# UNITED STATES INTERNATIONAL TRADE COMMISSION

EXTRUDED RUBBER THREAD FROM INDONESIA
Investigation No. 731-TA-787 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3191, May 1999)

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Investigation No. 731-TA-787 (Final)**

**EXTRUDED RUBBER THREAD FROM INDONESIA**

## DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury[3] by reason of imports from Indonesia of extruded rubber thread,[4] provided for in heading 4007.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5]

## BACKGROUND

The Commission instituted this investigation effective March 31, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by North American Rubber Thread Co., Ltd., Fall River, MA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of extruded rubber thread from Indonesia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 19, 1998 (63 FR 64276). The hearing was held in Washington, DC, on March 25, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[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 Askey dissenting.

[3] Commissioner Crawford finds two like products corresponding to the scope of this investigation as defined by Commerce. She finds (1) that the industry in the United States producing food-grade extruded rubber thread is not materially injured, or threatened with material injury, by reason of LTFV imports from Indonesia, and (2) that the industry in the United States producing all other extruded rubber thread is materially injured by reason of such imports.

[4] For purposes of this investigation, Commerce has defined "extruded rubber thread" 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 inches or 18 gauge, in diameter.

[5] The Commission did not determine that it would have found material injury but for the suspension of liquidation of entries of the merchandise under investigation, pursuant to 19 U.S.C. §1673d(b)(4)(B).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 7, 1999. The views of the Commission are contained in USITC Publication 3191 (May 1999), entitled *Extruded Rubber Thread from Indonesia: Investigation No. 731-TA-787 (Final).*

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is threatened with material injury by reason of imports of extruded rubber thread from Indonesia that have been found by the Department of Commerce ("Commerce") to be sold at less than fair value ("LTFV").[6] [7]

## I. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

To determine whether 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." Section 771(4)(A) of the Tariff Act of 1930 ("the Act") defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[8] 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."[9]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[10] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[11] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[12] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise being sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[13]

Commerce has defined the imported article within the scope of these investigations as:

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[6] Commissioner Crawford finds two like products: food-grade extruded rubber thread and all other extruded rubber thread. With respect to food-grade extruded rubber thread, she determines that an industry in the United States is neither materially injured nor threatened with material injury by reason of the subject imports. With respect to all other extruded rubber thread, she determines than an industry in the United States is materially injured by reason of the subject imports. *See* Additional and Dissenting Views of Commissioner Carol T. Crawford.

[7] Commissioner Askey determines that an industry in the United States is neither materially injured nor threatened with material injury by reason of the subject imports from Indonesia. *See* Dissenting Views of Commissioner Thelma J. Askey.

[8] 19 U.S.C. § 1677(4)(A).

[9] 19 U.S.C. § 1677(10).

[10] *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 and producer perceptions; and, where appropriate, (6) price. *See id.* at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[11] *See, e.g.*, Nippon Steel, 19 CIT at 454-55.

[12] 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).

[13] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

> 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[es] or 18 gauge, in diameter.[14]

In the preliminary phase of this investigation the Commission determined that there is one like product.[15] We have been presented with no new arguments or new evidence to change that finding in this final phase of the investigation. Accordingly, for the same reasons articulated in the preliminary phase determination, *i.e.*, the common manufacturing facilities and production employees, channels of distribution and technical interchangeability of all extruded rubber thread, albeit with some limitations, and comparable prices, we determine that there is one like product, consisting of all extruded rubber thread, including food-grade.[16] [17]

### B. Domestic Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product."[18] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.[19] Based on our domestic like product determination, we find that the domestic industry consists of the producers of all extruded rubber thread, as the Commission found in the preliminary investigation.[20]

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act.[21] That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[22]

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[14] 64 Fed. Reg. 14690, 14691 (Mar. 26, 1999).

[15] Extruded Rubber Thread from Indonesia, Inv. No. 701-TA-375 & 731-TA-787 (Preliminary), USITC Pub. 3106, at 6 (May 1998) ("Preliminary Determination"). Commissioner Crawford determined that there were two like products: food-grade extruded rubber thread and extruded rubber thread other than food-grade. *Id*. at 17.

[16] As indicated above, Commissioner Crawford finds two domestic like products: food-grade and all other extruded rubber thread. As she did in the preliminary phase of the investigation, she bases her findings on the different uses and the lack of interchangeability. *See* Additional and Dissenting Views of Commissioner Carol T. Crawford.

[17] Commissioner Askey does not join the remainder of these views. *See* Dissenting Views of Commissioner Thelma J. Askey.

[18] 19 U.S.C. § 1677(4)(A).

[19] *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).

[20] Preliminary Determination at 7.

[21] 19 U.S.C. § 1677(4)(B).

[22] *See* Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

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

(continued...)

In this investigation, Globe Manufacturing Company ("Globe"), ***,[23] imported substantial amounts of extruded rubber thread from Indonesia during the period of investigation.[24] Accordingly, Globe is an importer of subject merchandise and the Commission must consider whether appropriate circumstances exist to exclude it from the domestic industry. North American Rubber Thread Co., Ltd. ("North American") argued in the preliminary phase of the investigation that Globe should be excluded from the domestic industry, because Globe accounted for the vast majority of subject imports from Indonesia. North American maintains in this final phase of the investigation that, in light of the increasing imports of fine-gauge extruded rubber thread from Indonesia -- which compete with Globe's domestic production -- Globe is less able to protect itself from injury from subject imports and that "a justifiable reason exists now to include Globe as part of the domestic industry."[25]

Globe imported a substantial volume of extruded rubber thread from Indonesia over the period of investigation.[26] As noted in the preliminary phase, Globe appears to have restructured its operations to focus on producing high-value products in the United States, such as fine-gauge and heat-resistant extruded rubber thread, and to substitute imports from Indonesia for its production of standard grades of extruded rubber thread, which are competing head-to-head with North American's domestic product.[27] As a result, Globe significantly reduced its domestic production while significantly increasing the volume of its imports. These facts, coupled with ***, suggest that Globe's primary interest lies in importation.[28]

Accordingly, in this final phase of the investigation we determine that appropriate circumstances exist to exclude Globe and therefore define the domestic industry to consist of North American, the only other domestic producer.

## II. NO MATERIAL INJURY BY REASON OF DUMPED IMPORTS[29]

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[22] (...continued)

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

*See, e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g.*, Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

[23] Confidential Report ("CR") at III-2, Public Report ("PR") at III-1.

[24] CR at III-2 - III-3, PR at III-1.

[25] North American's Posthearing Brief at 3.

[26] Globe imported *** pounds of extruded rubber thread from Indonesia in 1996, *** pounds in 1997 and *** pounds in 1998. Globe's ratio of subject imports to U.S. production was *** percent in 1996, *** percent in 1997 and *** percent in 1998. Its total U.S. production was *** pounds in 1996, *** pounds in 1997 and *** pounds in 1998. CR/PR at Table III-2.

[27] CR at III-4 n.7, PR at III-2 n.7. North American ***. CR at III-1 n.1, PR at III-1 n.1. *See also* Letter from Julie Pennell, President, Hickory Rubber Thread, Inc. to the Honorable Lynn M. Bragg (Mar. 31, 1999) (North American has never offered fine-gauge extruded rubber thread); Letter from Lau Ser Seng, Managing Director, PT Swasthi Parama Mulya, Indonesia to the Honorable Lynn M. Bragg (Mar. 30, 1999) (Swasthi competes with Globe with respect to fine-gauge extruded rubber thread, which North American does not produce).

[28] Commissioner Crawford does not consider Globe's *** as a factor in her decision to exclude Globe from the domestic industry.

[29] Commissioner Crawford determines that the domestic industry producing all other extruded rubber thread (*i.e.*, extruded rubber thread that is not food-grade) is materially injured by reason of the subject imports. *See* Additional and

(continued...)

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the dumped imports under investigation.[30] [31] In making these determinations, the Commission must consider the volume of the dumped 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.[32] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[33] In assessing whether the domestic industry is materially injured by reason of dumped imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[34] No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[35]

For the reasons discussed below, we determine that the domestic industry producing extruded rubber thread is not materially injured by reason of LTFV imports from Indonesia, but that it is threatened with material injury.[36] [37]

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[29] (...continued)
Dissenting Views of Commissioner Carol T. Crawford.

[30] 19 U.S.C. § 1673d(b).

[31] Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is materially injured "by reason of" 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 unfairly traded imports, not by reason of the unfairly traded 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 the less-than-fair-value imports." S. Rep. No. 96-249 at 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. 96-317 at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74. Rather, it is to determine whether any injury "by reason of" the unfairly traded 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. 100-71 at 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).

[32] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[33] 19 U.S.C. § 1677(7)(A).

[34] 19 U.S.C. § 1677(7)(C)(iii).

[35] 19 U.S.C. § 1677(7)(C)(iii).

[36] Commissioner Crawford finds that the domestic industry producing food-grade extruded rubber thread is neither materially injured nor threatened by material injury by reason of imports of extruded rubber thread from Indonesia. She also finds that the domestic industry producing all other extruded rubber thread is materially injured by reason of imports of extruded rubber thread from Indonesia. Because she finds that there are two domestic like products, she makes

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### A. Conditions of Competition

We find a number of conditions of competition pertinent to the extruded rubber thread industry. First, extruded rubber thread is manufactured in different varieties, including standard grades, heat-resistant, fine-gauge and food-grade, that comprise various segments of the market.[38] Second, nonsubject imports from Malaysia and Globe's domestic production are significant sources of supply in the U.S. market other than North American and the subject imports.[39] As discussed above, Globe's domestic production is concentrated in fine-gauge and heat-resistant extruded rubber thread, while its imports are concentrated in standard grades. Third, raw material costs account for a substantial proportion of the total production cost of extruded rubber thread. The price of natural rubber, the primary raw material, declined 46.7 percent over the period of investigation.[40]

In addition, we note that within specific product types extruded rubber thread is a commodity product sold largely on the basis of price.[41] Moreover, demand is relatively inelastic, such that modest reductions in price would be unlikely to stimulate meaningful additional demand for extruded rubber thread, whether now or in the near future.[42] [43]

### B. Volume of Subject Imports

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[36] (...continued)
separate determinations with respect to each like product. *See* Additional and Dissenting Views of Commissioner Carol T. Crawford.

[37] As an initial matter, we note that we have considered data for the three-year period from 1996 through 1998 in this investigation. We also considered information submitted by North American regarding earlier periods. North American's Prehearing Brief, Exh. 2; *see also* North American's Posthearing Brief at 11-12. Although the Commission usually examines data for a three-year period in its investigations, we have the discretion to determine the appropriate period of investigation. Wieland Werke, AG v. United States, 718 F. Supp. 50, 55 (Ct. Int'l Trade 1989). The Commission has examined longer time periods in other investigations where it found that an examination of the longer time period would better allow it to understand the conditions in the market, the cyclical nature of an industry, or generally provide it with a broader perspective of the market. *See, e.g.,* Fresh Atlantic Salmon from Chile, Inv. No. 731-TA-768 (Final), USITC Pub. 3116 (July 1998), at 14; Portable Electric Typewriters from Singapore, Inv. No. 731-TA-515 (Final), USITC Pub. 2681 (Sept. 1993), at 11; Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-461 (Final), USITC Pub. 2376 (Apr. 1991), at 28); Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-451 (Final), USITC Pub. 2305 (Aug. 1990). We note, however, that petitioner has expressly argued that the extruded rubber thread market is not cyclical. Conference Tr. at 12.

[38] Commissioner Crawford notes that because she finds two domestic like products, she joins in this discussion of the conditions of competition only insofar as it applies to the domestic like product that is defined as all extruded rubber thread other than food-grade extruded rubber thread.

[39] CR/PR at Tables I-1, III-2. Imports from Malaysia are subject to an antidumping duty order. CR at I-2, PR at I-2.

[40] CR at V-1, PR at V-1. Rubber latex accounts for *** percent of total cost of goods sold. CR at V-1, PR at V-1. In the preliminary determination, the Commission also noted that the level of demand for extruded rubber thread is prone to noticeable fluctuations. Preliminary Determination at 10. We find that this condition has changed in the final phase of the investigation in that apparent consumption increased from *** pounds in 1996 to *** pounds in 1997, then declined only slightly to *** pounds in 1998. CR/PR at Table I-1.

[41] Tr. at 10; Petitioner's Prehearing Brief at 1; *see* CR at II-8 - II-13, PR at II-4 - II-8.

[42] Petitioner's Prehearing Brief at 3.

[43] Commissioner Crawford concurs that these conditions of competition, among others, are relevant to an analysis of the U.S. market. Because she finds separate domestic like products and separate industries, Commissioner Crawford does not join the remainder of these views. For her separate determinations, *see* Additional and Dissenting Views of Commissioner Carol T. Crawford.

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[44]

Subject imports increased over the period of investigation. The volume of these imports nearly doubled,[45] while their value rose by more than a factor of two.[46] Subject imports' market share also increased, both in terms of quantity and value.[47] Despite these increases, U.S. market share increased in 1998.[48] This increase in domestic market share may reflect the fact that Globe reduced its imports in 1998, possibly as a consequence of the filing of the petition in March 1998.[49] P. T. Swasthi Parama Mulya, the other Indonesian exporter, ***, but these exports are concentrated in fine-gauge extruded rubber thread, which does not compete directly with North American.[50]

### C. Price Effects of Subject Imports

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

[44] 19 U.S.C. § 1677(7)(C)(i).

[45] The quantity of U.S. shipments of extruded rubber thread from Indonesia increased from *** pounds in 1996 to *** pounds in 1998. CR/PR at Table I-1.

[46] The value of these shipments increased from $*** in 1996 to $*** in 1998. CR/PR at Table I-1.

[47] In 1996, subject imports' share of the quantity of apparent U.S. consumption was *** percent, whereas in 1998, it was *** percent. In 1996, subject imports' share of the value of apparent U.S. consumption was *** percent and it was *** percent in 1998. CR/PR at Table IV-2.

[48] U.S. market share was *** percent in 1996 and *** percent in 1997, and then increased to *** percent in 1998. CR/PR at Table C-2.

[49] *See* Tr. at 7 ("our filing of the dumping petition caused a leveling off and a reduction in such Globe Indonesian import activity to North American's benefit").

[50] *See* CR at VII-4, PR at VII-3; Letter from Julie Pennell, President, Hickory Rubber Thread, Inc. to The Honorable Lynne Bragg [*sic*] (rec'd Mar. 25, 1999), at 2; Foreign Producer Questionnaire Response of P. T. Swasthi Parama Mulya.

> the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[51]

The record shows that purchasers of extruded rubber thread consider price to be a significant -- albeit not necessarily the most important -- factor in making purchasing decisions.[52] The record also shows that domestic extruded rubber thread and subject imports are generally substitutable.[53]

In this investigation we collected quarterly pricing data for three representative extruded rubber thread products. Subject imports consistently undersold the domestic product.[54] The price of domestic products has declined over the period of investigation.[55] Given the significant decreases in rubber latex costs, however, it is difficult to assess to what extent decreasing extruded rubber thread prices are attributable to declining raw material costs rather than subject imports.[56] We find that the declines are due in part to the decreased cost of rubber latex, which accounts for *** percent of the total cost of goods sold.[57] We also note that prices stabilized in 1998, subsequent to the filing of the petition in March 1998,[58] and there is information in the record indicating that the pendency of the investigation may have contributed to more stable prices in 1998.[59]

### D. Impact of Subject Imports [60] [61]

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[62] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.

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[51] 19 U.S.C. § 1677(7)(C)(ii).

[52] CR at II-8 - II-9 & Table II-2, PR at II- 5 & Table II-2.

[53] CR at II-8 - II-9, PR at II-5.

[54] There were 21 instances in which price comparisons between the U.S. and Indonesian products were possible. In every instance, the Indonesian product was priced below the U.S. product. CR/PR at Tables V-1 - V-3, Figure V-3. Margins of underselling ranged from *** to *** percent. CR/PR at Table V-5.

[55] *See* CR/PR at Tables V-1 - V-3.

[56] *See* Tr. at 20.

[57] CR at V-1, PR at V-1; *see* Tr. at 19-20.

[58] *See* CR/PR at Tables V-1 - V-3.

[59] *See* CR at V-5 n.10; PR at V-3 n.10; North American's Prehearing Brief at 7-8.

[60] As part of its consideration of the impact of imports, the statute as amended by the Uruguay Round Agreements Act ("URAA") specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final dumping margins range from 5.13 percent to 28.29 percent. INV-W-076 (Apr. 26, 1999), Att. B.

[61] 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).

[62] 19 U.S.C. § 1677(7)(C)(iii). *See also* URAA Statement of Administrative Action, H.R. Rep. 316, 103d Cong., 2d Sess., vol. I, at 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports."). *See also id*. at 851.

U.S. production increased during the period of investigation.[63] While U.S. capacity was steady throughout the period, capacity utilization increased, although significant excess capacity remains.[64] Net sales also increased, when measured both by quantity and value.[65] Employment measures also improved somewhat.[66] During the period, there was a decline, albeit irregular, in inventories.[67] Capital expenditures fell between 1996 and 1997, but then increased to the previous level in 1998.[68] Research and development expenditures decreased over the entire period.[69] Gross profit increased and the domestic industry experienced an operating profit throughout the period of investigation.[70] The cost of goods sold also declined, primarily reflecting declining rubber latex prices.[71] This significant decrease in raw material costs appears to have contributed to the industry's modestly improved financial performance in 1998 and, to some extent, may mask the full impact of subject imports. Thus, many of the factors we examined show a mixed picture of an industry whose production, sales and profits are increasing, while prices for its product have declined and imports have increased.

We are directed by the statute to consider the pendency of this investigation in considering any change in volume, price effects and impact of the subject imports after the filing of the petition.[72] North American argues that it benefitted in 1998 from the filing of the petition and the pendency of the investigation.[73] Because some of these indicators show improvement particularly at the end of the period of investigation, it appears that the pendency of the investigation, which commenced in March 1998, affected the financial condition of the domestic industry. In particular, we note that Globe reduced the volume of its imports in 1998.[74] As noted earlier, Globe primarily imports standard grades of extruded rubber thread, which compete directly with North American's domestic production.[75] The decrease in Globe's imports in

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[63] U.S. production increased from *** pounds in 1996 to *** pounds in 1997, where it remained in 1998. CR/PR at Table III-3.

[64] U.S. capacity was *** pounds from 1996 to 1998, but capacity utilization climbed from *** percent in 1996 to *** percent in 1997, then rose further to *** percent in 1998. CR/PR at Table III-3.

[65] The quantity of net sales increased from *** pounds in 1996 to *** pounds in 1997, then remained steady at *** pounds in 1998. The value of net sales rose from $*** in 1996 to $*** in 1997, then fell to $*** in 1998. CR/PR at Table VI-2.

[66] Between 1996 and 1997, the number of production and related workers decreased from *** to ***, then increased to *** in 1998. Hours worked increased from *** to *** in 1997, then increased further to *** in 1998. Wages paid remained steady at $*** from 1996 to 1997, then rose to $*** in 1998. Productivity increased from *** pounds per hour to *** pounds per hour between 1996 and 1997, then fell to *** pounds per hour in 1998. CR/PR at Table III-6.

[67] Inventories fell from *** pounds in 1996 to *** pounds in 1997, then climbed slightly to *** pounds in 1998. CR/PR at Table III-5.

[68] Capital expenditures declined from $*** in 1996 to $*** in 1997, then rose to $*** in 1998. CR/PR at Table VI-5.

[69] Research and development expenditures decreased from $*** in 1996 to $*** in 1997, then climbed to $*** in 1998. CR/PR at Table VI-5.

[70] Gross profit increased from $*** in 1996 to $*** in 1997, then rose further to $*** in 1998. Operating profit increased from $*** in 1996 to $*** in 1997, then to $*** in 1998. CR/PR at Table VI-2.

[71] The cost of goods sold increased from $*** in 1996 to $*** in 1997, then decreased to $*** in 1998. CR/PR at Table VI-2.

[72] 19 U.S.C. § 1677(7)(I).

[73] North American's Prehearing Brief at 7; Tr. at 11.

[74] CR/PR at Table III-2.

[75] *See* CR at III-4 n.7, PR at III-2 n.7. Hickory Rubber Thread, Inc., another U.S. importer, ***, but these imports consist primarily of fine-gauge extruded rubber thread. *See* Importer Questionnaire Response of Hickory Rubber Thread, Inc.

1998 may explain why North American recaptured market share in that year.[76] While we believe that North American's stronger performance in 1998 is related to some extent to the pendency of this investigation, the record indicates that other factors -- such as significantly decreased rubber latex costs -- also contributed to North American's improved performance.

In sum, based on our consideration of the volume, price effects and impact of subject imports on the industry, we do not find present material injury by reason of subject imports.

## III. THREAT OF MATERIAL INJURY BY REASON OF DUMPED IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[77] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.[78] In making our determination, we have considered all statutory factors that are relevant to this investigation,[79] including imminent increases in production capacity in Indonesia, the rate of the increase in the volume and market penetration of subject imports, the low prices of subject imports, and the substantial inventories of subject merchandise.

The volume of the subject imports nearly doubled over the period examined[80] and market penetration increased substantially.[81] Production of extruded rubber thread in Indonesia increased significantly over the period.[82] There remains considerable excess capacity in Indonesia.[83] Also, there is evidence in the record that ***, Bakrie Rubber Industry, plans to increase substantially its production capacity.[84] Further, P.T. Perleebunan Nusuntara III, *** producer, recently began taking steps to sell extruded rubber thread in the United States.[85] The United States is the largest market for the Indonesian producers and the percentage of shipments to the U.S. market increased during the period, while Indonesia's home market shipments

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[76] *See* CR/PR at Table C-2.

[77] 19 U.S.C. § 1673b(a) and 1677(7)(F)(ii).

[78] 19 U.S.C. § 1677(7)(F)(ii).

[79] 19 U.S.C. § 1677(7)(F)(i). Factor I is inapplicable because this investigation does not involve countervailing duties. We note that petitioner had alleged countervailing duties, but Commerce made a negative final determination. 64 Fed. Reg. 14695 (Mar. 26, 1999). Factor VI regarding product-shifting is not an issue in this investigation. Factor VII is inapplicable because this investigation does not involve imports of a raw agricultural product.

[80] U.S. shipments of subject imports from Indonesia increased from *** pounds in 1996 to *** pounds in 1997, then to *** pounds in 1998. CR/PR at Table I-1.

[81] Subject imports' market share increased from *** percent in 1996 to *** percent in 1997, then increased further to *** percent in 1998. CR/PR at Table IV-2.

[82] Indonesian production of subject imports increased from *** pounds in 1996 to *** pounds in 1997, then fell to *** pounds in 1998. CR/PR at Table VII-1.

[83] Capacity utilization increased from *** percent in 1996 to *** percent in 1997, then decreased to *** percent in 1998. CR/PR at Table VII-1.

[84] During the period of investigation, Bakrie operated two extruders, while it has plans to operate four. It was to expand from two to three extruders by March 1999, and then add a fourth by August 2000. Petitioner's Prehearing Brief at 12-13 & Exhs. 5-6; Tr. at 12-13, 40.

[85] CR at VI-11, PR at VI-2; Petitioner's Prehearing Brief at 13-14. This company ***. *See* CR at VI-11, PR at VI-2.

decreased by almost one-half over the period.[86] Inventories increased during the period of investigation and were very substantial at the end of the period.[87] All of these factors indicate the likelihood of substantially increased imports of subject merchandise unless an order is issued.

As stated above, consistent underselling at substantial margins was present throughout the period of investigation.[88] Moreover, domestic prices declined over the period.[89] While we attribute these price declines in part to decreases in rubber latex costs, the pricing evidence from the period of investigation indicates that subject imports will enter the U.S. market at prices that are likely to have significant price depressing or suppressing effects on the domestic product, particularly as the volume of subject imports increases. In this regard, we note that price is a very important factor in purchasing decisions and domestic and Indonesian extruded rubber thread are broadly interchangeable.[90] Also, as discussed above, the filing of the petition may have constrained import pricing in 1998 to some extent,[91] suggesting that more aggressive pricing is likely unless an order is issued.

The domestic industry's condition improved somewhat during the period, but was never robust.[92] While North America has earned profits, it reported that it has not been able to implement several capital expansion projects in which it is interested and has had to delay the speed at which it was moving forward with others, including utilization of a patent for a new extruded rubber thread product, which was granted over 18 months ago.[93] Further, four years ago North American bought an extruded rubber thread production line belonging to a former competitor, but states it has not been able to begin commercial production with this equipment because of the impact of dumped subject imports.[94] Moreover, as discussed earlier, North American appears to have benefitted from the filing of its petition in early 1998. We find a substantial likelihood of significantly increased negative effects on the domestic industry's production and development efforts due to subject imports, which are likely to worsen in the immediate future in light of the fact that subject imports' volumes and market penetration are increasing.[95]

In sum, we find that the volume of subject imports will increase significantly and these imports will enter the U.S. market at prices that are likely to have significant depressing or suppressing effects, unless an order is issued. Such negative volume and price effects would adversely impact the domestic industry. Accordingly, we find that the domestic industry producing extruded rubber thread is threatened with material injury by reason of subject imports from Indonesia.

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[86] Shipments to the United States increased from *** pounds in 1996 to *** pounds in 1997, then increased further to *** pounds in 1998. Home market shipments rose from *** pounds in 1996 to *** pounds in 1997, then declined to *** pounds in 1998. Exports to all other markets remained steady at *** pounds in 1996 and 1997, then climbed to *** pounds in 1998. CR/PR at Table VII-1.

[87] U.S. importers' end-of period inventories increased from *** pounds in 1996 to *** pounds in 1997, then fell only slightly to *** pounds in 1998. The ratio of U.S. importers' end-of-period inventories to U.S. shipments of imports increased from *** percent in 1996 to *** percent in 1997, then decreased to *** percent in 1998. CR/PR at Table VII-2.

[88] *See* CR/PR at Tables V-1 - V-3.

[89] CR/PR at Tables V-1 - V-3.

[90] CR at II-7 - II-8, PR at II-3 - II-4.

[91] CR at V-5 n.10, PR at V-3 n.10; North American's Prehearing Brief at 7-8 & Exh. 3.

[92] *See* CR/PR at Tables III-3, III-6, VI-2.

[93] Petitioner's Prehearing Brief, Exh. 2; Petitioner's Posthearing Brief at 10, 16-17, 22-23, 25; Tr. at 33-34.

[94] Petitioner's Posthearing Brief at 16-17.

[95] *See* CR at IV-1 -IV-2, PR at IV-1.

We do not find that but for the suspension of liquidation, we would have found the domestic industry to be experiencing material injury.[96] The record does not indicate that absent suspension of liquidation in October 1998, the domestic industry would have been materially injured by reason of subject imports.

## CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing extruded rubber thread is threatened with material injury by reason of subject imports from Indonesia.

[96] *See* 19 U.S.C. § 1673d(b)(4).

## ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of the information contained in the record of this investigation, I find two like products, extruded rubber thread ("ERT") other than food-grade ERT and food-grade ERT. I determine 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 sold in the United States at less-than-fair-value ("LTFV"). However, I determine that the industry in the United States producing food-grade ERT is not materially injured or threatened with material injury by reason of imports of food-grade ERT from Indonesia that are sold in the United States at LTFV. Because my findings differ from those of my colleagues on the issues of like product and present material injury, 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 except in extremely rare instances.[97] In sum, the legal restrictions on food-grade ERT dictate different uses for 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 ERT from Indonesia. I concur in my colleagues' finding that appropriate circumstances exist in these investigations 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.

[97] CR at I-10; PR at I-7.

B. The Industry Producing Food-grade ERT

Only one firm, Globe, reported producing any food-grade ERT during the period of investigation. It produced small quantities of food-grade ERT during the period of investigation.[98] 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.[99] 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 a domestic industry is materially injured by reason of 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….[100]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."[101] 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."[102]

The statute directs that we determine whether there is material injury by reason of the LTFV imports. Thus we are called upon to evaluate the effect of such dumped imports on the domestic industry and determine if 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 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 injury "by reason of" the dumped imports is material. That is, the Commission must determine if 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 domestic industry."[103] It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had

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[98] CR at I-10; PR at I-7.

[99] CR at I-9; PR at I-6; Preliminary CR/PR at Table VII-1.

[100] 19 U.S.C. § 1677(7)(B)(i).

[101] 19 U.S.C.§ 1677(7)(B)(ii).

[102] 19 U.S.C. § 1677(7)(C)(iii).

[103] 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).

subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.[104]

In my analysis of material injury, I evaluate the effects of the dumping[105] on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of the dumping on the quantity of domestic sales,[106] I compare the level of domestic sales that existed when imports were 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 factors[107] (*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 dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that the domestic industry producing ERT other than food-grade ERT is materially injured by reason of the dumped imports from Indonesia. However, I find that the domestic industry producing food-grade ERT is not materially injured or threatened with material injury by reason of the dumped imports from Indonesia.

## IV MATERIAL INJURY BY REASON OF 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. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

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[104] 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).

[105] 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).

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

[107] 19 U.S.C. § 1677(7)(C)(iii).

My analysis of the conditions of competition that are distinctive to the affected industry,[108] *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 depending on the product in which it is being used, ranging from 2 to 70 percent. It appears that for the large majority of products the cost share is quite high, ranging from 10 to 40 percent.[109] 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 webbing waistband in underwear). Thus, ERT's cost share in the final downstream product in which it is used is likely to be much smaller for a number of products. In fact, North American has provided evidence that suggests the cost share of ERT in a finished garment is indeed quite small, at about *** per garment.[110] As such, the elasticity of demand will be lower.

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.[111] The limited availability of

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[108] 19 U.S.C. § 1677(7)(C).

[109] CR at II-7; PR at II-3.

[110] The current sales price of finished one-inch elastic knitted webbing, one of the most common sizes, is about *** per yard. For woven webbing, the sales price is about *** per yard. Rubber thread constitutes about 50 percent of the cost of the raw material in elastic webbing (depending on the price of the rigid yarn), and about 40 percent of the final sales price. Assuming that a typical garment contains one yard of elastic webbing, and using an average sales price of *** per yard for the elastic web, then the cost of the rubber thread is *** per garment. Prehearing Brief of Petitioner, North American Rubber Thread, Exhibit 7 at 48.

[111] CR at II-5 to II-7; PR at II-2 to II-3.

substitute products reduces the elasticity. In addition, petitioner testified that "the demand for elastic thread is inelastic."[112]

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.

Purchasers have four potential sources of ERT: domestically-produced ERT, subject imports, nonsubject imports, and ERT produced by Globe.[113] 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. Data regarding these product mixes were presented during the preliminary phase of this investigation. However, because 1998 data were unavailable for the different product mixes, I have relied upon the data from the preliminary phase of this investigation for an analysis of the issue of substitutability among different sources of ERT. The product mix within the domestic industry is *** dominated by standard talcless ERT, which accounted for about *** percent of North American's 1997 shipments. Similarly, standard talcless ERT accounted for *** percent of non-food-grade shipments of subject imports from Indonesia.[114] 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,

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

[113] 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.

[114] Preliminary CR/PR at Table C-3.

record evidence indicates that the quality of subject imports from Indonesia is higher than the quality of North American's ERT, 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 in 1997.[115] 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 accounted for *** percent of shipments of nonsubject Malaysian ERT in 1997. 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. Therefore, nonsubject Malaysian imports and the domestic product are likely only moderate substitutes for each other.

In 1997, standard talcless ERT accounted for *** percent of Globe's domestic shipments.[116] 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 *** pounds of unused capacity available with which it could have produced standard talcless ERT.[117] 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 enforce a price increase. 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

[115] Preliminary CR/PR at Table C-3.

[116] Preliminary CR/PR at Table C-3. In 1997, Globe's shipments of its U.S.-produced talcless product accounted for *** percent of its combined shipments of domestic and Indonesian standard talcless product in 1997. Preliminary CR/PR at Table III-2.

[117] Preliminary CR/PR at Table III-3.

to sell more at a lower price. In 1997 North American's capacity utilization, and thus the domestic industry's capacity utilization, was *** percent. In absolute terms, the domestic industry had unused capacity of *** pounds in 1998.[118] 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 *** pounds accounted for *** percent of its total shipments, while its exports of *** pounds accounted for *** percent of total shipments.[119] 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 value of its domestic shipments.[120] 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 1998.[121] 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 increased from *** pounds in 1996 to *** pounds in 1997, and then to *** pounds in 1998. The value of subject imports from Indonesia was $*** in 1996, $*** in 1997, and $*** in 1998.[122] By quantity, the subject imports held a market share of *** percent in 1996, *** percent in 1997, and *** percent in 1998. Their market share by value was *** percent in 1996, *** percent in 1997, and *** percent in 1998.[123]

Nonsubject imports are a major factor in the U.S. market. Total nonsubject imports increased from *** pounds in 1996 to *** pounds in 1997, before falling to *** pounds in 1998. The value of total nonsubject imports was $*** in 1996, $*** in 1997, and $*** in 1998.[124] By quantity, total nonsubject imports held a market share of *** percent in 1996, *** percent in 1997, and *** percent in 1998. The market share by value was *** percent in 1996, *** percent in 1997, and *** percent in 1998.[125]

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[118] CR/PR at Table C-2.

[119] Id.

[120] Id.

[121] Id.

[122] CR/PR at Table IV-1.

[123] CR/PR at Table C-2.

[124] CR/PR at Table IV-1.

[125] CR/PR at Table C-2.

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 *** pounds in 1996 to *** pounds in 1997, but decreased to *** pounds in 1998. The value of nonsubject imports from Malaysia was $*** in 1996, $*** in 1997, and $*** in 1998.[126] By quantity, nonsubject imports from Malaysia held a market share of *** percent in 1996, *** percent in 1997, and *** percent in 1998. Malaysian market share by value was *** percent in 1996, *** percent in 1997, and *** percent in 1998.[127]

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 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 investigations the final dumping margins range from 5.13 to 28.29 percent.[128] Based on these margins alone, prices for the subject imports likely would have risen 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.[129] Thus it is likely that demand for both the domestic product and nonsubject imports would have increased.

Since subject imports from Indonesia held a market share of *** percent in 1998,[130] 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 1998, and thus represent significant competition

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[126] CR/PR at Table IV-1.

[127] CR/PR at Table C-2.

[128] INV-W-076 (Apr. 26, 1999), Att. B.

[129] 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 ***. Preliminary CR/PR at 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.

[130] CR/PR at Table C-2.

for the domestic industry, which accounted for only *** percent of the market in 1998.[131] 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.[132] These factors together either encompass or reflect the volume and price effects of the subject 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 dumped 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. Consequently, the domestic industry likely would have been materially better off if the subject imports from Indonesia had been fairly traded.

### E. Conclusion

On the basis of the foregoing analysis, I determine that a domestic industry producing ERT other than food-grade ERT is materially injured by reason of the subject imports from Indonesia.

## V. NO MATERIAL INJURY OR THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF FOOD-GRADE EXTRUDED RUBBER THREAD FROM INDONESIA

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[131] Id.

[132] 19 U.S.C. § 1677(7)(C)(iii).

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. Therefore, the domestic industry would not have been materially better off if the subject imports had not been dumped. Consequently, there is no material injury to a domestic industry by reason of subject 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. Consequently, there is no material injury or threat of material injury to the domestic industry by reason of subject imports of food-grade ERT from Indonesia.

## DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

On the basis of the record in this investigation, I find that the domestic industry is not materially injured or threatened with material injury by reason of imports of extruded rubber thread ("ERT") from Indonesia. I join the description of domestic like product found in my colleagues' joint opinion. My other conclusions differ from theirs. I therefore write separately to explain the reasoning leading to my negative determination.

### I. Domestic Industry

I agree with my colleagues that the domestic industry comprises two producers, North American and Globe. The statute provides that "related parties," e.g. importers of subject merchandise, may be excluded from the domestic industry in appropriate circumstances.[133] Globe is one of the largest importers of ERT from Indonesia and ***. Globe ***. Despite its status as a related party, I do not find that appropriate circumstances exist to exclude Globe from the domestic industry for the purposes of our investigation.

The Commission generally considers three factors when determining whether to exclude a related party: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the producer has decided to import the product subject to investigation; (3) the competitive position of the related producers vis-à-vis the rest of the industry (whether exclusion or inclusion will skew the data for the rest of the industry).[134] The Commission has also considered the ratio of import shipments to U.S. production and whether the primary interest of the related producer lies in domestic production or importation.[135]

Globe, which ***. North American accounted for *** percent of the domestic industry's production by volume in 1998 and *** percent of total volume of U.S. consumption.[136] Globe accounted for *** percent of domestic production by volume in 1998 and *** percent of the volume of U.S. consumption.[137] Globe accounted for *** percent of U.S. production over the entire 1996-1998 period of investigation ("POI").[138]

Historically, the Commission has asked whether the related party is importing in order to benefit from the unfair trade practice or to enable it to continue production and to compete in the domestic market.[139] Globe imports commodity-type ERT (***) from Indonesia because ***."[140] The record indicates that Globe has decided to concentrate its U.S. production on fine-gauge and heat-resistant thread while it imports most

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[133] 19 U.S.C. § 1677(4)(B).

[134] Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992) .

[135] Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7-8 (July 1994).

[136] Table C-2, CR at C-5, PR at C-3; Table III-1, CR at III-2, PR at III-1.

[137] Id.

[138] Table III-2, CR at III-3, PR at III-2.

[139] Torrington, 790 F. Supp. at 1168; see also Steel Wire Rope from the Republic of Korea and Mexico, Inv. No. 731-TA-546-47 (Final), USITC Pub. 2613, at 14-15 (March 1993) (producers may import to fill out production lines, satisfy particular customer specifications, or to maintain competitive prices in a product line they could not produce themselves and sell at the same price).

[140] Globe's Final Importer Questionnaire Response, at II-4.

of the commodity-type ERT that it sells in the U.S. market. Globe's production ***.[141] Globe is responsible for ***.[142] ***.[143]

Identifying whether a company's decision to import stems from a desire to benefit from the unfair trading practice or whether it stems from a desire to continue production to compete in the domestic market is not easy. In this case, however, Globe's questionnaire response supports the conclusion that it has made the competitive decision to concentrate its domestic production on higher-priced fine-gauge and heat-resistant ERT, while it imports commodity-grade ERT to fill out its product line.

This conclusion is bolstered by the fact that Globe ***.[144] Globe's financial performance over the POI was ***. By contrast, ***.[145] In 1997, the year in which Globe ***, its subject import volume was ***.[146] However, this was also the year that ***.[147] The year in which Globe's imports ***, was also ***.[148]

The ratio of Globe's imports to its total U.S. production ***.[149] The record nevertheless supports a conclusion that Globe's primary interest remains in domestic production rather than in importation. Globe continues to ***. It faces increasing import competition in the fine-gauge thread segment of the market, but continues to produce fine-gauge thread domestically.[150]

For the foregoing reasons, I conclude that Globe should not be excluded from the domestic industry because of its status as a related party. Globe accounts for such a large percentage of domestic production that excluding its production would distort the data on the condition of the domestic industry. Globe is not benefitting significantly from its subject imports. In fact, it ***. Globe produces *** fine-gauge ERT in the United States; excluding Globe from the domestic industry would thus ***.[151] Though Globe's volume of subject imports has increased over the POI, I find that Globe's primary interest continues to lie in domestic production rather than importation.

## II. No Material Injury By Reason of Subject Imports

In determining whether an industry in the United States is materially injured by reason of the allegedly subsidized and LTFV imports under investigation, I 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.[152] The statute defines "material injury" as

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[141] CR at III-4 n.7; PR at III-2.

[142] Globe's Preliminary Producer Questionnaire Response at 6.

[143] Id.; Table III-3, CR at III-5; PR at III-2.

[144] Empire Plow Co. v. United States, 675 F. Supp. 1348, 1353-54 (Ct. Int'l Trade 1987) (benefits accrued from the relationship between the related parties appears to be a major factor in ITC consideration).

[145] Table VI-2, CR at VI-4; PR at VI-1.

[146] Table III-2, CR at III-3; PR at III-2.

[147] Table III-2, CR at III-3; PR at III-2; Table III-3, CR at III-5; PR at III-2.

[148] Table III-2, CR at III-3; PR at III-2.

[149] Table III-2, CR at III-3; PR at III-2.

[150] Globe's Final Producer Questionnaire Response, at III-9; fine-gauge thread represented approximately ***; Globe predicted that proportion will continue. CR at III-4 n.7, PR at III-2.

[151] CR at III-1; PR at III-1.

[152] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19

(continued...)

"harm which is not inconsequential, immaterial, or unimportant."[153] I have considered all of the relevant economic factors that bear on the state of the industry in the United States.[154] No single factor is dispositive and I have considered all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[155]

A. Conditions of Competition

The statute provides that the Commission examines all relevant economic factors that may affect the impact of dumped imports on the domestic industry "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[156] Several conditions of competition have informed my decision in this case.

Raw material costs (primarily of rubber latex) account for a substantial proportion of the total cost of producing ERT. Rubber latex costs fell significantly in mid-1996, then declined more gradually through the rest of the POI.[157] The Daily Market Indicator Price for December 1998 was 46.7 percent below the January 1996 price.[158] Rubber latex accounts for about *** percent of North American's cost of goods sold ("COGS"), while Globe reported it as accounting for roughly *** percent of its COGS.[159]

ERT is sold on both contract and spot bases. Globe reported that ***. Hickory, another importer of subject merchandise, ***. Globe and Hickory ***, while North American stated that ***. All suppliers reported ***.[160]

Globe was the largest importer over the POI. Globe imported approximately *** percent of all subject imports in the first two years of the POI, though its imports diminished to approximately *** percent of all Indonesian imports in 1998.[161] Globe attributes that reduction to the entry into the market of a new Indonesian exporter, Swasthi.[162]

Overall production capacity remained constant over the period of investigation at *** million pounds.[163] Capacity utilization varied somewhat and ultimately declined. It started at *** percent in 1996, rose to *** percent in 1997, and fell to *** percent in 1998.[164] North American's capacity utilization actually increased over the POI, and North American further noted that ***.[165]

The demand for ERT is a derived demand, depending primarily on the demand for the downstream products in which it is used -- narrow elastic fabric used in different kinds of apparel and home furnishings,

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[152] (...continued)
U.S.C. § 1677(7)(B).

[153] 19 U.S.C. §1677(7)(A).

[154] 19 U.S.C. § 1677(7)(C)(iii).

[155] Id.; 19 U.S.C. §§ 1673d(b).

[156] 19 U.S.C. § 1677(7)(C)(iii).

[157] CR at III-4; PR at III-2. North American reported price declines of approximately *** percent over the period.

[158] CR at V-1; PR at V-1.

[159] CR at V-1; PR at V-1.

[160] CR at V-4-5; PR at V-3.

[161] Table III-2, CR at III-3; PR at III-2; Table C-2, CR at C-3; PR at C-3.

[162] Globe's Final Producer Questionnaire Response at IV-E.

[163] Table III-3, CR at III-5; PR at III-2.

[164] Id.

[165] CR at III-4; PR at III-2.

some medical products, and food-grade netting used by meat-packers. Increasing competition in the textile industry has negatively affected U.S. textile producers. Purchasers indicated their demand for ERT directly correlated with the demand for their products. Demand for non-latex products may be increasing for certain applications.[166] Overall U.S. consumption increased *** percent over the POI; consumption was slightly higher in 1997 at *** million pounds than in 1998 at *** million pounds.[167] Demand is relatively inelastic given that substitute products are limited and ERT generally accounts for only a small proportion of the cost of the end product.

Substitution with other products is generally limited because of price and performance concerns. Some products are theoretically substitutable for ERT, but are not practical substitutes. Cut rubber thread, which has a different structure from ERT, cannot easily be used on much of the knitting and weaving machinery used by ERT purchasers. Spandex and neoprene, both synthetic products, could be used in place of ERT but are significantly more expensive to produce than ERT. Also, although spandex may be superior to ERT in some cases, it is not suitable for materials that will be dry-cleaned because dry-cleaning chemicals can react with spandex.[168]

Different sizes of ERT are not interchangeable. Similarly, specialty types of ERT, *e.g.*, food-grade and heat-resistant, may not be replaced by standard ERT. Although the specialty types could be used in place of standard ERT, such replacement generally does not occur because of higher cost or limited availability. Talcless and talced ERT of the same size are theoretically interchangeable, but users do not substitute them in practice.[169]

Twenty-eight purchasers of ERT responded at least in part to the ITC's questionnaires. Sixty-two percent of purchasers selected quality as the most important factor in purchasing decisions. One importer noted that lower prices might "get them in the door" with large customers for fine-gauge rubber thread, but that superior quality permitted them to retain those customers. Indonesian and U.S.-produced ERT of the same gauge are generally interchangeable, although some purchasers indicated that U.S. products have some advantages in terms of availability of products in small quantities, delivery, and technical support.[170]

### C. 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."[171]

The volume of subject imports increased over the POI, growing from *** percent of the market in 1996 to *** percent of the market in 1998, an *** percent increase.[172] Subject imports gained market share primarily at the expense of Globe, the primary importer of subject merchandise, whose market share *** percent over the POI (from *** percent to *** percent of domestic consumption).[173] Some of the increase has

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[166] CR at II-5; PR at II-3.

[167] CR at Table C-1, CR at C-3; PR at C-3.

[168] CR at II-5-6; PR at II-3.

[169] CR at II-8; PR at II-4. Knitters use talcless ERT and braiders used talced ERT.

[170] CR at II-10, II-13; PR at II-5, II-6.

[171] 19 U.S.C. § 1677(7)(C)(i).

[172] Table C-1, CR at C-3; PR at C-3.

[173] Table C-2, CR at C-5; PR at C-3.

also come at the expense of non-subject imports, which lost *** percent of their market share over the POI.[174] North American's share of the U.S. market increased slightly over the POI, from *** percent to *** percent of domestic consumption.[175] Accordingly, while the increase in volume of subject imports over the POI is significant, that increase occurred primarily from one U.S. producer's decision to fill out its product line with imports of subject merchandise.

B. 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, 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.[176]

The Commission has data on the average unit values ("AUVs") of two types of commodity-grade ERT imported from Indonesia that competed with products of U.S. producers. Imported ERT Product One undersold the product of both U.S. producers in all quarters for which data are available at values ranging from $*** to $*** per pound.[177] Product One is not imported in great quantities -- imports ranged from *** pounds in third quarter 1997 to *** pounds in second quarter of 1998.[178] Imported ERT Product Two undersold U.S. production in most quarters for which information is available; in 1998 the imported product was slightly more expensive than Globe's U.S.-produced merchandise, but still undersold North American's product.[179] Product Two was imported in much greater quantities, ranging from *** pounds in first quarter 1996 to *** pounds in first quarter 1998; its margins of underselling were lower, however, ranging from $*** to $*** over the period.[180] We have no data on the average unit values of fine-gauge thread.

The average unit value of U.S.-produced ERT generally declined throughout the POI, although AUVs fluctuated somewhat during that time.[181] One producer's average unit value for Products One and Two declined by $*** over the POI, while the other producer's AUV showed a spread of $*** over the POI for Product One and $*** for Product Two. At least some of that decline in price may be attributable to the fact that the cost of the primary input in ERT, rubber latex, fell significantly over the POI -- 46.7 percent according to the major industry publication.[182] Consequently, the COGS over the POI decreased by $*** per pound from 1996 to 1998.[183]

Sixty-two percent of responding purchasers reported that quality was the most significant factor in their purchasing decisions. This fact suggests that Indonesian imports are not gaining market share because of low prices. In fact, three of the four purchasers that North American identified as having switched to low-

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[174] Table C-2, CR at C-5; PR at C-3. Non-subject imports primarily come from Malaysia and have been subject to a dumping order since 1992. CR at I-2; PR at I-2.

[175] Table C-2, CR at C-5; PR at C-3.

[176] 19 U.S.C. § 1677(7)(C)(ii).

[177] Table V-1, CR at V-10; PR at V-4.

[178] Id.

[179] Table V-2, CR at V-11; PR at V-5.

[180] Id.

[181] Table V-1, CR at V-10; Table V-2, CR at V-11; PR at V-5.

[182] CR at V-1. Globe stated that in October 1998 it ***. Globe's Final Producer Questionnaire Response at IV-B-26.

[183] CR at VI-1; PR at VI-1.

priced Indonesian imports told Commission staff that they switched primarily for quality reasons. These purchasers found North American's product inferior to Globe's because of poor or inconsistent quality.[184]

Though the data show relatively consistent underselling over the POI, I find that the subject merchandise did not have significant price suppressing or depressing effects. The decline in AUVs illustrated by Commission data resulted largely from a decline in the price of rubber latex, the major input in ERT production. In addition, the evidence suggests that several of the lost sales identified by the domestic industry resulted from concerns about the quality of the domestic product, not from underselling.

D. Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry," including actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and existing development and production efforts of the domestic industry; and the magnitude of the dumping margin.[185] I have considered these factors within the context of the conditions of competition relevant to the ERT industry.[186] I conclude that imports of the subject merchandise are not having a negative impact on the domestic industry.

The domestic industry is not experiencing injury resulting from subject imports. The domestic industry's financial performance has remained positive throughout the POI, and even peaked during 1997, the year during which subject imports reached their highest volume. The domestic industry showed an operating loss of $*** in 1996, a profit of $*** in 1997, and a profit of $*** in 1998.[187] The industry's other indicators are less positive, with production declining from *** pounds in 1996 to *** million pounds in 1998.[188] Average number of production and related workers, hours worked, and wages paid all declined over the POI.[189] However, hourly wage rates and productivity increased over the POI.[190] Capital expenditures grew from $*** in 1996 to $*** in 1998, and peaked at $*** in 1997.[191] Research and development expenditures also increased over the POI, growing from $*** in 1996 to $*** in 1998.[192]

The aggregate numbers recounted above are generally positive. An anomalous fact in this investigation is that ***. One might therefore speculate that petitioner is not being injured by subject imports, whereas the non-petitioning producer is in a more precarious position. Yet, the non-petitioning producer, Globe, ***. Globe accounted for approximately *** percent of Indonesian imports in 1996 and

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[184] CR at V-16-19; PR at V-6-7.

[185] I have considered the magnitude of the dumping margin in making my determination. OINV Memo INV-W-076 (April 26, 1999).

[186] No party has alleged that the captive production provision, 19 U.S.C. § 1677(7)(C)(iv), should be applied.

[187] Table VI-1, CR at VI-2; PR at VI-1.

[188] Table III-3, CR at III-5; PR at III-2.

[189] Table III-6, CR at III-9; PR at III-3. The number of production and related workers declined from *** in 1996 to *** in 1998, while hours worked declined from *** to ***. Total wages paid declined from $*** to $***.

[190] Id. Hourly wages increased from $*** to $***, while productivity increased from *** pounds per hour to *** pounds per hour.

[191] CR at Table VI-5, CR at VI-9; PR at VI-2.

[192] Id.

1997, and accounted for approximately *** percent of imports in 1998.[193] The principle of enlightened self-interest suggests that Globe would not be importing subject merchandise if by so doing it causes or exacerbates any financial injury to itself. Indeed, Globe *** and apparently finds importing subject merchandise to be consistent with its status as a domestic producer.[194]

For the foregoing reasons, I find that imports of the subject merchandise are not having a negative impact on the domestic industry.

## III. The Domestic Industry Is Not Threatened with Material Injury by Reason of the Subject Imports

Because I have concluded that the domestic industry is not materially injured by reason of the subject imports, I must also determine whether the industry is threatened with material injury by reason of the subject imports.[195] The statute directs the Commission to consider nine factors when performing its threat analysis. I have considered all of the statutory factors relevant to these investigations in making my determination that the domestic industry is not threatened with material injury by reason of the subject imports.[196] In making my determination, I have considered all of the factors as a whole, and have been mindful that further dumped or subsidized imports must be imminent and that any determination "may not be made on the basis of mere conjecture or supposition."[197]

In conjunction with the statutory threat factors, I have considered whether the domestic industry is in a vulnerable condition such that it is more likely to be injured by imports of the subject merchandise. I find that the industry is not in a vulnerable condition. The industry's financial performance was generally positive over the POI. The domestic industry lost some market share, but nearly all of that loss is attributable to one domestic producer's decision to import commodity-type ERT and to concentrate its domestic production on the higher-end product.

The record reflects mixed evidence as to Indonesian capacity and projected capacity increases. In questionnaire responses, Indonesian producers have projected that capacity will remain steady through 2000, though they project an increase in capacity utilization from *** percent in 1998 to *** percent in 2000.[198] One of the Indonesian producers, which had two extruders on-line in 1998, projected in its audited financial statement that it would start production on a third extruder in March 1999 and on a fourth in August 2000.[199] The record before us does not show that the third extruder actually began production in March. Further, even assuming it has commenced production, we have no information as to its projected capacity. As for the projected fourth extruder, I believe that an increase in capacity projected to start in August 2000 is too distant

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[193] Table III-2, CR at III-3; PR at III-2; Table C-1, CR at C-3; PR at C-3.

[194] This situation is thus readily distinguishable from that faced by the U.S. producer in Sebacic Acid from China, which brought the dumping petition. Sebacic Acid, USITC Pub. 2793, at I-8.

[195] 19 U.S.C. §§ 1673d(b), 1677(7)(F).

[196] Two of the factors are not relevant here. The Department of Commerce has determined that the Government of Indonesia does not provide countervailable subsidies to the ERT industry in Indonesia. The factor relating to raw and processed agricultural products is also not relevant here. The Commission is also directed to consider the effect of any dumping in third-country markets, but staff have identified no barriers to Indonesian exports to other countries and no pending investigations. 19 U.S.C. § 1677(7)(F)(iii). CR at VII-4; PR at VII-3.

[197] 19 U.S.C. § 1677(7)(F)(ii).

[198] CR at Table VII-1, CR at VII-2; PR at VII-2.

[199] Exhibit 6 to Petitioner's Pre-Hearing Brief of March 19, 1999.

to qualify as posing an "imminent" threat of increased imports as required by the statute.[200] Overall, I conclude that the projected changes in production and capacity utilization are too small to result in substantially increased imports of the subject merchandise into the United States.

The volume of imports increased steadily over the POI, rising from *** pounds in 1996 to *** pounds in 1998.[201] The majority of this increase (*** percent) came from 1996 to 1997, however, and the domestic industry remained profitable during that time.[202] As I have already noted, one of the domestic producers was responsible for *** over the POI. Non-Globe imports consist primarily of fine-gauge thread ***. Globe is the *** U.S.-producer of fine-gauge thread and acknowledges that it faces increasing competition from those imports, yet Globe still ***. Therefore, I continue to conclude that a member of the domestic industry is primarily responsible for the increase in subject imports and I am reluctant to attribute any injury or threat thereof to those subject imports.

I have already concluded that the subject imports are not having price depressing or suppressing effects on the domestic prices, and I do not find that the situation is likely to change in the near future. Though domestic AUVs have declined over the POI, they have declined to a much smaller degree than one would expect were subject imports, which have generally had significantly lower AUVs, exercising a price suppressing or depressing effect. The significant drop in the price of rubber latex, the largest component of ERT, is more likely to have affected U.S. prices. In addition, as noted before, many lost sales were attributable to deficiencies in quality rather than to price competition.

Indonesian inventories of subject merchandise have declined over the POI (from *** pounds in 1996 to *** pounds in 1998) and are projected to decline still further through 2000.[203] Inventories of subject merchandise in the United States increased over the POI, from *** pounds in 1996 to *** pounds in 1998.[204] The decrease in Indonesian inventories over the POI was *** the increase in U.S. inventories. In addition, the ratio of inventories to U.S. shipments of imports has decreased over the POI, from *** percent to *** percent.[205] Therefore, I do not find that inventories of subject merchandise have increased over the POI.

The record contains virtually no data on the ability of Indonesian producers to shift production from other types of product to subject merchandise in the event of an increase in demand.

Over the POI, the domestic industry's production and development efforts do not appear to have been adversely affected by the subject imports. Capital expenditures grew from $*** in 1996 to $*** in 1998, and peaked at $*** in 1997.[206] Research and development expenditures also increased over the POI, growing from $*** in 1996 to $*** in 1998.[207] One U.S. producer has reported reducing its capital investments and being rejected for bank loans due to poor financial performance,[208] but I do not believe this one fact justifies a finding that subject imports have adversely affected the domestic industry's production and development efforts.

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[200] "The 'essence of threat lies in the ability and incentive to act imminently.'" Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), *quoting* Republic Steel Corp. v. United States, 591 F. Supp. 640, 650 (1984).

[201] Table I-1, CR at I-11; PR at I-7.

[202] Id.; CR at VI-1, CR at VI-2; PR at VI-1.

[203] Table VII-1, CR at VII-2; PR at VII-2.

[204] Table VII-2, CR at VII-4; PR at VII-3.

[205] Id.

[206] CR at Table VI-5, CR at VI-9; PR at VI-2.

[207] Id.

[208] CR at VI-10; PR at VI-2.

No other adverse trends indicate the probability that subject imports pose an imminent threat of material injury. Based on the foregoing factors, I find that the domestic industry is not threatened with material injury by reason of the subject imports.