

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 753-TA-34

EXTRUDED RUBBER THREAD FROM MALAYSIA

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 753(a) of the Tariff Act of 1930 (19 U.S.C. § 1675b(a)) (the Act), that an industry in the United States is not likely to be materially injured by reason of imports of extruded rubber thread from Malaysia, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States, if the countervailing duty order concerning such extruded rubber thread is revoked.

BACKGROUND

The Commission initiated this investigation effective December 15, 1997, following receipt of a request filed with the Commission by North American, Fall River, MA, on June 30, 1995, requesting the continuation of the existing countervailing duty order, issued August 25, 1992, concerning extruded rubber thread from Malaysia. 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 December 24, 1997 (62 FR 67406). The hearing was held in Washington, DC, on May 5, 1998, 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 investigation, we determine under section 753 of the Tariff Act of 1930, as amended (“the Act”), that an industry in the United States is not likely to be materially injured by reason of imports of the subject merchandise if the countervailing duty order concerning extruded rubber thread (ERT) from Malaysia is revoked.¹

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In making its determination under section 753, the Commission first defines the “domestic like product” and the “industry.”² Section 771(4)(A) 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 the domestic like product constitutes a major proportion of the total domestic production of that 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

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.⁵ No single factor is dispositive, and the Commission may

¹ Section 753 concerns countervailing duty orders having two characteristics. First, the order must have been issued under section 303 or 701(c) of the Act without a determination of material injury by reason of subject imports. Second, the order must apply to merchandise from a country that entered the WTO Agreement on Subsidies and Countervailing Measures after the order was issued. *See* 19 U.S.C. § 1675b(a)(1), (2). The countervailing duty order on ERT from Malaysia was issued without any final Commission determination of material injury by reason of subsidized imports.

² 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including section 753. *See* 19 U.S.C. § 1677.

³ *Id.*

⁴ 19 U.S.C. § 1677(10).

⁵ *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*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

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

B. Product Description and Domestic Like Product

The imported product covered under the existing countervailing duty order consists of vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex, of any cross-sectional shape, measuring 0.18 mm (0.007 inches), or 140 gauge, to 1.42 mm (0.056 inches), or 18 gauge in diameter.⁸ ERT is produced in a variety of forms. ERT may be lubricated with talcum powder (“talced”) or with a silicon-based lubricant (“talless”). There are several specialty ERT products. These include fine-gauge ERT, which is constructed with a gauge greater than 75 and usually is used for hosiery; heat-resistant ERT, which is produced using antioxidants and vulcanizing agents to provide better protection against heat degradation; and food-grade ERT, which is manufactured into an elastic netting used to package boneless meats.⁹

The only domestic like product issue raised by the parties to this investigation concerns whether food-grade ERT should be treated as a separate product from other ERT. North American Rubber Thread Co. (“North American”), a U.S. producer of ERT that supports continuation of the countervailing duty order on ERT from Malaysia, argues that there should be a single domestic like product encompassing all ERT.¹⁰ Malaysian respondents argue that there should be two distinct domestic like products: (1) food-grade ERT and (2) all other ERT.¹¹

Malaysian respondents acknowledge that “there appears to be no current domestic production of food-grade ERT.”¹² In fact, there has been no domestic production of food-grade ERT for commercial purposes in recent years. Extremely small quantities of food-grade ERT have been produced domestically for

⁶ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁷ 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).

⁸ Countervailing Duty Order, 57 Fed. Reg. 38472 (Aug. 25, 1992). The order has not subsequently been modified.

⁹ Confidential Report (CR) at I-11-12, Public Report (PR) at I-4.

¹⁰ “All ERT” is a somewhat broader product than that encompassed by the scope of the countervailing duty order, which does not include certain very heavy gauge ERT that is manufactured domestically. The inclusion of such very heavy gauge ERT in the domestic like product, which is not contested here, is consistent with prior Commission investigations of ERT. See Extruded Rubber Thread from Malaysia, Inv. No. 731-TA-527 (Final), USITC Pub. 2559 at 9, 31 (Sept. 1992).

¹¹ Commissioner Crawford has determined that there are two domestic like products, consisting of food-grade ERT and ERT other than food-grade ERT, and does not join the following paragraph. See Views of Commissioner Carol T. Crawford, *infra*.

¹² Malaysian Respondents’ Posthearing Brief, ex. 1 at 11.

purposes of research and development ***.¹³ Because there has been no production of food-grade ERT for commercial sale, and the production for research and development purposes has been extremely small, both in absolute terms and relative to apparent U.S. consumption, we find that domestic production of a food-grade ERT product does not exist in any practical sense. Accordingly, we conclude that food-grade ERT cannot be considered a “domestic like product.”¹⁴ We therefore define the domestic like product as all ERT.

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.”¹⁵ 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 United States.¹⁶ Based on our domestic like product determination, we find that the domestic industry consists of the

¹³ CR at I-19 & n.55; PR at I-14 & n.55. Domestic food-grade ERT production amounted to *** pounds in 1995, *** pounds in 1996, and *** pounds in 1997. These production quantities amounted to *** percent, *** percent, and *** percent of apparent U.S. consumption of food-grade ERT in 1995, 1996, and 1997, respectively. See CR at I-19, PR at I-14; Table C-3, CR at C-5, PR at C-3. Additionally, ***, CR at I-17-19, PR at I-12-13, as no domestic producer has established food-grade ERT production facilities or lines.

¹⁴ 19 U.S.C. 1677(10); see Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA-571 (Preliminary), USITC Pub. 2536 at 17 (July 1992) (“A product not produced in the United States is not an appropriate candidate for a separate like product determination, unless material retardation . . . is a genuine issue.”); Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final), USITC Pub. 2502 at 7 & n.9 (Apr. 1992) (Commission cannot find that there is no domestic like product).

Malaysian respondents are not aided by their contention that a product not currently produced in the United States can still be deemed a domestic like product for purposes of a material retardation analysis in an original antidumping or countervailing duty investigation. As Malaysian respondents acknowledge, section 753 does not provide for a material retardation analysis. See Malaysian Respondents’ Posthearing Brief, ex. 1 at 13. The legislative history of the Act indicates that when material retardation is not an issue before the Commission and a domestic industry does not exist, the Commission should examine the industry producing the product most similar in characteristics and uses to the imported article. See S. Rep. No. 249, 96th Cong., 1st Sess. 90 (1979). Here the domestically-produced product most similar in characteristics and uses to food-grade ERT is all ERT.

¹⁵ 19 U.S.C. § 1677(4)(A).

¹⁶ See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

producers of all ERT.¹⁷ There are two such producers: North American and Globe Manufacturing Co. (“Globe”).¹⁸

II. NO LIKELIHOOD OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 753 of the Act directs the Commission to “determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the [countervailing duty] order is revoked.”¹⁹ The Act defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²⁰

Section 753 indicates that the Commission shall consider the nature of the countervailable subsidy identified by Commerce²¹ and states that if the Commission considers the magnitude of the net countervailable subsidy in making its determination, it shall use the net countervailable subsidy that Commerce provides.²² Section 753 does not itself otherwise specify the factors that the Commission is to examine in determining likelihood of material injury. However, the Statement of Administrative Action

¹⁷ Commissioner Crawford finds two domestic industries: one producing food-grade ERT, and the second producing ERT other than food-grade ERT.

¹⁸ CR at III-1, PR at III-1. Because neither company has imported ERT from Malaysia during the period examined, *see* CR at III-3, PR at III-2, or is otherwise related within the meaning of section 771(4)(B) of the Act, there are no related party issues in this investigation. This fact distinguishes the instant investigation from our recent preliminary determination in Extruded Rubber Thread from Indonesia, Inv. Nos. 701-TA-375, 731-TA-787 (Preliminary), USITC Pub. 3106 (June 1998), where we found that appropriate circumstances existed to exclude Globe, a substantial importer of ERT from Indonesia, from the domestic industry for purposes of the analysis in those investigations.

¹⁹ 19 U.S.C. § 1675b(a)(1).

²⁰ 19 U.S.C. § 1677(7)(A).

²¹ We have considered the fact that the subsidies in question are export subsidies. We note that, in general, export subsidies suggest a greater likelihood of increased volumes and/or lower prices of subject imports than other types of subsidies such as domestic production subsidies. For the reasons discussed below, however, we conclude that the volume and prices of subject imports are not likely to change significantly if the countervailing duty order is revoked. The nature of the subsidies in this case does not affect our determination.

²² 19 U.S.C. § 1675b(b)(2).

(SAA) of the Uruguay Round Agreements Act (URAA) provides guidance on this matter.^{23 24} It states that in making a determination under section 753 of likelihood of material injury by reason of subject imports:

the Commission will perform a prospective analysis similar to that required in sunset injury reviews under section 751(c). To the extent relevant, the Commission will generally consider the factors set forth in section 751(c) regarding the likelihood of injury.²⁵

Section 751(c) of the Act, in turn, provides that the factors that the Commission is to consider in conducting a five-year “sunset” review are those set forth in section 752 of the Act.²⁶ Section 752(a) of the Act provides that the Commission is to consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked, taking into account its prior injury determinations, whether any improvement in the state of the industry is related to the order, and whether the industry is vulnerable to material injury if the order is revoked. The Commission is to evaluate all relevant economic factors within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.²⁷ Although we do not consider all of the criteria in section 752 to be relevant in this investigation, we conclude that section 752 provides a framework for analyzing whether the domestic industry is likely to be materially injured by reason of the subject imports if the countervailing duty order is revoked.²⁸

²³ Section 102(d) of the URAA provides that the SAA “shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the [URAA] in any judicial proceeding in which a question arises concerning such interpretation or application.” 19 U.S.C. § 3512(d).

²⁴ In Commissioner Crawford’s view, the statute is clear on its face that the statute requires the analysis employed in original countervailing duty investigations, and thus it is neither necessary nor appropriate to rely on the SAA for guidance. For her legal analysis of this issue, *see* Views of Commissioner Carol T. Crawford, *infra*.

²⁵ SAA, H.R. Rep. No. 316, 103d Cong., 2d Sess., vol. I at 943 (1994).

²⁶ 19 U.S.C. § 1675(c)(1).

²⁷ *See* 19 U.S.C. § 1675a(a).

²⁸ The consideration stated in 19 U.S.C. § 1675a(a)(1)(A) concerning consideration of prior injury determinations is not technically applicable in this investigation because the countervailing duty order at issue was not based on a final Commission determination of material injury by reason of subsidized imports. In response to North American’s arguments, however, we have considered data pertaining to the industry’s condition prior to imposition of the countervailing duty order. The consideration stated in 19 U.S.C. § 1675a(a)(1)(D) concerning duty absorption findings by Commerce applies only to antidumping proceedings and hence is inapplicable here.

For the reasons stated below, we determine that the domestic ERT industry is not likely to be materially injured by reason of imports of the subject merchandise if the countervailing duty order on ERT from Malaysia is revoked.²⁹

A. Conditions of Competition

Several conditions of competition are pertinent to this investigation. First, ERT imports from Malaysia are subject to an antidumping duty order. This antidumping duty order was issued in October 1992, less than two months after imposition of the countervailing duty order that is the subject of this investigation.³⁰ As instructed by section 753, we consider the effects of revocation of the countervailing duty order only.³¹

Second, while Malaysia was once the predominant source of imported ERT in the U.S. market, there are now substantial volumes of ERT imports from countries other than Malaysia. In recent years, these imports have originated predominantly from Indonesia.³² The principal U.S. importer of ERT from Indonesia is Globe, a domestic producer of ERT that has ***.³³ ERT from Indonesia is currently the subject of antidumping and countervailing duty investigations in which the Commission has issued affirmative preliminary determinations.³⁴

²⁹ Commissioner Crawford determines that the domestic industry producing ERT other than food-grade ERT is not likely to be materially injured if the countervailing duty order on ERT from Malaysia is revoked. She observes that the data presented below concerning all ERT are identical in most respects to the data pertaining to her domestic like product consisting of ERT other than food-grade ERT. When differences did exist, she examined the data pertaining to the domestic like product comprised of ERT other than food-grade ERT. *See* Table C-2, CR at C-4, PR at C-3. The differences that exist between the data pertaining to this domestic like product and the data pertaining to the domestic like product defined by her colleagues are very minor.

For her negative determination concerning food-grade ERT, *see* Views of Commissioner Carol T. Crawford, *infra*.

³⁰ *See* CR at I-1, I-6, PR at I-1, I-5. The initial dumping margins ranged from 10.68 percent to 20.38 percent. Initial countervailing duty rates ranged from 4.21 percent to 9.63 percent. Tables I-1-2, CR at I-4, I-6, PR at I-4-5.

³¹ At the time it requested the Commission conduct the instant investigation, North American could also have requested a simultaneous accelerated section 751(c) five-year review of the antidumping duty order on ERT from Malaysia. *See* 19 U.S.C. § 1675b(e). It did not do so. Section 753 directs the Commission to cumulate imports that are the subject of a section 753 investigation with other unfairly traded imports only when there is a simultaneous accelerated section 751(c) five-year review. *See* 19 U.S.C. § 1675b(e)(2).

³² *See* Table IV-1, CR at IV-4, PR at IV-2.

³³ *See* CR at III-2-4, PR at III-2; Table IV-1, CR at IV-4, PR at IV-2.

³⁴ Extruded Rubber Thread from Indonesia, Inv. Nos. 701-TA-375, 731-TA-787 (Preliminary), USITC Pub. 3106 (June 1998). The findings the Commission made in the Indonesia investigations are of

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Third, 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. In recent years there have been substantial proportions of domestic production of the standard talcless, fine-gauge, and heat-resistant products, a much smaller proportion of standard talced product, and no commercial production of food-grade ERT. By contrast, in recent years imports from Malaysia have been predominantly standard talced and talcless products, as well as smaller volumes of fine-gauge, food-grade, and heat-resistant ERT.³⁵

Fourth, raw material costs constitute a substantial proportion of total production costs of ERT. In particular, rubber latex generally accounts for *** percent of the cost of producing ERT, although the exact range varies pursuant to fluctuations in the cost of latex. Rubber latex costs for domestic producers were relatively stable (despite some company-specific quarterly fluctuations) between the first quarter of 1992 and the third quarter of 1994, increased significantly during the first half of 1995, and gradually declined thereafter.³⁶

Fifth, the level of demand for ERT in the U.S. market is prone to noticeable annual fluctuations. Apparent consumption of ERT increased from 1991 to 1994, declined significantly from 1994 to 1996, and then increased sharply from 1996 to 1997.³⁷

B. Likely Volumes of Subject Imports

Imports of ERT from Malaysia have had a relatively stable presence in the U.S. market in recent years. U.S. shipments of subject imports were sharply lower in 1993, the first full year after the countervailing duty order came into effect, than in either 1991 or 1992.³⁸ Since 1994, U.S. shipments of

³⁴(...continued)

limited applicability in the instant investigation. As explained above, the domestic industry the Commission examined for purposes of its determination of reasonable indication of material injury by reason of subject imports in the Indonesia determination is significantly different from the domestic industry that the Commission is examining here. Moreover, the legal standard applicable in a preliminary antidumping and countervailing duty determination, which concerns whether there is a reasonable indication of material injury by reason of subject imports, is different from the one applicable in the instant section 753 investigation, which focuses on the likelihood of material injury by reason of subject imports if a countervailing duty order is revoked. *Compare* 19 U.S.C. § 1671b(a)(1) *and* 19 U.S.C. § 1673b(a)(1) *with* 19 U.S.C. § 1675b(a)(1).

³⁵ Table C-6, CR at C-9-12, PR at C-3.

³⁶ CR at V-1-2 & n.1, PR at V-1.

³⁷ Measured by quantity, apparent consumption was 31.4 million pounds in 1991, 34.2 million pounds in 1992, 35.5 million pounds in 1993, 39.4 million pounds in 1994, 33.5 million pounds in 1995, 28.1 million pounds in 1996, and 34.4 million pounds in 1997. Table I-6, CR at I-25, PR at I-16; Table C-4, CR at C-6, PR at C-3.

³⁸ Nearly all empirical data pertaining to both the domestic industry and the subject imports in this investigation are confidential. The quantity of U.S. shipments of subject imports declined from *** in 1991 to *** in 1992 and to *** pounds in 1993. The value of these shipments increased from *** in 1991 to ***

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subject imports have fluctuated on an annual basis. To an appreciable degree, these fluctuations correspond to changes in apparent U.S. consumption of ERT.³⁹ Consequently, U.S. market penetration of ERT from Malaysia has fluctuated within a relatively narrow range since 1994.^{40 41}

We consider the current volume of imports of subject merchandise from Malaysia to be significant. For the reasons discussed below, we anticipate that although the volume of imports from Malaysia will continue to be significant, it is unlikely to increase substantially from present levels if the order is revoked. First, the antidumping duty order will remain in place. The continued existence of the antidumping duty order on ERT from Malaysia is likely to constrain any increase in subject import volumes.⁴² Additionally, the

³⁸(...continued)

in 1992 and then declined to *** in 1993. Table C-4, CR at C-6, PR at C-3.

³⁹ Subject import shipments were *** pounds in 1994, *** pounds in 1995, *** pounds in 1996, and *** pounds in 1997. The value of these shipments was *** in 1994, *** in 1995, *** in 1996, and *** in 1997. Table C-1, CR at C-3, PR at C-3.

⁴⁰ Measured by quantity, subject import market penetration was *** in 1994, *** in 1995, *** in 1996, and *** in 1997. Table IV-2, PR at IV-6, CR at IV-3.

⁴¹ Commissioner Crawford concurs that the volume of the subject imports is not likely to change significantly if the countervailing duty order is revoked. However, she does not rely on any analysis of trends in the volume of the subject imports or a sunset review analysis in her determination that an industry is not likely to be materially injured if the countervailing duty order is revoked. Thus, she does not join the remainder of this discussion of the volume of the subject imports. Rather, her determination is based on the following analysis. The net countervailable subsidy (NCS), *i.e.*, the margin likely to prevail if the order is revoked, is 6.76 percent *ad valorem* for all producers except Rubfil and 1.06 percent *ad valorem* for Rubfil. Thus, Commerce has found that Malaysian ERT is likely to be subsidized by 6.76 percent (or 1.06 percent for Rubfil) if the order is revoked. This margin is too small to have a material effect on the domestic industry. North American acknowledges that demand for ERT is relatively unresponsive to changes in price. Therefore, it is unlikely that the Malaysian producers would reduce their prices by the amount of the NCS, because doing so likely would not increase demand for their product significantly. Rather, doing so likely would result in a decrease in their overall revenues, because they would likely sell about the same volume of ERT, but at lower prices. Even assuming that the Malaysian producers would reduce their prices by the entire NCS, any increase in demand for Malaysian ERT likely would be small if the subject imports are subsidized by less than 7 percent. Consequently, Commissioner Crawford finds that the volume of the subject imports is not likely to increase significantly if the order is revoked.

⁴² Vice Chairman Miller has considered North American's arguments regarding the improvement in the state of the industry following imposition of the countervailing duty order in 1992. She does not find that a strong causal nexus exists between subject import volumes and the level of countervailing duties. Although subject import volumes did decline appreciably between 1992 and 1993, this decline coincided with the imposition of the antidumping duty order as well as the countervailing duty order. While antidumping duty margins have generally fluctuated upward, countervailing duty rates have declined since the original order as a result of Commerce's administrative reviews. *Compare* Table I-2, CR at I-6, PR at I-5, *with* Table I-1, CR at I-4, PR at I-4. The administrative review for 1994 resulted in countervailing duty rates that were *de*

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presence of significant volumes of ERT from Indonesia is likely to restrain any increase of imports of ERT from Malaysia. We note in this regard that domestic ERT producer Globe *** and has restructured its U.S. production operations so that it has substantially reduced domestic production of the standard talcless product that it imports from Indonesia.⁴³

Moreover, our examination of the factors specified in section 752(a)(2) of the Act indicates that, even if Malaysian producers were motivated to increase their exports to the United States, they would have limited ability to do so. ERT production capacity in Malaysia has increased modestly during the period examined. Between 1995 and 1997, the increase in capacity was only *** percent.⁴⁴ Capacity utilization was very high towards the latter portion of the period examined, reaching *** percent in 1995, *** percent in 1996, and *** percent in 1997.⁴⁵ These figures indicate that important constraints exist on the ability of Malaysian producers to increase exports to the United States by increasing production.⁴⁶ Additionally, there is no indication of any recent buildup in inventory levels of subject imports which would indicate a likelihood of significantly increased imports. Since 1995, relative levels of inventories of ERT in Malaysia have remained generally stable, and inventory levels of the subject merchandise in the United States have declined on both an absolute and a relative basis.⁴⁷

⁴²(...continued)

de minimis for all but one of the five Malaysian producers. The administrative review for 1995 resulted in *de minimis* rates for three of the Malaysian producers and rates below one per cent for the remaining two. No party requested an administrative review in 1996. CR at I-4-5, PR at I-4. Nevertheless, despite the very low to *de minimis* subsidy rates prevailing during the latter portion of the investigation, subject import volume levels during that period remained well below those for 1991 and 1992.

⁴³ CR at III-4, PR at III-2; Table III-2, CR at III-3, PR at III-2.

⁴⁴ Table VII-2, CR at VII-4, PR at VII-2.

⁴⁵ Table VII-2, CR at VII-4, PR at VII-2.

⁴⁶ We recognize that one Malaysian producer, ***, projected that its ERT exports to the United States would increase ***. However, this producer's ERT exports to the United States predominantly have been of ***. CR at VII-5, PR at VII-2. As previously stated, *** ERT constitutes a relatively small share of domestic ERT production and there is ***. Consequently, we do not conclude that *** projected increase in exports, in and of itself, is significant.

⁴⁷ The ratio of inventories of ERT in Malaysia to shipments by Malaysian producers increased from *** percent in 1995 to *** percent in 1996, and then declined back to *** percent in 1997. Table VII-2, CR at VII-4, PR at VII-2. Inventories of subject merchandise in the United States declined from *** pounds in 1995 to *** pounds in 1996 and then increased to *** pounds in 1997. The ratio of inventories to subject imports declined from *** percent in 1995 to *** percent in 1996 and then to *** percent in 1997. Table VII-4, CR at VII-7, PR at VII-2.

The record also indicates that in recent years, Malaysian producers' exports to the United States have been a small percentage of their total global exports.⁴⁸ The existence of such significant third-country export markets indicates that there are few practical barriers to the importation of ERT from Malaysia into countries other than the United States.⁴⁹ It also indicates no disproportionate reliance on exports to the United States market.

Finally, the record does not support a conclusion that revocation of the countervailing duty order would lead Malaysian ERT producers to shift production equipment used for other products to production of ERT. The record indicates that the ability to shift production equipment between ERT and other products is limited.⁵⁰

In sum, the factors in the U.S. market that serve to constrain any increase in subject imports, as well as the available information concerning the capacity, capacity utilization, and export patterns of Malaysian ERT producers, indicate that subject import volumes are unlikely to change significantly from present levels if the countervailing duty order on ERT from Malaysia is revoked.

C. Likely Price Effects

The record in this investigation indicates that both price and quality are important factors in purchasing decisions in the market for ERT.⁵¹ The record also demonstrates that, for ERT of the same type, the subject imports and the domestic like product are reasonably good substitutes for each other.⁵²

The record indicates that aggregate U.S. demand for ERT is relatively inelastic.⁵³ That is, modest reductions in the price of ERT would be unlikely to stimulate meaningful additional demand for the product. North American itself acknowledges that aggregate demand for ERT is relatively unresponsive to changes in price.⁵⁴ Indeed, the record indicates that, for both ERT products for which the Commission collected pricing

⁴⁸ Table VII-2, CR at VII-4, PR at VII-2.

⁴⁹ North American's contention that ERT from Malaysia was subject to high duties in other Asian countries, *see* Tr. at 24 (Friar), was not corroborated. The ASEAN customs rates for imports from Malaysia is 10 percent. CR at VII-7, PR at VII-2.

⁵⁰ *See* CR at I-16, II-4-5, PR at I-11, II-2-3; Malaysian Foreign Producer Questionnaires.

⁵¹ Table II-2, CR at II-12, PR at II-5.

⁵² *See* CR at II-12-13, PR at II-8 (90 percent of purchasers indicate Malaysian and U.S.-produced ERT can be used interchangeably); Table II-5, CR at II-15, PR at II-10 (pluralities or majorities of purchasers perceive Malaysian and U.S.-produced ERT to be comparable with respect to 10 of 14 product factors).

⁵³ *See* CR at II-7-8, PR at II-4 (substitutability between ERT and other products is generally limited).

⁵⁴ Tr. at 26 (Friar).

data, quantities sold of either the domestic like product or the subject imports did not respond consistently to absolute or relative changes in prices.^{55 56}

Price differences existed between the subject imports and the domestic like product throughout the period examined. Pricing comparisons between the domestically-produced ERT and importers' sales of ERT from Malaysia were possible in 48 instances ***. ***.⁵⁷ Sixteen of 23 purchasers indicated that the Malaysian product offered superior pricing compared to U.S.-produced ERT.⁵⁸

For several reasons, we think it is unlikely that import pricing behavior would change if the order is revoked. First, the existing antidumping duty order on ERT from Malaysia is likely to constrain price declines.^{59 60} The constraints on increasing import volumes discussed above would also militate against price declines for the subject imports; if the volume of subject imports cannot increase significantly because of

⁵⁵ See Tables V-1-2, CR at V-8-9, PR at V-4.

⁵⁶ Commissioner Crawford concurs that the subject imports likely will have no significant effects on domestic prices if the order is revoked. As noted previously, Commissioner Crawford finds that any increase in demand for the subject imports would be small if the order is revoked. Therefore, any shift in demand away from other sources of ERT, *e.g.*, domestic ERT and Indonesian ERT, would also be small. This small shift in demand would prevent significant price decreases for the domestic product. Nonsubject imports, particularly imports from Indonesia, are a significant factor in the U.S. market and compete directly with the subject imports from Malaysia. Thus it is likely that at least some of the increase in demand for the subject imports would come at the expense of nonsubject imports. Therefore, while any overall shift in demand away from both domestic ERT and nonsubject imports likely would be small, any shift in demand away from domestic ERT alone likely would be even smaller. Since there would be no significant shift in demand away from the domestic product, prices for domestic ERT would not decrease significantly. Consequently, revoking the countervailing duty order is not likely to have significant effects on prices for domestic ERT.

⁵⁷ CR at V-10, PR at V-4. Despite an initial contraction in the margin of underselling in late 1992 and 1993, underselling margins fluctuated over the period for which pricing data were collected. Table V-3, CR at V-11, PR at V-4.

⁵⁸ CR at V-10, PR at V-5. North American's own witness testified that at least some Malaysian producers "continue to sell in the United States market . . . at prices that are surprisingly low considering the level of tariffs that they must pay." Tr. at 33 (Friar).

⁵⁹ Chairman Bragg does not join this statement.

⁶⁰ Section 772(c)(1)(C) of the Act requires Commerce, when making price calculations for purposes of determining antidumping duties, to increase the export price by the amount of any countervailing duty imposed on the subject merchandise to offset an export subsidy. 19 U.S.C. § 1677a(c)(1)(C). Thus, in effect, the antidumping duty is reduced to reflect the countervailing duty. Commerce has informed the Commission that the countervailable subsidies that are likely to prevail if the countervailing duty order on ERT from Malaysia is revoked are export subsidies. See Letter from Robert S. LaRussa to Marcia E. Miller at 1 (Jan. 8, 1998). In its most recent administrative reviews, Commerce did offset the amount of antidumping duties for those Malaysian producers not subject to *de minimis* countervailing duties by the amount of countervailing duties. See CR at II-21, PR at II-14.

capacity constraints and export patterns in Malaysia, price decreases would simply serve to reduce the revenues that sellers of Malaysian ERT would receive. Furthermore, there has been no discernible correlation between U.S. prices for ERT from Malaysia and changes in countervailing duty rates as a result of administrative reviews.⁶¹ Instead, in the period since imposition of the antidumping and countervailing duty orders, the most significant change in prices for ERT from Malaysia occurred during 1995, when product prices increased.⁶² This was concurrent with an increase in the Malaysian ERT producers' raw material costs.⁶³ We thus conclude that U.S. prices for the subject imports are unlikely to be significantly different if the countervailing duty order were to remain in effect than if it were revoked.⁶⁴

D. Likely Impact of Subject Imports

In evaluating the likely impact of subject imports, we have considered the current state of the domestic ERT industry,⁶⁵ and whether the industry is vulnerable to material injury. We have also considered

⁶¹ Chairman Bragg concurs that there is no discernible correlation between U.S. prices for ERT from Malaysia and changes in the countervailing duty rate. The statute does not require, as it does with regard to antidumping reviews, *see* 19 U.S.C. § 1675a(a)(1)(D), that the Commission be advised of whether countervailing duties are absorbed. Consequently, the Commission does not have sufficient information to discern a price/duty rate correlation.

⁶² *See* Tables V-1-2, CR at V-8-9, PR at V-4. In light of both the empirical data and reported observations of the Malaysian product as being consistently lower priced than the domestic like product, as well as the purchaser pricing data, we perceive *** to be an anomaly. *See* Tables V-1, V-4, CR at V-8, V-13, PR at V-4-5.

⁶³ CR at V-1-2, PR at V-1. Domestic ERT producers' raw material costs and product prices also increased during 1995. CR at V-1, PR at V-1, Tables V-1-2, CR at V-8-9, PR at V-4.

⁶⁴ North American cites questionnaire responses by several purchasers that project price declines if the countervailing duty order is revoked. North American Final Comments at 2. However, several other purchasers projected that revocation of the countervailing duty order would not result in a decline in ERT prices. Additionally, substantial numbers of purchasers projected that there would be little or no change in their activities (either on a short-term or a long-term basis) as a result of revocation of the countervailing duty order. *See* CR at II-22-23, PR at II-15-16. In light of these responses and the considerations discussed above, we do not give probative value to the questionnaire responses cited by North American.

⁶⁵ Commissioner Crawford concurs that the subject imports likely will have no significant impact on the domestic industry if the order is revoked. However, she does not base her determination on the trends in the statutory impact factors or a sunset analysis, and thus does not join the remainder of this discussion. As noted above, Commissioner Crawford finds that there likely would be no significant effect on domestic prices if the order is revoked. Therefore, any impact on the domestic industry would be on its output and sales. If the order is revoked any shift in demand away from domestic ERT likely would not be significant, and thus the domestic industry's output and sales would not decrease significantly. Therefore, revoking the order is not likely to have a significant impact on the domestic industry. Overall, the domestic industry's prices, output, and sales, and thus its revenues, would not be likely to decrease significantly if the order is revoked. Consequently, Commissioner Crawford determines that the domestic industry is not likely to be materially

(continued...)

the extent to which any improvement in the state of the industry is related to the countervailing duty order at issue.

Virtually all domestic industry indicators increased from 1991, the year preceding issuance of the countervailing duty order, to 1993, the year following its issuance.⁶⁶ As previously stated, these improvements cannot be attributed solely to the issuance of the countervailing duty order, as the antidumping duty order on ERT from Malaysia was issued nearly contemporaneously.⁶⁷

In recent years, the domestic industry's performance has been mixed. Production declined from 1995 to 1996 and then increased by a lesser amount from 1996 to 1997.⁶⁸ Capacity utilization followed a similar pattern.⁶⁹ Domestic producers' market share has declined each year from 1995 to 1997.⁷⁰ Employment declined from 1995 to 1996, and increased by a lesser amount from 1996 to 1997.⁷¹ The industry ***.⁷² We observe that several of the conditions of competition have impacted the domestic ERT industry's performance in recent years. The *** financial results of 1995 and 1996 were coincident with a period where raw material costs rose sharply and producers' unit costs of goods sold increased.⁷³ Additionally, recent years have been characterized by increasing volumes of imports from countries other than Malaysia, as Globe

⁶⁵(...continued)

injured by reason of the subject imports if the order is revoked.

⁶⁶ These include production quantity, which increased from *** pounds in 1991 to *** pounds in 1993; capacity utilization, which increased from *** percent in 1991 to *** percent in 1993; market share, which, as measured by quantity, increased from *** percent in 1991 to *** percent in 1993; employment, which increased from *** workers in 1991 to *** workers in 1993; and operating income, which improved from a *** in 1991 to a *** in 1993. Table C-4, CR at C-6, PR at C-3.

⁶⁷ Chairman Bragg does not join this statement.

⁶⁸ Production declined from *** pounds in 1995 to *** pounds in 1996 and then increased to *** pounds in 1997. Table III-3, CR at III-7, PR at III-3.

⁶⁹ Capacity utilization declined from *** percent in 1995 to *** percent in 1996 and then increased to *** percent in 1997. Table III-3, CR at III-7, PR at III-3.

⁷⁰ Domestic producers' market share, measured by quantity, declined from *** percent in 1995 to *** percent in 1996, and then to *** percent in 1997. Table IV-2, CR at IV-6, PR at IV-3.

⁷¹ Employment of production workers declined from *** in 1995 to *** in 1996, and then increased to *** in 1997. Table III-6, CR at III-13, PR at III-5.

⁷² The industry *** in 1995 and *** in 1996. *** in 1997. ***. Table VI-1, CR at VI-2, PR at VI-1.

⁷³ See CR at V-1, PR at V-1; Table VI-1, CR at VI-2, PR at VI-1.

began to import increasing amounts of ERT from Indonesia and restructured its domestic ERT production operations to reflect its role as a significant importer.^{74 75}

Based on the record, we find that the domestic ERT industry is vulnerable to material injury. However, because we find that the volume and pricing of ERT from Malaysia is unlikely to be affected by revocation of the order, we conclude that the industry's condition will not "deteriorate further" if the countervailing duty order on ERT from Malaysia is revoked.⁷⁶ As previously discussed, the subject imports have had a fairly stable presence in the U.S. market in recent years which is unlikely to change if the countervailing duty order is revoked. We therefore conclude that the subject imports would likely have no significant impact on the domestic ERT industry if the countervailing duty order is revoked.

CONCLUSION

For the foregoing reasons, we conclude that the domestic ERT industry is not likely to be materially injured by reason of imports of subject merchandise if the countervailing duty order on ERT from Malaysia is revoked.

⁷⁴ See CR at III-2-4, PR at III-2; Table IV-1, CR at IV-4, PR at IV-2.

⁷⁵ Chairman Bragg notes that a North American witness testified that the countervailing duty order is not a factor in that firm's strategic planning. Tr. at 25 (Friar).

⁷⁶ See SAA at 885. Consequently, we find that revocation of the order will not cause likely declines in the factors specified in 19 U.S.C. § 1675a(a)(4)(A) and will not have likely negative effects on the factors specified in 19 U.S.C. § 1675a(a)(4)(B) and (C).

IEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this investigation, I concur in my colleagues' determination that an industry in the United States is not likely to be materially injured by reason of the subject imports if the countervailing duty order on imports of extruded rubber thread ("ERT") from Malaysia is revoked. However, I do not concur in their conclusion that the analysis required by the statute is the analysis to be performed in a so-called "sunset" review. Rather, the statute directs the Commission to undertake the analysis used in an original countervailing duty investigation. In addition, I find two like products, ERT other than food-grade ERT and food-grade ERT. I determine that neither of the domestic industries producing these like products is likely to be materially injured by reason of imports of ERT from Malaysia if the countervailing duty order on the subject imports is revoked.¹ Because my analysis under the statute and finding on like product differ from those 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 that there is not "production" of food-grade ERT and therefore that it cannot be considered a separate like product. Rather, I conclude that domestic production of food-grade ERT exists, and I find that food-grade ERT is a separate like product.

Only one firm, Globe, reported producing any food-grade ERT during the period of investigation. It produced small quantities of food-grade ERT in each of the three years 1995, 1996 and 1997.² Globe's food-grade production was limited to samples for research and development. None of the production has been sold commercially, because Globe's food-grade production has not been approved for sale by the Food and Drug Administration ("FDA").

The existence of domestic "production" of a product is a necessary element of the Commission's like product finding. Whether production has occurred is an empirically verifiable fact. If the production process results in even one unit, production has, in fact, occurred. A minuscule amount of production is still production, just as a large amount of production is production. The amount of production is the result of the act of producing, not part of the definition of the act.

No provision in the statute suggests that small amounts or specific types of production do not constitute domestic production. Furthermore, the Commission consistently defines production to include all domestic production, whether toll-produced, captively consumed, or sold in the merchant market.³ Captively consumed production and sample production are conceptually identical. Neither is considered "commercial" production

¹ The analysis for my determination with respect to ERT other than food-grade ERT is contained in the joint analysis with my colleagues. See Views of the Commission, *supra*.

² CR at I-19; PR at I-14. In addition, food-grade ERT was produced domestically during the period of investigation for the 1992 antidumping investigation concerning ERT from Malaysia. This information has been included in the record for this investigation.

³ See *e.g.*, Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Inv. Nos. 731-TA-753-756 (Final), USITC Pub. 3076 (December 1997).

because neither is sold commercially. Therefore, it is inconsistent and unjustifiable to include one type of production but not the other. Regardless of the amount or type of production, as a legal matter production is still production. Therefore, there is no basis to find that sample production of food-grade ERT does not constitute domestic production. Consequently, I find that Globe's production constitutes domestic production of food-grade ERT. I next evaluate whether there is a clear dividing line between food-grade ERT and other ERT.

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 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.⁴

The FDA requirements and lack of interchangeability 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. There is no evidence to suggest that any domestic producer is a related party or should be excluded from the domestic industry. Therefore, I find that the domestic industry producing ERT other than food-grade ERT consists of both domestic producers.⁵ Furthermore, I find that the domestic industry producing food-grade ERT consists of Globe, the only domestic producer that reported producing any food-grade ERT.

III. LEGAL STANDARD

An important legal issue raised in this investigation is what analysis the statute requires the Commission to employ in making its determination. To determine what analysis is required by the statute, I evaluate the relevant statutory provisions. Section 753 of the Tariff Act of 1930, as amended, ("the Act"), provides an injury investigation for imports subject to a countervailing duty order that was issued at a time when an injury test was not required by our international obligations. Providing an injury investigation in these circumstances is commonly referred to as a "black hole" investigation. A separate provision, Section 752 of the Act, governs reviews of outstanding antidumping and countervailing duty orders. Reviews under Section 752 are commonly referred to as "sunset" reviews.

⁴ CR at I-16 - I-22; PR at I-11 - I-15.

⁵ The Commission recently conducted preliminary antidumping and countervailing duty investigations concerning imports of ERT from Indonesia. In those investigations, one domestic producer, Globe, is a related party because it imports the subject imports from Indonesia, and I joined my colleagues in finding appropriate circumstances to exclude it from the domestic industry. See Extruded Rubber Thread from Indonesia, Inv. Nos. 701-TA-375 and 731-TA-787 (Preliminary), USITC Pub. 3106 (June 1998). In this investigation, imports from Indonesia are nonsubject imports. Therefore, Globe's imports of ERT from Indonesia do not make Globe a related party.

As noted, I do not concur in my colleagues' conclusion that a sunset review analysis is contemplated by the statute for this injury investigation. Rather, the statute is clear that the analysis used in an original countervailing duty investigation is appropriate here. This clarity is demonstrated by the different statutory standards for black hole investigations and sunset reviews, and the specific statutory provisions applicable to each.

The statutory standard in this, a black hole investigation, is whether an industry "is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked."⁶ By contrast, the legal standard in a sunset review is "whether revocation of an order, . . . would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."⁷ The two standards logically are different because they serve different purposes.

In a sunset review the Commission has made a specific determination of material injury by reason of the subject imports at some earlier time. The sunset proceeding thus is not an investigation, but rather consists of a *review* of an existing order that is based on the Commission's specific legal determination. Consequently, a standard relating to *continuation or recurrence* of material injury is supportable logically.

By contrast, the outstanding countervailing duty order in this proceeding was issued without the Commission first making a determination of material injury by reason of the subsidized imports. Therefore, as a legal matter there is no material injury to continue or recur. Our international obligations require a *de novo* injury determination for this order to remain in effect. To fulfill these obligations the statute provides an injury investigation for the subsidized imports, after the countervailing duty order was issued, to determine if material injury is likely to *occur* if the order is revoked. As such, a black hole proceeding is an *investigation*, not a review, of material injury by reason of the subject imports.

The statutory provisions reflect the different purposes of the two proceedings. The analysis to be employed by the Commission follows from the statute.

Section 753 governs black hole investigations, and Section 753(b)(1)(A) requires that:

"Except as otherwise provided in this section, the provisions of this title regarding evidence in and procedures for investigations conducted under subtitle A shall apply to investigations conducted by the Commission under this section."

Subtitle A consists of Sections 701 - 709 of the Act, which are the provisions that govern original countervailing duty investigations. Therefore, the statute is clear on its face that the analysis that "shall apply" is that of an original countervailing duty investigation.⁸

⁶ 19 U.S.C. § 1675b(a)(1).

⁷ 19 U.S.C. § 1675a(a)(1).

⁸ Section 753(b)(1)(A) requires the Commission to conduct an original countervailing duty investigation "Except as otherwise provided in this section". Only one subparagraph in Section 753 that refers to the sunset review provisions could possibly be construed as an exception. Section 753(b)(3)(A) provides that if the Commission's determination is affirmative, *i.e.*, that an industry is likely to be materially injured if the order is revoked, then the order

Similarly, it is clear that Section 752, which governs sunset reviews, is limited only to sunset reviews. The sunset provisions contain no reference or cross-reference to the black hole provisions. Therefore, the statute clearly contemplates separate analyses to implement the separate statutory provisions and purposes.

The statute is clear on its face, and thus it is neither necessary nor appropriate to resort to the legislative history.⁹ The statute requires the Commission to employ the analysis used in original countervailing duty investigations. Consequently, in accordance with the statute¹⁰ I evaluate the likely volume of the subject imports, the likely effect of the subject imports on domestic prices, and the likely impact of the subject imports on the domestic industry if the countervailing duty order is revoked.

IV. THE DOMESTIC INDUSTRY PRODUCING FOOD-GRADE EXTRUDED RUBBER THREAD IS NOT LIKELY TO BE MATERIALLY INJURED BY REASON OF THE SUBJECT IMPORTS IF THE COUNTERVAILING DUTY ORDER ON EXTRUDED RUBBER THREAD FROM MALAYSIA IS REVOKED

As discussed above, only one domestic firm, Globe, 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, North American 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.¹¹ Nonetheless, at the current time neither domestic firm is legally able to sell food-grade ERT in the U.S. market.

None of the domestic production of food-grade ERT can be sold legally in the United States, and thus domestic food-grade ERT is not satisfying any of the demand in the U.S. market for this product. Therefore, if the order is revoked, there would be no effect on the demand for domestic food-grade ERT, and thus there would be no shift in demand away from domestic food-grade ERT. Since there would be no decrease in demand for domestic food-grade ERT, there would be no decrease in the domestic industry's prices, output, sales or revenues if the order is revoked. Therefore, if the order is revoked the volume of the subject imports will not be significant,

remains in effect until revoked as a result of a sunset review. In other words, an affirmative determination converts a "black hole order" into a sunset order, and thus any subsequent proceeding would be a sunset review. Therefore, only in such a subsequent proceeding is a sunset analysis of any "black hole order" contemplated by the statute.

⁹ Proponents of employing a sunset analysis point to the Statement of Administrative Action (SAA) of the Uruguay Round Agreements Act as authority for the Commission to perform a "prospective analysis similar to" a sunset review, and "to the extent relevant" consider the factors set forth in the sunset review provisions. SAA, H.R. Rep. No. 316, 103d Cong., 2d Sess., vol. I at 943 (1994). Since the statute is clear on its face, the SAA should not be read to create a conflict where none exists. Rather, if considered at all, the SAA should be read in a context that is consistent with the statute. In this regard, the SAA states the obvious: a prospective analysis is appropriate because the statutory inquiry in a black hole investigation, *i.e.*, whether an industry is likely to be materially injured if the order is revoked, is a prospective inquiry. Furthermore, both the black hole provisions and the sunset review provisions require the Commission to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. As such, these requirements for sunset reviews are, arguably, "relevant" to black hole investigations. However, sunset review requirements that are not common to black hole investigation requirements are not relevant, given the different statutory provisions and purposes. Consequently, the SAA is not an appropriate basis on which to employ a sunset analysis in a black hole investigation.

¹⁰ 19 U.S.C. § 1677(7)(B).

¹¹ Tr. at 17-18.

there will be no effect on domestic prices, and there will be no impact on the domestic industry. Consequently, the domestic industry producing food-grade ERT is not likely to be materially injured by reason of the subject imports from Malaysia if the countervailing duty order is revoked.