

UNITED STATES INTERNATIONAL TRADE COMMISSION

FOLDING GIFT BOXES FROM CHINA

Investigation No. 731-TA-921 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3480, December 2001)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of folding gift boxes, provided for in subheadings 4819.20.00 and 4819.50.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective February 20, 2001, following receipt of a petition filed with the Commission and Commerce by Harvard Folding Box Company, Inc., Lynn, MA, and Field Container Company, L.P., Elk Grove, IL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of folding gift boxes from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 30, 2001 (66 FR 45864). The hearing was held in Washington, DC, on November 15, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that an industry in the United States is materially injured by reason of imports of certain folding gift boxes from China that the U.S. Department of Commerce (“Commerce”) has determined to be sold in the United States at less than fair value (“LTFV”).

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”² Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”³ 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.”⁴

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.⁵ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁶ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁷ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁸

² 19 U.S.C. § 1677(4)(A).

³ Id.

⁴ 19 U.S.C. § 1677(10).

⁵ 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).

⁶ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁷ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (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.”).

⁸ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single

(continued...)

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of this investigation as:

a type of folding or knock-down carton manufactured from paper or paperboard. Certain folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the investigation excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope of the investigation also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Certain folding gift boxes are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes certain folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Certain folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope of the investigation excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as "not-for-resale" gift boxes or "give-away" gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the investigation also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4819.20.00 and 4819.50.40. These subheadings also cover products that are outside the scope of this investigation.⁹

⁸ (...continued)

like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁹ 66 Fed. Reg. 58115, 58116 (Nov. 20, 2001).

C. Domestic Like Product¹⁰

In the preliminary phase of the investigation, the Commission defined the domestic like product as certain folding gift boxes for resale, coextensive with the scope of the investigation.¹¹ In this final phase of the investigation petitioners continue to argue, as they did in the preliminary phase, that “not-for-resale” or “give-away” gift boxes should not be included in the definition of the domestic like product.¹² Respondents continue to assert, as they did in the preliminary phase of the investigation, that there is one domestic like product that includes all folding gift boxes, or in the alternative, that unpackaged plain white boxes (which are outside the scope of the imports subject to investigation) should be considered to be part of the domestic like product.¹³

We first note that respondents have also argued that the scope as written does not distinguish between for-resale and give-away boxes, mainly because some for-resale boxes are excluded from the scope.¹⁴ We find that, for the most part, the scope language does separate the two types of boxes. Most for-resale folding gift boxes are printed with holiday motifs,¹⁵ or to a lesser extent are plain white,¹⁶ and shrink-wrapped in multi-box packs.¹⁷ These boxes are within the scope of the investigation. Most give-away folding gift boxes are printed with company names or logos, or are single colors, and are sold in bulk.¹⁸ These boxes are outside the scope.

It is true, as claimed by respondents, that some for-resale boxes are excluded from the scope, primarily white boxes that are not shrink-wrapped or otherwise packaged. The number of these boxes appears to be relatively minor as compared to other for-resale boxes.¹⁹

With respect to the definition of the domestic like product, we again define the domestic like product as we did in the preliminary phase of the investigation: certain folding gift boxes for resale,

¹⁰ Commissioner Bragg does not join Section I.C. of these views. She finds that there is one like product consisting of all folding gift boxes, including “not-for-resale,” or give-away, folding gift boxes. The final record indicates that resale and give-away folding gift boxes are often sold in different channels of distribution, some producers do not use the same equipment and facilities to produce both products, and price comparisons are mixed. However, Commissioner Bragg also finds that the final record indicates that: (1) resale and give-away folding gift boxes share similar physical characteristics (sizes and colors/motifs) and uses; (2) there is interchangeability between resale and give-away folding gift boxes for both producers and consumers, especially regarding white boxes within the scope; (3) producers manufacture other folding boxes on the same equipment, with the same production workers used to produce resale folding gift boxes; and (4) the range of prices overlap. CR at I-5 - I-8, PR at I-3 - I-6. Accordingly, Commissioner Bragg finds that the record fails to establish a significantly clear dividing line distinguishing for-resale folding gift boxes from give-away folding gift boxes.

¹¹ Folding Gift Boxes from China, Inv. No. 731-TA-921 (Preliminary), USITC Pub. 3411 (Apr. 2001), at 7.

¹² See Petitioners’ Prehearing Brief at 5; Petitioners’ Posthearing Brief at 1-6.

¹³ Lindy Bowman’s Posthearing Brief at Ex. 2.

¹⁴ See, e.g., Lindy Bowman’s Posthearing Brief at 4-5.

¹⁵ See Confidential Report (“CR”) at I-3, Public Report (“PR”) at I-2.

¹⁶ Sales of white for-resale folding gift boxes account for 20 to 30 percent of the total for-resale folding gift box market. CR at I-7 n.31, PR at I-5 n.31.

¹⁷ CR at I-3, PR at I-2.

¹⁸ See CR at I-3, PR at I-2.

¹⁹ Domestic producers estimated the value of for-resale white boxes that were not shrink-wrapped as \$*** in 2000, or *** percent of the total reported value of for-resale folding gift boxes. See Staff Telephone Survey Notes and Summary Table. Also, the instances in which boxes with company names or logos are sold to consumers appear to be relatively limited. See CR at I-9 n.42, PR at I-6 n.42.

coextensive with the scope of the investigation, not including give-away gift boxes, for the reasons discussed below.

Although for-resale gift boxes may be printed with a single color or left plain white, the majority of for-resale gift boxes, as set forth in the scope, have distinctive holiday motifs or colors. By contrast, most give-away gift boxes are either plain or have a company name, logo, or other such identification.²⁰ For-resale gift boxes are generally shrink-wrapped and packaged for retail sale whereas give-away boxes are packaged in bulk.²¹ While all folding gift boxes are used to package gifts, for-resale gift boxes generally require no additional wrapping by the end users.²²

The design phase, which is the first step in the manufacture of for-resale gift boxes, includes determining the size and shape of the box as well as the graphic designs, and begins 12 to 18 months before the holiday season for which the boxes are intended. The design phase is not necessary for give-away boxes because customers typically own their designs, which are tailored specifically to their product.²³

The manufacturing phase begins by printing the selected design on paperboard using either a flexographic or a lithographic printer. Next, the printed sheets are fed through a die cutter, which cuts the material to shape and creates the appropriate creases, scores or perforations. This phase of production concludes as the boxes are fed through machines that apply glue to the appropriate areas and fold the boxes. Up to this point, the manufacture of give-away boxes is identical to that of the for-resale boxes. The former are then packed in corrugated containers and shipped in bulk to customers. For-resale boxes, however, require collating, packaging, and labeling for retail sale. Because manufacturers of for-resale boxes offer many different designs, they employ collating equipment to include tops with different designs in a single pack. For two-piece boxes, the equipment will also add the appropriate number of tops and bottoms to each pack. Once properly assembled, the packs of boxes are compressed, wrapped in plastic and packed in cartons for shipment or storage.²⁴ Because of their highly seasonal nature, for-resale boxes must be stored in warehouses until late summer and early fall, while non-seasonal give-away boxes do not require warehousing.²⁵

Much of the for-resale market is seasonal or holiday business, while give-away boxes are very rarely printed with holiday designs. Moreover, there is evidence on the record that sizes of for-resale and give-away boxes are somewhat different, with for-resale gift boxes being slightly smaller than the give-away boxes.²⁶

There is some degree of interchangeability in that both types of boxes may be used for the same purpose – *i.e.*, gift giving. Interchangeability is further supported by the fact that certain white gift boxes are within the scope (estimated to be 20 to 30 percent of the for-resale folding gift box market).²⁷

²⁰ CR at I-3 - I-4, I-7, PR at I-2-3, I-5.

²¹ CR at I-6, I-8, PR at I-4, I-5.

²² See hearing transcript (Tr.) at 29 (Mr. Lencsak), 59 (Mr. Lanford), 73 (Mr. Graham).

²³ CR at I-5 - I-6, PR at I-4.

²⁴ CR at I-6 - I-7, PR at I-4, I-5. At least one domestic producer, Harvard, has two facilities dedicated to packaging and collating gift boxes. Tr. at 85 (Mr. Lencsak).

²⁵ CR at I-7 - I-8, PR at I-5. The seasonal aspect of the product is evident from a comparison of data regarding for-resale boxes with data pertaining to give-away boxes. For example, the value of consumption for for-resale boxes in the January-June interim periods is a fraction of the value of consumption in the full years. See CR/PR at Table C-1. By contrast, the value of consumption for give-away boxes in the interim periods is almost one-half of the value of consumption during the full years. See CR/PR at Table C-2.

²⁶ Petitioners' Prehearing Brief at 8.

²⁷ CR at I-7 n.31, PR at I-5 n.31.

However, the fact that the overwhelming percentage of for-resale gift boxes have seasonal designs and/or value-added packaging, and that their use at other times of the year generally is limited as a result, is indicative of limited rather than broad interchangeability. The fact that only two of 23 purchasers responding to the Commission's questionnaire indicated that they purchased both for-resale and give-away gift boxes²⁸ also indicates very little interchangeability for first-tier purchasers.

Customer and producer perceptions of folding gift boxes suggest recognizable distinctions between for-resale and other folding gift boxes. As noted above, few purchasers of for-resale boxes actually purchase other types of boxes.²⁹ Moreover, producers of for-resale boxes either specialize in sales of such boxes or have a separate division responsible for such sales.³⁰

For-resale boxes are sold through specialized channels of distribution, primarily independent representatives that specialize in seasonal items. Other types of folding gift boxes, in contrast, are sold through general distributors for delivery to customers' stores nationwide.³¹

The record in this investigation indicates that a substantial price differential exists between for-resale folding gift boxes and other folding gift boxes. In 2000, domestic producers reported U.S. shipments of for-resale folding gift boxes with average unit values of \$0.17 per box, compared to \$*** per box for give-away folding gift boxes.³² Witness testimony suggests that price differentials reflect the need for for-resale folding gift boxes to be collated or packaged for retail sale.³³

In view of the differences in physical characteristics, production processes and workers, channels of distribution, customer and producer perceptions, and the limited interchangeability between for-resale and give-away folding gift boxes, we define the domestic like product as we did during the preliminary phase of the investigation: certain folding gift boxes for resale, coextensive with the scope of the investigation, and not including give-away gift boxes.³⁴

D. Domestic Industry³⁵

Section 771(4) of the Act defines the relevant industry as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of the total domestic production of the product."³⁶ In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁷

²⁸ CR at I-7, PR at I-5; see Tr. at 138 (Mr. Bowman).

²⁹ We also note the different promotional arrangements between customers and producers. See Tr. at 140 (Mr. Bowman).

³⁰ CR at I-7 & n.27, PR at I-4 - I-5 & n.27; see Tr. at 45 (Mr. Lencsak) (Harvard does not manufacture give-away boxes).

³¹ CR at I-7, PR at I-5.

³² Compare Table C-1 with Table C-2.

³³ Tr. at 26 (Mr. Tulch).

³⁴ Information obtained regarding give-away boxes may be found in Table C-2 of the Report.

³⁵ Based upon her definition of the domestic like product, Commissioner Bragg defines the domestic industry as all domestic producers of folding gift boxes, including producers of not-for-resale folding gift boxes. Despite her different domestic industry definition, Commissioner Bragg joins the majority's related party discussion.

³⁶ 19 U.S.C. § 1677(4)(A).

³⁷ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d (continued...)

Based on our definition of the domestic like product, we determine that the domestic industry consists of all producers of certain folding gift boxes for resale.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute 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.³⁸ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.³⁹

Two of the four domestic producers of folding gift boxes reported that they imported subject merchandise during the period examined and, therefore, are related parties. No party has argued that the Commission should find that appropriate circumstances exist to exclude *** producer from the domestic industry.

Field Container Company ("Field") imported a quantity of subject merchandise that accounted for *** percent of its shipments in 1998, and *** percent of its shipments in 1999.⁴⁰ Field imported most of the subject gift boxes for one customer that demanded price concessions that Field could not provide on U.S.-produced gift boxes.⁴¹ The value of Field's net sales increased steadily from 1998 to 2000 (from \$*** in 1998 to \$*** in 2000), and was highest in 2000, when it did not import subject merchandise. It experienced *** throughout the period -- ranging from \$*** in 1998 to \$*** in 2000, and *** was largest in 2000. The ratio of *** increased steadily over the period, from *** percent in 1998 to *** percent in 2000.⁴² Field had the *** of the four domestic producers during the full-year period examined.

³⁷ (...continued)
1352 (Fed. Cir. 1996).

³⁸ 19 U.S.C. § 1677(4)(B).

³⁹ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

⁴⁰ CR/PR at IV-1 n.1.

⁴¹ CR at III-3 n.10, PR at III-2 n.10.

⁴² CR/PR at Table VI-3.

Superior Packaging, Inc. (“Superior”) imported subject merchandise throughout 1998-2000 and in the first half of 2001⁴³ ***.⁴⁴ Superior imported subject gift boxes because it was ***.⁴⁵ The value of Superior’s net sales increased from \$*** in 1998 to \$*** in 1999, then to \$*** in 2000. Superior also experienced *** over the period examined: from \$*** in 1998 to \$*** in 1999, then remaining at \$*** in 2000. The ratio of Superior’s *** increased from *** percent in 1998 to *** percent in 1999, then fell to *** percent in 2000.⁴⁶ Superior *** of the four domestic producers during the full-year period, and it had *** net sales.

Field and Superior support the petition.⁴⁷ In view of their financial trends, it appears that Field and Superior are not benefitting from the subject imports. In addition, each of their interests is predominantly those of a domestic producer. Thus, we do not exclude Field or Superior from the domestic industry as a related party.

We therefore determine that the domestic industry consists of all producers of certain folding gift boxes for resale, and do not exclude any domestic producer as a related party.

II. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁴⁸ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁴⁹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵⁰ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵¹ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵²

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from China of certain folding gift boxes that are sold in the United States at less than fair value.⁵³

⁴³ We note that, because of the seasonality of the product, in making our material injury determination, as well as in making these additional findings, we have focused our examination on full-year data. All parties agreed that the Commission should focus its analysis on full-year data. See Tr. at 37 (Mr. Lanford), 115 (Mr. Klett).

⁴⁴ CR/PR at IV-1 n.1.

⁴⁵ CR at III-3 n.11, PR at III-2 n.11.

⁴⁶ CR/PR at Table VI-3.

⁴⁷ CR/PR at Table III-1.

⁴⁸ 19 U.S.C. § 1673d(b).

⁴⁹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁵⁰ 19 U.S.C. § 1677(7)(A).

⁵¹ 19 U.S.C. § 1677(7)(C)(iii).

⁵² Id.

⁵³ Commissioner Bragg notes that given her like product and domestic industry findings, the data she relied

(continued...)

A. Conditions of Competition

Several conditions of competition are pertinent to our analysis in this investigation.

First, the majority of sales by domestic producers are made on a contract basis, although policies vary among importers.⁵⁴ Contracts are typically signed in the spring for delivery in time for the holiday season.⁵⁵ Most shipments are made during the third and fourth quarters of the year, with most folding gift boxes resold by retailers to consumers in November and December, mainly to package Christmas gift items.⁵⁶

Second, most domestically-produced for-resale gift boxes are sold to retailers such as mass merchandisers, discount stores, and food and drug stores.⁵⁷ Most Chinese folding gift boxes are imported directly by retailers, while some are imported by importers who resell to retailers.⁵⁸ Most imports are sold to discount retailers, although the number sold to mass merchandisers is increasing, and subject imports are becoming more competitive with the domestic like product in sales to that part of the market.⁵⁹

Third, apparent U.S. consumption, as measured by value, climbed steadily from 1998 to 2000.⁶⁰ The value of apparent U.S. consumption rose from \$*** in 1998 to \$*** in 1999, then rose further to \$*** in 2000.⁶¹

⁵³ (...continued)

upon in performing her injury analysis differ somewhat from the data relied upon by the Commission majority; however, the differences are not meaningful to the analysis and the trends for both data sets are nearly identical. See CR/PR at Tables C-1 and C-3. Because Commissioner Bragg concurs in the Commission majority's affirmative injury determination, she finds it appropriate to join the majority's material injury analysis.

⁵⁴ CR at V-3, PR at V-2.

⁵⁵ CR at V-3, PR at V-2.

⁵⁶ CR/PR at II-1.

⁵⁷ CR/PR at II-1.

⁵⁸ CR/PR at II-1.

⁵⁹ Of the total purchases by mass merchandisers, as measured by value, imports from China account for an increasing share: 0.4 percent in 1998, increasing to 5.4 percent in 2000. Similarly, imports from China rose from 14.7 percent of total purchases by discount retailers and dollar stores in 1998, to 20.8 percent in 2000. Rev. CR/PR at Table II-1, INV-Y-247 (Dec. 10, 2001).

⁶⁰ As noted below, we focus on full-year data in making our material injury determination because the seasonal nature of gift box sales, which are concentrated in the latter portion of the year, makes partial-year data less useful. All parties agreed that we should focus our analysis on full-year data, see Tr. at 37 (Mr. Lanford), 115 (Mr. Klett), and in making our material injury determination, we are satisfied that the seasonal nature of production and sales have not distorted our analysis.

We also focus on data pertaining to the value of subject imports, and not the quantity, because of the difficulty in determining the quantities reported. Although the Commission in the final phase of this investigation requested quantity data as pieces, rather than packs, it appears that a number of firms may have reported quantity figures in terms of packs while others reported their figures in terms of pieces. CR at IV-2 - IV-3 n.8. The fact that different numbers of folding gift boxes are contained in various packs does not enable us to readily convert the number of packs to the number of pieces.

Thus, while the quantity of apparent consumption indicates that demand may have steadily declined between 1998-2000, see CR/PR at Table IV-3, there likely was an actual increase, especially in view of the number of producers reporting that demand has increased, CR at II-3, PR at II-2, and the steady increase in the value of apparent consumption. CR/PR at Table IV-3.

⁶¹ The rate of growth, however, is somewhat understated by virtue of anomalies in reporting by two importers, (continued...)

Fourth, the domestic like product and the subject merchandise are substitutable. *** domestic producers stated that the products are always interchangeable, and the majority of importers stated that they are frequently or sometimes interchangeable. Purchasers familiar with both products consider them to be generally substitutable for each other.⁶² While quality is the most important factor in purchasing decisions,⁶³ a large number of purchasers view the quality and consistency of the domestic like product and subject imports to be comparable.⁶⁴ Price is the second most important factor in purchasing decisions,⁶⁵ although there is no clear price leader in the industry.⁶⁶ As a result of the substitutability of the products, the market is highly price competitive.⁶⁷

Fifth, U.S. producers have substantial available capacity to supply the U.S. market. The domestic industry reported that its capacity utilization remained stable, at 75-76 percent, between 1998 and 2000.⁶⁸

Sixth, nonsubject imports do not have a significant role in the U.S. market. The only nonsubject imports are *** amounts from China as to which Commerce found the dumping margins to be de minimis.⁶⁹ Further, imports of Chinese folding gift boxes began to enter the U.S. market in approximately 1995.⁷⁰

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that 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.”⁷¹

Subject imports increased substantially from 1998 to 2000.⁷² As measured by value, subject imports more than doubled from 1998 to 2000. Subject imports increased from \$*** in 1998 to \$*** in 1999, then increased to \$*** in 2000.⁷³ Subject import market share, by value, nearly doubled during the

⁶¹ (...continued)

. Adjusted data for apparent U.S. consumption suggest strong growth to \$ million. See INV-Y-250 (Dec. 13, 2001).

⁶² CR at II-6 - II-7, PR at II-4 - II-5.

⁶³ CR/PR at Table II-2.

⁶⁴ Nine of 12 purchasers viewed the quality of the domestic and subject imports to be comparable, while 8 of 12 viewed the consistency of the products to be comparable. CR/PR at Table II-3.

⁶⁵ CR/PR at Table II-2.

⁶⁶ CR at V-11, PR at V-5.

⁶⁷ Nineteen of 22 purchasers stated that the lowest price would always, usually, or sometimes win a contract or sale. CR at II-6, PR at II-4.

⁶⁸ CR/PR at Table III-3.

⁶⁹ See CR/PR at Table IV-1 n.1. There were no nonsubject imports in 1998, they were valued at *** in 1999, and at \$*** in 2000. CR/PR at Table IV-1.

⁷⁰ See Tr. at 1995 (Mr. Bowman); Letter from *** to Valerie Newkirk (Nov. 27, 2001).

⁷¹ 19 U.S.C. § 1677(7)(C)(i).

⁷² We note that, because the vast majority of shipments in this industry occur in the second half of the year, we do not rely on the data pertaining to the interim periods, i.e., January-June 2000 and 2001, in making our determination. We also note that, due to the fact that a number of importers may have reported quantity data in terms of packs rather than pieces, we focus on data pertaining to the value of subject imports and not the quantity. See CR at IV-2 - IV-3 n.8, PR at IV-2 n.8.

⁷³ CR/PR at Table IV-1.

same period, and indeed may be understated. Subject import market share climbed from *** percent in 1998 to *** percent in 1999, then rose to *** percent in 2000.^{74 75}

Because the only imports of folding gift boxes for resale are from China, the U.S. producers' loss of volume and market share over the period can be attributed to these imports. Accordingly, we find that the increased volumes of subject imports, both in absolute terms and relative to consumption in the United States, are significant.

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, 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.⁷⁶

The pricing data gathered by the Commission exhibit a mixed pattern of underselling and overselling. The delivered prices paid by retailers that import directly, which as noted above comprise most subject imports, were lower than U.S. producer prices for pricing product 1 in five of the six quarters in which imports occurred.⁷⁷ These pricing data likely understate the extent of actual underselling because the importer prices include transportation charges and the domestic prices do not. Pricing data reported by importers who resell to retailers show a mixed pattern, with a roughly equal number of instances of overselling and underselling in the third and fourth quarters, the period of critical importance for this seasonal product. Given the general substitutability of imported and domestic folding gift boxes and

⁷⁴ CR/PR at Table IV-3. Adjusting 2000 data to account for two importers of subject gift boxes, ***, whose data were not included in the Staff Report, increases the value of subject imports to \$***, and increases subject import market share to *** percent. INV-Y-250 (Dec. 13, 2001); INV-Y-247, rev. CR at IV-2 n.5 (Dec. 10, 2001). We note that nonsubject imports experienced an increase from 1998 to 2000 as well. By value, nonsubject import market share rose from *** percent in 1998 to *** percent in 1999, then climbed to *** percent in 2000. CR/PR at Table IV-3. However, this rise was eclipsed by the rise in subject imports.

⁷⁵ Although data problems exist regarding volume of the subject imports, nonetheless Commissioners Bragg and Hillman note that the record indicates the volume of the subject imports, in terms of quantity, increased from *** pieces in 1998 to *** pieces in 2000, or by *** percent. CR/PR at Table IV-1.

⁷⁶ 19 U.S.C. § 1677(7)(C)(ii).

⁷⁷ In the third and fourth quarters of 1998, Chinese prices were \$*** and \$***, respectively, while U.S. prices were \$*** and \$***, respectively. In 1999, Chinese prices were \$*** and \$*** for the third and fourth quarters, respectively, while U.S. prices were \$*** and \$***, respectively. In 2000, Chinese prices were \$*** in the third and fourth quarters, respectively, and U.S. prices were \$*** and \$***, respectively. Compare CR/PR at Table V-2 with CR/PR at Table V-1.

We also note that respondents argue that the Commission's data present prices from three importers on an f.o.b. Hong Kong basis rather than on a delivered basis (that includes ocean shipping costs, brokerage fees, duties, and inland freight) as requested by the Commission. However, the Commission corrected prices of one importer, ***, to reflect the delivery charges. The price data from the other two importers, *** and ***, were not used because the importers were unable to provide estimates of their delivery charges. CR at V-10 n.11, PR at V-4 n.11.

recognizing that the pricing data likely understate the extent of underselling, we find the underselling to be significant.

The record also indicates that most of petitioners' allegations of lost sales and revenues were confirmed. The amount of lost sales and revenues is significant, totaling more than \$4.0 million from 1998-2000 in an industry with U.S. shipments valued at \$43.3 million in 2000.⁷⁸ Further, the record indicates that subject imports have recently increased their share of large accounts, including some mass merchandisers as well as discount or dollar stores. These accounts include ***.⁷⁹ Thirteen of the 23 purchasers responding to the Commission's questionnaires purchased subject Chinese gift boxes or imported them directly from China between 1998 and 2000, and only six of the 23 described themselves as discount retailers or dollar stores. A fourteenth purchaser, ***, began purchasing subject imports during January-June 2001.⁸⁰ The level of confirmed lost sales and lost revenue allegations is consistent with our finding of significant underselling by subject imports. Given the substitutability of subject imports and the domestic like product, as well as the price competitive nature of the U.S. market, we find that subject imports would only be able to gain market share as a result of underselling.

We note further that the cost of goods sold ("COGS") relative to net sales increased steadily between 1998 and 2000.⁸¹ This indicates that there is a cost-price squeeze and that domestic producers have been unable to increase prices in order to recoup increased costs. We attribute this price suppression, to a significant degree, to the increasing volumes of underpriced subject imports.

Accordingly, we find that there has been significant underselling by the subject imports and that the subject imports have suppressed domestic prices to a significant degree during the period examined.

D. Impact of the Subject Imports⁸²

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁸³ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor

⁷⁸ CR/PR at Tables III-4, V-3, V-4.

⁷⁹ See *** Purchaser Questionnaire Responses; Tr. at 18 (Mr. Lencsak).

⁸⁰ CR at II-5 n.5, PR at II-3 n.5; Purchaser Questionnaire Responses.

⁸¹ The ratio of COGS to net sales increased from 93.0 percent in 1998 to 93.5 percent in 1999, and rose further to 95.6 percent in 2000. CR/PR at Table VI-1.

⁸² Respondents claim that the Commission has not obtained full coverage for the domestic producers. Respondents' Final Comments at 9-10. However, we note that a number of these producers manufacture relatively small amounts of folding gift boxes. For instance, *** estimates that it produces approximately *** gift boxes annually, *** produces only *** gift boxes annually. The other producers manufacture give-away boxes. CR at III-4 & n.14, PR at III-3 & n.14. We have obtained data from producers of the domestic like product that account for a major proportion of total domestic production of the like product. See CR at III-1 - III-4, PR at III-1 - III-3; 19 U.S.C. § 1677(4)(A).

⁸³ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{84 85 86}

From 1998 to 2000, domestic consumption rose in terms of value.⁸⁷ Domestic shipments followed the same trend.⁸⁸ However, domestic market share steadily declined during this period,⁸⁹ as subject import market share rose.⁹⁰

Domestic production decreased steadily from 1998 to 2000.⁹¹ Capacity also shrank, although capacity utilization was relatively steady during this period.⁹²

Employment figures also evidence a decline during that period. The average number of production and related workers decreased from 1998 to 2000, and their hours worked followed the same trend.⁹³

The financial condition of the domestic industry deteriorated over the period. Although total net sales increased in terms of value,⁹⁴ gross profit declined during this period⁹⁵ and the industry experienced increasing operating losses in each year. The operating loss was \$841,000 in 1998, rising to \$1.5 million

⁸⁴ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

⁸⁵ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce published its final antidumping determination in its investigation of folding gift boxes from China on Nov. 20, 2001. In its final determination, Commerce assigned individual weighted-average dumping margins ranging from 1.67 percent to 9.26 percent, and a PRC-wide rate of 164.75 percent.

⁸⁶ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

⁸⁷ Domestic consumption increased from \$*** in 1998 to \$*** in 1999, then rose to \$*** in 2000. CR/PR at Table IV-3.

⁸⁸ U.S. producers’ U.S. shipments rose from \$40.3 million in 1998 to \$42.7 million in 1999, then rose further to \$43.3 million in 2000. CR/PR at Table III-4.

⁸⁹ The domestic market share fell from *** percent in 1998 to *** percent in 1999, then fell further to *** percent in 2000. CR/PR at Table IV-3.

⁹⁰ The subject import market share climbed from *** percent in 1998 to *** percent in 1999, then climbed further to *** percent in 2000. CR/PR at Table IV-3. While nonsubject import market share rose at the same time, increasing from *** percent in 1998 to *** percent in 1999, then rising to *** percent in 2000, CR/PR at Table IV-3, this increase was *** compared to the increase in subject import market share.

⁹¹ Domestic production fell from 275.4 million pieces in 1998 to 269.4 million pieces in 1999, then fell to 255.3 million pieces in 2000. CR/PR at Table III-3.

⁹² Domestic capacity decreased from 363.2 million pieces in 1998 to 355.1 million pieces in 1999, then to 338.9 million pieces in 2000. Capacity utilization was 75.8 percent in 1998, 75.9 percent in 1999 and 75.3 percent in 2000. CR/PR at Table III-3.

⁹³ The average number of production and related workers rose from 425 in 1998 to 427 in 1999, then fell to 420 in 2000. Their hours worked rose from 659,000 hours in 1998 to 672,000 hours in 1999, then declined to 613,000 hours in 2000. CR/PR at Table III-6.

⁹⁴ The value of total net sales rose from \$40.5 million in 1998 to \$42.9 million in 1999, then climbed to \$43.5 million in 2000. CR/PR at Table VI-1.

⁹⁵ Gross profit was \$2.8 million in 1998 and 1999, then fell to \$1.9 million in 2000. CR/PR at Table VI-1.

in 1999, then climbing to \$3.0 million in 2000.⁹⁶ Selling, general, and administrative expenses rose,⁹⁷ as did the cost of goods sold (“COGS”).⁹⁸ The ratio of COGS to net sales steadily increased.⁹⁹ Capital expenditures fell.¹⁰⁰ Most domestic producers reported negative effects from the subject imports and *** reported anticipated negative effects.¹⁰¹ The industry’s operating margins declined from a negative 2.1 percent in 1998 to a negative 6.8 percent in 2000.¹⁰²

We have considered the degree of price competition for sales to diverse types of customers.¹⁰³ Although certain large purchasers did not purchase the subject merchandise during the period examined,¹⁰⁴ we are not convinced that competition between imports of the subject merchandise and the domestic like product is sufficiently attenuated as to support a conclusion that subject imports have not had a significant impact on the domestic industry.¹⁰⁵ To the contrary, record evidence suggests that low-priced imports of for-resale folding gift boxes from China successfully compete for sales to a variety of purchasers on the basis of price, gaining sales to mass merchandise retailers (e.g., ***) as well as other retailers large and small (e.g., ***) at the expense of U.S. producers.¹⁰⁶

In sum, the record indicates that there have been significant increases in the volume and market share of the subject imports, that the subject imports undersold the domestic like product and have had a significant suppressing effect on domestic prices, and that there was a significant number of confirmed lost sales and revenue allegations. As a result, although the industry was unprofitable throughout the period, the overall condition of the industry worsened as subject import volumes increased significantly.¹⁰⁷ Accordingly, we find that the subject imports are having a significant adverse impact on the domestic industry.

⁹⁶ CR/PR at Table VI-1.

⁹⁷ Selling, general and administrative expenses increased from \$3.7 million in 1998 to \$4.3 million in 1999, then rose to \$4.9 million in 2000. CR/PR at Table VI-1.

⁹⁸ COGS climbed from \$37.6 million in 1998 to \$40.1 million in 1999, then climbed further to \$41.6 million in 2000. CR/PR at Table VI-1.

⁹⁹ The ratio of COGS to net sales increased from 93.0 percent in 1998 to 93.5 percent in 1999, then rose to 95.6 percent in 2000. CR/PR at Table VI-1.

¹⁰⁰ Capital expenditures rose from \$*** in 1998 to \$*** in 1999, then fell to \$*** in 2000. CR/PR at Table VI-4.

¹⁰¹ CR at VI-6 - VI-7, PR at VI-4.

¹⁰² CR/PR at Table VI-1.

¹⁰³ USITC Pub. 3411 at 12 n.73; see also INV-Y-244 (Dec. 7, 2001), at 1-2.

¹⁰⁴ See, e.g., Conference Tr. at 79 (Mr. Bowman) (“My retailers that I work with exclude Walmart, Target and K-Mart. I haven't solicited Walmart, Target and K-Mart. I don't sell Walmart, Target and K-Mart. I've never made a sales call to Walmart, Target and K-Mart”); see also ***.

¹⁰⁵ See CR/PR at Table II-1.

¹⁰⁶ Rev. CR/PR at Table II-1, INV-Y-247 (Dec. 10, 2001); of the total purchases by mass merchandisers, as measured by value, imports from China account for an increasing share: 0.4 percent in 1998, increasing to 5.4 percent in 2000. Rev. CR/PR at Table II-1, INV-Y-247; CR/ PR at Tables V-3 and V-4.

¹⁰⁷ We note that one former domestic producer of folding gift boxes, a member of the industry from 1970 until 1998, ceased production because it could not be competitive with subject imports. Letter from *** to Valerie Newkirk (Nov. 27, 2001); CR at III-4, PR at III-3.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of certain folding gift boxes from China that are being sold in the United States at less than fair value.