

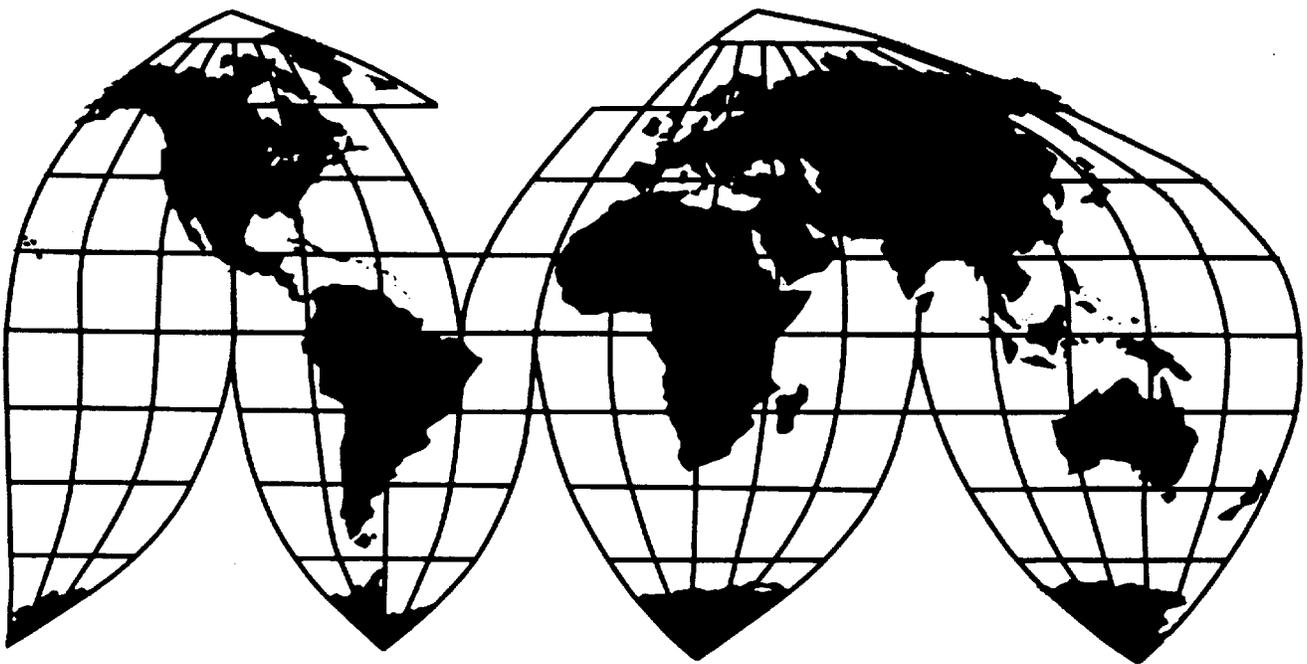
Certain Polyester Staple Fiber From Korea and Taiwan

Investigation Nos. 731-TA-825-826 (Review)

Publication 3843

March 2006

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.- - Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

GLOSSARY OF FIRMS

| | |
|-------------------|---|
| Consolidated | Consolidated Textiles, Inc. |
| DAK | DAK Americas LLC |
| DuPont | E.I. DuPont de Nemours, Inc. |
| Far Eastern | Far Eastern Textile, Inc. |
| FFT | Formed Fiber Technologies, d/b/a Color-Fi |
| Fibertex | Fibertex Corp. |
| Foss | Foss Manufacturing Co., Inc. |
| Huvis | Huvis Corporation |
| Intercontinental | Intercontinental Polymers |
| Invista | Invista S.a.r.L. |
| KoSa | Arteva Specialties S.a.r.l., d/b/a KoSa |
| Nan Ya America | Nan Ya Plastics Corp. America |
| Nan Ya Taiwan | Nan Ya Plastics Corp. Taiwan |
| Pac Tell | Pac Tell Group |
| Samyang | Samyang Corp. |
| Seahan | Seahan Industries, Inc. |
| Shinkong | Shinkong Synthetic Fibers Corp. |
| SK Chemicals | SK Chemicals Co., Ltd. |
| Stein | Stein Fibers, Ltd. |
| United Synthetics | United Synthetics, Inc. |
| U.S. Fibers | U.S. Fibers d/b/a Pac Tell Group |
| Wellman | Wellman, Inc. |

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-825 and 826 (Review) Certain Polyester Staple Fiber from Korea and Taiwan

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on certain polyester staple fiber from Korea and Taiwan, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on March 31, 2005 (70 FR 16522) and determined on July 5, 2005 that it would conduct full reviews (70 FR 41427, July 19, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on September 13, 2005 (70 FR 54080). The hearing was held in Washington, DC, on January 17, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (the Act), that revocation of the antidumping duty orders on polyester staple fiber (“PSF”) from Korea and Taiwan would likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. BACKGROUND

In May of 2000, the Commission unanimously determined that an industry in the United States was materially injured by reason of less than fair value (“LTFV”) imports of conventional subject polyester staple fiber.² On May 25, 2000, Commerce imposed antidumping duty orders on subject certain polyester staple fiber from Korea and Taiwan.³

The Commission instituted these reviews of the antidumping duty orders on PSF from Korea and Taiwan on March 31, 2005.⁴ The Commission found the domestic interested party group response to the notice of institution for each review adequate, the Korean respondent interested party group response adequate, and the Taiwan respondent interested party group response inadequate.⁵ The Commission determined to conduct full reviews with respect to both countries “to promote administrative efficiency.”⁶

The PSF subject to these reviews (“certain PSF”) is known in the industry as “fiber for fill” because it is primarily used as polyester fiberfill for stuffing furniture, comforters, pillows, cushions, sleeping bags, and ski jackets.⁷ Certain PSF is physically distinguishable from other types of polyester staple fiber not subject to these reviews, including carpet fiber and fine denier PSF for spinning into textile products, in terms of the product’s denier, length, and, in some cases, finish and “crimp.”⁸ While certain PSF is 3 denier or more in thickness and from 1 to 5 inches in length, fine denier PSF for textile applications is less than 3 denier in thickness and carpet fiber ranges from 10 to 18 denier in thickness cut into lengths of 6 to 8 inches.⁹ Unlike fine denier PSF or carpet fiber, certain PSF used as fiberfill is seldom visible after being incorporated into the finished product, generally making its appearance less important to purchasers than its performance in terms of loft, smoothness to the touch, and profile (*i.e.*,

¹ We have disregarded new factual information in the Final Comments filed by the respondent interested parties, see Memorandum INV-DD-029 (Mar. 1, 2006), pursuant to the statute and our regulations. 19 U.S.C. § 1677m(g); 19 C.F.R. § 207.30(b).

² Polyester Staple Fiber from Korea and Taiwan, Inv. Nos. 731-TA-825 and 826 (Final), USITC Pub. 3300 (May 2000) (“Original Determinations”). The Commission also found that the domestic industry was not materially injured, or threatened with material injury, by reason of LTFV imports of low-melt polyester staple fiber. Chairman Bragg dissented from the majority’s finding that low melt polyester staple fiber constituted a separate like product, and found that based on a single domestic like product, coextensive with the scope, the domestic industry was materially injured by reason of LTFV imports of PSF, including low-melt fiber. See *id.* at 3 n.1.

³ 65 Fed. Reg. 33807 (May 25, 2000).

⁴ 70 Fed. Reg. 16522 (March 31, 2005).

⁵ Confidential Report (“CR”)/Public Report (“PR”) at Appendix A.

⁶ CR/PR at Appendix A.

⁷ CR at I-13-14; PR at I-11-12; see also CR/PR at Table II-1.

⁸ CR at I-14; PR at I-12; see also Respondent Interested Parties’ Posthearing Brief, Exhibit 17 (***) (“****”) at paras. 4-12 (***)

⁹ See CR at I-12 & n.20, I-17; PR at I-11 & n.20, I-13-14; CR/PR at Table III-2 n. 3; see also Hearing Tr. at 134 (Rosenthal) (only carpet fiber over 15 denier).

hollow or solid).¹⁰ The first stage of the production process is similar for all three certain PSF products: polymers are formed from either virgin or recycled materials, liquified, and then extruded through a spinnerette, like water through a showerhead, to form continuous filaments.¹¹ However, the size of the spinnerette holes varies depending on the denier of the fiber being produced, and carpet fibers are produced from different raw materials to impart a more lustrous appearance.¹²

There are several varieties of certain PSF. Virgin certain PSF is produced from unprocessed chemical precursors, by reacting ethylene glycol with either terephthalic acid or its methyl ester.¹³ Certain PSF may also be made from recycled polyester, either consumer waste, such as polyethylene terephthalate bottles, or industrial waste, such as polyester chips or spun tow.¹⁴ Fiber made this way is known as regenerated, or recycled, certain PSF. Some producers use a blend of virgin and recycled/regenerated materials.¹⁵ Certain PSF obtains its loft by being crimped; the crimp may be produced mechanically¹⁶ or as a result of the fiber's chemical composition. The latter process bonds two different polymers of different viscosities, one of which shrinks to produce spiral-shaped crimps, to produce what is known as conjugate certain PSF, which has superior loft.¹⁷ Over the period of review ("POR"), *** reported U.S. shipments of virgin certain PSF; *** reported shipments of regenerated certain PSF; and *** reported shipments of conjugate certain PSF (it also appears that E.I. DuPont de Nemours ("DuPont") *** produced conjugate certain PSF early in the POR).¹⁸ As discussed below, the record indicates that all varieties of fiber are used for similar end-uses, and that endusers blend different varieties to obtain desired characteristics.

Three domestic producers, DAK Fibers, LLC ("DAK"), Invista, S.a.r.l. ("Invista"), and Wellman, Inc. ("Wellman"), appeared as interested parties in the reviews (collectively, the "domestic interested parties"), filing briefs and, in the case of DAK and Wellman, providing testimony at the Commission's hearing. Two importers of subject merchandise, Consolidated Fibers, Inc. and Stein Fibers, Ltd. ("Stein"), appeared as interested parties in the reviews (collectively, the "respondent interested parties"), filing briefs and providing hearing testimony.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the "domestic like product" and the "industry."¹⁹ The Act defines the "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation

¹⁰ CR at I-14, 17; PR at I-12-13.

¹¹ See CR at I-16-17; PR at I-12-13.

¹² CR at I-17; PR at I-13-14.

¹³ CR at I-15; PR at I-12-13.

¹⁴ CR at I-16; PR at I-13.

¹⁵ CR at I-14-15; PR at I-12.

¹⁶ CR at I-16; PR at I-13.

¹⁷ CR at I-19; PR at I-14-15.

¹⁸ CR at III-10 & n.33; PR at III-7 & n.33; Domestic Producers' Questionnaire Response of *** at Question II-10.

¹⁹ 19 U.S.C. § 1677(4)(A).

under this subtitle.”²⁰ The Commission’s practice in five-year reviews is to look to the like product definition from the original determinations and any previous reviews and consider whether the record indicates any reason to revisit that definition.²¹

In these five-year reviews, Commerce has defined the subject merchandise as follows: [S]ynthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.²²

Commerce has specifically excluded the following products from the scope of the orders:

[M]erchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the HTS at subheading 5503.20.0020 (5503.20.0025 in the 2005 HTS) and known to the industry as PSF for spinning and generally used in woven and knit applications to produce textile and apparel products; polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and low-melt polyester staple fiber, defined as bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.²³

In the original investigations, the Commission found two domestic like products corresponding to 1) low-melt fiber, and 2) conventional certain PSF.²⁴ Because the Commission found no material injury or threat of material injury by reason of subject imports with respect to low-melt fiber, the relevant domestic like product definition from the original investigations is all conventional certain PSF. The domestic interested parties have urged the Commission to adopt this domestic like product definition for these reviews, and the respondent interested parties were silent on the issue.²⁵ The record of these reviews contains no information that suggests it would be appropriate to reconsider the domestic like

²⁰ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

²¹ See Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom, Inv. No. 701-TA-380-382 and 731-TA-797-804 (Review), USITC Pub. 3788 (July 2005) at 6; Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 (July 2003) at 4; Steel Concrete Reinforcing Bar from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 (Feb. 2003) at 4.

²² Certain Polyester Staple Fiber from the Republic of Korea and Taiwan; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, Case Nos. A-580-839, A-583-833, 70 Fed. Reg. 45368 (August 5, 2005) (“Final Results”); see also CR at I-12; PR at I-10.

²³ Final Results, 70 Fed. Reg. at 45368-69; see also CR at I-12 n. 20; PR at I-11 n.20.

²⁴ Original Determinations at 9.

²⁵ Domestic Interested Parties’ Prehearing Brief at 4.

product definition from the original determinations;²⁶ we therefore define the domestic like product in these reviews as all certain PSF, coextensive with the scope of the reviews.

B. Domestic Industry and Related Parties

1. Domestic Industry

Section 771(4)(A) of the Act defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²⁷ In the original investigations, the Commission defined the relevant domestic industry as all domestic producers of conventional certain PSF.²⁸ The domestic interested parties have urged the Commission to adopt this definition of the domestic industry in these reviews, and the respondent interested parties were silent on the issue.²⁹ Because the record of these reviews contains no new information that would warrant reconsideration of the domestic industry definition from the original investigations, we define the domestic industry to include all known domestic producers of certain PSF: DAK, Formed Fiber Technologies, d/b/a Color-Fi (“FFT”), Invista, Nan Ya Plastics Corp. America (“Nan Ya”), United Synthetics, Inc. (“United Synthetics”), U.S. Fibers d/b/a Pac Tell Group (“U.S. Fibers”), and Wellman.³⁰

2. Related Parties

We next examine whether circumstances warrant the exclusion of any of the three possible related parties in these reviews – FFT, Nan Ya, and United Synthetics – though no party has requested the exclusion of any domestic producer as a related party.³¹ Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.³² For the

²⁶ The sections of the staff report titled “physical characteristics and end-use applications” and “manufacturing process” have largely been adopted from the staff report of the original investigations, as the record indicated little to no change with regard to these subjects. See CR at I-13-17; PR at I-11-14; compare Original Determinations, Public Staff Report at I-2-4. Similarly, the sections of the staff report defining conjugate and regenerated fibers encapsulate the definitions of these two products in the staff report from the original investigations. See CR at I-18-20; PR at I-14-15; compare Original Determinations, Public Staff Report at I-4-5, 7.

²⁷ 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

²⁸ Original Determinations at 9-10.

²⁹ Domestic Interested Parties’ Prehearing Brief at 6-7.

³⁰ CR/PR at Table I-3.

³¹ See Domestic Interested Parties’ Prehearing Brief at 6-8 (arguing that circumstances do not warrant the exclusion of any domestic producer from the domestic industry as a related party).

³² The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

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

following reasons, we decline to exclude any domestic producer from the domestic industry as a related party.

a. FFT

Though FFT satisfies the definition of a related party as an importer of subject merchandise from *** over the POR,³³ we find that circumstances do not warrant its exclusion from the domestic industry. FFT opposes continuation of the orders with respect to black automotive substrate fiber only.³⁴ FFT's imports, while *** percent greater than its domestic production in ***, did not shield FFT from subject import competition. FFT reports ***³⁵ ***.³⁶ By contrast, FFT reports ***.³⁷ Thus, FFT benefitted from its importation of subject merchandise ***, but not as a producer of subject PSF.

b. Nan Ya

Though Nan Ya qualifies as a related party as a *** subsidiary of Taiwan producer Nan Ya, we find that circumstances do not warrant its exclusion from the domestic industry. Nan Ya *** continuation of the orders.³⁸ Nan Ya's primary interest appears to be in domestic production, given that it imported *** over the POR and was the *** largest domestic producer in 2004, representing *** percent of domestic production.³⁹ Further, although Nan Ya's financial performance was *** to that of other domestic producers,⁴⁰ no party has argued that Nan Ya was shielded in any way from subject import competition, or otherwise benefitted from its relationship with a subject foreign producer.

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

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993).

The Commission has also concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist where the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial. See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 (September 2001) at 8-9.

³³ FFT's imports of subject merchandise ranged from a low of *** pounds in *** to a high of *** pounds in ***, and declined *** from *** pounds in interim 2004 to *** pounds in interim 2005. CR/PR at Table III-6.

³⁴ CR/PR at Table I-3 & n.1.

³⁵ Importers Questionnaire Response of *** at Questions I-11, II-6, and III-B-10.

³⁶ Importers Questionnaire Response of *** at Questions III-B-1 and 16.

³⁷ Domestic Producers Questionnaire Response of ***, as revised, at Question II-8.

³⁸ CR/PR at Table I-3.

³⁹ CR/PR at Tables I-3, III-14.

⁴⁰ See CR/PR at Table III-9.

c. United Synthetics

United Synthetics qualifies as a related party, as a domestic producer that *** and is *** percent owned by importer Stein Fibers,⁴¹ but we find that circumstances do not warrant its exclusion from the domestic industry. United Synthetics *** on continuation of the orders.⁴² United Synthetics appears primarily interested in domestic production, given that it imported only *** and shipped significant quantities of domestic PSF over the POR.⁴³ Although United Synthetics' financial performance was generally *** to that of other domestic producers,⁴⁴ no party has argued that the producer was shielded in any way from subject import competition, or otherwise benefitted from its importation of subject merchandise or its relationship with ***.

Thus, we find that circumstances do not warrant the exclusion of any related party from our definition of the domestic industry.

III. CUMULATION

A. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.⁴⁵

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. Also, the statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.⁴⁶ We note that neither the statute nor the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") provides specific guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact" on the domestic industry.⁴⁷ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely

⁴¹ CR/PR at Tables I-3, I-25. Stein's *** ownership interest in United Synthetics indicates that it may directly or indirectly control the producer. See also Hearing Tr. at 221-222 (Stein) (indicating that Stein exercises substantial control over United Synthetics).

⁴² CR/PR at Table I-3.

⁴³ CR at III-12; PR at III-9.

⁴⁴ See CR/PR at Table III-9.

⁴⁵ 19 U.S.C. § 1675a(a)(7).

⁴⁶ 19 U.S.C. § 1675a(a)(7).

⁴⁷ SAA, H.R. Rep. No. 103-316, vol. I (1994).

impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.⁴⁸

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied, as Commerce initiated all the reviews on September 1, 2004.⁴⁹

The Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.⁵⁰ Only a “reasonable overlap” of competition is required.⁵¹ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Because of the prospective nature of five-year reviews, the Commission also has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.⁵²

No party has argued that the Commission should not cumulate subject imports in these reviews.⁵³

B. Likelihood of No Discernible Adverse Impact

We find that revocation of either of the individual antidumping duty orders on certain PSF from Korea or Taiwan would likely have a discernible adverse impact on the domestic industry. Notwithstanding the orders, foreign producers in each subject country demonstrated the ability to export significant quantities of certain PSF to the United States, and commanded a substantial share of the U.S.

⁴⁸ For a discussion of the analytical framework of Chairman Koplan and Commissioner Hillman regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review) USITC Pub. 3274 (Feb. 2000). For a further discussion of Chairman Koplan’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 303-TA-13 (Review); 701-TA-249 (Review); and 731-TA-262, 263, and 265 (Review) USITC Pub. 3247 (Oct. 1999) (Views of Commissioner Stephen Koplan Regarding Cumulation).

⁴⁹ Notice of Initiation of Five-year (“Sunset”) Reviews, 69 Fed. Reg. 53408 (Sept. 1, 2004).

⁵⁰ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (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. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

⁵¹ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 (Preliminary) and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 15 (Feb. 1999), aff’d sub nom, Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353 (CIT 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

⁵² See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

⁵³ Respondent Interested Parties’ Responses to Commissioner Questions at 88 (“The importers are not arguing, at this time, that the subject imports from Korea and Taiwan should be decumulated.”).

market, throughout the POR.⁵⁴ Moreover, foreign producers in each country are export oriented with ample excess capacity as of the interim 2005 period with which to increase exports.⁵⁵ The antidumping duty orders and other trade barriers that these producers confront in third markets, coupled with their already substantial presence in the United States, make them likely to increase their exports of subject merchandise to the U.S. market were the antidumping duty orders to be revoked.⁵⁶ We find that the magnitude of existing subject import volume, as well as the likely increase in subject import volume from both Korea and Taiwan, respectively, would be sufficient to have a discernible adverse impact on the domestic industry if the orders under review were revoked.

C. Likelihood of a Reasonable Overlap of Competition

We find that there would likely be a reasonable overlap of competition among subject imports from all sources and between subject imports and the domestic like product were the orders to be revoked, based on the analysis below.

In the original investigations, the parties did not dispute that subject imports and the domestic like product were sold in the same geographic markets through similar channels of distribution, and were simultaneously present in the market.⁵⁷ With respect to competition among different varieties of conventional certain PSF, the Commission found cumulation appropriate based upon the substantial fungibility of conjugate and regenerated certain PSF with other types of conventional certain PSF in the U.S. market.⁵⁸

In these reviews, the record reflects a substantial degree of fungibility between subject imports from Korea and Taiwan, respectively, and the domestic like product. All domestic producers, a majority of importers, and a majority of purchasers reported that domestic PSF is “always” or “frequently” interchangeable with subject imports from Korea.⁵⁹ All domestic producers and half of all importers and purchasers reported that domestic certain PSF is “always” or “frequently” interchangeable with subject imports from Taiwan. Most of the remaining importers and purchasers reported that subject imports from both countries are “sometimes” interchangeable with domestic certain PSF.⁶⁰ With the exception of delivery time, price, and technical support, purchasers reported that subject imports from both Korea and Taiwan are comparable to the domestic like product with respect to a wide range of factors relevant to their purchasing decisions.⁶¹

⁵⁴ See CR/PR at Table I-8 (Korean subject imports held from 15.0 to 24.3 percent of the U.S. market, and Taiwan subject imports held from 4.4 to 19.3 percent of the U.S. market, over the POR).

⁵⁵ See CR/PR at Tables IV-6 (in interim 2005, the Korean industry exported *** percent of its shipments and utilized *** percent of its capacity) and IV-9 (in interim 2005, the Taiwan industry exported *** percent of its shipments and utilized *** percent of its capacity).

⁵⁶ See CR at IV-21-22; PR at IV-14 (Korean PSF subject to antidumping duty orders in Japan, China, the EU, and Turkey); CR at IV-29-30; PR at IV-17 (PSF from Taiwan subject to trade barriers in China and the EU, and antidumping duty orders in Japan and Turkey).

⁵⁷ Original Determinations at 13.

⁵⁸ Original Determinations at 14.

⁵⁹ CR at II-15; PR at II-10; CR/PR at Table II-4.

⁶⁰ CR at II-15; PR at II-10; CR/PR and Table II-4. The only importer to report that domestic PSF is “never” interchangeable with subject imports from either Korea or Taiwan was ***. CR at II-15; PR at II-10.

⁶¹ CR/PR at Table II-6 (purchasers reported that the domestic like product is generally superior in terms of delivery time and technical support, while subject imports from both Korea and Taiwan are generally superior in terms of their lower price).

All domestic producers reported that subject imports from Korea and Taiwan are “always” or “frequently” interchangeable.⁶² A majority of importers agreed that subject imports from Korea and Taiwan are “always” or “frequently” interchangeable, with the balance reporting that they are “sometimes” interchangeable.⁶³ Purchasers reported that subject imports from Korea and Taiwan are generally comparable with respect to a wide range of factors relevant to their purchasing decisions.⁶⁴

The record also indicates substantial competition between subject imports from Korea and Taiwan and the domestic like product over the POR in terms of geographic markets, channels of distribution, and simultaneous presence. The customs districts through which subject imports from Korea and Taiwan entered the U.S. market largely overlapped over the POR, dispersing subject imports throughout the United States.⁶⁵ Domestic producers and importers reported selling most PSF directly to end users, with the balance sold to distributors, throughout the United States.⁶⁶ Subject imports from both Korea and Taiwan were imported into the United States during every month of the POR.⁶⁷

We conclude that there would likely be a reasonable overlap of competition between subject imports and the domestic like product, as well as between subject imports from Korea and Taiwan, were the orders to be revoked. We also find no other factors on the record that suggest we should not exercise our discretion to cumulate subject imports from Korea and Taiwan. Accordingly, we exercise our discretion to analyze subject imports from Korea and Taiwan on a cumulated basis in these reviews.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDERS ARE REVOKED

A. Legal Standard in a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the antidumping duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁶⁸ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”⁶⁹ Thus, the likelihood standard is prospective in nature.⁷⁰ The U.S.

⁶² CR/PR at Table II-7.

⁶³ CR/PR at Table II-7.

⁶⁴ CR/PR at Table II-8.

⁶⁵ CR at IV-12; PR at IV-8.

⁶⁶ CR at II-1; PR at II-1.

⁶⁷ CR/PR at Table IV-5.

⁶⁸ 19 U.S.C. § 1675a(a).

⁶⁹ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

⁷⁰ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

Court of International Trade has found that “likely,” as used in the sunset review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.^{71 72 73}

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”⁷⁴ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”^{75 76}

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”⁷⁷ It directs the Commission to take into account its prior injury determination, whether any improvement in

⁷¹ See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d without opinion, 05-1019 (Fed. Cir. August 3, 2005); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

⁷² Vice Chairman Okun notes that, consistent with her dissenting views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” to mean “probable.” See Usinor Industeel, S.A. et. al. v. United States, No. 01-00006, Slip Op. 02-39 at 13 (Ct. Int’l Trade April 29, 2002). However, she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue. See also Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

⁷³ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

⁷⁴ 19 U.S.C. § 1675a(a)(5).

⁷⁵ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

⁷⁶ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁷⁷ 19 U.S.C. § 1675a(a)(1).

the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).⁷⁸

B. Conditions of Competition and the Business Cycle

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁹

In the original investigations, the Commission addressed five conditions of competition relevant to its analysis. First, it observed that the healthy economy, and particularly the strong housing market, had contributed to increasing demand for certain PSF.⁸⁰ It also noted that certain PSF demand was somewhat sensitive to price, notwithstanding the lack of substitutes, due to the high cost share of certain PSF in end-use products.⁸¹ Second, it noted that the cost of shifting production between certain PSF and nonsubject products on the same equipment was low, and far less than the significant cost of assembling a new production line.⁸² Third, it noted that the willingness of purchasers to pay a premium for branded certain PSF had been significantly eroded over the POI.⁸³ Fourth, it contrasted the insignificant market share of nonsubject imports with the dominant shares held by subject imports and the domestic like product.⁸⁴ Finally, the Commission rejected the respondents’ assertion that subject imported conjugate and regenerated certain PSF competed primarily with non-PSF alternative products, and not the domestic like product.⁸⁵ The record had indicated that purchasers were driven by price considerations to blend different types of PSF to achieve desired product characteristics at a given price point.⁸⁶ Respondents could cite to no niche market served solely by subject imported conjugate and regenerated certain PSF, and the import volume of both products was much larger than would be expected for products serving niche markets.⁸⁷ Pricing data did not corroborate the respondents’ argument that conjugate certain PSF was a premium specialty product, and purchasers had reported that both conjugate and regenerated certain PSF were generally interchangeable with other types of PSF.⁸⁸

⁷⁸ 19 U.S.C. § 1675a(a)(1). There have been no duty absorption findings by Commerce with respect to the orders under review. CR at I-8, PR at I-7-8.

⁷⁹ 19 U.S.C. § 1675a(a)(4).

⁸⁰ Original Determinations at 14.

⁸¹ Original Determinations at 14.

⁸² Original Determinations at 15.

⁸³ Original Determinations at 15.

⁸⁴ Original Determinations at 15.

⁸⁵ Original Determinations at 15.

⁸⁶ Original Determinations at 15.

⁸⁷ Original Determinations at 16.

⁸⁸ Original Determinations at 16.

We find the following conditions of competition relevant to our determinations in these reviews.

1. Demand Conditions

Most domestic producers, importers, and purchasers reported that U.S. demand for PSF increased over the POR, as the strong housing market increased demand for furniture and bedding containing PSF, and will remain robust in the foreseeable future.⁸⁹ U.S. apparent consumption of PSF increased by 22.8 percent between 2000 and 2004, and it was 0.3 percent higher in interim (January-September) 2005 than in interim 2004.⁹⁰

2. Supply Conditions

a. Domestic Industry Restructuring

The domestic industry underwent substantial restructuring over the POR. Since the original investigations, in which there were six known domestic producers, one domestic producer has declared bankruptcy and ceased production, while three others have undergone a change in ownership.⁹¹ Three new domestic producers have emerged since the original investigations, though one is currently in bankruptcy.⁹² *** reported significant reductions in capacity over the POR through the full or partial closure of production facilities.⁹³

b. Raw Material Costs

The domestic industry's raw material costs, primarily for petroleum-based purified terephthalic acid ("PTA") and monoethylene glycol ("MEG"), constituted 60 percent of virgin certain PSF production costs; prices for these raw materials rose significantly over the POR,⁹⁴ and prices spiked toward the end of interim 2005 after hurricane Katrina limited their availability.⁹⁵ The price of inputs used in the production of regenerated certain PSF, including post industrial (regenerated) pellet and film waste and post consumer bottles,⁹⁶ also increased over the POR, primarily due to increased demand from the burgeoning Chinese PSF industry.⁹⁷ The recent price of sorted industrial waste was over *** the ten-year historical

⁸⁹ See CR at II-7-9; PR at II-5-6; see also Domestic Interested Parties' Prehearing Brief at 27; Respondent Interested Parties' Prehearing Brief at 18-19.

⁹⁰ CR/PR at Table I-7 and Appendix F; see also Domestic Interested Parties' Prehearing Brief at 27; Respondent Interested Parties' Prehearing Brief at 19.

⁹¹ CR/PR at Table I-4 (only the ownership of Wellman and Nan Ya remains unchanged since the original investigations).

⁹² CR/PR at Table I-4.

⁹³ CR at III-2-3; PR at III-2.

⁹⁴ CR at V-1; PR at V-1; CR/PR at Figure V-1 (The weighted-average purchase price of PTA increased between 2003 and 2004, and continued to increase in the first half of 2005. The weighted-average purchase price of MEG increased between 2003 and 2004, but declined slightly in the first half of 2005 to a level still well above that in 2003.).

⁹⁵ CR at V-2; PR at V-1-2; see also Hearing Tr. at 322 (Stein).

⁹⁶ CR at I-16; PR at I-13.

⁹⁷ See Hearing Tr. at 170 (Katz).

average price, and the recent price of PET bottles was *** times the historical average price.⁹⁸ For the industry as a whole, raw material costs, on a per unit basis, increased by 24 percent between 2003 and 2004, and were 21 percent higher in interim 2005 than in interim 2004.⁹⁹ Raw material costs as a share of the cost of goods sold (“COGS”) increased from 60 percent in 2000 to 72 percent in 2004, and were 71 percent in interim 2004 to 73 percent in interim 2005.¹⁰⁰ Total unit COGS increased with raw material costs from a POR low of \$0.49 per pound in 2002 to \$0.57 per pound in 2004, and from \$0.55 per pound in interim 2004 to a POR high of \$0.64 per pound in interim 2005.¹⁰¹

c. Nonsubject Imports

Nonsubject import volumes more than doubled over the POR, from 73.0 million pounds in 2000 to 166.3 million pounds in 2004.¹⁰² Nonsubject import volume totaled 120.4 million pounds in interim 2004 and 201.5 million pounds in interim 2005.¹⁰³ Nonsubject import market share increased from 8.5 percent in 2000 to 15.7 percent in 2004, and was 15.3 percent in interim 2004 and 25.5 percent in interim 2005.¹⁰⁴

Most of the increase in nonsubject import volume and market share over the POR is attributable to the emergence of China as the largest source of nonsubject imported certain PSF.¹⁰⁵ The share of nonsubject imports comprised of Chinese certain PSF, by volume, increased from 0.7 percent in 2000 to 42.9 percent in 2004, and rose from 41.8 percent in interim 2004 to 60.0 percent in interim 2005.¹⁰⁶ Among the major sources of nonsubject imports, nonsubject imports from China possessed among the lowest average unit values (“AUV”) throughout the POR.¹⁰⁷

3. Substitutability

As discussed earlier, certain PSF comes in three varieties: virgin PSF, made from non-recycled materials; regenerated PSF, made from recycled materials such as PET bottle stock,¹⁰⁸ and conjugate PSF, made from different polyester polymers, including either virgin or recycled inputs, chemically arranged in

⁹⁸ CR at V-2; PR at V-1 (according to one producer, the current price of sorted industrial waste is *** cents per pound, compared to ten-year average price of *** cents per pound, while the current price of PET bottles is between *** cents per pound, compared to a ten-year average price of *** cents per pound).

⁹⁹ CR/PR at Table III-8.

¹⁰⁰ CR/PR at Table III-8.

¹⁰¹ CR/PR at Table III-8 (unit COGS began the POR at \$0.55 per pound).

¹⁰² CR/PR at Table I-8.

¹⁰³ CR/PR at Table I-8.

¹⁰⁴ CR/PR at Table I-8.

¹⁰⁵ Nonsubject imports from sources other than China increased 31.2 percent between 2000 and 2004, from 72,457,000 pounds to 95,055,000 pounds, and 15.2 percent between the interim periods, from 70,053,000 pounds to 80,712,000 pounds. CR/PR at Table IV-1.

¹⁰⁶ See CR/PR at Table IV-1.

¹⁰⁷ See CR/PR at Table IV-1 (compared to nonsubject imports from other major sources, nonsubject imports from China possessed the lowest AUV in 2001, 2002, and interim 2005; the second lowest AUV in 2003, 2004, and interim 2004, and the third lowest AUV in 2000). We recognize that AUV comparisons in these reviews are influenced by product mix. See CR/PR at Tables IV-7 and 10.

¹⁰⁸ As explained in section IV.E. below, the record does not support the argument advanced by the respondent interested parties that regenerated PSF is distinct from recycled PSF. Accordingly, we use the terms interchangeably.

a spiral configuration.¹⁰⁹ All types of certain PSF are utilized in the same end use applications, primarily as stuffing for furniture, pillows, and other bedding.¹¹⁰ The record indicates that purchasers select among different types of certain PSF to achieve the performance characteristics required by a given end use.¹¹¹ There is nothing on the record of these reviews that contradicts the Commission's finding in the original investigations that purchasers blend different types of PSF to achieve desired product characteristics at a given price point.¹¹²

Substantial quantities of all three varieties of certain PSF were produced domestically and imported from Korea and Taiwan.¹¹³ As detailed in section IV.C., supra, producers, importers, and purchasers report substantial interchangeability between subject imports from Korea and Taiwan, and between cumulated subject imports and the domestic like product, and purchasers report that certain PSF from all three sources is generally comparable in terms of factors relevant to their purchasing decisions.¹¹⁴

In sum, the record indicates a substantial degree of substitutability between subject imports and the domestic like product.

4. The Alleged Antitrust Conspiracy

The parties disputed whether certain domestic producers conspired to fix prices and allocate customers for certain PSF during a period overlapping parts of the original investigations and the current reviews. The central dispute was whether the alleged conspiracy involved the certain PSF that is the subject of these reviews. By way of background, in October of 2002, Arteva Specialties S.a.r.l. d/b/a

¹⁰⁹ See CR at I-15-17, 19-20; PR at I-12-13, 14-15. ***. See Domestic Interested Parties' Responses to Commissioner Questions at 55 & n.31.

¹¹⁰ See CR at I-13-14; PR at I-11-12; see also Respondent Interested Parties' Prehearing Br. at 14 ("Conjugate fiber is of higher quality than other certain PSF. . . despite the fact that conjugate has the same or similar end uses to other certain PSF.").

¹¹¹ See CR at II-10-11; PR at II-7 (quality characteristics that differentiate PSF products include color, whether the fiber is hollow or solid, whether it is slick or dry, the degree of fill power (fiber used/ounce), loft, crimp level, fiber length, resiliency, performance on equipment, and consistency); see also Hearing Tr. at 26, 156-58 (Katz).

¹¹² Original Determinations at 15. Respondent interested parties acknowledge that "it is possible to blend different types of PSF to achieve a desired quality to some degree" but maintain that "customer demands on quality and price limit the extent to which this can occur." Respondent Interested Parties' Prehearing Brief at 15. Yet, only one producer, two importers, and two purchasers reported that different grades of certain PSF are required by end users for different applications. CR at II-10; PR at II-7. As in the original investigations, respondent interested parties were unable to cite a single end use limited to a particular type of certain PSF. Purchaser affidavits submitted by the respondent interested parties indicate that subject imported regenerated PSF and domestic recycled PSF exist on a quality continuum of certain PSF products that serve the same end use applications at different price points. See Respondent Interested Parties' Posthearing Brief, Exhibit 21 at para. 24 (***) (***), Exhibit 24 at para. 6 (Declaration of ***) (***), and Exhibit 25 at para. 7 (Declaration of ***) (***); see also Hearing Tr. at 295-96 (Kunik), 319 (Stein) (regenerated PSF used in low quality pillows sold at Costco and Walmart); Respondent Interested Parties' Responses to Commissioner Questions at 81-82 (claiming that regenerated PSF is not used in throw pillows). Similarly, another purchaser affidavit submitted by the respondent interested parties indicates that ***. See Respondent Interested Parties' Posthearing Brief, Exhibit 26 (Declaration of ***) at paras. 4, 8.

¹¹³ CR/PR at Tables III-4 (reported domestic conjugate certain PSF production beginning in 2002), IV-4; CR at III-10 n.33; PR at III-7 n.33 (DuPont was the only domestic producer of conjugate certain PSF until 2002, but ***), and; see also CR/PR at Tables IV-7 (Korean foreign producers report substantial exports of *** throughout the POR), and IV-10 (Taiwan foreign producers report substantial exports of *** throughout the POR); CR at IV-13 n. 12, IV-16; PR at IV-8 n.12, IV-12 (smaller producers that did not respond to the Commission's foreign producers' questionnaires account for *** from Korea).

¹¹⁴ See CR/PR at Tables II-4-8.

Kosa (“KoSa”) and a KoSa employee, Mr. Troy Stanley, pled guilty to participating in a conspiracy to fix prices and allocate customers for “first-quality polyester staple fiber” in North America for a period “beginning at least as early as September 1999 and continuing until at least January, 2001.”¹¹⁵ Another criminal prosecution brought against Mr. Robert Bradley Dutton of Nan Ya, however, ended in an acquittal. Mr. Mitchell Chitwood, Esq., was the lead prosecutor for the U.S. Department of Justice (“DOJ”) in each of the criminal matters. Separately, civil antitrust actions were brought against KoSa, DAK, Nan Ya, and Wellman. DAK, Nan Ya, and Wellman publicly settled the actions with the payment of not insubstantial sums, though with no admission of any wrongdoing.¹¹⁶

Respondent interested parties have alleged that a conspiracy existed among DAK, KoSa, Nan Ya, and Wellman to fix prices and allocate customers for certain PSF, beginning as early as 1995 and ending in 2001, and that it has irrevocably corrupted the Commission’s record from the original investigations and for these reviews.¹¹⁷ In particular, they assert that the Commission might not have found material injury by reason of subject imports in the original investigations had the conspiracy not allegedly inflated underselling margins,¹¹⁸ and had domestic producers not allegedly concealed their conspiracy, a key condition of competition, from the Commission.¹¹⁹ They claim that there are “striking and highly relevant” parallels between the conspiracy they allege, and the antitrust conspiracy perpetrated by three domestic producers in Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela (“Ferrosilicon”), which prompted the Commission to self-institute a reconsideration proceeding that culminated in a negative reconsideration determination.¹²⁰ Alleging that domestic producers hold under seal a wide range of relevant documents relating to the criminal antitrust prosecutions and the civil antitrust litigation, the respondent interested parties also requested that the Commission extend these reviews by 90 days, and conduct “discovery” by using its subpoena power to compel the production of these documents.¹²¹ They conclude that the Commission should either “revoke the orders ab initio,” asserting that the Commission did as much in the Ferrosilicon case,¹²² or at least disregard all pricing product data through 2002 and issue negative determinations in these reviews.¹²³ The domestic interested parties counter that the antitrust conspiracy cited by respondent interested parties, for which only KoSa and KoSa employee Mr. Stanley were criminally charged and pled guilty, targeted fine denier PSF for

¹¹⁵ See CR at II-3, E-4-5; PR at II-12, E-4-5.

¹¹⁶ See CR at II-3-4, E-10, 12, and 13; PR at II-2, E-10, 12.

¹¹⁷ See, generally, Respondent Interested Parties’ Prehearing Brief at 5-13, 22-34; Respondent Interested Parties’ Posthearing Brief at 1-8; Respondent Interested Parties’ Responses to Commissioner Questions at 14-47.

¹¹⁸ Respondent Interested Parties’ Posthearing Brief at 2; Hearing Tr. at 13, 192 (Blakeslee), 232, 254, 272 (Malashevich).

¹¹⁹ See Respondent Interested Parties’ Prehearing Brief at 24-26; Respondent Interested Parties’ Posthearing Brief at 3-4.

¹²⁰ See Respondent Interested Parties’ Prehearing Brief at 5, 23-24 (citing Ferrosilicon Reconsideration Determination, Inv. Nos. 303-TA-23, 731-TA-566-570 and 731-TA-741 (Reconsideration), USITC Pub. 3218 (Aug. 1999) (“Ferrosilicon Reconsideration”); Ferrosilicon Reconsideration Remand Determination, Inv. Nos. 303-TA-23, 731-TA-566-570 and 731-TA-741 (Reconsideration) (Remand), USITC Pub. 3531 (Sept. 2002) (“Ferrosilicon Reconsideration Remand”); Respondent Interested Parties’ Posthearing Brief at 4-5 (citing Ferrosilicon Reconsideration and Ferrosilicon Reconsideration Remand).

¹²¹ Respondent Interested Parties’ Posthearing Brief at 3; see also Respondent Interested Parties’ Prehearing Brief at 32-34; Hearing Tr. at 238-39, 285 (Blakeslee).

¹²² Respondent Interested Parties’ Prehearing Brief at 30-31; Respondent Interested Parties’ Posthearing Brief at 8.

¹²³ Respondent Interested Parties’ Prehearing Brief at 42; Respondent Interested Parties’ Posthearing Brief at 2-3; Hearing Tr. at 13, 912 (Blakeslee), 232, 254, 272 (Malashevich).

textile applications, not certain PSF subject to these reviews.¹²⁴ Because the conspiracy concerned a nonsubject product, and had no impact on the record of these reviews, the domestic interested parties argue that the Commission should disregard the respondent interested parties' allegations, as it disregarded a conspiracy among domestic silicomanganese producers to fix prices for ferrosilicon in its review of the antidumping duty orders on Silicomanganese from Brazil, China, and Ukraine.¹²⁵

As an initial matter, we observe that the Commission cannot "revoke the orders ab initio" as urged by respondent interested parties because Commerce, not the Commission, is charged with revoking antidumping duty orders.¹²⁶ Because the Commission cannot reconsider its original determinations for PSF from Korea and Taiwan in the context of these five-year reviews, which are governed by specific statutory provisions, we construe the respondent interested parties' "ab initio revocation" arguments as a renewal of their October 26, 2005 request for institution of a reconsideration proceeding, which the Commission provisionally rejected.¹²⁷

Based on our examination of the voluminous record evidence concerning the price-fixing issue, we find that the record does not substantiate the theory that the conspiracy in question covered products other than fine denier PSF for textile applications, a product not subject to these reviews, and that the antitrust conspiracy did not impact the record of these reviews such that pricing data or other information on the record should be discounted. We also determine that circumstances do not warrant the institution of a reconsideration proceeding with respect to PSF from Korea and Taiwan. We elaborate on both findings below.

¹²⁴ See, generally, Domestic Interested Parties' Prehearing Brief at 66-80; Domestic Interested Parties' Posthearing Brief at 3-8; Domestic Interested Parties' Responses to Commissioner Questions at 1-22. The domestic interested parties also distinguished Ferrosilicon from the facts alleged by respondent interested parties to argue that even when viewed in the most favorable light, respondent interested parties' allegations do not warrant institution of a reconsideration proceeding. See Domestic Interested Parties' Prehearing Brief at 76-79; Hearing Tr. at 36 (Rosenthal).

¹²⁵ See Domestic Interested Parties' Prehearing Brief at 79-80 (citing Inv. Nos. 731-TA-671-673 (Review), USITC Pub. 3386 (Jan. 2001)); Domestic Interested Parties' Posthearing Brief at 6-8; Domestic Interested Parties' Responses to Commissioner Questions at 28-34.

¹²⁶ See, e.g., Notice of rescission of antidumping duty orders on ferrosilicon from Brazil, Kazakhstan, People's Republic of China, Russia, Ukraine, and Venezuela, rescission of countervailing duty order on ferrosilicon from Venezuela, and termination of administrative reviews of ferrosilicon from Brazil, the People's Republic of China, and Venezuela, Case Nos. A-351-820, A-834-804, A-821-804, A-823-804, A-307-807, A-570-819, C-307-808, 64 Fed. Reg. 51097 (Sep. 21, 1999) (rescinding the antidumping duty orders and the countervailing duty order effective from the date of their original issuance, pursuant to the Commission's negative reconsideration determination).

¹²⁷ See Respondent Interested Parties' Responses to Commissioner Questions at 55 ("[T]he importers filed a formal request for 'reconsideration' of the Commission's original material injury determinations. . . The Commission chose, for the moment, not to accept the Importers' reconsideration request.") (citing Request of Consolidated Fibers, Inc., Stein Fibers, Ltd., BMT Commodity Corp. and Bernet International Trading, LLC for Reconsideration (Oct. 26, 2005)).

a. KoSa Pled Guilty to a Conspiracy to Fix Prices and Allocate Customers for Fine Denier PSF, Not Certain PSF

The record evidence does not allow us to conclude that KoSa's admitted conspiracy to fix prices and allocate customers covers products other than nonsubject ***.¹²⁸ In particular, the factual basis of Mr. Stanley's guilty plea, which DOJ prosecutor Mr. Chitwood read at Mr. Stanley's November 15, 2004 sentencing hearing, emphasized repeatedly that the conspiracy in which Mr. Stanley had participated targeted "first quality polyester staple fiber sold primarily for textile applications in North America."¹²⁹ ***.¹³⁰ ***¹³¹ ***¹³² ***¹³³ We view ***, as highly probative.

b. The Record Lacks Sufficient Evidence of an Antitrust Conspiracy Targeting Certain PSF

The evidence submitted by the interested parties from both the criminal prosecution of KoSa, Mr. Stanley, and Mr. Dutton for antitrust violations, and the class action antitrust litigation against KoSa, DAK, Nan Ya, and Wellman, is not sufficient to establish that domestic producers conspired to fix prices

¹²⁸ See ***; see also CR/PR at Table E-1.

¹²⁹ See CR/PR at E-9, Table E-1; Domestic Interested Parties' Prehearing Brief, Exhibit 12 at 3, lines 24-25 ("[t]he defendant while employed by KoSa participated in a conspiracy among the four major United States polyester staple producers to fix the price of and allocate customers for first quality polyester staple fiber sold primarily for textile applications in North America"), 4, line 15 (targeted customer that purchased "commodity textile polyester staple"), 5, lines 16-17, and 6, lines 7-8 (conspirators coordinated prices for "first quality polyester staple customers, primarily textile customers").

¹³⁰ *** at 1 (***).

¹³¹ Respondent interested parties assert that ***. Respondent Interested Parties' Final Comments at 4 & n.11. ***. See id. It is well settled that parties to Commission investigations have no right to cross-examination because such investigations are investigatory rather than adjudicative in nature, and the Commission's hearings are statutorily exempted from the APA provisions governing adjudicative hearings. See Matsushita Electrical Industrial Co. v. United States, 750 F.2d 927, 936, 937 (Fed. Cir. 1984) ("Following its historic practice, the ITC conducted its investigation more like a congressional committee than a court, and of course it was exercising delegated legislative powers.") (referring to the Commission's "quasi-legislative" determination) (Nichols, J., concurring) ("The additional views of Judge Nichols have not been incorporated into the majority opinion only because they read so well as separately stated." 750 F.2d at 936, n.14.); Avesta AB v. United States, 687 F.Supp. 1173, 1189 (Ct. Int'l Trade 1988) ("Congress has stipulated that antidumping proceedings are investigatory rather than adjudicatory in nature. In an investigative proceeding an agency need not provide these rights of appraisal, cross-examination, and confrontation applicable in an adjudicatory proceeding." citing Hannah v. Larche); Budd Company Railway Division v. United States, 507 F.Supp. 997, 1001 (Ct. Int'l Trade 1980) (The court noted that because antidumping investigations were designated by Congress as investigatory, not adjudicatory, proceedings, there was no procedure established by statute or regulation for "discovery" of an opposing party prior to, or during, the investigation.); Pasco Terminals, Inc. v. U.S., 83 Cust. Ct. 65, 477 F.Supp. 201 (1979) aff'd 68 CCPA 8, C.A.P. 1251, 634 F.2d 610 (1980) ("[W]hen administrative agencies conduct nonadjudicative fact-finding investigations, rights such as cross-examination generally do not obtain."); 19 U.S.C. § 1677c(b) ("Any hearing required or permitted under this subtitle . . . shall not be subject to the provisions of subchapter II of chapter 5 of Title 5 or to section 702 of such title."). In conformity with the governing statutory provisions, the Commission disclosed *** to the interested parties, subject to the administrative protective order, which permitted the parties to comment on the information, as the respondent interested parties in fact did. 19 U.S.C. §§ 1677f(a)(3) and 1677m(g).

¹³² *** at 1-2.

¹³³ *** at 1-2.

and allocate customers for certain PSF. This contrasts with the evidence, addressed above, that the antitrust conspiracy to which KoSa pled guilty focused on fine denier PSF for textile applications.¹³⁴ The indirect evidence mustered by respondent interested parties that the conspiracy might have included certain PSF is not persuasive.

***.¹³⁵ Respondent interested parties submitted a copy of the Dutton trial transcript, but were unable to cite any explicit evidence presented by the DOJ of a conspiracy targeting the PSF subject to these reviews, used primarily as fiberfill.¹³⁶ We also note that Mr. Dutton was acquitted of the charges against him.¹³⁷

Respondent interested parties cite statements by Mr. Chitwood and testimony by Mr. Stanley, called as a government witness, seemingly defining “polyester staple fiber” broadly to include fiberfill as evidence that Mr. Dutton was prosecuted for a conspiracy that reached fiberfill.¹³⁸ This testimony was expository, however, and did not concern specific allegations or evidence of antitrust violations.¹³⁹

Respondent interested parties also cite testimony by Mr. Stanley that he allocated a customer for both fine and “coarse” denier PSF, Mt. Vernon, to Nan Ya by purposefully overbidding Nan Ya’s bid price.¹⁴⁰ Yet, “coarse” denier PSF includes nonsubject carpet fiber, and Mr. Dutton rebutted Mr. Stanley’s testimony with evidence that Nan Ya had competed “briskly” with Wellman and Sam Yang for Mt. Vernon’s business.¹⁴¹

Respondent interested parties were no more successful in finding explicit references to an antitrust conspiracy targeting certain PSF in other record documents. With respect to Mr. Stanley’s sentencing hearing, respondent interested parties contend that Mr. Chitwood’s repeated statements that the conspiracy targeted “primarily” textile customers could only mean that the conspiracy targeted large home textile producers, such as Dan River and Mt. Vernon, that consumed primarily fine denier PSF but also certain PSF.¹⁴² They contend that ***.¹⁴³ ***.¹⁴⁴ ***.¹⁴⁵ ***.¹⁴⁶

¹³⁴ Other documents submitted by respondent interested parties explicitly cite an antitrust conspiracy that targeted fine denier PSF. See, generally, CR/PR at Exhibit E. Both KoSa’s statement of admissions filed in Canada, and the complaint filed in Koch v. Hoescht, reference a conspiracy to coordinate fine denier sales and allocate textile customers. See Importers Questionnaire Response of ***, public Exhibit (Letter from DeKieffer & Horgan to Marilyn Abbott resubmitting price-fixing documents (Sept. 30, 2005)), Attachment 5 at paras. 12-13 and Attachment 7 at paras. 1-2. ***. See Domestic Interested Parties’ Prehearing Brief at Exhibit 13.

¹³⁵ *** at 2.

¹³⁶ See Respondent Interested Parties’ Posthearing Brief, Volume II, Exhibit 8 (“Dutton Trial Transcript”) (Transcript of trial proceedings in United States v. Robert Bradley Dutton (W.D.N.C. 2003) (Docket No. 3:02-cr-220)). At the Commission’s hearing, counsel to respondent interested parties conceded that he could not “at the moment point you to a place” in the Dutton trial transcript “where the scope was enlarged significantly” beyond fine denier PSF for textile applications. Hearing Tr. at 291 (Blakeslee).

¹³⁷ Respondent Interested Parties’ Prehearing Brief at 10.

¹³⁸ See Respondent Interested Parties’ Responses to Commissioner Questions at 21 (citing Dutton Trial Transcript at 22-25), 25 (citing Dutton Trial Transcript at 203).

¹³⁹ See Dutton Trial Transcript at 23 (Mr. Chitwood stated to the jury that “[t]he other thing you’re going to hear a lot of is references to polyester staple” and proceeded to define the term broadly), 203 (When Mr. Stanley testified that he had reported to Tom Nixon, market manager for fine denier PSF, Mr. Chitwood asked him to clarify that “fine denier” and “coarse denier” fiberfill were both types of PSF).

¹⁴⁰ See Responses to Commissioner Questions at 26 (citing Dutton Trial Transcript at 300).

¹⁴¹ See Dutton Trial Transcript at 831-34.

¹⁴² Respondent Interested Parties’ Responses to Commissioner Questions at 29-30; Hearing Tr. at 200-2, 236, 267, 278 (Blakeslee). That the conspiracy would primarily concern fine denier PSF is unsurprising, they opine, given that the PSF market in 2000 “primarily” consisted of fine denier PSF, at 70 percent of the market, with certain PSF comprising only 16 percent of the market. Respondent Interested Parties’ Responses to Commissioner

Respondent interested parties also claim that the guilty pleas entered by Mr. Stanley and KoSa were based on the definition of PSF contained in their identical “criminal information” documents, which provide in part that “{o}ther forms of polyester staple have applications in items such as sleeping bags, pillows, and comforters.”¹⁴⁷ At the Rule 11 and sentencing hearing held on December 18, 2002, prosecutor Chitwood stated that the conspiracy had victimized all purchasers of polyester staple,¹⁴⁸ and neither Mr. Stanley nor KoSa accepted the Judge’s invitation to elaborate on their guilty pleas, as by clarifying the definition of the subject product contained in the criminal information document.¹⁴⁹ Yet, the stipulated facts to which both KoSa and Mr. Stanley plead guilty, as read by Mr. Chitwood at Mr. Stanley’s December 14, 2004 sentencing hearing, clarify that their conspiracy primarily targeted fine denier PSF for textile applications, as confirmed by ***. In our view, there is insufficient evidence to rebut these stipulated facts, particularly when ***.

Respondent interested parties cite Assistant Attorney General R. Hewitt Pate’s Congressional testimony in which he states that KoSa pled guilty to an antitrust conspiracy targeting “polyester staple, a synthetic fiber used in textile products such as clothing, table and bedding linens, upholsteries, carpeting, and air and water filters,” and claim that five of the seven enumerated products could contain subject PSF.¹⁵⁰ Yet when Tate’s testimony is construed in the context of the stipulated facts underlying KoSa’s guilty plea, and ***, it is more likely that he was referring to textile products primarily containing fine denier PSF, rather than textile products containing either fine denier PSF or certain PSF. In any event, the more specific information from the case, addressed above, is more probative than general testimony before Congress.

The fact that the alleged conspirators’ price hike announcements covered all types of PSF, respondent interested parties argue, is evidence that they targeted both fine denier PSF and certain PSF purchases by large textile customers, particularly given the industry practice of negotiating prices for all PSF products simultaneously.¹⁵¹ Witnesses for the domestic interested parties, however, testified at the Commission’s hearing that the industry practice is to announce a percentage price increase for all PSF products, typically spurred by increased costs for inputs common to all PSF products, followed by negotiations with individual customers to determine the price increase for purchases of specific PSF

Questions at 30.

¹⁴³ Respondent Interested Parties’ Responses to Commissioner Questions at 33 n.72.

¹⁴⁴ *** at 2.

¹⁴⁵ *** at 1.

¹⁴⁶ We observe that ascertaining antitrust violations based upon conflicting or ambiguous evidence submitted in civil or criminal antitrust proceedings is outside the Commission’s expertise.

¹⁴⁷ Respondent Interested Parties’ Responses to Commissioner Questions at 17-18; Hearing Tr. at 197-98, 235, 252-53, 278 (Blakeslee). Respondent interested parties also cite the settlement agreements entered into by Wellman and Nan Ya in the class action antitrust litigation, claiming that both cover all PSF products, as evidence that an antitrust conspiracy extended to certain PSF. Respondent Interested Parties’ Responses to Commissioner Questions at 32 n. 71. However, Nan Ya’s settlement agreement is not on the record of these reviews, and Wellman’s settlement agreement, attached as Exhibit G to Respondent Interested Parties’ Prehearing Brief, denies any wrongdoing. Neither company was charged with criminal antitrust violations.

¹⁴⁸ Respondent Interested Parties’ Responses to Commissioner Questions at 19.

¹⁴⁹ Respondent Interested Parties’ Responses to Commissioner Questions at 19-20; Hearing Tr. at 197-98, 235, 252-53, 278 (Blakeslee).

¹⁵⁰ Respondent Interested Parties’ Responses to Commissioner Questions at 27 (citing Exhibit 9 at 4-5) (specifically “table and bedding linens,” “upholstery,” and “air and water filters”).

¹⁵¹ Respondent Interested Parties’ Responses to Commissioner Questions at 32; Hearing Tr. at 202 (Blakeslee), 220, 282 (Stein), 221, 228 (Kunik).

products in different markets.¹⁵² One of the respondents' own industry witnesses at the hearing acknowledged that general pricing announcements are typically followed by negotiations with specific customers over the pricing of specific products.¹⁵³ Respondent interested parties also concede that fine denier PSF and certain PSF are distinct products primarily purchased by different customers in separate industries.¹⁵⁴ Both Wellman and DAK reportedly maintained separate sales forces for fine denier PSF and certain PSF between September 1999 and April 2001, the duration of the conspiracy to which KoSa pled guilty.¹⁵⁵ No purchaser that completed a purchasers' questionnaire, including three large textile producers that might have purchased both fine denier PSF and certain PSF and one purchaser that was also a plaintiff in the class action antitrust litigation against PSF producers, reported any knowledge of an antitrust conspiracy targeting certain PSF over the POR, ***.¹⁵⁶ The fact that certain domestic industry price hike announcements allegedly related to the antitrust conspiracy extended to all PSF products is not persuasive evidence that the conspiracy extended to certain PSF, especially given the contrary evidence addressed above.¹⁵⁷

In conclusion, we find that the weight of the voluminous record evidence indicates that any conspiracy was primarily limited to nonsubject PSF, and that record evidence does not support the proposition that any conspiracy extended to certain PSF. In particular, we consider ***, to be particularly probative and persuasive. The information relied upon by respondents is generally indirect or inconclusive, and requires assumptions that are contradicted by other evidence. Thus, we do not view the record evidence as substantiating an antitrust conspiracy involving certain PSF.

c. Circumstances Do Not Warrant Institution of a Reconsideration Proceeding or the Discounting of Evidence on the Record of These Reviews

Given the weight of the evidence that KoSa and Mr. Stanley pled guilty to fixing prices and allocating customers for fine denier PSF for textile applications, and the absence of clear evidence that the conspiracy targeted certain PSF,¹⁵⁸ we do not conclude that circumstances warrant the institution of a

¹⁵² See Hearing Tr. at 71, 80-81 (Katz), 72, 124 (McNaull).

¹⁵³ See Hearing Tr. at 338 (Stein) (“After there’s a price increase, just like I think you, the Petitioner, said this morning, after you announce a price increase there’s always some negotiating that goes on with individual customers, but for the most part we try to stay with a percentage.”).

¹⁵⁴ See Hearing Tr. at 241 (Kunik) (testifying that five to ten percent overlap between customers of fine denier PSF and fiberfill is “probably accurate”), 303 (Malashevich) (opining that overlap would have been greater during original investigations); see also *** at paras. 4-12 (describing distinct markets for fine denier PSF and fiberfill).

¹⁵⁵ See Hearing Tr. at 72, 78, 165 (Katz) (Wellman had possessed separate marketing directors for textile PSF and fiberfill, but merged them within the past two years), 79, 164 (McNaull) (DAK merged their sales forces in 1999, but maintained separate pricing for textile PSF and fiberfill); Domestic Interested Parties’ Responses to Commissioner Questions at 43-44, Exhibit 5 (***). (***)).

¹⁵⁶ CR at II-2 & n. 4; PR at II-2 & n.4 (a third purchaser, ***, reported that it had been placed on allocation by domestic producers, but did not link the allocation to an antitrust conspiracy).

¹⁵⁷ We also note that only KoSa was charged with participation in the conspiracy.

¹⁵⁸ We reject respondent interested parties’ request for a 90 day extension of these reviews in order to conduct “discovery” into relevant documents allegedly held under seal by the domestic interested parties. Respondent interested parties argue that they are unfairly handicapped in presenting their case to the Commission by their lack of access to these sealed court records, which permits the domestic interested parties to present to the Commission only those documents that advance their case. Respondent Interested Parties’ Posthearing Brief at 3; see also Respondent Interested Parties’ Prehearing Brief at 32-34; Hearing Tr. at 238-39, 285 (Blakeslee). The Commission conducts its investigations according to statutory provisions and regulations, and scheduling notices published in the Federal

reconsideration proceeding to reconsider the original determinations for PSF from Korea and Taiwan. In Ferrosilicon, the Commission suspended a changed circumstances review, and self-initiated a separate reconsideration proceeding, based on “extraordinary circumstances. . . that strike at the heart of the administrative process”: the criminal conviction of three domestic producers for price fixing, when ferrosilicon pricing was the “focal point” of the original investigations, and evidence that these domestic producers “made material misrepresentations and omissions throughout the investigation relating to that issue.”¹⁵⁹ In these reviews, the allegation that KoSa’s antitrust violations undermined the integrity of the original investigations is not supported by the record evidence. Petitioners provided evidence and testimony consistent with an antitrust conspiracy targeting fine denier PSF but not certain PSF. The respondent interested parties’ claim that the conspiracy inflated underselling margins is unsupported by the record.¹⁶⁰ We therefore reject respondent interested parties’ request for institution of a reconsideration proceeding.

Nor do we find that the conspiracy to fix prices and allocate customers for fine denier PSF significantly affected the record of these reviews. Over the duration of the conspiracy, there was no significant overlap between the markets, customers, and domestic producer sales forces for fine denier PSF and certain PSF.¹⁶¹ Domestic producers generally followed pricing announcements covering all PSF products with negotiations with specific customers over the price of specific types of PSF. No producer, importer, or purchaser that responded to the Commission’s questionnaires, ***, reported any impact on the market for certain PSF due to the antitrust conspiracy. There was no trend in the underselling and overselling margins for pricing products examined in these reviews that would suggest that underselling margins were inflated by the antitrust conspiracy targeting fine denier PSF.¹⁶² We therefore decline to discount the pricing data or other evidence in these reviews in light of the conspiracy to fix prices and allocate customers for fine denier PSF.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹⁶³ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2)

Register, that do not provide for formal discovery. At the hearing, the Commission asked the domestic interested parties to provide certain additional documents to assist its consideration of the issue and all requested documents were provided. See Hearing Tr. at 77 (Commissioner Hillman), 87 (Commissioner Lane), and 108-9 (Chairman Koplan); Domestic Interested Parties’ Posthearing Brief, Exhibit 1 at 1-18, 24. We are satisfied with the completeness of the record. We also observe that ascertaining antitrust violations based upon conflicting or ambiguous evidence submitted in civil antitrust proceedings is outside the Commission’s expertise.

¹⁵⁹ Ferrosilicon Reconsideration at 7-8.

¹⁶⁰ See Original Determinations, Confidential Staff Report at Tables V-1-9 (Between the first and second halves of 1999, subject import underselling margins generally narrowed for pricing products 1, 2, 3, 4, 7, 8, and 9, and fluctuated within a narrow band for pricing product 5. There were no domestic sales of pricing product 6.).

¹⁶¹ See Section IV.C.4.b., supra.

¹⁶² See CR/PR at Table V-8. Nor was there any such trend in the underselling and overselling margins between the first quarter of 1999 and the fourth quarter of 2001, for pricing products examined in both the original investigations and these reviews. See Original Determinations, Confidential Staff Report at Tables V-1, 3, 6, 8, 9; CR/PR at Tables V-1, 3, 5, 6, and 7 (Subject import underselling margins increased only for pricing product 3, while pricing product 5 was generally oversold and underselling margins on all other pricing products generally declined.).

¹⁶³ 19 U.S.C. § 1675a(a)(2).

existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹⁶⁴

In the original investigations, the Commission found that subject imports increased significantly between 1997 and 1999, with subject import volume increasing *** percent to *** million pounds, subject import shipment volume increasing *** percent to *** million pounds, and subject import market share increasing from *** percent in 1997 to *** percent in 1999.¹⁶⁵ Although domestic industry shipments increased *** percent over the same period, despite an *** percent dip in 1998, domestic industry market share declined from *** percent in 1997 to *** percent in 1999.¹⁶⁶

We find that revocation of the orders would likely result in a significant increase in subject import volume within a reasonably foreseeable time. We base this finding on the significant presence of subject imports in the U.S. market throughout the POR, the significant capacity and unused capacity possessed by subject foreign producers, the significant export orientation of subject foreign producers, trade barriers in third markets, and the rapid growth of China's certain PSF industry.

Subject imports maintained a significant presence in the U.S. market throughout the period, although with the orders in place, subject import market share and volume declined.¹⁶⁷ Subject import volume increased from 363.1 million pounds in 2000 to 371.1 million pounds in 2001, before declining to 282.2 million pounds in 2004.¹⁶⁸ Subject import volume was 220.8 million pounds in interim 2004 and 153.6 million pounds in interim 2005.¹⁶⁹ Subject import market share declined from 42.1 percent in 2000 to 26.6 percent in 2004, and was 28.0 percent in interim 2004 and 19.4 percent in 2005.¹⁷⁰ Subject import volume as a share of domestic production increased from 80.4 percent in 2000 to 89.9 percent in 2001 before declining to 42.4 percent in 2004, and it declined from 45.8 percent in interim 2004 to 33.2 percent in interim 2005.¹⁷¹

Foreign producers in Korea and Taiwan that responded to the Commission's questionnaire reported substantial capacity for the production of certain PSF throughout the POR, with no capacity

¹⁶⁴ 19 U.S.C. § 1675a(a)(2)(A-D).

¹⁶⁵ Confidential Original Determinations at 23-24 (subject import volume increased from *** million pounds in 1997 to *** million pounds in 1999; subject import shipment volume increased *** percent from *** million pounds in 1997 to *** million pounds in 1999).

¹⁶⁶ Confidential Original Determinations at 24 (domestic industry shipments declined from *** million pounds in 1997 to *** million pounds in 1998, before increasing to *** million pounds in 1999).

¹⁶⁷ We do not find that the substantial presence of subject imports in the U.S. market over the POR reflects any shortage of domestically produced regenerated or conjugate certain PSF, as respondent interested parties argue. Respondent Interested Parties' Posthearing Brief at 10; Hearing Tr. at 223-24 (Kunik). All types of certain PSF are generally substitutable in the sense that they are used in the same end uses, and can be blended for the requisite combination of price and performance in a given end use. See Section IV.B.2.b., supra. The domestic industry produced substantial quantities of conjugate certain PSF and regenerated certain PSF, which competes to a significant degree with subject imported regenerated certain PSF, and operated at only 58.9 percent of capacity in interim 2005. See CR/PR at Tables III-1 and 4; Section IV.E., infra.

¹⁶⁸ CR/PR at Table I-7.

¹⁶⁹ CR/PR at Table I-7.

¹⁷⁰ CR/PR at Table I-7. As addressed below, we find it unlikely that the decline in subject import volume over the POR would continue in the event of revocation, as argued by respondent interested parties, given the declining capacity utilization reported by Korean and Taiwan PSF producers, trade barriers to Korean and Taiwan PSF exports in several third country markets, and China's declining demand for certain PSF imports and increasing certain PSF exports. See Respondent Interested Parties' Prehearing Brief at 36-41.

¹⁷¹ CR/PR at Table IV-1.

reductions. Korean foreign producers reported capacity of *** million pounds per year over the 2001-2004 period, and *** million pounds in both interim 2004 and 2005.¹⁷² Taiwan foreign producers reported capacity of *** million pounds per year over the 2000-2004 period, and *** million pounds in both interim 2004 and 2005.¹⁷³

While the reported capacity of subject foreign producers is significant in and of itself, the actual capacity of the two industries is larger, because only two producers from Korea and two from Taiwan responded to the Commission's questionnaires.¹⁷⁴ Other information on the record indicates that production capacity in both countries is substantially larger than that reported by responding producers. The Taiwan Man Made Fiber Industries Association reports that Taiwan capacity for all PSF products in 2004 was approximately 2.0 billion pounds per year.¹⁷⁵ Given that *** percent of reported PSF production in Taiwan consisted of certain PSF, total capacity in Taiwan for certain PSF would have been approximately *** million pounds per year in 2004.¹⁷⁶ This estimate of total Taiwan capacity, *** reported capacity, is consistent with the fact that the responding producers' reported exports to the United States were *** percent of subject imports from Taiwan, according to official Commerce statistics.¹⁷⁷

The capacity reported by Korean responding foreign producers substantially understates the true extent of Korean capacity to produce certain PSF to an even greater extent, given that their reported exports to the United States in 2004, *** million pounds, constitute *** percent of total subject imports from Korea in 2004 of 209.9 million pounds, according to importers' questionnaire responses and official Commerce statistics.¹⁷⁸ This would be consistent with our finding in the original investigations that a number of family owned businesses, which did not complete foreign producer questionnaires, produced the bulk of regenerated certain PSF in Korea.¹⁷⁹ *** Korean producer that responded to the Commission's foreign producer questionnaire reported ***, though importers reported that *** comprised *** percent of their subject imports from Korea in 2004.¹⁸⁰

Foreign producers of certain PSF in Korea and Taiwan experienced declining capacity utilization over the interim periods, and possessed ample unused capacity in interim 2005 with which to increase exports. Responding Korean producers reported that their capacity utilization increased *** from *** percent in 2000 to peak at *** percent in 2004, but was *** lower in interim 2005, at *** percent, than it had been in interim 2004, at *** percent.¹⁸¹ Taiwan producers reported that their capacity utilization generally declined over the POR, from a high of *** percent in 2000 to *** percent in 2004, and it declined from *** percent in interim 2004 to *** percent in interim 2005. In interim 2005, the

¹⁷² CR/PR at Table IV-6. ***. CR at IV-17.

¹⁷³ CR/PR at Table IV-9.

¹⁷⁴ CR at IV-16, 25. A limited number of foreign producers in Korea and Taiwan may have the ability to increase their certain PSF capacity by shifting production from nonsubject PSF products. *** reported that it could easily switch production between subject and nonsubject PSF products, though *** reported that they could not. CR at IV-24, 32.

¹⁷⁵ CR/PR at Table IV-8 (calculated by multiplying 2,778 tons per day by 2,000 pounds per short ton, and by 364 days per year, given that ***).

¹⁷⁶ CR/PR at Tables III-1 and IV-11.

¹⁷⁷ Compare CR/PR at Table IV-9 with Table I-7.

¹⁷⁸ Compare CR/PR Table IV-6 with Table I-7.

¹⁷⁹ CR at IV-16; PR at IV-12; see also CR/PR at Table IV-7.

¹⁸⁰ CR/PR at Tables IV-4 and 7.

¹⁸¹ CR/PR at Table IV-6.

responding foreign producers reported a total of *** million pounds of unutilized capacity, equal to *** percent of U.S. apparent consumption in the same period.¹⁸²

Korean and Taiwan foreign producers were highly, and increasingly, export oriented over the POR. Exports as a share of Korean shipments increased from *** percent in 2000 to *** percent in 2004, before declining *** from *** percent in interim 2004 to *** percent in interim 2005.¹⁸³ Exports as a share of Taiwan shipments increased from *** percent in 2000 to *** percent in 2004, before declining *** from *** percent in interim 2004 to *** percent in interim 2005.¹⁸⁴ With the orders in place, the export orientation of Taiwan producers towards the U.S. market declined from *** percent of shipments in 2000 to *** percent in 2004, and declined from *** percent of shipments in interim 2004 to *** percent of shipments in interim 2005, while the export orientation of Korean producers towards the U.S. market declined *** from *** percent of shipments in 2000 to *** percent in 2004, and increased from *** percent of shipments in interim 2004 to *** percent of shipments in interim 2005.¹⁸⁵

Given recently imposed trade barriers in third country markets, and the rapidly expanding Chinese certain PSF industry, Korean and Taiwan producers would likely seek to fill their unused capacity by significantly increasing their certain PSF exports to the United States were the antidumping duty orders to be revoked. Since the imposition of the antidumping duty orders currently under review, Korean exports of certain PSF have become subject to antidumping duty orders in Japan, China, the EU, and Turkey.¹⁸⁶ Taiwan exports of certain PSF are subject to antidumping duty orders in Japan and Turkey.¹⁸⁷ It also is likely that the rapid expansion of the PSF industry in China, as evidenced by the dramatic increase in nonsubject imports from China over the POR, will increasingly displace substantial quantities of Korean and Taiwan exports from the Chinese market. With China the largest Asian export market for Korean and Taiwan producers, the proportion of Korean shipments exported to Asia declined from *** percent in 2000 to *** percent in 2004, and was *** percent in interim 2004 and *** percent in interim 2005, while the proportion of Taiwan shipments exported to Asia declined from *** percent in 2000 to *** percent in 2004, and was *** percent in interim 2004 and *** percent in interim 2005.¹⁸⁸ Korean and Taiwan producers report that increasing exports to the EU, which leveled off in interim 2005, have not compensated for the greater decline in their exports to Asia, largely accounting for declines in their capacity utilization.¹⁸⁹

¹⁸² CR/PR at Table I-7, Tables IV-6 and 9.

¹⁸³ CR/PR at Table IV-6.

¹⁸⁴ CR/PR at Table IV-9.

¹⁸⁵ CR/PR at Tables IV-6 and 9.

¹⁸⁶ See CR at IV-21-22; PR at IV-14.

¹⁸⁷ See CR at IV-29-30; PR at IV-17.

¹⁸⁸ CR/PR at Tables IV-6 and 9. See also Domestic Interested Parties' Posthearing Brief at Exhibit 14 (data from China customs showing a dramatic decline in imports of all PSF products, HTS number 5503.20, from Korea and Taiwan over the POR from a substantial baseline). In this regard, one foreign producer in Taiwan indicated that it shipped more product to *** because of the imposition of the orders under review, suggesting that on revocation the producer would be likely to re-direct additional export volumes to the U.S. market. CR at IV-29; PR at IV-17.

¹⁸⁹ CR/PR at Tables IV-6 and 9. These trends belie the respondent interested parties' argument that strong global demand will draw Korean and Taiwan certain PSF exports to third markets, particularly the EU and China. See Respondent Interested Parties' Prehearing Brief at 41; Hearing Tr. at 226 (Kunik), 317 (Kunik and Stein), 322, 332-33 (Malashevich). See CR/PR at Tables IV-6 and 9. Though Korean and Taiwan producers reported that the AUV of certain PSF exported to the United States was generally lower than the AUV of certain PSF exported elsewhere, we note that any comparison of AUVs across markets is complicated by differences in product mix. For example, Korean producers reported that the AUV of certain PSF exported to China increased dramatically over the POR, consistent with respondent interested party testimony that Chinese producers remain unable to satisfy home market demand for higher-quality types of certain PSF. See Hearing Tr. at 317 (Kunik and Stein), 332-33 (Malashevich).

We conclude that Korean and Taiwan producers, faced with flagging capacity utilization and obstacles in third markets, are likely to increase significantly exports of certain PSF to the U.S. market were the orders to be revoked, particularly given their already substantial presence in the U.S. market.¹⁹⁰ Accordingly, we find that the likely volume of subject imports would be significant within a reasonably foreseeable time if the orders are revoked.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.¹⁹¹

In the original investigations, the Commission found that significant volumes of subject imports undersold the domestic like product and significantly contributed to the depression of prices for the domestic like product. The Commission observed that domestic producers lost sales and market share in 1997 and 1998 as their prices remained relatively steady, and only regained lost market share in 1999 when their prices dropped.¹⁹² The Commission concluded that subject imports had contributed significantly to these trends by underselling the domestic like product in 96.4 percent of pricing comparisons at margins ranging from 1.9 percent to 78.2 percent.¹⁹³ In rejecting respondents' arguments that subject import competition was attenuated, the Commission found that subject import volume was too great to serve primarily niche markets, particularly when respondents had failed to identify a single niche market exclusively served by subject imports, and that most importers and purchasers reported that conjugate and regenerated fiber were interchangeable with other types of certain PSF.¹⁹⁴

We find that the likely significant increase in subject import volume would likely be accompanied by significant underselling were the orders to be revoked, which would likely have a significant adverse impact on prices for the domestic like product.

We observe that there is a substantial degree of substitutability between subject imports and the domestic like product, and that price is an important factor to purchasers choosing among suppliers. Producers, importers, and purchasers report a substantial degree of interchangeability between subject imports and the domestic like product.¹⁹⁵ This substitutability extends to all varieties of certain PSF, including virgin PSF, regenerated/recycled PSF, and conjugate PSF, which are all produced domestically and imported from Korea and Taiwan.¹⁹⁶ All types of certain PSF are used in the same end uses, with end users selecting a type of certain PSF, or blending different types of certain PSF, to achieve desired

¹⁹⁰ See CR/PR at Tables IV-6 and 9.

¹⁹¹ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

¹⁹² Original Determinations at 17.

¹⁹³ Original Determinations at 17-18.

¹⁹⁴ Original Determinations at 18.

¹⁹⁵ See section III.C., *supra*.

¹⁹⁶ See section IV.B.3., *supra*.

product characteristics at a given price point.¹⁹⁷ Purchasers report that price is among the most important factors in purchasing decisions, along with quality, availability, and reliability of supply.¹⁹⁸

Pricing product data in these reviews reflects a mixed pattern of subject import underselling and overselling over the POR, regardless of the methodology used, even with the orders in place. The data as reported to the Commission indicate that subject imports from Korea undersold the domestic like product in 100 of 160 comparisons at margins ranging from 0.3 percent to 28.7 percent, and averaging 8.0 percent, while subject imports from Taiwan undersold the domestic like product in 53 of 115 comparisons at margins ranging from 0.03 percent to 29.9 percent, and averaging 8.0 percent.¹⁹⁹ Even under the methodology advocated by respondent interested parties, allegedly to provide a more accurate apples-to-apples comparison,²⁰⁰ subject imports from Korea undersold the domestic like product in *** of *** comparisons at margins ranging from *** percent to *** percent, and averaging *** percent, while subject imports from Taiwan undersold the domestic like product in *** of *** comparisons at margins ranging from *** percent to *** percent, and averaging *** percent.²⁰¹

The importance of price to purchasing decisions indicates that Korean and Taiwan producers would have to price their certain PSF exports more aggressively to recapture lost market share in the U.S. market, due in part to the rapid emergence of low-priced Chinese competition.²⁰² We therefore find that foreign producers are likely to increase their instances and margins of underselling were the orders to be revoked, adopting their strategy from prior to the imposition of the orders, as a means of significantly increasing their exports to the U.S. market.

We also find that increased subject import underselling would likely depress or suppress prices for the domestic like product, given the substitutability of subject imports and the domestic like product and the importance of price to purchasing decisions.²⁰³ The preponderance of spot sales and short-term

¹⁹⁷ See footnote 106, *supra*.

¹⁹⁸ CR at II-11-12; CR/PR at Tables II-2 (21 of 25 purchasers ranked price among their top three considerations in making purchasing decisions) and II-3 (22 of 26 purchasers report that price was “very important” to their purchasing decisions).

¹⁹⁹ CR at V-20; PR at V-9; CR/PR at Table V-9.

²⁰⁰ See Respondent Interested Parties’ Responses to Commissioner Questions at 71-73 (arguing that “recycled PSF” reported by domestic producers as pricing products 6 and 7 competed with virgin certain PSF, not subject imported regenerated certain PSF, and therefore should be reclassified as pricing products 1 and 3, respectively). We note that this proposed methodology is inappropriate with respect to pricing products 6 and 7 from Taiwan, because there is no allegation that regenerated certain PSF imported from Taiwan does not compete with domestically produced recycled certain PSF.

²⁰¹ CR/PR at Appendix I, Table I-5.

²⁰² Seven purchasers reported their perception that revocation of the orders would likely result in lower prices for certain PSF, and five importers reported their perception that the orders have had a significant restraining effect on subject imports. See CR/PR at Appendix D. We find no reason that the presence of nonsubject imports in the U.S. market, addressed in section IV.B.2.c., *supra*, would somehow preclude Korean and Taiwan producers from regaining significant market share through an underselling strategy were the orders to be revoked. Despite the effects of the orders, subject imports have maintained a substantial presence in the U.S. market while in competition with nonsubject imports. Given recently erected trade barriers in third country markets, declining exports to China, and declining capacity utilization, foreign producers of subject merchandise face increased incentives to ship additional volumes to the United States. Absent the volume- and price-restraining effects of the antidumping duty orders, the foreign producers would likely revert to underselling as a means of regaining market share in the U.S. market.

²⁰³ Respondent interested parties argue that subject imports could have caused no price depression over the POR when domestic prices for all pricing products increased, nor price suppression when the AUV of domestic shipments increased more than raw material costs between 2004 and interim 2005. See Respondent Interested Parties’ Prehearing Brief at 48, 51. The premise of their price suppression argument is unfounded, however, given that both

contracts in the U.S. market would permit purchasers to switch quickly from domestic to subject foreign suppliers of certain PSF.²⁰⁴ Domestic producers would have to react to intensified subject import price competition by either lowering their prices or relinquishing market share, which would further depress the domestic industry's already low capacity utilization rates. Were the orders to be revoked, subject imports are particularly likely to suppress prices for the domestic like product by preventing price increases, or the maintenance of higher prices, as necessary given the high and increasing cost of raw materials and unit COGS at the end of the POR.²⁰⁵

We conclude that revocation of the antidumping duty orders would be likely to lead to significant adverse price effects, including significant underselling by subject imports as compared to the domestic like product, as well as significant price depression or suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.²⁰⁶ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.²⁰⁷ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the orders are revoked.²⁰⁸

unit COGS and COGS as a ratio to net sales increased for the industry each full year from 2002 through 2004. See CR/PR at Table III-8. While both measures were lower in interim 2005 compared to interim 2004, it is not clear whether the full year data for 2005 would show declines in these measures, particularly since hurricane Katrina caused a temporary spike in certain PSF prices in interim 2005. See Hearing Tr. at 308 (Stein). In any event, we note that the focus of our inquiry is on the likely price effects of subject imports in the reasonably foreseeable future, rather than whether adverse price effects are being experienced at the present time.

²⁰⁴ See CR at V-5; PR at V-4.

²⁰⁵ See section IV.B.2.c, supra.

²⁰⁶ 19 U.S.C. § 1675a(a)(4).

²⁰⁷ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce found that revocation of the antidumping duty order on certain PSF from Korea would likely lead to continuation or recurrence of dumping at a margin of 7.91 percent for Sam Young Synthetics Co. and 7.91 percent for all other producers. CR at I-8; PR at I-7. Commerce found that revocation of the antidumping duty order on certain PSF from Taiwan would likely lead to continuation or recurrence of dumping at a margin of 11.50 percent for Far Eastern Corp., 3.79 percent for Nan Ya Plastics Corp., Ltd., and 7.31 percent for all other producers. CR at I-9; PR at I-8.

²⁰⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

In the original investigations, the Commission determined that the domestic industry was materially injured by reason of subject imports based on the domestic industry's declining performance over the POI.²⁰⁹ Though U.S. apparent consumption increased in each year of the POI, domestic industry market share declined along with the unit sales value of domestic shipments.²¹⁰ The declining unit value of domestic shipments resulted in declining domestic industry gross profits, operating income, and operating margins, notwithstanding a decline in the cost of goods sold and an increase in net sales quantity.²¹¹

We find that the domestic industry is vulnerable to the continuation or recurrence of material injury were the orders to be revoked. The domestic industry suffered operating losses totaling \$75 million between 2000 and 2004, with losses narrowing from \$24.3 million in 2000 to \$2.9 million in 2002, before widening to \$17.2 million in 2004.²¹² The domestic industry turned an operating profit only in interim 2005, \$11.6 million, compared to a loss of \$11.5 million in interim 2004, but this profit resulted in part from the temporary post-Katrina spike in certain PSF prices.²¹³ The domestic industry's ratio of operating income to net sales improved from -10.7 percent in 2000 to -1.0 percent in 2002, before deteriorating to -4.6 percent in 2004, and the ratio was -4.4 percent in interim 2004 and 3.7 percent in interim 2005.²¹⁴

As we examine the record data pertaining to other factors bearing on the state of the domestic industry, we are cognizant that we lack complete data for the period 2000 through 2003.²¹⁵ Thus, while our data show an increase from *** production workers in 2000 to 1,052 production workers in 2004, the actual trend was likely to the contrary.²¹⁶ In fact, *** reported significant reductions in capacity over the POR through the full or partial closure of production facilities.²¹⁷ In the case of capacity utilization, it is unclear how the incomplete nature of the data would affect the figures for 2000-2003. In any case, our data show the capacity utilization declined irregularly from 77.6 percent in 2000 to 69.0 percent in 2004, and was 64.0 percent in interim 2004 and 58.9 percent in interim 2005.²¹⁸ As to the domestic industry's capital expenditures, while our record shows a decline from \$8.8 million in 2000 to \$1.1 million in 2004, the actual decline in capital expenditures was likely even steeper, given the incomplete data for the 2000-2003 period.²¹⁹ For the interim periods, capital expenditures were \$817,000 in interim 2004 and \$777,000

²⁰⁹ Original Determinations at 19.

²¹⁰ Original Determinations at 19.

²¹¹ Original Determinations at 19; see also Confidential Original Determinations at 28 (finding that the domestic industry's ratio of operating income to sales dropped from *** percent in 1997 to *** percent in 1998, and to *** percent in 1999).

²¹² CR/PR at Table III-8.

²¹³ CR/PR at Table III-8.

²¹⁴ CR/PR at Table III-8.

²¹⁵ No data are available for one domestic producer, Intercontinental, which permanently closed in October 2003. CR at III-1; PR at III-1. *** was unable to provide data for January 2000-June 2002 for the *** operations it acquired in 2002. Id. *** was unable to provide data for January 2000-November 2003 for ***, which it acquired in 2003. Id. In the original investigations, these firms had the following shares of 1999 production: ***, *** percent, *** percent, and *** percent. Id. at III-1 n.1.

²¹⁶ CR/PR at Table III-7.

²¹⁷ CR at III-2-3; PR at III-2. The apparent increase in domestic capacity shown in our data results in part from the missing data addressed above. CR at III-1; PR at III-1.

²¹⁸ CR/PR at Table III-1.

²¹⁹ CR/PR at Table III-12.

in interim 2005, as the industry's return on investment remained in negative territory.²²⁰ The domestic industry has been further weakened by intensified competition from low-priced Chinese nonsubject imports over the POR, which will likely increase its vulnerability to the recurrence or continuation of material injury by reason of subject imports.²²¹

Respondent interested parties concede that the domestic industry is vulnerable in many respects, but argue that it is vulnerable by reason of disinvestment, not subject import competition.²²² We note that the domestic industry's vulnerability is to be considered as a factor in our analysis, regardless of the reasons for its current condition, as we examine the likely effects of revocation of the orders.²²³

We cannot determine whether any improvement in the condition of the domestic industry resulted from the imposition of the antidumping duty orders, because the domestic industry was weaker according to most every measure over the POR than over the period examined in the original investigations, with the exception of interim 2005.²²⁴ The domestic industry's weakened condition supports our finding that the industry is vulnerable to the recurrence or continuation of material injury were the orders to be revoked, however, and not the respondent interested parties' contention that revocation of the orders would have no effect.²²⁵

We have found that revocation of the orders would likely lead to a significant increase in the volume of subject imports that would undersell the domestic like product and significantly suppress or depress U.S. prices. We also have found that there is a substantial degree of substitutability between subject imports and the domestic like product, and that the domestic industry is vulnerable to the continuation or recurrence of material injury. We therefore find that the significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry within a reasonably foreseeable time. This reduction would have a direct adverse impact on the industry's profitability and employment levels, as well as its ability to raise capital and make and maintain necessary capital investments. Five of seven domestic producers report that their operations would suffer significant adverse consequences in the event of revocation, including plant closures and layoffs.²²⁶

We are unpersuaded by the respondent interested parties' argument that subject import competition is attenuated by certain physical differences between subject imports and the domestic like product. They contend that higher-quality domestically produced "recycled" certain PSF does not compete with lower-quality subject imported regenerated certain PSF,²²⁷ but rather with domestic and

²²⁰ CR/PR at Table III-13.

²²¹ See section IV.B.2.d., *supra.*; see also Hearing Tr. at 19, 21 (McNaull), 49-50, 116, 154 (Magrath), 174 (Magrath and Katz).

²²² Respondent Interested Parties' Prehearing Brief at 55-56, 64-65; Respondent Interested Parties' Posthearing Brief at 11-12. Respondent interested parties also explain the increase in reported subject PSF unit costs as caused by an increasing proportion of fixed costs for overall PSF operations, including nonsubject PSF products, being borne by subject PSF products. *Id.* at 56, Exhibit T; see also Respondent Interested Parties' Responses to Commissioner Questions at 83. However, the record indicates that per unit direct labor, other factory costs, and sales, general and administrative ("SG&A") expenses declined over the POR. CR/PR at Table III-8.

²²³ See footnote 202, *supra.*

²²⁴ See CR/PR at Table I-1.

²²⁵ See Respondent Interested Parties' Posthearing Brief at 11-12.

²²⁶ See CR/PR at Appendix D.

²²⁷ Respondent Interested Parties' Prehearing Brief at 46; Respondent Interested Parties' Posthearing Brief at 9; Respondent Interested Parties' Responses to Commissioner Questions at 72-74; Hearing Tr. at 215, 249-50 (Stein).

imported virgin PSF,²²⁸ and that chemically crimped “bi-component” subject imported conjugate certain PSF does not compete with mechanically crimped domestically produced conjugate certain PSF, due to its superior loft.²²⁹ Most purchasers reported that the quality of the domestic like product was comparable to the quality of subject imports from both Korea and Taiwan.²³⁰ Only nine of 27 responding purchasers indicated that they or their customers make purchasing decisions based on the country of origin of certain PSF, and only four indicated that certain grades/types of certain PSF are available from only certain sources.²³¹ Moreover, respondent interested parties did not raise these product distinctions in response to the Commission’s draft questionnaires, and the Commission’s final questionnaires adopted product definitions endorsed by the respondent interested parties themselves.²³²

Moreover, industry witnesses for the domestic interested parties disputed that “recycled PSF” was anything other than a synonym for regenerated certain PSF.²³³ Though respondent interested parties asserted that domestic producers make “recycled PSF” from 100 percent high-quality PET bottle stock, Commission staff conducting a field visit to Wellman reported that the domestic producer ***.²³⁴ In the same vein, a domestic interested party witness from Wellman testified at the Commission’s hearing that her company produces regenerated certain PSF using the same nonvirgin inputs as Korean producers, including fiber waste, filament waste, popcorn chips, polyester lumps, and off-grade chips.²³⁵

To the extent that there are quality differences between subject imports and the domestic like product, we conclude that they would not likely attenuate subject import competition in the U.S. market to a significant degree in the event of revocation, given our finding that subject imports are substantially substitutable with the domestic like product.²³⁶ As in the original investigations, we observe that the volume of subject imports was too great to serve only niche markets, and that respondent interested parties could cite no end use served exclusively by subject imports.²³⁷

We therefore find that revocation of the antidumping duty orders would be likely to lead to significant declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and negative effects on the domestic industry’s development and production efforts within a reasonably foreseeable time. Accordingly, we conclude that, if the antidumping duty orders are revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

²²⁸ Respondent Interested Parties’ Posthearing Brief at 9; Respondent Interested Parties’ Responses to Commissioner Questions at 75; Hearing Tr. at 214 (Stein).

²²⁹ Respondent Interested Parties’ Posthearing Brief at 9-10; Hearing Tr. at 213 (Stein).

²³⁰ See CR/PR at Table II-6.

²³¹ See CR at II-13-14; PR at II-8-9.

²³² See Respondent Interested Parties’ Comments on the Commission’s Draft Questionnaires (Sept. 19, 2005) at 2-3 (citing the three groupings of pricing products in the draft questionnaires – virgin, conjugate, and regenerated certain PSF – respondent interested parties argued that “[p]reserving these categories will assist the Commission to make apples-to-apples comparisons”).

²³³ See Hearing Tr. at 147 (Katz); see also *id.* at 23-24 (Katz).

²³⁴ Notes from November 4, 2005 Field Visit to Wellman, Inc., USITC Doc. No. 242867 at 2.

²³⁵ See Hearing Tr. at 25 (Katz) (Wellman uses the same nonvirgin inputs as Korean producers, as listed in Commerce verification report), 214 (Stein) (U.S. recycled PSF made from 100 percent PET stock).

²³⁶ See Sections IV.C., V.B.2.b., and V.D., *supra*.

²³⁷ See footnote 104, *supra*.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on certain PSF from Korea and Taiwan would likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

PART I: INTRODUCTION AND OVERVIEW

BACKGROUND

On March 31, 2005, the Commission gave notice, pursuant to section 751(c) of the Tariff Act of 1930 (the Act), that it had instituted reviews to determine whether revocation of the antidumping duty orders on polyester staple fiber¹ from Korea and Taiwan would likely lead to the continuation or recurrence of material injury to a domestic industry. Effective July 5, 2005, the Commission determined that it would conduct full reviews pursuant to section 751(c)(5) of the Act.² Information relating to the background and schedule of these reviews is provided in the following tabulation.³

| Effective date | Action |
|-------------------|--|
| May 25, 2000 | Commerce's antidumping duty orders (65 FR 33807) |
| March 31, 2005 | Commission's institution of reviews (70 FR 16522) |
| July 5, 2005 | Commission's decision to conduct full reviews (70 FR 41427, July 19, 2005) |
| August 5, 2005 | Commerce's final results of expedited reviews (70 FR 45368) |
| September 1, 2005 | Commission's scheduling of the reviews (70 FR 54080, September 13, 2005) |
| January 17, 2006 | Commission's hearing ¹ |
| March 7, 2006 | Commission's vote |
| March 20, 2006 | Commission's determinations to Commerce |

¹ A list of witnesses appearing at the hearing is presented in app. B.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Section 751(c) of the Act requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation “would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.”

¹ A complete description of the imported products subject to these reviews is presented in the “Subject Product” section of this part of the report.

² The Commission received adequate responses from three U.S. producers of certain polyester staple fiber and an inadequate response from one U.S. producer, and therefore determined that the domestic interested party group response was adequate. The Commission received adequate responses from two Korean producers and one importer of the subject product and therefore determined that the Korean respondent interested group response was adequate. The Commission did not receive a response from any respondent interested parties in the review concerning subject imports from Taiwan, and therefore determined that the respondent interested group response for Taiwan was inadequate. However, the Commission determined to conduct full reviews with respect to both countries “to promote administrative efficiency.” See *Explanation of Commission Determination on Adequacy*, app. A.

³ The Commission’s notice of institution, notice to conduct full reviews, scheduling notice, and statement on adequacy appear in app. A and may also be found at the Commission’s web site (internet address www.usitc.gov). Commissioners’ votes on whether to conduct expedited or full reviews may also be found at the web site.

Section 752(a) of the Act provides that in making its determination of likelihood of continuation or recurrence of material injury--

(1) IN GENERAL.-- . . . the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account--

(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,

(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,

(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and

(D) in an antidumping proceeding . . . , (Commerce's findings) regarding duty absorption . . .

(2) VOLUME.--In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including--

(A) any likely increase in production capacity or existing unused production capacity in the exporting country,

(B) existing inventories of the subject merchandise, or likely increases in inventories,

(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and

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

(3) PRICE.--In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether--

(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and

(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.

(4) IMPACT ON THE INDUSTRY.--In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors

which are likely to have a bearing on the state of the industry in the United States, including, but not limited to--

(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

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

The Commission shall evaluate all such relevant economic factors . . . within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

Section 752(a)(6) of the Act states further that in making its determination, “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy.” Information obtained during the course of these reviews that relates to the above factors is presented throughout this report.

SUMMARY DATA

A summary of data collected in these reviews is presented in appendix C. U.S. industry data are based on questionnaire responses of *** firms that accounted for the vast majority of known U.S. production of certain polyester staple fiber (“certain PSF”) during the review period (January 2000-September 2005). U.S. import data for the period of the original investigations, January 1997 - December 1999, are based on responses to importers’ questionnaires obtained in those investigations.⁴ U.S. import data for the period of these reviews, January 2000 - September 2005, are based on official Commerce statistics. Responses by U.S. producers, importers, and purchasers of certain PSF, and producers of certain PSF in Korea and Taiwan, to a series of questions concerning the significance of the existing antidumping duty orders and the likely effects of revocation are presented in appendix D. Table I-1 presents a summary of data from the original investigations and from these reviews.

⁴ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, confidential staff report (INV-X-082), April 21, 2000, pp. IV-2-IV-3.

Table I-1

Certain PSF: Comparative data of the U.S. market and industry from the original investigations and the current reviews, 1997-2004, January-September 2004, and January-September 2005¹

(Quantity=1,000 pounds; value=1,000 dollars, unit values= per pound, shares/ratios in percent)

| Item | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | Jan.-Sept. 2004 | Jan.-Sept. 2005 |
|-----------------------------------|---------|---------|---------|---------|---------|-----------|-----------|-----------|--------------------|--------------------|
| U.S. consumption quantity: | | | | | | | | | | |
| Amount | 804,768 | 842,713 | 912,463 | 862,370 | 883,367 | 1,057,540 | 1,061,124 | 1,059,175 | 788,520 | 791,176 |
| U.S. producers' share | 63.7 | 55.6 | 58.1 | 49.4 | 45.5 | 50.3 | 48.7 | 57.6 | 56.7 | 55.1 |
| U.S. importers' share: | | | | | | | | | | |
| Korea | *** | *** | *** | 23.0 | 22.8 | 21.0 | 24.3 | 19.8 | 20.8 | 15.0 |
| Taiwan | *** | *** | *** | 19.1 | 19.3 | 13.3 | 8.9 | 6.8 | 7.2 | 4.4 |
| Subtotal, subject imports | *** | *** | *** | 42.1 | 42.0 | 34.3 | 33.3 | 26.6 | 28.0 | 19.4 |
| All other sources | *** | *** | *** | 8.5 | 12.5 | 15.4 | 18.0 | 15.7 | 15.3 | 25.5 |
| Total imports | 36.3 | 44.4 | 41.9 | 50.6 | 54.5 | 49.7 | 51.3 | 42.4 | 43.3 | 44.9 |
| U.S. imports from: | | | | | | | | | | |
| Korea: | | | | | | | | | | |
| Quantity | *** | *** | *** | 198,608 | 201,077 | 222,594 | 258,351 | 209,856 | 163,907 | 118,501 |
| Value | *** | *** | *** | 85,298 | 82,179 | 84,563 | 107,640 | 100,920 | 76,663 | 69,926 |
| Unit value | \$*** | \$*** | \$*** | \$0.43 | \$0.41 | \$0.38 | \$0.42 | \$0.48 | \$0.47 | \$0.59 |
| Taiwan: | | | | | | | | | | |
| Quantity | *** | *** | *** | 164,473 | 170,054 | 140,271 | 94,793 | 72,376 | 56,937 | 35,063 |
| Value | *** | *** | *** | 87,533 | 83,796 | 67,350 | 48,612 | 43,262 | 32,801 | 24,296 |
| Unit value | \$*** | \$*** | \$*** | \$0.53 | \$0.49 | \$0.48 | \$0.51 | \$0.60 | \$0.58 | \$0.69 |
| Subtotal, subject: | | | | | | | | | | |
| Quantity | *** | *** | *** | 363,082 | 371,131 | 362,865 | 353,144 | 282,232 | 220,844 | 153,564 |
| Value | *** | *** | *** | 172,831 | 165,975 | 151,914 | 156,252 | 144,181 | 109,464 | 94,222 |
| Unit value | \$*** | \$*** | \$*** | \$0.48 | \$0.45 | \$0.42 | \$0.44 | \$0.51 | \$0.50 | \$0.61 |
| All other sources: | | | | | | | | | | |
| Quantity | *** | *** | *** | 73,002 | 110,740 | 162,932 | 191,476 | 166,335 | 120,382 | 201,497 |
| Value | *** | *** | *** | 41,669 | 64,114 | 83,649 | 98,823 | 96,618 | 68,324 | 130,273 |
| Unit value | \$*** | \$*** | \$*** | \$0.57 | \$0.58 | \$0.51 | \$0.52 | \$0.58 | \$0.57 | \$0.65 |
| Total: | | | | | | | | | | |
| Quantity | 292,177 | 374,329 | 382,123 | 436,084 | 481,872 | 525,797 | 544,620 | 448,568 | 341,225 | 355,061 |
| Value | 161,532 | 172,332 | 170,164 | 214,500 | 230,089 | 235,563 | 255,075 | 240,799 | 177,788 | 224,495 |
| Unit value | \$0.55 | \$0.46 | \$0.45 | \$0.49 | \$0.48 | \$0.45 | \$0.47 | \$0.54 | \$0.52 | \$0.63 |

Table continued on next page.

Table I-1--Continued

Certain PSF: Comparative data of the U.S. market and industry from the original investigations and the current reviews, 1997-2004, January-September 2004, and January-September 2005

(Quantity=1,000 pounds; value=1,000 dollars, unit values= per pound, shares/ratios in percent)

| Item | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | Jan.-Sept. 2004 | Jan.-Sept. 2005 |
|--|---------|---------|---------|----------|----------|---------|---------|----------|--------------------|--------------------|
| U.S. producers': | | | | | | | | | | |
| Capacity | 671,945 | 701,393 | 743,608 | 581,500 | 596,500 | 833,500 | 893,700 | 964,900 | 754,350 | 785,550 |
| Production | 550,890 | 510,212 | 548,703 | 451,317 | 412,989 | 563,081 | 530,804 | 665,590 | 482,704 | 463,067 |
| Capacity utilization | 82.0 | 72.7 | 73.8 | 77.6 | 69.2 | 67.6 | 59.4 | 69.0 | 64.0 | 58.9 |
| U.S. shipments: | | | | | | | | | | |
| Quantity | 512,591 | 468,384 | 530,340 | 426,286 | 401,495 | 531,743 | 516,504 | 610,607 | 447,295 | 436,115 |
| Value | 338,088 | 290,748 | 281,070 | 222,161 | 212,068 | 270,114 | 269,187 | 343,808 | 243,691 | 290,564 |
| Unit value | \$0.66 | \$0.62 | \$0.53 | \$0.52 | \$0.53 | \$0.51 | \$0.52 | \$0.56 | \$0.54 | \$0.68 |
| Export shipments: | | | | | | | | | | |
| Quantity | 29,055 | 27,676 | 28,071 | *** | *** | 22,813 | 35,613 | 49,222 | 35,339 | 35,402 |
| Value | 34,083 | 32,147 | 30,053 | *** | *** | 11,361 | 17,517 | 26,579 | 18,411 | 22,798 |
| Unit value | \$1.17 | \$1.16 | \$1.07 | *** | *** | \$0.50 | \$0.49 | \$0.54 | \$0.52 | \$0.64 |
| Production and related workers | 1,445 | 1,351 | 1,241 | *** | *** | 985 | 1,141 | 1,052 | 1,018 | 975 |
| Hours worked (1,000) | 2,287 | 2,018 | 1,957 | *** | *** | 2,460 | 2,329 | 2,788 | 2,200 | 2,089 |
| Hourly wage | \$17.50 | \$19.11 | \$19.41 | *** | *** | \$19.43 | \$22.40 | \$19.85 | \$18.45 | \$19.54 |
| Net sales (value) | 372,745 | 324,659 | 311,143 | 227,989 | 216,880 | 280,853 | 286,756 | 369,998 | 262,074 | 313,276 |
| Operating income or (loss) (value) | 32,641 | 11,430 | 5,489 | (24,344) | (20,953) | (2,863) | (9,547) | (17,190) | (11,499) | 11,637 |
| Ratio operating income or (loss)/sales | 8.8 | 3.5 | 1.8 | -10.7 | -9.7 | -1.0 | -3.3 | -4.6 | -4.4 | 3.7 |

¹ Domestic industry data from the original investigations and the current reviews are generally comparable. Complete comparability, however, is not possible, in light of the closure of Intercontinental Polymers and the absence of some trade and financial data for ***. Data availability is discussed in greater detail in Part III of this report.

Source: Data for 1997-99 are compiled from *Certain Polyester Staple Fiber from Korea and Taiwan, Inv. Nos. 731-TA-825 and 826 (Final)*, confidential staff report (INV-X-082), April 21, 2000, and *Certain Polyester Staple Fiber from Korea and Taiwan, Inv. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000. Specifically, the data are derived from the following tables in the staff report and publication: table IV-5 (U.S. producers' shipments); table IV-1 (import volume); table III-1 (production, capacity and capacity utilization); table III-2 (U.S. producers' shipments); table III-3 (exports); table III-7 (employment); and table VI-1 (financial performance). Data for January 2000-September 2005 are compiled from responses to the Commission questionnaires in the current reviews and from official Commerce statistics.

THE ORIGINAL INVESTIGATIONS

On April 2, 1999, a petition was filed with Commerce and the Commission alleging that an industry in the United States was materially injured by reason of dumped imports of certain PSF from Korea and Taiwan.⁵ Commerce made final affirmative dumping determinations with respect to Korea, with margins as follows:

| Manufacturer/ producer/exporter | Weighted-average margin (percent) | | |
|------------------------------------|--|---|---|
| | Final determination (March 30, 2000) ¹ | Amended final determination (May 25, 2000) ² | Second amended final determination (December 24, 2003) ^{3 4} |
| Samyang Corp. | 0.14 (<i>de minimis</i>) | 0.14 (<i>de minimis</i>) | 0.14 (<i>de minimis</i>) |
| Sam Young Synthetics Co. | 7.96 | 7.91 | 7.91 |
| Geum Poong Corp. | 14.10 | 14.10 | 0.12 (<i>de minimis</i>) |
| All others | 11.38 | 11.35 | 7.91 |

¹ *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea*, 65 FR 16880, March 30, 2000.

² *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807, May 25, 2000.

³ An appeal was filed with the Court of International Trade ("CIT") by the petitioners and respondents, challenging Commerce's final determination. The challenge related to Commerce's method for calculating Geum Poong's constructed value profit rates. Following two remand decisions by the CIT, and changes to profit calculations by Commerce in response, the CIT affirmed Commerce's *Final Results of Redetermination* on August 22, 2002. Commerce appealed this decision. On October 9, 2003, the CIT's decision was affirmed by the United States Court of Appeals for the Federal Circuit, *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552, December 24, 2003.

⁴ *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552, December 24, 2003.

⁵ The petition was filed by E.I. Dupont de Nemours, Inc. ("DuPont"); Nan Ya Plastics Corp., America (originally a petitioner in the Korea investigation only); Arteva Specialties S.a.r.l., d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. However, in a letter dated May 4, 1999, DuPont withdrew its support for the Taiwan case before the preliminary determination and Nan Ya withdrew its support for the Korea case, and thus was removed as a petitioner. Domestic interested parties' prehearing brief, p. 16, n. 6.

Commerce made final affirmative dumping determinations with respect to Taiwan, with margins as follows:

| Manufacturer/ producer/exporter | Weighted-average margin (<i>percent</i>) | |
|------------------------------------|--|---|
| | Final determination (March 30, 2000) ¹ | Amended final determination (April 27, 2000) ² |
| Far Eastern Textiles Ltd. | 9.51 | 9.51 |
| Nan Ya Plastics Corp., Ltd. | 0.00 | 5.77 |
| All others | 9.51 | 7.53 |

¹ Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan, 65 FR 16877, March 30, 2000.
² Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan, 65 FR 24678, April 27, 2000.

The Commission made its final affirmative injury determinations on May 17, 2000,⁶ and Commerce issued antidumping duty orders on May 25, 2000.⁷

COMMERCE’S RESULTS OF EXPEDITED REVIEWS

On August 5, 2005, Commerce found that revocation of the antidumping duty order on certain PSF from Korea would likely lead to continuation or recurrence of dumping as follows:

| <u>Manufacturer/producer/exporter</u> | <u>Weighted-average margin (<i>percent</i>)</u> ⁸ |
|---------------------------------------|--|
| Sam Young Synthetics Co. | 7.91 |
| All Others | 7.91 |

Commerce has not issued a duty absorption determination with respect to this order.

⁶ 65 FR 33576, May 24, 2000.

⁷ Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan, 65 FR 33807, May 25, 2000.

⁸ Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 70 FR 45368, August 5, 2005.

On August 5, 2005, Commerce found that revocation of the antidumping duty order on certain PSF from Taiwan would likely lead to continuation or recurrence of dumping as follows:

| <u>Manufacturer/producer/exporter</u> | <u>Weighted-average margin (percent)⁹</u> |
|---------------------------------------|--|
| Far Eastern Corp. | 11.50 |
| Nan Ya Plastics Corp., Ltd. | 3.79 |
| All Others | 7.31 |

Commerce has not issued a duty absorption determination with respect to this order.

COMMERCE’S ADMINISTRATIVE REVIEWS

Commerce has conducted five administrative reviews of the antidumping duty order on certain PSF from Korea as shown in the following tabulation:

| Period of review | Date results published | Margin (percent) |
|------------------------------------|---------------------------------|--|
| November 8, 1999 to April 30, 2001 | October 15, 2002 (67 FR 63616) | Daeyang Industrial Co., Ltd 1.39 Estal Industry Co., Ltd. 0.20 ¹ Huvis Corp. 3.37 Keon Baek Co., Ltd. 0.31 ¹ Mijung Ind. Co., Ltd. 1.00 Sam Young Synthetics Co., Ltd. 0.75 Sunglim Co., Ltd. 0.61 |
| May 1, 2001 to April 30, 2002 | October 15, 2003 (68 FR 59366) | East Young Co., Ltd. 4.07 Huvis Corp. 0.21 ¹ |
| May 1, 2002 to April 30, 2003 | October 18, 2004 (69 FR 61343) | Huvis Corp. 1.54 Keon Baek Co., Ltd. 0.07 ² Saehan Industries, Inc. 4.19 |
| May 1, 2002 to April 30, 2003 | November 22, 2004 (69 FR 67891) | Saehan Industries, Inc. 2.13 ³ |
| May 1, 2003 to April 30, 2004 | December 12, 2005 (70 FR 73437) | Huvis Corp. 5.87 |

¹ *De minimis*.

² As a result of this administrative review, Commerce revoked application of the antidumping duty order to Keon Baek, *Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke the Order in Part*, 69 FR 61341, October 18, 2004.

³ Commerce amended its final results of the administrative review published October 18, 2004, to correct ministerial errors, *Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from Korea*, 69 FR 67891, November 22, 2004.

Commerce has rescinded three reviews of the antidumping duty order on certain PSF from Taiwan. The first review, initiated on June 19, 2001, was rescinded as a result of the withdrawal of requests for review by Far Eastern Textile, Ltd. (“Far Eastern”), Arteva Specialties S.a.r.l., d/b/a KoSa

⁹ Ibid.

(“KoSa”), and Wellman, Inc. (“Wellman”).¹⁰ The second review, initiated on June 25, 2002, was rescinded because Far Eastern and Nan Ya withdrew their requests for review.¹¹ The third review, initiated on June 30, 2004, was rescinded because Far Eastern and Fibertex Corp. withdrew their requests for review.¹²

COMMERCE’S CHANGED CIRCUMSTANCES REVIEW

Commerce has conducted one changed circumstances review of the antidumping duty order on polyester staple fiber from Korea. On January 9, 2001, Commerce initiated a changed circumstances review to examine the formation of Huvis Corp. (“Huvis”) through a joint venture merger of Samyang Corp. (“SAMYANG”) and SK Chemicals Co., Ltd. (“SK Chemicals”).¹³ On June 6, 2001, Commerce determined that Huvis was not the successor-in-interest to either Samyang or SK Chemicals, nor to Samyang and SK Chemicals jointly, making Huvis subject to the “all others” rate calculated in the antidumping duty investigation.¹⁴

ANTITRUST LITIGATION AND SETTLEMENTS

Four U.S. producers of certain PSF have been involved in litigation involving the alleged violation of U.S. antitrust laws, including price fixing and customer allocation: DAK (formerly DuPont), Invista (formerly KoSa), Nan Ya, and Wellman.¹⁵ The domestic interested parties concede that “there was a price fixing conspiracy on polyester staple fiber for textile applications” but maintain that the conspiracy did not involve the subject product, certain PSF of 3 denier or greater.¹⁶ Parts II and V of this report contain additional information on the issue of price-fixing. Also, appendix E contains an index of information contained in the record of these reviews that relates to this issue.

DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET ACT FUNDS

The Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”), commonly known as the “Byrd Amendment,” provides that duties assessed pursuant to an antidumping or countervailing duty order are distributed on an annual basis by U.S. Customs and Border Protection (“Customs”) to “affected

¹⁰ *Certain Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review*, 66 FR 52107, October 12, 2001.

¹¹ *Certain Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review*, 67 FR 48441, July 24, 2002.

¹² *Certain Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review*, 69 FR 63363, November 1, 2004.

¹³ *Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea*, 66 FR 1642, January 9, 2001.

¹⁴ *Notice of Final Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea*, 66 FR 30411, June 6, 2001.

¹⁵ See section entitled, “Allegations of Allocation and Price Fixing” in Part II.

¹⁶ Domestic interested parties’ posthearing brief, p. 1 and hearing transcript, pp. 10, 30-31 (Rosenthal).

domestic firms.”¹⁷ Disbursements received by U.S. producers of certain PSF since enactment of the CDSOA are presented in table I-2.

Table I-2
Certain PSF: Distribution of Continued Dumping and Subsidy Offset Act funds to affected domestic producers, 2001-05

| Domestic firm | U.S. dollars (<i>actual</i>) | | | | |
|-------------------------------|--------------------------------|-----------|-----------|-----------|-----------|
| | 2001 | 2002 | 2003 | 2004 | 2005 |
| DAK Fibers LLC | 0 | 840,143 | 163,167 | 458,383 | 334,278 |
| Intercontinental ¹ | 402 | 95,253 | 0 | 0 | 0 |
| Invista (formerly Arteva) | 13,354 | 1,433,736 | 736,204 | 1,267,217 | 463,258 |
| Wellman | 22,156 | 4,365,048 | 3,416,930 | 7,885,970 | 3,442,108 |
| Total | 35,912 | 6,734,180 | 4,316,301 | 9,611,570 | 4,239,644 |

¹Intercontinental filed for bankruptcy in October 2003 and exited the certain PSF industry.

Source: Compiled from Customs CDSOA Annual Reports, found at http://www.cbp.gov/xp/cgov/import/add_cvd/cont_dump, retrieved January 30, 2006.

THE SUBJECT PRODUCT

Scope of the Orders

The imported product subject to the antidumping duty orders under review is certain PSF. Commerce has defined the subject product as:

synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex¹⁸ (3 denier¹⁹, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

¹⁷ Under the provisions of the CDSOA (19 U.S.C. §1675(c)), the term “affected domestic producer” refers to any producer or worker that (1) was a petitioner or interested party in support of the petition leading to imposition of an antidumping or countervailing duty order, or antidumping finding, and (2) remains in operation.

¹⁸ Decitex is the Canadian and European equivalent to denier and equals the total weight in grams of 10,000 meters. Resources, Antron Carpet Fiber, found at http://www.antron.net/content/resources/styling_glossary/ant06_08_04.shtml, retrieved February 4, 2006.

¹⁹ Denier is a weight-per-unit-length measure of filament fibers or yarns. Denier is numerically equal to the weight in grams of 9,000 meters of fiber. Denier is a direct numbering system in which the lower numbers represent the finer sizes and the higher numbers the coarser sizes. In the U.S., the denier system is used for numbering filament yarns and man-made fiber staple tow, but not spun yarns. Resources, Antron Carpet Fiber, found at http://www.antron.net/content/resources/styling_glossary/ant06_08_04.html, retrieved February 4, 2006. Denier is not a unit of measure commonly used in the Harmonized Tariff System nomenclature.

All products that meet the physical description provided above are within the scope of the orders under review unless otherwise excluded.²⁰

Tariff Treatment

Certain PSF is imported under Harmonized Tariff Schedule of the United States (“HTS”) subheading 5503.20.00 (statistical reporting numbers 5503.20.0045 and 5503.20.0065) and enters the United States at a column 1-general duty tariff rate of 4.3 percent *ad valorem* for imports from countries with normal trade relations, including Korea and Taiwan.²¹ The column 1-general tariff rate at the time of the original investigations was 4.5 percent *ad valorem*.

In the original investigations, the Commission determined that low-melt fiber was a separate like product, and further determined that subject imports of the product neither materially injured, nor threatened to materially injure an industry in the United States.²² Subsequent to the original investigations, in July 2001, the existing statistical reporting numbers under subheading 5503.20.00 of the HTS were redesignated as follows: 5503.20.0020 became 5503.20.0025; 5503.20.0040 became 5503.20.0045; 5503.20.0060 became 5503.20.0065; and a new provision was created for imports of low-melt PSF, statistical reporting number 5503.20.0015.²³ Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

Physical Characteristics and End-Use Applications²⁴

PSF is a man-made fiber that is similar in appearance to cotton or wool fiber when baled. Certain PSF is known in the industry as “fiber for fill,” as it is primarily used as polyester fiberfill.²⁵ Certain PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions,

²⁰ The following products are specifically excluded by Commerce: “merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the HTS at subheading 5503.20.00.20 (5503.20.0025 in the 2005 HTS) and known to the industry as PSF for spinning and generally used in woven and knit applications to produce textile and apparel products; polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and low-melt polyester staple fiber, defined as bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.” *Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 45368, August 5, 2005.

²¹ HTS, chapter 55.

²² *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. 3 and 7.

²³ The existing provisions were renumbered to reflect the reduced product scope; a portion of the goods from each one fall in this new product category. *Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from Korea*, 69 FR 67891, November 22, 2004.

²⁴ The following discussion generally is from the original investigations, except as noted. *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. I-3-I-9.

²⁵ PSF is also used on a more limited basis in the production of ***. Staff field trip report, Wellman, November 4, 2005.

pillows, and furniture.²⁶ Certain PSF has physical characteristics that distinguish it from other polyester staple fibers (such as carpet fiber and fiber for spinning), including the denier of the fiber, the length of the fiber, and in some cases the finish and “crimp” of the fiber. Most synthetic fiber is sold by quantity based on the denier of the fiber.

Because certain PSF is principally used as fiberfill, it is seldom directly visible. Therefore, the appearance of the product is generally less important than the performance of the fiber to customers. However, the appearance of certain PSF directly affects the appearance and perceived value of many end-products, such as mattresses, comforters, cushions, pillows, and furniture with light-color upholstery.

Certain PSF used for fill can be produced in many variations for purposes of quality enhancement. For example, the subject fiber may be crimped or conjugate, giving the fiber “loft” for stuffing purposes. It may also be coated with a finish (usually silicone or oil-based), making the fiber smoother to the touch for certain high-end uses.²⁷ The subject fiber may vary in shape and may be hollow or solid, depending on both the preference of the manufacturer and the end use of the fiber.

Raw materials used in the production of certain PSF may also vary. Staple fiber can be made by reacting ethylene glycol with either terephthalic acid or its methyl ester; if so produced, it is termed virgin PSF. Staple fiber may also be made from recycled polyester, using either consumer waste, such as polyethylene terephthalate (“PET”) bottles, or industrial waste, such as polyester chips or spun tow. Fiber made in this way is known as regenerated, or recycled, fiber. Industry witnesses at the hearing disagreed on whether regenerated and recycled PSF are different terms for the same product or are products distinguishable according to the quality of the recycled inputs.²⁸ Some producers of the subject fiber also manufacture a blend of virgin and recycled/regenerated materials by introducing polyester chips into the virgin production line. Finally, PSF may be in the form of a low-melt fiber. This is a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner polyester core, for purposes of thermal bonding, and is not included within the scope of the orders under review.²⁹

Manufacturing Processes³⁰

Manufacturing of certain PSF may be divided into two discrete stages. The first stage of the process is polymer formation, a process that can vary depending on whether virgin (unprocessed chemicals) or recycled materials are being used. Polymer formation also varies, depending on whether conjugate fiber or low-melt fiber is being produced. The second stage of the process, which is common to all certain PSF (including conjugate and regenerated fiber) is fiber formation, including stretching, cutting, and baling.

²⁶ *Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 45368, August 5, 2005.

²⁷ According to industry testimony given at the hearing held in connection with these reviews, a silicone finish is preferred for certain end uses such as pillows. When rubbed, fiber with a silicone finish will slide, lending the product a slightly slick feeling. Hearing transcript, p. 156 (Katz).

²⁸ Hearing transcript, pp. 24 and 247 (Katz) and pp. 214-215 (Stein).

²⁹ *Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 45368, August 5, 2005.

³⁰ The following discussion generally is from the original investigations, except as noted. *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. I-3-I-9.

The manufacture of certain PSF from virgin materials begins by reacting ethylene glycol with either terephthalic acid or its methyl ester in the presence of an antimony catalyst. The reaction is carried out at a high temperature and in a vacuum to achieve the high molecular weights needed to form useful fiber. The mix is then sent through an esterification process before it is polymerized. Esterification is the chemical process of combining an acid with an alcohol to form an ester. If a virgin or recycled blend is to be produced, the recycled material (usually in the form of polyester chips) is introduced at the esterification stage.

After polymerization, the solid, molten plastic, which has a consistency similar to cold honey, must be heated and liquefied before it can be extruded. The liquid fiber-forming polymers are then extruded through tiny holes of a spinneret, a device similar in principle to a showerhead, to form continuous filaments of semi-solid polymer. The denier of the fiber is controlled by the size of the holes on the spinneret. After extrusion, the semi-solid fibers are blasted with cold air to form solid fibers. This process is known as continuous polymerization.

The manufacture of regenerated³¹ certain PSF begins with the processing of the recycled materials. As reported in the original investigations, regenerated certain PSF inputs can consist of a variety of different types of materials including: virgin first quality chip, virgin off-spec chip, post industrial (regenerated) pellet waste, post industrial (regenerated) film waste, post consumer bottles, post consumer bottle flake and miscellaneous post industrial (regenerated) waste.³² Depending on the materials used, the recycled product is cleaned and either chipped or pelletized before being sent to the extruder. The recycled material is then melted to form molten polymers and sent through the spinneret to form continuous filaments of semi-solid polymer. As with fiber from virgin materials, the polymer is then blasted with cold air to form solid fiber.³³

The second stage of production is common to fibers made from either virgin or recycled materials. The solid fiber is coated for the first time with an oil finish, usually only for internal use to facilitate further processing. The spun tow, as it is now known, is collected into a can to be stretched. The spun tow is sent over a creel and a series of “draw wheels” in order to orient the fiber molecules and strengthen the tow. Next, the tow is sent through a crimping machine, which gives the fiber tow a two-dimensional, saw-tooth shape. The tow is then sent through an oven to heat-set the crimp. A second finish (usually silicone or some type of oil-based finish) may be added during this stage of the process, either before the fiber tow is crimped and heat-set or directly after, depending on the preference of the manufacturer. Finally, the fiber tow is cut to length and baled.³⁴

The manufacturing processes for nonsubject PSF are similar to those for certain PSF. Nonsubject PSF includes PSF of less than 3 denier, PSF for carpeting, and low-melt PSF, in addition to other products.³⁵ These nonsubject forms of PSF may be manufactured on the same equipment and machinery used in the production of certain PSF.³⁶ The production of PSF of less than 3 denier, commonly referred to as fine denier PSF, is controlled by the size of the holes on the spinneret. By using a spinneret with smaller holes, a production line can switch from heavier gauge PSF to finer denier; the other steps of the

³¹ “Regenerated certain PSF” refers to both regenerated and recycled PSF unless otherwise noted.

³² *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. V-2.

³³ Staff field trip report, Wellman, November 4, 2005.

³⁴ *Ibid.*

³⁵ *Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 45368, August 5, 2005.

³⁶ See part III, pp. III-5-III-6 of this report.

manufacturing process remain generally the same.³⁷ PSF for carpeting is a heavier denier than certain PSF and is produced by using a spinneret with larger holes. To achieve carpet fibers with luster, a slightly different mix of raw materials are used.³⁸ Low-melt fiber is produced in a very similar process to conjugate fiber. Like conjugate, low-melt can be produced by both a direct spinning system or a batch system. Component polymers are forced through a Y-shaped extruder to form a single fiber. A chemical ingredient is added to make the outer sheath polymer subject to a lower melting point. The fiber is then stretched, cut, and baled.³⁹

DOMESTIC LIKE PRODUCT ISSUES

During the original investigations, the Commission considered whether conjugate fiber, regenerated fiber, and low-melt fiber were separate like products. The Commission determined that conjugate fiber and regenerated fiber were not separate like products. However, the Commission determined that low-melt fiber was a separate like product and made negative injury and threat determinations with respect to that product.⁴⁰

In response to a question soliciting comments regarding the appropriate domestic like product in the Commission's notice of institution of these reviews, two Korean producers/exporters⁴¹ agreed with the Commission's like product determination. One domestic producer and importer of the subject product, Formed Fiber Technologies, d/b/a Color-Fi ("FFT"), stated in its response to the notice of institution of these reviews that it sought "exemption" of "black automotive substrate" or "reprocessed intermingled" PSF from the original investigation's scope on the grounds that "automotive substrate fiber" is not produced domestically, and differs from fiberfill in terms of characteristics and end uses. FFT maintained that "the markets for fiberfill and black automotive substrate fibers are distinct and different and should not be considered the same for duty purposes." Though not explicitly arguing that automotive substrate fiber should be found a separate like product, FFT did state that it both domestically produces and imports PSF for automotive applications, and that its domestic operations benefit from subject imports of the product.⁴² No other party addressed any like product issue in the course of these full five-year reviews. There have reportedly been no substantial changes in the product, production processes, or channels of distribution since the original investigations.

Conjugate Fiber

As defined in the original investigations, conjugate fiber is "a hollow, siliconized fiber with a spiral configuration imparted by a chemical process that bonds two different polyester polymers of different viscosities, causing one to shrink to produce spiral-shaped crimps. Conjugate fibers can be produced by *** direct spinning *** batch spinning. Whether direct or batch, conjugate fibers require a

³⁷ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. I-3.

³⁸ Hearing transcript, p. 298 (Stein).

³⁹ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. I-6.

⁴⁰ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. 3 and 7.

⁴¹ The Korean producers/exporters agreeing with the Commission's like product determination were Huvis and Seahan Industries, Inc. ("Seahan").

⁴² Response to notice of institution of domestic producer FFT, May 18, 2005.

double spinning process since they are composed of a bipolymer blend.”⁴³ Conjugate fiber is often used for its superior loft, a quality that is imparted by the crimp or curl of the fiber. After the fiber is extruded, the stretching, cutting, and baling of the fiber are identical to other types of PSF.

Regenerated Fiber

Regenerated fiber, as defined in the original investigations, is “polyester staple fiber produced primarily from waste polyester fibers but may also include other polyester waste products such as non-fiber polyester solids. It generally has inconsistent physical properties, such as irregular color, denier, staple length, and crimp count. It is generally sold without specifications, guarantees, or warranties of any kind.”⁴⁴ Like virgin PSF, regenerated PSF is used as fiber for fill, usually in lower quality products. Regenerated fiber is occasionally blended with higher quality fiber, allowing end users to reduce their costs, while at the same time offering a somewhat better product. Regenerated fiber is produced by the same method as virgin PSF. Respondent importers, Consolidated and Stein, have argued that imported regenerated certain PSF is a different, lower quality product than domestically produced “recycled” certain PSF. This alleged lower quality results from the use of less expensive, poorer quality raw materials and less sophisticated processing. As a result, they contend that imported regenerated certain PSF has a lack of consistency and less loft while domestically produced regenerated certain PSF is closer in characteristics to a virgin PSF product.⁴⁵ Domestic interested parties claim that regenerated and recycled PSF are synonymous and produced using similar raw materials.⁴⁶

U.S. MARKET PARTICIPANTS

U.S. Producers

During the original investigations, six firms, representing nearly 100 percent of production of certain PSF in the United States, provided the Commission with data on their PSF operations.⁴⁷ In the current reviews, the Commission mailed questionnaires to 11 companies believed to produce certain PSF. *** companies, representing nearly all production of certain PSF in the United States, provided the Commission with data on their certain PSF operations.⁴⁸ Three firms, DAK Americas LLC, Invista, and Wellman, representing nearly *** percent of reported 2004 production, are parties to this proceeding. One

⁴³ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. I-4.

⁴⁴ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. I-7.

⁴⁵ Consolidated and Stein’s posthearing brief, p. 9.

⁴⁶ Hearing transcript, pp. 24 and 147 (Katz) and domestic interested parties’ posthearing brief, pp. 12-13.

⁴⁷ Arteva Specialities S.a.r.L. d/b/a KoSa; Intercontinental Polymers, Inc.; Invista (formerly DuPont Textiles and Interiors); Martin Color-Fi; Nan Ya Plastics Corp., America; and Wellman, Inc. *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. III-1.

⁴⁸ Two firms reported that they do not produce the subject products (***). The *** responding producers, most of which existed, in one form or another, during the original investigations, are: ***. However, trade data provided by *** was incomplete and was not used. Staff has confirmed that Foss Manufacturing Co., Inc. (“Foss”) with operations in Hampton, NH produces subject PSF but this company has not responded to repeated requests for a producer’s questionnaire response and is reportedly in Chapter 11 bankruptcy. E-mail from ***, November 17, 2005.

firm, Nan Ya Plastics Corp. America (“Nan Ya America”), representing close to *** percent of reported 2004 production, *** the continuation of the orders. Another firm, ***, which accounted for *** percent of 2004 production, *** the continuation of the orders. United Synthetics Inc., with *** percent of reported 2004 production, *** the orders and one firm, FFT, with *** of 2004 production, (***) percent), opposes continuation of the orders with respect to the inclusion of black automotive substrate fiber in the scope of the orders.

Reported domestic production of certain PSF is concentrated in the southern United States. Specifically, nine factories are located in South Carolina, three in North Carolina, and one in Georgia. No domestic producer reported having been involved in a toll agreement to produce certain PSF since January 1, 2000. In addition, no domestic producer reported production of certain PSF in a foreign trade zone. Details regarding each responding firm’s production location(s), share of 2004 production, parent company, and position on the orders are presented in table I-3.

The domestic certain PSF industry has restructured since the original investigations. Bankruptcies, consolidations, shifts in ownership and new entrants have all changed the composition of domestic production. Three domestic certain PSF producers filed for bankruptcy: one closed its operations permanently, another was acquired out of bankruptcy and is operating today, and the third is presently in Chapter 11. Three major producers were consolidated and other companies exited and entered the polyester staple fiber industry during the period of review. Table I-4 illustrates the changes in company status that have occurred since the original investigations.

Two former producers have exited the polyester staple fiber industry, E.I. DuPont de Nemours, Inc. (“DuPont”) and Intercontinental Polymers, Inc. (“Intercontinental”). DuPont exited the polyester staple fiber industry in two stages, by first divesting itself of its joint venture with Alpek, DuPont-Akra Polyester, in July 2001. DAK Americas LLC (“DAK”) was formed with the acquisition of select assets from DuPont, and changed its name to DAK Fibers LLC in October 2001. In November 2004, DAK Monomers LLC, DAK Resins LLC, and DAK Fibers LLC merged under one company, the current DAK Americas LLC.⁴⁹ Secondly, DuPont sold Invista (formerly DuPont Textiles & Interiors) to Koch Industries, Inc. in 2003. Koch combined its subsidiary, KoSa, with newly acquired Invista to create a large polyester producer under the Invista name.⁵⁰ Intercontinental filed for bankruptcy in October 2003 and no longer produces polyester staple fiber.⁵¹

⁴⁹ DAK America’s producer questionnaire response, section II-2.

⁵⁰ *Invista*, found at <http://www.kosa.com/>, retrieved November 23, 2005.

⁵¹ Intercontinental Polymers, Inc. (Intercontinental) was a wholly owned subsidiary of Tolaram Corp. of Singapore with production facilities in Morristown, TN. Intercontinental’s share of production in 1999 was *** percent. *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, staff report, April 21, 2000, p. III-1.

**Table I-3
 Certain PSF: U.S. mills, locations, shares of 2004 production, parent companies, and positions on the orders**

| Firm | Locations | Share of production (percent) | Parent company | Position on continuation of orders |
|---|---|-------------------------------|---|------------------------------------|
| DAK | Charlotte, NC Leland, NC Moncks Corner, SC | *** | ***% Alfa S.A. de C.V. *** (Mexico) ***% Alpek S.A. de C.V. *** (Mexico) | Support |
| FFT | Sumter, SC | *** | ***% Morgenthaler Partners (U.S.) | *** ¹ |
| Invista | Salisbury, NC Spartanburg, SC | *** | ***% Koch Industries (U.S.) | Support |
| Nan Ya Plastics | Lake City, SC | *** | ***% Nan Ya Plastics (Taiwan) | *** |
| United Synthetics | Lafayette, GA | *** | ***% *** ***% *** ***% *** ***% *** ***% *** | *** |
| U.S. Fibers | Laurens, SC Trenton, SC | *** | ***% U.S. Fibers (U.S.) | *** |
| Wellman | Darlington, SC Johnsonville, SC Marion, SC (closed) | *** | ***% Wellman (U.S.) | Support |
| <p>¹ FFT opposes the inclusion of black automotive substrate fiber in the subject product definition. FFT's response to the notice of institution, May 18, 2005.</p> <p>Note: An additional firm, Foss Manufacturing, did not respond to the Commission's questionnaire and is presently in Chapter 11 bankruptcy.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p> | | | | |

Table I-4

Certain PSF: Changes in the status of U.S. producers since 2000, and status in 2005

| Firm | Changes since 2000 | Status in 2005 |
|---|--|--|
| DuPont | <p>DuPont sold its textiles and interiors division, INVISTA, to Koch Industries in 2003, <i>see below</i>.</p> <p>In 1999 DuPont and Alpek entered a joint venture, to create DuPont-Akra Polyester, LLC. By August 2001, DuPont had divested itself of the joint venture and DAK Americas was created by the acquisition of select assets from DuPont. Between April and July 2001, Dak Monomers and DAK Resins were also formed.</p> | <p>INVISTA (<i>see below</i>)</p> <p>DAK Americas LLC. In November 2004, DAK Fibers, DAK Monomers, and DAK Resins, merged under one company—the current DAK Americas LLC.</p> <p>DuPont no longer produces certain PSF in the United States.</p> |
| Foss Manufacturing Co., Inc. | Not identified in the original investigations as a producer. Currently in Chapter 11 bankruptcy. | Foss Manufacturing. Currently in Chapter 11 bankruptcy. |
| KoSa | Koch Industries acquired full ownership of subsidiary, KoSa, in 2001. In 2003 Koch Industries purchased INVISTA from DuPont and is merging its KoSa and INVISTA operations under the name INVISTA. | INVISTA, a wholly owned, independent subsidiary of Koch industries. |
| Intercontinental | Filed for bankruptcy in October 2003. | No longer produces PSF. |
| Martin Color-Fi | Formed Fiber Technologies (FFT) acquired Martin Color-Fi in 2003. | FFT, d/b/a Color-Fi. |
| Nan Ya Plastics Corp. America | No change in status reported. | Nan Ya Plastics Corp. America, wholly owned subsidiary of Nan Ya Plastics Corp., of Taiwan. |
| U.S. Fibers | Joined the industry after the original investigations. Importer, ***, purchased former *** plants in *** and *** and began production of PSF in December 2004. | U.S. Fibers, owned by importer, ***. |
| United Synthetics | Began production after the original investigations, in 2000. | Affiliate of importer, Stein Fibers. |
| Wellman | No change in status reported. | Wellman |
| <p>Source: Compiled from data submitted in response to Commission questionnaires, the domestic industry's joint response to the notice of institution, May 23, 2005, p. 11, and <i>Fibernews</i> online, found at http://www.fibersource.com/f-info/More_News/IPI-103103.htm, retrieved November 16, 2005, and the Invista company website, found at http://www.kosa.com, retrieved November 23, 2005.</p> | | |

Martin Color-Fi, with a 1999 share of production of *** percent, filed for bankruptcy in November 1998 but continued producing certain PSF at its plant in Edgefield, SC.⁵² The company was acquired by FFT (the former Gates Formed-Fibre Products, Inc.⁵³), an automotive nonwovens supplier and its majority investor, Morgenthaler Partners, in November 2003.⁵⁴ Post-acquisition, FFT consolidated the former Martin Color-Fi's operations with those of FFT in Sumter, SC.⁵⁵ This consolidation eased the market entry for one importer, ***, that purchased *** facilities and began production under the company name *** in ***. The company cited the antidumping duties as the impetus for this shift from importation to production.⁵⁶ A second importer, Stein Fibers, became involved in domestic production of certain PSF during the period of review through its joint ownership of producer United Synthetics with Korean firm ***. United Synthetics began production of certain PSF at its Lafayette, GA plant in ***.⁵⁷

One certain PSF producer that was not included in the original investigations has been identified: Foss Manufacturing Co., Inc. ("Foss"), headquartered in Hampton, NH. Foss did not respond to the Commission's questionnaire and is a vertically integrated producer of industrial nonwoven fabrics and specialty synthetic fibers used in a variety of applications. The company has the capacity to produce fibers within the range of 0.8 to 50 denier and cut to lengths of 7 to 180 millimeters.⁵⁸ However, Foss, is presently in Chapter 11 bankruptcy.⁵⁹

U.S. Importers

The original investigations identified 24 firms that imported certain polyester staple fiber in the period between 1997 and 1999. The majority of these importers were concentrated in the Carolinas and New York. In the present reviews, importer questionnaires were sent to 37 firms identified by Customs as having imported merchandise under the HTS numbers covering certain PSF between January 1999 and June 2005. Responses were received from 20 firms, with two certifying no imports of certain PSF between 1999 and June 2005, and 17 firms providing useable import data.⁶⁰ Two importers of the subject product submitted responses to the notice of institution opposing continuation of the orders.⁶¹ Reported U.S. importers of certain PSF are still concentrated in two major geographic areas: six reported to be in the Carolinas, and five reported to be in the New York, New Jersey area. The six remaining responding

⁵² *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. III-1 and III-2.

⁵³ In 2003, Gates Formed-Fibre Products, Inc. was acquired by Morgenthaler Partners and renamed Formed Fiber Technologies.

⁵⁴ *FFT buys Martin Color-Fi*, *Fibernews*, December 1, 2003, found at http://www.fibersource.com/info/More_News/Martin-120103.htm, retrieved November 16, 2005.

⁵⁵ FFT's producer questionnaire response, sections I-3 and II-5.

⁵⁶ Staff telephone interview with ***, and *** importer questionnaire response, section II-2.

⁵⁷ Hearing transcript, p. 212 (Stein) and United Synthetics' producer questionnaire response, sections I-6, I-7 and II-8. Stein Fibers cited its difficulty in obtaining certain types of subject PSF from domestic and foreign producers as its impetus to enter the domestic industry.

⁵⁸ *About Foss Manufacturing*, found at <http://www.fossmfg.com/about.htm>, retrieved September 16, 2005.

⁵⁹ Staff telephone interview with ***, November 16, 2005.

⁶⁰ Firms indicating that they have not imported the subject product since January 2000 were ***.

⁶¹ Response of Consolidated Fibers, Inc. to the notice of institution, May 31, 2005. FFT, a domestic producer as well as an importer of the subject product, opposes continuation of the orders with respect to "black automotive substrate" or "reprocessed intermingled" PSF. See FFT's response to the notice of institution, May 18, 2005.

importers are located throughout the continental United States from Maine to California. Table I-5 presents a summary of information regarding U.S. importers of certain polyester staple fiber.

**Table I-5
Certain PSF: U.S. importers, source(s) of imports, U.S. headquarters, parent companies, and shares of total imports in January 2000-September 2005**

* * * * *

There were two reported business affiliations between U.S. importers and subject foreign sources. Importer Stein Fibers is ***-percent owned by Korea Synthetics Fiber.⁶² Additionally, importer *** is ***-percent owned by *** of ***.⁶³ Several importers reported having business ties to nonsubject country companies. Importers *** and *** are wholly owned by *** and ***, respectively.⁶⁴

Three domestic importers are related to foreign PSF producers. Importer and domestic producer DAK is ***-percent owned by Alpek S.A. de C.V. of Mexico. Through this ownership, DAK is related through its common parent to Mexican PSF producer, ***.⁶⁵ A second ***, is related to a certain PSF producer in ***. *** is an affiliate of ***.⁶⁶ *** is related to a PSF producer in ***, ***.⁶⁷ Finally, importer Stein Fibers is related to domestic producer United Synthetics because a *** share of United Synthetics is held by Stein Fibers executives.⁶⁸

*** was by far the largest importer of certain PSF during 2004, the most recent full year for which data were collected. During 2004, the company accounted for *** percent of total U.S. imports from all sources, *** percent of imports from Korea, and *** percent of imports from Taiwan, as reported in questionnaire responses. *** was the second largest importer of certain PSF during 2004, among questionnaire respondents. This company accounted for *** percent of total U.S. imports from all sources, *** percent of imports from Korea, and *** percent of imports from Taiwan. *** was the third largest importer from all sources during 2004 with *** percent of total imports, and *** was the fourth largest with *** percent. Both *** and *** imported largely from nonsubject sources. No other responding importer accounted for more than *** percent of total U.S. imports from all sources during 2004.

U.S. Purchasers

In response to Commission purchaser questionnaires issued in these reviews, 27 purchasers supplied usable data. Table I-6 presents a summary of information regarding U.S. purchasers of certain PSF.

⁶² *** importer questionnaire response, section I-3.

⁶³ *** importer questionnaire response, section I-3.

⁶⁴ *** and *** importer questionnaire responses, section I-3.

⁶⁵ Table I-4 and hearing transcript p. 18 (Mcnaull).

⁶⁶ *** importer questionnaire response, section I-6.

⁶⁷ *** importer questionnaire response, section I-6.

⁶⁸ Table I-4 and hearing transcript p. 211 (Stein).

Table I-6

Certain PSF: U.S. purchasers, U.S. headquarters, sources of purchases, types of firms, and end products produced using certain PSF

* * * * *

Purchasers were concentrated in the southeast and southern regions. Many furniture and bedding manufacturers, which are a large component of the end users of certain PSF, are located in the southeast. Additionally, the Commission received purchaser responses from companies located in the northeast, mid-Atlantic, mid-west, and west coast.

The predominant purchasers of certain PSF are in the home textile and furniture industries and use certain PSF as a filling for pillows, upholstery, sleeping bags, and pet beds. Certain PSF is also used to manufacture batting, non-woven materials for medical and other purposes, automotive insulation, filtration, and roofing applications.

APPARENT U.S. CONSUMPTION AND MARKET SHARES

Table I-7 presents U.S. shipments, imports, and apparent consumption of certain PSF for the period for which data were collected in these reviews. The quantity of apparent U.S. consumption increased steadily over the period examined, by 2.4 percent between 2000 and 2001, then by a much larger increase of 19.7 percent between 2001 and 2002. The quantity of apparent U.S. consumption increased marginally from 2002-03 by 0.3 percent and decreased marginally by 0.2 percent from 2003-04. The value of apparent U.S. consumption exhibited a similar trend. The quantity and value of apparent U.S. consumption were higher in 2004 than in 2000 by 22.8 and 33.9 percent, respectively, and increased in the interim periods by 0.3 and 22.2 percent, respectively.

Table I-8 presents U.S. market shares for the period for which data were collected in these reviews. U.S. producers' share of the U.S. market (based on quantity) increased over the period of review from 49.4 percent in 2000 to 57.6 percent in 2004. By 2001, this share had decreased to its lowest level, 45.5 percent. The share of U.S. consumption accounted for by subject imports from Korea declined, from 23.0 percent in 2000 to 19.8 percent in 2004. The largest change occurred in the share of imports from Taiwan which decreased by 12.2 percentage points between 2000 and 2004. The loss of market share experienced by imports from Taiwan was accompanied by an increase in the share of shipments of nonsubject imports from 8.5 percent in 2000 to 15.7 percent in 2004.

Table I-7

Certain PSF: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 2000-04, January-September 2004, and January-September 2005

| Item | 2000 | 2001 | 2002 | 2003 | 2004 | Jan.-Sept. 2004 | Jan.-Sept. 2005 |
|--|---------|---------|-----------|-----------|-----------|--------------------|--------------------|
| Quantity (1,000 pounds) | | | | | | | |
| U.S. producers' U.S. shipments | 426,286 | 401,495 | 531,743 | 516,504 | 610,607 | 447,295 | 436,115 |
| U.S. imports from-- Korea | 198,608 | 201,077 | 222,594 | 258,351 | 209,856 | 163,907 | 118,501 |
| Taiwan | 164,473 | 170,054 | 140,271 | 94,793 | 72,376 | 56,937 | 35,063 |
| All subject countries | 363,082 | 371,131 | 362,865 | 353,144 | 282,232 | 220,844 | 153,564 |
| Non subject countries | 73,002 | 110,740 | 162,932 | 191,476 | 166,335 | 120,382 | 201,497 |
| All countries | 436,084 | 481,872 | 525,797 | 544,620 | 448,568 | 341,225 | 355,061 |
| Apparent U.S. consumption | 862,370 | 883,367 | 1,057,540 | 1,061,124 | 1,059,175 | 788,520 | 791,176 |
| Value (\$1,000) | | | | | | | |
| U.S. producers' U.S. shipments | 222,161 | 212,068 | 270,114 | 269,187 | 343,808 | 243,691 | 290,564 |
| U.S. imports from-- Korea | 85,298 | 82,179 | 84,563 | 107,640 | 100,920 | 76,663 | 69,926 |
| Taiwan | 87,533 | 83,796 | 67,350 | 48,612 | 43,262 | 32,801 | 24,296 |
| Subtotal | 172,831 | 165,975 | 151,914 | 156,252 | 144,181 | 109,464 | 94,222 |
| Other sources | 41,669 | 64,114 | 83,649 | 98,823 | 96,618 | 68,324 | 130,273 |
| Total imports | 214,500 | 230,089 | 235,563 | 255,075 | 240,799 | 177,788 | 224,495 |
| Apparent consumption | 436,661 | 442,157 | 505,677 | 524,262 | 584,607 | 421,479 | 515,059 |
| Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics. | | | | | | | |

Table I-8

Certain PSF: U.S. market shares, 2000-04, January-September 2004, and January-September 2005

| Item | 2000 | 2001 | 2002 | 2003 | 2004 | Jan.-Sept. 2004 | Jan.-Sept. 2005 |
|--|---------|---------|-----------|-----------|-----------|--------------------|--------------------|
| Quantity (1,000 pounds) | | | | | | | |
| Apparent consumption | 862,370 | 883,367 | 1,057,540 | 1,061,124 | 1,059,175 | 788,520 | 791,176 |
| Value (1,000 dollars) | | | | | | | |
| Apparent consumption | 436,661 | 442,157 | 505,677 | 524,262 | 584,607 | 421,479 | 515,059 |
| Share of quantity (percent) | | | | | | | |
| U.S. producers' U.S. shipments | 49.1 | 44.0 | 49.0 | 47.3 | 56.7 | 55.7 | 53.1 |
| U.S. imports from-- Korea | 23.2 | 23.4 | 21.6 | 25.0 | 20.3 | 21.3 | 15.7 |
| Taiwan | 19.2 | 19.8 | 13.6 | 9.2 | 7.0 | 7.4 | 4.6 |
| All subject countries | 42.4 | 43.2 | 35.2 | 34.2 | 27.3 | 28.7 | 20.3 |
| Nonsubject countries | 8.5 | 12.9 | 15.8 | 18.5 | 16.1 | 15.6 | 26.6 |
| All countries | 50.9 | 56.0 | 51.0 | 52.7 | 43.3 | 44.3 | 46.9 |
| Share of value (percent) | | | | | | | |
| U.S. producers' U.S. shipments | 50.6 | 46.8 | 52.3 | 50.2 | 57.9 | 56.9 | 55.2 |
| U.S. imports from-- Korea | 19.6 | 19.0 | 17.1 | 21.0 | 17.6 | 18.6 | 14.0 |
| Taiwan | 20.2 | 19.4 | 13.6 | 9.5 | 7.6 | 8.0 | 4.8 |
| All subject countries | 39.8 | 38.4 | 30.7 | 30.5 | 25.2 | 26.5 | 18.8 |
| All other sources | 9.6 | 14.8 | 16.9 | 19.3 | 16.9 | 16.6 | 26.0 |
| Total imports | 49.4 | 53.2 | 47.7 | 49.8 | 42.1 | 43.1 | 44.8 |
| Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics. | | | | | | | |

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

CHANNELS OF DISTRIBUTION

Producers and importers primarily sell certain PSF to end users, with some sales going to distributors. Major end users consist of furniture, bedding, pillow, and automotive insulation manufacturers who use certain PSF for the filling of various products. Other end users include manufacturers of non-woven batting, which is then sold to manufacturers of sleeping bags and comforters, filtration, and roofing.

Most domestic producers and importers reported that they serve the entire United States with certain PSF. Two domestic producers and four importers reported concentrating their sales on the east coast and in the Midwest. Many furniture and bedding manufacturers are located in the southeast.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Lead Times and Supply Limitations

A majority of U.S. producers reported that all or nearly all of their sales are from inventory. These producers reported that lead times from inventory range from immediate delivery to three weeks. One producer reported that it exclusively sells on a made-to-order basis, with lead times up to one month. The other producers reported lead times on these orders ranging from 7 to 21 days. Among eight responding importers, six reported that all or most of their sales are from inventory, with lead times ranging from immediate delivery to two months. The two importers reporting that all or most of their sales are on a made-to-order basis reported lead times ranging from 4 to 12 weeks. The other importers reported lead times on such orders ranging from seven days to eight weeks.

When asked about supply limitations, three producers cited a raw material shortage in September 2005 in the aftermath of hurricanes Katrina and Rita in the Gulf Coast. This shortage reportedly resulted in one producer imposing raw material surcharges and another reducing supply of certain PSF to its customers. One importer reported that the surcharges raised the price of certain PSF by approximately 25 percent.¹ This firm and one other importer reported that the surcharges implemented in the wake of the hurricanes lasted for about three months.² U.S. producer *** announced a price increase of *** per pound effective from September 7, 2005 until January 1, 2006, when prices were adjusted back to August 2005 levels plus an increase of \$0.03 per pound to cover other rising production costs.³ Five purchasers also reported that supply of certain PSF is diminished due to the decrease in U.S. production. One purchaser attributed the decreased U.S. production to the fact that producers are shifting away from production of certain PSF to other products not covered by the duties. This purchaser added that U.S. production is moving to Mexico, while another purchaser reported that some U.S. production has moved to Asia. One purchaser attributed the decreased domestic supply to refinery limitations.

¹ Hearing transcript, p. 308 (Stein).

² Hearing transcript, p. 310 (Stein, Kunik).

³ *** reported that the hurricanes affected the cost and supply of both virgin raw materials and recycled plastic bottles, but that the resulting price increase was greater for the virgin material than for the recycled material. Domestic interested parties' posthearing brief, pp. 60-61.

Allegations of Customer Allocation and Price Fixing

When asked about availability and allocation of certain PSF, three purchasers, two of which are also importers and respondent interested parties, reported that domestic supply of certain PSF has been reduced due to allocation by U.S. producers.⁴ One purchaser that is also an importer noted that U.S. producers prefer to sell to larger customers and do not allocate adequate supply to smaller and mid-size firms. This firm also reported that it attempted to buy second-quality certain PSF from a U.S. producer who refused to sell unless the importer bought all of the second-quality certain PSF it produced, which the importer was unable to do.⁵ One other importer also reported that allocation and price-fixing have limited domestic supply of certain PSF and driven up prices.

On October 31, 2002, one major U.S. producer of certain PSF, KoSa, plead guilty to charges that it “entered into and participated in a combination and conspiracy to suppress and restrain competition by fixing the price of, and allocating customers for, polyester staple fiber sold by the defendant and its co-conspirators in North America” beginning at least as early as September 1999 and continuing until at least January 2001.⁶ However, the focus of the U.S. Justice Department’s prosecution of KoSa and KoSa employee Troy F. Stanley was on fine denier PSF used in textile applications, which is less than three denier in thickness, and outside the scope of these reviews.⁷ KoSa did not identify its co-conspirators in its guilty plea, but *** alleges that they included three other major U.S. producers of certain PSF.⁸

Wellman settled civil antitrust claims alleging price fixing during the period, filed by 35 North American PSF purchasers, with no admission of guilt.⁹ In September 2005, Wellman paid a civil settlement of \$8.5 million and Nan Ya paid a settlement of \$5 million to purchasers of polyester staple fiber, with no admission of guilt.¹⁰ In August 2003, DAK paid a civil settlement of \$17.15 million in response to a charge of price fixing and allocation of polyester staple during the period from April 1, 1999 through July 31, 2001, with no admission of guilt.¹¹

⁴ These three purchasers are ***. Seven U.S. purchasers of PSF were plaintiffs in an antitrust litigation against DAK. Consolidated’s purchaser questionnaire response, non-confidential attachment, *DAK Settlement Agreement, MDL Docket No.: 3:03CV1516*, tab 6. The Commission received a questionnaire from one of these purchasers, ***, but did not receive a questionnaire from the other, ***. The other five purchasers (***) were not listed by producers or importers as one of their 10 largest customers, so initial questionnaires were not sent to these firms. Two of these companies, *** and ***, are out of business. Staff contacted the other three purchasers, but did not receive questionnaire responses from them.

⁵ ***’s importer questionnaire response, section III-B-29.

⁶ Consolidated’s purchaser questionnaire response, non-confidential attachment, *U.S. v. Arteva Specialties, S.a.r.L. d/b/a KoSa*, Crim. No. 3: 02CR229-V (Oct. 31, 2002).

⁷ Staff telephone interview with ***. ***.

⁸ Consolidated’s purchaser questionnaire response, non-confidential attachment, *Canadian Statement of Admissions by Kosa*, tab 5 (KoSa’s Statement of Admissions filed in a separate indictment in Canada for antitrust violations named its co-conspirators as DAK, Hoechst, Wellman, and Nan Ya America); see also Consolidated and Stein’s posthearing brief at p. 5 and exh. 10 at pp. 3-4.

⁹ Wellman, Inc. Form 10-Q, August 9, 2005.

¹⁰ Domestic interested parties’ posthearing brief, exh. 9, *Notice of Class Plaintiffs’ Motion and Motion for Final Approval of Settlements with Wellman, Inc. And the Nan Ya Defendants*.

¹¹ Consolidated’s purchaser questionnaire response, non-confidential attachment, *DAK Settlement Agreement*, tab 6, p. 4.

Domestic Production

The sensitivity of the domestic supply of certain PSF to changes in price depends upon such factors as the existence of excess capacity, the levels of inventories in relation to sales, the ease of shifting facilities to the production of other products, and the existence of export markets. Based on available information, U.S. certain PSF producers are likely to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced certain PSF to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity and the ability to produce alternate products balanced against limited alternate markets.

Industry capacity

U.S. producers' capacity utilization decreased from 77.6 percent in 2000 to 59.4 percent in 2003, increased to 69.0 percent in 2004, and declined to a low of 58.9 percent in the January-September 2005 period. This level of capacity utilization suggests that the industry has considerable ability to expand output in response to changes in price.¹²

Alternative markets

Total exports by U.S. producers accounted for *** percent of total shipments in 2000, increased to 7.5 percent of total shipments in 2004, and remained at this level in the January-September 2005 period. These data indicate that U.S. producers are constrained in their ability to divert some shipments to or from alternative markets in response to changes in the price of certain PSF. All four responding U.S. producers reported that it would be difficult for them to shift their sales of certain PSF between the U.S. market and alternative country markets. One firm attributed this difficulty to the fact that production costs are high in the United States while another reported that certain PSF is oversupplied worldwide. Moreover, three of four U.S. producers reported that their exports of certain PSF are subject to trade barriers in other countries. One producer reported that it pays duties in Argentina and Uruguay; another producer reported that China imposes a 13.4 percent duty and that Peru and Brazil have high sales taxes; and a third producer reported high transportation costs to Mexico. One importer also reported that Mexico imposes an import duty on certain PSF of 10 percent.

Inventory levels

The ratio of end-of-period inventories to total shipments increased from *** percent in 2000 to *** percent in 2002, before decreasing to 5.4 percent in 2004 and to 4.4 percent in the January-September 2005 period.

¹² Respondent interested parties contend that due to the raw material supply shortages in the aftermath of hurricanes Katrina and Rita as well as diminished U.S. production (as described at II-2), the U.S. industry is currently operating at virtually 100 percent of practical capacity. Consolidated and Stein's prehearing brief, p. 68. However, as described earlier, the supply shortages due to the hurricanes were short-lived, ending by January 2006. Staff notes that reductions in domestic certain PSF capacity could potentially cause capacity utilization to increase in the future.

Production alternatives

Most U.S. producers are able to shift their facilities from production of certain PSF to other products in response to changing market conditions.¹³ The machinery and equipment used in various stages of certain PSF production are also used to make other products. Additional products include polyester carpet fiber, which is typically 10-18 denier cut to 6-8 inches in length; polyester staple fiber for spinning and textiles, usually less than 3 denier; and, to a lesser degree, nylon fibers and specialty fibers.¹⁴

Subject Imports

Based on available information, producers in both Korea and Taiwan are likely to respond to changes in demand with large changes in the quantity of shipments of certain PSF to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity and the existence of alternate markets.

Industry capacity

During 2000, the capacity utilization rate for producers of certain PSF in Korea was *** percent; it decreased to *** percent in 2001, increased to *** percent in 2004, and then declined to *** percent in the January-September 2005 period. During 2000, the capacity utilization rate for producers of certain PSF in Taiwan was *** percent; it decreased to *** percent in 2003, increased to *** percent in 2004, and declined to *** percent in the January-September 2005 period.

Alternative markets

Available data indicate that foreign producers in Korea can divert shipments to or from alternative markets in response to changes in the price of certain PSF. Shipments of certain PSF from Korea to the United States decreased from *** percent of its total shipments in 2000 to *** percent in 2004, before increasing to *** percent in the January-September 2005 period. The share of Korea's shipments to export markets other than the United States increased from *** percent in 2000 to *** percent in 2004, and then decreased to *** percent in the January-September 2005 period, with the remainder going to its home market, including internal consumption. Most of the increase in Korea's shipments to export markets other than the United States was attributable to increased shipments to the European Union.

Available data indicate that foreign producers in Taiwan can divert shipments to or from alternative markets in response to changes in the price of certain PSF. Shipments of certain PSF from Taiwan to the United States decreased from *** percent of its total shipments in 2000 to *** percent in 2004, and then decreased to *** percent in the January-September 2005 period. The share of Taiwan's shipments to export markets other than the United States increased from *** percent in 2000 to *** percent in 2004, and then increased to *** percent in the January-September 2005 period, with the remainder going to its home market, including internal consumption. Most of the increase in Taiwan's shipments to export markets other than the United States was attributable to increased shipments to the European Union.

¹³ See table III-4.

¹⁴ At least one U.S. producer, DAK, reported that it can switch easily between production of certain PSF and fine-denier textile fiber. Hearing transcript, p. 84 (McNaull). Wellman reported that such a switch was time-consuming and costly. Hearing transcript, p. 178 (Katz).

Inventory levels

Foreign producers' inventories fluctuated between low and moderate levels during the period of review. Korean producers' inventories, as a share of total shipments, declined from *** percent in 2000 to *** percent in 2004, before slightly increasing to *** percent in the January-September 2005 period. These data indicate that foreign producers in Korea have the ability to use inventories as a means of increasing shipments of certain PSF to the U.S. market. Taiwan producers' inventories, as a share of total shipments, declined from *** percent in 2000 to *** percent in 2001, and then increased to *** percent in 2002. This ratio was *** percent in 2004 and increased to *** percent in the January-September 2005 period. These data indicate that foreign producers in Taiwan have some ability to use inventories as a means of increasing shipments of certain PSF to the U.S. market.

U.S. Demand

Demand Characteristics

The overall demand for certain PSF depends upon the demand for a variety of end-use applications. Certain PSF is used in the production of furniture (stuffing for couches and chairs), bedding (including mattress pads, pillows, comforters, sleeping bags, pet beds, and bedspreads), and insulation and filtration products. Apparent U.S. consumption increased by 22.8 percent from 2000 to 2004. Two of four responding domestic producers reported that demand has increased since 2000, due to overall economic growth and increased housing starts, creating more consumption of furniture and home textiles, some of which contain certain PSF.¹⁵ One U.S. producer reported that demand has shifted from the United States to China, citing decreased production by domestic manufacturers of home goods in the face of increasing imports of finished goods containing certain PSF. The other U.S. producer reported that demand was unchanged. Seven of 12 responding importers reported that demand has increased since 2000, citing the growth in the housing market and its impact on demand for home goods.¹⁶ Three importers reported that demand has decreased, with one firm citing increased imports of finished goods containing certain PSF. The two remaining importers reported that demand was unchanged.

Eleven purchasers reported an increase in demand for their final products since 2000, eight reported a decrease, and three reported no change.¹⁷ One purchaser reported that demand for its U.S.-based products has decreased, whereas demand for its products from China has increased. These purchasers were also asked how the change in demand has affected their purchases of certain PSF. Ten purchasers stated that the increased demand has led to an increase in the volume of their purchases and eight stated that decreased demand has led to a decrease in their purchases.

When asked how demand for certain PSF will change in the future, three of four U.S. producers reported that global demand for certain PSF will continue to increase, following increases in the overall economy and consumption of home textiles. One of these producers specifically reported that imports of finished home goods will increase. One producer reported that new federal regulations on flame retardant home textiles, especially mattresses, will lower the demand for certain PSF in these applications.

When importers were asked how demand will change in the future, four firms reported that demand will increase, following overall economic activity, population growth, and the housing market.

¹⁵ According to the U.S. Census Bureau, housing starts have increased by 24.7 percent from 2000 to 2004. http://www.census.gov/const/starts_cust.xls. See appendix F.

¹⁶ Two importers reported that they did not know how demand had changed since 2000.

¹⁷ When purchasers were asked how demand for certain PSF had changed since 2000, ten reported that it had increased, five reported that it had decreased, five reported that it was unchanged, and six said that they did not know how demand had changed.

Three importers reported that demand for certain PSF will continue to shift away from the United States to foreign countries, especially in Asia, as manufacturing of home textiles moves to these locations. One of these importers also reported that demand in the United States will decrease as imports of finished goods containing certain PSF increase. Seven importers reported that they expect no future changes in demand.

When purchasers were asked how demand for certain PSF will change in the future, five reported that domestic demand will increase, following the overall economy and the housing market. One purchaser reported that Asian demand for certain PSF will increase while another reported that imports of PSF into the United States will increase. Two purchasers reported that domestic demand will decrease as manufacturing of finished products containing certain PSF will shift from the United States to Asia. Two purchasers also cited the new federal regulations on flame retardant mattresses as having a negative impact on certain PSF in the future.

The sensitivity of the overall demand for certain PSF to changes in price depends upon the availability of substitute products and the cost of other certain PSF as an input in final products. Because much of the certain PSF marketed in the United States faces limited competition from substitutes, price changes are likely to have little overall effect on the demand for certain PSF. However, the relatively high cost share of certain PSF in end-use products increases the sensitivity of demand to changes in the price of certain PSF. Most end-use products are sold through retail outlets. Competition among retailers is very high, particularly among the major discount and mass merchandise stores.

Substitute Products

Most responding domestic producers reported substitutable products for certain PSF. They listed polyurethane foam, a lower-quality substitute in furniture and pillows; duck and goose down, which are more expensive replacements; polypropylene fiber; low-melt fiber; and continuous filament tow, which is a pre-cut form of certain PSF. One producer noted that these substitutes represent a very small portion of the market. Nearly all importers reported substitutes, especially for regenerated PSF. These include polyurethane foam, rayon staple fiber and waste, miscellaneous shoddy (a low-grade product used for fill) made from fabric waste, cotton and polyester waste, down, wood chips, coconut fiber and waste, polypropylene fiber, cardboard, and others. Purchasers were also asked if alternate products could be substituted for certain PSF. Eight of 27 purchasers listed a variety of substitutes, such as spun bonded polyester products, polyurethane foam, shredded foam, cotton, and feathers/down. One purchaser noted that bonded polyester fiber can only be used to fill decorative pillows because it lacks loft and resilience.

Purchasers were asked if changes in the prices of these alternative products have affected the price for certain PSF. Two purchasers responded that changes in the prices of substitutes have affected the price for certain PSF. Another purchaser reported that extreme price increases in certain PSF or unavailability could cause some purchasers to shift to inferior materials. One importer reported that increasing foam costs may lead more customers to choose certain PSF over foam.

Cost Share

Purchasers estimated the cost share of certain PSF in the various end-use products and these are listed in table II-1. The cost shares vary widely by product.

Table II-1**Certain PSF: Cost share estimates of various end-use products as reported by purchasers**

| Product | Percent |
|--|---------|
| Pillows | 33-70 |
| Furniture | 4.5-64 |
| Batting | 48-80 |
| Automotive insulation | 25 |
| Decorative pillows | 15 |
| Filtration | 42-50 |
| Roofing | 21 |
| Pet beds | 30 |
| Upholstery | 17 |
| Mattress pads | 40-50 |
| Comforters | 2-5.7 |
| Source: Compiled from data submitted in response to Commission questionnaires. | |

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported certain PSF depends on many factors. Relative prices are an important factor, as well as the type of fiber (i.e., virgin, conjugate, regenerated, etc.) and its inherent qualities. Quality characteristics that differentiate the products are color, whether the fiber is hollow or solid, and whether it is slick or dry. Other important quality characteristics are the degree of fill power (fiber used/ounce), loft, crimp level, fiber length, resiliency, performance on equipment, and consistency. One U.S. producer, two importers, and two purchasers reported that different grades of certain PSF are required by end users for different applications. In particular, they said that certain PSF which is white in color is required for applications with light-colored upholstery, whereas certain PSF which is less white or grey is better-suited for products in which the fiber color would not be seen (such as filtration) or for lower-priced home furnishings.¹⁸ One importer, Stein, reported that customers may accept white regenerated certain PSF made from clean PET bottle stock as a substitute for virgin PSF, but may not accept regenerated certain PSF made from other waste.¹⁹ One U.S. producer, Wellman, reported that its customers would not know the difference between its regenerated PSF and its virgin product.²⁰

¹⁸ Consolidated and Stein's posthearing brief, exh. 17, 21, 22, 24 and 25; and hearing transcript, p. 222 (Kunik).

¹⁹ "Regenerated certain PSF" refers to both regenerated and recycled PSF, unless otherwise noted. Stein and *** claimed that certain PSF made from clean PET bottle stock is referred to as "recycled" and that certain PSF made from other waste is referred to as "regenerated". Hearing transcript, p. 215 (Stein) and Consolidated and Stein's posthearing brief, exh. 21. U.S. producer Wellman disagreed with the distinction between "recycled" and "regenerated," stating that the two terms are synonymous. Hearing transcript, pp. 25 and 147 (Katz).

²⁰ Hearing transcript, p. 148 (Katz).

Factors Affecting Purchasing Decisions

Available information indicates that a variety of factors are considered important in the purchasing decision for certain PSF. While price has been mentioned as being an important factor in the sale of certain PSF, factors such as quality, availability, and reliability of supply are also important considerations. Purchasers were asked to list the top three factors that they consider when choosing a supplier of certain PSF. Table II-2 summarizes the responses.

Table II-2
Certain PSF: Ranking of factors used in purchasing decisions as reported by U.S. purchasers

| Factor | Number of firms reporting | | |
|--------------------|---------------------------|-------------------|---------------------|
| | Number one factor | Number two factor | Number three factor |
| Price | 6 | 7 | 8 |
| Quality | 13 | 7 | 1 |
| Availability | 5 | 7 | 5 |
| Other ¹ | 1 | 4 | 11 |

¹ Other factors include one instance of "qualified vendor" for number one factor; two instances of "reliability" for number two factor; one instance of "traditional supplier" for number two factor; one instance of "delivery" for number two factor; three instances of "reliability" for number three factor; two instances of "service" for number three factor; three instances of "on-time delivery" for number three factor; one instance of "traditional supplier" for number three factor; one instance of "extension of credit" for number three factor; and one instance of "technical support" for number three factor.

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

As indicated in table II-3, 22 of 26 purchasers indicated that price was a "very important" factor in their purchasing decisions. Five of the purchasers reported that the lowest price will "always" win a contract or sale. Eleven purchasers reported that the lowest price will "sometimes" win a contract or sale and nine purchasers reported "usually." Most U.S. producers reported that factors other than price are never important in sales of certain PSF while the majority of importers reported that factors other than price are sometimes or frequently important.

Quality was named by 13 purchasers as the number one factor generally considered in deciding from whom to purchase certain PSF, while seven other purchasers indicated that it was the number two factor and one responded it was the number three factor. Nearly all the responding purchasers indicated that product consistency and quality meeting industry standards were "very important" factors in their purchasing decisions.

Availability was named by five purchasers as the number one factor generally considered in deciding from whom to purchase certain PSF, while seven other purchasers indicated that it was the number two factor and five responded it was the number three factor. Nearly all responding purchasers indicated that availability was a "very important" factor in their purchasing decisions.

Fifteen responding purchasers reported that they require their suppliers to become certified. Six purchasers reported that since 2000 one or more suppliers have failed in their attempts to qualify certain PSF. Four domestic sources (importers ***) and one nonsubject-country source (***) were named. ***.

Nine of 27 responding purchasers indicated that either they or their customers make purchasing decisions involving certain PSF based on the country of origin. Six of these purchasers reported that they or their customers "sometimes" base a purchasing decision on country of origin, and three reported "usually," citing issues such as quality, freight costs, delivery time, availability, and contract

Table II-3
Certain PSF: Importance of factors used in purchasing decisions, as reported by U.S. purchasers

| Factor | Number of firms reporting | | |
|------------------------------------|---------------------------|--------------------|---------------|
| | Very important | Somewhat Important | Not important |
| Availability | 25 | 1 | 0 |
| Delivery terms | 16 | 8 | 2 |
| Delivery time | 22 | 3 | 1 |
| Discounts and rebates | 9 | 12 | 4 |
| Extension of credit | 12 | 7 | 7 |
| Price | 22 | 4 | 0 |
| Minimum qty requirements | 3 | 10 | 12 |
| Packaging | 2 | 15 | 8 |
| Product Consistency | 24 | 2 | 0 |
| Quality meets industry standards | 18 | 5 | 0 |
| Quality exceeds industry standards | 9 | 10 | 6 |
| Product range | 2 | 14 | 9 |
| Reliability of supply | 25 | 1 | 0 |
| Technical support/service | 5 | 11 | 10 |
| U.S. transportation costs | 9 | 10 | 6 |

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

specifications. Purchasers more frequently make purchasing decisions based on the producer of the certain PSF than on the country of origin. Eight of 26 responding purchasers indicated that they “always” or “usually” make purchasing decisions involving certain PSF based on the producer, citing issues such as quality, reliability of supplier, price, and customer requirements. Another eight purchasers indicated that they or their customers “sometimes” base purchasing decisions on the producer and the remaining ten purchasers reported “never.” Also, four purchasers indicated that some grades/types of certain PSF are available from only certain sources.²¹ Two purchasers reported that bi-component conjugate was available in limited quantities from domestic producers.

Purchasers were also asked about changes in their purchasing patterns for certain PSF from subject and nonsubject sources since 2000. Five of 20 responding purchasers reported that they did not change their purchasing patterns of certain PSF from subject sources. One purchaser reported that it discontinued its purchases from subject sources because of the orders. The remaining 14 firms reported they changed their pattern of purchasing from subject countries for reasons other than the orders. Of these 14 purchasers, three firms reported increasing their purchases of subject product, citing quality, availability, price and delivery. The other eleven purchasers reported decreasing their purchases of subject product. Their reasons included switching to domestic sourcing because of higher quality and

²¹ Two purchasers reported that only U.S. producer *** produces type 271, pre-blended hollow fiber, and low-melt (15x). Another purchaser reported that 4 denier is not available in the United States and that 7 denier is available only in limited quantities in the United States.

service; better pricing available from India, China, and other countries; change in subject sources' export policies; or newly available product in the United States. One purchaser that is also an importer, ***, reported that sources in Korea and Taiwan allocated some product to China and Europe. Six of 20 responding purchasers reported that they did not change their purchasing patterns of certain PSF from nonsubject sources. Three of the remaining 14 purchasers reported that they increased their purchases from nonsubject sources because of the orders. The other 11 purchasers reported that they increased purchases from nonsubject sources for a variety of other reasons, including changes in product requirements; availability; and technical and capacity improvements in China. Three firms reported shifting purchases to India, with two citing price as their reason, and another two firms reported shifting purchases to Thailand.

Comparisons of Domestic Products and Subject Imports

In order to determine whether U.S.-produced certain PSF can generally be used in the same applications as imports from Korea and Taiwan, producers, importers, and purchasers were asked whether the product can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. As indicated in table II-4, all responding domestic producers indicated that U.S.-produced certain PSF and imports of certain PSF from all subject countries are either “always” or “frequently” used interchangeably. Responses from importers and purchasers were mixed. At least half of the importers indicated that U.S.-produced certain PSF and imports of certain PSF from Korea and Taiwan are either “always” or “frequently” used interchangeably, with nearly all the remainder indicating “sometimes.”

Table II-4
Certain PSF: Perceived degree of interchangeability of certain PSF produced in the United States and in other countries

| Country pair | U.S. producers | | | | U.S. importers | | | | Purchasers | | | |
|-----------------|----------------|---|---|---|----------------|---|---|---|------------|---|---|---|
| | A | F | S | N | A | F | S | N | A | F | S | N |
| U.S. vs. Korea | 2 | 3 | 0 | 0 | 2 | 5 | 5 | 1 | 4 | 5 | 7 | 1 |
| U.S. vs. Taiwan | 2 | 3 | 0 | 0 | 2 | 4 | 5 | 1 | 3 | 5 | 6 | 2 |
| U.S. vs. Other | 2 | 2 | 0 | 0 | 1 | 3 | 5 | 0 | 4 | 3 | 6 | 0 |

Note.--A=always; F=frequently; S=sometimes; N=never.

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

Some firms made general comments concerning the extent of interchangeability between products from the United States and other country sources. The only importer to indicate that product from the United States is “never” interchangeable with product from Korea or Taiwan, ***, which is also a purchaser, reported that U.S. producers do not offer 100 percent regenerated fiber or siliconized hollow conjugate fiber, and that the quality of U.S.-produced conjugate fiber is not sufficient for the demands of the market. Two other purchasers, ***, reported that there is limited availability of conjugate fiber from domestic producers.²² Another importer reported that the black automotive substrate it imports from Korea is only available from U.S. producers in very limited quantities. One importer reported that

²² Consolidated and Stein’s posthearing brief, exh. 26.

Korean producers are willing to take smaller orders than U.S. producers.²³ Two importers reported that certain PSF from different producers is never totally interchangeable because each producer’s product behaves differently on different processing equipment.

Two purchasers reported that factors limiting interchangeability are color (whiteness) and loft. One U.S. producer reported that imports of regenerated certain PSF can range from very low quality, containing splinters and trash contaminants, to higher quality.²⁴ One importer, one U.S. producer, and two purchasers reported that imports of regenerated certain PSF, mostly from Korea, are generally less white and less lofty than domestically produced regenerated certain PSF.²⁵ One of these purchasers noted that imports of regenerated certain PSF mostly serve customers that are more interested in price than quality.²⁶ Two purchasers and one importer reported that domestic regenerated certain PSF competes most directly with virgin certain PSF.²⁷

As indicated in table II-5, two of five responding producers reported that differences other than price between certain PSF produced in the United States and subject countries were “sometimes” a significant factor in their firm’s sales of the product, while two other producers indicated that such differences were “never” a significant factor. In contrast, all but one importer indicated that differences other than price were at least “sometimes” a factor. Two importers reported that quality and availability were among these differences. One importer that is also a producer reported that longer lead times from import sources are a disadvantage.

Table II-5
Certain PSF: Perceived significance of differences other than price between certain PSF produced in the United States and in other countries

| Country pair | Number of U.S. producers reporting | | | | Number of U.S. importers reporting | | | |
|-----------------|------------------------------------|---|---|---|------------------------------------|---|---|---|
| | A | F | S | N | A | F | S | N |
| U.S. vs. Korea | 0 | 1 | 2 | 2 | 3 | 4 | 6 | 1 |
| U.S. vs. Taiwan | 0 | 1 | 2 | 2 | 3 | 5 | 4 | 1 |
| U.S. vs. Other | 0 | 0 | 2 | 2 | 0 | 4 | 4 | 1 |

Note.--A=always; F=frequently; S=sometimes; N=never.

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

For the factors that almost all responding purchasers indicated were “very important” in their purchasing decisions (see table II-3), purchaser comparisons of U.S.-produced and subject imported certain PSF indicate that the domestic product is mostly comparable to the subject imported product. As indicated in table II-6, a majority of the responding purchasers responded that with respect to availability, U.S.-produced certain PSF was “superior” or “comparable” to certain PSF produced in each of the subject countries. With respect to lower price, a majority of responding purchasers indicated that U.S.-produced certain PSF was “inferior” (i.e., higher) and nearly all of the remainder responded that it was “comparable” to certain PSF produced in subject countries. With respect to quality meeting industry

²³ Hearing transcript, p. 223 (Kunik).

²⁴ Hearing transcript, pp. 149-150 (McNaull).

²⁵ Consolidated and Stein’s posthearing brief, exhibits 17, 22, 24, and 25.

²⁶ Consolidated and Stein’s posthearing brief, exhibit 25, p. 3.

²⁷ Consolidated and Stein’s posthearing brief, exhibits 24, 25 and hearing transcript, pp. 214-215 (Stein).

standards, product consistency, and reliability of supply, a strong majority of responding purchasers indicated that U.S.-produced certain PSF was “comparable” or “superior” to certain PSF produced in subject countries.

Table II-6
Certain PSF: Comparisons between U.S.-produced and subject imported product as reported by U.S. purchasers

| Factor | Korea | | | Taiwan | | |
|------------------------------------|-------|----|----|--------|----|---|
| | S | C | I | S | C | I |
| Availability | 3 | 9 | 3 | 3 | 5 | 2 |
| Delivery terms | 4 | 9 | 2 | 2 | 8 | 0 |
| Delivery time | 9 | 6 | 0 | 6 | 4 | 0 |
| Discounts offered | 2 | 8 | 4 | 1 | 8 | 1 |
| Extension of credit | 2 | 11 | 1 | 2 | 8 | 0 |
| Lower price ¹ | 1 | 4 | 10 | 0 | 6 | 4 |
| Minimum quantity requirements | 4 | 11 | 0 | 2 | 8 | 0 |
| Packaging | 2 | 13 | 0 | 0 | 10 | 0 |
| Product consistency | 6 | 9 | 0 | 3 | 7 | 0 |
| Quality meets industry standards | 3 | 12 | 0 | 1 | 9 | 0 |
| Quality exceeds industry standards | 6 | 9 | 0 | 2 | 8 | 0 |
| Product range | 5 | 7 | 2 | 2 | 5 | 3 |
| Reliability of supply | 3 | 11 | 1 | 3 | 6 | 1 |
| Technical support/service | 8 | 5 | 1 | 6 | 4 | 0 |
| Lower U.S. transportation costs | 4 | 9 | 0 | 3 | 6 | 0 |

¹ A rating of superior means that the price is generally lower. For example, if a firm reports “U.S. superior,” this means that it rates the U.S. price generally lower than the subject import price.

Note.--S=U.S. product is superior, C=U.S. product is comparable, I=U.S. product is inferior.

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

Comparisons Among Subject Imports

In order to determine whether certain PSF from each of the subject countries can generally be used in the same applications, producers and importers were asked whether the product can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. As indicated in table II-7, all responding domestic producers and a majority of responding importers indicated that imports of certain PSF from each subject country are either “always” or “frequently” used interchangeably with imports of certain PSF from any other subject country.

Table II-7**Certain polyester staple fiber: Perceived degree of interchangeability of certain polyester staple fiber produced in the subject countries**

| Country pair | Number of U.S. producers reporting | | | | Number of U.S. importers reporting | | | |
|--|------------------------------------|---|---|---|------------------------------------|---|---|---|
| | A | F | S | N | A | F | S | N |
| Korea vs. Taiwan | 2 | 3 | 0 | 0 | 1 | 6 | 5 | 0 |
| Korea vs. Other | 2 | 2 | 0 | 0 | 1 | 4 | 4 | 0 |
| Taiwan vs. Other | 2 | 2 | 0 | 0 | 1 | 4 | 3 | 0 |
| Note.--A=always; F=frequently; S=sometimes; N=never. | | | | | | | | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | | | |

For the factors that almost all responding purchasers indicated were “very important” in their purchasing decisions (see table II-3), purchaser comparisons of product produced in each of the subject countries indicate that subject imports are nearly always comparable. As indicated in table II-8, nearly all of the responding purchasers responded that with respect to availability, subject imports from each source were always “comparable.” With respect to lower price, all of responding purchasers indicated that imports from Korea were comparable to imports from Taiwan.

Comparison of Domestic Products and Subject Imports to Nonsubject Imports

As shown in table II-4, all four U.S. producers reported that U.S.-produced certain PSF and nonsubject imports are “always” or “frequently” used interchangeably. Among nine responding importers, four reported that U.S.-produced certain PSF and nonsubject imports are “always” or “frequently” used interchangeably. The other five importers reported that these products are “sometimes” used interchangeably. One producer that is also an importer reported that transportation delays are a disadvantage for nonsubject imports from some countries. One importer noted that quality and availability are better from nonsubject sources than from U.S. sources. Among 13 responding purchasers, seven reported that U.S.-produced certain PSF and nonsubject imports are “always” or “frequently” used interchangeably and the remainder responded “sometimes.” Responding purchasers indicated that nonsubject sources may include China, India, and Thailand. One purchaser noted that the quality of certain PSF from China is lower than that of PSF from other countries.

As shown in table II-7, all four U.S. producers reported that certain PSF from Korea and Taiwan and nonsubject imports are “always” or “frequently” used interchangeably. At least half of the responding importers reported that certain PSF from Korea and Taiwan and nonsubject imports are “always” or “frequently” used interchangeably. The remaining importers reported that these products are “sometimes” interchangeable. Among purchasers, nearly half reported that certain PSF from Korea and Taiwan and nonsubject imports are “always” or “frequently” used interchangeably and the remainder responded “sometimes.”

Table II-8**Certain PSF: Comparisons among subject imported products as reported by U.S. purchasers**

| Factor | Korea vs. Taiwan | | |
|------------------------------------|------------------|---|---|
| | S | C | I |
| Availability | 1 | 5 | 0 |
| Delivery terms | 0 | 6 | 0 |
| Delivery time | 1 | 5 | 0 |
| Discounts offered | 0 | 6 | 0 |
| Extension of credit | 1 | 5 | 0 |
| Lower price ¹ | 0 | 6 | 0 |
| Minimum quantity requirements | 0 | 6 | 0 |
| Packaging | 0 | 6 | 0 |
| Product consistency | 0 | 6 | 0 |
| Quality meets industry standards | 0 | 6 | 0 |
| Quality exceeds industry standards | 0 | 6 | 0 |
| Product range | 1 | 5 | 0 |
| Reliability of supply | 1 | 5 | 0 |
| Technical support/service | 0 | 5 | 1 |
| Lower U.S. transportation costs | 0 | 6 | 0 |

¹ A rating of superior means that the price is generally lower. For example, if a firm reports "Korea superior," this means that it rates the Korean price generally lower than the Taiwan price.

Note.--S=Korean product is superior, C=Korean product is comparable, I=Korean product is inferior.

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

ELASTICITY ESTIMATES**U.S. Supply Elasticity²⁸**

The domestic supply elasticity for certain PSF measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of certain PSF. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced certain PSF. Analysis of these factors above indicates that the U.S. industry is likely to be able to moderately increase or decrease shipments to the U.S. market; an estimate in the range of 3 to 5 is suggested.²⁹

²⁸ A supply function is not defined in the case of a non-competitive market.

²⁹ Respondent interested parties contend that the elasticity of domestic supply under current market conditions is close to zero due to recent supply shortages. Consolidated and Stein's prehearing brief, p. 68. However, as noted at (continued...)

U.S. Demand Elasticity

The U.S. demand elasticity for certain PSF measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of certain PSF. This estimate depends on factors discussed above such as the existence, availability, and commercial viability of substitute products, as well as the component share of the certain PSF in the production of any downstream products. Based on the available information, the aggregate demand for certain PSF is likely to be in the range of -0.5 to 1.5.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.³⁰ Product differentiation, in turn, depends upon such factors as quality (e.g., consistency, loft, etc.) and conditions of sale (availability, sales terms/discounts, etc.). Based on available information, the elasticity of substitution between U.S.-produced certain PSF and imported certain PSF is likely to be in the range of 2 to 4.

²⁹ (...continued)

II-4, fn. 10, staff believes that supply shortage shocks due to hurricanes Katrina and Rita were short-lived and should not be included in current supply elasticity estimates.

³⁰ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

PART III: CONDITION OF THE U.S. INDUSTRY

U.S. PRODUCERS' CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data regarding U.S. certain PSF producers' capacity, production, and capacity utilization are presented in table III-1. Data for the period examined are not directly comparable to data collected in the original investigations. The permanent closure of Intercontinental in October 2003 and the resulting absence of data for Intercontinental, as well as the absence of data for *** acquired *** operations, which excludes data for January 2000-June 2002, and for *** acquisition of ***, which excludes data for January 2000-November 2003, result in understated trade data over these periods.¹ Reported U.S. capacity to produce certain polyester staple fiber increased by 65.9 percent between 2000 and 2004 and was 4.1 percent higher during January-September 2005 than during January-September 2004. Production also increased during the period of review, by 47.5 percent between 2000 and 2004, however, production was 4.1 percent lower in January-September 2005 than in January-September 2004. Capacity utilization was at its highest, 77.6 percent, in 2000 and its lowest, 58.9 percent in January-September 2005.

Table III-1
Certain PSF: U.S. capacity, production, and capacity utilization, 2000-04, January-September 2004, and January-September 2005¹

| Item | Calendar year | | | | | January-September | |
|--------------------------------------|---------------|---------|---------|---------|---------|-------------------|---------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Capacity (1,000 pounds) ² | 581,500 | 596,500 | 833,500 | 893,700 | 964,900 | 754,350 | 785,550 |
| Production (1,000 pounds) | 451,317 | 412,989 | 563,081 | 530,804 | 665,590 | 482,704 | 463,067 |
| Capacity utilization (percent) | 77.6 | 69.2 | 67.6 | 59.4 | 69.0 | 64.0 | 58.9 |

¹ Data are somewhat understated for the period January 2000-June 2002 because the Commission lacks information for Intercontinental's pre-closure operations and received partial data from ***.

² On average, U.S. producers reported capacity based on 168 hours per week, 50 weeks per year.

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

The data presented in table III-1 reflect an increase in domestic firms' capacity to produce certain PSF during the period examined. However, no responding firms reported any additions to their productive capacity.² This apparent increase in capacity can be attributed to the lack of complete data for ***. Because *** did not report trade data for *** certain PSF operations for January 2000 through June 2002, domestic industry capacity and production appear to increase sharply in 2002 with the inclusion of the former *** data from July 2002 forward. Furthermore, because *** did not report trade data for *** PSF operations for January 2000 through November 2003, domestic industry capacity appears to increase in 2003. This lack of data could not, however, account for the decrease in production reported that year.

¹ In the original investigations these firms had the following shares of 1999 production: Intercontinental, *** percent, *** percent, and *** percent. *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, confidential staff report (INV-X-082), April 21, 2000, p. III-1.

² During the hearing held in connection with these reviews, a representative from DAK Fibers testified that "There have not been any increases in domestic capacity. . . there's not been any capacity commissioned in the period." Hearing transcript, p. 135 (McNaull).

Several firms reported circumstances that reduced their capacity. DAK reported that *** maintained *** PSF manufacturing lines at the *** facility until May 24, 2000, when *** was shut down. According to DAK, if its production lines cannot be run at optimal capacity they must be shutdown because their capacity cannot be marginally reduced.³ In July 2001, *** at the same facility was also shut down. In February 2002, *** at the *** manufacturing facility was restarted, but *** remained shut down. DAK cited ***.⁴ In 2005 DAK eliminated non-competitive capacity at its Monterrey, Mexico plant and consolidated some of that production into its domestic operations to achieve economies of scale.⁵ *** reported that it has experienced a ***-percent capacity reduction, relocation and/or closure at its *** facility and a ***-percent capacity reduction, relocation, and/or closure at its *** plant.⁶ Wellman reported that at the end of 2000, the company idled *** of new certain PSF production assets at its *** facility after operating them ***. This decision was made in response to declining certain PSF sales, according to Wellman. Then in May 2001, a power outage at the Palmetto, SC plant resulted in a temporary shutdown of the entire facility.⁷ In 2002, the company closed its Marion, SC plant, eliminating certain PSF capacity of *** pounds and 43 jobs.⁸ Wellman reported that in the second quarter of 2005, the company permanently shuttered *** of certain PSF capacity at the *** plant with a resultant loss of 50 jobs.⁹ According to Wellman, these assets “were too costly to operate in today’s low margin environment.” This partial closure of operations at the *** facility was part of Wellman’s strategy to move away from the textile fibers business and toward the fiberfill market because many of the company’s textile customers had reportedly gone out of business.¹⁰ In addition, Wellman was striving to become more efficient by eliminating those assets that were not performing properly, either because of age or antiquated technology.¹¹ Then in September 2005, Wellman ***.¹²

The Commission asked domestic producers to describe the constraints that limit production capacity. Three domestic producers reported that equipment limitations constrain capacity to produce PSF. Specifically, *** gave equipment capacity as its only constraint and *** gave equipment size and design as its production constraints.¹³ Similarly, *** stated that for its *** plant the number of spinning lines limit capacity, while at its *** plant, the availability of the appropriate spinnerettes limits capacity.¹⁴ Two domestic producers responded that their production capacity is constrained by economic forces. Specifically, *** responded that its production capacity is constrained by market demand, citing the current shutdown of *** at its *** facility because of a “lack of market opportunity based upon the

³ Hearing transcript, p. 20 (McNaull).

⁴ *** producer questionnaire response, section II-2.

⁵ Hearing transcript, p. 184 (McNaull).

⁶ *** producer questionnaire response, section II-2.

⁷ *Wellman reports power outage at Palmetto plant*, Press Releases, found at <http://www.shareholder.com/wellman/ReleaseDetail.cfm?ReleaseID=43801>, retrieved December 6, 2005.

⁸ *Mass Layoff and Plant Closure Events, Jan.-Dec. 2002*, found at <http://www.scommerce.com/wia/annual2002.htm>, retrieved December 6, 2005.

⁹ *CY 2005 Layoff Notifications*, found at <http://www.scommerce.com/teamscpdfs/WIADoc/WIALayoffCY2005.pdf>, retrieved December 6, 2005.

¹⁰ Hearing transcript, p. 99 (Katz).

¹¹ Hearing transcript, p. 183 (Katz).

¹² Wellman’s producer questionnaire response, section II-2.

¹³ *** and *** producer questionnaire responses, section II-6.

¹⁴ *** producer questionnaire response, section II-6.

current market conditions.”¹⁵ According to *** import competition has prevented the company from operating at full capacity.¹⁶

The Commission asked domestic producers to report anticipated changes in their operations. *** domestic producers reported that they do not anticipate any operational changes.¹⁷ The other *** domestic producers provided a variety of responses. *** responded that it will undertake capacity consolidation and portfolio rationalization at its two plants over a 3-year period, 2006-08. As a result, *** expects certain PSF capacity at the plants to decrease from *** pounds in 2005 to *** pounds in 2006.¹⁸ *** stated that if the antidumping duty orders are maintained, the company expects to invest to double its production capacity in 2006.¹⁹ *** responded that it is trying to develop new value-added products to compete against imports. To this end, the company anticipates creating more flexibility at its *** plant so that it can produce some of these value-added products. The company’s projected capacity for 2005 and 2006 is approximately *** pounds each year.²⁰

The Commission asked domestic producers to report production of other products on the same equipment and machinery used in the production of certain PSF. *** domestic producers responded that they do not produce other products on the same equipment and machinery used to make certain polyester staple fiber.²¹ The *** remaining companies do produce other products on their polyester staple fiber equipment and machinery. In addition to certain PSF, *** produced *** in 2002-04 and the interim periods of 2004 and 2005.²² *** produces a *** that had been made by *** prior to ***.²³ *** produced *** listed in the Commission’s questionnaire.²⁴ *** produces an unidentified product on the same equipment and machinery used to produce certain PSF.²⁵ Finally, *** produced *** on the same equipment used to produce certain PSF.²⁶ Data on domestic producers’ capacity, and production for alternative polyester products are presented in table III-2.

The Commission asked domestic producers whether they are able to switch production between certain PSF and other products in response to a relative change in the price of certain PSF vis-a-vis the price of other products, using the same equipment and labor. *** and *** responded that they are unable to switch production, and *** did not respond to the question. *** reported that it is able to produce alternative products using the same equipment and labor used in the manufacture of certain PSF but noted that there is currently no market to utilize the available capacity. *** blamed oversupply and the availability of low-cost imports from Korea, Taiwan, and other countries for these unfavorable market conditions.²⁷ *** reported that the same equipment and labor used in the manufacture of certain PSF can be used to produce other polyester staple fiber and that the cost of switching production is “not

¹⁵ *** producer questionnaire response, section II-6.

¹⁶ *** producer questionnaire response, section II-6.

¹⁷ The producers that reported no anticipated operational changes were ***.

¹⁸ *** producer questionnaire response, section II-3.

¹⁹ *** producer questionnaire response, section II-3.

²⁰ *** producer questionnaire response, section II-3.

²¹ Companies responding no to this question were ***.

²² *** producer questionnaire response, section II-5.

²³ *** producer questionnaire response, section II-5.

²⁴ *** producer questionnaire response, section II-5.

²⁵ *** producer questionnaire response, section II-5. Data provided by *** for this alternate product production were not included in table III-2 because they were incomplete.

²⁶ *** producer questionnaire response, section II-5.

²⁷ *** producer questionnaire response, section II-7.

significant.”²⁸ *** cannot switch production.²⁹ Finally, *** stated that its *** facility can switch production to *** products which are “aimed at a different market.”³⁰

Table III-2

Certain PSF: U.S. producers’ capacity, production, and share of total production for alternative products, 2000-04, January-September 2004, and January-September 2005¹

| Item | Calendar year | | | | | January-September | |
|--|--|-----------|-----------|-----------|-----------|-------------------|-----------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| | Quantity (1,000 pounds) | | | | | | |
| Annual capacity for all products | 1,472,000 | 1,472,000 | 1,440,000 | 1,445,200 | 1,505,400 | 1,317,050 | 1,237,050 |
| Production of certain PSF products: | 273,231 | 259,725 | 392,138 | 372,378 | 487,398 | 347,428 | 317,065 |
| Production of alternative products: | | | | | | | |
| Polyester staple fiber of less than 3 denier ² | *** | *** | 704,733 | 665,303 | 650,015 | 489,867 | 458,744 |
| Polyester staple fiber for carpeting ³ | *** | *** | *** | *** | *** | *** | *** |
| Low-melt polyester staple fiber ⁴ | 0 | 0 | 0 | *** | *** | *** | *** |
| Other ⁵ | *** | *** | *** | *** | *** | *** | *** |
| Annual production of all products | 1,120,215 | 939,436 | 1,230,965 | 1,160,268 | 1,288,893 | 951,883 | 912,793 |
| | Share of total production (percent) | | | | | | |
| Certain PSF products: | 24.4 | 27.6 | 31.9 | 32.1 | 37.8 | 36.5 | 34.7 |
| Alternative products: | | | | | | | |
| Polyester staple fiber of less than 3 denier ² | *** | *** | 57.2 | 57.3 | 50.5 | 51.5 | 50.2 |
| Polyester staple fiber for carpeting ³ | *** | *** | *** | *** | *** | *** | *** |
| Low-melt polyester staple fiber ⁴ | *** | *** | *** | *** | *** | *** | *** |
| Other ⁵ | *** | *** | *** | *** | *** | *** | *** |
| ¹ Data are somewhat understated because the Commission lacks data for Intercontinental’s pre-closure operations and received partial data from ***. ² Merchandise of less than 3.3 decitex (less than 3 denier). ³ Merchandise of 10 to 18 denier that are cut to lengths of 6 to 8 inches. ⁴ Bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core. ⁵ Includes nylon staple fiber. | | | | | | | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | | |

²⁸ *** producer questionnaire response, section II-7.

²⁹ *** producer questionnaire response, section II-7.

³⁰ *** producer questionnaire response, section II-7.

U.S. PRODUCERS' DOMESTIC SHIPMENTS AND EXPORT SHIPMENTS

Data on the domestic industry's U.S. shipments and export shipments of certain PSF are presented in table III-3. No domestic producer reported consuming certain PSF internally or transferring the product to related firms. Between 2000 and 2004, the quantity and value of the industry's U.S. shipments increased overall by 43.2 percent and 54.8 percent, respectively. Both quantity and value decreased initially between 2000 and 2001, then increased in 2002, decreased again in 2003 and finally increased once more in 2004. The quantity of U.S. shipments during January-September 2005 was 2.5 percent lower than in the same period in 2004. The value of U.S. shipments during January-September 2005 was 19.2 percent higher than the value during January-September 2004. Unit values of the domestic industry's U.S. shipments fluctuated between 2000 and 2004 but varied at most by \$0.05 per pound. Unit values for U.S. shipments during January-September 2005 were 25.2 percent higher than unit values during the same period in 2004, a difference of \$0.14 per pound. Only one domestic producer reported exports to *** during the review period. *** had exports to ***, a ***. ***. The *** PSF manufacturing facility in *** was closed on ***.³¹

³¹ *** producer questionnaire response, section II-9.

Table III-3
Certain PSF: U.S. producers' shipments, by type, 2000-04, January-September 2004, and January-September 2005¹

| Item | Calendar year | | | | | January-September | |
|---|------------------|------------------|------------------|------------------|------------------|-------------------|------------------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Quantity (1,000 pounds) | | | | | | | |
| Commercial shipments | 426,286 | 401,495 | 531,743 | 516,504 | 610,607 | 447,295 | 436,115 |
| Internal consumption | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Transfers to related firms | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| U.S. shipments | 426,286 | 401,495 | 531,743 | 516,504 | 610,607 | 447,295 | 436,115 |
| Export shipments | *** | *** | 22,813 | 35,613 | 49,222 | 35,339 | 35,402 |
| Total | *** | *** | 554,556 | 552,117 | 659,829 | 482,634 | 471,517 |
| Value (1,000 dollars) | | | | | | | |
| Commercial shipments | 222,161 | 212,068 | 270,114 | 269,187 | 343,808 | 243,691 | 290,564 |
| Internal consumption | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Transfers to related firms | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| U.S. shipments | 222,161 | 212,068 | 270,114 | 269,187 | 343,808 | 243,691 | 290,564 |
| Export shipments | *** | *** | 11,361 | 17,517 | 26,579 | 18,411 | 22,798 |
| Total | *** | *** | 281,475 | 286,704 | 370,387 | 262,102 | 313,362 |
| Unit value (per pound) | | | | | | | |
| Commercial shipments | \$0.52 | \$0.53 | \$0.51 | \$0.52 | \$0.56 | \$0.54 | \$0.68 |
| Internal consumption | (²) | (²) |
| Transfers to related firms | (²) | (²) |
| U.S. shipments | 0.52 | 0.53 | 0.51 | 0.52 | 0.56 | 0.54 | 0.68 |
| Export shipments | 0.45 | 0.50 | 0.50 | 0.49 | 0.54 | 0.52 | 0.64 |
| Average | 0.52 | 0.53 | 0.51 | 0.52 | 0.56 | 0.54 | 0.68 |
| Share of shipment quantity (percent) | | | | | | | |
| Commercial shipments | *** | *** | 95.9 | 93.5 | 92.5 | 92.7 | 92.5 |
| Internal consumption | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Transfers to related firms | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| U.S. shipments | *** | *** | 95.9 | 93.5 | 92.5 | 92.7 | 92.5 |
| Export shipments | *** | *** | 4.1 | 6.5 | 7.5 | 7.3 | 7.5 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

¹ These figures are somewhat understated for the period January 2000-June 2002 because the Commission lacks data for Intercontinental's pre-closure operations and received partial data from ***.

² Not applicable.

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

Export shipments by the domestic industry increased both absolutely and relatively during the period for which data were collected in these reviews. After an initial decline between 2000 and 2001, export shipments increased each year thereafter for an overall increase between 2000 and 2004 of *** percent in quantity and *** percent in value. In 2000 exports were *** percent of total shipments; in 2004 exports were 7.5 percent of total shipments. The unit values of export shipments were lower than the unit values for U.S. commercial shipments in every year and in both interim periods for which data were collected. Principal export markets identified by domestic producers were Canada, Central America, Europe, Mexico, Oceania, and South America.³²

Data on the U.S. industry's domestic shipments by product group are presented in table III-4. Four domestic producers reported U.S. shipments of virgin polyester staple fiber: ***. However, *** only began shipping this product domestically in ***. Of these four producers, ***, had the largest quantity of domestic shipments of virgin PSF. ***, reported domestic shipments of conjugate polyester staple fiber beginning in *** through ***.³³ One domestic producer, ***, reported domestic shipments of regenerated polyester staple fiber ***. Also, *** reported shipping *** thousand pounds of regenerated fiber in 2004 but did not provide shipment values and therefore this amount is not included in table III-4.³⁴

U.S. PRODUCERS' INVENTORIES

Data collected in these reviews on domestic producers' end-of-period inventories of certain PSF are presented in table III-5. The domestic industry's inventories of certain PSF decreased between 2000 and 2001, peaked in 2002, then decreased in 2003 before rising in 2004. Overall, the quantity of end-of-period inventories held by domestic producers between 2000 and 2004 increased by 17.3 percent. Inventories in January-September 2005 were 9.7 percent lower than those held during the same period in 2004.

³² Oceania is a geographical, often geopolitical, region consisting of numerous countries and territories, mostly islands, in the Pacific Ocean, usually including Australia and New Zealand. Found at <http://en.wikipedia.org/wiki/Oceania>, retrieved November 27, 2005. Wellman exports certain PSF largely to sister companies of its domestic customers but reportedly has difficulty competing in the Canadian market while DAK Americas exports primarily to customers in Mexico, hearing transcript, p. 167 (Katz) and (McNaull).

³³ Until 2002, DuPont was the only U.S. producer of conjugate PSF, *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. I-5 cited in the domestic interested parties' posthearing brief, p. 53, n. 29. The unavailability of *** results in understated conjugate PSF shipment quantities for 2000-01.

³⁴ *** producer questionnaire, section II-10.

Table III-4
Certain PSF: U.S. producers' U.S. shipments, by product group, 2000-04, January-September 2004, and January-September 2005¹

| Item | Calendar year | | | | | January-September | |
|--|---------------|---------|---------|---------|---------|-------------------|---------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Quantity (1,000 pounds) | | | | | | | |
| Virgin polyester staple ² | 217,435 | 177,643 | 267,116 | 245,333 | 324,027 | 231,335 | 244,002 |
| Conjugate polyester staple ³ | *** | *** | *** | *** | *** | *** | *** |
| Regenerated polyester staple ⁴ | *** | *** | *** | *** | *** | *** | *** |
| Total | 420,863 | 378,064 | 507,038 | 493,030 | 603,142 | 441,103 | 428,224 |
| Value (1,000 dollars) | | | | | | | |
| Virgin polyester staple ³ | 118,286 | 98,637 | 138,035 | 130,226 | 183,182 | 127,298 | 169,028 |
| Conjugate polyester staple ³ | *** | *** | *** | *** | *** | *** | *** |
| Regenerated polyester staple ⁴ | *** | *** | *** | *** | *** | *** | *** |
| Total | 219,841 | 202,205 | 259,872 | 259,110 | 340,462 | 240,714 | 286,636 |
| Unit value (per pound) | | | | | | | |
| Virgin polyester staple ² | \$0.54 | \$0.55 | \$0.52 | \$0.53 | \$0.57 | \$0.55 | \$0.69 |
| Conjugate polyester staple ³ | *** | *** | *** | *** | *** | *** | *** |
| Regenerated polyester staple ⁴ | *** | *** | *** | *** | *** | *** | *** |
| Average | 0.52 | 0.53 | 0.52 | 0.53 | 0.57 | 0.55 | 0.66 |
| Share of total quantity (percent) | | | | | | | |
| Virgin polyester staple ² | 51.7 | 47.0 | 52.7 | 49.8 | 53.7 | 52.4 | 56.9 |
| Conjugate polyester staple ³ | *** | *** | *** | *** | *** | *** | *** |
| Regenerated polyester staple ⁴ | *** | *** | *** | *** | *** | *** | *** |
| <p>¹ Data are somewhat understated for the period January 2000-June 2002 because the Commission lacks data for Intercontinental's pre-closure operations and received partial data from ***.</p> <p>² "Virgin polyester staple fiber," as used here, is single component, single crimp PSF that does not contain regenerated fibers. Virgin fibers are made directly from raw materials and are characterized by the purity of the whiteness of the fibers.</p> <p>³ "Conjugate polyester staple fiber," as used here, is spiral/double crimp PSF made from two types of fiber (also known as bi-component fiber).</p> <p>⁴ "Regenerated polyester staple fiber," as used here, does not contain any virgin fibers. It is made from recycled PET stock. Blended virgin and regenerated fiber products do not fall within this definition.</p> <p>⁵ ***.</p> | | | | | | | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | | |

Table III-5
Certain PSF: U.S. producers' end-of-period inventories, 2000-04, January-September 2004, and January-September 2005¹

| Item | Calendar year | | | | | January-September | |
|---|---------------|--------|--------|--------|--------|-------------------|--------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Inventories (1,000 pounds) | 30,401 | 29,615 | 41,979 | 31,303 | 35,654 | 30,933 | 27,937 |
| Ratio of inventories to production (percent) | 6.7 | 7.2 | 7.5 | 5.9 | 5.4 | 4.8 | 4.5 |
| Ratio of inventories to U.S. shipments (percent) | 7.1 | 7.4 | 7.9 | 6.1 | 5.8 | 5.2 | 4.8 |
| Ratio of inventories to total shipments (percent) | *** | *** | 7.6 | 5.7 | 5.4 | 4.8 | 4.4 |

¹ Data are somewhat understated because the Commission lacks data for Intercontinental's pre-closure operations and received partial data from ***.

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

U.S. PRODUCERS' IMPORTS AND PURCHASES OF SUBJECT MERCHANDISE

The Commission asked domestic producers whether they had imported certain PSF since January 1, 2000.³⁵ Four companies responded in the affirmative, and their direct import data appear in table III-6, with the exception of *** which responded that the company imported *** of certain PSF in *** but did not provide more detailed information.³⁶ *** imported certain PSF from *** from *** until ***.³⁷ Then beginning in *** *** imported certain PSF from ***.³⁸ In addition to producing certain PSF domestically, *** imported certain PSF from *** in *** and ***.³⁹ *** stated that although the company produces certain PSF, it does not manufacture adequate quantities of *** fibers to meet *** needs. *** does not believe that this product is produced by another domestic producer, and therefore must import what it cannot produce.⁴⁰

Table III-6
Certain PSF: U.S. producers' direct imports, by sources, 2000-04, January-September 2004, and January-September 2005

* * * * *

The Commission asked domestic producers to report purchases, other than direct imports, of certain polyester staple fiber since January 2000. Five producers reported that they had not purchased

³⁵ Companies responding no to this question were: ***.

³⁶ *** producer questionnaire response, section II-14.

³⁷ *** domestic producer questionnaire response, section I-7.

³⁸ *** importer questionnaire response, section II-7.

³⁹ *** importer questionnaire response, section II-7.

⁴⁰ *** importer questionnaire response, section II-6.

certain PSF since January 2000.⁴¹ One domestic producer, ***, reported that it made purchases of certain PSF, other than direct imports, since January 1, 2000. *** purchased *** pounds of certain PSF imported from Korean producer *** in 2000. The reason given for this purchase was “***.”⁴²

U.S. PRODUCERS’ EMPLOYMENT, WAGES, AND PRODUCTIVITY

The U.S. producers’ aggregate employment data for certain PSF are presented in table III-7. The number of production and related workers (“PRWs”) employed by U.S. certain PSF producers increased overall between 2000 and 2004 by *** percent, or *** workers. Over this period, hourly wages increased by *** percent while productivity decreased by *** percent, resulting in a *** percent increase in unit labor costs from 2000 through 2004.

Table III-7
Certain PSF: U.S. producers’ employment-related indicators, 2000-04, January-September 2004, and January-September 2005¹

| Item | Calendar year | | | | | January-September | |
|--|---------------|------|---------|---------|---------|-------------------|---------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Production and related workers (PRWs) | *** | *** | 985 | 1,141 | 1,052 | 1,018 | 975 |
| Hours worked by PRWs (1,000 hours) | *** | *** | 2,460 | 2,329 | 2,788 | 2,200 | 2,089 |
| Wages paid to PRWs (1,000 dollars) | *** | *** | 47,809 | 52,159 | 55,353 | 40,590 | 40,822 |
| Hourly wages | *** | *** | \$19.43 | \$22.40 | \$19.85 | \$18.45 | \$19.54 |
| Productivity (pounds produced per 1,000 hours) | *** | *** | 217.7 | 216.2 | 229.7 | 211.1 | 204.9 |
| Unit labor costs (per pound) | *** | *** | \$0.09 | \$0.10 | \$0.09 | \$0.09 | \$0.10 |

¹ Data are somewhat understated for the period January 2000-June 2002 because the Commission lacks data for Intercontinental’s pre-closure operations and received partial data from ***.

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

Martin Color-Fi laid off 33 workers at its Trenton, SC fiber plant in April 2001 when its overall employment level was 454 people.⁴³ Wellman announced cost cutting measures in November 2003 that included a reduction in the levels of management and the number of employees, in order to lower all PSF manufacturing costs.⁴⁴ At that time employees holding the least specialized jobs, such as sorters and those that did repetitive line work, were laid off and temporary workers were hired in their places. The

⁴¹ Companies responding no to this question were: ***.

⁴² *** producer questionnaire response, section II-11.

⁴³ *Martin Color-Fi CEO Explains Layoffs*, *Fibernews*, March 12, 2001, found at http://www.fibersource.com/f-info/More_News/martin-1.htm, retrieved November 16, 2005.

⁴⁴ *Wellman Continues Cost Cutting*, *Fibernews*, November 4, 2003, found at http://www.fibersource.com/f-info/More_News/Wellman-110503.htm, retrieved November 16, 2005.

employees at ***, and no other *** facility, are members of the UNITE HERE union.⁴⁵ In ***, the union employees at *** negotiated a new contract that will expire in three years. The contract includes ***,⁴⁶

FINANCIAL EXPERIENCE OF THE U.S. PRODUCERS

Background

*** U.S. producers, ***,⁴⁷ ***, provided usable financial data on their operations on certain PSF.⁴⁸ These data account for the majority of U.S. production of certain PSF in 2004.⁴⁹ No firms reported toll production, internal consumption, or transfers to related firms within the United States.

Operations on Certain PSF

Income-and-loss data for U.S. producers on their operations on certain PSF are presented in table III-8. Selected financial data, by firm, are presented in table III-9. The domestic industry reported operating losses during most periods for which data were collected. The domestic industry's reported aggregate operating loss decreased by approximately \$21 million from 2000 to 2002, then increased by approximately \$14 million through 2004. Interim period data show improvement from an operating loss of \$11.5 million in interim 2004 to an operating profit of \$11.6 million in interim 2005. The quantity of net sales of certain PSF increased irregularly from 2000 to 2004 and declined between the interim periods, while net sales value per pound increased irregularly throughout the review period with a significant increase between the interim periods. Due to the lack of financial data for 2000 and 2001 from ***, comparisons of data from 2000 and 2001 to data later in the period examined should be done with caution.

⁴⁵ UNITE (formerly the Union of Needletrades, Industrial and Textile Employees) and HERE (Hotel Employees and Restaurant Employees International Union) merged on July 8, 2004 forming UNITE HERE. The union represents more than 450,000 active members and more than 400,000 retirees throughout North America.

⁴⁶ ***.

⁴⁷ Commission staff verified the questionnaire response of Invista. The data were reviewed based on the business records of the firm, and the results of the verification are incorporated in this report.

⁴⁸ ***.

⁴⁹ All firms except *** reported a fiscal year end of December 31. *** reported a fiscal year end of September 30.

Table III-8
Certain PSF: Results of operations of U.S. producers, 2000-04, January-September 2004, and
January-September 2005

| Item | Fiscal year | | | | | January-September | |
|--|-------------------------------------|----------|---------|----------|----------|-------------------|----------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| | Quantity (1,000 pounds) | | | | | | |
| Total net sales ^{1 2} | 439,221 | 410,530 | 551,097 | 552,172 | 659,510 | 482,893 | 461,688 |
| | Value (\$1,000) | | | | | | |
| Total net sales ¹ | 227,989 | 216,880 | 280,853 | 286,842 | 370,096 | 262,128 | 313,375 |
| Cost of goods sold | 243,096 | 224,611 | 269,339 | 281,925 | 377,038 | 267,025 | 294,946 |
| Gross profit or (loss) | (15,107) | (7,731) | 11,514 | 4,917 | (6,942) | (4,897) | 18,429 |
| SG&A expenses | 9,237 | 13,222 | 14,377 | 14,518 | 10,245 | 6,600 | 6,787 |
| Operating income or (loss) | (24,344) | (20,953) | (2,863) | (9,601) | (17,187) | (11,497) | 11,642 |
| Interest expense | 2,403 | 3,997 | 2,096 | 1,783 | 6,715 | 4,941 | 6,271 |
| Other income/(expense), net ³ | (17,559) | (7,962) | (1,171) | (3,115) | 5,687 | (3,151) | (25,384) |
| Net income or (loss) | (44,306) | (32,912) | (6,130) | (14,499) | (18,215) | (19,589) | (20,013) |
| Depreciation/amortization | 11,575 | 12,583 | 23,597 | 25,049 | 29,689 | 21,448 | 17,345 |
| Cash flow | (32,731) | (20,329) | 17,467 | 10,550 | 11,474 | 1,859 | (2,668) |
| | Ratio to net sales (percent) | | | | | | |
| Cost of goods sold: | | | | | | | |
| Raw materials | 63.4 | 61.7 | 57.3 | 62.8 | 73.0 | 71.8 | 69.4 |
| Direct labor | 8.3 | 8.1 | 8.0 | 7.2 | 5.9 | 6.1 | 5.2 |
| Other factory costs | 34.9 | 33.7 | 30.6 | 28.3 | 23.0 | 24.0 | 19.6 |
| Total cost of goods sold | 106.6 | 103.6 | 95.9 | 98.3 | 101.9 | 101.9 | 94.1 |
| Gross profit or (loss) | (6.6) | (3.6) | 4.1 | 1.7 | (1.9) | (1.9) | 5.9 |
| SG&A expenses | 4.1 | 6.1 | 5.1 | 5.1 | 2.8 | 2.5 | 2.2 |
| Operating income or (loss) | (10.7) | (9.7) | (1.0) | (3.3) | (4.6) | (4.4) | 3.7 |
| Net income or (loss) | (19.4) | (15.2) | (2.2) | (5.1) | (4.9) | (7.5) | (6.4) |

Table continued on next page.

Table III-8--Continued**Certain PSF: Results of operations of U.S. producers, 2000-04, January-September 2004, and January-September 2005**

| Item | Fiscal year | | | | | January-September | |
|---|----------------------------------|--------|--------|--------|--------|-------------------|--------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| | Value (per pound) | | | | | | |
| Total net sales | \$0.52 | \$0.53 | \$0.51 | \$0.52 | \$0.56 | \$0.54 | \$0.68 |
| Cost of goods sold: | | | | | | | |
| Raw materials | 0.33 | 0.33 | 0.29 | 0.33 | 0.41 | 0.39 | 0.47 |
| Direct labor | 0.04 | 0.04 | 0.04 | 0.04 | 0.03 | 0.03 | 0.04 |
| Other factory costs | 0.18 | 0.18 | 0.16 | 0.15 | 0.13 | 0.13 | 0.13 |
| Total cost of goods | 0.55 | 0.55 | 0.49 | 0.51 | 0.57 | 0.55 | 0.64 |
| Gross profit or (loss) | (0.03) | (0.02) | 0.02 | 0.01 | (0.01) | (0.01) | 0.04 |
| SG&A expenses | 0.02 | 0.03 | 0.03 | 0.03 | 0.02 | 0.01 | 0.01 |
| Operating income or (loss) | (0.06) | (0.05) | (0.01) | (0.02) | (0.03) | (0.02) | 0.03 |
| Net income or (loss) | (0.10) | (0.08) | (0.01) | (0.03) | (0.03) | (0.04) | (0.04) |
| | Number of firms reporting | | | | | | |
| Operating losses | 4 | 3 | 2 | 4 | 3 | 4 | 1 |
| Data | 4 | 4 | 5 | 6 | 6 | 6 | 6 |
| ¹ ***. ² ***. ³ Funds reported as "other income" from the Continued Dumping and Subsidy Offset Act ("CDSOA" or "Byrd Amendment") were ***. | | | | | | | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | | |

Table III-9**Certain PSF: Results of operations of U.S. producers, by firm, 2000-04, January-September 2004, and January-September 2005**

* * * * *

The cost of goods sold ("COGS") per pound increased irregularly by 3.3 percent from 2000 to 2004, and further increased by 15.5 percent between the interim periods. Raw material costs had the biggest impact on the overall COGS, representing 59.5 percent of total costs in 2000 and 73.7 percent in interim 2005. Raw material costs per pound increased 24.5 percent from 2000 to 2004, and 20.9 percent between the interim periods. In comparison, net sales value per pound increased by 8.1 percent from 2000 to 2004, and 25.0 percent between the interim periods. Changes in COGS and net sales value per pound resulted in a general decline in the level of losses from 2000 through 2002, increased losses from 2002 through 2004, and improvement from losses to profits between the interim periods.

Table III-10 contains domestic producers' quantity and value data on their purchases of mono ethylene glycol ("MEG") and purified terephthalic acid ("PTA") used in the production of certain PSF for 2003-04 and the January-September periods of 2004 and 2005. While numerically different from the

absolute and per-unit raw material cost data in table III-8, there are nonetheless similarities.⁵⁰ In particular, both data sets indicate rising unit costs.

Table III-10

Certain PSF: U.S. producers' purchases of MEG and PTA, 2003-04, January-September 2004, and January-September 2005

| Item | Fiscal year | | January-September | |
|--|--------------------------------|---------|-------------------|---------|
| | 2003 | 2004 | 2004 | 2005 |
| | Quantity (1,000 pounds) | | | |
| Purchases of MEG | 114,734 | 151,115 | 108,271 | 106,260 |
| Purchases of PTA | 310,838 | 405,840 | 292,216 | 285,850 |
| | Value (\$1,000) | | | |
| Purchases of MEG | 28,417 | 45,561 | 30,294 | 35,445 |
| Purchases of PTA | 93,924 | 149,369 | 101,518 | 118,095 |
| | Unit value (per pound) | | | |
| Purchases of MEG | \$0.25 | \$0.30 | \$0.28 | \$0.33 |
| Purchases of PTA | 0.30 | 0.37 | 0.35 | 0.41 |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | |

A variance analysis for certain PSF is presented in table III-11. The information for this variance analysis is derived from table III-8. The variance analysis provides an assessment of changes in profitability as it relates to changes in pricing, cost, and volume. The analysis shows that the improvement in operating income from 2000 to 2004, as well as between the interim periods, is primarily attributable to the higher favorable price variance.

⁵⁰ ***.

Table III-11
Certain PSF: Variance analysis on operations of U.S. producers, 2000-04, January-September 2004, and January-September 2005

| Item | Between fiscal years | | | | | January-September |
|---|----------------------|----------|----------|----------|----------|-------------------|
| | 2000-04 ¹ | 2000-01 | 2001-02 | 2002-03 | 2003-04 | 2004-05 |
| Value (\$1,000) | | | | | | |
| Total net sales: | | | | | | |
| Price variance | 27,760 | 3,784 | (10,288) | 5,441 | 27,494 | 62,758 |
| Volume variance | 114,347 | (14,893) | 74,261 | 548 | 55,760 | (11,511) |
| Total net sales variance | 142,107 | (11,109) | 63,973 | 5,989 | 83,254 | 51,247 |
| Cost of sales: | | | | | | |
| Cost variance | (12,018) | 2,605 | 32,180 | (12,061) | (40,309) | (39,647) |
| Volume variance | (121,924) | 15,880 | (76,908) | (525) | (54,804) | 11,726 |
| Total cost variance | (133,942) | 18,485 | (44,728) | (12,586) | (95,113) | (27,921) |
| Gross profit variance | 8,165 | 7,376 | 19,245 | (6,597) | (11,859) | 23,326 |
| SG&A expenses: | | | | | | |
| Expense variance | 3,625 | (4,588) | 3,372 | (113) | 7,095 | (477) |
| Volume variance | (4,633) | 603 | (4,527) | (28) | (2,822) | 290 |
| Total SG&A variance | (1,008) | (3,985) | (1,155) | (141) | 4,273 | (187) |
| Operating income variance | 7,157 | 3,391 | 18,090 | (6,738) | (7,586) | 23,139 |
| Summarized as: | | | | | | |
| Price variance | 27,760 | 3,784 | (10,288) | 5,441 | 27,494 | 62,758 |
| Net cost/expense variance | (8,393) | (1,983) | 35,552 | (12,174) | (33,214) | (40,123) |
| Net volume variance | (12,210) | 1,590 | (7,174) | (6) | (1,866) | 505 |
| 1 ***. | | | | | | |
| Note.-- Unfavorable variances are shown in parentheses; all others are favorable. Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | |

Capital Expenditures and Research and Development Expenses

The responding firms' aggregate data on capital expenditures and research and development ("R&D") expenses are shown in table III-12. Aggregate capital expenditures declined from 2000 to 2004 and between the interim periods, while aggregate R&D expenses irregularly increased from 2000 to 2004 and declined between the interim periods. *** accounted for the majority of reported capital expenditures and R&D expenses, and reported that its data primarily reflect *** and ***.⁵¹

⁵¹ E-mail from ***.

Table III-12
Certain PSF: Capital expenditures and research and development expenses of U.S. producers, 2000-04, January-September 2004, and January-September 2005

| Item | Fiscal year | | | | | January-September | |
|--|------------------------|-------|-------|-------|-------|-------------------|------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| | Value (\$1,000) | | | | | | |
| Capital expenditures | 8,780 | 4,172 | 3,581 | 1,920 | 1,059 | 817 | 777 |
| R&D expenses | 1,223 | 1,216 | 1,499 | 1,619 | 1,530 | 1,121 | 884 |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | | |

Assets and Return on Investment

The Commission's questionnaire requested data on assets used in the production, warehousing, and sale of certain PSF to compute return on investment ("ROI"). Although ROI can be computed in many different ways, a commonly used method is income divided by total assets. Therefore, ROI is calculated as operating income divided by total assets used in the production, warehousing, and sale of certain PSF.

Data on the U.S. certain PSF producers' total assets and their ROI are presented in table III-13. The total assets utilized in the production, warehousing, and sale of certain PSF increased irregularly from \$192 million in 2000 to \$205 million in 2004. The ROI improved irregularly from a negative 12.7 percent in 2000 to a negative 8.4 percent in 2004. The trend in ROI was similar to the trend in the operating income or (loss) margin during the reporting period.

Table III-13**Certain PSF: Value of assets and return on investment of U.S. producers, 2000-04**

| Item | Fiscal year | | | | |
|--|------------------------|----------|---------|---------|----------|
| | 2000 | 2001 | 2002 | 2003 | 2004 |
| Value of assets: | Value (\$1,000) | | | | |
| Current assets: | | | | | |
| Cash and equivalents | 40 | 90 | 105 | 91 | 158 |
| Accounts receivable, net | 24,024 | 24,138 | 29,622 | 27,824 | 44,342 |
| Inventories (finished goods) | 52,215 | 39,510 | 30,470 | 27,522 | 33,907 |
| Inventories (raw materials and work in process) | 4,084 | 2,081 | 6,134 | 8,155 | 14,481 |
| Other | 3,645 | 2,245 | 1,876 | 1,969 | 1,987 |
| Total current assets | 84,008 | 68,064 | 68,207 | 65,561 | 94,875 |
| Property, plant and equipment: | | | | | |
| Book value ¹ | 107,948 | 122,840 | 152,537 | 121,960 | 109,695 |
| Other non-current assets | 33 | 27 | 31 | 28 | 3 |
| Total assets | 191,989 | 190,931 | 220,775 | 187,549 | 204,573 |
| Operating income or (loss) ² | (24,344) | (20,953) | (2,863) | (9,547) | (17,190) |
| | Percent | | | | |
| Return on investment ² | (12.7) | (11.0) | (1.3) | (5.1) | (8.4) |
| ¹ *** only reported book value data for property, plant, and equipment; therefore, original cost and accumulated depreciation are not presented in this table. ² ***. | | | | | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | |

PART IV: U.S. IMPORTS AND THE FOREIGN INDUSTRY

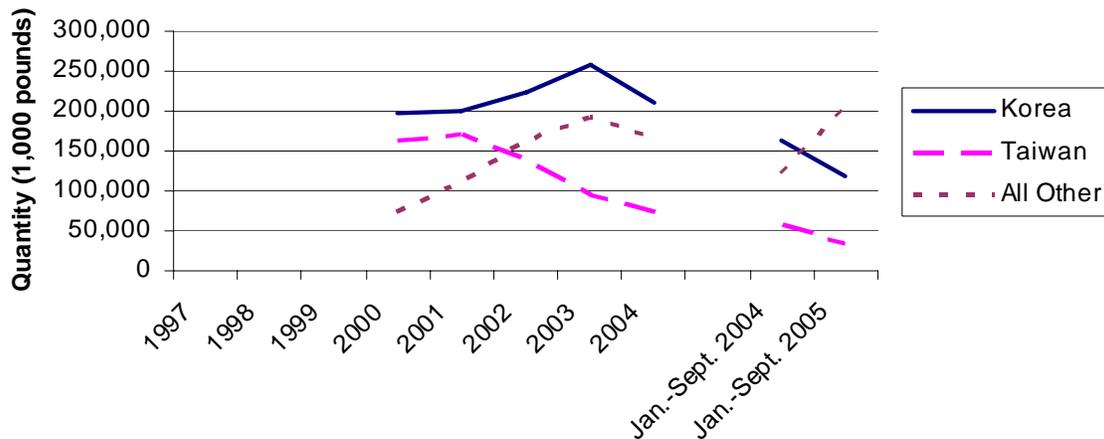
U.S. IMPORTS

The Commission sent questionnaires to 35 firms believed to have imported certain PSF between January 2000 and September 2005, and received usable data from 17 of the firms.¹ Based on official Commerce statistics for imports of certain PSF, firms responding to the Commission's questionnaire accounted for 96.5 percent of subject imports from Korea, and 86.5 percent of subject imports from Taiwan in 2004. However, because coverage was lower for other years during the period of review, import data in this report are derived from official Commerce statistics for certain PSF.

No importers reported entering or withdrawing certain PSF from foreign trade zones or bonded warehouses. In addition, no importers reported imports of certain PSF under the temporary importation under bond program.

Figure IV-1 shows trends in U.S. imports of certain PSF from Korea and Taiwan since 1997. Imports of certain PSF from each of the subject sources and from all nonsubject countries for the periods 2000-04, January-September 2004, and January-September 2005 appear in table IV-1. Overall, the total quantity of certain PSF imports from all sources increased from 2000 to 2004 by 2.9 percent while the composition of these imports changed noticeably over the period. After an initial increase of 2.2 percent in the combined quantity of imports from the subject sources between 2000 and 2001, the combined quantity of imports from subject sources declined yearly between 2001 and 2004, by nearly 24.0 percent overall. Nonsubject imports accounted for an increasing portion of total U.S. imports during the period examined. Among the largest nonsubject import sources, imports from Mexico decreased by 60.2 percent as imports from China, Thailand, and India increased sharply, resulting in an overall increase of

Figure IV-1
Certain PSF: U.S. imports, by sources, 1997-2004, January-September 2004, and January-September 2005



Source: *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, confidential staff report (INV-X-082), table IV-1 for 1997-99 and official Commerce statistics for 2000-04 and January-September 2005.

¹ Two of the firms reported that they did not import certain PSF during the period for which data were collected; one firm did not provide complete data; and 16 firms did not respond to the Commission's questionnaires.

127.8 percent in the quantity of nonsubject imports from 2000-04. Between 2000 and 2004, nonsubject imports rose from 16.7 percent to 37.1 percent of total U.S. imports. In January-September 2005, this share increased to 56.8 percent.

Table IV-1
Certain PSF: U.S. imports, by sources, 2000-04, January-September 2004, and January-September 2005

| Source | Calendar year | | | | | January-September | |
|--|---------------|---------|---------|---------|---------|-------------------|-------------------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 ¹ |
| Quantity (1,000 pounds) | | | | | | | |
| Korea | 198,608 | 201,077 | 222,594 | 258,351 | 209,856 | 163,907 | 118,501 |
| Taiwan | 164,473 | 170,054 | 140,271 | 94,793 | 72,376 | 56,937 | 35,063 |
| Subtotal | 363,082 | 371,131 | 362,865 | 353,144 | 282,232 | 220,844 | 153,564 |
| Other sources: | | | | | | | |
| China | 545 | 1,007 | 44,934 | 74,606 | 71,280 | 50,329 | 120,785 |
| Thailand | 7,120 | 26,301 | 40,059 | 30,744 | 41,848 | 29,300 | 28,727 |
| Mexico | 29,756 | 47,731 | 32,974 | 22,074 | 11,854 | 8,640 | 9,701 |
| India | 3,829 | 1,685 | 5,813 | 11,165 | 16,147 | 12,014 | 14,222 |
| All other | 31,752 | 34,017 | 39,151 | 52,888 | 25,206 | 20,099 | 28,061 |
| Subtotal | 73,002 | 110,740 | 162,932 | 191,476 | 166,335 | 120,382 | 201,497 |
| Total | 436,084 | 481,872 | 525,797 | 544,620 | 448,568 | 341,225 | 355,061 |
| Value (1,000 dollars)¹ | | | | | | | |
| Korea | 85,298 | 82,179 | 84,563 | 107,640 | 100,920 | 76,663 | 69,926 |
| Taiwan | 87,533 | 83,796 | 67,350 | 48,612 | 43,262 | 32,801 | 24,296 |
| Subtotal | 172,831 | 165,975 | 151,914 | 156,252 | 144,181 | 109,464 | 94,222 |
| Other sources: | | | | | | | |
| China | 295 | 468 | 18,774 | 32,465 | 36,211 | 24,848 | 69,796 |
| Thailand | 3,658 | 13,546 | 20,243 | 17,027 | 26,694 | 18,109 | 20,916 |
| Mexico | 16,583 | 29,274 | 21,288 | 16,097 | 10,644 | 7,697 | 9,467 |
| India | 1,969 | 826 | 2,664 | 4,570 | 7,654 | 5,516 | 8,349 |
| All other | 19,164 | 20,001 | 20,680 | 28,665 | 15,416 | 12,154 | 21,746 |
| Subtotal | 41,669 | 64,114 | 83,649 | 98,823 | 96,618 | 68,324 | 130,273 |
| Total | 214,500 | 230,089 | 235,563 | 255,075 | 240,799 | 177,788 | 224,495 |

Table continued on next page.

Table IV-1--Continued

Certain PSF: U.S. imports, by sources, 2000-04, January-September 2004, and January-September 2005

| Source | Calendar year | | | | | January-September | |
|---|---------------|--------|--------|--------|--------|-------------------|--------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Unit value (per pound)¹ | | | | | | | |
| Korea | \$0.43 | \$0.41 | \$0.38 | \$0.42 | \$0.48 | \$0.47 | \$0.59 |
| Taiwan | 0.53 | 0.49 | 0.48 | 0.51 | 0.60 | 0.58 | 0.69 |
| Average | 0.48 | 0.45 | 0.42 | 0.44 | 0.51 | 0.50 | 0.61 |
| Other sources: | | | | | | | |
| China | 0.54 | 0.46 | 0.42 | 0.44 | 0.51 | 0.49 | 0.58 |
| Thailand | 0.51 | 0.52 | 0.51 | 0.55 | 0.64 | 0.62 | 0.73 |
| Mexico | 0.56 | 0.61 | 0.65 | 0.73 | 0.90 | 0.89 | 0.98 |
| India | 0.51 | 0.49 | 0.46 | 0.41 | 0.47 | 0.46 | 0.59 |
| All other | 0.60 | 0.59 | 0.53 | 0.54 | 0.61 | 0.60 | 0.77 |
| Average | 0.57 | 0.58 | 0.51 | 0.52 | 0.58 | 0.57 | 0.65 |
| Average | 0.49 | 0.48 | 0.45 | 0.47 | 0.54 | 0.52 | 0.63 |
| Share of quantity (percent) | | | | | | | |
| Korea | 45.5 | 41.7 | 42.3 | 47.4 | 46.8 | 48.0 | 33.4 |
| Taiwan | 37.7 | 35 | 26.7 | 17.4 | 16.1 | 16.7 | 9.9 |
| Subtotal | 83.3 | 77.0 | 69.0 | 64.8 | 62.9 | 64.7 | 43.2 |
| Other sources: | | | | | | | |
| China | 0.1 | 0.2 | 8.5 | 13.7 | 15.9 | 14.7 | 34.0 |
| Thailand | 1.6 | 5.5 | 7.6 | 5.6 | 9.3 | 8.6 | 8.1 |
| Mexico | 6.8 | 9.9 | 6.3 | 4.1 | 2.6 | 2.5 | 2.7 |
| India | 0.9 | 0.3 | 1.1 | 2.0 | 3.6 | 3.5 | 4.0 |
| All other | 7.3 | 7.1 | 7.4 | 9.7 | 5.6 | 5.9 | 7.9 |
| Subtotal | 16.7 | 23.0 | 31.0 | 35.2 | 37.1 | 35.3 | 56.8 |
| Total | 100.0 | 100.00 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Table continued on next page.

Table IV-1--Continued

Certain PSF: U.S. imports, by sources, 2000-04, January-September 2004, and January-September 2005

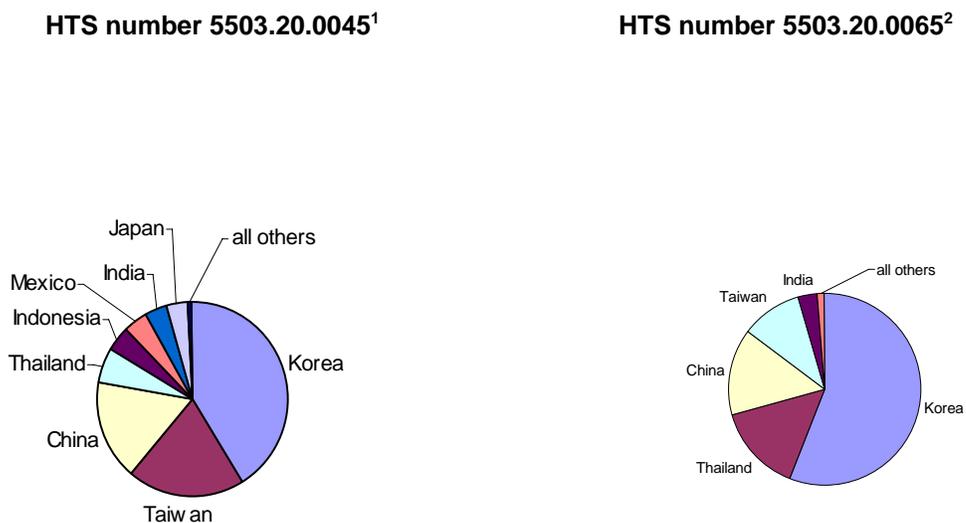
| Source | Calendar year | | | | | January-September | |
|--|---------------|--------|-------|-------|-------|-------------------|-------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Share of value (percent) | | | | | | | |
| Korea | 39.8 | 35.7 | 35.9 | 42.2 | 41.9 | 43.1 | 31.1 |
| Taiwan | 40.8 | 36.4 | 28.6 | 19.1 | 18.0 | 18.4 | 10.8 |
| Subtotal | 80.6 | 72.1 | 64.5 | 61.3 | 59.9 | 61.6 | 42.0 |
| Other sources: | | | | | | | |
| China | 0.1 | 0.2 | 8.0 | 12.7 | 15.0 | 14.0 | 31.1 |
| Thailand | 1.7 | 5.9 | 8.6 | 6.7 | 11.1 | 10.2 | 9.3 |
| Mexico | 7.7 | 12.7 | 9.0 | 6.3 | 4.4 | 4.3 | 4.2 |
| India | 0.9 | 0.4 | 1.1 | 1.8 | 3.2 | 3.1 | 3.7 |
| All other | 8.9 | 8.7 | 8.8 | 11.2 | 6.4 | 6.8 | 9.7 |
| Subtotal | 19.4 | 27.9 | 35.5 | 38.7 | 40.1 | 38.4 | 58.0 |
| Total | 100.0 | 100.00 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Ratio of import quantity to U.S. production (percent) | | | | | | | |
| Korea | 44.0 | 48.7 | 39.5 | 48.7 | 31.5 | 34.0 | 25.6 |
| Taiwan | 36.4 | 41.2 | 24.9 | 17.9 | 10.9 | 11.8 | 7.6 |
| Subtotal | 80.4 | 89.9 | 64.4 | 66.5 | 42.4 | 45.8 | 33.2 |
| Other sources: | | | | | | | |
| China | 0.1 | 0.2 | 8.0 | 14.1 | 10.7 | 10.4 | 26.1 |
| Thailand | 1.6 | 6.4 | 7.1 | 5.8 | 6.3 | 6.1 | 6.2 |
| Mexico | 6.6 | 11.6 | 5.9 | 4.2 | 1.8 | 1.8 | 2.1 |
| India | 0.8 | 0.4 | 1.0 | 2.1 | 2.4 | 2.5 | 3.1 |
| All other | 7.0 | 8.2 | 7.0 | 10.0 | 3.8 | 4.2 | 6.1 |
| Subtotal | 16.2 | 26.8 | 28.9 | 36.1 | 25.0 | 24.9 | 43.5 |
| Total | 96.6 | 116.7 | 93.4 | 102.6 | 67.4 | 70.7 | 76.7 |
| ¹ Landed, duty-paid. Note- - Because of rounding, figures may not add to the totals shown. Source: Compiled from official Commerce statistics. In July 2001, the statistical reporting numbers under subheading 5503.20.00 of the HTS were reassigned as follows: 5503.20.0020 became 5503.20.0025; 5503.20.0040 became 5503.200.0045; 5503.20.0060 became 5503.20.0065; and low-melt PSF was assigned its own unique statistical reporting number, 5503.20.0015. The data in the table are for HTS statistical reporting numbers 5503.20.0040, 5503.20.0045, 5503.20.0060, and 5503.20.0065. | | | | | | | |

The average unit values of U.S. imports of polyester staple fiber generally declined between 2000 and 2002 and increased between 2002 and 2004, and between the interim periods, for both subject and nonsubject sources. In each year of the period of review, the average unit value for imports from nonsubject countries exceeded the average unit value for subject sources. In addition, the average unit value for imports from Taiwan exceeded the average unit value for imports from Korea in each year from 2000 through 2004 and in the interim periods.

The ratio of U.S. imports of certain PSF from the two subject sources to U.S. production of certain PSF fluctuated broadly during the period for which data were collected in these reviews. The ratio of subject imports to U.S. production peaked in 2001 at 89.9 percent, then decreased steadily to 42.4 percent in 2004 and a period low of 33.2 percent in interim 2005. Overall, the ratio of subject source imports to U.S. production decreased from 2000 to 2004 by 38.0 percentage points. In contrast, the ratio of nonsubject imports to U.S. production increased irregularly from 16.2 percent in 2000 to 25.0 percent in 2004.

The Commission asked U.S. importers to list the nonsubject countries from which they imported certain PSF during the period examined. The responses of U.S. importers mirror official Commerce statistics for 2004 imports as illustrated in figure IV-2. In addition to subject sources, U.S. importers reported importing certain PSF from the following nonsubject sources: four from China, three each from Indonesia, Thailand and Mexico, and two from India.

Figure IV-2
Certain PSF: U.S. imports in 2004, share of quantity (in percent) by source, for HTS numbers 5503.20.0045 and 5503.20.0065



¹ HTS number 5503.20.0045 covers imports of polyester measuring 3.3 decitex or more but less than 13.2 decitex.

² HTS number 5503.20.0065 covers imports of polyester measuring 13.2 decitex or more.

Source: Official Commerce statistics.

Several importers reported arrangements for the importation of certain PSF from Korea and Taiwan for delivery after September 30, 2005. Data relating to U.S. importers' orders for importation of certain PSF from the subject sources for delivery after the period of these reviews are presented in table IV-2.

Table IV-2
Certain PSF: U.S. importers' orders for importations from Korea and Taiwan for delivery after September 30, 2005

* * * * *

In total, U.S. importers reported having orders in place for the importation of nearly *** pounds of certain PSF from subject sources for delivery after September 30, 2005. Specifically, U.S. importers have orders in place for the importation of more than *** pounds of certain PSF from Korea and for nearly *** pounds from Taiwan. These figures are likely understated because two importers reported having monthly orders but did not indicate how many months they have placed orders for. An estimate of one month's order quantity was included in the table for each of these two importers. In addition, importer *** has arranged for continuous monthly import transactions for delivery after September 30, 2005 but did not indicate the sources and quantities involved.²

The Commission asked U.S. importers to report any changes in the character of their operations or organization relating to the importation of certain PSF since May 25, 2000 (the date on which the antidumping duty orders under review became effective). Five U.S. importers reported operational and organizational changes during the period examined. U.S. importer *** described its creation from assets of *** between April and July 2001 and the merger of *** under one company, ***, in November 2004.³ *** responded that it has experienced a ***-percent capacity reduction, relocation and/or closure at its *** plant and a ***-percent reduction at its *** plant.⁴ *** stated that because of the antidumping duties, the company changed from importation to production of certain PSF in ***.⁵ *** reported that in September 1999, it became *** owner of a domestic producer of certain PSF, ***. Production started in May 2000 of *** that was not available in the United States to fulfill purchasers' needs, according to ***. The company reported *** throughout the period of review, and that it added an *** in the summer of 2004, and a *** in September 2004.⁶ *** reported that the December 2004 bankruptcy of one of its Korean suppliers reduced available fiber supply. Additionally, in June of 2004 a west coast port strike caused delays in *** fiber shipments, resulting in lower inventories for the company.⁷

The Commission asked U.S. importers to report any anticipated changes in the character of their operations or organization related to the importation of certain PSF. Only two U.S. importers reported anticipating such changes. *** stated that the availability of imports from Korea and Taiwan has become more limited because prices for certain PSF exports from Korea and Taiwan are increasing, and those exports are being allocated to other markets such as China, Korea, and Europe.⁸ *** stated that if the antidumping duty orders under review remain in place, the company will add *** pounds *** of additional capacity to its plant in *** and that will result in the addition of approximately *** new employees.⁹

² *** importer questionnaire response, section II-5.

³ *** importer questionnaire response, sections I-3 and II-2.

⁴ *** importer questionnaire response, section II-2.

⁵ *** importer questionnaire response, sections II-2 and II-6.

⁶ *** importer questionnaire response, section II-2.

⁷ *** importer questionnaire response, section II-2.

⁸ *** importer questionnaire response, section II-3.

⁹ *** importer questionnaire response, section II-3.

U.S. IMPORTERS' INVENTORIES

Inventories of imports from subject sources decreased irregularly between 2000 and 2004 while inventories of imports from nonsubject sources increased irregularly, nearly quadrupling by 2004. Data relating to U.S. importers' inventories of certain PSF are presented in table IV-3. Relative to import quantity, inventories of imports from subject sources were highest in 2000 at 24.4 percent and lowest in 2001 and 2002 at 16.2 percent. Similarly, as a ratio to U.S. shipments of imports, inventories of imports from subject sources in this period were highest in 2000 and 2003 at 25.2 percent and lowest in 2001 and 2002 at 15.9 and 18.7 percent, respectively. Over the period, inventories of imports from subject sources fluctuated widely from a low of 37.8 million pounds in 2001 to a high of 57.6 million pounds in 2003.

Table IV-3
Certain PSF: U.S. importers' end-of-period inventories of imports, by source, 2000-04, January-September 2004, and January-September 2005

| Item | Calendar year | | | | | January-September | |
|--|---------------|--------|--------|--------|--------|-------------------|--------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Imports from Korea: | | | | | | | |
| Inventories (1,000 pounds) | 29,948 | 23,402 | 31,326 | 43,548 | 41,323 | 46,017 | 31,694 |
| Ratio to imports (percent) | 23.6 | 16.2 | 18.3 | 23.4 | 20.4 | 22.0 | 20.6 |
| Ratio to U.S. shipments of imports (percent) | 22.3 | 17.0 | 20.5 | 26.0 | 21.3 | 22.6 | 20.3 |
| Imports from Taiwan: | | | | | | | |
| Inventories (1,000 pounds) | 27,699 | 14,397 | 14,978 | 14,102 | 14,249 | 17,196 | 13,037 |
| Ratio to imports (percent) | 25.3 | 16.2 | 13.1 | 19.4 | 22.7 | 29.9 | 27.6 |
| Ratio to U.S. shipments of imports (percent) | 29.2 | 14.4 | 15.9 | 23.2 | 26.5 | 30.4 | 28.3 |
| Imports from subject sources: | | | | | | | |
| Inventories (1,000 pounds) | 57,647 | 37,799 | 46,304 | 57,650 | 55,572 | 63,213 | 44,731 |
| Ratio to imports (percent) | 24.4 | 16.2 | 16.2 | 22.2 | 21.0 | 23.7 | 22.3 |
| Ratio to U.S. shipments of imports (percent) | 25.2 | 15.9 | 18.7 | 25.2 | 22.4 | 24.3 | 22.1 |
| Imports from all other sources: | | | | | | | |
| Inventories (1,000 pounds) | 4,265 | 3,462 | 12,594 | 10,329 | 16,944 | 23,216 | 34,132 |
| Ratio to imports (percent) | 734.6 | 195.7 | 79.9 | 69.6 | 52.2 | 68.4 | 28.9 |
| Ratio to U.S. shipments of imports (percent) | 1067.1 | 226.2 | 145.9 | 86.7 | 64.2 | 76.5 | 39.7 |
| Imports from all sources: | | | | | | | |
| Inventories (1,000 pounds) | 61,912 | 41,261 | 58,898 | 67,979 | 72,516 | 86,429 | 78,863 |
| Ratio to imports (percent) | 1.7 | 1.4 | 3.7 | 3.0 | 4.6 | 6.5 | 9.6 |
| Ratio to U.S. shipments of imports (percent) | 1.8 | 1.4 | 4.5 | 3.5 | 5.1 | 6.8 | 10.8 |
| Note: Interim period ratios are based on annualized imports and shipments. | | | | | | | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | | |

CUMULATION CONSIDERATIONS

In assessing whether subject imports are likely to compete with each other and with the domestic like product with respect to cumulation, the Commission has generally considered the following four factors: (1) the degree of fungibility, including specific customer requirements and other quality-related questions; (2) presence of sales or offers to sell in the same geographical markets; (3) common or similar channels of distribution; and (4) simultaneous presence in the market.¹⁰ Issues concerning fungibility and channels of distribution are addressed in Part II of this report. Geographical markets and simultaneous presence in the market are discussed below.

Based on official Commerce statistics, U.S. imports of certain polyester staple fiber were dispersed geographically throughout the United States during the period of review. Primary U.S. customs districts of entry for imports from Korea were (in order of quantity) Savannah, GA; Los Angeles, CA; Charlotte, NC; New York, NY; Charleston, SC; Dallas-Fort Worth, TX; and New Orleans, LA. The primary U.S. Customs districts of entry for U.S. imports from Taiwan during this period largely overlapped those for imports from Korea and were (in order of quantity) Los Angeles, CA; Savannah, GA; Charleston, SC; Seattle, WA; New Orleans, LA; New York, NY; Charlotte, NC; and Dallas-Fort Worth, TX.¹¹

Data on importer imports from Korea and Taiwan by product group are presented in table IV-4. U.S. importer imports from Korea of all three specified types of certain PSF (virgin, conjugate, and regenerated) increased overall by 58.8 percent from 2000-04. At the same time, importer imports of these three types of certain PSF from Taiwan decreased overall by 41.9 percent. During the period of these reviews the overwhelming majority of importer imports were of regenerated PSF from Korea and conjugate PSF from Taiwan. Companies responding to the Commission's foreign producer questionnaire in these reviews ***. However, importers reporting imports from Korea and Taiwan of ***.¹² In general, the average unit values for importer's imports from Taiwan were higher than those from Korea. Average unit values for imports from both sources increased overall from 2000-04 by 11.1 percent for Korea and 22.2 percent for Taiwan.

Certain PSF from Korea and Taiwan was imported into the United States in each quarter during the period examined. In addition, certain PSF from all other sources was also imported into the United States in each quarter during the period examined.¹³ Data regarding quarterly U.S. imports of certain PSF are presented in table IV-5. According to official Commerce statistics, certain PSF from Korea and Taiwan and from all other sources, was imported into the United States during each month from January 2000 through September 2005.

¹⁰ In the original investigations, the Commission found it appropriate to cumulate U.S. imports from the two subject sources. *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. 14. The domestic interested parties have argued that the record in these reviews strongly supports cumulating imports from Korea and Taiwan. Domestic interested parties' prehearing brief, pp. 8-14, and hearing transcript, pp. 42-43 (Cannon). The respondent interested parties have not argued against the cumulation of subject imports. Consolidated and Stein's posthearing brief, p. 88.

¹¹ Compiled from official Commerce statistics, HTS numbers 5503.20.0040, 5503.20.0060, 5503.20.0045, and 5503.20.0065.

¹² Potential sources of the *** certain PSF imports reported in table IV-4 may include the following: from Korea, ***; and from Taiwan, ***. Compiled from proprietary Customs data.

¹³ Compiled from official Commerce statistics.

Table IV-4
Certain PSF: U.S. importers' imports from Korea and Taiwan, by product group, 2000-04, January-September 2004, and January-September 2005

| Item | Calendar year | | | | | January-September | |
|---|---------------|---------|---------|---------|---------|-------------------|---------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Quantity (1,000 pounds) | | | | | | | |
| U.S. imports from Korea: | | | | | | | |
| Virgin polyester staple ¹ | *** | *** | *** | *** | *** | *** | *** |
| Conjugate polyester staple ² | *** | *** | *** | *** | *** | *** | *** |
| Regenerated polyester staple ³ | 80,177 | 92,854 | 113,994 | 129,746 | 117,691 | 90,592 | 62,675 |
| Total | 123,609 | 138,515 | 169,029 | 185,408 | 196,294 | 151,234 | 114,900 |
| U.S. imports from Taiwan: | | | | | | | |
| Virgin polyester staple ¹ | *** | *** | *** | *** | *** | *** | *** |
| Conjugate polyester staple ² | 69,680 | 71,682 | 75,706 | 38,090 | 48,298 | 31,987 | 26,892 |
| Regenerated polyester staple ³ | *** | *** | *** | *** | *** | *** | *** |
| Total | 103,642 | 113,639 | 109,604 | 65,845 | 60,191 | 42,731 | 33,989 |
| Value (1,000 dollars) | | | | | | | |
| U.S. imports from Korea: | | | | | | | |
| Virgin polyester staple ¹ | *** | *** | *** | *** | *** | *** | *** |
| Conjugate polyester staple ² | *** | *** | *** | *** | *** | *** | *** |
| Regenerated polyester staple ³ | 29,328 | 32,738 | 39,416 | 47,597 | 53,012 | 40,644 | 31,476 |
| Total | 50,154 | 56,941 | 64,487 | 73,863 | 93,513 | 71,294 | 65,838 |
| U.S. imports from Taiwan: | | | | | | | |
| Virgin polyester staple ¹ | *** | *** | *** | *** | *** | *** | *** |
| Conjugate polyester staple ² | 42,262 | 42,286 | 36,899 | 20,176 | 27,501 | 17,752 | 17,489 |
| Regenerated polyester staple ³ | *** | *** | *** | *** | *** | *** | *** |
| Total | 52,932 | 55,562 | 50,415 | 32,465 | 33,635 | 23,208 | 21,667 |

Table continued on next page.

Table IV-4--Continued

Certain PSF: U.S. importers' imports from Korea and Taiwan, by product group, 2000-04, January-September 2004, and January-September 2005

| Item | Calendar year | | | | | January-September | |
|--|---------------|-------|-------|-------|-------|-------------------|-------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2004 | 2005 |
| Unit value (per pound) | | | | | | | |
| U.S. imports from Korea: | | | | | | | |
| Virgin polyester staple ¹ | \$*** | \$*** | \$*** | \$*** | \$*** | \$*** | \$*** |
| Conjugate polyester staple ² | *** | *** | *** | *** | *** | *** | *** |
| Regenerated polyester staple ³ | 0.37 | 0.35 | 0.35 | 0.37 | 0.45 | 0.45 | 0.50 |
| Average | 0.45 | 0.50 | 0.43 | 0.45 | 0.50 | 0.48 | 0.60 |
| U.S. imports from Taiwan: | | | | | | | |
| Virgin polyester staple ¹ | *** | *** | *** | *** | *** | *** | *** |
| Conjugate polyester staple ² | 0.61 | 0.59 | 0.49 | 0.53 | 0.57 | 0.55 | 0.65 |
| Regenerated polyester staple ³ | *** | *** | *** | *** | *** | *** | *** |
| Average | 0.45 | 0.44 | 0.43 | 0.47 | 0.55 | 0.53 | 0.60 |
| Share of total quantity (percent) | | | | | | | |
| U.S. imports from Korea: | | | | | | | |
| Virgin polyester staple ¹ | *** | *** | *** | *** | *** | *** | *** |
| Conjugate polyester staple ² | *** | *** | *** | *** | *** | *** | *** |
| Regenerated polyester staple ³ | 64.9 | 67.0 | 67.4 | 70.0 | 60.0 | 59.3 | 54.5 |
| U.S. imports from Taiwan: | | | | | | | |
| Virgin polyester staple ¹ | *** | *** | *** | *** | *** | *** | *** |
| Conjugate polyester staple ² | 78.0 | 71.6 | 69.1 | 57.8 | 80.2 | 74.9 | 79.1 |
| Regenerated polyester staple ³ | *** | *** | *** | *** | *** | *** | *** |
| ¹ "Virgin polyester staple fiber," as used here, is single component, single crimp PSF that does not contain regenerated fibers. Virgin fibers are made directly from raw materials and are characterized by the purity of the whiteness of the fibers. ² "Conjugate polyester staple fiber," as used here, is spiral/double crimp PSF made from two types of fiber (also known as bi-component fiber). ³ "Regenerated polyester staple fiber," as used here, does not contain any virgin fibers. It is made from recycled PET stock. Blended virgin and regenerated fiber products do not fall within this definition. | | | | | | | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | | |

Table IV-5
Certain PSF: U.S. imports, quarterly, by sources, 2000-05
Quantity (1,000 pounds)

| Source | Jan.-Mar. | Apr.-June | July-Sept. | Oct.-Dec. | Total |
|---|-----------|-----------|------------|-----------|---------|
| 2000: | | | | | |
| Korea | 50,781 | 53,467 | 43,104 | 51,257 | 198,608 |
| Taiwan | 46,764 | 45,418 | 33,552 | 38,740 | 164,473 |
| All other | 25,140 | 9,436 | 88 | 36,415 | 73,002 |
| 2001: | | | | | |
| Korea | 41,773 | 46,411 | 51,951 | 60,943 | 201,077 |
| Taiwan | 38,130 | 43,453 | 38,976 | 49,495 | 170,054 |
| All other | 25,921 | 27,440 | 28,516 | 28,863 | 110,740 |
| 2002: | | | | | |
| Korea | 46,006 | 65,871 | 57,886 | 52,831 | 222,594 |
| Taiwan | 40,609 | 41,491 | 34,531 | 23,641 | 140,271 |
| All other | 30,430 | 45,404 | 42,163 | 44,935 | 162,932 |
| 2003: | | | | | |
| Korea | 61,198 | 79,567 | 55,946 | 61,640 | 258,351 |
| Taiwan | 27,622 | 29,155 | 17,161 | 20,854 | 94,793 |
| All other | 53,048 | 57,386 | 45,039 | 36,003 | 191,476 |
| 2004: | | | | | |
| Korea | 63,466 | 52,596 | 47,845 | 45,949 | 209,856 |
| Taiwan | 21,903 | 19,910 | 15,124 | 15,440 | 72,376 |
| All other | 33,405 | 43,635 | 43,342 | 45,954 | 166,335 |
| 2005: | | | | | |
| Korea | 40,848 | 40,810 | 36,843 | 46,690 | 165,191 |
| Taiwan | 11,206 | 9,472 | 14,385 | 14,273 | 49,336 |
| All other | 61,203 | 74,438 | 65,856 | 72,521 | 274,019 |
| Source: Compiled from official Commerce statistics. | | | | | |

THE INDUSTRY IN KOREA

During the original investigations, the Commission identified five firms believed to produce the subject product in Korea.¹⁴ Additionally, at the time of the original investigations, a number of small, family-owned businesses were believed to account for the bulk of regenerated fiber produced in Korea but were not identified.¹⁵ In November 2000 Samyang and SK Chemicals (Korea SK Group) formed a joint venture, Huvis Corp. (“Huvis”).¹⁶ Samyang and SK Chemicals no longer produce the subject product.¹⁷ In their joint response to the Commission’s notice of institution in the current five-year reviews, the domestic interested parties identified four firms believed to currently produce the subject merchandise in Korea and noted the existence of small firms producing regenerated PSF that have not been identified.¹⁸ The Commission issued questionnaires to each of these known companies as well as to ten potential producers/exporters identified through further research.¹⁹

Two Korean producers, Huvis and Seahan Industries, Inc. (“Seahan”), provided complete questionnaire responses. *** responded with a letter stating that the company had stopped production of PSF and had no plans to produce PSF in the future.²⁰ According to testimony given at the hearing held in these reviews, several Korean producers of certain PSF, specifically regenerated PSF, have gone out of business due to bankruptcy or have moved their operations out of Korea, including East Young, Geum Poong, and Kohap.²¹ *** responded with a letter stating that the company found the financial and personnel burden of responding to be too great but supported revocation of the antidumping duty orders. According to that letter, the company employs *** and *** polyester fiber.²² Accordingly, the data on Korea’s polyester staple fiber capacity, production, inventories, and shipments presented in table IV-6 are for Huvis and Seahan.

Table IV-6

Certain PSF: Korea’s capacity, production, inventories, and shipments, 2000-04, January-September 2004, and January-September 2005

* * * * *

During 2000-04, reported capacity to produce certain PSF in Korea increased by *** percent while production increased by nearly *** percent. The large jump in capacity and production between 2000 and 2001 can be attributed entirely to ***. Because the company was formed in *** only *** of data for *** are included in year 2000 while full year data is included for all periods from 2001 forward and this reporting *** in capacity and production. During 2001-04 and the interim January-September

¹⁴ Daehan Synthetic Fiber Co., Ltd.; Kohap, Ltd.; Seahan Industries, Inc.; Samyang Co.; and SK Chemicals. *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. VII-1.

¹⁵ Ibid, p. VII-2.

¹⁶ *Company Introduction*, Huvis, found at <http://www.huvis.com/en/english/about/>, retrieved September 27, 2005.

¹⁷ Joint response of DAK Fibers, LLC; Invista S.a.r.L; and Wellman to the notice of institution, May 23, 2005, p. 14.

¹⁸ The Korean producers are Daehan, Huvis, Kohap, and Seahan. Ibid., pp. 14-16.

¹⁹ Dae Yang Industrial Co., Ltd.; Dae Sung; Dong Il Hwa Seung Co., Ltd.; Dong Woo Industry Co. Ltd.; Geum Poong Corp.; KP Chemical Corp.; Kaon Back Co., Ltd.; Mijung Ind. Co., Ltd.; SamYoung Synthetics Co., Ltd.; and Se-Ma Industrial.

²⁰ Letter from ***, November 14, 2005.

²¹ Hearing transcript, p. 224 (Kunik), and p. 312 (Stein).

²² Letter from ***, November 5, 2005.

periods, capacity remained unchanged. Production in January-September 2005 was *** percent lower than production in January-September 2004. Capacity utilization increased between 2000 and 2004 by *** percentage points and was *** percentage points lower in January-September 2005 than in January-September 2004.

In response to the Commission's question on changes in capacity, *** responded that it has not experienced changes in its operations since May 25, 2000.²³ *** stated that it has neither expanded nor closed certain PSF production facilities since that date.²⁴ Both producers stated that their production capacities are limited by the design and capacity of their production lines.²⁵ In response to the Commission's question on plans to add, expand, curtail, or shut down production capacity and/or production of certain PSF, both producers responded that they have *** and that they *** changes in the character of their operations or organization in the future.²⁶

The Commission asked foreign producers to describe the production technology and inputs used in the manufacture of certain PSF. Both Huvis and Saehan reported that there have been no major changes in production technology since 2000. Both producers reported using *** in their certain PSF production. ***, however, specified that the company uses both *** in its ***.²⁷ Ethylene Glycol ("EG") and PTA reportedly remain their major production inputs.²⁸

The Commission asked producers in Korea to report inventories maintained by their firms in the United States (excluding inventories held by importers the producers sold to and related U.S. importing firms) since 2000. Both reporting producers responded that *** inventories of certain PSF in the United States since 2000.²⁹

Sales of certain PSF accounted for *** percent and *** percent of total sales by responding producers in Korea in their most recent fiscal year.³⁰ During 2000-04, Korean industry's home market shipments of certain PSF decreased by *** percent. Also during this period, exports increased by *** percent. In 2004, exports accounted for *** percent of the Korean industry's total certain PSF shipments.

After 2001, exports of certain PSF from Korea to the United States and the European Union ("EU") increased irregularly by *** and *** percent, respectively, while exports to Asia decreased by *** percent, particularly towards the end of the period. Exports of certain PSF from Korea to Asia, the EU, and the U.S. were all lower in interim 2005 than in interim 2004 by *** percent, *** percent, and *** percent, respectively. *** stated that it increased sales of certain PSF to *** as a result of the antidumping duty orders.³¹ *** stated that it has increased sales to *** but that these changes were not the result of the antidumping duty orders under review. Rather, *** attributed the growth of these markets to the creation of a *** between *** and *** and increased demand in ***.³²

In 1993, the EU imposed antidumping duties on imports of certain PSF from Korea. The EU revoked those duties on August 4, 1999, although a subsequent investigation was initiated against Korean

²³ *** foreign producer questionnaire response, section II-1.

²⁴ *** foreign producer questionnaire response, section II-1.

²⁵ Huvis's and Saehan's foreign producer questionnaire responses, section II-8.

²⁶ Huvis's and Saehan's foreign producer questionnaire responses, section II-4.

²⁷ Huvis's and Saehan's foreign producer questionnaire responses, section II-5.

²⁸ PTA was first introduced in 1965 as an alternative feedstock to Dimethyl Terephthalate ("DMT") for the production of polyester. By the end of 1999, almost 85 percent of total world production was based on PTA and this input remains the preferred raw material for polyester. *Purified Terephthalic Acid*, Reliance, found at http://www.ril.com/business/fibre/pta/business_fibre_ptahome.html, retrieved November 29, 2005.

²⁹ Huvis's and Saehan's foreign producer questionnaire responses, section II-11.

³⁰ Huvis's and Saehan's foreign producer questionnaire responses, section II-9.

³¹ *** foreign producer questionnaire response, section II-13.

³² *** foreign producer questionnaire response, section II-13.

imports in October 1999 by the EU. Turkey also initiated a similar investigation that year.³³ Also in 1999, India imposed antidumping duties on all imports of PSF from Korea.³⁴

Today, polyester staple fiber from Korea is subject to several antidumping duty orders.³⁵ Argentina imposed antidumping duties on imports of PSF from Korea in November 2002, for a duration of three years. Japan imposed antidumping duty orders on imports of PSF from Korea on July 26, 2002 with tariff rates of 0 to 13.5 percent.³⁶ Twenty-six Korean companies were made subject to these duties. According to the Japanese government's findings, Korea's Samheung Co. was found to be exporting the fiber at a dumping margin of 6 percent. The remaining 25 Korean producers were given an identical 13.5 percent tariff due to a lack of evidence that could be used to identify individual dumping margins. Four firms, Sam Young Synthetics Co., Sung Lim Co., Dae Yang Industrial Co., and Huvis, were found not to have dumped the fiber.³⁷ China imposed antidumping duty orders on imports of PSF from Korea on February 3, 2003, with antidumping duty rates between 2 and 48 percent.³⁸ The EU initiated an investigation of imports of PSF from Korea in December 2003 that resulted in the imposition of antidumping duties of 0.9 to 10.6 percent in March 2005. In 2004, Mexico imposed an antidumping duty rate of 4.8 percent on Korean exports of certain PSF.³⁹ Similarly, Turkey issued an antidumping duty order on imports of PSF from Korea on March 10, 2005.⁴⁰

The Commission requested that foreign producers provide details on the composition of their shipments of certain PSF to the United States. In the original investigations, the Commission collected data for conjugate, low-melt, and regenerated fiber separately but determined that conjugate and regenerated fiber were not separate like products.⁴¹ The data collected in these reviews on shipments of subject PSF by product type are presented in table IV-7. The responding producers reported exports of *** polyester staple fiber to the United States during *** of the review period. Initially, exports of *** polyester staple fiber increased by nearly *** percent each in ***. This increase reflects the inclusion of *** data for ***. Then in ***, exports of these two product types decreased, again increasing in *** and ***, as well as over the interim periods. Overall unit values increased over the period. The responding producers reported *** export shipments of regenerated fiber to the United States during the period of review.

³³ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. VII-2.

³⁴ *Ibid.*, p. VII-3.

³⁵ These orders were in effect as of June 30, 2005, the date of the World Trade Organization's annual antidumping duty order report. These antidumping duty orders are for "polyester staple fiber" and may include nonsubject PSF within their scope.

³⁶ Compiled from various semi-annual country reports under article 16.4 of The Agreement of the World Trade Organization for the period January 1, 2005 to June 30, 2005, found at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm, retrieved November 16, 2005.

³⁷ *Japan Sets Polyester Dumping Duties*, *Fiber News*, July 19, 2002, found at http://www.fibersource.com/f-info/More_News/jpn-071902.htm, retrieved November 17, 2005.

³⁸ *China Anti-Dumping Measures on Korean Fiber*, *Fiber News*, February 10, 200, found at http://www.fibersource.com/f-info/More_News/china-021003.htm, retrieved November 17, 2005.

³⁹ *** foreign producer questionnaire, section II-12.

⁴⁰ Compiled from various semi-annual country reports under article 16.4 of The Agreement of the World Trade Organization for the period January 1, 2005 to June 30, 2005, found at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm, retrieved November 16, 2005.

⁴¹ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. 3, 7.

Table IV-7
Certain PSF: Korea's export shipments to the United States, by type of polyester staple fiber, 2000-04, January-September 2004, and January-September 2005

* * * * *

The Commission asked producers in Korea to report production of other products on the same equipment and machinery used in the production of certain PSF. Both producers responded that they do not produce other products on the same equipment and machinery used to make certain PSF.⁴² In response to the Commission's question on producer ability to switch production between certain PSF and other products in response to a relative change in the price of certain PSF vis-a-vis the price of other products, both producers responded that they cannot switch production.⁴³

The Commission asked producers in Korea to report production of other products using the same production and related workers employed to produce certain polyester staple fiber. Both Huvis and Saehan reported ***, other products using the same production and related workers employed to produce certain PSF.⁴⁴

THE INDUSTRY IN TAIWAN

During the original investigations, the Commission identified four firms believed to produce the subject product in Taiwan.⁴⁵ In their joint response to the Commission's notice of institution in the current five-year reviews, the domestic interested parties identified the four firms known to the Commission as active certain PSF producers and no additional firms.⁴⁶ No new entrants to the certain PSF industry in Taiwan have been identified and no producers in Taiwan have submitted a response to the notice of institution of these reviews. The Commission issued questionnaires to each of these companies as well as to four potential producers/exporters identified through further research.⁴⁷ Nan Ya Plastics Corp. ("Nan Ya Taiwan") and Shinkong Synthetic Fibers Corp. ("Shinkong") provided complete questionnaire responses. No responses were obtained from Far Eastern Textile and Tuntex Distinct Corp.⁴⁸ Accordingly, publicly available data for the industry in Taiwan are presented below in table IV-8 while the data presented in table IV-9 are based solely on the data of Nan Ya Taiwan and Shinkong.

⁴² Huvis and Seahan's foreign producer questionnaire responses, section II-6.

⁴³ Huvis and Seahan's foreign producer questionnaire responses, section II-10.

⁴⁴ Huvis and Seahan's foreign producer questionnaire responses, section II-7.

⁴⁵ Far Eastern Textile, Ltd.; Nan Ya Plastics Corp.; Tuntex Distinct Corp.; and Shinkong Synthetic Fibers Corp. *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. VII-4.

⁴⁶ Domestic interested parties response to the notice of institution, May 23, 2005, pp. 13-14.

⁴⁷ Chimoco Industrial Co., Ltd.; Chung Shing Textile Co., Ltd.; Rope King Enterprise Co., Ltd.; and Shing Ming Industrial Co., Ltd.

⁴⁸ Tuntex Distinct Corp. began production of polyester in 1972 and operates a plant in Hsinchih Township, Tainan County. Source: *Tuntex Distinct Corp., About URMS*, found at <http://www.Urms.com/en/aboutURMS/aboutURMS.alliances.suppliers.html>, retrieved September 27, 2005.

Table IV-8
Certain PSF: Taiwan's production capacity, 2000-04

| Item | Calendar year | | | | |
|----------------------------|---------------|-------|-------|-------|-------|
| | 2000 | 2001 | 2002 | 2003 | 2004 |
| Quantity (tons/day) | | | | | |
| Capacity | 3,109 | 2,957 | 2,994 | 2,803 | 2,778 |

Source: Taiwan Man Made Fiber Industries Association, as found in Consolidated's and Stein's posthearing brief, exhibit 32.

Table IV-9
Certain PSF: Taiwan's capacity, production, inventories, and shipments, 2000-04, January-September 2004, and January-September 2005

* * * * *

During 2000-04, reported capacity to produce certain PSF in Taiwan remained constant while production decreased by nearly *** percent. Production in January-September 2005 was *** percent lower than production in January-September 2004. Capacity utilization decreased between 2000 and 2004 by *** percentage points and was *** percentage points lower in January-September 2005 than in January-September 2004.

In response to the Commission's question on changes in capacity, *** responded that it has not experienced changes in its operations since May 25, 2000. *** stated that because of high costs the company *** with a capacity of *** in November 2000.⁴⁹ In response to the Commission's question on plans to add, expand, curtail, or shut down production capacity and/or production of certain PSF, both producers responded that they have *** and that they *** changes in the character of their operations or organization in the future.

The Commission asked foreign producers to describe the production technology and inputs used in the manufacture of certain PSF. Both *** and *** reported that there have been no major changes in production technology since 2000. However, *** did report that it uses *** in the production of ***.⁵⁰ MEG and PTA reportedly remain their major production inputs.⁵¹

The Commission asked producers in Taiwan to report inventories maintained by their firms in the United States (excluding inventories held by importers the producers sold to and related U.S. importing firms) since 2000. Both reporting producers responded that *** inventories of certain PSF in the United States since 2000.

Sales of certain PSF accounted for *** percent and *** percent of total sales by responding producers in Taiwan in their most recent fiscal year. During 2000-04, Taiwan industry's internal consumption and home market shipments of certain PSF decreased by *** and *** percent, respectively. Also during this period, exports decreased by *** percent. In 2004, exports accounted for *** percent of the Taiwan industry's total certain PSF shipments.

⁴⁹ *** foreign producer questionnaire response, section II-1.

⁵⁰ *** foreign producer questionnaire response, section II-5.

⁵¹ PTA was first introduced in 1965 as an alternative feedstock to Dimethyl Terephthalate ("DMT") for the production of polyester. By the end of 1999, almost 85 percent of total world production was based on PTA and this input remains the preferred raw material for polyester. *Purified Terephthalic Acid*, Reliance, found at http://www.ril.com/business/fibre/pta/business_fibre_ptahome.html, retrieved November 29, 2005.

After 2000, exports of certain PSF from Taiwan were shipped increasingly to *** and other markets while exports to the United States and Asia declined overall from 2000 through 2004. *** stated explicitly that its sales of certain PSF to *** have increased because of the U.S. antidumping duty orders on Taiwan.⁵² *** stated that it has been trying to develop sales of certain PSF to *** and ***.⁵³

During the original investigations, certain PSF exported from Taiwan to China was subject to an “export price agreement,” under which Taiwan promised not to ship certain PSF to China with export prices below 92 percent of its domestic prices.⁵⁴ In 1992, the EU imposed antidumping duties on imports of PSF from Taiwan. As a result of a review dated August 4, 1999, the EU maintained the antidumping duties, which are below 7 percent, on Taiwan. The EU then initiated an antidumping duty investigation on PSF from Taiwan on December 19, 2003. This antidumping investigation was terminated and the measures were repealed on March 17, 2005.⁵⁵ However, according to respondent ***, certain PSF from Taiwan remains subject to a 4-percent tariff barrier in Europe, imposed in 2004.⁵⁶ *** also reported that certain PSF from Taiwan is subject to a 5-percent tariff barrier in China, imposed in 2004.⁵⁷ Japan imposed antidumping duty orders on imports of certain PSF from Taiwan on July 26, 2002, with a tariff rate of 10.3 percent for 13 firms.⁵⁸

On July 29, 2003, Turkey imposed an antidumping duty order on imports of certain PSF from Taiwan that remained in place as of June 30, 2005.⁵⁹ The two responding producers stated that their exports of certain PSF are not subject to current investigations in any countries other than the United States that might result in tariff or non-tariff barriers to trade.⁶⁰

The Commission requested that foreign producers provide details on the composition of their shipments of certain PSF to the United States. In the original investigations, the Commission collected data for conjugate, low-melt, and regenerated fiber separately but determined that conjugate and regenerated fiber were not separate like products.⁶¹ The data collected in these reviews on shipments of subject PSF by product type are presented in table IV-10. The responding producers reported exports of both virgin and conjugate polyester staple fiber to the United States during *** of the review period. The quantity of virgin PSF exports decreased each year from 2000-04 by a total of *** percent. After an initial increase in exports of conjugate PSF in 2001, the quantity of conjugate PSF exports decreased steadily each year thereafter. Even as quantities declined, unit values increased overall by *** percent for virgin PSF and by *** percent for conjugate PSF between 2000 and 2004. The responding producers reported *** export shipments of regenerated fiber to the United States during the period of review.

⁵² *** foreign producer questionnaire response, section II-13.

⁵³ *** foreign producer questionnaire response, section II-13.

⁵⁴ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, p. VII-4.

⁵⁵ Source: Compiled from various semi-annual country reports under article 16.4 of The Agreement of the World Trade Organization (WTO) for the period January 1, 2005 to June 30, 2005. Found at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm, retrieved November 16, 2005.

⁵⁶ *** foreign producer questionnaire response, section II-12(a).

⁵⁷ Ibid.

⁵⁸ *Japan Sets Polyester Dumping Duties*, *Fiber News*, July 19, 2002, found at http://www.fibersource.com/f-info/More_News/jpn-071902.htm, retrieved November 17, 2005.

⁵⁹ Various semi-annual country reports under article 16.4 of The Agreement of the World Trade Organization (WTO) for the period January 1, 2005 to June 30, 2005. Found at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm, retrieved November 16, 2005 and Nan Ya-Taiwan and Shinkong’s foreign producer questionnaire responses, section II-12 (b).

⁶⁰ Nan Ya-Taiwan and Shinkong’s foreign producer questionnaire responses, section II-12 (b).

⁶¹ *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, USITC Publication 3300, May 2000, pp. 3, 7.

Table IV-10
Certain PSF: Taiwan's export shipments to the United States, by type of polyester staple fiber, 2000-04, January-September 2004, and January-September 2005

* * * * *

The Commission asked producers in Taiwan to report production of other products on the same equipment and machinery used in the production of certain PSF. Both producers responded that they produce other products on the same equipment and machinery used to make certain PSF. Data on Taiwan producers' capacity, production, and capacity utilization for alternative polyester products are presented in table IV-11.

Table IV-11
Certain PSF: Taiwan producers' capacity, production, and capacity utilization for total polyester staple fiber and alternative products, by products, 2000-04, January-September 2004, and January-September 2005

* * * * *

In response to the Commission's question on producer ability to switch production between certain PSF and other products in response to a relative change in the price of certain PSF vis-a-vis the price of other products, *** responded that ***.⁶² *** responded that it cannot switch production.

The Commission asked producers in Taiwan to report production of other products using the same production and related workers employed to produce certain polyester staple fiber. *** reported that it produced staple fiber of *** between 2000 and 2005 using the same PSF production and related workers.⁶³ *** responded that it does not produce other products using the same production and related workers employed to produce certain PSF.⁶⁴

⁶² *** foreign producer questionnaire response, section II-10.

⁶³ *** foreign producer questionnaire response, section II-7.

⁶⁴ *** foreign producer questionnaire response, section II-7.

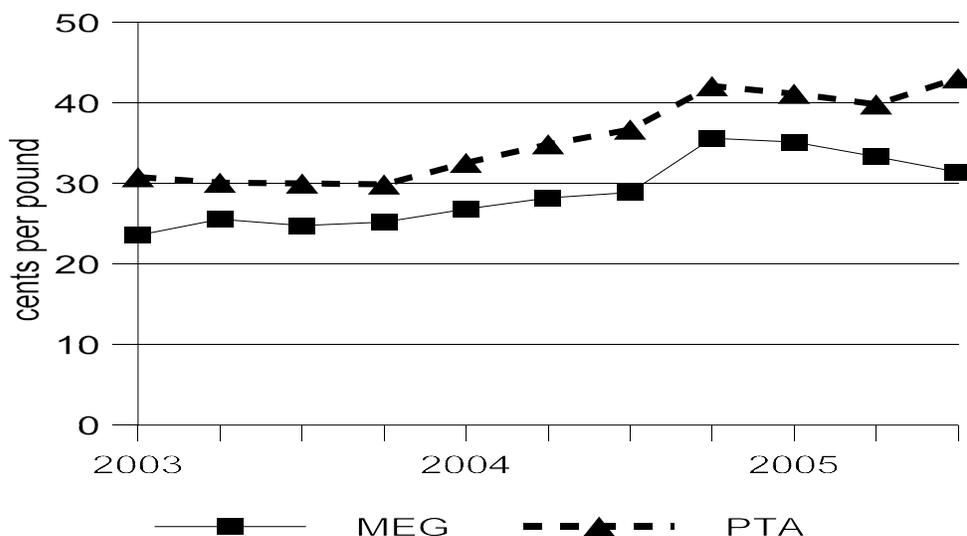
PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Two raw materials, MEG and PTA, together reportedly account for over 60 percent of the cost of producing certain PSF.¹ Weighted-average purchase prices of these materials reported by U.S. producers are presented on a quarterly basis in figure V-1 below.² The reported price of PTA has risen steadily from the first quarter of 2003 to the third quarter of 2005, whereas the reported price of MEG peaked in the fourth quarter of 2004 and then slightly decreased through the third quarter of 2005.

Figure V-1
Certain PSF: Weighted-average purchase prices reported by U.S. producers for mono ethylene glycol (MEG) and purified terephthalic acid (PTA), by quarters, January 2003-September 2005



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

According to one U.S. producer, processing fiber from virgin chemicals is generally less expensive than recycled processing. However, most recently, virgin production has reportedly been more expensive due to the limited availability of petroleum-related products in the wake of hurricanes Katrina and Rita in September 2005. This producer also reported that the ten-year historical average price of sorted industrial waste is *** cents per pound and currently costs *** cents per pound and that the ten-year historical average price of PET bottles is *** cents per pound and currently costs between *** cents per pound.³

¹ *** producer and importer questionnaire responses.

² Four U.S. producers, ***, provided data on raw material costs.

³ Staff field trip report, Wellman, November 4, 2005.

Five responding U.S. producers reported that there is a correlation between the cost of raw materials and the price they charge for certain PSF. Three producers specifically cited a raw material shortage in September 2005 in the aftermath of hurricanes Katrina and Rita in the Gulf Coast. This shortage reportedly resulted in one producer imposing raw material surcharges and another reducing supply of certain PSF to its customers. Nine of eleven responding importers reported that the price they charge for certain PSF is directly affected by changes in the price of raw materials. Four importers, two of which are also producers, also noted the hurricanes' effect on the supply of raw materials and the resulting higher price charged for certain PSF. One importer also reported that it expects the price of virgin PSF to decrease in 2006 due to more global PTA capacity.

Transportation Costs to the U.S. Market

Transportation costs of imported certain PSF shipped from Korea and Taiwan averaged 14.4 percent and 13.8 percent of their respective customs values in 2004. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.⁴

U.S. Inland Transportation Costs

Transportation costs for U.S. inland shipments of certain PSF generally account for a small to moderate share of the delivered price of these products. For the five responding U.S. producers, reported costs ranged from 2 to 5 percent of the delivered price. For importers from the subject countries, the costs ranged from 1 percent to as much as 25 percent of the delivered price.

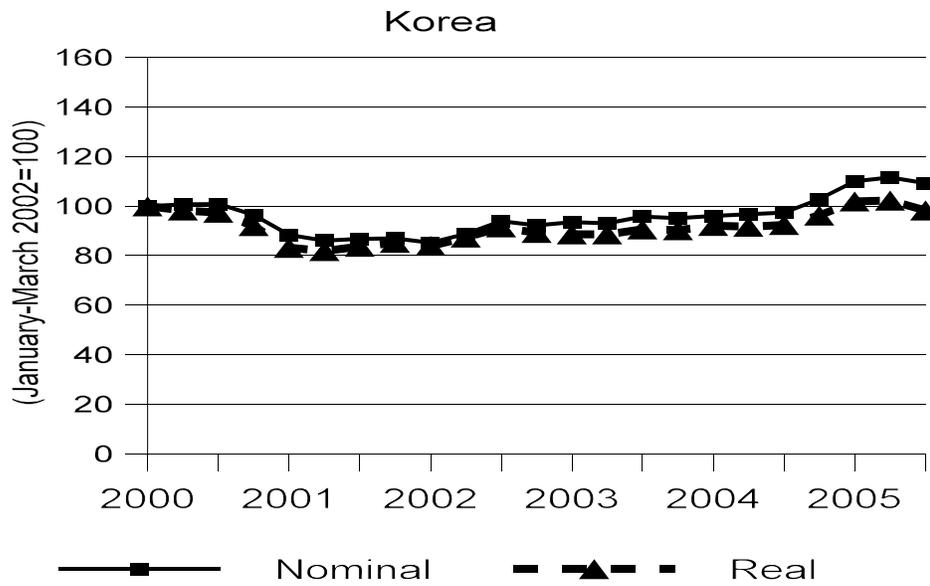
Exchange Rates

Nominal and real exchange rate data for Korea and Taiwan are presented on a quarterly basis in figure V-2.⁵ The data show that the nominal and real exchange rates of the Korean won slightly depreciated against the U.S. dollar for most of the period, but rebounded in 2005. The nominal and real exchange rates of the New Taiwan dollar slightly depreciated against the U.S. dollar early in the period and have remained relatively flat since 2001.

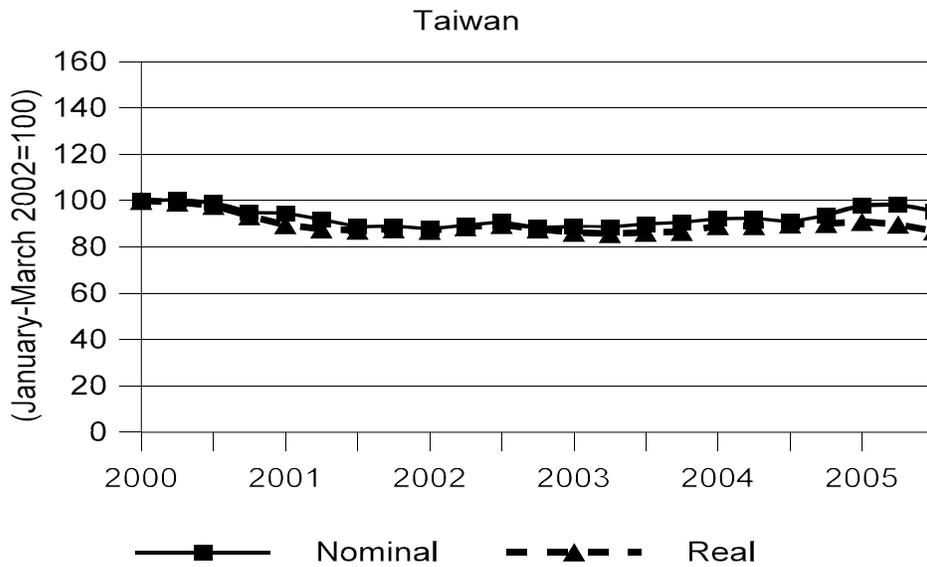
⁴ Following normal Commission practice, the estimated cost was obtained by subtracting the customs value from the c.i.f. value of the imports for 2004 and then dividing by the customs value.

⁵ Real exchange rates are calculated by adjusting the nominal rates for movements in producer prices in the United States and each of the subject countries.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates between the Korea and Taiwan currencies and the U.S. dollar, by quarters, January 2000-September 2005



Source: International Monetary Fund, *International Financial Statistics*; St. Louis Federal Reserve, November 28, 2005.



PRICING PRACTICES

Pricing Methods

Questionnaire respondents were asked how they determined the prices that they charge for certain PSF, and responses varied. Among U.S. producers, customer-by-customer negotiations or transaction-by-transaction negotiations were cited by five of six firms. The sixth producer reported that it bases its price on monthly contracts for multiple shipments. Among importers, most firms reported that prices are determined through negotiations with buyers, in most cases on a transaction-by-transaction basis. One importer added that prices are determined in the course of negotiations for multiple shipments, while other importers cited market conditions. One importer reported the use of price lists.

Prices of certain PSF are most commonly quoted on a delivered basis rather than an f.o.b. basis. Two of six responding producers quote exclusively on a delivered basis; three provide both delivered and f.o.b. quotes; and one quotes exclusively on a f.o.b. basis. Nine of 12 responding importers that sell certain PSF quote on a delivered basis.

As discussed in part II of this report, four U.S. producers have been involved in litigation involving alleged violation of U.S. antitrust laws, including price fixing and allocation.⁶ One producer has plead guilty to a price-fixing conspiracy focusing on nonsubject textile PSF.⁷ Two importers reported that a single pricing negotiation with suppliers covers their purchases of both certain PSF and textile PSF.⁸ In addition, one U.S. producer reported that a common sales force handles price negotiations for both types of PSF, but with separate pricing arrangements for each product.⁹ This producer and one other U.S. producer reported that announced price increases may cover all types of PSF due to rising raw material costs, but that there are always further price negotiations with individual customers to determine prices for specific products.¹⁰

Sales Terms and Discounts

U.S. producers and importers of certain PSF from Korea and Taiwan were asked what share of their sales were on a (1) long-term contract basis (multiple deliveries for more than 12 months), (2) short-term contract basis, and (3) spot sales basis (for a single delivery) during 2004. Among the six producers, two firms reported that they sell entirely on a spot basis. Among the other four producers, one sells exclusively on a short-term basis, whereas the other three reported nearly all short-term or spot contracts. Among the 12 importers, four reported that they sell exclusively on a spot basis, two nearly exclusively sell on a spot basis, and the remainder sell on both a spot and short-term contract basis. None of the importers reported the use of long-term contracts.

⁶ See section entitled, "Allegations of Customer Allocation and Price Fixing" in Part II.

⁷ See discussion at II-3.

⁸ Hearing transcript, pp. 228-229 (Kunik) and p. 220 (Stein). Consolidated and Stein's posthearing brief, exh. 17, p. 5. Respondent interested parties contend that even if the price-fixing conspiracy applied only to textile PSF, that it "still distorted the pricing and production data for subject merchandise," Consolidated and Stein's posthearing brief, p. 50. They maintain that production and pricing decisions involved with certain PSF are sensitive to the relative pricing of textile PSF, especially because three of six U.S. producers produce textile PSF on the same production lines they use to produce certain PSF. See Part III, p.4. One U.S. producer reported that it can switch relatively easily between producing textile PSF and certain PSF, hearing transcript, p. 84 (McNaull), while another producer reported that such a switch was expensive and time-consuming, hearing transcript, pp. 177-178 (Katz).

⁹ Hearing transcript, p. 164 (McNaull).

¹⁰ Hearing transcript, pp. 71, 80-81 (Katz) and 72, 124-125 (McNaull).

For U.S. producers selling on a contract basis, provisions varied from company to company. Long-term contracts ranged from periods of one year to three and a half years, while short-term contracts are reportedly for periods of one to three months. For long-term contracts, one producer reported that quantities are sometimes fixed, whereas another reported that only price is fixed. For short-term contracts, two producers reported that both price and quantity are fixed, whereas another reported that neither is fixed. Due to the recent volatility in the prices of raw materials, domestic producers are increasingly re-negotiating prices on a monthly basis. These producer contracts usually do not have a meet-or-release provision. In the case of importers, short-term contracts are typically for periods of one to six months with both prices and quantities fixed. The majority do not contain meet-or-release provisions. Two importers noted that the price may be re-negotiated if the market price is declining.

Discount policies on sales of certain PSF are widely varied. Among the six producers, four reported that they do not offer discounts, whereas the other two reported the use of volume discounts. One of these firms also offers discounts for advanced payment. Among importers, eleven firms reported that they do not offer discounts. One firm reported the use of volume discounts and another reported that discounts are negotiated on an individual customer basis.

PRICE DATA

The Commission requested U.S. producers and importers of certain PSF to provide quarterly data for the total quantity and value of certain PSF that was shipped to unrelated customers in the U.S. market. Data were requested for the period January 2000-September 2005. Five U.S. producers and 11 importers provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for approximately *** percent of U.S. producers' commercial shipments of certain PSF from January 2000 to September 2005. They also account for *** percent U.S. shipments of subject imports from Korea over the same period and *** percent of U.S. shipments of subject imports from Taiwan over the same period. The products for which pricing data were requested are as follows:

Product 1.--Virgin polyester staple fiber.-- 5-7 denier, solid, dry

Product 2.--Virgin polyester staple fiber.-- 5-7 denier, hollow, slick

Product 3.--Virgin polyester staple fiber.-- 12-15 denier, solid, dry

Product 4.--Virgin polyester staple fiber.-- 12-15 denier, hollow, slick

Product 5.¹¹--Conjugate fiber.-- 12-15 denier, hollow, slick

¹¹ Respondent interested parties Consolidated and Stein asserted that certain importers may have misreported pricing information for imports of conjugate PSF (especially from Taiwan) in the virgin pricing item because conjugate PSF is sometimes made with virgin materials. Consolidated and Stein's posthearing brief, p. 77. Staff contacted two importers, ***, which reported pricing data on virgin products (pricing products 1-4) imported from Taiwan in order to verify their data. One purchaser, ***, reported that it had indeed misreported its conjugate product as virgin product 4. The data presented here include the corrected data. *** did not respond and its pricing data for products 2 and 4 are included here. Staff notes, however, that *** also reported pricing data for product 5, the conjugate item, and it is therefore less likely that *** misreported its imports of conjugate PSF. *** submitted revised pricing data on products 1, 2, 3, 4, 6, and 7.

Product 6.¹²--100% Regenerated polyester staple fiber.-- 5-7 denier, solid, dry

Product 7.¹²--100% Regenerated polyester staple fiber.-- 12-15 denier, solid, dry

Price Trends

Weighted-average prices reported by U.S. producers and importers are presented in tables V-1 through V-7 and in figures V-3 through V-9 on a quarterly basis during January 2000-September 2005.¹³

The weighted-average sales price of U.S.-produced product 1 increased by *** percent from the first quarter of 2000 to the third quarter of 2005, though it fluctuated slightly through the end of 2003. The weighted-average sales prices of product 1 imported from Korea and Taiwan also increased from January 2000-September 2005. The weighted-average sales price of product 1 imported from Korea increased by *** percent from the first quarter of 2000 to the third quarter of 2005 and the weighted-average sales price of product 1 from Taiwan increased by *** percent from the second quarter of 2000 to the third quarter of 2005.

The weighted-average sales prices of the U.S.-produced product 2 and the imported product 2 all increased from January 2000-September 2005. The weighted-average sales price of U.S.-produced product 2 fluctuated over the period, increasing by *** percent from the first quarter of 2000 to the third quarter of 2005. The weighted-average sales price of product 2 imported from Korea increased by *** percent from the first quarter of 2000 to the third quarter of 2005. The weighted-average sales price of product 2 imported from Taiwan increased by *** percent over the same period.

The weighted-average sales price of the U.S.-produced product 3 fluctuated through the end of 2003, increasing by *** percent from the first quarter of 2000 to the third quarter of 2005. The weighted-average sales price of product 3 imported from Korea increased by *** percent over the same period. The weighted-average sales price of product 3 imported from Taiwan slightly decreased from the third quarter of 2000 to the fourth quarter of 2001 by *** percent.

The weighted-average sales price of the U.S.-produced product 4 decreased from the first quarter of 2000 to the first quarter of 2004 and then increased through the third quarter of 2005 to *** percent above first quarter 2000 levels. The weighted-average sales price of product 4 imported from Korea increased by *** percent from the first quarter of 2000 to the third quarter of 2005.¹⁴ The weighted-average sales price of product 4 imported from Taiwan increased by *** percent over the same period.

The weighted-average sales price of the U.S.-produced product 5 increased irregularly by *** percent from the first quarter of 2000 to the third quarter of 2005. The weighted-average sales price of product 5 imported from Korea increased by *** percent from the first quarter of 2000 to the third quarter

¹² Consolidated and Stein make a distinction between “recycled” certain PSF made from 100% PET bottles and “regenerated” certain PSF made from PET bottles and other waste. See discussion at II-15 and II-16. They contend that “recycled” PSF is only produced in the United States and is of a higher quality than “regenerated” PSF and therefore commands a higher market price. However, the Commission requested pricing data on products 6 and 7 on the questionnaires in response to Consolidated and Stein’s comments when the questionnaires were drafted and used their own wording for the definitions of products 6 and 7. See Consolidated and Stein’s comments on draft questionnaires, submitted September 19, 2005, p. 4. Domestic interested parties did not object to the proposed definitions. E-mail from Kathleen Cannon, September 22, 2005.

¹³ Appendix G shows pricing data broken out by each of the five responding U.S. producers. Appendix H shows historical pricing data for products 1, 3, 5, 6, and 7 (the products for which pricing data were collected in the original investigations) from January 1997 to December 1999. The pricing data are compiled from *Certain Polyester Staple Fiber from Korea and Taiwan, Invs. Nos. 731-TA-825 and 826 (Final)*, Confidential Staff Report, (INV-X-082), April 21, 2000, tables V-6 and V-7 and app. E.

¹⁴ *** value for sales of product 4 imported from Korea as reported by *** was excluded because it was deemed to be an outlier.

of 2005.¹⁵ The weighted-average sales price of product 5 imported from Taiwan increased by *** percent over the same period.

The weighted-average sales price of the U.S.-produced product 6 increased irregularly by *** percent from the first quarter of 2000 to the third quarter of 2005, with steadily increasing prices after 2003.¹⁶ The weighted-average sales price of product 6 imported from Korea increased by *** percent over the same period.¹⁷ The weighted-average sales price of product 6 imported from Taiwan fluctuated from the first quarter 2002 to the third quarter of 2005, but generally increased by *** percent over that period.

The weighted-average sales price of the U.S.-produced product 7 increased irregularly by *** percent from the first quarter of 2000 to the third quarter of 2005, with steadily increasing prices after first quarter 2004.¹⁶ The weighted-average sales price of product 6 imported from Korea increased by *** percent over the same period.¹⁸ The weighted-average sales price of product 7 imported from Taiwan increased by *** percent from the first quarter 2002 to the third quarter of 2005.

Table V-1
Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 2000-September 2005

* * * * *

Table V-2
Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2000-September 2005

* * * * *

Table V-3
Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, January 2000-September 2005

* * * * *

¹⁵ Pricing data for sales prices of product 5 imported from Korea as reported by *** were only reported on an annual basis. The annual data were converted into quarterly averages.

¹⁶ Respondent interested parties claim that U.S.-produced “recycled” PSF made from clean PET bottle stock does not compete directly against imported “regenerated” PSF made from other waste. Hearing transcript, p. 215 (Stein) and Consolidated and Stein’s posthearing brief, exh. 21. However, U.S. producer Wellman maintains that “regenerated” PSF and “recycled” PSF are synonymous. Hearing transcript, pp. 24 and 147 (Katz). U.S. producer *** originally reported in its questionnaire that it produces “regenerated” PSF, but has subsequently reported that it only produces “recycled” PSF. E-mail ***. Appendix I contains alternate pricing comparisons with pricing data on products 6 and 7 as reported by *** and *** (argued to be competitive with virgin PSF by respondent interested parties) shifted to their corresponding virgin pricing products (1 and 3), resulting in *** instances of underselling and *** instances of overselling, with underselling occurring in *** percent of the pricing comparisons.

¹⁷ Pricing data for sales prices of product 6 imported from Korea and Taiwan as reported by *** were only reported on an annual basis. The annual data were converted into quarterly averages.

¹⁸ Pricing data for sales prices of product 7 imported from Korea and Taiwan as reported by *** were only reported on an annual basis. The annual data were converted into quarterly averages.

Table V-4
Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 4 and margins of underselling/(overselling), by quarters, January 2000-September 2005

* * * * *

Table V-5
Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 and margins of underselling/(overselling), by quarters, January 2000-September 2005

* * * * *

Table V-6
Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 6 and margins of underselling/(overselling), by quarters, January 2000-September 2005

* * * * *

Table V-7
Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 7 and margins of underselling/(overselling), by quarters, January 2000-September 2005

* * * * *

Figure V-3
Certain PSF: Weighted-average f.o.b prices of domestic and imported product 1, by quarters, January 2000-September 2005

* * * * *

Figure V-4
Certain PSF: Weighted-average f.o.b prices of domestic and imported product 2, by quarters, January 2000-September 2005

* * * * *

Figure V-5
Certain PSF: Weighted-average f.o.b prices of domestic and imported product 3, by quarters, January 2000-September 2005

* * * * *

Figure V-6
Certain PSF: Weighted-average f.o.b prices of domestic and imported product 4, by quarters, January 2000-September 2005

* * * * *

Figure V-7
Certain PSF: Weighted-average f.o.b prices of domestic and imported product 5, by quarters, January 2000-September 2005

* * * * *

Figure V-8
Certain PSF: Weighted-average f.o.b prices of domestic and imported product 6, by quarters, January 2000-September 2005

* * * * *

Figure V-9
Certain PSF: Weighted-average f.o.b prices of domestic and imported product 7, by quarters, January 2000-September 2005

* * * * *

Price Comparisons

Margins of underselling and overselling for the period are presented by country and by product in tables V-8 and V-9. The data show that prices of imports from Korea were lower than the U.S. producer prices in 100 out of 160 quarterly comparisons by margins of 0.3 percent to 28.7 percent and prices of imports from Taiwan were lower in 53 out of 115 comparisons by margins ranging from 0.03 to 29.9 percent. In the remaining instances, the imported product was priced above the comparable domestic product; margins of overselling ranged from 0.03 to 30.6 percent.

Twelve purchasers reported that the price of U.S. certain PSF has changed relative to the price of imported certain PSF and is now generally higher than the imported price. Eight purchasers reported that the prices of domestic and imported certain PSF have changed by the same amount.

Table V-8
Certain PSF: Margins of underselling/(overselling) by product and by country, quarterly, January 2000-September 2005

* * * * *

Table V-9
Certain PSF: Instances of underselling/overselling and the range and average of margins for products 1-7, by sources, January 2000-September 2005

| Item | Underselling | | | Overselling | | |
|---|---------------------|---------------------|--------------------------|---------------------|---------------------|--------------------------|
| | Number of instances | Range (percent) | Average margin (percent) | Number of instances | Range (percent) | Average margin (percent) |
| Country: | | | | | | |
| Korea | 100 | 0.3 to 28.7 | 8.0 | 60 | 0.2 to 28.8 | 8.6 |
| Taiwan | 53 | 0.03 to 29.9 | 8.0 | 62 | 0.03 to 30.6 | 14.9 |
| Total¹ | 153 | 0.03 to 29.9 | 8.0 | 122 | 0.03 to 30.6 | 11.8 |
| Total subject imports by product: | | | | | | |
| 1 | 28 | 0.3 to 16.7 | 7.7 | 8 | 2.9 to 23.6 | 8.1 |
| 2 | 15 | 0.3 to 9.0 | 3.3 | 31 | 0.3 to 30.6 | 11.7 |
| 3 | 26 | 1.4 to 28.7 | 10.6 | 1 | 1.2 | 1.2 |
| 4 | 16 | 2.2 to 22.4 | 7.2 | 30 | 1.1 to 26.0 | 14.2 |
| 5 | 5 | 0.5 to 6.8 | 2.4 | 39 | 0.2 to 28.8 | 11.7 |
| 6 | 35 | 0.03 to 29.9 | 10.4 | 3 | 9.7 to 13.2 | 11.7 |
| 7 | 28 | 0.9 to 15.2 | 6.7 | 10 | 0.03 to 29.8 | 7.5 |
| Total¹ | 153 | 0.03 to 29.9 | 8.0 | 122 | 0.03 to 30.6 | 11.8 |
| ¹ Total number of instances for all cited countries, range of margins for all cited countries, and average margin for all cited countries. Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | |

APPENDIX A

FEDERAL REGISTER NOTICES AND ADEQUACY STATEMENT

Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on polyester staple fiber from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is May 23, 2005. Comments on the adequacy of responses may be filed with the Commission by June 14, 2005. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: *Background.*—On May 25, 2000, the Department of Commerce issued antidumping duty orders on imports of polyester staple fiber from Korea and Taiwan (65 FR 33807). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine

**INTERNATIONAL TRADE
COMMISSION**

[Investigations Nos. 731–TA–825 and 826
(Review)]

**Polyester Staple Fiber From Korea and
Taiwan**

AGENCY: United States International
Trade Commission.

ACTION: Institution of five-year reviews
concerning the antidumping duty orders
on polyester staple fiber from Korea and
Taiwan.

SUMMARY: The Commission hereby gives
notice that it has instituted reviews
pursuant to section 751(c) of the Tariff

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 05–5–119, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Korea and Taiwan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission determined that there are two Domestic Like Products corresponding to (1) low-melt fiber and (2) conventional polyester staple fiber (all subject polyester staple fiber except for low-melt fiber). One Commissioner defined the Domestic Like Product differently. Because the Commission made a negative determination with respect to low-melt fiber, for purposes of this notice, the Domestic Like Product is all subject polyester staple fiber except for low-melt fiber.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined two Domestic Industries: (1) All domestic producers of low-melt fiber and (2) all domestic producers of conventional polyester staple fiber. One Commissioner defined the Domestic Industry differently. Because the Commission made a negative determination with respect to low-melt fiber, for purposes of this notice, the Domestic Industry is all domestic producers of subject polyester staple fiber except for low-melt fiber.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is May 25, 2000.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject

Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter

will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 23, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 14, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to

section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since the Order Date.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's

operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S.

dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of

total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 23, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-6402 Filed 3-30-05; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE
COMMISSION**

**[Investigation Nos. 731-TA-825 and 826
(Review)]**

**Polyester Staple Fiber From Korea and
Taiwan**

AGENCY: International Trade
Commission.

ACTION: Notice of Commission
determination to conduct full five-year
reviews concerning the antidumping
duty orders on polyester staple fiber
from Korea and Taiwan.

SUMMARY: The Commission hereby gives
notice that it will proceed with full
reviews pursuant to section 751(c)(5) of
the Tariff Act of 1930 (19 U.S.C.
1675(c)(5)) to determine whether
revocation of the antidumping duty
orders on polyester staple fiber from
Korea and Taiwan would be likely to
lead to continuation or recurrence of
material injury within a reasonably
foreseeable time. A schedule for the
reviews will be established and
announced at a later date. For further
information concerning the conduct of

these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 5, 2005.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 5, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 16522, March 31, 2005) was adequate, and that the respondent interested party group response with respect to Korea was adequate, but found that the respondent interested party group response with respect to Taiwan was inadequate. However, the Commission determined to conduct a full review concerning subject imports from Taiwan to promote

administrative efficiency in light of its decision to conduct a full review with respect to subject imports from Korea. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-14135 Filed 7-18-05; 8:45 am]

BILLING CODE 7020-02-P

SUPPLEMENTARY INFORMATION:**Background**

On April 1, 2005, the Department initiated sunset reviews of the antidumping duty orders on PSF from Korea and Taiwan pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 70 FR 16800 (April 1, 2005). The Department received a notice of intent to participate from DAK Fibers, LLC; Invista S.a.r.l (formerly Arteva Specialties S.a.r.l., d/b/a KoSa);¹ and Wellman, Inc., (collectively "the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations ("sunset regulations"). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States. We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from any of the respondent interested parties. As a result, pursuant to section 751(c)(53)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of these orders.

Scope of the Orders

For the purposes of these orders, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from these orders. Also specifically excluded from these orders are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from these orders. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at

DEPARTMENT OF COMMERCE**International Trade Administration**

(A-580-839, A-583-833)

Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On April 1, 2005, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on certain polyester staple fiber ("PSF") from the Republic of Korea ("Korea") and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, the Department conducted expedited (120-day) sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels identified in the *Final Results of Reviews* section of this notice.

EFFECTIVE DATE: August 5, 2005.

FOR FURTHER INFORMATION: Yasmin Bordas or David Goldberger, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-3813 or (202) 482-4136, respectively.

¹ On March 11, 2005, the Department was informed that Arteva Specialties, Inc. d/b/a KoSa changed its name to Invista S.a.r.l.

a significantly lower temperature than its inner core.

The merchandise subject to these orders is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

Analysis of Comments Received

All issues raised in these cases are addressed in the "Issues and Decision Memorandum" from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 1, 2005, ("Decision Memorandum"), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on PSF from Korea and Taiwan would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

| Manufacturers/Exporters/Producers | Weighted-Average Margin (Percent) |
|---|-----------------------------------|
| Korea. | |
| Sam Young Synthetics Co. | 7.91 |
| All Others | 7.91 |
| Taiwan. | |
| Far Eastern Corporation | 11.50 |
| Nan Ya Plastics Corporation, Ltd. | 3.79 |
| All Others | 7.31 |

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or

conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 1, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4237 Filed 8-4-05; 8:45 am]

BILLING CODE 3510-DS-S

201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202-205-3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On July 5, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 41427, July 19, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after

**INTERNATIONAL TRADE
COMMISSION**

**[Investigation Nos. 731-TA-825 and 826
(Review)]**

**Polyester Staple Fiber From Korea and
Taiwan**

AGENCY: International Trade
Commission (ITC).

ACTION: Scheduling of full five-year
reviews concerning the antidumping
duty orders on polyester staple fiber
from Korea and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on polyester staple fiber from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part

publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on December 13, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on January 17, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 9, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 11, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 22, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 26, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 26, 2006. On February 23, 2006, the Commission will make available to

parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 27, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

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

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 7, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-18132 Filed 9-12-05; 8:45 am]

BILLING CODE 7020-02-P

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY
in
Polyester Staple Fiber from Korea and Taiwan, Inv. Nos. 731-TA-825 and 826 (Review)

On July 5, 2005, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).

The Commission determined that three domestic producer responses, filed by DAK Fibers, LLC, Invista S.a.r.L., and Wellman, Inc., were individually adequate, and one domestic producer response, filed by Formed Fiber Technologies, LLC, (“FFT”) d/b/a/ Color-fi, was individually inadequate. Because the three producers that filed adequate responses account for the majority of domestic production of polyester staple fiber, the Commission further determined that the domestic interested party group response was adequate.

The Commission also received responses to its notice of initiation by Korean producers Huvis Corporation and Saehan Industries, Inc., and importers of Korean subject merchandise Consolidated Fibers, Inc. and FFT. The Commission determined that the responses of all but FFT were individually adequate, and further that they constituted an adequate respondent interested party group response because these firms account for the majority of the production of polyester staple fiber in Korea, and a significant share of exports of subject merchandise from Korea to the United States. Accordingly, the Commission determined to proceed to a full review in *Polyester Staple Fiber from Korea*.

The Commission did not receive a response from any respondent interested parties in the review concerning subject imports from Taiwan and, therefore, determined that the respondent interested party group response for this country was inadequate. However, the Commission determined to conduct a full review concerning subject imports from Taiwan to promote administrative efficiency in light of its decision to conduct a full review in *Polyester Staple Fiber from Korea*.

A record of the Commissioners’ votes is available from the Office of the Secretary and the Commission’s web site (<http://www.usitc.gov>).

APPENDIX B
LIST OF HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

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

Subject: Polyester Staple Fiber from Korea and Taiwan
Inv. Nos.: 731-TA-825 and 826 (Review)
Date and Time: January 17, 2006 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room, 500 E Street (room 101), SW, Washington, D.C.

OPENING REMARKS:

In Support of Continuation of Orders (**Paul C. Rosenthal**,
Collier Shannon Scott, PLLC)

In Opposition to Continuation of Orders (**Merritt R. Blakeslee**,
deKieffer & Horgan)

In Support of Continuation of Antidumping Duty Orders:

Collier Shannon Scott, PLLC
Washington, D.C.
on behalf of

Domestic Industry

Jonathan McNaull, Fibers Business Director, DAK
Americas LLC

Gisela Katz, Manager Market Planning, Wellman Inc.

Patrick J. Magrath, Senior Vice President,
Georgetown Economic Services

**In Support of Continuation of
Antidumping Duty Orders (continued):**

Gina Beck, Economist, Georgetown Economic
Services

Paul C. Rosenthal)
Kathleen W. Cannon)
) – OF COUNSEL
David C. Smith, Jr.)
Grace W. Kim)

**In Opposition to Continuation of
Antidumping Duty Orders:**

deKieffer & Horgan
Washington, D.C.
on behalf of

Consolidated Fibers, Inc. (“Consolidated Fibers”)
Stein Fibers, Ltd. (“Stein Fibers”)

Robert P. Kunik, President, Consolidated Fibers

Sidney J. (Chip) Stein, III, Vice President, Stein
Fibers

Bruce Malashevich, President, Economic Consulting
Services, LLC

Jennifer Lutz, Economist, Economic Consulting
Services, LLC

Merritt R. Blakeslee)
) – OF COUNSEL
Gregory S. Menegaz)

REBUTTAL/CLOSING REMARKS:

In Support of Continuation of Orders (**Paul C. Rosenthal**,
Collier Shannon Scott, PLLC)

In Opposition to Continuation of Orders (**Merritt R. Blakeslee**,
deKieffer & Horgan)

APPENDIX C
SUMMARY DATA

Table C-1

Polyester staple fiber: Summary data concerning the U.S. market, 2000-04, January-September 2004, and January-September 2005

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

| Item | Reported data | | | | | | Period changes | | | | | | | |
|--|---------------|----------|-----------|-----------|-----------|-------------------|----------------|---------|---------|---------|---------|---------|-----------------------|--|
| | 2000 | 2001 | 2002 | 2003 | 2004 | January-September | | 2000-04 | 2000-01 | 2001-02 | 2002-03 | 2003-04 | Jan.-Sept. 2004-05 | |
| | | | | | | 2004 | 2005 | | | | | | | |
| U.S. consumption quantity: | | | | | | | | | | | | | | |
| Amount | 856,947 | 859,936 | 1,030,180 | 1,033,334 | 1,035,091 | 770,661 | 757,047 | 20.8 | 0.3 | 19.8 | 0.3 | 0.2 | -1.8 | |
| Producers' share (1) | 49.1 | 44.0 | 49.0 | 47.3 | 56.7 | 55.7 | 53.1 | 7.6 | -5.1 | 5.0 | -1.7 | 9.4 | -2.6 | |
| Importers' share (1): | | | | | | | | | | | | | | |
| Korea | 23.2 | 23.4 | 21.6 | 25.0 | 20.3 | 21.3 | 15.7 | -2.9 | 0.2 | -1.8 | 3.4 | -4.7 | -5.6 | |
| Taiwan | 19.2 | 19.8 | 13.6 | 9.2 | 7.0 | 7.4 | 4.6 | -12.2 | 0.6 | -6.2 | -4.4 | -2.2 | -2.8 | |
| Subtotal | 42.4 | 43.2 | 35.2 | 34.2 | 27.3 | 28.7 | 20.3 | -15.1 | 0.8 | -7.9 | -1.0 | -6.9 | -8.4 | |
| Other sources | 8.5 | 12.9 | 15.8 | 18.5 | 16.1 | 15.6 | 26.6 | 7.6 | 4.4 | 2.9 | 2.7 | -2.5 | 11.0 | |
| Total imports | 50.9 | 56.0 | 51.0 | 52.7 | 43.3 | 44.3 | 46.9 | -7.6 | 5.1 | -5.0 | 1.7 | -9.4 | 2.6 | |
| U.S. consumption value: | | | | | | | | | | | | | | |
| Amount | 434,341 | 432,294 | 494,083 | 511,903 | 572,148 | 412,437 | 500,965 | 31.7 | -0.5 | 14.3 | 3.6 | 11.8 | 21.5 | |
| Producers' share (1) | 50.6 | 46.8 | 52.3 | 50.2 | 57.9 | 56.9 | 55.2 | 7.3 | -3.8 | 5.5 | -2.2 | 7.7 | -1.7 | |
| Importers' share (1): | | | | | | | | | | | | | | |
| Korea | 19.6 | 19.0 | 17.1 | 21.0 | 17.6 | 18.6 | 14.0 | -2.0 | -0.6 | -1.9 | 3.9 | -3.4 | -4.6 | |
| Taiwan | 20.2 | 19.4 | 13.6 | 9.5 | 7.6 | 8.0 | 4.8 | -12.6 | -0.8 | -5.8 | -4.1 | -1.9 | -3.1 | |
| Subtotal | 39.8 | 38.4 | 30.7 | 30.5 | 25.2 | 26.5 | 18.8 | -14.6 | -1.4 | -7.6 | -0.2 | -5.3 | -7.7 | |
| Other sources | 9.6 | 14.8 | 16.9 | 19.3 | 16.9 | 16.6 | 26.0 | 7.3 | 5.2 | 2.1 | 2.4 | -2.4 | 9.4 | |
| Total imports | 49.4 | 53.2 | 47.7 | 49.8 | 42.1 | 43.1 | 44.8 | -7.3 | 3.8 | -5.5 | 2.2 | -7.7 | 1.7 | |
| U.S. imports from: | | | | | | | | | | | | | | |
| Korea: | | | | | | | | | | | | | | |
| Quantity | 198,608 | 201,077 | 222,594 | 258,351 | 209,856 | 163,907 | 118,501 | 5.7 | 1.2 | 10.7 | 16.1 | -18.8 | -27.7 | |
| Value | 85,298 | 82,179 | 84,563 | 107,640 | 100,920 | 76,663 | 69,926 | 18.3 | -3.7 | 2.9 | 27.3 | -6.2 | -8.8 | |
| Unit value | \$0.43 | \$0.41 | \$0.38 | \$0.42 | \$0.48 | \$0.47 | \$0.59 | 12.0 | -4.8 | -7.0 | 9.7 | 15.4 | 26.2 | |
| Ending inventory quantity | 29,948 | 23,402 | 31,326 | 43,548 | 41,323 | 46,017 | 31,694 | 38.0 | -21.9 | 33.9 | 39.0 | -5.1 | -31.1 | |
| Taiwan: | | | | | | | | | | | | | | |
| Quantity | 164,473 | 170,054 | 140,271 | 94,793 | 72,376 | 56,937 | 35,063 | -56.0 | 3.4 | -17.5 | -32.4 | -23.6 | -38.4 | |
| Value | 87,533 | 83,796 | 67,350 | 48,612 | 43,262 | 32,801 | 24,296 | -50.6 | -4.3 | -19.6 | -27.8 | -11.0 | -25.9 | |
| Unit value | \$0.53 | \$0.49 | \$0.48 | \$0.51 | \$0.60 | \$0.58 | \$0.69 | 12.3 | -7.4 | -2.6 | 6.8 | 16.6 | 20.3 | |
| Ending inventory quantity | 27,699 | 14,397 | 14,978 | 14,102 | 14,249 | 17,196 | 13,037 | -48.6 | -48.0 | 4.0 | -5.8 | 1.0 | -24.2 | |
| Subtotal: | | | | | | | | | | | | | | |
| Quantity | 363,082 | 371,131 | 362,865 | 353,144 | 282,232 | 220,844 | 153,564 | -22.3 | 2.2 | -2.2 | -2.7 | -20.1 | -30.5 | |
| Value | 172,831 | 165,975 | 151,914 | 156,252 | 144,181 | 109,464 | 94,222 | -16.6 | -4.0 | -8.5 | 2.9 | -7.7 | -13.9 | |
| Unit value | \$0.48 | \$0.45 | \$0.42 | \$0.44 | \$0.51 | \$0.50 | \$0.61 | 7.3 | -6.0 | -6.4 | 5.7 | 15.5 | 23.8 | |
| Ending inventory quantity | 57,647 | 37,799 | 46,304 | 57,650 | 55,572 | 63,213 | 44,731 | -3.6 | -34.4 | 22.5 | 24.5 | -3.6 | -29.2 | |
| Other sources: | | | | | | | | | | | | | | |
| Quantity | 73,002 | 110,740 | 162,932 | 191,476 | 166,335 | 120,382 | 201,497 | 127.8 | 51.7 | 47.1 | 17.5 | -13.1 | 67.4 | |
| Value | 41,669 | 64,114 | 83,649 | 98,823 | 96,618 | 68,324 | 130,273 | 131.9 | 53.9 | 30.5 | 18.1 | -2.2 | 90.7 | |
| Unit value | \$0.57 | \$0.58 | \$0.51 | \$0.52 | \$0.58 | \$0.57 | \$0.65 | 1.8 | 1.4 | -11.3 | 0.5 | 12.5 | 13.9 | |
| Ending inventory quantity | 4,265 | 3,462 | 12,594 | 10,329 | 16,944 | 23,216 | 34,132 | 297.3 | -18.8 | 263.8 | -18.0 | 64.0 | 47.0 | |
| All sources: | | | | | | | | | | | | | | |
| Quantity | 436,084 | 481,872 | 525,797 | 544,620 | 448,568 | 341,225 | 355,061 | 2.9 | 10.5 | 9.1 | 3.6 | -17.6 | 4.1 | |
| Value | 214,500 | 230,089 | 235,563 | 255,075 | 240,799 | 177,788 | 224,495 | 12.3 | 7.3 | 2.4 | 8.3 | -5.6 | 26.3 | |
| Unit value | \$0.49 | \$0.48 | \$0.45 | \$0.47 | \$0.54 | \$0.52 | \$0.63 | 9.1 | -2.9 | -6.2 | 4.5 | 14.6 | 21.4 | |
| Ending inventory quantity | 61,912 | 41,261 | 58,898 | 67,979 | 72,516 | 86,429 | 78,863 | 17.1 | -33.4 | 42.7 | 15.4 | 6.7 | -8.8 | |
| U.S. producers': | | | | | | | | | | | | | | |
| Average capacity quantity | 576,000 | 572,000 | 806,000 | 866,200 | 939,400 | 736,050 | 746,050 | 63.1 | -0.7 | 40.9 | 7.5 | 8.5 | 1.4 | |
| Production quantity | 445,831 | 389,825 | 535,638 | 503,319 | 640,095 | 464,406 | 426,064 | 43.6 | -12.6 | 37.4 | -6.0 | 27.2 | -8.3 | |
| Capacity utilization (1) | 77.4 | 68.2 | 66.5 | 58.1 | 68.1 | 63.1 | 57.1 | -9.3 | -9.2 | -1.7 | -8.3 | 10.0 | -6.0 | |
| U.S. shipments: | | | | | | | | | | | | | | |
| Quantity | 420,863 | 378,064 | 504,383 | 488,714 | 586,523 | 429,436 | 401,986 | 39.4 | -10.2 | 33.4 | -3.1 | 20.0 | -6.4 | |
| Value | 219,841 | 202,205 | 258,520 | 256,828 | 331,349 | 234,649 | 276,470 | 50.7 | -8.0 | 27.9 | -0.7 | 29.0 | 17.8 | |
| Unit value | \$0.52 | \$0.53 | \$0.51 | \$0.53 | \$0.56 | \$0.55 | \$0.69 | 8.2 | 2.4 | -4.2 | 2.5 | 7.5 | 25.9 | |
| Export shipments: | | | | | | | | | | | | | | |
| Quantity | *** | *** | 22,813 | 35,613 | 49,222 | 35,339 | 35,402 | *** | *** | *** | 56.1 | 38.2 | 0.2 | |
| Value | *** | *** | 11,361 | 17,517 | 26,579 | 18,411 | 22,798 | *** | *** | *** | 54.2 | 51.7 | 23.8 | |
| Unit value | *** | *** | \$0.50 | \$0.49 | \$0.54 | \$0.52 | \$0.64 | *** | *** | *** | -1.2 | 9.8 | 23.6 | |
| Ending inventory quantity | 30,401 | 29,615 | 41,979 | 31,303 | 35,654 | 30,933 | 27,937 | 17.3 | -2.6 | 41.7 | -25.4 | 13.9 | -9.7 | |
| Inventories/total shipments (1) | *** | *** | 7.6 | 5.7 | 5.4 | 4.8 | 4.4 | *** | *** | *** | -1.9 | -0.3 | -0.4 | |
| Production workers | *** | *** | 985 | 1,141 | 1,052 | 1,018 | 975 | *** | *** | *** | 15.8 | -7.8 | -4.2 | |
| Hours worked (1,000s) | *** | *** | 2,460 | 2,329 | 2,788 | 2,200 | 2,089 | *** | *** | *** | -5.3 | 19.7 | -5.0 | |
| Wages paid (\$1,000s) | *** | *** | 47,809 | 52,159 | 55,353 | 40,590 | 40,822 | *** | *** | *** | 9.1 | 6.1 | 0.6 | |
| Hourly wages | *** | *** | \$19.43 | \$22.40 | \$19.85 | \$18.45 | \$19.54 | *** | *** | *** | 15.2 | -11.3 | 5.9 | |
| Productivity (pounds per hour) | *** | *** | 217.7 | 216.2 | 229.7 | 211.1 | 204.9 | *** | *** | *** | -0.7 | 6.2 | -3.0 | |
| Unit labor costs | *** | *** | \$0.09 | \$0.10 | \$0.09 | \$0.09 | \$0.10 | *** | *** | *** | 16.1 | -16.6 | 9.2 | |
| Net sales: | | | | | | | | | | | | | | |
| Quantity | 436,488 | 390,613 | 527,197 | 524,337 | 635,697 | 464,785 | 437,425 | 45.6 | -10.5 | 35.0 | -0.5 | 21.2 | -5.9 | |
| Value | 226,814 | 208,515 | 269,859 | 274,302 | 357,957 | 253,081 | 299,262 | 57.8 | -8.1 | 29.4 | 1.6 | 30.5 | 18.2 | |
| Unit value | \$0.52 | \$0.53 | \$0.51 | \$0.52 | \$0.56 | \$0.54 | \$0.68 | 8.4 | 2.7 | -4.1 | 2.2 | 7.6 | 25.6 | |
| Cost of goods sold (COGS) | 241,879 | 217,121 | 260,257 | 272,404 | 367,334 | 259,442 | 282,408 | 51.9 | -10.2 | 19.9 | 4.7 | 34.8 | 8.9 | |
| Gross profit or (loss) | (15,065) | (8,606) | 9,602 | 1,898 | (9,377) | (6,361) | 16,854 | -37.8 | -42.9 | -211.6 | -80.2 | -594.0 | -365.0 | |
| SG&A expenses | 19,428 | 12,101 | 12,882 | 11,913 | 7,944 | 5,043 | 10,567 | -59.1 | -37.7 | 6.5 | -7.5 | -33.3 | 109.5 | |
| Operating income or (loss) | (34,493) | (20,707) | (3,280) | (10,015) | (17,321) | (11,404) | 6,287 | -49.8 | -40.0 | -84.2 | 205.3 | 73.0 | -155.1 | |
| Capital expenditures | 8,780 | 4,172 | 3,581 | 1,920 | 1,059 | 817 | 777 | -87.9 | -52.5 | -14.2 | -46.4 | -44.8 | -4.9 | |
| Unit COGS | \$0.55 | \$0.56 | \$0.49 | \$0.52 | \$0.58 | \$0.56 | \$0.65 | 4.3 | 0.3 | -11.2 | 5.2 | 11.2 | 15.7 | |
| Unit SG&A expenses | \$0.04 | \$0.03 | \$0.02 | \$0.02 | \$0.01 | \$0.01 | \$0.02 | -71.9 | -30.4 | -21.1 | -7.0 | -45.0 | 122.6 | |
| Unit operating income or (loss) | (\$0.08) | (\$0.05) | (\$0.01) | (\$0.02) | (\$0.03) | (\$0.02) | \$0.01 | -65.5 | -32.9 | -88.3 | 207.0 | 42.7 | -158.6 | |
| COGS/sales (1) | 106.6 | 104.1 | 96.4 | 99.3 | 102.6 | 102.5 | 94.4 | -4.0 | -2.5 | -7.7 | 2.9 | 3.3 | -8.1 | |
| Operating income or (loss)/ sales (1) | -15.2 | -9.9 | -1.2 | -3.7 | -4.8 | -4.5 | 2.1 | 10.4 | 5.3 | 8.7 | -2.4 | -1.2 | 6.6 | |

(1) "Reported data" are in percent and "period changes" are in percentage points.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

APPENDIX D

COMMENTS BY U.S. PRODUCERS, IMPORTERS, PURCHASERS, AND FOREIGN PRODUCERS REGARDING THE EFFECTS OF THE ORDERS AND THE LIKELY EFFECTS OF REVOCATION

**U.S. PRODUCERS' COMMENTS REGARDING THE EFFECTS OF THE ORDERS
AND THE LIKELY EFFECTS OF REVOCATION**

**Anticipated Operational/Organizational Changes If The Orders
Were To Be Revoked**

The Commission requested U.S. producers to describe any anticipated changes in the character of their operations or organization relating to the production of certain polyester staple fiber in the future if the antidumping duty orders on certain polyester staple fiber from Korea and Taiwan were to be revoked. Their responses are as follows:

“No.”

“Yes. (1) Future expansion will be cancelled. (2) Lay-offs, cut wages, delay on paying suppliers. (3) Possibility of selling the business.”

“No.”

“No.”

“*** would anticipate significant increases in imports at lower prices that would cause *** market share to decline. Long term response would be partial or complete shutdown of capacity and termination in employment for those employees supporting such capacity, as well as financial deterioration.”

“Yes. Capacity consolidation and product portfolio rationalization at *** and *** plants over a 3-year period 2006-08 would have to be accelerated, with an immediate negative impact in cash flow, profitability, and working capital at the organization.”

“If the antidumping duties are removed on imports of certain polyester staple from Korea and Taiwan, the price of imported certain polyester staple will decline while sales for these imports will increase, putting severe price pressure on domestically manufactured certain polyester staple fiber and resulting in volume losses. If the orders were revoked, *** would likely be forced to completely shut down our *** facility if, as expected, the plant becomes cash-negative.”

Significance of Existing Orders In Terms of Trade and Related Data

The Commission requested U.S. producers to describe the significance of the existing antidumping duty orders covering imports of certain polyester staple fiber from Korea and Taiwan in terms of their effect on production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values. Their responses are as follows:

No response was given.

“No influence.”

“Antidumping duty protected U.S. manufacturing jobs. Without it, it is easy to see that most of the domestic producers will be going out of business soon.”

“***.”

“The existing antidumping duty orders have allowed us to maintain a certain degree of competitiveness with the market locally, allowing us to continue to operate and run our U.S.-based manufacturing sites.”

“The existing antidumping duty helps maintain market share for U.S. origin products and keeps U.S. capacity running at a certain level.”

“The antidumping duties imposed on Korea and Taiwan have resulted in the levels of imports of certain polyester staple fiber from these countries declining in the past two years. Without these antidumping duties, imports of certain polyester staple from these countries would have continued to grow. We have also been able to achieve price increases that would probably not have been achieved without these duties.”

Anticipated Changes in Trade and Related Data If Orders Were To Be Revoked

The Commission requested U.S. producers to describe any anticipated changes in their production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values relating to the production of certain polyester staple fiber in the future if the antidumping duty orders on certain polyester staple fiber from Korea and Taiwan were to be revoked. Their responses are as follows:

No response was given.

“No.”

“*** would anticipate significant increases in imports at lower prices that would cause *** current market share to decline. Long term response would be partial or complete shutdown of capacity and termination in employment for those employees supporting such capacity, as well as financial deterioration.”

“Yes. (1) Lay offs. (2) Less production, fewer inventories, fewer shipments. (3) Cancellation of expansion plans. (4) No expenses allowed on future investment on plant, personnel, R&D, and all other activities.

“Yes. Capacity consolidation and product portfolio rationalization at *** and *** plants over a 3-year period 2006-08 would have to be accelerated, with an immediate negative impact in cash flow, profitability, and working capital at the organization.”

“If certain polyester staple fiber produced in the U.S. can not compete with imports from Korea and Taiwan, *** has to reduce production and employment.”

“*** has publicly stated that if the growth in imports results in negative cash flow for our plants manufacturing certain polyester staple, *** will either shut down these facilities or convert the equipment at these facilities, where possible, to produce alternative products.”

U.S. IMPORTERS’ COMMENTS REGARDING THE EFFECTS OF THE ORDERS AND THE LIKELY EFFECTS OF REVOCATION

Anticipated Operational/Organizational Changes If The Orders Were To Be Revoked

The Commission requested importers to describe any anticipated changes in the character of their operations or organization relating to the importation of certain polyester staple fiber in the future if the antidumping duty orders on certain polyester staple fiber from Korea and Taiwan were to be revoked. Their responses are as follows:

“No.”

“No.”

“No.”

“No. We believe that the duties are so low that they really have no effect on the market pricing.”

“*** would anticipate a significant increase in imports at lower prices that would deteriorate its current market share. Long term response would be partial or complete shutdown of capacity and reduction in employment for those employees supporting such capacity.”

“No.”

“Yes. If the duties are to be removed, our future expansion plant and current employment in the state will be put on hold, then will be voided.”

“No.”

“Yes. We will import more fibers from Korea.”

“No.”

“No.”

Significance of Existing Orders In Terms of Trade and Related Data

The Commission requested U.S. importers to describe the significance of the existing antidumping duty orders covering imports of certain polyester staple fiber from Korea and Taiwan in terms of their effect on imports, U.S. shipments of imports, and inventories. Their responses are as follows:

“We have eliminated Korea and Taiwan from our sourcing strategies due to the imposed duties.”

“Anti-dumping duties increased our selling prices and decreased our margins, making us less competitive.”

“After orders were imposed, the supply of recycled fibers from Korea and Taiwan experienced slight decreases for a limited period of time. Because the U.S. market was not a major producer of recycled fibers in these quality categories, *** was forced to seek supply from other countries outside of Korea and Taiwan.”

No response was given.

“***. However, with the order in place *** has had the confidence in this particular category of products (certain polyester staple products) to commit capital funds on growth and physical improvements of current assets used to produce these products. The result has been a gradual, yet small amount of growth in production and market share of these products since ***. *** only imports of certain polyester staple products throughout the period were from ***. In September 2005, *** did import some products from *** to cover short term commitments that were in place from ***. These volumes were very small and were not enough to substantiate running a full production line.

“We can import from only a few factories who opposed through a law firm, and we have no more choice.”

“The effect of the existing antidumping duty is to force us to seek sources for certain polyester staple fiber from other countries.”

“Though the orders have not influenced the quantity of fiber *** imports, they have increased our *** import purchase cost by the duty amount.”

“ We import less with the existing antidumping duty.”

“During 2002-03 additional demand could not be covered with existing capacity, thus prompting the need to import certain polyester staple fiber from ***.”

“No major impact.”

No response was given.

“No change.”

“Antidumping duty protected U.S. manufacturing jobs. Without it, it is easy to see that most of the domestic producers will be going out of business soon.”

“The existing antidumping duty orders have no significant effect on the operations of ***. The products *** imports were never made by U.S. producers.”

No response was given.

“Antidumping did not have a significant impact on our imports.”

No response was given.

Anticipated Changes in Trade and Related Data If Orders Were To Be Revoked

The Commission requested importers to describe any anticipated changes in their imports, U.S. shipments of imports, or inventories of certain polyester staple fiber in the future if the antidumping duty orders on certain polyester staple fiber from Korea and Taiwan were to be revoked. Their responses are as follows:

“Yes. We would add these countries back into our fiber sourcing strategies.”

“No.”

“No.”

“No.”

“*** would not anticipate significant increases in imports of certain polyester staple fiber that it imports as volume will no longer be imported from ***.”

“Yes. No meaning, only law firms make money. (Korean) all factories who can afford to hire lawyer, they won and 0 percent antidumping duty.”

“We have no specific plans or projections for any such changes.”

“No.”

“No.”

“No.”

“No.”

“No.”

“No.”

“Yes. Without a 12 percent duty, it is much easier to import then sell in the state than to manufacture in the state. No future manufacturing in the state.”

“No.”

“Yes. We will import more fibers from Korea if the antidumping duty is revoked.”

“No.”

“No.”

U.S. PURCHASERS' COMMENTS REGARDING THE EFFECTS OF THE ORDERS AND THE LIKELY EFFECTS OF REVOCATION

Effects on Future Activities of the Firms and the U.S. Market as a Whole

The Commission requested purchasers to comment on the likely effects of revocation of the antidumping duty orders for imports of certain polyester staple fiber from Korea and Taiwan on (1) the future activities of their firms and (2) the U.S. market as a whole. Their responses are as follows:

“(1) Production associated with the filling/packing of pet beds could remain in the U.S., as opposed to being shifted to China.

“(2) Imported certain polyester fiber is cheaper in price than U.S. produced certain polyester fiber whether or not the Commission decides to revoke the antidumping duty order. However, revoking the order, and allowing a free market to exist, may allow some users of certain polyester fiber to remain in the U.S.

“(1) We have not purchased any fiber from Korea or Taiwan and are not aware of effect on market.”

“(2) No answer.”

“(1) It should lower the upward pressure on polyester pricing. Hopefully stabilize the market.”

“(2) No opinion.”

“(1) None.”

“(2) None.”

“(1) Do not know- the particular fiber we buy for processing is rarely available from U.S. producers.”

“(2) Do not know.”

“(1) Anti-dumping duties have always been so low that any revocation would have no affect on imports of certain polyester staple fiber from Korea and Taiwan. This is in addition to the fact that U.S. producers do not offer these types of certain PSF (100 percent regenerated fiber) which makes the likely effect of any revocation minimal.”

“(2) Same as above.”

“(1) We will continue to look for the best fiber at the best price to determine if we can produce our products domestically compared to importing them.”

“(2) The above is also the U.S. market trend.”

(1) No answer.

(2) No significant effect. The orders are an unnecessary nuisance. The major problems facing the U.S. industry concern lack of control over raw material costs, out-dated equipment, a limited range of product types, so removing the orders will have no significant effect on the domestic industry.”

“(1) Could possibly benefit our business by reducing cost due to increased competition.”

“(2) Same as above.”

No response was given.

“(1) More competitive price.”

“(2) Continued availability of regenerated polyester and conjugates at a competitive price. More competitive prices between suppliers.”

“(1) Will not change.”

“(2) Do not know.”

“(1) Our purchasing objectives will not change.”

“(2) Same as above.”

No response was given.

“(1) Unknown.”

(2) No response was given.

“(1) Unknown at this time.”

“(2) Unknown at this time.”

“(1) Revocation would probably help U.S. users of PSF compete better with imported products incorporating PSF.”

“(2) Revocation would probably hurt the U.S. PSF producers by making them have to be more competitive with foreign producers on price.”

“(1) Do not expect much change to market, U.S. products are high and competition will be in-line.”

“(2) No answer.”

No response was given.

“(1) We do not foresee any impact from the removal of antidumping duties.”

“(2) No answer.”

“(1) Revocation of the antidumping orders will have only a negligible impact on *** in the future (next 3-5 years) because many of the products it sources from Korea and Taiwan are not produced in the United States and the dumping duties are low in any event.”

“(2) *** does not foresee, over the next 1-2 years, any significant change in the U.S. market. There is no indication that domestic producers will commence production of the 100 percent regenerated products desired by our customers or that *** will boost its domestic production of conjugate to address our needs.”

No response was given.

No response was given.

“(1) Currently all sources of fiber are reviewed for customers needs and cost analyses. Restrictions of global fiber markets/sourcing could dramatically impact our ability to serve our customer base.”

(2) No response was given.

“(1) Trend with purchasing more Asian fiber will continue. Quality is improving and has a cost advantage.”

“(2) Most U.S. producers are not cost competitive today to the Asian producers and the removal of duties will make this issue more apparent. This is driven by lower labor costs and newer, more efficient equipment.”

“(1) Price reductions for certain polyester staple fiber.”

“(2) Consolidation of manufacturers and distributors.”

“(1) The revocation of antidumping duties in the U.S. will have no effect. There is currently no effect and really hasn't been any since the initial duties were announced. The duties only affected for a short time those who had the highest duty rates. It closed the most inefficient down and added strength to the efficient. Today you pay virtually the same net price duty paid U.S. for a fiber that has 7.9% antidumping versus one that has zero duty (due to the seller reducing his price to compensate for the duty difference). Our firm does not seek out those who have low duty rates or those who are located in countries without antidumping duties. We seek out companies who can supply the products the U.S. manufacturers want and at the prices they are willing to pay. We look for consistency and loyalty in both quality and performance.”

FOREIGN PRODUCERS' COMMENTS REGARDING THE EFFECTS OF THE ORDERS AND THE LIKELY EFFECTS OF REVOCATION

Anticipated Operational/Organizational Changes If The Orders Were To Be Revoked

The Commission requested foreign producers to describe any anticipated changes in the character of their operations or organization relating to the production of certain polyester staple fiber in the future if the antidumping duty orders on certain polyester staple fiber from Korea and Taiwan were to be revoked. Their responses are as follows:

“No.”

“No.”

“No.”

“No.”

Anticipated Changes in Trade and Related Data If Orders Were To Be Revoked

The Commission requested foreign producers to describe any anticipated changes in their production capacity, production, home market shipments, exports to the United States and other markets, or inventories relating to the production of certain polyester staple fiber in the future if the antidumping duty orders on certain polyesters staple fiber from Korea and Taiwan were to be revoked. Their responses are as follows:

“No.”

“No.”

“No.”

“No.”

Significance of the Orders In Terms of Trade and Related Data

The Commission requested foreign producers to describe the significance of the existing antidumping duty orders on certain polyester staple fiber from Korea and Taiwan, in terms of their effect on the firms’ production capacity, production, home market shipments, exports to the United States and other markets, and inventories. Their responses are as follows:

“There are nearly no significant effects on *** operations as a direct result of the antidumping duty order of the United States. *** production is still at a high level over *** percent.”

“After imposition of anti-dumping orders, sales quantity to the U.S. still increased in 2001, but decreased from 2002 since *** took over some of the sales.

“The existing antidumping duty orders do not have a significant effect on *** production capacity, production, etc . Rather, *** believes that the market situation such as demand and supply has a significant effect on them.”

“Our regular sales with certain volumes have become limited due to the existing antidumping duty, and this may cause additional inventories when some markets are sluggish. Accordingly, we have been forced to switch more of our sales to other markets where they request even much lower prices, like China.”

APPENDIX E

**INDEX OF RECORD INFORMATION ON POLYESTER STAPLE FIBER
ANTITRUST LITIGATION AND SETTLEMENT AGREEMENTS**

Table E-1

Certain PSF: Record documents related to criminal antitrust proceedings

| Document | Submitted By | Antitrust Related Content |
|---|---|--|
| <p>“KoSa announced Polyester Staple Price Increase,” KoSa News Release, 06/29/1999.</p> | <ul style="list-style-type: none"> • Consolidated’s and Stein’s prehearing brief, Exhibit M. | <ul style="list-style-type: none"> • Announcement of a 10-15% price increase effective August 1999 for “polyester staple products.” |
| <p>Assorted Price Announcements made by domestic producers, 1999-2000.</p> | <ul style="list-style-type: none"> • Consolidated’s and Stein’s posthearing brief, Exhibit 13. | <ul style="list-style-type: none"> • KoSa (06/29/1999) increases prices of its polyester staple products by 10-15% effective with August orders. • KoSa (10/01/1999) increases prices of its polyester staple products by 10-15% effective with November orders. • Wellman (06/30/1999) increases price of Fortel® polyester staple by 10-12% effective 08/01/1999. • Wellman (10/04/1999) increases price of Fortel® polyester staple by 6 cents per pound effective 11/01/1999. This will affect “the apparel, home furnishings, industrial, non-wovens and fiberfill markets.” • Wellman (1/13/2000) increases price of all polyester staple by 11-13% effective 02/14/2000. This will affect “apparel, home furnishings, industrial, nonwovens, fiberfill and carpet markets.” • News release dated 11/12/1999: DuPont raised prices 5-10% effective 01/2000; KoSa raised prices 5-10% effective 01/2000; Nan Ya raised prices 8-10% effective 01/03/2000, and Wellman raised prices 7-11% effective 01/2000. • News release dated 01/14/2000: DuPont raised prices 12-14% effective 02/12/2000; KoSa raised prices 10-15% effective 02/15/2000; Wellman raised prices 11-13% effective 02/14/2000; Nan Ya was making similar plans but did not confirm them. • News release dated 03/31/2000: DuPont raised prices 6-10% effective 04/28/2000; in mid-March price hikes were announced by DuPont, KoSa, Nan Ya and Wellman, “the four companies have already raised staple prices three times.” |

Table continued on next page.

Table E-1--Continued

Certain PSF: Record documents related to criminal antitrust proceedings

| Document | Submitted By | Antitrust Related Content |
|---|--|---|
| Assorted Price Announcements made by domestic producers, 1999-2000-- <i>Continued</i> . | <ul style="list-style-type: none"> • Consolidated's and Stein's posthearing brief, Exhibit 13. | <ul style="list-style-type: none"> • News release dated 03/15/2000: "Wellman was the fourth major polyester producer to increase polyester filament prices in the past week." |
| "KoSa announces Polyester Staple price increase," KoSa News Release, 01/11/2000. | <ul style="list-style-type: none"> • Consolidated's and Stein's prehearing brief, Exhibit J. | <ul style="list-style-type: none"> • Announcement of 10-15% price increase effective February 15, 2000 on "polyester staple products." |
| "Polyester Staple Price Increase Announced by Wellman," Wellman News Release, 01/13/2000. | <ul style="list-style-type: none"> • Consolidated's and Stein's prehearing brief, Exhibit J. | <ul style="list-style-type: none"> • Announcement of 11-13% price increase effective February 14, 2000 on "all polyester staple" including apparel, home furnishings, industrial, nonwovens, fiberfill and carpet markets. |
| Indictment of Robert Dutton, <u>U.S. v. Robert Bradley Dutton</u> , Docket No. 3:02CR220-V, 09/13/2002. | <ul style="list-style-type: none"> • Domestic interested parties' posthearing brief, Exhibit 3. | <ul style="list-style-type: none"> • The Government describes the offense charged as engaging in a conspiracy to "suppress and restrain competition in the sale of polyester staple sold in the U.S." • "Polyester staple is a man-made, petroleum-based fiber that is manufactured in varying thicknesses and cut into short lengths. It is sold to textile manufacturers who incorporate it into fabrics for sheets, shirts, and other wearing apparel. Other forms of polyester staple have applications in items such as sleeping bags, pillows, and comforters." |
| Plea Agreement of Troy Stanley, <u>U.S. v. Troy Stanley</u> , Docket No. 3:02CR230-V, 10/28/2002. | <ul style="list-style-type: none"> • Consolidated's and Stein's posthearing brief, Exhibit 6. | <ul style="list-style-type: none"> • Mr. Stanley will plead guilty to "participating in a conspiracy to suppress and eliminate competition by fixing the price of, and allocating customers for, polyester staple sold in North America, beginning at least as early as September, 1999 and continuing until at least January, 2001." • Mr. Stanley and his co-conspirators agreed on prices for "first-quality polyester staple in North America." |

Table continued on next page.

Table E-1--Continued
Certain PSF: Record documents related to criminal antitrust proceedings

| Document | Submitted By | Antitrust Related Content |
|--|--|---|
| <p>Troy Stanley Information, <u>U.S. v. Troy F. Stanley</u>, Docket No. 3:02CR230V, 10/31/2002</p> | <ul style="list-style-type: none"> • Domestic interested parties’ posthearing brief, Exhibit 3. • Consolidated’s and Stein’s posthearing brief, Exhibit 5. | <ul style="list-style-type: none"> • “Beginning at least as early as September 1999 and continuing until at least January 2001. . . the defendant and co-conspirators participated in a conspiracy to suppress and restrain competition by fixing the price of, and allocating customers for, polyester staple sold by the defendant and his co-conspirators in North America.” • “Polyester staple is a man-made, petroleum-based fiber that is manufactured in varying thicknesses and cut into short lengths. It is sold to textile manufacturers who incorporate it into fabrics for sheets, shirts, and other wearing apparel. Other forms of polyester staple have applications in items such as sleeping bags, pillows, and comforters.” |
| <p>Information, <u>U.S. v. Arteva</u>, Criminal No. 3:02CR229-V, 10/31/2002.</p> | <ul style="list-style-type: none"> • Consolidated’s importer questionnaire response, Exhibit 1. • Domestic interested parties’ posthearing brief, Exhibit 3. • Consolidated’s and Stein’s posthearing brief, Exhibit 3. | <ul style="list-style-type: none"> • DOJ charges that KoSa participated in a criminal conspiracy to fix prices and allocate customers “at least as early as September 1999...until at least January 2001.” • “Polyester staple is a man-made, petroleum-based fiber that is manufactured in varying thicknesses and cut into short lengths. It is sold to textile manufacturers who incorporate it into fabrics for sheets, shirts, and other wearing apparel. Other forms of polyester staple have applications in items such as sleeping bags, pillows, and comforters.” |
| <p>KoSa Plea Agreement, <u>U.S. v. Arteva</u>, Criminal No. 3:02CR229-V, 10/31/2002.</p> | <ul style="list-style-type: none"> • Consolidated’s importer questionnaire response, Exhibit 2. • Consolidated’s and Stein’s posthearing brief, Exhibit 4. | <ul style="list-style-type: none"> • KoSa guilty plea for conspiracy “to fix, increase, and maintain prices, coordinate price increases, and allocate customers for first-quality polyester staple fiber...” |

Table continued on next page.

Table E-1--Continued

Certain PSF: Record documents related to criminal antitrust proceedings

| Document | Submitted By | Antitrust Related Content |
|--|--|--|
| Plea and Rule 11 and Sentencing Hearing Transcript, <u>U.S. v. Arteva</u> , Criminal Nos. 3:02CR229 and 3:02CR230, 12/18/2002. | <ul style="list-style-type: none"> • Consolidated’s importer questionnaire response, Exhibit 3. | <ul style="list-style-type: none"> • DOJ lawyer recommends \$28.5 million fine for KoSa with downward departure in fine range due to defendant’s substantial assistance to the government. • References are made to “polyester staples” (7 line 6) and “first quality polyester staple fiber” (45 line 7). |
| Plea and Rule 11 Sentencing Hearing Transcript, <u>U.S. v. Arteva Specialties and Troy F. Stanley</u> , Docket No. 3:02CR229 and 230V, 12/18/2002. | <ul style="list-style-type: none"> • Consolidated’s and Stein’s posthearing brief, Exhibit 7. | <ul style="list-style-type: none"> • The Court: “the defendant, Arteva Specialties (same for Stanley on page 11), and co-conspirators entered into and participated in a combination and conspiracy to suppress and restrain competition by fixing the price of and allocating customers for polyester staples sold by the defendant and its co-conspirators in North America.” p. 7. |
| Statement of R. Hewitt Pate, Assistant Attorney General, Antitrust Division, before the Committee on the Judiciary, U.S. House of Representatives, 07/24/2003. | <ul style="list-style-type: none"> • Domestic interested parties’ posthearing brief, Exhibit 3. • Consolidated’s and Stein’s posthearing brief, Exhibit 9. | <ul style="list-style-type: none"> • In testimony to the House on recent DOJ enforcement activities, Mr. Pate testified that, “In Oct. 2002, KoSa, pled guilty to price-fixing and market allocation in polyester staple, a synthetic fiber used in textile products such as clothing, table and bedding linens, upholsteries, carpeting, and air and water filters.” p. 4. ¶3. |
| Indictment, <u>Between Her Majesty the Queen and Arteva</u> , Court File No: T-_____, 08/04/2003. | <ul style="list-style-type: none"> • Consolidated’s importer questionnaire response, Exhibit 4. | <ul style="list-style-type: none"> • Indictment accusing KoSa of conspiracy with DAK, Wellman and Nan Ya to limit “polyester staple fibre” competition “in Canada.” |
| Statement of Admissions, <u>Between Her Majesty the Queen and Arteva</u> , Court File No._____, 08/07/2003. | <ul style="list-style-type: none"> • Consolidated’s importer questionnaire response, Exhibit 5. | <ul style="list-style-type: none"> • KoSa admits to conspiracy with DAK, Wellman and NanYa to coordinate prices and allocate customers in Canada for PSF between September 1999 and June 2000. • “Polyester staple fibre is...cut into short lengths for processing into spun yarns. Polyester staple fibre is sold to textile manufacturers which process it into spun yarns thereafter woven into fabric...The relevant product for these purposes is first quality fine denier polyester staple fibre.” |

Table continued on next page.

Table E-1--Continued
Certain PSF: Record documents related to criminal antitrust proceedings

| Document | Submitted By | Antitrust Related Content |
|--|---|--|
| <p>Defendant's Exhibit No. 60, <u>U.S. v. Robert Bradley Dutton</u>, Docket No. 3:02CR220.</p> | <ul style="list-style-type: none"> • Consolidated's and Stein's posthearing brief, Exhibit 12. | <ul style="list-style-type: none"> • Internal business memorandum of Bradley Dutton regarding staple fiber business. • In going over accounts that Nan Ya does not have as customers he writes, "The reason Wellman has the fiberfill and KoSa the spinning fiber is because they understand if one takes the other they will have competition on current business. Basically they do not try to take the others business. Something to think about!" p. 2. • "I know we have competition at Greenwood with DuPont. Wellman met with Doyle the day before, but I do not know what they offered (if anything). KoSa quoted \$0.58/lb." |
| <p>"Prosecutors outline price-fixing allegations," <u>Charlotte.com: The Charlotte Observer</u>, 09/24/2003.</p> | <ul style="list-style-type: none"> • Consolidated's and Stein's prehearing brief, Exhibit I. | <ul style="list-style-type: none"> • Federal prosecutors outlined illegal price-fixing conspiracy by Nan Ya, KoSa, Wellman, and DAK in trial of former Nan Ya employee. • "The allegations concern polyester staple fiber, a fluffy white substance used to make sheets and carpets as well as stuff pillows, sleeping bags and comforters." |
| <p>Transcript of Trial Proceedings, <u>U.S. v. Robert Bradley Dutton</u>, Docket No. 3:02CR220, 09/30/2003.</p> | <ul style="list-style-type: none"> • Consolidated's importer questionnaire response, Exhibit 8. • Consolidated's and Stein's prehearing brief, Exhibit K. • Domestic interested parties' posthearing brief, Exhibit 4. | <ul style="list-style-type: none"> • Stanley testified at trial of Robert Dutton (ultimately acquitted) that: • conspiracy to fix prices and allocate customers began as early as 1994/1995; • he met with DAK's "market manager for fine denier." (p. 273, line 16); • he coordinated price increases in 1999 and 2000, including price increases to Dan River; • "{t}he textile manufacturers" were targeted by the conspiracy. (290 lines 12-25, 291 lines 1-2) • Brad Dutton read from his sales report for Nan Ya, dated 2/1/00, stating that KoSa would implement a price increase to 45 cents on 2/1/00 and 48 cents on 4/1/00. |

Table continued on next page.

Table E-1--Continued
Certain PSF: Record documents related to criminal antitrust proceedings

| Document | Submitted By | Antitrust Related Content |
|--|---|---|
| <p>Transcript of Trial Proceedings, <u>U.S. v. Robert Bradley Dutton</u>, Docket No. 3:02CR220, 9/23/2003-10/2/2003.</p> | <ul style="list-style-type: none"> • Consolidated’s and Stein’s posthearing brief, Exhibit 8. | <ul style="list-style-type: none"> • Dutton testifies that in September of 1999 he met with DuPont’s staple business manager, Sonny Walker, and fine denier market manager, Jim Netzel, and later discussed the same issues with Wellman’s Dave Whitley, pp. 274 and 286. • The company representatives reached agreements on “price, timing and the need to be religious and follow through on price,” p. 287. • Robert Dutton describes his contact with Dave Whitley and John Hobson (President) of Wellman regarding efforts to fix prices, pp. 247 and 252. |
| <p>Transcript of Sentencing Hearing, <u>U.S. v. Troy Franklin Stanley</u>, Docket No. 3:02CR230, 11/15/2004.</p> | <ul style="list-style-type: none"> • Domestic interested parties’ prehearing brief, Exhibit 12. • Consolidated’s and Stein’s posthearing brief, Exhibit 10. | <ul style="list-style-type: none"> • In asserting the factual basis of Stanley’s guilty plea, DOJ lawyer states that Stanley participated in a conspiracy to fix prices for first quality PSF sold primarily for textile applications (3 lines 24-25); “commodity textile polyester staple” (4 line 15); “first quality polyester staple” (4 line 23); and “first quality polyester staple customers, primarily textile customers” (5 lines 16-17, 6 lines 7-8). |
| <p>***</p> | <p>***</p> | <p>***</p> |

Table E-2
Certain PSF: Record documents related to civil antitrust proceedings

| Document and Date | Submitted By | Content |
|--|--|--|
| <p>“KoSa announces Polyester Staple price increase,” KoSa News Release, 01/11/2000.</p> | <ul style="list-style-type: none"> • Consolidated’s and Stein’s prehearing brief, Exhibit J. | <ul style="list-style-type: none"> • Announcement of 10-15% price increase on “polyester staple products” effective February 15, 2000. |
| <p>***</p> | <ul style="list-style-type: none"> • Domestic interested parties’ posthearing brief, Exhibit 8. | <p>*** *** *** ***</p> |
| <p>Consolidated Amended Class Action Complaint, <u>In Re: PSF Antitrust Litigation</u>, MDL Docket No. 3:03CV1516, 07/21/2003.</p> | <ul style="list-style-type: none"> • Consolidated’s and Stein’s prehearing brief, Exhibit A. | <ul style="list-style-type: none"> • “Polyester Staple” means Polyester Fiber cut to specific and relatively limited but spinnable lengths (generally 0.5 to 4-6 inches). (¶44) • “The Defendant ITC Petitioners defined the single relevant, identifiable market for purposes of the anti-dumping investigation as follows: excerpt of scope definition from AD petition” (¶51) |

Table continued on next page.

Table E-2--Continued
Certain PSF: Record documents related to civil antitrust proceedings

| Document and Date | Submitted By | Content |
|--|--|--|
| <p>DAK Settlement Agreement, <u>In Re: PSF Antitrust Litigation</u>, MDL Docket No.: 3:03CV1516, 08/26/2003.</p> | <ul style="list-style-type: none"> • Consolidated’s importer questionnaire response, Exhibit 6. | <ul style="list-style-type: none"> • DAK defendants agree to \$17,150,000 settlement with purchasers of “polyester fiber, other than fiberfill,” but “deny Plaintiffs’ allegations.” • “Polyester staple” means any polyester fiber, other than fiberfill, cut to specific and relatively limited lengths (generally 0.5 to 5-6 inches).” (§8) |
| <p>Complaint, <u>Koch v. Hoechst</u>, Court No. 03 Civ. 8679, 11/03/2003.</p> | <ul style="list-style-type: none"> • Consolidated’s importer questionnaire response, Exhibit 7. | <ul style="list-style-type: none"> • KoSa complaint against Hoechst alleging fraud in Hoechst’s sale of PSF facilities to KoSa, given restraint of trade organized by Troy Stanley and others beginning in 1994. • KoSa purchased business from Hoechst that included “polyester textile fibers, including what is known as polyester staple.” (§1) • Hoechst employees including Stanley allocated customers and coordinated sales strategies with Wellman for “polyester staple customers in the textile industry” from 1995 through 1998. (§35) The same employees attempted an “industry-wide polyester staple price increase” in 1997, but failed. (§36) |
| <p>Memorandum and order denying Koch Industries’ Motion to Dismiss, <u>In Re: PSF Antitrust Litigation</u>, MDL Docket No. 3:03CV1516, 08/04/2004.</p> | <ul style="list-style-type: none"> • Consolidated’s and Stein’s posthearing brief, Exhibit 14. | <ul style="list-style-type: none"> • Koch was the parent of KoSa at the time of filing and is seeking dismissal of the claims against it on the grounds that there is a lack of connection between Koch and the alleged conspiracy within the polyester staple industry, p. 4. • Plaintiffs allege that Koch was at a minimum aware of the conspiracy’s existence and that Koch approved or condoned the alleged illegal conduct, p. 9. • Court refuses Koch’s motion for dismissal, p. 10. |
| <p>Transcript of Proceedings, <u>In Re: PSF Antitrust Litigation</u>, MDL Docket No. 3:03CV1516, 10/05/2004.</p> | <ul style="list-style-type: none"> • Domestic interested parties’ prehearing brief, Exhibit 14. | <ul style="list-style-type: none"> • At status conference, the court observes that the DOJ lawyer involved in the KoSa prosecution had announced that the government would pursue no additional criminal prosecutions. |

Table continued on next page.

Table E-2--Continued
Certain PSF: Record documents related to civil antitrust proceedings

| Document and Date | Submitted By | Content |
|--------------------------------------|---|--|
| *** | <ul style="list-style-type: none"> • Domestic interested parties' posthearing brief, Exhibit 5. | *** |
| *** | <ul style="list-style-type: none"> • Domestic interested parties' prehearing brief, Exhibit 13. • Consolidated's and Stein's posthearing brief, Exhibit 16. | *** *** |
| Wellman Inc., Form 10-Q, 08/09/2005. | <ul style="list-style-type: none"> • Consolidated's and Stein's prehearing brief, Exhibit C. | <ul style="list-style-type: none"> • Wellman reports that it settled alleged antitrust violations with 35 purchasers, with 21 federal actions outstanding, denying wrongdoing and claiming strong defenses. |
| Wellman Press Release, 09/08/2005. | <ul style="list-style-type: none"> • Consolidated's and Stein's prehearing brief, Exhibit D. | <ul style="list-style-type: none"> • Wellman reports antitrust settlements totaling \$32 million in second and third quarters of 2005, denying any wrongdoing and claiming strong defenses. |

Table continued on next page.

Table E-2--Continued
Certain PSF: Record documents related to civil antitrust proceedings

| Document and Date | Submitted By | Content |
|--|---|---|
| <p>Memo in Support of Plaintiffs' Motion for Preliminary Approval of Proposed Settlements with Wellman, Inc. and the Nan Ya Defendants, <u>In Re: PSF Antitrust Litigation</u>, MDL Docket No. 3:03CV1516, 09/22/2005.</p> | <ul style="list-style-type: none"> • Consolidated's and Stein's prehearing brief, Exhibit G. | <ul style="list-style-type: none"> • Exhibit A to Wellman and Nan Ya settlement agreements lists numerous "non-class" plaintiffs with which Wellman and Nan Ya settled for undisclosed amounts. • Includes copy of Wellman settlement agreement in which Wellman "denies plaintiffs' allegations of wrongdoing and injury." • Memo: "Polyester Staple" (1, 3) Wellman Settlement Agreement: "'Polyester Staple' means any cut polyester fiber used for any purpose." (§10) |
| <p>Order Granting Preliminary Approval of Proposed Settlement with Nan Ya, <u>In Re: PSF Antitrust Litigation</u>, MDL Docket No. 3:03CV1516, 10/05/2005.</p> | <ul style="list-style-type: none"> • Consolidated's and Stein's prehearing brief, Exhibit F. | <ul style="list-style-type: none"> • Nan Ya settlement agreement covers the period April 1, 1999 through July 31, 2001. |
| <p>Order Granting Preliminary Approval of Proposed Settlement with Wellman, <u>In Re: PSF Antitrust Litigation</u>, MDL Docket No. 3:03CV1516, 10/05/2005.</p> | <ul style="list-style-type: none"> • Consolidated's and Stein's prehearing brief, Exhibit E. | <ul style="list-style-type: none"> • Wellman settlement agreement covers the period April 1, 1999 through July 31, 2001. |
| <p>Wellman Inc., Form 10-Q, 11/09/2005.</p> | <ul style="list-style-type: none"> • Consolidated's and Stein's posthearing brief, Exhibit 15. | <ul style="list-style-type: none"> • Wellman recorded a pre-tax charge of \$8.0 million in the third quarter of 2005 due to the settlement of the federal class action lawsuits of direct purchasers alleging that the Company engaged in price fixing and customer allocation relating to the sales of polyester staple fiber, p. 10. |

Table continued on next page.

Table E-2--Continued
Certain PSF: Record documents related to civil antitrust proceedings

| Document and Date | Submitted By | Content |
|---|--|--|
| <p>Notice of Class Plaintiffs' Motion and Motion for Final Approval of Settlements with Wellman, Inc. and the Nan Ya Defendants, <u>In Re Polyester Staple Antitrust Litigation</u>, MDL Docket No. 3:03CV1516, 12/05/2005.</p> | <ul style="list-style-type: none"> • Domestic interested parties' posthearing brief, Exhibit 9. | <ul style="list-style-type: none"> • Class plaintiffs make a motion for the court to approve their settlements with Wellman for \$8.5 million and Nan Ya for \$5.0 million, p. 1¶2. • "Class plaintiffs are direct purchasers of Polyester Staple who allege a single, nationwide conspiracy to fix, maintain and stabilize the prices of, and allocate the market and customers for, Polyester Staple in the U.S. The Defendants include all of the major producers of Polyester Staple during the class period, which runs from April 1, 1999 through and including July 31, 2001." p. 3. • The Court certified the Wellman and Nan Ya Settlement Classes as follows: "All persons . . . who purchased Polyester Staple in the United States. . . at any time . . . from April 1, 1999 to July 31, 2001." p. 4. |
| <p>***</p> | <ul style="list-style-type: none"> • Consolidated's and Stein's posthearing brief, Exhibit 17. | <p>*** *** *** ***</p> |

APPENDIX F
CENSUS BUREAU DATA ON HOUSING STARTS

Table F-1
New privately owned housing units started, annually, 2000-04

| Year | Total (Thousands of units) |
|-------------|---------------------------------------|
| 2000 | 1,568.7 |
| 2001 | 1,602.7 |
| 2002 | 1,704.9 |
| 2003 | 1,847.7 |
| 2004 | 1,955.8 |

Source: Compiled from official statistics of the U.S. Census Bureau.

APPENDIX G

**WEIGHTED-AVERAGE PRICES AND QUANTITIES AS
REPORTED BY INDIVIDUAL U.S. PRODUCERS**

Table G-1
Certain PSF: Weighted-average prices and quantities of product 1 produced by U.S. producers, by quarters, January 2000-September 2005

* * * * *

Table G-2
Certain PSF: Weighted-average prices and quantities of product 2 produced by U.S. producers, by quarters, January 2000-September 2005

* * * * *

Table G-3
Certain PSF: Weighted-average prices and quantities of product 3 produced by U.S. producers, by quarters, January 2000-September

* * * * *

Table G-4
Certain PSF: Weighted-average prices and quantities of product 4 produced by U.S. producers, by quarters, January 2000-September 2005

* * * * *

Table G-5
Certain PSF: Weighted-average prices and quantities of product 5 produced by U.S. producers, by quarters, January 2000-September 2005

* * * * *

Table G-6
Certain PSF: Weighted-average prices and quantities of product 6 produced by U.S. producers, by quarters, January 2000-September 2005

* * * * *

Table G-7
Certain PSF: Weighted-average prices and quantities of product 7, produced by U.S. producers, by quarters, January 2000-September 2005

* * * * *

Figure G-1
Certain PSF: Weighted-average f.o.b prices of domestic product 1, by quarters, January 2000-September 2005

* * * * *

Figure G-2
Certain PSF: Weighted-average f.o.b prices of domestic product 2, by quarters, January 2000-September 2005

* * * * *

Figure G-3
Certain PSF: Weighted-average f.o.b prices of domestic product 3, by quarters, January 2000-September 2005

* * * * *

Figure G-4
Certain PSF: Weighted-average f.o.b prices of domestic product 4, by quarters, January 2000-September 2005

* * * * *

Figure G-5
Certain PSF: Weighted-average f.o.b prices of domestic product 5, by quarters, January 2000-September 2005

* * * * *

Figure G-6
Certain PSF: Weighted-average f.o.b prices of domestic product 6, by quarters, January 2000-September 2005

* * * * *

Figure G-7
Certain PSF: Weighted-average f.o.b prices of domestic product 7, by quarters, January 2000-September 2005

* * * * *

APPENDIX H

HISTORICAL PRICING DATA ON PRODUCTS 1, 3, 5, 6, AND 7, BY QUARTERS, JANUARY 1997-DECEMBER 1999

Table H-1

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 1997-December 1999

* * * * *

Table H-2

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, January 1997-December 1999

* * * * *

Table H-3

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 and margins of underselling/(overselling), by quarters, January 1997-December 1999

* * * * *

Table H-4

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 6 and margins of underselling/(overselling), by quarters, January 1997-December 1999

* * * * *

Table H-5

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 7 and margins of underselling/(overselling), by quarters, January 1997-December 1999

* * * * *

Figure H-1

Certain PSF: Weighted-average f.o.b prices of domestic product 1, by quarters, January 1997-September 2005

* * * * *

Figure H-2

Certain PSF: Weighted-average f.o.b prices of domestic product 3, by quarters, January 1997-September 2005

* * * * *

Figure H-3

Certain PSF: Weighted-average f.o.b prices of domestic product 5, by quarters, January 1997-September 2005

* * * * *

Figure H-4
Certain PSF: Weighted-average f.o.b prices of domestic product 6, by quarters, January 1997-September 2005

* * * * *

Figure H-5
Certain PSF: Weighted-average f.o.b prices of domestic product 7, by quarters, January 1997-September 2005

* * * * *

APPENDIX I

**ALTERNATE PRESENTATION OF PRICING DATA FOR
PRODUCTS
1, 3, 6, AND 7**

Table I-1

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 1, including data as reported by * and *** for product 6, and margins of underselling/(overselling), by quarters, January 2000-September 2005**

* * * * *

Table I-2

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 3, including data as reported by * and *** for product 7, and margins of underselling/(overselling), by quarters, January 2000-September 2005**

* * * * *

Table I-3

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 6, excluding data as reported by * and ***, and margins of underselling/(overselling), by quarters, January 2000-September 2005**

* * * * *

Table I-4

Certain PSF: Weighted-average f.o.b. prices and quantities of domestic and imported product 7, excluding data as reported by * and ***, and margins of underselling/(overselling), by quarters, January 2000-September 2005**

* * * * *

Figure I-1

Certain PSF: Weighted-average f.o.b prices of domestic and imported product 1, including data as reported by * and *** as product 6, by quarters, January 2000-September 2005**

* * * * *

Figure I-2

Certain PSF: Weighted-average f.o.b prices of domestic and imported product 3, including data as reported by * and *** as product 7, by quarters, January 2000-September 2005**

* * * * *

Figure I-3

Certain PSF: Weighted-average f.o.b prices of domestic and imported product 6, excluding data as reported by * and ***, by quarters, January 2000-September 2005**

* * * * *

Figure I-4

Certain PSF: Weighted-average f.o.b prices of domestic and imported product 7, excluding data as reported by * and ***, by quarters, January 2000-September 2005**

* * * * *

Table I-5

Certain PSF: Instances of underselling/overselling and the range and average of margins for products 1-7, shifting data on products 6 and 7 as reported by * and ***, by sources, January 2000-September 2005**

* * * * *

