

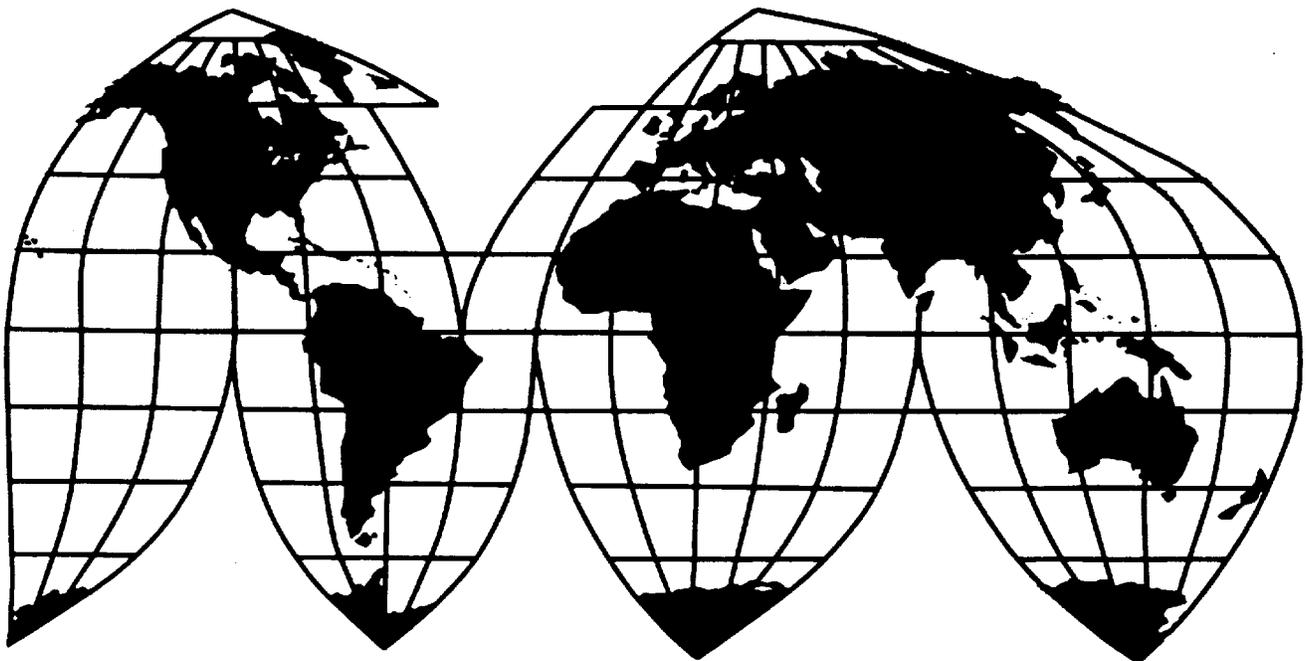
# Laminated Woven Sacks From China

Investigation Nos. 701-TA-450 and 731-TA-1122 (Preliminary)

Publication 3942

August 2007

**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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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.

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-450 and 731-TA-1122 (Preliminary)

## LAMINATED WOVEN SACKS FROM CHINA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports from China of laminated woven sacks, provided for in subheading 6305.33.0020 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and to be subsidized by the Government of China.

### COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### BACKGROUND

On June 28, 2007, a petition was filed with the Commission and Commerce by the Laminated Woven Sacks Committee, an *ad hoc* committee composed of five U.S. producers of laminated woven sacks, alleging that the establishment of an industry in the United States is materially retarded, or that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of laminated woven sacks from China. Members of the Laminated Woven Sacks Committee include: (1) Bancroft Bag, Inc. of West Monroe, LA; (2) Coating Excellence International, LLC of Wrightstown, WI; (3) Hood Packaging Corp. of Madison, MS; (4) Mid-America Packaging, LLC of Twinsburg, OH; and (5) Polytex Fibers Corp. of Houston, TX. Accordingly, effective June 28, 2007, the Commission instituted antidumping and countervailing duty investigation Nos. 701-TA-450 and 731-TA-1122 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of July 5, 2007 (72 FR 36720). The conference was held in Washington, DC, on July 19, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup>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 the preliminary phase of these investigations, we find that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of laminated woven sacks from the People's Republic of China ("China") that are allegedly subsidized and sold in the United States at less than fair value.

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the U.S. International Trade Commission ("Commission") to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>1</sup> In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."<sup>2</sup>

### II. BACKGROUND

The petitions in these investigations were filed on June 28, 2007 on behalf of the Laminated Woven Sacks Committee, an ad hoc group of five producers of laminated woven sacks, and its individual members (Bancroft Bag, Inc. ("Bancroft") of West Monroe, LA; Coating Excellence, International, LLC ("Coating Excellence") of Wrightstown, WI; Hood Packaging Corp. ("Hood") of Madison, MS; Mid-America Packaging, LLC ("Mid-America") of Twinsburg, OH; and Polytex Fibers Corp. ("Polytex") of Houston, TX).<sup>3</sup> Domestic producers La Pac Manufacturing, Inc. ("La Pac") and SeaTac Packaging Manufacturing Corp. ("SeaTac") of Puyallup, WA are not petitioners \*\*\*.<sup>4</sup> These seven producers are believed to account for all U.S. production of laminated woven sacks in 2006.<sup>5</sup> The two largest producers (\*\*\*) accounted for almost \*\*\* of reported U.S. production in 2006.<sup>6</sup>

In addition to petitioners, three respondents participated in the staff conference: Shapiro Packaging ("Shapiro"), a U.S. importer of subject laminated woven sacks from China; Excel Packaging ("Excel"); and Solaris Manufacturing ("Solaris").<sup>7</sup> Wenzhou Hotsun Plastics Co., Ltd. ("Hotsun"), a

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<sup>1</sup> 19 U.S.C. §§ 1671b(a), 1673b(a); *see also, e.g., Co-Steel Raritan, Inc. v. United States*, 357 F.3d 1294 (Fed. Cir. 2004); *American Lamb Co. v. United States*, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); *Aristech Chemical Corp. v. United States*, 20 CIT 353, 354 (1996).

<sup>2</sup> *American Lamb*, 785 F.2d at 1001; *see also Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>3</sup> *See, e.g.*, Petitions at 2, Exh. 1; Confidential Staff Report (Prelim.), Mem. INV-EE-088 (Aug. 2, 2007) ("CR") at I-1; Public Staff Report, Laminated Woven Sacks from China, Invs. Nos. 701-TA-450 and 731-TA-1122 (Prelim.), USITC Pub. 3942 at I-1 (Aug. 2007) ("PR").

<sup>4</sup> *See, e.g.*, Petitions at 2, Exh. 2; CR/PR at Table III-1.

<sup>5</sup> *See, e.g.*, CR at I-4; PR at I-3.

<sup>6</sup> *See, e.g.*, CR at I-3; PR at I-3.

<sup>7</sup> Shapiro, Solaris, and Excel are partners in a venture in China called Zibo Aifudi Plastic Packaging Co. ("Zibo") that is engaged in the production of laminated woven sacks. Shapiro imports into the United States laminated woven sacks produced by Zibo. *See, e.g.*, July 20, 2007 Transcript of Staff Conference in the Matter of Laminated Woven Sacks from China, ("Conf. Tr.") at 213-14 (Zhu). Their joint postconference brief is referred to (continued...)

Chinese producer and exporter of subject merchandise, filed a postconference brief although it did not participate in the staff conference. American Bag & Burlap, a broker/distributor of multi-wall paper bags, woven polypropylene bags, extrusion-coated woven propylene bags, polyethylene bags, and laminated sacks, also participated in the staff conference on behalf of respondents.<sup>8</sup>

### III. DOMESTIC LIKE PRODUCT

#### A. In General

In determining whether there is a reasonable indication that the establishment of a domestic industry is materially retarded or that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>9</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“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.”<sup>10</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ... .”<sup>11</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>12</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>13</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>14</sup>

Although the Commission must accept the determination of the U.S. Department of Commerce (“Commerce”) as to the scope of the imported merchandise that is allegedly subsidized and sold at less

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<sup>7</sup> (...continued)

hereinafter as “Shapiro’s Postconf. Br.”

<sup>8</sup> See, e.g., Conf. Tr. at 124 (Corman).

<sup>9</sup> 19 U.S.C. § 1677(4)(A).

<sup>10</sup> 19 U.S.C. § 1677(4)(A).

<sup>11</sup> 19 U.S.C. § 1677(10).

<sup>12</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>13</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>14</sup> Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

than fair value,<sup>15</sup> the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>16</sup> The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.<sup>17</sup>

## **B. Product Description**

In its notices of initiation, Commerce defined the imported merchandise subject to these investigations as laminated woven sacks. More specifically, laminated woven sacks are:

bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics;<sup>18</sup> printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird seed.<sup>19</sup>

Laminated woven sacks are made from polypropylene or polyethylene woven fabric.<sup>20</sup> The fabric is made when polypropylene or polyethylene pellets and pigments are melted, made into sheets, cut

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<sup>15</sup> See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 at 9 (Fed. Cir. Apr. 25, 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

<sup>16</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming the Commission’s determination of six like products in investigations where Commerce found five classes or kinds).

<sup>17</sup> See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1988); Citrusuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

<sup>18</sup> “Paper suitable for high quality print graphics,” as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.”

<sup>19</sup> 72 Fed. Reg. 40833 (Jul. 25, 2007) (initiation of antidumping investigation); 72 Fed. Reg. 40839 (Jul. 25, 2007) (initiation of countervailing duty investigation). As Commerce explained, effective July 1, 2007, “laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classified under HTSUS subheadings 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polypropylene strip, laminated woven sacks may be classified under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classified under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.” Id.

<sup>20</sup> See, e.g., Petitions at 4 n.2.

into thin flat strips, spooled, and then woven.<sup>21</sup> The woven fabric then is laminated with one or several layers of polypropylene or polypropylene-polyethylene mix either to a reverse-printed plastic such as BOPP film or to paper that is suitable for high-quality print graphics.<sup>22</sup> The outer ply that is printed with high-quality multi-colored images on one or both sides serves as point-of-sale advertising.<sup>23</sup> Laminated sacks may be lined or unlined, and they may or may not have a thin layer of plastic film over the print medium.<sup>24</sup> The bottom of the finished sack is either folded and stitched, or a separate polypropylene strip is folded over one end of the fabric and sewn to create a closure at the bottom.<sup>25</sup>

### **C. Analysis**

Petitioners ask the Commission to define a single domestic like product coextensive with the scope of these investigations that includes all laminated woven sacks regardless of dimensions or other features. They urge the Commission not to define the domestic like product broader than the scope of these investigations to include either paper sacks or non-laminated woven sacks.<sup>26</sup> Respondents Shapiro, Excel, and Solaris agree with petitioners' proposed domestic like product for purposes of the preliminary phase of these investigations.<sup>27</sup> Respondent Hotsun, in contrast, asks the Commission to broaden the definition of the domestic like product to include multi-wall paper sacks.<sup>28</sup>

#### **1. Whether to Define the Domestic Like Product Broader Than the Scope of These Investigations to Include Multi-Wall Paper Sacks**

Respondent Hotsun argues that the Commission should define the domestic like product as sacks of all kinds (including multi-walled paper sacks) used in retail packaging of consumer goods such as pet foods and bird seed.<sup>29</sup> Petitioners disagree, and they point out that the respondents that participated in the preliminary staff conference testified extensively about important differences between laminated woven sacks and multi-wall paper sacks.<sup>30</sup>

*Physical Characteristics and Uses.* The current record indicates that multi-wall paper sacks and laminated woven sacks serve at least some of the same end uses – retail packaging of consumer goods.<sup>31</sup> There are some differences in physical characteristics between multi-wall paper sacks and laminated woven sacks. Because they are produced from polypropylene or polyethylene fabric, laminated woven sacks have greater tensile strength, apparently making them much less likely than multi-wall paper sacks to puncture, and tear after puncture, during shipping and distribution of the packaged product from the

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<sup>21</sup> See, e.g., Petitions at 3-4; CR at I-9 to I-11; PR at I-8 to I-11.

<sup>22</sup> See, e.g., CR at I-12; PR at I-10. All U.S. producers of laminated woven sacks reportedly do their own printing of BOPP film or paper suitable for high-quality print graphics. See, e.g., Petitions at 4 n.3.

<sup>23</sup> See, e.g., Petitions at 1.

<sup>24</sup> See, e.g., Petitions at 4.

<sup>25</sup> See, e.g., Petitions at 4; CR at I-13; PR at I-11.

<sup>26</sup> See, e.g., Petitioners' Postconf. Br. at 3-12.

<sup>27</sup> See, e.g., Shapiro's Postconf. Br. at 5.

<sup>28</sup> See, e.g., Hotsun's Postconf. Br. at 1-2.

<sup>29</sup> See, e.g., Hotsun's Postconf. Br. at 1-2.

<sup>30</sup> See, e.g., Petitioners' Postconf. Br. at 5-12.

<sup>31</sup> See, e.g., Hotsun's Postconf. Br. at 1-2. Whereas multi-wall paper sacks meeting certain standards reportedly have been approved to carry hazardous materials, laminated woven sacks have not. See, e.g., Petitions at 8.

manufacturer of the consumer goods to the retailer and ultimately the end user.<sup>32</sup> Laminated woven sacks are also resistant to water, oil, and grease, whereas multi-wall paper sacks require additional barrier plies to become resistant to moisture.<sup>33</sup> Reportedly, laminated woven sacks have fewer plies, weigh less, and occupy less space when empty than multi-wall paper sacks, making them less expensive to ship and store.<sup>34</sup> Petitioners also point out that laminated woven sacks almost always have high-quality print graphics whereas many multi-wall paper sacks do not.<sup>35</sup> The record also suggests that laminated woven sacks typically have a sewn-end closure whereas paper sacks typically have an adhesive pinch-end closure.<sup>36</sup> There is mixed evidence about the environmental effects of laminated woven sacks compared to multi-wall paper sacks.<sup>37</sup>

*Interchangeability.* Laminated woven sacks have begun to replace multi-wall paper sacks because differences in the physical characteristics between the two products (such as laminated woven sacks' lower weight; smaller storage space; higher tensile strength; lower susceptibility to puncturing, tearing, and breaking; and resistance to water, oil, and grease) are important to what appears to be a growing number of purchasers, at least of certain specific products that require heavy-weight packaging (17-55 pounds), such as pet foods and bird seed. Some purchasers also reportedly value the ability to display higher quality, multi-color print graphics on laminated woven sacks. According to petitioners, at their filling stations, some manufacturers of consumer goods have closing equipment that is specific either to multi-wall paper sacks (such as paste lines) or to laminated woven sacks (such as sewing lines), further limiting the interchangeability of laminated woven sacks and multi-wall paper sacks.<sup>38</sup>

*Channels of Distribution.* Laminated woven sacks are sold to manufacturers of consumer goods (such as pet foods and some feed products) for packaging products that are sold and displayed in retail stores.<sup>39</sup> In addition to these channels, petitioners assert that multi-wall paper sacks are also sold for packaging a wide variety of non-consumer industrial and agricultural goods not sold at retail, such as building materials, chemicals, and minerals.<sup>40</sup>

*Production Processes, Manufacturing Facilities, and Employees.* Multi-wall paper sacks are produced from different raw materials, plies of paper, rather than plies of woven polypropylene or polyethylene fabric.<sup>41</sup> Petitioners report that the extrusion laminator used to bond a woven sack to an exterior ply of BOPP film or an exterior ply of paper is not used to produce multi-wall paper sacks; many multi-wall paper sacks do not have high-quality multi-color graphics and often have a kraft paper exterior ply.<sup>42</sup> They also assert that different equipment is used to close the bottoms of laminated woven sacks than to close the bottoms of multi-wall paper sacks.<sup>43</sup> There does appear to be some overlap, however, in the equipment used to print designs on coated paper (for those producing laminated woven sacks with a

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<sup>32</sup> See, e.g., Petitions at 7; Petitioners' Postconf. Br. at 5.

<sup>33</sup> See, e.g., Petitions at 7-8; Petitioners' Postconf. Br. at 6.

<sup>34</sup> See, e.g., Petitions at 7; Petitioners' Postconf. Br. at 5.

<sup>35</sup> See, e.g., Petitions at 10; Petitioners' Postconf. Br. at 5, 8.

<sup>36</sup> See, e.g., Petitions at 8.

<sup>37</sup> Multi-wall paper sacks that are made from a renewable resource are biodegradable unlike laminated woven sacks. Laminated woven sacks, however, are more environmentally friendly than those multi-wall paper sacks with a laminated interior. See, e.g., Petitions at 8; Conf. Tr. at 155 (Wisla for Lang).

<sup>38</sup> See, e.g., Petitions at 9; Petitioners' Postconf. Br. at 7.

<sup>39</sup> See, e.g., Petitions at 9.

<sup>40</sup> See, e.g., Petitions at 9; Petitioners' Postconf. Br. at 7-8.

<sup>41</sup> See, e.g., Petitions at 11; Petitioners' Postconf. Br. at 10.

<sup>42</sup> See, e.g., Petitions at 11; Petitioners' Postconf. Br. at 10.

<sup>43</sup> See, e.g., Petitions at 11; Petitioners' Postconf. Br. at 11.

coated paper laminate) and in the finishing equipment.<sup>44</sup> Moreover, at least \*\*\* domestic producers (\*\*\*) make both multi-wall paper sacks and laminated woven sacks.<sup>45</sup>

*Producer and Customer Perceptions.* The record indicates that large retailers such as Dollar General, Wal-Mart and specialty pet stores such as Petco and PetSmart contributed to a growing preference for laminated woven sacks over multi-wall paper sacks, at least for applications where the physical characteristics of laminated woven sacks are important.<sup>46</sup>

*Price.* The current record also suggests some differences in prices and production costs between paper and laminated woven sacks.<sup>47</sup>

In conclusion, laminated woven sacks have begun to be used for some of the same applications as multi-walled paper sacks, but differences in the physical characteristics between the two products associated with differences in raw material inputs (such as laminated woven sacks' lower weight, smaller storage space, higher tensile strength, lower susceptibility to puncturing, tearing, and breaking, and resistance to water, oil, and grease) are important to a growing number of purchasers. Some purchasers also value the ability to display higher-quality, multi-color print graphics on laminated woven sacks or prefer laminated woven sacks based on the type of closing equipment at their filling stations, further limiting the interchangeability of the products. Although there is some overlap in producers, production equipment, and employees, the current record suggests that there are also some differences in production equipment and processes between laminated woven sacks and paper sacks as well as differences in manufacturing costs and prices. On balance, based on the current evidence, we do not define the domestic like product to include multi-wall paper sacks.

## **2. Whether to Define the Domestic Like Product Broader than the Scope to Include Non-Laminated Woven Sacks**

Petitioners urge the Commission not to define a domestic like product broader than the scope of these investigations to include non-laminated woven sacks, and they point out that respondents did not argue otherwise.<sup>48</sup>

*Physical Characteristics and End Uses.* According to petitioners, lamination gives laminated woven sacks greater tensile strength and makes them less likely to break than non-laminated woven sacks.<sup>49</sup> Whereas laminated woven sacks often have high-quality multi-color graphics, graphics on non-laminated woven sacks, if any, are printed directly onto the sack and are of a much lower quality that is susceptible to degradation once the bag is filled and the yarns of the woven material separate.<sup>50</sup> Without the lamination, petitioners argue that non-laminated woven sacks are not resistant to water, oil, and grease.<sup>51</sup> And, because they lack the rigidity and dimensional stability of laminated woven sacks, non-laminated woven sacks are not as suitable for use on automated filling equipment.<sup>52</sup>

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<sup>44</sup> See, e.g., CR/PR at Table III-4.

<sup>45</sup> See, e.g., CR/PR at Table III-4.

<sup>46</sup> See, e.g., Petitions at 9-10; Petitioners' Postconf. Br. at 8-9; Conf. Tr. at 24-25 (Bazbaz), 152 (Wisla for Lang).

<sup>47</sup> See, e.g., Petitions at 11; Petitioners' Postconf. Br. at 11; Conf. Tr. at 26 (Bazbaz) (suggesting that laminated woven sacks cost more to produce than paper sacks and have a higher price than paper sacks on a weight basis).

<sup>48</sup> See, e.g., Petitioners' Postconf. Br. at 5-12.

<sup>49</sup> See, e.g., Petitions at 8; Petitioners' Postconf. Br. at 6.

<sup>50</sup> See, e.g., Petitions at 8; Petitioners' Postconf. Br. at 6-7.

<sup>51</sup> See, e.g., Petitions at 8; Petitioners' Postconf. Br. at 6.

<sup>52</sup> See, e.g., Petitions at 8; Petitioners' Postconf. Br. at 6.

*Interchangeability.* According to petitioners, non-laminated woven sacks are not interchangeable with laminated woven sacks for use in automatic filling equipment, or where high-quality graphics or moisture-resistance are desired.<sup>53</sup>

*Channels of Distribution.* According to petitioners, laminated woven sacks are almost always sold to manufacturers of consumer goods products, such as pet foods and some feed products, for packaging products that are sold and displayed in retail stores, whereas non-laminated woven sacks are primarily sold to suppliers of goods not generally sold in retail outlets, such as agricultural products for export.<sup>54</sup>

*Manufacturing Facilities, Production Processes, and Employees.* According to petitioners, the extrusion laminator used to laminate the sack to an exterior ply of BOPP film or paper suitable for high-quality print graphics is not used in the production of non-laminated woven sacks.<sup>55</sup> Polytex is the \*\*\*.<sup>56</sup>

*Producer and Customer Perceptions.* Petitioners maintain that domestic producers, manufacturers of packaged products, and retailers view laminated and non-laminated woven sacks as different products.<sup>57</sup>

*Price.* According to petitioners, the extra cost of printing the high-quality graphics and laminating the outer ply on the laminated woven sacks results in a substantially higher price for laminated than non-laminated woven sacks.<sup>58</sup>

In conclusion, based on the record in the preliminary phase of these investigations, we do not define a domestic like product broader than the scope of these investigations. No party has asked the Commission to include non-laminated woven sacks in the definition of the domestic like product.<sup>59</sup> The different physical characteristics associated with lamination permit laminated woven sacks to be used differently than non-laminated woven sacks. Also, some purchasers value their ability to have multi-colored, high-quality graphics that are not susceptible to degradation as well as the rigidity and dimensional stability of laminated woven sacks for use in automatic filling machines. Although there is some overlap of production processes, equipment, and employees in the common early steps of production, laminated woven sacks appear to be perceived as different products by producers and customers, especially given the higher price that laminated woven sacks command over non-laminated woven sacks.

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<sup>53</sup> See, e.g., Petitions at 9; Petitioners' Postconf. Br. at 7.

<sup>54</sup> See, e.g., Petitions at 9; Petitioners' Postconf. Br. at 8.

<sup>55</sup> See, e.g., Petitions at 11; Petitioners' Postconf. Br. at 11.

<sup>56</sup> See, e.g., CR/PR at Table III-4.

<sup>57</sup> See, e.g., Petitions at 10; Petitioners' Postconf. Br. at 9-10.

<sup>58</sup> See, e.g., Petitions at 11; Petitioners' Postconf. Br. at 11.

<sup>59</sup> As a general matter, and as our rules contemplate, we remind parties that new data collection requests, such as those related to like product (and the consequent industry data corresponding to a newly proposed like product), should be made during the preliminary phase of an investigation, or at least no later than the written comments on draft questionnaires, in order for the Commission to gather the necessary data in an effective and timely manner. See Notice of Final Rule-making, 61 Fed. Reg. 37818, 37826 (Jul. 22, 1996) (explaining the promulgation of rule 207.20(b)) ("It is often impracticable to satisfy new data collection requests made during the later stages of a final phase investigation, given the need to collect, verify, and analyze data, release data under {administrative protective order}, and receive comments from the parties concerning data before the record closes.")

#### **D. Conclusion**

Based on the current record, we find that laminated woven sacks, regardless of their dimension, strength, closure, or design, constitute a single domestic like product.<sup>60</sup> We define the domestic like product as co-extensive with the scope of these investigations and decline to define it more broadly to include either multi-wall paper sacks or non-laminated woven sacks for the reasons discussed above.

#### **IV. ACTUAL OR POTENTIAL DOMESTIC INDUSTRY**

##### **A. In General**

The domestic industry is defined as the domestic “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>61</sup> 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.

There are seven known producers of laminated woven sacks in the United States: Bancroft, Coating Excellence, Hood, La Pac, Mid-America, Polytex, and SeaTac. Petitioners request that the Commission define the domestic industry as U.S. producers of laminated woven sacks.<sup>62</sup> Respondents make no arguments concerning how to define the domestic industry. Based on our definition of the

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<sup>60</sup> See, e.g., Softwood Lumber from Canada, Invs. Nos. 701-TA-404 & 731-TA-928 (Final), USITC Pub. 3509 at 6-15 (May 2002); Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA- 571 (Final), USITC Pub. 2658 at 8-10, 49-51 (Jul. 1993); Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, USITC Pub. 2383 at 8 and 10 (May 1991). There are some limitations in interchangeability among various types of laminated woven sacks associated with differences in dimensions, strengths, and features (such as closing mechanisms, handles, or advertising graphics), but in investigations where the domestic like product, like the scope, encompasses a wide variety of types of products, a lack of interchangeability among types of products is not unexpected. See, e.g., Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey, Invs. Nos. 731-TA-1099 & 1101 (Prelim.), USITC Pub. 3832 at 10 (Jan. 2006); Outboard Engines from Japan, Inv. No. 731-TA-1069 (Prelim.), USITC Pub. 3673 at 7-8 (Mar. 2004).

<sup>61</sup> 19 U.S.C. § 1677(4)(A).

<sup>62</sup> See, e.g., Petitions at 12.

domestic like product, for purposes of the preliminary phase of these investigations,<sup>63</sup> we define the actual or potential domestic industry as U.S. producers of laminated woven sacks.<sup>64</sup>

## **B. Related Parties**

### **1. In General**

We also considered whether any producer of the domestic like product should be excluded from the actual or potential domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision 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.<sup>65</sup> <sup>66</sup> Of the seven known U.S. producers, \*\*\* (\*\*\*) reported that they imported the subject merchandise during the period of investigation.<sup>67</sup> Thus, they qualify as “related parties” under 19 U.S.C. § 1677(4)(B).

According to petitioners, the domestic producers that imported subject merchandise from China did so “defensively to retain customers they otherwise would have lost to lower-priced imports from China.”<sup>68</sup> Petitioners assert that these domestic producers remain committed to producing laminated woven sacks in the United States, and argue that appropriate circumstances do not exist to exclude any of them as related parties from the domestic industry.<sup>69</sup> Respondents did not address this issue.

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<sup>63</sup> Although no party has raised this issue, in any final phase investigations, we may explore whether all domestic producers are engaged in sufficient production-related activities to be considered domestic producers. In assessing whether domestic producers are engaging in sufficient production-related activities to be considered part of the actual or potential domestic industry, the Commission has considered the following factors: the source and extent of firm’s capital investment; technical expertise involved in U.S. production activities; value added to the product in the United States; employment levels; the quantity and type of parts sourced in the United States; and any other costs and activities in the United States directly leading to production. See, e.g., Diamond Sawblades and Parts Thereof from China and Korea, Inv. No. 731-TA-1092 & 1093 (Final), USITC Pub. 3862 at 8-11 (Jul. 2006); Artists’ Canvas from China, Inv. No. 731-TA-1091 (Final), USITC Pub. 3853 at 13, n.85 (May 2006); Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-68 (Final), USITC Pub. 3748 at 12-14 (Jan. 2005); DRAMs and DRAM Modules from Korea, Inv. No. 701-TA-431 (Final), USITC Pub. 3616 at 11 (Aug. 2003); Pure Magnesium from China and Israel, Invs. Nos. 701-TA-403 and 731-TA-895 & 896 (Final), USITC Pub. 3467 at 9-11 (Nov. 2001); see also, e.g., International Imaging Materials, Inc. v. United States, Slip 06-11 at 17-18 (Ct. Int’l Trade Jan. 23, 2006).

<sup>64</sup> We use the term “potential” domestic industry in the preliminary phase of these investigations because petitioners have alleged that the domestic industry is not yet established, as discussed in more detail below.

<sup>65</sup> 19 U.S.C. § 1677(4)(B).

<sup>66</sup> Commissioner Deanna Tanner Okun notes that the purpose of the related parties provision is to exclude domestic producers that substantially benefit from, or that are shielded from injury due to, their imports of subject merchandise, or their relationship(s) with exporter(s) of subject merchandise in which they exercise control or are controlled, on the basis that the interests of such domestic producers do not lie with the domestic industry. While Commissioner Okun often examines the financial performance of a related party vis-à-vis the rest of the industry as one indicator of whether a producer is shielded from injury due to its imports of subject merchandise, she finds it difficult to do so in these investigations involving allegations that the establishment of a domestic industry is materially retarded by reason of subject imports.

<sup>67</sup> See, e.g., CR/PR at Table III-7.

<sup>68</sup> Petitioners’ Postconf. Br. at Exh. 1 at 9.

<sup>69</sup> See, e.g., Petitioners’ Postconf. Br. at Exh. 1 at 9.

## 2. Analysis

\*\*\* imported \*\*\* laminated woven sacks from China in \*\*\*; its imports of subject merchandise were equivalent to \*\*\* percent of its domestic production \*\*\*.<sup>70</sup> The company began production in \*\*\*.<sup>71</sup> It reported that \*\*\*.<sup>72</sup> The company's operating income as a share of net sales was \*\*\* percent in \*\*\*.<sup>73</sup> \*\*\* accounted for \*\*\* percent of total domestic production in 2006.<sup>75</sup> Before commencing domestic laminated woven sacks production, \*\*\*.<sup>76</sup> The company \*\*\*.<sup>77</sup>

\*\*\* imported \*\*\* laminated woven sacks from China in \*\*\*.<sup>78</sup> The company's ratio of subject imports from China to domestic production was \*\*\* percent in \*\*\*.<sup>79</sup> The company reported that it began importing \*\*\* in order to \*\*\*.<sup>80</sup> The company's operating income as a share of net sales was \*\*\* percent in \*\*\*.<sup>81</sup> \*\*\* began producing laminated woven sacks in \*\*\* and in 2006 accounted for \*\*\* percent of total domestic production.<sup>82</sup> Before then, \*\*\*.<sup>83</sup> \*\*\*.<sup>84</sup> The company \*\*\*.<sup>85</sup>

\*\*\* imported \*\*\* laminated woven sacks from China in \*\*\*; the company also \*\*\*.<sup>86</sup> Rather than importing from \*\*\*.<sup>87</sup> \*\*\*.<sup>88</sup> The company's ratio of subject imports \*\*\* from China to domestic

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<sup>70</sup> See, e.g., CR/PR at Table III-7.

<sup>71</sup> See, e.g., CR/PR at Table III-7.

<sup>72</sup> See, e.g., CR/PR at Table III-7 \*\*\*.

<sup>73</sup> See, e.g., CR/PR at Table VI-2.

<sup>74</sup> Consistent with her practice in past investigations and reviews, Vice Chairman Shara L. Aranoff does not rely on individual-company operating income margins in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic shipments and whether its primary interests lie in domestic production or importation.

<sup>75</sup> See, e.g., CR/PR at Tables III-1.

<sup>76</sup> See, e.g., CR at III-2; PR at III-1 to III-2. The company had capital expenditures of \*\*\* and incurred \*\*\* in research and development expenses associated with domestic production of laminated woven sacks during the period of investigation. See, e.g., Domestic Producer Questionnaire Response at Answer to Question III-15a.

<sup>77</sup> See, e.g., CR/PR at Table III-1.

<sup>78</sup> See, e.g., CR/PR at Table III-7.

<sup>79</sup> See, e.g., CR/PR at Table III-7.

<sup>80</sup> See, e.g., CR/PR at Table III-7.

<sup>81</sup> See, e.g., CR/PR at Table VI-2.

<sup>82</sup> See, e.g., CR/PR at Tables III-1, III-2.

<sup>83</sup> See, e.g., CR at III-2; PR at III-1.

<sup>84</sup> See, e.g., CR/PR at Table III-2. The company had capital expenditures of \*\*\* and incurred \*\*\* in research and development expenses associated with domestic production of laminated woven sacks during the period of investigation. See, e.g., Domestic Producer Questionnaire Response at Answer to Question III-15a.

<sup>85</sup> See, e.g., CR/PR at Table III-1.

<sup>86</sup> See, e.g., CR/PR at Table III-7.

<sup>87</sup> See, e.g., CR/PR at Table III-7.

<sup>88</sup> See, e.g., CR/PR at Table III-7.

production was \*\*\* percent in \*\*\*.<sup>89</sup> The company reported that it \*\*\*<sup>90</sup> The company's operating income as a share of net sales was \*\*\*.<sup>91</sup> \*\*\* began producing laminated woven sacks in \*\*\* and in 2006 accounted for \*\*\* percent of total domestic production.<sup>92</sup> Before then, \*\*\*.<sup>93</sup> Whereas \*\*\*. The company \*\*\*.<sup>94</sup>

\*\*\* imported \*\*\* laminated woven sacks from China in \*\*\*.<sup>95</sup> \*\*\* did not begin production of laminated woven sacks \*\*\*. In \*\*\*, its imports were equivalent to \*\*\* percent of its domestic production.<sup>96</sup> The company \*\*\*.<sup>97</sup> \*\*\* did not report \*\*\*.<sup>98</sup> The company's operating income as a share of net sales was \*\*\*.<sup>99</sup> \*\*\* accounted for \*\*\* percent of total domestic production in 2006.<sup>100</sup> Before then, \*\*\*.<sup>101</sup> The company \*\*\*.<sup>102</sup>

### 3. Conclusion

For purposes of the preliminary phase of these investigations, we find that the record contains insufficient data on which to decide whether appropriate circumstances exist to exclude any producers from the actual or potential domestic industry.<sup>103</sup> We intend to explore this issue further in any final phase investigations (particularly with respect to \*\*\*).<sup>104</sup> We invite the parties to provide further arguments on this issue in any final phase investigations, including whether the appropriate resolution of

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<sup>89</sup> See, e.g., CR/PR at Table III-7.

<sup>90</sup> See, e.g., CR/PR at Table III-7. The company incurred \*\*\* capital expenditures and \*\*\* in research and development expenses associated with domestic production of laminated woven sacks in the period of investigation. See, e.g., Domestic Producer Questionnaire Response at Answer to Question III-15a.

<sup>91</sup> See, e.g., CR/PR at Table VI-2.

<sup>92</sup> See, e.g., CR/PR at Tables III-1, III-2.

<sup>93</sup> See, e.g., CR at III-2; PR at III-1.

<sup>94</sup> See, e.g., CR/PR at Table III-1.

<sup>95</sup> See, e.g., CR/PR at Table III-7.

<sup>96</sup> See, e.g., CR/PR at Table III-7.

<sup>97</sup> See, e.g., CR/PR at Tables III-2, III-7; CR at \*\*\*; PR at III-1; Petitioners' Postconf. Br. at \*\*\*; \*\*\*. The company incurred \*\*\* in capital expenditures and \*\*\* in research and development expenses associated with domestic production of laminated woven sacks during the period of investigation. See, e.g., Domestic Producer Questionnaire Response at Answer to Question III-15a.

<sup>98</sup> See, e.g., CR/PR at Table III-7.

<sup>99</sup> See, e.g., CR/PR at Table VI-2.

<sup>100</sup> See, e.g., CR/PR at Tables III-1, III-2.

<sup>101</sup> See, e.g., CR at III-2; PR at III-1.

<sup>102</sup> See, e.g., CR/PR at Table III-1.

<sup>103</sup> For purposes of the preliminary phase of these investigations, Commissioner Dean A. Pinkert does not rely upon the financial performance of \*\*\* on their U.S. operations as a factor in determining whether there are appropriate circumstances to exclude them from the actual or potential domestic industry. The present record is not sufficient to infer from these domestic producers' financial performance that they have or have not derived a specific benefit from importing. See Allied Mineral Products Inc. v. United States, Slip Op. 04-139 at 8 (Ct. Int'l Trade Nov. 12, 2004). In any final phase investigations, Commissioner Pinkert invites the parties to provide any information they may have with respect to whether these domestic producers are benefitting financially from their status as related parties.

<sup>104</sup> See Certain Steel Nails from China and the United Arab Emirates, Invs. Nos. 731-TA-1114 and 1115 (Prelim.), USITC Pub. 3939 at 9-14 (Aug. 2007).

this issue is affected by the fact that we may also find that the domestic industry is not established.<sup>105</sup> For purposes of the preliminary phase of these investigations, however, we define the actual or potential domestic industry as all seven domestic producers of laminated woven sacks.

## V. CONDITIONS OF COMPETITION AND BUSINESS CYCLE

We have taken a number of conditions of competition into consideration in the preliminary phase of these investigations.<sup>106</sup>

### A. Product Considerations

Laminated woven sacks are produced in various dimensions and strengths, and these and other criteria (such as closure, color, design, and handles) are specified by manufacturers of the consumer goods as needed to serve their retail customers.<sup>107</sup> Some laminated woven sacks are made in tubular form, and some are made with a vertical back seam.<sup>108</sup> Some are laminated with paper, and some are laminated with BOPP film.<sup>109</sup>

\*\*\* responding producers, \*\*\* reported that there are no direct substitutes for laminated woven sacks.<sup>110</sup> Twelve of thirteen responding importers reported substitutes for laminated woven sacks such as multi-wall paper sacks, clay-coated paper sacks, and polyethylene sacks.<sup>111</sup> Most questionnaire respondents estimated that laminated woven sacks accounted for between 1 and 5 percent of the total cost of the end-use products for which they are used, primarily as flexible packaging for pet food, bird seed, animal feed, and grass seed.<sup>112</sup>

### B. Demand Considerations

The parties agree that production of laminated woven sacks originally began in Thailand and China.<sup>113</sup> Respondents claim that over the past five years, Thai and Chinese producers educated prospective packagers/purchasers in the United States about the advantages of laminated woven sacks over multi-wall paper sacks, and introduced the product to the United States.<sup>114</sup> Respondents assert that domestic producers did not anticipate the demand for this new product or the growing shift from paper packaging to laminated woven sack packaging.<sup>115</sup> Petitioners and respondents agree that in the last several years, customers have begun to switch from multi-wall paper sacks to laminated woven sacks for

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<sup>105</sup> We specifically invite the parties to comment on whether high levels of subject imports as a ratio to domestic production are meaningful when capacity utilization levels are low and production operations are relatively new.

<sup>106</sup> There is inadequate information on the current record to make a finding concerning the business cycle for laminated woven sacks or the industries that consume laminated woven sacks. We invite the parties to address this issue in any final phase investigations.

<sup>107</sup> See, e.g., Petitions at 3, 7-11; Petitioners' Postconf. Br. at 5-11.

<sup>108</sup> See, e.g., CR at I-11, I-13 & n.23; PR at I-8, I-11 & n.23.

<sup>109</sup> See, e.g., CR at I-12; PR at I-10.

<sup>110</sup> See, e.g., CR at II-6; PR at II-4.

<sup>111</sup> See, e.g., CR at II-6; PR at II-4.

<sup>112</sup> See, e.g., CR at II-7; PR at II-5.

<sup>113</sup> See, e.g., Conf. Tr. at 19-20 (Bazbaz), 120 (Abel), 137 (Shapiro).

<sup>114</sup> See, e.g., Shapiro's Postconf. Br. at 1, 6; Conf. Tr. at 120-22 (Abel), 137 (Shapiro).

<sup>115</sup> See, e.g., Shapiro's Postconf. Br. at 6.

at least some of the same uses,<sup>116</sup> and that several domestic producers were approached by their customers about beginning to produce laminated woven sacks.<sup>117</sup>

Although the petitions emphasize the use of laminated woven sacks as flexible packaging for consumer goods such as pet food and bird seed,<sup>118</sup> the record indicates that laminated woven sacks are also used by other manufacturers of consumer goods such as grass seed and fertilizer as flexible packaging for their consumer goods weighing between 17 and 55 pounds.<sup>119</sup> Available data indicate that apparent U.S. consumption of laminated woven sacks increased from \*\*\* sacks in 2004 to 192.4 million sacks in 2006 and was 39.9 million sacks in interim 2006 and 54.8 million sacks in interim 2007.<sup>120</sup> \*\*\* of the \*\*\* responding producers and 13 of 15 responding importers reported that demand for laminated woven sacks had increased since January 1, 2004, with the remaining \*\*\* importers reporting no change in demand.<sup>121</sup> The most commonly cited reasons for the increase are the greater durability, improved print graphics, and price competitiveness of laminated woven sacks compared to products such as multi-walled paper sacks.<sup>122</sup> All parties expect continued demand growth.<sup>123</sup> For example, respondents estimate that even now, ninety percent of the bags for packaging pet food and bird seed are multi-walled paper sacks.<sup>124</sup> Petitioners assert that demand for laminated woven sacks is price inelastic; that is, demand growth has been driven by consumer preferences and not by low prices.<sup>125</sup> We intend to explore the reasons for demand growth, projections for future demand growth, and the underlying components of demand in any final phase investigations.

### **C. Supply Considerations**

There are three sources of supply in the U.S. market: imports of subject merchandise from China, imports from non-subject countries, and domestic shipments.

#### **1. Imports**

Until July 1, 2007, laminated woven sacks were classified under HTSUS statistical reporting number 6305.33.0020.<sup>126</sup> This statistical reporting number includes products that are outside the scope of the petitions, such as non-laminated woven sacks.<sup>127</sup> For purposes of the petitions, petitioners estimated which portion of the goods entering under this statistical reporting number were laminated woven sacks

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<sup>116</sup> See, e.g., Conf. Tr. at 82-83 (Nowak), 83-84 (Bazbaz), 121-22 (Abel).

<sup>117</sup> See, e.g., Shapiro's Postconf. Br. at 7; Conf. Tr. at 20 (Bazbaz), 51-52 (Nowak), 68-69 (Bazbaz).

<sup>118</sup> See, e.g., Petitions at 1, 3, 5.

<sup>119</sup> See, e.g., CR at I-3, I-9; PR at I-3, I-8.

<sup>120</sup> See, e.g., CR/PR at Table IV-3.

<sup>121</sup> See, e.g., CR at II-6; PR at II-4.

<sup>122</sup> See, e.g., CR at II-6; PR at II-4.

<sup>123</sup> See, e.g., Conf. Tr. at 70 (Bazbaz), 83-84 (Bazbaz), 90 (Bazbaz), 91 (Nowak), 91 (Nicolai), 142 (Boltuck), 203-04 (Boltuck).

<sup>124</sup> See, e.g., Hotsun's Postconf. Br. at 2; Conf. Tr. at 118 (Abel).

<sup>125</sup> See, e.g., Petitioners' Postconf. Br. at 16.

<sup>126</sup> If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polypropylene strip, laminated woven sacks may be classified under HTSUS statistical reporting numbers 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classified under HTSUS statistical reporting numbers 5903.90.2500 and 3921.19.0000.

<sup>127</sup> See, e.g., CR at IV-1 to IV-2; PR at IV-1 to IV-2.

as opposed to other non-subject products; reportedly, there is no narrower source of information on the level of subject and non-subject imports of laminated woven sacks into the U.S. market.<sup>128</sup> Petitioners' methodology was used to adjust official import statistics from Commerce,<sup>129</sup> although data from importer questionnaire responses are also available for comparison purposes.<sup>130</sup> Although respondents argue that petitioners' methodology overstates the volume of subject imports and understates the volume of non-subject imports,<sup>131</sup> we have accepted petitioners' methodology for purposes of the preliminary phase of these investigations given the low response rate to importer questionnaires, and because only one Chinese producer submitted a foreign producer questionnaire response.<sup>132</sup> Petitioners assert that the methodology used in the petitions may understate the magnitude of the increase of subject import volume when compared to importer questionnaire data.<sup>133</sup> While resolution of this issue does not affect the question of whether subject imports from China are negligible,<sup>134</sup> we recognize that the choice of data sets does affect the volume and changes in the volume of subject and non-subject imports as well as market shares for subject imports, non-subject imports, and domestic producers. Although we relied primarily on petitioners' estimates for purposes of these preliminary investigations, we intend to seek more refined import data in any final investigations.

## 2. Domestic Shipments

Of the seven known producers of laminated woven sacks in the United States, \*\*\* began production in 2003.<sup>135</sup> Polytex began its operations in late 2004.<sup>136</sup> \*\*\* began production operations in

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<sup>128</sup> See, e.g., Petitions at 6, 16, Exh. 6, 7. Specifically, U.S. import data were based on the official Commerce statistics for statistical reporting number 6305.33.0020, as adjusted by petitioners using the following assumptions: (1) there were no U.S. imports of laminated woven sacks prior to 2003; (2) non-subject non-laminated woven sacks included in the statistical reporting number experienced a steady 5 percent growth rate in U.S. imports between 2002 and 2006; (3) the difference in the Commerce statistics between U.S. imports in 2002 and 2003 (after accounting for the 5 percent growth rate) is entirely laminated woven sacks; (4) all U.S. imports from non-subject countries are from Thailand, which commenced in 2005 and no other non-subject country exported this product to the United States; (5) the weight-to-number of sacks conversion rate is 8,000 sacks to 1 short ton to 907 kilograms. See, e.g., id.; Conf. Tr. at 57-60 (Bazbaz); CR/PR at IV-1 n.3.

<sup>129</sup> See, e.g., CR at IV-1 to IV-2 & nn.3-5; PR at IV-1 to IV-2 & nn.3-5.

<sup>130</sup> See, e.g., CR/PR at Table C-2.

<sup>131</sup> See, e.g., Shapiro's Postconf. Br. at 28-30, Exh. 4; Hotsun's Postconf. Br. at 4. Although respondents asserted that the volume of at least some of the non-subject merchandise would have increased after the WTO Agreement on Textiles and Clothing became effective for certain textile products from China into the United States, any related changes in import volumes from China would have taken place prior to the period of investigation at issue here. See, e.g., CR at IV-6 to IV-7; PR at IV-4.

<sup>132</sup> See, e.g., CR at IV-1 to IV-2; PR at IV-1 to IV-2.

<sup>133</sup> See, e.g., Petitioners' Postconf. Br. at 18-20, Exh. 1 at 15-16, Exhs. 12, 13; Conf. Tr. at 57-60 (Bazbaz).

<sup>134</sup> There does not appear to be any question that subject imports from China were well above three percent of total imports for the most recent 12-month period preceding the filing of the petitions regardless of whether official import statistics adjusted using petitioners' methodology or importer questionnaire responses are used. See, e.g., 19 U.S.C. § 1677(24); CR at IV-7; PR at IV-4. Consequently, we do not find that subject imports from China are negligible.

<sup>135</sup> See, e.g., CR/PR at Table III-2. Petitioners emphasize that \*\*\*. See, e.g., Petitioners' Postconf. Br. at 31 n.98.

<sup>136</sup> See, e.g., CR/PR at Table III-2.

\*\*\*, and \*\*\* began production operations in \*\*\* 2006, respectively.<sup>137</sup> Several of the domestic producers had existing operations as paper sacks producers,<sup>138</sup> Polytex had existing non-laminated woven sacks operations,<sup>139</sup> and Coating Excellence had a variety of existing flexible packaging and labeling operations, and it had particular expertise in printing and laminating film, before beginning production of laminated woven sacks.<sup>140</sup> These producers thus began their laminated woven sacks production operations with differing production experiences, and in some respects are differently situated as a result.<sup>141</sup>

Whereas Polytex is an integrated producer that makes its own polypropylene woven fabric from polypropylene pellets, the other domestic producers purchase polypropylene or polyethylene woven fabric from outside sources.<sup>142</sup> \*\*\* U.S. producers of laminated woven sacks purchase woven polypropylene fabric from third-party sources, and several also purchase other products or services from third parties.<sup>143</sup> \*\*\*<sup>144</sup> \*\*\* only performed printing, laminating, and finishing operations, and had third parties perform the other production operations.<sup>145</sup> \*\*\* purchased \*\*\*.<sup>146</sup> The inputs that these \*\*\* producers purchased ranged from \*\*\* to \*\*\* per sack as compared to a total production cost that ranged from \*\*\* to \*\*\* for these producers.<sup>147</sup> The production costs associated with \*\*\* own operations were \*\*\* but more than half of total production costs for \*\*\*.<sup>148</sup> In any final phase investigations, we intend to further examine the production steps that each domestic producer performs internally, and those performed by outside sources, as well as the relative costs and value added associated with each stage.

There are also differences in the types of laminated woven sacks made by the domestic producers, with some laminated to paper, some laminated to BOPP film, some produced in tubular form, and some produced with a vertical back seam.<sup>149</sup> The record indicates that at least some technical expertise is needed to produce laminated woven sacks, particularly to be able to laminate BOPP film to the woven

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<sup>137</sup> See, e.g., CR/PR at Table III-2.

<sup>138</sup> See, e.g., CR at III-2; PR at III-1.

<sup>139</sup> See, e.g., Conf. Tr. at 19-20 (Bazbaz).

<sup>140</sup> See, e.g., Conf. Tr. at 28-30 (Nowak).

<sup>141</sup> See, e.g., Conf. Tr. at 49-51 (Bazbaz, Nicolai). This may help to explain, in part, some of the divergences between domestic producers in terms of their total capital expenditures for the period of investigation as compared to their total net sales value. For example, between 2004 and 2006, \*\*\* had capital expenditures of \*\*\* and had \*\*\* in net sales in \*\*\* whereas \*\*\* had capital expenditures of \*\*\* between 2004 and 2006 and had \*\*\* in net sales in \*\*\*, and \*\*\* had capital expenditures of \*\*\* between 2004 and 2006 and had \*\*\* in net sales in 2006. See, e.g., CR/PR at Tables VI-2 & VI-4. We intend to explore these differences in more detail in any final phase investigations.

<sup>142</sup> See, e.g., Petitions at 4 n.2; CR at III-5; PR at III-4.

<sup>143</sup> See, e.g., CR/PR at Table III-5.

<sup>144</sup> See, e.g., CR/PR at Table III-5.

<sup>145</sup> See, e.g., CR/PR at Table III-5.

<sup>146</sup> See, e.g., CR/PR at Table III-5.

<sup>147</sup> See, e.g., CR/PR at Table III-5.

<sup>148</sup> See, e.g., CR/PR at Table III-5.

<sup>149</sup> See, e.g., Conf. Tr. at 37 (Nicolai), 53 (Nicolai), 129 (Corman).

fabric,<sup>150</sup> and at least one domestic producer was unable to master this technique.<sup>151</sup> It appears from the current record that some domestic producers produce at least some of their laminated woven sacks in tubular form, but that other domestic producers produce at least some of their laminated woven sacks with a vertical back-seam.<sup>152</sup> The record suggests that all laminated woven sacks are produced initially from tubular woven material, but some producers slit the woven material into a flat sheet form prior to lamination, and then after lamination reform the material into a tube with a gusseted back-seam.<sup>153</sup> We intend to seek further clarification of this issue in any final phase investigations.

### **3. Share of Apparent U.S. Consumption**

In terms of apparent U.S. consumption, the volume of subject imports increased over the period of investigation, but subject imports held a declining share of the market.<sup>154</sup> The volume of shipments by domestic producers increased over the period of investigation, and domestic producers gained an increasing share of the U.S. market, as did non-subject imports.<sup>155</sup> Non-subject imports, however, continued to hold a relatively small share of the market as compared to both subject imports and domestic production.<sup>156</sup>

#### **D. Substitutability**

Petitioners argue that laminated woven sacks are not commodity products but that purchasing decisions are made largely on the basis of price because all laminated woven sacks are made to customer order.<sup>157</sup> The competing suppliers quote on dimensions and features of the bag using a graphic design

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<sup>150</sup> See, e.g., Shapiro's Postconf. Br. at Exh. 7; Petitioners' Postconf. Br. at Exh. 1 at 1-2; Conf. Tr. at 20 (Bazbaz) (indicating it took Polytex, a producer of non-laminated woven sacks, over six months of research and development and numerous trials to come up with a successful lamination process); 54-57 (Nicolai, Bazbaz, Dorn); 70-73 (Bazbaz, Nicolai); 156 (Wisla for Lang).

<sup>151</sup> See, e.g., Petitions at 13; Petitioners' Postconf. Br. at 31; Conf. Tr. at 38-39 (Nicolai), 53-55 (Nicolai), 73 (Nicolai).

<sup>152</sup> See, e.g., Conf. Tr. at 21 (Bazbaz), 119 (Abel), 129 (Corman), 143 (Boltuck), 218 (Dorn)

<sup>153</sup> See, e.g., CR at I-11 & n.23, I-13; PR at I-8 & n.23, I-11; Conf. Tr. at 21 (Bazbaz).

<sup>154</sup> The volume of subject imports from China increased from 77.7 million sacks in 2004 to 153.2 million sacks in 2006 and was 32.9 million sacks in interim 2006 as compared to 38.9 million sacks in interim 2007. See, e.g., CR/PR at Table IV-2. Subject imports' share of apparent U.S. consumption declined from \*\*\* percent in 2004 to 79.6 percent in 2006 and was 82.5 percent in interim 2006 and 70.9 percent in interim 2007. See, e.g., CR/PR at Table IV-4.

<sup>155</sup> Thailand is the only non-subject country from which petitioners believed that laminated woven sacks entered the United States during the period of investigation. See, e.g., CR at IV-4; PR at IV-2. The volume of non-subject imports increased from 0 in 2004 to 12.8 million sacks in 2006 and was 3.0 million sacks in interim 2006 as compared to 3.7 million sacks in interim 2007. See, e.g., CR/PR at Table IV-2. Non-subject imports' share of apparent U.S. consumption increased from 0 in 2004 to 7.7 percent in 2006 and was 8.3 percent in interim 2006 and 8.8 percent in interim 2007. See, e.g., CR/PR at Table IV-4.

<sup>156</sup> Domestic producers' U.S. shipments increased from \*\*\* sacks in 2004 to 26.4 million sacks in 2006 and were 4.0 million sacks in interim 2006 as compared to 12.2 million sacks in interim 2007. See, e.g., CR/PR at Table IV-3. Domestic producers' U.S. shipments' share of apparent U.S. consumption increased from \*\*\* percent in 2004 to 13.7 percent in 2006 and was 10.1 percent in interim 2006 and 22.2 percent in interim 2007. See, e.g., CR/PR at Table IV-4.

<sup>157</sup> See, e.g., Conf. Tr. at 8 (Dorn), 74 (Dorn), 86-87 (Nowak), 87-88 (Bazbaz).

that is also provided by the customer.<sup>158</sup> Respondents Shapiro, Excel, and Solaris agree that laminated woven sacks are not commodity products.<sup>159</sup>

The parties participating in the staff conference agreed that laminated woven sacks from China and from the United States are highly substitutable for one another.<sup>160</sup> Questionnaire respondents generally agreed.<sup>161</sup>

Laminated woven sacks are generally sold on a spot basis.<sup>162</sup> On average, responding domestic producers sold 2.0 percent of their laminated woven sacks on a long-term contract basis, 7.5 percent on a short-term contract basis, and 90.4 percent on a spot basis.<sup>163</sup> Responding U.S. importers of subject merchandise from China reported no long-term contract sales, but sold through short-term contracts to a greater extent (23.7 percent of the time) than domestic producers.<sup>164</sup> Importers of Chinese products sold the remaining 76.3 percent on a spot basis.<sup>165</sup>

Responding domestic producers and most importers of subject merchandise reported that prices are determined on a transaction-by-transaction basis, and are not based on price lists.<sup>166</sup> The vast majority of responding domestic producers and importers of subject merchandise from China usually quote prices on a delivered basis.<sup>167</sup> The record indicates that U.S. producers and importers of subject merchandise from China both sell primarily to end users.<sup>168</sup> U.S. producers tended to ship laminated woven sacks shorter distances than U.S. importers of subject merchandise from China.<sup>169</sup>

Respondents argued that domestic producers were slow to produce or in some instances were unable to produce the laminated woven sack products preferred by purchasers. For example, they assert that some domestic producers only supplied paper-laminated woven sacks rather than BOPP film-laminated woven sacks, and that some domestic producers only supplied laminated woven sacks in a tubular form rather than laminated woven sacks with a vertical back seam.<sup>170</sup> According to respondents, paper-laminated woven sacks are subject to some of the same problems as multi-wall paper sacks (such as

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<sup>158</sup> See, e.g., Petitioners' Postconf. Br. at 2, 14-15; Conf. Tr. at 8 (Dorn).

<sup>159</sup> See, e.g., Shapiro's Postconf. Br. at 24.; Conf. Tr. at 192 (Levinson).

<sup>160</sup> See, e.g., Conf. Tr. at 8 (Dorn), 74 (Dorn), 86-87 (Nowak), 87-8 (Bazbaz), 192 (Levinson); Petitioners' Postconf. Br. at 2, 14-15; Shapiro's Postconf. Br. at 24.

<sup>161</sup> Four U.S. producers reported that differences other than price between laminated woven sacks produced in the United States and in China were never significant, and two reported that non-price differences were sometimes significant. Two importers reported that non-price differences were never significant, four importers reported that non-price differences were sometimes significant, one importer reported that non-price differences were frequently significant, and two importers reported that non-price differences were always significant. See, e.g., CR at II-7 to II-8; PR at II-5; CR/PR at Table II-2. Of the \*\*\* responding U.S. producers, \*\*\* reported that U.S. and Chinese-produced laminated woven sacks are always interchangeable; of the thirteen responding importers, five reported they are always interchangeable, six reported that they are frequently interchangeable, and two reported that they are sometimes interchangeable. See, e.g., CR at II-9; PR at II-5; CR/PR at Table II-3. Certain purchasers reported physical differences between some laminated woven sacks produced in the United States and China. See, e.g., CR at V-12, V-14; PR at V-6.

<sup>162</sup> See, e.g., CR at V-2; PR at V-2.

<sup>163</sup> See, e.g., CR at V-2; PR at V-2.

<sup>164</sup> See, e.g., CR at V-2; PR at V-2.

<sup>165</sup> See, e.g., CR at V-2; PR at V-2.

<sup>166</sup> See, e.g., CR at V-3; PR at V-2.

<sup>167</sup> See, e.g., CR at V-3; PR at V-2.

<sup>168</sup> See, e.g., CR at II-1; PR at II-1; CR/PR at Table II-1.

<sup>169</sup> See, e.g., CR at II-1; PR at II-1.

<sup>170</sup> See, e.g., Conf. Tr. at 119-23 (Abel), 126-29 (Corman), 160-61 (Shapiro); 161 (Levinson); 161-66 (Abel).

deteriorating or wrinkling of the design) and laminated woven sacks in a tubular form have unsightly “fins” that interfere with automatic filling equipment.<sup>171</sup> The record is not clear about the extent to which particular features are desirable, or which purchasers prefer particular features. Although it also is not clear which portion of the shipments by domestic producers or which portion of the shipments of subject imports from China are paper-laminated versus BOPP film-laminated products, or tubular versus back-seam products, there is some evidence that both sources supplied some of the same types of laminated woven sacks to the U.S. market during the period of investigation.<sup>172</sup> We intend to explore these issues further in any final phase investigations.

We also intend to explore in any final phase investigations the importance of price to purchasers, the significance of any quality differences between subject imports from China and domestically produced laminated woven sacks, and other factors affecting how products from the two sources compete with one another in the U.S. market.

## VI. WHETHER A DOMESTIC INDUSTRY IS ESTABLISHED

### A. Historical Overview

The issue of material retardation of the establishment of a domestic industry has not been posed in a Commission antidumping or countervailing duty investigation since 1998,<sup>173</sup> and the issue has been discussed in only approximately fifteen cases, mostly in the mid- to late 1980s and early 1990s, since the Trade Agreements Act of 1979<sup>174</sup> went into effect.<sup>175</sup>

Under the statute, the Commission shall determine whether there is a reasonable indication that “the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise.”<sup>176</sup> Neither the statute nor the legislative history provide much guidance for material retardation investigations. Historically, the Commission has not limited the applicability of the material retardation provisions of the statute to domestic producers that had not yet engaged in production

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<sup>171</sup> See, e.g., Conf. Tr. at 119-23 (Abel), 126-29 (Corman), 160-61 (Shapiro).

<sup>172</sup> See, e.g., Conf. Tr. at 40 (Nicolai), 54 (Dorn), 185-86 (Abel).

<sup>173</sup> In Butter Cookies in Tins from Denmark, Invs. Nos. 701-TA-704 and 731-TA-780 (Prelim.), USITC Pub. 3092 (Mar. 1998), two longstanding U.S. producers of cookies first began production of butter cookies in tins in 1994. The petitioners did not raise the material retardation issue. It was not an issue for either of the two Commissioners reaching negative preliminary determinations, given how they defined the relevant domestic like product and thus the corresponding domestic industry. Commissioner Miller defined the domestic like product as all cookies in tins (USITC Pub. 3092 at 5), and Commissioner Crawford defined the domestic like product as all cookies (*id.* at 32). Commissioner Bragg, who made an affirmative preliminary threat determination, defined the domestic like product as butter cookies in tins. *Id.* at 32. She did not discuss the material retardation issue, but she did take into consideration as a condition of competition the recent entry of the two domestic cookie producers into high-volume commercial production of butter cookies in tins. *Id.* at 34.

<sup>174</sup> P.L. 96-39, approved July 26, 1979.

<sup>175</sup> There were also three changed circumstances reviews (in which the Commission examined whether to modify or revoke the existing antidumping duty orders to exclude specific products) that also raised the material retardation issue. See, e.g., Liquid Crystal Display Television Receivers from Japan, Inv. No. 751-TA-14 (Changed Circumstances Review), USITC Pub. 2042 (Dec. 1987); Salmon Gill Fish Netting of Man-Made Fibers from Japan, Inv. No. 731-TA-5 (Changed Circumstances Review), USITC Pub. 1234 (Mar. 1982); and Synthetic L-Methionine from Japan, Inv. No. 751-TA-4 (Changed Circumstances Review), USITC Pub. 1167 (Jul. 1981).

<sup>176</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

in the United States.<sup>177</sup> If there was or had been at least some domestic production,<sup>178</sup> which is the case in these investigations, then in the previous investigations where this issue has arisen, the Commission applied a two-step framework in which it first determined whether the domestic industry was established. If the domestic industry was not yet established, then the Commission determined in the second step of the framework whether the establishment of a domestic industry was materially retarded by reason of subject imports. If the industry was established, then the Commission instead proceeded to examine whether the domestic industry was materially injured or threatened with material injury by reason of the subject imports. As the Commission has previously recognized, under the statute,<sup>179</sup> material retardation and material injury/threat thereof are mutually exclusive standards. In previous Commission determinations, if a domestic industry is established, then it no longer qualifies as a “nascent” industry, and instead, the analysis turns on the issues of material injury or threat thereof.<sup>180</sup> For purposes of the preliminary phase of these investigations, we proceed under the framework generally indicated by the Commission’s past determinations.

## **B. Parties’ Arguments**

Petitioners assert that a domestic laminated woven sacks industry is not established.<sup>181</sup> Respondents Shapiro, Excel, and Solaris agree that a domestic laminated woven sacks industry is not established.<sup>182</sup> Respondent Hotsun asserts that the domestic industry is established because laminated woven sacks are merely another product line in the pet food flexible packaging market.<sup>183</sup>

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<sup>177</sup> In any final phase investigations, we welcome party arguments on the merits of this approach.

<sup>178</sup> In instances where domestic firms had not yet undertaken production, the Commission looked for an indication that the producers had made a “substantial commitment” to commence production before examining whether the establishment of a domestic industry was materially retarded by reason of the subject imports. See, e.g., Certain Commuter Airplanes from France and Italy, Invs. Nos. 701-TA-174 & 175 (Prelim.), USITC Pub. 1269 at 8 (Jul. 1982) (domestic producers had not yet commenced production but the Commission found they had made a substantial commitment to do so); Motorcycle Batteries from Taiwan, Inv. No. 731-TA-42 (Final), USITC Pub. 1228 (Oct. 1981) (finding that U.S. companies did not take substantial steps or make an affirmative commitment to produce 6-volt motorcycle batteries); and Thin Sheet Glass from Switzerland, Belgium, and the Federal Republic of Germany, Invs. Nos. 731-TA-127 & 129 (Prelim.), USITC Pub. 1376 (May 1983) (finding that Jeanette Sheet Glass’s efforts to date did not demonstrate a substantial commitment to commence production of high-quality thin sheet glass because Jeanette’s marketing efforts were not very intensive, Jeanette had not purchased testing equipment that would have allowed it to differentiate between regular and high-quality glass, and Jeanette had problems qualifying its product), aff’d, Jeannette Sheet Glass Corp. v. United States, 607 F. Supp. 123, 131-32 (Ct. Int’l Trade 1985) (affirming the Commission’s “substantial commitment” test where domestic producers had not yet engaged in production of high-quality thin sheet glass).

<sup>179</sup> 19 U.S.C. §§ 1671b, 1673b.

<sup>180</sup> See, e.g., Fresh Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Prelim.), USITC Pub. 2272 at 15 n.39 (Apr. 1990); and Pressure Sensitive Battery PVC Covers from West Germany, Inv. No. 731-TA-452 (Prelim.), USITC Pub. 2265 at 12 (Mar. 1990).

<sup>181</sup> See, e.g., Petitioners’ Postconf. Br. at 27-35.

<sup>182</sup> See, e.g., Shapiro’s Postconf. Br. at 3 & n.2.

<sup>183</sup> See, e.g., Hotsun’s Postconf. Br. at 3.

### C. Examination of Whether a Domestic Industry is Established

We now turn to the question of whether a domestic industry is established. In applying the first step of the framework, to determine if a domestic industry is established,<sup>184</sup> the Commission in previous investigations has examined several or all of the following criteria: (1) the length of domestic production operations; (2) the characteristics of domestic production; (3) the size of domestic production operations compared to the U.S. market as a whole; (4) whether the proposed domestic industry has reached a reasonable financial “break-even” point; and (5) whether the start-up is more in the nature of the introduction of a new product line by an already established business. The Commission has previously stated that the question of whether a domestic industry is established must be made on an industry-wide basis.<sup>185</sup> Petitioners and respondents Shapiro, Excel, and Solaris agree that these factors indicate the domestic industry is not yet established because domestic producers as a whole have not stabilized their operations.<sup>186</sup>

At the outset, we wish to stress that our inquiry likely would have been facilitated had the record contained documentation concerning the goals, plans, assumptions, and expectations of domestic producers when they decided to undertake their laminated woven sacks operations. We will loosely refer to such documents herein as “business plans,” although we have no expectation that documentation was necessarily formalized as such, particularly given the size of the laminated woven sack operations of some of the domestic producers. Because of the material retardation allegations in the petitions, the standard domestic producer questionnaires issued in the preliminary phase of these investigations were modified to ask, among other questions, “Has your firm prepared or commissioned feasibility and/or break-even studies for your LW sacks operations?”<sup>187</sup> Of the \*\*\* producers responding to this question, \*\*\* responded: “no.” During questioning at the staff conference, however, it appeared that petitioners had performed (and perhaps documented) some type of analysis.<sup>188</sup> Commission staff, therefore,

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<sup>184</sup> The Commission has also referred to this inquiry as whether a domestic industry that has at least begun some production operations has “stabilized its operations.” We invite comments from the parties as to whether this is an appropriate characterization of the purpose of this inquiry.

<sup>185</sup> See, e.g., Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 at 18-19 (Aug. 1991).

<sup>186</sup> See, e.g., Petitioners’ Postconf. Br. at 29-35; Shapiro’s Postconf. Br. at 4-6. Petitioners assert that there are inherent weaknesses to some of the factors that the Commission has previously examined. Petitioners also assert that there is no requirement that all five factors be met for the Commission to find that an industry has not been established. See, e.g., Petitions at 13 n.10. Respondents Shapiro, Excel, and Solaris do not make any arguments concerning the appropriateness of the factors that the Commission examines to determine if a domestic industry is established. In any final phase investigations, we intend to explore more closely the utility of these five criteria in analyzing whether a domestic industry is established. We invite further arguments concerning whether there may be additional criteria that we might consider. For example, in one opinion, the Commission examined whether domestic producers had “substantial productive assets,” although it did not single this out as a separate factor. See, e.g., Fresh Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Prelim.), USITC Pub. 2272 at 16-18 (Apr. 1990) (finding the domestic industry to be established because, *inter alia*, there were “substantial total productive assets”). We also invite further comments concerning whether some of the existing criteria should be adapted, and whether some of the existing criteria fail to advance the analysis.

<sup>187</sup> Domestic Producer Questionnaire, Question III-11.

<sup>188</sup> See, e.g., Conf. Tr. at 32 (“Let me emphasize that none of our assumptions about demand, customer base, equipment or technology were wrong.”) (Nowak); 68 (“We put together a typical return on investment calculation based on what the customers were telling us from a volume standpoint and a profitability margin standpoint on the products we would sell them and were able to justify a good return on our investment and went ahead to our board and our banks to invest.”) (Nowak); 68-69 (“We had discussions of the potential business, the volume, pretty much

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requested that confidential details of such analysis be provided in petitioners' postconference brief.<sup>189</sup> In that brief, it once again appeared that some type of analysis had been performed (and in some cases documented), but petitioners did not provide the Commission with any documentation.<sup>190</sup>

In any final phase investigations, we intend to collect the business plans and analyses, if any, from each of the domestic producers that were contemporaneous with their investments and decisions to produce and market laminated woven sacks.<sup>191</sup>

## 1. The Length of Domestic Production Operations

The Commission has regularly focused on when domestic producers began their U.S. production of the domestic like product. Petitioners assert that this factor is relevant to the question of whether a domestic industry is established.<sup>192</sup> In general, where domestic producers had engaged in production operations for fewer than two to three years, the Commission found that they were part of a nascent domestic industry.<sup>193</sup> Where some or all of the domestic producers had engaged in production operations for longer periods of time, then the Commission found the domestic industry was established.<sup>194</sup> The

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<sup>188</sup> (...continued)

the targeted prices, and we made an analysis and we felt that we could be competitive and be profitable at it, so certainly we did that analysis, you know.") (Bazbaz); 69-70 ("We don't have anything formally put together, but we can provide any information we have to you at a later date. It was pulled from the customer asking us to produce it.") (Nicolai).

<sup>189</sup> See, e.g., Conf. Tr. at 69 (Bernstein), 92-94 (Klir, Dorn, Bazbaz).

<sup>190</sup> See, e.g., Petitioners' Postconf. Br. at 1, 13-14, 26, Exh. 1 at 2-5, 9-12, Exhs. 21-22.

<sup>191</sup> Our request would include, but would not be limited to, \*\*\* research on both market potential and potential customers; \*\*\*. All of these are referenced in Exhibit 1 to Petitioners' Postconf. Br., Answers to Questions from Staff at 2-4.

<sup>192</sup> See, e.g., Petitioners' Postconf. Br. at 29.

<sup>193</sup> See, e.g., Benzyl Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 (Feb. 1991) (domestic producer produced for fifteen months, shut down, began again but shut down less than a year later and was then supplying customers out of inventory); Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 6 (July 1985), aff'd, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int'l Trade 1987), aff'd, 852 F.2d 1285 (Fed. Cir.), cert denied, 1009 U.S. 1120 (1988) (production of salted codfish was suspended after two years with the intent to resume production); and Certain Copier Toner from Japan, Inv. 731-TA-373 (Prelim.), USITC Pub. 1960 at 9-10 (Mar. 1987) (domestic production began about three years earlier). But see Lime Oil from Peru, Inv. No. 303-TA-16 (Prelim.), USITC Pub. 1723 at 8 n.19 (Jul. 1985) (The Commission found the domestic industry was established based on how it defined the domestic like product and domestic industry, as producers of both cold-pressed and distilled lime oil and not just distilled lime oil. But, the Commission said that, had it defined the domestic industry as producers of distilled lime oil, it would have found the domestic industry established, even though, inter alia, domestic production of distilled lime oil began over two years earlier).

<sup>194</sup> See, e.g., Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Prelim.), USITC Pub. 2824 (Oct. 1994) (steady production throughout the period of investigation by at least three producers and since the late 1980s by at least two U.S. producers); Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, Inv. No. 731-TA-485 (Final), USITC Pub. 2412 (Aug. 1991) (domestic production for more than three years); Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 at 18-19 (Aug. 1991) (domestic production began before the period of investigation); Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Prelim.), USITC Pub. 2367 at 18 n.49 (Mar. 1991) (continuous production over a long period of time); Fresh Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Prelim.), USITC Pub. 2272 at 16-18 (Apr. 1990) (domestic producers had been engaging in activities leading to production for a number of years, and some had recently

(continued...)

Commission has also examined the duration of production operations in the context of the next factor (whether the production can be characterized as continuous or start and stop).

As noted above, of the seven known producers of laminated woven sacks in the United States, \*\*\* began production in 2003;<sup>195</sup> Polytex began production operations in 2004, \*\*\*, and \*\*\* began production operations in \*\*\* 2006, respectively.<sup>196</sup> Although respondents assert that some domestic producers produce only tubular products, since \*\*\* at least some of the domestic producers have been making laminated woven sacks with vertical back seams.<sup>197</sup> It is not clear on this record which portion of the domestic producers are capable of producing laminated woven sacks with vertical back seams, or which portion of domestic producers' U.S. shipments are comprised of such products. We intend to explore this issue further in any final phase investigations.

The parties have emphasized that, in this industry, mastering the technology of laminating reverse-printed BOPP film to woven polypropylene takes some time and effort, and at least one domestic producer was not able to do this.<sup>198</sup> According to petitioners, production of laminated woven sacks \*\*\*.<sup>199</sup> The \*\*\* to make BOPP-laminated woven sacks reportedly \*\*\* began \*\*\* in late 2004 \*\*\*.<sup>200</sup> It is not clear on this record which producers are producing paper-laminated versus BOPP-laminated woven sacks or what portion of domestic production is of either.

It is also not clear how difficult or expensive it is to master back-seam production or BOPP-film lamination. One of the witnesses testifying on behalf of the respondents indicated that it would only take a Chinese producer about six months and under \$1 million to start up production operations, given the large number of production operations already in existence in China and the availability of knowledgeable workers there.<sup>201</sup> In contrast, the same witness emphasized that the absence of almost any historical experience in the United States means that additional time for trial and error is needed.<sup>202</sup>

Evaluating this factor has been complicated somewhat by the fact that domestic producers did not submit business plans or analyses. Although the record on this issue is somewhat mixed, for purposes of the preliminary phase of these investigations, and based on the current record, we find that at

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<sup>194</sup> (...continued)

produced the product); Pressure Sensitive Battery PVC Covers from West Germany, Inv. No. 731-TA-452 (Prelim.), USITC Pub. 2265 at 12 (Mar. 1990) (production began three to four years prior to Commission's investigation); and Fabric and Expanded Neoprene Laminate from Japan, Inv. No. 731-TA-206 (Prelim.), USITC Pub. 1608 at 8 n.24 (Nov. 1984) (producing for several years).

<sup>195</sup> See, e.g., CR/PR at Table III-2.

<sup>196</sup> See, e.g., CR/PR at Table III-2.

<sup>197</sup> See, e.g., Petitioners' Postconf. Br. at 15; CR/PR at Table III-2.

<sup>198</sup> See, e.g., CR at III-2 n.2, VII-2 n.3; PR at III-1 n.2, VII-2 n.3; Shapiro's Postconf. Br. at Exh. 7; Petitioners' Postconf. Br. at Exh. 1 at 1-2; Conf. Tr. at 20 (indicating it took Polytex, a producer of non-laminated woven sacks over six months of research and development and numerous trials to come up with a successful lamination process), 54-57, 70-73, 100.

<sup>199</sup> See, e.g., Petitions at 13; Petitioners' Postconf. Br. at 31 n.98.

<sup>200</sup> See, e.g., CR/PR at Tables III-1, III-2.

<sup>201</sup> See, e.g., CR at VII-2 n.3; PR at VII-2 n.3; Shapiro's Postconf. Br. at Exh. 7 at ¶ 3.

<sup>202</sup> See, e.g., CR at VII-2 n.3; PR at VII-2 n.3; Shapiro's Postconf. Br. at Exh. 7 at ¶ 3.

least some of the domestic producers have been engaging in production operations long enough to suggest that this factor weighs in favor of finding the domestic industry to be established.

## 2. The Characteristics of Domestic Production

In examining the characteristics of domestic production, the Commission has asked whether domestic production has been “modest,” continuous, or more akin to start and stop. Petitioners argue that this factor is relevant to the determination of whether a domestic industry is established.<sup>203</sup> When the Commission found that domestic production was “modest” or that domestic production began but halted and domestic producers were not producing at the time of the Commission’s vote, the Commission found the domestic industry was not established.<sup>204</sup> Where domestic producers’ production was continuous or even continuous and growing, the Commission has found the domestic industry was established.<sup>205</sup>

One domestic producer, Mid-America, stopped producing laminated woven sacks in March 2007 because it was unable to master the technology of reverse-printing BOPP film to woven polypropylene and because low-priced imports from China ostensibly did not justify the additional investment needed to rectify its production problems.<sup>206</sup> \*\*\*.<sup>207</sup> Likewise, \*\*\* experienced a number of production outages in \*\*\*.<sup>208</sup> Finally, \*\*\* were operating at low capacity utilization levels.<sup>209</sup>

The record on this issue is mixed. It is unclear from the parties’ arguments whether they believe the focus for this factor should be on specific domestic producers or on domestic producers as a whole.<sup>210</sup> Several of the domestic producers only recently began their production operations whereas others began

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<sup>203</sup> See, e.g., Petitioners’ Postconf. Br. at 29.

<sup>204</sup> See, e.g., BenzyI Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 at 9-10 (Feb. 1991) (petitioner produced for fifteen months, shut down production, began again but shut down less than a year later and was then supplying the U.S. market out of inventory); Certain Copier Toner from Japan, Inv. 731-TA-373 (Prelim.), USITC Pub. 1960 at 9 n.24 (Mar. 1987) (domestic production was “modest”); and Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 4-5 & n.8 (Jul. 1985), aff’d, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), aff’d, 852 F.2d 1285 (Fed. Cir. 1988), cert denied, 1009 U.S. 1120 (1989) (domestic producer began production in late 1982 but suspended operations in November 1984 with the intent to reopen the plant in summer 1985 pending conclusion of negotiations with the FDIC concerning certain loans from a now-bankrupt bank and the receipt of additional capital financing from another source).

<sup>205</sup> See, e.g., Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Prelim.), USITC Pub. 2824 (Oct. 1994) (steady production throughout the period of investigation by at least three producers and since the late 1980s by at least two U.S. producers); Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, Inv. No. 731-TA-485 (Final), USITC Pub. 2412 (Aug. 1991) (steady and substantial increases in domestic production capacity and domestic production); Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 at 18-19 (Aug. 1991) (steady rather than start-up production); Fresh Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Prelim.), USITC Pub. 2272 at 16-18 (Apr. 1990) (substantial U.S. shipments); and Pressure Sensitive PVC Battery Covers from West Germany, Inv. No. 731-TA-452 (Prelim.), USITC Pub. 2265 at 12 (Mar. 1990) (production was increasing).

<sup>206</sup> See, e.g., Conf. Tr. at 38-39 (Nicolai).

<sup>207</sup> See, e.g., CR/PR at Table III-2 n.1; Petitions at 13; Petitioners’ Postconf. Br. at 31-32, Exh. 1 at 8-9, Exh. 19.

<sup>208</sup> See, e.g., CR/PR at Table III-2; Petitions at 13; Petitioners’ Postconf. Br. at 31-32, Exh. 1 at 8-9, Exh. 19.

<sup>209</sup> See, e.g., CR/PR at Table III-4; Petitions at 13; Petitioners’ Postconf. Br. at 30, 31-32, Exh. 1 at 8-9, Exh. 19.

<sup>210</sup> See, e.g., Petitions at 13; Petitioners’ Postconf. Br. at 31-32, Exh. 1 at 8-9, Exh. 19; Shapiro’s Postconf. Br. at 4.

earlier in the period of investigation, so it is unclear on this record how to weigh this factor. On the whole, and based on the current record, we find for purposes of the preliminary phase of these investigations that this factor provides some, but not conclusive, support for finding the domestic industry is not established.

### **3. The Size of Domestic Production Operations Compared to the U.S. Market as a Whole**

The Commission has sometimes considered the size of domestic production operations compared to the U.S. market as a whole, with higher levels of production for domestic producers generally leading to a finding that the domestic industry was established,<sup>211</sup> and lower market shares sometimes leading to a finding that the domestic industry was not established.<sup>212</sup> In one instance, the Commission found the domestic industry was established where the domestic producers' market share was "relatively stable."<sup>213</sup> Petitioners assert that this factor is relevant to the determination of whether a domestic industry is established.<sup>214</sup> Petitioners also propose that the Commission consider whether the domestic industry has succeeded in making sales to a significant share of the customer base for the domestic like product.<sup>215</sup> Depending on the facts, the domestic producers' production as a share of the total market, shipments as a share of the total market, or even the share of the customer base to which the domestic producers made sales, may yield different results. For example, domestic producers might be producing large quantities (but shipping little), or shipping relatively little compared to the total market, but shipping at least some volume to each of the major customers.

Petitioners assert that the size of domestic laminated woven sack production operations is extremely small in relation to the U.S. market as a whole and that domestic shipments are even smaller.<sup>216</sup> Respondents Shapiro, Excel, and Solaris attribute domestic producers' small market share to the facts that domestic producers have only recently decided to compete for this new market, and lack expertise. As a result, respondents assert that the vast majority of U.S. consumption is necessarily served by subject and

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<sup>211</sup> See, e.g., Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, Inv. No. 731-TA-485 (Final), USITC Pub. 2412 (Aug. 1991) (finding domestic industry was established where, among other factors, the vast majority of the U.S. market was supplied by the domestic industry); and Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Prelim.), USITC Pub. 2071 at A-15 (Mar. 1988) (domestic industry established because, *inter alia*, domestic producers had achieved a significant and increasing share of the U.S. market). But see Benzyl Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 at 10 (Feb. 1991) (did not find the domestic industry was established even though the company had been increasing its market share; the Commission did not find the company's market share particularly indicative of whether the industry was established given the small number of purchasers involved and the Commission's findings on other factors).

<sup>212</sup> See, e.g., Certain Copier Toner from Japan, Inv. No. 731-TA-373 (Prelim.), USITC Pub. 1960 at 9 n.24 (Mar. 1987) (did not find the domestic industry to be established where, *inter alia*, domestic production was small compared to the market as a whole). But see Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 at 18-19 (Aug. 1991) (found domestic industry was established despite finding that domestic production accounted for "at least some" if only a "small" share of the total U.S. market); and Fresh and Chilled Atlantic Salmon from Norway, Inv. No. 701-TA-302 (Prelim.), USITC Pub. 2272 at 17 (Apr. 1990) (finding domestic industry established despite low market share of domestic producers).

<sup>213</sup> See, e.g., Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Prelim.), USITC Pub. 2824 (Oct. 1994) (finding domestic industry established where, *inter alia*, domestic producers' share of the U.S. market was relatively stable).

<sup>214</sup> See, e.g., Petitioners' Postconf. Br. at 29.

<sup>215</sup> See, e.g., Petitioners' Postconf. Br. at 30.

<sup>216</sup> See, e.g., Petitions at 14; Petitioners' Postconf. Br. at 33.

non-subject merchandise imported into the U.S. market rather than domestically produced laminated woven sacks.<sup>217</sup>

As we indicated above, there is some uncertainty on the current record about the size of the U.S. market as well as the relative market shares for subject imports, non-subject imports, and domestic shipments. We invite further discussion in any final phase investigations concerning whether the appropriate baseline is domestic production, domestic shipments, or domestic capacity as a share of the U.S. market. Based on the current record, and for purposes of the preliminary phase of these investigations, we find that this factor weighs in favor of finding the domestic industry established.<sup>218</sup>

#### **4. Whether the Proposed Domestic Industry Has Reached a Reasonable Financial “Break-even” Point**

In deciding whether the proposed domestic industry is already established, the Commission has also examined whether the proposed domestic industry has reached a reasonable financial “break-even” point. In some previous cases, the Commission has examined whether total revenues and total expenses are equal. Where possible, the Commission has calculated a break-even point by dividing total fixed costs and expenses by the unit contribution margin (which is equal to the unit sales price minus the unit variable cost).<sup>219</sup> In cases where domestic producers as a whole have not reached a reasonable break-even point, the Commission generally found the domestic industry was not established.<sup>220</sup> But, where it found that domestic producers as a whole had reached a reasonable break-even point, the Commission found the domestic industry was established.<sup>221</sup>

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<sup>217</sup> See, e.g., Shapiro’s Postconf. Br. at 4-5.

<sup>218</sup> Based on the available data, domestic production increased from \*\*\* sacks in 2004 to 28.6 million sacks in 2006 and was 13.1 million sacks in interim 2007, whereas domestic shipments increased from \*\*\* sacks in 2004 to 26.4 million sacks in 2006 and were 12.2 million sacks in interim 2007. See, e.g., CR/PR at Tables IV-3, IV-5. Domestic producers’ share of apparent U.S. consumption has increased from \*\*\* percent in 2004 to 13.7 percent in 2006 and was 22.2 percent in interim 2007. See, e.g., CR/PR at Table IV-4. Thus, record evidence indicates that domestic production and domestic shipments are relatively small compared to the U.S. market, but not necessarily insignificant. On the other hand, in 2006, total U.S. capacity to produce laminated woven sacks was equivalent to 74.2 percent of apparent U.S. consumption that year. (Derived from CR/PR at Table C-1).

<sup>219</sup> See, e.g., Benzyl Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 at 10 (Feb. 1991).

<sup>220</sup> See, e.g., Benzyl Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 at 10 (Feb. 1991) (domestic industry not established, where, *inter alia*, company did not reach reasonable break-even point during the latest period for which the Commission had data (interim 1990)); and Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 5 (Jul. 1985), *aff’d*, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), *aff’d*, 852 F.2d 1285 (Fed. Cir. 1988), *cert denied*, 1009 U.S. 1120 (1989) (domestic industry not established, company did not reach break-even point).

<sup>221</sup> See, e.g., Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Prelim.), USITC Pub. 2824 (Oct. 1994) (found domestic industry was established where, *inter alia*, the domestic producers as a whole had passed the break-even point and reached profitability during the period of investigation; they were able to cover their fixed and variable costs); Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, Inv. No. 731-TA-485 (Final), USITC Pub. 2412 (Aug. 1991) (found domestic industry was established where, *inter alia*, an overwhelming majority of the domestic producers already had reached a break-even point); and Fresh Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Prelim.), USITC Pub. 2272 at 16-18 (Apr. 1990) (finding domestic industry to be established where, *inter alia*, by 1988 a portion of the domestic producers had achieved profitability and another company showed improvement from 1987 to 1988 and even though the Commission recognized that there were no sustained profits for domestic producers as a whole). *But see, e.g., Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan*, Inv. No. 731-TA-469

(continued...)

In the petitions, petitioners asserted that this factor is important in these investigations. They argued that U.S. producers have not been able to stabilize their production at a level even approaching a break-even point and have consistently lost money.<sup>222</sup> In their postconference brief, however, petitioners asserted that this factor is relevant but that reaching a break-even point is by no means sufficient. They assert that to “become stabilized, a new industry must attain operating income sufficient to earn the risk-adjusted required rate of return on the capital invested.” As a result, petitioners suggest that the Commission instead consider “whether the {proposed} industry has achieved an operating income margin comparable to that of all manufacturing or some subset of manufacturing in the broad sector in which the {proposed} domestic industry falls.”<sup>223</sup> In that regard, the statute requires the Commission to focus on the domestic industry producing the like product, not on specific sectors.<sup>224</sup>

Based on a standard break-even formula, staff calculated break-even volumes on a retrospective basis, assuming 2006 costs and sales prices. Based on this analysis, break-even volumes on U.S. producers’ aggregate reported financial data would be \*\*\* sacks in 2004, 17.5 million sacks in 2005, 70.4 million sacks in 2006, 3.9 million sacks in interim 2006, and 26.2 million sacks in interim 2007.<sup>225</sup> As noted above, domestic production increased from \*\*\* sacks in 2004 to 15.0 million sacks in 2005 and

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<sup>221</sup> (...continued)

(Final), USITC Pub. 2413 at 18-19 (Aug. 1991) (finding domestic industry was established but not making any explicit break-even analysis); and Pressure Sensitive PVC Battery Covers from West Germany, Inv. No. 731-TA-452 (Prelim.), USITC Pub. 2265 at 12 (Mar. 1990) (finding the domestic industry established but not making any explicit break-even analysis).

<sup>222</sup> See, e.g., Petitions at 14-15.

<sup>223</sup> See, e.g., Petitioners’ Postconf. Br. at 30. Petitioners explain that, given “the Commission’s due considerations to business conditions, this factor would be less relevant during a recessionary period.” See, e.g., Petitioners’ Postconf. Br. at 30 n.97.

<sup>224</sup> The Commission has rejected comparing the relevant industry to other industries. See, e.g., Persulfates from China, Inv. No. 731-TA-749 (Final), USITC Pub. 3044 at 13, n.75 (Jun. 1997):

Both petitioner and respondents attempted to compare the industry in this investigation to those in investigations concerning coated groundwood paper and semiconductors. We decline to place much reliance on these comparisons because the industries are very different from one another. Further, the statute and case law clearly indicate that our analysis is to be based on the industry producing the like product. 19 U.S.C. §1677(7)(B)(I); General Motors Corp. v. United States, 827 F. Supp. 744, 780 (Ct. Int’l Trade 1993). Thus, the Commission generally does not assess injury issues on the basis of cross-sectoral comparisons to other industries. See Softwood Lumber from Canada, Inv. No. 701-TA-312 (First Remand), USITC Pub. 2689 at 11-12 (Oct. 1993) (“We agree with the panel that a comparison of the performance of the . . . domestic industry . . . with that of some other industry, for the purpose of determining whether the industry under investigation [sic] is materially injured, or whether material injury is by reason of imports, is inappropriate.”). Rather, each investigation and each industry is sui generis. See, e.g., Nippon Steel Corp. v. United States, 19 CIT \_\_\_, Slip Op. 95-57 at 11 (Apr. 3, 1995); Kern-Liebers USA, Inc. v. United States, 19 CIT \_\_\_, Slip Op. 95-9 at 25 (Jan. 27, 1995), aff’d sub nom. United States Steel Group v. United States, 96 F. 3d 1352 (Fed. Cir. 1996).

See also, e.g., Silicon Carbide from China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 at I-13, n.72 (Jun. 1994); and Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions from India, Invs. Nos. 701-TA-436 (Prelim.) and 731-TA-1042 (Prelim.), USITC Pub. 3615 at 16 (Jul. 2003) (“Our reviewing courts have stressed the need for the Commission’s analysis of material injury by reason of subject imports to focus on the industry producing the domestic like product, and not other industries . . .”) (rejecting the argument that the Commission should find an impact “downstream” from the industry to be sufficient).

<sup>225</sup> See, e.g., CR at VI-6; PR at VI-4.

28.6 million sacks in 2006 and was 4.2 million sacks in interim 2006 and 13.1 million sacks in interim 2007.<sup>226</sup> The domestic producers as a whole experienced operating losses throughout the period of investigation except for an operating income of \*\*\* in interim 2006, equivalent to \*\*\* percent of net sales.<sup>227</sup>

Based on the current record, and for purposes of the preliminary phase of these investigations, we find that evidence on this factor appears to support a finding that the domestic industry is not yet established. In any final phase investigations, we intend to examine this factor more closely, including the utility of a prospective versus a retrospective break-even analysis. We also invite party arguments on the effect of several recent entrants on the utility of this calculation.

##### **5. Whether the Start-up Is More in the Nature of the Introduction of a New Product Line by an Already Established Business**

In assessing whether a proposed domestic industry is already established, the Commission also has examined whether the start-up of production is more in the nature of the introduction of a new product line by an already established business. In examining this factor, the Commission's underlying question was whether the introduction of this product was aided by the domestic producers' other existing products. Where the Commission found the start-up of production was in the nature of the introduction of a new product line by an already established business, then it generally found the domestic industry was established.<sup>228</sup> And, in some cases where, *inter alia*, the start-up of production was entirely by new

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<sup>226</sup> See, e.g., CR/PR at Tables IV-3, IV-5.

<sup>227</sup> See, e.g., CR/PR at Table C-1.

<sup>228</sup> See, e.g., Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Prelim.), USITC Pub. 2824 (Oct. 1994) (found domestic industry was established where, *inter alia*, wheel inserts were produced as just one of several product lines of established firms); Certain Gene Amplification Thermal Cyclers and Subassemblies thereof from the United Kingdom, Inv. No. 731-TA-485 (Final), USITC Pub. 2412 (Aug. 1991) (found domestic industry was established and noted that this was a new product for some established companies but a new product made by some newly established firms); Pressure Sensitive Battery PVC Covers from West Germany, Inv. No. 731-TA-452 (Prelim.), USITC Pub. 2265 at 13 (Mar. 1990) (finding that pressure sensitive battery covers were merely a new product line of an established firm that had been producing labels for 76 years); Lime Oil from Peru, Inv. No. 303-TA-16 (Prelim.), USITC Pub. 1723 at 8 n.19 (Jul. 1985) (noting in dicta that it would have found distilled lime oil to be an established industry because, *inter alia*, "unlike a new entrant, petitioner has been in the business of selling lime oil for years and could use existing customer contacts and distribution infrastructure in introducing distilled lime oil. Rather than establishing an industry, petitioner was introducing a new product line which has established a stable presence in the market"); and Fabric and Expanded Neoprene Laminate from Japan, Inv. No. 731-TA-206 (Prelim.), USITC Pub. 1608 at 8 nn.24-26 (Nov. 1984) (The Commission majority found that R-131 neoprene was merely a change in the product line of the established fabric and expanded neoprene laminate industry, but Commissioner Stern disagreed, stating that "{w}hether or not the company embarking upon production of the new product is new or well-established, the statute requires the Commission to define the industry according to specific like products, not in the general business sense.") But see, e.g., Benzyl Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 at 11 (Feb. 1991) (even though petitioner was an established company, its benzyl paraben operations did not appear to have derived a significant benefit from its other arguably 'established' operations); Certain Copier Toner from Japan, Inv. No. 731-TA-373 (Prelim.), USITC Pub. 1960 at 9 n.24 (Mar. 1987) (not discussing this factor but determining that the electrically resistive monocomponent toner ("ERMT") industry was "nascent" even though the ERMT producers manufactured other toners as well); and Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 (Jul. 1985), *aff'd*, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int'l Trade 1987), *aff'd*, 852 F.2d 1285 (Fed. Cir. 1988), *cert denied*, 1009 U.S. 1120 (1989) (even though petitioner was also producing other dried salted fish such as pollock or hake, that did not prevent the Commission from finding the domestic industry was not established).

companies that did not already produce other products, the Commission still found that the domestic industry was established.<sup>229</sup>

Petitioners believe that this factor contravenes the statute. They believe that once the domestic like product and the corresponding domestic industry are defined, then whatever other products the domestic producers make are irrelevant to the question of whether an industry is established, if such products are not part of the domestic like product definition.<sup>230</sup> Petitioners insist that neither the statute nor the Commission's previous investigations require that domestic producers make no products other than the domestic like product and assert that U.S. laminated woven sack producers are not significantly aided by their existing operations.<sup>231</sup> For purposes of the preliminary phase of these investigations, Shapiro, Excel, and Solaris do not challenge petitioners' definition of the domestic like product, and as such, although there is some overlap in equipment between laminated woven sacks and paper sacks, they agree that laminated woven sacks are a separate product and not a new line of domestic producers' existing businesses.<sup>232</sup> Respondent Hotsun asserts that the domestic industry is established because laminated woven sacks are merely another product line in the pet food flexible packaging market, and as a result, the Commission should not apply a material retardation analysis.<sup>233</sup>

While this factor may not be dispositive on the issue of whether a domestic industry is established, it does appear to raise considerations that at least help to put the inquiry into context. For example, to the extent domestic producers already possess some of the equipment, employees, expertise, distribution systems, customer bases and/or other components needed to produce and distribute the laminated woven sacks, and are able to leverage these assets for purposes of their laminated woven sacks operations, then this factor would lend some support to a finding that the domestic industry is established. As we found above in our discussion of the relevant conditions of competition, domestic producers began their laminated woven sacks operations from several vantage points. Several domestic producers were originally paper-sack producers, and as such, had the equipment and know-how to take a tubular form, split it, and produce a vertical back seam. Not knowing how to produce laminated woven sacks, these paper-sack producers needed to acquire that skill (or purchase the woven polypropylene or polyethylene fabric) and then acquire the know-how and equipment needed to laminate the woven sack to BOPP film or paper.<sup>234</sup> Although some of these paper-sack producers appear to have mastered how to laminate the woven sack to BOPP film, and some mastered how to laminate the woven sack to paper, at least one did not master the technique of laminating the woven sack to BOPP film, and \*\*\*.<sup>235</sup> The record suggests that these producers \*\*\* also may have benefitted from existing customer lists and existing distribution networks for the sale of their new laminated woven sacks products.<sup>236</sup>

In contrast to this group of domestic producers, domestic producer Polytex had the equipment and know-how to make woven sacks, but needed to acquire the equipment and know-how to laminate the

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<sup>229</sup> See, e.g., Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 at 18-19 (Aug. 1991) (finding the domestic industry was established even though most of the domestic producers were dedicated from the start to production of this product).

<sup>230</sup> See, e.g., Petitioners' Postconf. Br. at 30; Conf. Tr. at 44-45 (Dorn), 64-65 (Dorn).

<sup>231</sup> See, e.g., Petitions at 15; Petitioners' Postconf. Br. at 35.

<sup>232</sup> See, e.g., Shapiro's Postconf. Br. at 5.

<sup>233</sup> See, e.g., Hotsun's Postconf. Br. at 3.

<sup>234</sup> See, e.g., CR/PR at Tables III-4, III-5; Conf. Tr. at 36 (Mid-America produces paper sacks and the craft paper that is the basic raw material for those sacks).

<sup>235</sup> See, e.g., CR/PR at Tables III-4, III-5.

<sup>236</sup> See, e.g., Petitions at 9-10; Petitioners' Postconf. Br. at 8-9; Conf. Tr. at 24-25 (Bazbaz), 152 (Wisla for Lang).

woven sack to BOPP film as well as the equipment and know-how to produce a vertical back seam.<sup>237</sup> Domestic producer Coating Excellence had the know-how to make film, but had to acquire the know-how and equipment to laminate a woven sack to BOPP film and \*\*\*.<sup>238</sup> The current record appears to reflect agreement that the most difficult aspect of laminated woven sack production is learning how to laminate the woven sack to BOPP film, as also noted above.

The data concerning this factor on the record in these preliminary investigations appear to weigh in favor of finding that the domestic industry is established to the extent that there is some overlap in the production equipment and employees used to produce laminated woven sacks and other existing products, and there is some overlap in terms of the distribution systems and customer bases for laminated woven sacks and domestic producers' other existing products.<sup>239</sup> We intend to examine this issue more closely in any final phase investigations and to seek more detailed information on the production processes performed by each producer, the cost and value-added to each stage of production, as well as the equipment, types and numbers of employees, and know-how associated with each.

## **6. Conclusion**

As noted above, the statute and legislative history provide little guidance on this issue. All but one respondent and petitioners agree that, if the Commission were to apply the same criteria as it has in past investigations, the domestic industry is not established. Based on the facts discussed above and the factors that the Commission has previously examined, we find this to be a very close call, but conclude that the analysis leans toward the position advanced by most of the parties to the proceeding. Therefore, for purposes of the preliminary phase of these investigations, we find, on balance, that the domestic industry is not established. We intend to revisit all aspects of this issue (factual and legal) in any final phase investigations and invite comments on additional data collection at the time that draft questionnaires are circulated.

## **VII. REASONABLE INDICATION THAT THE ESTABLISHMENT OF A DOMESTIC INDUSTRY IS MATERIALLY RETARDED BY REASON OF SUBJECT IMPORTS**

Petitioners assert that the establishment of a domestic industry is materially retarded by reason of subject imports from China.<sup>240</sup> Respondents Shapiro, Excel, and Solaris assert that factors other than subject imports explain any problems experienced by domestic producers, regardless of whether the Commission examines the facts in this case based on a material retardation or material injury/threat thereof standard.<sup>241</sup>

In the previous investigations where the Commission has determined that a domestic industry was not established,<sup>242</sup> the Commission has then examined whether the establishment of the domestic industry

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<sup>237</sup> See, e.g., CR/PR at Table III-4; Conf. Tr. at 19 (Polytex was the first integrated producer of circular woven polypropylene bags for export shipments of commodities like rice and sugar and became the largest bag producer of woven bags in the United States by 1985).

<sup>238</sup> See, e.g., CR/PR at Table III-4; Conf. Tr. at 28 (Coating Excellence's President testified that the company's "particular expertise is in printing and laminating film, as demonstrated by our leading position as packager of ream wrap."); 36 (Mid-America produces paper sacks and the craft paper that is the basic raw material for those sacks).

<sup>239</sup> See, e.g., Petitions at 9; Petitioners' Postconf. Br. at 7-8; Hotsun's Postconf. Br. at 2-3.

<sup>240</sup> See, e.g., Petitioners' Postconf. Br. at 27-35.

<sup>241</sup> See, e.g., Shapiro's Postconf. Br. at 3 & n.2.

<sup>242</sup> In nearly all of the material retardation investigations since the enactment of the Trade Agreements Act of 1979, the Commission has not reached this stage because it found that the domestic industry was already established.

was materially retarded by reason of the subject imports.<sup>243</sup> The Commission has previously stated that because each attempt to establish a new industry is inherently unique, the determination of whether the establishment of an industry is materially retarded is to be made on a case-by-case basis.<sup>244</sup> The Commission has framed its inquiry as whether the performance of the industry “reflects merely the normal start-up condition of a company entering an admittedly difficult market or, is the performance worse than what could reasonably be expected ...”<sup>245</sup>

The factors that the Commission has examined in assessing whether the establishment of a domestic industry is materially retarded by reason of subject imports have included many of the same factors it considers in its material injury determinations: domestic production, shipments, capacity utilization, inventories, financial condition, employment, projected performance compared to actual performance, and other market conditions.<sup>246</sup> Sometimes, the Commission has examined the documents prepared by the individual producers at the time of their inception to gauge whether a reasonable level of operations had been achieved.<sup>247</sup> We were unable to do so here because domestic producers did not provide copies of any of their business plans to us.

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<sup>243</sup> See, e.g., Benzyl Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 at 9, 14 (Feb. 1991) (domestic industry not yet established where domestic producers had intermittent production) (affirmative material retardation case); Certain Copier Toner from Japan, Inv. 731-TA-373 (Prelim.), USITC Pub. 1960 at 9-10 (Mar. 1987) (domestic industry not yet established where domestic production was modest) (negative material retardation case); Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 4 (Jul. 1985), aff’d, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), aff’d, 852 F.2d 1285 (Fed. Cir.), cert denied, 1009 U.S. 1120 (1988) (domestic industry not yet established where domestic producers had ceased production) (affirmative material retardation case); Certain Commuter Airplanes from France and Italy, Invs. Nos. 701-TA-174 & 175 (Prelim.), USITC Pub. 1269 at 8 (Jul. 1982) (domestic industry, which had not begun production, was not established) (negative material retardation case).

<sup>244</sup> See, e.g., Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 4 (Jul. 1985), aff’d, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), aff’d, 852 F.2d 1285 (Fed. Cir.), cert denied, 1009 U.S. 1120 (1988).

<sup>245</sup> See, e.g., Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 5 (Jul. 1985), aff’d, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), aff’d, 852 F.2d 1285 (Fed. Cir.), cert denied, 1009 U.S. 1120 (1988).

<sup>246</sup> See, e.g., Benzyl Paraben from Japan, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 at 9, 14 (Feb. 1991); Certain Copier Toner from Japan, Inv. 731-TA-373 (Prelim.), USITC Pub. 1960 (Mar. 1987); Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 6-7 (July 1985), aff’d, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), aff’d, 852 F.2d 1285 (Fed. Cir.), cert denied, 1009 U.S. 1120 (1988). The negative material retardation determination in Certain Commuter Airplanes from France and Italy, Invs. Nos. 701-TA-174 & 175 (Prelim.), USITC Pub. 1269 at 8 (Jul. 1982) turned on the Commission’s determination that any difficulties the domestic producer was experiencing were not due to subject imports but rather the petitioner’s failure to make sufficient marketing efforts such as providing detailed product specifications to prospective customers, who were unwilling to proceed with negotiations on the question of financing let alone commit to purchase the product.

<sup>247</sup> See, e.g., Certain Copier Toner from Japan, Inv. 731-TA-373 (Prelim.), USITC Pub. 1960 at 9-10 (Mar. 1987) (negative material retardation case) (finding that the domestic industry was performing better than what could be expected (increasing U.S. shipments, stable production, steady improvements in its financial performance, and signs of new entrants) and that the business plan for higher market share was unrealistic given the absence at the time of an extensive national distribution network); Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 (July 1985), aff’d, BMT Commodity Corp. v. United States, 667 F. Supp. 880 (Ct. Int’l Trade 1987), aff’d, 852 F.2d 1285 (Fed. Cir.), cert denied, 1009 U.S. 1120 (1988) (affirmative material retardation case) (looking at a market and feasibility study done at the inception of business operations).

For the reasons discussed below, we find that there is a reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports of laminated woven sacks from China.

#### **A. Volume of Subject Imports from China**

Based on the adjusted Census data used to measure subject and non-subject import volume in these investigations, subject imports of laminated woven sacks from China were significant, and they increased significantly during the period of investigation.<sup>248</sup> Subject imports from China increased from 77.7 million sacks in 2004 to 112.3 million sacks in 2005 and to 153.2 million sacks in 2006, and they were 32.9 million sacks in interim 2006 as compared to 38.8 million sacks in interim 2007.<sup>249</sup> The volume of U.S. imports of laminated woven sacks from China increased 44.5 percent between 2004 and 2005, and 36.5 percent between 2005 and 2006, or by 97.2 percent between 2004 and 2006, and was 18.2 percent higher in interim 2007 than in interim 2006.<sup>250</sup> The rate of increase in subject imports was significant and almost as large as the strong growth in apparent U.S. consumption during each of these periods. Apparent U.S. consumption increased from \*\*\* sacks in 2004 to 131.1 million sacks in 2005 and to 192.4 million sacks in 2006 and was 39.9 million sacks in interim 2006 as compared to 54.8 million sacks in interim 2007.<sup>251</sup> Therefore, apparent U.S. consumption increased \*\*\* percent between 2004 and 2005, and 46.7 percent between 2005 and 2006, or by \*\*\* percent between 2004 and 2006, and was 37.5 percent higher in interim 2007 than in interim 2006.<sup>252</sup>

U.S. shipments of domestically produced laminated woven sacks increased each year, and rose overall by \*\*\* percent from 2004 to 2006.<sup>253</sup> The market share held by subject imports declined from \*\*\* percent in 2004 to 85.6 percent in 2005 and to 79.6 percent in 2006, and was 82.5 percent in interim 2006 as compared to 70.9 percent in interim 2007.<sup>254</sup> The ratio of the quantity of subject imports to U.S. production declined from \*\*\* percent in 2004 to 750.2 percent in 2005 and 534.9 percent in 2006 and was 776.1 percent in interim 2006 as compared to 297.8 percent in interim 2007.<sup>255</sup> We do not place great weight on the increases in U.S. shipment volume, the declines in market share by subject imports in these investigations, and the corresponding increases in domestic producers' market share, given that domestic producers were in the process of starting up their operations and our finding that a domestic industry is not established. We further note that domestic producers had large and growing capacity at

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<sup>248</sup> Respondents assert that these data overstate subject imports and understate non-subject imports, but even data from importer questionnaire responses, which petitioners assert understate subject import volumes, show significant and significantly increasing volumes of subject imports of laminated woven sacks from China. See, e.g., CR/PR at Table C-2. As discussed above, we intend to seek more refined import data in any final phase investigations.

<sup>249</sup> See, e.g., CR/PR at Table IV-2.

<sup>250</sup> See, e.g., CR at IV-4; PR at IV-2.

<sup>251</sup> See, e.g., CR/PR at Table C-1.

<sup>252</sup> See, e.g., CR/PR at Table C-1.

<sup>253</sup> See, e.g., CR/PR at Table C-1. U.S. shipments of domestically produced laminate woven sacks increased from \*\*\* sacks in 2004, to 13.9 million sacks in 2005, and to 26.4 million sacks in 2006, and were 4.0 million sacks in interim 2006 as compared to 12.2 million sacks in interim 2007. Id.

<sup>254</sup> See, e.g., CR/PR at Table IV-4. Domestic producers' market share increased from \*\*\* percent in 2004 to 10.6 percent in 2005 and to 13.7 percent in 2006 and was 10.1 percent in interim 2006 as compared to 22.2 percent in interim 2007. Id.

<sup>255</sup> See, e.g., CR/PR at Table IV-5. Domestic production of laminated woven sacks increased from \*\*\* sacks in 2004 to 15.0 million sacks in 2005 and to 28.6 million sacks in 2006 and was 4.2 million sacks in interim 2006 as compared to 13.1 million sacks in interim 2007. See, e.g., CR/PR at Table IV-5.

the end of the period of investigation relative to apparent U.S. consumption,<sup>256</sup> much of which remained largely unutilized.<sup>257</sup>

Non-subject imports fluctuated over the period examined and increased overall, both in absolute terms and relative to U.S. consumption, from 2004 to 2006, but were much smaller than subject imports in absolute terms.<sup>258</sup> <sup>259</sup> <sup>260</sup> In addition, the increase in absolute non-subject import volume over the period of investigation was small relative to the absolute increase in U.S. producer's U.S. shipments by quantity.<sup>261</sup>

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<sup>256</sup> Average production capacity for domestic producers as a whole increased from \*\*\* sacks in 2004 to 89.1 million sacks in 2005 and to 142.7 million sacks in 2006, and was 22.7 million sacks in interim 2006 as compared to 53.8 million sacks in interim 2007. See, e.g., CR/PR at Table C-1.

<sup>257</sup> Although capacity utilization levels increased over the period of investigation from \*\*\* percent in 2004 to 16.8 percent in 2005 and to 20.1 percent in 2006 and were 18.7 percent in interim 2006 and 24.3 percent in interim 2007, these levels continued to be low throughout the period of investigation. See, e.g., CR/PR at Table C-1.

<sup>258</sup> See, e.g., CR/PR at Table C-1. Non-subject imports were: zero in 2004, 1.7 million sacks in 2005, 1.9 million sacks in 2005, and 3.0 million sacks in interim 2006 as compared to 3.7 million sacks in interim 2007. See, e.g., id. The U.S. market share held by non-subject imports was zero in 2004, 5.9 percent in 2005, 8.4 percent in 2006, and 11.2 percent in interim 2006 as compared to 8.4 percent in interim 2007. Id.

<sup>259</sup> We note that there is limited information on the record regarding the role of non-subject imports in the U.S. market. In any final phase investigations, we will seek information on the role of non-subject imports in the U.S. market. We invite further comments in any final phase investigations on whether the recent decision by the U.S. Court of Appeals for the Federal Circuit, Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), is applicable to the facts of these investigations. The Commission also invites parties to comment on what additional information the Commission should collect to address the issues raised by the Court and how that information should be collected, and to identify which of the various nonsubject sources should be the focus of additional information gathering by the Commission in any final phase investigation.

<sup>260</sup> Chairman Pearson and Commissioner Okun do not join the preceding footnote. The U.S. Court of Appeals for the Federal Circuit did not address the application of its mandate in Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), to preliminary investigations, let alone material retardation investigations. In that case the Court indicated that, in cases involving commodity products in which imports from non-subject countries are price-competitive and are a significant factor in the U.S. market, in order to establish a causal link between subject imports and material injury the Commission must evaluate whether the non-subject imports would replace subject imports and thereby eliminate the benefit to domestic producers of an antidumping or countervailing duty order.

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that the establishment of a domestic industry is materially retarded or that a domestic industry is materially injured or threatened with material injury by reason of the allegedly unfairly traded imports. 19 U.S.C. §§ 1671b(a), 1673b(a). Thus, Chairman Pearson and Commissioner Okun conclude that they must conduct a Bratsk analysis as they would any other type of causation analysis in preliminary investigations. Chairman Pearson and Commissioner Okun find that the record in the preliminary phase of these investigations is insufficient to determine if Bratsk is triggered. See Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States.

<sup>261</sup> See, e.g., CR/PR at Table C-1. Shipments of non-subject imports in the U.S. market increased from zero in 2004 to 12.8 million sacks in 2006 (a difference of 12.8 million sacks) whereas shipments of domestically produced laminated woven sacks increased from \*\*\* sacks in 2004 to 26.4 million sacks in 2006 (a difference of \*\*\* sacks). Id.

## **B. Price Effects of the Subject Imports from China**

The record in the preliminary phase of these investigations generally indicates that prices are important in purchasing decisions. As noted above, none of the parties asserted that laminated woven sacks are commodity products, the parties participating in the staff conference agreed that laminated woven sacks from China and from the United States are highly substitutable for one another,<sup>262</sup> and most responding importers reported that laminated woven sacks from China and from the United States are always or frequently interchangeable.<sup>263</sup> The fact that prices are generally determined on a transaction-by-transaction basis and that most sales by both domestic producers and importers of subject merchandise are made on a spot basis suggests that the effects of low-priced subject imports from China may be felt relatively quickly. We intend to explore this issue in any final phase investigations, as well as the extent to which domestic producers and importers of subject merchandise from China are competing for sales to the same purchasers.<sup>264</sup>

In these investigations, U.S. producers and importers provided quarterly pricing data for three types of laminated woven sacks.<sup>265</sup> The pricing data show a pattern of consistent and significant underselling by subject imports. Subject imports undersold the domestic like product for all three pricing products and in each of the 23 possible quarterly comparisons, with margins of underselling ranging from 33.9 to 50.6 percent for Product 1, from 29.8 to 53.5 percent for product 2, and from 29.8 to 57.9 percent for product 3.<sup>266</sup> In any final phase investigations, we intend to explore why there are persistent, large underselling margins for products that are reportedly substitutable for one another.

We have also considered movements in laminated woven sack prices over the period of investigation. The Commission's pricing data show a series of fluctuations in prices, but no overall clear trends.<sup>267</sup> Specifically, regarding product 1, average prices for domestically produced laminated woven sacks fluctuated between \$\*\*\* and \$\*\*\* per 1,000 laminated woven sacks until the third quarter of 2005,

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<sup>262</sup> See, e.g., Conf. Tr. at 8 (Dorn), 74 (Dorn), 86-87 (Nowak), 87-8 (Bazbaz), 192 (Levinson); Petitioners' Postconf. Br. at 2, 14-15; Shapiro's Postconf. Br. at 24.

<sup>263</sup> See, e.g., CR at II-7 to II-9; PR at II-5 to II-6; CR/PR at Tables II-2 and II-3.

<sup>264</sup> In the preliminary phase of these investigations, domestic producers reported \*\*\* purchasers, and importers of subject merchandise from China reported \*\*\* purchasers. Of these purchasers, \*\*\* were listed by both domestic producers and importers of subject merchandise from China (\*\*\*). Not all domestic producers and importers of subject merchandise from China reported what share of their U.S. shipments in 2006 were attributable to each purchaser. The overlapping purchasers for which share data were reported accounted for \*\*\* of domestic producers' U.S. shipments in 2006 and \*\*\* of importers' U.S. shipments in 2006, or \*\*\* percent of domestic producers' U.S. shipments in 2006 (not including U.S. shipments by domestic producers that did not report customer share information) and \*\*\* percent of importers' U.S. shipments in 2006 (not including shipments by importers that did not report customer share information). \*\*\* purchasers (\*\*\*) accounted for nearly all of this overlap. (Derived from questionnaire responses).

<sup>265</sup> The three types of laminated woven sacks for which pricing data were requested are: Product 1 (woven polypropylene fabric laminated to BOPP reverse-printed film, ink coverage 200 percent, measuring 15" x 3.5" x 27" (plus or minus 1 inch in any or all directions), fabric 70 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>), coating 20 g/m<sup>2</sup> (plus or minus 5 g/m<sup>2</sup>), film 22 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>); Product 2 (woven polypropylene fabric laminated to BOPP reverse-printed film, ink coverage 200 percent, measuring 16" x 6" x 39" (plus or minus 1 inch in any or all directions), fabric 80 g/m<sup>2</sup> (plus or minus 8 g/m<sup>2</sup>), coating 20 g/m<sup>2</sup> (plus or minus 5 g/m<sup>2</sup>), film 22 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>); and Product 3 (woven polypropylene fabric laminated to BOPP reverse-printed film, ink coverage 200 percent, measuring 13" x 2" x 24" (plus or minus 1 inch in any or all directions), fabric 75 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>), coating 20 g/m<sup>2</sup> (plus or minus 5 g/m<sup>2</sup>), film 25 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>). See, e.g., CR at V-4; PR at V-3.

<sup>266</sup> See, e.g., CR/PR at Tables V-1 to V-3.

<sup>267</sup> See, e.g., CR/PR at Tables V-1 to V-3.

before falling to their lowest point during the rest of the period of investigation.<sup>268</sup> Overall, prices for product 1 produced domestically were 8.7 percent lower in the first quarter of 2007 than they were in the first quarter of 2004.<sup>269</sup> Average prices for product 1 imported from China increased by 24.2 percent from \*\*\* in the second quarter of 2004 to \*\*\* in the fourth quarter of 2005, then fluctuated downward during the rest of the period.<sup>270</sup> Overall, prices for product 1 imported from China were 1.2 percent higher in the first quarter of 2007 than they were in the second quarter of 2004.<sup>271</sup>

Prices for product 2 produced domestically fell by 5.1 percent during 2004, increased by 23.3 percent between the fourth quarter of 2004 and the first quarter of 2006, then fell by 14.0 percent during the rest of the period.<sup>272</sup> Overall, prices for domestically produced product 2 were 0.7 percent higher at the end of the period than they were at the beginning.<sup>273</sup> Importers of product 2 from China reported only six quarters of pricing data. Reported prices for product 2 from China fluctuated, and did not show a clear trend.<sup>274</sup>

Prices of product 3 produced domestically fluctuated widely during the period, and did not show a clear trend.<sup>275</sup> Prices for product 3 imported from China increased by 10.3 percent between the fourth quarter of 2004 and the first quarter of 2006, then fluctuated downward during the rest of the period.<sup>276</sup> Overall, prices for product 3 imported from China were 6.3 percent lower in the first quarter of 2007 than they were in the fourth quarter of 2004.<sup>277</sup>

While there is mixed evidence of price increases and decreases over the period of investigation, we find that subject imports suppressed domestic prices to a significant degree. The cost of goods sold (“COGS”) for domestic producers as a share of their net sales increased over the period examined.<sup>278</sup> Although unit sales values also increased, these increases were not sufficient to completely offset the increases in unit COGS.<sup>279</sup> These data indicate that, as domestic producers’ costs increased and significant volumes of low-priced subject imports entered the U.S. market, the domestic producers \*\*\*. This evidence suggests price suppression in the form of a cost-price squeeze due at least in part to the subject imports. The evidence of some confirmed lost sales and revenues provides additional support for our finding that subject imports of laminated woven sacks from China have suppressed prices to a significant degree.<sup>280</sup> In any final phase investigations, we will also examine the extent to which the entry of new domestic producers to the U.S. market also helps to explain these trends.

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<sup>268</sup> See, e.g., CR at V-5; PR at V-3; CR/PR at Table V-1.

<sup>269</sup> See, e.g., CR at V-5; PR at V-3; CR/PR at Table V-1.

<sup>270</sup> See, e.g., CR at V-5; PR at V-3; CR/PR at Table V-1.

<sup>271</sup> See, e.g., CR at V-5; PR at V-3; CR/PR at Table V-1.

<sup>272</sup> See, e.g., CR at V-5; PR at V-3; CR/PR at Table V-2.

<sup>273</sup> See, e.g., CR at V-5; PR at V-3; CR/PR at Table V-2.

<sup>274</sup> See, e.g., CR at V-5; PR at V-3 to V-4; CR/PR at Table V-2.

<sup>275</sup> See, e.g., CR at V-5; PR at V-4; CR/PR at Table V-3.

<sup>276</sup> See, e.g., CR at V-5; PR at V-4; CR/PR at Table V-3.

<sup>277</sup> See, e.g., CR at V-5; PR at V-4; CR/PR at Table V-3.

<sup>278</sup> See, e.g., CR/PR at Table C-1. Polypropylene is one of the primary raw materials used in the production of laminated woven sacks. The price of polypropylene has risen substantially over the period of investigation. Prices in March 2007 were 71.8 percent higher than they were in January 2004. See, e.g., CR at V-1; PR at V-1; CR/PR at Figure V-1.

<sup>279</sup> See, e.g., CR/PR at Table C-1.

<sup>280</sup> See, e.g., CR at V-11 to V-14; PR at V-5 to V-6; CR/PR at Tables V-4 to V-5.

### C. Impact of the Subject Imports from China<sup>281</sup>

We have examined the performance indicators in the trade and financial data for the domestic producers as a whole.

For domestic producers as a whole, production, shipments to the U.S. market, market share, and net sales quantity and value all increased each year between 2004 and 2006, and were higher in interim 2007 than in interim 2006. U.S. production of laminated woven sacks increased from \*\*\* sacks in 2004 to 15.0 million sacks in 2005 and to 28.6 million sacks in 2006 and was 4.2 million sacks in interim 2006 compared to 13.1 million sacks in interim 2007.<sup>282</sup> Domestic producers' U.S. shipments of laminated woven sacks also increased each year from \*\*\* sacks in 2004 to 13.9 million sacks in 2005 and to 26.4 million sacks in 2006 and were 4.0 million sacks in interim 2006 as compared to 12.2 million sacks in interim 2007.<sup>283</sup> Domestic producers' share of apparent U.S. consumption increased from \*\*\* percent in 2004 to 10.6 percent in 2005 and to 13.7 percent in 2006 and was 10.1 percent in interim 2006 as compared to 22.2 percent in interim 2007.<sup>284</sup> Net sales volumes were identical to U.S. shipments except for 2006, when net sales volumes were 25.3 million sacks, and interim 2007, when net sales volumes were 11.8 million sacks.<sup>285</sup> We do not view the apparent improvements in these indicia in the same light as we might in other investigations, however, given our finding that a domestic industry is not yet established, and given that several of the domestic producers began production operations only in the last year.

We also discount the apparent improvements in domestic producers' production, U.S. shipments, market share, and net sales volumes and values in light of the very low levels of capacity utilization reported by domestic producers as a whole. Average production capacity for domestic producers as a whole increased from \*\*\* sacks in 2004 to 89.1 million sacks in 2005 and to 142.7 million sacks in 2006,

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<sup>281</sup> In its notices of initiation, Commerce estimated ad valorem weighted-average dumping margins for imports of subject laminated woven sacks from China into the U.S. market that ranged from 74.70 to 91.73 percent. See, e.g., CR at I-4; PR at I-3. In its notices of initiation, Commerce also identified twenty-three programs alleged in the petitions to have provided countervailable subsidies to producers of laminated woven sacks in China. Commerce grouped these programs under seven headings: (1) Government of China loan's programs; (2) Government of China's provision of goods or services for less than adequate remuneration; (3) Government of China's grant programs; (4) Government of China's income tax programs; (5) Government of China's indirect tax programs and import tariff programs; (6) provincial grant programs; and (7) provincial and local tax programs for foreign-invested enterprises. See, e.g., CR at I-4 to I-6; PR at I-4 to I-5; 72 Fed. Reg. 40839 (Jul. 25, 2007). Petitioners argue that enormous subsidies from the Government of China and provincial and local Chinese governments give Chinese laminated woven sacks producers an unfair competitive advantage over domestic producers. They also argue that the Chinese Government's artificial undervaluation of the Renminbi facilitates underselling, which allows Chinese laminated woven sacks to penetrate the U.S. market. See, e.g., Petitioners' Postconf. Br. at 17; Conf. Tr. at 16-18. Although respondent Hotsun recognizes that Commerce and not the Commission determines the existence of subsidies, it emphasizes that Chinese laminated woven sacks producers are generally small, privately-owned, and fully developed, not companies needing government support, and not companies that can afford to dump in one region for very long. It asserts that textiles refers to cotton spinning, not laminated woven sacks production, so the preferential policies identified by petitioners do not benefit laminated woven sacks producers. See, e.g., Hotsun's Postconf. Br. at 6-7.

<sup>282</sup> See, e.g., CR/PR at Table C-1.

<sup>283</sup> See, e.g., CR/PR at Table C-1.

<sup>284</sup> See, e.g., CR/PR at Table IV-4.

<sup>285</sup> See, e.g., CR/PR at Table C-1. Net sales increased from \*\*\* in 2004 to \$7.6 million in 2005 and to \$15.4 million in 2006 and were \*\*\* in interim 2006 as compared to \$6.7 million in interim 2007. See, e.g., CR/PR at Table C-1.

and was 22.7 million sacks in interim 2006 as compared to 53.8 million sacks in interim 2007.<sup>286</sup> By 2006, total domestic capacity to produce laminated woven sacks was equivalent to 74.2 percent of apparent U.S. consumption that year.<sup>287</sup> Although capacity utilization levels increased over the period of investigation from \*\*\* percent in 2004 to 16.8 percent in 2005 and to 20.1 percent in 2006 and were 18.7 percent in interim 2006 and 24.3 percent in interim 2007, these levels continued to be very low throughout the entire period.<sup>288</sup>

Both petitioners and respondents agree that laminated woven sacks are produced to order, and yet, domestic producers' inventories increased over the period of investigation, and by the end of the period were \*\*\* the size of inventories of subject merchandise from China reported by importers.<sup>289</sup>

The average number of production-related workers, hours worked, wages paid, and hourly wages were all higher in 2006 than in 2004.<sup>290</sup> Average unit labor costs increased from \*\*\* in 2004 to \$0.10 in 2005 and to \$0.13 in 2006, and were \$0.14 in interim 2006 as compared to \$0.10 in interim 2007.<sup>291</sup> Productivity in terms of sacks per 1,000 hours declined from \*\*\* in 2004 to 102.5 in 2005, and to 95.1 in 2006 and was 77.0 in interim 2006 as compared to 130.9 in interim 2007.<sup>292</sup> Several of these trends are unsurprising given the additional domestic producers that began production operations over the course of the period of investigation.

Two important financial indicators – operating income and operating margins – steadily declined over the period of investigation. Operating losses were larger in each successive year of the period.<sup>293</sup> The domestic producers' ratio of operating \*\*\* to net sales followed a similar trend, \*\*\* from \*\*\* percent in 2004 to negative 3.9 percent in 2005 and negative 19.8 percent in 2006, and they were \*\*\* percent in interim 2006 and negative 15.5 percent in interim 2007.<sup>294</sup>

While net sales measured by quantity increased over the period of investigation, and net sales values also increased over this period, as discussed above, increasing net sales unit values were unable to keep pace with increasing raw material costs.<sup>295</sup> As discussed previously, COGS as a ratio to sales increased overall from 2004 to 2006. COGS was \*\*\* percent of sales in 2004, increased to 89.6 percent of sales in 2005, and to 101.3 percent of sales in 2006, and was \*\*\* percent of sales in interim 2006 as compared to 102.8 percent of sales in interim 2007.<sup>296</sup> As the result of this cost/price squeeze, domestic producers as a whole reported increasing operating losses in each year of the period of investigation.

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<sup>286</sup> See, e.g., CR/PR at Table C-1.

<sup>287</sup> See, e.g., CR at III-3; PR at III-2.

<sup>288</sup> See, e.g., CR/PR at Table C-1.

<sup>289</sup> See, e.g., CR/PR at Table C-1. Domestic producers' end-of-period inventories increased from \*\*\* sacks in 2004 to 1.5 million sacks in 2005 and to 3.6 million sacks in 2006 and were 1.7 million sacks in interim 2006 as compared to 4.5 million sacks in interim 2007. Id. Importers of Chinese laminated woven sacks reported end-of-period inventories of \*\*\* in 2004, \*\*\* sacks in 2005, \*\*\* sacks in 2006, \*\*\* sacks in interim 2006 and \*\*\* sacks in interim 2007. Id.

<sup>290</sup> See, e.g., CR/PR at Table C-1.

<sup>291</sup> See, e.g., CR/PR at Table C-1.

<sup>292</sup> See, e.g., CR/PR at Table C-1.

<sup>293</sup> See, e.g., CR/PR at Table C-1. Operating losses increased from \*\*\* in 2004 to negative \$297,000 in 2005 and to negative \$3.1 million in 2006. Domestic producers as a whole recorded \*\*\* in operating \*\*\* in interim 2006 and an operating loss of negative \$1.0 million in interim 2007. Id.

<sup>294</sup> See, e.g., CR/PR at Table C-1.

<sup>295</sup> See, e.g., CR/PR at Table C-1. The unit net sales value increased from \*\*\* in 2004 to \$0.54 in 2005 and to \$0.61 in 2006 and was \*\*\* in interim 2006 as compared to \$0.57 in interim 2007. Id.

<sup>296</sup> See, e.g., CR/PR at Table C-1.

Capital expenditures for domestic producers as a whole increased each year of the period of investigation (from \*\*\* in 2004 to \*\*\* in 2005, and to \*\*\* in 2006), although they were lower in interim 2007 (\*\*\*) than in interim 2006 (\*\*\*).<sup>297</sup> Capital expenditures for domestic producers as a whole were consistently lower than annual depreciation expenses.<sup>298</sup> Research and development expenditures, which accounted for an even smaller level of expenditures, increased each year of the period of investigation.<sup>299</sup>

In any final phase investigations, we intend to explore whether the performance of the domestic producers as a whole “reflects merely the normal start-up condition of a company entering an admittedly difficult market” or is “worse than what could reasonably be expected.” Access to the domestic producers’ business plans would facilitate this assessment. We also intend to further explore respondents’ assertions that domestic producers invested in the wrong technology or did not make enough investments in additional equipment or know-how that would have enabled them to provide the sort of laminated woven sacks products purchasers desire in the U.S. market.

### **CONCLUSION**

For the reasons stated above, we conclude that subject imports had an adverse impact on the domestic producers’ condition during the period of investigation. In particular, we find that the significant absolute and relative volume of subject imports has significantly increased over the period of investigation, and has significantly undersold the domestic like product and suppressed domestic prices to a significant degree. The suppressed domestic prices, combined with the pattern of consistent underselling, have caused declines in the financial performance over the period of investigation for the domestic producers as a whole. Therefore, we find that there is a reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports of laminated woven sacks from China that allegedly are subsidized and sold in the United States at less than fair value.

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<sup>297</sup> See, e.g., CR/PR at Table VI-4.

<sup>298</sup> Compare, e.g., CR/PR at Table VI-4 with, e.g., CR/PR at Table VI-5.

<sup>299</sup> See, e.g., CR/PR at Table VI-4.



**SEPARATE AND ADDITIONAL VIEWS OF CHAIRMAN DANIEL R.  
PEARSON AND COMMISSIONER DEANNA TANNER OKUN CONCERNING  
*BRATSK ALUMINUM V. UNITED STATES***

**I. Legal Issues Concerning *Bratsk Aluminum Smelter v. United States***

In the recent case of *Bratsk Aluminum Smelter et al. v. United States*, 444 F.3d 1369 (Fed. Cir. 2006) (“*Bratsk*”), the Federal Circuit reaffirmed that the requisite causal link to subject imports is not demonstrated if such imports contributed only “minimally or tangentially to the material harm.”<sup>1 2</sup> Applying that standard to an investigation involving a commodity product, *i.e.*, silicon metal, and the significant presence of nonsubject imports, the Court held that the Commission had not sufficiently explained whether nonsubject imports simply would have replaced subject imports during the period of investigation had an antidumping order been in place and continued to cause injury to the domestic industry.<sup>3</sup>

As a threshold matter, it is not immediately clear how the Commission should interpret the *Bratsk* opinion in terms of its effect on our analysis of causation in Title VII investigations. We discern at least two possible interpretations that differ substantially. The first interpretation is that *Bratsk* mandates application of an additional test apparently not contemplated by the statute (the so-called “replacement/benefit test”). Under this interpretation, *Bratsk* appears to require that the Commission apply an extra-statutory causation test with respect to nonsubject imports and to determine that the domestic industry will benefit from the antidumping duty or countervailing duty order. While we respectfully disagree with the Court that such a causation analysis is legally required, we discuss *infra* our interpretation of the *Bratsk* standard and attempt to perform the analysis based on the record in these preliminary investigations. The second interpretation is that *Bratsk* is a further development of the causation approach prescribed by *Gerald Metals*. Under this interpretation we are required to identify and assess the competitive effects of subject imports to ensure that they contribute more than “minimally or tangentially to the material harm” of the domestic industry. To the extent that we had the relevant information, the Commission evaluated this issue in our threat analysis. We will re-examine this in any final phase of these investigations once the Commission has collected further relevant information (*e.g.*, information about the market from purchasers).<sup>4</sup>

**II. Application of *Bratsk* Replacement/Benefit Test**

Having found that there is a reasonable basis to determine that the establishment of an industry in the United States is materially retarded by reason of subject imports from China, we now must assess whether the facts of this investigation trigger a *Bratsk* analysis under the “replacement/benefit test” interpretation of *Bratsk*. *Bratsk* requires a two-step analysis. First, we must determine whether *Bratsk* is triggered based on the facts of the investigation. Second, if it is triggered, then we must consider whether the non-subject imports would have replaced the subject imports without a beneficial effect on domestic

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<sup>1</sup> 444 F.3d at 1373 (Fed. Cir. 2006), quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997).

<sup>2</sup> Commissioner Okun did not participate in the underlying investigation nor the subsequent litigation.

<sup>3</sup> 444 F.3d at 1375-1376.

<sup>4</sup> For a complete statement of our interpretation of *Bratsk* in a preliminary investigation, see Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning *Bratsk Aluminum V. United States* in *Sodium Hexametaphosphate from China*, Inv. No. 731-TA-1110 (Preliminary), USITC Pub. 3912 (Apr. 2007) at 19-25.

producers.<sup>5</sup> Based on the record in these preliminary investigations, we conclude that *Bratsk* is not triggered.

The *Bratsk* Court states that “[t]he obligation under *Gerald Metals* is triggered whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.”<sup>6</sup> Thus, the *Bratsk* test purportedly is not required in every case, only in cases involving a “commodity product” and where “price competitive non-subject imports are a significant factor in the market.”

The *Bratsk* Court referred to a “commodity product” as “meaning that it is generally interchangeable regardless of its source.” While the parties participating in the staff conference agreed that laminated woven sacks from China and from the United States are highly substitutable for one another,<sup>7</sup> and most responding importers reported that laminated woven sacks from China and from the United States are always or frequently interchangeable,<sup>8</sup> other record evidence in the preliminary phase of these investigations indicates that laminated woven sacks are not commodity products. First, we note that the parties asserted that laminated woven sacks are not commodity products.<sup>9</sup> Laminated woven sacks are only produced by the manufacturer once they have been ordered by a customer, with each order for the sacks having its own specific characteristics (*e.g.*, size, capacity, color/clear) and also different labeling provided by the customer.<sup>10</sup> Second, the domestic producers of the nascent industry have developed differing techniques to manufacture laminated woven sacks. The different types of laminated woven sacks made by the domestic producers include some laminated with paper, some laminated with BOPP film, some produced in tubular form, and some produced with a vertical back seam.<sup>11</sup>

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<sup>5</sup> We have concluded that *Bratsk* may require either a backward-looking or a forward-looking analysis depending on the context (*i.e.*, whether the determination in question is an affirmative present injury determination or one of threat). *See Polyester Staple Fiber from China*, Inv. No. 731-TA-1104 (Final), USITC Pub. 3922 at 28-29 n. 185. In the context of material retardation, in which we must determine whether subject imports materially retarded the establishment of an industry, we apply a backward-looking approach.

<sup>6</sup> *Bratsk*, 444 F.3d at 1375.

<sup>7</sup> *See, e.g.*, Conf. Tr. at 8 (Dorn), 74 (Dorn), 86-87 (Nowak), 87-8 (Bazbaz), 192 (Levinson); Petitioners’ Postconf. Br. at 2, 14-15; Shapiro’s Postconf. Br. at 24.

<sup>8</sup> Four U.S. producers reported that differences other than price between laminated woven sacks produced in the United States and in China were never significant, and two reported that non-price differences were sometimes significant. Two importers reported that non-price differences were never significant, four importers reported that non-price differences were sometimes significant, one importer reported that non-price differences were frequently significant, and two importers reported that non-price differences were always significant. *See, e.g.*, CR at II-7 to II-9; PR at II-5 to II-6; CR/PR at Tables II-2 and II-3. Of the \*\*\* responding U.S. producers, \*\*\* reported that U.S. and Chinese-produced laminated woven sacks are always interchangeable; of the thirteen responding importers, five reported they are always interchangeable, six reported that they are frequently interchangeable, and two reported that they are sometimes interchangeable. *See, e.g.*, CR at II-9, PR at II-6; CR/PR at Table II-3. Certain purchasers reported physical differences between some laminated woven sacks produced in the United States and China. *See, e.g.*, CR at V-12, V-14; PR at V-5 - V-6.

<sup>9</sup> *See, e.g.*, Conf. Tr. at 8 (Dorn), 74 (Dorn), 86-87 (Nowak), 87-88 (Bazbaz). Respondents Shapiro, Excel, and Solaris agree that laminated woven sacks are not commodity products. *See, e.g.*, Shapiro’s Postconf. Br. at 24.; Conf. Tr. at 192 (Levinson).

<sup>10</sup> *See, e.g.*, Petitioners’ Postconf. Br. at 2, 14-15; Conf. Tr. at 8 (Dorn).

<sup>11</sup> *See, e.g.*, Conf. Tr. at 21 (Bazbaz), 37 (Nicolai), 53 (Nicolai), 119 (Abel), 129 (Corman), 143 (Boltuck), 218 (Dorn).

Finally, the record indicates that at least some technical expertise is needed to produce laminated woven sacks, particularly to be able to laminate BOPP to the woven fabric.<sup>12</sup> While it is not clear how difficult or expensive it is to master the various techniques, the current record appears to reflect agreement that the most difficult aspect of laminated woven sack production is mastering the technology of laminating reverse-printed BOPP film to woven polypropylene.<sup>13</sup> Moreover, one of the witnesses testifying on behalf of the respondents indicated that the absence of almost any historical experience in the United States and the lack of knowledgeable workers here means that U.S. producers will require additional time for trial and error before they can master the technology.<sup>14</sup> Indeed, at least one domestic producer, Mid-America, stopped producing laminated woven sacks in March 2007 because it was unable to master the technology of reverse-printing BOPP film to woven polypropylene.<sup>15</sup> These differing techniques and the difficulties experienced by various domestic producers in mastering the technology suggest that laminated woven sacks are not yet commodity products. For purposes of this analysis we find, based on the record available in these preliminary investigations, that the first triggering factor for the *Bratsk* replacement/benefit test is not satisfied.

Because we find that the first triggering factor for the *Bratsk* replacement/benefit test is not present in these investigations, we therefore are not required to address “whether non-subject imports would have replaced subject imports without any beneficial effect on domestic producers.”

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<sup>12</sup> See, e.g., CR/PR at VII-2 n.3; Shapiro’s Postconf. Br. at Exh. 7; Petitioners’ Postconf. Br. at Exh. 1 at 1-2; Conf. Tr. at 20 (Bazbaz) (indicating it took Polytex, a producer of non-laminated woven sacks, over six months of research and development and numerous trials to come up with a successful lamination process); 54-57 (Nicolai, Bazbaz, Dorn); 70-73 (Bazbaz, Nicolai); 156 (Wisla for Lang).

<sup>13</sup> See, e.g., CR at III-2 n.2, VII-2 n.3; PR at III-1 n.2, VII-2 n.3; Petitioners’ Postconf. Br. at Exh. 1 at 1-2; Conf. Tr. at 20 (indicating it took Polytex, a producer of non-laminated woven sacks over six months of research and development and numerous trials to come up with a successful lamination process), 54-57, 70-73, 100.

<sup>14</sup> See, e.g., CR/PR at VII-2 n.3; Shapiro’s Postconf. Br. at Exh. 7 at ¶ 3.

<sup>15</sup> See, e.g., Petitions at 13; Petitioners’ Postconf. Br. at 31; Conf. Tr. at 38-39 (Nicolai), 53-55 (Nicolai), 73 (Nicolai).



## PART I: INTRODUCTION

### BACKGROUND

These investigations result from a petition filed on June 28, 2007, by the Laminated Woven Sacks Committee, which members include: (1) Bancroft Bag, Inc. of West Monroe, LA (“Bancroft”); (2) Coating Excellence International, LLC of Wrightstown, WI (“Coating Excellence”); (3) Hood Packaging Corp. of Madison, MS (“Hood”); (4) Mid-America Packaging, LLC of Twinsburg, OH (Mid-America”); and (5) Polytex Fibers Corp. of Houston, TX (“Polytex”), alleging that the establishment of an industry in the United States is materially retarded, or alternatively, is materially injured or is threatened with material injury, by reason of imports from China of laminated woven sacks (“LW sacks”)<sup>1</sup> that are allegedly subsidized by the government of China and sold in the United States at less-than-fair-value (“LTFV”). Information relating to the background of these investigations is provided below.<sup>2</sup>

Effective date	Action
June 28, 2007	Petition filed with Commerce and the Commission; Commission institutes investigation (72 FR 36720, July 5, 2007)
July 19, 2007	Commission’s conference <sup>1</sup>
July 25, 2007	Initiation of antidumping investigation by Commerce (72 FR 40833)
July 25, 2007	Initiation of countervailing duty investigation by Commerce (72 FR 40839)
August 10, 2007	Commission’s vote
August 13, 2007	Commission’s determinations transmitted to Commerce
August 20, 2007	Commission’s views transmitted to Commerce

<sup>1</sup> A list of witnesses that appeared at the conference is presented in app. B.

### ORGANIZATION OF REPORT

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

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<sup>1</sup> A complete description of the imported product subject to these investigations is presented in *The Subject Product* section located in Part I of this report.

<sup>2</sup> *Federal Register* notices cited in the tabulation are presented in app. A.

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

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

...

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

...

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

Information on the subject merchandise, alleged margins of dumping and subsidies, and domestic like product is presented in *Part I*. Information on conditions of competition and other relevant economic factors is presented in *Part II*. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Parts IV and V*, respectively. *Part VI* presents information on the financial experience of U.S. producers. Information obtained for use in the Commission's consideration of the question of threat of material injury is presented in *Part VII*.

## U.S. MARKET SUMMARY

The U.S. market for LW sacks totaled approximately \$60 million and 192 million sacks in 2006. Currently, seven firms produce LW sacks in the United States. These firms include: (1) Bancroft; (2) Coating Excellence; (3) Hood; (4) La Pac Manufacturing, Inc. (“La Pac”); (5) Mid-America; (6) Polytex; and (7) SeaTac Packaging Mfg. Corp. (“SeaTac”). The two largest producers, \*\*\*, accounted for almost \*\*\* of reported U.S. production in 2006. At least 20 firms have imported LW sacks from China since 2004, including \*\*\*.

U.S. producers’ U.S. shipments of LW sacks totaled 26.4 million sacks valued at \$16.1 million in 2006, and accounted for 13.7 percent of apparent U.S. consumption by quantity (26.7 percent by value). U.S. imports from China totaled 153 million sacks in 2006, and accounted for 79.6 percent of apparent U.S. consumption by quantity (64.9 percent by value), while U.S. imports from all other sources combined totaled 12.8 million sacks valued at \$5.1 million in 2006, and accounted for 6.6 percent of apparent U.S. consumption by quantity (8.4 percent by value). LW sacks are generally used by pet food, bird seed, grass seed, fertilizer, and other manufacturers as flexible packaging for their consumer goods.

## SUMMARY DATA AND DATA SOURCES

A summary of data collected in these investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of seven firms that accounted for what is believed to be all of U.S. production of LW sacks in 2006. U.S. imports are based on official import statistics of Commerce, adjusted by a methodology provided by petitioners to remove product not within the scope of these investigations.<sup>3</sup> Data regarding the Chinese industry are based on one foreign producer questionnaire, which is believed to account for \*\*\* percent of 2006 LW sack production in China, and \*\*\* percent of Chinese export shipments to the United States.

## PREVIOUS AND RELATED INVESTIGATIONS

LW sacks have not been the subject of any prior antidumping or countervailing duty investigations in the United States.

## NATURE AND EXTENT OF ALLEGED SALES AT LTFV

On July 25, 2007, Commerce published a notice in the *Federal Register* of the initiation of its antidumping investigation of LW sacks from China. The estimated weighted-average dumping margins (in percent *ad valorem*), as reported by Commerce (based on petitioners’ comparison of the export price and normal value) ranged from 74.70 percent to 91.73 percent.<sup>4</sup>

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<sup>3</sup> Petitioners’ adjustment methodology is found in exhibit 6 of the petition. See also p. IV-1, fn. 3 of this report. U.S. imports as compiled by the Commission in response to U.S. importer questionnaires is provided in appendix C, table C-2.

<sup>4</sup> *Laminated Woven Sacks from the People’s Republic of China: Initiation of Antidumping Duty Investigation*; 72 FR 40833, 40836, July 25, 2007.

## NATURE OF ALLEGED COUNTERAVAILABLE SUBSIDIES

On July 25, 2007, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on LW sacks from China.<sup>5</sup> In its notice, Commerce listed the following programs alleged in the petition to have provided countervailable subsidies to producers of LW sacks in China:<sup>6</sup>

### *Government of China Loan Programs*

- (1) Policy loans to LW sack producers from Chinese government-owned banks
- (2) Loan forgiveness for LW sack producers by the government of China

### *Government of China's Provision of Goods or Services for Less Than Adequate Remuneration*

- (3) Provision of electricity for less than adequate remuneration
- (4) Provision of land for less than adequate remuneration

### *Government of China's Grant Programs*

- (5) The State Key Technologies Renovation Project Fund
- (6) Grants and other funding for high technology equipment for the Chinese textile industry
- (7) Grants to loss-making state-owned enterprises

### *Government of China's Income Tax Programs*

- (8) Preferential tax policies for enterprises with foreign investment
- (9) Preferential tax policies for export-oriented Foreign Invested Enterprises (FIEs)
- (10) Corporate income tax refund program for reinvestment of FIE profits in export oriented enterprises
- (11) Tax benefits for FIEs in encouraged industries that purchase domestic origin machinery
- (12) Tax program for FIEs recognized as high or new technology enterprises
- (13) Preferential tax policies for research and development

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<sup>5</sup> Commerce has recently determined that the current nature of the economy in China does not create obstacles to applying the necessary criteria in the countervailing duty law and initiated a countervailing duty investigation against China. *See Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17486 (April 9, 2007).

<sup>6</sup> *Laminated Woven Sacks from the People's Republic of China: Initiation of Countervailing Duty Investigation*; 72 FR 40839, 40840, July 25, 2007.

- (14) Tax subsidies to FIEs in specially designated geographic areas
- (15) Preferential tax policies for township enterprises by FIEs

***Government of China's Indirect Tax Programs and Import Tariff Programs***

- (16) Value-added tax (VAT) rebate for FIE purchases of domestically produced equipment
- (17) VAT and tariff exemptions for FIEs using imported technology and equipment in encouraged industries
- (18) VAT and tariff exemptions on imported equipment
- (19) Exemption from payment of staff and worker benefit taxes for export-oriented enterprises

***Provincial Grant Programs***

- (20) Export interest subsidy funds for enterprises located in Zhejiang and Guangdong Provinces
- (21) Technological innovation funds provided by Zhejiang Province
- (22) Programs to rebate antidumping legal fees

***Provincial and Local Tax Programs for FIEs***

- (23) Local income tax exemption and reduction programs for "Productive" FIEs

**THE SUBJECT PRODUCT**

**Commerce's Scope**

Commerce has defined the imported product subject to these investigations as follows:

*Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;<sup>7</sup> printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird seed.*

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<sup>7</sup> "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classifiable under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

### Tariff Treatment

During the period of investigation, LW sacks were classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) under statistical reporting number 6305.33.0020.<sup>8</sup> Effective July 1, 2007, a revision to the HTSUS places LW sacks in statistical reporting numbers 6305.33.0050 and 6305.33.0080.<sup>9</sup> Table I-1 presents the statistical reporting number in the HTSUS under which LW sacks are classified and their tariff treatment.

**Table I-1  
LW sacks: Tariff treatment, 2007**

HTS provision	Article description	General <sup>1</sup>	Special <sup>2</sup>	Column 2 <sup>3</sup>
		Rates (percent ad valorem)		
6305	Sacks and bags, of a kind used for the packing of goods:			
6305.10.00	Of jute or of other textile bast fibers of heading 5303 . . .			
6305.20.00	Of cotton (369) .....			
6305.32.00	Of man-made textile materials:			
10	Flexible intermediate bulk containers .....			
20	Weighing one kg or more (669) .....			
	Other (669) .....			
6305.33.00	Other, of polyethylene or polypropylene strip or the like	8.4%	(4)	103%
10	Weighing one kg or more (669) .....			
20	Other (669) .....			

<sup>1</sup> Normal trade relations, formerly known as the most-favored-nation duty rate.

<sup>2</sup> Special rates not applicable when General rate is free.

<sup>3</sup> Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

<sup>4</sup> Certain nonsubject countries qualify for duty free rates either within the U.S. Generalized System of Preferences (“GSP”) program or as negotiated in a free trade agreement with the United States.

Source: Harmonized Tariff Schedule of the United States (2007).

<sup>8</sup> Petitioners have noted that if LW sacks enter the United States with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, they may be classifiable under HTSUS statistical reporting numbers 3923.21.0080, 3923.21.0095, or 3923.29.0000 (“Articles for the conveyance or packaging of goods, of plastics; stoppers, lids, caps, and other closures”). Petitioners have also noted that if LW sacks enter the United States not closed on one end or in roll form, they may be classifiable under HTSUS statistical reporting numbers 5903.90.2500 (“Textile fabrics impregnated, coated, covered, or laminated with plastics”) and 3921.19.0000 (see HTS 3921 description above). Petitioners have stated that they do not believe LW sacks have entered the United States during the period of investigation classified under these statistical reporting numbers and that all subject product entered under HTS 6305.33.0020.

<sup>9</sup> Revision 2 of the HTSUS (2007). Statistical reporting number 6305.33.0050 is described as “Other: Weighing less than 1 kg, with an outer laminated ply of plastics sheeting.” Statistical reporting number 6305.33.0080 is described as “Other.”

## THE DOMESTIC LIKE PRODUCT

The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price. Information regarding interchangeability, customer and producer perceptions, and channels of distribution is presented in part II of this report. Information regarding price is presented in part V of this report. Information regarding the physical characteristics and uses, and the manufacturing process of LW sacks is presented below.

### Physical Characteristics and Uses

LW sacks are made primarily from polypropylene ("PP") fabric,<sup>10 11</sup> which provides strength, and a laminated exterior ply of plastic film, typically biaxially oriented polypropylene ("BOPP") or a laminated exterior ply of paper.<sup>12</sup> LW sacks have improved physical properties compared with multi-wall paper sacks,<sup>13</sup> the previous standard packaging material for marketers of pet foods, litter, and other animal feed products, the primary consumers of LW sacks. Specifically, LW sacks weigh less than alternative packaging materials and occupy less storage space, resulting in lower expenses for shipment and storage. Also, LW sacks are more tear-resistant and have greater tensile strength, resulting in less breakage; and are resistant to water, oil, and grease, resulting in less material breakdown and leakage, resulting in a cost saving for the consuming industry.<sup>14</sup> Another feature that is reported to be attractive to the pet supply industry, particularly in the case of the reverse printed BOPP laminated product, is the maintenance of the

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<sup>10</sup> In some cases, woven polyethylene ("PE") fabric can be substituted for PP, specifically, high-density polyethylene ("HDPE"). However, HDPE tends to "elongate(s) more and it's not as stiff or rigid as polypropylene." Conference transcript, pp. 99-100 (Bazbaz).

<sup>11</sup> Society of the Plastics Industry, *About the Industry: Definitions of Plastics Resins*, found at <http://www.plasticsindustry.org/industry/defs.htm>, retrieved on July 18, 2007.

"Polypropylene belongs to the "olefins" family, which also includes the polyethylenes, but it is quite different in its properties. It has a low density, is fairly rigid, has a heat distortion temperature of 150 to 200 degrees F (making it suitable for "hot-fill" packaging applications), and excellent chemical resistance and electrical properties. Polypropylenes are also very easy to process in all conventional systems. Major applications of commercial polypropylenes are packaging, automotive, appliances and carpeting. Polypropylene is made by polymerizing propylene monomers, with suitable catalysts, generally aluminum alkyl and titanium tetrachloride mixed with solvents."

"Polyethylenes are thermoplastic resins obtained by polymerizing the gas ethylene. Low molecular weight polymers of ethylene are fluids used as lubricants; medium weight polymers are waxes miscible with paraffin; and the high molecular weight polymers (i.e., over 6,000) are the materials used in the plastics industry."

<sup>12</sup> Petition, p. 7.

<sup>13</sup> Paper multi-wall sacks are still used in some of the packaging of the same consumer goods (i.e., pet food and bird seed) as the LW sacks, but are reported to result in additional costs to the pet food and seed suppliers through returns of product owing to packaging breakage. Conference transcript, p. 11 (Levinson); respondent Hotsun's postconference brief, pp. 1-2.

Paper sacks were initially produced in the United States in 1859. In 1919, the idea of producing multiwall sacks was brought from Norway and "gusseted wall" sacks were developed. In the early 1920s, three-, four-, and five-wall bags made of 100 percent kraft paper were introduced. In 1925, the Bates Valve Sack Company opened and produced 40 million sacks; by 1927 131 million bags were produced. Paper Shipping Sack Manufacturers' Association, Inc., found at <http://www.pssma.com>, retrieved on July 25, 2007.

<sup>14</sup> Petition, pp. 7-8.

integrity of the high quality graphics which serve as point-of-sale advertising for the packaged consumer goods.<sup>15</sup>

LW sacks are generally used to package products weighing between 17 and 55 pounds.<sup>16</sup>

### **Manufacturing Facilities and Manufacturing Process**

The production of LW sacks involves several separate staged operations, which allow for a producer to enter into the production scheme at a number of different steps, resulting in a variation of starting materials. The initial step for the most vertically integrated of the domestic producers (i.e., Polytex) involves the melting of PP (or PE) pellets and extrusion<sup>17</sup> into a sheet of a specific thickness. The sheets are then cut into thin flat strips that are spooled onto a bobbin for weaving into the necessary fabric. Figure I-1 shows a schematic of the extrusion equipment used to produce the required polyethylene or polypropylene sheet for the LW sacks. The dry PP pellets are loaded into a receptacle (hopper), and then fed into a grating chamber through the action of a revolving screw. At the end of the heating chamber, the molten plastic material is forced through a small opening, shaped in the form of the desired product, and is subsequently fed onto a conveyor belt on which it is cooled either by air blowers or by water.<sup>18</sup>

Once the sheets have been cut into strips (or tapes), the strips are fed through a hot air stretching oven and to a stretching unit to add strength and stability before being wound onto the bobbins.<sup>19</sup>

The second discrete step in LW sacks production involves the weaving of the spooled PP strip into fabric (*see* figure I-2).<sup>20</sup> Although eventually the LW sacks can be made using either a tubular woven form or from a flat woven sheet, both are made from the same weaving process that initially produces the tubular woven form.<sup>21</sup> The tubular woven material is used directly to produce the seamless LW sacks;<sup>22</sup> however, the tubular woven material is slit to produce the flat sheet form (which requires a heat-sealing step at a later stage of production) to produce “back seam LW sacks.”<sup>23</sup> The equipment used in the

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<sup>15</sup> Conference transcript, p. 127 (Corman).

<sup>16</sup> Conference transcript, p. 61 (Bazbaz).

<sup>17</sup> Society of the Plastics Industry, *About the Industry: Processing Methods*, (found at <http://www.plasticsindustry.org/industry/process.htm>, retrieved on July 18, 2007): “Extrusion is the method employed to form thermoplastic materials into continuous products, such as blown and cast film, sheet, pipe and tubing, a large variety of profiles, coated paper/foil/wire/cable/textiles, monofilaments and most all synthetic fibers, hollow sections for blow molding, and compounding and reclaim of plastic pellets. Extrusion machinery includes twin-screw systems, which are mainly used for polyvinylchloride pipe and/or profiles and compounding, and single-screw systems, which are used for these and other extruded products.” Also see *Plastics Engineering Handbook of the Society of Plastics Industries*, “Chapter 4: Extrusion Processes,” 1991, pp. 79-132.

<sup>18</sup> *Society of the Plastics Industry: Processing Methods*, (found at <http://www.plasticsindustry.org/industry/process.htm>, retrieved on July 18, 2007).

<sup>19</sup> Petitioners’ postconference brief, exh. 5, p. 9.

<sup>20</sup> Petition, p. 10.

<sup>21</sup> Respondent Shapiro Packaging’s postconference brief, pp. 31-35.

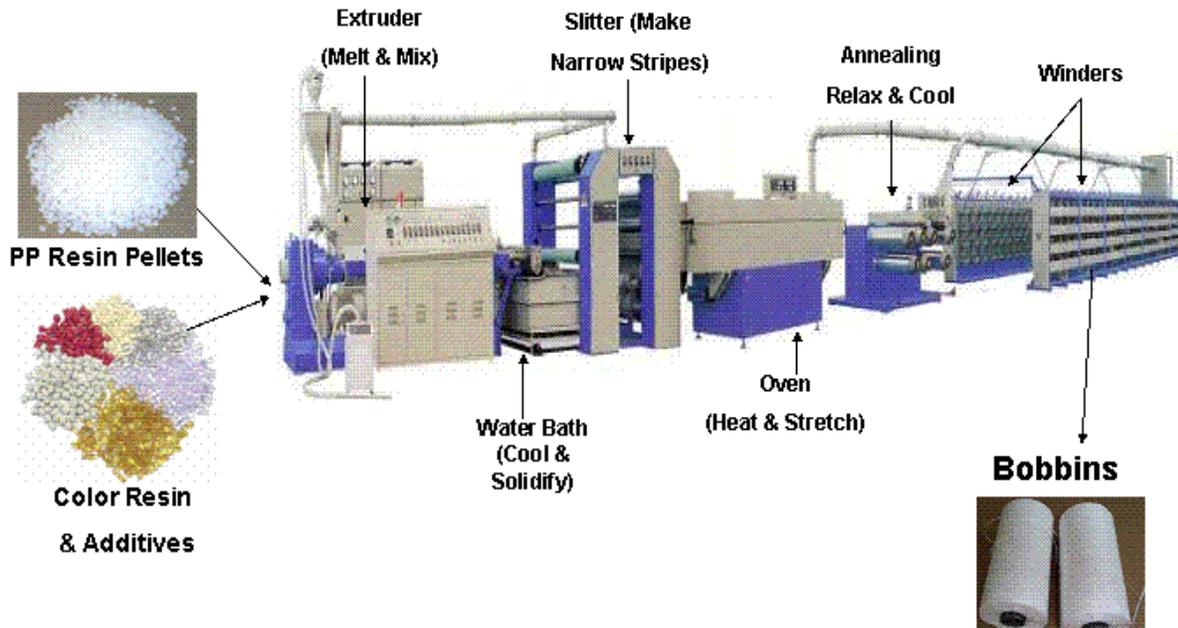
<sup>22</sup> Conference transcript, pp. 119-120 (Abel); respondent Shapiro Packaging’s postconference brief, pp. 31-35.

<sup>23</sup> The back seam LW sacks are produced using the second method and are reported by respondents to be considered (by their customers) better for use on the automated filling equipment currently in operation in customers’ plants. Respondents maintain that their customers reported a preference for the back seam LW sacks (which are reported to be more expensive to produce) owing to the additional expense required for the consumer to purchase different automated filling equipment for the less-expensive seamless LW sacks. The overlapping material in the back seam LW sacks provides enough stiffness, according to respondents, that these sacks work with the same filling equipment formerly (and possibly still) used for multiwall paper sacks. Seamless LW sacks reportedly do not have the same degree of stiffness, and often have extra laminate material (which respondents refer to as “fins”) that

(continued...)

weaving process can produce various widths of fabric for different size LW sacks, by variation of the weaving ring.<sup>24</sup>

**Figure I-1**  
**LW sacks: Extrusion line and slitter for producing polypropylene strips**



Source: Conference transcript, petitioners' presentation attachment.

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<sup>23</sup> (...continued)

may affect the automated filling of these sacks on automated filling equipment used for other packaging materials. Conference transcript, pp. 120-122 (Abel) and 164-165 (Abel); respondent Shapiro Packaging's postconference brief, pp. 33

<sup>24</sup> Petitioners' postconference brief, exh. 5, p. 12.

**Figure I-2**  
**LW sacks: Weaving process**



Source: Conference transcript, petitioners' presentation attachment.

Printing onto the laminate prior to the lamination process provides another of the features that gives LW sacks an advantage over previous packaging alternatives. Producers of LW sacks reverse print onto the laminate material, a plastic film such as BOPP (or directly print onto an exterior ply of laminating paper). Both of these laminates are suitable for high quality print graphics, allowing for the application of high quality print graphics in multiple colors that serve as point-of-sale advertising for packaged consumer goods.<sup>25</sup>

Once printed, the lamination step (*see* figure I-3) bonds the laminate material directly to the woven sack material. The process involves a “curtain of liquid PP” that is allowed to “flow between the film and the fabric, immediately forming a bonding center layer.”<sup>26</sup> When bonding the laminate to the flat woven sheet format, only one side of the material is laminated.<sup>27</sup> However, when bonding the laminate to the woven tube formatted material, the laminate is bonded to two sides (at the same time). This dual-sided lamination process often results in the extra laminate extending along two sides of the resulting LW sacks, referred to by the respondents as “fins.”<sup>28</sup>

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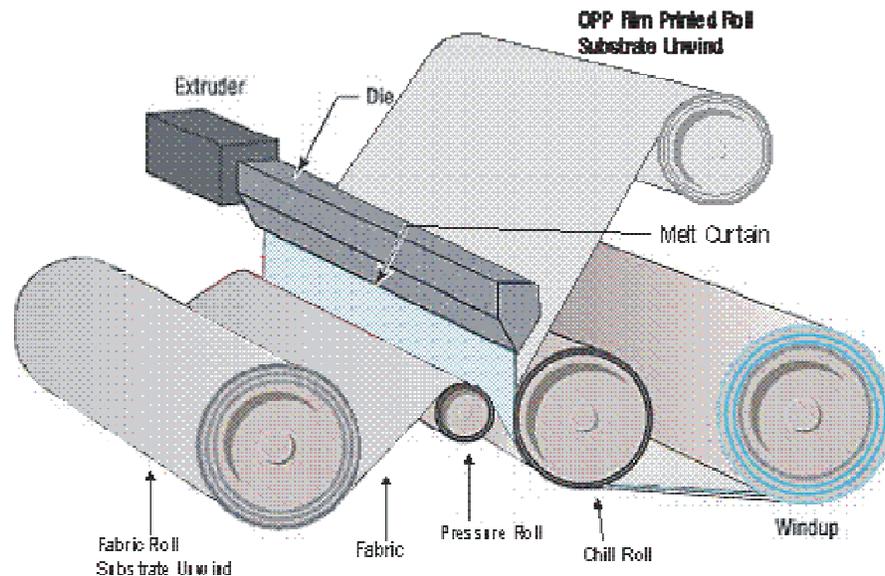
<sup>25</sup> Petition, p. 3.

<sup>26</sup> Petitioners' postconference brief, exh. 5, p. 16.

<sup>27</sup> After this lamination step the sheet is sealed back onto itself to form the shape of the sack, and provide the extra stiffness inherent in having a back seam on the LW sacks.

<sup>28</sup> Conference transcript, pp. 164-165 (Abel). These fins are reported by the respondents to interfere with tight tolerances of certain automated filling machines. Conference transcript, pp. 128-129 (Corman).

**Figure I-3**  
**LW sacks: Lamination process**



Source: Conference transcript, petitioners' presentation attachment.

After lamination, in the case of the flat sheet laminated material, the rolls are sent to a tuber, where the fabric is formed into a continuous tube, gusseted,<sup>29</sup> and cut into individual pieces. The individual tubes are then transferred to a sewing line where they are sewn and formed into individual sacks of the required dimensions.<sup>30</sup> In the case of the already tubular formed laminate, there is no tubing or gusseting; the laminated tubular form is cut and sewn into the individual sacks. In both cases, the bags are finished by sewing the bottom and applying closure tape and the pull tape for easy opening. The bags are then inspected and packaged for shipment.<sup>31</sup>

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<sup>29</sup> Gusseting involves the addition of a stiffening material (the gusset) to add a support mechanism within the layers of overlapping material that is sealed (hot melt glued) to form the vertical back seam of the sack. Respondent Shapiro Packaging's postconference brief, p. 35. The back seam can also be formed without the addition of the gusset. Petitioners' postconference brief, exh. 5, p. 21.

<sup>30</sup> Petitioners' postconference brief, exh. 5, p. 24.

<sup>31</sup> Conference transcript, p. 22 (Bazbaz); petitioners' postconference brief, exh. 5, p. 24.

## DOMESTIC LIKE PRODUCT ISSUES

The petitioners contend that the Commission should find one domestic like product that is co-extensive with the scope of merchandise subject to the investigations as identified by Commerce.<sup>32</sup> Respondent Shapiro Packaging did not raise any domestic like product issues.<sup>33</sup> Respondent Hotsun Plastics argued that paper multi-wall sacks are merely part of a continuum of packaging products for consumer retail easily substitutable with LW sacks and thus should be included in the domestic like product.<sup>34</sup> Respondent Hotsun argued that 90 percent of bird seed and pet food packaging are currently multi-walled paper bags and that LW sacks and multi-walled paper bags are interchangeable.<sup>35</sup> Petitioners contend that LW sacks physically are not like paper sacks as the two types of sacks use different raw materials (woven polypropylene vs. multi-ply paper) and thereby have fewer plies, weigh less, and occupy less space when empty. Moreover, they contend that LW sacks possess greater tensile strength, are far more resistant to punctures and tears, and are more resistant to water, oil, and grease.<sup>36</sup> Petitioners further argue that paper sacks are not interchangeable with LW sacks as customers that have made the shift to LW sacks no longer find paper sacks a viable substitute.<sup>37</sup>

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<sup>32</sup> Petitioners' postconference brief, p. 4.

<sup>33</sup> Respondent Shapiro Packaging's postconference brief, p. 3.

<sup>34</sup> Respondent Hotsun's postconference brief, pp. 1-2.

<sup>35</sup> Respondent Hotsun offers only these two contentions in support of its domestic like product argument. It offered neither documentary evidence nor testimony at the conference. Respondent Hotsun did not participate in the conference proceedings.

<sup>36</sup> Petitioners' postconference brief, p. 6.

<sup>37</sup> *Ibid.*, p. 7.

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

### **U.S. MARKET SEGMENTS**

U.S. producers' and U.S. importers of Chinese LW sacks sell primarily to end users. Typical end users include manufacturers of consumer goods—products that are sold and displayed in retail stores such as pet foods, grass seed, and some feed products.<sup>1</sup>

Markets appear to be somewhat limited geographically. Two producers reported nationwide sales, whereas the other four responding U.S. producers sold in a variety of regions, including the Midwest, the Southeast, the Rocky Mountains, and the Northwest. Four of 14 responding importers reported nationwide sales with the remaining 10 responding importers reporting sales to three or fewer regions including the Northeast, the Midwest, the Southeast, the Southwest, and the Northwest.

Producers and importers were asked to estimate the percentage of their sales that occurred within certain distance ranges. U.S. producers tended to ship LW sacks shorter distances than U.S. importers of Chinese LW sacks. On average, U.S. producers sold 11.5 percent of their LW sacks within 100 miles of their storage or production facilities, 43.2 percent between 101 and 1,000 miles, and 45.3 percent over 1,000 miles. On average, U.S. importers of Chinese LW sacks sold 1.1 percent of their LW sacks within 100 miles of their storage facilities, 3.0 percent between 101 and 1,000 miles, and 95.8 percent over 1,000 miles.

### **CHANNELS OF DISTRIBUTION**

U.S. producers and importers of Chinese LW sacks sell primarily to end users. Table II-1 presents information on channels of distribution for U.S. producers as well as for U.S. importers of subject product from China.

### **SUPPLY AND DEMAND CONSIDERATIONS**

#### **U.S. Supply**

##### **Domestic Production**

Based on available information, staff believes that U.S. producers are likely to respond to changes in demand with relatively large increases in shipments of LW sacks to the U.S. market. Low levels of capacity utilization indicate that U.S. producers have the ability to substantially increase production of LW sacks in the short run. U.S. producers' limited ability to shift production to and from alternative products and the lack of alternative markets suggest a lower degree of responsiveness, while moderately high inventories suggest a higher degree of responsiveness.

##### ***Industry capacity***

Total U.S. capacity \*\*\* from \*\*\* LW sacks in 2004 to 142.7 million LW sacks in 2006, and increased between the interim 2006-07 periods, from 22.7 million LW sacks in interim 2006 to 53.8 million in interim 2007. U.S. producers' reported capacity utilization for LW sacks \*\*\* from \*\*\*

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<sup>1</sup> Conference transcript, p. 25 (Bazbaz).

**Table II-1**

**LW sacks: U.S. producers' and U.S. importers' U.S. shipments of subject product, by channels of distribution, 2004-06, January-March 2006, and January-March 2007**

	Calendar year			Jan.-Mar.	
	2004	2005	2006	2006	2007
<b>U.S. producers' U.S. shipments to:</b>	<b>U.S. shipments (in 1,000 sacks)</b>				
Distributors	***	***	***	***	***
End users	***	***	***	***	***
<b>U.S. importers' U.S. shipments to:</b>					
Distributors	***	***	***	***	***
End users	***	***	***	***	***
<b>U.S. producers' U.S. shipments to:</b>	<b>Shares of U.S. shipments (in percent)</b>				
Distributors	***	***	***	***	***
End users	***	***	***	***	***
<b>U.S. importers' U.S. shipments to:</b>					
Distributors	***	***	***	***	***
End users	***	***	***	***	***

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

percent in 2004 to 20.1 percent in 2006, and increased between the interim periods, from 18.7 percent in interim 2006 to 24.3 percent in interim 2007.<sup>2</sup>

***Alternative markets***

U.S. producers reported \*\*\* export shipments during 2004, and no export shipments during 2005, interim 2006, and interim 2007. U.S. producers reported minimal export shipments in 2006, accounting for only \*\*\* percent of U.S. producers' total shipments.<sup>3</sup>

***Inventory levels***

U.S. producers' inventory/total shipments ratios \*\*\* from \*\*\* percent in 2004 to \*\*\* percent in 2006, but fell between the interim periods, from \*\*\* percent to \*\*\* percent.<sup>4</sup>

***Production alternatives***

Four of the U.S. producers, \*\*\*, reported that they did produce other products using the same manufacturing and/or production employees that were used to produce LW sacks. The manufacturing

<sup>2</sup> See table C-1.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

equipment used to produce multiple products is generally that equipment used for printing on coated paper and finishing operations and not equipment used in the printing and lamination of BOPP film.<sup>5</sup>

### **Subject Imports**

Imported LW sacks from China increased by 97.2 percent from 77.7 million LW sacks in 2004 to 153.2 million sacks in 2006, and increased by 18.2 percent between the interim periods. Subject Chinese imports' share of apparent U.S. consumption fell from \*\*\* percent in 2004 to 79.6 percent in 2006, and fell between the interim periods, from 82.5 percent to 70.9 percent. Imported LW sacks from China as a share of total U.S. imports of LW sacks fell from 100.0 percent in 2004 to 92.3 percent in 2006, and continued to fall between the interim periods, from 91.7 percent to 91.2 percent.<sup>6</sup>

Based on limited available information, Chinese producers of LW sacks are likely to respond to changes in demand with moderate to large changes in the quantity of LW sacks shipped to the U.S. market. A moderate to large change in the quantity supplied is supported by the relatively large number of reported Chinese producers of LW sacks, although most of these producers are reportedly relatively small. The existence of alternative markets also suggests a relatively higher supply response.

### **Industry capacity**

David Zhu of Solaris Manufacturing Group in China, reported that the Chinese LW sacks industry is already very crowded with existing manufacturers. Mr. Zhu estimated that there are currently 300 to 400 LW sacks manufacturers in China. However, Mr. Zhu stated that the vast majority of these manufacturers were privately owned small businesses that employ 100 to 200 people.<sup>7</sup>

### **Alternative markets**

Mr. Zhu reported that the majority of Chinese-produced LW sacks are consumed within China, because the domestic market is relatively larger and easier to sell to than export markets. Mr. Zhu also agreed that the Chinese home market was more developed, at least in terms of woven sacks, although not necessarily the newer LW sacks. Mr. Zhu reported that Chinese producers export to Europe, Australia, New Zealand, Canada, and Brazil.<sup>8</sup>

### **Inventory levels**

Hotsun, a Chinese producer of LW sacks, reported inventory/total shipments ratios of \*\*\* percent in 2006, \*\*\* percent in interim 2006, and \*\*\* percent in interim 2007.<sup>9</sup>

### **Production alternatives**

Hotsun reported that \*\*\*.

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<sup>5</sup> See Table III-4.

<sup>6</sup> See Table C-1.

<sup>7</sup> Conference transcript, pp. 173-174 and 207-208 (Zhu).

<sup>8</sup> Conference transcript, pp. 175-177 (Zhu).

<sup>9</sup> The Commission received a response from one firm, Wenzhou Hotsun Plastics Co., Ltd. ("Hotsun"), which claims to account for approximately \*\*\* percent of Chinese production of LW sacks and \*\*\* percent of exports to the United States.

## U.S. Demand

Based on available information, LW sack consumers are likely to respond to changes in the price of LW sacks with relatively little change in their purchases of LW sacks. The main contributing factor to the lack of responsiveness of demand is the emergence of LW sacks as a preferred alternative to possible substitute products, such as multi-wall paper sacks. LW sacks also account for a relatively small share of the total cost of their end use products.

### Demand Characteristics

Available data indicate that apparent U.S. consumption of LW sacks increased from \*\*\* LW sacks in 2004 to 192.4 million LW sacks in 2006. Apparent U.S. consumption of LW sacks rose between the interim periods, from 39.9 million LW sacks in interim 2006 to 54.8 million sacks in interim 2007.

When asked if demand for LW sacks had changed since January 1, 2004, \*\*\* responding producers and 13 of 15 responding importers reported that demand had increased. The remaining \*\*\* responding importers reported that demand was unchanged since January 1, 2004. The most commonly cited reasons for the increase are the greater durability, improved print graphics, and price competitiveness of the LW sacks compared to products such as multi-wall paper sacks that had been the preferred sack of the U.S. pet food, bird seed, animal feed, and grass seed industries.<sup>10 11</sup>

### Substitute Products

\*\*\* responding producers reported that there are no direct substitutes for LW sacks. However, 12 of 13 responding importers reported that there are substitutes for LW sacks. Reported substitute products include multi-wall paper sacks, clay-coated paper sacks, and polyethylene sacks.<sup>12</sup> Producers reported that purchasers have indicated that they prefer LW sacks to other types of sacks, primarily because of their greater durability. Producers maintain that the greater durability of the LW sacks reduces product waste from breakage of bags. Producers also cite LW sacks' improved print graphics, and reduced landfill waste because of their lighter weight.<sup>13 14</sup> Although most importers reported that there are

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<sup>10</sup> Petitioners also testified that they believe U.S. demand will continue to grow for a number of years at a high rate. Conference transcript, pp. 91-92 (Nowak, Nicolai, and Bazbaz).

<sup>11</sup> Respondents maintained that importers of Thai and Chinese LW sacks with vertical-back seams are responsible for successfully introducing that product to pet food packagers over the past five years. Respondents contend that it is that product, a variant of LW sacks, that accounts for the bulk of the U.S. LW sacks market today, and for the continued strong growth in that market. Conference transcript, p. 142 (Boltuck). Respondents also maintained that the move towards poly-woven packaging is primarily driven by mass-merchant retailers, such as Wal-Mart, Dollar General, Family Dollar, Petco, and PetSmart, which are increasingly insisting upon poly-bag packaging in order to minimize product damage in the chain of distribution. Conference transcript, p. 152 (Lang).

<sup>12</sup> Respondents testified that, currently, about 90 percent of the 800 to 900 million bags used annually in the pet food industry are the pinch bottom open mouth style paper bag. Conference transcript, p. 118 (Abel).

<sup>13</sup> \*\*\* reported that demand for woven PP bags has been growing at double digits since 2004. The increase has been driven by the desire of major retailers (led by Wal-Mart) to move exclusively to LW sacks. This is because LW sacks reduce waste from breakage of bags, reduce waste to landfill due to the light weight of LW sacks, and have excellent graphics resulting in enhanced shelf appeal.

<sup>14</sup> Petitioners stated that "In a nutshell, no other type of sack combines the high tensile strength, high puncture resistance, high tear resistance and low weight of the polypropylene fabric and the high quality print graphics of BOPP film or coated free sheet paper. In practice, when customers specify a laminated woven sack they will not accept an alternative bag as a replacement." Conference transcript, p. 7 (Dorn).

substitute products for LW sacks, many importers reported that demand for LW sacks has increased due to their durability and high quality graphics.<sup>15</sup>

## **Cost Share**

U.S. producers and importers reported that LW sacks were used primarily as packaging in the pet food, bird seed, animal feed, and grass seed industries. Most estimates of the share of the total cost of the end use product accounted for by the cost of LW sacks ranged from 1 to 5 percent.

## **SUBSTITUTABILITY ISSUES**

### **Factors Affecting Purchasing Decisions**

Producers and importers were also asked to assess how often differences other than price were significant in sales of LW sacks from the United States, China, or nonsubject countries (table II-2). Four U.S. producers reported that differences other than price (i.e., quality, availability, transportation network, product range, technical support, etc.) between LW sacks produced in the United States and in China were never significant, while two U.S. producers reported that non-price differences were sometimes significant.<sup>16</sup> Alternatively, two importers reported that non-price differences were always significant, one importer reported that non-price differences were frequently significant, four importers reported that non-price differences were sometimes significant, and two importers reported that non-price differences were never significant. Importers cited factors such as the logistical advantage of purchasing all types of sack products from one supplier, printing graphics (rotogravure printing in China versus

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<sup>15</sup> \*\*\* reported that the low price of LW sacks and the durability of LW sacks have impacted demand for the product. \*\*\* reported that the demand within the United States for LW sacks has increased since January 1, 2004, due to the interest in this product from mass merchandisers like Wal-Mart and Dollar General. \*\*\* maintained that interest in this product has increased because LW sacks are interchangeable for the multi-wall paper bags and offer significant advantages over the multi-wall paper bags. \*\*\* further maintained that LW sacks are stronger packages with less or no breakage and tearing of the finished product vs. paper bags. \*\*\* contended that LW sacks offer improved printing and marketing graphics, and better environmental sustainability because they can be recycled. \*\*\* noted that the current pinch style paper bags can not be recycled due to the clay coated paper and polypropylene liners used in this style of bag. \*\*\* reported that demand for LW sacks increased because of their package strength (main reason), print/graphics quality, and price. \*\*\* reported that increased demand for LW sacks is driven by marketing and increased product availability from both domestic manufacturers and importers. \*\*\* reported that LW sacks' printing capabilities increased worldwide, and that LW sacks are price competitive with alternatives and offer superior performance. \*\*\* reported that LW sacks are a better packaging product than kraft multi-wall paper sacks, are more economical, and have better graphics. \*\*\* reported that the BOPP package has better graphics, is much more durable, and is priced competitively. \*\*\* reported that LW sacks are stronger than paper. \*\*\* reported that demand for LW sacks increased because of their print quality and detail (high graphic print), and structural integrity.

<sup>16</sup> At the conference, petitioners acknowledged that "This is not a commodity product." However, petitioners also maintained that "purchasing decisions, however, are made largely on the basis of price. This is because all laminated woven sacks are made to customer order. The customer specifies the dimensions and features of the bag and provides the design and the graphics. The competing suppliers quotes on the specifications provided by the customer; this means that U.S. and Chinese bags are virtually perfect substitutes." Conference transcript, p. 8 (Dorn).

**Table II-2**

**LW sacks: U.S. producers' and importers' conceptions concerning the importance of non-price differences in purchases of LW sacks from the United States and other countries<sup>1</sup>**

Country comparison	U.S. producers					U.S. importers				
	A	F	S	N	0	A	F	S	N	0
U.S. vs. China	0	0	2	4	0	2	1	4	2	6
U.S. vs. Nonsubject	0	0	1	3	2	0	1	3	2	9
China vs. Nonsubject	0	0	0	4	2	1	1	1	1	11

<sup>1</sup> Producers and importers were asked if differences other than price between LW sacks produced in the United States and in other countries are a significant factor in their firm's sales of the product.

Note: "A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never, and "0" = No familiarity.

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

flexigraphic printing in the United States), COF rates (a measure of bag slickness), Chinese vertical-back seam versus U.S. tubular construction, and product availability and delivery lead times.<sup>17</sup>

### **Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports**

Producers and importers were asked to report how frequently LW sacks from different countries were used in the same applications. All six responding U.S. producers reported that U.S.- and Chinese-produced LW sacks were always interchangeable (table II-3).<sup>18</sup> Alternatively, five importers reported that U.S.- and Chinese-produced LW sacks were always interchangeable, six reported that they were frequently interchangeable, and two reported that they were sometimes interchangeable. Importers maintain that the Chinese rotogravure printing process produces better print graphics than the U.S. producers' flexigraphic printing process. \*\*\* reported that Chinese COF rates are higher than U.S. producers' COF rates, which is an advantage at the packer level. \*\*\* also reported that purchasers prefer the Chinese LW sacks' vertical back seam construction to the U.S.-produced LW sacks' tubular construction, because the vertical back-seamed LW sacks can stand on their own, whereas the tubular LW sacks tend to collapse. Importers also noted the better availability and shorter delivery lead times of the U.S. producers.<sup>19 20</sup>

<sup>17</sup> Respondents reported that, typically, the type of LW sack construction (vertical-back seam or tubular) is included in the specifications requested by the purchaser. Conference transcript, pp. 199-200 (Abel).

<sup>18</sup> Coating Excellence's website lists benefits of U.S. production such as lead times being much shorter, bag cutting and sewing being automated rather than manual, better printing, easier to change graphics when needed, better quality control, and shorter shipping distances. Coating Excellence, found at <http://www.coatingexcellence.com>, retrieved on July 18, 2007.

<sup>19</sup> \*\*\* reported that they import a variety of sacks from China, not just LW sacks. \*\*\* stated that having their Chinese LW sacks producers make all of the products that they import is a distinct logistical advantage to them, and a significant reason why they limit importing from other countries. \*\*\*. \*\*\* reported that, when comparing LW sacks from China and the United States, there are frequently differences in the product from China that are significant to sales of the product. \*\*\* maintained that the Chinese producers have improved printing graphics, because rotogravure printing is used in China versus Flexigraphic printing in the United States. \*\*\* reported that

(continued...)

**Table II-3**

**LW sacks: U.S. producers' and importers' perceived degree of interchangeability of products produced in the United States and other countries<sup>1</sup>**

Country comparison	U.S. producers					U.S. importers				
	A	F	S	N	0	A	F	S	N	0
U.S. vs. China	6	0	0	0	0	5	6	2	0	2
U.S. vs. Nonsubject	4	0	0	0	2	6	1	2	0	6
China vs. Nonsubject	4	0	0	0	2	5	1	1	0	8

<sup>1</sup> Producers and importers were asked if LW sacks produced in the United States and in other countries is used interchangeably.

Note: "A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never, and "0" = No familiarity.

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

<sup>19</sup> (...continued)

Chinese LW sacks have higher COF rates, which will affect the performance at the packer level. \*\*\* maintains that purchasers have preferences for the rigid vertical-back seam style of Chinese LW sacks. Vertical-back seam LWS stand on their own, whereas U.S.-produced tubular bags tend to collapse. \*\*\* maintains that the capacity of the U.S. manufacturers is not capable of handling the demand for LW sacks in the United States. \*\*\* states that the U.S. industry has limited capacity and has made weak or futile efforts to promote the newly revised product that is superior to the old package. \*\*\* stated that U.S. manufacturers have the advantage when it comes to availability and transportation. \*\*\* maintains that most U.S. producers lack the quality standards that U.S. purchasers are used to getting from overseas. \*\*\* maintains that rotogravure printing is superior to flexigraphic printing, and that \*\*\* uses only rotogravure plates.

<sup>20</sup> At the conference, respondents testified that tubular LW sacks failed to secure commercial acceptance due to their lack of rigidity and stiffness (dimensional integrity) needed to perform well in existing automated bag filling equipment. For this reason, purchasers of vertical-back seam LW sacks (which have better dimensional integrity) did not need to make changes to their filling equipment, or to purchase new filling equipment to run the LW sacks. Respondents maintained that most of U.S. LW sack production is tubular. Conference transcript, pp. 119-121(Abel), 127-130 (Corman), 137-138 (Shapiro), 142-143 (Boltuck), and 160-165 (Shapiro, Boltuck, Abel). In their postconference brief, petitioners reported that domestic producers manufacture LW sacks in tubular form and LW sacks with a back seam. Petitioners noted that Nestle Purina, one of the largest U.S. producers of pet food, has purchased a tubular bag from China and a back seam bag from the United States. Petitioners maintained that, contrary to respondents assertions, tubular style bags are readily used in automatic filling equipment and are interchangeable with back seam bags in that regard. Petitioners maintained that the maker of a tubular bag can vary the stiffness of the bag to accommodate any automatic filling equipment. Petitioners also noted that domestic producers charge the same price for tubular bags and back seam bags. Petitioners postconference brief, pp. 15-16.



## PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

Information presented in this section of the report is based on (except as noted) the questionnaire responses of seven firms which are believed to account for all U.S. production of LW sacks in 2006.

### U.S. PRODUCERS

The Commission sent producers' questionnaires to seven firms identified as U.S. producers of LW sacks in the petition. All U.S. producers submitted responses. Table III-1 presents the list of U.S. producers with each company's U.S. production location, share of U.S. production in 2006, and position on the petition.

**Table III-1**  
**LW sacks: U.S. producers, U.S. production locations, shares of U.S. production in 2006, and positions on the petition**

Firm	Production location	Share of production (percent)	Position on the petition
Bancroft	West Monroe, LA	***	Petitioner
Coating Excellence	Wrightstown, WI	***	Petitioner
Hood <sup>1</sup>	Madison, MS	***	Petitioner
La Pac	Crowley, LA	***	***
Mid-America	Twinsburg, OH	***	Petitioner
Polytex <sup>2</sup>	Houston, TX	***	Petitioner
SeaTac	Puyallup, WA	***	Support

<sup>1</sup> Hood is a wholly owned subsidiary of the Hood Companies, Inc. of Madison, MS.  
<sup>2</sup> Polytex is a wholly owned subsidiary of Z-L Star, Inc. of Houston, TX.

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

### U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Five of the seven U.S. producers began production of LW sacks during the period of investigation.<sup>1</sup> Coating Excellence had never produced any type of bag or sack prior to its production of LW sacks. Bancroft, Hood, and Mid-America<sup>2</sup> traditionally produced paper sacks and had to learn new printing and laminating production processes necessary to manufacture LW sacks. Polytex, traditionally

<sup>1</sup> \*\*\*. Petitioners' postconference brief, p. 31 fn. 98.

<sup>2</sup> Mid-America acknowledged at the staff conference that it was "not able to master the technology of laminating reverse printed BOPP film to woven polypropylene," and therefore ceased production of LW sacks in March 2007 because low-priced imports from China did not justify the additional investment needed to rectify its production problems. Conference transcript, pp. 39, 55 (Nicolai); petitioners' postconference brief, exh. 1, p. 1.

a U.S. producer of non-laminated sacks, also had to learn the lamination processes.<sup>3 4</sup> Two of those producers reported that they experienced cessation of production at some point during the period. Table III-2 shows the date on which each U.S. producer commenced production of LW sacks and whether they experienced any production stoppages during the period of investigation.

**Table III-2**

**LW sacks: Date of the commencement of U.S. production of LW sacks, by firm**

\* \* \* \* \*

Data on U.S. producers' capacity, production, and capacity utilization are presented in table III-3. Total U.S. capacity increased from 2004 to 2006 by \*\*\* percent and 138 percent between January-March 2006 and January-March 2007, as a number of U.S. producers brought capacity on line in 2006 (*see* table III-2). Even with this recent increase, however, U.S. capacity volume accounts for only 74.2 percent of apparent U.S. consumption of LW sacks in 2006. Total U.S. production of LW sacks increased by \*\*\* percent from 2004 to 2006, and 208 percent between January-March 2006 and January-March 2007, again as new firms entered the U.S. market.<sup>5</sup> Capacity utilization ranged from \*\*\* percent in 2004 to 24.3 percent in interim 2007.

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<sup>3</sup> Petitioners' postconference brief, p. 35.

<sup>4</sup> Respondent Shapiro Packaging argues that the lack of U.S. production experience, and not U.S. imports from China, is the source of the U.S. industry's current problems. Respondent Shapiro Packaging's postconference brief, pp. 16-18 (list of perceived U.S. production inefficiencies).

<sup>5</sup> The domestic producers reported \*\*\* toll agreements \*\*\* U.S. production of LW sacks in U.S. foreign trade zones.

**Table III-3**  
**LW sacks: U.S. producers' capacity, production, and capacity utilization, 2004-06, January-March 2006, and January-March 2007**

Item	Calendar year			January-March	
	2004	2005	2006	2006	2007
<b>Capacity (1,000 sacks)</b>					
Bancroft	0	0	***	***	***
Coating Excellence	0	0	***	***	***
Hood	***	***	***	***	***
La Pac	***	***	***	***	***
Mid-America	0	0	***	***	***
Polytex	***	***	***	***	***
SeaTac	***	***	***	***	***
Total	***	89,061	142,718	22,657	53,823
<b>Production (1,000 sacks)</b>					
Bancroft	0	0	***	***	***
Coating Excellence	0	0	***	***	***
Hood	***	***	***	***	***
La Pac	***	***	***	***	***
Mid-America	0	0	***	***	***
Polytex	***	***	***	***	***
SeaTac	***	***	***	***	***
Total	***	14,964	28,636	4,238	13,054
<b>Capacity utilization (percent)</b>					
Bancroft	(1)	(1)	***	***	***
Coating Excellence	(1)	(1)	***	***	***
Hood	***	***	***	***	***
La Pac	***	***	***	***	***
Mid-America	(1)	(1)	***	***	***
Polytex	***	***	***	***	***
SeaTac	***	***	***	***	***
Average	***	16.8	20.1	18.7	24.3
<sup>1</sup> Not applicable.					
Source: Compiled from data submitted in response to Commission questionnaires.					

Four of the U.S. producers, \*\*\*, reported that they produced other products using the same manufacturing equipment and/or production employees that were used to produce LW sacks. Table III-4 shows overall U.S. capacity for these producers as well as the other products for which they have allocated capacity.

**Table III-4**  
**Sacks: Overall capacity of U.S. producers, and production by firms and products, 2006**

\* \* \* \* \*

Of the seven U.S. producers, only Polytex is an integrated producer of LW sacks, and therefore produces its own polypropylene woven fabric. All other U.S. producers purchase woven polypropylene fabric from third-party sources.<sup>6</sup> All U.S. producers engage in printing and finishing operations.<sup>7</sup> Table III-5 shows what production activities in which each U.S. producer engaged during the period of investigation and the per sack cost of those production activities.

**Table III-5**  
**LW sacks: Production activities of U.S. producers, by firms and production cost**

\* \* \* \* \*

**U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORT SHIPMENTS**

As detailed in table III-6, the volume of U.S. producers' U.S. shipments of LW sacks increased by \*\*\* percent from 2004 to 2006 and 203 percent between January-March 2006 and January-March 2007, as new players entered the market. The value of U.S. shipments also increased by \*\*\* percent and 160 percent, respectively, during the same time period. None of the U.S. producers reported internal consumption or transfers to related firms of LW sacks. \*\*\* reported export shipments in \*\*\*.

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<sup>6</sup> Petition, p. 4 fn. 2.

<sup>7</sup> Petition, p. 4. fn. 3.

**Table III-6**  
**LW sacks: U.S. producers' shipments, by types, 2004-06, January-March 2006, and January-March 2007**

Item	Calendar year			January-March	
	2004	2005	2006	2006	2007
<b>Quantity (1,000 sacks)</b>					
U.S. shipments <sup>1</sup>	***	13,914	26,407	4,021	12,196
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
<b>Value (\$1,000)</b>					
U.S. shipments <sup>1</sup>	***	7,623	16,073	2,647	6,883
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
<b>Unit value (per sack)</b>					
U.S. shipments <sup>1</sup>	\$***	\$0.55	\$0.61	\$0.66	\$0.56
Export shipments	***	***	***	***	***
Average	***	***	***	***	***
<sup>1</sup> U.S. producers reported no internal consumption or transfers to related firms. All U.S. shipments are commercial sales. <sup>2</sup> Not applicable.					
Source: Compiled from data submitted in response to Commission questionnaires.					

### U.S. PRODUCERS' IMPORTS AND PURCHASES OF IMPORTS

\*\*\* of the seven U.S. producers reported that they directly imported or purchased from U.S. importers LW sacks from China during the period of investigation.<sup>8</sup> Table III-7 presents those firms' direct imports and purchases of LW sacks from China, their U.S. production, and the ratio of their U.S. imports and purchases to their U.S. production.

**Table III-7**  
**LW sacks: U.S. producers' subject imports and purchases of subject imports, 2004-06, January-March 2006, and January-March 2007**

\* \* \* \* \*

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<sup>8</sup> Petitioners contend that they imported LW sacks from China "defensively to retain customers they would otherwise have lost to lower priced imports from China" and remain committed to producing LW sacks in the United States. Therefore, they argue that appropriate circumstances do not exist to exclude from the domestic industry any U.S. producer. Petitioners' postconference brief, exh. 1, p. 9.

## U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of LW sacks for the period of investigation are presented in table III-8.<sup>9</sup>

**Table III-8**

**LW sacks: U.S. producers' end-of-period inventories, 2004-06, January-March 2006, and January-March 2007**

Item	Calendar year			January-March	
	2004	2005	2006	2006	2007
Inventories ( <i>1,000 sacks</i> )	***	1,508	3,636	1,725	4,493
Ratio to production ( <i>percent</i> )	***	10.1	12.7	10.2	8.6
Ratio to U.S. shipments ( <i>percent</i> )	***	10.8	13.8	10.7	9.2
Ratio to total shipments ( <i>percent</i> )	***	***	***	***	***

Note.--January-March ratios are calculated using annualized production and shipment data.  
Source: Compiled from data submitted in response to Commission questionnaires.

## U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers (“PRWs”) engaged in the production of LW sacks, the total hours worked by such workers, and wages paid to such PRWs during the period for which data were collected in these investigations are presented in table III-9. From 2004 to 2006, the number of PRWs increased by \*\*\* percent (an increase of 71 percent between January-March 2006 and January-March 2007), hours worked increased by \*\*\* percent (increase of 81 percent between the interim periods), wages paid increased by \*\*\* percent (increase of 139 percent between the interim periods), hourly wages increased by \*\*\* percent (an increase of 32 percent between the interim periods), productivity decreased by \*\*\* percent (but increased 70 percent between the interim periods), and unit labor costs increased by \*\*\* percent (but decreased 22 percent between the interim periods).

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<sup>9</sup> Given the custom graphics required, LW sacks are made to order, therefore U.S. producers generally do not carry large inventories.

**Table III-9**

**LW sacks: Average number of production and related workers producing LW sacks, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2004-06, January-March 2006, and January-March 2007**

Item	Calendar year			January-March	
	2004	2005	2006	2006	2007
PRWs ( <i>number</i> )	***	72	182	100	171
Hours worked ( <i>1,000</i> )	***	146	301	55	100
Wages paid ( <i>\$1,000</i> )	***	1,555	3,767	573	1,370
Hourly wages	\$***	\$10.65	\$12.51	\$10.41	\$13.73
Productivity ( <i>sacks per 1,000 hours</i> )	***	102.5	95.1	77.0	130.9
Unit labor costs ( <i>per sack</i> )	\$***	\$0.10	\$0.13	\$0.14	\$0.10
Source: Compiled from data submitted in response to Commission questionnaires.					



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

### **U.S. IMPORTERS**

The Commission sent importer questionnaires to 40 firms believed to be U.S. importers of LW sacks, as well as to all seven U.S. producers.<sup>1</sup> Usable questionnaire responses were received from 20 firms.<sup>2</sup> Data for U.S. imports from China and nonsubject countries that are displayed throughout this report are compiled using official Commerce statistics, adjusted using the methodology set forth in the petition to account for product not within the scope of these investigations included in the HTS statistical reporting number.<sup>3</sup> The petitioners' method was used to compile U.S. import data in order to alleviate what petitioners allege is low import data coverage given the apparent low response rate to the Commission's questionnaire among U.S. importers.<sup>4</sup> Respondents agreed that the HTS statistical reporting number does contain product not within the scope of these investigations, however, offered

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<sup>1</sup> The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by the U.S. Customs and Border Protection ("Customs"), may have imported LW sacks since 2004.

<sup>2</sup> In addition to the 20 usable responses (those respondents are shown in table IV-1), the Commission received responses from \*\*\* indicating that they did not import LW sacks during the period examined. \*\*\* also reported that it did not import LW sacks during the period.

<sup>3</sup> The methodology used to compile U.S. import data from China and nonsubject countries is taken from exhibit 6 of the petition. Specifically, U.S. import data were based on the official Commerce statistics under statistical reporting number 6305.33.0020 incorporating a number of adjustments based on the following assumptions made by petitioners:

- (1) There were no U.S. imports of LW sacks prior to 2003.
- (2) Nonsubject non-laminated woven sacks included in the category experienced a steady 5 percent growth rate in U.S. imports from 2002 through 2006.
- (3) The difference in the Commerce statistics between U.S. imports in 2002 and 2003 (after accounting for the 5 percent growth rate) is entirely LW sacks.
- (4) All U.S. imports from nonsubject countries are from Thailand which commenced in 2005. No other country exports this product to the United States.
- (5) A weight to "number of sacks" conversion rate of 8,000 sacks= 1 short ton= 907 kilograms. This conversion rate is generally accepted by respondents. Conference transcript, p. 133 (Corman); Petition, exh. 6; *see also* conference transcript, pp. 57-60 (Bazbaz).

<sup>4</sup> Petitioners argue that the Commission did not receive importer questionnaire responses from a number of firms listed in the petition, and therefore, should not use data compiled from U.S. importer questionnaire responses as it would significantly understate the absolute volume of U.S. imports. Petitioners' postconference brief, pp. 19-20 and exh. 1, pp. 15-16.

The trend of the volume of U.S. imports, however, is similar as both data sets show increases in volume. Petitioners' methodology for computing U.S. imports from China shows an increase in U.S. imports of LW sacks from 2004 to 2006 of 97 percent and in the interim periods of 2006 to 2007 of 18 percent. U.S. import data compiled by the Commission using importer questionnaire responses show an increase of \*\*\* percent from 2004 to 2006 and another \*\*\* percent during the interim periods. Petitioners' postconference brief, pp. 18-21; *see also* Appendix C, table C-2 which shows U.S. import data compiled using the Commission's importer questionnaire responses.

neither an opinion as to the credibility of the U.S. import data as compiled by Commission questionnaires nor an alternative methodology to adjust the Commerce statistics.<sup>5</sup>

Table IV-1 lists all responding U.S. importers of LW sacks from China, their U.S. locations, and their quantities of imports, by source, in 2006.<sup>6</sup>

**Table IV-1**  
**LW sacks: Reported U.S. imports, by importers and by sources of imports, 2006**

\* \* \* \* \*

### U.S. IMPORTS<sup>7</sup>

Table IV-2 shows that the volume of U.S. imports of LW sacks from China increased by 97.2 percent from 2004 to 2006 and 18.2 percent from January-March 2006 to January-March 2007. The value of U.S. imports from China increased by 142.0 percent from 2004 to 2006 and 29.3 percent between January-March 2006 and January-March 2007. The volume of U.S. imports from Thailand, the only nonsubject country from which petitioners believe LW sacks entered the United States during the period of investigation, were nonexistent in 2004. Petitioners believe that U.S. imports from Thailand began entering the United States in 2005. U.S. imports from Thailand increased 26.1 percent by volume and 17.4 percent by value between January-March 2006 and January-March 2007.

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<sup>5</sup> Respondent Shapiro Packaging disagreed with petitioners' methodology, especially the assumed 5 percent annual growth rate in the non-laminated woven sacks market segment (computed in order to subtract these imports from the Commerce data). Respondent Shapiro Packaging argued that the 5 percent growth rate potentially understates U.S. imports of non-laminated sacks by a substantial margin for the following reasons:

(1) Non-laminated sacks were largely or entirely covered by the Agreement on Textiles and Clothing, which expired during the period of investigation (2004) and those U.S. imports of textiles covered by the agreement generally increased after expiration. *See* p. IV-6 (quotas for the category under which LW sacks fall expired in 2002, before the period of investigation).

(2) Demand for sandbags, a product included in the non-laminated sacks category, most likely increased during the period of investigation with events occurring such as Hurricane Katrina (2005) and the war in Iraq (2003 to present). Respondent Shapiro Packaging postconference brief, pp. 28-30.

Respondent Shapiro Packaging also disputed petitioners' application of its 5 percent growth rate in its methodology and provides a "corrected" version. Respondent applies a 5 percent growth rate to U.S. imports from the "world" including countries alleged to not have exported to the United States. Petitioners' methodology always assumed that only Commerce data on U.S. imports from China and Thailand contained subject product. All other countries were disregarded. *Ibid.*

<sup>6</sup> \*\*\* reported that they entered the subject product into or withdrew it from a foreign trade zone. \*\*\* reported that they entered the subject product into or withdrew it from a bonded warehouse.

<sup>7</sup> U.S. imports from China and nonsubject countries are based on adjusted Commerce statistics. The adjustment methodology utilized by Commission staff is that proposed by petitioners in exh. 6 of the petition. *See* fn. 3 of this part of the report.

**Table IV-2**  
**LW sacks: U.S. imports, by sources, 2004-06, January-March 2006, and January-March 2007**

Source	Calendar year			January-March	
	2004	2005	2006	2006	2007
<b>Quantity (1,000 sacks)</b>					
China	77,686	112,262	153,182	32,886	38,878
All others	0	4,963	12,778	2,974	3,749
Total	77,686	117,225	165,960	35,860	42,627
<b>Value (\$1,000)<sup>1</sup></b>					
China	16,128	26,746	39,025	8,154	10,540
All others	0	2,137	5,051	1,356	1,592
Total	16,128	28,883	44,076	9,510	12,132
<b>Unit value (per sack)</b>					
China	\$0.21	\$0.24	\$0.25	\$0.25	\$0.27
All others	0	0.43	0.40	0.46	0.42
Average	0.21	0.25	0.27	0.27	0.28
<b>Share of quantity (percent)</b>					
China	100.0	95.8	92.3	91.7	91.2
All others	0	4.2	7.7	8.3	8.8
Total	100.0	100.0	100.0	100.0	100.0
<b>Share of value (percent)</b>					
China	100.0	92.6	88.5	85.7	86.9
All others	0	7.4	11.5	14.3	13.1
Total	100.0	100.0	100.0	100.0	100.0

<sup>1</sup> Landed, duty-paid.

Source: Compiled from adjusted Commerce statistics. U.S. imports from nonsubject countries are exclusively from Thailand.

## U.S.-China Textile Agreement

On January 1, 2005, the United States eliminated quotas on imports of textiles and apparel from World Trade Organization (“WTO”) countries, as obligated under the WTO Agreement on Textiles and Clothing (“ATC”). The ATC, which came into effect with the WTO Uruguay Round Agreements in 1995, required that WTO countries eliminate quantitative restrictions on textile and apparel articles in four stages over 10 years.<sup>8</sup> Category 669,<sup>9</sup> covering other man-made manufactures including “sacks & bags for packaging goods, of man-made material (polyethylene), weighing less than 1 kg.,”<sup>10</sup> was liberalized in stage three of the integration, effective January 1, 2002. Therefore, imports of materials included in category 669 expired before the period of investigation and the data from HTS statistical reporting number 6305.33.0020 from China would not show any changes related to the ATC.

China became eligible for quota liberalization for all categories integrated in phases one and two of the integration, as well as items scheduled for future integration, upon its accession to the WTO in 2001. Under the provisions of China’s accession agreement, the United States and other WTO countries may invoke temporary “safeguards” (or quotas) on imports of Chinese textiles and apparel that are, owing to market disruption, threatening to impede the orderly development of trade in such goods.<sup>11</sup> The China textile safeguard provision is available until December 31, 2008. While the United States has initiated a number of safeguard cases against imports of textile and apparel products from China, a case has never been initiated nor requested for goods under category 669.<sup>12</sup>

### NEGLIGENCE

The Tariff Act of 1930 provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition.<sup>13</sup> The share (in *percent*) of the total quantity of U.S. imports from China for the period of June 2006 to May 2007 using either petitioners’ methodology for the computation of U.S. imports or U.S. import data compiled from the Commission’s questionnaire responses was well above the 3 percent negligibility threshold.

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<sup>8</sup> The ATC superseded the Multifiber Arrangement (“MFA”), an arrangement negotiated under the auspices of the General Agreement on Tariffs and Trade (“GATT” 1947) that governed world trade in textiles and apparel and permitted importing countries to establish quotas on such goods outside normal GATT rules during 1974-94. The United States continues to maintain quotas on non-WTO countries.

<sup>9</sup> To administer the U.S. textile and apparel quota program, articles are grouped under 3-digit category numbers, which cover many 10-digit statistical reporting numbers under which goods are classified in the HTS. The category system was designed to simplify monitoring of textile and apparel imports by aggregating several thousand statistical reporting numbers into larger, more manageable categories.

<sup>10</sup> Category 669 covers other man-made manufactures classified in 21 separate 10-digit statistical reporting numbers in the HTS. Only one of these statistical reporting numbers, 6305.33.0020, includes imports of any subject product. However, the primary subject import from China is made from PP, not PE, and falls outside of the range of products included in category 669. Both petitioners and respondents agreed that there are only minimal, if any, PE LW sacks in the domestic market. Conference transcript, pp. 99-100 (Bazbaz) and pp. 209-210 (Corman).

<sup>11</sup> The safeguard provision covers all products subject to the ATC as of January 1, 1995.

<sup>12</sup> U.S. Department of Commerce, International Trade Administration, Office of Textiles and Apparel.

<sup>13</sup> 19 U.S.C. § 1677(24)(A)(ii).

## APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of LW sacks are presented in table IV-3. From 2004 to 2006, the quantity of apparent U.S. consumption of LW sacks increased by \*\*\* percent and increased by 37.5 percent between January-March 2006 and January-March 2007. From 2004 to 2006, the value of apparent U.S. consumption increased by \*\*\* percent and increased by 56.4 percent between the interim periods.

**Table IV-3**

**LW sacks: U.S. shipments of domestic product, U.S. imports by sources, and apparent U.S. consumption, 2004-06, January-March 2006, and January-March 2007**

Item	Calendar year			January-March	
	2004	2005	2006	2006	2007
<b>Quantity (1,000 sacks)</b>					
U.S. producers' U.S. shipments	***	13,914	26,407	4,021	12,196
U.S. imports from--					
China	77,686	112,262	153,182	32,886	38,878
All other countries	0	4,963	12,778	2,974	3,749
Total imports	77,686	117,225	165,960	35,860	42,627
Apparent U.S. consumption	***	131,139	192,367	39,881	54,823
<b>Value (\$1,000)</b>					
U.S. producers' U.S. shipments	***	7,623	16,073	2,647	6,883
U.S. imports from--					
China	16,128	26,746	39,025	8,154	10,540
All other countries	0	2,137	5,051	1,356	1,592
Total imports	16,128	28,883	44,076	9,510	12,132
Apparent U.S. consumption	***	36,506	60,149	12,157	19,015
Source: Compiled from data submitted in response to Commission questionnaires and adjusted Commerce statistics. U.S. imports from nonsubject countries are exclusively from Thailand.					

## U.S. MARKET SHARES

Data on U.S. market shares for LW sacks are presented in table IV-4. From 2004 to 2006, U.S. producers gained \*\*\* percentage points of market share based on quantity and \*\*\* percentage points based on value. Between January-March 2006 and January-March 2007, U.S. producers gained 12.2 percentage points of U.S. market share based on volume and 14.4 percentage points based on value. U.S. imports from China lost \*\*\* percentage points of U.S. market share during 2004-06 based on quantity and \*\*\* percentage points based on value. Between the interim periods, U.S. imports from China lost 11.5 percentage points of U.S. market share. From 2004 to 2006, U.S. imports from Thailand captured and increased \*\*\* percentage points of U.S. market share based on quantity and \*\*\* percentage points based on value.

**Table IV-4**  
**LW sacks: Apparent U.S. consumption and market shares, 2004-06, January-March 2006, and January-March 2007**

Item	Calendar year			January-March	
	2004	2005	2006	2006	2007
<b>Quantity (1,000 sacks)</b>					
Apparent U.S. consumption <sup>1</sup>	***	131,139	192,367	39,881	54,823
<b>Value (\$1,000)</b>					
Apparent U.S. consumption <sup>1</sup>	***	36,506	60,149	12,157	19,015
<b>Share of quantity (percent)</b>					
U.S. producers' U.S. shipments	***	10.6	13.7	10.1	22.2
U.S. imports from--					
China	***	85.6	79.6	82.5	70.9
All other countries	***	3.8	6.6	7.5	6.8
Total imports	***	89.4	86.3	89.9	77.8
<b>Share of value (percent)</b>					
U.S. producers' U.S. shipments	***	20.9	26.7	21.8	36.2
U.S. imports from--					
China	***	73.3	64.9	67.1	55.4
All other countries	***	5.9	8.4	11.2	8.4
Total imports	***	79.1	73.3	78.2	63.8
Note.--Because of rounding, figures may not add to totals shown.					
Source: Compiled from data submitted in response to Commission questionnaires and adjusted Commerce statistics. U.S. imports from nonsubject countries are exclusively from Thailand.					

## RATIO OF IMPORTS TO U.S. PRODUCTION

Data on the ratio of imports to U.S. production of LW sacks are presented in table IV-5.

**Table IV-5**

**LW sacks: U.S. production, U.S. imports, and ratios of imports to production, 2004-06, January-March 2006, and January-March 2007**

Item	Calendar year			January-March	
	2004	2005	2006	2006	2007
<b>Quantity (1,000 sacks)</b>					
U.S. production	***	14,964	28,636	4,238	13,054
U.S. imports from--					
China	77,686	112,262	153,182	32,886	38,878
All other countries	0	4,963	12,778	2,974	3,749
Total imports	77,686	117,225	165,960	35,860	42,627
<b>Ratio of imports to U.S. production (percent)</b>					
U.S. imports from--					
China	***	750.2	534.9	776.1	297.8
All other countries	***	33.2	44.6	70.2	28.7
Total imports	***	783.4	579.5	846.2	326.5
Source: Compiled from data submitted in response to Commission questionnaires and adjusted Commerce statistics. U.S. imports from nonsubject countries are exclusively from Thailand.					



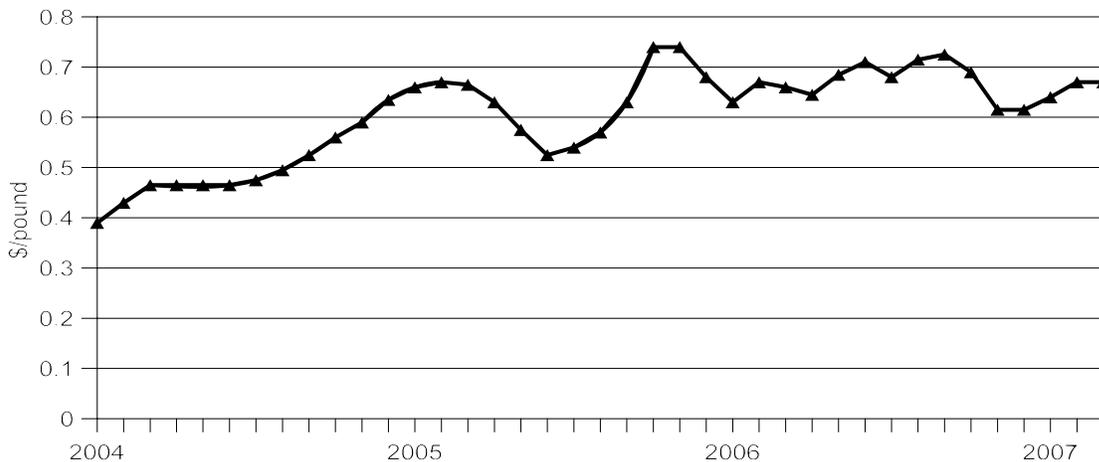
## PART V: PRICING AND RELATED INFORMATION

### FACTORS AFFECTING PRICES

#### Raw Materials

Polypropylene is one of the primary raw materials used in the production of LW sacks. As shown in figure V-1, the price of polypropylene has risen erratically, but substantially over the period January 2004-March 2007. Prices in March 2007 were 71.8 percent higher than they were in January 2004. U.S. producers' raw materials cost per LW sack \*\*\* from \$\*\*\* in 2004 to \$\*\*\* in 2006.

**Figure V-1**  
**Polypropylene prices: CMAI price index of U.S. polypropylene, Raffia Grade Bulk, by month, January 2004-March 2007**



Source: Petitioners' postconference brief, exhibit 17

#### Transportation Costs to the U.S. Market

Transportation costs for LW sacks from China to the United States (excluding U.S. inland costs) in 2006 are estimated to be equivalent to approximately 9.8 percent of the customs value for subject product from China. 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.<sup>1</sup>

#### U.S. Inland Transportation Costs

The \*\*\* responding U.S. producers reported that U.S. inland transportation costs generally ranged from 1 to 6 percent of the total delivered cost of LW sacks.<sup>2</sup> Reported U.S. inland transportation costs ranged from 2.5 to 25 percent for the 10 responding Chinese importers, with all but two reporting transportation costs of 10 percent or less. Nearly all U.S. producers and Chinese importers reported that their firm arranged for transportation.

<sup>1</sup> These estimates are based on HTS subheading 6305.33.0020.

<sup>2</sup> \*\*\*, reported that U.S. inland transportation costs accounted for 100 percent of the delivered price of LW sacks.

## Exchange Rates

From January 2004 to June of 2005, the Chinese currency was pegged at 8.28 yuan per U.S. dollar. There was a small revaluation in the third quarter of 2005 raising the value of the Chinese currency to 8.14 yuan per dollar after which the yuan was moved to a partial float against the dollar. The yuan appreciated further in the fourth quarter of 2005, averaging 8.08 yuan per dollar. The yuan continued to appreciate in 2006, averaging 7.97 yuan per dollar.<sup>3</sup>

## PRICING PRACTICES

### Pricing Methods

LW sacks are generally sold on a spot basis. On average, responding U.S. producers sold 2.0 percent of their LW sacks on a long-term contract basis, 7.5 percent on a short-term contract basis, and 90.4 percent on a spot basis. Responding U.S. importers of Chinese LW sacks reported no long-term contract sales, but sold to a greater extent than U.S. producers through short term contracts (23.7 percent). Importers of Chinese products sold the remaining 76.3 percent on a spot basis. \*\*\* that reported selling on a short-term contract basis, reported that the average duration of their contracts was \*\*. Chinese importers reported short-term contract durations ranging from less than 60 days to one year. Most Chinese importers reported that prices could not be renegotiated during the contract period, that contracts fix price and quantity, and that contracts do not have meet or release provisions.

Responding U.S. producers reported that prices are determined on a transaction-by-transaction basis, and are not based on price lists. Four U.S. producers reported determining prices on a calculated cost plus profit margin basis.<sup>4</sup> Most Chinese importers reported that prices are determined through transaction-by transaction negotiation. Four Chinese importers reported determining prices on a cost-plus-profit margin basis.<sup>5</sup> Most U.S. producers reported typical sales terms of 1/10 net 30 days, and most Chinese importers reported typical sales terms of net 30 days. The vast majority of responding U.S. producers and Chinese importers usually quote prices on a delivered basis. Two of the six responding

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<sup>3</sup> IMF International Financial Statistics. Found at <http://imfstatistics.org/imf/ifsBrowser.aspx> , retrieved on July 25, 2007.

<sup>4</sup> \*\*\* reported that they determine prices on a cost-plus margin basis. \*\*\* reported that they calculate the cost of each sale individually and price accordingly. \*\*\* reported that they determine the price of each bag based on the specification of each bag. The specifications are entered into an estimating system based on raw material costs, labor, etc. \*\*\* reported that they price each product individually. \*\*\* utilizes a price model that calculates a selling price based on \*\*. \*\*\* maintained that the major determinants of raw material cost are bag size (as it impacts the quantity of raw materials needed) and number of colors and amount of ink coverage as this impacts the number of printing plates needed and how much expensive ink will be used. \*\*\* reported that run size also has a big impact on pricing as machine set-up costs and waste are \*\* the price and small orders result in large cost being allocated to the product. \*\*\* stated that all its prices are long-term prices, which reflect where \*\*\* expects to be when its machines are running full and at optimum efficiency. \*\*\* reported that it did not run optimally during 2006 due to lower volume (as a result of extremely low cost Chinese imports) and due to start-up expenses. These increased costs are not included in \*\* prices.

<sup>5</sup> \*\*\* reported that, on average, it determines prices by calculating total cost plus a \*\* percent profit margin. \*\*\* noted that, if the order is small, the profit percentage may be more. \*\*\* reported that, once customers determine the specification of the bag, \*\*\* submits the specifications to their Chinese suppliers to determine the cost of the bag. \*\*\* then adds landed cost to cost of sales goods and a percentage for expense and profit. \*\*\* reported that price is determined by adding the item cost, duties and freight insurance, and \*\* profit margin of \*\* percent. \*\*\* reported that they do not have price lists. \*\*\* determines its pricing (profit added after costs) in a variety of ways. \*\*\* reported that some customers have short-term contracts, but most pricing is done on an individual sales/negotiation basis.

U.S. producers (\*\*\*) and \*\*\* of 13 responding Chinese importers (\*\*\*) reported offering quantity discounts.

## PRICE DATA

The Commission requested U.S. producers and importers of LW sacks to provide quarterly data for the total quantity and f.o.b. (U.S. point of shipment) value of certain LW sacks that were shipped to unrelated customers in the U.S. market. Data were requested for the period January 2004 to March 2007. The products for which pricing data were requested are defined as follows:

***Product 1.***—Woven polypropylene fabric laminated to biaxially-oriented polypropylene (“BOPP”) reverse-printed film, ink coverage 200 percent, measuring 15" x 3.5" x 27" (plus or minus 1 inch in any or all directions), fabric 70 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>), coating 20 g/m<sup>2</sup> (plus or minus 5 g/m<sup>2</sup>), film 22 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>).

***Product 2.***—Woven polypropylene fabric laminated to biaxially-oriented polypropylene (“BOPP”) reverse-printed film, ink coverage 200 percent, measuring 16" x 6" x 39" (plus or minus 1 inch in any or all directions), fabric 80 g/m<sup>2</sup> (plus or minus 8 g/m<sup>2</sup>), coating 20 g/m<sup>2</sup> (plus or minus 5 g/m<sup>2</sup>), film 22 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>).

***Product 3.***—Woven polypropylene fabric laminated to biaxially-oriented polypropylene (“BOPP”) reverse-printed film, ink coverage 200 percent, measuring 13" x 2" x 24" (plus or minus 1 inch in any or all directions), fabric 75 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>), coating 20 g/m<sup>2</sup> (plus or minus 5 g/m<sup>2</sup>), film 25 g/m<sup>2</sup> (plus or minus 6 g/m<sup>2</sup>).

\*\*\* U.S. producers and nine importers of LW sacks from China provided usable pricing data for sales of the requested products, although not all firms reported pricing for all quarters. Tables V-1 through V-3 and figures V-2 through V-4 present f.o.b. (U.S. point of shipment) selling prices for the three LW sacks products defined above that are produced and sold in the United States, as well as the specified products produced in China and imported into the United States. By quantity, pricing data reported by responding firms for the period January 1, 2004 through March 31, 2007 accounted for 39.4 percent of U.S. commercial shipments of U.S.-produced LW sacks and 47.4 percent of reported U.S. commercial shipments of Chinese-produced LW sacks.<sup>6</sup>

## Price Trends

Average prices for U.S. product 1 fluctuated between \$\*\*\* per 1,000 LW sacks until the third quarter of 2005, before falling to their lowest point during the rest of the period. Overall, U.S. product 1 prices were \*\*\* percent lower in the first quarter of 2007 than they were in the first quarter of 2004. Average prices for imported Chinese product 1 increased by \*\*\* percent from \$\*\*\* in the second quarter of 2004 to \$\*\*\* in the fourth quarter of 2005, then fluctuated downward during the rest of the period. Overall, imported Chinese product 1 prices were \*\*\* percent higher in the first quarter of 2007 than they were in the second quarter of 2004. U.S. product 2 prices fell by \*\*\* percent during 2004, increased by \*\*\* percent between the fourth quarter of 2004 and the first quarter of 2006, then fell by \*\*\* percent during the rest of the period. Overall, U.S. product 2 prices were \*\*\* percent higher at the end of the period than they were at the beginning. Importers of Chinese product 2 reported only six

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<sup>6</sup> Based on Commerce import statistics, reported pricing data for imported Chinese LW sacks accounted for \*\*\* percent of U.S. imports of LW sacks for the period January 1, 2004 through March 31, 2007. Staff notes that HTS statistical reporting number 6305.33.0020 includes products besides the subject LW sacks.

**Table V-1**

**LW sacks: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 2004-March 2007**

\* \* \* \* \*

**Table V-2**

**LW sacks: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2004-March 2007**

\* \* \* \* \*

**Table V-3**

**LW sacks: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, January 2004-March 2007**

\* \* \* \* \*

**Figure V-2**

**LW sacks: Weighted-average prices of domestic and imported product 1, by quarters, January 2004-March 2007**

\* \* \* \* \*

**Figure V-3**

**LW sacks: Weighted-average prices of domestic and imported product 2, by quarters, January 2004-March 2007**

\* \* \* \* \*

**Figure V-4**

**LW sacks: Weighted-average prices of domestic and imported product 3, by quarters, January 2004-March 2007**

\* \* \* \* \*

quarters of price data. Reported prices for imported Chinese product 2 fluctuated, and did not show a clear trend. U.S. product 3 prices fluctuated widely during the period, and did not show a clear trend. Prices for imported Chinese product 3 increased by \*\*\* percent between the fourth quarter of 2004 and the first quarter of 2006, then fluctuated downward during the rest of the period. Overall, prices for imported Chinese product 3 were \*\*\* percent lower in the first quarter of 2007 than they were in the fourth quarter of 2004.

### **Price Comparisons**

Reported average prices of imported Chinese products 1-3 were lower than reported average prices of U.S. products 1-3 in all 23 quarters for which price comparisons were available. Margins of underselling were relatively high for all comparisons, ranging from 29.8 percent to 57.9 percent. Prices of imported Chinese product 1 were lower than prices of U.S. product 1 in 10 quarters by margins ranging from 33.9 percent to 50.6 percent. Prices of imported Chinese product 2 were lower than prices of U.S. product 2 in six quarters by margins ranging from 29.8 percent to 53.5 percent. Prices of imported

Chinese product 3 were lower than prices of U.S. product 3 in seven quarters by margins ranging from 29.8 percent to 57.9 percent.<sup>7 8 9 10</sup>

## LOST SALES AND LOST REVENUES

Petitioners provided a list of \*\*\* alleged lost sales to Chinese competitors totaling \*\*\* since January 2004. In addition, petitioners alleged another \*\*\* of lost revenue attributable to lower prices on retained contracts due to competition from Chinese producers. Staff attempted to contact the 12 customers named in the lost sales and lost revenue allegations. \*\*\* confirmed \*\*\* lost sales allegations valued at \$\*\*\*. \*\*\* responding customers named in \*\*\* lost sales allegations valued at \$\*\*\* disagreed with the lost sales allegations. \*\*\* responding customers named in \*\*\* lost sales allegations valued at \$\*\*\* did not directly address the allegations. The remaining six customers named in the lost sales allegations did not respond.

\*\*\* was named by \*\*\* in \*\*\* lost sales allegations concerning \*\*\*. \*\*\* disagreed with all \*\*\* allegations. \*\*\* stated that “I have no recollection of our taking product like this out for bid, and it appears that all aspects of this allegation are incorrect. The described product does not represent a bag that the \*\*\* would have purchased. \*\*\*. The alleged Chinese price is also incorrect, since, as far as I have been able to determine, \*\*\*Chinese laminated woven sacks at prices this low.” \*\*\* further reported that “\*\*\* began to move business from domestic paper sacks to poly bags several years ago when approached by importers representing Chinese manufacturers. These importers were successful in promoting the benefits of using poly bags. At that time, we were not aware of any domestic manufacturers of poly bags. The increase in imports of poly bags from China during the past several years reflects this shift in product type.”

\*\*\* also stated that “If this case is successful, the domestic producers that are likely to benefit the most are producers of paper bags rather than producers of poly bags. Given the interchangeability of paper and poly bags, \*\*\* would need to consider changing back to using paper for most applications if the price of poly bags significantly increases relative to paper bags. Also, domestic producers of poly

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<sup>7</sup> Respondents maintain that, in a market such as this, it is natural to see U.S.-produced and imported Chinese LW sacks selling at distinct price points, where the U.S. producers earn a premium to reward their significant lead time advantage. Conference transcript, p. 145 (Boltuck).

<sup>8</sup> Respondents further maintain that the price comparisons based on products 1 through 3 specified in the questionnaires are not valid evidence of the existence of price differences and their magnitude. Respondents note that each of these pricing product definitions includes both tubular and vertical-back seam LW sacks. Respondents maintain that packagers do not regard tubular and vertical-back seam LW sacks as fully interchangeable on their equipment. Respondents state that U.S. producers sell a significantly greater share of tubular sacks than importers from China. Therefore, respondents argue that, because of these product mix differences, each of the pricing products contains apples and oranges, and one cannot know what to make of any apparent difference in price between what are, in effect, different products, or at least different mixes of imported and domestic products. Conference transcript, p. 144-145 (Boltuck).

<sup>9</sup> Respondents reported that the cost of manufacturing vertical-back seam LW sacks is slightly higher than the cost of manufacturing tubular LW sacks. Respondents also reported that the equipment used to make vertical-back seam LW sacks is more expensive than the equipment used to make tubular LW sacks. Conference transcript, p. 202 (Zhu and Abel). Respondents reported that suppliers that sell both vertical-back seam and tubular LW sacks tend to get a 3-5 percent premium for the vertical-back seam LW sacks. Conference transcript, p. 212 (Corman and Shapiro).

<sup>10</sup> Petitioners argue that, if vertical-back seam LW sacks are more expensive to produce and are priced higher than tubular LW sacks, and if subject imports are primarily vertical-back seam LW sacks and U.S. produced LW sacks are primarily of tubular construction, then the Commission price comparisons are understating the margins of underselling. Conference transcript, p. 219 (Dorn). Respondents counter that the tubular LW sacks are sold to a different segment of customers than vertical-back seam LW sacks, and we do not know the price differences within these segments. Conference transcript, pp. 224-225 (Boltuck).

bags are unable to supply all of \*\*\*'s needs so shifting all of our purchases to domestic poly bags is not an option.”

\*\*\* was named by \*\*\* in \*\*\* concerning \*\*\* LW sacks valued at \$\*\*\*. \*\*\* disagreed with \*\*\*. \*\*\* reported that “\*\*\*. Until a manufacturer has a proven record (several years of significant volume of similar product of quality and service level) I cannot entrust my package requirements to them. The economic consequences of poor quality and/or service level are severe. In addition, I was not convinced that \*\*\*.”

\*\*\* was named by \*\*\* in \*\*\* concerning \*\*\* LW sacks valued at \$\*\*\*. \*\*\* did not address \*\*\*. However, \*\*\* reported that \*\*\* had switched purchases of LW sacks from U.S. producers to suppliers of LW sacks imported from China due to price. \*\*\* also reported that “In addition to price, \*\*\* were absorbed by the Chinese printer.”

\*\*\* was named by \*\*\* in \*\*\* lost sales allegations concerning \*\*\* LW sacks valued at \$\*\*\* and by \*\*\* in a lost revenue allegation valued at \$\*\*\*. \*\*\* disagreed with \*\*\* lost sales allegations. \*\*\* reported that \*\*\* sources laminated woven sacks from both domestic and foreign sources, but does not procure from China. \*\*\* reported that, since January 1, 2004, \*\*\* did not switch purchases of LW sacks from U.S. producers to suppliers of LW sacks imported from China. \*\*\* further stated, since \*\*\* does not purchase LW sacks from China, he cannot say whether domestic suppliers reduced their prices in order to compete with China. However, \*\*\* stated that he believes that global competition has resulted in price pressures on all producers.

\*\*\* was named by \*\*\* in \*\*\* lost sales allegations valued at \$\*\*\*. \*\*\* reported that \*\*\* declined their offers, citing the availability of lower-priced imports from China. \*\*\* reported that, unable to secure the sale of domestically produced products, \*\*\* the same volumes of the identical products manufactured in China. \*\*\* stated that “All our purchases of said sacks have been made using \*\*\*.”

\*\*\* was named by \*\*\* in \*\*\* lost sales allegations concerning \*\*\* LW sacks valued at \$\*\*\*. \*\*\* agreed with \*\*\* allegations. \*\*\* did not know whether U.S. producers reduced their prices of LW sacks in order to compete with prices of LW sacks imported from China, but reported that their U.S. supplier was resistant to reducing their specifications to match the quality of the Chinese product (i.e., \*\*\*). Summaries of U.S. producers’ lost revenue and lost sales allegations are presented in tables V-4 and V-5, respectively.

**Table V-4  
LW sacks: U.S. producers’ lost revenue allegations**

\* \* \* \* \*

**Table V-5  
LW sacks: U.S. producers’ lost sales allegations**

\* \* \* \* \*

## PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

### BACKGROUND

\*\*\* U.S. producers (\*\*\*) provided usable financial data on their operations on LW sacks.<sup>1</sup> These data are believed to account for the large majority of U.S. production of LW sacks in 2006. No firms reported internal consumption or transfers to related firms. All firms \*\*\* reported a fiscal year end of December 31. \*\*\*. U.S. producers were also asked to provide financial data on the overall operations of their U.S. establishments within which LW sacks are produced. These data are presented in appendix D.

### OPERATIONS ON LW SACKS

Income-and-loss data for U.S. producers on their LW sacks operations are presented in table VI-1.<sup>2</sup> Selected company-specific financial data are presented in table VI-2. The reported net sales quantity more than tripled from 2004 to 2006, and almost tripled between the interim periods. During these same time frames, the net sales values increased over four-fold and over two-fold, respectively. Operating losses occurred in four of the five periods for which data were requested, with increasing operating losses occurring from 2004 to 2006, and a small operating profit in January-March 2006 preceding a relatively large operating loss in January-March 2007.

On a per-unit basis, net sales values increased by \$\*\*\* from 2004 to 2006, while the per-unit cost of goods sold (“COGS”) increased by \$\*\*\* and selling, general, and administrative (“SG&A”) expenses irregularly increased by \$\*\*\* during this time frame. Between the interim periods, per-unit net sales values declined by \$0.09, while per-unit costs and expenses increased by \$0.01 (per-unit COGS increased by \$0.08 and per-unit SG&A expenses declined by \$0.07). Thus, both full-year and interim per-unit data reveal costs and expenses that in combination increased at a greater rate than revenue.

While all components of COGS increased on a per-unit basis from 2004 to 2006 as well as between the interim periods, “other factory costs” showed the greatest increase within COGS on a per-unit basis and as a percentage of sales. Per-unit SG&A expenses were essentially unchanged from 2004 to 2006, and declined between the interim periods; however, such expenses represented 11 to 22 percent of total operating costs and expenses in each period for which data were requested, and contributed substantially to the reported operating income or loss in all periods.<sup>3</sup>

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<sup>1</sup> \*\*\*.

<sup>2</sup> \*\*\* allocated all expenses and costs to their operations on LW sacks based upon relative sales values; in other words, if sales of LW sacks accounted for 10 percent of the overall establishment sales then LW sacks was allocated 10 percent of establishment expenses and costs. See the July 30, 2007 e-mail from \*\*\* and the July 25, 2007 e-mail from \*\*\*. Notwithstanding the representations made in those e-mails, staff notes that allocating expenses and costs based upon relative sales values is often misleading because different products almost always have different cost structures. See footnote 1 in table VI-1 for a discussion of the effect of removing \*\*\* data from the domestic industry.

<sup>3</sup> According to Coating Excellence, selling expense as a percent of sales was substantially higher for LW sacks as compared to the total company’s selling expense as a percent of sales because Coating Excellence set up a new sales force with the capability of selling the firm’s total LW sacks capacity, and this sales force needed to be maintained in order for the firm to compete at target sales levels. According to Polytex, SG&A expenses were higher for LW sacks as compared to the firm’s overall operations because certain additional expenses unrelated to non-laminated woven sacks are included in the LW sacks operations. Conference transcript, pp. 94-96 (Bazbaz and Nowak).

**Table VI-1**  
**LW sacks: Results of operations of U.S. producers, 2004-06, January-March 2006, and January-March 2007**

Item	Fiscal year			January-March	
	2004	2005	2006	2006	2007
	<b>Quantity (1,000 sacks)</b>				
Total net sales <sup>1</sup>	***	13,914	25,309	4,021	11,770
	<b>Value (\$1,000)</b>				
Total net sales <sup>1</sup>	***	7,556	15,441	2,634	6,701
Cost of goods sold	***	6,770	15,637	2,054	6,892
Gross profit or (loss)	***	786	(196)	580	(191)
SG&A expense	***	1,083	2,862	557	848
Operating income or (loss) <sup>1</sup>	***	(297)	(3,058)	23	(1,039)
Interest expense	***	75	690	22	273
Other income or (expense), net	***	4	8	2	1
Net income or (loss)	***	(368)	(3,740)	2	(1,311)
Depreciation	***	255	782	91	245
Cash flow	***	(113)	(2,958)	94	(1,066)

Table continued on next page.

U.S. producers were asked to provide the percentages of variable costs and fixed costs for their reported COGS and SG&A expenses in each period for which data were requested. This information, along with the reporting firms' profit-and-loss data, was used to calculate the breakeven point (the sales quantity necessary to achieve a zero operating profit for LW sacks operations) for each period for which data were requested.

Aggregate data reveal that variable costs accounted for 74 to 81 percent of total operating costs during the period of investigation, and in all periods for which data were requested, U.S. producers as a whole were able to cover all of their reported variable costs and a portion of their reported fixed costs. From 2004 to 2006, the coverage of fixed costs declined from \*\*\* percent to 36 percent. All operating costs were covered in the January to March 2006 time frame, resulting in a small operating profit; however, in January-March 2007, coverage of fixed costs declined to 45 percent as compared to the 2006 period.

**Table VI-1--Continued**

**LW sacks: Results of operations of U.S. producers, 2004-06, January-March 2006, and January-March 2007**

Item	Fiscal year			January-March	
	2004	2005	2006	2006	2007
	<b>Ratio to net sales (percent)</b>				
Cost of goods sold:					
Raw materials	***	43.1	49.4	40.8	49.2
Direct labor	***	25.0	25.8	24.2	30.2
Other factory costs	***	21.5	26.0	13.0	23.5
Average COGS	***	89.6	101.3	78.0	102.8
Gross profit or (loss)	***	10.4	(1.3)	22.0	(2.8)
SG&A expenses	***	14.3	18.5	21.2	12.7
Operating income or (loss) <sup>1</sup>	***	(3.9)	(19.8)	0.9	(15.5)
Net income or (loss)	***	(4.9)	(24.2)	0.1	(19.6)
	<b>Unit value (per sack)</b>				
Total net sales	***	\$0.54	\$0.61	\$0.66	\$0.57
Cost of goods sold:					
Raw materials	***	0.23	0.30	0.27	0.28
Direct labor	***	0.14	0.16	0.16	0.17
Other factory costs	***	0.12	0.16	0.09	0.13
Average COGS	***	0.49	0.62	0.51	0.59
Gross profit or (loss)	***	0.06	(0.01)	0.14	(0.02)
SG&A expenses	***	0.08	0.11	0.14	0.07
Operating income or (loss)	***	(0.02)	(0.12)	0.01	(0.09)
Net income or (loss)	***	(0.03)	(0.15)	0.00	(0.11)
	<b>Number of companies reporting</b>				
Operating losses	***	***	3	***	***
Data	***	***	***	***	***
<p><sup>1</sup>As previously noted, *** allocated expenses and costs to their LW sacks operations based upon relative sales values. Such an allocation may result in expenses, costs, and levels of profitability that are not correct. If *** data were excluded from the data in table VI-1, the abbreviated financial results of the domestic industry for 2004, 2005, 2006, January-June 2006 and January-June 2007 are: sales quantities – ***</p>					
<p>Source: Compiled from data submitted in response to Commission questionnaires.</p>					

**Table VI-2**  
**LW sacks: Selected results of operations of U.S. producers, by firms, 2004-06, January-March 2006, and January-March 2007**

\* \* \* \* \*

Based on a standard breakeven formula (total fixed cost divided by per-unit sales price minus per-unit variable cost),<sup>4</sup> breakeven volumes based on U.S. producers' aggregate reported financial data would be \*\*\* million sacks in 2004, 17.5 million sacks in 2005, 70.4 million sacks in 2006, 3.9 million sacks in January-March 2006, and 26.2 million sacks in January-March 2007.<sup>5</sup>

U.S. producers were also asked to provide financial data on the overall operations of their U.S. establishments within which LW sacks are produced. These data are presented in appendix D. In the aggregate, the sales value of LW sacks represented 5.0 percent of the overall establishment operations of U.S. producers in 2006, and operating profit margins ranged from 3.1 to 5.0 percent on overall establishment operations during the period for which data were requested.

A variance analysis for LW sacks is presented in table VI-3. The information for this variance analysis is derived from table VI-1. 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 decline in operating income from 2004 to 2006 is primarily attributable to the increased unfavorable net cost/expense variance despite a higher favorable price variance (i.e., costs and expenses rose higher than prices). Between the interim periods, both the price variance and the net cost/expense variance were unfavorable (i.e., prices declined while costs and expenses increased).

#### **CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES**

Capital expenditures and research and development ("R&D") expenses are shown in table VI-4. Five firms reported capital expenditures and R&D expenses during the period for which data were requested. \*\*\*.

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<sup>4</sup> *Cost Accounting, A Managerial Emphasis*, Charles T. Horngren, Srikant M. Datar, George Foster, Prentice Hall, 2003, p.65.

<sup>5</sup> Petitioners undertook breakeven analyses of their financial data, which are presented in exhibit 22 of petitioners' postconference brief. For these analyses, petitioners did not rely on U.S. producers' responses regarding percentages of variable and fixed costs, but rather assumed that raw materials and direct labor were entirely variable costs, and other factory costs and SG&A were entirely fixed costs (petitioners' postconference brief, exh. 1, pp. 11-12). Petitioners also provided a sensitivity analysis that adjusts a portion of assumed fixed costs to variable costs in exhibit 23 of their postconference brief.

**Table VI-3**  
**LW sacks: Variance analysis on operations of U.S. producers, 2004-06, January-March 2006 to**  
**January-March 2007**

Item	Calendar year			Jan.-March
	2004-06	2004-05	2005-06	2006-07
	<b>Value (\$1,000)</b>			
Total net sales:				
Price variance	***	***	1,697	(1,008)
Volume variance	***	***	6,188	5,076
Total net sales variance	***	***	7,885	4,068
Cost of sales:				
Cost variance	***	***	(3,322)	(881)
Volume variance	***	***	(5,545)	(3,958)
Total cost variance	***	***	(8,867)	(4,839)
Gross profit variance	***	***	(982)	(771)
SG&A expenses:				
Expense variance	***	***	(892)	784
Volume variance	***	***	(887)	(1,074)
Total SG&A variance	***	***	(1,779)	(291)
Operating income variance	***	***	(2,760)	(1,062)
Summarized as:				
Price variance	***	***	1,697	(1,008)
Net cost/expense variance	***	***	(4,213)	(97)
Net volume variance	***	***	(243)	44
Note.--Unfavorable variances are shown in parenthesis; all others are favorable.				
Source: Compiled from data submitted in response to Commission questionnaires.				

**Table VI-4**  
**LW sacks: Capital expenditures and research and development expenses of U.S. producers, 2004-06, January-March 2006, and January-March 2007**

\* \* \* \* \*

### ASSETS AND RETURN ON INVESTMENT

The Commission's questionnaire requested data on assets used in the production, warehousing, and sale of LW sacks 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 LW sacks.

Data on the U.S. producers' total assets and their ROI are presented in table VI-5. The total assets utilized in the production, warehousing, and sale of LW sacks increased from \*\*\* in 2004 to \*\*\* in 2006. The ROI was negative throughout the period of investigation, and declined from negative \*\*\* percent in 2004 to negative \*\*\* percent in 2006.

**Table VI-5**  
**LW sacks: U.S. producers' assets and return on investment, fiscal years 2004-06**

\* \* \* \* \*

### CAPITAL AND INVESTMENT

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

## PART VII: THREAT CONSIDERATIONS

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors<sup>1</sup>--

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

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

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

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

(V) inventories of the subject merchandise,

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

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission

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

under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

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

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

Information on the nature of the alleged subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

### THE INDUSTRY IN CHINA

The Commission requested data from 40 firms which were listed in the petition and believed to produce LW sacks in China during the period of investigation.<sup>3</sup> The Commission received a response from one firm, Wenzhou Hotsun Plastics Co., Ltd. ("Hotsun"), which claims to account for approximately \*\*\* percent of Chinese production of LW sacks and \*\*\* percent of exports to the United States.<sup>4</sup> Hotsun began production of LW sacks in \*\*\*.<sup>5</sup>

Hotsun reported that \*\*\* percent of its total sales in the most recent fiscal year were sales of LW sacks. In 2006, \*\*\* percent of Hotsun's total shipments of LW sacks were exported to the United States, \*\*\* percent of its shipments were to its home market, and \*\*\* percent of its shipments were to \*\*\*. Hotsun's reported capacity is projected to \*\*\* in 2007 and 2008 from its reported 2006 level. It has stated that it \*\*\*. Hotsun reported that its capacity is constrained by the capacity of its \*\*\*.<sup>6</sup> Its production, which began in 2006, increased by \*\*\* percent between January-March 2006 and January-March 2007, and is projected to further increase from 2007 to 2008 by an additional \*\*\* percent. Hotsun

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<sup>2</sup> Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

<sup>3</sup> Petition, exh. 4. At the staff conference, a witness testified that there may exist 300 to 400 producers of LW sacks in China, 95 percent of which he believed to be small private-owned businesses concentrated on the Chinese home market and not export oriented. Conference transcript, pp. 207-208 (Zhu); respondent Shapiro Packaging's postconference brief, exh. 7. He also stated that barriers to entry in China are small, whereby, with under \$1 million in investment capital and six months time, a new producer can begin production.

<sup>4</sup> The Commission also received a response from \*\*\*.

<sup>5</sup> Hotsun's foreign producer questionnaire response, p. 8.

<sup>6</sup> Hotsun reported that \*\*\*.

reported that its five largest U.S. importers of LW sacks during the period of investigation were: \*\*\*. Table VII-1 presents data for reported production and shipments of LW sacks for Hotsun.

**Table VII-1**

**LW sacks: Hotsun's reported production capacity, production, shipments, and inventories, 2004-06, January-March 2006, January-March 2007, and projections for 2007 and 2008**

\* \* \* \* \*

### U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of subject merchandise from China and nonsubject countries are shown in table VII-2.<sup>7</sup>

**Table VII-2**

**LW sacks: U.S. importers' end-of-period inventories of subject and nonsubject imports, by sources, 2004-06, January-March 2006, and January-March 2007**

\* \* \* \* \*

### U.S. IMPORTERS' CURRENT ORDERS

The Commission requested U.S. importers to indicate whether they imported or arranged for the importation of LW sacks after March 31, 2007. \*\*\* of the reporting U.S. importers (\*\*\*), stated that they had imported or arranged for importation since March 31, 2007. Table VII-3 presents the \*\*\* U.S. importers which indicated that they had imported or arranged for the importation of the subject product from China and the quantity of those U.S. imports.

**Table VII-3**

**LW sacks: U.S. importers' orders of subject imports from China subsequent to March 31, 2007, by firm**

\* \* \* \* \*

### ANTIDUMPING AND COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

Imports of LW sacks from China are subject to an antidumping duty order imposed by Mexico in 1994. The duty, in effect until at least 2009, is 397 percent *ad valorem*.<sup>8</sup> There is no indication that LW sacks from China have been the subject of any import relief investigations in any other countries.

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<sup>7</sup> Given the custom graphics required, LW sacks are made to order; therefore, U.S. importers generally do not carry large inventories.

<sup>8</sup> Petitioners' postconference brief, exh. 1, p. 15.

## INFORMATION ON NONSUBJECT SOURCES

### “Bratsk” Considerations

As a result of the Court of Appeals for the Federal Circuit (“CAFC”) decision in *Bratsk Aluminum Smelter v. United States* (“Bratsk”), the Commission is directed to:<sup>9 10</sup>

*undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.” The additional inquiry required by the Court, which we refer to as the Bratsk replacement / benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.*

Petitioners argue that Bratsk is inapplicable to these investigations because LW sacks are not a commodity product as they are made to individual customer and not industry specifications.<sup>11</sup> Petitioners further argue that U.S. imports from nonsubject countries are virtually nonexistent, with only a nominal volume of imports coming from Thailand, and China accounting for over 90 percent of U.S. imports.<sup>12</sup>

Respondent Shapiro Packaging agrees that LW sacks are not a commodity product, but argues that *Bratsk* should nonetheless be applied because LW sacks produced in the United States are virtually perfect substitutes with imported product.<sup>13</sup> Respondent Shapiro Packaging further argues that if an antidumping or countervailing duty order were placed on imports from China, foreign producers in many nonsubject countries including Colombia, Brazil, Thailand, South Korea, Turkey, India, Romania, and Indonesia would have the incentive to export LW sacks to the United States.<sup>14</sup> Respondent contends that due to the U.S. industry’s lack of experience in production of LW sacks and its inability to supply U.S. consumption, purchasers would be required to source LW sacks from nonsubject countries.<sup>15</sup>

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<sup>9</sup> *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

<sup>10</sup> In the silicon metal remand, Chairman Pearson noted “consistent with his views in *Lined Paper School Supplies From China, India, and Indonesia, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final)*, USITC Pub. 3884 (Sept. 2006) at 51, that while he agrees with the Commission that the Federal Circuit’s opinion suggests a replacement/benefit test, he also finds that the Federal Circuit’s opinion could be read, not as requiring a new test, but rather as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports.” *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2, fn. 17. Commissioner Okun joined in those separate and dissenting views in *Lined Paper*.

<sup>11</sup> Petitioners observe that the Commission has never conducted a *Bratsk* analysis in the context of an investigation in which material retardation of a U.S. industry is being alleged. Petitioners’ postconference brief, exh. 1, p. 5.

<sup>12</sup> *Ibid.*, p. 6.

<sup>13</sup> Respondent Shapiro Packaging’s postconference brief, p. 24.

<sup>14</sup> *Ibid.*, exh. 2 (various website pages depicting foreign producers of LW sacks in India, South Korea, and Indonesia).

<sup>15</sup> *Ibid.*, p. 26.

**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



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**INTERNATIONAL TRADE  
COMMISSION**

[Investigation Nos. 701-TA-450 and 731-TA-1122 (Preliminary)]

**Laminated Woven Sacks From China**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701-TA-450 and 731-TA-1122 (Preliminary) under section 703(a) (19 U.S.C. 1671b(a)) and section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of laminated woven sacks, provided for in subheading 6305.33.0020 of the

Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 13, 2007. The Commission's views are due at Commerce within five business days thereafter, or by August 20, 2007.

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

**DATES:** *Effective Date:* June 28, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Christopher J. Cassise (202-708-5408), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.* These investigations are being instituted in response to a petition filed on June 28, 2007, by the Laminated Woven Sacks Committee, an ad hoc committee composed of five U.S. producers of laminated woven sacks. Members of the Laminated Woven Sacks Committee include: (1) Bancroft Bag, Inc. of West Monroe, LA; (2) Coating Excellence International, LLC of Wrightstown, WI; (3) Hood Packaging Corp. of Madison, MS; (4) Mid-America Packaging, LLC of Twinsburg, OH; and (5) Polytex Fibers Corp. of Houston, TX.

*Participation in the investigations and public service list.* Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven

days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.* The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 19, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202-708-5408) not later than July 17, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.* As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must 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).

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

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 29, 2007.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7-12986 Filed 7-3-07; 8:45 am]

**BILLING CODE 7020-02-P**

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**A-570-916**

**Laminated Woven Sacks from the  
People's Republic of China: Initiation  
of Antidumping Duty Investigation**

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

**EFFECTIVE DATE:** July 25, 2007.

**FOR FURTHER INFORMATION CONTACT:**  
Catherine Bertrand, AD/CVD  
Operations, Office 9, Import  
Administration, International Trade  
Administration, U.S. Department of  
Commerce, 14th Street and Constitution  
Avenue, NW, Washington, DC 20230;  
telephone: (202) 482-3207.

**SUPPLEMENTARY INFORMATION:****INITIATION OF INVESTIGATION:****The Petition**

On June 28, 2007, the Department of Commerce ("Department") received a petition concerning imports of laminated woven sacks ("LWS") from the People's Republic of China ("PRC") filed in proper form by the Laminated Woven Sacks Committee and its individual members, Bancroft Bags, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytext Fibers Corporation (collectively, "Petitioners"). See Petition on Laminated Woven Sacks from the People's Republic of China filed on June 28, 2007 ("Petition"). On July 2, and 11, 2007, the Department issued requests for additional information and clarification of certain areas of the Petition. Based on the Department's requests, the Petitioners filed additional information on July 9, and 12, 2007. The period of investigation ("POI") is October 1, 2006, through March 31, 2007. See 19 CFR 351.204(b).

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), the Petitioners allege that imports of LWS from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially retarding the establishment of an industry in the United States, or that such an industry is materially injured or threatened with material injury by reason of such imports.

The Department finds that the Petitioners filed this Petition on behalf of the domestic industry because the Petitioners are interested parties as defined in section 771(9)(C), (E) and (F) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigation (see "Determination of Industry Support for the Petitions" section below).

**Scope of Investigation**

The merchandise covered by this investigation is laminated woven sacks. See Attachment I to this notice for a complete description of the merchandise covered by this investigation.

**Comments on Scope of Investigation**

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties;*

*Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by August 7, 2007. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, attention Catherine Bertrand, room 4003. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

**Comments on Product Characteristics for Antidumping Duty Questionnaire**

We are requesting comments from interested parties regarding the appropriate physical characteristics of laminated woven sacks to be reported in response to the Department's antidumping questionnaire. For example, we are considering whether certain physical characteristics such as width, gusset, length, fabric thickness, coating thickness, film thickness, and total bag weight are relevant. This information will be used to identify the key physical characteristics of the subject merchandise in order for respondents to more accurately report the relevant factors of production.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use 1) as general product characteristics and 2) as the product reporting criteria. We note that it is not always appropriate to use all product characteristics as product reporting criteria. In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive non-proprietary comments at the above-referenced address by August 8, 2007, and rebuttal comments must be received within 10 calendar days of the receipt of timely filed comments.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the

petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (*CIT 2001*), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), aff'd 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

Section 771(10) of 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 under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of

the information submitted on the record, we have determined that laminated woven sacks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Antidumping Investigation Initiation Checklist: Laminated Woven Sacks from the People's Republic of China (PRC)*, Industry Support at Attachment II (Initiation Checklist), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See Section 732(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(i) because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(ii) because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *Initiation Checklist* at Attachment II (Industry Support).

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. See *Initiation Checklist* at Attachment II (Industry Support).

#### **Allegations and Evidence of Material Retardation and of Material Injury and Causation**

Section 733(a)(1)(B) of the Act states that the ITC “shall determine . . .

whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise.” The Petitioners allege that imports of subject merchandise from the PRC have materially retarded the establishment of the domestic industry producing LWS. The Petitioners argue that U.S. producers of LWS have not stabilized their operations and, therefore, a U.S. industry producing LWS has not been established. To support their argument, the Petitioners examine the five factors considered by the ITC to determine if an industry is established, as set forth in the ITC’s *Antidumping and Countervailing Duty Handbook*. See *Antidumping and Countervailing Duty Handbook* (12th Ed.), USITC Pub. 3916 (April 2007). Furthermore, the Petitioners contend that their efforts to establish a domestic LWS industry have been thwarted by dumped imports of LWS from the PRC.

The Petitioners also allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (“NV”). The Petitioners contend that the industry’s injured condition is illustrated by lost sales, lost revenue, underselling and price depression or suppression, poor financial performance, capacity and depressed capacity utilization rate, and increased import penetration.

We have assessed the allegations and supporting evidence regarding material retardation and material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See *Initiation Checklist* at Attachment III (Injury).

#### **Allegation of Sales at Less Than Fair Value**

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation on imports of LWS from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the checklist. See *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

#### **Export Price**

The Petitioners relied on two U.S. offers for LWS manufactured in the PRC and offered for sale in the United States. The two price offers were for a certain type of laminated woven sack falling within the scope of the Petition, for sale to the U.S. customer within the POI. The Petitioners deducted from the prices the costs associated with exporting and delivering the product, foreign inland freight costs, and foreign brokerage and handling. See *Initiation Checklist*. The Petitioners adjusted the U.S. price for foreign inland freight charges based on the methodology used by the Department in *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 (May 15, 2007) (“*Hand Trucks*”) See Petition at page 29. The Petitioners adjusted the U.S. price for foreign brokerage and handling based on Indian surrogate value data applied in *Hand Trucks*. See Petition at page 29.

#### **Normal Value**

The Petitioners stated that the PRC remains a non-market economy (“NME”) country and no determination to the contrary has yet been made by the Department. Recently, the Department examined the PRC’s market status and determined that NME status should continue for the PRC. See *Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, Regarding The People's Republic of China Status as a Non-Market Economy*, dated May 15, 2006. (This document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>.) In addition, in two recent investigations, the Department also determined that the PRC is an NME country. See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a

surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The Petitioners selected India as the surrogate country arguing that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a level of economic development comparable to that of the PRC and is a significant producer and exporter of LWS. See Petition at page 23. Based on the information provided by the Petitioners, we believe that the use of India as a surrogate country is appropriate for purposes of initiation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection.

The Petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. However, because information regarding the factors of production consumed by Chinese producers is not available to the Petitioners, the Petitioners calculated NVs for each U.S. price discussed above based on consumption rates for producing LWS as experienced by U.S. producers. See Petition at page 22. The Petitioners use a U.S. producer's consumption figures, as actual factors of production for a Chinese company were not reasonably available. The Petitioners provide affidavits to support their NV calculation. See July 9, 2007, response at Exhibits B and C. Accordingly, we found the Petitioners' use of the production data to be reasonable.

For the NV calculations, the Petitioners were unable to obtain surrogate value figures contemporaneous with the POI for all material inputs, and accordingly relied upon the most recent information available. The sources of these data include the World Trade Atlas compilation of Indian import statistics, which provided data through November 2006 at the time the Petition was filed. See Petition at page 24. Where an input price reflected a period preceding the POI, the Petitioners adjusted it for inflation using the wholesale price index for India reported by the Reserve Bank of India. See *id.* To value the cost of electricity, the Petitioners used the identical methodology recently used by the Department in *Hand Trucks*. See Petition at page 15 and Exhibit 15. The Petitioners excluded those values from countries previously determined by the

Department to be NME countries; imports into India from Indonesia, the Republic of Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies, as well as imports from unspecified countries. See *Hand Trucks* accompanying Issues and Decision Memorandum at Comment 23. The surrogate values used by the Petitioners for the material and packing inputs consist of information reasonably available to the Petitioners and are, therefore, acceptable for purposes of initiation.

With respect to the surrogate financial expenses, the Petitioners relied on the factory overhead, SG&A expenses and profitability of two Indian LWS producers, KG Petrochem, Ltd. and Dhoot Compack, Ltd., taken from the companies' most recently available annual reports that are closest to the POI. See Petition at page 28 and Exhibit 18. We find that the Petitioners' use of these two companies' information as the source for the surrogate financial expenses is appropriate for purposes of initiation.

#### Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of LWS from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for laminated woven sacks are 74.70 percent and 91.73 percent.

#### Initiation of Antidumping Investigations

Based upon the examination of the Petition on LWS from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of laminated woven sacks from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

#### Separate Rates and Quantity and Value Questionnaire

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. See Policy Bulletin 05.1: Separate-Rates Practice

and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (*Separate Rates and Combination Rates Bulletin*), available on the Department's Web site at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. The process requires the submission of a separate-rate status application. Based on our experience in processing the separate-rate applications in the following antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See *Initiation of Antidumping Duty Investigations: Certain Lined Paper Products From India, Indonesia, and the People's Republic of China*, 70 FR 58374, 58379 (October 6, 2005); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005); and *Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35625, 35629 (June 21, 2005). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application is due no later than September 17, 2007.

#### NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the PRC Petition. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline. Therefore, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies that manufacture and export subject merchandise to the United States, as well as to manufacturers that produce the subject merchandise for companies that were engaged in exporting subject merchandise to the United States during the POI. The quantity and value data received from

NME exporters is used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Attachment II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than August 8, 2007. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the IA Web site: <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department will send the quantity and value questionnaire to those companies identified in Exhibit 4 of Volume I of the Petition and those identified by the NME government.

**Use of Combination Rates in an NME Investigation**

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in the PRC investigation. The *Separate Rates and Combination Rates Bulletin*, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm

that supplied the exporter during the period of investigation. See *Separate Rates and Combination Rates Bulletin*, at 6.

**Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the Petition have been provided to the representatives of the Government of the PRC. We will attempt to provide a copy of the public version of the Petition to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

**International Trade Commission Notification**

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determination by the International Trade Commission**

The ITC will preliminarily determine, no later than August 13, 2007, whether there is a reasonable indication that imports of laminated woven sacks from the PRC are materially retarding the establishment of a U.S. industry, or whether such an industry is materially injured or threatened with material injury by reason of such imports. A negative ITC determination with respect to the investigation will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 18, 2007.

**Joseph A. Spetrini,**  
*Deputy Assistant Secretary for Import Administration.*

**Attachment I**

**Scope of the Antidumping Duty Investigation**

**Laminated Woven Sacks from the People's Republic of China**

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of

the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;<sup>1</sup> printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird Seed. Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polypropylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classifiable under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

**Attachment II**

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (See scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2006, through March 31, 2007.

Market	Total Quantity in Pieces	Terms of Sale	Total Value
United States.			
1. Export Price Sales.			

<sup>1</sup> "Paper suitable for high quality print graphics," as used herein, means paper having an ISO

brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an

example of a paper suitable for high quality print graphics.

Market	Total Quantity in Pieces	Terms of Sale	Total Value
2.. a. Exporter Name. b. Address. c. Contact. d. Phone No.. e. Fax No.. 3. Constructed Export Price Sales. 4. Further Manufactured. <b>Total Sales.</b>			

**Total Quantity:**

- Please report quantity on a piece basis. If any conversions were used, please provide the conversion formula and source.

**Terms of Sales:**

- Please report all sales on the same terms (e.g., free on board).

**Total Value:**

- All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

**Export Price Sales:**

- Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.
- Please include any sales exported by your company directly to the United States;
- Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

**Constructed Export Price Sales:**

- Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.
- Please include any sales exported

by your company directly to the United States;

- Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

**Further Manufactured:**

- Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E7-14370 Filed 7-24-07; 8:45 am]

Billing Code: 3510-DS-S

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**DEPARTMENT OF COMMERCE**
**International Trade Administration**

[C-570-917]

**Laminated Woven Sacks from the People's Republic of China: Initiation of Countervailing Duty Investigation**

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

**EFFECTIVE DATE:** July 25, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley or Joshua Reitze, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3128 and (202) 482-0666, respectively.

**Initiation of Investigation****SUPPLEMENTARY INFORMATION:****The Petition**

On June 28, 2007, the Department of Commerce (Department) received a Petition filed in proper form by the Laminated Woven Sacks Committee and its individual members, Bancroft Bag, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytex Fibers Corporation (collectively, the Petitioners). See Petition for the Imposition of Antidumping and Countervailing Duties Against Laminated Woven Sacks from the People's Republic of China (June 28, 2007) (Petition). On July 2, July 6, July 11, and July 12, 2007, the Department issued requests for additional information and clarification of certain areas of the Petition involving general issues concerning the countervailing duty (CVD) allegations. Based on the Department's requests, the Petitioners filed additional information concerning the Petition on July 11 and July 13, 2007.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the Petitioners allege that manufacturers, producers, or exporters of laminated woven sacks (LWS) in the

People's Republic of China (the PRC) receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially retarding the establishment of an industry in the United States, or that such an industry is materially injured or threatened with material injury by reason of such imports.

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(E) and (F) of the Act and the Petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation (see "Determination of Industry Support for the Petition" section below).

**Scope of Investigation**

The merchandise covered by this investigation is laminated woven sacks. See Attachment to this notice for a complete description of the merchandise covered by this investigation.

**Comments on Scope of Investigation**

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by August 7, 2007. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, attention Mark Hoadley, room 7866. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

**Consultations**

Pursuant to section 702(b)(4)(A)(ii) of the Act, on June 29, 2007, the Department invited representatives of the Government of the People's Republic of China (herein after the GOC) for consultations with respect to the countervailing duty Petition. The Department held these consultations in Beijing, China, with representatives of the GOC on July 16, 2007. See Memorandum to the File,

"Consultations with Officials from the Government of the People's Republic of China" (July 16, 2007) (on file in the Central Records Unit (CRU) of the Department of Commerce building, Room B-099).

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of 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 under this subtitle.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation,” (i.e., the class or kind of merchandise to be investigated, covered by the scope as defined in the Petition).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that LWS constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Countervailing Duty Investigation Initiation Checklist: Laminated Woven Sacks from the People's Republic of China (PRC)*, Industry Support at Attachment II (*CVD Initiation Checklist*), on file in the CRU.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See Section 702(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under 702(c)(4)(A)(i) because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under 702(c)(4)(A)(ii) because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See *CVD Initiation Checklist* at Attachment II (Industry Support).

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and

they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. See *CVD Initiation Checklist* at Attachment II (Industry Support).

#### **Allegations and Evidence of Material Retardation and of Material Injury and Causation**

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry, or whether the establishment of an industry in the United States is materially retarded.

Section 703(a)(1)(B) of the Act states that the ITC “shall determine . . . whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise.” The Petitioners allege that imports of subject merchandise from the PRC have materially retarded the establishment of the domestic industry producing LWS. The Petitioners argue that U.S. producers of LWS have not stabilized their operations and, therefore, a U.S. industry producing LWS has not been established. To support their argument, the Petitioners examine the five factors considered by the ITC to determine if an industry is established, as set forth in the ITC’s *Antidumping and Countervailing Duty Handbook*. See *Antidumping and Countervailing Duty Handbook* (12th Ed.), USITC Pub. 3916 (April 2007). Furthermore, the Petitioners contend that their efforts to establish a domestic LWS industry have been thwarted by dumped and subsidized imports of LWS from the PRC.

The Petitioners also allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the subsidized imports of the subject merchandise. The Petitioners contend that the industry’s injured condition is illustrated by lost sales, lost revenue, underselling and price depression or suppression, poor financial performance, capacity and depressed capacity utilization rate, and increased import penetration.

We have assessed the allegations and supporting evidence regarding material retardation and material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the

statutory requirements for initiation. See *CVD Initiation Checklist* at Attachment III (Injury).

#### **Subsidy Allegations**

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the Petitioners supporting the allegations.

The Department has examined the countervailing duty Petition on LWS from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of LWS in the PRC receive countervailable subsidies.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

##### *GOC Loan Programs*

1. Policy Loans to LWS Producers from Government–Owned Banks
  2. Loan Forgiveness for LWS Producers by the GOC
- GOC Provision of Goods or Services for Less Than Adequate Remuneration*

3. Provision of Electricity for Less than Adequate Remuneration
  4. Provision of Land for Less than Adequate Remuneration
- GOC Grant Programs*
5. The State Key Technologies Renovation Project Fund
  6. Grants and Other Funding for High Technology Equipment for the Textile Industry
  7. Grants to Loss–Making State–Owned Enterprises
- GOC Income Tax Programs*
8. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)

9. Preferential Tax Policies for Export–Oriented Foreign Invested Enterprises (FIEs)
10. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export–Oriented Enterprises

11. Tax Benefits for FIEs in Encouraged Industries that

Purchase Domestic Origin Machinery

12. Tax Program for FIEs Recognized as High or New Technology Enterprises  
13. Preferential Tax Policies for Research and Development  
14. Tax Subsidies to FIEs in Specially Designated Geographic Areas

15. Preferential Tax Policies for Township Enterprises by FIEs  
*GOC Indirect Tax Programs and Import Tariff Programs*  
16. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment  
17. VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries

18. VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises)

19. Exemption from Payment of Staff and Worker Benefit Taxes for Export-Oriented Enterprises  
*Provincial Grant Programs*  
20. Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Guangdong Provinces  
21. Technological Innovation Funds Provided by Zhejiang Province  
22. Programs to Rebate Antidumping Legal Fees  
*Provincial and Local Tax Programs for FIEs*  
23. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs

For further information explaining the basis for the Department’s determination to investigate these programs, see *CVD Initiation Checklist*.

#### **Application of the Countervailing Duty Law to the PRC**

The Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (TRBs) From the People’s Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–1 (February 14, 2003), unchanged in *TRBs from the People’s Republic of China: Final Results of 2001–2002 Administrative Review*, 68 FR 70488, 70488–89 (December 18, 2003).

In the amended preliminary determination in the investigation of coated free sheet paper from the PRC, the Department preliminarily determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. See *Coated Free Sheet Paper from the People’s Republic of China; Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17486 (April 9, 2007) (*CFS Preliminary Determination*), and Memorandum for David M. Spooner, Assistant Secretary for Import Administration, “Countervailing Duty Investigation of Coated Free Sheet Paper from The People’s Republic of China Whether the Analytic Elements of the *Georgetown Steel* Opinion are Applicable to China’s Present-day Economy,” (March 29, 2007), on file in the CRU. Therefore, because the Petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a countervailing duty investigation of LWS from the PRC, initiation of a CVD investigation is warranted in this case.

#### **Distribution of Copies of the Petition**

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the Petition has been provided to the GOC. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, consistent with 19 CFR 351.203(c)(2).

#### **ITC Notification**

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

#### **Preliminary Determination by the ITC**

The ITC will preliminarily determine, no later than August 13, 2007, whether there is a reasonable indication that imports of LWS from the PRC are materially retarding the establishment of a U.S. industry, or whether such an industry is materially injured or threatened with material injury by reason of such imports. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 18, 2007.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration.*

#### **Attachment**

#### **Scope of the Countervailing Duty Investigation**

#### **Laminated Woven Sacks from the People’s Republic of China**

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric;<sup>1</sup> laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics; printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polypropylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classifiable under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. E7–14375 Filed 7–24–07; 8:45 am]

**BILLING CODE 3510–DS–S**

<sup>1</sup>“Paper suitable for high quality print graphics,” as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.



**APPENDIX B**  
**LIST OF CONFERENCE WITNESSES**



**CALENDAR OF PUBLIC CONFERENCE**

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

Subject: Laminated Woven Sacks from China  
Inv. Nos.: 701-TA-450 and 731-TA-1122 (Preliminary)  
Date and Time: July 19, 2007 - 9:30 a.m.

The conference was held in connection with these investigations in the Main Hearing Room (Room 101), U.S. International Trade Commission, 500 E Street, S.W., Washington, DC.

**OPENING STATEMENTS**

Petitioner: **Joseph W. Dorn**, King & Spalding, LLC  
Respondents: **Lizabeth R. Levinson**, Garvey Schubert Barer

**IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING AND COUNTERVAILING DUTIES:**

King & Spalding LLP  
Washington, DC  
on behalf of

Laminated Woven Sacks Committee

Bancroft Bag, Inc.  
Coating Excellence International, LLC  
Hood Packaging Corp.  
Mid-America Packaging, LLC  
Polytex Fibers Corp.

**Isaac Bazbaz**, President, Polytex Fibers Corp.

**Michael R. Nowak**, President, Coating Excellence International, LLC

**Stephen F. Nicolai**, Vice President, Mid-America Packaging, LLC

**Rebecca L. Woodings**, International Trade Consultant, King & Spalding LLP

**Joseph W. Dorn** )  
)–OF COUNSEL  
**Taryn L. Koball** )



**APPENDIX C**  
**SUMMARY DATA**



Table C-1

## Laminated woven sacks: Summary data concerning the U.S. market, 2004-06, January-March 2006, and January-March 2007

Item	Reported data					Period changes			
	2004	2005	2006	January-March		2004-06	2004-05	2005-06	Jan.-Mar.
				2006	2007				2006-07
U.S. consumption quantity:									
Amount	***	131,139	192,367	39,881	54,823	***	***	46.7	37.5
Producers' share (1)	***	10.6	13.7	10.1	22.2	***	***	3.1	12.2
Importers' share (1):									
China	***	85.6	79.6	82.5	70.9	***	***	-6.0	-11.5
Other sources	***	3.8	6.6	7.5	6.8	***	***	2.9	-0.6
Total imports	***	89.4	86.3	89.9	77.8	***	***	-3.1	-12.2
U.S. consumption value:									
Amount	***	36,506	60,149	12,157	19,015	***	***	64.8	56.4
Producers' share (1)	***	20.9	26.7	21.8	36.2	***	***	5.8	14.4
Importers' share (1):									
China	***	73.3	64.9	67.1	55.4	***	***	-8.4	-11.6
Other sources	***	5.9	8.4	11.2	8.4	***	***	2.5	-2.8
Total imports	***	79.1	73.3	78.2	63.8	***	***	-5.8	-14.4
U.S. imports from:									
China:									
Quantity	77,686	112,262	153,182	32,886	38,878	97.2	44.5	36.5	18.2
Value	16,128	26,746	39,025	8,154	10,540	142.0	65.8	45.9	29.3
Unit value	0.21	0.24	0.25	0.25	0.27	22.7	14.8	6.9	9.3
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity	0	4,963	12,778	2,974	3,749	(2)	(2)	157.5	26.1
Value	0	2,137	5,051	1,356	1,592	(2)	(2)	136.4	17.4
Unit value	(2)	0.43	0.40	0.46	0.42	(2)	(2)	-8.2	-6.9
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All sources:									
Quantity	77,686	117,225	165,960	35,860	42,627	113.6	50.9	41.6	18.9
Value	16,128	28,883	44,076	9,510	12,132	173.3	79.1	52.6	27.6
Unit value	0.21	0.25	0.27	0.27	0.28	27.9	18.7	7.8	7.3
Ending inventory quantity	***	***	***	***	***	***	***	***	***
U.S. producers':									
Average capacity quantity	60,586	89,061	142,718	22,657	53,823	***	***	60.2	137.6
Production quantity	7,812	14,964	28,636	4,238	13,054	***	***	91.4	208.1
Capacity utilization (1)	12.9	16.8	20.1	18.7	24.3	***	***	3.3	5.6
U.S. shipments:									
Quantity	7,624	13,914	26,407	4,021	12,196	***	***	89.8	203.3
Value	3,338	7,623	16,073	2,647	6,883	***	***	110.9	160.0
Unit value	\$0.44	\$0.55	\$0.61	\$0.66	\$0.56	***	***	11.1	-14.3
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	1,508	3,636	1,725	4,493	***	***	141.1	160.5
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	***	72	182	100	171	***	***	152.8	71.0
Hours worked (1,000s)	***	146	301	55	100	***	***	106.2	81.3
Wages paid (\$1,000s)	***	1,555	3,767	573	1,370	***	***	142.2	139.1
Hourly wages	***	\$10.65	\$12.51	\$10.41	\$13.73	***	***	17.5	31.9
Productivity (sacks/1,000 hours)	***	102.5	95.1	77.0	130.9	***	***	-7.2	69.9
Unit labor costs	***	\$0.10	\$0.13	\$0.14	\$0.10	***	***	26.6	-22.4
Net sales:									
Quantity	***	13,914	25,309	4,021	11,770	***	***	81.9	192.7
Value	***	7,556	15,441	2,634	6,701	***	***	104.4	154.4
Unit value	***	\$0.54	\$0.61	\$0.66	\$0.57	***	***	12.3	-13.1
Cost of goods sold (COGS)	***	6,770	15,637	2,054	6,892	***	***	131.0	235.6
Gross profit or (loss)	***	786	(196)	580	(191)	***	***	-124.9	-132.9
SG&A expenses	***	1,083	2,862	557	848	***	***	164.2	52.2
Operating income or (loss)	***	(297)	(3,058)	23	(1,039)	***	***	928.6	-4694.1
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	***	\$0.49	\$0.62	\$0.51	\$0.59	***	***	27.0	14.6
Unit SG&A expenses	***	\$0.08	\$0.11	\$0.14	\$0.07	***	***	45.3	-48.0
Unit operating income or (loss)	***	(\$0.02)	(\$0.12)	\$0.01	(\$0.09)	***	***	465.5	-1669.4
COGS/sales (1)	***	89.6	101.3	78.0	102.8	***	***	11.7	24.9
Operating income or (loss)/sales (1)	***	-3.9	-19.8	0.9	-15.5	***	***	-15.9	-16.4

(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 round 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.

**Table C-2**  
**Laminated woven sacks: Summary data concerning the U.S. market (based on importer questionnaire data), 2004-06, January-March 2006, and January-March 2007**

\* \* \* \* \*

**APPENDIX D**

**U.S. PRODUCERS' OPERATIONS OF THEIR OVERALL U.S.  
ESTABLISHMENTS WITHIN WHICH LW SACKS ARE PRODUCED**



**Table D-1**

**LW sacks: Results of operations of U.S. producers on their overall U.S. establishments within which LW sacks are produced, 2004-06, January-March 2006, and January-March 2007**

Item	Fiscal year			January-March	
	2004	2005	2006	2006	2007
<b>Value (\$1,000)</b>					
Total net sales	215,443	255,760	308,109	77,619	84,461
Cost of goods sold	185,885	221,162	272,613	68,103	74,283
Gross profit	29,558	34,598	35,496	9,516	10,178
SG&A expense	21,925	23,375	25,833	6,110	5,990
Operating income	7,633	11,222	9,663	3,406	4,188
Interest expense	2,772	4,526	11,848	2,379	3,240
Other income or (expense), net	(1,122)	(1,749)	156	364	182
Net income or (loss)	3,738	4,947	(2,029)	1,390	1,129
Depreciation	7,943	8,467	10,779	2,583	2,933
Cash flow	11,682	13,413	8,750	3,973	4,062
<b>Ratio to net sales (percent)</b>					
Cost of goods sold:					
Raw materials	57.8	58.7	58.9	59.7	58.6
Direct labor	12.8	11.9	12.3	12.2	13.1
Other factory costs	15.7	15.9	17.3	15.9	16.2
Average COGS	86.3	86.5	88.5	87.7	88.0
Gross profit	13.7	13.5	11.5	12.3	12.1
SG&A expenses	10.2	9.1	8.4	7.9	7.1
Operating income	3.5	4.4	3.1	4.4	5.0
Net income or (loss)	1.7	1.9	(0.7)	1.8	1.3
<b>Number of companies reporting</b>					
Operating losses	***	***	***	***	***
Data	***	***	***	***	***
Source: Compiled from data submitted in response to Commission questionnaires.					



**APPENDIX E**

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



**The Commission requested U.S. producers to describe any actual or potential negative effects since January 1, 2004, on their return on investment, growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of LW sacks from China. Their responses are as follows:**

**Actual Negative Effects**

\* \* \* \* \*

**Anticipated Negative Effects**

\* \* \* \* \*

