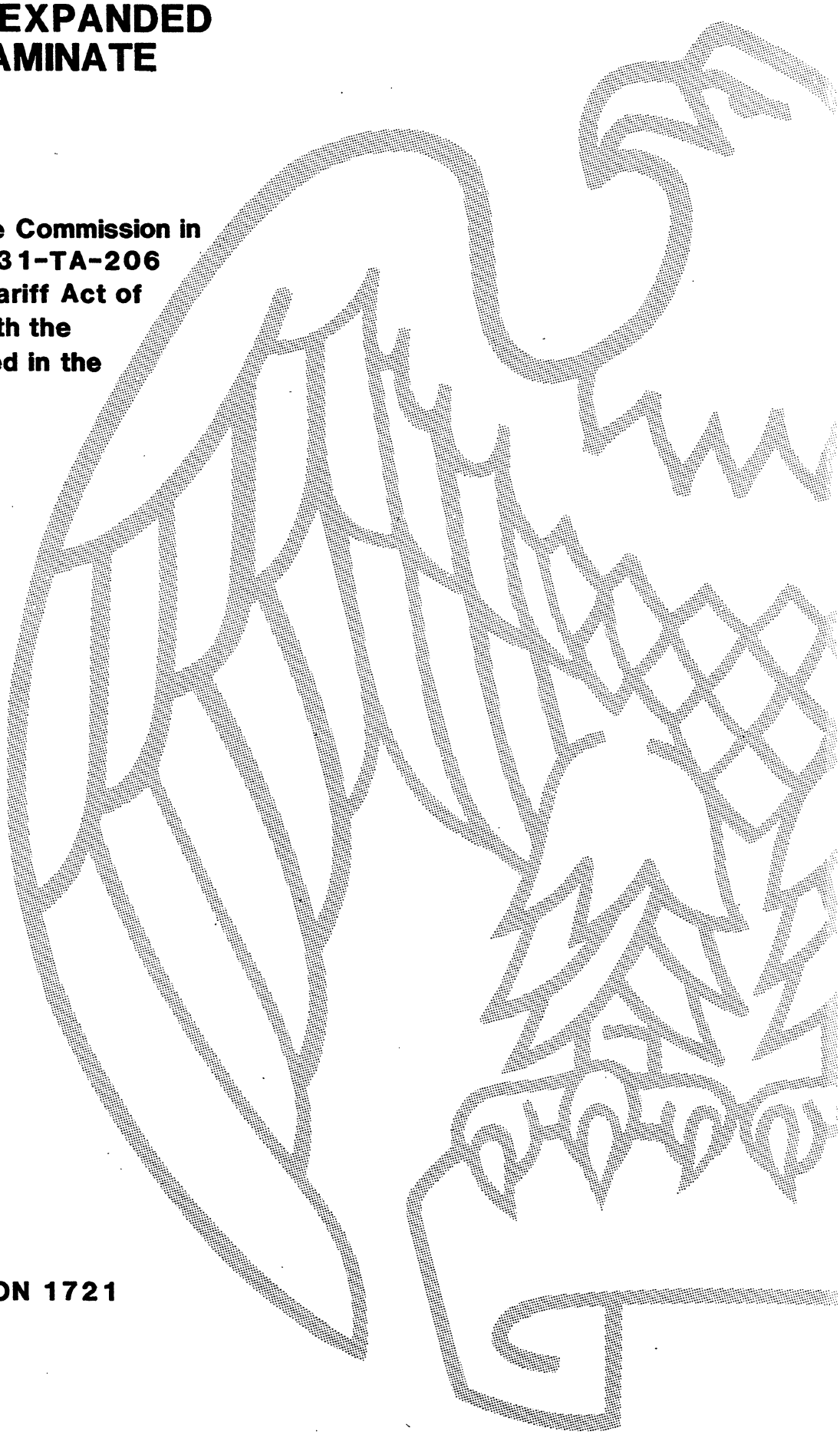
FABRIC AND EXPANDED NEOPRENE LAMINATE FROM JAPAN

Determination of the Commission in Investigation No. 731-TA-206 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-206 (Final)

FABRIC AND EXPANDED NEOPRENE LAMINATE FROM JAPAN

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, 2/ pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of fabric and expanded neoprene laminate, provided for in items 335.81, 335.82, 359.50, and 359.60 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 15, 1985, following a preliminary determination by the Department of Commerce that imports of fabric and expanded neoprene laminate from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. § 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 24, 1985 (50 F.R. 16165). The hearing was held in Washington, DC, on June 11, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

2/ Chairwoman Stern and Vice Chairman Liebeler dissenting.

VIEWS OF COMMISSIONERS ALFRED ECKES,
SEELEY LODWICK, AND DAVID ROHR

On the basis of the record in this final antidumping investigation, we determine that an industry in the United States is materially injured by reason of imports of fabric and expanded neoprene laminate (FENL) from Japan, which the Department of Commerce (Commerce) has determined are being sold at less than fair value (LTFV). 1/

We find the domestic industry is suffering material injury as evidenced by declining production, market share, and employment, as well as deteriorating financial performance. We further conclude that the increasing volume of LTFV imports and the price depression resulting from significant underselling by those imports constitute a causal connection between the injury suffered and the LTFV imports.

Like product and the domestic industry

The term "industry" is defined in section 771(4)(A) of the Tariff Act of 1930 as "[t]he domestic producers as a whole of the like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 2/ The term "like product," in turn, is defined in section 771(10) 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 . . . ." 3/ Further, the legislative history of this provision indicates that:

1/ Material retardation of the establishment of a domestic industry is not at issue in this investigation and is not discussed further.

2/ 19 U.S.C. § 1677(4)(A).

3/ 19 U.S.C. § 1677(10). See S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979).

> [t]he requirement that a product be 'like' the imported article 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 investigation. 4/

The imported product at issue in this final investigation is fabric and expanded neoprene laminate (FENL). 5/ In our preliminary determination, we described FENL, its characteristics, and its uses, as follows:

> The imported product which is the subject of this investigation is fabric and expanded neoprene laminate (FENL). FENL is a sheet of rubber with a textile fabric bonded to one or both sides of the rubber. The rubber is an expanded rubber, usually neoprene or a blend predominately of neoprene. The textile portion of the composite is primarily nylon, or a combination of nylon and spandex, which are used because they possess desired stretch and tensile-strength characteristics. The nylon fabric is available in various colors and constructions.
>
> FENL is . . . used in surfing, sailboating, diving, and other water sports. It is also used in sports-related activities, such as sailing apparel and ski masks, and, to a lesser extent, for eyeglass cases, mats, and bottle holders. 6/

In this final investigation, no party has disagreed with this basic description of the product nor have we received any information that suggests the advisability of reexamining this description.

4/ S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

5/ There are fewer producers of imported products at issue in this final investigation than in the preliminary investigation. In the preliminary investigation, the alleged LTFV imports were produced by Yamamoto, Asahi, Daiwa, Sedo, and others (including Misuzu). In its final determination, Commerce concluded that there are no LTFV sales by Sedo. Commerce also concluded that sales by Asahi and Daiwa were at de minimis LTFV margins. Only Yamamoto and Misuzu products were found to be sold at LTFV and the weighted average LTFV margin for both Yamamoto and Misuzu is 3.09 percent. 50 Fed. Reg. 23,486 (June 4, 1985). Accordingly, the LTFV products that we consider in this determination are those of Yamamoto and Misuzu. 19 U.S.C. § 1673d(b)(1).

6/ Fabric and Expanded Neoprene Laminate from Japan, Inv. No. 731-TA-206 (Preliminary), USITC Pub. 1608 at 4-5 (1984) (footnotes omitted) (FENL Preliminary).

In the preliminary determination, we determined that the like product consists of all domestically produced FENL, including Rubatex types G-231-N, R-1400-N, R-131-N, R-5000-N, R-6000-N, all FENL produced by Kirkhill, FENL containing white neoprene, and FENL containing fire-retardant or nonflammable neoprene. 7/ We also found that there is no domestic product like FENL made with neoprene containing metallic oxides. On the basis of the information and arguments raised in this investigation, it is necessary to reexamine the like product, particularly with regard to FENL made with G-231-N neoprene and FENL containing metallic oxides. 8/

FENL made with G-231-N neoprene differs from other FENLs in that it is produced by a gas-blowing process and is used primarily for professional and serious amateur diving, for which other FENLs are little used. 9/ It is recognized as a premium quality product with highly desirable physical properties, particularly stretchability and durability. 10/ Nevertheless, it is chemically identical to other FENLs 11/ and its physical properties do not differ significantly from those of at least one imported FENL product. 12/

7/ FENL Preliminary at 7. Chairwoman Stern and Commissioner Rohr determined that G-231-N was not a like product. Id. at 7 n.22.

8/ Petitioner urges us to reaffirm our conclusion that FENL produced with its G-231-N neoprene is a like product. Rubatex prehearing brief at 4-7; Tr. at 12-13. The parties in opposition to the petition (respondents) urge us to find that G-231-N is not a like product. Prehearing brief of respondents Yamamoto Corporation, Toyomenka (America), Inc., and Chugai Int'l Corp. (Yamamoto prehearing brief) at 5; Prehearing Brief of O'Neill, Inc. and Misuzu Chemicals Industries Co., Ltd. (Misuzu prehearing brief) at 5. Petitioner also urges us to reexamine the question of neoprenes containing metallic oxides. Rubatex prehearing brief at 15.

9/ Report of the Commission (Report) at A-6.

10/ Yamamoto prehearing brief at 1-2, 5. G-231-N appears to be as stretchable as the imported LTFV FENLs, and stretchability has been one of the key quality characteristics asserted by respondents to favor their FENLs over domestic FENLs. Report at Table 13.

11/ Rubatex prehearing brief at 7; Hearing exhibit 2.

12/ Report at Table 13.

It is available for the same uses as other FENL products 13/ and has been replaced for certain end uses over time by other products that have entered the market because of their lower prices. 14/ Finally, respondents have stated that one of the factors that differentiates G-231-N is price. 15/ The thrust of these comments is that price is a, if not the, feature that distinguishes G-231-N from the imported LTFV FENL. Accordingly, we find that G-231-N manufactured by petitioner Rubatex is part of the like product. 16/

In the preliminary investigation, we excluded from the scope of the like product FENLs made with neoprene containing metallic oxides. 17/ Our concern was metallic oxides that impart specific electric conductivity properties. 18/ We have now learned that all FENLs contain magnesium oxide and zinc oxide as catalysts in the production of neoprene and that these oxides impart no electrical conductivity properties. 19/ 20/ Accordingly, we

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13/ Transcript of the hearing (Tr.) at 12; Hearing exhibit 1.

14/ Rubatex prehearing brief at 4-5.

15/ "The problem with G-231 is not imports at less than fair value but that it is just too expensive for most ordinary wet suits." Misuzu posthearing brief at 2. "G-231 is too good and too expensive to be used for casual sports." Yamamoto posthearing brief at 3.

16/ Commissioner Rohr determines that G-231-N is not part of the like product. As noted by the majority, G-231-N is produced by a different method than the imported neoprenes. Although it may be similar in chemical properties to other neoprene, the unique process through which it is produced imparts different and superior characteristics. Finally, it is used for the manufacture of wetsuits for professional and serious amateur diving, a use not met by any other FENL products. These characteristic and use distinctions, in Commissioner Rohr's view, are substantial and require a finding that G-231-N FENL is not part of the like product. See Roquette Freres v. United States, 583 F. Supp. 599 (CIT 1984).

17/ FENL Preliminary at 6-7.

18/ Id. We stated that "[n]eoprene containing metallic oxide is not used in wetsuits and has different characteristics (electric conductivity) from other FENLs."

19/ Rubatex prehearing brief at 15-16 and exhibit 1.

20/ Respondents concur that neoprene containing metallic oxides for electric conductivity are not the same as neoprenes used for producing the FENLs at issue here. Tr. at 136.

find that FENL manufactured from neoprene containing magnesium oxide and zinc oxide for catalytic purposes is part of the like product. We exclude from the like product FENLs manufactured with neoprene containing metallic oxides for electric conductivity purposes.

Several other like product questions were raised in the preliminary investigation. The information received in this final investigation does not justify any exclusion from the like product on the basis of thickness, 21/ neoprene color, 22/ or fire-retardant characteristics. 23/

In view of the foregoing considerations, we determine that the like product consists of all FENL currently produced in the United States, specifically including Rubatex' FENLs containing G-231-N, R-1400-N, R-6000-N, R-131-N, and "008" neoprenes and Kirkhill Rubber Company's LM 300, S500, OS450, and SE500. 24/ We further determine that there is no domestic product like imported FENL made with neoprene containing metallic oxides other than magnesium oxide and zinc oxide.

21/ In the preliminary investigation, it was unclear whether there was domestic production of FENL in thicknesses of 1/16 inch or less and whether the like product should be restricted by thickness. In this final investigation, we have learned that the petitioner produces FENL and neoprene in thicknesses of less than 1/16 inch. Petitioner's prehearing brief at 25-26; Tr. at 72-73.

22/ The record shows, notwithstanding the arguments raised by respondents in the preliminary investigation, that petitioner has produced neoprene in green, blue, red, and yellow since 1962. Rubatex states that it also currently produces flesh-tone and orange and that it can produce other colors as well. Rubatex prehearing brief at 8.

23/ Petitioner's G-231-N, R-1400-N and R-131-N are recognized as fire-retardant FENL and have been approved as such by Underwriter's Laboratories. Rubatex prehearing brief at 19.

24/ In the preliminary investigation, we included R-5000-N in the like product. FENL Preliminary at 7. R-5000-N is no longer produced or sold and, accordingly, is not part of the like product. R-6000-N is currently produced and sold. Tr. at 59; GC memorandum GC-I-115 (June 28, 1985) at 7, n.14. We also include "008," petitioner's newest FENL product, within the scope of the like product. Although there is scant information on the record regarding this product, it is apparent that it is designed to have the same characteristics and uses as the imported FENLs. Rubatex prehearing brief at 6.

Accordingly, the domestic industry consists of the producers of the like product, Rubatex Corp. and Kirkhill Rubber Co. 25/

Condition of the domestic industry 26/

Domestic production and shipments have declined sharply during the period of investigation despite significant increases in consumption. 27/ 28/ Utilization of productive capacity was not only at a low level at the beginning of the period of investigation, but it also declined throughout the investigation. 29/ Inventories, as a percentage of shipments, increased. 30/ Employment of FENL production and related workers declined, as did the total wages paid to them. 31/ In terms of financial performance, the negative trends that we observed during the preliminary investigation continued and, in some respects, the financial performance of the industry is worse than observed during the preliminary investigation. 32/ Finally, we note that neither group of respondents has seriously contended that the industry is not suffering material injury. We conclude that the industry is experiencing material injury. 33/

25/ Commissioner Rohr determines, pursuant to his determination that G-231-N is not a like product, that the industry consists of the producers of all FENLs except G-231-N.

26/ Most of the data concerning the condition of the domestic industry are confidential because there are only two domestic FENL producers. Accordingly, our analysis of the condition of the domestic industry must focus on general trends and is presented in general terms.

27/ The investigation covered the period 1981 through the first quarter of 1985.

28/ Report at Tables 2-4.

29/ Id. at Table 2.

30/ Id. at Table 5.

31/ Id. at Table 6.

32/ Id. at Table 7.

33/ In conducting the analysis of injury, Commissioner Rohr focused on all FENL except for G-231-N. Although the data for an industry that excludes G-231-N are different from that considered by the Commission majority, the same trends are apparent and Commissioner Rohr concurs that the domestic industry is experiencing material injury.

Material injury by reason of the LTFV imports

In order to understand the injurious impact of the imported FENL products on the domestic FENL industry, it is necessary to begin with an understanding of the recent evolution of the FENL market. Prior to the late 1970s, FENL was used primarily for wetsuits by professional and serious amateur divers. 34/ At the end of the 1970s, two developments changed the FENL marketplace. First, there was significant growth in the surface water sports area (e.g., windsurfing and sailboarding). 35/ Second, there was the concurrent introduction of Japanese FENL products. 36/

Consumer tastes in the surface water sports market appear to differ somewhat from tastes in the traditional diving market. In particular, the surface water sports market is more fashion conscious, demanding a variety of bright, colorful FENL materials. 37/ This market also demands more flexible and stretchable FENL materials. 38/ The market is also more price conscious than the traditional diving market. 39/

To more effectively compete for FENL consumers in this emerging market segment, petitioner Rubatex introduced a succession of products to supplement its G-231-N and R-1400-N. 40/ Neither R-5000-N nor R-6000-N was successful. 41/ R-131-N has been accepted to some degree by this market. 42/

34/ See Rubatex prehearing brief at 4-5.
35/ See Conference transcript (C.Tr.) at 55, 82.
36/ Report at A-18. See C.Tr. at 84, 88.
37/ Tr. at 59; C.Tr. at 86, 88-89.
38/ C.Tr. at 86.
39/ See Id. at 85.
40/ Rubatex prehearing brief at 5-6, 17.
41/ The R-5000-N was not successful and is no longer produced. R-6000-N was not successful in the surface water sports market. Rubatex prehearing brief at 17-18; C.Tr. at 66-67.
42/ We note that respondents have stated that R-131-N will not be successful in this market. Tr. at 126. See C.Tr. at 60.

"008" was introduced within the last several months, 43/ and it is too soon to tell whether it will be accepted by this market segment. Rubatex has also introduced additional fabric colors and designs. Rubatex now has a wide range of colors and fabric styles available. 44/

Throughout the preliminary and final investigations, respondents have argued that any injury suffered by the domestic industry is exclusively a function of the asserted lower "quality" of the domestic product. 45/ 46/ Petitioner, on the other hand, asserts that there are no such differences, and that the domestic industry is materially injured by reason of the LTFV imports. 47/

43/ Tr. at 59.

44/ Compare C.Tr. at 88 ("bright colors . . . unavailable from Rubatex" in 1981) with Rubatex prehearing brief exhibit 2 and with Tr. at 27-30, 55.

45/ E.g., Misuzu prehearing brief at 3-4, 9-10; Yamamoto prehearing brief at 10-11. As used throughout the respondents' submissions, the term "quality" appears to cover not just the physical properties of the FENL, but also style considerations such as fabric color.

46/ Commissioner Rohr notes that while the information gathered in this investigation does not necessarily show that the quality of all FENL materials is identical it does show that quality differences are not sufficiently substantial to "break" the causal nexus which otherwise appears to exist.

47/ The Tariff Act of 1930 directs the Commission to determine whether the domestic industry is materially injured or threatened with material injury by reason of the LTFV imports. In conducting this analysis, we may not weigh causes of injury. However, we must be cognizant of factors other than LTFV imports which may be causes of injury. H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

> Although the Commission does not weigh causes of injury, . . . where injury to a domestic industry is caused exclusively by factors other than the alleged LTFV imports, a negative finding is required. Where the allegedly LTFV imports are one of the causes of injury, and regardless of other causes, there is a sufficient causal nexus between the imports and the injury, an affirmative finding is required.

FENL Preliminary at 11 n.41. See also Certain Tapered Roller Bearings and Parts Thereof from Japan, the Federal Republic of Germany, and Italy, Invs. Nos. 731-TA-120, 121, and 122 (Preliminary), USITC Pub. 1359 (1983) (compare Views of Chairman Eckes finding a causal nexus with Views of Commissioner Stern, dissenting on the ground that there was no such nexus). Thus, if LTFV imports are one of several causes of injury, and there is a sufficient causal nexus between the LTFV imports, an affirmative finding is required. See FENL Preliminary at 11; Certain Tapered Roller Bearings and Parts Thereof, supra.

In the final investigation, extensive information was provided by the parties, including expert testimony, regarding the various quality issues. Both petitioner and the Yamamoto respondents provided test results that compared Rubatex' R-131-N, Rubatex' R-1400-N, and Yamamoto's Y-38. Test information has also been provided to the Commission by Misuzu on its own FENL products. 48/

Respondents have asserted that the stretchability of the imported LTFV product is a major factor in the market's acceptance of their FENL over domestic FENL. 49/ Stretchability covers two distinct but interrelated concepts--elongation and tensile stress. Elongation refers to lengthening of the FENL and tensile stress is the force required to lengthen the FENL at a certain elongation. 50/ Tensile stress, at least in part, appears to be a function of the rate of elongation. 51/ A combination of relatively low tensile stress and relatively high elongation is preferable. 52/

In terms of elongation, petitioner's data show that all products have more than adequate elongation for use in normal circumstances. 53/ With regard to tensile stress, no significant differences were found between the Y-38 and the R-131-N over the normal range of elongation (75 to 100 percent), although both are superior in tensile stress to R-1400-N. 54/

48/ Due to its confidential nature, the Misuzu test data have not been made available to any other party for comment. Even though we have not had the benefit of comments on the Misuzu methodology and results, the Misuzu test results are of somewhat limited utility for several reasons. First, the Misuzu tests are not comparison studies of the Rubatex and Misuzu products. Second, many of the tests run on the Misuzu material were different from the tests run by Rubatex and Yamamoto and their experts. Finally, many of the Misuzu tests sought information not sought by Rubatex or Yamamoto.

49/ E.g., C.Tr. at 84; Misuzu prehearing brief at 14-15.

50/ Rubatex prehearing brief at 9.

51/ Tr. at 97-98.

52/ See Rubatex prehearing brief at 9.

53/ Id. at 11.

54/ Id. at 13 and exhibit 5.

These results are confirmed by the results of the Yamamoto testing, which found no significant differences in stretchability between the same two products. 55/ In a test for multidirectional stretchability, the Yamamoto expert again found no significant differences between these two products. He did, however, find statistically significant differences in stretchability between R-131-N and Y-38 on the one hand and R-1400-N on the other. 56/

We conclude that, from the test data presented regarding stretchability, there is no significant difference between the R-131-N and the Y-38, although differences exist between these two and the R-1400-N.

Along with stretchability, respondents have asserted that the LTFV imports are more comfortable to wear and are softer. 57/ Petitioner presented a study that addressed the subjective comfort of wetsuits. Without here summarizing the study or its methodology, it found no statistically significant differences between suits made from the Rubatex R-131-N material and those made from the Yamamoto Y-38 material on an overall basis. 58/ Even recognizing the criticisms and limitations of the study, we find none of them

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55/ Yamamoto prehearing brief exhibit 1 at 3.
56/ Id. at 13.
57/ E.g., Misuzu prehearing brief at 3; Yamamoto prehearing brief at 10.
58/ Hearing exhibit 10. As noted by its authors, the study has several limitations. First, it was limited to the activities of kayaking, canoeing, and whitewater rafting and that other results may be obtained in scuba diving, surfing, wind surfing, or other uses. Second, the subjects of the study were college-aged novices whose views might differ from those of more experienced users. Third, the suits were evaluated in relatively mild weather and more extreme conditions could produce different results. The study was criticized by the Misuzu respondents on the ground that the suits were not identical, as the Rubatex suit had a triangular piece in the armpit. Misuzu posthearing brief at 3. The Yamamoto respondents criticized the study because each subject used only one suit so that the study cannot represent a comparative study. Yamamoto posthearing response to questions at 8. Notwithstanding the third limitation recognized by the authors of the study, Yamamoto Y-38, according to its specifications, is designed for use in the surface water sports market segment. In our view, surface water sports do not entail conditions significantly more extreme than those experienced in the study.

sufficient, whether taken singly or collectively, to cause us to disregard it. 59/

With regard to other measurable quality differences, the various tests show no significant differences among Y-38, R-1400-N, and R-131-N. Thus, in testing thermal conductivity (i.e., insulating ability), respondent Yamamoto's expert found surprisingly uniform heat loss for all three FENLs over a 24 minute period, regardless of the water depth at which the tests were conducted. 60/ For compression set, the results of tests by both Rubatex and Yamamoto show no difference in the ability of the three FENLs tested to resume their original thickness after compression. 61/ The results of tests for tear strength show no significant differences among the various FENLs. 62/

We also attempted to obtain the subjective views of retailers regarding perceived differences between the domestic and the imported FENLs. The responses of the retailers show no preference for the imported or domestic FENL. 63/

Finally, we note that one of the criticisms made of Rubatex FENL during the preliminary investigation was an alleged paucity of colors for the laminating fabrics. 64/ Although this is a fashion issue, not a quality issue, the information does not support the allegation; Rubatex has fabrics in a wide variety of colors and patterns. 65/

59/ Although we had no opportunity to conduct any experiments in water, our review of the samples of FENL and wetsuits provided by the parties confirms the results of the Rubatex comfort study. We did not note any significant difference between the feel and comfort of the R-131-N and the Y-38, although the R-1400-N did appear to be a little stiffer.

60/ Yamamoto prehearing brief exhibit 1 at 16-18.

61/ Id. at 19; Rubatex prehearing brief at 14-15.

62/ Rubatex prehearing brief at 13-14.

63/ Report at A-21. We recognize that the low response rate to our retailer questionnaire limits its usefulness.

64/ E.g., C.Tr. at 84-85.

65/ See Rubatex prehearing brief at 22 and exhibit 2; Report at A-22; Tr. at 27-28, 30.

The foregoing facts simply do not sustain the position that the differences between the domestic and the imported LTFV FENLs are of such magnitude as to demonstrate the position sustained by the respondents--namely, that any injury to the domestic industry is due not to the subject imports but to the superior quality of the imported LTFV FENL. In particular, we find no significant differences in physical or stylistic attributes between Rubatex' R-131-N and Yamamoto's Y-38. 66/

This conclusion is buttressed by the lack of allegations that purchasers' experiences with R-5000-N and R-6000-N have caused them to shy away from R-131-N. 67/ Thus, it appears that the market evaluates each FENL product on its own merits, and any quality problems experienced with earlier Rubatex products have not carried over into the evaluation of R-131-N. 68/

Finally, we note that the quality characteristics of Y-38 are, in a variety of significant aspects, similar to those of G-231-N. 69/ If quality were the only consideration, or even the overriding consideration, in the selection of FENL for use in surface water sports, we would expect to find significant amounts of G-231-N used in this market segment. However, except for custom-made suits and repairs, G-231-N is almost unused in this market. As noted by the respondents themselves: "The problem with G-231 is not imports at less than fair value but that it is just too expensive for most ordinary wet suits." 70/ "G-231 is too good and too expensive to be used for

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66/ We regret the absence of test data comparing Misuzu FENL products and Rubatex products. However, the data that are available suggest no significant differences between the Misuzu products and R-131-N. Misuzu prehearing brief confidential exhibit C; Rubatex prehearing brief exhibits; hearing exhibits 1-11; Report at Table 13.

67/ See FENL Preliminary at 7 n.20.

68/ See C.Tr. at 89; Tr. at 126.

69/ Report at Table 13; Rubatex and Yamamoto test results.

70/ Misuzu posthearing brief at 2.

casual sports." 71/ The thrust of these comments is that price is a significant competitive factor in the purchase of G-231-N. 72/

We now turn to a consideration of the volume and price effects of the LTFV imports and their impact on the domestic industry. 73/ We look primarily to the volume and price effects of the LTFV imports. First, the volume of imports of LTFV FENL from Japan has increased significantly over the period of the investigation. 74/ The LTFV imports have garnered an increasing share of increasing domestic consumption at the same time. 75/ Even if we accepted the argument that G-231-N is not a like product and excluded it from our analysis, we note that the market share held by the LTFV imports has continued to increase after the introduction of petitioner's R-131-N.

Second, the Commission requested quarterly pricing information on several FENL specifications. In each instance in which there were sales of both the domestic and the LTFV imports, there were significant margins of underselling by the imports. 76/ Moreover, domestic prices have declined irregularly over the period of investigation, with the more notable price declines occurring in the most recent period. The domestic industry states that there have been price concessions as a result of the presence of the Japanese fabric. 77/ The

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71/ Yamamoto posthearing brief at 3.

72/ Commissioner Rohr notes that while price, generally, may be a factor in the purchase of G-231-N, the relevant question in this investigation is whether the price of G-231-N relative to the price of imported FENL is a competitive factor. In his view, the data do not support an affirmative answer to this question.

73/ As in the case of the domestic producers, only the products of two foreign manufacturers remain at issue here. Accordingly, much of the information regarding these imports is confidential and the imports and their impact may be discussed only in general terms.

74/ Report at Table 10.

75/ Id. at Table 12 and A-20.

76/ Id. at Tables 14-16.

77/ Id. and Report at A-23.

record shows an across-the-board 10 percent price cut for all FENL by petitioner in January 1985, notwithstanding increased production costs. 78/

The Commission confirmed a number of sales lost by the domestic industry, although product quality was the reason most often given by the purchaser for the sourcing decision. 79/ All these instances occurred before the introduction of R-131-N. We determine that there are no significant qualitative differences between the G-231-N and the LTFV imports, and thus give little weight to purchasers' statements that quality was more important than price. 80/

Finally, although R-131-N is not significantly different from the imports in terms of quality, it has not made significant inroads into the surface water sports market segment. The market share held by the lower-priced LTFV imports has increased markedly even after the introduction of R-131-N. This confirms our view that price plays a significant role in this market.

We conclude that the increasing volume of LTFV imports and the price depression resulting from significant underselling by these imports constitute a causal nexus between the injury suffered and the LTFV imports. We find quality differences between domestic FENL and the LTFV imports to be generally insignificant, and far less than would be necessary to support the position that quality was the cause of injury to the domestic industry. Accordingly, the domestic industry is materially injured by reason of the LTFV imports.

78/ Rubatex prehearing brief at 29; Tr. at 45-46.

79/ Report at A-29.

80/ Commissioner Rohr has found that there are significant differences between G-231-N and other FENLs and, therefore, disagrees with this statement. However, he notes that this disagreement does not affect his conclusion that a causal nexus between the injury and the LTFV imports has been established.

VIEWS OF CHAIRWOMAN STERN

On the basis of the record in this final investigation, I determine that an industry in the United States is not materially injured, or threatened with material injury, nor is an industry being materially retarded by reason of imports of fabric and expanded neoprene laminate (FENL) from Japan, which the Department of Commerce has determined are being sold at less that fair value.

Like Product and the Domestic Industry

In all final determinations under title VII of the Tariff Act of 1930, the Commission must first define the domestic industry against which to assess the impact of the unfairly traded imports. The term industry is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of the like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 1/ The term "like product" in turn is defined in section 771(10) as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article

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1/ 19 U.S.C. Sec. 1677(4)(A).

subject to an investigation . . . ." 2/ While minor differences in physical characteristics or uses may not be sufficient to find the domestic product to be unlike the imports, significant differences could result in such a finding 3/

The imported product at issue in this final investigation is fabric and expanded neoprene laminate (FENL) manufactured by Yamamoto and Misuzu of Japan. 4/ In the Commission's preliminary determination, FENL was described as follows --

> The imported product which is the subject of this investigation is fabric and expanded neoprene laminate (FENL). FENL is a sheet of rubber with a textile fabric bonded to one or both sides of the rubber. The rubber is an expanded rubber, usually neoprene or a blend predominately of neoprene. The textile portion of the composite is primarily nylon, or a combination of nylon and spandex, which are used because they possess desired stretch and tensile-strength characteristics. The nylon fabric is available in various colors and constructions.
>
> FENL is used in the fabrication of wet suits used in surfing, sailboating, diving, and other water sports. It is also used in sports-related

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2/ 19 U.S.C. Sec. 1677(10). See S. Rep. No. 249, 96th Cong., 1st Less. 83 (1979).
3/ See Roquette Freres v. United States, 583 F. Supp. 599 (CIT 1984).
4/ There are fewer imported products at issue than in the preliminary investigation. In the preliminary investigation, the alleged LTFV imports were produced by Yamamoto, Asahi, Daiwa, Sedo, and others (including Misuzu). In its final determination, the Department of Commerce concluded that there are no LTFV sales by Sedo. Commerce also concluded that sales by Asahi and Daiwa were at de minimis LTFV margins. Only Yamamoto and Misuzu products were found to be sold at less than fair value and the weighted average LTFV margin for both Yamamoto and Misuzo is 3.09 percent.

activities, such as sailing apparel and ski masks, and, to a lesser extent, for eyeglass cases, mats, and bottle holders. 5/

In my preliminary determination my findings on like product differed from those of my collegues. My like product findings were as follows:

1) FENL in thicknesses of less than 1/16 inch was not part of the like product.
2) Rubatex FENL grades R-5000-N and R-6000-N were not "like" the imported product.
3) Rubatex FENL grade G-231-N was not "like" the imported product.
4) Rubatex FENL grade R-1400-N and any other comparable dometically producted FENL were like products.
5) Rubatex FENL grade R-131-N and any other comparable domestically produced FENL were like products.
6) FENL containing white neoprene and fire-retardent or nonflammable neoprene were included as part of the like product.
7) There were no domestic products like imported neoprene containing metallic oxides.

As I noted in the preliminary determination, my analysis was limited by the information on the record at that time which I felt to be incomplete on several important issues. I put the representatives of the domestic industry on notice that in any final investigation they would be expected to cooperate fully in the development of a complete record.

I am pleased to note at this time that all interested parties to this final investigation have cooperated in developing a more complete record. It is now clear

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5/ Fabric and Expanded Neoprene Laminate from Japan, Investigation No. 731-TA-206 (Preliminary) USITC, Pub. No. 1608 at 4-5 (1984) (footnotes omitted) ("FENL Preliminary").

that the domestic producers can and do produce FENL less that 1/16 inch in thickness. 6/ Rubatex FENL grades R-5000-N is no longer produced; grade R-6000-N is still being produced. 7/ Rubatex FENL grade G-231-N, although produced by a different process, has a chemical composition and physical properties that do not appear to differ from those of at least one imported FENL product. 8/ It is available for the same uses as other FENL products. 9/ Further, petitioner now argues that G-213-N is "like" imported FENL's and has been replaced in certain end uses because other products have entered the market at lower prices. 10/ Petitioner's grade G-231-N, R-1400-N, and R-131-N FENLs are all recognized and approved as fire-retardent products. 11/ Rubatex has produced neoprenes in a variety of colors. 12/ Finally, the record now indicates that all FENLs contain magnesium oxide and zinc oxide which are used as a catalyst in neoprene production. These oxides impart no electrical conductivity to the product. 13/

6/ Petitions prehearing, brief at 25-26; Hearing transcript (Transcript) at 72-73; staff Report (Report) at A-11.
7/ Report at A-23.
8/ Report at Table 13.
9/ Transcript at 12; Hearing exhibit.
10/ Rubatex prehearing brief at 4-5; Report at Table 14.
11/ Rubatex prehearing brief at 19.
12/ Rubatex prehearing brief at 8.
13/ Rubatex prehearing brief at 15-16 and Exhibit No. 1.

In view of these considerations, I determine that the like product in this final investigation consists of all FENL currently produced in the United States, specifically including Rubatex FENLs G-231-N, R-1400-N, R 6000-N, R-131-N, and "008" and Kirkhill Rubber Company's LM 300, S500, OS450, and SE 500. I further determine that fire-retardent or nonflamable neoprenes are included in the like product, as is white neoprene. Those made from neoprene containing zinc and magnesium oxides used as chemical catalyst are included as like products. FENLs containing metallic oxides for electric conductivity purposes are excluded. Accordingly, the domestic industry consists of the producers of the like product, Rubatex Corp. and Kirkhill Rubber Co.

Condition of the domestic industry 14/

In evaluating the condition of the domestic industry, the Commission considers, among other factors, changes in U.S. production, market share, capacity utilization, investment, employment, wages, productivity, domestic prices and profitability. 15/

14/ Most of the data concerning the condition of the domestic industry are confidential because there are only two domestic FENL producers. Accordingly, my analysis of the condition of the domestic industry must focus on general trends and is presented in general terms.
15/ 19 U.S.C. Sec. 1677(7)(C).

Domestic production and shipments have declined sharply during the period of investigation. 16/17/ Utilization of productive capacity was not only at a low level at the beginning of the period of investigation, but it also declined throughout the investigation. 18/ Inventories, as a percentage of shipments, increased. 19/ Employment of FENL production and related workers declined, as did the total wages paid to them. 20/ In terms of financial performance, the negative trends observed during the preliminary investigation have not been reversed and, in some respects, the financial performance of the industry is worse than observed during the preliminary investigation. 21/

While I do not believe it is necessary or desirable to make a determination on the question of material injury separate from the consideration of causality, I do conclude that the domestic industry is experiencing economic problems.

16/ The investigation covered the period 1981 through the first quarter of 1985.
17/ Report at Table 2, 3, and 4.
18/ Report at Table 2.
19/ Report at Table 5.
20/ Report at Table 6.
21/ Report at Table 7.

Material injury or threat thereof by reason of LTFV imports

The Tariff Act of 1930 directs the Commission to determine whether the domestic industry is materially injured or threatened with material injury by reason of the LTFV imports by considering, among other factors, (1) the volume of imports of the products which is the subject of the investigation, (2) the effect of the imports of such products on prices in the United states for the like product, and (3) the impact of the imports of such products on domestic producers of the like product. 22/

An analysis of the volume and prices of LTFV imports shows that such imports increased during 1982-1984 before declining slightly in the first quarter of 1985. Prices of such imports generally declined during the period of investigation with margins of underselling ranging from about 3.5 percent to over 71 percent according to the grade and thickness of the products compared.

Before assessing the impact of these LTFV sales on domestic producers, one must first view the overall market for FENL. The petitioner, Rubatex, was the first producer to offer a FENL product to the producers of wetsuits. Its original product, grade G-231-N, was marketed to professional divers and

22/ 19 U.S.C. Sec. 1677(7)(A), (B), and (C).

was received as a high quality, premimum product. Toward the end of the 1970's a new area of demand for FENL developed. Surface water sports (e.g., wind surfing and sailboarding) began to grow in popularity. 23/ Unlike professional divers, who were primarily interested in a durable product which provided the necessary thermal, stretch, and abrasion-resistance qualities, these new wetsuit consumers demanded "a more refined, a more differentiated, and a more cosmetically appealing product." 24/ This required a new type of FENL. During this same time period, Japanese-produced FENL products began to enter the U.S. market. Whether the growth of the surface water sports market attracted these imports or the new products stimulated the growth in demand for surface applications is unclear. What is clear is that this market developed with a strong preferance for fashion and comfort. The market was characterized by a demand for bright, colorful wetsuit materials, which were also lighter, more flexible and more stretchable.

The Japanese products were successfully introduced into this market. Rubatex was not as fortunate. Its grade G-231-N FENL was apparently considered too expensive for this new market, its R-1400-N too stiff for surface water sports usage. In 1982, Rubatex introduced a new FENL, R-5000-N. This was not accepted by the market and is no longer produced. In 1983

23/ Conference Transcript (C.Tr.) at 55, 82.
24/ C.Tr. at 64, 84, 86, 88, 95.

Rubatex R-6000-N was introduced but was also unsuccessful, although it is still in production. In the last 18 months Rubatex has introduced two new products R-131-N (which appears to have gained some acceptance) and grade 008 which just entered the market in the last several months.

It is my view that the Japanese producers' ability to respond quickly to the changing consumer demand for wetsuit materials gave them an early foothold in the growing surface water sports market. Their ability to provide a high quality yet fashionable FENL made them natural sources for wetsuit producers who were responding to their customers demands for a new type of wetsuit. The fact that Rubatex has had difficulity penetrating this new market is not surprising in that its customers were providing wetsuits to a different market with much different needs. Fashion was not a consideration to these purchasers. In this regard, the Commission staff examining lost sales allegations received a unamious response that the primary reason for purchases of imported FENL was superior softness and stretchability. These qualities are in great demand in the surface water sports market.

In view of the importance placed on these asserted quality differences in the preliminary investigation, much of the data obtained in this final investigation addressed quality considerations. Extensive test data were provided by all parties, including objective product comparisons by expert witnesses. These data appear to confirm Rubatex' contention

that R-131-N is no different in terms of physical properties from Yamamoto's Y-38, although the data appears to confirm that R-1400-N is inferior in key aspects. The test data, however, cannot address the long-held marketplace perception that the Japanese products are superior. Only time will tell whether the surface water sports market will accept R-131-N and "008" as qualitatively equal to the LTFV imports. In any event, because price and volume effects of those imports clearly have been negligible, my determination does not rest on the question of whether the quality of the LTFV imports is the sole or overwhelming cause of injury.

An examination of prices in this market shows margins of underselling far in excess of the margins found by Commerce, 3.09 percent. Even if there were no margins of dumping, the margins of underselling would not change appreciably. Domestic producers would find themselves competing in the same price environment which currently exists. Thus, any incremental impact of the dumping margins on the prices of the LTFV imports is clearly insignificant, and the sales at LTFV do not provide a significant price advantage to these imports. The small LTFV margins simply do not afford any additional price competitiveness to the LTFV FENL.

This conclusion is supported by a comparison of the prices of the LTFV imports with the fair value imports. The price differentials between these imports are so small that the margins of dumping do not distinguish the LTFV from the fair

value imports in the marketplace. In fact, the data show that both the LTFV and the fair value imports sell for virtually the same price. If no sales at LTFV had occured or were antidumping duties to be imposed, one could not expect any perceptible impact on domestic producers. Given the superior position of all Japanese imports in the surface water sports market, if there were to be any effect at all it would be the shifting of market share from the LTFV Japanese producers to the non-LTFV Japanese producers.

In view of the above, I determine that LTFV imports are not the cause of any materially injury or treat thereof to the domestic industry producing FENL.

VIEWS OF VICE CHAIRMAN SUSAN W. LIEBELER

I determine that imports of fabric and expanded neoprene laminate (FENL), which the Department of Commerce has determined are being sold at less than fair value (LTFV), is not a cause of material injury or of the threat of material injury to the domestic industry producing FENL.[1] In the rest of my opinion I will discuss the issues of like product/domestic industry, material injury, and causation in turn.

Like Product/Domestic Industry[2]

The term industry is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of the like product or those producers whose collective output of the like product constitutes a major proportion of the total

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[1]Material retardation is not an issue in this case.

[2]Because of the wishes of one member of the Commission majority, the majority will not share its opinion with other members of the Commission prior to publication. Thus, I am unable to join in their discussions of like product/domestic industry and condition of the domestic industry.

domestic production of that product."[3] The term like product in turn is defined in section 771(10) as "a product which is like or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . ."[4] In the preliminary stage of this investigation the Commission majority determined that the like product consists of all domestically produced FENL and that there is no product like FENL made with neoprene containing metallic oxides.[5] At this final determination, I determine that the like product consists of all FENL produced in the United States, including G-231-N, R-1400-N, R-6000-N, R-131-N, and 008 neoprenes produced by Rubatex and LM300, S500, OS450, and SE500 neoprenes produced by Kirkhill. I also determine that neoprene containing metallic oxides for electric conductivity are not like the imported product.[6] Furthermore, I determine that the domestic industry consists of Rubatex Corp. and Kirkhill Rubber Corp.

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[3]19 U.S.C. 1677(4)(A) (1982).

[4]19 U.S.C. 1677(10)(1982).

[5]Fabric and Expanded Neoprene Laminate from Japan, Inv. No. 731-TA-206 (Preliminary) USITC Pub No. 1608 at 7 (1984) (hereinafter FENL).

[6]Since the preliminary determination we have learned that all FENLs contain the metallic oxides, magnesium oxide and zinc oxide, as a catalyst in their production. I do not exclude these neoprenes from the like product, but only neoprenes containing metallic oxides for electric conductivity.

Condition of the Domestic Industry[7]

At the preliminary stage of this investigation, the Commission found the condition of the industry to be deteriorating over the period of the investigation.[8] The data currently available confirms my earlier conclusion that the domestic industry is materially injured. Over the period of investigation, domestic production, shipments, capacity utilization, and employment have all declined.[9] The available data also show negative financial trends over the period of the investigation.[10] Therefore, I conclude that the domestic industry producing FENL is suffering material injury.

No Material injury by reason of LTFV imports

The Tariff Act of 1930 directs the Commission to consider several factors in determining whether a domestic industry is materially injured or threatened with material injury by reason

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[7]Because there are only two firms in the domestic industry, most of the data are confidential, and accordingly my discussion is in general terms.

[8]FENL at 8-9.

[9]Report at Tables 2, 3, 4, and 6.

[10]Report at Tables 7 and 8.

of LTFV imports.[11] The Commission is precluded from weighing causes, but it should be aware of factors other than LTFV imports that could be the cause of injury.[12]

In this investigation the questions of quality and reputation are paramount. Respondents have argued that any injury suffered by the domestic industry is a result of the lower quality of the domestic product. In the preliminary stage of this investigation, a unanimous Commission made an affirmative determination because the available data then could not resolve the issue. On the basis of the more complete record available to the Commission at this time, I am convinced that the data support the respondents' position.

In the late 1970's there were two major developments in the market for FENL. First, there was a significant growth in surface water sports such as windsurfing. Second, Japanese FENL was introduced into the United States market. The record suggests that the surface water sports market is a market segment distinct from the underwater sports market segment. The surface water sports market segment is more fashion conscience than the underwater sports market segment, and it demands lighter, more flexible suits.[13] The markets segments

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[11]19 U.S.C. 1677(7) (1982).

[12]See S. Rep. 1298, 93d Cong., 2d Sess. at 180 (1974).

[13]There is also an underwater professional and serious amateur market segment.

are also differentiated by price, with the surface water sports market segment demanding a significantly lower priced product. Higher priced FENLs, even of superior quality, are not significant competitors in this segment.

The Japanese were the first, and until 1984 the only, successful entrants into this market segment. Rubatex' R-1400-N and G-231-N both failed to win acceptance in this market segment. The evidence suggests that the former was too stiff to be used for surface water sports, and the latter too expensive. Beginning in 1982 Rubatex introduced a succession of products specifically for the surface water sports market. The first was R-5000-N, which is no longer produced. Then in 1983 Rubatex introduced R-6000-N, which was also unsuccessful in the surface water sports market segment, but it is still being produced for other market segments. No argument was made that these products were accepted as competitive in the surface water sports market segment. Thus, the only possible competition to the LTFV imports in this segment of the market is petitioner's newly introduced R-131-N. After listening to the arguments of all parties, I conclude that LTFV sales of FENL imported from Japan have not had a negative impact on R-131-N.

The first basis for my conclusion is the evidence of quality differences. Yamamoto Amenity 38, Y-38, is apparently the largest selling surface water sports FENL. Although the available objective evidence supports the conclusion that

R-131-N is approximately equal in quality to Y-38, there is ample testimony that there are significant differences in how the two feel. Because wetsuits are bought by customers on the basis of subjective factors as much as they are bought on the basis of objective factors, I determine that there are important quality differences between the R-131-N and Y-38, and that R-131-N is not really competitive in the surface water sports market segment.

Second, there is a significant price difference between R-131-N and Y-38, with the latter significantly below the former.[14] Thus, the R-131-N would appear to be priced for the underwater sports market segment, not for the surface water sports segment. Imports of LTFV FENL, with low margins of dumping, are not likely to have a material impact upon a domestic product that would not otherwise be competitive in the market segment.

Third, market penetration is often a slow process and there is no evidence that it would have occurred faster but for the LTFV imports. The value of information in the marketplace has been recognized by economists for many years. When information is costly to obtain, consumers rely heavily upon reputation.

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[14]Report at Tables 13 and 16.

Because of their long-standing success in producing a product for the surface water sports market, the Japanese producers of FENL are likely to have a significant advantage over the domestic firms which have been markedly less successful. Thus, even if Rubatex' R-131-N is of approximately the same overall quality as the imported FENL and even if it were competitively priced, it would still take some time for the R-131-N to capture a significant market share. In light of the advantage Japanese producers of FENL have, not from LTFV imports, but from an established reputation, sales of R-131-N would not have been higher, but for the LTFV sales.[15]

In conclusion, I determine that the domestic producers of FENL are not materially injured by reason of LTFV imports of FENL from Japan. Domestic products introduced prior to 1984 were inferior to the imported product and there is no evidence that the products introduced since 1984 were or are competitive with the imported product and would have done any better but for the LTFV imports.

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[15]Rubatex has just introduced a new product to compete in the surface water sports market, 008, which has just recently become available in the marketplace. There is no concrete evidence to suggest that it has or will be adversely affected by LTFV imports.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On September 28, 1984, a petition was filed with the U.S. International Trade Commission by Rubatex Corp. (Rubatex), Bedford, VA, alleging that imports of fabric and expanded neoprene laminate from Japan are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured or threatened with material injury by reason of such imports. Although the petitioner mailed the petition on the same date to the U.S. Department of Commerce, Commerce received the petition on October 1, 1984.

Accordingly, effective September 28, 1984, the Commission instituted antidumping investigation No. 731-TA-206 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from Japan of fabric and expanded neoprene laminate, provided for in items 355.81, 355.82, 359.50, and 359.60 of the Tariff Schedules of the United States (TSUS), which were alleged to be sold in the United States at LTFV.

Notice of the institution of the Commission's investigation and of a 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 on October 11, 1984 (49 F.R. 39924). The conference was held on October 22, 1984, and the briefing and vote was held on November 6, 1984. On the basis of the record in investigation No. 731-TA-206 (Preliminary), the Commission determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of fabric and expanded neoprene laminate from Japan, which are allegedly sold at LTFV. The Commission notified Commerce of its determination on November 13, 1984. 1/

On March 15, 1985, Commerce published in the Federal Register its preliminary affirmative determination that imports of fabric and expanded neoprene laminate from Japan are being, or are likely to be, sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930 (50 F.R. 10518). 2/

As a result of Commerce's affirmative preliminary determination of LTFV sales, the Commission instituted investigation No. 731-TA-206 (Final), effective March 15, 1985, to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports of fabric and expanded neoprene laminate from Japan. Commerce's final determination was made on May 28, 1985, and on June 4, 1985, Commerce

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1/ Fabric and Expanded Neoprene Laminate from Japan: Determination of the Commission in Investigation No. 731-TA-206 (Preliminary) . . ., USITC Publication 1608, November 1984.

2/ A copy of Commerce's preliminary determination is presented in app. A.

published in the Federal Register its final affirmative determination that imports of fabric and expanded neoprene laminate from Japan are being sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930 (50 F.R. 23488). 1/

Notice of institution of investigation No. 731-TA-206 (Final) and the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on April 24, 1985 (50 F.R. 16165). 2/ The hearing was held in Washington, DC, on June 11, 1985. 3/ The Commission is scheduled to vote on this case on July 3, 1985, and must notify Commerce of its determination by July 12, 1985.

Fabric and expanded neoprene laminate has not been the subject of any other investigation conducted by the Commission, and no other form of import relief is currently being sought by the petitioner or any other member of the domestic industry.

The Product

Description

The product under investigation, fabric and expanded neoprene laminate, is a textile fabric and rubber composite that is used as a fabric. The textile fabric is usually nylon, or nylon and spandex, 4/ and the rubber is an expanded rubber, usually neoprene or a blend predominantly of neoprene. 5/ The fabric may be laminated to one or both sides of the rubber. If the finished product is to have fabric laminated to only one side, then the rubber surface can be textured in various patterns to enhance eye appeal.

According to the American Society for Testing & Materials (ASTM), 6/ expanded rubber is a type of cellular rubber having closed cells dispersed throughout the rubber mass. Sponge rubber, in contrast, is a cellular rubber consisting predominantly of open cells dispersed throughout the mass. There is some inconsistency in use of the term "sponge rubber," because in the trade, closed-cell material is sometimes called sponge rubber, but it would be referred to as expanded rubber in ASTM terminology.

1/ A copy of Commerce's final determination is presented in app. A.

2/ A copy of the Commission's notice of institution is presented in app. A.

3/ A list of the witnesses who appeared at the hearing is presented in app. B.

4/ Spandex is a manmade fiber in which the fiber-forming substance is a long-chain synthetic polymer made up of at least 85 percent of a segmented polyurethane and is noted for good elongation and recovery.

5/ Neoprene is a synthetic rubber made by the polymerization of chloroprene and characterized by superior resistance to decomposition by oils, oxygen, ozone, and many other substances.

6/ American Society for Testing & Materials, "Standard Specifications for Flexible Cellular Materials, Sponge or Expanded Rubber," Annual Book of ASTM Standards, ASTM D 1056-78, pp. 1-14.

Nylon or nylon blended fabrics are used in the laminate, because they can be made to incorporate desired stretch characteristics and have high tensile strength. The two domestic producers use several fabric constructions. The primary one is a warp knit made of 40-denier nylon yarn (81 percent) and 30-denier spandex (19 percent). Other constructions include a circular jersey knit consisting entirely of 70-denier nylon yarn, terries, and plushes. The fabrics are available in a wide range of colors and stripes, and often one color is laminated to one side of the neoprene and a different color to the other side.

Fabric and expanded neoprene laminate is sold in both sheet and roll form. 1/ The primary domestic producer's rolls measure from 40 to 44 inches in width and 50 feet in length; it's sheets measure 40 to 44 inches by 120 inches. The imported fabric generally consists of sheets measuring either 44 by 80 inches or 50 by 126 inches. The thicknesses of the fabric and expanded neoprene laminate range from about 1/32 inch (approximately 0.5 millimeter (mm)) to about 3/8-inch (approximately 9mm), depending on the requirements of the end product. Domestically produced laminates are available principally in 1/16-inch (approximately 1mm), 3/32-inch (approximately 2mm), 1/8-inch (approximately 3mm), 3/16-inch (approximately 5mm), 1/4-inch (approximately 6mm), and 3/8-inch (approximately 9mm) thicknesses. The imported product is available in thicknesses ranging from 0.5 to 9.0 millimeters, with 2.0, 2.5, 3.0, 4.0, 5.0, and 6.0 millimeters being the most widely used.

Manufacturing processes

The manufacturing processes used in producing fabric and expanded neoprene laminate consist of producing the expanded neoprene and then laminating the fabric to one or both sides of the rubber.

U.S. manufacturing processes.—The manufacturing processes used by Rubatex are described in the petition. Manufacturing processes of Kirkhill Rubber Co., the other domestic producer, are substantially the same as those employed by Rubatex.

At Rubatex, neoprene rubber is purchased along with all of the other basic ingredients and chemicals required to produce expanded neoprene. Neoprene is mixed with specified amounts of carbon black, calcium carbonate, mineral oil, and other chemicals required to produce a finished rubber with the desired characteristics. The ingredients are placed in a mixer common in the rubber industry where they are heated and mixed. The heated mixture is discharged into a roll mill for blending and cooling. This material is again placed in mixers along with vulcanizing chemicals and other chemicals that decompose upon heating to form nitrogen gas. The gas-forming chemicals are called blowing agents by the industry and are critical to the process, as they form the closed cells in the finished rubber.

After mixing, blending, and cooling, the neoprene mix is extruded into a continuous ribbon that is conveyed on a moving belt through an oven.

1/ Only Rubatex offers rolls for sale.

Vulcanization and formation of closed cells in the rubber takes place in the oven at elevated temperatures. An expansion by more than two times in the dimensions of the rubber ribbon takes place as the blowing agents decompose into small nitrogen bubbles trapped within the vulcanizing neoprene. The expanded neoprene is cut into 50-foot lengths as it exits from the oven. The chemical reactions initiated by the vulcanization process continue at a diminished rate after cooling, and then the 50-foot sheets are allowed to age and stabilize for about 2 weeks. The sheets are about 1/2 inch thick and 48 inches wide at this stage.

Some of the stabilized rubber is cut into 10-foot lengths. The 10-foot and 50-foot sheets are split into thicknesses usually ranging from 1/16 inch to 3/8 inch. As the sheets are fed through the splitting machines, the edges of the sheets are trimmed to exact dimensions, leaving little scrap.

Most, if not all, of the equipment used to produce expanded neoprene sheets at Rubatex can be, and is, used to produce other expanded rubber products, such as insulation for air-conditioning tubing or automobile gaskets.

The final step in the manufacturing process is the lamination of a textile fabric to the sheet of expanded neoprene. In this process, a special rubber adhesive is applied to one side of the split expanded neoprene with a coating machine. The fabric is then rolled onto the adhesive-coated neoprene, and the sheet is passed through a vulcanizer that bonds the fabric to the neoprene, thus forming the laminate. If fabric is to be applied to both sides of the expanded neoprene, the sheet or roll makes another pass through the lamination operation, and fabric is applied to the other side.

Rubatex currently manufactures four grades or types of expanded neoprene for use in its laminates, which are designated as R-131-N, G-231-N, R-1400-N and 008. Grade 008 is the newest grade of neoprene made by Rubatex and offers increased softness and flexibility. Two new presses were installed to produce this grade in 1985. Grade G-231-N differs from the other products in that instead of using blowing agents to produce the closed cells, partially vulcanized rolls of neoprene are placed in heated cylinders that are pressurized to 5,000 pounds per square inch with nitrogen gas. The gaseous nitrogen is physically forced into the partially cured neoprene, and the vulcanization process traps nitrogen in the form of small bubbles within the neoprene.

Kirkhill currently manufactures two grades or types of fabric and expanded neoprene laminate, which are designated as LM300 and S500. Grade LM300 is the standard, heavy-duty neoprene, and grade S400 is a lighter, more flexible fabric. 1/

Japanese manufacturing processes.--Information on the Japanese manufacturing processes was obtained for the most part from the petition, although some information was supplied by purchasers of fabric and expanded neoprene laminate who have visited the Japanese plants.

1/ Kirkhill also provides Grades OS450 and SE500 for manufacturing survival suits.

The formulation and mixing of the ingredients for the neoprene rubber by producers in Japan is similar to that of the U.S. producers. The mix is discharged, blended in a roll mill, and cut into strips. After cooling, the preformed sheets are partially vulcanized in a press. The final vulcanization and formation of the expanded neoprene is carried out in a larger press mold, which provides sheets of a standard size. The cured sheets are then split into various thicknesses. In the Japanese splitting operation, thicknesses are measured in metric units. Each Japanese producer offers fabric laminated to different grades of neoprene, with the size of the closed cell varying among the different grades. Those grades of material with small cells are the most dense and most expensive, and grades with large cells are the least expensive. The process of lamination of fabric to the expanded neoprene is believed to be essentially the same in Japan and the United States.

The most significant difference in the U.S. and Japanese manufacturing processes seems to be that Rubatex uses a continuous process to make most of its expanded neoprene with the exceptions of the 008 and the premium G-231-N grade. In contrast, the Japanese produce the expanded neoprene to specified dimensions in molds.

Uses

Fabric and expanded neoprene laminate is used primarily to manufacture wet suits, which are classified into three general categories. The above-surface suits are used primarily for surfing, wind surfing, water sking, and sailing and accounted for about 80 percent of the suits sold in 1984. The below-surface suits, used primarily for snorkling, scuba, and sports diving, represented approximately 18 percent of the total suits used. The third category consists of dive suits, which are used mainly by commercial and deep-water divers and the more serious amateur divers. The third category accounted for about 2 percent of the total in 1984. However, the uses of some wet suits classified in the first two categories overlap. Other uses of the fabric include insulation, pads for medicinal purposes, weight-reducing belts and various recreational products, such as kayak cockpit-covers, and ski masks. Less important uses of this fabric include such products as bottle and can holders, cases for eye glasses, table mats, and miscellaneous novelty items.

According to some wet suit manufacturers, the physical qualities of the fabric are often more important than price when selecting a fabric and expanded neoprene laminate. The laminated fabric must be durable and comfortable, as well as appealing.

Because of the nature and use of the end products, the durability of the laminated fabric is constantly being tested. The fabric must be abrasion and cut resistant to sharp or rough objects, resistant to strength deterioration as a result of repeatedly becoming wet or damp, and resistant to fading from exposure to sunlight, water, and wind. Comfort is important, since it is worn next to the body, usually in various or abruptly changing temperatures, while the wearer is actively moving about. The end product is also more likely to bind or chafe if it resists stretching or is not smooth. Fashion, style, and color often determine which product is purchased. The availability of various colors or color combinations is important, since the majority of the products

are purchased by individuals for recreational or sport purposes. Fashion is less important to purchasers for professional uses; however, they constitute a small segment of the market. Professional divers reportedly prefer wet suits made of a high-quality fabric and expanded neoprene laminate such as Rubatex's G-231-N, since the pressure-induced gas bubbles provide excellent temperature insulation, shock cushioning, and compression resistance. Rubatex is the only known firm, domestic or foreign, that produces a grade of expanded neoprene by the more expensive, external gassing method.

U.S. tariff treatment

Imports of the product under investigation may be classified in items 355.81, 355.82, 359.50, or 359.60 of the TSUS depending on their composition. 1/ If the product weighs over 44 ounces per square foot and contains 50 percent or less by weight of textile fibers, 2/ it is classified in TSUS item 359.50. All other such products, pursuant to headnote 2(c), part 4C, of schedule 3, are classified in TSUS item 355.81 (if over 70 percent by weight of rubber or plastics) or item 355.82 (if 70 percent or less by weight of rubber or plastics). TSUS items 355.81, 355.82, and 359.50 also include many fabrics other than those covered by this investigation.

The column 1 (most-favored-nation) rates of duty for TSUS items 355.81, 355.82, and 359.50 are 4.8 percent ad valorem, 4 cents per pound plus 10.7 percent ad valorem, and 10.5 cents per pound plus 22 percent ad valorem, respectively (table 1). The column 2 rates of duty 3/ for TSUS items 355.81, 355.82, and 359.50 are 25 percent ad valorem, 84.5 percent ad valorem, and 83.5 percent ad valorem, respectively. As a result of concessions made during the Tokyo round of Multilateral Trade Negotiations (MTN), the column 1 duty rates of duty for these items are scheduled to be reduced as shown in table 1. Imports entered from least developed developing countries (LDDC's) under TSUS item 355.81 are granted a preferential rate of 4.2 percent ad valorem. 4/ Also, imports under TSUS 355.81 item from all designated beneficiary developing countries except Taiwan are eligible for duty-free treatment under the Generalized System of Preferences (GSP). 5/ There are no preferential LDDC rates for imports entered under TSUS items 355.82 or 359.50, nor are these articles eligible for duty-free treatment under the GSP or the

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1/ The petitioner included TSUS item 359.60 in its petition, but it is not likely that fabric and expanded neoprene laminate would be imported under this item, since it provides for laminated fabrics other than those in chief value of manmade of other enumerated fibers.

2/ For the purpose of the tariff schedules, in determining the component fibers of chief value in coated, filled, or laminated fabrics and articles wholly or in part thereof, the coating or filling or the nontextile laminating substances shall be disregarded in the absence of context to the contrary.

3/ Applicable to countries enumerated in general headnote 3(f) of the TSUS.

4/ The preferential rates of duty in the LDDC column reflect the full U.S. MTN concession rates implemented without staging for particular items which are the products of LDDC's enumerated in general headnote 3(d) of the TSUS.

5/ The GSP, enacted as title V of the Trade Act of 1974, and extended by the Trade Act of 1984, provides duty-free entry to specified eligible articles imported from designated beneficiary developing countries and is scheduled to remain in effect until July 1993.

Table 1.—Woven or knit fabrics coated or laminated with rubber or plastics: Pre-MTN col. 1 rates of duty and staged reductions in the col. 1 rates, as of Jan. 1, of 1980-88

(Percent ad valorem; cents per pound)

Period	TSUS item 355.81	TSUS item 355.82	TSUS item 359.50
Pre-MTN 1/	6.0%	12.5¢ + 15.0%	25.0¢ + 30.0%
1980	6.0%	12.5¢ + 15.0%	25.0¢ + 30.0%
1981	6.0%	12.5¢ + 15.0%	25.0¢ + 30.0%
1982 2/	5.7%	10.0¢ + 13.9%	20.0¢ + 28.0%
1983	5.4%	8.0¢ + 12.8%	18.0¢ + 26.0%
1984	5.1%	6.0¢ + 11.8%	14.0¢ + 24.0%
1985	4.8%	4.0¢ + 10.7%	10.5¢ + 22.0%
1986	4.5%	2.0¢ + 9.6%	7.0¢ + 20.0%
1987	4.2%	8.5%	3.0¢ + 18.0%
1988	4.2%	8.5%	16.0%

1/ Rate effective prior to Jan. 1, 1980.
2/ The first staged reduction became effective Jan. 1, 1982.

Caribbean Basin Economic Recovery Act (CBERA). 1/ Although TSUS items 355.81, 355.82, and 359.50 contain manmade fiber fabrics, they are not subject to restraint under the Arrangement Regarding International Trade in Textiles, commonly known as the Multifiber Arrangement (MFA), because of their large nontextile content.

The Nature and Extent of Sales at LTFV

On May 28, 1985, Commerce issued its final determination that fabric and expanded neoprene laminate from Japan is being sold in the United States at LTFV. Commerce made fair-value comparisons on all the reported fabric and expanded neoprene sold in the United States by four Japanese companies during the investigative period. Commerce found margins of 4.88 to 29.18 percent on 25 percent of sales by Yamamoto Corp. and a weighted-average margin for Yamamoto of 3.09 percent. For Sedo, Commerce found no margins, and for Asahi and Daiwa the margins found were de minimis. Therefore, Commerce excluded Sedo, Asahi, and Daiwa from its final determination. A fifth company, Misuzu Chemical Industry Co., Ltd. (Misuzu), filed a voluntary response on March 29, 1985. Statutory time constraints did not permit inclusion of their data in Commerce's investigation. Therefore, Commerce considered Misuzu to also have a margin of 3.09 percent.

1/ The CBERA affords nonreciprocal tariff preferences to developing countries in the Caribbean Basin area to aid their economic development and to diversify and expand their production and exports. The CBERA, enacted in title II of Public Law 98-67 and implemented by Presidential Proclamation 5133 of November 30, 1983, applies to merchandise entered, or withdrawn from warehouse for consumption, on or after January 1, 1984; it is scheduled to remain in effect until September 30, 1995. It provides duty-free entry to eligible articles imported directly from designated Basin countries.

The U.S. Market

Apparent U.S. consumption

Apparent U.S. consumption of fabric and expanded neoprene laminate increased *** percent in 1983 from the previous year, and then increased *** percent in 1984. Apparent consumption during January-March 1985, when compared with consumption in January-March 1984, declined *** percent. Estimates of apparent U.S. consumption of fabric and expanded neoprene laminate, according to data submitted in response to the Commission's questionnaires, are as shown in the following tabulation (in thousands of square feet):

	Apparent U.S. consumption
1982	***
1983	***
1984	***
January-March—	
1984	***
1985	***

U.S. producers

Rubatex is the larger of the two U.S. producers of fabric and expanded neoprene laminate, accounting for about *** percent of domestic production. In addition to producing fabric and expanded neoprene laminate, Rubatex produces numerous other expanded rubber products. All of Rubatex's manufacturing facilities for producing expanded rubber products are located in Bedford, VA. In 1984, sales of fabric and expanded neoprene laminate accounted for about *** percent of net sales of Rubatex's establishment in which this material is produced.

Rubatex is a wholly owned subsidiary of Great American Industries, Inc., located in Binghamton, NY. Rubatex, one of the pioneers in the production of expanded rubber products, began operation in 1935. Rubatex has sales offices in 27 cities throughout the United States in addition to four foreign sales offices located in Canada, France, Panama, and the United Arab Emirates. Rubatex also maintains five warehouses, located in Santa Fe Springs, CA; Decatur, GA; St. Louis, MO; Houston, TX; and Bedford, VA.

The only other known other domestic producer of fabric and expanded neoprene laminate is Kirkhill Rubber Co., located in Brea, CA. Kirkhill, established in 1919, is independently owned and operated and accounts for approximately *** percent of domestic production. Kirkhill, in addition to producing fabric and expanded neoprene laminate, is one of the largest domestic custom rubber manufacturers, producing a variety of industrial products such as gaskets, seals, molding, trim, and sheeting. Fabric and expanded neoprene laminate accounted for approximately *** percent of Kirkhill's total sales in 1984.

During the preliminary investigation, Rubatex (the petitioner) was the only member of the domestic industry seeking relief from allegedly LTFV imports. Kirkhill did not join in the petition, appear at the conference, or

respond in any way other than completing the Commission's producer's questionnaire. However, in the final investigation, Kirkhill testified in favor of the petition as well as responding with a completed producer's questionnaire. 1/

U.S. importers

In 1985, approximately 15 to 20 firms imported fabric and expanded neoprene laminate classified under TSUS items 355.81, 355.82, and 359.50. These firms consist of at least two Japanese trading companies and one broker, all of which import, warehouse, and sell to individual wet suit manufacturers. The remaining importers of record are domestic wet suit manufacturers. The importers are located primarily along the west coast, with the balance located mostly on the east and gulf coasts. The following tabulation shows importers that responded to the Commission's questionnaires and their related firms, if any.

Importer	Related firm
Chugai International Corp., Plainview, NY	Chugai Boyeki Co., Ltd. Tokyo, Japan
Dive N'Surf, Inc Redondo Beach, CA	None
Fathom/H.I.M., Inc., Orlando, FL	None
Harvey's Skindiving Suits, Inc., Kent, WA	None
Henderson Aquatics, Inc., Millville, NJ	None
Imperial Manufacturing Corp., Bremerton, WA	Aquanautics, Corp., San Francisco, CA
Interstate Business Consultants, Inc., Garden Grove, CA	None
Ocean Apparel, Inc., South Amboy, NJ	None
O'Neill, Inc., Santa Cruz, CA	California Onax, Santa Cruz, CA
Parkway Fabricators/Poseidon Systems, South Amboy, NJ	Great American Industries, Inc., Binghamton, NY
Sport Fox, Inc., Huntington Beach, CA	None
Toyomenka (America), Inc., Los Angeles, CA	Toyo Menka Kaisha, Ltd. Osaka, Japan
Trestles, Inc., (Rip Curl), San Clemente, CA	Rip Curl Pty., Ltd., Victoria, Australia
Victory Wet Suits, Huntington Beach, CA	None

Parkway Fabricators, a wet suit manufacturer located in South Amboy, NJ, is, like Rubatex, a wholly owned subsidiary of Great American Industries, Inc. Parkway Fabricators has purchased fabric and expanded neoprene laminate from both Rubatex and Japan.

1/ See app. C for a copy of the letter from Kirkhill Rubber Co. to the Commission.

Channels of distribution

Domestic producers of fabric and expanded neoprene laminate sell directly to wet suit makers and fabricators of other products. Most imported fabric and expanded neoprene laminate is either purchased directly from Japan by fabricators or imported through a trading company that then sells to the fabricators. There is also at least one U.S. firm that imports Japanese fabric and resells the product to wet suit makers. The west coast wet suit industry that uses Rubatex fabric is serviced by Rubatex's California warehouse.

Consideration of Material Injury to an Industry in the United States

U.S. production, capacity, and capacity utilization

As the larger of the two producers of fabric and expanded neoprene laminate, Rubatex accounted for *** percent of U.S. production in 1982 and *** percent in 1984. U.S. production of fabric and expanded neoprene laminate fell by *** percent during 1982-84 and by *** percent during January-March 1985 compared with that in January-March 1984 (table 2). Neither domestic producer reported any significant losses in production because of employment-related problems, temporary equipment-related problems, source problems, transition problems, or any other unusual circumstances in their fabric and expanded neoprene laminate plants during this period. The drop in production during January 1982-March 1985 was not a result of a reallocation of resources to any foreign subsidiaries.

Table 2.--Fabric and expanded neoprene laminate: U.S. producers' production, practical capacity, and capacity utilization, 1982-84, January-March 1984, and January-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The limiting stage in U.S. manufacturing capacity to produce fabric and expanded neoprene laminate is the lamination of the fabric to the expanded rubber. Practical capacity to laminate on both sides of the expanded neoprene is one-half the capacity to laminate on one side, because the expanded neoprene passes through the lamination process twice. Equipment is not now available that will laminate fabric simultaneously to both sides of the expanded neoprene. In addition, the share of production accounted for by one-sided laminations and two-sided laminations varies from year to year and during the year. Consequently, 1984 production for each firm was selected as the product mix to be used to establish annual practical U.S. capacity.

Product thicknesses are not a limiting factor in practical capacity; nevertheless, both domestic producers were asked to provide data for ranges of thicknesses and laminations for their production in 1984. Their responses to that request are shown in the following tabulation:

	Percentage distribution of total 1984 production	
	Rubatex	Kirkhill
Thickness: 1/		
1/32-inch (or 0.5mm) or less	***	***
Over 1/32-inch (or 0.5mm) to 1/16-inch (or 1mm)	***	***
Over 1/16-inch (or 1mm) to 3/32-inch (or 2mm)	***	***
Over 3/32-inch (or 2mm) to 1/8-inch (or 3mm)	***	***
Over 1/8-inch (or 3mm) to 3/16-inch (or 5mm)	***	***
Over 3/16-inch (or 5mm) to 1/4-inch (or 6mm)	***	***
Over 1/4-inch (or 6mm) to 3/8-inch (or 10mm)	***	***
Total	100	100
Lamination:		
One side only	***	***
Two sides	***	***
Total	100	100

1/ Conversions from inches to millimeters are approximate.

Capacity utilization for the production of fabric and expanded neoprene laminate declined from *** percent during 1982 to *** percent during 1984 and from *** percent during January-March 1984 to *** percent during January-March 1985.

From the point at which the expanded neoprene is split into different thicknesses, the domestic producers manufacture fabric and expanded neoprene laminate separately from other expanded rubber products. Operating its fabric and expanded neoprene laminate producing facility *** hours per week, *** weeks per year, Rubatex's capacity to produce fabric and expanded neoprene laminate at *** square feet per year during 1982-84. Kirkhill's capacity, based upon operating the firm's fabric and expanded neoprene facilities *** hours per week, *** weeks per year, was *** square feet per year during 1982-84.

U.S. producers' domestic shipments, intracompany shipments, and exports

The trend for U.S. producers' shipments parallels that for their production (table 3). During 1982-84, U.S. producers' domestic shipments *** by *** percent in quantity and *** percent in value; intracompany shipments *** by *** percent in quantity and *** percent in value; and

Table 3.--Fabric and expanded neoprene laminate: U.S. producers' domestic shipments, intracompany shipments, and exports, 1982-84, January-March 1984, and January-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

exports *** by *** percent in quantity and *** percent in value. The trend *** during January-March 1985, when domestic shipments *** by *** percent in quantity and in value, and intracompany shipments *** by *** percent in quantity and *** percent in value, from the levels reported during the corresponding period of 1984. Domestic producers' exports *** by *** percent in quantity and *** percent in value during January-March 1985 when compared with those in January-March 1984. Exports accounted for *** percent of the total quantity of fabric and expanded neoprene laminate shipped during 1982 and *** percent of the 1984 total.

Rubatex, the *** of the two domestic producers, had shipments that consisted predominantly of grades *** during 1982-84, January-March 1984, and January-March 1985 (table 4). Rubatex's shipments of grade *** percent in quantity and *** percent in value from 1982 to 1984, and *** percent in quantity and *** percent in value from January-March 1984 to the corresponding period in 1985. ***, which accounts for the *** volume of Rubatex's shipments, *** percent in quantity and *** percent in value from 1982 to 1984 and *** percent in quantity and *** percent in value from January-March 1984 to January-March 1985.

Table 4.--Fabric and expanded neoprene laminate: U.S. producers' shipments, by grades, 1982-84, January-March 1984, and January-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. producers' inventories

U.S. producers' end-of-period inventories of fabric and expanded neoprene laminate *** by *** percent during 1982-84 (table 5). The level of inventories at the end of March 1985 was *** percent *** that at the end of March 1984. As a share of the total quantity shipped during the preceding period, inventories *** from *** percent in 1982 to *** percent in 1984 and from *** percent in January-March 1984 to *** percent in January-March 1985.

Table 5.--Fabric and expanded neoprene laminate: U.S. producers' inventories as of Dec. 31 of 1982-84, March 31, 1984, and March 31, 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. employment, wages, and productivity

The average number of U.S. production and related workers producing fabric and expanded neoprene laminate *** by *** percent from 1982 to January-March 1985 (table 6). Total compensation paid to those workers *** by *** percent during 1982-84 and by *** percent during January-March 1985 when compared with that paid during January-March 1984. Their average hourly compensation, however, *** during *** reporting period, from *** in 1982 to *** in January-March 1985. The average hourly compensation in January-March 1985 for Rubatex and Kirkhill was *** and ***, respectively. Worker productivity *** in 1983, *** in 1984, reaching a period *** during January-March 1984, and then *** during January-March 1985. Unit labor costs *** to a period *** in 1983, *** in 1984, and then *** in January-March 1985. Rubatex's workers are represented by the United Rubber Workers of America; Kirkhill's workers are not represented by a union.

Table 6.--Average number of U.S. producers' employees, total and production and related workers producing all products and those producing fabric and expanded neoprene laminate; hours worked by, wages paid to, total compensation paid to, and average hourly compensation paid to such workers; output per hour worked; and unit labor costs in producing fabric and expanded neoprene laminate, 1982-84, January-March 1984, and January-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Financial experience of U.S. producers

Rubatex Corp., the petitioner, which accounted for *** percent of total reported 1984 U.S. shipments of fabric and expanded neoprene laminate, furnished income-and-loss data on its operations which produced neoprene laminate and on overall establishment operations. Kirkhill Rubber Co., the only other U.S. manufacturer of the product, which accounted for *** percent of total reported 1984 U.S. shipments of fabric and expanded neoprene laminate, has indicated in the final investigation questionnaire that *** of its operations that produced fabric and expanded neoprene laminate. In the

final investigation questionnaire and at the time of the preliminary investigation, the Chief Financial Officer (CFO) of Kirkhill indicated that Kirkhill ***." The company is also *** for fabric and expanded neoprene laminate. The CFO of Kirkhill indicated that a *** of the company's assets are dedicated to the production of neoprene laminate, and Kirkhill *** period of time.

Fabric and expanded neoprene laminate.—Rubatex's net sales of neoprene laminate *** from *** in 1982 to *** in 1983, a *** percent ***. The *** into 1984, when net sales *** percent to *** (table 7). During the interim periods ended March 31, net sales *** from *** in 1984 to *** in 1985, or by *** percent.

In addition to *** sales, Rubatex has been adversely affected by *** production costs, which have ***. Between 1982 and 1983 its cost of goods sold *** from *** percent of net sales to *** percent; such costs *** again to *** percent of net sales in 1984. This situation continued into the March 31, 1985, interim period, when its cost of goods sold *** to *** percent of net sales. Although the relative level of period costs (general, selling, and administrative expenses) has changed from year to year, the changes have *** .

Table 7.—Income-and-loss experience of Rubatex Corp. on its operations producing fabric and expanded neoprene laminate, accounting years 1982-84, and interim periods ended March 31, 1984, and March 31, 1985

* * * * * * *

Source: Compiled from data submitted in response to a questionnaire of the U.S. International Trade Commission.

Rubatex realized operating income in 1982, 1983, and 1984. Operating income in 1982 was ***, or *** percent of sales; in 1983, it was ***, or *** percent of sales. Operating income in 1984 was ***, or *** percent of sales. During the interim period ended March 31, 1984, the company earned operating income of ***, or *** percent of net sales, while in the interim period in 1985 the company *** an operating ***, or *** percent of net sales.

Kirkhill's net sales of neoprene laminate have been on a *** throughout the period of the investigation. Its net sales *** from *** in 1982 to *** in 1983, representing a *** percent. The *** continued into 1984, when net sales *** percent to ***. During the interim periods ended March 31, net sales *** from *** in 1984 to *** in 1985, or by *** percent. Kirkhill's net sales of fabric and expanded neoprene laminate and overall establishment net sales are shown in the tabulation below:

* * * * * * *

Overall establishment operations.—Rubatex's net sales of all products produced in the establishment within which fabric and expanded neoprene laminate is produced *** from *** in 1982 to *** in 1983, or by *** percent, and then *** by *** percent to *** in 1984 (table 8). During the interim periods ended March 31, sales *** from *** in 1984 to *** in 1985, a *** of *** percent.

Rubatex reported operating income of *** in 1982, or *** percent of net sales. In 1983 and 1984, Rubatex reported operating incomes of *** and *** respectively, representing an *** of *** percent in 1984. During the interim periods ended March 31, operating income *** percent from *** in 1984 to *** in 1985. The interim period operating margins in 1984 and 1985 were *** percent and *** percent, respectively.

Table 8.—Income-and-loss experience of Rubatex Corp. on the overall operations of its establishments within which fabric and expanded neoprene laminate are produced, accounting years 1982-84, and interim periods ended March 31, 1984, and March 31, 1985

*	*	*	*	*	*	*

Source: Compiled from data submitted in response to a questionnaire of the U.S. International Trade Commission.

Capital expenditures and research and development expenses.—Rubatex supplied information on its capital expenditures for buildings, machinery, and equipment used in the production of fabric and expanded neoprene laminate, and furnished data on its research and development expenses. Capital expenditures *** from *** in 1982 to *** in 1983 and then *** to *** in 1984. The *** in 1984's capital expenditures is attributable to two projects. Rubatex acquired land and built a new warehouse to store fabric and expanded neoprene laminate along with other products. A portion of these expenditures has been allocated to fabric and expanded neoprene laminate. In addition, Rubatex constructed a plant to manufacture adhesives which are used to laminate the expanded neoprene to the fabric. Previously, Rubatex purchased adhesives from an unrelated company. There were *** capital expenditures during the interim periods. Research and development expenses *** from *** in 1982 to *** in 1983, and *** percent to *** in 1984. Research and development expenses amounted to *** and *** during the January-March periods of 1984 and 1985, respectively. Capital expenditures and research and development expenses are shown in the following tabulation:

	Capital expenditures	Research and development expenses
1982	***	***
1983	***	***
1984	***	***
January-March—		
1984	***	***
1985	***	***

Rubatex's research and development expenses have principally been for salaries of staff endeavoring to improve Rubatex's fabric and expanded neoprene laminate and lower its costs by utilizing less expensive compounds in the production process.

Capital and investment.--Rubatex provided comments in the questionnaire as to the actual and potential negative effects of imported fabric and expanded neoprene laminate on its growth, investment, or ability to raise capital. Rubatex's statement is provided below:

* * * * * * *

Consideration of Threat of Material Injury to an Industry in the United States by LTFV Imports from Japan

Japan's producers

Foreign producers of fabric and expanded neoprene laminate identified and investigated during the course of this investigation are Asahi Rubber Co., Ltd. (Asahi), Kobe, Japan; Daiwa Rubber and Chemical Industry Co., Ltd. (Daiwa), Kobe, Japan; Misuzu Chemical Industry Co., Ltd. (Misuzu), Kobe, Japan; Sedo Chemical Co., Ltd. (Sedo), Kobe, Japan; and Yamamoto Corp. (Yamamoto), Osaka, Japan. Commerce determined that two of these foreign producers, Misuzu and Yamamoto, were selling fabric and expanded neoprene laminate in the United States at LTFV. Data regarding the capacity, production, and shipments for the five Japanese producers on their fabric and expanded neoprene laminate operations were requested by the Commission staff at the hearing on June 11, 1985. Only the counsel for Misuzu and for Yamamoto provided such data.

The share of sales to the United States by each Japanese producer during the period of Commerce's investigation is shown in the following tabulation:

Japanese producers	Percentage distribution of sales to the United States 1/	
	Quantity	Value
Asahi	***	***
Daiwa	***	***
Misuzu	***	***
Sedo	***	***
Yamamoto	***	***
Total	100.0	100.0

1/ This is based on the six month period, May 1984 through October 1984.

Misuzu and Yamamoto: capacity, production, and capacity utilization

Practical capacity to produce fabric and expanded neoprene laminate by Japanese producers Misuzu and Yamamoto *** from *** square feet in 1982 to *** square feet in 1984 (table 9). The *** was *** due to Misuzu beginning operations in ***. Practical capacity for January-March 1984 and for January-March 1985 was *** at *** square feet.

Production of fabric and expanded neoprene laminate by Misuzu and Yamamoto *** percent from *** square feet in 1982 to *** square feet in 1984. However, production *** percent from *** square feet in January-March 1984 to *** square feet in January-March 1985. Yamamoto accounted for the *** percentage of production during *** period, *** in January-March 1985. ***.

Table 9.--Fabric and expanded neoprene laminate: Capacity, production, and capacity utilization for 2 Japanese producers, 1982-84, January-March 1984, and January-March 1985

*	*	*	*	*	*	*

Source: Compiled from data provided by counsel for Misuzu and Yamamoto.

Capacity utilization for the production of fabric and expanded neoprene laminate by Misuzu and Yamamoto *** from *** percent in 1982 to *** percent in 1983 and then *** to *** percent in 1984. Capacity utilization *** from *** percent in January-March 1984 to *** percent in January-March 1985. ***.

Misuzu and Yamamoto: domestic shipments and export shipments

Domestic shipments of fabric and expanded neoprene laminate from Japanese producers Misuzu and Yamamoto *** from *** square feet in 1982 to *** square feet in 1984. Domestic shipments *** percent from *** square feet in January-March 1984 to *** square feet in January-March 1985 (table 10). ***.

Export shipments of fabric and expanded neoprene laminate from Misuzu and Yamamoto to the United States *** from *** square feet in 1982 to *** square feet in 1984. However, such shipments *** percent from *** square feet in January-March 1984 to *** square feet in January-March 1985. ***.

Table 10.--Fabric and expanded neoprene laminate: Domestic shipments and export shipments for 2 Japanese producers, 1982-84, January-March 1984, and January-March 1985

*	*	*	*	*	*	*

Source: Compiled from data provided by counsel for Misuzu and Yamamoto.

Consideration of the Causal Relationship Between LTFV Imports and the Alleged Material Injury

U.S. imports

Japan was the only reported source of imports of fabric and expanded neoprene laminate during January 1982-March 1985. Reported imports from Japan increased by 102.4 percent in quantity and by 94.7 percent in value during 1982-84, from 3.4 million square feet, valued at $3.4 million, during 1982, to 6.9 million square feet, valued at $6.7 million, during 1984 (table 11). The trend continued during January-March 1985, when imports from Japan increased by 14.9 percent in quantity and by 15.1 percent in value compared with those entered in the corresponding period of 1984. Unit values of imports dropped from $1.00 per square foot in 1982 to $0.97 per square foot in 1984, and remained at $0.90 per square foot during both January-March periods for 1984 and 1985.

U.S. market penetration by imports

Imports of fabric and expanded neoprene laminate from Japan *** their U.S. market penetration during 1982-84 and *** in 1985, as shown in the following tabulation (in percent):

	Share of apparent U.S. consumption held by imports from Japan
1982	***
1983	***
1984	***
January-March—	
1984	***
1985	***

U.S. producers' shipments of fabric and expanded neoprene laminate *** as imports from Japan increased during 1982-84 and January-March 1985 (table 12). ***, the ratio of imports to consumption ***.

Table 11.—Fabric and expanded neoprene laminate: U.S. imports for consumption from Japan, by importers, 1982-84, January-March 1984, and January-March 1985

Importer	1982	1983	1984	January-March	
				1984	1985
	Quantity (1,000 ft^2)				
Chugai International, Corp	***	***	***	***	***
Dive N' Surf, Inc	***	***	***	***	***
Fathom/H.I.M., Inc	***	***	***	***	***
Harveys Skindiving Suits, Inc	***	***	***	***	***
Henderson Aquatics, Inc	***	***	***	***	***
Imperial Manufacturing Corp	***	***	***	***	***
Interstate Business Consultants, Inc	***	***	***	***	***
Ocean Apparel, Inc	***	***	***	***	***
O'Neill, Inc	***	***	***	***	***
Parkway Fabricators	***	***	***	***	***
Sport Fox, Inc	***	***	***	***	***
Toyomenka America, Inc	***	***	***	***	***
Trestles, Inc	***	***	***	***	***
Victory Wet Suits	***	***	***	***	***
Total	3,426	4,524	6,933	1,475	1,695
	Value (1,000 dollars)				
Chugai International, Corp	***	***	***	***	***
Dive N' Surf, Inc	***	***	***	***	***
Fathom/H.I.M., Inc	***	***	***	***	***
Harveys Skindiving Suits, Inc	***	***	***	***	***
Henderson Aquatics, Inc	***	***	***	***	***
Imperial Manufacturing Corp	***	***	***	***	***
Interstate Business Consultants, Inc	***	***	***	***	***
Ocean Apparel, Inc	***	***	***	***	***
O'Neill, Inc	***	***	***	***	***
Parkway Fabricators	***	***	***	***	***
Sport Fox, Inc	***	***	***	***	***
Toyomenka America, Inc	***	***	***	***	***
Trestles, Inc	***	***	***	***	***
Victory Wet Suits	***	***	***	***	***
Total	3,441	4,484	6,701	1,323	1,523

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 12.—Fabric and expanded neoprene laminate: U.S. producers' shipments, imports for consumption, exports of domestic merchandise, and apparent consumption, 1982-84, January-March 1984, and January-March 1985

* * * * * * *

Source: Compiled from information submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. imports of fabric and expanded neoprene laminate from Japanese producers Misuzu and Yamamoto *** their U.S. market penetration during 1982-84, and *** from *** percent in January-March 1984 to *** percent in January-March 1985, as shown in the following tabulation (in percent): 1/

	Share of apparent U.S. consumption held by imports from Misuzu and Yamamoto
1982	***
1983	***
1984	***
January-March—	
1984	***
1985	***

The *** in market penetration for January-March 1985 from that in the corresponding period in 1984 by Japanese producers Misuzu and Yamamoto is *** the result of *** production and shipments by ***. ***.

Considerations for purchasing other than price

In the preliminary investigation the Commission was made aware that there are important considerations other than price for some purchasers of fabric and expanded neoprene laminate. Quality was a major factor discussed in the preliminary investigation, particularly with regard to alleged qualitative differences between the domestic and imported products. Interested parties at the Commission's conference during the preliminary investigation were asked to address this issue in their arguments. The issue of quality was also a factor mentioned frequently in the discussion of lost sales allegations. Since quality remains an important issue, the Commission has gathered additional information from questionnaires and interviews in order to address this subject. In the course of its investigation, the Commission became aware that the word "quality" was used in two different contexts. In some instances, quality was used in the sense of quality control; that is, referring to dimensional uniformity, defects, delamination, color fastness, etc. In many cases, however, quality was used to describe the general physical and aesthetic characteristics of the product, i.e., stretch, softness, eye appeal,

1/ ***.

and other factors relating to acceptance by the ultimate consumer. Therefore, the Commission has analyzed certain physical properties to provide a basis forcomparing the quality of imported and domestically produced fabric and expanded neoprene laminate. Physical properties and quality are discussed further in the price section. The information presented was obtained from questionnaires, telephone conversations, and interviews. In addition, the Commission visited domestic producers, importers, purchasers, and retailers that are familiar with wet suits produced from both imported and domestically produced fabric and expanded neoprene laminate.

In order to get the view of wet suit retailers as to the nature of quality differences between domestic and Japanese fabric and expanded neoprene laminate, the Commission sent out questionnaires to a list of randomly selected retail establishments. The retailer's questionnaire asked the retailers to compare the different quality criteria of both the domestic and Japanese product. The response was limited and the results did not indicate a preference for either the domestic or Japanese product.

Thickness.--The availability of a uniform and specific thickness is important to the purchasers of fabric and expanded neoprene laminate that manufacturer wet suits. The thickness of fabric and expanded neoprene laminate used in making a wet suit ranges from 1/32-inch (approximately 0.5mm) to 3/8-inch (approximately 9mm). However, the majority of wet suits are made from laminate ranging between 3/32-inch (approximately 2mm) and 1/4-inch (approximately 6mm). The type of wet suit that is produced and its end use will often indicate the thickness that is used. The above-surface wet suits usually consist of 3/32-inch (approximately 2mm) and 1/8-inch (approximately 3mm) thicknesses, whereas dive wet suits usually require the thicker 3/16-inch (approximately 5mm) and 1/4-inch (approximately 6mm) sizes. Some manufacturers use the same thickness throughout the suit, and others use different thicknesses to achieve certain characteristics. A thin fabric and expanded neoprene laminate generally offers more flexibility, whereas a thicker one will generally offer more warmth. According to one importer of fabric and expanded neoprene laminate, the 0.5mm and 1.0mm thicknesses contain very little neoprene and are mostly of fabric. These thin sizes have limited use in the wet suit, although they may be used for increased flexibility behind the knee or arm pit. Kirkhill stated that they have not produced any fabric and expanded neoprene laminate less than *** in thickness nor have they had any requests to do so, while Rubatex has not produced any fabric and expanded neoprene laminate less than *** in thickness. However, Rubatex stated that their slicing machinery can be set to make *** cuts should they receive any requests.

Domestic and foreign producers provide U.S. customers with a full range of thicknesses. Some U.S. wet suit manufacturers have claimed that unwanted thickness and other dimensional variations occur in shipments from Rubatex. However, no quantitative evidence was submitted that shows that this type of quality problem is more prevalent in U.S. fabric and exanded neoprene laminate than in the imported product.

Color.--The availability and selection of various colors of fabric and expanded neoprene laminate were also important issues in the preliminary investigation. When discussing colors of fabric and expanded neoprene laminate, reference is made primarily to the textile fabric and, to a much

lesser degree, the neoprene on which it is laminated. The great majority of fabric and expanded neoprene laminate purchased from both domestic and imported sources contains black neoprene. The small amount purchased containing white neoprene is usually imported and is generally laminated with a light-colored fabric to enhance the brightness of the finished laminate. According to industry sources, the white neoprene is usually not as durable as the black neoprene, because the black neoprene contains carbon, which provides strength, as well as the black color. White neoprene does not contain carbon, so it must use a substitute ingredient in its composition to provide strength. Rubatex and Kirkhill both have the ability to produce white neoprene.

Both domestic and imported fabric and expanded neoprene laminate are offered in a wide range of colors, although the majority of wet suits are made from five basic colors: black, red, yellow, navy, and royal blue. However, certain U.S. wet suit manufacturers have stated that the Japanese offer a considerably wider range of colors than the domestic producers, which they feel is an important sales feature of the Japanese fabrics. It was further stated by the wet suit manufacturers that Japanese textile mills offer a wider range of types of constructions and colors to the Japanese fabric and expanded neoprene laminate producers than the U.S. mills offer to the U.S. fabric and expanded neoprene laminate producers. The need for a variety of colors is the greatest for the above-surface wet suits, since fashion and style are considered an important feature for those suits. Domestic and imported suppliers usually keep some of the basic colors of fabric and expanded neoprene laminate in stock, and other colors are usually provided by special order. Some wet suit manufacturers purchase fabric and expanded neoprene laminate that has a different color fabric laminated on each side. This allows them to maintain a smaller inventory with a greater selection of colors. This also allows them to hedge against purchasing too much of a certain color that might prove unpopular, since either side can be used for the exterior surface of the wet suit.

Delivery.--Delivery time is another factor considered by wet suit manufacturers when purchasing fabric and expanded neoprene laminate. Domestic producers maintain inventories of several thicknesses and colors that can often be delivered the next day or within several days, usually from warehouses maintained by Rubatex. Delivery of a special order requires from one week to several months. The delay in delivery of a special order is generally the result of not having the required textile fabric in stock, since the neoprene is usually available.

Deliveries on imported fabric and expanded neoprene laminate usually range from 60 to 120 days, and, therefore, most wet suit manufacturers who use imported fabric and expanded neoprene laminate must maintain larger inventories of certain thicknesses and colors. There is also imported fabric and expanded neoprene laminate available from the two importers and one broker within a day or two. However, the importers' and brokers' inventories are limited and all thicknesses and colors are not available .

Prices

Fabric and expanded neoprene laminate prices are either quoted on a delivered basis or stated in price lists. The petitioner sells all types of

fabric and expanded neoprene laminate at list prices. At the end of the year, petitioner gives rebates to customers who have purchased certain quantities. In each of the years for which information was requested, 1983 and 1984, the rebate policies were different as to the amount of the rebate and the base quantity to which the rebate was applicable.

Transportation costs for domestic fabric and expanded neoprene laminate are usually paid by the purchaser in addition to the merchandise price. Freight equalization is not practiced in the industry. Most fabric and expanded neoprene laminate is shipped by truck. The transportation costs range from *** to *** percent of the delivered price.

Sales by importers are generally on an f.o.b. basis, with delivery costs from the docks usually paid by the end user. No end-of-year rebates are said to be offered. Inland transportation costs range from *** to *** percent of delivered prices. Direct purchases by end users from Japanese manufacturers are on a c.i.f. basis, with the end user paying for domestic shipping costs. Transportation costs on direct purchases are reported to range from *** to *** percent of the delivered price. Prices are denominated in either dollars or yen, depending on the Japanese producer. Prices denominated in dollars are guaranteed over the life of the contract on the basis of the letter of credit. Volume discounts can be obtained, again depending upon the Japanese manufacturer. One purchaser has indicated that the Japanese prices for fabric and expanded neoprene laminate are negotiable and that when purchases are demoninated in yen, savings of up to *** percent below the Japanese list price can occur.

There is considerable disagreement among the parties as to what are comparable products in this investigation. Counsel for importers and certain purchasers argue that there is no fabric and expanded neoprene laminate produced in the United States comparable with the imported products. Certain wet suit manufacturers stated that they began buying Japanse fabric and expanded neoprene laminate because the Japanese product was softer, had more stretch, and offered greater comfort and salability, particularly to the customers that use wet suits for above-water or shallow-diving purposes. Rubatex contends that except for its top of the line G-231-N, its fabric and expanded neoprene laminate products are equivalent in quality to the Japanese products. Rubatex's G-231-N is generally perceived by the wet-suit-manufacturing industry to be superior to all other fabric and expanded neoprene laminate products.

Since 1982, Rubatex has introduced four new grades of fabric and expanded neoprene laminate, presumably to better compete with the Japanese products. Prior to 1982, Rubatex relied primarily on grade R-1400-N, which has traditionally been their largest seller. One of the newer products, R-5000 has been discontinued, while R-6000 is still being produced. The third product, R-131-N, has been available since mid-1984. It is slightly lower in price than R-1400-N. Rubatex has developed a new grade, 008, that has recently become available in the marketplace. It was first introduced in January 1985 and a few sales have been made since April 1985.

In order to provide objective price comparisons among imported and domestic fabric and expanded neoprene laminate, the Commission developed a generic definition of neoprene to establish different grades and qualities according to measurable standards. The questionnaires requested each

producer, importer, and purchaser to identify each grade and the principal intended use of fabric and expanded neoprene laminate that they produced, imported, or purchased. For each grade specified, they were asked to provide the following technical specifications: average density; average modulus or tensile stress at 100 percent elongation to measure softness; average ultimate elongation in percentage increase to measure stretchability; average compression-deflection to measure the materials' ability to return to its original thickness after compression; average ozone deterioration elongation to help measure durability; and average percentage of closed cell for each grade to help measure the ability of the material to resist absorption of water (see app. D for additional information on these specificiations). All parties were asked to include copies of the producers' brochures for each grade of fabric and expanded neoprene laminate and were also asked to list the primary types of uses for each grade of fabric and expanded neoprene laminate such as professional diving, amateur diving, surface-water sports, sports medicine, knee braces, elbow braces, sweat belts, etc.

Both petitioner and respondents agreed to all aspects of the Commission's generic grade definition except for the ozone deterioration measurement. The petitioner disagreed with the ozone deterioration measurement, because it felt that this measurement did not give a true measure of ozone deterioration under actual use conditions. The ozone deterioration measurement was included in the generic definition, because it is a standard that can be used to help group the different neoprenes into their appropriate grade classifications if the statistics are available. Moreover, all the measurements occur under extreme conditions.

None of the responses to the questionnaires provided all the measurements requested for the price comparisons by grade. Only the density measurement was provided for each grade of fabric and expanded neoprene laminate; therefore, only it could be used for grouping fabric and expanded neoprene laminates for all producers. Two measurements, elongation and water absorption, were provided for each producer of fabric and expanded neoprene laminate except for Kirkhill. The product groupings were based primarily on density, with the other measurements influencing the groupings to the extent they were available and were comparable. Grade 1 consisted of ***, and certain *** fabric and expanded neoprene laminate. Grade 2 consisted of ***, certain ***, certain *** and certain *** fabric and expanded neoprene laminates. Grade 3 consisted of ***, certain ***, and certain *** fabric and expanded neoprene laminates. Grade 4 consisted of *** fabric and expanded neoprene laminates. Grade 5 consisted of *** fabric and expanded neoprene laminate. Table 13 shows the physical property qualities and the grade comparisons for both the domestic and Japanese fabrics.

Table 13.--Fabric and expanded neoprene laminate: Comparison of U.S.-produced and Japanese-produced products

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Although prices are quoted on a sheet or roll basis, prices of fabric and expanded neoprene laminate were requested on a square-foot basis, since there is no standardized sheet size. U.S. producers and importers were requested to provide the quantity and net selling prices for their largest sale, by quarters, for January 1983-March 1985 for the thicknesses listed below. Purchasers were asked to provide the largest quantity purchased and the purchase price from U.S. and Japanese producers, by quarters, for January 1983-March 1985 for the following thicknesses:

Thickness 1: A rubber-textile material 1/32-inch (approximately 0.5mm) or less in thickness with stretch-nylon fabric laminated to both sides of the expanded neoprene rubber.

Thickness 2: A rubber-textile material over 1/32-inch (approximately 0.5mm) to 1/16-inch (approximately 1mm) in thickness with stretch-nylon fabric laminated to both sides of the expanded neoprene rubber.

Thickness 3: A rubber-textile material over 1/16-inch (approximately 1mm) to 3/32-inch (approximately 2mm) in thickness with stretch-nylon fabric laminated to both sides of the expanded neoprene rubber.

Thickness 4: A rubber-textile material over 3/32-inch (approximately 2mm) to 1/8-inch (approximately 3mm) in thickness with stretch-nylon fabric laminated to both sides of the expanded neoprene rubber.

Thickness 5: A rubber-textile material over 1/8-inch (approximately 3mm) to 3/16-inch (approximately 5mm) in thickness with stretch-nylon fabric laminated to both sides of the expanded neoprene rubber.

Thickness 6: A rubber-textile material over 3/16-inch (approximately 5mm) to 1/4-inch (approximately 6mm) in thickness with stretch-nylon fabric laminated to both sides of the expanded neoprene rubber.

Thickness 7: A rubber-textile material over 1/4-inch (approximately 6mm) in thickness with stretch-nylon fabric laminated to both sides of the expanded neoprene rubber.

Both U.S. producers, two importers that sell to end users, and seven purchasers provided usable data. 1/ Domestic and Japanese prices for all grades and thickness of neoprene tended to fall or remain stable during the period of investigation, though prices in January-March 1985 increased for some thicknesses. The data show margins of underselling for grades 1 through 3 for all quarters from January 1983 to March 1985 for which data were available. Margins ranged from a low of 3.4 percent to a high of 71.2 percent. There were no imports of grades 4 and 5. There were no reported U.S. sales for thickness 1.

1/ Many of the purchasers were also importers of record.

Grade 1.--Domestic weighted-average prices and margins of underselling for grade 1 thicknesses are presented in table 14. Grade 1 prices for all thicknesses ranged from a *** of *** to a high of *** per square foot. Prices of domestic neoprene for thickness 2 ***. Prices for thickness 3 *** percent from January-March 1983 to October-December 1983 before *** percent by April-June 1984. Prices for thickness 4 ***, showing a *** percent *** between January-March 1983 and January-March 1985. Prices for thickness 5 *** all quarters. Prices for thickness 6, though ***, ***. Prices for thickness 7 *** all quarters.

Margins of underselling by all Japanese thicknesses of grade 1 ranged from a low of 42.2 percent to a high of 71.2 percent. Margins for thickness 2 ranged from 57.0 percent in January-March 1984 to 63.4 percent in January-March 1985. Margins for thickness 3 ranged from 60.9 percent in October-December 1983 to 71.2 percent in April-June 1984. Margins for thickness 4 ranged from 54.8 percent in January-March 1983 to 67.4 percent in July-September 1984.

Table 14.--Fabric and expanded neoprene laminate, Grade 1: Weighted-average prices of U.S.-produced fabric and expanded neoprene laminate and margins of underselling of fabric and expanded neoprene laminate imported from Japan, by thicknesses and by quarters, January 1983-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Margins for thickness 5 ranged from 42.2 percent in January-March 1984 to 62.5 percent in January-March 1985. Margins for thickness 6 ranged from 55.2 percent in January-March 1983 to 59.9 percent in July-September 1984. There were no margins for thickness 7, because there were no reported Japanese prices for this thickness.

Grade 2.--Domestic weighted-average prices and margins of underselling for grade 2 thicknesses are presented in table 15. Grade 2 prices for all thicknesses ranged from a *** of *** to a high of *** per square foot. Prices of domestic neoprene for thickness 2 *** percent from January-March 1983 to January-March 1985. Prices for thickness 3 *** percent from January-March 1983 to January-March 1985. Prices for thickness 4 *** percent from January-March 1983 to April-June 1984 before *** percent by January-March 1985. Prices for thickness 5 *** percent during 1983 before ***percent by January-March 1985. Prices for thickness 6 *** percent from January-March 1983 to January-March 1985. Prices for thickness 7 *** in 1983 before *** at *** percent below the January-March 1983 price.

Margins of underselling of all Japanese thicknesses of grade 2 ranged from a low of 3.4 percent to a high of 35.6 percent. There were no margins for thicknesses 2 and 3, because there were no reported Japanese prices for these thicknesses. Margins for thickness 4 ranged from 22.6 percent in October-December 1984 to 31.2 percent in January-March 1983. Margins for thickness 5 ranged from 24.4 percent in October-December 1984 to 35.6 percent

in October-December 1983. Margins for thickness 6 ranged from 3.4 percent in January-March 1985 to 25.4 percent in October-December 1983. Margins for thickness 7 ranged from 21.1 percent in July-September 1983 to 29.3 percent in January-March 1984.

Table 15.--Fabric and expanded neoprene laminate, Grade 2: Weighted-average prices of U.S.-produced fabric and expanded neoprene laminate and margins of underselling of fabric and expanded neoprene laminate imported from Japan, by thicknesses and by quarters, January 1983-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Grade 3.--Domestic weighted-average prices and margins of underselling for grade 3 thicknesses are presented in table 16. Grade 3 prices for all thicknesses ranged from a *** of *** to a high of *** per square foot. Prices of domestic neoprene for thickness 2 *** percent from January-March 1983 to April-June 1984 before *** percent by January-March 1985. Prices for thickness 3 *** percent from January-March 1983 to January-March 1984, then *** percent in July-September 1984 before *** percent by January-March 1985. Prices for thickness 4 *** percent from January-March 1983 to January-March 1985. Prices for thickness 5 *** percent from January-March 1983 to July-September 1983 before *** percent by January-March 1985. Prices for thickness 6 *** percent for 1983 before *** percent by January-March 1985. Prices for thickness 7 *** percent during 1984.

Table 16.--Fabric and expanded neoprene laminate, Grade 3: Weighted-average prices of U.S.-produced fabric and expanded neoprene laminate and margins of underselling of fabric and expanded neoprene laminate imported from Japan, by thicknesses and by quarters, January 1983-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Margins of underselling of all Japanese thicknesses of grade 3 ranged from a low of 13.4 percent to a high of 40.2 percent. There were no margins for thicknesses 2 or 3, because there were no reported Japanese prices for these thicknesses. Margins for thickness 4 ranged from 19.0 percent in October-December 1984 to 35.1 percent in July-September 1984. Margins for thickness 5 ranged from 18.0 percent in January-March 1985 to 31.0 percent in October-December 1983. Margins for thickness 6 ranged from 13.4 percent in January-March 1985 to 40.2 percent in October-December 1983. Margins for thickness 7 ranged from 14.1 percent in April-June 1984 to 32.2 percent in January-March 1984.

Japanese grade 1.--Weighted-average prices for the largest sales of imported Japanese fabric and expanded neoprene laminate for grade 1 are reported in table 17. Prices for all Japanese grade 1 thicknesses ranged from a *** of *** per square foot to a *** of ***. Prices for all thicknesses of grade 1 fabric and expanded neoprene laminate *** from January-March 1983 to January-March 1985, except for thickness 7, where there were no reported prices. Thickness 2 prices *** percent. Thickness 3 prices *** percent. Thickness 4 prices *** percent. Thickness 5 prices *** percent. Thickness 6 prices *** percent.

Table 17.--Fabric and expanded neoprene laminate, Grade 1: Weighted-average prices of Japanese-produced products, by thicknesses and by quarters, January 1983-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Japanese grades 2 and 3 1/.--Weighted-average prices for the largest sales of imported Japanese fabric and expanded neoprene laminate for grades 2 and 3 are reported in table 18. Prices for all Japanese grade 2 and 3 thicknesses ranged from a *** per square foot to a *** of ***. Prices for all thicknesses of grade 2 and 3 fabric and expanded neoprene laminate *** from January-March 1983 to January-March 1985. There were no reported Japanese prices for thicknesses 2 and 3. Thickness 4 prices *** from January-March 1983 to January-March 1985. Thickness 5 *** the period. Thickness 6 prices *** percent from January-March 1983 to January-March 1985. Thickness 7 prices *** from January-March 1983 to January-March 1985.

Table 18.--Fabric and expanded neoprene laminate, Grades 2 and 3: Weighted-average prices of Japanese-produced products, by thicknesses and by quarters, January 1983-March 1985

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Lost sales 2/

The domestic producers were asked to furnish the Commission with customer names, quantities, and dates relating to any sales of fabric and expanded

1/ Japanese grades 2 and 3 both consist of *** fabric and expanded neoprene laminate. The density of the Japanese product fell between the densities of domestic grades 2 and 3 and was therefore compared to both domestic grades.

2/ This discussion is from the report on the preliminary investigation. Rubatex made no new lost sale allegations in the final investigation.

neoprene laminate they allege were lost to Japanese imports since January 1, 1981. Rubatex reported that it lost sales to *** accounts for calendar year 1984 that would have amounted to *** square feet, valued at *** (table i9). Kirkhill reported that it lost *** accounts, *** in 1982 and *** in 1984, for unspecified quantities of fabric and expanded neoprene laminate valued at *** in each of the 2 years. The allegations involve various types of fabric and expanded neoprene laminate. To support the lost sales allegations, Rubatex submitted copies of two interoffice memoranda, one dated July 26, 1984, and the other dated July 27, 1984. ***. All were contacted by the Commission, and all confirmed that they purchased fabric and expanded neoprene laminate from Japan.

All of the identified customers, or former customers, stated that the primary reason they purchased fabric and expanded neoprene laminate from Japan, was superior softness and stretchability. In addition, some customers stated that better service was another reason for purchasing from Japan. Some said they would prefer to purchase domestically if the same quality and characteristics of the imported thickness were available from U.S. sources. None would say that price was the principal consideration in their purchases of fabric and expanded neoprene laminate for their wet-suit business.

* * * * * * *

Table 19.—Fabric and expanded neoprene laminate: Lost sales reported by Rubatex, by customers, January 1981-September 1984

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Some of the firms alleged to be lost sales appeared at the Commission's hearing in opposition to the petition. A comparison of the tabulation in the U.S. importers' section with table 19 shows that some of the firms where sales were alleged to be lost are now importers of record.

Lost revenues

Both Rubatex and Kirkhill stated in their questionnaire responses that they had lost revenues as a result of making some price concessions or price related concessions that would not have been made in the absence of Japanese fabric and expanded neoprene laminate in the U.S. market. The specifics of the lost revenue allegations were not quantified.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during the period January 1982 through March 1985 the nominal value of the Japanese yen depreciated relative to the U.S. dollar by 9.2 percent (table 20). After adjustment for relative differences between inflation rates over the 12-quarter period ended December 1984 by the respective Producer Price Indexes of each country, the real value of the Japanese currency depreciated by a larger proportion--10.1 percent--relative to the U.S. dollar, as opposed to the apparent depreciation of 5.1 percent represented by the nominal value.

Table 20.--Exchange rates 1/.--Nominal exchange rate equivalents of the Japanese yen in U.S. dollars, real exchange rate equivalents, and producer price indicators in the United States and Japan, 2/ indexed by quarters, January 1982-March 1985

(January-March 1982=100.0)

Period	U.S. producer price index	Japanese producer price index	Nominal exchange rate index	Real exchange rate index 3/
1982:				
January-March	100.0	100.0	100.0	100.0
April-June	100.1	100.3	95.6	95.8
July-September	100.5	101.3	90.2	90.9
October-December	100.6	101.2	89.9	90.4
1983:				
January-March	100.7	99.2	99.0	97.5
April-June	101.0	98.2	98.3	95.6
July-September	102.0	.98.4	96.3	92.9
October-December	102.5	97.9	99.7	95.2
1984:				
January-March	103.6	98.0	101.1	95.6
April-June	104.3	97.9	101.7	95.5
July-September	104.1	98.6	95.9	91.0
October-December	103.9	98.3	94.9	89.9
1985:				
January-March	4/ 103.7	5/	4/ 90.8	5/

1/ Exchange rates expressed in U.S. dollars per yen.

2/ Producer price indicators are based on average quarterly indexes presented in line 63 of the International Financial Statistics.

3/ The real value of a currency is the nominal value adjusted for the difference between inflation rates as measured by the producer price indexes in the United States and the foreign country. Producer prices in the United States increased by 3.9 percent during the period January 1982-December 1984. In contrast, producer prices in Japan increased by 1.3 percent during the period January 1982-September 1982 and then fell by 2.9 percent during the period October 1982-December 1984.

4/ Based on data for January and preliminary data for February only.

5/ Not available.

Source: International Monetary Fund, International Financial Statistics, April 1985.

APPENDIX A

FEDERAL REGISTER NOTICES

[A-588-404]

Preliminary Determination of Sales at Less Than Fair Value; Fabric Expanded Neoprene Laminate From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that fabric expanded neoprene laminate from Japan is being, or is likely to be, sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise, with the exception of entries of merchandise manufactured by three companies preliminarily excluded, which are entered, or withdrawn from

warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have excluded three manufacturers whose margins are *de minimis* from this preliminary determination. Those firms which are subject to suspension of liquidation are indicated in the "Suspension of Liquidation" section.

If this investigation proceeds normally, we will make a final determination by May 28, 1985.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-1776.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that fabric expanded neoprene laminate from Japan is being sold, or is likely to be sold, in the United States at less than "fair value," as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have found *de minimis* margins on sales at less than fair value for three of the firms investigated. Therefore, we have excluded those firms from this determination. For the remaining firm we have found that the foreign market value exceeded the United States price on 88 percent of the sales compared. These margins ranged from .39 percent to 38 percent. The weighted-average margin on all sales compared is 13.02 percent. Those firms which are subject to or excluded from this determination are indicated in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by May 28, 1985.

Case History

On October 1, 1984, we received a petition in proper form from Rubatex Corporation, Bedford, Virginia on behalf of the U.S. industry producing fabric expanded neoprene laminate. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petition alleged that fabric expanded neoprene laminate from Japan is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 22, 1984 (49 FR 42970). The ITC subsequently found, on November 14, 1984, that there is a reasonable indication that imports of this product from Japan are materially injuring, or are threatening to materially injure, a United States industry.

Scope of the Investigation

The merchandise covered by this petition is fabric expanded neoprene laminate imported from Japan and currently classified under item numbers 355.81, 355.82, 359.50, and 359.60 of the *Tariff Schedules of the United States*. We investigated sales of this product which were made by four Japanese producers and sold to the United States during the period of investigation, May 1, 1984 through October 31, 1984. The firms investigated were: Yamamoto Corporation (Yamamoto); Asahi Rubber Co., Ltd. (Asahi); Sedo Chemicals Co., Ltd. (Sedo); and Daiwa Rubber and Chemical Co., Ltd. (Daiwa). Sales by the above firms accounted for approximately 94 percent of all sales of the merchandise to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. With the exception of certain sales by Asahi, we based the foreign market value on sales of such or similar merchandise in the Japanese home market. For sales by Asahi of a unique, fire-retardant product there were no sales in the home market of such or similar merchandise. In accordance with section 773(a)(1)(B) of the Act, for these sales we based the foreign market value on sales of such or similar merchandise to a third country, Canada.

United States Price

As provided in section 772(b) of the Act, for all companies we used the purchase price of the subject merchandise to represent the United States price, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated purchase price based on FAS or FOB Japanese port or CIF, packed prices to unrelated purchasers in the United States or to unrelated trading companies for sale to the United States.

We made deductions, where appropriate, for ocean freight, marine insurance, foreign inland freight and foreign brokerage and handling charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Yamamoto, Sedo, Daiwa and certain sales by Asahi based on home market ex-factory or delivered, packed and unpacked prices to unrelated purchasers in the home market. For sales of fire-retardant products by Asahi we based foreign market value on delivered Japanese port, packed prices to unrelated trading companies for sale to Canada, because there were no sales of such or similar merchandise in the home market. We made deductions, where appropriate, for foreign inland freight and cash discounts. We made adjustments for warranty expenses, advertising expenses and differences in credit expenses, where appropriate, in accordance with § 353.15 of the Commerce regulations. We made adjustments for cost differences in comparisons of similar merchandise in accordance with § 353.16 of the Commerce regulations. We also deducted the home market or third-country packing cost, where appropriate, and added the packing cost incurred on sales to the United States.

Yamamoto claimed a level of trade adjustment to home market prices, because sales to the United States were all to unrelated trading companies, while sales in the home market were to end users and unrelated trading companies. In the home market we compared only sales to unrelated trading companies. Therefore, no adjustment for level of trade was necessary.

Sedo claimed as a direct selling expense costs associated with salesmen's visits to customers. We have not allowed this claim pending verification that such expenses are directly related to the sales under investigation.

Daiwa claimed an adjustment to home market prices for a "quality discount". We have not allowed the adjustment at this time as we need further clarification of the nature of this discount. If warranted, we will consider this claim further in our final determination.

Asahi claimed an adjustment to home market prices for an amount reflecting advertising and other direct selling expenses. We have denied this adjustment pending clarification of the individual expenses included in this

amount. We may consider this claim further for our final determination. Asahi also submitted revised calculations of home market packing expenses. These were not submitted in time to be included in our preliminary determination. They will be reviewed at verification and considered for our final determination.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of fabric expanded neoprene laminate from Japan which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise exceeds the United States price. This suspension of liquidation will remain in effect until further notice. Companies excluded from this determination are identified by an asterisk (*) in the chart below. The weighted-average margins are as follows:

Manufacturer	Weighted-average margin (percent)
Yamamoto Corporation	13.02
*Asahi Rubber Co., Ltd	[1].12
*Seiko Chemicals Co., Ltd	[1].002
*Daiwa Rubber & Chemicals Co., Ltd	[1].34
*All others	13.02

[1] De minimis.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on April 22, 1984, at the U.S. Department of Commerce, Room B841, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by April 19, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

March 11, 1985.

[FR Doc. 85-6228 Filed 3-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[Investigation No. 731-TA-206 (Final)]

Fabric and Expanded Neoprene Laminate From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-206 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of fabric and expanded neoprene laminate, provided for in items 355.81, 355.82, 359.50, and 359.80 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 28, 1985, and the Commission will make its final injury determination by July 12, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: Lee Cook (202-523-0348), Office of Industries, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of fabric and expanded neoprene laminate from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on October 1, 1984, by Rubatex Corp., Bedford, VA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (49 FR 45935, November 21, 1984).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with section 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on May 24, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on June 11, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 17, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 22, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 6, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32589, August 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 18, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information to the subject of the investigation on or before June 18, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 CFR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32589, Aug. 15, 1984).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32589, Aug. 15, 1984).

By order of the Commission.

Issued: April 15, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-9935 Filed 4-23-85; 8:45 am]

BILLING CODE 7020-02-M

[A-588-404]

Fabric Expanded Neoprene Laminate From Japan; Final Determination of Sales at Less Than Fair Value

SUMMARY: We have determined that fabric expanded neoprene laminate from Japan is being sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine within 45 days of publication of this notice whether these imports are materially injuring, or are threatening to materially injure, a United States industry.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: William D. Kane, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-1766.

SUPPLEMENTARY INFORMATION:

Case History

On October 1, 1984, we received a petition filed by Rubatex Corporation, on behalf of the U.S. industry producing fabric expanded neoprene laminate. In compliance with the filing requirements of § 353.36 of our Regulations (19 CFR 353.36), the petition alleged that imports of fabric expanded neoprene laminate from Japan are being sold, or are likely to be sold, in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 22, 1984 (49 FR 42970). The ITC subsequently found,

on November 14, 1984, that there is a reasonable indication that imports of fabric expanded neoprene laminate are materially injuring, or are threatening to materially injure, a United States industry.

The petitioner alleged that at least five Japanese companies produce fabric expanded neoprene laminate for export to the United States. We found that two of these companies, Yamamoto Corporation (Yamamoto) and Asahi Rubber Co., Ltd. (Asahi), accounted for 60 percent of sales to the United States during the period of investigation. Questionnaires were presented to these companies in Japan on November 8, 1984. Yamamoto responded to the questionnaire on December 26, 1984. Asahi responded on December 31, 1984. Sedo Chemicals Co., Ltd. (Sedo) and Daiwa Rubber & Chemicals Co., Ltd. (Daiwa) also filed voluntary responses to the antidumping questionnaire on December 31, 1984. As these voluntary responses were received in a timely manner, permitting complete review, verification and analysis, sales by these companies were included in our investigation.

On March 11, 1985, we preliminarily determined that fabric expanded neoprene laminate from Japan was being, or was likely to be, sold in the United States at less than fair value (50 FR 10618).

Our notice of preliminary determination provided interested parties an opportunity to submit views orally and in writing. Verifications were conducted at Osaka and Kobe, Japan at the corporate offices of Yamamoto, Asahi, Sedo and Daiwa on March 18 thru 29, 1985.

On April 22, 1985, we held a public hearing.

Scope of Investigation

The product covered by the investigation is fabric expanded neoprene laminate, currently provided for in items 355.81, 355.82, 359.50 and 359.60 of the *Tariff Schedules of the United States, Annotated* (TSUSA). We investigated sales of fabric expanded neoprene laminate by the four respondents during the period from May 1, 1984, to October 31, 1984. A fifth company, Mizuno Chemical Industry Co., Ltd. (Mizuno) filed a voluntary response on March 29, 1985. Statutory time constraints did not permit inclusion of their data in our investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of fabric expanded neoprene laminate to represent the United States price for sales by the Japanese producers because the merchandise was sold prior to the date of importation to unrelated United States purchasers. We calculated the purchase price on the FAS or FOB Japanese port, or CIF, packed price to unrelated purchasers in the United States or to unrelated trading companies for sale to the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling charges, ocean freight and marine insurance.

Yamamoto

One U.S. sale was found to have been subsequently cancelled. This sale was not considered in our calculations. In the original submission some sales late in the period were assigned zero inland freight and packing amounts because invoices for the services from sub-contractors were not available. At the time of verification these amounts were presented and verified.

Asahi

Brokerage and handling charges for these sales were found to be in error. These were revised to reflect the correct amounts.

Sedo

Sales transactions to the U.S. were in Japanese yen. One customer remitted payment in U.S. dollars which resulted in a net return in Japanese yen which differed from invoice prices in the Sedo U.S. sales listing. These were corrected to reflect the amounts actually received. Small differences in amounts claimed for brokerage were corrected.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Yamamoto, Sedo, Daiwa and certain sales by Asahi based on home market ex-factory or delivered, packed and unpacked prices to unrelated purchasers in the home market. For sales of fire-retardant products by Asahi we based foreign market value on delivered Japanese port, packed prices to unrelated trading companies for sale to Canada, because there were no sales of such for similar merchandise in the home market. We made deductions, where appropriate, for foreign inland freight and cash discounts. We made adjustments for advertising and warranty expenses, where appropriate, in accordance with § 353.15 of the Commerce Regulations. We made adjustments for cost differences in comparisons of similar merchandise in accordance with § 353.16 of the Commerce Regulations. We also deducted the home market or third country packing cost where appropriate, and added the packing cost incurred on sales to the United States.

Yamamoto

As verified home market sales prices revealed no consistent pattern of price discrimination based on category of purchaser, we included sales to both end-users and unrelated trading companies in our final calculations. Prior to verification Yamamoto submitted calculations for home market inland freight and packing which were services performed by company employees. Those amounts were verified and allowed. Warranty expenses claimed by Yamamoto were found to related to a sale outside the period of investigation and were not allowed. At our request Yamamoto revised their home market average credit cost allocations to reflect actual expenses incurred on each sale. These were verified and allowed. Mathematical errors were discovered in Yamamoto's calculations of cost differences for comparisons of similar merchandise. These were corrected and the revised and verified amounts were allowed.

Asahi

Prior to verification Asahi presented corrections to twenty sales to which they had applied estimated amounts for packing and inland freight charges because of the unavailability of source documents at the time of preparation of the response. The corrected amounts were verified and allowed. One sale price was found to be incorrect and was adjusted to reflect the true price. Inland freight charges for two sales could not be documented and were not allowed. Included in an amount for "advertising" and "other direct selling expenses" was a portion of sample sheets supplied to individual customers free of charge. As we consider this a normal cost of doing business and not directly attributable to a particular sale, that portion was not allowed. A portion of warranty costs related to one sale were found to be borne by an unrelated freight company. That portion of warranty costs was not allowed. A warranty cost attributed to one customer was found to relate to a sale outside the period of investigation and was not allowed. One figure in

calculations of cost differences for comparisons of similar merchandise was found to contain a computational error. This was corrected to reflect the proper amount.

Daiwa

At the time of their original response Daiwa had estimated credit expenses for certain sales at the end of the period of investigation for which documentation was not available. At the time of verification actual amounts for these sales were presented and verified. A claim for a "quality discount" was requested for certain sales. These sales were found to be of grade B material, of which there were no sales to the United States.

As their were sufficient sales of identical grade material, sales of grade B were not considered in our calculations. Warranty expenses attributed to two customers were found to be related to sales outside the period of investigation and were not allowed.

Sedo

One sale price was revised to correct a typographical error. Prior to verification Sedo presented revisions to individual sales data. These revisions were verified and allowed. Sedo claimed as an adjustment for direct selling expenses the travel costs associated with salesman visits to customers. As these costs could not be directly related to the sales under investigation, they were not allowed.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the companies involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Results of Investigation

We made fair value comparisons on all the reported fabric expanded neoprene laminate sold in the United States by the four Japanese companies during the investigative period. We found margins of 4.88 percent to 29.18 percent on 25 percent of sales by Yamamoto. The weighted-average margin was 3.09 percent. For Sedo we found no margins. For Asahi and Daiwa the margins found were de minimis. Therefore, we are excluding Sedo, Asahi and Daiwa from this final determination.

Petitioner's Comments

Comment 1: Petitioner claims that Yamamoto sales of fabric expanded neoprene laminate to an end-user who subsequently manufactures the material into ski masks and motorbike masks should be included in the investigation because such a customer is part of the market for which petitioner seeks relief.

DOC Position: The Department agrees that such sales should be incorporated in our investigation. At no time has the scope of the investigation been limited to exclude a product based on such intended uses.

Comment 2: Petitioner states that the Department should allow only customary warranty expenses during a normal time period.

DOC Position: The Department agrees. Only those warranty expenses directly related to sales during the period of investigation have been allowed. Department policy on this issue is further discussed in response to respondent Yamamoto's comment number 3.

Comment 3: Petitioner contends that an untimely voluntary submission filed by Misuzu Corporation should not be considered in the course of the investigation.

DOC Position: The Department agrees. We have rejected the response of Misuzu from consideration because statutory time constraints would not permit a complete review, verification and analysis of the submitted data.

Respondent's Comments

Yamamoto's Comments

Comment 1: Respondent objected to the use of home market sales to only unrelated trading companies in the calculation of Yamamoto's margin in the Department's preliminary determination, and contended that sales to both end-users and unrelated trading companies should be considered.

DOC Position: The Department agrees. An analysis of verified home market prices shows no evidence of price discrimination based on category of purchaser. Therefore, for our final calculations we have incorporated all home market sales regardless of class of purchaser.

Comment 2: Respondent claims that sales to one customer who manufactures the material into ski masks and motorbike masks should not be considered because they were not made in the ordinary course of trade or in the principal market in Japan.

DOC Position: The Department disagrees. The scope of this investigation includes merchandise sold for many uses, including skimasks and motorbike masks, as explained in the International Trade Commissions preliminary determination. Nor does the fact of Yamamoto having only one such customer demonstrate that such sales would be out of the ordinary course of trade, or not in the principal market of the fabric expanded neoprene laminate industry in Japan. There is no evidence to suggest that such a customer would not constitute a normal market for manufacturers or trading companies in Japan. Sales to this customer have been included in our calculations.

Comment 3: Respondent contends that their claim for an allowance for warranty expenses should be allowed because it relates to the kind of merchandise under investigation.

DOC Position: The Department disagrees. The requirement for allowance of such sales expenses is that they be directly related to sales under investigation, not simply to the kind of merchandise under investigation. Recognizing that claims under warranty are often, by their nature, delayed, and thus not captured during the period of investigation, the Department has in the past allowed an average warranty cost based on historical experience. However, in the instant case respondent did not compute, or present evidence to compute, such an average. Therefore, these warranty costs were not allowed.

Comment 4: Respondent contends that this investigation was improperly initiated in that it fails to allege the elements necessary for imposition of dumping duties, fails to provide information readily available, and is not brought on behalf of a United States industry.

DOC Position: The Department disagrees. We have found the petition to meet the filing requirements of our regulations. The petitioner alleged sales at less than fair value, and presented reasonably available sales and cost information to substantiate the allegation. The petitioner clearly stated the petition was filed on behalf of the U.S. industry producing the products. Members of that industry have cooperated with the International Trade Commission (ITC) in their injury investigation, and at no time throughout the course of this investigation has any industry member indicated to the Department or the ITC that they do not consider the petition to have been filed on their behalf.

Sedo's Comments

Comment 1: Respondent claims that a clerical error discovered at verification regarding underpayment by one customer on two orders had been

corrected and that prices as stated in their response should be accepted.

DOC Position: The Department agrees. It was clear during the verification that the small unreconciled difference between invoice and payment was the result of bookkeeping error. Evidence subsequently submitted has demonstrated that the full invoiced amount has been received and that there was no intent to misrepresent that amount.

Comment 2: Respondent claims that Japanese yen amounts realized by virtue of currency rate fluctuations should be disregarded in deference to the Japanese yen invoiced amount.

DOC Position: The Department disagrees. The transactions in question were denominated in Japanese yen. These contracts mentioned no equivalent dollar amount, nor any agreed upon exchange rate on which a dollar equivalent might be based. The dollar amount remitted by the customer was apparently at the customer's discretion and unquestioned by the manufacturers. As the transaction was yen denominated, the Department considers yen receipts to represent the price of the merchandise.

Comment 3: Respondent claims an allowance for a salesman's visits to customers should be allowed as a circumstance of sale adjustment.

DOC Position: The Department disagrees. Such a circumstance of sale adjustment must be directly related to the sales under investigation to be allowed. The visits in question could not be demonstrated to be related to those sales during the period of investigation, and these expenses were not allowed.

Asahi Comments

Comment 1: Respondent claims advertising costs should be allowed.

DOC Position: The Department agrees in part. Such advertising costs were found to be directly related to the product under investigation and directed to its ultimated consumers. These expenses were allowed with the exception of sample sheets provided free of charge to Asahi's own customers. The Department considers such free trial samples a normal cost of doing business and not a cost directly related to the sales under investigation.

Daiwa's Comments

Comment 1: Respondent claims warranty costs directly related to the sales under investigation should be allowed.

DOC Position: The Department agrees. All those warranty costs demonstrated to be directly related to the sales under investigation have been allowed.

Mitsuzu Comments

Comment 1: Mitsuzu contends that the Department should honor its request for exclusion under § 353.45 of its regulations by verifying and analyzing its response submitted after our preliminary determination.

DOC Position: The Department disagrees, as stated in its letter of May 15, 1985, to counsel for Mitsuzu. The time constraints placed upon the Department by law and regulation did not permit the full administrative procedures necessary for verification and analysis of a response submitted so late in the proceeding. The Mitsuzu response has not been considered in our final determination.

Comment 2: Mitsuzu contends that the Department should include the calculations on all manufacturers investigated in weight-averaging a margin to be applied to all other manufacturers, rather than apply the rate of the one manufacturer with a positive margin.

DOC Position: The Department disagrees. The Departments' long-standing policy is to base the bonding rate for manufacturers and exporters not investigated on the weighted average of the margins applicable to companies covered by an affirmative determination. Manufacturers or exporters which have demonstrated, through verified information, that they do not sell at less than fair value, including those which have *de minimis* margins, are excluded from the determination. The Department does not believe it is appropriate to include in the weighted-average bonding rate companies not covered by the affirmative determination.

Final Determination

Based on our investigation and in accordance with section 735(a) of the Act, we have reached a final determination that fabric expanded neoprene laminate from Japan is being sold in the United States at less than fair value within the meaning of section 731 of the Act.

Suspension of Liquidation

On March 18, 1985, we instructed the United States Customs Service to suspend liquidation of all entries of fabric expanded neoprene laminate from Japan, with the exception of that produced by Asahi, Daiwa and Sedo. As of the date of publication of this notice in the Federal Register, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended for all firms subject to suspension. The Customs Service shall require a cash deposit or the posting of a bond equal to the new estimated weighted-average amounts shown in this notice for those firms not excluded from this final determination, by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted average margins are as follows:

Manufacturer and status	Weighted average margin (percent)
Yamamoto (subject to suspension)	3.89
Asahi (excluded)	.85
Daiwa (excluded)	.33
Sedo (excluded)	.0
All others (subject to suspension)	3.89

ITC Notification

We are notifying the ITC and making available to it all nonprivileged and nonconfidential information relating to this determination. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that such injury does exist, we will issue an antidumping order directing Customs officers to assess an antidumping duty on fabric expanded neoprene laminate from Japan entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d).

Dated: May 28, 1985.

William T. Archey,

Assistant Secretary for Trade Administration.

[FR Doc. 85-13403 Filed 6-3-85; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

U.S. INTERNATIONAL TRADE COMMISSION, CALENDAR OF WITNESSES AT THE PUBLIC HEARING

TENTATIVE CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : Fabric and Expanded Neoprene Laminate from Japan

Inv. No. : 731-TA-206 (Final)

Date and time: June 11, 1985 - 10:00 a.m.

Sessions were held in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

In support of the imposition of antidumping duties:

Rubatex Corporation, Bedford, Virginia

Ronald L. Adams, President and Chief Executive Officer

Hunter Allen, Market Development Manager

Larry Brookshier, Assistant Plant Manager

Ray Cash, Technical Director

Ron Clanin, Sales Representative - California

Glen DeLong, Quality Control Manager

Milton Tsoleas, Controller

Carl Witt, Product Sales Manager

Mark Kettenhoffen, Founder and Owner, Kettenhoffen Enterprises

Dale Starrett, Windward Exposure Suits

Ellen Whitehouse, Whitehouse Industries

Expert Testimony:

Virginia Polytechnic Institute, Blacksburg, Virginia

Dr. Wallace Grant

Dr. David Cockrell

Peter Hemmerick, Vice President, Hemmerick Industries

Kirkhill Rubber Company, Brea, California

Carl D. Meyer, Manager, Marketing Division

In opposition to the imposition of antidumping duties:

Graham & James--Counsel
Washington, D.C.
on behalf of

Toyomenka (America), Inc.,
Chugai International Corporation
Mitsui & Co. (U.S.A.), Inc.

Geoffrey A. Stern, President, Blue Water Manufacturing, Inc.

Glenn Egstrom, Professor, University of California, Los Angeles, California

Allan Edmund, President of Henderson Aquatics

Michael Hertzberg)
Stewart Benson)--OF COUNSEL
Yoshihiro Saito)

Hale & Dorr--Counsel
Washington, D.C.
on behalf of

O'Neill, Inc. & Misuzu Chemical Company Industries, Ltd.

Alan Carpenter, North America Sales Manager, Harvey's, Inc.

Russell Stevenson--OF COUNSEL

APPENDIX C

KIRKHILL RUBBER CO. LETTER TO THE COMMISSION

kirkhill
RUBBER COMPANY
EST. 1919

300 E. CYPRESS, BREA, CALIFORNIA 92621
(714) 529-4901 TWX 910-596-1213
TELEX 65-5366 TWX 910-596-1215

May 2 1985

Ms. Paula Stern, Chairwoman
U.S. International Trade Commission
701 E. Street N.W.
Washington, D.C. 20436

Subject: Fabric and Expanded
Neoprene Laminate
From Japan

Dear Ms. Stern:

It is our understanding that there will be another hearing concerning the Fabric and Expanded Neoprene From Japan during the month of May, 1985. We feel that it is importand that you are aware of the position taken by the Kirkhill Rubber Rubber Company concerning the investigation which was brought about by the filing of a petition with the Commission by Rubatex Corp.

We support the contentions made by Rubatex Corp. We certainly feel that the Sponge and Fabric Laminate Industry in the United States has been, and continues to be, continually injured by LTFV Imports of fabric and expanded neoprene Laminate from Japan. We feel that the pricing of the Japanese products may well constitute dumping.

The Kirkhill Rubber Company has been in business for 66 years and has gone from a two person operation to a company which employees approximately 800 people. Over the years Kirkhill has shown a constant growth pattern and our overall business continues to grow. However, the competition from Japanese laminated products has been so severe over the last five years that our volume of sales in sponge and fabric laminates has decreased to the point that 1984 sales of this product were 43% of the sales in 1981. If 1985 sales continue at the same rate as the first quarter, there will be a further 33% reduction from the 1984 levels. The Kirkhill Rubber Company has manufactured this product for the last 25 years and it had shown a steady growth pattern until the decline which started in 1981.

Certainly, for the most part, the Japanese made product being imported into the U.S. is of an excellent quality However, in every case of which we are aware, when the determination has been made to stop purchasing the domestic product and start purchasing the Japanese Product, major cost savings, due to lower Japanese prices, has been the major determing factor.

We recently developed a sponge laminate product which is 23% less expensive than the product we were selling in 1981. Even with this new product we are unable to be price competitive with the Japanese.

The Kirkhill Rubber Company has a reputation for manufacturing high quality products. We have been the recipient of numerous awards including the Navy Flag for the Trident, Poisedon, Polaris program. We are currently a valued supplier to the Space Shuttle Program. We apply the same high quality standards to our manufacture of our laminated sponge and fabric products.

I thought the enclosed article from the Seattle Post Intelligencer Newspaper would be of interest as an indication of how the Japanese treat competition in their market. Also, please note that Mr. Des Pres felt he would have to manufacture outside of the United States in order to be competitive.

We hope that the actions of the U.S. International Trade Commission will result in the U.S. Industry's opportunity to compete with the Japanese on a more even basis.

Sincerely yours,

Carl D. Meyer
Manager
Marketing Division

CDM:bm
Enc.

cc: Wm. J. Haney
R. Colvin
Don Reid

APPENDIX D

GLOSSARY

DEFINITIONS

Accelerated life test – Method designed to approximate in a short time the deteriorating effect of normal, long-term service conditions.

Age resistance – The ability of a material to resist aging.

Aging (rubber) – (1) The irreversible change of material properties after exposure to an environment for an interval of time. (2) Exposure of material to an environment for an interval of time.

Aging, air bomb – The process of exposing materials to the action of air at an elevated temperature and pressure.

Aging, air oven – The process of exposing materials to the action of air at an elevated temperature at atmospheric pressure.

Aging, oxygen bomb – The process of exposing materials to the action of oxygen at an elevated temperature and pressure.

Blister – A cavity or sac that deforms the surface of a material.

Bench marks – Marks of known separation applied to a specimen and used to measure strain.

Blow, cellular rubber –The volume expansion during the production of expanded or sponge rubber.

Blowing agent – Compounding ingredient used to produce gas by chemical or thermal action, or both, in the manufacture of hollow or cellular articles.

Cell – A single small cavity surrounded partially or completely by walls.

Cell, open – A cell not totally enclosed by its walls and hence interconnecting with other cells.

Cell, closed – A cell totally enclosed by its walls and hence not interconnecting with other cells.

Cracks, atmospheric – Fissures originating in the surface of a rubber vulcanizate, resulting from weathering.

Cracks, ozone – Fissures originating in the surface of rubber vulcanizate under strain, resulting from exposure to an ozone–containing environment.

Note: These cracks are perpendicular to the direction of strain.

Elongation – Extension produced by a tensile stress.

Elongation percent – The extension of a uniform section of a specimen expressed as percent of the original length.

Note: Elongation percent = $\frac{\text{final length} - \text{original length}}{\text{original length}} \times 100$

DEFINITIONS—Continued

Elongation, ultimate - The elongation at the time of rupture.

Rubber, closed cell, cellular - A cellular material in which practically all the individual cells are non-connecting.

Note: Closed-cell cellular rubber is made by incorporating gas-forming materials into the unvulcanized dry rubber compound or by subjecting the unvulcanized compound to gas at high pressure.

Rubber, expanded - Cellular rubber having closed cells made from a solid rubber compound.

Rubber sponge - Cellular rubber consisting predominantly of open cells and made from a dry rubber compound.

Skin - A relatively dense layer at the surface of a cellular polymeric material.

Tear strength - The maximum force required to tear a specified specimen, the force acting substantially parallel to the major axis of the test specimen.

Tensile strength - The maximum tensile stress applied during stretching a specimen to rupture.

Tensile stress - A stress applied to stretch a test specimen.

Tensile stress at a given elongation - The stress required to stretch the uniform cross section of a test specimen to a given elongation.

Water absorption - The amount of water absorbed by a material under specified test conditions.

Weathering - The surface deterioration of a rubber article during outdoor exposure.

Note: The above definitions were selected from ASTM D-1566, "Standard Definitions of Terms Relating to Rubber," 1984 Book of Standards, part 9.01.

DEFINITIONS--Continued

Compression-deflection - Pressure required to deflect a specimen to 75 percent of its original thickness. A method of expressing resistance to compression.

Density - Weight per unit volume. In the United States, usually pounds per cubic foot.

Elongation - Usually ultimate elongation, the expression of how much stretch may be applied before rupture in relation to original length.

Tensile strength - Pressure required to rupture test specimen.

Tear strength - Force required to continue tearing a specimen where a tear has been initiated. Units expressed as Force per unit width.

Thermal Conductivity - The rate at which heat flows through a material expressed as BTU's (British Thermal Units) inches per hours per square foot per Fahrenheit degrees.

Compression set - An expression of recovery after constant deflection at 50% for 22 hours at room temperature with a subsequent recovery period of 24 hours at room temperature. Expressed as a percentage of the deflected thickness.

Water Absorption - Used to delineate closed-cell materials from open-cell materials.

Note: The above definitions were provided by Rubatex Corp.