

UNITED STATES INTERNATIONAL TRADE COMMISSION

**Investigations Nos. 731-TA-857-858 (Preliminary)
CERTAIN PAINTBRUSHES FROM CHINA AND INDONESIA**

**Determinations and Views of the Commission
(USITC Publication 3237 / September 1999)**

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930,³ that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of synthetic filament paintbrushes from China,⁴ and imports of natural bristle and synthetic filament paintbrushes from Indonesia,⁵ that are alleged to be sold in the United States at less than fair value (LTFV).

BACKGROUND

On August 2, 1999, a petition was filed with the Commission and the Department of Commerce by the Paintbrush Trade Action Coalition (PATAC) whose member firms include EZ Paint Corp., St. Francis, WI; Bestt Liebco, Philadelphia, PA; The Wooster Brush Co., Wooster, OH; Purdy Corp., Portland, OR; and TruServ Manufacturing, Cary, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of synthetic filament paintbrushes from China and imports of natural bristle and synthetic filament paintbrushes from Indonesia. Accordingly, effective August 2, 1999, the Commission instituted antidumping investigations Nos. 731-TA-857-858 (Preliminary).

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

² Commissioner Crawford voting in the affirmative with respect to imports of the subject merchandise from China.

³ 19 U.S.C. § 1673b(a).

⁴ The products covered by the investigation concerning China include all paintbrushes and paintbrush heads that are used to apply paint, stain, varnish, shellac, or any other type of protective coating, other than natural bristle paintbrushes and paintbrush heads that are classifiable under statistical reporting number 9603.40.4040 of the Harmonized Tariff Schedule of the United States (HTS). The scope includes paintbrushes and paintbrush heads with a blend of natural bristle and synthetic filaments, provided that synthetic filaments comprise over 50 percent of the total filler material in the finished paintbrush or paintbrush head. The merchandise subject to this investigation is classifiable under statistical reporting number 9603.40.4060 of the HTS. Excluded from the scope are artists' brushes classified under statistical reporting numbers 9603.30.2000, 9603.30.4000, or 9603.30.6000 of the HTS, or other non-paintbrush products classified under statistical reporting number 9603.40.4060 of the HTS such as foam applicators, sponge applicators, or any other type of non-brush paint applicator.

⁵ The products covered by the investigation concerning Indonesia include all paintbrushes and paintbrush heads that are used to apply paint, stain, varnish, shellac, or any other type of protective coating, including natural bristle paintbrushes and paintbrush heads, synthetic filament paintbrushes and paintbrush heads, and paintbrushes and paintbrush heads made with a blend of natural bristle and synthetic filament. The merchandise subject to this investigation is classifiable under statistical reporting numbers 9603.40.4040 and 9603.40.4060 of the HTS. Excluded from the scope are artists' brushes classified under statistical reporting numbers 9603.30.2000, 9603.30.4000, or 9603.30.6000 of the HTS, or other non-paintbrush products classified under statistical reporting number 9603.40.4060 of the HTS such as foam applicators, sponge applicators, or any other type of non-brush paint applicator.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 11, 1999.⁶ The conference was held in Washington, DC, on August 23, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁶ 64 FR 43715.

IEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain paintbrushes from China or Indonesia that are allegedly sold in the United States at less than fair value (“LTFV”).⁷

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.⁸ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁹

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”¹⁰ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”¹¹ 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”¹²

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in

⁷ Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly LTFV imports of the subject merchandise from China. See Separate and Dissenting Views of Commissioner Carol T. Crawford.

⁸ 19 U.S.C. § 1671b(a); 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT ____, Slip Op. 96-51 at 4-6 (March 11, 1996).

⁹ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(4)(A).

¹² 19 U.S.C. § 1677(10).

characteristics and uses” on a case-by-case basis.¹³ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁴ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁵ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁶

B. Product Description

In its notice of institution, Commerce described the merchandise within the scope of the investigation with respect to Chinese imports as follows:

The scope of the PRC investigation includes all paintbrushes and paintbrush heads that are used to apply paint, stain, varnish, shellac, or any other type of protective coating, other than natural bristle paintbrushes and paintbrush heads that are classifiable under 9603.40.4040 of the Harmonized Tariff Schedule of the United States (HTSUS). The scope of the investigation includes paintbrushes and paintbrush heads with a blend of natural bristle and synthetic filaments, provided that the synthetic filaments comprise over 50 percent of the total filler material in the finished paintbrush or paintbrush head. The merchandise subject to this investigation is classifiable under 9603.40.4060 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Excluded from the scope of this investigation are artists' brushes classifiable under 9603.30.2000, 9603.30.4000, or 9603.30.6000 of the HTSUS or other non-paintbrush products classifiable under 9603.40.4060 of the HTSUS, such as foam applicators, sponge applicators, or any other type of non-brush paint applicator.¹⁷

¹³ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’ ”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹⁴ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

¹⁵ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁶ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁷ 64 Fed. Reg. 46881, 46882 (August 27, 1999).

Commerce described the merchandise within the scope of the investigation with respect to Indonesian imports as follows:

The scope of the Indonesian investigation includes all paintbrushes and paintbrush heads that are used to apply paint, stain, varnish, shellac, or any other type of protective coating, including natural bristle paintbrushes and paintbrush heads, synthetic filament paintbrushes and paintbrush heads, and paintbrushes and paintbrush heads made with a blend of natural bristle and synthetic filament. The merchandise subject to this investigation is classifiable under 9603.40.4040 and 9603.40.4060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Excluded from the scope of this investigation are artists' brushes classifiable under 9603.30.2000, 9603.30.4000, or 9603.30.6000 of the HTSUS or other non-paintbrush products classifiable under 9603.40.4060 of the HTSUS, such as foam applicators, sponge applicators, or any other type of non-brush paint applicator.¹⁸

Therefore, the scope of the Chinese investigation includes paintbrushes containing more than 50 percent synthetic filaments, while the scope of the Indonesian investigation encompasses both natural bristle and synthetic filament paintbrushes.

C. Domestic Like Product Issues

In its 1986 final determination concerning LTFV natural bristle paintbrushes from China, the Commission found that the domestic product like imported natural bristle paintbrushes consisted of natural bristle and synthetic filament paintbrushes.¹⁹ The Commission reached the same conclusion in the recently concluded five-year review of the resulting antidumping order, defining the like product to include both natural bristle and synthetic filament paintbrushes.²⁰ No party in these investigations urged the Commission to define natural and synthetic paintbrushes as separate like products.²¹

¹⁸ 64 Fed. Reg. 46881, 46882 (August 27, 1999).

¹⁹ Natural Bristle Paint Brushes from the People's Republic of China, Inv. No. 731-TA-244 (Final), USITC Pub. 1805 at 7 (Jan. 1986).

²⁰ Natural Bristle Paint Brushes from China, Inv. No. 731-TA-244 (Review), USITC Pub. 3199 (June 1999) at 4.

²¹ The Commission must base its domestic like product determination on the record in these investigations, and is not bound by prior determinations concerning the same imported products. Nippon Steel, 19 CIT at 455; Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade 1988). However, in the event that the Commission finds a different domestic like product or products than it has in prior investigations, it should provide a reasoned explanation of its decision. Id. We do not place great weight on the findings in the recent expedited five-year review of the order covering natural bristle paintbrushes from China, which was based on a different, and much more limited, record than these investigations.

In these investigations, petitioners²² urge the Commission to adopt a single like product definition consisting of all domestically produced paintbrushes.²³ The Joint Respondents²⁴ contend that the Commission should find three domestic like products: chip brushes, low-quality paintbrushes, and high-quality paintbrushes.²⁵ We conclude that there is one domestic like product consisting of all types of chip brushes and paintbrushes, whether natural bristle, synthetic filament or a blend of the two.

1. Whether Chip Brushes Should Constitute a Separate Like Product

Chip brushes or utility brushes are made with natural bristles and have wooden handles.²⁶ They are generally 2 inches or less in width and are relatively thin because they have fewer rows of bristles compared to higher quality paintbrushes.²⁷ Like other lower quality brushes, chip brushes have bristles of the same length. Chip brushes are used in the industrial market for removing chips and scrap during machining operations and for applying glue, adhesives, or lubricants.²⁸ The record indicates that chip brushes and paint brushes share many physical characteristics and uses. Both paintbrushes and chip brushes consist of bristles or filaments attached to the ferrule with adhesive to make the head of the brush, and both have handles attached to that head. The record indicates that some consumers use chip brushes for painting.²⁹ The record does indicate some differences, most notably that chip brushes are primarily disposable while paintbrushes generally are not.³⁰ However, we conclude that the similarities between chip brushes and paintbrushes outweigh the differences.

The record indicates some interchangeability between chip brushes and paintbrushes. Although a chip brush may be unsatisfactory as a paint applicator for high-quality finishes,³¹ consumers may use chip brushes to apply paint or other protective coatings.³² Natural bristle paintbrushes could presumably also be used in some of the main chip brush applications: applying adhesives and lubricants and cleaning metal chips off hot machinery.³³ Because consumers may take advantage of this interchangeability to paint with chip brushes, they apparently view chip brushes as paintbrushes, albeit low-quality ones.³⁴

²² The petitioners are Bestt Liebco, EZ Paintr Corp., Purdy Corp., Wooster Brush Co., and Tru*Serv Manufacturing.

²³ Petitioners' Postconference Brief at 2.

²⁴ The Joint Respondents are Linzer Products Corp., Best B International Products, Wuxi Shengfa Brush Co., and PT Ace Oldfields.

²⁵ Joint Respondents' Brief at 5.

²⁶ Confidential Report (CR) CR at I-10 & Public Report (PR) at I-10.

²⁷ CR at I-9, I-13 & PR at II-1.

²⁸ CR at I-9 & PR at II-1

²⁹ CR at I-13-14 & PR at I-10.

³⁰ Conference Transcript (Tr.) at 71 (testimony of Alan Benson of Linzer Products). However, we note that some paintbrushes are disposable. CR & PR at II-1.

³¹ CR at I-13 & PR at I-10.

³² CR at I-14 & PR at I-10.

³³ Because synthetic filaments and plastic handles can melt in intense heat, paintbrushes with wood handles and natural bristles are typically used for working with hot machinery. Tr. at 71 (testimony of Alan Benson of Linzer Products).

³⁴ CR at I-13 & PR at I-10.

Chip brushes and paintbrushes share channels of distribution.³⁵ Both are sold through mass merchandisers, such as Home Depot, although chip brushes are also sold directly to industrial end users.³⁶ U.S. producers manufacture paintbrushes and chip brushes in the same facilities, with the same employees and machinery.³⁷

There is little question that chip brushes have lower prices than other types of paintbrushes.³⁸ However, paintbrush prices vary with the quality of the brush, and these low prices are commensurate with the position of chip brushes at the low end of the paintbrush quality scale.³⁹

In sum, while there are some differences between chip brushes and paintbrushes in physical characteristics, end uses, and price, the record shows numerous similarities between chip brushes and paintbrushes in all of the relevant factors. These similarities suggest that there is a continuum of paintbrushes of various quality levels. Low prices for chip brushes reflect the position of chip brushes at the low end of the quality spectrum, but do not constitute a clear dividing line in the continuum sufficient to justify a separate like product finding.

2. Whether Low-Quality Paintbrushes Should Constitute a Separate Like Product

We further conclude that low- and high-quality paintbrushes should not be separate like products. Low-quality and high-quality paintbrushes share the same physical characteristics except for minor differences related to quality of construction and of the bristles or filaments.⁴⁰ They are used for painting, and thus are interchangeable.⁴¹ Both quality levels are sold to consumers at retail outlets and mass merchandisers.⁴² Some of the highest quality brushes are handcrafted,⁴³ but all of these paintbrushes are typically made by the same production process and by the same employees.⁴⁴ Professional painters and manufacturers perceive differences between the two types of brushes, though the average consumer may not.⁴⁵ There does appear to be a substantial price premium for the high-quality paintbrushes.⁴⁶ However, the many similarities between high- and low-quality paintbrushes again demonstrate that there is a continuum of products of varying quality levels with no clear dividing lines.⁴⁷ Consequently, we find a single like product consisting of all paintbrushes.

D. Domestic Industry and Related Parties

³⁵ CR at I-14 & PR at I-10.

³⁶ CR at I-14 & PR at I-10.

³⁷ CR at I-13 & PR at I-10.

³⁸ Tr. at 21-24 (testimony of Frederick Burns, formerly of EZ Paint).

³⁹ CR at II-1 & PR at II-1.

⁴⁰ The thickness of the filler, ferrule, length out, and packaging, typically distinguish the different quality levels of brushes. CR at II-1 & PR at I-10.

⁴¹ Tr. at 18 (testimony of Frederick Burns, formerly of EZ Paint).

⁴² Tr. at 60 (testimony of Alan Benson of Linzer Products).

⁴³ Tr. at 19 (testimony of Frederick Burns, formerly of EZ Paint).

⁴⁴ Tr. at 18 (testimony of Frederick Burns, formerly of EZ Paint).

⁴⁵ Tr. at 18 (testimony of Frederick Burns, formerly of EZ Paint).

⁴⁶ Tr. at 23-24 (testimony of Frederick Burns, formerly of EZ Paint).

⁴⁷ Tr. at 19, 23-24 (testimony of Frederick Burns, formerly of EZ Paint).

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . .”⁴⁸ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴⁹ Based on our finding that the domestic like product consists of all paintbrushes, we find that the domestic industry consists of all domestic producers of paintbrushes.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). 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.⁵⁰ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.⁵¹

Two domestic producers, Linzer and EZ Paintr, meet the criteria for potential exclusion from the domestic industry pursuant to section 771(4)(B) of the Act because they are importers of the subject merchandise.⁵² We find that appropriate circumstances do not exist to exclude from the domestic industry either of these producers as related parties. Both Linzer and EZ Paintr accounted for a *** of U.S. production during the investigation period.⁵³ Their primary interest appears to lie with domestic production, rather than importation. EZ Paintr and Linzer are, respectively, *** domestic producers,⁵⁴ and domestically produced brushes accounted for *** for both.⁵⁵ In addition, both companies emphasized their commitment to U.S. production.⁵⁶ We also note that direct imports of the subject merchandise do not appear to have shielded EZ Paintr and Linzer from any effects of the subject imports. While Linzer’s financial performance is *** than

⁴⁸ 19 U.S.C. § 1677(4)(A).

⁴⁹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁵⁰ 19 U.S.C. § 1677(4)(B).

⁵¹ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, *e.g.*, Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

⁵² CR at IV-6, PR at IV-6.

⁵³ CR at III-3& PR at III-2-3. Linzer was responsible for *** percent and EZ Paintr for *** percent of production of domestic paintbrushes in 1998. Id.

⁵⁴ CR & PR at Table III-1.

⁵⁵ Measured by value, subject imports accounted for *** percent of EZ Paintr’s total U.S. shipments of paintbrushes in 1998. In terms of units sold, subject imports were *** percent of EZ Paintr’s U.S. shipments of paintbrushes in 1998. CR & PR at IV-6, nn.4-5. As for Linzer, subject imports accounted for *** percent of the value of its total U.S. shipments of paintbrushes in 1998. In terms of units sold, subject imports were *** percent of Linzer’s paintbrush shipments in 1998. CR & PR at IV-6, nn.6-7 and data compiled from questionnaires submitted to the Commission.

⁵⁶ Tr. at 110 (testimony of Alan Benson of Linzer); Tr. at 50 (testimony of Jeff Burbach, of Newell Rubbermaid, corporate parent of EZ Paintr).

the industry average, Linzer and EZ Paintr registered operating profit margins between *** percent, which are consistent with those of the rest of the domestic industry.⁵⁷ Therefore, we find that appropriate circumstances to exclude either company do not exist.

In addition, three domestic producers purchased significant volumes of subject merchandise from unrelated importers.⁵⁸ Because these producers were neither owners of nor were owned by the exporters or importers of the subject merchandise, neither the producers nor the importers or exporters directly controlled the other so as to qualify the domestic producers as a related party under section 771(4)(B). Also, although sizable, the purchases of subject merchandise were not large enough to amount to direct or indirect control of a producer, importer, or exporter, and thus we consider none of these three producers to be a related party.⁵⁹

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to cumulatively assess the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁶⁰ In assessing whether subject imports compete with each other and with the domestic like product,⁶¹ the Commission has generally considered four factors, including:

⁵⁷ CR & PR, Table VI-2.

⁵⁸ These producers were ***. CR at III-11 & PR at III-7.

⁵⁹ 19 U.S.C. § 1677(4)(B)(ii) (“a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direct over the other party.”). Two importers – ***- reported making sales to domestic producers. In one case, the largest domestic producer customer accounted for about *** of the importer’s business. *** Questionnaire Response at 16. The other importer reported having multiple brush manufacturers as customers. *** Questionnaire Response at 7. Therefore, it does not appear that either importer was so reliant on any producer as to place that producer in a position of “control” of the importer. Conversely, purchases of imported merchandise do not appear to have accounted for a large enough share of the three domestic producers’ total sales to have given the importers operational control over any of the domestic producers. CR at III-11 & PR at III-7.

⁶⁰ 19 U.S.C. § 1677(7)(G)(I).

⁶¹ The SAA (at 848) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition,” citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

- (1) *the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;*⁶²
- (2) *the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;*
- (3) *the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and*
- (4) *whether the subject imports are simultaneously present in the market.*⁶³

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁶⁴ Only a “reasonable overlap” of competition is required.⁶⁵

B. Analysis

As a threshold issue, we are presented with the question whether it is appropriate to cumulate imports subject to investigations that have different scopes. In these investigations, the scope definitions include all paintbrushes from Indonesia and synthetic filament paintbrushes from China. We conclude that it is appropriate to cumulate imports subject to petitions filed on the same day if the subject imports compete with each other and the domestic like product, notwithstanding differences in the scope of the subject merchandise among the investigations.⁶⁶ For the reasons discussed below, we have determined to cumulate the subject imports.⁶⁷

⁶² Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

⁶³ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁶⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁶⁵ See Goss Graphic System, Inc. v. United States, ___ CIT ___, slip op. 98-147 at 8 (Oct. 16, 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁶⁶ Commissioner Crawford finds that the statute precludes the Commission from cumulatively assessing the volume and effect of allegedly unfairly traded imports from two countries when such imports do not consist of the same subject merchandise. See Separate and Dissenting Views of Commissioner Carol T. Crawford.

⁶⁷ In Certain Special Quality Hot-Rolled and Semifinished Carbon and Alloy Steel Products from Brazil, the Commission declined to cumulate the subject imports when the scopes were mutually exclusive. In declining to cumulate, the Commission stated that, given the mutually exclusive scopes, it was “not persuaded that there is a sufficiently reasonable overlap of competition between the special quality lead and bismuth bar and rod imports and the much broader range of special quality semifinished and hot-rolled bar imports in this investigation to justify cumulation.” Inv. No. 731-TA-572 (Preliminary), USITC Pub. 2537 (July 1992) at 28 n.104. In these investigations, the scopes overlap and encompass synthetic paintbrushes from China and Indonesia.

We find that there is some substitutability among the Chinese, Indonesian, and domestic paintbrushes. Virtually all of the Chinese imports and 72 percent of the domestic product were of consumer paintbrushes.⁶⁸ While 82 percent of the Indonesian imports were of chip brushes, 18 percent of Indonesian imports were consumer brushes.⁶⁹ Moreover, as noted above, there is at least some interchangeability at the consumer level between chip brushes and paintbrushes, as both can be used for painting.⁷⁰ Further, while subject imports from the subject countries also differed because subject imports from Indonesia consisted exclusively of natural bristle brushes, while those from China were exclusively synthetic filament paintbrushes,⁷¹ users may view these types of brushes as being somewhat interchangeable.⁷²

Imports from subject countries were generally fungible with the U.S. product, as there was substantial U.S. production of both types of brushes during the investigation period.⁷³ While, as discussed below, there are important limits to the substitutability of subject imports and the domestic product, we find the subject imports and domestic product to be at least somewhat fungible.

There is also a geographic overlap in sales. All of the U.S. producers and a majority of importers reported that they sell paintbrushes nationwide.⁷⁴ Significant quantities of subject imports from both countries were present throughout the period of investigation,⁷⁵ and therefore, were simultaneously present in the marketplace.⁷⁶

Subject imports and domestic paintbrushes are sold through the same channels of distribution.⁷⁷ Paintbrushes are sold by domestic producers and importers to mass merchandisers and hardware stores. Both imported and domestic paintbrushes are also sold, to a lesser degree, to hardware distributors that then sell them to hardware stores and mass merchandisers.⁷⁸ Some mass merchandisers import paintbrushes directly.⁷⁹ Moreover, a large portion of the subject imports were reported as distributed to U.S. paintbrush producers, suggesting that they then traveled through the same channels of distribution as the U.S. producers' domestically-produced brushes.⁸⁰

Based on the analysis above, we find a reasonable overlap of competition and cumulate subject imports from China and Indonesia for purposes of our analysis of present material injury.

V. NO REASONABLE INDICATION OF MATERIAL INJURY

⁶⁸ CR & PR at Table II-1.

⁶⁹ CR & PR at Table II-1.

⁷⁰ CR at I-13-14 & PR at I-10.

⁷¹ CR at IV-2; CR & PR at Table IV-2.

⁷² Although the recommended uses are different – natural bristle paintbrushes work best with oil-based coatings and synthetic filament paintbrushes with water-based coatings – synthetic filament brushes may also be used with oil-based paints. CR at I-9 & PR at I-7. Technological developments are increasing this overlap, and a new type of synthetic filament that closely matches the properties of natural bristle is becoming available. CR at I-9 & PR at I-7. Furthermore, consumers may not always differentiate between different types of paint brushes. Tr. at 14 (testimony of Stan Welty, formerly of Wooster Brush).

⁷³ CR & PR, Table III-2.

⁷⁴ CR at V-2 & PR at V-1.

⁷⁵ CR & PR at Table IV-2.

⁷⁶ See also Petitioners' Postconference Brief at 20.

⁷⁷ CR at II-3 & PR at II-2.

⁷⁸ CR at II-3 & PR at II-2.

⁷⁹ CR at II-3 & PR at II-2.

⁸⁰ CR & PR at Table II-2.

BY REASON OF ALLEGEDLY LTFV IMPORTS⁸¹

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.^{82 83} In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁸⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁸⁵ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁸⁶ 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.”⁸⁷

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing paintbrushes is materially injured by reason of subject imports from China and Indonesia that are allegedly sold in the United States at less than fair value.

⁸¹ Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly LTFV imports of the subject merchandise from China.

⁸² 19 U.S.C. § 1671b(a) and 1673b(a).

⁸³ Commissioner Crawford notes that the statute requires that the Commission determine whether there is a reasonable indication that a domestic industry is “materially injured by reason of” the allegedly subsidized and 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 less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the 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. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997)(rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745(Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of 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).

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

⁸⁵ 19 U.S.C. § 1677(7)(A).

⁸⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁷ 19 U.S.C. § 1677(7)(C)(iii).

A. Conditions of Competition

We find several conditions of competition relevant to these investigations. Demand for paintbrushes is generally derived from demand for paint.⁸⁸ Demand is also influenced by housing starts and construction activity and is somewhat seasonal.⁸⁹ Apparent domestic consumption of paintbrushes grew from 232.0 million brushes in 1996 to 255.4 million brushes in 1998.⁹⁰ In the first quarter of 1999, apparent domestic consumption was 55.1 million as compared to 60.0 million brushes in the first quarter of 1998.⁹¹

The U.S. producers increased paintbrush production and production capacity during the period of investigation. Capacity increased from 119 million brushes in 1996 to 126.7 million in 1998,⁹² primarily because investments in machinery enhanced productivity.⁹³ Domestic production of all paintbrushes increased from 75.9 million brushes in 1996 to 78.3 million in 1998.⁹⁴ The domestic industry's capacity utilization rates declined from 61.1 to 55.0 percent over the same period, as capacity levels increased faster than production levels.⁹⁵

Measured by volume, subject imports account for a substantial portion of U.S. consumption.⁹⁶ However, a large portion of these imports are sold by or through domestic producers, including petitioners.⁹⁷ These direct importations and sales of imported products accounted for *** percent of the imports by volume from Indonesia,⁹⁸ and *** percent of the imports from China, during 1998.⁹⁹

Finally, the market is divided between professional and consumer segments.¹⁰⁰ The professional segment represents *** percent of U.S. shipments of U.S. produced paintbrushes or *** percent of the U.S. market, and is not known to face any subject import competition.¹⁰¹ The consumer segment is subdivided further, with product offerings falling into four groups – chip brushes and what the domestic industry describes as “good,” “better,” and “best” levels of paintbrushes.¹⁰² Chip brushes account for approximately *** percent of the U.S. market, while the “good,” “better,” and “best” consumer brushes collectively account for *** percent.¹⁰³ Domestic production is concentrated in the higher-valued consumer and professional

⁸⁸ Petitioners' Postconference Brief at 13.

⁸⁹ CR at II-6 & PR at II-4.

⁹⁰ CR & PR at Table IV-5.

⁹¹ CR & PR at Table IV-5.

⁹² CR at II-4 & PR at II-3.

⁹³ Petitioners' Postconference Brief, Exh. 1, at 3; Tr. at 45 (testimony of Jeff Burbach, of Newell Rubbermaid, corporate parent of EZ Painter); Tr. at 45 (testimony of Stan Welty, formerly of Wooster Brush).

⁹⁴ CR at II-4 & PR at II-3.

⁹⁵ CR at II-4 & PR at II-3.

⁹⁶ Subject imports increased their U.S. market share from 33 percent to 46 percent by volume over the period of investigation. CR & PR at Table IV-5.

⁹⁷ CR at IV-6.

⁹⁸ CR & PR at Table IV-6.

⁹⁹ CR & PR at Table IV-6.

¹⁰⁰ CR & PR at II-1.

¹⁰¹ CR & PR at Table II-1. This figure does not include nonsubject imports, which are also not known to be sold in the professional segment. Tr. at 19-20 (testimony of Frederick Burns, formerly of EZ Painter).

¹⁰² CR & PR at II-1.

¹⁰³ See Table II-1. The calculations of the sizes of segments do not include nonsubject imports.

segments, whereas subject imports are mostly chip brushes and lower-valued consumer paintbrushes.^{104 105}

B. Volume

Section 771(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.”¹⁰⁶ The volume of subject imports increased steadily, from 76.5 million brushes in 1996, to 94.7 million in 1997, and 117.4 million in 1998, with shipments of 22.9 million in the first quarter of 1998 and 25.9 million in the first quarter of 1999.¹⁰⁷ The value of subject imports also increased, from \$17.9 million in 1996 to \$25.9 million in 1998, with interim period values of \$5.4 million in 1998 and \$6.9 million in 1999.¹⁰⁸

Subject imports increased their market share in terms of units from 33 percent to 46 percent from 1996 to 1998.¹⁰⁹ However, in terms of value, the subject import market share only increased from 10.4 percent to 13.1 percent.¹¹⁰ The domestic industry’s market share in terms of units declined from 34.4 percent to 29.1 percent over the period of investigation, with market shares of 26.2 percent in the first quarter of 1998 and 31.4 in the first quarter of 1999.¹¹¹ But in terms of value, the domestic industry’s market share actually increased from 76.5 percent in 1996 to 79.8 percent in 1998, with a 77.4 percent market share in the first quarter of 1998 and 77.6 percent in the first quarter of 1999.¹¹² Nonsubject imports’ share of value of the market declined from 13.1 percent to 7.1 percent from 1996 to 1998.¹¹³

The volume of subject imports at the end of the period of investigation, when viewed in isolation, could be considered significant.¹¹⁴ However, there are important limits to the substitutability of the subject imports and the domestic product. The subject imports consist primarily of lower-valued paintbrushes, including chip brushes, whereas domestic production is concentrated in the higher-valued paintbrushes, including professional paintbrushes. For this reason, we do not find that the volume of subject imports is significant. We note that this finding is consistent with our determinations that subject imports did not have any significant negative price effects or impact on the domestic industry, as discussed below.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) *there has been significant price underselling by the imported merchandise as*

¹⁰⁴ Tr. at 50 (testimony of Jeff Burbach, of Newell Rubbermaid, corporate parent of EZ Paint).

¹⁰⁵ Commissioner Crawford does not join in the rest of the Commission’s views.

¹⁰⁶ 19 U.S.C. § 1677(7)(C)(I).

¹⁰⁷ CR & PR at Table IV-2.

¹⁰⁸ CR & PR at Table IV-2.

¹⁰⁹ CR & PR at Table IV-5.

¹¹⁰ CR & PR at Table IV-5.

¹¹¹ CR & PR at Table IV-5.

¹¹² CR & PR at Table IV-5.

¹¹³ CR & PR at Table IV-5. This figure includes nonsubject Chinese natural bristle paintbrushes.

¹¹⁴ Chairman Bragg finds that, although subject import volumes could be deemed significant when viewed in isolation, in the context of the instant preliminary investigations they are not significant given the absence of negative price effects and impact, discussed below.

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.*¹¹⁵

Pricing data reveal pervasive underselling by the subject imports. Pricing comparisons for six specific brushes from the U.S. and subject countries show that subject imports undersold the domestic product in all 160 quarterly price comparisons with an average margin of underselling of 68.4 percent for China and *** percent for Indonesia.¹¹⁶ Nevertheless, we do not find this underselling to be significant because it had no apparent effect on domestic prices reflecting to some extent the concentration in different market segments of the domestic and subject import paintbrushes.

Domestic producers' prices showed a general upward trend during the period of investigation for 5 of the 6 products for which import prices were reported, while prices stayed stable or declined for the four products in which there was no data concerning import competition.¹¹⁷ Our questionnaire pricing data do not exhibit any correlation between the underselling and domestic prices. Therefore, we find that the subject imports did not depress domestic prices.

We also do not find that subject imports suppressed domestic prices. The ratio of costs of goods sold to net sales declined from 57.2 to 56.0 percent during the period of investigation,¹¹⁸ while the domestic producers' average unit values increased. These trends resulted in a noteworthy increase in the domestic industry's operating margins, which suggests that they would not have been able to raise prices even further in the absence of the subject imports. Given the domestic producers' high degree of participation as importers and sellers of subject merchandise,¹¹⁹ they are likely to market those imported paintbrushes in a manner which would not adversely affect prices for their higher-priced domestic paintbrushes. Thus, we do not find significant price suppression by the subject imports. Accordingly, we find that the subject imports did not adversely affect prices for the domestic like product to a significant degree.

¹¹⁵ 19 U.S.C. § 1677(7)(C)(ii).

¹¹⁶ CR at V-19; CR & PR at Table V-8. We recognize that the observed price differences may in part, reflect differences in quality between domestic and imported merchandise. Chinese paintbrushes are constructed of inferior brush filaments, limiting their substitutability with the domestic product and the degree of price competition. CR at II-7. In addition, both Chinese and Indonesian paintbrushes use an inferior acrylic adhesive to bind the bristles, which makes them more likely to shed than domestic brushes. Tr. at 67 (testimony of Alan Benson of Linzer Products).

¹¹⁷ CR & PR at Tables V-2-7

¹¹⁸ CR & PR at Table VI-1.

¹¹⁹ For example, in 1998, the U.S. producers accounted for, either by importing or purchasing, *** percent of the value of imports from Indonesia. CR & PR at Table IV-6.

D. Impact

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.¹²⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor 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.”^{121 122 123}

We do not find that the subject imports had a material adverse impact on the domestic industry. Although subject imports increased during the period of investigation and continually undersold domestic merchandise, the domestic industry registered strong performance most measures, particularly financial indicators.

The volume of U.S. producers’ domestic shipments decreased from 79.8 million brushes in 1996 to 73.2 million in 1997, and then increased to 74.4 million in 1998. Their shipments of 17.3 million brushes in the first quarter of 1999 were again higher than shipments of 15.7 million brushes in 1998.¹²⁴ The value of U.S. shipments also increased, from \$132.2 million in 1996 to \$157.9 million in 1998, with \$33.8 million in the first quarter of 1998 and \$35.9 million in the first quarter of 1999.¹²⁵

Operating income margins increased in each year, beginning at 15.8 percent in 1996, then increasing to 15.9 percent in 1997 and 17.3 percent in 1998.¹²⁶ Production initially fell from 75.9 million brushes in 1996 to 73.4 million in 1997, but then increased to 78.3 million in 1998.¹²⁷ Due to productivity enhancing capital investments, average annual capacity increased from 119 million brushes in 1996 to 126.7 million brushes in 1998.¹²⁸ Capacity utilization declined from 63.8 percent to 61.8 percent over the period of

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

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

¹²² The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce stated that the estimated dumping margins were as follows: China, 10.82 to 148.91 percent; Indonesia, 0.00 percent to 53.12 percent. 64 Fed. Reg. 46881, 46883 (August 27, 1999).

¹²³ Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on 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).

¹²⁴ CR & PR at Table IV-4.

¹²⁵ CR & PR at Table III-3. In the interim period the value of shipments increased from \$33,760,000 to \$35,892,000.

¹²⁶ CR & PR at Table VI-2. Margins increased during the interim period as well, from 13.0 percent to 15.3 percent.

Id. Operating income was \$21.8 million in 1996, \$24.1 million in 1997 and \$27.9 million in 1998. Operating income in the first quarter of 1999 was \$5.6 million, which was higher than the \$4.5 million figure for the first quarter of 1998.

¹²⁷ CR & PR at Table III-2. Production was 13.8 million brushes in the first quarter of 1998, and 17.4 million in the same period in 1999.

¹²⁸ CR at III-2 & PR at II-3.

investigation, reflecting the increase in productive capacity.¹²⁹ Domestic producers' employment also increased from 764 workers in 1996 to 820 workers in 1998.¹³⁰ Capital expenditures rose from \$0.9 million in 1996 to \$2.2 million in 1998, and R&D expenses increased from \$209,000 in 1996 to \$568,000 in 1998.¹³¹

As discussed above, most performance measures indicate that the industry is performing well.¹³² While capacity utilization and productivity displayed negative trends, the decline in capacity utilization occurred because increases in capacity and production occurred at slightly different rates. Moreover, as significant sellers of subject merchandise, the domestic producers were able to control their own capacity utilization by shifting between domestic production and importing subject merchandise.¹³³

In short, the industry's excellent operating performance has resulted from the significant increase in net sales values, reflecting the industry's concentration in the production of higher-valued brushes. The industry also was successful in instituting price increases over the period of investigation. As the increase in net sales values outpaced the increase in unit costs, the industry's operating performance, which was good at the beginning of the period of investigation, improved. Subject imports did not suppress price increases to any significant degree. Accordingly, the subject imports did not have a material adverse impact on the domestic industry.

Therefore, based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured by reason of imports of paintbrushes from China or Indonesia that are allegedly sold in the United States at less than fair value.

VI. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

A. Cumulation for Purposes of Analyzing the Threat of Material Injury

Cumulation for threat analysis is treated in Section 771(7)(H) of the Act.¹³⁴ This provision leaves to the Commission's discretion the cumulation of imports in analyzing threat of material injury. Based on an evaluation of the relevant criteria as well as our analysis supporting cumulation in the context of assessing present material injury, we exercise our discretion to cumulate imports from China and Indonesia for purposes of assessing threat of material injury in these preliminary determinations.

¹²⁹ CR at III-2 & PR at II-3. Capacity utilization was also down from 61.1 percent to 55.0 percent in the interim period.

¹³⁰ CR & PR at Table III-6. There were 817 workers in the first quarter of 1998, as opposed to 801 workers in the first quarter of 1999. Wages paid increased from \$17.8 million in 1996 to \$18.6 million in 1998, with \$4.6 million in the first quarter of 1998 and \$4.4 million in the first quarter of 1999. CR & PR at Table III-6. Productivity declined slightly, from 47.3 to 44.2 units per hour. CR & PR Table at III-6.

¹³¹ CR & PR at Table VI-5. For the interim periods, capital expenditures were \$765,000 in 1998 and \$482,000 in 1999, while R&D expenditures were \$175,000 in 1998 and \$169 in 1999.

¹³² The interim data suggest this profitability has continued. CR & PR at Table VI-2.

¹³³ Although productivity was lower in 1998 than in 1996, it reached a low point in 1997 and increased in 1998.

¹³⁴ 19 U.S.C. § 1677(7)(H).

B. Statutory Factors

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.”¹³⁵ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹³⁶ In making our determination, we have considered all factors that are relevant to this investigation.¹³⁷ Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain paintbrushes from China and Indonesia that are allegedly sold in the United States at less than fair value.

As an initial matter, we reiterate our observation that the domestic industry is currently prospering in virtually every respect. In fact, the industry’s fortunes improved significantly over the period of investigation. As a result, we find that it is not vulnerable to import competition.

We find that the rate of increase in the volume and market penetration of subject imports for purposes of our threat analysis is not significant.¹³⁸ We find it useful to consider the likely future volume and market share of natural bristle and synthetic filament paintbrushes before aggregating them for a finding with regard to the cumulated subject merchandise as a whole. Shipments of subject imported natural bristle paintbrushes from Indonesia increased from 37.1 million brushes in 1996 to 49.0 million in 1998, with shipments of 12.1 million brushes in the first quarter of 1999 being higher than the 7.7 million brushes shipped in the first quarter of 1998.¹³⁹ Most of this increase resulted from domestic producers’ own shipments of subject merchandise.¹⁴⁰ Therefore, we find that any increase in the volume of subject natural

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

¹³⁶ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

¹³⁷ 19 U.S.C. § 1677(7)(F)(I). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(I)(I) and (VII).

¹³⁸ 19 U.S.C. § 1677(7)(F)(I)(III).

¹³⁹ CR & PR at Table IV-4. The value of these imports increased from \$7.5 million in 1996 to \$8.8 million in 1999. First quarter shipments had a value of \$1.5 million in 1998 and \$2.5 million in 1999. The market share of imported natural bristle paintbrushes in terms of quantity increased from 47.3 to 53.1 percent from 1996 to 1998, with market shares of 40.4 and 59.9 percent in the first quarters of 1998 and 1999, respectively. In terms of value, the market share of Indonesian brushes was essentially the same from 1996 to 1998, while the market share for the first quarter of 1999 was higher than the same period in 1998. CR & PR at Table IV-5.

¹⁴⁰ CR & PR at Table IV-6. U.S. producers’ shipments of subject merchandise exceeded the quantity and value of importers’ shipments by ***, respectively in 1996. The gap increased, with U.S. producers’ shipments of subject merchandise higher than importers’ shipments by *** in 1998. As measured by value, importers’ market share actual decreased over that period. We placed little weight on the fact that importers’ shipments of natural bristle brushes were much higher in the first quarter of 1999 than they were in the first quarter of 1998. The record indicates that there was not a fixed relationship between first quarter shipments and shipments for the full year in 1998, which indicates that shipments in the first quarter of 1999 are not a reliable indicator of future shipments or market shares. Moreover, given that the Indonesian producers were producing at nearly full capacity during the investigation period, any such increase

(continued...)

bristle paintbrushes is unlikely to be significant.

The volume of subject import synthetic filament paintbrushes from China increased from 39.4 million brushes in 1996, to 57.1 million in 1997, and 68.4 million in 1998. However, the 13.8 million brushes shipped in the first quarter was less than the 15.2 million shipped in the same period in 1998. We note that most of the overall increase in subject imports from China occurred early in the investigation period, between 1996 and 1997, with a much smaller increase in 1998 coming almost exclusively at the expense of nonsubject sources.¹⁴¹ Domestic producers' shipments of synthetic filament brushes stayed essentially flat from 1997 to 1998, while their market share increased.¹⁴² Therefore, current data do not indicate that subject imports from China are likely to accelerate in the imminent future.

While petitioners alleged that improvements in the quality of subject imports threatened the domestic industry's dominance of the high end of the market, Indonesian producers cannot produce synthetic filament brushes, and the inferior production equipment and materials used by Chinese producers do not allow them to match the quality of U.S. producers.¹⁴³ There is no record evidence suggesting that this situation will change in the imminent future.¹⁴⁴ Therefore, we find that any increase in the volume of subject synthetic filament paintbrushes is unlikely to be significant, as it would likely displace imports of a comparable quality from nonsubject sources rather than higher value, higher quality domestic products.¹⁴⁵

The record shows no indication of increased capacity or excess production capacity in the subject countries that would indicate the likelihood of substantially increased imports of subject merchandise into the United States. The Indonesian industry was operating at nearly full capacity and shipping nearly all of its production to the United States during the investigation period.¹⁴⁶ We do not expect that current shipments to Australia or Indonesia would be diverted to the United States, and instead find it likely that these markets will absorb any additional production.¹⁴⁷ Therefore, we conclude that the small increase in Indonesian producers' capacity in 1999 is unlikely to result in a substantial increase in imports into the United States. The record contains little information on Chinese capacity and the parties disagree with respect to Chinese capacity and the rate of capacity utilization.¹⁴⁸ Nevertheless, our finding that any increased imports of subject synthetic filament paintbrushes are unlikely to displace domestic merchandise leads us to conclude that any such excess capacity would not pose a threat to the domestic industry even if it resulted in increased imports to the United

¹⁴⁰ (...continued)

would not be sustainable over the full year.

¹⁴¹ CR and PR at Table IV-4.

¹⁴² CR & PR at Table IV-5.

¹⁴³ Tr. at 64-70 (testimony of A. Benson); Tr. at 60 (testimony of K. Walkerden).

¹⁴⁴ The average unit values of subject synthetic filament paintbrushes decreased from 1997 to 1998. Because the Commission's product-specific pricing analysis shows that the prices for subject synthetic filament brushes did not decrease markedly over this period, a decrease in average unit values may indicate a shift in the product mix of subject imports toward less expensive, lower-quality products. Thus, it is clear that imports are not targeting the high end of the market and are, in fact, moving away from it.

¹⁴⁵ This same conclusion holds true for any competition between subject synthetic filament paintbrushes and domestic natural bristle paintbrushes, which is clearly more attenuated than competition between imported and domestic synthetic filament paintbrushes.

¹⁴⁶ CR & PR at Table VII-1. Since natural bristle paintbrushes from China are already subject to an antidumping duty order, likely exports from China are not relevant to this analysis.

¹⁴⁷ PR & CR at Table VII-1, Testimony of K. Walkerden (Tr. at 87). We note that Australia is the home of one Indonesian producer's corporate owner.

¹⁴⁸ See, e.g., Tr. at 25 (testimony of F. Burns); Tr. at 96 (testimony of S. Weiss).

States.

We find that there is unlikely to be a significant degree of product shifting in China or Indonesia. Indonesian producers do not make synthetic filament paintbrushes, and any switching of production from natural bristle to synthetic filament paintbrushes in China likely would have already occurred, given the existing antidumping duty order on natural bristle paintbrushes from China.¹⁴⁹ The record contains no indication that the equipment currently used to make synthetic filament paintbrushes in China or natural bristle paintbrushes in Indonesia is used to produce any other product. Therefore, product shifting is not likely.

We note that U.S. importers' inventories of the subject imports increased at the end of the investigation period. However, this appears to be primarily a result of the increased overall volume of subject imports, as the ratios of inventories to both shipments and to imports remained at roughly their historical levels.¹⁵⁰ Moreover, ***.¹⁵¹

Our evaluations of each of the statutory factors with respect to subject imports from China and Indonesia lead us to conclude that neither the volume nor the market penetration of cumulated subject imports is likely to increase substantially.

We do not find that imports of the subject merchandise are likely to enter the U.S. market at prices that are likely to depress or suppress domestic prices to a significant degree. As noted above, despite uniform underselling of domestic products by large margins during the investigation period, subject imports neither suppressed nor depressed U.S. prices. We find no indication that competitive conditions will change to the point that subject imports in the imminent future would have such an effect, as the domestic producers will continue to import and/or market a significant portion of subject imports. Moreover, both capital expenditures and research and development expenditures increased markedly over the investigation period, indicating that imports are unlikely to have any negative effect on development and production efforts of the domestic industry.¹⁵²

Based on these factors, we determine that significantly increasing volumes of subject imports are not imminent, and that material injury will not occur in the absence of an antidumping duty order. Therefore, we find that the domestic industry producing paintbrushes is not threatened with material injury by reason of subject imports from China and Indonesia.

¹⁴⁹ Petition at 28-29.

¹⁵⁰ CR & PR at Table VII-2.

¹⁵¹ The questionnaire responses of *** indicate that they accounted for *** percent of U.S. importers' inventories of subject imports from Indonesia in 1996, *** percent in 1997, *** percent in 1998, and *** percent in interim 1999. These companies accounted for *** percent of U.S. importers' inventories of subject imports from China in 1996, *** percent in 1997, *** percent in 1998, and *** percent in interim 1999. The inventory levels alone would not be sufficient for us to find a reasonable indication of a threat of material injury.

¹⁵² CR & PR at Table VI-5.

CONCLUSION

For the reasons stated above, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain paintbrushes from China or Indonesia that are allegedly sold in the United States at less than fair value.¹⁵³

¹⁵³ Commissioner Crawford dissenting with respect to imports of the subject merchandise from China.

SEPARATE AND DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of the information obtained in these investigations, I determine that there is a reasonable indication that the industry in the United States producing paintbrushes is materially injured by reason of imports of the subject merchandise from China that are allegedly sold in the United States at less-than-fair-value (“LTFV”), but that there is no reasonable indication that the industry in the United States producing paintbrushes is materially injured or threatened with material injury by reason of imports of the subject merchandise from Indonesia that are allegedly sold in the United States at LTFV. I join my colleagues in the findings with respect to the domestic like product and the domestic industry, as well as in the discussion of the conditions of competition in the U.S. market. However, in light of the different scopes in the two investigations, I have not cumulatively assessed the volume and effect of imports of the subject merchandise from China and Indonesia. Because my analysis and determination differ from those of the majority, my separate and dissenting views follow.

I. ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the 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 . . .*¹⁵⁴

In making its determination, the Commission may consider “such other economic factors as are relevant to the determination.”¹⁵⁵ 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.”¹⁵⁶

The statute directs that we determine whether there is “material injury by reason of the dumped imports.” Thus we are called upon to evaluate the effect of 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 any 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.”¹⁵⁷ It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects

¹⁵⁴ 19 U.S.C. § 1677(7)(B)(i).

¹⁵⁵ 19 U.S.C. § 1677(7)(B)(ii).

¹⁵⁶ 19 U.S.C. § 1677(7)(C)(iii).

¹⁵⁷ 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).

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 subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. 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.¹⁵⁸

In my analysis of material injury, I evaluate the effects of the dumping¹⁵⁹ 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 dumping on the quantity of domestic sales,¹⁶⁰ 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 impact on other industry indicators (*e.g.*, employment, wages, etc.) is 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 there is a reasonable indication that the domestic industry producing paintbrushes is materially injured by reason of allegedly LTFV imports of the subject merchandise from China, but that there is no reasonable indication that the domestic industry producing paintbrushes is materially injured or threatened with material injury by reason of allegedly LTFV imports of the subject merchandise from Indonesia.

II. LIKE PRODUCT AND DOMESTIC INDUSTRY

For each investigation, I concur in the finding that the domestic like product consists of both synthetic filament and natural fiber paintbrushes. I also concur with the finding that high-quality paintbrushes, low-quality paintbrushes, and chip brushes are not separate domestic like products. Finally, I concur in the conclusion that the domestic industry consists of all domestic producers of paintbrushes.

¹⁵⁸ United States Steel Group v. United States, 96 F.3rd 1352, at 1361 (Fed.Cir. 1996), *aff’g* 873 F.Supp. 673, 694-695 (Ct. Int’l Trade 1994).

¹⁵⁹ 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). In these investigations, the alleged dumping margins for subject imports are 10.82 -148.91 percent for the subject merchandise from China and 0.00 - 53.12 percent for the subject merchandise from Indonesia. 64 F.R. at 46881, 46883 (Aug. 27, 1999).

¹⁶⁰ In examining the quantity sold, I take into account sales from both existing inventory and new production.

III. 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. I concur with the discussion of the conditions of competition presented in the views of the Commission majority. However, my analysis requires additional evaluation of the commercial environment in which competition takes place. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. 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, such as 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 demand for paintbrushes is moderately inelastic.

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 end-use product, demand is determined by the importance of the product to the consumer. This importance will depend on whether the product is considered a non-discretionary (necessity) purchase or a discretionary (luxury) purchase by the consumer. When the end use is considered a necessity, changes in the price of the product are less likely to alter demand by the consumer. When the end use is considered a luxury, changes in the price of the product are more likely to alter demand by the consumer.

Demand for paintbrushes is driven by construction and renovation trends and tends to follow paint consumption.¹⁶¹ Most consumers purchasing paint also require some form of paint applicator. There are likely, however, to be some differences in the elasticity of demand across consumers of the different qualities (*e.g.*, good-better-best product distinctions). Moreover, the costs of paintbrushes are likely to be moderate in relation to the costs of paint and other necessary painting equipment. In addition, chip brushes are very inexpensive, disposable articles. The non-discretionary nature of paintbrush (including chip brush) purchases and the moderate cost shares indicate that demand would likely be moderately inelastic.

¹⁶¹ Most producers felt that demand grew over the period examined, although importers had mixed views on demand. This is consistent with the 10.1-percent increase in U.S. consumption from 1996 to 1998, but 8.1-percent decrease in the first quarter of 1999 relative to the first quarter of 1998. Confidential Report (“CR”) at II-6, Public Report (“PR”) at II-4; table C-1, CR at C-3, PR at C-3.

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.

Information on the record indicates that there are many alternative forms of paint applicators (*e.g.*, foam brushes, rollers, pads, sprayers) that can be used in a similar fashion as synthetic filament and natural bristle paintbrushes.¹⁶² In general, the choice of which applicators to use for a given project depends upon such considerations as the desired quality of the finish and the size and texture of the surface being finished.¹⁶³ Moreover, despite the reported increase in the use of paint applicators such as foam brushes or rollers,¹⁶⁴ it appears that many projects require the use of paintbrushes in conjunction with other paint applicators.¹⁶⁵ Therefore, in many instances these alternative products are complements, rather than substitutes. Thus, limits on the substitutability of alternative products indicate moderately inelastic demand for paintbrushes.

The non-discretionary nature of paintbrush purchases and the moderate cost share of paintbrushes, combined with the limits on the substitutability of alternative products, reduce the elasticity of demand. For this reason, I find that the demand for paintbrushes is moderately inelastic. That is, purchasers will not reduce significantly the amount of paintbrushes they buy in response to a general increase in the price of paintbrushes.

B. 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 non-price 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 non-price 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 for paintbrushes is moderately inelastic, overall purchases will not decline significantly if the overall prices of paintbrushes increase. However, purchasers can avoid price increases from one source by seeking other sources of paintbrushes. In addition to any changes in overall demand for paintbrushes, the demand for paintbrushes from different sources will decrease or increase depending on their relative prices and their substitutability. If paintbrushes from different sources are substitutable, purchasers are more likely to shift their demand from one source when the products from that source (*i.e.*, subject imports) experience a price increase. The magnitude of this shift in demand is determined by the degree of

¹⁶² CR at II-6, PR at II-4.

¹⁶³ CR at II-6, PR at II-4.

¹⁶⁴ *See, e.g., Conference Transcript* at 59, 63 (testimony of Mr. Linzer).

¹⁶⁵ *See, e.g., Petitioners' Postconference Brief* at 8, identifying "cutting in," trim work, and touch up as examples of tasks that require the use of paintbrushes in conjunction with other paint applicators.

substitutability among the sources.

Purchasers have a number of available sources of paintbrushes: paintbrushes produced by domestic producers, nonsubject imports, and subject imports. 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 paintbrushes from different sources as follows.

Based on the evidence in the record, I find that subject imports from China and domestic paintbrushes are moderate substitutes for each other, while subject imports from Indonesia and domestic paintbrushes are poor substitutes for each other. Nearly all U.S. producers reported that U.S.-produced, Chinese, and Indonesian paintbrushes are interchangeable, a characterization disputed by the majority of importers. U.S. producers and the majority of importers also stated that nonsubject imports and the domestic like product, as well as nonsubject and subject imports, were interchangeable.¹⁶⁶

Subject Merchandise from China. Based on *physical characteristics*, both U.S. and subject Chinese paintbrushes are primarily of synthetic filament (75 percent and 100 percent, respectively); however, the quality of the synthetic filament used by Chinese producers is reportedly inferior to that used by U.S. producers.¹⁶⁷

The most important *non-product characteristics* distinguishing U.S.-produced paintbrushes and Chinese paintbrushes are the segments to which they are marketed. All Chinese brushes are sold to the consumer (do-it-yourself) segment of the market, while 21.5 percent of U.S.-produced brushes are sold to the professional segment.¹⁶⁸ In addition, only 6.2 percent of imports are distributed through paint stores or hardware stores, as opposed to 48.4 percent of U.S.-produced paintbrushes.¹⁶⁹ Finally, domestically produced paintbrushes are supported by advertising and volume incentives equivalent to two to six percent of sales.¹⁷⁰

¹⁶⁶ CR at II-7-12, PR at II-5-7.

¹⁶⁷ CR at II-7, PR at II-5. The synthetic filament used in Chinese paintbrushes reportedly is hollow, as opposed to solid, and lacks the desirable taper of solid filament.

¹⁶⁸ According to Stan Welty, Chairman of the Paintbrush Trade Action Committee Coalition, "It is important for the Commission to focus its investigation on the consumer segment of the market. Imports from China and Indonesia do not currently compete in the professional segment of the market, although they are about to enter that market segment as well." *Conference Transcript* at 10 (emphasis added).

¹⁶⁹ See tables II-1 and II-2, CR at II-3, PR at II-2. The import channel structure is not broken down between Chinese and Indonesian product.

¹⁷⁰ *Petitioners' Postconference Brief* at exh. 1, pp. 6-7. It is not clear if the same level of support is extended to sales by U.S. producers of their imported paintbrushes.

Other issues affecting substitutability include the intentional segregation of product lines between imported and domestic product.¹⁷¹ Given that U.S. producers import directly or purchase a large portion of subject Chinese paintbrushes (***) percent by quantity, (***) percent by value in 1998), this is no small consideration.¹⁷²

Based on the evidence in the record, I find that subject imports from China and domestic paintbrushes are moderate substitutes for each other.

Subject Merchandise from Indonesia. Based on *physical characteristics*, all Indonesian paintbrushes are of natural fiber and none are of synthetic filament. In contrast, less than 25 percent of U.S.-produced paintbrushes are of natural fiber. Moreover, 82 percent of Indonesian brushes are chip brushes, as opposed to 6 percent of U.S. brushes.¹⁷³

The same *non-product characteristics* described earlier distinguish U.S.-produced paintbrushes and Indonesian paintbrushes: the segments to which they are marketed; the distribution channel structure; and the use of advertising and volume incentives.

Other issues affecting substitutability include the aforementioned intentional segregation of product lines between imported and domestic product. Given that U.S. producers import directly or purchase the large majority of Indonesian paintbrushes (***) percent by quantity, (***) percent by value in 1998), this is an important consideration.¹⁷⁴

Based on the evidence in the record, I find that subject imports from Indonesia and domestic paintbrushes are poor substitutes for each other.

Paintbrushes from Nonsubject Countries. Nonsubject imports appear to be at least moderate substitutes for subject imports from China and subject imports from Indonesia. The record does not contain extensive details regarding the marketing of nonsubject paintbrushes. However, approximately 40 percent of nonsubject imports are natural bristle paintbrushes and 60 percent are synthetic filament paintbrushes. Moreover, chip brushes are well-represented among nonsubject imports of natural fiber brushes, originating in such countries as China and Taiwan.¹⁷⁵ More than (***) percent of nonsubject imports are imported directly or purchased by domestic producers. Given the segregation of product lines discussed above and the emphasis on sales of U.S.-produced paintbrushes into the professional segment of the paintbrush market, substitutability between domestically produced paintbrushes and nonsubject imports is likely to be no more than moderate.

¹⁷¹ See, e.g., testimony of Alan Benson, C.E.O of Linzer Products: “The import brush is a niche below our domestic product line. And we do not permit, as I said before, the imports to impinge on that which we make. It is not our business to compete with ourselves in that sense.” *Conference Transcript* at 90. See also testimony of Jeff Burbach, VP & Controller of Newell Rubbermaid: “So, in the individual product categories, you won't see a heck of a lot of overlap in domestic production versus what we're importing. There will be some. But it really deals with being able to put together a whole product range of product and to be cost-competitive in certain portions of that range.” *Conference Transcript* at 50.

¹⁷² Calculated from table IV-6, CR at IV-15, PR at IV-14.

¹⁷³ Table II-1, CR at II-3, PR at II-2. Indonesian chip brushes are produced by hand, as opposed to the automated production process used in the United States.

¹⁷⁴ Calculated from table IV-6, CR at IV-15, PR at IV-14.

¹⁷⁵ (***) CR at IV-7, PR at IV-6. See also the testimony of Stan Welty, Chairman of the Paintbrush Trade Action Committee Coalition, regarding imports of Chinese and Taiwanese chip brushes. *Conference Transcript* at 41.

For these reasons, I find that subject Chinese imports and domestic paintbrushes are moderate substitutes for each other, while subject imports from Indonesia and domestic paintbrushes are poor substitutes for each other. Therefore, I find that purchasers would have switched portions of their purchases of subject imports from China to both nonsubject imports and the domestic like product, had subject imports been fairly priced. To the limited extent that purchasers would have switched away from purchases of subject imports from Indonesia, I find that they would have switched the vast majority of their purchases to nonsubject imports, had subject imports been fairly priced.

C. Supply Conditions

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. For the reasons discussed below, I find that the elasticity of supply of paintbrushes is high.

Capacity Utilization and Capacity. Unused capacity can exert price discipline in a competitive market, because no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. In 1998, the domestic industry's capacity utilization stood at 61.8 percent.¹⁷⁶ Therefore, a substantial share of capacity was unused and thus apparently available to increase production.¹⁷⁷ Based on these rates, it would appear that U.S. producers have considerable unused capacity that could have been used to supply the demand for subject imports.

Inventories and Exports. The domestic industry had 15.4 million paintbrushes in inventory as of December 31, 1998. This volume appears to be substantial, with ending inventories equivalent to 20.7 percent of U.S. shipments in 1998.¹⁷⁸ The domestic industry's export shipments were small, and thus do not represent a significant source of supply.¹⁷⁹ Despite minor participation in export markets, the domestic industry's extensive inventories appear to indicate a high elasticity of supply.

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, there are approximately a dozen companies that produce paintbrushes, and thus there is competition within the domestic industry. Nonsubject imports are a substantial source of competition in this market, as evidenced by their large share of the market during the period examined. Consequently, I find that there is a high level of competition in the U.S. market for paintbrushes.

I find that the elasticity of supply is high, based on the domestic industry's extensive ability to increase the supply of domestic paintbrushes from existing unused capacity and inventories.

¹⁷⁶ Table III-2 CR at III-7, PR at III-5.

¹⁷⁷ U.S. producers reported available capacity sufficient to produce 9.9 million natural fiber paintbrushes and 38.5 million synthetic filament paintbrushes. Tables C-2 and C-3, CR at C-4 and C-6, PR at C-3.

¹⁷⁸ Table III-5, CR at III-14, PR at III-9.

¹⁷⁹ The domestic industry exported *** paintbrushes, valued at ***, in 1998. Exports accounted for approximately *** percent of total shipments in 1998. Table III-3, CR at III-9, PR at III-6.

IV. CUMULATION

I have not cumulated the subject merchandise imported from China and the subject merchandise imported from Indonesia because the scopes of the two investigations are different: synthetic filament paintbrushes from China and natural fiber and synthetic filament paintbrushes from Indonesia. In my view, the statute precludes the Commission from cumulatively assessing the volume and effect of allegedly unfairly traded imports from two countries when such imports do not consist of the same subject merchandise. Section 771(7)(G)(i) of the Tariff Act of 1930, as amended, directs the Commission to cumulatively assess the volume and effects of imports of “the subject merchandise” from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like products in the U.S. market.¹⁸⁰ The statute specifically defines the term “the subject merchandise” as “the class or kind of merchandise that is within the scope of an investigation . . .”¹⁸¹ Here the classes or kinds of merchandise that are within the scopes of the two investigations before the Commission are different. Because the scopes are different, the plain reading of the statute precludes cumulation. Consequently, the subject imports from China are not eligible under the statute for cumulation with the subject imports from Indonesia.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF SYNTHETIC FILAMENT PAINTBRUSHES FROM CHINA

The statute requires Commissioners 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.

A. Volume of Subject Imports

The quantity of subject imports of paintbrushes from China increased from 39.4 million units in 1996 to 57.1 million units in 1997 and 68.4 million units in 1998, increasing by 73.5 percent between 1996 and 1998. Apparent U.S. consumption increased by 10.1 percent during the same period. The quantity of subject imports was 15.2 million units in first quarter 1998 compared to 13.8 million units in first quarter 1999. Apparent U.S. consumption was 8.1-percent higher in first quarter 1998 compared to first quarter 1999. Subject imports’ market share by quantity increased from 17.0 percent of U.S. consumption in 1996 to 26.8 percent in 1998, and was 25.4 percent in first quarter 1998 compared to 25.0 percent in first quarter 1999.¹⁸²

The value of subject imports of paintbrushes from China increased from \$10.4 million in 1996 to \$16.5 million in 1997 and \$17.1 million in 1998, increasing by 64.1 percent between 1996 and 1998. Apparent U.S. consumption increased by 14.5 percent during the same period. The value of subject Chinese imports was \$3.9 million in first quarter 1998 compared to \$4.4 million in first quarter 1999. Apparent U.S. consumption was 6.1-percent lower in first quarter 1998 compared to first quarter 1999. Subject imports’ market share by value increased from 6.0 percent of U.S. consumption in 1996 to 8.7 percent in 1998, and was 8.9 percent in first quarter 1998 compared to 9.6 percent in first quarter 1999.¹⁸³

¹⁸⁰ 19 U.S.C. § 1677(7)(G)(i).

¹⁸¹ 19 U.S.C. § 1677(25).

¹⁸² Table C-1, CR at C-3, PR at C-3.

¹⁸³ Table C-1, CR at C-3, PR at C-3.

While it is clear that the larger the volume of subject imports, the larger the effect it 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 Chinese imports relative to those of the domestic like product and nonsubject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price effects and impact.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the paintbrush market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether unused capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

In this investigation, the dumping margins for subject Chinese imports range from moderate to very high: 10.82 -148.91 percent.¹⁸⁴ Therefore, most of the subject imports would have been priced significantly higher had they been fairly traded. Given that demand is moderately inelastic, a large portion of demand likely would have shifted away from these subject imports. Alternative products would not have been likely to capture a significant portion of the shift in demand because they are complements rather than substitutes. Therefore, much of the demand for Chinese subject imports would have shifted to other sources of supply.

In 1998, Chinese subject imports accounted for 26.8 percent of the market, imports from nonsubject countries accounted for 24.9 percent of the market, imports from Indonesia accounted for 19.2 percent of the market, and shipments of domestically produced paint brushes accounted for 29.1 percent of the market. Given moderate substitutability between Chinese subject imports and the domestic like product, at least some of the demand for subject imports likely would have shifted toward domestic producers, had the subject imports been fairly traded. However, nonsubject imports of paint brushes are somewhat better substitutes for Chinese subject imports than the domestic like product or the Indonesian imports (due to product mix),¹⁸⁵ indicating that the larger share of any shift in demand would accrue to nonsubject imports. Nonetheless, given the large market share of the Chinese subject imports, it is likely that there would have been a significant increase in the demand for the domestic like product had the subject imports been fairly traded.

Even though demand is moderately inelastic, had Chinese subject imports been fairly traded, the domestic producers could not have increased their prices. The U.S. industry, which consists of 12 companies, is reasonably competitive. Moreover, the market power of the larger U.S. producers is diluted by the significant presence of nonsubject imports in the U.S. market. In 1998 the domestic industry had sufficient capacity and inventory to satisfy the increase in demand that would have shifted toward the domestic like product.¹⁸⁶ Therefore, the available capacity and competition within the domestic industry and from other sources of supply would have prevented the domestic industry from increasing its prices.

¹⁸⁴ 64 F. R. 46881, 46883 (Aug. 27, 1999).

¹⁸⁵ All U.S. producers and a majority of importers believe that subject and nonsubject imports can be used interchangeably and that there are no differences in product characteristics or sales conditions. CR at II-10-11, PR at II-7. *See also* earlier cited testimony about the role of imports generally within U.S. producers' product lines.

¹⁸⁶ The U.S. industry had available capacity to produce 48.4 million units; the available capacity allocated to synthetic filament paintbrushes was 38.5 million units. Table III-2, CR at III-7, PR at III-4.

Consequently, I find that subject imports from China are not having significant effects on the price of paintbrushes produced and sold by the industry in the United States.

C. 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.¹⁸⁷ These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic industry would not have been able to increase its prices had the subject imports not been dumped. Therefore, any impact on the domestic industry would have been on the domestic industry's output and sales. As I have discussed above, demand for paintbrushes likely would have shifted away from the subject Chinese imports had they been sold at fairly traded prices. In light of the dumping margins ranging from 10.82 -148.91 percent, the 26.8 percent market share held by Chinese subject imports, and the moderately inelastic nature of domestic demand, it is likely that, had the subject imports been fairly traded, the shift in demand toward the domestic product would have been substantial. The domestic industry had sufficient available capacity to satisfy the increased demand for the domestic like product. The overall domestic industry's output and sales, and therefore its revenues, likely would have increased significantly had the subject imports not been dumped. Consequently, the domestic industry would have been materially better off if the subject Chinese imports had been fairly traded.

VI. **NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF PAINTBRUSHES FROM INDONESIA**

The statute requires Commissioners 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.

A. Volume of Subject Imports

The quantity of subject imports of paintbrushes from Indonesia increased from 37.1 million units in 1996 to 37.5 million units in 1997 and 49.0 million units in 1998, increasing by 32.1 percent between 1996 and 1998. Apparent U.S. consumption increased by 10.1 percent during the same period. The quantity of Indonesian imports was 7.7 million units in first quarter 1998 compared to 12.1 million units in first quarter 1999. Apparent U.S. consumption was 8.1-percent higher in first quarter 1998 compared to first quarter 1999. Indonesian imports' market share by quantity increased from 16.0 percent of U.S. consumption in 1996 to 19.2 percent in 1998 and was 12.8 percent in first quarter 1998 compared to 22.0 percent in first quarter 1999.¹⁸⁸

The value of subject imports of paintbrushes from Indonesia increased from \$7.5 million in 1996 to \$7.7 million in 1997 and \$8.8 million in 1998, increasing by 17.7 percent between 1996 and 1998. Apparent U.S. consumption increased by 14.5 percent during the same period. The value of subject Indonesian imports was \$1.5 million in first quarter 1998 compared to \$2.5 million in first quarter 1999. Apparent U.S. consumption was 6.1 percent lower in first quarter 1998 compared to first quarter 1999. Indonesian imports' market share by value increased from 4.3 percent of U.S. consumption in 1996 to 4.4 percent in 1998, and was

¹⁸⁷ 19 U.S.C. § 1677(7)(C)(iii).

¹⁸⁸ Table C-1, CR at C-3, PR at C-3.

3.5 percent in first quarter 1998 compared to 5.4 percent in first quarter 1999.¹⁸⁹

While it is clear that the larger the volume of subject imports, the larger the effect it 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 poor substitutability of Indonesian imports for the domestic like product, reflecting in part the domestic industry's concentration on the production of synthetic filament paintbrushes and the extremely limited availability of domestic production of chip brushes,¹⁹⁰ I find that the volume of subject imports is not significant in light of the lack of price effects and impact.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the paintbrush market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether unused capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

In this investigation, the dumping margins for subject Indonesia imports range from 0.00 to 53.12 percent.¹⁹¹ Therefore, most of the subject imports likely would have been priced moderately higher had they been fairly traded. Given that demand is moderately inelastic, a marginal portion of demand likely would have shifted away from these subject imports. Alternative products would not have been likely to capture a significant portion of the shift in demand because they are complements rather than substitutes. Therefore, a marginal portion of the demand for Indonesian subject imports would have shifted to other sources of supply.

In 1998, Indonesian subject imports accounted for 19.2 percent of the market, imports from nonsubject countries accounted for 24.9 percent of the market, subject imports from China accounted for 26.8 percent of the market, and shipments of domestically produced paint brushes accounted for 29.1 percent of the market. Given poor substitutability between Indonesian subject imports (82 percent of which are chip brushes) and the domestic like product (6 percent of which are chip brushes), very little of the demand for subject imports would have shifted toward domestic producers, had the subject imports been fairly traded. Nonsubject imports of paint brushes are better substitutes for Indonesian paintbrushes than the domestic like product or the Chinese subject imports (due to product mix),¹⁹² indicating that most of any shift in demand would accrue to nonsubject imports.

Had Indonesian subject imports been fairly traded, the domestic industry as a whole could not have increased its prices. The U.S. industry, which consists of 12 companies, is reasonably competitive. Moreover, the significant presence of nonsubject imports in the U.S. market would have imposed price discipline. In 1998 the domestic industry had virtually no capacity to meet the increased demand for chip brushes. However, this

¹⁸⁹ Table C-1, CR at C-3, PR at C-3.

¹⁹⁰ The ability of the U.S. industry to supply chip brushes is virtually non-existent: one company produced *** units in 1998, compared to industry-wide production of 78.3 million natural and synthetic paintbrushes. *Compare Petitioners' Postconference Brief* at exh. 1, p.1, with table C-1, CR at C-4, PR at C-3.

¹⁹¹ 64 F. R. 46881, 46883 (Aug. 27, 1999).

¹⁹² All U.S. producers and a majority of importers believe that subject and nonsubject imports can be used interchangeably and that there are no differences in product characteristics or sales conditions. CR at II-10-11, PR at II-7.

lack of available capacity is due to the fact that only one petitioning producer produces chip brushes.¹⁹³ Because the other petitioning producers do not produce chip brushes, there could have been no increase in demand for their products, had the subject imports from Indonesia been fairly traded. Thus, if subject imports had been fairly traded, it is likely that nonsubject imports would have captured all or nearly all of any shift in demand away from the subject imports.

Consequently, I find that subject imports from Indonesia are not having significant effects on the price of paintbrushes produced and sold by the industry in the United States.

C. 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.¹⁹⁴ These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic industry would not have been able to increase its prices had the subject imports not been dumped. Therefore, any impact on the domestic industry would have been on the domestic industry's output and sales. As I have discussed above, it is likely that, had the subject imports been fairly traded, the shift in demand toward the domestic product would have been very small, since only one of the petitioning producers could have increased its output to meet the increased demand for chip brushes. Accordingly, the domestic industry as a whole likely would not have been able to increase significantly its output and sales, and therefore its revenues, had subject imports not been dumped. Consequently, the domestic industry would not have been materially better off if the subject imports had been fairly traded.

¹⁹³ The U.S. industry had available capacity to produce 48.4 million units; however, the reason that domestic producers account for such a large portion of Indonesian imports is because they no longer produce significant quantities of chip brushes. One company, ***, produced *** chip brushes in 1998; that company's maximum chip brush production over the entire period examined never exceeded *** units. *Petitioners' Postconference Brief* at exh. 1, p. 1.

¹⁹⁴ 19 U.S.C. § 1677(7)(C)(iii).

VII. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS FROM INDONESIA

For the purposes of determining whether there is a reasonable indication that a U.S. industry is threatened with material injury by reason of the subject merchandise, Section 771(7)(F) of the Tariff Act of 1930, as amended, lists a number of factors for the Commission to consider.¹⁹⁵ While an analysis of the statutory threat factors necessarily involves projection of future events, “[s]uch a determination may not be made on the basis of mere conjecture or supposition.”¹⁹⁶

Further direction is provided by the amendment to Section 771(7)(F)(ii), which adds that the Commission consider the threat factors “as a whole” in making its determination “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur” unless an order issues.¹⁹⁷ In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.¹⁹⁸ I have considered all of the statutory factors and determined that there is no reasonable indication that the domestic industry is threatened with material injury by reason of the allegedly LTFV imports of paintbrushes from Indonesia.

By quantity, subject imports of paintbrushes from Indonesia increased from 37.1 million units in 1996 to 37.5 million units in 1997 and 49.0 million units in 1998. The corresponding market share of the subject imports from Indonesia declined from 16.0 percent in 1996 to 15.3 percent in 1997, then increased to 19.2 percent in 1998. Most of this increase resulted from domestic producers’ purchases or direct imports of the subject merchandise.¹⁹⁹ The quantity of Indonesian imports was 7.7 million units in first quarter 1998 compared to 12.1 million units in first quarter 1999, while the Indonesian imports’ market share was 12.8 percent in first quarter 1998 compared to 22.0 percent in first quarter 1999.²⁰⁰ In my view, these increases are sufficiently large to justify a conclusion that there has been a significant rate of increase in the volume or market penetration of the subject imports that would indicate the likelihood of substantially increased imports. However, the significance of the rate of increase is limited by the poor substitutability between the domestic like product and the subject imports.

Despite a marked increase in capacity in 1998, unused capacity in Indonesia was *** units, out of *** units of total capacity. Capacity utilization was *** percent, consistent with capacity utilization rates in 1996 and 1997 and projections for 1999 and 2000. The two reporting manufacturers accounted for *** exports to the United States (the market that already accounts for over *** percent of Indonesian paintbrush shipments).²⁰¹ The record contains no indication that the equipment currently used to make natural bristle paintbrushes in Indonesia is used to produce any other product. Therefore, there is no basis to conclude that product shifting is likely.

¹⁹⁵ 19 U.S.C. § 1677(7)(F)(ii); see 19 U.S.C. §§ 1671b(a), 1673b(a).

¹⁹⁶ 19 U.S.C. § 1677(7)(F)(ii); see, e.g., S. Rep. No. 249 at 88-89; see also Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990).

¹⁹⁷ 19 U.S.C. § 1677(7)(F)(ii).

¹⁹⁸ 19 U.S.C. § 1677(7)(F)(iii)(I). There are no such findings relevant to this investigation.

¹⁹⁹ Table IV-6, CR at IV-15, PR at IV-14.

²⁰⁰ Table C-1, CR at C-3, PR at C-3. I place little weight on the fact that imports of natural bristle brushes from Indonesia held a greater share of the U.S. market in the first quarter of 1999 they did in the first quarter of 1998, given the shortness of the interim period and the seasonal nature of the market.

²⁰¹ Table VII-1, CR at VII-4, PR at VII-2.

Notwithstanding the large increase in the volume and market share of the subject imports, the Indonesian manufacturers have little ability to increase exports to the U.S. market from available capacity or by product shifting. Therefore, I find that further dumped imports are not imminent.

Consistent with the increase in imports of paintbrushes from Indonesia, inventory levels in the United States increased from *** units in 1996 to *** units in 1998. By March 31, 1999, inventory levels in the United States were *** units compared to *** units as of March 31, 1998.²⁰² However, inventories in Indonesia fell from *** units in 1996 to *** units in 1998 and, despite a spike to *** units in March 1999, are projected to stabilize at *** units.²⁰³ Given this decline, I find that inventories of Indonesian paintbrushes do not constitute a threat of material injury.

As discussed previously, the subject imports are not currently having significant effects on domestic prices due to the poor substitutability of imports of Indonesian paintbrushes for domestically produced paint brushes. There is no evidence that these conditions are likely to change. Therefore, I find that Indonesian subject imports are not likely to have a significant effect on the domestic industry's prices or output and sales in the imminent future. Consequently, I find that material injury is not likely to occur unless an order is issued.

For the reasons stated above, I do not find that further dumped imports from Indonesia are imminent or that material injury by reason of the subject imports will occur unless an order is issued. Consequently, I find that there is no reasonable indication that the domestic industry is threatened with material injury by reason of the allegedly LTFV imports of paintbrushes from Indonesia.

CONCLUSION

For the foregoing reasons, I determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of paintbrushes from Indonesia that allegedly are sold in the United States at less than fair value.

²⁰² Table VII-2, CR at VII-5, PR at VII-3. The questionnaire responses of *** indicate that they accounted for ***.

²⁰³ Table VII-1, CR at VII-4, PR at VII-2.