

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-375 and 731-TA-787 (Preliminary)

EXTRUDED RUBBER THREAD FROM INDONESIA

On the basis of the record¹ developed in the subject investigations, the United States International Trade 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)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Indonesia of extruded rubber thread, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Indonesia and to be sold in the United States at less than fair value (LTFV).²

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phases of its investigations. The Commission will issue final phase notices 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 the investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phases 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 March 31, 1998, petitions were filed with the Commission and the Department of Commerce by North American Rubber Thread Co., Fall River, MA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and LTFV imports of extruded rubber thread from Indonesia. Accordingly, effective March 31, 1998, the Commission instituted countervailing duty investigation No. 701-TA-375 (Preliminary) and antidumping duty investigation No. 731-TA-787 (Preliminary).

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

² Commissioner Carol T. Crawford found in the negative with respect to food grade extruded rubber thread.

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 April 9, 1998 (63 FR 17444). The conference was held in Washington, DC, on April 20, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of extruded rubber thread (“ERT”) from Indonesia that allegedly are subsidized and sold in the United States at less than fair value (“LTFV”).¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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 a domestic industry is materially injured, or threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly LTFV and subsidized imports.² 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.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

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

¹Commissioner Crawford finds that there are two domestic like products: food-grade ERT and all other ERT. She determines that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized and LTFV imports of ERT other than food-grade ERT from Indonesia. She determines that there is no reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of allegedly subsidized and LTFV imports of food-grade ERT. *See* Views of Commissioner Carol T. Crawford, *infra*.

²19 U.S.C. §§1671b(a), 1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT ___, Slip Op. 96-51, at 5-6 (Mar. 11, 1996); Calabrian Corp v. United States, 794 F. Supp. 377, 381 (Ct. Int’l Trade 1992).

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

⁴19 U.S.C. § 1677(4)(A).

proportion of the total domestic production of that product.”⁵ 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.”⁶

Our 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.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁹ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly subsidized and sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description and Domestic Like Product

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as

*extruded rubber thread (“rubber thread”) from Indonesia. Rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter.*¹¹

⁵Id.

⁶19 U.S.C. § 1677(10).

⁷*See, e.g., Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. *See Nippon Steel* at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁸*See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).*

⁹*Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991).

¹⁰*Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single 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 in which Commerce found five classes or kinds).

¹¹*Initiation of Antidumping and Countervailing Duty Investigations: Extruded Rubber Thread from Indonesia*, U.S. Department of Commerce, 63 Fed. Reg. 23,267 (Apr. 28, 1998).

On the basis of the information obtained in these preliminary investigations, we determine that there is one like product, consisting of all extruded rubber thread.¹² The parties agreed we should find one domestic like product.

ERT is a monofilament elastomeric fiber that is vulcanized and produced by a low-pressure extrusion of compounded natural rubber latex. It is typically manufactured in standard sizes falling within the range of 22 gauge through 60 gauge and as finer-gauge thread (over 75 gauge).¹³

Domestic manufacturers produce a variety of ERT products that generally fall into distinct market segments, including standard talced, standard talcless, heat-resistant, fine-gauge, and food-grade. ERT is commonly used in narrow fabrics (knit, woven, and braided), shock (bungee) cords, tubular elastic netting (both for food and non-food products), bandages and other medical supplies, covered elastic yarn, elastic tapes, furniture webbing, and disposable diapers.¹⁴ ERT is coated with either talcum powder (talced ERT) or a silicone-based lubricant (talcless ERT) to prevent the threads from sticking together. It is manufactured in a number of sizes (gauges), which indicate thickness.¹⁵ Talced and talcless ERT technically are interchangeable, although in practice end users do not generally use the two types interchangeably.¹⁶

Particular varieties of ERT made with specialized compounds (*e.g.*, the heat-resistant and food-grade products) are not interchangeable with standard ERT for those specific end uses requiring a specialty product. For example, many of the firms that produce underwear require the narrow elastic fabric used for waistbands to be manufactured with heat-resistant ERT; similarly, firms that produce meat netting for the food industry are required to use food-grade ERT. However, some parties assert that heat-resistant and food-grade ERT can be used in place of standard ERT, although customers reportedly choose not to do so.¹⁷ Food-grade ERT is natural in hue and does not have the same pigmentation as most other ERT. Heat-resistant ERT is more costly than the standard product.¹⁸ The average unit value for Indonesian food-grade ERT does not differ greatly from the prices for common sizes of standard talced and talcless ERT.¹⁹

¹²As noted previously, Commissioner Crawford finds two domestic like products.

¹³Confidential Report (“CR”) at I-5 - I-6, Public Report (“PR”) at I-4.

¹⁴CR at II-1, PR at II-1.

¹⁵CR at I-6 - I-7; PR at I-4.

¹⁶CR at II-6, PR at II-4.

¹⁷Based on different uses and the lack of interchangeability, Commissioner Crawford finds that food-grade ERT is a separate domestic like product. *See* Views of Commissioner Carol T. Crawford, *infra*.

¹⁸CR at II-6, PR at II-4.

¹⁹*Compare* the average unit value of food-grade ERT from Indonesia, CR at C-9, Table C-3, PR at C-3,

(continued...)

Based on the evidence in these preliminary phase investigations, we find that there is no clear dividing line between the varieties of ERT. All varieties of ERT exhibit many of the same physical characteristics, *e.g.*, the same appearance and texture and similar elasticity characteristics. Any differences in physical characteristics appear to be minor and exist for all varieties of ERT depending on the end-use requirements of the product.²⁰ All ERT varieties are manufactured using the same equipment and production processes,²¹ *i.e.*, using the same basic latex extrusion process. Natural rubber latex is the most important input for all varieties of ERT. There are differences in the additives used in the formulation of the different varieties; however, these differences are relatively minor.²² All ERT varieties are sold through the same channels of distribution, *i.e.*, directly to end users.²³ As discussed above, there is limited interchangeability among the different varieties of ERT. We find that these end-use distinctions subdivide the product into market segments, rather than create separate like products. Most varieties of ERT are generally sold at comparable prices.²⁴

In view of the similar physical characteristics, common manufacturing facilities and production processes and employees, similar channels of distribution, and comparable pricing patterns, we determine that there is one domestic like product, consisting of all ERT, including standard talced, standard talcless, heat-resistant, fine-gauge, and food-grade.²⁵

C. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product, or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that product.”²⁶ In defining the domestic industry, the Commission’s practice has been to include in the domestic industry all domestic production, whether toll-produced, captively consumed, or sold in the merchant market, assuming sufficient production-related activity occurs in the

¹⁹(...continued)

with the unit value prices for products 1 and 2 from Indonesia, CR at V-10 - V-11, Tables V-1 - V-2, PR at V-4.

²⁰CR at I-5 - I-7, II-1 - II-2; PR at I-4 - I-5, II-1.

²¹CR at I-12, PR at I-8.

²²CR at I-9 - I-10, PR at I-5, I-7.

²³CR at I-9, PR at I-5.

²⁴See CR at II-6, PR at II-4.

²⁵For purposes of these preliminary investigations, Chairman Miller and Vice Chairman Bragg have determined that there is one domestic like product, which includes food-grade ERT. They may continue to evaluate this issue in any final phase investigations.

²⁶19 U.S.C. § 1677(4)(A).

United States.²⁷ Based on our domestic like product determination, we find that the domestic industry consists of the producers of all ERT.

D. Related Parties

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). Applying the provision involves two steps. First, the Commission must determine whether a domestic producer is a related party or is an importer of the subject merchandise. Second, the Commission may exclude such a producer from the domestic industry if “appropriate circumstances” exist.

There are two U.S. producers of ERT: North American Rubber Thread Co., Ltd. (“North American”) and Globe Manufacturing Company (“Globe”). North American *** produces standard talcless ERT and Globe *** manufactures fine-gauge and heat-resistant ERT.²⁸ Globe, ***,²⁹ imported standard talcless ERT from Indonesia throughout the period of examined.³⁰ Accordingly, Globe meets the first criterion of section 771(4)(B) and the Commission must consider whether appropriate circumstances exist to exclude it from the domestic industry.³¹

Globe’s importation of subject merchandise, as well as its ratio of subject imports to domestic production, was substantial and increasing throughout the period examined. The volume of its imports rose from *** pounds in 1995 to *** pounds in 1997, and its ratio of subject imports to production increased from *** percent in 1995 to *** percent in 1997.³² During the period examined Globe significantly reduced its domestic production of talcless ERT and increased its imports from Indonesia of

²⁷See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

²⁸CR at III-3, Table III-2, PR at III-3.

²⁹In 1997, Globe accounted for *** percent of U.S. production of ERT, while North American accounted for *** percent. CR at III-1, PR at III-1.

³⁰Globe accounted for the majority of subject imports during the period examined. Further, ***. CR at IV-1 n.3, PR at IV-1 n.3.

³¹19 U.S.C. §1677(4)(B). Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a domestic producer include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the domestic producer will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for such producers; and whether the primary interest of the producer lies in domestic production or importation. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). See also Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997), at 10 n.26.

³²CR at III-3, Table III-2, PR at III-1.

this product.³³ In 1997, *** percent of Globe's total acquisition of standard talcless ERT was imported from Indonesia, and *** percent was produced domestically.³⁴ While Globe still produces more ERT than it imports, ***, and its imports are *** large in both relative and absolute terms.³⁵

The pattern of Globe's importation -- focusing on the standard, commodity segment of the market -- indicates that it is not "filling out" its product line. Rather than supplementing its production of standard talcless ERT, which is the domestic product with which subject imports compete most directly, Globe replaced its production of this product type with subject imports.^{36 37} The record supports the conclusion that in the market segment where competition is greatest between subject imports and the other domestic producer, Globe's primary interest lies in importation rather than production.

We also note that Globe's product mix,³⁸ pricing history,³⁹ and ***⁴⁰ differ markedly from North American's, and reflect the continuing effects of Globe's transformation from a producer to an importer in a basic, high-volume product line.

For the above reasons, we determine to exclude Globe from the domestic industry.

³³Globe produced *** pounds of standard talcless ERT in 1995, *** pounds in 1996 and *** pounds in 1997. Globe imported *** pounds of standard talcless ERT from Indonesia in 1995, *** pounds in 1996 and *** pounds in 1997. CR at III-3, Table III-2, PR at III-3.

³⁴CR at III-3, Table III-2, PR at III-3.

³⁵Globe's total U.S. production was *** pounds of ERT in 1995, *** pounds in 1996 and *** pounds in 1997. CR at III-3, Table III-2, PR at III-3.

³⁶CR at III-3, Table III-2, PR at III-3.

³⁷Based on the foregoing, and as discussed in her separate Views, Commissioner Crawford concurs that appropriate circumstances exist to exclude Globe from the domestic industry. *See* Views of Commissioner Carol T. Crawford, *infra*. She does not join the remainder of this discussion.

³⁸CR at III-3, Table III-2, PR at III-3.

³⁹CR at V-10 - V-12, Tables V-1 - V-3, PR at V-4.

⁴⁰CR at VI-3, Table VI-2, PR at VI-1.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV AND SUBSIDIZED IMPORTS

In preliminary antidumping and countervailing duty determinations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the allegedly LTFV and subsidized imports subject to investigation.^{41 42} In making this determination, the Commission must consider the volume of subject 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, and taking into account the business cycle and conditions of competition that are distinctive to the affected industry.⁴³

⁴¹19 U.S.C. §§ 1671b(a), 1673b(a). The statute defines “material injury” as “harm which is not inconsequential, immaterial or unimportant.” *Id.* § 1677(7)(A).

⁴²Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of LTFV imports, not by reason of the LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the LTFV imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final) USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’g* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

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

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing extruded rubber thread is materially injured by reason of allegedly LTFV and subsidized imports from Indonesia.⁴⁴

A. Conditions of Competition

There are several pertinent conditions of competition in the ERT industry. First, as previously stated, ERT is manufactured in different varieties, *i.e.* standard talced, standard talcless, heat-resistant, fine-gauge, and food-grade, which comprise various segments of the ERT market. North American, as discussed above, *** manufactures standard talcless ERT. The bulk of the subject imports consist of standard talcless ERT.⁴⁵

Second, there are significant sources of supply in the U.S. market other than North American and the subject imports, namely nonsubject imports -- primarily from Malaysia -- and Globe.⁴⁶ As discussed above, however, Globe's production is concentrated in fine-gauge and heat-resistant ERT.⁴⁷

Third, raw material costs account for a substantial proportion of the total cost of producing ERT. Rubber latex generally accounts for approximately *** percent of the cost of producing ERT, although the exact range varies pursuant to fluctuations in the cost of latex. Rubber latex costs increased significantly in 1996, and then declined in 1997. North American reported that for 1996-97, rubber latex accounted for *** percent of material cost and approximately *** percent of the total cost of goods sold.⁴⁸

Fourth, the level of demand for ERT in the U.S. market is prone to noticeable fluctuations. Some purchasers reported declining demand for their products, and apparent consumption of ERT declined significantly in 1996 as compared to 1995. However, apparent consumption of ERT recovered in 1997, and actually increased slightly during the period examined.^{49 50}

⁴⁴Commissioner Crawford finds two separate domestic like products and thus makes separate determinations with respect to each like product. *See* Views of Commissioner Carol T. Crawford, *infra*.

⁴⁵CR at I-6; III-3, Table III-2; PR at I-4, III-3.

⁴⁶In terms of quantity, all nonsubject imports of ERT accounted for *** percent of consumption in 1995, *** percent in 1996 and *** percent in 1997. With respect to value, these imports accounted for *** percent of consumption in 1995, *** percent in 1996 and *** percent in 1997. CR at IV-4, Table IV-2, PR at IV-3.

⁴⁷*See* CR at III-3, Table III-2, PR at III-3.

⁴⁸CR at V-1 & n.1; PR at V-1 & n.1.

⁴⁹Measured by quantity, apparent consumption decreased from *** pounds in 1995 to *** pounds in 1996, and then rose to *** pounds in 1997. CR at I-17, Table I-3; II-4, PR at I-11, II-2.

⁵⁰Commissioner Crawford concurs that these conditions of competition, among others, are relevant to an
(continued...)

B. Volume of Subject Imports

Section 771(7)(C)(i) 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.”⁵¹

The quantity and value of subject imports were substantial and increased significantly during the period examined, especially relative to the small net increase in apparent consumption, as indicated above. By quantity, subject imports fell from *** pounds in 1995 to *** pounds in 1996, then rose to *** pounds in 1997. Measured by value, subject imports fell from *** in 1995 to *** in 1996, then rose to *** in 1997.⁵² The market share held by subject imports increased commensurately, whether measured by quantity or value. Measured by quantity, subject import market share decreased from *** percent in 1995 to *** percent in 1996, then increased to *** percent in 1997, a net increase of *** percentage points. Similarly, when measured by value, subject import market share decreased from *** percent in 1995 to *** percent in 1996, then increased to *** percent in 1997, a net increase of *** percentage points.⁵³

North American lost market share between 1995 and 1997. North American’s market share was *** percent in 1995, but decreased to *** percent in 1996 and decreased further to *** percent in 1997. In terms of value, the domestic industry’s market share decreased from *** percent in 1995 to *** percent in 1996 and to *** percent in 1997.⁵⁴

Based on the rising volume and market share of the subject imports over the period as a whole, as well as their displacement of domestic production during the period, we find that both the volume of subject imports and the increase in that volume over the period examined are significant.

C. Price Effects of Subject Imports

Section 771(7)(C)(ii) 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,

⁵⁰(...continued)
analysis of the U.S. market. Because she finds separate domestic like products and separate domestic industries, Commissioner Crawford does not join the remainder of these views. For her separate determinations, *see* Views of Commissioner Carol T. Crawford, *infra*.

⁵¹19 U.S.C. § 1677(7)(C)(i).

⁵²CR at IV-2, Table IV-1, PR at IV-3.

⁵³CR at IV-4, Table IV-2, PR at IV-3.

⁵⁴CR at C-8, Table C-2, PR at C-3.

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.⁵⁵

The record in these investigations indicates that price, as well as quality, are important factors in purchasing decisions in the market for ERT, particularly in the standard talcless ERT segment of the market in which North American concentrates its production.⁵⁶ The record also demonstrates that subject imports and the domestic like product are reasonably good substitutes for each other.⁵⁷

Overall, North American's prices changed gradually over time,⁵⁸ notwithstanding significant fluctuations in the price of rubber latex, as explained above. Prices peaked in the third quarter of 1995, and declined during the remainder of the period. In the 17 quarters for which price comparisons were possible between North American's product and subject imports, Indonesian ERT was priced below that of North American. The margins of underselling ranged from 11.3 to 29.2 percent.⁵⁹ While most of the margins of underselling fluctuated within a narrow band, *i.e.* from 11.3 to 16.9 percent,⁶⁰ the volume of subject imports of the standard talcless ERT for which the Commission gathered pricing data increased rapidly over the period examined.⁶¹

The evidence suggests that subject imports are having a price depressing or suppressing effect. We note that the average unit values for North American's U.S. shipments of all ERT varieties rose between 1995 and 1996, but then fell in 1997.⁶² However, while the average unit values for North American's heat-resistant ERT, which faces no Indonesian competition, remained stable over the period examined, average unit values for its standard talcless ERT -- the market segment in which most subject imports compete -- rose between 1995 and 1996, but then fell noticeably in 1997.⁶³ This is consistent with observed pricing trends for North American's 24-34 gauge ERT, which peaked in the third quarter of

⁵⁵19 U.S.C. § 1677(7)(C)(ii).

⁵⁶CR at II-6, PR at II-4.

⁵⁷CR at II-5 - II-7 & Table II-2, PR at II-3 - II-5.

⁵⁸See CR at V-8 - V-12 & Tables V-1 - V-3; PR at V-3 - V-4.

⁵⁹CR at V-13, Table V-4, PR at V-4.

⁶⁰See CR at V-13, Table V-4, PR at V-4.

⁶¹Indonesian imports of standard talcless ERT in the gauge range of 24-34 (*i.e.*, "product 2," increased from *** pounds in 1995 to *** pounds in 1997. CR at V-11, Table V-2, PR at V-4.

⁶²CR at III-8, Table III-4, PR at III-4.

⁶³CR at C-9, Table C-3, PR at C-3.

1995, then drifted downward over the remainder of the period examined.⁶⁴ We note further that the price declines between 1996 and 1997 took place during a period of rapidly increasing imports of Indonesian ERT.⁶⁵

Lost sales allegations were confirmed in an environment in which the subject imports were sold at prices lower than North American could match. However, in each instance purchasers cited issues concerning the quality of North American's product.⁶⁶

Based on the foregoing, we conclude there is a reasonable indication that subject imports are having adverse price effects.

D. Impact of Subject Imports^{67 68}

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of allegedly LTFV and subsidized imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁹ The relevant economic factors affecting the state of the domestic industry that the Commission considers 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.⁷⁰ No single factor is dispositive and all relevant factors are

⁶⁴CR at V-11, Table V-2, PR at V-4.

⁶⁵CR at IV-2, Table IV-1, PR at IV-1.

⁶⁶CR at V-14 - V-17, PR at V-4 - V-5. We note that Commission staff were unable to confirm the specific quantities specified in North American's allegations. We intend to gather more information regarding quantity and quality issues in any final phase investigations.

⁶⁷As part of its consideration of the impact of subject imports that are allegedly sold at LTFV, the statute specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The statute, 19 U.S.C. § 1677(35)(C), defines the "magnitude of the margin of dumping" to be used by the Commission in a preliminary determination as the margin or margins published by Commerce in its notice of initiation. In its notice of initiation, Commerce estimated dumping margins ranging from 0.81 percent to 62 percent. 63 Fed. Reg. 23,267 (Apr. 28, 1998).

⁶⁸Vice Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China*, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁶⁹19 U.S.C. § 1677(7)(C)(iii).

⁷⁰19 U.S.C. § 1677(7)(C)(iii).

considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷¹

A number of the indicators that the Commission must consider reflect negative trends over the period examined. Domestic production decreased.⁷² Capacity utilization also decreased, although capacity remained the same.⁷³ Sales declined, whether measured by quantity or value,⁷⁴ as decreasing domestic shipments⁷⁵ offset a net increase in exports.⁷⁶ The employment measures also worsened over the period examined.⁷⁷

North American’s financial performance was relatively weak in 1995 and 1996, but improved in 1997 as unit COGS fell more dramatically than did unit sales.⁷⁸ However, this improvement appears to have resulted from declining raw material costs.⁷⁹ Other costs of goods sold, *i.e.*, direct labor and other factory costs, rose on a unit basis between 1995 and 1997, as did both unit selling and general and

⁷¹Id.

⁷²North American’s production decreased from *** pounds in 1995 to *** pounds in 1997. CR at III-6, Table III-3, PR at III-4.

⁷³North American’s capacity utilization fell from *** percent in 1995 to *** percent in 1997, while actual capacity remained steady at *** million pounds throughout the period examined. CR at III-6, Table III-3, PR at III-4.

⁷⁴By quantity, North American’s net sales declined from *** pounds in 1995 to *** pounds in 1997. By value, North American’s net sales declined from *** in 1995 to *** in 1997. CR at VI-3, Table VI-2, PR at VI-1.

⁷⁵Specifically, shipments of standard talcless ERT decreased. North American’s U.S. shipments of heat-resistant ERT (which face no Indonesian competition) exhibited robust growth and stable average unit values. CR at C-7 - C-9, Table C-3, PR at C-3.

⁷⁶North American’s total shipments decreased from *** pounds in 1995 to *** pounds in 1997. However, its export shipments increased from *** pounds in 1995 to *** pounds in 1997. CR at III-8, Table III-4, PR at III-4.

⁷⁷The number of North American’s production workers decreased from *** to *** from 1995 to 1997, and the hours they worked decreased from *** to *** during the same period. CR at III-10, Table III-6, PR at III-5.

⁷⁸North American’s gross profit increased from *** in 1995 to *** in 1997. Its operating profit was *** in 1995 and rose to *** in 1997. CR at VI-3, Table VI-2, PR at VI-1.

⁷⁹The cost of North American’s raw materials fell from *** per pound in 1995 to *** per pound in 1996, and then to *** per pound in 1997. CR at VI-6, Table VI-3, PR at VI-1.

administrative expenses,⁸⁰ apparently as a consequence of declining production and sales volumes. Deferrable expenditures declined steadily over the period examined.⁸¹

These adverse trends occurred in the face of increasing volumes of low-priced subject imports. As discussed above, North American lost market share during the period examined, while subject import market share increased.

Given North American's generally weak performance in the face of increased volumes of lower-priced subject imports, we find a reasonable indication that the subject imports are having a significant adverse impact on the domestic industry.

CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing ERT is materially injured by reason of allegedly LTFV and subsidized imports from Indonesia.

⁸⁰North American's direct labor costs rose from *** per pound in 1995 to *** per pound in 1997, and its other factory costs rose from *** per pound in 1995 to *** per pound in 1997. North American's selling expenses rose from *** per pound in 1995 to *** per pound in 1997, and its general and administrative expenses rose from *** per pound in 1995 to *** per pound in 1997. CR at VI-6, Table VI-3, PR at VI-1.

⁸¹North American's capital expenditures decreased from *** in 1995 to *** in 1997. Its research and development expenditures fell from *** in 1995 to *** in 1997. CR at VI-8, Table VI-5, PR at VI-2.

IEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these preliminary investigations, I find two like products, extruded rubber thread ("ERT") other than food-grade ERT and food-grade ERT. I determine that there is a reasonable indication that the industry in the United States producing ERT other than food-grade ERT is materially injured by reason of imports of ERT other than food-grade ERT from Indonesia that are allegedly subsidized and sold in the United States at less-than-fair-value ("LTFV"). However, I determine that there is no reasonable indication that the industry in the United States producing food-grade ERT is materially injured or threatened with material injury by reason of imports of food-grade ERT from Indonesia that are allegedly subsidized and sold in the United States at LTFV. Because my finding on like product differs from that of my colleagues, my separate views follow.

I. LIKE PRODUCT

I have joined my colleagues in finding that all types of ERT, other than food-grade ERT, and all gauges of ERT should be included in the same like product. However, I do not concur in their conclusion to include food-grade ERT in the same like product as other ERT. Rather, I find that food-grade ERT is a separate like product.

While there are differences in physical characteristics between food-grade ERT and other ERT, a clear dividing line exists based on different uses and the lack of interchangeability. Food-grade ERT is used only in rubber netting that is used to wrap food, primarily boneless meats. Food-grade ERT must satisfy Food and Drug Administration ("FDA") requirements for use as a food wrap. Therefore, purchasers of food-grade ERT are prohibited from using other ERT to wrap food. Consequently, consumers simply cannot use other types of ERT as an alternative to food-grade ERT. While it may be possible that food-grade ERT could be used in place of other ERT, no evidence has been offered that such interchangeability actually occurs. In sum, the legal restrictions on food-grade ERT dictate different uses for food-grade ERT and other ERT. In addition, there is no interchangeability between food-grade ERT and other ERT.

The FDA requirements create a clear dividing line between food-grade ERT and other ERT. Therefore, I find two like products, food-grade ERT and ERT other than food-grade ERT.

II. DOMESTIC INDUSTRY

Having found two like products, I find two domestic industries, the industry producing ERT other than food-grade ERT and the industry producing food-grade ERT. My analyses of the composition of these respective industries follow.

A. The Industry Producing ERT other than Food-grade ERT

Both petitioner North American and Globe produce ERT other than food-grade ERT. Globe is a related party because it imports subject imports from Indonesia. In fact, Globe imports *** of the subject merchandise exported by Bakrie, which accounted for ***% of the subject imports in 1997.¹

¹ Table VII-1.

I concur in my colleagues' finding that appropriate circumstances exist in these investigations to exclude Globe from the domestic industry. In 1997 Globe's imports of the subject product from Indonesia were *** million pounds, and its U.S. production was *** million pounds. Thus, the ratio of Globe's imports of the subject product to its U.S. production was slightly more than *** percent. Put another way, Globe's imports of the subject product accounted for about *** percent of its combined imports and U.S. production.² Standing alone, these percentages make it a close call as to whether Globe's primary interest lies in production instead of importation. However, other facts on the record support a decision to exclude Globe from the domestic industry.

Globe asserts that it imports a narrow line of subject merchandise consisting of wider-gauge, low-cost "commodity-type" products in order to fill out its product line and complement its U.S. production of higher-value specialty products. Globe asserts that this allows it to compete with nonsubject imports and North American.³ The assertions may be true, but there are other facts to consider. The products that Globe imports are considered a standard talcless product. Globe testified that almost all of the ERT it imports goes to companies that were Globe customers before it began importing from Indonesia, and that they continue to buy from Globe for quality and service reasons. Globe can and does manufacture a comparable product in the United States, although in decreasing and currently small quantities. In addition, Globe indicates that it could supply its U.S.-produced product to its customers if it was unable to do so with the subject imports.⁴

Globe began importing the subject imports in 1994, and since that time Globe's U.S. production of its comparable product has declined substantially. In fact, in 1997 Globe's shipments of its comparable U.S. product accounted for only a small portion, *** percent, of its combined shipments of domestic and Indonesian standard talcless product. Therefore, the record clearly justifies a conclusion that Globe replaced nearly all of its U.S. production with subject imports from Indonesia.

Because shipments of Globe's U.S. production are *** greater than its shipments of subject imports in 1997, it may not be precisely accurate to say that its primary interest lies in importation for this reason alone. However, when the *** portion, *** percent, of its 1997 shipments accounted for by subject imports is combined with the fact that Globe accounts for the *** majority, *** percent, of the subject imports and apparently has chosen to replace its U.S. production with subject imports, a finding that its primary interest lies in importation is warranted. Therefore, for purposes of these preliminary investigations, I find that appropriate circumstances exist to exclude Globe from the domestic industry.

Excluding Globe from the domestic industry leaves only one firm, North American, that is a domestic producer. Therefore, the domestic industry producing ERT other than food-grade ERT consists solely of North American.

B. The Industry Producing Food-grade ERT

Only one firm, Globe, reported producing any food-grade ERT during the period of investigation.

² Table III-2.

³ CR at III-4; PR at III-2.

⁴ CR at III-4 to III-5; PR at III-2 to III-3.

It produced small quantities of food-grade ERT in each of the three years covered by these investigations.⁵ No domestic producer imports subject imports of food-grade ERT. Rather, all of the subject imports of food-grade ERT are imported by a firm that is not a domestic producer of food-grade ERT.⁶ There is no other evidence on the record to indicate that any domestic producer is a related party. Therefore, I conclude that no domestic producer of food-grade ERT is a related party. Consequently, the domestic industry producing food-grade ERT consists of Globe, the sole domestic producer of food-grade ERT.

III. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the allegedly subsidized and LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .⁷

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."⁸ In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁹

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

⁵ CR at I-14; PR at I-9.

⁶ Table VII-1.

⁷ 19 U.S.C. § 1677(7)(B)(i).

⁸ 19 U.S.C. § 1677(7)(B)(ii).

⁹ 19 U.S.C. § 1677(7)(C)(iii).

domestic industry."¹⁰ It is important, therefore, to assess the effects of the allegedly subsidized and dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the subsidies and dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the subsidies and dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.¹¹

In my analysis of material injury, I evaluate the effects of the alleged subsidies and dumping¹² on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the alleged subsidies and dumping on domestic prices, I compare domestic prices that existed when the imports were allegedly subsidized and dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of the subsidies and dumping on the quantity of domestic sales,¹³ I compare the level of domestic sales that existed when imports were allegedly subsidized and dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the effects on the statutory impact factors¹⁴ (e.g., employment, wages, etc.) are derived from the impact on the domestic industry's prices, sales, and revenues.

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

For the reasons discussed below, I determine that there is a reasonable indication that the domestic industry producing ERT other than food-grade ERT is materially injured by reason of the allegedly subsidized and LTFV imports Indonesia. However, I find that there is no reasonable indication that the domestic industry producing food-grade ERT is materially injured or threatened with material injury by reason of the allegedly subsidized and LTFV imports from Indonesia.

¹⁰ S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997)(rehearing denied).

¹¹ Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, at 1361 (Fed.Cir. 1996), *aff'g* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

¹² As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

¹³ In examining the quantity sold, I take into account sales from both existing inventory and new production.

¹⁴ 19 U.S.C. § 1677(7)(C)(iii).

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS OF ERT OTHER THAN FOOD-GRADE ERT FROM INDONESIA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn, in the context of the conditions of competition distinctive to the domestic industry producing ERT other than food-grade ERT.

A. Conditions of Competition

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

My analysis of the conditions of competition that are distinctive to the affected industry,¹⁵ *i.e.*, the domestic industry producing ERT other than food-grade ERT, follows.

1. Demand Conditions

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

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (e.g., an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the downstream product, and, by extension, demand for the input.

The cost share of ERT in downstream products varies significantly, ranging from 1.3% to 65%. It appears that for the vast majority of products the cost share is quite high, from 20% to 65%.¹⁶ This high cost share would indicate a fairly high elasticity of demand. However, these cost shares are for the first downstream product in which ERT is used, *e.g.*, the elastic waistband in underwear. Thus, ERT's cost

¹⁵ 19 U.S.C. § 1677(7)(C).

¹⁶ Prehearing Report in Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34 (INV-V-031).

share in the final downstream product in which it is used is likely to be much smaller for a number of products. As such, the elasticity of demand will be lower.¹⁷

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

There are only very limited substitute products for ERT, and those that can be substituted apparently are much higher priced so that substitution is not economically feasible.¹⁸ The limited availability of substitute products reduces the elasticity. In addition, petitioner testified that “the demand for elastic thread is inelastic.”¹⁹

Because the cost share of ERT in the final downstream products is likely to be quite small and there is only limited availability of substitute products, demand is likely to be fairly inelastic.

2. Substitutability

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

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand elasticity for ERT is relatively low, overall purchases will not decline significantly if the overall prices of ERT increase. However, purchasers can avoid price increases from one source by seeking other sources of ERT. In addition to any changes in overall demand, the demand for ERT from different sources will decrease or increase depending on their relative prices and their substitutability. If ERT from different sources is substitutable, purchasers are more likely to shift their demand when the price from one source (i.e., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

¹⁷ In the event of any final investigations, I will seek further information concerning the cost share of ERT in the final downstream products in which it is used.

¹⁸ CR at II-4 to II-5; PR at II-3.

¹⁹ Commission hearing in Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34, transcript at p. 26.

Purchasers have four potential sources of ERT: domestically-produced ERT, subject imports, nonsubject imports, and ERT produced by Globe.²⁰ Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among ERT from different sources as follows.

Overall, the substitutability among different sources of ERT largely is determined by the product mixes of the various sources. The product mix of the domestic industry is *** dominated by standard talcless ERT, which accounts for about *** percent of North American's 1997 shipments. Similarly, standard talcless ERT accounts for *** percent of non-food-grade shipments of subject imports from Indonesia.²¹ Based on these product mixes, the domestic ERT and the subject imports appear to be very good substitutes for each other. The substitutability is somewhat reduced by nonprice factors. As noted earlier, Globe imports the subject product from Indonesia and resells it to its longstanding customers, who require Globe's dependable quality and service. These longstanding relationships and quality requirements reduce the substitutability between the domestic product and the subject imports. In addition, record evidence indicates that the quality of subject imports from Indonesia is higher than the quality of North American's ERT,²² which further reduces the substitutability between the two. While quality differences reduce substitutability, the overwhelming overlap in product mixes indicates that subject imports and the domestic product are at least moderate, and more likely, fairly good substitutes for each other.

Subject Indonesian imports and nonsubject Malaysian imports appear to be fairly good substitutes for each other. There is significant overlap in the product mixes of these two sources, with standard talcless ERT accounting for *** percent and *** percent of shipments, excluding food-grade ERT, of Indonesian imports and Malaysian imports, respectively.²³ In addition, there are few, if any, quality differences between these two sources. Therefore, subject imports from Indonesia and nonsubject Malaysian imports are likely fairly good substitutes for each other.

Excluding food-grade ERT, standard talcless ERT accounts for *** percent of shipments of nonsubject Malaysian ERT. Thus, there is a smaller overlap in these product mixes than between the domestic product and the subject imports. However, the overlap in the product mixes of Malaysian ERT and North American's ERT is still significant. Therefore, these two sources of ERT are likely to be moderate or fairly good substitutes for each other. However, as with subject Indonesian imports, there are quality differences between Malaysian ERT and North American's ERT that reduce the substitutability between them.²⁴ Therefore, nonsubject Malaysian imports and the domestic product are likely only moderate substitutes for each other.

²⁰ Although Globe is excluded from the domestic industry, it does not somehow disappear from the U.S. market. Rather, Globe remains in the U.S. market as an alternative source of supply of ERT.

²¹ Table C-3.

²² CR at V-15 to V-17; PR at V-4 to V-5.

²³ Table C-3.

²⁴ CR at V-15 to V-17; PR at V-4 to V-5.

In 1997, standard talcless ERT accounted for *** percent of Globe's domestic shipments.²⁵ Thus, based on product mix alone, Globe's ERT is a poor substitute for ERT from the other three sources. However, as noted above Globe can and does manufacture a product comparable to the subject Indonesian ERT, but has replaced nearly all of its domestic production with subject imports of standard talcless ERT from Indonesia. Thus, Globe has the ability to change its product mix to produce more standard talcless ERT. In 1997, Globe had *** million pounds of unused capacity available with which it could have produced standard talcless ERT.²⁶ However, Globe's clear focus on higher-value products limits the potential for using its ability to produce the comparable standard talcless product. Consequently, Globe's ERT is something less than a moderate substitute, and likely a poor substitute, for ERT from the other three sources.

3. Supply Considerations

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market.

Since Globe is excluded from the domestic industry, the elasticity of supply is based solely on the information relating to North American. For the reasons discussed below, I find that the elasticity of supply of ERT other than food-grade ERT is quite high.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. In 1997 North American's capacity utilization, and thus the domestic industry's capacity utilization, was ***%. In absolute terms, the domestic industry had unused capacity of *** million pounds in 1997.²⁷ Consequently, the domestic industry had *** capacity available to supply the demand for subject imports.

Inventories and Exports. In 1997 the domestic industry's inventories of *** million pounds accounted for *** percent of its total shipments, while its exports of *** million pounds accounted for *** percent of total shipments.²⁸ Nominally, these inventories and exports represent available supply that North American could have shipped into the U.S. market. While North American's exports conceivably could be used to supply demand in the U.S. market, the unit value of its export shipments is *** the unit

²⁵ Table C-3. As noted earlier, Globe's shipments of its U.S.-produced talcless product accounted for *** percent of its combined shipments of domestic and Indonesian standard talcless product. Table III-2.

²⁶ Table III-3.

²⁷ Table C-2a.

²⁸ Table C-2a.

value of its domestic shipments.²⁹ Thus, it is unlikely that exports would be diverted absent a significant increase in the price in the U.S. market. Therefore, it is likely that only North American's unused capacity and inventories would be available to supply an increase in demand for the domestic product.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, the domestic industry consists of only one producer, North American. Nevertheless, there is significant competition in the market. Nonsubject imports are a substantial source of competition in this market, accounting for *** percent of consumption, by quantity, in 1997.³⁰ In addition, Globe remains a source of supply for ERT, even though it is excluded from the domestic industry. Although the domestic industry consists of only one producer, there is substantial competition from nonsubject imports and Globe. Consequently, I find that there is a significant level of competition in the U.S. market for ERT other than food-grade ERT.

Based on the level of competition in the U.S. market, and the domestic industry's unused capacity and inventories, I find that domestic supply is fairly elastic.

B. Volume of Subject Imports

Subject imports from Indonesia decreased from *** million pounds in 1995 to *** million pounds in 1996, and then increased to *** million pounds in 1997. The value of subject imports from Indonesia was \$*** million in 1995, \$*** million in 1996, and \$*** million in 1997.³¹ By quantity, the subject imports held a market share of *** percent in 1995, *** percent in 1996, and *** percent in 1997. Their market share by value was *** percent in 1995, *** percent in 1996, and *** percent in 1997.³²

Nonsubject imports are a major factor in the U.S. market. Total nonsubject imports decreased from *** million pounds in 1995 to *** million pounds in 1996, and then increased to *** million pounds in 1997. The value of total nonsubject imports was \$*** million in 1995, \$*** million in 1996, and \$*** million in 1997.³³ By quantity, total nonsubject imports held a market share of *** percent in 1995, *** percent in 1996, and *** percent in 1997. The market share by value was *** percent in 1995, *** percent in 1996, and *** percent in 1997.³⁴

Malaysian ERT, which has been fairly traded since the 1992 orders, accounted for the largest portion of nonsubject imports. Nonsubject imports from Malaysia increased from *** million pounds in 1995 to *** million pounds in 1996, and to *** million pounds in 1997. The value of nonsubject imports

²⁹ Table III-4.

³⁰ Table C-2a.

³¹ Table IV-1a.

³² Table C-2a.

³³ Table IV-1a.

³⁴ Table C-2a.

from Malaysia was \$*** million in 1995, \$*** million in 1996, and \$*** million in 1997.³⁵ By quantity, nonsubject imports from Malaysia held a market share of *** percent in 1995, *** percent in 1996, and *** percent in 1997. Their market share by value was *** percent in 1995, *** percent in 1996, and *** percent in 1997.³⁶

While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of subject imports from Indonesia and the conditions of competition in the domestic market, the volume of the subject imports is significant in light of its price and volume effects.

C. Effect of Subject Imports on Domestic Prices

I find that subject imports are not having significant effects on domestic prices for ERT. To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices had the subject imports not been subsidized and dumped.

In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In these preliminary investigations the dumping margins alleged by petitioner range from 0.81 percent to 62 percent.³⁷ Based on the alleged dumping margins alone, prices for the subject imports likely would have risen significantly if they had been priced fairly, and they would have become more expensive relative to the domestic product and other alternative sources for the product (*e.g.*, nonsubject imports from Malaysia and ERT produced by Globe). In such a case, if the products are substitutable, demand would have shifted away from subject imports and towards the relatively less-expensive products.

At fairly traded prices, a substantial portion of the demand supplied by subject imports from Indonesia likely would have shifted away from this source. It is likely that most of this shift in demand away from subject imports would have been captured by both the domestic industry and nonsubject imports from Malaysia because they are all fairly good substitutes for each other. However, it is likely that very little of the shift in demand away from subject imports would have been captured by Globe, because ERT from this source is a poor substitute for subject Indonesian ERT.³⁸ Thus it is likely that demand for both the domestic product and nonsubject imports would have increased.

³⁵ Table IV-1a.

³⁶ Table C-2a.

³⁷ Petition at 17. No specific subsidy margins were alleged or calculated by Commerce.

³⁸ As discussed previously, Globe can and does manufacture a standard talcless product that is comparable to the subject imports from Indonesia. Thus, some of the shift in demand away from the subject imports could shift to Globe's ERT, particularly since the purchasers are longstanding customers. However, Globe currently produces only very small quantities of this comparable product, and the unit value for this product is ***. Table C-3. Consequently, it is unlikely that Globe would have increased its production of standard talcless ERT, absent an increase in the price that it could obtain for this product.

Since subject imports from Indonesia held a market share of *** percent by quantity in 1997,³⁹ the shift in demand away from the subject imports likely would have been fairly large. By quantity nonsubject imports from Malaysia accounted for *** percent of the market in 1997,⁴⁰ and thus represent significant competition for the domestic industry, which accounted for only *** percent of the market in 1997. Therefore, more of the demand for subject imports likely would have shifted to nonsubject imports than to the domestic product. Nonetheless, since subject imports from Indonesia and domestic ERT are fairly good substitutes for each other, a significant portion of the demand for subject imports likely would have shifted to the domestic product.

The elasticity of demand indicates the domestic supplier should have been able to increase prices in response to this shift in demand. However, any attempt by the domestic industry to increase its prices in response to the shift in demand would have been unsuccessful. There is significant competition from nonsubject imports, possible competition from Globe, and the domestic industry has substantial unused production capacity available, as well as some inventories, with which it would have competed for sales, had demand shifted away from the subject imports. This competition would have enforced price discipline in the market. In these circumstances, any effort by the domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of these subject imports. Consequently, I find that the subject imports from Indonesia are not having significant effects on prices for domestic ERT.

D. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.⁴¹ These factors together either encompass or reflect the volume and price effects of the allegedly subsidized and dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic industry would not have been able to increase its prices significantly if the subject imports from Indonesia had been sold at fairly traded prices. Therefore, any impact of the allegedly dumped and subsidized imports on the domestic industry would have been on the domestic industry's output and sales.

As I have discussed above, competition from nonsubject imports is significant, and thus, had the subject imports not been unfairly traded, only some of the demand satisfied by the subject imports would have shifted to the domestic product. The increase in demand for the domestic product likely would have been significant, and the domestic producer could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for subject imports from Indonesia that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped and subsidized. Consequently, the domestic industry likely would have been materially better off if the subject imports from Indonesia had been fairly

³⁹ Table C-2a.

⁴⁰ Table C-2a.

⁴¹ 19 U.S.C. § 1677(7)(C)(iii).

traded.

E. Conclusion

On the basis of the foregoing analysis, I determine that there is a reasonable indication that the domestic industry producing ERT other than food-grade ERT is materially injured by reason of the allegedly dumped and subsidized imports from Indonesia.

V. NO REASONABLE INDICATION OF MATERIAL INJURY OR THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS OF FOOD-GRADE EXTRUDED RUBBER THREAD FROM INDONESIA

As discussed above, only one domestic firm reported producing any food-grade ERT during the period of investigation. However, this firm has not obtained the required FDA approval, and therefore cannot legally sell its product commercially. In addition, petitioner has testified that it will be able to manufacture food-grade ERT, but not until the FDA issues its final regulations governing food-grade ERT. Nonetheless, at the current time neither domestic firm is legally able to sell food-grade ERT in the U.S. market.

Had subject imports of food-grade ERT been priced fairly, there would have been no shift in demand to domestic food-grade ERT, because none of the domestic production of this product can be sold legally in the U.S. market. In addition, there would have been no shift in demand to other domestic ERT products because those products cannot be sold in food-grade applications. Therefore, there would have been no increase in demand for domestic ERT. Absent an increase in demand for domestic ERT, the domestic industry would not have been able to increase its prices, output, sales or revenues had the subject imports of food-grade ERT not been dumped and subsidized. Therefore, the domestic industry would not have been materially better off if the subject imports had not been subsidized and dumped. Consequently, there is no reasonable indication that a domestic industry is materially injured by reason of allegedly subsidized and dumped imports of food-grade ERT from Indonesia.

Regardless of the volumes and prices of subject imports of food-grade ERT that may be imported in the U.S. market in the immediate future, the fact that no domestic firm is legally able to sell food-grade ERT means that none of the sales in the immediate future can be captured by the domestic industry. Thus, imposing duties on these subject imports will not have any effect, much less a material effect, on the domestic industry. Therefore, there is no basis to conclude that material injury would occur unless an order is issued.⁴² Consequently, there is no reasonable indication that a domestic industry is threatened with material injury by reason of allegedly subsidized and dumped imports of food-grade ERT from Indonesia.

⁴² 19 U.S.C. § 1677(7)(F)(ii).