to overcome the combination of the other factors, discussed above, which suggest that the like product be defined as domestic coated groundwood paper.

²⁷ 19 U.S.C. § 1677(7)(C)(iii).

²⁸ 19 U.S.C. § 1677(7)(C)(iii).

In these investigations the Commission collected data for the period 1987 through September of 1990. Petitioner suggested that the period of investigation be expanded to include a nine-year period beginning in 1981 based upon the alleged existence of a nine-year "business cycle."²⁹ The allegedly unique business cycle is based upon the relationship between pricing and investment in this industry. Petitioner asserts that the extraordinary sensitivity of domestic prices and the extreme capital intensity of the industry have resulted in a cycle of increasing prices followed by significant investment in expanded capacity that, in turn, is followed by declining prices until increases in demand forces prices to rise again. Since the domestic industry allegedly is the lowest-cost producer in the world, imports have historically only entered the market at times of increasing demand and only at higher prices. Once domestic capacity has expanded to meet increased demand,

²⁹ Postconference Brief of Petitioner at 23-27. Petitioner cites Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-461 (Preliminary), USITC Pub. 2297 at 23-25 (Views of Commissioner Lodwick) (July 1990) as support for their suggestion that the Commission should expand the period of investigation to nine years. Petitioner, however, misreads this opinion. The Commission did not expand the period of investigation in the Cement from Japan investigation. In fact, the petitioner in that case sought expansion of the period of investigation to 15 years. This was not adopted by any Commissioner. The Commission did have four years of data available, and used that data, because of a concurrent final investigation involving cement from Mexico. In Certain Brass Sheet and Strip from Japan and the Netherlands, Inv. Nos. 731-TA-379-380 (Final), USITC Pub. 2099 (July 1988), the Commission had four years' worth of data available for its analysis, but the Commission did not determine to expand the period of investigation to include a full business cycle. Data were collected in the preliminary for 1984-1986 and interim 1987. The final investigation took place in 1988, so full year 1987 data were then available. In this regard, the comment of Commissioner Rohr in Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Inv. Nos. 731-TA-379, 701-TA-287 (Final), USITC Pub. 2103 at 6, n. 11 (August 1988) is instructive. In that case, Commissioner Rohr noted that, while the Commission collected four years worth of data due to the length of time between the preliminary and the final, the use of the extra data was of "no particular added significance," and that the "Commission has frequently taken note of data outside this normal three year period when it possesses such information from prior cases or other sources."

prices begin to decline and imports disappear from the market.³⁰ Petitioner asserts that a review of the industry data over the last nine years clearly illustrates the existence of this cycle, but that, in recent years, imports have altered the cycle by remaining in the market and exacerbating the price decline during the downturn in the business cycle. This has allegedly resulted in lower rates of return and to the domestic industry and an inability for the industry to make needed investment.

We believe that petitioner's business cycle argument is both factually and legally flawed. As a factual matter, the evidence available to the Commission at this time does not support a finding of a nine-year cycle. In order to establish the existence of a cycle, it is fundamental that the alleged cycle must have occurred repeatedly. The period proffered by petitioner does not include a sufficient period for such repeated cycles to be manifest. Further, a cycle must be internally complete, i.e., the time period should run from peak-to-peak or trough-to-trough. Petitioners proposed business "cycle" merely runs from what is alleged to be the year of lowest market penetration by subject imports to what is alleged to be the year of highest market penetration.

As a legal matter, the existence of a business cycle does not require a different period of investigation, it merely requires the Commission to evaluate the data that it normally collects in the context of the phase of the business cycle that is occurring during the period of investigation. The Commission's determination focuses on the current condition of the domestic

³⁰ Postconference Brief of Petitioner at 44-47.

industry.³¹ Nonetheless, to the extent that data from earlier periods provides useful background upon which to evaluate the current condition of the domestic industry, the Commission will evaluate such data.³² The Commission is not required, however, to expand the period of investigation and collect a complete series of data dating from 1981 or any earlier period.³³

Turning now to the data relevant to an assessment of the condition of the domestic industry, apparent domestic consumption of coated groundwood paper has been rising throughout the period of investigation.³⁴ In January-September 1990, apparent consumption increased by 7.2 percent in quantity, compared with January-September 1989.³⁵

Aggregate domestic capacity to produce coated groundwood paper increased by four percent from 1987 to 1989, and increased by another three percent in interim 1990. At least six producers, however, reported that they have either cancelled or deferred plans to increase capacity.³⁶

Increases in domestic production slightly outpaced capacity increases

³¹ See Chaparral Steel v. United States, 901 F.2d 1097, 1104 (Fed. Cir. 1990) ("The injury requirement mandates a determination whether an industry suffers present material injury.") (emphasis in original).

³² See 19 U.S.C. § 1677(7)(C)(iii).

³³ Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 735 (CIT 1989) ("Commission has the discretion to determine the appropriate periods of investigation."); Kenda Rubber Industrial Co. v. United States, 630 F. Supp. 354, 359 (CIT 1986) ("Commission has the discretion to examine a period that most reasonably allows it to determine whether a domestic industry is injured by LTFV imports").

³⁴ Report at A-20.

³⁵ Apparent consumption figures are not available for 1987 and 1988 due to the lack of disaggregated data regarding imports from Canada. It is generally agreed, however, that consumption has been rising over the entire period of investigation. See Report at A-20.

³⁶ Report at A-7 and Appendix E.

during the period of investigation, resulting in an irregular increase in capacity utilization. Production increased from 3.4 million tons in 1987 to 3.7 million tons in 1989. Production continued to increase in interim 1990. Given the industry practice not to maintain significant inventories, domestic shipments were virtually identical to domestic production and followed the same trends.³⁷

Capacity utilization increased from 87.8 percent in 1987 to 93.5 percent in 1988, then declined to 91.1 percent in 1989, before increasing again to 92.2 percent in interim 1990, compared with 90.4 percent in interim 1989. While the utilization rates may be high compared to other industries, the record indicates that the coated groundwood paper industry is highly capital intensive and the market is extremely competitive. Thus, utilization rates in excess of 90 percent are the norm for both the domestic and foreign producers as firms seek to maximize economies of scale and reduce their fixed costs per unit of output.³⁸

Overall employment in the domestic industry has remained relatively stable throughout the period of investigation, changing less than one percent from 1987 to interim 1990. Hours worked also remained relatively stable. Total compensation and hourly compensation, however, steadily increased.³⁹

The available data indicate that subject imports are growing at a faster rate than domestic production and that domestic market share is declining. The ratio of subject imports to domestic production has increased steadily during the period of investigation, rising from 6.6 percent in 1987 to 7.9

³⁷ Report at A-8-A-9, and Table 4.

³⁸ Report at A-8, Table 4.

³⁹ Report at A-9, Table 5.

percent in 1988, and further to 9.1 percent in 1989. The increase continued in interim 1990 reaching 9.9 percent, compared with 9.1 percent for interim 1989.⁴⁰

Domestic prices for coated groundwood paper generally increased in 1988 and early 1989, but declined in late 1989 and 1990, notwithstanding continued increases in apparent consumption.⁴¹

The financial indicators of U.S. producers also experienced a downturn in 1989 and interim 1990.⁴² While net sales increased steadily throughout the period, operating income as a percentage of net sales peaked in 1988 at 18.5 percent, before declining to 15.0 percent in 1989, and again to 10.1 percent

⁴⁰ See Report at A-23, Table 16. Absent complete data regarding apparent consumption for 1987 and 1988, it can be inferred from the increase in the ratio of subject imports to domestic production, and the acknowledged increase in imports from Canada, that domestic market share is declining.

⁴¹ Report at A-27.

⁴² Petitioner suggested, citing earlier Commission determinations, that the Commission use market price for pulp, rather than cost, in determining the financial condition of the domestic industry. As is stated in the report, generally accepted principles of accounting dictate the use of the lower of cost or market price in such situations. Report at A-10, and Appendix D. The lower figure in this case is cost and that is the figure which we rely upon. Further, the petitioner's citations to prior Commission practice do not stand up to close scrutiny. For example, their reference to Stainless Steel Pipe and Tube From Sweden, 701-TA-281 (Final), USITC Pub. 1966 at 9, n. 21 (April 1987) fails to mention that then Vice Chairman Brunsdale's footnote rejected internal transfer prices in favor of market prices because those internal prices were higher than market prices, not lower. In fact, the Commission's skepticism regarding transfer prices is based upon a concern that they will be inflated over market price for the purpose of demonstrating operating losses. Further, in Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Inv. Nos. 731-TA-379, 701-TA-287 (Final), USITC Pub. 2103 at 9-11 (August 1988), the Commission had no data because of the narrow product definition and had to construct the data on its own. In the present investigation, the Commission has both cost and market price data available for the product subject to investigation and the cost data is lower than the market price data. Therefore, we use the cost-based data. Regardless of the method of accounting used, however, the trends in profitability remain the same.

in interim 1990, compared with 15.2 percent in interim 1989.⁴³ Further, two domestic producers began to show operating losses in interim 1990. The operating return on assets for the coated groundwood paper industry followed a similar trend as that of operating income, increasing from 6.2 percent in 1987 to 14.2 percent in 1988, but declining to 10.4 percent in 1989, and continuing to decline to 6.8 percent in interim 1990, compared with 10.5 percent in interim 1989.⁴⁴

Capital expenditures by the domestic coated groundwood paper industry increased from \$177 million in 1987 to \$430 million in 1988, and then to \$505 million in 1989, before declining sharply to \$158 million in interim 1990, compared with \$377 million in interim 1989.⁴⁵ Several domestic producers indicated that they had deferred plans to expand capacity during the period of investigation, citing declining operating rates, declining prices, and anticipated increased competition from European imports.⁴⁶

⁴³ Report at A-12, Table 7. We note, however, that operating income did increase irregularly over the period of investigation as a whole. Moreover, evidence taken from the annual reports of domestic producers indicates that 1988 may have been the best year in the history of the coated groundwood paper industry, with 1989 a close second. Report at Appendix C. Should any final investigation occur, the Commission will further explore the significance of these profitability levels, which appear to be high for a capital intensive industry operating in a highly price competitive domestic market. The Commission will also examine the relationship, if any, of those changes in profitability to whatever business cycle may exist for coated groundwood paper. In addition, we will examine the relationship between changes in costs, and the reasons for those changes, and changes in profitability.

⁴⁴ Report at A-14, Table 10.

⁴⁵ Report at A-15, Table 11. Research and development expenses increased irregularly during the period of investigation. Report at A-15.

⁴⁶ See Petition at Exhibit 19; Report at Appendix E. Should any final investigation occur, we will examine further the extent to which planned capacity expansion was realistic, given relatively steady increases in consumption of approximately five percent per year. Given the utilization
(continued...)

Based upon the data available in these investigations, we find a reasonable indication that the domestic industry is materially injured. The financial condition of the domestic industry has deteriorated in 1989 and interim 1990. While apparent consumption has grown steadily, increases in production, shipments, and net sales have not kept pace. Further, investment has declined dramatically in interim 1990 and plans to expand capacity have been deferred.

III. Cumulation, competition, and the negligible imports exception

In determining whether there is material injury by reason of the LTFV imports, the Commission is required to cumulatively assess the volume and effect of imports from two or more countries subject to investigation if such imports are reasonably coincident with one another and compete with one another and with the domestic like product in the United States market,⁴⁷ unless imports from a subject country are negligible and have no discernable adverse impact on the domestic industry.⁴⁸ In determining whether there is a threat a of material injury by reason of LTFV imports, cumulation is discretionary.⁴⁹

⁴⁶(...continued)

rates common throughout the industry and the significant expense involved in expanding capacity, it may be the case that all the planned expansion would not have taken place in any event as that would have led to a capacity increase of approximately 50 percent. See Exhibit 9 B to the Conference Testimony of Bruce Malashevich (Table 5, Actual Capacity v. Proposed Capacity Cancelled).

⁴⁷ 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

⁴⁸ 19 U.S.C. § 1677(7)(C)(v).

⁴⁹ 19 U.S.C. § 1677(7)(F)(iv). A discussion of the additional cumulation factors that the Commission should consider in the context of a threat determination is presented separately below.

A. The competition requirement

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

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.⁵⁰

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.⁵¹ Furthermore, only a "reasonable overlap" of competition is required.⁵²

⁵⁰ 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 (CIT 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁵¹ See Wieland Werke, AG v. United States, 718 F.Supp. 50 (CIT 1989); Granges Metallverken AB v. United States, 716 F.Supp. 17 (CIT 1989); Florex v. United States, 705 F.Supp. 582 (CIT 1989).

⁵² See Wieland Werke, AG v. United States, 718 F.Supp. 50, 52 (CIT 1989) ("Completely overlapping markets are not required."); Granges Metallverken AB v. United States, 716 F.Supp. 17, 21, 22 (CIT 1989) ("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and all domestic like products . . . the Commission need only find evidence of reasonable overlap in

(continued...)

Petitioner argues that the imports from all nine subject countries -- Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom -- should be cumulated in these investigations.⁵³

Petitioner asserts that each of the four criteria enumerated above is met in the present case. First, it relies on testimony of industry witnesses at the conference to establish that the coated groundwood paper sold by the European and domestic producers is essentially a fungible commodity. Second, it declares that the subject imports and domestic like product compete in the same geographical markets. Third, it asserts that the both imported and domestic coated groundwood paper are sold through common channels of trade.⁵⁴ Finally, it states that each of the nine subject countries has exported coated groundwood paper to the United States during the investigation period.⁵⁵

Petitioner asserts that these factors support a finding of a "reasonable overlap" of competition and, thus, require the cumulation of the imports from all nine subject countries.

Producers in four of the countries under investigation -- Italy, the Netherlands, Austria, and Sweden -- contest the petitioner's first point and argue that their exports of coated groundwood paper do not compete with the

⁵²(...continued)
competition"); Florex v. United States, 705 F.Supp. 582, 592 (CIT 1989)
("[c]ompletely overlapping markets is [sic] not required.").

⁵³ Postconference Brief of Petitioner at 47.

⁵⁴ Both the domestic and imported products are sold through agents, brokers, and merchants, as well as directly to printers and publishers. Report at A-24-A-26. Further, some of the European producers use common brokers and agents to sell their product in the domestic market.

⁵⁵ Postconference Brief of Petitioner at 48-50.

domestic like product, and therefore should not be cumulated.⁵⁶ No other producers or respondents argue that their product does not compete with other imports or with the domestic like product.

Burgo, the Italian manufacturer, states that two-thirds of Italian imports during the investigation period were coated groundwood paper in sheet form, not in rolls, the form in which all domestically-produced groundwood paper is allegedly produced.⁵⁷ KNP, the sole producer of coated groundwood paper in the Netherlands, alleges that all of its exports to the United States consist of sheets. Burgo and KNP argue that sheet is different from, and not competitive with, roll for a number of reasons. The most pertinent grounds for differentiation are that printing presses that use sheet are different from those that use roll,⁵⁸ sheet and roll are allegedly sold through

⁵⁶ All parties apparently are in agreement that, in general, imports of coated groundwood paper from the various countries compete with one another and with the domestic like product. The arguments of certain respondents are limited to certain alleged specialty products and their alleged lack of domestic competition. The evidence of record persuades us that coated groundwood paper of particular grades is essentially a fungible product, regardless of the country of origin, with very little product differentiation and very little difference in price. Report at A-34-A-36. Thus our competition discussion is limited to the three allegedly "special" products and their competition with coated groundwood paper in general, regardless of country of origin. These three special products are coated groundwood paper in sheet form, non-bleached coated groundwood paper, and start-up tonnage.

⁵⁷ Postconference Brief of Burgo at 4. Even if respondents' argument regarding sheet is factually correct, however, it only applies to two-thirds of its U.S. exports. The remaining one-third is roll that does compete with the domestic and imported products. Even if we determined that sheet does not compete with roll, we would still have to determine whether or not there is a "reasonable overlap" in competition, because one-third of Burgo's U.S. imports are competitive. See Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (CIT), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁵⁸ Postconference Brief of Burgo at 8. Rolls are used in web offset or rotogravure presses, while sheets are used in sheet fed offset printers. Id.

different channels of distribution,⁵⁹ and the end user markets allegedly are different.⁶⁰ Petitioner asserts that sheet and roll are competitive and are similar in characteristics and uses. We determine that, while sheet and roll are similar in their general characteristics and uses, they are not readily interchangeable given the differences in the machinery required to print with sheet and with roll, and the apparent differences in end uses. Thus, the competition between sheet and roll is attenuated.

Burgo and KNP also assert that coated groundwood sheets are either not produced in the United States, or produced only in minute quantities.⁶¹ Given the absence of domestic production, they argue, there is no competition between imported sheet and any domestic product. Petitioner maintains that any argument that there is no domestic production of sheet is simply incorrect. Petitioner alleges that there is domestically-produced sheet available in the market.⁶² Petitioner insists that there are domestic converters who buy roll from domestic producers and cut it for resale as sheet. Petitioner, however, does not identify any alleged converters, and during the preliminary investigation, industry sources contacted by the Commission were unable to identify any U.S. production of sheet.⁶³

Leykam, the sole Austrian exporter of coated groundwood paper, argues that its product does not compete with the domestic like product because 90

⁵⁹ Postconference Brief of Burgo at 6.

⁶⁰ Postconference Brief of Burgo at 7-8. Sheets are allegedly sold to small specialty commercial printers, while rolls are sold to printers for mass publication. Id.

⁶¹ Postconference Brief of Burgo at 7-8.

⁶² Petitioner's Comments on APO Material at 11-12.

⁶³ Report at A-25, n. 16.

percent of its exports are start-up tonnage, which fails to meet the requirements of first quality paper.⁶⁴ Leykam asserts that since, in PET Film,⁶⁵ the Commission did not cumulate Taiwanese imports, citing their "unacceptably low quality,"⁶⁶ the Commission should refuse to cumulate imports of Austrian coated groundwood paper on the same grounds.⁶⁷ Leykam provides no information regarding the existence of domestic start-up tonnage and competition between the two, if it exists.

Petitioner alleges that start-up production may or may not result in a low quality product; it merely means that a new plant is operating at less than maximum capacity. Calling its production start-up tonnage is often an excuse to undersell with perfectly acceptable product. Petitioner alleges that start-up tonnage that does not meet quality standards still competes with domestic production, although at a significant discount. Further, the domestic industry may have start-up tonnage available for sale in the domestic market periodically, such as start-up tonnage from Blandin's new plant. Finally, petitioner argues that start-up tonnage is used for the same end uses

⁶⁴ Leykam alleges that it normally takes a new paper machine 2-3 years to perfect its production capability. During the interim, the paper it manufactures is of "second quality," characterized by inconsistent weight, texture, dimension, composition and color. As a result it sells at a discount to first quality paper. Leykam began manufacturing coated groundwood paper at the end of 1989. Postconference Brief of Leykam at 4-5.

⁶⁵ Polyethylene Terephthalate Film, Sheet, and Strip from Japan, the Republic of Korea, and Taiwan, 701-TA-458 (Preliminary), USITC Pub. 2292 at 24 (June 1990).

⁶⁶ This reading of the PET Film determination is incorrect. The Commission specifically declined to make any finding regarding the "lower quality" issue in that investigation. USITC Pub. 2292 at 24. Moreover, we note that prior Commission determinations are not "precedent" and provide only limited guidance in future cases. See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1094 (CIT 1988).

⁶⁷ Postconference Brief of Leykam at 5.

as groundwood paper generally. Petitioner alleges that purchasers often buy start-up tonnage to take advantage of the discount or to establish a relationship with a supplier, but they put it to the same end uses as the domestic product.⁶⁸ We find that start-up tonnage does compete with coated groundwood paper generally, although that competition may occur at a discount.

Mo och Domsjo AB (MoDo), a Swedish manufacturer, produces a non-bleached paper that allegedly is not available in the United States from other foreign or domestic manufacturers.⁶⁹ Due to the paper's environmentally-sensitive characteristics, it has special appeal to its two U.S. purchasers. Further, nearly all of MoDo's U.S. exports allegedly consists of this special paper. One of MoDo's customers submitted a letter to the Commission stating that the product was unavailable from any domestic producer.⁷⁰ MoDo relies on Industrial Nitrocellulose⁷¹ to support its contention that specific customer requirements should be considered by the Commission in determining whether imports compete with other imports and the domestic product.⁷² Because of the

⁶⁸ Letter of Petitioner to Staff Attorney, dated 2/1/91. Even accepting Leykam's no competition argument, however, at least 10 percent of its imports would be competitive with those of other producers. Thus, as with Italy, we would still have to consider this aspect of competition in the context of a "reasonable overlap." Moreover, it should also be noted that the competition argument regarding start-up tonnage would have little relevance to cumulation in a threat context because start-up tonnage is generally a short term phenomenon.

⁶⁹ Postconference Brief of MoDo at 8.

⁷⁰ Postconference Brief of MoDo, Exhibit 2 (letter from Greenpeace).

⁷¹ Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Inv. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990).

⁷² Postconference Brief of MoDo at 8. While the Commission did consider whether perceived quality differences were sufficient to make cumulation inappropriate in Nitrocellulose, the Commission determined that the perceived
(continued...)

specific customer requirements applicable to "nearly all" of MoDo's exports, MoDo urges the Commission to find that there is no reasonable overlap of competition with the other imports or with the domestic product. Further, since MoDo is the only known Swedish producer exporting to the United States,⁷³ nearly all Swedish exports apparently consist of this non-bleached product.⁷⁴ Petitioner stated that the domestic industry "most probably could produce" non-bleached paper "depending upon price," and that "there is no actual production" of non-bleached paper "because there is very little demand for such a product."⁷⁵ Further, petitioner asserts that non-bleached paper is still interchangeable with bleached paper. We find that the Swedish non-bleached paper is produced to meet specific customer requirements and that it competes only indirectly with bleached coated groundwood paper.

While there may be some merit in the respondents' competition arguments, especially with regard to non-bleached paper from Sweden, we need not resolve these issues definitively, nor address the reasonable overlap of competition issue for those countries that produce some directly competitive products as well, given our findings regarding negligibility, detailed below. We note

⁷²(...continued)

differences were insufficient in that case and all imports subject to those investigations were cumulated. Additionally, we again note that Commission determinations are sui generis and are not precedent. See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1094 (CIT 1988).

⁷³ Report at A-2, Table 1. Petitioner identifies MoDo as the only producer in Sweden. See Petition at Exhibit 15, p. 30.

⁷⁴ MoDo, however, apparently does export some bleached groundwood paper to the U.S. Therefore, as with Italy and the Netherlands, the Commission would also have to consider the effect of those competitive exports on a "reasonable overlap" analysis should it determine that the non-bleached product is not competitive with the domestic product.

⁷⁵ Letter of Petitioner to Staff Attorney, dated 2/1/91.

that the lessened degree of competition for most of the imports from Italy, the Netherlands, and Sweden, which is established in the record, is a "relevant economic factor" that we considered when determining whether the imports from a particular country were having a "discernable adverse impact" on the domestic industry.⁷⁶ For the purposes of these preliminary determinations, therefore, we find sufficient evidence indicating that all imports from the subject countries compete with one another and with the domestic product, although the competition of imports from Italy, the Netherlands, Austria, and Sweden with the products of all other producers is attenuated to varying degrees.⁷⁷

B. The negligible import exception

1. The statute and legislative history

Section 1330 of the Omnibus Trade and Competitiveness Act of 1988 provides that the Commission is not required to cumulate in any case in which it finds that imports of the merchandise from a particular country subject to investigation are negligible and have no discernible adverse impact on the domestic industry. In determining whether imports are negligible, the Commission considers all relevant economic factors including whether:

- (I) the volume and market share of the imports are negligible,
- (II) sales transactions involving the imports are isolated and sporadic, and

⁷⁶ See 19 U.S.C. § 1677(7)(C)(v).

⁷⁷ If we had reached an affirmative determination as to imports from Italy, the Netherlands, Austria, and Sweden, and not found them negligible, we would, of course, have reexamined these competition arguments in any final investigations.

(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.⁷⁸

Both the House Report and the Conference Report stress that the Commission is to apply the exception sparingly and that it is not to be used to subvert the purpose and general application of the mandatory cumulation provision of the statute.⁷⁹ The House Report further emphasizes that whether imports are "negligible" may differ from industry to industry and for that reason the statute does not provide a specific numerical definition of negligibility.⁸⁰ Additionally, the House Ways and Means Committee Report notes that:

For an industry which is already suffering considerable injury and has long been battered by unfair import competition, very small additional quantities of unfair imports may be more than negligible. For another industry, not so deeply injured, small additional quantities of unfair imports may have no discernable effect at all.⁸¹

The legislative history also indicates this exception should be applied with "particular care in situations involving fungible products, where a small quantity of low-priced import can have a very real effect on the market."⁸²

⁷⁸ 19 U.S.C. § 1677(7)(C)(v).

⁷⁹ See H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. 131 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988).

⁸⁰ H.R. Rep. No. 40, 100th Cong., 1st Sess. 130 (Part I 1987).

⁸¹ H.R. Rep. No. 40, 100th Cong., 1st Sess. 130 (Part I 1987).

⁸² H.R. Rep. No. 40, 100th Cong., 1st Sess. 130 (Part I 1987); see also H.R. Rep. 576, 100th Cong., 2d Sess. 621 (1988). The Commission has granted the negligible imports exception in at least four instances. In PET Film, the Commission found that imports from Taiwan were negligible, notwithstanding the existence of a price sensitive market. Taiwanese imports had less than 0.1 percent of the market and less than \$500,000 in domestic sales. The available
(continued...)

2. General issues regarding negligibility

These investigations require consideration of the negligible imports exception in a wide variety of contexts. Petitioner argues that this exception is not applicable to any of the nine subject countries. Petitioner argues that the value of the imports from the subject countries has been substantial during the period of investigation, and has caused significant harm to the domestic industry.⁸³ Further, petitioner alleges that imports from these countries have been neither isolated, nor sporadic.⁸⁴ Petitioner asserts that because the subject product is fungible and purchasing decisions are generally made on the basis of price, the coated groundwood paper market

⁸²(...continued)

data suggested that sales of Taiwanese imports were isolated, one-time transactions to a particular purchaser. In Steel Wire Rope, USITC Pub. 2343 at 19-20, the Commission found that imports from Chile were negligible. Chilean imports peaked at 0.4 percent of the market in 1989, valued at \$853,000. Further, imports declined dramatically in interim 1990 and the nature of sales transactions concerning Chilean products suggested that they were isolated and sporadic. In Certain Sodium Sulfur Chemical Compounds from the Federal Republic of Germany, the People's Republic of China, Turkey, and the United Kingdom, Inv. Nos. 701-TA-303, 731-TA-465-468 (Preliminary), USITC Pub. 2307 at 19-20 (August 1990), the Commission determined that there were two like products and then applied the negligible imports exception to imports of one of the products from Turkey, because there had been no imports of the product from Turkey. Finally, in Certain Personal Word Processors from Japan and Singapore, Inv. Nos. 731-TA-483-484 (Preliminary), USITC Pub. 2344 at 19-20 (December 1990), the Commission determined that imports from Singapore were negligible in light of the absence of continued foreign production and no likelihood of the resumption of imports.

⁸³ Postconference Brief of Petitioner at 53. In accordance with the statute, the Commission has considered value of imports as one factor in determining negligibility. See, e.g., PET Film, USITC Pub. 2292 at 24 (negligible at less than \$500,000); Small Business Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 at 32-33 (November 1989) (not negligible as market share was between 1.5 and 3.5 percent and value exceeded \$10 million annually).

⁸⁴ Postconference Brief of Petitioner at 53.

is highly price sensitive.⁸⁵ Consequently, even low levels of imports can have a significantly adverse impact on the domestic industry.⁸⁶ Finally, relying on the Commission's determination in EMD from Greece and Japan,⁸⁷ petitioner argues that cross-ownership should also be considered since the Commission must evaluate "all relevant economic factors regarding the imports."⁸⁸

Seven of the subject countries -- Austria, Belgium, France, Italy, the Netherlands, Sweden, and the United Kingdom -- appear to be possible candidates for the negligible imports exception.⁸⁹ All but France have presented specific arguments regarding their qualification for the negligible imports exception. Several of the arguments are of general applicability. First, respondents argue that the market share of each of these countries is

⁸⁵ Postconference Brief of Petitioner at 54. Petitioner relies on the Commission's approach in past cases (Industrial Nitrocellulose, USITC Pub. 2295, and Small Business Telephones, USITC Pub. 2237) to support its contention that the coated groundwood paper market is price sensitive.

⁸⁶ Postconference Brief of Petitioner at 54-55.

⁸⁷ Electrolytic Manganese Dioxide from Greece and Japan, Inv. No. 731-TA-406 and 408 (Final), USITC Pub. 2177 (April 1989) (ownership of only Greek producer by Japanese producer together with common U.S. importer indicated common channel of distribution for the products of both countries, imports from the two countries compete in the supply chain at the discretion of the parent importer and producer).

⁸⁸ Postconference Brief of Petitioner at 53-55 (quoting 19 U.S.C. § 1677(7)(C)(v)).

⁸⁹ None of the respondents contend that imports from Finland and Germany are negligible. Their market share in interim 1990 exceeds 2.0 percent, individually, and exceeds 6.0 percent, collectively. Report at A-22, Table 15. Their combined import value exceeded \$200 million in 1989. Report at A-21, Table 14. We determine that imports from Finland and Germany are not negligible given their market share, their volume, their fungibility with the domestic product, and the price sensitive nature of the domestic market.

minuscule -- 0.6 percent or less.⁹⁰ Second, they argue, consistent with the legislative history of the negligible imports exception, that the relatively good condition of the domestic industry suggests that "small additional quantities of unfair imports may have no discernable effect at all."⁹¹ Third, they argue that the domestic market is not as price sensitive as petitioner suggests due to the degree of product differentiation in the market (e.g. sheet v. roll, start-up tonnage v. first-quality paper, and bleached v. non-bleached). Finally, they assert that cross-ownership is legally irrelevant and, even if relevant, ignores the lack of control over individual producers, does not apply uniformly to all countries, and could not, in any event, lead to product-shifting due to capacity restraints.⁹²

With regard to these general arguments, we find at this preliminary stage that the domestic and imported products of the same specifications of weight and brightness are highly substitutable for one another and that the domestic market is very price sensitive. On the other hand, we also find that the evidence of record indicates that the coated groundwood paper industry is not "an industry which is already suffering considerable injury and has long been battered by unfair competition."⁹³ Finally, we find that the relationship of foreign producers to one another and to common importers is a "relevant economic factor" to consider, together with all other pertinent

⁹⁰ See Report at A-22, Table 15.

⁹¹ See H. R. Rep. No. 40, 100th Cong., 1st Sess. at 131 (Part I 1987).

⁹² See, e.g., Postconference Brief of Leykam, Appendix I, II.

⁹³ H.R. Rep. No. 40, 100th Cong., 1st Sess. at 131 (Part I 1987).

factors, in deciding the issue of negligibility.⁹⁴ We believe, however, that evidence of central control in allocating shipments to the United States, as in EMD, would be more pertinent to the cumulation issue than the mere existence of some stock ownership. Thus in evaluating the issue of cross-ownership and its relevance to cumulation issues and to the extent possible given the available evidence in these preliminary investigations, we closely examine the nature of the relationship between the affiliated companies in this case, how they sell their product in the United States, and whether they operate independently or in concert with one another.⁹⁵ We observe, however, that evidence of common control is only one of many factors to consider in determining negligibility, and it is not determinative, in and of itself, on this question.

In this regard it should be noted that the cross-ownership in this case does not apply across the board to all producers in all countries. The Italian producer, Burgo, is not affiliated with any other producer. The producers in Austria, Belgium, and the Netherlands, are affiliated with one

⁹⁴ For example, in EMD from Greece and Japan, the only producer in Greece was owned, in part, by the Japanese producer, and the Greek producer and the Japanese producer marketed their products through a common U.S. importer who also owned the remaining interest in the Greek producer. The Commission determined that such a close relationship was relevant to the competition requirement for cumulation. While that case was decided prior to the negligible imports exception, such a close relationship may also be a "relevant economic factor" in the application of the negligible imports exception.

⁹⁵ While we base our cumulation decision with regard to France and the United Kingdom, in part, on cross-ownership, we note that the extent of control of the producers in those countries by their affiliated producers in Finland and Germany and the significance of common affiliated importers is not clear. Should any final investigations occur, we would seek more detailed information regarding these issues.

another, but are not affiliated with producers in other countries.⁹⁶ The UK producer, and one of the French producers, are 100 percent owned by Kymmene, one of the producers in Finland, the subject country with the largest share of the market.⁹⁷ The other French producer is 100 percent owned by Feldmuhle of Germany, the subject country with the second largest share of the market.⁹⁸ The sole Swedish producer owns a 25 percent interest in one of the German producers. No other producers have any affiliation with producers in other countries.⁹⁹

Regarding the relationship with common importers, the imports from the United Kingdom, produced by Caledonian, are imported into the United States by Kymmene Paper Inc., an importer affiliated with Kymmene, the producer in Finland that owns 100 percent of Caledonian. Similarly, one of the two French producers, Feldmuhle Beghin-Corbehem, is 100 percent owned by a German producer, Feldmuhle, and both companies' products are imported by another affiliated company, Feldmuhle North America. On the other hand, while the producers in Austria, Belgium, and the Netherlands have a common importer, that common importer is not affiliated with any of the foreign producers. No other producers from different countries share the same U.S. importer.¹⁰⁰

3. Application of negligibility criteria to particular countries

Application of the negligible import exception to the imports subject to

⁹⁶ The Netherlands producer KNP owns 100 percent of KNP Belgium and 50 percent of Leykam, the only known producers in Belgium and Austria, respectively.

⁹⁷ Report at A-22, Table 15.

⁹⁸ Report at A-22, Table 15.

⁹⁹ Postconference Brief of Petitioner at Exhibit 13.

¹⁰⁰ Report at A-6, Table 3.

this investigation involves a consideration of the general factors, discussed above, and certain country-specific factors or variations on the general factors, discussed below.¹⁰¹ The result of the application of these factors varies depending upon a weighing of the unique facts and circumstances of each country.

As noted previously, we find that imports from Finland and Germany are not negligible and, thus, must be cumulated with one another. We also find that imports from France are not negligible given their absolute volume, the growth in that volume, and their higher market share relative to other European producers. Further, imports from France are essentially fungible with coated groundwood paper from other foreign producers and the domestic industry and the domestic market is highly price sensitive. In addition, the two French producers are 100 percent owned by producers in Finland and Germany, respectively. Finally, the U.S. importer of one of the French producers is also the U.S. importer for the related German producer, and is itself affiliated with that German producer.¹⁰²

For much the same reasons, we find that imports from the United Kingdom are not negligible. The United Kingdom's share of the domestic market while small, increased significantly from 1989 to interim 1990.¹⁰³ Imports from the United Kingdom were valued at several million dollars in 1989 and more than doubled during interim 1990.¹⁰⁴ As with French imports, it appears that

¹⁰¹ The precise figures for value and market penetration are confidential and, thus, our description of these data is necessarily general.

¹⁰² The extent of common control is less clear, and will be examined further should any final investigation occur.

¹⁰³ Report at A-21-A-22, Table 14, 15.

¹⁰⁴ Report at A-21-A-22, Table 14, 15.

imports from the United Kingdom are essentially fungible with the domestic product and with most other imports, and have the same impact on pricing and competition in the U.S. market. Furthermore, Caledonian, the sole exporter of coated groundwood paper from the United Kingdom, is wholly owned by Kymmene, a Finnish producer which also owns the French producer Chapelle Darblay, and the imports of both producers are sold by an affiliated importer in the United States, Kymmene Paper, Inc.¹⁰⁵

We also find that imports from Belgium are not negligible. They have had a steady presence in the market. The volume and market share of Belgian imports, while smaller than that of France, was larger than all other European producers in 1989 and interim 1990.¹⁰⁶ The value of imports exceeded several million dollars throughout the period of investigation.¹⁰⁷ Thus, transactions involving Belgian imports are not isolated and sporadic. Moreover, imports from Belgium apparently are highly competitive with the domestic like product and with imports from other cumulated countries, and have the same impact on pricing and competition in the U.S. market. While KNP Belgie, the only producer in Belgium, is related to KNP and the Austrian producer, and the imports of all three producers are sold by a common U.S. importer, that common importer is not affiliated with any of the three producers and there is evidence that all three producers operate as independent entities in Europe. Thus we do not rely on cross-ownership in evaluating whether Belgian imports are negligible. Given their volume and market share, and the fact that they are essentially fungible with the domestic product and imports from Finland,

¹⁰⁵ Postconference Brief of Petitioner at 57.

¹⁰⁶ Report at A-21-A-22, Table 14, 15.

¹⁰⁷ Report at A-21, Table 14.

Germany, France, and the United Kingdom, we find that Belgian imports are not negligible and should be cumulated.

As noted above, the domestic industry is not already "suffering considerable injury," nor has it "long been battered by unfair import competition," although the domestic market is price sensitive, and coated groundwood paper is generally fungible. Consideration of these general market factors, and the specific details described below, lead us to find that imports from Austria, Italy, the Netherlands, and Sweden are negligible and should not be cumulated.¹⁰⁸

As noted previously, Leykam, the Austrian producer claims its exports to the United States were primarily non-competitive start-up product that began in 1990. The import figures for Austria indicate a very low market share and import value during interim 1990, the only instance of Austrian imports during the period of investigation.¹⁰⁹ Further, sales of Austrian imports have all apparently been on the spot market and through the merchant channel of distribution. There were no reported contract sales. Thus, the facts persuade us that sales of imports from Austria are isolated and sporadic. While we are not persuaded that start-up production does not compete with other imports or with the domestic product, there appears to be a significant quality difference between the products. Further, evidence submitted by Leykam establishes that it is an independent company with its own sales force, although it is 50 percent owned by KNP, the Dutch producer, and its imports

¹⁰⁸ See Additional Views of Commissioner Lodwick with regard to the imports from Italy, the Netherlands, and Sweden.

¹⁰⁹ Report at A-21-A-22, Table 14, 15. At the Conference, counsel for Leykam stated that, using petitioner's data, imports from Austria were 0.1 percent of the market in interim 1990. Tr. at 190.

are handled by the same, albeit unaffiliated, importer.¹¹⁰ Moreover, Leykam has no relationship with producers in any other countries.¹¹¹ Given the nature of sales transactions and the minuscule level of market share, together with the general factors previously noted, and the lack of concerted marketing with other imports, we find that Austrian imports have had no discernable adverse impact on the domestic industry and are negligible.

In 1989 and interim 1990, the percentage of the domestic coated groundwood paper market accounted for by imports from the Netherlands was smaller than any other subject country, with the exception of Italy, and was declining.¹¹² The value of imports from the Netherlands was over a million dollars in 1989, but declined to less than a million dollars during interim 1990.¹¹³ Dutch sales transactions are also isolated and sporadic, given the fact that there were no exports in 1987 and 1988, and that exports in 1989 and 1990 were spot sales to a single customer,¹¹⁴ whereas the domestic producers

¹¹⁰ Postconference Brief of Leykam at 7-9; Postconference Brief of Petitioner at 57. Leykam and KNP are legally distinct companies with separate production facilities, managements, product lines and sales departments. In fact, these companies compete for the same customers. KNP has two of the 17 seats on Leykam's Advisory Board, and has no control over Leykam's executive board, which makes all of the day-to-day decisions. Postconference Brief of Leykam at 7-9. Further, the Dutch product is less competitive sheet, and the Dutch plant will apparently cease production in 1992.

¹¹¹ Postconference Brief of Leykam at 3-9.

¹¹² Report at A-21-A-22, Table 14, 15. At the Conference, counsel for KNP alleged that Dutch imports never exceeded 0.05 percent during the entire period of investigation. Tr. at 182.

¹¹³ Report at A-21-A-22, Table 14, 15.

¹¹⁴ Postconference Brief of KNP at 3. KNP claims there were also no exports in 1989, which is at odds with the staff's investigation, the staff's results are being used as the official figures in the Commission's Report.

sell almost exclusively under contract.¹¹⁵ Additionally, plans have been announced, and money apparently allocated, to cease production of coated groundwood paper in the Netherlands and convert those facilities to the production of other products. Further, while KNP is affiliated with producers in Belgium and Austria, and shares a common, albeit unaffiliated, importer with those producers, the evidence of record indicates that the companies market their products independently. Finally, imports of coated groundwood paper from the Netherlands consist of sheet only; there apparently are no imports of roll. Since all imports consisted of sheet, competition with the domestic product was attenuated. For all of these reasons, we conclude that imports from the Netherlands are negligible and should not be cumulated in these investigations.

Swedish imports accounted for only a very small percentage of domestic sales of coated groundwood paper in 1989 and interim 1990.¹¹⁶ While imports were valued at several million dollars in 1989 and interim 1990,¹¹⁷ they consisted almost entirely of non-bleached paper not otherwise available in the United States, and were sold to two customers with specific requirements for this type of paper.¹¹⁸ While the Swedish producer MoDo owns 25 percent of the German concern Munchen Dachau, MoDo does not possess control as the result of this 25 percent interest.¹¹⁹ Further, different U.S. importers import the

¹¹⁵ Postconference Brief of KNP at 3.

¹¹⁶ Report at A-22, Table 15.

¹¹⁷ Report at A-21, Table 14.

¹¹⁸ Postconference Brief of MoDo at 6.

¹¹⁹ Postconference Brief of MoDo at 9. MoDo has no representative on the board of Munchen Dachau, and has one representative on the four-member board

(continued...)

Swedish and German products.¹²⁰ For all of these reasons, we find that Swedish imports have had no discernable adverse impact on the domestic industry and should not be cumulated.

Burgo, the sole Italian exporter, is the only respondent with no transnational affiliation at all. Italy's share of coated groundwood paper sales in the United States was significantly smaller than that of any other subject country in 1989 and 1990.¹²¹ Similarly the value of imports from Italy was very low in 1989 and interim 1990.¹²² Further, since there was only one contract sale during the period of investigation, it appears that sales of Italian imports are isolated and sporadic. Finally, Italian imports consisted predominately of sheet, which is apparently less competitive with domestically-produced groundwood paper in roll form.¹²³ We conclude, therefore, that Italian imports qualify for the negligible imports exemption and should not be cumulated in these investigations.

¹¹⁹(...continued)

of Munchen Dachau's holding company. MoDo's interest in Munchen Dachau is limited to stock ownership, not control over the company's operations. Id. Even if there were some evidence of control, the other evidence regarding the small volume and market share, the isolated nature of sales transactions, and the indirect competition, if any, outweighs the importance of cross-ownership as to Swedish imports.

¹²⁰ See Report at A-6, Table 3.

¹²¹ Report at A-22, Table 15. Counsel for Burgo stated at the Conference that, according to petitioner's data, imports from Italy were less than one-fifth of one percent of the market in 1990. Tr. at 185.

¹²² Report at A-21, Table 14. The report indicates that there has been some difficulty in determining the precise level of Italian imports and that the level used in the table may be understated. See Table 14, n. 2. Even if the staff used the higher volume figures noted in the table that include free sheet, however, the import market share is still very small.

¹²³ Postconference Brief of Burgo at 9.

IV. Material injury by reason of alleged LTFV imports

In addition to finding a reasonable indication of material injury to a domestic industry, the Commission must also determine whether such injury is "by reason of" the allegedly less than fair value or subsidized imports.¹²⁴ In making this determination, the Commission is required to consider, inter alia, the volume of the imports subject to investigation, the effect of such imports on domestic prices, and the impact of such imports on the domestic industry.¹²⁵ Evaluation of these factors involves a consideration of: (1) whether the volume of imports, or increase in volume is significant, (2) whether there has been significant price underselling by the imported products, and (3) whether imports have otherwise depressed prices to a significant degree, or have prevented price increases.¹²⁶ In addition, the Commission must evaluate the impact of the imports on the domestic industry by examining other relevant economic factors, such as actual and potential changes in profits, productivity, capacity utilization, and investment.¹²⁷

The Commission may not weigh the various causes of material injury,¹²⁸ nor must it determine that LTFV or subsidized imports are the principal, a substantial, or a significant cause of material injury.¹²⁹ However, the

¹²⁴ 19 U.S.C. § 1673b(a).

¹²⁵ 19 U.S.C. § 1677(7)(B).

¹²⁶ 19 U.S.C. § 1677(7)(C)(i-ii).

¹²⁷ 19 U.S.C. § 1677(7)(C)(iii).

¹²⁸ S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979); La Metalli Industriale, S.p.A. v. United States, 712 F. Supp. 969, 971 (CIT 1989); Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1101 (CIT 1988); Hercules, Inc. v. United States, 673 F. Supp. 454, 481 (CIT 1987); British Steel Corp. v. United States, 593 F. Supp. 405, 413 (CIT 1984).

¹²⁹ S. Rep. No. 249, 96th Cong., 1st Sess. at 74 (1979).

Commission may consider any information demonstrating possible alternative causes of injury to the domestic industry.¹³⁰

Based upon the information available in these preliminary investigations, we determine that there is a reasonable indication that the domestic coated groundwood paper industry is materially injured by reason of cumulated imports from Belgium, Finland, France, Germany, and the United Kingdom that are allegedly sold at less than fair value. We further determine that there is no reasonable indication that imports from Austria, the Netherlands, Sweden, and Italy, considered separately, are a cause of material injury to the domestic industry.¹³¹

Before turning to a discussion of the volume and market share of cumulated imports, and their effect on domestic prices, we again note that this industry has some unique characteristics and conditions of trade. First, the industry is extremely capital intensive. Second, the products produced by the domestic industry and the imported products from the five cumulated countries are essentially fungible in most respects. Third, the fungible

¹³⁰ S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). Such alternative causes may include "the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry." *Id.* at 74.

¹³¹ Given our previous discussion in the negligible imports section of this opinion, concerning the small volume and market share of the imports, the lack of a price depressing or suppressing effect, and our conclusion that there is no discernable adverse impact of imports from each of these countries on the domestic industry, a discussion regarding the lack of a causal connection between these imports and the condition of the domestic industry would be redundant. In making our negative determinations, we are fully cognizant of the requirements of American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986), which requires an affirmative determination in a preliminary investigation unless there is (1) clear and convincing evidence of no material injury and (2) no likelihood that contrary evidence will arise should a final investigation occur.

nature of the product and the need to operate plants at extremely high utilization rates results in a very price competitive market. This price sensitivity is apparently heightened by the rapid dissemination of pricing information in the market and the practice of most purchasers to negotiate reductions in prices based upon quotes from multiple suppliers.¹³² Finally, as noted previously, there allegedly is a business cycle in which imports have historically increased in times of rising prices and tight supply, and decreased in times of declining prices and excess supply, given the imports' higher costs of production.¹³³

In the context of these conditions of trade, cumulated imports from Belgium, Finland, France, Germany, and the United Kingdom have increased steadily and significantly in quantity terms throughout the period of investigation. Cumulated imports from these five countries rose from 214,936 tons in 1987 to 282,010 tons in 1988, and then to 321,649 tons in 1989. In interim 1990, cumulated imports increased again, to 270,302 tons, compared with 240,960 tons for interim 1989.¹³⁴ Trends in the value of cumulated imports followed a similar pattern.

In terms of market share, the lack of product-specific data for Canadian imports in 1987 and 1988 makes precise calculation of total market share problematic for those two years. In 1989 and interim 1990, the market share

¹³² Tr. at 96, 105-110.

¹³³ We do not rely on the alleged business cycle, or necessarily agree with petitioner's allegation as to its length, in making these preliminary determinations. Should any final investigations occur, however, we would explore the allegations of a business cycle, and its significance, further.

¹³⁴ Report at A-21, Table 14.

of cumulated imports was 7.7 percent and 8.0 percent, respectively.¹³⁵

Complete data for the entire period of investigation is available for the subject countries and the U.S. industry, however. An evaluation of changes in the ratio of cumulated imports from the five countries to domestic production provides a useful indicia of relative changes in market share. This data indicates that the ratio of cumulated imports to domestic production increased steadily from 6.3 percent in 1987 to 7.6 percent in 1988, and then to 8.8 percent in 1989. In interim 1990, the ratio continued to climb, reaching 9.7 percent for that period, compared with 8.8 percent in interim 1989.¹³⁶

With regard to the pricing data, it appears that prices for both the domestic and imported products increased in 1987 and 1988, but have declined continually in 1989 and interim 1990.¹³⁷ Notwithstanding the recent declines in price, cumulated imports have continued to increase market share relative to domestic production. As noted previously, the record clearly indicates that the domestic market is very competitive in terms of price. Purchasers routinely report their suppliers discounting off list prices and constantly renegotiating prices under contract sales.¹³⁸ Further, the evidence indicates that, for individual transactions, suppliers of both the domestic and imported products are within one percent of each other on price.¹³⁹ Evidence of price leadership in the market, however, is inconclusive at this time. It appears that, given the diffusion of market power, there is no clear price leader,

¹³⁵ Report at A-22, Table 15.

¹³⁶ Report at A-23, Table 16.

¹³⁷ Report at A-22-A-23.

¹³⁸ Report at A-25-A-26.

¹³⁹ Report at A-34-A-36.

either domestic or foreign. Instead all suppliers price their product aggressively and respond rapidly to any change in their competitors' prices. The evidence of record also indicates that, at a minimum, suppliers of the imported product from some of the cumulated countries (Finland and Germany) are active participants in this practice of aggressive pricing.

Comparisons of quarterly price data for the largest volume sales by different producers to different purchasers has limited utility, given the fluid nature of the domestic market. The relatively large differences indicated by comparing prices from different transactions is apparently not indicative of actual price competition for each individual transaction since purchasers report that final offered prices for each sale rarely vary significantly from one supplier to the next.¹⁴⁰ Prices vary from transaction to transaction depending on a variety of circumstances, including the negotiating ability of the purchaser, the quality of information in his possession regarding current pricing, and the current pricing practices of his suppliers. Because of the uncertain nature of the margin of underselling data in the Commission report, we do not rely on this data in making our preliminary determinations.

Evidence of lost sales and lost revenue is relatively spotty at this time, although the evidence does suggest that cumulated imports have been able to capture sales in the domestic market on the basis of price and that domestic suppliers have had to cut their prices in response to competition with cumulated imports in order to retain customers.¹⁴¹

In light of the foregoing, we determine that there is a reasonable

¹⁴⁰ Report at A-32.

¹⁴¹ Report at A-34-A-36.

indication that increasing cumulated imports have contributed to the downward price spiral in the domestic market. This decline in price has, in turn, contributed to the downturn in the financial condition of the domestic industry and hampered its ability to invest in the expensive capital equipment and new capacity necessary to continue to retain its competitive edge in the market.¹⁴² Thus, we determine that there is a reasonable indication that the cumulated imports have been a cause of material injury to the U.S. coated groundwood paper industry.

V. Cumulation and threat¹⁴³

Since we have already determined that imports from Belgium, Finland, France, Germany, and the United Kingdom should be cumulated, and that there is a reasonable indication that those imports are a cause of material injury to the domestic industry, we need not consider the issue of threat as to such imports. Thus, the only relevant cumulation issue with regard to a possible threat determination is whether the imports from Austria, the Netherlands, Sweden, and Italy should be cumulated together and with imports from the other countries in determining whether there is a reasonable indication of a threat of material injury. We find that imports from those four countries should not

¹⁴² Respondents have cited a number of other factors that they believe explain any difficulties experienced by the domestic industry. Given the prohibition on weighing causes and the "reasonable indication" standard applicable to preliminary determinations, there is no need to discuss these factors at length. Should any final investigations occur, however, we will examine some of these factors in detail in order to determine the extent of their impact and whether they are solely, or in combination, responsible for the condition of the industry. The other causal factors that may require further examination include the impact of nonsubject imports from Canada, which is the largest source of imported groundwood paper, the alleged overexpansion of the domestic industry, the apparent need for alternative sources of supply in a tight market, and the alleged increase in competition from other paper products.

¹⁴³ Commissioner Lodwick does not join this portion of the opinion.

be cumulated for purposes of a threat analysis.

When the Commission is considering threat of material injury to a domestic industry by reason of imports from several countries, the Commission may, at its discretion, cumulate the volume and effect of each country's imports.¹⁴⁴ In considering cumulation in the context of a threat case, we considered all the competition and negligible imports arguments previously discussed. In addition, we evaluated certain other factors, not relevant or of lesser relevance in the context of a material injury case. This section will examine these additional factors.

In addition to the requirement that imports be subject to investigation and compete with one another and the domestic like product, the Court of International Trade has suggested that the Commission could also measure the rate of increase in United States market penetration by imports,¹⁴⁵ as well as consider the probability that imports of merchandise will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.¹⁴⁶ ¹⁴⁷ The Commission should also consider any imminent change in a foreign producer's productive capacity, as is allegedly the case in Italy and the Netherlands.¹⁴⁸ Also the issue of

¹⁴⁴ 19 U.S.C. S 1677(7)(F)(iv); Steel Wire Rope, USITC Pub. 2343 at 14 (citing Metallwerken Nederland, B.V. v. United States, 728 F.Supp. 730, 741-42 (CIT 1989); Asocoflores, 693 F. Supp. at 1171-72 (CIT 1988), Commission determination aff'd after remand, 704 F. Supp. 1068, 1070-71 (CIT 1988)).

¹⁴⁵ See Report at A-21-A-22, Table 14, 15 (trends in volume and market share).

¹⁴⁶ Asocoflores, 693 F. Supp. at 1171-72 (CIT 1988), Commission determination aff'd after remand, 704 F. Supp. 1068, 1070-71 (CIT 1988).

¹⁴⁷ See Report at A-31-A-34 (data regarding imports price trends and comparison with domestic prices).

¹⁴⁸ See Report at A-17-A-19 and Table 12 (data regarding capacity, capacity utilization, and planned expansion).

cross-ownership, which allegedly permits centralized control over production and export decisions in different countries, becomes more significant in a threat case due to the alleged ability to shift production between countries. In this regard, as we previously noted, the critical question here is not the mere existence of cross-ownership, but rather, how it enhances the ability to source imports to the United States from plants located in different countries.

We previously discussed the factors that led us to conclude that imports from Austria, the Netherlands, Italy and Sweden were negligible and had no discernable adverse impact on the domestic industry. Further, we note that the evidence of record demonstrates that imports from those countries are stable or declining, the producers in those countries are operating at high capacity utilization rates, and there is no imminent expansion of capacity that could lead to increased imports. Finally, we do not believe that common control or ease in shifting production exists to such an extent that future imports from Austria, the Netherlands, Italy, and Sweden could increase to a significant degree. For all these additional reasons, as well as those reasons previously discussed, we do not believe that cumulation of these imports for threat purposes is warranted. Specific discussion of these additional factors as to each country is provided in detail in our threat analysis, below.

VI. No reasonable indication of threat of material injury by reason of allegedly LTFV imports from Austria, the Netherlands, Sweden, or Italy

Section 771(7)(F) of the Tariff Act of 1930, as amended by the Trade and Tariff Act of 1984, requires that, in assessing a threat of material injury, the Commission consider, inter alia, increases in production capacity or existing unused or underutilized capacity in the exporting country that might

lead to a significant increase in imports, any rapid increase in U.S. market penetration and the likelihood that the penetration will reach an injurious level, the probability that imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices, and whether there are substantial increases in inventories of the imported products in the United States.¹⁴⁹ The statute also cautions that an affirmative threat determination "shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent" and not on the basis of mere conjecture or supposition.¹⁵⁰

Application of the threat criteria separately to imports from Austria, the Netherlands, Sweden, and Italy leads us to conclude that there is no reasonable indication that imports from any of those countries poses a threat of material injury to the domestic industry.¹⁵¹

With respect to imports from Austria, the evidence of record indicates that capacity utilization rates are extremely high.¹⁵² Thus there is little, if any, existing unused or underutilized capacity in that country. Further,

¹⁴⁹ 19 U.S.C. § 1677(7)(F)(i)(I)-(VII); see Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1094 (CIT 1988). Inventories are insignificant for all producers of coated groundwood paper. Thus this factor has little relevance to the threat determination in these investigations and will not be discussed further. The remaining factors cited in the statute, but not specifically addressed in our determination, also have no relevance to these particular investigations.

¹⁵⁰ 19 U.S.C. § 1677(7)(F)(ii).

¹⁵¹ Since we determine that there is a "reasonable indication" that imports from Belgium, Finland, France, Germany, and the United Kingdom are a cause of material injury to the domestic industry, discussion of the threat of injury from those imports, if any, is not necessary. Should any final investigations occur, however, we would examine the threat issue and its potential relevance should we determine that a material injury determination is not appropriate.

¹⁵² Report at A-17-A-19, Table 12, 13.

there is no indication that capacity in Austria will expand in the future. With respect to increases in market share or significant increases in import volume, that increase has already occurred and cannot increase further due to capacity constraints. Moreover, the increase that occurred was from no imports in 1989 to several thousand tons in interim 1990, in a total market in excess of 4.2 million tons. Thus market penetration has peaked at a very low level.¹⁵³ Given this minuscule amount, there is no indication that imports from Austria will have a depressing or suppressing effect on prices in the United States. Most Austrian production is consumed internally and exports to the United States are a small fraction of total exports, indicating the lack of significance attached to the U.S. market.¹⁵⁴

Imports from the Netherlands, as noted previously, are declining. There were no imports in 1987 or 1988. In 1989, imports from the Netherlands were significantly less than 0.1 percent of the market, with the bulk of those imports entering in the first half of 1989.¹⁵⁵ Imports dropped from interim 1989 to interim 1990.¹⁵⁶ Further, most Dutch production is consumed internally and the United States represents only a small fraction of the total product actually exported. In addition, capacity utilization rates are extremely high, there is no significant existing unused or underutilized capacity, and there is evidence that capacity will not expand but, instead, will actually decline in the near future as the Dutch industry converts to

¹⁵³ Report at A-22, Table 15.

¹⁵⁴ Report at A-17-A-19, Table 12, 13.

¹⁵⁵ Report at A-21, Table 14.

¹⁵⁶ Report at A-22, Table 15.

production of other products.¹⁵⁷ Further, as previously discussed, imports from the Netherlands have been exclusively the relatively less directly competitive groundwood sheet, not roll. Thus, there is no reason to believe that imports from the Netherlands will have a depressing or suppressing effect on domestic prices. Given the capacity constraints and the significance of the European market, it is unlikely that imports from the Netherlands will increase significantly, either in absolute volumes or in market share.

Imports from Sweden, as we have also noted, consist predominately of a non-bleached product that competes with the domestic product, if at all, to a lesser extent than other imports. The small volume and market share of Swedish imports, in combination with their attenuated competitive impact, indicate that they have little, if any, depressing or suppressing effect on domestic prices. Swedish capacity is stable and there is little, if any, existing unused or underutilized capacity available, given the high capacity utilization rates evident in the record. Moreover, there is no evidence suggesting that capacity will increase in the future.¹⁵⁸ Imports from Sweden have declined irregularly over the period of investigation and there is also no reason to believe that they will increase significantly in the future.¹⁵⁹ Further, U.S. market penetration of Swedish imports has never reached the levels achieved by imports from France, Belgium, and the United Kingdom and

¹⁵⁷ Report at A-17-A-19, Table 12, 13. The mill, which currently produces mostly coated free sheet and small amount of coated groundwood sheet, allegedly will cease production of groundwood paper in 1992 and has already begun to phase out production. Tr. at 183; Postconference Brief of KNP at 7; see Report at A-17.

¹⁵⁸ Report at A-17-A-19, Table 12, 13.

¹⁵⁹ Report at A-21, Table 14.

European markets remain the primary export markets for the Swedish product.¹⁶⁰

Italy is the only foreign producer for which there is any evidence of an expansion of capacity. Burgo plans to increase its net capacity by a fraction of its current level, but that capacity will not be in place until 1994.¹⁶¹ Thus, there is no real and imminent threat of increased imports by virtue of this expansion.¹⁶² Burgo is currently operating at an extremely high rate of capacity utilization, and has little, if any, existing unused or underutilized capacity. Most of Italian production is consumed internally, with U.S. exports representing the lowest percentage of total exports directed to the United States of all the countries subject to these investigation.¹⁶³ Further, imports from Italy have been predominately less directly competitive sheet, as opposed to roll, and has never exceeded a fraction of 0.1 percent of the market.¹⁶⁴ Thus we conclude that there is no likelihood that Italian imports will have a depressing or suppressing effect on domestic prices.

¹⁶⁰ Report at A-22, Table 15.

¹⁶¹ Postconference Brief of Burgo at 14-15; Report at A-17.

¹⁶² See, e.g., Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780 (CIT 1981).

¹⁶³ Report at A-17-A-19, Table 12, 13.

¹⁶⁴ Report at A-22, Table 15.

Additional Views of Commissioner Lodwick

I do not cumulate Austrian imports with the imports from Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom in the consideration of impact of these imports on the domestic industry. I concur with the majority opinion regarding its finding that Austrian imports are negligible but do not concur with the majority's finding imports from Italy, the Netherlands and Sweden are negligible. I also determine that there is a reasonable indication that the domestic coated groundwood paper industry is injured by reason of cumulated imports from Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom for the reasons stated in the majority opinion for injury by reason of cumulated imports from Belgium, Finland, France, Germany and the United Kingdom.

In evaluating the competition requirement for cumulation and the negligible imports exception thereto, I have followed the reasonable indication standard set forth in American Lamb Co. v. United States.¹ I also have considered the legislative history which indicates that the negligible imports exception should be applied with "particular care in situations involving fungible products, where a small quantity of low-priced imports can have a very real effect on the market."² As stated in the majority opinion, I consider coated groundwood paper to be essentially a fungible product whose purchasers are sensitive to very small price differences between potential suppliers of coated groundwood paper. Taking these factors under consideration, I believe it is appropriate, at this stage of the proceedings, to cumulate imports from Italy, the Netherlands and Sweden with those of other subject countries except Austria.

¹ 785 F. 2d 994 (Fed. Cir. 1986). American Lamb requires an affirmative determination in a preliminary investigation unless there is (1) clear and convincing evidence of no material injury; and (2) no likelihood that contrary evidence will arise should a final investigation occur.

² H.R., Rep. No. 40, 100th Cong., 1st Sess. 130 (Part 1 1987); see also H.R. Rep. 576, 100th Cong., 2d Sess. at 621 (April 20, 1988).

Negligible Imports³**Chlorine Bleached vs. Chlorine Free Coated Groundwood Paper**

I am not fully persuaded that the conditions of competition are such that there is limited or no competition between imports of Swedish chlorine free coated groundwood paper and products manufactured by the U.S. coated groundwood paper industry. The Swedish respondent asserts that the chlorine free coated groundwood paper "has unique properties that distinguish it from the domestic product and from other imports."⁴ However, it is unclear as to the degree of substitutability between chlorine bleached and chlorine free coated groundwood paper at the consumer level. There appears to be no clearcut price premium for the Swedish product in the limited set of price comparisons available.⁵ Related to the question of substitutability is an issue of market niches. Is the use of chlorine free coated groundwood paper unique in its end use or does the chlorine free coated groundwood paper simply displace chlorine bleached coated groundwood paper in the end use? For example, if Greenpeace could not obtain chlorine free coated groundwood paper would they stop printing their magazine or would they use chlorine bleached coated groundwood paper instead? There is also a lack of information

³ In consideration of the cumulation of two or more countries of like products subject to investigation, the Commission has been asked to consider several factors including if such imports compete with each other and with like products of the domestic industry in the United States and if the imports of the merchandise are negligible and have no discernible adverse impact on the domestic industry. In evaluating whether the imports are negligible, the Commission is asked to evaluate all relevant economic factors regarding imports, including:

- 1) The volume and market share of the imports are negligible,
- 2) Sales transactions involving the imports are isolated and sporadic, and
- 3) The domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression and depression.

The Commission is to apply the negligible import exception "only in circumstances where it is clear that imports from that source are so small and isolated that they could not possibly be having any injurious impact on the U.S. industry". In applying the negligible import standard to imports in this investigation, the nature of each country's imports needs to be evaluated. H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. 131 (1987); H.R. Rep. No. 576, 100th Cong., 2nd Sess. at 621.

⁴ Post Conference Brief of MoDo at 8.

⁵ Final Staff Report at Table 17 & 19.

regarding the degree of production line dedication involved in making chlorine free vs. chlorine bleached coated groundwood paper. Does making chlorine free coated groundwood paper merely involve skipping the addition of chlorine bleach in the production process or does unbleached paper require an entirely different set of production equipment and processes?

I also note steady market share of Swedish imports in the U.S. market throughout the period of investigation. These imports are neither sporadic or isolated. It is also questionable whether the volume and market share of the Swedish imports are negligible. I am reluctant to find that the Swedish imports are negligible in this preliminary investigation if contrary information regarding their impact on the domestic industry could arise in a final investigation.

Sheet vs. Rolled Coated Groundwood Paper

There is also some uncertainty as to the degree of competition between sheet and roll in the U.S. coated groundwood paper market. Petitioner alleges that the domestic sheet is sold in the U.S. market.⁶ They allege that the only difference between domestic roll and imported sheet is the cutting of the roll into sheets by a convertor. This would seem to imply that the domestic coated groundwood paper is identical to the imported sheet in characteristics and uses except for the form it is sold in. The available information in the staff report states that industry sources could not identify any U.S. production of coated groundwood paper in sheet form.⁷ However the number of convertors, if any, in the U.S. and the amount of U.S. rolled coated groundwood paper which is converted into coated groundwood paper in sheet form is not known. If there are convertors in the industry, then not all coated groundwood paper produced in rolls is being used in applications which handle coated groundwood paper only in its rolled form. If rolled coated groundwood paper is converted to sheet form, it then could be used in applications

⁶ Petitioner's Comments on APO material at 11-12.

⁷ Final Staff Report at A-24.

handling coated groundwood paper in sheets and therefore compete directly with imported sheet. Petitioner states that at least one domestic convertor has been forced from business due to the low cost imports of sheet.⁸ This would imply that there has been direct displacement of U.S. rolled coated groundwood paper by sales of imported coated groundwood paper in sheets. Respondents argue that sheets are different from rolls for a variety of reasons including manufacturing process, paper width and weight, channels of distribution and end use in printing.⁹

Both Italian and Dutch imports are small. However, Dutch imports have come in during two periods, in 1989 and in the interim period. There is also some uncertainty as to the actual level of Italian imports. Additional information regarding the level of Italian imports and the impact of imported sheet coated groundwood paper on sales of rolled groundwood paper by the domestic industry could be forthcoming in a final investigation. Therefore I do not believe it appropriate to find that Italian and Dutch imports are negligible in this preliminary investigation.

⁸ Petitioner's Comments on APO material at 11-12.

⁹ Postconference brief of Burgo at 7-8.

VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE

**Coated Groundwood Paper from Austria, Belgium,
Finland, France, Germany, Italy, The Netherlands,
Sweden, and the United Kingdom**

Inv. No. 731-TA-486 through 494 (Preliminary)

February 11, 1991

While I agree with certain of my colleagues' conclusions in these investigations,¹ I dissent from their determination that a domestic industry is materially injured by reason of dumped imports from several of the subject countries. In particular, the fact that imports of coated groundwood paper from nine countries have never achieved a market penetration of 10 percent of domestic consumption suggests a pattern of trade characterized more by episodic sales based on non-price factors than by encroachment into the domestic market by means of price dumping. The record in this case confirms this view.

American Lamb and the State of the Record

In a preliminary antidumping investigation, the Commission must determine whether there is "a reasonable indication that" an industry in the United States is injured or threatened with material injury "by reason of the imports of the merchandise

¹ I agree with the majority's conclusions regarding like product and domestic industry. I also do not quarrel with the plurality's interpretation of the negligible imports exception to the cumulation rule, but the extent of cumulation makes little difference in my analysis of this case.

which is the subject of the investigation."² In American Lamb Co. v. United States,³ our reviewing court approved the Commission's practice of rendering a negative determination in a preliminary investigation when "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."⁴ The real import of the American Lamb case, however, is judicial approval of the ITC's practice of weighing the information on the record in a preliminary investigation to determine whether a "reasonable indication" of injury or threat is present rather than considering only the evidence supporting an affirmative result.⁵

On the face of the American Lamb test, one can see that its two halves are inversely interrelated. The greater the gaps in the administrative record, the smaller the possibility of finding clear and convincing evidence of no injury or threat. The obverse, of course, is not necessarily true: the fact that the record is complete does not itself support a preliminary negative determination.

² 19 U.S.C. § 1673b. Since material retardation, a third basis for an affirmative determination, is not an issue in this case, it will not be discussed further.

³ 785 F.2d 994 (Fed. Cir. 1986).

⁴ Id. at 999.

⁵ Id. at 1001-02.

But the more complete the record, the freer the Commission is to weigh the evidence with confidence that no other material facts will arise in a final investigation and the more clear and convincing are any conclusions based thereon. Ultimately, if the record in a preliminary investigation contains all the material information necessary to establish a conclusion based on clear and convincing evidence, the preliminary investigation standard becomes identical to the final investigation standard. In an affirmative case, the "reasonable indication" blossoms into a full-blown conclusion; in a negative case, the "reasonable indication" disappears as the weight of the complete record lies against the petition.

This case presents the Commission with a complete record. In large measure, this is the result of the efforts of the American Paper Institute on the one side and the European Paper Institute on the other. The Commission has a very clear picture of the domestic industry, the relevant foreign industries, and the market for coated groundwood paper. Given the limitations of the import data available from public sources, the Institutes were an indispensable and thorough source of relevant data.⁶

⁶ For the years subject to investigation prior to 1989, imports of coated groundwood paper were within a basket category for tariff purposes. Thus, import data for this particular product are unavailable. The data provided by the Institutes and their members included the import data for coated groundwood paper, which seem to jibe with the 1989 and 1990 data available from public sources.

Unfortunately, data for imports from Canada, traditionally the largest foreign supplier of coated groundwood paper in the United States market, are unavailable. The possibility exists

(continued...)

In addition, interested parties in these investigations have provided clear and exhaustive briefs setting forth their legal and factual arguments regarding the impact of the subject imports on the domestic industry. While each party has questioned the veracity of the opposition's factual conclusions, none of the parties has indicated that more information would be fruitfully obtained in any final investigation. Thus, having the benefit of exhaustive argument and a complete record, I am comfortable that my negative determination is based on all of the input that would be available to me in any final investigation.⁷

Material Injury and the Paper Trail

Petitioners have presented an excellent outline of the facts that they believe establish material injury by reason of the subject imports. Their arguments are worth quoting in full:

United States producers, because of their sources of inexpensive wood and clay, integration of most of

⁶(...continued)

that the Commission could obtain Canadian import data for years prior to 1989 by issuing questionnaires to Canadian producers (many of whom are affiliated with domestic paper firms). However, as Canadian imports are not involved in this case and the exact magnitude of such imports is immaterial in any event (as discussed below), I believe that such an exercise would be a waste of time and effort.

⁷ Of course, in light of the Commission's practice of voting the week before opinions are due and then not sharing opinions -- not even the opinion drafted by the General Counsel for the plurality -- before they are released, I do not have the benefit of my colleagues' views on the central issues in this case. I therefore do not know whether their arguments might have swayed me. As these are established Commission procedures that, though I oppose, I am unable to change, I must proceed within the ground rules as they are laid out.

them in the production of kraft pulp, and the lower transportation costs associated with supplying their own market, are the low-cost producers of coated groundwood paper. Therefore, imports of coated paper have been at a cost disadvantage. Imports historically entered the U.S. market only at premium prices and only during periods when demand exceeded supply. During 1977 through 1980, for example, a large number of imports were present in the U.S. market in order to meet the portion of demand that exceeded supply. The cyclically high prices then stimulated additions to domestic capacity. Once new domestic capacity came on-stream, imports largely disappeared from the market, as they did in the early 1980s. Moreover, in light of the short supply conditions in which imports entered the U.S. market, they were historically priced at or above domestic market prices, which typically tend to be strong during these periods.

During the course of the mid-1980s through the present, however, the role of U.S. imports originating in Europe changed in a manner that progressively distorted the cycles' normal operation. As supplies tightened during 1983-1985, imports from Europe rose and substantially increased their share of U.S. consumption from almost zero to approximately 5.0 percent. In 1986, substantial new domestic capacity quite normally came onstream. But as supply conditions later eased, imports declined only slightly, and thereafter remained a presence in the U.S. market at an historically high level and at prices below those of domestic producers. Domestic profitability in 1987 plummeted. As market conditions once again tightened to a peak in 1988-1989, imports from Europe rose to still higher levels from their higher base and acted as a drag on natural upward movements in pricing. Since early 1989, prices generally have been falling, notwithstanding growth in demand and in the volume of shipments during 1990. Planned expansions of domestic capacity totalling in excess of [amount confidential] tons were cancelled or deferred over the last year owing to the poor returns anticipated. In the absence of relief from LTFV pricing, should market conditions once again tighten in the years ahead, incremental demand will be served from excess capacity being constructed in Europe, rather than new facilities originally planned by U.S. producers.⁸

To summarize:

⁸ Petition at 35-36 (emphasis in original).

From the mid-1980s through the present, however, the cycle became progressively more distorted as the role of European imports in the U.S. market changed significantly. These imports reentered the market as predicted in order to meet a shortfall in supply. With the change in supply conditions through the addition of U.S. capacity, however, imports should have naturally declined and prices should have moved upward. Instead, low-priced imports remained in the U.S. market despite their cost disadvantage. They also grew substantially and a downward trend in real prices commenced.⁹

In short, imports are "natural" and expected during the short-supply periods of the paper cycle, but they have now overstayed their welcome.

In the first place, petitioner's argument is self-contradictory. Despite the fact that new capacity has softened the market from the extreme short-supply situation in 1987-88, demand for coated groundwood paper has also grown. Petitioner itself notes that, over two time periods for which it presents data -- 1981 through 1990 and 1987 through 1990 -- "Domestic shipments increased . . . while consumption [i.e., demand] increased by a much higher amount."¹⁰ "Although domestic shipments rose in interim 1990 compared to interim 1989, the increase hardly kept pace with the increase in apparent U.S. consumption."¹¹ Furthermore, according to petitioner, the domestic industry is producing coated groundwood paper "at a

⁹ Post Conference Brief on Behalf of Petitioners at 24 (emphasis in original, footnote omitted).

¹⁰ Id. at 30.

¹¹ Id.

relatively strong operating rate"¹² despite the "substantial new domestic capacity." In short, petitioner outlines the condition in which even it concedes that imports are normally to be expected -- where demand exceeds available supply -- and rests its entitlement to relief almost entirely on the fact that this situation still persists.

With respect to the evidence on which petitioner relies, the assertion that the industry has foregone capacity expansion in the face of mounting imports is at best overstated and at worst untrue. The allegedly foregone expansion cited by petitioner, involving billions of dollars of capital investment over the next few years, so dwarfs the volume of dumped imports as to make the entire claim appear specious. Indeed, the evidence is that many of the firms in the domestic industry sought to expand to the full extent of the volume of imports and beyond. Had they all proceeded, as petitioner apparently would have liked, it could well have been the worst industrial gaffe since New Coke.

That said, petitioner does skirt a viable argument establishing material injury by reason of the subject imports based on the data in the record. Coated groundwood paper is

¹² Petition at 41. This discussion tests only the logic of petitioner's arguments, not the data on which it relies. In fact, Commission data reflect a slightly lower capacity utilization rate than that advanced by petitioner, but still reflect an moderately increasing capacity utilization rate over time despite increases in domestic capacity over the past few years. In other words, domestic production is still outpacing capacity increases. Report at A-12-13. Thus, some of the excess demand has gone to imports and some has gone to increased U.S. production. The impact of this state of affairs on the domestic industry is discussed below.

generally purchased directly from the purchaser at a discount from list price. Apparently, during part of 1987-88, domestic production was insufficient to meet domestic demand and import penetration from the subject countries was even smaller than it is today. Both domestic producers and importers report that during this period they could not supply all of their customers with coated groundwood paper.¹³ The discounts offered by domestic producers during this period, therefore, were small to nonexistent. As imports increased and as new capacity came on line, the short-supply situation eased. Discounts predictably began to grow larger.

Petitioner's contention thus boils down to the proposition that prices have been suppressed from the extraordinarily high levels of the 1987-88 period by the advent of the subject imports. But, as discussed above, this is the scenario that petitioner paints as "natural" and that petitioner concedes has continued to the present. Furthermore, petitioner does not account for the increase in domestic capacity following the short-supply situation.

The record plainly reveals that the impact of the subject imports on domestic prices is minimal. In the highly capital-intensive paper industry, profits depend on maintaining high capacity utilization rates on the enormous and expensive paper-making machines. Although the industry has remained enviably profitable during the entire investigation period, capacity

¹³ Report at A-25.

utilization rates have remained in the low 90-percent range in large part because of the domestic industry's capacity increases of 4 percent during the period 1987-1989 and another 3 percent in interim 1990. In the absence of dumped imports the domestic industry would certainly increase its capacity utilization rate as much as possible. This would minimize any upward pressure on prices as a result of unsatisfied demand.¹⁴

Of course, the increased volume does represent increased revenues for the domestic industry. The record is clear, however, that the volume effects would not be material. The maximum possible volume effect is equal to the volume of the subject imports. In 1989, the subject imports peaked at 332,614 tons, a 7.9 percent market share in that year.¹⁵ As a percentage of U.S. production, which would by definition be higher than market share (imports as a share of domestic consumption, including the large amount of Canadian imports), subject imports reached 9.1 percent in 1989, only 1.2 percentage point higher than in 1988 and 2.5 percentage points higher than in 1987, the first year of the short-supply situation.¹⁶ The maximum volume effect of the subject imports on domestic production in 1989, therefore, was 9.1 percent of revenues.

¹⁴ In economic parlance, the elasticity of supply in the industry is relatively high.

¹⁵ Report at A-21, Table 14. While we lack firm data on imports and therefore do not know the market share of the subject imports for prior years, we do know that in volume terms 1989 imports were far higher than imports in the two previous years.

¹⁶ Report at A-22, Table 15.

From this 9.1 percent figure, several deductions must be made. Although, as I stated at the outset, my views do not depend on excluding any imports under the negligible imports rule, application of that provision would result in a somewhat smaller volume effect from the remaining cumulated unfair imports. Then, as petitioner itself concedes, the United States and Canada effectively comprise one unified market.¹⁷ The upward pressure on prices and resulting increased capacity utilization levels would lead to a similar response in Canada -- particularly since Canadian and American firms are largely affiliated and jointly supply the North American market.¹⁸ The result would be more Canadian imports into the United States.¹⁹ Finally, the record reveals that many paper purchasers -- as reflected in the responses of the purchasers cited in the domestic industry's lost sales/lost revenues allegations -- would still import from the subject countries even if prices were higher. Some imported products have particular characteristics that make them especially desirable to certain customers. In other cases, purchasers are disinclined to repeat their experiences of 1987

¹⁷ Post-Conference Brief at 77: "Canadian producers face essentially the same production economics as U.S. producers and he [sic] priced fairly and are considered a neutral part of the U.S.-Canadian market." Canadian and U.S. producers are largely affiliated companies.

¹⁸ Petitioner's Post-Conference Brief at 77.

¹⁹ In fact, Canadian imports in interim 1990 (three quarters) already exceeded the total quantity of imports in 1989.

and 1988 when domestic producers could not meet demand;²⁰ they have expressed to the Commission an ardent intention to retain alternate, offshore sources of supply.²¹ Thus, the increased demand for the domestic product -- the total volume effect -- would not match even the relatively small import penetration levels attained by the subject imports in this case.

In sum, events in the industry have followed the path that petitioner laid out. Following the short-supply situation in 1987-88, domestic capacity rose substantially; nonetheless, capacity utilization rates rose and remain above 1987 levels. Canadian imports, not subject to investigation, also rose. Finally, imports from the subject countries rose, but only moderately and for reasons that are not attributable to their price. In these circumstances, the data do not support the conclusion that the domestic industry is materially injured by reason of the subject imports.

Paper Threats and Paper Tigers

I have examined each of the statutory factors pertaining to threat in this case.²² Nearly all of them are either not

²⁰ This is especially important given the uses of coated groundwood paper, particularly advertisements, catalogs, and periodical publications. Each of these uses is extremely time sensitive, and even a small delay in delivery can have enormous adverse consequences for downstream industries.

²¹ In economic parlance, these facts limit the elasticity of substitution between the domestic product and the subject imports.

²² 19 U.S.C. § 1677(7)(F).

relevant to this case or have no basis of support in the record. The only factor worthy of note is the apparent increase in productive capacity in several of the countries under investigation. After examining that factor, however, I conclude that it is insufficient to sustain an affirmative case.

As the Court of International Trade has pointed out,

[T]he mere fact of increased capacity does not ipso facto imply increased exports to the United States.

. . . . A Commission finding that levels of imports will increase must be based on 'positive evidence tending to show an intention to increase the levels of importation.' [Citation omitted.] The mere existence of increased [capacity to produce the subject imports] -- the only information cited by plaintiffs -- is not such positive evidence.²³

In addition, the record must show not only more than an increase in imports, but also a real and imminent threat of material injury to the domestic industry.²⁴

Petitioner claims that the European paper industry is in the midst of a program to increase its capacity to produce coated groundwood paper from 3.9 million tons to 6.9 million tons. According to petitioner's evidence, this program began in 1987 and is scheduled to be completed in 1994.²⁵ Petitioner stresses that European capacity will continue to expand by about 1 million

²³ American Spring Wire Corp. v. United States, 590 F.Supp 1273, 1280 (Ct. of Int'l Trade 1984), aff'd sub nom. Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985), quoting Matsushita Electric Industrial Co. v. United States, 569 F.Supp 853, 857 (Ct. of Int'l Trade 1983).

²⁴ 19 U.S.C. § 1677(7)(F)(ii).

²⁵ Petitioner's Post-Conference Brief at 84.

tons over the next few years and suggests a connection between the cancelled plans to expand domestic capacity and the pending expansion of the European industry.²⁶

Commission data indicate that European capacity has increased from 4.8 million tons in 1988 to 6.0 million tons in 1990.²⁷ The Commission's investigation revealed, however, that there are no new plans to expand capacity in Europe.²⁸

Petitioner's flaw appears to be that it does not admit of the possibility that the European industry's ambitious expansion plans fell prey to the same factors that curtailed the domestic industry's efforts: new capacity that came on line following the short-supply period in 1987-88 softened the market, revealing that the initial forecasts on which the expansion plans were based were too optimistic. For this reason, the results of the Commission's more recent investigation are entitled to much greater weight than the petitioner's citation of the European Paper Institute's earlier pronouncements.

Finally, the production capacity increases in Europe to date have not resulted in a heavy surge of imports. As mentioned above, the subject imports -- attributable to factors other than low prices -- have increased only moderately relative to domestic

²⁶ Id. at 84.

²⁷ Report at A-18, Table 12.

²⁸ Staff Report at A-17. Some minor changes in capacity are expected, but these are not all expected to be in the positive direction. The net effect is likely to be nil. Id.

production over the period of investigation.²⁹ With respect to those countries whose imports accounted for the greatest share of the increased capacity and whose capacity utilization levels dropped the most during the period of investigation, their total exports and exports to the United States actually dropped even as their additional capacity came on line in 1990.³⁰ Under clear precedent of the Commission and its reviewing courts, this evidence standing alone is insufficient to establish a real and imminent threat of material injury to the domestic industry.

Conclusion

For the foregoing reasons, I conclude that an industry in the United States is neither materially injured nor threatened with material injury by reason of imported coated groundwood paper from the United States.

²⁹ As stated above, these data overstate the market penetration of the subject imports because they do not take into account total shipments within the integrated North American market.

³⁰ Report at A-18 and A-19, Tables 12 and 13.

INFORMATION OBTAINED IN THE INVESTIGATIONS

Introduction

On December 28, 1990, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, New York, NY, and each of its individual members, alleging that imports of coated groundwood paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, effective December 28, 1990, the Commission instituted antidumping investigations Nos. 731-TA-486 through 494 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on January 4, 1991 (56 F.R. 444).¹ The public conference was held in Washington, DC, on January 18, 1991,² and the vote was held on February 6. Coated groundwood paper has not been the subject of any other investigation conducted by the Commission.

Nature and Extent of the Alleged Sales at LTFV

There is no information relating to the nature and extent of the alleged LTFV sales other than the allegations of the petitioner. The petitioner identified one firm each for Austria, Belgium, Italy, the Netherlands, Sweden, and the United Kingdom; two for France; four for Germany; and eight for Finland that have exported the subject product to the United States. Although not necessarily accounting for all production or shipments of the subject product by their respective countries, these firms allegedly account for all or the bulk of exports to the United States. On the basis of home-market prices for these firms and prices paid by unrelated customers in the United States during 1990, the petitioner calculated dumping margins ranging from 26.49 to 87.89 percent. The firms, their respective countries, and the alleged margins associated therewith are shown in table 1. (All of the firms shown are manufacturers, except where noted).

¹ Copies of the Commission's and Commerce's notices are shown in app. A.

² A list of witnesses appearing at the conference is presented in app. B.

Table 1

Coated groundwood paper: Countries subject to the instant investigations, range of alleged dumping margins pertaining thereto, and manufacturers therein exporting to the United States¹

Country	Range of alleged dumping margins (percent)	Firms exporting to the United States
Austria	57.12-87.89	Leykam-Murztaler Papier AG
Belgium	26.49-49.15	KNP Belgie NV
Finland	34.29-68.49	Enso-Gutzeit OY Kymmene Corp. (owns Chapelle Darblay (France) and Caledonian Paper (United Kingdom)) Metsa-Serla Group ² Myllykoski OY (owns Albbbruck Papierfabrik (Germany)) ² Rauma Repola OY Tampella Ltd. ² United Paper Mills Ltd. ² Veitsiluoto OY ²
France	56.32-59.31	Chapelle Darblay S.A. Feldmuhle Beghin-Corbehem
Germany	36.06-52.15	Albbbruck Papierfabrik Feldmuhle AG (owns Feldmuhle Beghin-Corbehem (France)) Haindl Papier GmbH MD Papierfabriken GmbH
Italy	56.54-71.75	Burgo SpA, Cartiere
Netherlands	29.30-61.67	Koninklijke Nederlandse Paperfabrieken NV (KNP) (owns KNP Belgie (Belgium) and 50 percent of Leykam (Austria))
Sweden	63.72-69.17	Holmens Bruk AB ³
United Kingdom	28.49-85.27	Caledonian Paper PLC

¹ All firms listed are manufacturers, except where noted.

² Members of the Finnish Paper Mills Association (Finnpap), a cooperative organization engaged in the sale and distribution of paper products.

³ Holmens is a marketing subsidiary of Mo och Domsjo, a Swedish manufacturer.

Source: Compiled from the petition submitted on behalf of the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry and from information submitted in response to questionnaires of the U.S. International Trade Commission.

The Product

Description and uses

The imported article subject to the petitioners' complaint--coated groundwood paper--is paper used for writing, printing, or other graphic purposes that is coated with kaolin (China clay) or other inorganic substances (to make it more suitable for these uses) and that consists of more than 10 percent by weight of fibers obtained by mechanical, as opposed to chemical, processes.³ Such paper may be coated on one or both sides. That coated on both sides constitutes the bulk of coated groundwood paper production in the United States and is the imported product to which the petitioners' complaint is limited. It is generally used for multi-colored publications that commonly remain in use from several days to a month, including magazines, sales fliers, merchandising catalogues, better quality newspaper inserts, and direct mail advertisements. (The relatively small quantity of coated groundwood paper produced with coating on one side is primarily used for printed wrapping paper).

The other major types of paper used for writing, printing, or other graphic purposes are uncoated groundwood paper, similar in composition to the subject product, but lacking the coating necessary for better graphics (color clarity and print sharpness), used primarily for handwriting, drawing, black-and-white publications and relatively short-lived color publications, such as most newspaper inserts; coated freesheet paper, a similarly coated paper but consisting of a greater proportion of fibers obtained by chemical means (90 percent or more by weight), used primarily for more permanent publications such as premium magazines, hard-bound books, and art reproductions; uncoated freesheet paper, similar in composition to the former but without coating and used primarily for drawing paper, handwriting paper, commercial correspondence paper, letterhead, carbonizing base, and wallpaper base; and newsprint, a very low quality uncoated groundwood paper designed exclusively for newspapers or similar publications commonly disposed of within a day. In addition to the above printing papers, distinguished mostly by their relative proportions of

³ Like most printing paper, coated groundwood paper is produced from a mixture of mechanically obtained and chemically obtained wood fibers--microscopic strands, which, when matted together, form paper. In the mechanical process they are produced by physically grinding wood chips, with water, to the appropriate size. The resultant product, groundwood pulp, contains pure wood (cellulose) fibers in addition to noncellulose elements such as lignin, the natural glue that holds the fibers together in wood. In the chemical process the fibers are produced by subjecting wood chips to certain chemicals, which, with the addition of water, achieves the same effect, except that the resultant product, chemical pulp, is relatively free of noncellulose elements. The difference is important for paper making. Although lignin and other noncellulosic elements provide paper with good opacity, they effectively weaken its structure and shorten its life. The addition of chemical pulp adds strength and longevity to the finished product. In general, the higher the chemical-pulp content, the better quality and higher priced the paper.

mechanically- or chemically-derived pulp and whether or not coated with kaolin or other inorganic substances, there are a number of printing papers coated with special substances specifically designed for use with duplicating machines, reprographic machines, and other specialized equipment.

Paper used for writing, printing, and other graphic purposes is classified by grade and basis weight. Grade is largely related to paper "brightness", a measure of the reflectivity of paper under standardized conditions by an instrument designed and calibrated for this purpose. Brightness grades for most printing papers range from a low of No. 5 to a high of No. 1. (A "premium" grade above No. 1 is sometimes available on special order). Basis weight, a standard unit of measurement in the United States, is the weight of the paper in pounds per ream, a ream being equivalent to 500 sheets of paper, each measuring 25" x 38". (In Europe basis weight is measured by the weight in grams of one sheet measuring one meter square). Most coated (2-sided) groundwood paper sold in the United States measures No. 5 to No. 4 in brightness and ranges from 32 to 50 pounds in basis weight. In addition to brightness and basis weight, coated groundwood paper is classified according to use for offset or rotogravure printing processes. Offset printing processes generally require paper of coarser texture and greater stiffness than do rotogravure processes, and coated groundwood paper is produced accordingly. In response to market demand, U.S. producers have gradually shifted production to lighter basis weights and higher brightness over the past several years.

To produce coated groundwood paper, logs and wood chips must first be reduced to pulp (minute wood fibers mixed with water) by both mechanical and chemical means and the respective pulps mixed to appropriate proportions. The mixed pulp then undergoes a fibrillation process to fray the fibers and otherwise increase their surface area for better cohesion. This process may include the addition of dyes to add color to the paper, starches to give it firmness, and/or resins to give it water resistant properties. Removing the bulk of the water from the pulp--by gravity, suction, and pressure--allows the fibers to cohere to each other, turning the pulp into large continuous sheets of paper. After further drying by means of heat and pressure, the paper is coated (usually with clays but also with other inorganic substances such as calcium carbonate and titanium dioxide) to provide a smooth surface for printing. The coated paper is often further smoothed by passing it through calenders, which press the paper between heavy polished rollers. The finished product is then wound into rolls or cut into sheets before distribution. Although the basic process is common worldwide, individual producers, both foreign and domestic, report proprietary modifications and upgrades to their processes that contribute to production efficiency or product enhancement. Such differences notwithstanding, the U.S.-produced and imported products appear to be similar for the bulk of the subject product's uses.

Printing characteristics are unique to each of the aforementioned types of paper. For this reason they are rarely substituted. Buyers generally decide upon the printing effect, both visual and tangible, they wish to achieve and select a paper accordingly. Coated freesheet paper, the closest substitute for coated groundwood paper in terms of physical characteristics, is 15 to 25 percent higher in price and does not provide adequate opacity at lower basis weights. (For this reason it is generally not available in basis

weights below 45 pounds). Uncoated papers are generally lower in price--10 to 25 percent for the better grades--but have inferior printing surfaces (i.e., brightness, smoothness, and gloss). The highest grade of uncoated groundwood paper, known as supercalendered paper (so-called because it undergoes an additional calendering process to improve its surface characteristics), has occasionally been substituted for the subject product, but only in the lowest-grade printing applications.

U.S. tariff treatment

Coated groundwood paper (coated on 1 or both sides) is provided for in subheadings 4810.21.00 and 4810.29.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 254.4620 of the former Tariff Schedules of the United States Annotated). The former subheading provides for paper of light basis weight, which, according to standard industry definition, is 50 pounds and under; the latter is for all other, i.e., over 50 pounds. The column 1-general (most-favored-nation) rate of duty for these subheadings, applicable to imports from the countries subject to these investigations, is 2.5 percent ad valorem.

U.S. Producers

The petitioning Committee consists of eight firms⁴ producing coated groundwood paper in the United States. These and five others account for all U.S. production of the subject product since 1986. The locations of their respective plants and shares of U.S. coated (2-sided) groundwood paper production in January-September 1990 are shown in table 2. Plant locations, proximate to sources of wood pulp, are concentrated in the northeast. Despite the concentration, each firm claims to serve and ship to the entire U.S. market.

All U.S. producers are primarily, if not exclusively, paper and wood-product manufacturers, and all manufacture paper other than the subject product, though not necessarily at the same location or in the same establishment. The degree of integration, i.e., the extent to which firms purchase and/or produce pulp, chemicals, and other raw materials, varies from firm to firm. All, however, produce a finished product.

U.S. Market, Importers, and Channels of Distribution

Virtually all coated groundwood paper is purchased and used by publishers and printers, which order the bulk of their material on a loose contractual basis directly from U.S. producers. Most of the remainder is purchased either on a similar contractual basis from U.S. sales agents affiliated with foreign producers or on an as-needed (spot) basis from independent brokers and merchants serving all sources. Sales agents, brokers, and merchants accounting for the bulk of the imported material subject to these investigations are shown in table 3.

⁴ The Committee originally consisted of 9 firms. One firm, Fraser Paper, Ltd., Madawasca, ME, asked to be excluded during the course of the Commission's preliminary investigations.

Table 2

Coated (2-sided) groundwood paper: U.S. producers, plant locations, and shares of domestic production in January-September 1990, by firms

Firm	Plant location(s)	Share (percent) of U.S. production ¹
Petitioners:		
Blandin Paper Co.	Grand Rapids, MN	***
Boise Cascade Corp.	Rumford, ME	***
Bowater, Inc.	Catawaba, SC	***
Champion International Corp.	Bucksport, ME, Sartell, MN, Deferiet, NY	***
Consolidated Papers, Inc.	Wisconsin Rapids, WI Stevens Point, WI	***
International Paper Co.	Jay, ME, Corinth, NY, Pine Bluff, AR	***
James River Corp.	St. Francisville, LA	***
Niagara Paper Co.	Niagara, WI	***
		78.1
Nonpetitioners:		
Fraser Paper, Ltd. ²	Madawasca, ME	***
Great Northern Paper Co. ³	Millinocket, ME	***
Mead Publishing Paper ³	Escanaba, MI	***
Midtec Paper Corp. ²	Kimberly, WI	***
Weyerhaeuser Paper Co. ³	Columbus, MS	***
		21.9

¹ Figures may not add to 100 percent due to rounding.

² Supports the petition.

³ Takes no position with respect to the petition.

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

Table 3

Coated (2-sided) groundwood paper: U.S. importers, foreign producer affiliations, and sources of imports, by firms

Firm	Foreign producer affiliation	Sources of imports
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*

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

Consideration of the Alleged Material Injury

The data in the following sections represent 85 to 90 percent of U.S. production during the period for which the data were collected. Firms not included in the aggregate data are noted in the corresponding tables.⁵

U.S. production, capacity, capacity utilization, shipments, and inventories

Most of the machinery and equipment used in the production of printing paper is specific to a single paper type. To convert a coated groundwood paper facility to the production of freesheet or uncoated groundwood paper, for example, would require an investment of \$10 to \$30 million for equipment modifications alone and a year or more in downtime for installation, cleaning, changing pulp furnish and chemical additives, resetting machine controls, fine tuning to achieve paper of acceptable quality, and, in many instances, additional training for workers. (Downtime for similar adjustments, albeit less lengthy, is incurred by producers even when switching to different grades and weights of coated groundwood paper). Alternatively, the cost of a new paper machine is on the order of several hundred million dollars. From time to time some producers have produced newsprint and/or uncoated groundwood paper on coated groundwood machinery, but only under exceptional circumstances, such as when coating equipment is idle or unable to keep pace with the rest of the machine's production. One producer, ***, reports that it shifts between coated groundwood and coated freesheet paper on one of its *** machines, but the machine was originally designed for this purpose and includes the additional equipment necessary.

Data reflecting aggregate U.S. producers' operations are shown in table 4. Several producers report changes in capacity since 1987. ***. In the aggregate, U.S. producers' productive capacity increased by 4.0 percent from 1987 to 1989 and by 3.0 percent from January-September 1989 to January-September 1990. At least six producers report that they have either cancelled or deferred plans to increase capacity. Their reports, referenced in the section of this report entitled "Financial Experience of U.S. Producers", are included in appendix E.

Production slightly outpaced capacity increases during the period for which data were collected. The result was an increase in capacity utilization from 87.8 percent in 1987 to 91.1 percent in 1989 and a further increase of

⁵ Petitioners maintain that "The domestic coated groundwood paper industry is characterized by several special factors, warranting use of an expanded period of investigation to depict an accurate economic picture of the U.S. market, and the industry's conditions, in the context of the industry's historical pricing and investment cycle" (postconference brief, p. 2), and that "The Commission should exercise its authority under 19 U.S.C. 1677(7)(C)(iii) to consider the unique pricing and investment cycle of the coated groundwood paper [industry] by establishing a nine-year investigation period in these investigations--1981 through interim 1990--in order to evaluate fully the adverse impact of dumped European imports on the domestic industry" (postconference brief, p. 23).

Table 4

Coated (2-sided) groundwood paper: U.S. production, end-of-period practical capacity, capacity utilization, company transfers, domestic shipments, exports, and end-of-period inventories, 1987-89, January-September 1989, and January-September 1990¹

Item	1987	1988	1989	January-Sept. --	
				1989	1990
Production (1,000 short tons).....	3,403	3,724	3,669	2,729	2,868
Capacity ² (1,000 short tons).....	3,874	3,983	4,029	3,019	3,111
Ratio of production to capacity (percent).....	87.8	93.5	91.1	90.4	92.2
Transfer shipments:					
Quantity (1,000 short tons).....	9	43	55	34	51
Value ³ (million dollars).....	6	34	44	28	39
Domestic shipments:					
Quantity (1,000 short tons).....	3,390	3,632	3,568	2,647	2,753
Value ³ (million dollars).....	2,265	2,885	2,913	2,156	2,175
Exports:					
Quantity (1,000 short tons).....	31	42	39	29	51
Value ³ (million dollars).....	21	32	31	23	36
Inventories (1,000 short tons)....	49	53	60	73	77
Ratio of inventories to total shipments during the period (percent).....	1.4	1.4	1.6	42.0	42.0

¹ Does not include ***.

² Most producers estimated capacity on the basis of operating their facilities 168 hours per week and 51 to 52 weeks per year.

³ Net sales value, i.e., gross value less all discounts, allowances, rebates, and the value of returned goods.

⁴ Annualized.

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

nearly 2 percentage points from January-September 1989 to January-September 1990. In view of their their substantial capital investment, U.S. producers endeavor to maintain high capacity utilization rates. Most U.S. producers report no unusual circumstances that have adversely affected production; however, the shift to lighter basis weights and higher brightness has effectively increased their downtime for machine reconfiguration.

Domestic shipments have kept pace with production, increasing irregularly from 3.4 million tons, valued at \$2.3 billion, in 1987 to 3.6 million tons, valued at \$2.9 billion, in 1989, an increase of 5.3 percent in quantity and 28.6 percent in value. Domestic shipments further increased, by 4.0 percent in quantity and 0.9 percent in value, from January-September 1989 to January-September 1990. The increase in unit value throughout most of the period reflects U.S. producers' shift in production toward lighter and brighter paper. As shown in table 4, exports have been relatively minor and

end-of-period inventories, while rising, remained at 2 percent or less of total shipments throughout the period for which data were collected.

Employment

Despite its capital intensiveness, the industry employs a large number of workers--well over 8,000--in the production of coated groundwood paper (table 5). Unlike most paper producing machinery, which is specific to the type of paper it produces, workers are often trained to produce other types of paper on separate equipment within their establishments. The data in table 5 reflect a number of workers equivalent to the proportion of all workers' time devoted to the subject product. Overall employment levels have remained relatively stable, changing less than 1 percent between 1987 and 1989 and between January-September 1989 and January-September 1990. Hours worked in the production of coated groundwood paper changed slightly more, increasing by less than 1 percent from January-September 1989 to January-September 1990 after declining by 2.1 percent from 1987 to 1989. Productivity, in terms of tons produced per worker, and total compensation paid to workers steadily increased, as shown in table 5.

Table 5
Coated (2-sided) groundwood paper: Average number of U.S. production and related workers and hours worked by and total compensation paid to such workers, 1987-89, January-September 1989, and January-September 1990¹

Item	1987	1988	1989	January-Sept.--	
				1989	1990
Average number of production and related workers producing coated groundwood paper.....	8,270	8,369	8,214	8,166	8,236
Hours worked by production and related workers producing coated groundwood paper (1,000 hours).....	17,185	17,451	16,827	12,643	12,753
Tons of coated groundwood paper produced per worker.....	390	420	421	420	439
Total compensation paid to production and related workers producing coated groundwood paper (1,000 dollars).....	334,405	347,082	348,636	256,164	268,897
Hourly compensation paid to production and related workers producing coated groundwood paper.....	\$19.46	\$19.89	\$20.72	\$20.26	\$21.08

¹ Does not include ***.

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

Financial experience of U.S. producers

Ten producers, accounting for approximately 86 percent of U.S. production of coated groundwood paper in January-September 1990, furnished income-and-loss data on their overall establishment operations and on their operations producing coated groundwood paper.⁶

Overall establishment operations.--Most producers' establishments are used to manufacture several kinds of paper products in addition to coated groundwood paper. The overall establishment income-and-loss experience of the U.S. producers is presented in table 6.

Operations on coated groundwood paper.--The income-and-loss experience of U.S. producers on their coated groundwood paper operations is presented in table 7. Net sales in 1988 were \$2.80 billion, an increase of 27.3 percent over sales in 1987. Sales in 1989 were virtually unchanged from 1988. Operating income was \$203.6 million in 1987, \$517.8 million in 1988, and \$419.1 million in 1989. Operating income margins (the ratio of operating income to sales) in those years were 9.3 percent, 18.5 percent, and 15.0 percent, respectively. One company reported operating losses for 1987; none reported losses for 1988 or 1989.

Net sales in interim 1990 were \$2.13 billion, an increase of 2.4 percent over interim 1989 sales of \$2.08 billion. Operating income, however, fell by 32.2 percent in this period--from \$315.6 million in interim 1989 to \$214.0 million in interim 1990. Correspondingly, operating income margins fell from 15.2 percent to 10.1 percent. None of the producers incurred operating losses in interim 1989; however, two producers incurred such losses in interim 1990. Excerpts from certain producers' annual reports are shown in appendix C.

As indicated previously, producers differ to the degree that they purchase and/or produce raw materials, particularly kraft (chemical) pulp. For purposes of reporting profit-and-loss information to the Commission, members of the petitioning Committee that produce kraft pulp valued this raw material at prevailing market price rather than actual production cost, reasoning that it is a separate commodity that they can, and do, sell on the open market. The effect is a substantial increase in the amount reported as cost and a corresponding reduction in profitability. By reporting kraft pulp at market price rather than cost, aggregate operating income shown in table 7 was reduced by \$120 million in 1987, \$203 million in 1988, \$255 million in 1989, \$198 million in January-September 1989, and \$178 million in January-September 1990. Although valuing raw materials on the basis of market price may serve and be appropriate for internal purposes, it is not in accordance with generally accepted accounting principles and is inappropriate when reporting income-and-loss information for external purposes. Accordingly, petitioners were requested to resubmit their income-and-loss data using actual costs for internally produced pulp.⁷ That information is presented in this section.⁸

⁶ ***.

⁷ Five firms resubmitted their income-and-loss data.

⁸ Additional information on the effects of valuing pulp at market or cost, including comparative profit figures, is presented in app. D. Also see petitioners' postconference brief at pp. 36-41.

Table 6

Income-and-loss experience of U.S. producers on the overall operations of their establishments in which coated groundwood paper is produced, fiscal years 1987-89, January-September 1989, and January-September 1990¹

Item	1987	1988	1989	January-Sept. --	
				1989	1990
<u>Value (1,000 dollars)</u>					
Net sales	3,358,935	4,167,339	4,307,561	3,201,008	3,285,817
Cost of goods sold	2,966,319	3,361,137	3,613,064	2,673,787	2,882,560
Gross profit	392,616	806,202	694,497	527,221	403,257
Selling, general, and administrative expenses	109,953	127,962	134,254	99,070	103,900
Operating income	282,663	678,240	560,243	428,151	299,357
Startup or shutdown expense	22,413	32,158	20,881	14,984	5,003
Interest expense	24,921	39,627	54,572	39,501	36,631
Other income or (expense), net	13,196	25,216	47,646	37,719	(2,801)
Net income before income taxes	248,525	631,671	532,436	411,385	254,922
Depreciation and amortiza- tion	213,326	234,072	265,032	193,248	233,720
Cash flow ²	461,851	865,743	797,468	604,633	488,642
<u>Ratio to net sales (percent)</u>					
Cost of goods sold	88.3	80.7	83.9	83.5	87.7
Gross profit	11.7	19.3	16.1	16.5	12.3
Selling, general, and administrative expenses	3.3	3.1	3.1	3.1	3.2
Operating income	8.4	16.3	13.0	13.4	9.1
Net income before income taxes	7.4	15.2	12.4	12.9	7.8
<u>Number of firms reporting</u>					
Operating losses	0	0	1	1	2
Net losses	0	0	1	1	3
Data	10	10	10	10	10

¹ ***.

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

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

Table 7
Income-and-loss experience of U.S. producers on their operations producing coated groundwood paper, fiscal years 1987-89, January-September 1989, and January-September 1990¹

Item	1987	1988	1989	January-Sept. --	
				1989	1990
<u>Value (1,000 dollars)</u>					
Net sales	2,197,243	2,796,192	2,797,578	2,080,693	2,129,719
Cost of goods sold	1,919,473	2,181,004	2,282,547	1,691,679	1,841,854
Gross profit	277,770	615,188	515,031	389,014	287,865
Selling, general, and administrative expenses	74,219	97,339	95,898	73,366	73,824
Operating income	203,551	517,849	419,133	315,648	214,041
Startup or shutdown expense	20,586	29,682	19,290	13,496	4,670
Interest expense	14,719	20,679	22,158	15,935	15,467
Other income, net	1,611	6,636	2,266	3,938	4,788
Net income before income taxes	169,857	474,124	379,951	290,155	198,692
Depreciation and amortiza- tion	150,640	165,337	183,483	131,559	166,621
Cash flow ²	320,497	639,461	563,434	421,714	365,313
<u>Ratio to net sales (percent)</u>					
Cost of goods sold	87.4	78.0	81.6	81.3	86.5
Gross profit	12.6	22.0	18.4	18.7	13.5
Selling, general, and administrative expenses	3.4	3.5	3.4	3.5	3.5
Operating income	9.3	18.5	15.0	15.2	10.1
Net income before income taxes	7.7	17.0	13.6	13.9	9.3
<u>Number of firms reporting</u>					
Operating losses	1	0	0	0	2
Net losses	2	0	0	0	3
Data	10	10	10	10	10

¹ James River's fiscal year ends April 30, all others are December 31.

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

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

The aggregate data conceal a wide variation among individual producers. Selected income-and-loss data for each reporting firm are shown in table 8. Producers' income-and-loss experience on a dollars-per-short-ton basis is shown in table 9.

Table 8
Income-and-loss experience of U.S. producers on their operations producing coated groundwood paper, by firms, fiscal years 1987-89, January-September 1989, and January-September 1990

Item	1987	1988	1989	January-Sept.--		
				1989	1990	
Value (1,000 dollars)						
Net sales:	*	*	*	*	*	*
Total.....	2,197,243	2,796,192	2,797,578	2,080,693	2,129,719	
Operating income or (loss):	*	*	*	*	*	*
Total.....	203,551	517,849	419,133	315,648	214,041	
Net income or (loss) before income taxes:	*	*	*	*	*	*
Total.....	169,857	474,124	379,951	290,155	198,692	
Ratio to net sales (percent)						
Operating income or (loss):	*	*	*	*	*	*
Average.....	9.3	18.5	15.0	15.2	10.1	
Net income or (loss) before income taxes:	*	*	*	*	*	*
Average.....	7.7	17.0	13.6	13.9	9.3	

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

Table 9
Income-and-loss experience (on a per-short-ton basis) of U.S. producers on their operations producing coated groundwood paper, fiscal years 1987-89, January-September 1989, and January-September 1990

Item	1987	1988	1989	January-Sept.--	
				1989	1990
Value (per short ton)					
Net sales.....	\$671	\$796	\$811	\$814	\$780
Cost of goods sold.....	586	621	662	662	675
Gross profit.....	85	175	149	152	105
Selling, general, and administrative expenses.....	23	28	28	29	27
Operating income.....	62	147	122	124	78

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

Investment in productive facilities.--U.S. producers' investment in property, plant, and equipment and return on investment are shown in table 10.

Table 10

Value of assets and return on assets of U.S. producers' establishments in which coated groundwood paper is produced, fiscal years 1987-89, January-September 1989, and January-September 1990

Item	As of the end of fiscal			As of Sept. 30--	
	1987	1988	1989	1989	1990
	Value (1,000 dollars)				
All products:					
Fixed assets:					
Original cost	4,728,734	5,463,907	6,178,386	5,964,493	6,402,636
Book value	3,032,426	3,552,156	3,983,196	3,846,972	4,103,448
Total assets ¹	4,289,807	4,979,796	5,632,600	5,532,773	5,974,113
Coated groundwood paper:					
Fixed assets:					
Original cost	3,331,849	3,724,903	4,172,400	4,031,810	4,281,875
Book value	2,242,362	2,472,791	2,710,291	2,645,909	2,716,203
Total assets ²	3,271,385	3,643,901	4,047,728	4,018,785	4,192,194
	Return on book value of fixed assets (percent) ³				
All products:					
Operating return ⁴	9.3	19.1	14.1	(⁶)	(⁶)
Net return ⁵	8.2	17.8	13.4	(⁶)	(⁶)
Coated groundwood paper:					
Operating return ⁴	9.1	20.9	15.5	(⁶)	(⁶)
Net return ⁵	7.6	19.2	14.0	(⁶)	(⁶)
	Return on total assets (percent) ³				
All products:					
Operating return ⁴	6.6	13.6	9.9	(⁶)	(⁶)
Net return ⁵	5.8	12.7	9.5	(⁶)	(⁶)
Coated groundwood paper:					
Operating return ⁴	6.2	14.2	10.4	(⁶)	(⁶)
Net return ⁵	5.2	13.0	9.4	(⁶)	(⁶)

¹ Defined as book value of fixed assets plus current and noncurrent assets.

² Total establishment assets are apportioned, by firm, to product groups on the basis of the ratio of the respective book values of fixed assets.

³ Computed using data from only those firms supplying both asset and income-and-loss information, and as such, may not be derivable from data presented.

⁴ Defined as operating income or loss divided by asset value.

⁵ Defined as net income or loss divided by asset value.

⁶ Not available.

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

Capital expenditures.--Capital expenditures by U.S. producers are shown in table 11.

Table 11
Capital expenditures by U.S. producers of coated groundwood paper, fiscal years 1987-89, January-September 1989, and January-September 1990

(In thousands of dollars)

Item	1987	1988	1989	January-Sept.--	
				1989	1990
All products:					
Land and land improvements	2,950	10,127	6,398	3,515	2,856
Building and leasehold improvements	32,899	34,288	37,512	27,081	9,714
Machinery, equipment, and fixtures	346,324	708,376	709,502	514,554	293,935
Total	382,173	752,791	753,412	545,150	306,505
Coated groundwood paper:					
Land and land improvements	2,120	5,694	4,599	2,038	2,343
Building and leasehold improvements	20,688	25,575	33,293	24,672	8,041
Machinery, equipment, and fixtures	153,987	399,071	467,206	350,645	147,461
Total	176,795	430,340	505,098	377,355	157,845

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

Research and development expenses.--Research and development expenses for coated groundwood paper operations are shown in the tabulation below (in thousands of dollars):

1987	1988	1989	January--Sept.--	
			1989	1990
8,441	8,803	8,574	6,659	7,955

Capital and investment.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of coated groundwood paper from the subject countries on their firm's growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of coated groundwood paper). The producers' responses are presented in appendix E.

Consideration of the Alleged Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors⁹--

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

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

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

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

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

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

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

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

⁹ Section 771(7)(F)(ii) of the act (19 U.S.C. 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

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

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product¹⁰

Available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between the Alleged LTFV Imports and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix E. Available information on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); and any other threat indicators, if applicable (item (VII) above), follows.

Virtually all of the coated groundwood paper imported into the United States from the countries subject to these investigations has been produced to order. Unless an order is cancelled during shipment or after importation, any inventories held in the United States are pre-sold and awaiting shipment. Paper is a heavy, bulky commodity, and importers, like producers, are not inclined to maintain large stocks of inventory.

Information on foreign producers' operations, to the extent it is known, is shown in tables 12 and 13. The data show that aggregate producers' capacity and production in the subject countries are currently in excess of that in the United States and rising. From 1988 to 1990, more than half of this production was exported worldwide. The share of these exports that were shipped to the United States increased from 11.6 percent in 1988 to 12.1 percent in 1990, as shown in table 13. There are no known plans of foreign manufacturers to significantly increase or decrease capacity, except ***.

Because of cross-ownership of some of the foreign firms subject to these investigations (see table 1), the petitioner has argued that antidumping orders issued for some but not all countries would allow owners of plants in countries subject to orders to shift production and exports to plants in the nonaffected countries. Kymmene, one of the Finnish producers, owns one of the two producers

¹⁰ Section 771(7)(F)(iii) of the act (19 U.S.C. 1677(7)(F)(iii)) further provides that, in antidumping investigations, "...the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

Table 12

Coated (2-sided) groundwood paper: Production and capacity of countries subject to the instant investigations, by country, 1988-90

Item	1988	1989	1990
Production (1,000 short tons):			
Austria.....			
Belgium.....			
Finland.....			
France.....			
Germany.....	*	*	*
Italy.....			
Netherlands.....			
Sweden.....			
United Kingdom.....			
Total.....	4,757	5,117	5,167
Capacity (1,000 short tons):			
Austria.....			
Belgium.....			
Finland.....			
France.....			
Germany.....	*	*	*
Italy.....			
Netherlands.....			
Sweden.....			
United Kingdom.....			
Total.....	4,831	5,369	6,010
Capacity utilization (percent):			
Austria.....			
Belgium.....			
Finland.....			
France.....			
Germany.....	*	*	*
Italy.....			
Netherlands.....			
Sweden.....			
United Kingdom.....			
Average.....	98.5	95.3	86.0

Source: Compiled from data submitted by respondents in accordance with Commission requests.

in France (Chapelle Darblay) and the producer in the United Kingdom (Caledonian); Feldmuhle, one of the German firms, owns the other producer in France (Feldmuhle Beghin); and KNP, the Netherlands firm, owns the Belgian producer (KNP Belgie), and 50 percent of the Austrian firm (Leykam). The extent to which any such shifting would, or could, take place is unknown; however, if European firms are operating at as high a capacity as they report, they would have limited capacity for any sales beyond their current commitments. Counsel for KNP, KNP Belgie, and Leykam report that both KNP Belgie and Leykam operate independently of KNP.

Table 13
Coated (2-sided) groundwood paper: Total exports and exports to the United States of countries subject to the instant investigations, by country, 1988-90

Item	1988	1989	1990
Total exports (1,000 short tons):			
Austria.....			
Belgium.....			
Finland.....			
France.....			
Germany.....	*	*	*
Italy.....			
Netherlands.....			
Sweden.....			
United Kingdom.....			
Total.....	2,787	3,027	3,021
Exports to the United States (1,000 short tons):			
Austria.....			
Belgium.....			
Finland.....			
France.....			
Germany.....	*	*	*
Italy.....			
Netherlands.....			
Sweden.....			
United Kingdom.....			
Total.....	323	350	365
Ratio of total exports to production (percent):			
Austria.....			
Belgium.....			
Finland.....			
France.....			
Germany.....	*	*	*
Italy.....			
Netherlands.....			
Sweden.....			
United Kingdom.....			
Average.....	58.6	59.2	58.5
Share of total exports exported to the United States (percent):			
Austria.....			
Belgium.....			
Finland.....			
France.....			
Germany.....	*	*	*
Italy.....			
Netherlands.....			
Sweden.....			
United Kingdom.....			
Average.....	11.6	11.6	12.1

Source: Compiled from data submitted by respondents in accordance with Commission requests.

Consideration of the Causal Relationship Between the
Alleged LTFV Imports and the Alleged Material Injury

Imports

Canada, Finland, and Germany are by far the United States' largest suppliers of foreign-made coated groundwood paper, together accounting for over 90 percent of imports in 1989 (table 14). Imports in that year totalled 579,068 short tons, valued at \$485 million. From January-September 1989 to January-September 1990, imports increased by 23.7 percent in terms of quantity. Total imports from the countries subject to these investigations increased by 48.4 percent between 1987 and 1989 and again, by 13.7 percent, between January-September 1989 and January-September 1990. There is considerable variation from country to country, however, in terms of trends and quantities imported, as shown in table 14. (Although the figures in table 14 that were compiled from official Commerce statistics may include some quantities of 1-sided coated groundwood paper, it is believed that these quantities, if any, are small).

U.S. consumption and market penetration

Apparent U.S. consumption of coated (2-sided) groundwood paper totalled 4.2 million short tons, valued at over \$3.4 billion, in 1989, and increased by 7.2 percent in quantity from January-September 1989 to January-September 1990 (table 15). Although no reliable consumption figures are available for 1987 and 1988, it is generally agreed that consumption has been rising over the period.

As a share of consumption, total imports from the countries subject to these investigations increased from 7.9 percent in 1989 to 8.5 percent in January-September 1990. Variations in the ratio of imports to consumption from country to country reflect similar variations in imports. For countries other than Finland and Germany, ratios of imports to consumption were less than *** percent for each period shown. The lack of reliable data on imports from Canada in 1987 and 1988 precludes reliable estimates of consumption and ratios of imports to consumption for those years. An alternate index of market penetration, the ratio of imports to U.S. production, is shown for the entire period of investigation in table 16.

Table 14
Coated (2-sided) groundwood paper: U.S. imports, by principal sources, 1987-89,
January-September 1989, and January-September 1990

Source	1987	1988	1989	January-Sept. --	
				1989	1990
<u>Quantity (short tons)</u>					
Austria.....					
Belgium ¹					
Finland.....					
France.....					
Germany.....	*	*	*	*	*
Italy ²					
Netherlands.....					
Sweden.....					
United Kingdom.....					
Subtotal.....	224,136	293,760	332,614	249,057	283,286
Canada.....	(3)	(3)	237,560	171,760	241,993
All others.....	(3)	(3)	8,894	6,905	4,596
Total.....	(3)	(3)	579,068	427,722	529,875
<u>Value, landed, duty-paid (1,000 dollars)</u>					
Austria.....					
Belgium.....					
Finland.....					
France.....					
Germany.....	*	*	*	*	*
Italy.....					
Netherlands.....					
Sweden.....					
United Kingdom.....					
Subtotal.....	159,546	242,818	285,903	214,964	240,547
Canada.....	(3)	(3)	187,156	134,827	188,783
All others.....	(3)	(3)	12,303	9,764	6,705
Total.....	(3)	(3)	485,362	359,555	436,035

¹ Data reported by respondents for the Belgian producer (table 13) indicate that import levels in 1988, 1989, and 1990 were *** the amounts shown; on the other hand, official statistics of the U.S. Department of Commerce for those years indicate import levels that are *** the amounts shown.

² Data reported by respondents for the Italian producer (table 13) and official statistics of the U.S. Department of Commerce indicate import levels *** of the figures shown for 1988-90. (Official import statistics show imports from Italy of 10,851 short tons (valued at \$13.5 million), 9,207 short tons (valued at \$11.5 million), and 7,852 short tons (valued at \$7.7 million) for 1989, January-September 1989, and January-September 1990, respectively.

³ Not available.

Source: Data for Finland (1989, January-September 1989, and January-September 1990), Canada, and "all others" compiled from official statistics of the U.S. Department of Commerce; all other data compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 15
Coated (2-sided) groundwood paper: Apparent U.S. consumption and ratio of imports to consumption, 1989, January-September 1989, and January-September 1990

(Quantity in 1,000 short tons; value in million dollars)

Period	Apparent U.S. consumption ¹	Ratio (percent) of imports to consumption										Subtotal	For all other countries	Total		
		For Austria	For Belgium	For Finland	For France	For Germany	For Italy	For Netherlands	For Sweden	For United Kingdom						
														Quantity		
1989.....	4,202											7.9	5.9	13.8		
Jan.-Sept.--																
1989.....	3,109	*	*	*	*	*	*	*	*	*	8.0	5.8	13.8			
1990.....	3,334										8.5	7.4	15.9			
														Value		
1989.....	3,442										8.3	5.8	14.1			
Jan. Sept.--																
1989.....	2,544	*	*	*	*	*	*	*	*	8.5	5.7	14.2				
1990.....	2,650									9.1	7.4	16.5				

¹ Transfer shipments and domestic shipments plus imports.

Source: Compiled from official statistics of the U.S. Department of Commerce and from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 16

Coated (2-sided) groundwood paper: Ratios (in percent) of imports to U.S. production for countries subject to these investigations, 1987-89, January-September 1989, and January-September 1990

Country	1987	1988	1989	January-Sept.--	
				1989	1990
Austria.....					
Belgium.....					
Finland.....					
France.....					
Germany.....	*	*	*	*	*
Italy.....					
Netherlands.....					
Sweden.....					
United Kingdom.....					
Total.....	6.6	7.9	9.1	9.1	9.9

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

Prices and market characteristics

Coated groundwood paper is used in printed media such as magazines, catalogs, and newspaper inserts primarily for advertisement purposes. Demand for coated groundwood paper therefore depends on the demand for these magazines and catalogs and the level of advertising in the United States. This demand is heavily influenced by the general economic conditions of the U.S. market as well as the postal rates to mail these magazines and catalogs. Demand for coated groundwood paper declines when either the U.S. economy declines or postal rates increase. These factors have also encouraged a shift in demand for this product toward lighter-weight coated groundwood paper, which has a lower per-sheet cost.

Substitutes for coated groundwood paper and the effect on price.--Coated groundwood paper is a specific type of paper within an array of paper products. One step above coated groundwood paper in quality is coated free-sheet paper, and one step below coated groundwood paper in quality is uncoated supercalendered paper. U.S. producers and importers disagree on the substitutability of these two products with coated groundwood paper. U.S. producers argue that they are not substituted for coated groundwood paper because of price or quality considerations. They argue that coated freesheet paper is priced significantly higher, by over 10 percent, than coated groundwood paper and generally is produced in basis weights higher than 45 pounds, thus making this product less suitable for mass circulation products such as magazines and catalogs.¹¹ On the other hand, U.S. producers report that uncoated supercalendered paper is priced significantly lower than coated groundwood paper, by over 15 percent, and

¹¹ Although the higher quality appearance of coated freesheet paper has an appeal for some uses, its heavier weight may also increase postage costs.

is inferior to coated groundwood paper in terms of gloss, brightness, and print surface.

U.S. importers argue in their questionnaire responses that these two products do occasionally substitute for coated groundwood paper, but acknowledge that this substitution is limited to only the high-end and low-end of the coated groundwood paper market. Importers report that purchasers who switch to coated freesheet paper do so based primarily on the improved quality achieved with the coated freesheet paper and not on price. These purchasers believe that the heavier-weight paper and greater gloss provided by the coated freesheet will benefit their business by attracting a more upscale audience.

U.S. importers also indicate that some purchasers switch between coated groundwood paper and uncoated supercalendered paper depending on the economic climate and the supply of coated groundwood paper. In good economic times, these purchasers will buy more coated groundwood paper, whereas in bad economic times, they will buy more uncoated supercalendered paper. Moreover, importers report that during 1987-88, when supply of coated groundwood paper was limited, some purchasers were willing to buy uncoated supercalendered paper as a substitute for coated groundwood paper.¹²

Most purchasers contacted during the investigations reported that they did not substitute either coated freesheet paper or uncoated supercalendered paper for coated groundwood paper.¹³ The coated groundwood paper provided the required "look" for their product. However, these purchasers also reported that they are purchasing more lighter-weight coated groundwood paper to compensate for increasing postal rates rather than switching to other paper types.

Other factors affecting price.--Coated groundwood paper is priced according to its basis weight, brightness grade, and whether it is produced in a roll form or sheet.¹⁴ Coated groundwood paper with a lower basis weight (lighter per sheet) or a lower brightness grade (brighter in color) is more expensive.¹⁵ Moreover, coated groundwood paper produced in a sheet form is more expensive than

¹² The economic consultants for the respondents observe that the price of uncoated supercalendered paper is highly correlated with the price of coated groundwood paper and somewhat correlated with the price of coated freesheet paper. They argue that this supports the claim that these products are substitutable. See postconference brief of respondents, Cahill Gordon & Reindel and Economists' Incorporated, Respondents' Exhibits Volume, Exhibit 13. U.S. producers, importers, and purchasers also indicated to staff that the price for the three paper types generally moved together.

¹³ Most of these purchasers were contacted for lost sales and lost revenues allegations.

¹⁴ Industry sources report that a new machine's initial production is often of inferior quality and must be sold at below normal prices.

¹⁵ See section of this report entitled "The product" for a more thorough explanation of basis weight and brightness grade.

coated groundwood paper produced in a roll form.¹⁶ Although a different paper is produced for offset or rotogravure type printing, there is typically no difference in price between the two types.¹⁷

The price of coated groundwood paper is also influenced somewhat by the type of customer. U.S. and foreign producers of coated groundwood paper sell both directly to the end user and indirectly through agents, brokers, or merchants. Agents, brokers, and merchants receive an extra discount from the manufacturer in payment for arranging the sale and/or inventorying the product. Agents and brokers typically receive a 3 percent commission paid by the manufacturer via a discount for arranging the coated groundwood paper sale. Merchants typically receive a higher discount than agents or brokers because they also inventory the product.

Market characteristics.--Pricing for coated groundwood paper is typically a discount off list price.¹⁸ This discount varies depending on the volume of the purchase and market conditions. During 1987-88, demand for coated groundwood paper was greater than the supply of this product and the discount was significantly lower than during 1989-90, when supply was greater than demand. Both U.S. producers and importers reported in their questionnaire responses that during the 1987-88 period of tight supply, there were periods where they could not supply all of their customers with this paper product.

Coated groundwood paper is generally sold by the hundredweight on a delivered basis. Order lead times for coated groundwood paper generally range from 3 to 8 weeks for U.S. producers and from 6 to 10 weeks for U.S. importers. For most U.S. producers and importers, sales terms are 2 percent discount if paid within 20 days, otherwise net 21 days. Transportation costs represent between 3 and 7 percent of the total delivered price of the coated groundwood paper product.

Although list prices are comparable for all suppliers of coated groundwood paper, U.S. producers and importers report that their transaction prices are negotiated. These negotiations may result in different prices being paid by different customers for the same volume of product. Purchasers contacted by staff reported that they generally bargain with high-priced suppliers to match the prices offered by acceptable low-priced suppliers and that final negotiated prices seldom vary more than 1-1/2 percent from one supplier to another.

Coated groundwood paper is sold both on the spot market and in multi-shipment sales via verbal or written commitments due to ongoing customer-producer relationships. This latter type of relationship represents most of the coated groundwood paper sales in the United States. Most of these long-term

¹⁶ Coated groundwood paper in roll form constitutes nearly all of the U.S. market. Industry sources could not identify any U.S. production of coated groundwood paper in a sheet form. Telephone conversations, 1/28/91 and 2/1/91.

¹⁷ Staff conversations with producers, importers, and purchasers. Also conference transcript, p. 22.

¹⁸ Purchasers report that list prices from their suppliers are comparable.

relationships are with printers and publishers, whereas most spot sales are with agents, brokers, and merchants.

The long-term relationships will generally be for 1 to 3 years at a specified annual volume commitment. However, the volume commitment is typically not a requirement and no penalty is assessed if the volume level is not attained.

The price for coated groundwood paper sold in the coming year via these relationships is typically negotiated in the fourth quarter of the prior year. This price is not fixed, and, if market conditions change, either side may renegotiate at any time given sufficient notice. The petitioners reported during the conference that the spot market heavily influences these long-term relationships because current market prices can affect the negotiated price.¹⁹ They also argued that agents, brokers, and merchants exaggerated this effect by competing against each other in the spot market for the best possible price from coated groundwood paper suppliers.

Questionnaire price data. --The Commission requested U.S. producers and importers to provide quarterly price data between January 1988 and December 1990 for spot sales and contract sales of four coated groundwood paper products. For spot sales, U.S. producers and importers were requested to provide information on their largest sale in each quarter. For contract sales, U.S. producers and importers were requested to provide pricing information on their largest contract customer for each of four channels of distribution: agents/brokers, merchants, printers, and publishers.²⁰ The specified paper products for which price data were requested are listed below:

- Product 1: Coated groundwood paper, offset, 34 lb. basis weight, GE brightness grade No. 5
- Product 2: Coated groundwood paper, offset, 40 lb. basis weight, GE brightness grade No. 5
- Product 3: Coated groundwood paper, offset, 45 lb. basis weight, GE brightness grade No. 5
- Product 4: Coated groundwood paper, gravure, 34 lb. basis weight, GE brightness grade No. 5

¹⁹ Conference transcript, p. 49.

²⁰ The questionnaire requested respondents to provide f.o.b. prices for contract sales. Counsel for petitioner informed staff that f.o.b. prices are the standard method of business in the industry. In support of this, petitioner submitted recommendations for this portion of the questionnaire including the f.o.b. pricing arrangement.

However, questionnaire responses from U.S. producers and importers indicate that pricing in this industry is overwhelmingly on a delivered basis. Rather than constructing an f.o.b. price by estimating a transportation cost, U.S. importers reported contract pricing on a delivered basis. U.S. producers subtracted estimated transportation costs to construct f.o.b. prices for contract sales.

Pricing for spot sales was requested in the questionnaire on both an f.o.b. basis and a delivered basis; producers and importers both reported delivered prices.

Nine U.S. producers and 10 U.S. importers reported price data for the paper products, but not necessarily for all periods or all products requested. The responding U.S. producers accounted for approximately 79 percent of all U.S. domestic shipments of all coated groundwood paper products and 47 percent of the four specified products in 1990. The responding U.S. importers accounted for approximately 100 percent of imports of all coated groundwood paper from Austria, 100 percent from Belgium, 80 percent from Finland, 85 percent from France, 96 percent from Germany, 100 percent from Italy, 95 percent from Sweden, and 90 percent from the United Kingdom. For the four specified products, the responding U.S. importers reported pricing information that accounted for 66 percent of imports of all coated groundwood paper from Austria, 94 percent from Belgium, 58 percent from Finland, 1 percent from France, 37 percent from Germany, 100 percent from Italy, 0 percent from Sweden, and 81 percent from the United Kingdom. No pricing data were received from U.S. importers of coated groundwood paper produced in the Netherlands.

U.S. price trends.²¹--Overall, U.S. producers' weighted-average prices for spot and contract sales of the four coated groundwood paper products generally increased during 1988 and/or early 1989, before declining during late 1989 and 1990 (tables 17 and 18). Prices for spot sales of 3 of the 4 products were lower at the end of 1990 than at the beginning of 1988, whereas prices for contract sales of most of the products were generally higher at the end of 1990. Lighter basis-weight paper was more expensive per ton than heavier basis-weight paper. Prices of coated groundwood paper to agents/brokers and merchants were typically lower than prices to publishers and printers because of the volume of the sale.

U.S. producers' delivered prices for spot sales of products 1, 2, and 4 at the end of 1990 were lower than prices for these products at the beginning of 1988. Prices for spot sales generally increased during 1988 and declined during 1989. Prices for product 1 declined for the first 3 quarters of 1990 before increasing in the fourth quarter, whereas prices for products 2, 3, and 4 fluctuated during 1990.

U.S. producers' contract sales f.o.b. prices also generally increased during 1988 and/or 1989. Prices then either declined or fluctuated through 1990. Contract prices for products 1 and 4 to agents/brokers increased during 1988 and declined during the remaining two years, whereas prices for products 2 and 3 to these customers followed the same trend but fluctuated during 1990. Contract prices for products 1, 2, and 3 to merchants increased during 1988, declined during 1989, and fluctuated during 1990. Contract prices for the 4 products to publishers and printers increased during 1988 and/or 1989 and generally declined thereafter.

²¹ U.S. producers reported delivered spot sales prices and f.o.b. contract sales prices.

Table 18
Coated groundwood paper: Weighted-average net f.o.b. prices for contract sales reported by U.S. producers and weighted-average net delivered prices for contract sales reported by U.S. importers, by customer types, by products, and by quarters, January 1988-December 1990

Period	(Per short ton)					
	Product 1				Finland ²	Germany ²
	United States ¹		Publishers	Printers		
Agents	Merchants					
1988:						
Jan.-Mar.....	\$847.43	\$857.14	\$804.24	\$860.48		
Apr.-June.....	836.81	-	810.70	828.50		
July-Sept.....	902.93	-	863.35	900.46		
Oct.-Dec.....	899.10	900.00	884.49	914.47		
1989:						
Jan.-Mar.....	877.68	-	886.11	896.93		
Apr.-June.....	865.85	-	892.03	912.05		
July-Sept.....	867.82	900.00	889.01	910.06	*	*
Oct.-Dec.....	848.17	880.00	850.04	891.90	*	*
1990:						
Jan.-Mar.....	857.63	847.06	867.78	882.02		
Apr.-June.....	854.11	888.89	890.90	894.51		
July-Sept.....	860.20	831.08	845.59	882.43		
Oct.-Dec.....	852.94	844.44	805.37	884.51		

Period	Product 2							
	United States ¹				Finland ²			
	Agents	Merchants	Publishers	Printers	Agents	Merchants	Publishers	Printers
1988:								
Jan.-Mar.....	\$728.49	\$730.26	\$768.07	\$747.01				
Apr.-June.....	732.53	754.79	778.90	754.84				
July-Sept.....	788.25	761.65	829.79	809.35				
Oct.-Dec.....	791.32	787.40	807.81	806.21				
1989:								
Jan.-Mar.....	783.46	785.70	810.14	811.09				
Apr.-June.....	753.07	793.76	816.29	804.92				
July-Sept.....	731.14	787.91	789.00	795.24	*	*	*	*
Oct.-Dec.....	727.04	779.60	802.03	795.68				
1990:								
Jan.-Mar.....	764.66	764.55	788.84	797.72				
Apr.-June.....	713.83	783.44	782.91	785.52				
July-Sept.....	748.71	752.16	786.80	786.80				
Oct.-Dec.....	738.50	766.46	771.80	799.08				

Period	Product 2				
	Germany ²		Italy ²		United Kingdom ²
	Publishers	Printers	Printers		Printers
1988:					
Jan.-March.....					
Apr.-June.....					
July-Sept.....					
Oct.-Dec.....					
1989:					
Jan.-March.....					
Apr.-June.....					
July-Sept.....	*	*	*	*	*
Oct.-Dec.....					
1990:					
Jan.-March.....					
Apr.-June.....					
July-Sept.....					
Oct.-Dec.....					

See footnotes at end of table.

Table continued on next page.

Table 18--Continued

Coated groundwood paper: Weighted-average net f.o.b. prices for contract sales reported by U.S. producers and weighted-average net delivered prices for contract sales reported by U.S. importers, by customer type, by products, and by quarters, January 1988-December 1990

(Per short ton)										
Period	Product 3									
	United States ¹				Finland ²			Germany ²		United Kingdom ²
	Agents	Merchants	Publishers	Printers	Agents	Publishers	Printers	Publishers	Printers	Printers
1988:										
Jan.-Mar...	\$717.32	\$731.57	\$756.33	\$727.46						
Apr.-June...	727.55	747.92	768.55	753.41						
July-Sept...	767.86	793.48	811.42	776.38						
Oct.-Dec...	782.86	793.40	820.91	794.11						
1989:										
Jan.-Mar...	801.40	794.11	780.29	789.19						
Apr.-June...	766.66	790.19	772.38	783.38	*	*	*	*	*	*
July-Sept...	764.48	768.33	751.01	778.59						
Oct.-Dec...	773.43	776.76	749.16	784.27						
1990:										
Jan.-Mar...	793.19	775.88	739.65	777.90						
Apr.-June...	755.32	766.68	738.45	763.66						
July-Sept...	754.96	742.67	737.39	764.82						
Oct.-Dec...	767.43	798.35	730.51	749.58						
Period	Product 4									
	United States ¹						Germany ²			
	Agents	Merchants	Publishers	Printers	Publishers	Printers	Publishers	Printers		
1988:										
Jan.-Mar...	\$807.50	-	-	\$817.92	\$828.67					
Apr.-June...	850.07	-	-	842.51	854.33					
July-Sept...	910.29	-	-	889.42	866.27					
Oct.-Dec...	892.73	-	-	891.90	863.24					
1989:										
Jan.-Mar...	903.89	-	-	894.09	859.58					
Apr.-June...	809.95	-	-	887.22	845.39					
July-Sept...	865.90	-	-	890.23	846.03	*	*	*		
Oct.-Dec...	817.29	-	-	870.53	852.13	*	*	*		
1990:										
Jan.-Mar...	747.32	-	-	871.64	835.72					
Apr.-June...	769.74	-	-	829.15	845.96					
July-Sept...	820.80	\$666.67	-	867.39	822.23					
Oct.-Dec...	789.03	-	-	862.78	839.40					

¹ F.o.b. prices.

² Delivered prices.

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

Import price trends.²²--Although some pricing data were reported for eight of the nine European countries under investigation, usable price series were available for only five countries: Belgium, Finland, Germany, France, and the United Kingdom (tables 17 and 18).²³ For the most part, pricing for these countries followed the same trend as U.S. producers, with prices increasing during the first half of the period and declining or fluctuating during the second half. Prices for complete price series for spot sales of the 4 imported products were generally lower at the end of 1990 than prices at the beginning of 1988, whereas prices for contract sales were mostly higher at the end of 1990.

Belgium.--U.S. importers of the Belgian coated groundwood paper provided two complete or nearly complete price series: spot sales of products 2 and 3. Prices generally fluctuated for these products without any clear trend. Prices for product 2 were at their lowest during 1989, whereas prices for product 3 were at their lowest during 1990.

Finland.--U.S. importers of the Finnish coated groundwood paper provided five complete or nearly-complete price series: spot sales of product 2; contract sales to agents/brokers and printers of product 2; and contract sales to agents/brokers and publishers of product 3. They also provided a partial price series for spot sales of product 4.

Prices for the complete price series generally increased during 1988 and/or 1989, before declining thereafter. Prices for spot sales of product 4 also generally declined during the latter period of the investigation.

France.--U.S. importers of the French coated groundwood paper provided only a partial price series: spot sales of product 3. Prices for this product declined during 1988-89, the only years for which a price series was available.

Germany.--U.S. importers of the German coated groundwood paper provided seven complete or nearly-complete price series: spot sales of products 2, 3, and 4; contract sales to publishers of product 1; contract sales to publishers and printers of product 2; and contract sales to publishers of product 4. They also provided a partial price series for spot sales of product 1.

For spot sales, prices for the imported German coated groundwood paper generally increased between 3 percent and 28 percent during 1988 and the first half of 1989 for the four products. During most of the second half of the period, prices generally declined between 4 percent and 8 percent. Prices for product 4 increased by 3 percent during the fourth quarter of 1990.

For contract sales to publishers for products 1, 2, and 4, prices likewise increased during the first half of the investigation period and

²² U.S. importers reported delivered pricing for both spot sales and contract sales.

²³ These five countries accounted for over 96 percent of all subject U.S. imports of coated groundwood paper.

generally declined during the second half. For contract sales of product 2 to printers, prices fluctuated during 1988-89, before falling in 1990.

United Kingdom.--U.S. importers of the British coated groundwood paper provided five partial price series: spot sales of products 1, 2, and 3; contract sales of product 2 to printers; and contract sales of product 3 to printers.

Spot prices for U.S. importers of British coated groundwood paper products 1 and 2 generally declined and were lower in 1990 than in 1989. Spot prices for product 3 fluctuated. Contract prices for products 2 and 3 to printers fluctuated, but were higher during 1990 than in 1989.

Price comparisons for spot sales.²⁴--The reported spot sales information for U.S. producers' and importers' quarterly shipments to their largest customer during January 1988-December 1990 resulted in 119 direct price comparisons over the four products for eight of the nine countries under investigation (table 19). There were 35 price comparisons for Germany, 27 for Belgium, 18 for Finland, 17 for the United Kingdom, 8 for France, 6 for Austria, 5 for Italy, and 3 for Sweden. There were no spot sales price comparisons for the Netherlands.

The margins shown in the table--both underselling and overselling--should be used with caution. As stated previously, purchasers report that the negotiated prices they pay rarely vary significantly from supplier to supplier. Nevertheless, large differences may exist among the prices paid by different customers having otherwise similar circumstances of sale. The questionnaire data appear to have captured these latter situations, showing differences of as much as 15 percent and, as such, may not reflect actual competitive situations.

Overall, there were 19 instances of underselling by U.S. importers. In these 19 instances, U.S. importers' prices were less than U.S. producers' prices by margins that ranged between 0.1 percent and 14.2 percent. There were also 100 instances where U.S. importers' prices were above those of U.S. producers. In these 100 instances; U.S. importers' prices exceeded U.S. producers' prices by margins that ranged between 0.1 percent and 15.3 percent.

For Germany, there were 6 instances of underselling in 35 comparisons with margins that ranged between 0.1 percent and 14.2 percent. For Belgium, there were 3 instances of underselling in 27 comparisons with margins that ranged between 2.1 percent and 5.2 percent. For Finland, there were 5 instances of underselling in 17 comparisons with margins that ranged between 1.0 percent and 9.2 percent. For Austria, there were 4 instances of underselling in 6 comparisons with margins that ranged between 5.8 percent and 6.9 percent. For Sweden, there was 1 instance of underselling in 3

²⁴ Price comparisons are made with spot sales only because both U.S. producers and importers reported delivered sales prices for these types of sales. Contract sales prices cannot be compared between U.S. producers and importers because U.S. producers reported contract sales on an f.o.b. basis, whereas U.S. importers reported contract sales on a delivered basis.

Table 19
 Coated groundwood paper: Average margins of underselling (overselling)
 by imports for spot sales, by products and by quarters, January 1988-
 December 1990

		(In percent)										
		Product 1				Product 2						
Period		Belgium	Finland	Germany	United Kingdom	Austria	Belgium	Finland	France	Germany	Italy	United Kingdom
1988:												
	Jan.-March..											
	Apr.-June...											
	July-Sept...											
	Oct.-Dec....											
1989:												
	Jan.-March..											
	Apr.-June...											
	July-Sept...	*		*		*		*		*		*
	Oct.-Dec....											
1990:												
	Jan.-March..											
	Apr.-June...											
	July-Sept...											
	Oct.-Dec....											
		Product 3					Product 4					
Period		Austria	Belgium	Finland	France	Germany	Italy	Sweden	United Kingdom	Belgium	Finland	Germany
1988:												
	Jan.-March..											
	Apr.-June...											
	July-Sept...											
	Oct.-Dec....											
1989:												
	Jan.-March..											
	Apr.-June...											
	July-Sept...	*		*		*		*		*		*
	Oct.-Dec....											
1990:												
	Jan.-March..											
	Apr.-June...											
	July-Sept...											
	Oct.-Dec....											

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

comparisons with a margin of 6.9 percent. There were no instances of underselling for France, Italy, or the United Kingdom.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that the currencies of the nine countries subject to these investigations fluctuated in relation to the U.S. dollar over the period January-March 1988 through July-September 1990 (table 20).²⁵ The nominal value of the Netherlands currency depreciated by 0.6 percent while the respective values of the Austrian, Belgian, Finnish, French, German, Italian, Swedish, and British currencies appreciated by 5.1 percent, 6.9 percent, 8.3 percent, 6.1 percent, 5.2 percent, 4.9 percent, 2.7 percent, and 3.6 percent. When adjusted for movements in producer price indexes in the United States and the specified countries, the German currency remained stable while the real values of the Finnish, Swedish, and British currencies appreciated 9.0 percent, 6.9 percent, and 6.7 percent, respectively. During the periods for which data were collected, the Austrian, Belgian, French, Italian, and Netherlands currencies showed depreciations of 1.7 percent, 1.6 percent, 3.3 percent, 5.1 percent, and 4.2 percent, respectively.

Lost sales/lost revenues

Forty-one allegations of lost sales and 49 allegations of lost revenues involving 33 purchasers were supplied to the Commission by 7 U.S. producers of coated groundwood paper.²⁶ Alleged lost sales amounted to over \$77 million, involving more than 110,000 tons, and lost revenues totaled over \$7 million, involving over 400,000 tons. Coated groundwood paper from 8 of the 9 European

²⁵ International Financial Statistics, January 1991.

²⁶ In some lost sales/lost revenues allegations, U.S. producers identified agents and brokers as purchasers of the coated groundwood paper product. These purchasers generally arrange the purchase of these products for other customers. In the allegations involving this type of purchaser, U.S. producers did not identify whether the lost sale or lost revenue was to the agent or broker or whether the agent or broker that represented the U.S. producer also lost the sale.

Table 20
Exchange rates:¹ Indexes of nominal and real exchange rates of selected currencies, and indexes of producer prices in specified countries,² by quarters, January 1988-September 1990

Period	Austria				Belgium			Finland		
	U.S. producer price index	Producer price index	Nominal exchange rate index	Real exchange rate index ³	Producer price index	Nominal exchange rate index	Real exchange rate index ³	Producer price index	Nominal exchange rate index	Real exchange rate index ³
1988:										
Jan.-Mar.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June.....	101.6	100.4	98.1	97.0	100.0	98.2	96.6	101.2	100.1	99.8
July-Sept.....	103.1	99.7	89.7	86.8	102.5	89.7	89.2	104.7	91.9	93.4
Oct.-Dec.....	103.5	99.9	94.3	91.0	103.6	94.3	94.3	104.1	96.8	97.4
1989:										
Jan.-Mar.....	105.8	101.1	90.6	86.5	107.1	90.5	91.6	105.8	94.6	94.6
Apr.-June.....	107.7	102.1	86.6	82.0	108.9	86.5	87.5	107.6	94.0	94.0
July-Sept.....	107.3	101.5	87.0	82.3	108.7	87.1	88.2	108.0	93.6	94.3
Oct.-Dec.....	107.7	102.5	92.3	87.8	108.3	92.1	92.6	109.2	96.4	97.7
1990:										
Jan.-Mar.....	109.3	104.0	99.0	94.2	107.4	99.3	97.6	109.7	101.7	102.1
Apr.-June.....	109.1	104.8	99.8	95.8	105.9	101.3	98.4	110.6	102.6	104.1
July-Sept.....	111.0	103.9	105.1	98.3	(⁵)	106.9	(⁵)	111.7	108.3	109.0
Period	France				Germany			Italy		
	U.S. producer price index	Producer price index	Nominal exchange rate index	Real exchange rate index ³	Producer price index	Nominal exchange rate index	Real exchange rate index ³	Producer price index	Nominal exchange rate index	Real exchange rate index ³
1988:										
Jan.-Mar.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June.....	101.6	101.2	98.1	97.7	100.6	98.1	97.2	101.3	97.4	97.2
July-Sept.....	103.1	103.5	89.7	90.1	101.2	89.8	88.1	102.5	89.1	88.6
Oct.-Dec.....	103.5	106.1	93.5	95.8	101.7	94.4	92.7	104.3	93.8	94.5
1989:										
Jan.-Mar.....	105.8	108.6	90.1	92.5	103.1	90.6	88.3	106.7	91.0	91.8
Apr.-June.....	107.7	109.0	86.5	87.6	104.0	86.7	83.7	108.2	87.7	88.1
July-Sept.....	107.3	108.5	87.1	88.1	104.2	87.1	84.6	108.8	89.1	90.4
Oct.-Dec.....	107.7	107.4	91.9	91.7	104.9	92.4	90.1	110.4	92.5	94.9
1990:										
Jan.-Mar.....	109.3	106.9	98.8	96.7	104.9	99.1	95.2	(⁵)	98.5	(⁵)
Apr.-June.....	109.1	(⁵)	100.4	(⁵)	105.7	99.9	96.8	(⁵)	100.2	(⁵)
July-Sept.....	111.0	(⁵)	106.1	(⁵)	105.6	105.2	100.0	(⁵)	104.9	(⁵)
Period	Netherlands				Sweden			United Kingdom		
	U.S. producer price index	Producer price index	Nominal exchange rate index	Real exchange rate index ³	Producer price index	Nominal exchange rate index	Real exchange rate index ³	Producer price index	Nominal exchange rate index	Real exchange rate index ³
1988:										
Jan.-Mar.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June.....	101.6	100.5	99.6	98.6	101.0	100.5	99.9	101.4	102.6	102.4
July-Sept.....	103.1	102.5	99.0	98.5	102.9	93.3	93.2	102.6	94.4	94.0
Oct.-Dec.....	103.5	102.7	99.2	98.5	104.9	97.4	98.7	103.8	99.6	99.9
1989:										
Jan.-Mar.....	105.8	104.7	98.8	97.7	107.8	94.8	96.6	105.2	97.3	96.8
Apr.-June.....	107.7	105.9	99.1	97.5	110.7	91.5	94.0	106.6	90.6	89.7
July-Sept.....	107.3	105.9	99.4	98.1	110.7	91.6	94.5	107.8	88.9	89.3
Oct.-Dec.....	107.7	106.1	100.7	99.3	111.7	93.7	97.2	109.2	88.2	89.5
1990:										
Jan.-Mar.....	109.3	105.9	101.1	98.0	113.6	97.4	101.2	110.9	92.3	93.6
Apr.-June.....	109.1	106.3	100.5	98.0	113.6	98.4	102.5	113.2	93.2	96.8
July-Sept.....	111.0	107.0 ⁴	99.4	95.8 ⁴	115.5	102.7	106.9	114.3	103.6	106.7

¹ Exchange rates expressed in U.S. dollars per unit of foreign currency.

² Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.

³ The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and the specified countries.

⁴ Derived from Netherlands price data reported for July-August only.

⁵ Not available.

Note.--January-March 1988 = 100. The real exchange rates, calculated from precise figures, cannot in all instances be derived accurately from previously rounded nominal exchange rate and price indexes.

Source: International Monetary Fund, International Financial Statistics, January 1991.

countries being investigated was specifically cited in these allegations.²⁷ Austria was the only country not specifically cited in these allegations. Commission staff contacted 10 of the purchasers cited; these firms accounted for 12 of the lost sales allegations, involving nearly \$30 million, and 10 of the lost revenues allegations, involving over \$4.3 million.

All of the purchasers contacted reported buying coated groundwood paper from more than one supplier to ensure their supply of this product. Each purchaser stated that the market is very competitive and no one company consistently quotes the lowest price. These purchasers also acknowledged that, if market conditions changed and the current market price for coated groundwood paper fell below a specific company's quote, the company would have to lower its quote to receive the business. These purchasers reported that prices from each of their suppliers varied by no more than 1-1/2 percent of each other. They commented that the imported product was not always the lowest priced coated groundwood paper.

* * * * *

²⁷ German coated groundwood paper was cited in 18 lost sales allegations involving nearly \$37 million and 9 lost revenues allegations involving over \$3 million. Finnish product was cited in 8 lost sales allegations involving over \$25 million and 26 lost revenues allegations involving over \$2 million. Belgian coated groundwood paper was cited in 4 lost sales allegations involving nearly \$3 million and 5 lost revenues allegations involving over \$150,000. French product was cited in 2 lost sales allegations involving nearly \$2 million and in 1 lost revenues allegation involving \$150,000. Italian coated groundwood paper was cited in 2 lost sales allegations involving over \$2 million. Swedish product was cited in 2 lost revenues allegations involving \$160,000. Dutch product was cited in 1 lost sales allegation involving over \$800,000. The United Kingdom was cited in one lost sales allegation involving over \$500,000.

U.S. producers did not specifically identify the European producer in 5 lost sales allegations involving nearly \$8 million and 6 lost revenues allegations involving over \$1 million.

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APPENDIX A

COMMERCE'S AND COMMISSION'S FEDERAL REGISTER NOTICES

section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and/or the United Kingdom of coated groundwood paper,¹ provided for in subheadings 4810.21.00 and 4810.29.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 11, 1991.

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

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-252-1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on December 28, 1990, on behalf of the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, New York, NY, and each of its nine individual members.

Participation in these investigations. Persons wishing to participate in 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 (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be

¹ For purposes of these investigations, coated groundwood paper is paper (excluding paperboard) used for writing, printing, or other graphic purposes, coated on both sides with kaolin (China clay) or other inorganic substances, and consisting of more than 10 percent by weight of fibers obtained by a mechanical process.

referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list. Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on January 18, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202-252-1185) not later than January 17, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-486 Through 494 (Preliminary)]

Coated Groundwood Paper From Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-486 through 494 (Preliminary) under

Written submissions. Any person may submit to the Commission on or before January 22, 1991, a written brief containing information and arguments pertinent to the subject matter of these investigations, as provided in section 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due January 23, 1991. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submission except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

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

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than January 25, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due January 28, 1991.

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

Issued: December 31, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-197 Filed 1-3-91; 8:45 am]

BILLING CODE 7025-02-M

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-433-801, A-423-801, A-405-801, A-427-803, A-428-808, A-475-803, A-421-801, A-401-803, A-412-807]

Initiation of Antidumping Duty Investigations: Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom

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

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the Department of Commerce (the Department), we are initiating antidumping duty investigations to determine whether imports of coated groundwood paper from Austria, Belgium, Finland, France, Germany, Italy, The Netherlands, Sweden, and the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, the International Trade Commission (ITC) will make its preliminary determinations on or before February 11, 1991. If these determinations are affirmative, we will make our preliminary determinations on or before June 6, 1991.

EFFECTIVE DATE: January 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8830 or (202) 377-3965, respectively.

SUPPLEMENTARY INFORMATION:**The Petition**

On December 28, 1990, we received a petition filed in proper form by the Committee of the American Institute to Safeguard the U.S. Coated Groundwood Paper Industry and each of its nine individual members (petitioners), on behalf of the U.S. industry producing coated groundwood paper. Supplements to the petition were received on January 16 and 17, 1991. In compliance with the filing requirements of 19 CFR 353.12, petitioners allege that imports of coated groundwood paper from Austria, Belgium, Finland, France, Germany, Italy, The Netherlands, Sweden and the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these

imports are materially injuring, or threaten material injury to, a U.S. industry.

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

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

For all countries subject to these investigations, petitioners' estimate of U.S. price is based on prices obtained by a European consultant. In addition, for Austria, Belgium, Finland, Germany, The Netherlands and the United Kingdom, petitioners' estimate of U.S. price is based on information obtained from U.S. sales representatives of the petitioners. These prices are actual offers for sale of the subject merchandise in the United States. Finally, for France, Italy and Sweden, petitioners' estimate of U.S. price is also based on average f.o.b. import values. These values were derived by aggregating Department of Commerce import statistics for the two main HTS categories under which the subject merchandise is imported.

When U.S. price is based on purchase price (Austria, Belgium, a portion of German sales, Italy, The Netherlands and Sweden), petitioners adjusted said prices as follows. For those prices based on the consultant's report and actual offers, petitioners made deductions for movement charges, discounts, rebates and commissions paid to unrelated brokers. Petitioners incorrectly calculated U.S. duty based on an f.o.b. foreign import value inclusive of U.S. duty. We recalculated U.S. duty based on the f.o.b. foreign port value exclusive of the U.S. duty amount. We disallowed petitioners' deduction for commissions from U.S. price. For U.S. prices based on average import values, petitioners deducted foreign movement charges. In all cases, petitioners added the amount

of value added tax (VAT) that would have been collected if the merchandise had not been exported.

When U.S. price is based on exporter's sales price (ESP) (Finland, France, a portion of German sales and the United Kingdom), petitioners adjusted these prices as follows. For those prices based on the consultant's report and actual offers, petitioners made deductions for movement charges, discounts, rebates, credit, and indirect selling expenses. Petitioners also deducted commissions paid to related brokers, which we reclassified as indirect selling expenses. Petitioners incorrectly calculated U.S. duty based on an f.o.b. foreign port value inclusive of U.S. duty. We recalculated U.S. duty based on the f.o.b. foreign port value exclusive of the U.S. duty amount. In all cases, petitioners added the amount of VAT that would have been collected if the merchandise had not been exported.

For all countries named in the petition, petitioners' estimate of foreign market value (FMV) is based on the European consultant's estimate of the average price of the subject merchandise prevailing in each country. For Austria, Belgium, Finland, The Netherlands, and Sweden, these prices were obtained through interviews with and/or documentation obtained from knowledgeable industry officials in each of the relevant countries. For France, Germany, Italy and the United Kingdom, these prices were obtained from a published source. Petitioners deducted rebates, discounts, movement charges and (for Italy only) commissions paid to unrelated brokers in their FMV calculations. When the U.S. price was based on purchase price, petitioners made a circumstance of sale adjustment for credit expenses. In addition, we made a circumstance of sale adjustment for commissions. When the U.S. price was based on ESP, petitioners also deducted home market indirect selling expenses capped by U.S. indirect selling expenses, and home market credit expenses. For all FMV calculations, petitioners made an upward adjustment to the tax-exclusive home market prices for the VAT computed for U.S. price. Petitioners also added U.S. packing expenses and deducted home market packing expenses.

For purposes of initiation, we are not accepting petitioners' less than fair value allegations which were based on published prices for coated groundwood paper sold in the United States that were obtained by the European consultant. These prices were based on a single estimate of the range of prevailing market prices of the subject merchandise in the United States and

could not be tied directly to exports from specific countries.

Based on the comparisons of U.S. price and FMV accepted by the Department, the alleged dumping margins for each country are as follows:

Country	Alleged margins
Austria	76.38 to 83.79 percent.
Belgium	23.55 to 30.83 percent.
Finland	34.23 to 62.75 percent.
France	24.30 to 33.70 percent.
Germany	47.84 percent.
Italy	11.88 to 20.43 percent.
The Netherlands	35.03 percent.
Sweden	36.96 to 54.35 percent.
The United Kingdom	28.41 percent.

Initiation of Investigations

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

We have examined the petition on coated groundwood paper from Austria, Belgium, Finland, France, Germany, Italy, The Netherlands, Sweden, and the United Kingdom and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of coated groundwood paper from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally, we will make our preliminary determinations by June 6, 1991.

Scope of Investigations

The product covered by these investigations is coated groundwood paper. For purposes of these investigations, coated groundwood paper is paper coated on both side with kaolin (China clay) or other inorganic substances (e.g., calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of (1) basis weight (e.g., pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (e.g., reels, sheets, or other forms).

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. "Paperboard" is specifically excluded from the scope of

these investigations. During the course of these proceedings, the Department will clarify the meaning of the term paperboard. We invite comments from all interested parties on the appropriate definition of paperboard. These comments should be submitted no later than February 11, 1991. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

ITC Notification

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

Preliminary Determinations

The ITC will determine by February 11, 1991, whether there is a reasonable indication that imports of coated groundwood paper from Austria, Belgium, Finland, France, Germany, Italy, The Netherlands, Sweden and the United Kingdom are materially injuring, or threaten material injury to, a U.S. industry. If its determinations are negative, the investigations will be terminated. Otherwise, the Department will make its preliminary determinations on or before June 6, 1991.

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

Dated: January 17, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 91-1822 Filed 1-24-91; 8:45 am]

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APPENDIX B

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE

Investigations Nos. 731-TA-486 through 494 (Preliminary)

COATED GROUNDWOOD PAPER FROM AUSTRIA, BELGIUM, FINLAND, FRANCE, GERMANY,
ITALY, THE NETHERLANDS, SWEDEN, AND THE UNITED KINGDOM

Those listed below appeared at the U.S. International Trade Commission's conference held in connection with the subject investigations on January 18, 1991, in Room 111 of the USITC Building, 500 E Street, SW, Washington, DC.

In support of the imposition of antidumping duties

Weil, Gotshal & Manges--Counsel
Washington, DC
on behalf of--

The Committee of the American Paper Institute to Safeguard
the U.S. Coated Groundwood Paper Industry (and each of its
individual members)¹

Bowater, Inc.
Anthony P. Gammie, Chairman and CEO

Blandin Paper Co.
Alfred C. Wallace, President and CEO
Thomas S. McKeon, President, Blandin Sales Corp.

International Paper Co.
James F. Kear, General Manager, Coated Papers

Economic Consulting Services, Inc.
Bruce P. Malashevich

A. Paul Victor)
Jeffrey P. Bialos)--OF COUNSEL
Angela J. Paolini Ellard)

¹ The Committee's 8 individual members are Blandin Paper Co., Grand Rapids, MN; Boise Cascade Corp., Boise, ID; Bowater, Inc., Darien, CT; Champion International Corp., Stamford, CT; Consolidated Papers, Inc., Wisconsin Rapids, WI; International Paper Co., New York, NY; James River II, Inc., Oakland, CA; and Niagara of Wisconsin Paper Corp., Oakbrook, IL.

In opposition to the imposition of antidumping duties

Cahill Gordon & Reindel--Counsel
New York, NY
on behalf of--

Veitsiluoto Oy (Finland)
Myllykoski Oy (Finland)
Metsa-Serla Group (Finland)
United Paper Mills Ltd./Repola (Finland)
Rauma Repola Oy (Finland)
European Paper Institute
The Madden Corp. (U.S. importer)

Economists, Inc.
Andrew R. Wechsler
John Preston
Kenneth Dunmore

Floyd Abrams)
Laurence T. Sorkin)--OF COUNSEL
Edward P. Krugman)

Stephoe & Johnson--Counsel
Washington, DC
on behalf of--

Caledonian Paper PLC (U.K.)

Stewart A. Baker) --OF COUNSEL
Gracia M. Berg)

O'Melveny & Myers--Counsel
Washington, DC
on behalf of--

Koninklijke Nederlandse Papierfabrieken N.V. (Netherlands)
KNP Belgie N.V. (Belgium)
Leykam-Mürztaler Papier & Zellstoff A.G. (Austria)
Cartiere Burgo SpA (Italy)

Stephen B. Strauss, Thompson Delstar, Inc.

Gary N. Horlick) --OF COUNSEL
F. Amanda DeBusk)

In opposition to the imposition of antidumping duties--Continued

Breed, Abbott & Morgan--Counsel

New York, NY

on behalf of--

Feldmühle A.G. (Germany)

Feldmühle Beghin-Corbehem (France)

Feldmuehle North America Co. (U.S. importer)

Robert J. Bagdasarian--OF COUNSEL

Graham & James--Counsel

Washington, DC

on behalf of--

Mo och Domsjö AB (Sweden)

Holmen Paper AB (Sweden)

Lawrence R. Walders)

Jeffrey L. Snyder)

--OF COUNSEL

APPENDIX C

EXCERPTS FROM THE 1989 ANNUAL REPORTS OF
BOWATER, INTERNATIONAL, AND JAMES RIVER
(FISCAL 1990)

Excerpts from annual reportsBowater IncorporatedCoated Paper Profits Declined Due to Temporary Pause in Demand
(1989 annual report - page 8, Chairman's Report)

The U.S. market for coated groundwood papers continued to be very strong in 1989, although industry shipments were off 3.8 percent from the superheated pace of 1988. Shipments from our two machines at Catawba, South Carolina, however, were 1.8 percent ahead for the year, but operating income was down 2.1 percent from 1988.

Coated groundwood is the staple paper for mass-circulation and special interest magazines and is widely used in newspaper inserts, coupons, direct-mail promotions and mail-order catalogs. These are all applications that require large-volume, high quality color reproduction. Bowater is one of the largest U.S. producers of this product, having upped its capacity by 167 percent since 1985.

Early in 1989, in anticipation of two new paper machines coming into the market, demand and prices eased as publishers worked down their inventories. Later in the year, there were good gains in magazine advertising and sales promotion budgets, and an exceptionally strong catalog merchandising effort developed in the last few months. In addition, the new capacity did not materialize as early as had been expected.

Operations of the two machines at Catawba were excellent. The large No. 2 machine has exceeded anticipated production levels two years ahead of schedule. Its ability to produce the lighter weights of paper has permitted us to concentrate the heavier-weight grades on the older No. 1 machine, resulting in a more efficient product mix.

During the year, we undertook detailed engineering and market-research studies for further expansion of coated capacity in anticipation of the construction of a large, new complex at the Calhoun, Tennessee, mill. The company's experience in producing such paper successfully from the technically difficult Southern pine, combined with customer interest and favorable market projections, made this an attractive objective. But the surprisingly high equipment cost quotations for the project, coming as they did during the current period of rapid industry expansion, worldwide, would have meant lower than acceptable returns. So the project was put on hold, and engineering and related expenditures totaling \$3.4 million were written off in the fourth quarter. Nevertheless, we remain committed to growth in coated paper.

Coated paper (1989 annual report, page 12, Chairman's Report) demand is forecast to remain at a healthy level, although we do not see quite the growth rates of the past decade. Increases in North American capacity, which seemed probable only a few months ago, are now unlikely to materialize anytime soon.

In addition, an impending surplus in Europe, which might have sought a home in the U.S. market, is now more likely to be directed to Eastern Europe where high potential demand exists constrained only by a shortage of hard currency. Faced with this scenario, Bowater not only will continue to push for the highest possible returns from our existing coated paper capacity, but also will seek expansion opportunities.

Coated Paper (pages 15-16)

(1989 annual report, page 15-16, Financial Review)

The coated paper segment of the company's business enjoyed another good year in 1989. Operating income of \$87.7 million represented the second-best performance ever, topped only by the \$89.5 million earned in 1988. Although total U.S. coated paper shipments were down 3.8 percent in 1989, compared with 1988, the company's shipments increased by 1.8 percent.

A price increase in effect since mid-1988 benefited average transaction prices for all of 1989, although discounting negated some of this advantage during the second half of the year. Also, the company incurred significantly higher costs for chemicals, further offsetting the positive effects of the increased tonnage and selling prices.

During 1989, the company completed a detailed feasibility study in anticipation of constructing a new coated paper machine at the Calhoun, Tennessee, mill. The surprisingly high equipment cost estimates and the recent expansion of industry capacity caused the company to put the project on hold. As a result, the company wrote off \$3.4 million of engineering and related expenditures in the fourth quarter of 1989.

1988 was the best year for coated paper in the company's history, easily surpassing the record sales and operating income recorded in 1987. Very strong demand, led by catalog printing, direct mail and newspaper inserts, resulted in three price increases from the fourth quarter of 1987. Average selling prices in 1988 were 24 percent higher than in 1987. In addition, the company shipped 7 percent more tonnage than in 1987 as excellent operation of the new machine placed in service in mid-1986 produced additional paper for sale.

During 1987, company shipments of coated paper increased by 68 percent over 1986 as production became available from the new machine. An anticipated glut of coated paper did not materialize, and demand increased during the second half of the year, leading to two price increases of 9 percent and 5.5 percent.

Although the company has enjoyed three consecutive good years in coated paper, there has been recent slowing in demand and discounting from list prices. This is primarily due to the entry of two additional North American machines into the market during 1989. While the company expects temporary downward pressure on coated selling prices, it believes that the projections of long-term growth rates and capacity increases for this product are very favorable.

International Paper

Coated Papers

(1989 annual report, page 37, Management's Discussion and Analysis)

Coated papers are used in printing applications requiring superior graphic appeal, such as catalogs and magazines. Company products range from coated groundwood papers to the highest quality coated papers and board. These papers are produced in the U.S., in France and, with the recent acquisition of Zanders, in West Germany. Sales for these businesses rose 22% in 1989 over 1988 levels, approaching 15% of total segment sales. This growth reflected higher volumes due to improved mill productivity and the acquisition of Ausseidat Rey early in the year. Operating earnings improved in 1989 as unit production costs declined and volumes increased.

The outlook for 1990 for these businesses is mixed. An expected weakening of the groundwood paper market as the U.S. economy softens will be offset by the contribution of Zanders' high-quality products and expected further improvements in cost reduction and productivity. Several of the Company's coated paper mills consume purchased market pulp so a decline in pulp prices in 1990 should benefit these businesses.

James River

(1989 annual report, page 18, Management's Discussion & Analysis)

The Company also experienced difficult conditions in other communication papers grades due to capacity additions and slackening demand. Of these, coated grades continued to experience weak markets at the end of the fiscal year with new industry capacity coming to full production at the same time that magazine demand softened.

APPENDIX D
EFFECTS OF VALUING PULP AT COST OR MARKET

Effects of Valuing Pulp at Cost or Market

Kraft pulp, one of the key raw materials used in manufacturing coated groundwood paper, is either purchased on the open market or produced by the companies that produce the paper. During the Commission's conference, petitioners argued that the Commission should evaluate the financial condition of the industry using a market-based transfer price for all internally produced kraft pulp. The argument was based on the fact that for many internal financial reporting purposes the majority of coated groundwood paper producers value internally produced kraft pulp at prevailing market prices because it is a world market commodity that has its own separate price behavior. Therefore, to insure consistent reporting, all petitioning firms were instructed to value all pulp, whether purchased or produced, at market price.

Staff disagrees with petitioners argument for the following reasons. While it is true that companies often maintain various types of internal records and that some may value raw materials at market prices, these records are not suitable for determining income-and-loss for most external purposes, including Commission investigations, unless prepared in accordance with "generally accepted accounting principles" (GAAP). Valuing internally-produced raw materials at market prices higher than cost is not in accordance with GAAP. (It may be acceptable to value internally-produced raw materials at market prices lower than costs if such raw materials are being withdrawn from inventory). In this investigation the appropriate cost for that portion of pulp that is produced internally and consumed in the production of coated groundwood paper is the cost of production as determined in accordance with GAAP. For open-market purchases of pulp that is used in the production of coated groundwood paper, the cost is the market transaction price. The utilization of an artificial transfer price for the cost of pulp is not necessary or appropriate. For informational purposes, a comparison of profitability measures with kraft pulp valued at market price and at cost (comparable to data presented in table 7) is presented below (in percent of net sales):

Item	1987	1988	1989	January-Sept.--	
				1989	1990
Gross profit:					
Market price.....	7.2	14.7	9.3	9.2	5.1
Cost.....	12.6	22.0	18.4	18.7	13.5
Operating income:					
Market price.....	3.8	11.3	5.9	5.7	1.7
Cost.....	9.3	18.5	15.0	15.2	10.1
Net income before income taxes:					
Market price.....	2.3	9.7	4.5	4.4	1.0
Cost.....	7.7	17.0	13.6	13.9	9.3

APPENDIX E

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT
OF IMPORTS OF COATED GROUNDWOOD PAPER FROM
AUSTRIA, BELGIUM, FINLAND, FRANCE, GERMANY,
ITALY, THE NETHERLANDS, SWEDEN, AND THE
UNITED KINGDOM ON THEIR GROWTH, INVESTMENT,
ABILITY TO RAISE CAPITAL OR EXISTING
DEVELOPMENT AND PRODUCTION EFFORTS

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